

Mohammed JalaludIn Vs. House Rent and Accommodation Controller

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Court : Karnataka

Decided On : Jul-16-1992

Reported in : ILR1992KAR2379; 1992(3)KarLJ24

Judge : K.A. Swami, Ag. C.J. and ;A.B. Murgod, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 5

Appeal No. : W.A. No. 354 of 1992

Appellant : Mohammed Jalaludin

Respondent : House Rent and Accommodation Controller

Advocate for Def. : Padubidri Raghavendra Rao, Adv. for R-3

Advocate for Pet/Ap. : U.L. Narayana Rao, Sr. Counsel for ;K.T. Anand, Adv.

Disposition : Appeal dismissed

Judgement :

K.A. Swami, Ag. C.J.

1. This Appeal is preferred against the Order dated 14th January 1992 passed by the learned Single Judge in Writ Petition No. 21455 of 1990, The learned Single Judge has allowed the Writ Petition and quashed the impugned orders passed by respondents 1 and 3.

2. The premises in question is No. 41, Osman Khan Road, S.J.P. Road Cross, Bangalore. It is a non-residential premises. Landlord obtained possession of this premises under Section 21(1) (h) of the Karnataka Rent Control Act on 30th June 1987.

2.1. The case of the respondents is that after obtaining possession of the premises the landlord did not occupy and he allowed it to remain vacant; that the Rent Controller made a local inspection on 2-1-1990, and found the premises locked; that he also enquired the neighbours and learnt that the premises was vacant; that on a second inspection the Rent Controller found one Simon working as a painter in the schedule premises and he also noticed certain painting materials, such as card boards and other articles kept in the premises, that the Rent Controller was of the view that the presence of Simon and painting articles were stage managed and that therefore he notified the schedule premises for allotment.

2.2. The appellant was one of the applicants for allotment. Landlord contested the case and contended that the premises was never vacant and he continued to be in actual physical possession of the premises, as such the Rent Controller had no jurisdiction to suo motu notify the vacancy and allot the same to others.

2.3. Before the Rent Controller the landlord gave evidence. However, the Rent Controller preferred to rely upon the information received by him during the inspection made on 2-2-1990 and also during his second visit to the schedule premises and held that the landlord failed to prove that the premises was occupied by him during two months from the date of taking possession of the premises pursuant to the order of eviction passed under Section 21(1)(h) of the Karnataka Rent Control Act (hereinafter referred to as the Act). He also further held that the premises was also vacant at the time when he made inspection of the premises on 2-2-1990 and also during his second visit. Accordingly, he allotted the premises to the appellant.

3. The order passed by the Rent Controller was also affirmed by the second respondent in the appeal filed before him by the landlord. Therefore the landlord challenged both the orders in Writ Petition No. 21455 of 1990.

3.1. Learned Single Judge has recorded a finding of fact that the premises was not vacant and it was continued to be in actual physical possession of the landlord; that the landlord occupied it within two months from the date of taking possession on 30th June 1987 pursuant to the order of eviction passed under Section 21(1)(h) of the Act. The Learned Single Judge has also held that the Rent Controller did not follow the correct procedure, in that, he proceeded on the basis that the burden was upon the landlord to prove that the premises was not vacant; that he relied upon the information collected behind the back of the landlord and the same was not put to the landlord during the enquiry when he gave evidence. The learned Single Judge was also of the view that there was no reason whatsoever for holding that the presence of Simon and the articles in the schedule premises were stage managed. Therefore the learned Single Judge held that the premises was not vacant at any point of time.

4. Sri U.L.Narayana Rao, learned Senior Counsel for the appellant contended that the learned Single Judge ought not to have reappreciated the evidence in a Writ Petition filed under Articles 226 and 227 of the Constitution; that the learned Single Judge is not correct in proceeding on the basis that the burden was placed on the landlord to prove that the premises was not vacant; that the Rent Controller came to the conclusion that the premises was vacant on the basis of the enquiry made by him, Learned Counsel placed reliance on the provisions of Sections 4 and 5 of the Act.

5. It is not possible to agree with any of the contentions urged on behalf of appellant. This is a case in which possession of the premises was obtained, pursuant to the order of eviction passed under Section 21(1)(h) of the Act, by the landlord on 30th June 1987. Thereafter, if the Rent Controller were to take a view that the premises was not either occupied within a period of two months from the date of taking possession or was vacant on the date the vacancy was suo motu notified for allotment, he was required to put to the landlord the material collected by him in that regard. It is not in dispute, and no material is brought to our notice, nor was it brought to the notice of the learned Single Judge, that the evidence collected by the Rent Controller behind the back of the landlord was put to the landlord during the course of enquiry which is quasi-judicial. Without affording an

opportunity to the landlord to rebut or adduce evidence to show that the information or the evidence collected by the Rent Controller was not trustworthy or was not true, the Rent Controller could not have relied upon it. The landlord in his evidence has stated that he continued to occupy the schedule premises and was conducting his business in it. In the course of cross examination nowhere it was suggested to the landlord that Simon was not his employee and the screen and other painting materials found in the premises were stage managed. Without affording an opportunity to the landlord, we are clearly of the view that the Rent Controller could not have relied upon the evidence which he had collected. Therefore, we are of the view that the findings recorded by the learned Single Judge that the premises was occupied within a period of two months from the date of obtaining possession and that it was continued to be in actual occupation of the landlord, are well founded.

6. Even in the case of notifying the vacancy suo motu by the Rent Controller on the information received by him under Section 5 of the Act, it is incumbent upon the Rent Controller to put to the landlord whatever the evidence or the material he had collected and the basis on which he has suo motu notified the vacancy, and wants to rely upon the same for the purpose of coming to the conclusion that the premises was vacant on the date the vacancy was suo motu notified. As the same has not been done in the instant case, the order passed by the Rent Controller allotting the premises on the basis that the premises was vacant and the order of the appellate authority confirming the same cannot stand the judicial scrutiny. In such a situation it is open to this Court to go into the correctness of the finding of fact recorded by the statutory authorities as it will be a finding based on no valid evidence. Hence we do not see any reason to interfere with the Order of the learned Single Judge. Consequently the Appeal has to fail. It is accordingly dismissed.