

(1978) 03 KAR CK 0020
In the Karnataka High Court
Case No : WP. 536 of 1978

Vishalakshi N. and Another

APPELLANT

Vs

Spl Deputy Commr, B"lore and Others

RESPONDENT

Date of Decision : 09-03-1978

Acts Referred:

Karnataka Rent Control Rules, 1961 — Rule 4(1)(A)(10)

Citation : (1978) 2 KarLJ 49

Hon'ble Judges : Rama Jois, J

Judgement

1. The first petitioner is the owner of a non-residential premises bearing No. 1/2, Church Street, Bangalore. Under Sec. 4 of the Karnataka Rent Control Act, the first petitioner gave intimation of the vacancy of the said premises. This is a non-residential premises, the monthly rent of which exceeds Rs. 500, the rent being Rs. 2,000 per month. When the matter came Up before the Rent Controller the first petitioner gave consent for the allotment of the premises to the second petitioner. By an order dated 8-9-77, the Rent Controller allotted the premises in favour of second petitioner relying on the order of priority given under Rule 4(1)(A)(10) of the Rent Control Rules (hereinafter referred to as the "Rules"). According to the said Rules where the monthly rent of a non-residential building exceeds Rs. 500 priority for allotment is given to a person who has obtained the consent of the landlord for the lease of the building in his favour. As the second petitioner had secured the consent of the first petitioner, the Rent Controller allotted the said premises to the second petitioner. The objection raised on the ground that the second petitioner is no other than the brother of the first petitioner was over-ruled stating that there was no bar for the first petitioner for leasing the said premises to her own brother.

2. The third respondent who was one of the applicants for allotment, preferred an appeal before the Spl Deputy Commissioner, Bangalore District. By order dated 7-1-1978. the Deputy Commr. allowed the appeal and directed the allotment of the premises in favour of third respondent. Aggrieved by the said order, the petitioners have presented this writ petition.

3. Sri Mohandas N. Hegde, learned Counsel for the petitioners submitted that the Deputy Commr erred in rejecting the claim of the second petitioner on the ground that the consent was not given at the time of reporting the vacancy. He invited my attention to para 9 of the order of the Deputy Commissioner, in which he has stated as follows:

" I find that the order of the Controller is not sustainable. The landlady while filing the vacancy report never gave any consent for the allotment of the notified premises."

4. Under the Rules, there is no requirement that the consent should be given at the time of intimation of the vacancy. Therefore, it can be given at any time before the Rent Controller considered the concerned application. As in the present case, it is not disputed that the first petitioner gave consent in favour of the second petitioner before the matter was taken up before the Rent Controller, the consent could not be held to be defective as is sought to be done by the Deputy Commissioner.

5. Sri K.G. Raghavan learned Counsel appearing for third respondent however contended that in view of proviso to Rule 4(1) of the Rules before claiming priority under Rule 4(1)(A) (10) of the Rules, it is necessary that any person who is other than public authority must have Registered his name as specified in sub-rule(3). Rule 4(1)(A) and (B) and Sub-rules (2) and (3) read as follows:

" 4. Order of priority:-(1) Where no direction is issued under the proviso to sub-sec(2) of Sec. 8, the Controller shall observe the following order of priority in selecting the public authority or other person in whose favour an order may be made under the said section namely:

(A) in case of non-residential buildings:

(1) The Government of Karnataka;

(2) The Central Government;

(3) Any local authority when such building is required for the use of such local authority;

(4) A corporation established by a State Act when the building is required for the use of such corporation;

(5) A Corporation established by a Central Act when the building is required for the use of such corporation;

(6) A Government Company when the building is required for the use of such Company;

(7) A public educational institution registered under Karnataka Societies Registration Act, 1960, when such building is required for use of such institution;

(8) A Public Charitable Institution registered under the Karnataka Societies

Registration Act, 1960, when the building is required for use of such institution;

(9) A Public Religious Institution under the management and control of the State Govt. when the building is required for the use of such institution;

(10) Where the monthly rent of the building-

(i) exceeds Rs. 500 to any person who has obtained the consent of the landlord for the lease of the building in his favour;

(ii) is Rs. 500 or less- (a) a clinic or nursing home, when the building is required for use as such by a Doctor who does not have a clinic or nursing home;

(b) A General or Departmental Store, when the building is required by such store for business in foodgrains, food products, oil, fuel, textile, stationery and other essential commodities;

(c) a restaurant run by any co-operative society or a person who does not run such business elsewhere.

(B) In case of residential buildings- (1) The Govt of Karnataka for providing accommodation to any Minister, Judges of the High Court or Tribunal, Members of the Legislature, the Presiding Officer of the Legislature, Deputy Presiding Officers, Govt Whips of both the Houses, Members of any Committee or Board or Corporation or its employees;

((2) to (14) omitted as unnecessary)

(15) Any person employed in Indian Institute of Science, ICAR, and CSIR who is not in possession of any alternative accommodation:

Provided that no person other than a public authority shall be entitled to priority unless he has registered his name as specified in sub-rule (3);

Provided further that where more than one person is eligible under the order of priority, the person who has registered his name earlier shall be preferred to the person who has registered his name later;

Provided also that no person shall be entitled for priority in respect of any residential building, the monthly rent of which is less than ten per cent of his monthly income;

Explanation: (1) In computing the income of the applicant, the income of all the members of the family shall be taken into account.

(2) Any person who is eligible for allotment under sub-rule(1) may make an application in Form-1A to the Controller for registering his name specifying, his address, locality in, which accommodation is required, and the rent he is willing to pay.

(3) A fee of Rs. 5 shall be payable in respect of every application for registration and such fee may be paid in the form of Court-fee stamp affixed to such

application.

(4) On receipt of the application, the Controller shall, if he is satisfied that the particulars contained in the application are correct and complete and the applicant is eligible under the Act and these rules for allotment, register his name.

(5) If the Controller is not satisfied that the particulars contained in the application are correct and complete or that the applicant is eligible for allotment, he shall reject the application.

(6) The Controller shall, if he is satisfied that the person registered has secured alternative accommodation either by way of allotment or otherwise, cancel the registration.

(7) The Controller shall cause to be maintained a register in which the particulars furnished in the application of the person whose name is ordered to be registered, are entered.

(8) The registration by the Controller shall not dispense with the making of an application in Form-II as required by sub-rule (5) of Rule 8, for allotment."

The above rule prescribes the order of preference, in the matter of allotment of non-residential and residential premise's to be observed by the Rent Controller. Sub-rule(2) provides that a person who is eligible for allotment under sub-rule(1) may make an application in Form-1A to the Controller for registering his name specifying his address, locality in which accommodation is required, and the rent he is willing to pay. Subrule (3) prescribes a fee of Rs.5 in respect of every application for registration. Proviso to Rule 4(1) provides that applicants for allotment other than public authorities before claiming the priority under Rule 4(1). (A)(10) of the Rules, ought to have registered their names under sub-rule (3). The contention urged for 3rd respondent in the present case is as the petitioner had not registered his name under the aforesaid Rule he is not entitled to claim priority under Rule 4(1)(A)(10) of the Rules.

5. But it is submitted on behalf of the petitioners that the above contention was not raised before the Deputy Commr. In the order of the Deputy Commr there is nowhere any reference to proviso to Rule 4(1) of the Rules. The Rent Controller also did not notice the Proviso, according to which registration of the name under sub-rules (2) and (3) is a condition precedent for claiming priority u/Rule 4(1)(A)(10) of the Rules.

6. It is however contended on behalf of the third respondent that as the Deputy Commr reached the conclusion that on comparative merits the claim of third respondent is preferable to second petitioner, the order should be confirmed. But as stated earlier, the Deputy Commr mainly proceeded on the basis that because the consent of the first petitioner was not given at the time of notification of the vacancy, the priority was not available to the second petitioner. As stated earlier, the proviso to Rule 4(1) has not been noticed either by the Deputy Commr or by the Rent Controller. The third respondent has also not raised this point before the

Deputy Commissioner or the Rent Controller.

7. Though this point was not raised before both the authorities, this is a pure question of law based on the interpretation of the Proviso to Rule 4(1) and as this point has not been raised by 3rd respondent and has been overlooked by both the authorities the orders are liable to be quashed and the matter has to be sent back to the Rent Controller to give opportunity to the petitioner to establish his claim in preference to respondent with or without priority under the Rules.

8. For the aforesaid reasons, the rule is made absolute. The impugned order of the second respondent dated 8-9-77 (Ext."A") and the order of the first respondent dated 7-1-78 (Ext."B") are quashed. The case is remanded to the second respondent for fresh disposal of the applications of the second petitioner and third respondent in accordance with law.

No costs.