
(1992) 04 AP CK 0004
In the Andhra Pradesh High Court
Case No : C.R.P. No. 5226 of 1980

Abdul Raheem by G.P.A., Mohd. Phiroze Ali	APPELLANT
Vs	
Srinivasa Dyeing Works and Others	RESPONDENT

Date of Decision : 24-04-1992

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 10(3)

Citation : (1993) 1 ALT 232

Hon'ble Judges : Immaneni Panduranga Rao, J

Bench : Single Bench

Advocate : K.F. Baba and Mirza Afzalullah Baig, for the Appellant; K. Raghuvveera Reddy, for A. Suryanarayana Murthy, for R. 1 and 2 and P.V.R. Sharma, for R. 3, for the Respondent

Final Decision : Dismissed

Judgement

Immaneni Panduranga Rao, J.—The sole tenant is the petitioner herein. The eviction petition was filed in the year 1972 on the grounds of wilful default in payment of rent and bona fide personal requirement. The learned Rent Controller holding that the ground of bona fide personal requirement was not established and that there is no wilful default in payment of rent, dismissed the eviction petition. On appeal, the learned Principal Subordinate Judge, Vijayawada who is the appellate authority held that the firm of which the minor is a partner, requires the premises bona fide for personal occupation and that there is also wilful default in payment of rent. He accordingly allowed the appeal and ordered eviction.

2. When the civil revision petition came up for hearing on an earlier occasion, K. Jayachandra Reddy, (as he then was) agreed with the appellate court holding that the premises is bona fide required for the occupation of the first landlord-firm (for short "the firm"). Though the learned Judge observed that there is no categorical finding with regard to the wilful default for the disputed months of

December, 1971, January, 1972 and February, 1972, dismissed the Civil Revision Petition upholding the ground of bona fide personal requirement giving seven months" time to the tenant to vacate the premises.

3. Challenging that order in the revision, the tenant filed Civil Appeal No. 2969 of 1982 in the Supreme Court of India. The Supreme Court by an order dated 24-7-1987 while setting aside the order of the High Court, remitted the matter back to the High Court with a direction that the High Court will call for a finding from the learned Rent Controller as to whether the landlord requires the premises in question for bona fide personal requirement having regard to all aspects. The landlord sought a further direction from the Supreme Court by filing I.A.No. 1 of 1990 in Civil Appeal No. 2969/1982. After hearing both sides, the Supreme Court directed this Court by an order dated 10th April, 1991 to consider the question of default either on the basis of the evidence already on record or after allowing the parties to let in additional evidence on the point. The Supreme Court also gave an option to this court to remit the case to the first appellate court for the aforesaid purpose.

4. In pursuance of the directions given by the Supreme Court, this court called for a finding from the learned Rent Controller, Vijayawada with regard to the bona fide requirement of the landlords. By a subsequent order, this court called for a finding from the Principal Subordinate Judge i.e., the appellate authority on the question of wilful default on the material available on record.

5. The learned Rent Controller, Vijayawada submitted his finding dated 27-3-1989 to the effect that the requirement of the landlords is not a bona fide one. The learned Principal Subordinate Judge, Vijayawada submitted his finding dated 4th December, 1991 that the first eviction petitioner-landlord is entitled to collect rents from 1-4-1972; that the tenant had committed wilful default in payment of rents from 1-6-1972 to 30-9-1972; that the second eviction petitioner-landlord is entitled to collect rent from 1-4-1971 till March, 1972 and that the tenant had committed wilful default in payment of rent for December, 1971 and from January, 1972 to March, 1972.

6. The learned counsel for the petitioner argued that the tenant has taken two items of property on lease under a registered lease deed dated 1-6-1959 executed by two brothers Valluru Keshava Rao and V.V. Subba Rao; that Valluru Keshava Rao filed H.R.C. No. 40 of 1967 on two grounds; that the tenant denied the right of the said Valluru Keshava Rao to carry on the litigation; that the said eviction petition was dismissed on 15-7-1968; that the appeal preferred against it was dismissed on 27-1-1971; that the revision preferred to this High Court in C.R.P. No. 1264 of 1971 was also dismissed on 13-2-1973 with a direction that the tenant should deposit rents from March, 1973; that the present eviction petition in R.C.C. No. 236/72 was filed by M/s. Srinivasa Dyeing Works, Vijayawada and V.V. Basavaiah, a minor represented by his father V.V. Subba Rao on the grounds of wilful default and personal requirement; that the finding of the learned Rent Controller is that the tenant has committed wilful default from

31-12-1971 to March, 1972; that the first eviction petitioner which is a partnership firm came into existence only on 1-4-1972 and that no eviction can be ordered even assuming that there is default in payment of rent for the period prior to the formation of the partnership firm. The learned counsel for the petitioner, therefore, argued that the defence set up by the tenant that the alleged wilful default does not enure to the benefit of the firm which has come into existence at a subsequent point of time should be upheld and as such, there is no wilful default in payment of rent. The learned counsel for the petitioner further argued that there are no arrears of rent from March, 1972 and if there were really arrears, the subsequent payment of rent should have been appropriated towards the arrears of rent for the earlier period; that the first petitioner-firm had no right to file the eviction petition; that there is no relationship of landlord and tenant between the first eviction petitioner and the tenant; that no doubt, the tenant admitted that V.V. Subba Rao is the landlord and that inasmuch as the said Subba Rao did not attorn the tenancy in favour of the first petitioner or the second petitioner in R.C.C. No. 236 of 1972, there is no cause of action in favour of the petitioners in the eviction petition to seek eviction of the tenant.

7. His further submission is that in pursuance of the directions of this court in CRP No. 1264 of 1971 which was dismissed on 13-2-1973, O.S. No. 43/75 was filed by Valluru Keshava Rao and the said suit was compromised only in 1979 and hence, the petition filed by petitioners 1 and 2 in R.C.C. No. 236 of 1972 for eviction of the tenant is not maintainable.

8. The learned counsel for the respondents-landlords, on the other hand, argued that R.C.C. No. 40 of 1967 related to one of the items covered by the lease deed whereas the present litigation which commenced with R.C.C. No. 236/72 pertains to the other item for which the ownership is not in dispute; that the tenant has admitted in categorical terms that the suit property belongs to V.V. Subba Rao; that the conduct of the tenant in stating that he does not recognise the partition between V.V. Subba Rao and his son V.V. Basavaiah (the second respondent herein) and he does not recognise the partnership of Srinivasa Dyeing Works is untenable and that the failure of the tenant to pay rent to the first respondent-firm and the second respondent in spite of the intimation by V.V. Subba Rao that his minor son has become the owner and that the partnership is entitled to receive the rents with effect from April, 1972 amounts to wilful default.

9. The learned counsel for the petitioner-tenant argued that the finding of the learned Rent Controller on the question of bona fide requirement is in favour of the tenant and, therefore, this court exercising revisional jurisdiction cannot interfere with that finding. But the learned counsel for the contesting respondents 1 and 2 submitted that on an earlier occasion the learned Subordinate Judge who is the appellate authority, gave a finding in favour of the landlords on the question of bona fide requirement; that what has been set aside by the Supreme Court in Civil Appeal No. 2969 of 1982 is only the judgment of

this court in CRJP. No. 5226 of 1980; that it, therefore, follows that the finding of the learned Subordinate Judge on the question of bona fide requirement is not at all set aside by the Supreme Court and hence that finding supersedes the finding of the Rent Controller on the question of bona fide requirement. When the Supreme Court gave a direction that a finding should be called for from the trial court, the Supreme Court must have intended that a fresh finding should be obtained from the original authority on the ground of bona fide requirement because the learned Rent Controller who has originally disposed of the eviction petition did not give a finding on that aspect. If the learned Judges of the Supreme Court intended to keep the finding of the learned Subordinate Judge on the question of bona fide requirement in tact, their Lordships would not have remitted the matter with a direction that a fresh finding should be called for from the learned Rent Controller. Therefore, the submission of the learned counsel for the respondents that the finding of the learned Subordinate Judge remains in tact cannot be accepted. However, as observed by the Supreme Court in *Nasirul Haque Vs. Jitendra Nath Dey*, when a finding is called for from the trial court bypassing the appellate court, the finding of the trial court should be scrutinised by the High Court though, normally, the High Court will not interfere with the finding of fact. Inasmuch as the Supreme Court has called for a finding from the original authority, viz., the Rent Controller bypassing the learned Subordinate Judge, who is the appellate authority, following the decision of the Supreme Court referred to above, I hold that this court has to scrutinise that finding of the learned Rent Controller even in a revision petition.

10. In this background, the two points that arise for consideration in this revision pertain to :

- (a) Wilful default in payment of rent; and
- (b) Bona fide requirement of the landlords.

11. First, I shall deal with the question of wilful default.

12. The submission of the learned counsel for the revision petitioner-tenant that the arrears of rent are due only for the period from 1-12-1971 to 31-3-1972 for a period of four months and that since the partnership was formed only on 1-4-1972, the partnership has no right to seek eviction of the tenant on the ground of wilful default for the anterior period cannot be accepted because the eviction petition shows that by way of amendment as per order dated 28-3-1974 in I.A. No. 1686 of 1974, the default for a further period of 4 months from 1-6-1972 to 30-9-1972 has been added. It is pleaded in paragraph 5 of the eviction petition that till the end of March, 1972, the minor V.V. Basavaiah was the owner of the property; that the rent for one month paid to the minor's mother was appropriated towards rent for November, 1971 and that the tenant has committed wilful default in payment of rent from 1-12-1971 to 31-3-1972. It is further pleaded that after the firm has become the owner, the tenant obtained a receipt dt. 15-6-1972 for the rent of April and May, 1972 from the firm alone;

that instead of sending the rent for the months of June and July, 1972 to the firm, the tenant has sent a crossed-cheque in favour of V.V. Subba Rao; and that the tender of rent to V.V. Subba Rao is neither legal nor valid.

13. In the counter-affidavit, the tenant has admitted the ownership of V.V. Subba Rao in respect of the suit property. It is, therefore, not open to the learned counsel for the petitioner-tenant to contend at this stage that there was a dispute with regard to the ownership of the suit property till O.S.No. 43/75 filed by Valluru Keshava Rao was compromised in the year 1979. The counter of the revision petitioner herein was filed in R.C.C. No. 236/72 as long back as on 22-8-1973 wherein the tenant has categorically admitted the ownership of V.V. Subba Rao. Having admitted the ownership of V.V. Subba Rao, it is not open to the tenant to challenge the validity of the partition between V.V. Subba Rao and his son V.V. Basavaiah or the transfer of the suit premises in favour of Srinivasa Dyeing Works which is a partnership firm. The plea of the tenant that he does not recognise the partition or the partnership of M/s. Srinivasa Dyeing Works is untenable. The suit property fell to the share of the second respondent herein under Ex.A-2 registered partition deed dated 11-3-1971 and Exs.B-5 to B-10 disclose that after partition, the tenant himself paid the rent to the second respondent herein who was a minor represented by his mother as guardian. Exs.A-32 to A-36 are the counter-foils of the receipts for the period from 1-4-1971 to 30-11-1971. Having paid the rent to the minor second respondent recognising his ownership of the suit property, the conduct of the tenant in withholding the rent from December, 1971 to March, 1972 certainly amounts to wilful default. Ex.A-4 letter dated 12-7-1972 addressed by V.V. Subba Rao shows that the tenant was informed that his minor son has become the owner of the property. The very conduct of the tenant in paying the rent to the minor represented by his mother as guardian as evidenced by Exs.B-5 to B-10 receipts and Exs.A-32 to A-36 counterfoils upto 30-11-1971 shows that the tenant has full knowledge that the minor has become the owner of the suit property; that the tenant had recognised the minor as his landlord and that he is liable to pay the rent to the minor. Under these circumstances, the non-payment of rent to the minor second respondent for the period from 1-12-1971 to 31-3-1972 amounts to wilful default.

14. M/s. Srinivasa Dyeing Works, a partnership firm, was formed with effect from 14-1972 as evidenced by Ex.A-37 partnership deed dated 24-1-1972. The tenant has admittedly paid the rent of Rs. 750/- under Ex.A-1 receipt dated 15-6-1972 for the months of April, 1972 and May, 1972. The said receipt was passed by V.V. Subba Rao as the Managing Partner of the firm. Along with Ex.A-10 letter, the tenant sent a cheque for Rs. 750/- dated 5-8-1972 to V.V. Subba Rao in his individual name by registered post acknowledgement due towards rent for the months of June and July, 1972. V.V. Subba Rao immediately sent Ex.A-11 reply notice dated 17-8-1972 enclosing the cheque and informing the tenant that the cheque was being returned in his individual capacity but not in the capacity of the Managing Partner of the firm. Ex.A-13 letter was also written giving in detail

all the defaults committed by the tenant. The tenant thereupon addressed Ex.A-15 letter expressing his desire to see the partition deed and the partnership deed. As I observed already, the tenant has no right to challenge the partition between V.V. Subba Rao and his son or has no right to question the right of V.V. Subba Rao to transfer the right to collect rents in favour of the partnership firm. The tenant addressed Ex.A-18 letter dated 12-9-1972 through his advocate to the advocate of the firm intimating that the rents were deposited in the State Bank of India, Machilipatnam Branch. There is neither plea nor proof that there is any dispute inter se between any of the petitioners in R.C.C. No. 236/72 or V.V. Subba Rao about the payment of rents. V.V. Subba Rao who is admittedly the landlord did not indicate to the tenant at any time to deposit the rents in the State Bank of India, Machilipatnam Branch. Neither the firm nor the minor Basavaiah intimated to the tenant to deposit the rents in the State Bank of India, Machilipatnam. If so, the conduct of the tenant in depositing the rents in the State Bank of India, Machilipatnam in respect of the building which is situated in Vijayawada undoubtedly discloses the mischievous intention of the tenant to harass the landlord and to build up a defence that he has deposited the rents in the Bank. In the absence of the landlord directing the tenant to deposit the rents in the Bank or in the absence of any dispute between the landlords inter se thereby throwing a doubt in the mind of the tenant as to who is the real person entitled to receive the rents, the tenant is not entitled to deposit the rents in the Bank. The defence of the tenant was that he paid the rents to the minor. But he has not substantiated that defence by producing any evidence with regard to the payment of rents to the minor through his guardian for the relevant period. After V.V. Subba Rao has returned the cheque for Rs. 750/- directing the tenant to pay the rent to M/s. Srinivasa Dyeing Works, the conduct of the tenant in not paying the rents to M/s. Srinivasa Dyeing Works but depositing the rents in State Bank of India, Machilipatnam Branch amounts to wilful default. It is significant to note that the rent for December, 1971 to March, 1972 has not been deposited even in the Bank.

15. A Division Bench of Madras High Court held in *Anandalwar v. Second Judge Sm. C.C*, AIR 1949 Madras 788. that in the absence of an unequivocal intimation by the landlord that he would not accept any payment or tender of rent for subsequent months, it cannot be said that merely because the rent due for one month has been improperly refused when tendered, the rent for subsequent months is neither due nor payable or that the tenant is not bound to pay the same. The Division Bench categorically held that a duty is cast on the tenant to make the payment or tender for every month, if he desires to take advantage of the provisions of the Rent Control Act. Even assuming that V.V. Subba Rao is not justified in returning the cheque of Rs. 750/- which was sent by the tenant on 10-8-1972 towards the rent for the months of June and July, 1972, the tenant is not entitled to withhold the payment of rent for the subsequent period in the absence of an unequivocal intimation by Sri V.V. Subbarao that he would not accept the rent for the subsequent periods. The conduct of the tenant in

accepting Ex.A-1 receipt issued by V.V. Subba Rao as the Managing Partner of the firm and withholding the rent for subsequent periods even after intimation by V.V. Subba Rao that the rents are liable to be paid to the firm, certainly amounts to wilful default.

16. From the above discussion, I hold that the default committed by the tenant is intentional, deliberate, calculated and conscious with full knowledge of the legal consequences flowing therefrom. Already, H.R.C. No. 40 of 1967 was filed against the tenant for eviction in respect of another premises by the brother of V.V. Subba Rao, which he was fighting at that time in the High Court. In that background, the conduct of the tenant in not paying the rent inspite of his knowledge that the rents are due to the firm amounts to wilful default. I, therefore, agree with the finding of the learned Principal Subordinate Judge, Vijayawada that there is wilful default in payment of rent from December, 1971 to March, 1972 to the minor second respondent and that there is wilful default in payment of rent from 1-6-1972 to 30-9-1972 to the first respondent-firm.

17. I shall now consider the finding of the learned Rent Controller with regard to the bona fide requirement.

18. As held by the Supreme Court in Madan Lal Puri Vs. Sain Das Berry, the finding with regard to the bona fide requirement is a mixed question of fact and law and it is open to the High Court when exercising its revisional jurisdiction to consider the correctness or otherwise of such finding. That apart, as held by the Supreme Court in Nasirul Haque's case (1 supra), inasmuch as the finding was called for from the primary authority viz., the Rent Controller bypassing the appellate authority, the finding of the trial court with regard to the question of bona fide requirement will have to be scrutinised by this court, in the exercise of its revisional jurisdiction. The learned counsel for the petitioner argued that the petition was filed u/s 10(3)(c) of the A.P. Buildings (Lease, Rent and Eviction) Control Act (for short "the Act") for additional accommodation whereas the evidence was let in to the contrary as if the requirement is for starting the business; that in the exchange of notices, there was no whisper made about the bona fide requirement; that P.W.I had no licence nor permission to open the Dyeing industry and that the finding with regard to bona fide requirement recorded by the learned Rent Controller should be upheld.

19. The learned counsel for the respondents, on the other hand, argued that the finding of the learned Rent Controller is contrary to the admissions made by the tenant himself in his evidence and there is no need to prove the admitted facts. The learned counsel for the respondents, therefore, argued that the finding recorded ignoring the admissions of the tenant himself should be set aside. In support of his submission, he has relied upon the finding of the learned Rent Controller himself that the petition schedule premises is best suited for the purpose of the business inasmuch as it is situated by the side of a canal and is suitable for the purpose for which the firm requires it. But the lerned Rent Controller held that excepting Exs. A-25 to A-27 which are the sales tax

assessment orders, the firm did not file any other evidence to show that there was an existing industry. The learned Rent Controller observed that the partnership firm did not file the Industrial Licence or the approved plans to establish that fact.

20. The learned Rent Controller after referring to the provisions of the Act held that the proper provision under which the eviction petition should have been filed is u/s 10(3)(a)(iii)(a) of the Act and that instead of quoting (a) of sub-clause (iii), the petitioner quoted (b) to sub-clause (iii) and that the misquoting of the section need not be taken serious view and it will not affect the spirit of the pleadings of the petitioners in R.C.C.No. 236 of 1972. The learned Rent Controller rightly held that the pleadings as such, should be taken into consideration for a just decision of the case. I, therefore, agree with the observation of the learned Rent Controller that the eviction petition should not fail on the ground of misquoting of the proper provision of law.

21. The learned Rent Controller disbelieved the plea of bona fide personal requirement on the ground that when the eviction petitioners seek eviction on the ground that they require the premises for the existing industrial undertaking, they have to establish that on the date of filing of the petition, the eviction petitioners are really continuing and pursuing the industry and that the only evidence which is available on the side of the eviction petitioners to establish about their carrying on the industry is Exs.A-25 to A-27. But the learned Rent Controller has overlooked the fact that the tenant who examined himself as R.W.1 admitted even in the chief examination that by the time of filing of the petition, the first petitioner in R.C.C. No. 236 of 1972 (the first respondent herein) has started the business and was doing business. In the course of cross-examination, he further admitted that the learnt that P.W.I and some others were doing business in the name of the first petitioner in RCCNo. 236/72. There is no necessity for the respondents herein to prove an admitted fact. Therefore, the finding of the learned Rent Controller that no evidence is produced by the eviction petitioners that there was an existing industrial undertaking on the date of the filing of the petition is erroneous.

22. It is significant to note that even in the counter filed by the revision petitioner herein in R.C.C.No. 236/72, he did not deny the existence of the first respondent firm or the existing business. Another observation made by the learned Rent Controller in support of his finding is that till 16-8-1972, though there was exchange of registered notices between the parties, the eviction petitioners nowhere asked the tenant to vacate the premises for their personal occupation and mat it is only for the first time on 16-8-1972 that the first respondent herein has issued a notice stating that it requires the suit premises for personal occupation. But the learned counsel for the respondents submitted that in Ex.A-13 notice dated 16-8-1972, it is pleaded that V.V. Subba Rao, the Managing Partner of the firm has been demanding the tenant to vacate the suit premises so as to enable the partnership to occupy the premises for the industry

since some months past, and that in Ex. A-15 reply dated 31-8-1972, the tenant did not deny the allegation that V.V. Subba Rao, P. W.1, has been demanding the tenant for vacating the premises on the ground of personal occupation since some months prior to the issuance of Ex.A-13 registered notice. The above documentary evidence shows that the observation of the learned Rent Controller that it is only for the first time on 16-8-1972 that a demand was made for personal occupation is erroneous. The finding of the learned Rent Controller based upon a mis-reading of the documentary evidence adduced before him and ignoring the admissions made by R.W.1 himself in his evidence cannot be sustained. In the light of the finding of the learned Rent Controller himself that the suit premises is best suited for the industry and in view of the admitted fact that the industry existed even by the date of filing of the eviction petition and in the absence of denial of the allegation that the demand was made for vacating the premises since some months prior to 16-8-1972, I set aside the finding of the learned Rent Controller that the requirement of the eviction petitioners is not a bona fide one.

23. From the above discussion, I hold that the respondents herein have substantiated both the grounds of wilful default in payment of rent and their bona fide requirement of the suit premises for personal occupation for the purpose of carrying on the business of the first respondent firm.

24. In the result, the civil revision petition is dismissed with costs. Since the tenant has successfully protracted the litigation for nearly 20 years and thereby deprived the landlords of their right to seek eviction of the tenant, I hold that the tenant does not deserve a long time for vacating the premises. Hence, time for eviction is granted for one month only from today.