

Paras Jain Vs. House Rent and Accommodation Controller

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Court : Karnataka

Decided On : Oct-17-1995

Reported in : ILR1995KAR3127; 1995(6)KarLJ425

Judge : M.L. Pendse, C.J. and ;B. Padmaraj, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1), 21A, 21A(1), 21A(2) and 21A(3)

Appeal No. : W.A. No. 2835 of 1991

Appellant : Paras Jain

Respondent : House Rent and Accommodation Controller

Advocate for Def. : Srinivasa Murthy, HCGP for R1 and ;D.R. Basavarajappa, Adv. for R2 to R4 and R6

Advocate for Pet/Ap. : Partly-in-Person

Judgement :

M.L. Pendse, C.J.

1. The dispute in this Appeal is in respect of first floor of house No. 38, 5th Cross, Gandhinagar, Bangalore. The premises were allotted to Deomal Murlidhar Bhatija in the year 1963 by Rent Controller in accordance with the provision of Section 5 of the Karnataka Rent Control Act, 1961 (for short 'the Act'). The allottee had died

leaving behind respondents-2 to 6 as legal representatives. The appellant is one of the co-owners of the property and claims to be residing in a rented house. The remaining co-owners are also residing in rented premises. The co-owners filed petition under Section 21-A(2) of the Act, for recovery of possession of the premises in occupation of respondents-2 to 6. The appellant claims that respondents-2 to 6 who are the sons of the original allottee have acquired house premises bearing Nos. 42, 43 and 43-A situated at Marenhally village and known as Chakravarthi Layout. The proceedings were resisted by respondents-2 to 6 claiming that only Harilal, one of the sons of original allottee was residing in the property and the remaining sons are not the tenants of the suit premises. Accepting the contention the Rent Controller dismissed the petition holding that the respondents-2 to 6 are not the tenants. The order of the Rent Controller was set aside by this Court in Writ Proceedings and the matter was remitted back for fresh hearing before the Rent Controller.

2. On remand the Rent Controller considered the matter afresh and proceeded to hold that the petition filed under Section 21-A(2) was not maintainable in view of the Decision of this Court reported in : AIR1990 Kant284 Kwaliti Restaurant v. S.K. Beeranna. The Rent Controller further held that Harilal, one of the sons of the original allottee had not acquired premises and the co-owners have already instituted eviction proceedings against the legal representatives of the allottee and consequently proceedings under Section 21-A were not maintainable. The decision of the Rent Controller was challenged by the appellant by filing Writ Petition under Article 226 of the Constitution before the learned Single Judge, By impugned Judgment dated October 22, 1991 the Writ Petition was dismissed. The learned Judge held that the Decision reported in ILR 1990 Karnataka 2599 S.K. Beeranna v. Kwaliti Restaurant prescribes that the Rent Controller had no jurisdiction to entertain the application under Section 21-A of the Act. The learned Judge further held that Section 21-A(1) or (2) of the Act, does not provide any machinery for recovering possession from the allottees. The Decision of the learned Single Judge is under challenge.

3. The learned Counsel for the appellant submitted that the Decision of the learned. Single Judge in the case of M/s. 'Kwaliti Restaurant is not correct and the

same is contrary to the earlier Decisions of this Court and reported in : AIR1980 Kant44 Srinivasa Vakil and Ors. v. State of Karnataka and Ors.; : ILR 1984 KAR379 T. Vamana Kini v. U. Ramachandra Pai; and ILR 1984 Karnataka 1488 M.V. Murthy v. House Rent & Accommodation Controller. The learned Counsel submitted that the finding that the Rent Controller had no jurisdiction to entertain application under Section 21-A of the Act would make the Section redundant. It was contended that the learned Single Judge was in error in concluding that the proceedings could be filed only under Section 21 (1) (p) of the Act and such proceedings can be filed only before the Special Court constituted under the Act. Respondents-2 to 6 did not appear, but the learned Government Advocate appearing on behalf of the Controller tried to sustain the order of the learned Single Judge.

4. The Karnataka Rent Control Act, 1961 was enacted to provide for the control of rents and evictions. Part II deals with subject of lease of buildings and Section 4 demands that every landlord shall give intimation to the Controller of any vacancy occurring in the building. Section 5 confers power on the Controller to direct the landlord whether intimation of the vacancy has been given or not to allot the premises to any person. In pursuance of this power when the suit premises are allotted by the Controller in favour of an allottee such allottee becomes tenant of the premises. Part-V of the Act deals with the subject of control of eviction of tenants and obligations of the landlords. Section 21 confers protection on tenants against eviction and provides that decree for recovery of possession shall not be passed against the tenant except on the grounds set out in the Section. Section 21(1)(p) of the Act provides that decree for eviction can be passed when the tenant, whether before or after the coming into operation of Part-V has built or acquired vacant possession or has been allotted a suitable building.

On August 20, 1976 the Legislature inserted Section 21-A in the Principal Act and the amending provisions deal with vacation of residential building in certain cases. The amended Section provides that notwithstanding anything in the Act, on and from the date of coming into force of the Section, any person who is in occupation or possession of a residential building as a tenant on allotment by the Controller, shall, within one year from the said date vacate such building if he owns a

residential building in the same City, Town or village either in his own name or in the name of any members of his family. The Section further prescribes that the landlord may apply to the prescribed authority for eviction of such tenant and the prescribed authority after making summary enquiry may evict such tenant and if necessary, by using force and put the landlord in possession. Sub-section (2) of Section 21-A deals with the situation where the tenant on allotment by the Controller acquires or constructs a residential premises after August 20, 1976. The difference between Sub-section (1) and Sub-section (2) of Section 21-A is that Sub-section (1) deals with a case where an allottee tenant had already acquired residential premises prior to August 20, 1976 while Sub-section (2) deals with a case where such acquisition or construction of residential premises is subsequent to August 20, 1976. Sub-section (3) of Section 21-A of the Act inter alia provides that any person who contravenes the provisions of Clause (a) of Sub-sections (1) and (2) shall on conviction, be punished with imprisonment and fine.

5. In exercise of powers conferred by Section 59 of the Act, the Government of Karnataka has framed Rules known as the Karnataka Rent Control Rules, 1961. Rule 28-B prescribes that the prescribed authority under Section 21-A of the Act is Controller of the area concerned. Rule 8-A which came into force on February 13, 1981 inter alia provides that the allottee tenant on acquisition of residential premises after August 20, 1976 shall vacate the premises in his occupation as tenant within a period of one year from the date of the commencement of, the Rule and when the premises are acquired or constructed after February 13, 1981 then within a period of 30 days from such acquisition or construction.

The object of Section 21-A of the Act as well as Rules framed by the Legislature was to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Section 21-A of the Act. The Legislature has realised the usual dilatory process in securing decree for eviction of tenant who acquires or constructs premises and still retains the tenanted premises. The Legislature was conscious of the fact that the suits for eviction in the regular Courts take a long time commencing with the proceedings before the Rent Controller and ending with the Supreme Court. The experience suggests that the proceedings commenced by the landlord for eviction continues for several years and the landlord is never alive

to reap the fruits of the decree. The Legislature realised that the tenants taking advantage of the projection prescribed by Section 21 of the Act merrily continue to cling to tenanted accommodation, even after securing alternate premises or constructing the residential premises and shifting to such premises. To over-come the difficulties faced by the landlord the Legislature stepped in and provided for a speedier remedy to recover possession from the tenants who have secured alternate premises or constructed premises. The Legislature by introduction of Section 21 -A of Act, carved out only a class of tenants who were in occupation of the leased premises on allotment made by the Controller under Section 5 of the Act. The plain reading of Section 21 -A of the Act, leaves no manner of doubt that the speedier remedy to approach the prescribed authority and which is the Rent Controller is available only to those landlords whose premises are in occupation of a tenant on allotment by the Rent Controller. The speedier remedy is provided by conferring power on the Prescribed Authority-Rent Controller to hold summary enquiry and evict the tenant if necessary by use of force. This Court by Decisions reported in Srinivas Vakil, Vamana Kini, and M.V. Murthy had consistently held that Section 21-A of the Act is applicable to certain class of persons who are tenants on allotment by the Controller and have acquired or constructed residential premises in the same City. The Decisions recorded by this Court clearly sets out that Section 21 -A of the Act operates only in cases where the tenanted premises are occupied on allotment by the Controller and only the Rent Controller has jurisdiction and power to evict the tenant provided the ingredients of Section 21 -A of the Act are satisfied.

6. The grievance of the appellant is that the learned Single Judge in the case of Kwaliti Restaurant took a contrary view holding that the Rent Controller had no jurisdiction to entertain the application filed by the landlord under Section 21-A of the Act. The submission is not accurate. The close scrutiny of the Decision does not support the contention that the learned Single Judge took a contrary view. In the case before the learned Single Judge the landlord had leased the property to Messrs Kwaliti Restaurant in the year 1979 and it was a contractual lease. The landlord claimed that lease of the premises was illegal as the landlord had not intimated the vacancy to the Rent Controller. It was further claimed that the lease was regularised under Sections 31-B and 31 -C of the Act and consequently by

the Controller under Section 5 of the Act. On the strength of this submission proceedings were filed under Section 21-A of the Act before the Rent Controller. The Rent Controller allowed the petition and directed eviction of the tenant and that gave rise to the dispute before the learned Single Judge. The learned Single Judge on facts held that the tenant was not in occupation on allotment by Rent Controller under Section 5 of the Act. The Judgment then proceeds to examine the provisions of Sections 21 and 21 -A of the Act and the learned Judge held that the provisions of Section 21-A of the Act-are not attracted when the premises are not leased to the tenant on allotment by Rent Controller. Various observations made in the Judgment are on the basis that the provisions of Section 21-A are not attracted to the facts of the case. In para-8 of the Judgment the learned Judge specifically observed that Section 21 -A of the Act refers only to the allottee tenant and provides a machinery to evict the allottee tenant. The Decision of the learned Single Judge in Messrs Kquality Restaurant is obviously on the basis that the tenant was not in occupation of premises on allotment by the Rent Controller and read accordingly, it is obvious that the Decision of Kquality Restaurant was not contrary to the earlier Decision of this Court.

The Decision of the learned Single Judge was challenged in Appeal preferred before the Division Bench of this Court and the Decision of the Division Bench is reported in : ILR 1991 KAR2599 . The Decision of the Division Bench is not contrary to the earlier Decisions recorded by this Court. The Division Bench held that Section 21-A(1) of the Act is attracted when the allotment has acquired premises of his own on or before August 20, 1976. The Division Bench noticed non-obstinate opening clause of Section 21-A of the Act and observed that the Section has a overriding effect. There is only one observation of the Division Bench which requires clarification, The Division Bench observed thus:-

'9. One redeeming feature as far as Section 21-A(1) is concerned is that it enables the prescribed authority after making summary enquiry to evict the person even by use of force and put the tenant in possession of his own building. That is totally absent in Section 21 A(2); because it merely throws an obligation on the tenant to vacate the building within such time as may be prescribed. What is the consequence of not vacating the premises is not made known. There is an

ominous silence as far as this vital aspect is concerned.'

We are afraid we cannot share the observation of the Division Bench. The Division Bench, with respect overlooked that the right to file an application is prescribed under Sub-section

(1) of the Act and the power is conferred upon the prescribed authority to make summary enquiry and direct eviction of the tenant under Sub-section (1)(c) of the Act. Sub-section

(2) of Section 21 of the Act makes reference to the category of tenants holding premises on allotment by the Controller and acquiring or constructing premises on or after August 20, 1976. As mentioned herein above the difference between Sub-section (1)(a) and Sub-section

(2) is that the first category covers cases where allottee tenant has acquired or constructed premises on or before August 20, 1976 while Sub-section

(2) refers to those cases where allottee tenant acquires or constructs premises after August 20, 1976. That is the only difference between Sub-section (1)(a) and Sub-section

(2) and the right to recover by filing application in respect of both categories is provided under Sub-section (1)(b) and (c) of Section 21-A of the Act. The Division Bench with respect was not correct in observing that Section 21-A(2) does not set out the consequence of not vacating the premises. The consequence of not vacating the premises creates a right in the landlord to file application under Sub-section (1)(b) and confers power on the Rent Controller to hold summary enquiry and pass order of eviction under Sub-section (1)(c). The Legislature therefore provided under Sub-section

(3) that any person who contravenes the provisions of Clause, (a) of Sub-section

(1) or Sub-section

(2) shall on conviction be punished with imprisonment and fine. The provisions of Sub-section

(3) clearly indicate that even in respect of allottee tenant covered by category set out in Section 21 (A)

(2) the remedy is one provided under Sub-section

(1) (b) and (c) of Section 21(A) of the Act.

7. In our Judgment, the Decision in the case of Kwaliti Restaurant delivered by learned Single Judge is not contrary to the earlier Decisions nor the Decision of the Division Bench in the case of Kwaliti Restaurant makes any departure from the ratio laid down by the earlier Decisions. In our Judgment, the Rent Controller and Rent Controller alone is the authority to entertain the application under Section 21-A and hold a summary enquiry and pass order for eviction if the ingredients of the Section are complied with. The proceedings commenced under Section 21-A of the Act are not parallel to the proceedings which the landlord might have adopted under Section 21(1)(p) of the Act. Section 21(A) confers a fresh remedy in favour of the landlord and not afresh right. The right to recover possession was already available to the landlord under Section 21(1)(p) of the Act on the tenant acquiring alternate suitable premises. Section 21-A of the Act provides an additional remedy to the landlords, in case the premises are occupied by tenants on allotment by Rent Controller under Section 5 of the Act. The additional remedy under Section 21 -A is restricted only to the category of tenants and that is the tenants who are in occupation as tenants on allotment from the Rent Controller. In our Judgment, there is no difference between the ratio laid down in the case of Srinivas Vakil, Vamana Kini and M.V. Murthy and Messrs Kwaliti Restaurant.

8. It is therefore obvious that the order passed by the Rent Controller on May 3, 1991 dismissing the proceedings filed by the appellant under Section 21-A of the Act cannot be sustained and so also the impugned Judgment dated October 22, 1991 delivered by the learned Single Judge. In normal course we would have set aside the order and remitted the proceedings back to the Rent Controller for fresh disposal but such course is not required in view of the fact that the Counsel for the appellant stated that during the pendency of this Appeal the respondents have handed over possession to the appellant.

9. Accordingly, Writ Appeal is disposed of. In the circumstances of the case, there will be no order as to cost.

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