

(1995) 03 KAR CK 0045
In the Karnataka High Court
Case No : Writ Petition No. 27301 of 1991

Rangaraj

APPELLANT

Vs

House Rent and Accommodation Controller

RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 3 (a), 4

Citation : (1995) ILR (Kar) 1316 : (1995) 3 KarLJ 505

Hon'ble Judges : G.P. Shivaprakash, J

Bench : Single Bench

Advocate : C.N. Kamath, for the Appellant; A.S. Mahesh, HCGP, for the Respondent

Judgement

Shivaprakash, J

1. The petitioner is the owner of the premises bearing No. 26, situated in 6th Main Road, Vyalikaval Extension, Corporation Division No. 5 as shown in the "Certificate" dated 30.10.1991 issued by the Assistant Revenue Officer of the Corporation of the City of Bangalore, copy of which is marked as Annexure-A. The second floor of the said premises was notified for allotment by the respondent giving description of the property as No. 26, New No. 20, 13th Cross, 6th Main Road, Vyalikaval, Malleswaram, Bangalore-3. Copy of the Notification is marked as Annexure-C, In the said Notification the owner of the premises is shown as Dr. R. Mani, No. 30, Nagappa Road, Palace Guttahalli, Bangalore.

2. According to the petitioner when he came to know of the Notification for allotment, he went to the office of the respondent on 11.12.1991 and realised that the same was notified for allotment under Reference No. HRC (N) ALT.634/91 showing the rent per month as Rs. 750/-. Aggrieved by the said Notification this Writ Petition is presented questioning the legality and validity of the said Notification.

3. The learned Counsel for the petitioner Sri C.N. Kamath, submitted that Dr.R.

Mani who is shown as owner of the premises in the impugned Notification, is no other than the son of the petitioner and he is not the owner of the premises. According to the petitioner, he acquired title to the premises in question under a registered Sale Deed dated 4.7.1991 from the previous owner of the premises who himself was in occupation of the said premises, and though in terms of the Sale Deed the vendor had to vacate and deliver vacant possession of the premises to the petitioner on or before 10.7.1991, at the request of the vendor time was extended by the petitioner for the vendor to vacate the premises on or before 10.10.1991 and subsequently, time was again extended upto 5.12.1991. Copy of the Agreement between the petitioner and his vendor regarding extension of time is marked as Annexure-B.

4. The learned Counsel for the petitioner, firstly submitted that since the premises in question has been notified for allotment without showing the name of the petitioner who is the owner of the premises, the Notification inviting applications for allotment of premises is bad in law. Secondly, the learned Counsel submitted that since the premises was not previously in occupation of a tenant, under the provisions of Section 4 of the Karnataka Rent Control Act, 1961 ("Act" for short), there was no obligation on the part of the petitioner to report the vacancy.

5. Relevant provisions of Section 4 of the Act is reproduced below:

"4. Intimation of vacancy by landlords.- (1) 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 in the prescribed form by registered post to the Controller.

(2) Except as provided in this Part, no person shall let, occupy or otherwise use any building which becomes vacant without the landlord giving intimation under Sub-section (1) and for a period of fifteen days from the date on which the intimation is received by the Controller or within a period of one week after the termination of the proceedings u/s 8, if any, whichever is later:

Proviso: xxx xxx xxx Proviso: xxx xxx xxx (3) & (4) xxx xxx xxx"

6. In terms of Section 4 every landlord is required within fifteen days after "the building becomes vacant" by his ceasing to occupy it or by the termination of a tenancy etc., to give intimation in the prescribed Form by registered post to the Controller regarding the vacancy. "Building" as defined in Clause (a) of Section 3 of the Act, means "any building or hut or part of a building or hut other than a farm house, let or to be let separately for residential or non-residential purpose and includes--

(i) (ii) (iii) xxx xxx xxx" 7. In the instant case, no part of the building, including the second floor purchased by the petitioner was let for residential or for non-residential purpose and therefore it was not a "Building" by definition to attract

the provisions of Section 4 of the Act.

8. Since the building purchased by the petitioner was previously in occupation of the owner himself and was not let at the time of purchase by the petitioner, there was no obligation on the part of the petitioner to report the vacancy consequent to the vendor vacating the premises, and the petitioner as purchaser thereof occupying the same.

9. The facts stated in the Petition are not disputed. No statement of objections is filed by the respondent and therefore this Court has to proceed on the basis that the facts narrated by the petitioner in the Petition are factually correct.

10. In the result the Notification issued by the respondent notifying the premises in question for allotment was not legally permissible and therefore, the same is quashed.

11. Writ Petition allowed with costs quantified at Rs. 1000/-.