

**Channaveerappa Vs. Assistant Commissioner and Rent Controller**

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**SooperKanoon Citation :** [sooperkanoon.com/384636](http://sooperkanoon.com/384636)

**Court :** Karnataka

**Decided On :** Aug-09-1990

**Reported in :** ILR1990KAR4078; 1990(2)KarLJ253

**Judge :** Hakeem, J.

**Acts :** Karnataka Rent Control Act, 1961 - Sections 3, 21B and 50

**Appeal No. :** W.P. No. 9335 of 1990

**Appellant :** Channaveerappa

**Respondent :** Assistant Commissioner and Rent Controller

**Advocate for Def. :** D. Bhoopathy, Adv. for R-1, ;P.G. Mogali, Adv. for R-2

**Advocate for Pet/Ap. :** N.S. Deshpande, Adv.

**Disposition :** Writ petition allowed

**Judgement :**

ORDER

**Hakeem, J.**

1. The petitioner, who is a tenant in occupation of the premises No. CTS 1935/1956 has challenged the validity of the order passed by the Rent Controller directing his eviction from the premises under Section 21B of the Karnataka Rent

Control Act, 1961 (the Act).

2. Shivappa -- respondent-2 is an Ex-Serviceman. On the basis of a Certificate issued by his Commanding Officer to the effect that he is discharged from Air Force Service and that he has no other accommodation of his own in Gadag Town, he claimed possession of the premises under Section 21B of the Act. The Rent Controller having accepted the said certificate and the averments in the application directed eviction of the petitioner.

3. The only question that arises for consideration is regarding jurisdiction of the Rent Controller to pass an order under Section 218 of the Act. Section 21B which comes, under Part-V of the Act pertaining to the Control of eviction of tenants and obligation of landlords, reads thus:

'21B. Special provision for recovery of possession of premises by members of Armed Forces of the Union or a member of the family of a deceased member of such forces - (1) Notwithstanding anything contained in this Act, -

(a) a landlord, who is a member of the Armed Forces of the Union or who was such a member and is duly retired which term shall include premature retirement shall be entitled to recover possession of any premises on the ground that the premises is bona fide required by him for occupation by himself or any member of his family and the Court shall pass a decree for eviction on such ground if the landlord, at the hearing of the suit, produces a certificate given by the head of his service or his commanding officer, to the effect that -

(i) he is presently a member of the Armed Forces of the Union or he was such a member and is now retired, and

(ii) he does not possess any other suitable accommodation in the local area where he or the members of his family can reside.

(Emphasis supplied)

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The expression 'Court' has been defined in Section 3(d) of the Act, viz., in respect of the area comprised within the limits of the City of Bangalore, the Court of Small Causes'. The expression 'Controller' is also defined under Clause (c) of the same Section, as an Officer not below the rank of a Gazetted Officer appointed by the State Government to perform the functions of the Controller under the Act. A perusal of the Section makes it clear that the jurisdiction to pass an order of eviction can be exercised only by the Court as defined under the Act. This is in consonance with the scheme of the Act pertaining to control of eviction of tenants as provided in Part V of the Act against which revision is provided under Section 50 of the Act.

4. The learned Counsel for the contesting respondent sought to rely upon the decision of the Supreme Court in SHIVARAM ANAND SHIRUR v. MRS. RADHABAI SHANTHARAM ILR 1985 KAR 41. While considering a similar matter under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Supreme Court has stated that while bona fide requirement has to be proved in such a claim, there is no need to prove comparative hardship and that the certificate issued by the higher authority is conclusive. The question regarding proper forum for seeking relief did not arise and has not been considered in the above cited decision. In that view of the matter, it cannot be an authority for the landlord to support his contention that the expression 'Court' in Section 21B of the Act can also be alternatively read as 'Controller'. That view appears to be far fetched and untenable. In the view I have taken above, the order passed by the Rent Controller is wholly without jurisdiction and hence, cannot be sustained in law.

5. In the result, the Writ Petition is allowed. The order passed by the Rent Controller in so far as the petitioner herein is concerned is set aside.