

**Jaswant Kaur Vs. House Rent and Accommodation Controller**

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**Court :** Karnataka

**Decided On :** Jun-04-1986

**Reported in :** ILR1986KAR2490; 1986(2)KarLJ129

**Judge :** Rama Jois and Ramakrishna, JJ.

**Acts :** Karnataka Rent Control Act, 1961 - Sections 4 and 21(1)

**Appeal No. :** W.A. No. 981 of 1983

**Appellant :** Jaswant Kaur

**Respondent :** House Rent and Accommodation Controller

**Advocate for Def. :** S. V. Jagannath, HCGP for R-1 & 3 and ;Papireddy, Adv. for R-2

**Advocate for Pet/Ap. :** C. Srinivasa, Adv.

**Disposition :** Writ appeal allowed

**Judgement :**

**Rama Jois, J.**

1. This Writ Appeal is presented by the appellant against the order of the learned single Judge dismissing her Writ Petition in which she had questioned the legality of the order of the Rent Controller which had been confirmed in appeal by the

Special Deputy Commissioner, Bangalore.

2. The facts of the case in brief are as follow :--

Premises bearing No. 47, upstairs, 9th Cross, Chamarajpet, Bangalore, belongs to the appellant. The said house had been leased out in favour of Dr. Pooswamy. The appellant filed H.R.C. No, 2160 of 1982 before the Court of Small Causes, Bangalore, seeking an order of eviction against the tenant from the above premises under Section 21(1)(h) of the Karnataka Rent Control Act, 1961 (the Act for short). After the notice was served, a joint memo was filed on 20-10-1982 by the appellant and her tenant. In the said memo the tenant conceded the bona fide requirement of the appellant and agreed to vacate the premises within one month's time. In view of the memo, the petition was allowed granting one month's time to the tenant to vacate the premises.

In the meanwhile, a report was made by the Revenue Inspector attached to the Office of the Rent Controller, Bangalore, on 25-9-1982 i.e., during the pendency of the H.R.C. case that the premises had become vacant on 31-7-82 and the appellant was negotiating to let out the said premises. In view of the said report, the Rent Controller initiated suo moto action for allotment of the house. In reply to the notice issued by the Rent Controller under Section 8 of the Act, the appellants appeared before the Rent Controller, produced a copy of the order made by the Court of Small Causes in H.R.C. No. 2160 of 1982 and submitted that she was not under obligation to report the vacancy as the vacancy occurred consequent on an order passed under Section 21(1)(h) of the Act, in view of the second proviso to Section 4 of the Act. She also submitted that the report made by the Revenue Inspector that the vacancy had occurred in July, 1982 was incorrect.

One of the applicants before the Rent Controller submitted that decree secured by the appellant was in collusion between her and the tenant with an intention to evade the provisions of the Act and therefore no importance should be attached to the said order. The Rent Controller accepted the plea of such an applicant. The relevant portion of the order of the Rent Controller reads :

'The landlady could get this order because the tenant did not oppose it and the Court also did not go into the merits of landlady's claim. If the Court had examined her claim on merits independent of the consent of the tenant, I think the Court would have looked into order in HRC. 970 of 1980 in which it is clearly mentioned that the intention of landlady was not bonafide in claiming the premises for self occupation. Moreover, it was made clear during the spot inspection and further hearing that the premises was vacated by the previous tenant on 31-7-1982. The petition under Section 21(1)(h) was filed on 6-8-1982 i.e., subsequent to the tenant vacated the premises, In fact the petition was untenable and redundant. It is surprising and unfortunate that the unscrupulous landlady with a colluding tenant would get an order under Section 21(1)(h) even after the tenant vacated the premises.'

3. Admittedly, the Rent Controller inspected the premises on 9-11-1982. It is difficult to appreciate how by his spot inspection on 9-11-1982 the fact that the house had become vacant in July, 1982 was proved. Except the submission made by one of the applicants before the Rent Controller that the house had become vacant in July, 1982 for which there was no basis at all, there was no evidence at all before the Rent Controller that the premises had fallen vacant in July, 1982. On the other hand, the proceedings before the Court of Small Causes in H. R. C. No. 2160 of 1982 indicate that an order of eviction was passed only on 20-10-1982 and one month's time was given to the tenant to vacate the premises. In the face of the order of the Court of Small Causes in H.R.C. No. 2160 of 1982, the Rent Controller could not have proceeded on the basis that there was a vacancy in July, 1982. It is no doubt true that the Learned Judge disposed of H.R.C. No. 2160 of 1982 by merely recording the joint memo. He ought to have recorded a finding that he was satisfied about the genuiness of the joint memo filed on behalf of the parties' and that the requirement of the landlady was bonafide. The circumstance that the Learned Judge did not do so, did not render the order coram non-judiciary as he had the jurisdiction to pass the order. Therefore, the Rent Controller could not sit in judgment over the order of eviction made by the Court of Small Causes. We are constrained to hold that while the order of the Civil Judge was perfunctory the action of the Rent Controller was without jurisdiction as the second proviso to Section 4 of the Act expressly provides that when there is an order of eviction

made under Section 21(1)(h) of the Act, the landlord concerned is not obliged to give intimation as required under Section 4 of the Act but has to do so only if the premises is not occupied within two months from the date of the order of eviction. Therefore, the proceedings could have been initiated by the Rent Controller suo moto if only it was found that the appellant had not occupied the premises personally within two months from the date on which Dr. Pooswamy vacated the premises pursuant to the order of the Court. As stated earlier, in the present case, the proceedings were initiated even during the pendency of H.R.C. No. 2160 of 1982 before the Court of Small Causes and therefore clearly without jurisdiction.

4. The Learned Counsel for the appellant submitted that the appellant had occupied the premises after Dr. Pooswamy vacated the same and she has been residing in and in possession of, the property for the last four years.

5. In the circumstances, we make the following

## **ORDER**

(i) The Writ Appeal is allowed ; and

(ii) in reversal of the order made by the Learned Single Judge, the Writ Petition is allowed and the order of the Rent Controller (Annexure-B) and the order of the Special Deputy Commissioner as per Annexure-C confirming the order of the Rent Controller, are set aside.