

(1998) 09 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 16770 of 1996

Smt. Sathyalakshmi

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-09-1998

Acts Referred:

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

Citation : (1999) 1 KarLJ 672

Hon'ble Judges : B.N. Mallikarjuna, J

Bench : Single Bench

Advocate : Sri S. Sekhar Shetty, for the Appellant; Sri Visweswaraiah, High Court Government Pleader and Sri M.V. Seshachala, for the Respondent

Judgement

1. This writ petition under Article 226 of the Constitution of India is by the landlady and appellant before respondent 2-Deputy Commissioner, Hassan District, Hassan for quashing the orders of respondent 3-Assistant Commissioner and House Rent Accommodation Controller, Hassan dated 24-10-1991 in HRC/46/89-90 and of respondent 2-Deputy Commissioner dated 21-5-1996 in HRA/20/91-92, Annexure-B is the order of respondent 3 and that is confirmed in appeal by respondent 2- Deputy Commissioner, Annexure-C is the order of respondent 2.

2. Heard the learned Counsel Sri Sekhar Shetty for the petitioner, Sri Seshachala for respondent 4 and the High Court Government Pleader for respondents 1 to 3. Records of the original proceedings and also of the appeal were made available for perusal by the Government Pleader.

3. Briefly stated, the facts leading to the presentation of this writ petition may be stated thus:

Undisputably, petitioner is the owner of certain shop premises situated at Salagame Road in Hassan Town. One Eshwarappa who was in occupation of one

of the shop premises i.e., now in dispute, it would appear on 27-7-1989 made an application before respondent 3 stating that he had been evicted unauthorisedly, by misrepresentation and fraud. On receiving the said complaint, respondent 3 called for the report from the Revenue Inspector. On 24-8-1989 Revenue Inspector submitted his report stating that the premises vacated by Eshwarappa is retained by the landlady for her personal use and occupation. It is stated that there was a notice thereafter to the landlady and on 20-9-1989 respondent 3 issued notification inviting applications from the intending persons. In response to the said notification three persons including respondent 4 viz., one H.R. Prakash, Eshwarappa and respondent 4 submitted their applications in the prescribed form. Thereafter, respondent 3 held an enquiry and by order at Annexure-B allotted the premises in question in favour of respondent 4 on a monthly rent of Rs. 250/- and further directed the landlady to deliver vacant possession of the premises within 15 days from the date of service of the order.

Aggrieved by the said order and direction, landlady, writ petitioner herein moved respondent 2 u/s 12 of the Karnataka Rent Control Act (hereinafter referred to as "the Act"). Deputy Commissioner, by the impugned order dated 21-5-1996 dismissed the appeal thereby confirmed the allotment in favour of respondent 4. These two orders are under challenge in this petition.

4. Sri Sekhar Shetty, learned Counsel for the petitioner principally contended that in allotting the house, Rent Controller has not followed the mandatory requirements of Section 8(1)(a) and Section 10-A of the Act and therefore whole proceedings are vitiated and as such both the orders are not sustainable in law. However, learned Government Pleader tried to support both the orders of respondents 2 and 3. Sri Seshachala, learned Counsel for respondent 4 on the other hand contended that there is notice to the landlady after the report of the Revenue Inspector, that there is an enquiry in the matter as required under law, even if the premises was in unauthorised occupation of one Mohammed Alif i.e., only after the report of the Revenue Inspector and in these circumstances there are no grounds to interfere with the impugned order.

5. On a careful consideration of the rival contentions and on perusal of the papers, I find merit in the arguments advanced on behalf of the writ petitioner.

6. Sri Sekhar Shetty, learned Counsel for petitioner was right in submitting that the proceedings are not initiated on the report of the Revenue Inspector and on the other hand proceedings are initiated on the complaint/petition of one of the three applicants, viz., Eshwarappa. A perusal of the records reveal that Eshwarappa made an application on 27-7-1989 and thereafter report of the Revenue Inspector was called for and the Revenue Inspector submitted his report on 24-8-1989. It is thereafter notification dated 20-9-1989 was published inviting applications from the intending persons requiring the premises. In between the report of the Revenue Inspector and the publication of notification, as rightly contended by the learned Counsel, there is no notice either to the landlady or to the person in possession of the property in compliance with the

mandatory requirements of Section 8(1)(a) of the Act. No doubt, certain notices are found in the record but those two notices do not satisfy the requirements of Section 8(1)(a) of the Act. In support of his arguments Sri Sekhar Shetty relied on the Division Bench decision of this Court in Mohammed Jalaludin Vs. House Rent and Accommodation Controller, . Division Bench while considering the scope and purport of Section 5 of the Act has said that it is incumbent upon the Rent Controller to put to the landlord whatever the evidence or the material he had collected and the basis on which he had suo motu notified the vacancy, more importantly when the authority intends to rely upon the said material. In the instant case, Revenue Inspector reports that the building vacated by Eshwarappa was in possession of the landlady and it had been retained for her personal use and occupation. But two notices I find in the record do not make a mention or substance of the report of the Revenue Inspector nor does it say that the landlady had not intimated the vacancy as required under law. In the circumstances, learned Counsel was right in contending that respondent 3 has not complied with the mandatory requirement of Section 8(1)(a) of the Act before allotting the premises in favour of respondent 4.

7. Secondly he contended that when once the report discloses that the disputed premises is in possession of a person unauthorisedly, Section 10-A of the Act requires issuance of notice to that person and to provide him an opportunity to have his say in the matter. In support of his arguments he relied on the decision of this Court in D. Suresh Kumar Sanghvi v House Rent and Accommodation Controller and Boramma Vs. Rent and Accomodation Controller, . It is seen from both the orders that the authorities were of the opinion that the disputed premises had been leased by the landlord unauthorisedly in favour of one Mohammed Alif after evicting the earlier t Eshwarappa. No doubt, landlady contends that she occupied the premises pursuant to the order of the Court u/s 21(1)(h) of the Act, but that order is not available in the records nor is that is spoken to by any one of the two witnesses examined on her behalf. Whatever, that may be, when there is a finding that the disputed premises was in occupation of a person who is not in law authorised to be in possession, authority was required to issue notice u/s 10-A of the Act affording him an opportunity to have his say in the matter. In case of unauthorised occupation, it is open to the controller to proceed under Sections 5 to 10 of the Act independently of Section 10-A of the Act. But even in such a situation, he is required to issue notice u/s 8(1)(a) of the Act to such person in unauthorised occupation before inviting applications for allotment. In the instant case, records do not reveal issuance of any such notices to the person in possession of the premises in question. In the circumstances, there being no compliance of mandatory provisions of Section 8(1)(a) and Section 10-A of the Act, order of respondent 3 at Annexure-B and confirmed in appeal by respondent 2 at Annexure-C are not sustainable in law hence, petitioner, succeeds.

8. In the result and for the reasons hereinabove stated, rule issued on 24-6-1996 is made absolute. Both the orders at Annexure-B and C are quashed. Matter is

remitted back to respondent 3 with a direction to readmit the matter in its original number, issue notice to the person in occupation of the premises viz., Mohammed Alif, provide opportunity to both the landlady and the person in occupation to submit their objections if any and thereafter proceed to hold an enquiry and make appropriate and necessary order in accordance with law. It is made clear that whatever evidence already recorded shall be read as evidence in the matter after the remand. In the peculiar circumstances of the case, each party is directed to bear their own costs. Respondent 3-Rent Controller is directed to complete the enquiry and make the said order within 31-12-1998.