
(2000) 03 KAR CK 0019

Karnataka High Court

Case No: House Rent Revision Petition No. 97 of 2000

Mr. B. Omprakash Bajaj

APPELLANT

Vs

Group Captain P.M.
Mathai

RESPONDENT

Date of Decision: March 30, 2000

Acts Referred:

- Karnataka Rent Control Act, 1961 - Section 21 (1) (h), 21 B, 50

Citation: (2000) 3 KCCR 1866

Hon'ble Judges: M.P. Chinnappa, J

Bench: Single Bench

Advocate: H. Sulaiman Sait and M.S. Sait, for the Appellant; Cariappa and Co., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.P. Chinnappa, J.

The brief facts leading to this revision petition are that the Respondent is the owner of the petition schedule premises which is a residential building more fully described in the schedule. The Petitioner is a tenant on a monthly rental of Rs. 2, 200/- which he occupied in the year 1991. The Petitioner however, agreed and undertook to vacate the schedule premises on or before April, 1994. It is also not in dispute that the Respondent is a member of the Armed Forces of the Union and at that time he was working at Higher Command Course, College of Combat, MHOW-543 442 (MP). The family of the Petitioner consists of himself, his wife and two children aged 13 and 11 years. It is also stated that he had no other alternative accommodation other than the petition schedule premises. As he is employed in the Armed Forces, he is constantly on the move. Therefore, he decided to send his family, i.e., wife and children to Bangalore, so that the children's education would not be affected. Therefore, the Petitioner filed HRC. 10019 of 1997 on the file of

the XV Additional Small Causes Judge, Bangalore, for eviction u/s 21-B of the Karnataka Rent Control Act as the tenant failed and neglected his request to deliver vacant possession to him.

2. The Petitioner/tenant resisted the claim of the Respondent by filing objections urging that the petition is a malafide one and it is merely an attempt to secure enhancement of rent or possession of the premises to let it out to others for higher rent. u/s 21-B of the Karnataka Rent Control Act, the Petitioner has to produce necessary certificates from the prescribed authority. Since the Petitioner failed to heed to his demands to pay enhanced rent the Respondent/landlord filed this petition. There is no bonafide and reasonable requirement by the Respondent. Therefore, he claims that the petition is liable to be dismissed.

3. To substantiate the case, the Respondent-landlord examined himself as P.W.1 and Exs. P-1 to P-5 were marked. Respondent examined himself and another witness as R. Ws. 1 and 2 and Exs. R-1 to R-3 were marked. After hearing the arguments and assessing the evidence, the Court below passed the Judgment on 20.11.1999 allowing the petition of the Respondent directing the Petitioner herein to vacate and hand over possession of the petition schedule premises to the Respondent within three months. Being aggrieved by that Judgment, the tenant has preferred this appeal u/s 50 of the Karnataka Rent Control Act.

4. Heard Sri. H. Sulaiman Sait for the Petitioner and Sri. Cariappa and Company, for the Respondent.

5. From the bare reading of Section 21-B, it is clear that the landlord who is a member of the Armed Forces has to produce a certificate issued by the competent authority which is conclusive evidence so far as past or present membership of Armed Forces and the member does not possess any other suitable residence in the local area. Mere production of requisite certificate does not absolve the landlord of the responsibility of proving that his requirement is bonafide. The landlord has to prove his bonafide requirement of the premises. There is no need to prove comparative hardship or that his claim is reasonable.

6. In [Prakash Chand Gupta Vs. K.S. Gupta](#), their Lordships of the Supreme Court have held that the landlord who retired from Government Service filed an application u/s 14-C of the Delhi Rent Control Act for eviction. In that case, during its pendency the landlord secured possession of another premises. Their Lordships remanded the matter for fresh consideration on the question of need and sufficiency of accommodation.

7. The learned Counsel for the Petitioner herein argued that the order issued by the officer merely says that he is not in possession of any other accommodation, it does not say that he is not the owner of any other house or accommodation. That order contains the materials as required u/s 21-B. But the Petitioner has not let in any evidence to show that the Respondent-landlord owns or is in possession of any other residential premises

in Bangalore. Therefore, the decision referred to above is not applicable on facts of this case.

8. The learned Counsel further argued that the landlord who is in occupation of one premises cannot invoke urgency provisions and in support of his argument, he relied on the decision reported in (1984 All LJ 1324), S.P. Jain v. Krishna Mohan Gupta and Ors. In that case, the landlord was in possession of ground floor portion and had let out first floor portion. The said portion in occupation of landlord could be used separately. Under those circumstances, it was held that the landlord is not entitled to invoke urgency provision under Sections 24-B and C of Uttar Pradesh Urban Buildings Act. In this case there is no residential portion in occupation of the landlord in Bangalore. He was allotted a house in Delhi and he is always on the move. Further, he has been transferred and for the present accommodation he has to pay Rs. 12,500/- as penal rent. He is now posted in the North-Eastern Frontier where he cannot shift his family as it is a sensitive area. Further there is no scope for the children's education. Hence, he intends to shift his family to Bangalore and settle them here for the purpose of the children who are still minors, prosecuting their studies.

9. The learned Counsel has vehemently argued that mere establishment of fact that he is a Defence Personnel itself is not sufficient. Further, he has to establish bonafide requirement. His argument is that from the materials available on record, it has to be inferred that he is not interested to occupy the premises but he wants to evict the Petitioner at any cost, obviously for securing tenants who would pay more rent.

10. It is no doubt true that as indicate above, the landlord will have to further establish that he is an Armed Personnel and his requirement is bonafide. However, he need not establish his reasonableness and hardship, as required is to be proved u/s 21(1) (h). To substantiate his argument, the learned Counsel placed reliance on the Judgment of this Court in [Srinivasa Baliga Vs. Gopalakrishna Pai](#), wherein this Court had considered Section 21(1) (h) and held that what is required to be proved is genuine need and if the need is established intention or desire automatically follows. Similarly, in AIR 1986 SC 1639, M/s. Rahabhar Productions Private Limited v. Rajendra K. Tandon it is held that there is no presumption that requirement of landlord is bonafide. Therefore, it is now necessary to find out as to whether the landlord/Respondent's requirement is a bonafide one.

11. The learned Counsel has vehemently argued that the landlord has even threatened the Petitioner to evict him from premises and in support of this argument, he has drawn my attention to the letters written by the landlord to the Petitioner. In those letters, he has earnestly requested the Petitioner to give vacant possession and he has also given time as required by the Petitioner every now and then. However, the Petitioner has not vacated the premises. Thereafter, he has also sent his friend to his house once or twice and on the basis of that, the learned Counsel for the Petitioner argued that he was sent only with a view to get the house for himself for higher rent, etc. this argument cannot be

accepted. There is nothing to indicate that his friend had visited the Petitioner with an object to occupy the premises and it is also not brought out in the evidence. Just because the friend of the landlord visited the premises, probably to request the Petitioner to vacate the premises as per the instructions of the Respondent, the Court cannot draw an adverse inference that he had visited the house only with an intention to occupy the same in the event the Petitioner vacates. It is also not the case of the Petitioner that the Respondent intends to let it out to his friend.

12. The learned Counsel further argued that the landlord has used force against the Petitioner to evict him which constrained the Petitioner to file original suit before the Court and obtain temporary injunction. There is no evidence to show that he has used any other extra judicial method to evict him. On the other hand, it appears that since the landlord was demanding to vacate the premises, he has filed the suit before Court and obtained injunction. After the summons were served, the landlord admittedly appeared before Court and submitted that he would take legal proceedings against the Petitioner to evict him under the relevant provisions of law. On the basis of this undertaking the suit itself was dismissed. This circumstances cannot be taken in to consideration to say that he was using force to evict him from the premises.

13. The learned Counsel further argued that he has not made any preparation to admit his children to school and that not even a scrap of paper is produced before Court to show that he has made attempts in Bangalore to secure seats for his children. According to him, the ground urged in the petition is only a pretext to claim possession. In answer to this, the learned Counsel for the Respondent rightly submitted that unless he gets vacant possession of the premises, he would not be in a position to put his children in school and he also submitted that as soon as the premises becomes vacant, he would secure seats in Bangalore for his children. However, the learned Counsel for the Petitioner wants the Court to believe that it is not very easy to secure seats in schools or colleges in Bangalore. It is left to the Respondent/landlord to take prompt action and put his children for whose benefit he intends to shift his family to Bangalore, but the fact remains that the landlord has been posted to different places as he is in Defence Service and that he is owning only one house in Bangalore and that house is required by him for the purpose of his children prosecuting their studies. Therefore, this cannot be dubbed as a malafide intention or that he had no intention to shift his family to Bangalore. The landlord has been fighting this battle since 1997 and it is also made clear that unless he gets vacant possession, he cannot shift his family and his children would be put to greater inconvenience. In addition to that, he has to pay penal rent to the Government and he has also been directed to vacate the premises. Therefore, I am of the clear opinion that the court below has rightly held that the requirement of the landlord is a bonafide one. The very purpose and object of Section 21-B is to secure possession to the Armed Personnel summarily, as expeditiously as possible. However, the contention of the Petitioner that the Respondent does not require the premises cannot be accepted and the Petitioner has been dodging to deliver vacant possession of the premises. The argument of the learned

Counsel for the Petitioner that he would be put to greater hardship need not be gone into as it is not the requirement of Section 21-B of the Act. When once the bonafide requirement is proved, the need is established. In this case, the Respondent has pleaded and also proved his genuine need.

14. For the foregoing reasons, I hold that this petition has no merit and accordingly, it is dismissed. The Petitioner is further directed to quit and deliver vacant possession of the premises on or before 31.5.2000. The Petitioner shall also give an undertaking to that effect before the trial Court within one month and he should continue to pay the future rent without any default till the vacant possession is delivered.