

**KARNATAKA HIGH COURT**

Aswatharamiah

Vs.

Special Deputy Commissioner

W.P. No. 9590 of 1976

(Malimath, J.)

09.02.1977

**ORDER**

**Malimath, J.**

1. The petitioner has challenged for the order made by the House Rent and Accommodation Controller (hereinafter referred to as the Controller) in HRC 595 ACC(B) 76 dt. 17.9.1976 Ext. 'A' and the appellate order made of by the Special Deputy Commissioner, Bangalore in HRC Appeal No. 188 of 1976-77 dt. 21.10.76 Ext. 'B', affirming the order made by the controller.

2. The undisputed facts that may be noticed are these : The premises in question bearing No. 30 (1st floor) Rama Iyengar Road, Visweswarapuram, Bangalore belongs to one Ratna. The owner has executed an usufructuary deed of mortgage in favor of the petitioner on the 4th of August 1976. After the petitioner thus became the mortgage in possession of the premises in question, he submitted an intimation to the Controller as required by Section 4(1) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the Act). The petitioner sought permission from the Controller to occupy the premises himself, stating that he is now residing in the house of a relative of his Jayanagar and that he would like to stay in the mortgaged house and bring his parents and his brothers to stay in the house in question who are now residing in the State of Andhra Pradesh. The third respondent who is the Superintendent of Police Corps of Detectives, CID, Bangalore secured a directive in his favor for allotment of premises. It appears that the third respondent opposed the prayer of the petitioner for grant of permission to occupy the premises on the ground that the said request is not *bonafide* and genuine. He assigned several reasons questioning the *bonafides* of the petitioner. The Controller rejected the prayer of the petitioner for permission to occupy the premises and proceeded to allot the premises in the favor of the third respondent. The petitioner challenged the said order before the appellate authority the Special Deputy Commissioner, Bangalore Distt. The appellate authority dismissed the petitioner's appeal and confirmed the order of the Controller. Hence, this writ petition under Article 226(1) of the

Constitution.

3. Sri. B Vedantaiengar, learned Counsel appearing for the petitioner, contended that the impugned orders are vitiated by errors apparent on the fact of the record. He submitted that the petitioner's prayer for permission to occupy the premises has been rejected on irrelevant grounds.

4. In paragraph 7 of the appellate order, there is a clear statement made to the effect that with the intention of securing suitable accommodation the petitioner has entered into usufructuary mortgage. After making that observation, the appellate authority has proceeded to observe that having regard to the directive issued for allotment in favour of the third respondent, he gets preference over all others including the mortgagee in possession. This observation is wholly erroneous. The mortgagee in possession steps into the shoes of the landlord and has to be regarded as the landlord for the purpose of the Act having regard to the definition of the word 'landlord' in Section 3(h) which defined the said word to mean any person who is for the time being receiving or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive rent if the premises were let to a tenant; and include any person not being a tenant who from time to time derives title under a landlord. The appellate authority was, therefore, clearly in error in proceeding on the assumption that a mortgagee in possession has an inferior status than the landlord under the Act. The appellate authority should have proceeded on the basis that the petitioner is the landlord and is therefore entitled to all the rights of the landlord, under the Act. A landlord is entitled to occupy the premises after obtaining necessary permission from the Controller satisfying him about his *bonafides*. Merely because the petitioner happens to be a mortgagee in possession, the authorities functioning under the Act could not compare the requirements of the mortgagee in possession with the requirements of applicants for allotment of the premises on lease basis. The question for consideration before the Controller, as laid down by this Court in *M.A. Sarada Bai v. State of Mysore*<sup>1</sup>, was as to whether the request of the petitioner for permission to occupy the premises can be regarded as *bonafide*. For the purposes of deciding the said question, it was not permissible to the authorities functioning under the Act to compare the case of the petitioner with the claim made by the third respondent who had filed an application for allotment of the premises in question. I have, therefore, on hesitation in taking the view that the claim of the petitioner has been rejected on a wholly irrelevant ground.

5. I fail to see how the appellate authority, after holding that with the intention of securing accommodation the petitioner has entered into an usufructuary mortgage, could proceed to observe that there are number of fallacies in the contentions advanced on behalf of the petitioner in justification of his claim for occupying the premises. It is also clear from the reading of the order of the appellate authority that there is no finding to the effect that the requirement of the petitioner is not *bonafide*. The order of the Controller also gives the impression that he has also tried to compare the requirement of the petitioner with the claim of the third respondent for allotment of the premises in question. As already stated, that is not the proper approach to be

made in a case like this.

6. What the Controller should have done is to first examine as to whether the claim of the petitioner for securing permission for occupying the premises in question is *bonafide* or not. If the Controller, on examination of the material and consideration of the contention of the parties, to accord the necessary permission to the petitioner to occupy the premises. It however, the Controller comes to the conclusion that the claim of the petitioner is not

<sup>1</sup>1968(2) Mys LJ 384

*bonafide*, he has to reject the claim of the petitioner and then proceed to allot the premises on lease basis.

7. For the reasons stated above, this writ petition is allowed and the impugned order of the Controller and the appellate authority are hereby quashed and the case is remitted back to the Controller for fresh disposal in accordance with law, and in the light of the observations made during the course of this order, as expeditiously as possible. No costs

Petition allowed.