

(1998) 04 SC CK 0051

In the Supreme Court Of India

Case No : Civil Appeal No. 8466 of 1995 with SLP (C) No. ... (CC No. 5325 of 1995)

Boorgu Jagadeshwaraiah and Sons

APPELLANT

Vs

Pushpa Trading Co.

RESPONDENT

Date of Decision : 16-04-1998

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(3)(a)(iii), 13(1)(ff)

Citation : AIR 1999 SC 1503 : (1998) AIRSCW 3862 : (1998) 3 ALT 26 : (1998) 6 JT 628 : (1998) 3 MLJ 124 : (1998) 4 SCALE 282 : (1997) 8 SCC 108

Hon'ble Judges : M. M. Punchhi, C.J;K. T. Thomas, J;D. P. Wadhwa, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. This appeal by the landlord has been referred to a three-Judge Bench for decision in order to resolve the apparent conflict between D. Devaji Vs. K. Sudarashana Rao, on the one hand and J. Pandu Vs. R. Narsubai, and Dr Saroj Kumar Das Vs. Arjun Prasad Jogani, on the other. The need to resolve the conflict arises because of the interpretation put to Section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The provisions reads as follows:

"10. Eviction of Tenants.--(1)-(2) * * *

(3)(a) A landlord may subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building-

(i)-(ii) * * * (iii) in case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise-

(a) for the purpose of a business which he is carrying on, on the date of the application; or

(b) for the purpose of a business which in the opinion of the Controller, the landlord bona fide proposes to commence:

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered:

Provided further that, where a landlord has obtained possession of a building under this clause he shall not be entitled to apply again under this clause-

(i) in case he has obtained possession of a residential building, for possession of another residential building of his own;

(ii) in case he has obtained possession of a non-residential building, for possession of another non-residential building of his own."

2. The landlord succeeded in the two courts below on the ground that the non-residential building, which was said to be in his possession, was not sufficient and suitable to meet his requirements of opening a textile and cloth business since it was situated in a locality where the business of textile and cloth-selling was not in vogue. The claim of the landlord was knocked down before the High Court on the basis of the decision in D. Devaji Case (Supra) in which a two-Member Bench of this Court has taken the view that when the landlord has a building in his possession the factors of suitability, convenience and sufficiency of accommodation in order to carry on the business are not relevant. Thus, the plea of the landlord that the non-residential building in his possession was not suitable to his business needs, was repelled on the factum that he owned a non-residential building, which was enough to non-suit him.

3. It has been pleaded on behalf of the unsuccessful landlord that in D. Devaji Case (Supra) the interpretation put on the provision is too narrow and defeats the very purpose of the provision. It has also been contended that the same is in conflict with J. Pandu2 and Dr Saroj Kumar Das Case (Supra).

4. Insofar as Dr Saroj Kumar Das Case (Supra) is concerned, that was a cause fought under the West Bengal Premises Tenancy Act, 1956 wherein Section 13(1) (ff) was employed to maintain a petition for eviction. There the language employed by the statute is to the following effect:

"13. Protection of tenant against eviction.--(1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any court in favour of the landlord against a tenant except on one or more of the following grounds namely:

(a)-(f) * * *

(ff) subject to the provisions of Sub-section (3-A), where the premises are reasonably required by the landlord for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held and the landlord or such person is not in possession of any reasonably suitable accommodation;"

5. The expression "reasonably suitable accommodation" is the pivot of the provision permitting the court going into the question whether the premises involved were reasonably suitable for the purpose. It is on that count that Dr Saroj Kumar Das Case (Supra) was decided by making the following observation:

"So far as the law on the question is concerned it is well settled that the alternative accommodation must be reasonably suitable and if it is not so then mere availability of alternative accommodation will not be a ground to refuse a decree for eviction if otherwise the courts are satisfied about the genuine requirement of the landlord and to this counsel for both the parties also agreed but the main contention was that on the facts appearing in evidence in this case whether the inference could be drawn that the flat on the thirteenth floor in South Calcutta was reasonably suitable to satisfy the need of the appellant-landlord."

6. Pandu Case (Supra) is closer being one u/s 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 which we are examining. That case apparently was decided on its own facts as would be evident from the finding culled therefrom:

"The fact that the respondent has been using the entire house purchased in 1970 i.e. including the 'malgis' for residential purposes and that the respondent is forced to run the family business in a rented premises in the same locality where the lease premises are situate have weighed with the Rent Controller and the appellate authority to concurrently hold that the respondent's requirement of the building is undoubtedly bona fide. The findings have been sustained by the High Court as well. We cannot, therefore, accept the argument of Mr Subba Rao that the order of eviction passed by the courts below and affirmed by the High Court is vitiated because of the ownership of four 'malgis' by the respondent. The 'malgis' have ceased to be non-residential premises from 1970 onwards and hence their mere ownership cannot preclude the respondent from seeking the eviction of the appellant u/s 10(3)(a)(iii)."

7. It, thus, becomes evident that there is no conflict as such between the said decisions and they have gone on in the context of their own facts and the provisions of law. Even so, the argument of the appellant's learned counsel carries weight that the intention of the legislature in D. Devaji Case (Supra) has been scuttled by putting an extremely narrow and literal construction on the provision. It has been observed therein as under:

"The landlord should not be in possession of another non-residential building or of which he is entitled to be in possession in the city, town or village concerned.

The intendment of the legislature thereby is clear that a landlord who is in occupation of a non-residential building which is his own or to the possession of which he is entitled to under the Act or any other law should not be permitted to recover possession of another non-residential building belonging to him by evicting the tenants therefrom."

8. The aspects of quality, size and suitability of the building have been totally put out of consideration. We think this would frustrate the purposes of the Act. Here was a claim set up by the landlord that the non-residential premises he owned did not serve the purpose of his need of setting up a textile and cloth business and that the need could only be met in seeking eviction of the tenant from the premises sought. As we view it there is no difficulty in D. Devaji Case (Supra) standing in the way of the landlord-appellant to have the issue examined from the point of view which would carry out the purposes of the Act. We refrain from mentioning any facts on the basis of which the landlord's claim is based lest the manner they are recounted cause prejudice to either of the parties.

9. We, therefore, upset the impugned order of the High Court, hindered as it felt in proceeding further because of D, Devaji Case (Supra) and remit the matter back to it for considering the objection of the tenant as to the claim of the landlord. Let the matter be decided by the High Court most expeditiously, preferably within a period of four months from today as the matter is fairly old and has been in court far too long. Ordered accordingly.

Special Leave Petition (C)... (CC No. 5325 of 1995)

10. Delay condoned.

11. In view of the remand effected in Civil Appeal No. 8466 of 1995, this SLP has become infructuous and is dismissed as such.