

Seetha Bai Vs. Rent and Accommodation Controller

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Court : Karnataka

Decided On : Oct-15-1990

Reported in : ILR1990KAR4072; 1990(3)KarLJ284

Judge : Shivashankar Bhat, J.

Acts : Karnataka Rent Control Act, 1961 - Parts II and III

Appeal No. : W.P. Nos. 12, 968 and 969 of 1989

Appellant : Seetha Bai

Respondent : Rent and Accommodation Controller

Advocate for Def. : Bhoopathy, HCGP

Advocate for Pet/Ap. : T.N. Raghupathy, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

Shivashankar Bhat, J.

1. The first respondent initiated proceedings under Section 10A of the Karnataka Rent Control Act to evict the unauthorised occupant. The petitioner who is the owner questioned the proceedings and asserted that the building was not

controlled by the provisions of Part-II because it was a new building. The proceedings were initiated in January 1986. But according to the landlady-petitioner the building was constructed and completed by about October or November 1985 and therefore the relevant provisions of the Act were not applicable to the building in question in January 1986.

2. The landlady pointed out that there was some dispute between the landlady and the Bangalore City Corporation and therefore she had to file a suit for declaration regarding her title to the site and this suit was decreed on 21-7-1984. Only thereafter in the vacant site the landlady was able to complete the construction. Till the said date, in view of the pendency of the litigation, she was not in a position to complete the construction. The landlady sought to corroborate this stand by producing the endorsement issued by the Corporation in connection with the tax assessment of the building. This endorsement shows that the landlady applied on 23-11-1985 requesting for the assessment of the building in question.

3. The first respondent, however, rejected the case of the petitioner. He held that the document produced by the landlady do not reveal whether the premises in question completed 5 years from the date of completion of the construction. Therefore he proceeded on the assumption that the then occupant of the premises who occupied in the year 1984 was an unauthorised occupant. Consequently, respondent-2 before the Rent and Accommodation Controller, Bangalore, was directed to vacate the premises. The landlady filed an appeal before the Special Deputy Commissioner who affirmed this order. The Deputy Commissioner also proceeds on the assumption that the burden of proving that the building was not covered by the relevant provisions of the Act was on the landlady.

4. Mr. T.N. Raghupathy, learned Counsel for the petitioner-landlady, urged that sufficient material had been produced by the landlady to establish prima facie that the landlady could not have completed the construction before 21-7-1984 and it must have been completed somewhere in October or November 1985 because the building is assessed to tax immediately after completion of the construction. The learned Counsel also urged that the decision of the authorities is the result of casting onus of proof wrongly on the landlady.

5. Smt. Bhoopathy, learned High Court Government Pleader, however contended that it was for the landlady to produce conclusive evidence to establish that the building was not covered by the provisions of Part-II of the Act, and the existing material produced by the landlady was not at all sufficient to convincingly establish that the building was completed somewhere in October or November 1985.

6. The Act is a special enactment enacted to provide for the control of rents and eviction as well as leasing of buildings. No doubt it interferes with the proprietary rights of the landlord; the landlord is not free to let out the premises to the tenants of his choice or to charge rent as he deems fit. Similarly the landlord is not permitted to evict his tenant as and when he chooses. Having regard to the needs of the society the Legislature has thought it fit to enact this legislation and such legislation is prevalent not only in Karnataka but in other States as well. The first respondent is a statutory authority under the Act. Whenever a building becomes vacant the landlord will have to intimate the vacancy to him. The landlord cannot occupy the building without getting appropriate release order. In appropriate cases the first respondent may allot the premises to other applicants. However the Act is not automatically applied to all the buildings. Under Section 2(2) of the Act Parts-II, and III of the Act shall be applicable to areas specified in Schedule I; the said Parts are stated to be not applicable to a building constructed after the 1st August 1957 for a period of 5 years from the date of construction of such building. In other words Parts-II and III of the Act will not govern a newly constructed building for a period of 5 years. The statutory authorities are vested with the jurisdiction to allot the premises only after the building attains the age of 5 years and more. The jurisdictional fact, to be established before the authorities can exercise the power in respect of the building, is the age of the building. No statutory authority can clutch at its jurisdiction to allot the premises until this factual aspect is ascertained and established. There is no presumption that every building in Bangalore is an old building; it will have to be ascertained and proved. The burden will be on the authority who seeks to extend his jurisdiction and exercise the statutory power over a particular building. It is for him to establish that the building will be covered by the provisions of Parts-II and III as and when he seeks to exercise the power. He may direct the owner to produce whatever material the landlord is capable of producing and he may expect the landlord to produce such materials but until he

makes a demand I do not think the landlord is bound to produce any material to show that the building, is a new one. The statutory authority may collect information from whatever source he thinks proper but he will have to disclose the source and the material to the landlord before deciding of this question.

7. In the instant case the decision arrived at by the first respondent and affirmed by the second respondent is the result of their wrong assumption that the landlady should have produced material to show that the building is new. The entire decision is the result of this wrong assumption. Consequently the impugned order of the first respondent as affirmed by the second respondent is liable to be set aside, since the question involved is one of fact and the decisions arrived at by the respondents are the result of casting the onus erroneously. It is most appropriate that the first respondent should be directed to hold, a fresh enquiry in the light of the law explained above,

8. Consequently, this Writ Petition is allowed. The impugned orders are set aside, with liberty to the first respondent to proceed with the matter afresh after issuing notice to the landlord and in accordance with law as stated above.

9. It is not always necessary for the first respondent, under Section 10A, to order eviction of unauthorised occupant. It all depends upon the circumstances; if there is an old tenant though occupied the premises unauthorisedly, the Authority may not exercise the discretion to evict him at all. There may be a tenant who sincerely believed that the building was not covered by the Act and therefore accepted the premises as a tenant due to a wrong information given to him by the landlord and his situation may warrant a sympathetic consideration of his case and in such a situation, again, the Authority may choose not to order his eviction. The power under Section 10A has to be exercised in a just manner depending upon several factors. Section 10A vests only a discretionary power. This aspect, also may be borne-in-mind by the first respondent while considering the question of taking any action under Section 10A, in case the building is found to be covered by Part-II of the Act.