

(1966) 03 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 1236 of 1965

Maimunnisa Begum

APPELLANT

Vs

Deputy Commissioner, Bangalore and Others

RESPONDENT

Date of Decision : 09-03-1966

Acts Referred:

Constitution of India, 1950 — Article 19, 19 (1) (f), 226
Karnataka Rent Control Act, 1961 — Section 10, 5, 8 (1) (a)

Citation : AIR 1967 Kar 107 : (1966) 1 MysLJ 694

Hon'ble Judges : T.K. Tukol, J;K. Bhimiah, J

Bench : Division Bench

Advocate : S.K. Venkataranga Iyengar, for the Appellant; S.A. Hakeem and G.B. Kulkarni, High Court Govt. Pleader, for the Respondent

Judgement

Tukol, J.—The petitioner is the landlady of Premises No. 37, Infantry Road, situated in the Civil Station, Bangalore. By his order dated May 29, 1965, the House Rent Controller allotted the premises to respondent No. 3 on a monthly rent of Rs. 175. Against this decision the petitioner approached the Deputy Commissioner in H. R. C. Appeal No. 315 of 1965-86. The appeal was rejected on June 18, 1965, upholding the order of the House Rent Controller and his findings on facts. It is this order which is challenged in the present Writ Petition under Article 226 of the Constitution, wherein the petitioner has prayed for quashing the order of allotment and the order confirming that order passed by the House Rent Controller and the Deputy Commissioner respectively.

2. The facts material for the purpose of disposal of this writ petition are as follows :--

The premises had been in the occupation of one Mrs. May Hackett as tenant. She left the premises. On failure of the landlady to report the vacancy, the Rent Controller directed by an order dated May 4, 1965 that the vacancy be notified and a notice should be issued to the landlady. The landlady filed an application on 8-4-1965 stating that she wanted at least 6 months to attend to the extensive

repairs and reconstruction of the premises and that she would report the vacancy on completion of the work. The 3rd respondent and some others submitted applications for allotment. On receiving intimation of the vacancy, the State Government passed an order on May 6, 1965, in pursuance of the proviso to Sub-section (2) of Section 8 of the Mysore Rent Control Act, 1961 (hereinafter called the "Act") directing that the premises in question be allotted in favour of Sri A.R. Naizamuddin, Deputy Commissioner of Police (respondent No. 3). On receipt of the notice aforesaid, the landlady filed her objections stating that she wanted the premises for the use of her son for starting some cottage industry and that it should not be allotted to anybody. The petitioner appeared through counsel before the Rent Controller and examined 4 witnesses in support of her contentions. On considering the evidence, the Rent Controller came to the conclusion that the building was not in such a bad condition as to render it unfit for occupation and that there was no evidence to show that the Corporation authorities had certified the building to be unfit for habitation. As regards the petitioner's claim that the building was required for the use of her son, the Rent Controller rejected this contention holding that it was an afterthought and was not at all bona fide. In his opinion neither the objections raised by the landlady nor the enquiries made by him disclosed any valid reasons against provisional allotment made by him. He accordingly confirmed the order of provisional allotment in favour of respondent No, 3 and directed the landlady to deliver possession of the allotted premises to the allottee on June 5, 1985 u/s 10 of the Act.

3. In the appeal before the Deputy Commissioner, the correctness of these two conclusions on facts was challenged by petitioner; but on an exhaustive discussion of the evidence, the Deputy Commissioner upheld those conclusions. The petitioner contended before him that the Rent Controller had committed an irregularity while issuing a notice to the appellant u/s 8(1)(a) of the Act, as he had not given days' time from the date of the receipt of the notice by the applicant to set forth her objections. It was also contended that the Rent Controller had erred in declining to call for the records of the State Government leading to the issue of a direction for the allotment of the premises u/s 8 (2) of the Act for allotting the premises in favour of respondent No. 3. The Deputy Commissioner came to the conclusion that the summoning of the records from the Government could not have been of any use in deciding the allotment. In view of the conclusions reached by him, he dismissed the petitioner's appeal,

4. In this court, Mr. S.K. Venkataranga Iyengar, appearing for the petitioner, has challenged the constitutional validity of Section 5 of the Act. He has also contended that there was no provision under the Act which required the owner of the premises to make an application for retaining possession of the premises for a period of 6 months or for a lesser period for effecting the repairs. He questioned the competency of the Government to issue a direction for allotment of the premises in favour of respondent No. 3. He addressed no arguments on that point. We have, however, no doubt that the provision relating to the

competency of the Government to issue a direction for allotment of premises in favour of any public authority or public servant is a valid provision and amounts to a reasonable restriction on the normal right of the landlady to select her own tenant. If any authority were needed on this point, we may mention the decision of the Supreme Court in *Jinadathappa v. R.P. Sharma* AIR 1961 SC 1523, wherein the question raised was about the validity of the provision empowering the Rent Controller to select tenant for the premises.

The contention raised was with reference to Section 3(3)(a) of the Mysore House Rent and Accommodation Control Act, 1951, which empowered the Rent Controller to select the State Government, the Central Government, the Government of any other State in India, any officer of Government or any other person to be inducted as a tenant in the house and direct the landlord by a written order to let the house to the allottee. The validity of the power to select the Government or the Government servant as a tenant was not challenged. What was however challenged was, that the Rent Controller had no power of selecting any person not wanted by the landlord as his tenant. Their Lordships came to the conclusion that having regard to the circumstances under which enactment was passed and the provisions that had been made in the Act for determination of the suitable tenant and the remedies provided to the landlord to challenge the correctness of the choice, the impugned provisions could not be struck down as violative of Article 19(1)(f) of the Constitution.

5. So the only other question that remains for the consideration is as regards the validity of Section 5 of the Act. The learned Government Pleader drew our attention to paragraph 25 of the petitioner's affidavit wherein the contention has been raised in the following terms:

"The petitioner respectfully submits that if as the Tribunals hold the House Rent Controller has the power to invent a procedure of his own u/s 5 of the Act and the corresponding rule under the House Rent Control Act, the same would be violative of the provisions of Article 19 of the Constitution interfering as they do with "with her freedom of enjoyment and possession of her property as she liked subject to reasonable restrictions. Section 5 in so far as it does not give any guidance for the exercise of the powers, cannot be said in any sense to be a reasonable restriction on the fundamental right guaranteed to her under the Constitution."

The learned Government Pleader contended that in substance the contention taken by the petitioner was against the allotment and that the provisions relating to the allotment could be upheld under Article 31(2) of the Constitution inasmuch as, the enactment made suitable provision for payment of reasonable rent after taking possession of the premises. That identical provisions have been upheld as valid, was sought to be supported by the decision of the Madras High Court in *C. Nataraja Mudaliar Vs. The Madras State*, . Therein the Controller acting under the orders of the Government had taken possession of the premises and allotted the property to one Sri Lakshmin Venkataraman, Sub-Inspector of Police. In discussing

the validity of the provisions of the type analogous to those contained in Section 8, Subba Rao, J. who delivered the Judgment of the Court made a distinction between deprivation of property by authority of law and the raking possession of the property for allotment to a tenant. In the former case, there is the actual transference of property whereas in the latter case the ownership still continues to vest in the owner of the property and it is only the right to enjoy the property that he is deprived of. His Lordship accordingly held that Section 3 (3) of the Madras Buildings (Lease and Rent Control) Act, 1949, providing for taking possession and for allotment of premises on reasonable rent, was not violative of Article 19(1)(f) of the Constitution and that the same was valid.

6. Mr. Iyengar, appearing for the petitioner, however departed materially from the contention taken by him in the petition. We permitted him to argue since the point was one of law and could be decided on the material on record. Briefly summarised his contention is whether it is open to a Rent Controller to make allotment of the premises when the owner requires the same for effecting the necessary repairs or for his or her personal use and whether Section 5 which contains no guidance on this point could be a valid legislation. After considering the lengthy arguments addressed to us and the provisions of the Act, we are of the opinion that Section 5 is valid and there is nothing illegal in the order passed either by the Rent Controller or by the Deputy Commissioner in appeal.

7. Part II of the Act which has a bearing on the points at issue deals with Lease of Buildings. Sections 4 to 13 are incorporated in this part. Section 4 (1) provides that:

"Every landlord shall, within fifteen days after the building becomes vacant by his ceasing to occupy it or by the termination of a tenancy or by the eviction of the tenant or by the release of the building from requisition, or otherwise, give intimation by registered post to the Controller."

We have already mentioned that the intimation given by the petitioner only requested the Rent Controller to give six months time for effecting repairs and improvements. The intimation has to be given in the prescribed form in triplicate, as required by Rule 3 of the Rules. After the receipt of the intimation, the Controller has to initiate proceedings for allotment of the premises. Section 5 the validity of which has been challenged, reads thus:

"5. Order for leasing of vacant buildings--(1) The Controller may, by order in writing served on the landlord, direct that any vacant building, whether intimation of its vacancy has been given by the landlord under Sub-section (1) of Section 4 or not, be given on lease to such public authority or any other person as he may think fit.

Explanation: A building may be directed to be leased under this section notwithstanding that it is subject to an agreement of lease or has been let or occupied in contravention of Sub-section (2) of Section 4."

Sub-Section (2) is a penal section and is not relevant. Section 6 only empowers the Controller to pass in writing an order for leasing a vacant building to such public authority or other person as he deems fit. Before he passes such an order he is required to follow the procedure and hold an elaborate enquiry. The procedure to be followed before ordering the leasing of the building u/s 5 is prescribed by Section 8. The relevant provisions read as follows:

"8. (1) Before issuing any order u/s 5 or Section 6, the Controller-

(a) shall call upon the landlord or any other person who may be in possession of the building by notice in writing to show cause, within seven days from the date of the service of such notice on him, why the building should not be ordered to be leased to a public authority or other person as may be specified in the notice; and (b) may, by order direct that neither the landlord nor any other person shall, without the permission of the Controller, dispose of or structurally alter the building or let it out to a tenant or occupy it or use it until the expiry of such period not exceeding one month, as may be specified in the order.

(2) In selecting the public authority or other person in whose favour an order may be made under this section, the Controller shall observe such order of priority as may be prescribed:

Provided that where the State Government, or in respect of any area, any officer not below the rank of a Deputy Commissioner authorised by the State Government In this behalf, directs that any building shall be leased to any public authority or any office of the "State Government or of the Central Government, the Controller shall, subject to the provisions of Sub-sections (3), (4) and (5), make an order under this section in favour of such public authority or officer, as the case may be,

(3) "In considering the causes", if any, shown by the landlord or other person in possession, the Controller, shall, in case the premises to be leased in a part of a building, give due regard to the customs, manners and social conventions of the persons occupying the remaining portions of the building, in so far as such customs, manners and social convention) are not opposed to law, public order, morality or health.

(4) "If, after considering the causes," if any, shown by the landlord or other person in possession of the building, "the Controller is satisfied that it is necessary or expedient so to do." he may by an order in writing direct the building to be leased to such authority or other person specified in the notice under Sub-section (1) at such rent as shall be specified in such order and may make such further orders as appear to him to be necessary or expedient in connection therewith"

(Underlining (herein in" ") is ours) The remaining portions of the section are not necessary for our purpose. The scheme of this section is quite obvious. Before issuing an order of allotment u/s 5 or Section 6, it is obligatory on the Controller

to call upon the landlord or any other person who may be in possession of the building by a notice in writing to show cause, why the building should not be ordered to be leased to a public authority or other person. Mr. Iyengar's contention is that this clause does not apply to a landlord who is not in possession. We are unable to agree with this submission. We have already referred to the explanation to Sub-section (i) of Section 5, wherein the Controller is empowered to pass an order for leasing the building even where the premises have been let or occupied in contravention of Sub-section (2) of Section 4. Therefore the words "any other person who may be in possession of the building" occurring in Clause (a) of Sub-section (i) of Section 8, necessarily refer to such person. The other clause is applicable to a landlord who has either occupied the building in contravention of provisions of Sub-section (4) or has kept it vacant. The law requires a notice to be given to him to show cause why the building should not be leased. While showing cause, it is open to the landlord to put forward various grounds. It is open for him to contend that the Building is required for his own occupation. He can contend that he wants to demolish the building and construct a new building. He can contend as the petitioners did in the present case, that the building was required for a period of six months to effect extensive repairs and improvements. All these are causes which could legitimately be shown or raised by a landlord or a landlady requiring to show cause u/s 8(1)(a) as to why the building should not be leased. The words underlined (here in" ") in Sub-sections (3) and (4) by us above indicate that the Controller has to consider those causes. Sub-section (3) requires him to consider the customs, manners and Social conventions of persons already in occupation of a portion of the building, while allotting the remaining portion of the vacant building. This sub-section completely negatives Mr. Iyengar's argument that the only cause which the landlord could show is whether it should be let out to A or B or to the person named in the notice. Considering the comprehensive words used in these two sub-sections, we are unable to see any force in this argument. Sub-section (4) required the Controller to consider the causes shown by the owner. Before passing an order for leasing the building, he is to be satisfied that it is necessary or expedient to pass an order in writing that the building should be leased. It may as well happen that he may come to the conclusion that the building should not be leased for a particular time or not at all, if he considers the possession of the building by the landlord necessary for a temporary period for effecting the repairs or the building is required of the owner for his own occupation bona fide. The order that is contemplated by Sub-section (4) is not merely an order directing the building to be leased; that sub-section also empowers the Controller "to make such further orders as appear to him to be necessary and expedient in connection therewith." The latter portion of Sub-section (4) empowers him to pass all incidental orders or give incidental directions that are consequential to the allotment order.

8. Mr. Iyengar's contention that there is no provision for withholding the building for a temporary period to enable the landlord to effect repairs, does not appear

to be sound. In our opinion, the concluding clause of Sub-section (4) contemplates a situation of this type and the Controller would be within his jurisdiction if he postpones the allotment by a month or two enabling the landlord to effect the necessary repairs.

9. Mr. Iyengar also drew our attention to Clauses (h), (i) and (k) of the proviso to Section 21(1) of the Act which permit the landlord to apply for eviction of a tenant, either on the ground that the premises are reasonably and bona fide required by him for his own occupation or for the occupation of any person for whose benefit he holds the premises, or are required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated, or are required for the immediate purpose of demolition ordered by the local authority or other competent authority. In the present case, it is not the case of the petitioner that the local authority had ordered demolition of the building. The Controller and the Deputy Commissioner in appeal have held that the repairs required for the premises are such as would not require at all possession of the premises by the landlord. The claim for bona fide use of the petitioner's son has been negated by both the authorities. These pleas were open to the petitioner in opposing the proposed allotment and he did raise them. We are, therefore unable to agree with the learned Advocate that the provisions of Section 8 of the Act did not envisage the situation created by the demands put forward by the petitioner before the Controller. As already observed the causes to be shown by a landlord or a landlady, are the causes not only against the allotment to the proposed persons, but also about the fitness or unfitness of the building for leasing or the personal requirements of the landlord himself or landlady herself.

10. In view of the conclusions reached by us, it is unnecessary to discuss the question as to whether Section 5 imposes any restriction on the landlord's right. As already observed, Section 5 is only an empowering section which comes into operation only at the conclusion or tie enquiry u/s 8. Section 8 provides for a detailed enquiry after giving full opportunity to the owner. On going through the proceedings before the Rent Controller, we find that a notice was served on the landlady. She appeared through a counsel. The matter was first fixed on 4-5-1965. It was called on 11-5-1965 and was postponed to 13-5-1965 when Mr. Farukhi, the learned Advocate for the petitioner was present. On 13-5-1965 the Rent Controller directed a notice to be issued u/s 8(1)(a) and posted the case to 20-5-1965. The notice that is contemplated by clause (a) of Sub-section (1) of Section 8 is a notice permitting the owner of the building to file his objections within 7 days from the date of service. In the present case, the landlady filed her objections on 20-5-1965 through her counsel. Thereafter on 25-5-1965 the petitioner examined four witnesses. The case was then adjourned to 27-5-1965 for arguments. It was only on 29-5-1965 that the arguments were heard and the order confirming the provisional allotment in favour of respondent No. 3 came to be passed.

We do not see any legal infirmity in the procedure followed by the Rent

Controller. This order directed the petitioner to deliver possession on 3-6-1965. The time was further extended up-to 4-6-1965. Section 9 (b) of the Act requires that the date specified for delivery of the possession shall not be earlier than five days from the date of service of the order. The order was passed in the presence of the Advocate for the petitioner. There is therefore nothing illegal or irregular in the order passed by the Rent Controller. In this view we consider it unnecessary to discuss the decision in *Iswari Prosad and Others Vs. N.R. Sen and Another*, wherein their Lordships considered as to what is a reasonable restriction under Clause (5) of Article 19 of the Constitution.

11. We have given full consideration to the various arguments advanced on behalf of the petitioner. We do not see any merit in any of them. We accordingly, dismiss this writ petition with costs. Advocate's fee Rs. 100.

12. Petition dismissed.