

(1992) 10 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 10663 of 1988

Dr. A. Sadananda Kamath

APPELLANT

Vs

Special Deputy Commissioner, Dakshina Kannada, Mangalore
and Others

RESPONDENT

Date of Decision : 14-10-1992

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 10A

Citation : (1993) 1 KarLJ 29

Hon'ble Judges : P. K. Shyamsundar, J

Judgement

1. The petitioner was a tenant of the premises of which the 3rd respondent is the landlord. Respondent No. 4 also happens to be the tenant under that very landlord. Whereas the petitioner is a medical practitioner, the 4th respondent happens to be an Insurance Company. It would appear that both of them agreed upon a plan to exchange the respective premises in their occupation, admittedly belonging to the 3rd respondent landlord. Respondent 3 landlord having not demurred on that count it transpires that both petitioner and respondent 4 grabbed the premises in their holding, petitioner occupying the 4th respondent's premises and the 4th respondent occupying the petitioner's premises.

2. For some reason it would appear another Doctor by name Surendra Shetty-respondent No. 5 who is represented by Mr. B.V. Acharya, learned counsel felt somewhat piqued and feigned to be aggrieved by this exchange of property belonging to the owner and therefore reported the matter to the Rent Controller for action under Section 10-A of the K.R.C. Act. The Rent Controller appeared to remain unconvinced by the alleged illegality in the innocuous exchange of premises effected between the petitioner and respondent 4 with the consent of the landlord and he ruled out any action in that matter.

3. Respondent 5 did not allow matters to rest in that he preferred an appeal to the Deputy Commissioner under Section 12 of the Act. The appeal was admittedly belated being 50 days behind time. The learned Deputy Commissioner

however choose to condone the delay involved in preferring the appeal despite opposition by the petitioner who was a party therein. I am not quite sure, in the circumstances the Deputy Commissioner could have persuaded himself to condone the delay of 50 days which in ordinary circumstances never be deemed to be fairly long. None the less he condoned the delay and Sri Sundaraswamy, learned counsel points out the specious reason given by the Deputy Commissioner for condoning the delay, which reads:

"The claim and counter claim made on this aspect are to my mind not so material. The appellant had made a specific claim about loss of the certified copy and has given an affidavit in support thereof. The respondent has only termed the affidavit as frivolous and false. Neither of the parties have supported their contentions with any documentary proof. At least the appellant has given an affidavit whereas the respondent has only given a counter statement. Therefore, I disregard this aspect and propose to consider the case on its merits." (emphasis supplied) I am surprised the Deputy Commissioner should have thought the filing of an affidavit by the appellant before him and the circumstance that the tenant filing only a counter statement instead of an affidavit so as to match the step taken by the appellant, whether that should be treated as giving the appellant before the Deputy Commissioner any leverage but then I remain unconvinced of the needless credibility attached to the affidavit opposed by a mere counter statement and not by a counter affidavit. While I do not propose to investigate into the correctness of the finding recorded by the Deputy Commissioner in condoning the delay on what appears to be a trivial reason but then I am persuaded however to interfere at the behest of the petitioner on an in limine ground, namely, the 5th respondent herein who had nothing to do with the matter who had merely drawn the attention of the Rent Controller to some unsavoury proceedings in the premises belonging to the landlord, could he be treated as a person aggrieved by the order of the Rent Controller. Section 12 of the Act, permits filing of an appeal from the order of the Rent Controller, which reads:

"12. Appeal.-Any person aggrieved by an order passed by the Controller under the provisions of this part may within thirty days from the date of communication of the order appeal- i) to the Deputy Commissioner, when the officer passing the order is an officer below the rank of a Deputy Commissioner; and ii) to the Divisional Commissioner, when the officer passing the order is an officer not below the rank of a Deputy Commissioner, and the appellate authority may pass such order on the appeal as it deems fit."

The section as extracted above, makes it clear that the person can approach the appellate authority by filing an appeal under Section 12 of the Act, provided he is really aggrieved by the order passed by the Controller. Now the order of the Rent Controller refusing to take action on the information furnished by the 5th respondent does not touch his interest personally or even otherwise it does not trammel any legal right of the 5th respondent, unless it be it is a question of the

5th respondent being interested in the law being administered in accordance with the requirements thereof. The appeal before the Deputy Commissioner is not and cannot be treated as akin to any public interest litigation where the question of locus standi may not be very relevant and strictly germane. The law speaks of a person being aggrieved by the order passed by the Rent Controller. If as pointed out above the Rent Controller merely refused to take action in the matter of exchange of premises between the petitioner and the 4th respondent, I do not know how the 5th respondent can feel aggrieved by that order of the Rent Controller and feel impelled to file an appeal under Section 12 of the Act. However, well meaning the move to assail the order of the Rent Controller by the 5th respondent may be and I will take it he was not motivated by any collateral considerations in mobilising the power of the Deputy Commissioner under Section 12 of the Act. Even then so long as the requirement of the section is that a person should be aggrieved by an order of the Rent Controller in order to take any action in the matter of exchange of premises between the petitioner and the 4th respondent cannot lead to any grievance on the part of the 5th respondent who had nothing to do with the premises in question.

4. It is however not necessary for me to dispose off the aforesaid point merely on apriori basis for the question is really not res integra being covered by the decision of the Supreme Court in the case of *Adi Pheroazshah Gandhi v H.M. Seervai*, AIR 1971 SC 385, wherein the learned Chief Justice M. Hidayatullah (as His Lordship then was) summarised the position thus:

"A) Advocates Act, 1961, Section 37(1)-"Person aggrieved"-Advocate-General appearing in pursuance of notice under Section 35(2) is not a person aggrieved-(Decision of Bar Council of India, Reversed)."

To similar effect is another decision of the Supreme Court in the case of *Bar Council of Maharashtra v M.V. Dabholkar, etc. etc.*, AIR 1975 SC 2092, wherein, Their Lordships considered the words "person aggrieved" and stated:

"The Bar Council is "a person aggrieved" for these reasons. First, the words "person aggrieved" in the Act are of wide import in the context of the purpose and provisions of the statute. In disciplinary proceedings before the disciplinary committee there is no lis and there are no parties. Therefore, the word "person" will embrace the Bar Council which represents the Bar of the State. Second, the Bar Council is "a person aggrieved" because it represents the collective conscience of the standards of professional conduct and etiquettes. The Bar Council acts as the protector of the purity and dignity of the profession. Third, the function of the Bar Council in entertaining complaints against advocates is when the Bar Council has reasonable belief that there is a prima facie case of misconduct that a disciplinary committee is entrusted with such inquiry. Once an inquiry starts, the Bar Council has no control over its decision. The Bar Council may entrust it to another disciplinary committee or the Bar Council may make a report to the Bar Council of India. This indicates that the Bar Council is all the time interested in the proceeding for the vindication of

discipline, dignity and decorum of the profession. Fourth, a decision of a disciplinary committee can only be corrected by appeals as provided under the Act. When the Bar Council initiates proceedings by referring cases of misconduct to disciplinary committee the Bar Council in the performance of its functions under the Act is interested in the task of seeing that the Advocates maintain the proper standards and etiquette of the profession. Fifth, the Bar Council is vitally concerned with the decision in the context of the function of the Bar Council. The Bar Council will have a grievance if the decision prejudices the maintenance of standards of professional conduct and ethics."

From the above citations it becomes clear a person who can prefer an appeal under Section 12, must in some manner be genuinely aggrieved in the sense of the impugned order denying him some benefit or taking away some advantage from him and causing him some injury. But if it is otherwise no one can feign a grievance and seek to call in question the order by preferring an appeal merely because law provides for such an appeal. Any endeavour made to canvass the order before the appellate authority even though it does not hurt the petitioner in the remotest of fashion, would be an act of sabre rattling without any purpose and must, therefore, merit rejection. The fruition of a vain appeal before the Deputy Commissioner such as the one concerned in this case has necessarily to be deprecated which in fact is the reason why it has to be annulled.

5. In the circumstances, the Deputy Commissioner having made the fundamental mistake in entertaining the appeal and further making an order adverse to the petitioner the said order of the Deputy Commissioner is treated as bereft of reason and has therefore got to go.

6. Hence, it is I allow this writ petition, the order of the Deputy Commissioner dated 21-6-1988 (Annexure-A) is quashed and retain the order passed by the Rent Controller. Rule affirmed. No costs. 1993(1)kar.l.j.33

Land Acquisition Act, 1894, Section 18 - Whether a claimant who has made a particular claim for compensation before the Land Acquisition Officer is at liberty to claim a higher compensation while seeking enhanced compensation under Section 18 - Whether the observation in Land Acquisition Officer v. R.H. Kalburgi, 1991 (4) Kar.L.J. 726: ILR 1991 Kar. 4242 lays down the law correctly.

HELD: (1) The claimant being free to ask and obtain compensation after making an appropriate demand before court subject to making good the claim by substantiating it by adequate evidence it would not be necessary for the claimant to explain away the circumstance under which he made no claim or made a smaller claim before the LAO. In view of the amended provision of Section 25 of the Act he is no longer under any obligation to support his conduct before LAO in not making a claim or in making a lesser claim, and (2) In the light of the discussion on the ambit of Section 25, after its amendment, the contrary dicta in Kalburgi's case cannot be supported more so in the light of the decision of the Supreme Court in Chimanlal's case, AIR 1988 SC 1652 and has necessarily to be

treated as per incuriam and therefore dissented to and overruled. (para 8)

Note.-Decision reported in LAO v. R.H. Kalburgi, 1991(4) Kar. L.J. 726: ILR 1991 Kar. 4242, dissented and overruled.