

(2002) 02 AP CK 0070
In the Andhra Pradesh High Court
Case No : CRP No. 4471 of 1997

Chanda Bai and Others

APPELLANT

Vs

Purushotham Dass and Brothers and Others

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

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

Citation : (2002) 2 ALD 628 : (2002) 4 ALT 618 : (2002) 1 APLJ 285

Hon'ble Judges : Dubagunta Subrahmanyam, J

Bench : Single Bench

Advocate : Pratap Narayan Sanghi, for the Appellant; Vilas Afzal Purkar, for the Respondent

Final Decision : Dismissed

Judgement

Dubagunta Subrahmanyam, J.—The landlords in RC No.350 of 1988 on the file of IV Additional Rent Controller at Hyderabad, filed this revision petition against the order dated 4th August, 1997, in RA No.520 of 1994 on the file of the Chief Judge, City Small Causes Court, Hyderabad, confirming the orders dated 29-7-1994 of the Rent Controller in RC No.350 of 1988.

2. The revision petitioners sought the eviction of the tenants on various grounds, namely, wilful default in payment of rent, bona fide requirement of the landlords for their personal use, subletting by the tenants and using the premises for the purpose others than the purpose for which the suit premises was leased out to the tenants. On appreciation of the material placed by both the parties before the Rent Controller, the Rent Controller as well as the appellant Court did not accept any of the grounds put forward by the landlords for eviction of the tenants. At time of hearing of this revision petition, the revision petitioners pressed into service only one ground, namely, that the tenants used the premises for the purpose other than for which the premises was let out to the tenants. The other grounds were not pressed by the landlords.

3. The suit premises was let out to the tenants for their residential purposes. In some other premises elsewhere the tenants were carrying on business in cloth in a rented shop. According to the landlords the tenants were bringing the cloth bundles into the residential premises, cutting them into pieces and then taking the cut pieces into their shop. Thus according to the landlords the tenants are using the residential premises for their business purposes. The tenants are disputing the same. According to them whenever the cloth bundles are received from outside stations, they used to bring the bundles into the residential premises and later take them into their cloth shop. The two Courts below concurrently found that the tenants are not using the premises for their business purposes. Those findings are given on proper appreciation of the evidence placed by both the parties before the Rent Controller.

4. It is to be pointed out that no piece of evidence indicating that the tenants did carry on their cloth business in the suit premises is pointed out by the revision petitioners. The evidence on record indicates that occasionally the tenants used to bring the cloth bundles into the residential premises and some times the cloth is being cut into pieces and carry them to their shop. The question to be considered is whether such an activity by the tenants would amount to change of user of the premises from the purpose for which the house was taken on lease to some other purpose.

5. The learned Counsel for the revision petitioners relied upon a number of decisions. The decisions relate to using the residential premises for business purpose and some decisions relate to using a portion of the non-residential premises for residential purposes. The decisions cited across the bar by the learned Counsel for the petitioners on facts will not help the revision petitioners. There is no need to discuss the facts and principles laid down in those decisions. For the purpose of record I would mention the decisions relied upon by the learned Counsel for the petitioners. Those decisions are -- Rai Chand Jain Vs. Miss Chandra Kanta Khosla, , M. Surya Kameswara Rao v. N. Satyanarayanamma 1997 (3) ALD 462, Vijaya Kumar Patangay Vs. Kedarnath, , K. Rachamma v. Bimal Bai 1996 (2) ALD 379, M. Arul Jothi and Another Vs. Lajja Bai (Deceased) and Another, , Gulraj Singh Grewal Vs. Dr Harbans Singh and Another, , and Dashrath Baburao Sangale and others Vs. Kashimath Bhaskar Data,

6. A decision in Majeti Butchi Viswanadham and Others Vs. Bathula Suryanarayana Murty, , is relied upon by the learned Counsel for the petitioners to the effect that written consent of the landlord is mandatory and change of use without obtaining written consent entitles the landlord for eviction of the tenant. This decision would help the revision petitioners if the Court finds that there is change in the user of the tenanted premises.

7. The learned Counsel for the revision petitioners relied upon a decision of the Supreme Court in Ram Narain Arora Vs. Asha Rani and Others, . It is held in this decision that in a revision petition, true findings of fact can be interfered with by the High Court if those findings are rendered on a wrong premise of law. In this

regard reliance is also placed on a decision of A.P. High Court in Sugui Bai @ Shakuntala Bai and Others Vs. Rafat Ali, . The A.P. High Court held in this case that revisional jurisdiction of the High Court u/s 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, is much wider than that u/s 115 CPC. It is also further held that concurrent findings of the Courts are liable to be set aside in revision if those findings are given ignoring the evidence on record. In the present case the Courts below did not ignore any important evidence on record while giving the findings of fact regarding the user of the suit premises by the tenants. Therefore, these two decisions are also not of much help to the revision petitioners.

8. It is already noticed that evidence on record merely indicates that some times the tenants are bringing cloth bundles to their residential premises, separate them and then cut them into pieces and again carry them to their shop. It is already further noticed that the evidence do not indicate at all that at any time the tenants carried on their cloth business in the suit premises. The learned Counsel for the respondents relied upon a latest decision of the Supreme Court in Atul Castings Limited v. Bawa Gurvaehan Singh 2001 AIR SCW 1711. The relevant passage reads as follows:

"So long as in a residential buildings, there is no regular commercial activity or carrying on of business and regular office with interaction of the public and customers, etc., it is not possible to say that use of one room for doing home work or study itself will change the user of the building and that the classification and character of the building is changed. But it continues to remain a residential building so also its purpose remains as residential. Use of a room in a residential building for personal purpose should be distinguished from use of such room for business, industry or other commercial activity or as regular public or professional office. Each case has to be considered on its own facts on the basis of the pleadings and evidence to find out as to whether there has been a change of user in the building from residential to non-residential as it is not possible to give exhaustive list of situations as to change of user of buildings."

In view of the principle of law laid down by the Supreme Court, without any hesitation I hold that material placed on record by either of the parties do not at all indicate that there is change of user of the suit premises from residential purpose to commercial purpose at any time by the tenants. Therefore, the findings of fact recorded by the two Courts below need no interference by this Court while exercising revisional powers u/s 22 of the Act. I do not find any merits in the revision petition.

9. In the result, I dismiss the revision petition. No costs.