
(2003) 06 AP CK 0023
In the Andhra Pradesh High Court
Case No : CRP No. 5173 of 2003

Binodlal Sagarmal and Others	Vs	APPELLANT
Prem Prakash Gupta and Others		RESPONDENT

Date of Decision : 24-06-2003

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 2, 20
Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 — Rule 22
Civil Procedure Code, 1908 (CPC) — Section 10, 115
Constitution of India, 1950 — Article 227

Citation : (2003) 5 ALD 222

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : M.R.K. Chowdary, for M. Sudheer Kumar, for the Appellant; S. Venkata Reddy, for S. Srinivas Reddy, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The first petitioner is a firm and petitioners 2 and 3 are its partners. They are tenants of mulgi bearing No. 1-2-174, Charkaman, Hyderabad, owned by the respondents. In 1985, the second petitioner along with two others filed a suit for specific performance of agreement of sale alleged to have been executed by one Madanlal Gupta in respect of mulgies bearing No. 21-2-172, 173 and 174, Charkaman, Hyderabad. The second petitioner along with one Devakinandam filed O.S. No. 2587 of 1985 (later numbered as O.S. No. 307 of 1993) on the file of the IV Additional Judge, City Civil Court, Hyderabad against respondents 1 and 2 for perpetual injunction restraining them from changing the nature of the suit schedule premises. The Trial Court, by a common judgment dated 16-2-1994 decreed both the suits in favour of the petitioners. Aggrieved by the said judgment and decree respondents and others filed first appeals before this Court being C.C.C.A. Nos. 39, 41, 194, 47 of 1994 and 49 of 1997.

2. While the suits were pending, respondents filed R.C. No. 812 of 1987 on the

file of the I Additional Rent Controller, Hyderabad seeking eviction of the petitioners on ground of wilful default. In the rent control case, the evidence of landlord was completed and was coming for evidence of respondents. This Court allowed the first appeals filed by the landlord being C.C.C.A. Nos. 39, 41, 194, 47 of 1994 and 49 of 1997 by judgment dated 16-3-2002. The petitioners filed Letters Patent Appeals being LPA Nos. 151, 173 and 176 of 2002 and are coming for admission before a Division Bench of this Court. At that stage, the petitioners filed I.A. No. 397 of 2002 contending that while the first appeals before the High Court were pending, at the request of the respondents, the High Court stayed the rent control proceedings and, therefore, during the pendency of LPAs, rent control case should be stayed. The learned I Additional Rent Controller, by an order dated 21-10-2002 dismissed IA.No. 397 of 2002 holding that Section 10 of the Code of Civil Procedure, 1908 (CPC) is not applicable to the Rent Controller in view of the judgment of a Division Bench of this Court in *Amrutlal v. Principal Rent Controller* 1978 (2) ALT 102. Aggrieved by this order, the tenant petitioner filed this revision petition under Article 227 of the Constitution of India.

3. Be it noted, the petitioners initially filed revision petition u/s 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereafter called "the Rent Act") against the order of the I Additional Rent Controller, Hyderabad in R.C. No. 812 of 1997. Initially, an interim order was granted staying and Rent Control case. Subsequently this Court by an order dated 14-2-2003 while vacating the interim order gave liberty to the petitioner to convert the petition into one under Article 227 of the Constitution.

4. Learned Senior Counsel for the petitioner, Sri M.R.K. Chowdary, submits as follows. When the respondents initially filed a revision petition for slaying the rent control case, during the pendency of the first appeals filed by them, this Court stayed the proceedings. However, after disposal of the first appeals by this Court, the respondents withdrew the CRP. According to the learned Counsel, as this Court already granted an order, as a necessary corollary, the Rent Controller exceeded his jurisdiction in not granting stay of the proceedings in rent control case pending on its file. Judicial Officer of the rank of the Junior Civil Judge, is posted as Rent Controller and he is under the control, supervision and superintendence of the High Court and, therefore, they do not cease to be judicial officers constituting the Court. Therefore, all the Rent Controllers are not *persona designata*, but they are duly constituted Courts who can exercise all powers u/s 10 CPC.

5. Rule 22 of A.P. Buildings (Lease, Rent, Eviction and Control) Rules, 1961, does not in any manner exclude the applicability of provisions of CPC. The Rent Controller is, therefore, entitled to invoke any provisions of CPC so long as such procedure does not conflict the procedure laid down under the Rent Act and the Rules. Reliance is placed on the decisions of the Supreme Court in *Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker*, .

6. The question whether Section 10 CPC is applicable to Rent Controller is no

more res integra. A Division Bench of this Court in *Amrutlal v. Principal Rent Controller* (supra) laid down that Rent Controller is not a Court and, therefore, Section 10 or Section 151 CPC have no application to the proceedings of the Rent Controller. Learned Senior Counsel has taken me through the entire judgment of the Division Bench and contends that the decision of the Division Bench requires reconsideration and prayed that the matter be referred to a Division Bench (as the same is binding on a Single Judge) so that the matter can be referred to a larger Bench.

7. Sri S. Venkata Reddy, learned Senior Counsel for the respondents, submits that when C.R.P. filed by the landlord was dismissed as withdrawn, this Court directed the Rent Controller to dispose of the rent control case expeditiously. Therefore, there cannot be any stay of the rent control proceedings. Secondly, he would contend that even the Supreme Court in *Mukri Gopalan v. C.P. Aboobacker* (supra) held that though the Appellate Court constituted under the Kerala Buildings (Lease and Rent Control) Act is a Court, Rent Controller is a persona designata and that the provisions of CPC are not applicable. He submits that the decision of the Division Bench in *Amrutlal v. Principal Rent Controller* (supra) is a well considered judgment and does not require any reconsideration.

8. The learned Rent Controller dismissed the petitioners' application being IA No. 397 of 2002 for stay of all further proceedings in R.C. No. 812 of 1997 mainly on the ground that the Rent Controller being a Tribunal under special enactment is not empowered to stay its own proceedings. The learned Rent Controller relied on the Division Bench judgment of this Court in *Amrutlal v. Principal Rent Controller* (supra).

9. In the above mentioned decision of this Court, the landlord filed a petition before the Rent Controller for eviction of the tenant on several grounds. The tenant filed a suit for specific performance of agreement of lease in his favour. Both the proceedings by the landlord and tenant were initiated simultaneously. The tenant filed an application u/s 10 CPC before the Rent Controller to stay all the proceedings until disposal of the suit filed by him. Following a decision of this Court in *Manta Subbaramayya and Others Vs. Batchu Narasimha Swamy and Another*, , the Rent Controller dismissed the application. An appeal was filed before the Chief Judge, City Small Causes Court, Hyderabad, who agreed with the Rent Controller holding that the Rent Controller cannot stay the proceedings on the ground of pendency of the suit. A writ petition under Articles 226 and 227 of the Constitution was filed for a writ of certiorari to quash the order of the Chief Judge confirming the order of the Rent Controller.

10. A learned Single Judge, following the decision in another judgment in *Harikishan Singh v. B. Narayana* 1971 (1) ALT 29 , took the view that the proceedings before the Rent Controller are governed by CPC. Nonetheless, the learned Single Judge relying on the judgment in *M. Subbaramayya v. B.N. Swamy* (supra) held that Section 10 or Section 151 CPC cannot be invoked by the tenant and accordingly dismissed the petition. The tenant filed a writ appeal.

The Division Bench of this Court in *Amrutlal v. Principal Rent Controller* (supra), after referring to the relevant case law in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, *Vidya Devi Dass Vs. Firm Madan Lal Prem Kumar*, *R.D.K. Sita Devi Vs. C. Anna Rao and Others*, *Manohar Lal v. Mohanlal* AIR 1957 P&H (FB), and also the various provisions of the Rent Act and the Rent Rules held that the Rent Controller constituted under the Act is not a "Court" and that the provisions of CPC much less Sections 10 and 151 are not applicable to the proceedings before the Rent Controller. It is apt to quote the following passage containing reasoning of this Court:

.....The power to make modifications in the matter of procedure relating to witnesses makes it clear that the Rent Controller is not strictly bound by the provisions of the CPC even in the matter of summoning witnesses or compelling production of documents. Deviation from the provisions of the Code with such modifications as the circumstances may require is permissible in the enquiries before him but that cannot make the Court of Rent Controller a "Court" so as to exercise jurisdiction u/s 10 CPC. Section 10 CPC is enacted in order to prevent Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon in respect of the same cause of action, the same subject-matter and same relief. It is to see that there are no parallel litigations going on in Courts of concurrent jurisdiction in respect of the same subject-matter or relief so as to avoid the possibility of conflicting decisions by two or more Courts. Firstly the Court of Rent Controller is not a Court of concurrent jurisdiction. The subject-matter and the relief sought by the appellants and the petitioners in the Civil Courts are different from the subject-matter and relief sought before the Rent Controller. Therefore, Section 10 cannot be availed by the Rent Controller to stay the proceedings pending before him. The question then is whether it would be open to him to stay the suit involving Section 151 CPC. The Court of Rent Controller may have the trappings of a Court. It has also the judicial power to examine witnesses on oath, to decide disputes between the contending parties and its decision is final subject to an appeal and revision. But the Rent Control Act is a self-contained Act and the provisions of the CPC are made applicable only for a limited purpose. The Rent Controller, therefore, is not a Civil Court though he performs functions similar to a Civil Court and belongs to the judicial cadre. It is not open to him to follow the procedure laid down in the CPC by-passing the procedure laid down in the Rent Control Act or the rules made thereunder except to the extent indicated in the proviso to Rule 22. He is bound by the procedure prescribed by the Act and the rules made thereunder.

11. The judgment of the Division Bench in *Amrutlal v. Principal Rent Controller* (supra) is binding on me. The learned Senior Counsel appearing for the petitioners, as noticed supra, however, submits that the said judgment requires reconsideration and, therefore, prays that the matter be referred to a Division Bench. In support of his contention, the learned Counsel submits that the Division Bench proceeded on the ground that the CPC is not applicable to Rent Controllers as they are not Civil Courts. He submits that a Junior Civil Judge who

is designated/ appointed as Rent Controller under the Rent Act continues to be Junior Civil Judge and, therefore, he should be treated as a Court. Secondly, he contends that an appeal is provided against the orders of the Rent Controller, to the Chief Judge, City Small Causes Court in Hyderabad and to the Court of the Principal Senior Civil Judge in other places. It only shows that though the Chief Judge and Senior Civil Judge are duly constituted Courts, they are treated as appellate forums. Therefore, by the same analogy, Rent Controller or a Junior Civil Judge must be treated as a Civil Court. He placed strong reliance on *Mukri Gopalan v. C.P. Aboobacker* (supra). The learned Counsel also submits that the provisions of CPC are not specifically excluded and on the other hand under the proviso to Rule 22 of the Rent Rules, the Rent Controller is empowered to follow the procedure in the matter of summoning witnesses and compelling production of documents in a rent control case.

12. Before dealing with this aspect of the matter, I may consider the prayer of the learned Counsel for the petitioner for referring the matter to a Division Bench to enable the petitioner to seek reference to a larger Bench regarding the correctness of the decision in *Amrutlal v. Principal Rent Controller* (supra). Learned Senior Counsel has not brought to my notice any decision directly on the point in support of his contention that a Rent Controller appointed under the Rent Act is not a *persona designata* of the Court or alternatively even if he cannot be treated as "Court", a Rent Controller is not precluded or prohibited from following the provisions of CPC. Indeed, in *Amrutlal v. Principal Rent Controller* (supra), the Division Bench observed that even if the Rent Controller "belongs to judicial cadre", it is not open to him to follow the procedure under CPC. This clinchingly belies the contention of the petitioners' Counsel.

13. The decision in *Amrutlal v. Principal Rent Controller* (supra) was rendered in February, 1978, almost twenty-five years ago. When the decision held the field for a quarter century, there should be stronger grounds to doubt the correctness of the judgment. Further, it is well settled principle of doctrine of precedent that a Division Bench judgment is binding on a Single Judge and even if the Single Judge differs, the matter has to be referred to a Division Bench supported by strong reasons. In *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, , Circulars issued by the Railway Board giving certain benefits and concessions in the matter of promotions to employees belonging to Scheduled Castes and Scheduled Tribes were challenged on the ground of reverse discrimination. One of the submissions made was that an earlier decision in *The General Manager, Southern Railway Vs. Rangachari*, , which is directly on the point requires reconsideration. Justice Krishna Iyar, who rendered the majority judgment, indicated that when a decision rendered by the Court held the field, the principle of law laid down therein should not be changed frequently unless there is a serious set-back. The following observations are apt and may be excerpted:

..... We will dwell at some length on that ruling later but we may merely mention that an appeal was made to us by Counsel for the petitioners that we should reconsider, by reference to a Larger Bench, the ratio of Rangachari which has been approvingly referred to for nearly two decades by this Court, acted upon by Government throughout and enjoys, if we may say so with great respect, our full concurrence. Constitutional propositions on which a whole nation directs its destiny are not like Olympic records to be periodically challenged and broken by fresh exercises in excellence but solemn sanctions, with judicial seal set thereon, for the country to navigate towards the haven of human development for everyone. To play crossword puzzle with constitutional construction is to profane it, unless, of course, a serious setback to the progress of human rights or surprise reversal of constitutional fundamentals has happened. We find the question discussed, decided and consistently followed since Rangachari and see no reason to open the Pandora's box.

14. In view of the above, I do not see any strong reasons to countenance the submission made by the learned Senior Counsel that the decision in *Amrutlal v. Principal Rent Controller* (supra) requires reconsideration.

15. The other submission that proviso to Rule 22 of the Rent Rules only indicates an instance where the Rent Controller can follow the procedure laid down in the matter of summoning witnesses and compelling production of documents and does not exclude the applicability of provisions of CPC cannot be accepted. When the statute specifically indicates the procedure to be followed and also indicates the few provisions of statute to be followed, it must be taken that the Legislature prohibited the Tribunal from following other provisions of CPC. This is supported by the decision of the Supreme Court in *All India Indian Overseas Bank SC, ST Employees Welfare Association v. Union of India*. Article 338(1) of the Constitution of India enables the appointment of National Commission for Scheduled Castes and Scheduled Tribes. Clause (8) of Article 338 provides that the Commission constituted under Clause (1) of Article 338 for investigating any matter referred to in Clause (5) (a) and (b) under Article 338 shall have all powers of Civil Court. The said clause further enumerates the matters in relation to which the Commission has powers of Civil Court. These provisions fell for interpretation in the above case before the Supreme Court. A contention was raised that the Commissioner appointed under Article 338(1) of the Constitution has powers to issue directions in the nature of interim injunction. The Apex Court rejected the contention that he has powers to grant injunction. It is suffice to extract the head note of the reported decision (SCC) which reads as under:

All the procedural powers of a Civil Court are given to the National Commission for Scheduled Castes and Scheduled Tribes by Article 338(8) of the Constitution of India are for the limited purpose of investigating any matter under Article 338(5)(a) or inquiring into any complaint under Article 338(5)(b). The powers of a Civil Court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of

Clause (8) of Article 338 of the Constitution. The Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated 4-3-1993 directing the Bank to stop the promotion process pending further investigation and final verdict in the matter.

16. Therefore, unless the Tribunal constituted under the relevant Act is specifically vested with the powers of the Civil Court and provisions of CPC are made applicable, the Rent Controller has no power to stay the proceedings u/s 10 CPC.

17. The learned Senior Counsel placed strong reliance on the judgment in *Mukri Gopalan v. C.P. Aboobacker* (supra). After perusing the judgment thoroughly, I am not able to agree with the learned Senior Counsel. Further, as rightly contended by Sri S.Venkata Reddy, learned Counsel for the respondents, Kerala Buildings (Lease and Rent Control) Act, 1965 (Kerala Rent Act) specifically requires the appointment of District Munsif alone as a Rent Controller u/s 3 of the said Act. In spite of this, though the Supreme Court held that the Appellate Court i.e., Subordinate Judges u/s 18 of the Kerala Rent Act are not Courts and are not *persona designata*, a Rent Controller is not a Court. In paragraph 17 of the judgment (AIR), it was observed:

In order to support his contention Mr. Nariman invited our attention to the relevant provisions of the Rent Act, namely Sections 20, 22, 23 as well as second proviso to Section 11(1) and contended that a Rent Court functioning under the Rent Control Act is not a full-fledged Civil Court. If it was a full-fledged Civil Court there would have been no occasion for the Legislature to provide that certain provisions of Code of Civil Procedure, 1908 will govern such proceedings. To that extent Mr Nariman is right. We will proceed on the basis that Rent Court functioning under the Rent Act or for that matter the appellate authority adjudicating disputes between landlords and tenants in a judicial manner may not be considered strictly as Civil Courts fully governed by the Code of Civil Procedure.....

18. In *Mukri Gopalan v. C.P. Aboobacker* (supra), the Supreme Court held that the appellate authorities constituted u/s 18 of the Kerala Rent Act being the District Judges cannot be considered to be *persona designata* and that they have all powers of Civil Court. Insofar as the Rent Controller is concerned, as seen from the above passage, the Supreme Court agreed with the contention that Rent Controller is only a *persona designata*. I am, therefore, of the considered opinion, the decision of the Supreme Court in *Mukri Gopalan v. C.P. Aboobacker* (supra) supports the view taken by this Court in *Amrutlal v. Principal Rent Controller* (supra).

19. The revision petition is filed under Article 227 of the Constitution of India. It is no doubt true that u/s 20 of the Rent Act, an appeal against the interlocutory orders passed by the Rent Controller is not maintainable. As held by this Court, a

revision under Article 227 of the Constitution is maintainable. But, it is well settled that exercise of jurisdiction under Article 227 of the Constitution cannot be resorted to in a routine manner. In a recent un-reported judgment in C.R.P. No. 1292 of 2003, disposed of on 16-4-2003, after considering Section 115 of CPC and Article 227 of the Constitution, after referring to various judgments of the Supreme Court in *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, , *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, , *Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives*, , *Sadhana Lodh v. National Insurance Co. Ltd.* AIR 2003 SCW 930, *Punjab National Bank v. O.C. Krishnan* (2001 20CompCas 107), *Roshan Deen Vs. Preeti Lal*, , I have culled out various principles in relation to exercise of jurisdiction under Article 227. These are

(i) In exercise of power under Article 227 of the Constitution, the High Court cannot assume appellate powers to correct every mistake of law;

(ii) Assumption of excessive jurisdiction or refusal to exercise jurisdiction or any irregularity or illegality - procedural or any breach of any rule of natural justice - are some of the grounds which might warrant exercise of jurisdiction, provided that such illegal assumption, illegality or irregularity results in miscarriage of justice;

(iii) In exercise of powers under Article 227, the High Court will not review or reweigh evidence upon which determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision. If elaborate reasons become necessary for the conclusion that the decision or finding of the lower Court is incorrect or wrong so such an error cannot be treated as apparent on the face of the record;

(iv) If two views are conceivably possible on a question of fact, merely because the High Court feels that its view is correct, the same cannot be a ground for exercising jurisdiction under Article 227. The decision of the lower Court must receive *impri matur*;

(v) If, by a special enactment, the Legislature, in its wisdom, specifies the principles of appeal or revision against the decision or a finding, the power of superintendence under Article 227 cannot be exercised by assuming un-limited prerogative to correct all species of hardship and wrong decision;

(vi) A revision under Article 227 of the Constitution is maintainable only when the remedy of revision u/s 115 is expressly barred by the State enactment and even in such a case, the supervisory jurisdiction of the High Court is confined only to see that the inferior Court or Tribunal proceeded within its parameters and not to correct an error apparent on the face of the record, much less an error of law. The High Court is not an appellate forum under Article 227 and, therefore, it is not permissible to review or re-weigh the evidence;

(vii) When an alternative remedy is available, judicial prudence demands that the High Court should refrain from exercising jurisdiction under Article 227 of the Constitution;

(viii) The High Court in exercise of power under Article 227 of the Constitution is not to pick out any error of law and correct it when justice became the by-product of such erroneous view of law; and

(ix) Whether or not a decision of the lower Court is incorrect or clearly wrong, unless and until gross error resulting in miscarriage of justice is shown, the power under Article 227 cannot be exercised.

20. After considering the case with reference to the settled principles, I am of the considered view that the CRP is not maintainable. The order of the I Additional Rent Controller, Hyderabad, does not suffer from any- illegality or error apparent on the face of the record. The learned Rent Controller rightly followed the binding principles of this Court and dismissed the application holding that the Rent Controller is not a Court.

21. In the result, for the above reasons, the CRP fails and is accordingly dismissed. There shall be no order as to costs.