

(1990) 10 AP CK 0016

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3525 of 1989

Chillampally Eshwaraiah (died) per LRs.

APPELLANT

Vs

Gangaram Sanghi

RESPONDENT

Date of Decision : 11-10-1990

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 10(3), 22

Citation : (1991) 1 ALT 108 : (1991) 1 APLJ 509

Hon'ble Judges : Eswara Prasad, J

Bench : Single Bench

Advocate : C. Jayashree Sarathy, for the Appellant; J.C. Saxena, for the Respondent

Final Decision : Allowed

Judgement

Eswara Prasad, J.—Petitioners 1 and 2 filed R.C. No. 85/79 before the Principal Rent Controller, Hyderabad, for eviction of the respondent u/s 10 (2) and (3) of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, on the ground of wilful default in payment of rent and for bona fide requirement for personal occupation of the 2nd petitioner. The Rent Controller found both the points in favour of the petitioners and directed eviction of the respondent. R.A.No. 109/85 filed by the respondent was allowed by the appellate authority, reversing the findings of the Rent Controller on both the points. Pending the proceedings, the first petitioner died and petitioners 3 to 8 were impleaded as his legal representatives.

2. The learned counsel for the petitioners submitted that there was wilful default in payment of rents by the respondent from 1-4-78 to 31-12-78 and hence the Rent Controller rightly directed eviction of the respondent. She further submitted that the 2nd petitioner owns only the premises in question and does not own any other residential premises. She further contended that the appellate authority was wrong in taking into consideration that the other building is in possession of the mother and brothers of the 2nd petitioner and in reversing the well

considered findings of the Rent Controller.

3. The learned counsel for the respondent contended that the rents for the alleged period of default were paid in advance and hence there was no default in payment of rent by the respondent. He argued that 2nd petitioner, not only owns the premises in question, but has a share in the joint family properties comprising eight houses and hence the appellate authority was correct in holding that the requirement of the petitioners is not bona fide.

4. The points for consideration are: (1) Whether there was wilful default in payment of rents by the respondent? 2. Whether the petitioners, bona fide, require the premises for their personal occupation.

5. On the question of wilful default in payment of rent, the appellate authority was correct in holding that there was no default at all as the respondent paid the rents in advance. Hence, there was no wilful default in payment of rent by the respondent,

6. The Rent Controller found that the 2nd petitioner is the owner of the premises in question and that he was living with his mother in the other building and had to shift to his own building and therefore, the requirement of the petitioners is bona fide. It was further found that the respondent failed to prove that the 2nd petitioner is having a share in the joint family property.

7. The appellate authority reversed the said finding on the ground that the 2nd petitioner is residing in his mother's house. He did not disagree with the finding of the Rent controller that the respondent failed to show that the 2nd petitioner has got any other house in the twin cities of Hyderabad and Secunderabad. The contention of the learned counsel for the petitioners that the family of the petitioners owns eight houses is not correct. A perusal of Ex. P. 4 shows that item 6 therein, which is the premises in question, was given to the 2nd petitioner under a settlement. There is nothing to show that he has a share in the other house owned by his father. Ex. P. 4 reads that the other properties are the exclusive properties of the father. The mere fact that the 2nd petitioner is residing with his mother, does not entitle him to continue to live with her for all times. It is stated by the learned counsel for the petitioners that the 2nd petitioner got married and has a child. It is accepted by the learned counsel for the respondent. This court can take the subsequent events into consideration. When the 2nd petitioner is married and has a child, he is not expected to continue to live with his mother.

7. The appellate authority also referred to the earlier petition for eviction as well as a suit for eviction filed by the petitioners for eviction of the respondent. The said eviction petition was dismissed on the ground that the Rent Controller alone has jurisdiction, taking into consideration the change in the position of law. Hence the observation of the appellate authority that the petitioners were trying to evict the respondent on one ground or the other, is not correct.

8. In *M. Khasim Khaleali Vs. The State of Tamil Nadu*, and *Mani v. Ramalingam*, 1985(1) MLJ 329 the Madras High Court referring to some provisions which are analogous to our Act, held that the expression "is not occupying residential building of his own", should be limited to a situation where the landlord is not occupying a residential building of which he is the sole owner thereof. It was further held that the Joint interest of the landlord in another building in his occupation along with others does not preclude the landlord from evicting the tenant from a building exclusively belonging to him.

9. In view of the fact that the premises in question is the only building owned by the 2nd petitioner and in the absence of any evidence to show that he is having a share in the other building owned by his father, the 2nd petitioner is not precluded from evicting the respondent. The requirement of the petitioners is bonafide, as they are entitled to live in the premises exclusively belonging to the 2nd petitioner and not be driven to the necessity of living along with the mother of the 2nd petitioner.

10. The judgment of the appellate authority is therefore set aside, restoring the order of the Rent Controller. The revision is accordingly allowed. No order as to costs. The respondent is granted three months time for vacating the premises on condition of his regularly paying the rents on or before the Tenth of each month during the said period; in default, the order granting time stands vacated and the respondent shall deliver immediate vacant possession of the premises to the petitioners.