

(1981) 02 KAR CK 0011
In the Karnataka High Court
Case No : Writ Appeal No. 129 of 1981

S. Subramanyaswamy

APPELLANT

Vs

The Deputy Commissioner, Bangalore District, Bangalore and
Others

RESPONDENT

Date of Decision : 26-02-1981

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 3 (h), 4 (1), 5
Karnataka Rent Control Rules, 1961 — Rule 4B

Citation : AIR 1981 Kar 190 : (1981) ILR (Kar) 513 : (1981) 1 KarLJ 451

Hon'ble Judges : N. Venkatachala, J; D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : Mirle L. Krishna Murthy, for the Appellant;

Judgement

This Judgment has been overruled by : S.B. Abdul Azeez (By Lrs.) Vs. M. Maniyappa Setty and Others, AIR 1989 SC 553 : (1988) 4 JT 133 : (1988) 2 SCALE 1009 : (1988) 4 SCC 727 : (1988) 3 SCR 505 Supp : (1989) 1 UJ 149

Venkatachalam, J.—This appeal is from the order of Sabhahit, J., dismissing Writ Petition No. 10069 of 1980. The petitioner therein has presented this appeal. For the sake of convenience, the parties will hereinafter be referred to according to their respective positions in the writ petition.

2. The material facts are these: Premises bearing No. 253/22 (first floor, left portion), First Block, 4th Cross, Jayanagar, Bangalore-560011 (hereinafter referred to as "the premises") formed the subject matter of proceedings under the provisions of Part II of the Karnataka Rent Control Act, 1931 (hereinafter referred to as the Act) The Rent Accommodation Controller, Civil Area, Bangalore (hereinafter referred to as the Controller, having information that the premises had become vacant on 5-4-1980, got served on 18-4-1980 a notice on its owner (respondent 2) calling upon her to report, as required u/s 4 (1) of the Act, the vacancy of the premises on or before 20-4-1980. Thereafter, on 26-4-1980 the petitioner who claimed to have become the usufructuary mortgagee of the said

premises, filed before the Controller a report intimating that the premises became vacant on 23-4-1980 and praying that the premises should be given to him for his own use and occupation.

3. After considering the claim of the petitioner and the applications of others for allotment of the premises, the controller made an order on 27-5-1980 rejecting the claim of the petitioner and allotting the premises to respondent 4. The Controller took the view that the claim of the petitioner was not just and reasonable and that respondent had to be given the highest priority among the applicants for the purpose of allotment.

4. Feeling aggrieved by that order, the petitioner preferred an appeal before the Deputy Commissioner who dismissed it affirming the order of the Controller and observed, *inter alia*, that the petitioner had no valid claim for occupation of the premises but would only be entitled to receive rent thereof.

5. In the writ petition, the petitioner had impugned the said orders of the Controller and the Deputy Commissioner. The learned single Judge dismissed the writ petition declining to interfere with those orders observing, *inter alia*, that the controller and the Deputy Commissioner had rightly rejected the claim of the petitioner and that there was no apparent error of law therein so as to call for interference.

6. In this appeal, Shri Mirle Krishna Murthy, learned Counsel for the appellant petitioner, firstly, contended that the learned Single Judge, in dismissing the writ petition, had overlooked the legal position that the petitioner, as the usufructuary mortgagee of the premises, was the landlord thereof as defined in the Act and that hence, The Controller and the Deputy Commissioner should not have rejected his claim for personal use and occupation of the premises. Shri Krishna Murthy referred to the definition of the term "landlord" in Clause (h) of Section 3 of the Act as any person who is for the time being receiving or entitled to receive the rent in respect of any premises. Shri Krishna Murthy argued that since the usufructuary mortgagee is entitled to receive the rent of the premises, he comes within the definition of the term "landlord" and at when he claimed that the premises which had fallen vacant, should be given to him for personal use and occupation, the Controller should have given priority to his claim over the claims of other applicants for allotment of the premises unless his (the usufructuary mortgagee's) desire to occupy the premises was not bona fide and reasonable that in the present case there was absolutely no reason to hold that the desire of the petitioner who had no other premises, to, occupy the premises in question, was either not bona fide or reasonable.

7. It was also contended by Shri Krishna Murthy that the Controller and the Deputy Commissioner had no jurisdiction to go into the question whether the usufructuary mortgage was genuine or a make believe one. Shri Krishna Murthy submitted that the petitioner who was in need of residential accommodation, could not secure it for a long time in spite of repeated efforts, that merely

because the petitioner took the usufructuary mortgage of the premises just about the time when it fell vacant, it could not be inferred that the transaction was a make believe one.

8. We shall proceed on the premise that the usufructuary mortgage in favour of the petitioner was a genuine one and examine the question whether an usufructuary mortgagee of premises should receive the same consideration as the owner of the premises when the same falls vacant. When any vacancy of premises occurs and the Controller has to make an order u/s 5 of the Act, the claim of the owner of the premises for his use and occupation should ordinarily have priority over the application of any other person for allotment of such premises, if the claim of the owner is bona fide and reasonable. But, should such priority be extended to a usufructuary mortgagee of such premises ? No doubt, the definition of landlord in Clause (h) of Section 3 includes a usufructuary mortgagee who is entitled to receive the rent of the premises during the subsistence of such mortgage. But, the opening part of Section 3 of the Act, itself qualifies the definitions in that section by stating "unless the context otherwise requires". In construing any word occurring in a provision of an Act, it is permissible to depart from the meaning given to that word in the definition hereof in the Act, if the context of that provision so requires. The whole scheme of Part II of the Act is to regulate letting of premises which are in great scarcity at present, so as to ensure availability of such premises when they fall vacant, to those who are in need thereof at reasonable rent and in certain order of priority. If a usufructuary mortgagee of a premises is put on par with the owner in regard to priority while deciding who should get such premises when a vacancy thereof occurs, a money person who can advance money and take a usufructuary mortgage of such premises, gets an advantage over a person who is otherwise in need of such premises, and desires to take it on lease, but does not have large funds to obtain such usufructuary mortgagee. The object of the legislature in enacting Part II of the Act, will be defeated if a person, who has money and takes a usufructuary mortgage of the premises, is given priority over applicants who can afford to pay nothing more than the fair rent for such premises. If such priority is given to a usufructuary mortgagee, an owner of the premises can also defeat the provisions of the Act which regulate the rent of premises so as to prevent rack-renting when there is scarcity of accommodation. For instance, it would not be difficult for the owner of a premises, by cleverly manipulating the terms of the usufructuary mortgage, to get a much higher, yield for his premises than the rent which may be fixed by the Controller while allotting the premises u/s 5 of the Act, to any person or public authority.

9. To prevent the object of Part II of the Act being defeated, the word "landlord" in Section 5 thereof, should, in the context of the provisions of that part, necessarily be given a restricted meaning, so as not to include a usufructuary mortgagee of a premises though the definition of the word "landlord" in Clause (h) of Section 3 (apart from the context) includes a usufructuary mortgagee. Hence, we take the view that the word "landlord" in Section 5 of the Act does

not include a usufructuary mortgagee.

10. The petitioner, a usufructuary mortgagee, was, therefore, not entitled to claim any priority in regard to the occupancy of the premises in question when the vacancy thereof occurred. If his application to the Controller was considered on the same footing as any other application for the allotment of the premises, respondent 4 who is a member of the State Legislature and had made an application for allotment of the premises, had, under Rule 4-B of the Karnataka Rent Control Rules, 1961, a claim for priority over the petitioner who is an employee in a Bank.

11. Shri Krishna Murthy contended that respondent 4 had already accommodation in the Legislators' Home and hence could not claim priority under Rule 4-B. But, such a plea was not put forward before the Controller or the Deputy Commissioner or in the writ petition. Whether respondent 4 had accommodation in the Legislators' Home and whether such accommodation was sufficient for himself and the members of his family, are questions of fact which cannot be enquired into in this appeal.

12. We do not find any good ground to interfere with the order of the learned single Judge who dismissed the writ petition.

13. Accordingly, we do not admit this appeal, but dismiss it.

14. Appeal dismissed.