
(2008) 08 AP CK 0056
In the Andhra Pradesh High Court
Case No : C.R.P. No. 5877 of 2007

Challa Maheshwara Rao and Another	APPELLANT
Vs	
Vadagam Venkata Subba Rao and Another	RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 10(2), 10(3), 12, 12(1)

Citation : (2008) 5 ALD 814 : (2008) 6 ALT 446

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

Bench : Single Bench

Advocate : W.V.S. Rajeswari, for the Appellant; N. Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—This is tenants' revision u/s 22 of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (the Act, for brevity). Petitioners lost before original authority as well as appellate authority, in the eviction petition being RCC No. 77 of 1997 filed by landlord - first respondent herein; on the ground of bona fide requirement, wilful default and subletting and RCA No. 8 of 2000. Petition schedule premises bearing No. 22-4-114 is situated at Zinnah Tower at Guntur, which is statedly busy commercial area. Petitioners and second respondent, who are arrayed as opposite parties in R.C.C. before Rent Controller-cum-Principal Junior Civil Judge, Guntur, are running M/s. Ganesh Medicals. Landlord filed eviction petition alleging subletting, wilful default for the period from October 1996 to January 1997 and requiring premises for bona fide personal occupation, for commencing business in electronics goods. They denied subletting and contended that though premises was initially let out by landlord to first petitioner, he is carrying on business along with his brother, second petitioner, who is a pharmacist. With regard to alleged wilful default, tenants pleaded that they paid rents for the months of October, November and December 1996 to landlord's natural grandfather, Kesava Rao, who used to receive rents

making plea that receipts would be issued later. Bona fide requirement was opposed alleging that landlord, his father and grandfather demanded enhancement of rent and when the same was refused, landlord filed the petition with mala fide intention.

2. Landlord examined himself as PW. 1 and his father was examined as PW.2. Exs. A1 to A5 were marked. Tenants marked Exs. B1 to B21 and examined RW. 1 (first petitioner) and RW.2, who is father-in-law of brother of RW. 1. Learned Rent Controller framed three substantial points for consideration dealing with question of wilful default, question of subletting and question of bona fide requirement for personal occupation. On the first question, it was held that tenants committed wilful default in payment of monthly rents from October 1996. For coming to such conclusion, learned Rent Controller relied on Exs. B1 to B10 rent receipts from December 1995 to September 1996 and inferred when there was practice of landlord issuing rent receipts, non-production of the same for the period from October 1996 to January 1997 shows there is wilful default.

3. On the question of subletting, finding was against tenants for the reason that admittedly RW. 1 had no registration certificate and such certificate was obtained in the name of other two tenants. After noticing the fact that landlord is an unemployee having M.B.A. degree and that he wanted to start business in electronics, as the area is known for electronics business, and also holding that tenants failed to prove their allegation that petition is mala fide, Rent Controller came to the conclusion that premises is bona fide required by landlord for commencing business. Petitioners herein appealed. Learned appellate authority agreed with findings of original authority and dismissed appeal being RCAJSIo.8 of 2000 confirming eviction of tenants.

4. In this revision, learned Counsel T r petitioners/tenants submits that when landlord seeks eviction of tenants for the purpose of demolishing existing premises to construct a new premises, the same does not fall u/s 10(3)(a)(iii) of the Act and that landlord has to necessarily seek an order of eviction as per provisions of Section 12 of the Act. She also submits that plea of subletting taken by landlords was misconceived. The business was carried on by Challa Maheswara Rao taking the assistance of other two persons and the same does not amount to subletting. She also impugned findings of lower authority with regard to wilful default. Per contra, learned Counsel for first respondent/ landlord submits that the first petitioner as RW. 1 admitted that he has no licence or registration to carry on pharmaceutical business and that he obtained said certificate in the name of other two persons and in the absence of any proof that it was a firm, subletting has to be inferred. He points out that RW. 1 did not file any partnership deed to support plea of business by firm. Secondly he submits that there is evidence on record to show that landlord was issuing rent receipts and RW. 1 having accepted the same, failed to prove that he did not commit wilful default. Lastly he submits that Section 12 of the Act is not attracted. Landlord wants schedule premises for commencing electronics business and if he

alleges, though it is not necessary, that he wants to raise a new complex, it cannot be treated that it is a case of demolition/renovation of tenanted premises. He placed reliance on *Tara Singh Vs. Wahid Bi*, , *Vishnu Prasad Bhatt Vs. K. Narayan Rao and Others*, and *Aswani Desai Vs. Visakhapatnam Municipal Corporation, Visakhapatnam* and another, .

5. The findings recorded by Rent Controller as well as appellate authority on the questions of wilful default, subletting and bona fide requirement do not warrant any interference. They are essentially based on facts and it is well settled that in exercise of powers u/s 22 of the Act, High Court cannot interfere with the findings recorded or reappreciate the evidence on record. After perusing the orders of authorities below, this Court is convinced that both the authorities have considered relevant evidence while recording findings. The only point therefore arises is whether landlord could maintain petition u/s 10(3)(a)(iii) of the Act.

6. As per Section 10(3)(a)(iii) of the Act, landlord can seek eviction of a tenant from a non-residential building if landlord is not occupying a non-residential building in the town, which is his own or to the possession of which he is entitled to under the Act, for the purpose of business which is carrying on by the date of application or for the purpose of business which the landlord bona fide proposes to commence. There is no doubt that landlord is a MBA graduate and unemployed. It is not the case of tenants that landlord owns another non-residential premises in Guntur Town. It was however urged that father and grandfather of landlord demanded enhancement of rent and when tenants refused to do so, with mala fide intention eviction petition was filed. Both the authorities recorded a finding against tenants on this aspect. Lower authorities held that landlord bona fide require petition schedule premises for commencing business in electronics. In his petition, landlord alleged that the building is more than fifty years old and therefore it requires demolition and renovation. He also alleged that he wanted to start business of his own in electronics as Zinnah Tower center is known for business in electronics where similar shops are located. It is well settled principle that if pleadings are inconsistent, one has to read them so as to avoid absurdity. For the purpose of eviction petition filed u/s 10(3)(a)(iii) of the Act, it is not necessary for landlord to say anything more than bona fide requirement. Applying this principle, pleadings must be understood as landlord is seeking eviction for commencing electronics business of his own. If after evicting tenants, landlord takes up renovation, there would not have been any objection.

7. When the matter was pending before learned Rent Controller, tenants did not raise any plea regarding maintainability of petition u/s 10(3)(a)(iii) of the Act. Learned Counsel for tenants however submits that such a plea was taken before appellate authority. A perusal of the order impugned would not show that tenants raised such a plea or in any case tenants did not seek a finding from appellate authority. Therefore, it is doubtful whether tenants could have raised a plea at the stage of revision. Secondly it is an undisputed fact that landlord filed eviction

petitions against all his tenants and got them evicted from other shops except petition schedule premises, which appears to be obstructing way to go to 500 Sq. yards of site behind schedule premises. In that view of the matter, landlord has to invariably demolish petition schedule premises and other shops for making construction on the vacant site.

In Vishnu Prasad Bhatt's case (supra), question arose whether petition u/s 10(3)(a)(iii) of the Act and Section 12 of the Act would lie. Repelling the contention that both of them are not compatible, this Court ruled as follows:

Then it is argued by Shri Venugopal Reddy that the relief under Sections (10) and 12 should not have been clubbed together because they are mutually incompatible. I do not see how they can mutually be incompatible. In any case where the Court has granted relief u/s 10 holding that the landlord requires t' premises bona fide for running his existing business or proposed business it must be held that Section 12 does not apply and the evicted tenant would not have the benefit of that section.

8. Learned Counsel for tenants nextly contends that when landlord has already evicted other tenants, petition for eviction on the ground of bona fide requirement would not lie. The plea cannot be accepted in view of decision of this Court in Tara Singh's case (supra), wherein this Court while interpreting Sections 10 and 12 of the Act observed as below:

A plain reading of Section 10(2)(i) will show that the eviction of tenant must inevitably follow if he is found to have committed wilful default in payment of rent. Section 12 on the other hand deals only with recovery of possession by landlord for repairs, alterations or additions or for reconstruction. This recovery of possession is only for a limited purpose of carrying out the repairs, alterations or additions to the building and this order under Sub-section (1) is only passed on the undertaking given under Sub-section (2) by the landlord to the effect that he will offer the building to the tenant who delivered possession under Sub-section (1) for reoccupation after the completion of the repairs. Therefore, it is clear that there is no outright order of eviction of the tenant u/s 12 as postulated u/s 10(2)(i) of the Act. The right that has been conceded to the landlord u/s 12 is for a limited purpose and that is to enable the landlord to renovate the building and not to exclude the tenant forever under the guise of repairs or renovation of the building. Therefore, the fact that possession was delivered to the landlord in pursuance of the order u/s 12 of the Act is not a bar to the passing of an order of outright eviction u/s 10(2)(i) of the Act as long as the landlord satisfies the Court that the tenant committed a wilful default in payment of rent while he continued to be a tenant in the premises.

19. In view of the two binding I precedents, this Court is of considered opinion that in a petition filed u/s 10(3)(a)(iii) of the Act for eviction of tenant from non-residential premises even if landlord takes plea that after evicting he would construct new premises to suit his business, the same does not fall within the

ambit of Section 12 of the Act. On the ground that landlord took such a plea, tenant cannot defeat eviction case.

20. In the result, for the above reasons, petitioners must fail. Accordingly, civil revision petition is dismissed. A period of two months time is granted to petitioners to vacate petition schedule premises. This extension of time is however subject to condition that petitioners shall deposit all arrears of rent, if any, within a period of one week from today and shall continue to pay monthly rent on or before fifth of every month during this extended period of two months. If the tenants commit any default in doing so, it shall be open to landlord to execute order forthwith. There shall be no order as to costs.