

KARNATAKA HIGH COURT

Subramanyaswamy S

Vs.

Deputy Commissioner

WA 129/81

(D.M. Chandrashekhar C.J and N. Venkatachala, J)

26.02.1981

JUDGMENT

Venkatachala, J.

1. This appeal is from the order of Subhahit, J., dismissing WP 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-II (hereinafter referred to as 'the premises') formed the subject-matter of proceedings under the provisions of Part-II of the Karnataka Rent Control Act, 1961 (hereinafter referred to as 'the Act'. The Rent and 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 under Section 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-4 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 dismissing 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, Sri Mirle L. Krishnamurthy, 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. Sri Krishnamurthy 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. Sri Krishnamurthy 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 that 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 *bonafide* and reasonable and that in the present case there was absolutely no reasons to hold that the desire of the petitioner who had no other premises to occupy the premises in question, was either not *bonafide* or reasonable.

7. It was also contended by Sri Krishna Murthy that the Controller and the Deputy Commissioner had no jurisdiction to go into the question whether the usufructuary mortgagee was genuine or a make believe one. Sri Krishna Murthy submitted that the petitioner who was in need of residential accommodation could not secure it for a long time inspite 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 premises 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 under Section 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 *bonafide* and reasonable. But, should such priority be extended to an usufructuary mortgagee of such premises ? No doubt, the definition of landlord in clause (h) of Section 3

includes an 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 constructing any word occurring in a provision of an Act, it is permissible to depart from the meaning given to that word in the definition thereof 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 an 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 moneyed person who can advance money and take an 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 mortgage. The object of the legislature in enacting Part-II of the Act, will be defeated if a person who has money and taken an 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 an 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 rackrenting when there is scarcity of accommodation. For instance, it would not be difficult for the owner of a premises, by clearly 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 under Section 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 an usufructuary mortgagee of a premises though the definition of the word 'landlord' in clause (h) of Section 3 (apart from the context) includes an usufructuary mortgagee. Hence, we take the view that the word 'landlord' in Section 5 of the Act, does not include an usufructuary mortgagee.

10. The petitioner, an 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 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. Sri Krishna Murthy contended that respondent-4 had already accommodation in the Legislatures' 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. We do not find any good ground to interfere with the order of the learned Single Judge who dismissed the writ petition.

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