

(1999) 07 AP CK 0160
In the Andhra Pradesh High Court
Case No : CRP No. 867 of 1995

Chennawar and Company and others	APPELLANT
Vs	
R. Madhusudan Rao	RESPONDENT

Date of Decision : 05-07-1999

Acts Referred:

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

Citation : AIR 2000 AP 32 : (1999) 5 ALD 1 : (1999) 4 ALT 572 : (1999) 2 APLJ 280

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. T. Anantha Babu for A.H. Ramakrishna Rao, for the Appellant; Mr. P.V.R. Sarma, for the Respondent

Judgement

1. Heard the learned Counsel on both sides.
2. This is a revision filed by the tenants questioning the orders of eviction passed against them by the two Courts below concurrently under the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (in short "the Act").
3. The respondent/landlord is an advocate practising in City Civil Court at Secunderabad. The suit premises is a non-residential building wherein the petitioners are carrying on wholesale business in textiles. The premises consists of two rooms, one on the ground floor and the other on the first floor, located in a busy commercial area known as Tobacco Bazaar in Secunderabad. The rent payable is Rs.400/- per month. The respondent/land-lord filed the eviction petition on the sole ground that he requires the suit premises for his personal use, that is, for the purpose of carrying on his profession. It is his case that presently he is running his office in a rented premises in R.P. Road, Secunderabad, which is very small, congested and wholly insufficient for running his office. The said rented premises consists of a single room on the mezzanine floor measuring 9 1/2 x 14 1/2 feet. There is hardly any space available to keep his library and other office furniture and thereby he and his clients are put to lot

of inconvenience and hardship. Further his landlady has been pressing him for abnormal increase of the rent or in the alternative to vacate the same. Hence he bona fide requires the suit premises for his own occupation.

4. The petition was resisted by the respondents denying the said allegations and contending, inter alia, that the respondent-landlord has been carrying on his professional work in the rented premises in his occupation without any inconvenience whatsoever for the past 20 years, that the said rented premises is situated in a very posh and central locality like Rashtrapati Road, that the suit premises which is situated in a bustling market place is hardly suited for an advocate's office and that the alleged requirement pleaded by the landlord is neither true nor bona fide and it is only a ruse for evicting the tenants with a view to let it out again for a higher rent after collecting a hefty amount by way of premium.

5. To prove his case, the land-lord got examined himself as PW1 and marked Exs.P1 to P4. On behalf of the tenants, one of the partners of the third respondent-firm got examined himself as RW1 and also got marked Exs.R1 to R9. On a consideration of the oral and documentary evidence adduced and after hearing the parties, the learned Rent Controller, by his order dated 2-9-1991 upheld the plea of bona fide requirement of the land-lord and ordered eviction granting three months' time to the tenants for vacating the premises. The said order was confirmed on appeal by the lower appellate Court. Hence this revision.

6. Sri T. Ananta Babu, the learned senior Counsel appearing for the petitioners, assailed the orders of the two Courts below by contending that the Courts below were awayed by the fact that the respondent/landlord is a practising advocate and ordered eviction even though the respondent miserably failed to prove that he bona fidely requires the suit premises for his own occupation. He submitted that the requirement pleaded is neither true nor bona fide. The land-lord has been able to carry on his profession in the rented premises in his occupation all these years without any inconvenience whatsoever. There is not an even an iota of evidence to show that there was any pressure from his landlady for vacating the premises which is now in his occupation. Admittedly no notice was issued by the land-lady to the respondent in that behalf. The said premises is situated in a very busy and central area of Secunderabad, namely, Rashtrapati Road whereas the suit premises is in a highly congested market place which is hardly suitable for having an advocate's office. There is not even an averment in the eviction petition that the land-lord is having any juniors or clerk or that he is possessed of a big library. As a matter of fact, the respondent has very limited work. He is also possessed of a huge residential building very near his office and he can as well attend to his professional work at his residence also. The lack of bona fides of his claim is established by the very fact that earlier also he filed a similar eviction petition against the petitioner but withdraw the same on enhancement of rent. Both the Courts below failed to take into consideration all these relevant circumstances and their findings are there by vitiated. They are also perverse as

they are based on no evidence. The learned Counsel for the petitioners made a further legal submission that in view of the prohibition contained in Section 10(3) (a)(iii) of the Act, the respondent is disentitled from seeking the eviction of the petitioners from the suit premises as the respondent is already in possession of another non-residential building in the city as a tenant. He also submitted that, in any case, the respondent does not require the entire suit premises and the room on the first floor alone will be sufficient for having his office and the petitioners may be allowed to continue in possession of the room on the ground floor. The learned Counsel for the petitioner finally made an alternative submission that it is a fit case for remand for fresh enquiry as the Courts below failed to consider the question of the size, suitability and adequacy of the suit premises for the avowed purpose. In support of this last submission, reliance is sought to be placed on the decision of the Supreme Court in *Boorgu Jagadeshwaraiah and sons v. Pushpa Trading Co.*, (1998) 5 SCC 572 .

7. The petitioners have also filed in this CRP two miscellaneous petitions i.e., CMP No.5311/95 to receive and admit as additional evidence two photographs, one showing the location of the suit premises and the other showing the location of the rented premises where the respondent/landlord is presently having his office, and CMP No.5312/95 to summon the Income Tax returns of the respondent for the years 1979 to 1992 from the Office of the Income -Tax Officer concerned with a view to showing that the respondent was having a very limited professional income.

8. On the other hand, Sri P.V.R. Sarma, the learned Counsel appearing for the respondent/land-lord submitted that the concurrent finding of bona fide requirement recorded by the both the Courts below is perfectly valid, just and unexceptionable and that the civil revision petition is wholly devoid of any merit. He also submitted that there are no valid grounds whatsoever either to remit the case or to receive any additional evidence at this stage as sought for by the petitioners.

9. Notwithstanding the limitations of a revisional Court, in view of the submission of the learned Counsel for the petitioners that the findings recorded by the Courts below are perverse and are based on no evidence, I have gone through the entire evidence on record and the orders of the two Courts below. To be fair to them, I must say that both the Courts below have passed well considered orders giving cogent reasons for upholding the plea of bona fide requirement of the land-lord and I do not find any illegality whatsoever in the orders. The learned Counsel for the petitioners is not right in submitting that the Courts below were simply swayed away by the fact that the respondent/landlord is a practising advocate. The Courts below were very much conscious of the fact that the burden is on the landlord to establish the truth as well as bona fides of the requirement pleaded by him and they have examined the facts of the case and the evidence on record in that perspective.

10. Admittedly the respondent is an advocate with a standing of more than 20

years at the bar. In the counter filed on behalf of the tenants to the eviction petition, it is categorically admitted that the landlord is a well established advocate with a good reputation. The rented premises in which he is presently running his office is a small room located on the mezzanine floor of the building in which it is not possible to have even a ceiling fan fixed. The available accommodation is very much limited and it is hardly sufficient to keep the office furniture and the library. The Court can certainly take judicial notice of the fact that an advocate with a standing of 20 years will normally have a working library with sufficient number of books if not a huge library. Naturally an advocate needs sufficient accommodation to run his office properly. I do not find anything unnatural or unreasonable in the requirement pleaded by the respondent in the instant case. RW1 in his evidence admitted that he cannot say whether the accommodation presently available to the landlord in his rented office is only 133 sq.feet and whether one table is shared by his typist and his junior Counsel and he cannot also say if there is any place for keeping the library. He further admitted that a mezzanine floor will have only 8 or 9 feet height and it might be that there is no possibility of fixing a ceiling fan in it. In this context it is useful to refer to the decision of a Division Bench of this Court in S. Mohanlal Vs. R. Kondaiah, , wherein the Division Bench repelled the arguments very similar to those advanced by the learned Counsel for the petitioners in the present case in the following words:

"It is therefore inappropriate to say that the respondent is only a junior practitioner or that he is not capable of having independent practice. Even otherwise the moment a person duly qualifies himself and enrolls as a lawyer, he becomes competent to set up practice as an Advocate. Standing at the Bar or the volume of the practice that one may attract at the profession, is not the criterion for testing whether the person is carrying the profession or not.

Whether he is practising independently or whether he is attached to the chambers of his senior Counsel, he still requires an office of his own where he could receive his own clients or prepare his cases. The existence of a library or a typewriter or the appointment of a clerk, is not the sine qua non for carrying on the profession of an advocate. The young lawyer may very well utilise the facilities of a library provided by the senior Counsel to whom he is attached or the library attached to the Courts or he may have the books which are just necessary for his daily reference. It cannot be postulated that the practice of the profession requires that every lawyer should compulsorily possess a big library. We are therefore unable to agree with the submission of the learned Counsel that the requirement of the respondent is not bona fide."

The instant case certainly stands on a higher footing for the respondent herein is a well established and a senior advocate with a good reputation. The Division Bench in the above case further ruled that the tenancy cannot be split up as suggested by the learned Counsel for the petitioners herein. The Division Bench referred to and followed an earlier judgment of this Court in Jaffer Ali v.

Choitram, (1957) 1 An.WR 348, wherein it was held as follows:

"The Controller either determines the lease as a whole if he is satisfied that the landlord requires it for his occupation and has no other residential house of his own, or dismisses the application. He cannot be permitted to split up the tenancy, as was done by the Rent Control Appellate Authority in the instant case, viz., to direct the tenant to vacate 3/4 of the suit premises and allowing him to remain in possession 1/4th, and creates a new one between the landlord and the tenant, as that would have the effect of creating a tenancy for the parties."

In view of the above pronouncements, the submission of the learned Counsel for the petitioners that the room on the first floor of the suit premises alone is sufficient to meet the requirements of the landlord cannot be accepted.

11. As regards the legal submission of the learned Counsel for the petitioners that in view of the prohibition contained in Section 10(3)(a)(iii) of the Act, the respondent is disentitled from seeking possession of the suit premises inasmuch as he is already in possession of another non-residential premises in the city though as a tenant, it is sufficient to refer to the judgment of the Full Bench of this Court in *M/s. Vijayalaxmi Printing Press v. N. Shankar*, 1991 (1) APLJ 183, wherein the Full Bench clarified the earlier Full Bench decision in *Vidya Bai and Another Vs. Shankerlal and Another*, and held that a landlord who is not in occupation of a non-residential premises of his own but who is conducting his business as a statutory tenant in a non-residential premises belonging to another person, cannot be barred from seeking possession of his own non-residential building in the occupation of a tenant. In view of this authoritative pronouncement, I do not find any merit in the above submission made by the learned Counsel for the petitioners.

12. So far as the alternative submission made by the learned Counsel for the petitioners for remanding the case for examining the question of suitability or otherwise of the suit premises for having an advocate's office therein is concerned, I do not find any justification for remanding the matter for that purpose. It was suggested to RW1 in his evidence that several advocates (whose names were also mentioned) were having their offices in tobacco bazaar where the suit premises is located. RW1 gave an evasive reply to the said suggestion by stating that he did not know. It is for the landlord to decide whether he can conveniently run his office in the suit premises or not. The judgment of the Supreme Court in *Boorgu Jagadeshwaraiah & Sons v. Pushpa Trading Co.*, (supra), far from helping the petitioners goes against them. In that decision the Supreme Court held that Section 10(3)(a)(iii) of the Act should not be interpreted too narrowly as such an interpretation would frustrate the purposes of the Act. In that case the landlord succeeded in the two Courts below on the ground that the non-residential building, which was 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 v. K. Sudarshana Rao*, 1994 Supp. (1) SCC 729, in which a two member Bench of the Supreme Court has taken the view that when the landlord has a building in his possession, the factors of suitability and convenience and sufficiency of accommodation in order to carry on the business are not relevant and the fact that he owned another non-residential building was enough to non-suit him. In *Boorgu Jagadeshwaraiah's* case (supra), the Supreme Court doubted the correctness of the decision in *D. Devaji's* case (supra) and held that Section 10(3)(iii) of the Act should not be interpreted too narrowly as such an interpretation would frustrate the purposes of the Act. The Supreme Court accordingly set aside the order of the High Court and remitted the matter back to the High Court for consideration of the claim of the landlord on merits i.e., whether the building in the occupation of the landlord is suitable for carrying on his business or not. That judgment cannot render any assistance to the petitioners herein.

13. I do not also find any valid grounds to receive or admit any additional evidence at this belated stage. It is not as if the documents, which are now sought to be filed as additional evidence were not available earlier and the petitioners could not file them in the Courts below. The two civil miscellaneous petitions filed by the petitioners viz., CMP Nos.5311 and 5312 of 1995 are accordingly dismissed.

14. For the foregoing reasons, the revision petition fails and it is accordingly dismissed with costs. However, considering that fact that the petitioners have been carrying on their business in the suit premises since a long time, they are granted six months time from today for vacating the premises subject to the condition that they continue to pay the rents regularly by 10th every month and also file a written undertaking in the Court of the Rent Controller within one month from the date of receipt of the order undertaking to vacate the premises at the end of six months. In default, this order granting six months time stands vacated and the order of eviction granted by the Courts below can be executed straightaway.