

Ramachandra Vs. Rent and Accommodation Controller

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Court : Karnataka

Decided On : Apr-04-1995

Reported in : ILR1995KAR1659; 1995(4)KarLJ15

Judge : Shivaprakash, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 2(2)

Appeal No. : W.P. No. 38059 of 1992

Appellant : Ramachandra

Respondent : Rent and Accommodation Controller

Advocate for Def. : A.S. Mahesh, Government Adv. for R-1 and R-2 and ;K.S. Chandrasaha, Adv. for R-3

Advocate for Pet/Ap. : R.B. Sadashivappa, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Shivaprakash, J.

1. From the impugned order of the first respondent, it appears the concerned Revenue Inspector submitted a report to him stating that premises bearing No.

782, 16th Main, 20th Cross, Banashankari II Stage, Bangalore has become vacant consequent upon the previous tenant vacating the premises, On the basis of the said report, the first respondent initiated suo motu proceedings, under Section 5 of the Karnataka Rent Control Act, 1961 ('Act' for short). At that stage, it seems the fourth respondent who is the owner of the premises reported the vacancy in terms of the provisions of Section 4(1) of the Act.

2. The petitioner-tenant (who claims to be in actual occupation of the premises) entered appearance before the first respondent, and filed statement, stating that he has been in occupation of the premises and that he is the brother-in-law of the owner of the premises who was working in Bokaro Steel Plant at Bokaro at that point of time. It was also contended by him that the premises in question was constructed in the year 1987 and that since he has been in occupation of the premises from the year 1991, the provisions of Chapters II and III of the Act were not applicable to the building in question in terms of the provisions of Sub-section (2) of Section 2 of the Act.

3. The first respondent, however, has proceeded to allot the premises in favour of the third respondent. Aggrieved by the said order the petitioner preferred appeal to the second respondent and at the same time made an application for stay of the order of allotment. It appears the second respondent rejected his application for stay. Against the rejection of his application for stay the petitioner filed W.P. 11362/92 before this Court. This Court granted the stay sought by the petitioner and disposed of the Writ Petition directing the parties to appear before the second respondent on 4.5.1992 for participating in the appeal proceedings.

4. It is the case of the petitioner that on 4.5.1992 he appeared before the second respondent, and since there was no sitting, the matter was adjourned to 15.6.1992. From 15.6.1992 the matter was again adjourned to 21.7.1992 and then to 1.9.1992 on the ground that the second respondent was 'otherwise engaged.' On 19.10.1992 to which date the case was last adjourned before the second respondent, the petitioner was not present and the second respondent posted the matter to 17.11.1992 for pronouncement of orders. The petitioner made an application for recalling the order dated 19,10.1992, giving certain reasons for his

non-appearance on 19.10.1992. From the original records, it is seen that the second respondent has passed an order on 16.11.1992 on the said application stating that the application of the petitioner cannot be considered since the order was 'under dictation.' On 17.11.1992 the second respondent has passed the impugned order dismissing the appeal of the petitioner.

5. Sri R.B. Sadashivappa, learned Counsel appearing for the petitioner submitted that the second respondent was in error in posting the matter for pronouncement of orders when the petitioner did not appear before him on 19.10.1992. He submitted that between 4.5.1992 and 19.10.1992 (inclusive) the several dates given by the Bench Clerk are not orders passed by the Presiding Officer of the Court.

6. Relying upon a Decision of this Court in CRP 601/76 disposed of on 14.4.1976 C.B. Ramachandra v. Rent & Accommodation Controller and Ors he contended that the date to which the suit was adjourned by the Bench Clerk because the Presiding Officer was 'Otherwise engaged' cannot be considered as a date fixed for further trial and that date was merely a date for, calling the suit by the Court and for fixing of a date for further trial.

7. In the instant case, since the several dates referred to were given by the Bench Clerk, in the absence of the Presiding Officer, the learned Counsel is right in submitting that on 19.10.1992 the second respondent could not have posted the matter to 17.11.1992 for orders on the ground that the petitioner did not appear before the Court on that day.

8. The learned Counsel further submitted that under the provisions of the Act before the Accommodation Controller for the purpose of allotment initiates any proceeding, he must be satisfied that the provisions of Part II of the Act are applicable to the building in question. He urged that in the instant case since there was no material whatsoever that the building in question was more than five years old on the relevant date to attract the provisions of Part II of the Act the Accommodation Controller could not have invoked any of the provisions under the said Part for the purpose of notifying the building for allotment.

9. In the original records produced by the learned Government Advocate there is no material to show that the building in question was more than five years old to attract the provisions of Part II of the Act, which empowers the first respondent to initiate proceeding for the purpose of allotment of a vacant building. The second respondent in the impugned order has presumed that the building in question was more than five years old as on the date when the building was notified for allotment. Since the allotment proceeding has been initiated by the first respondent without ascertaining the basic fact regarding the age of the building which is a jurisdictional fact, the order of the first respondent affirmed by the second respondent cannot be sustained.

10. It is not as if all buildings which become vacant would be more than five years old. Under the Act, there is no provision to presume that every building notified for allotment is more than five years old and the burden is always on the owner of the building to disprove the same. The authority cannot, in the absence of any prima facie material regarding the age of the building in question, initiate proceedings for allotment under the provisions of the Act. He must first satisfy himself that he has got the jurisdiction to exercise power in terms of Part II of the Act, Any other view would result in harassment to owners of buildings and they would be subjected to unnecessary expenses in the proceedings before the authority.

11. In the result, the impugned orders marked as Annexure-B dated 19.3.1992 and Annexure-C dated 17.11.1992, are quashed. Writ Petition allowed before issue of Rule.

12. The third respondent is permitted to withdraw the amount which the learned Counsel submits that he had deposited before the first respondent at the time when he made the application seeking allotment of the premises in question.