
(2005) 06 AP CK 0032
In the Andhra Pradesh High Court
Case No : CRP No. 33 of 2005

D. Anil Kumar

APPELLANT

Vs

Shiva Balak

RESPONDENT

Date of Decision : 23-06-2005

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 11, 12, 12(1), 12(2)

Citation : (2005) 6 ALD 114

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : J. Ugranarasimha, for the Appellant; S. Balchand, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri Ugranarsimha, learned Counsel representing the revision petitioner and Sri S. Balchand, learned Counsel representing the respondent.

2. The revision petition is filed u/s 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (Act No. 15 of 1960) (hereinafter referred to as "the Act") as against an order made in I.A. No. 640 of 2004 in R.A. No. 87 of 2003 on the file of the learned Additional Chief Judge, City Small Causes Court, Hyderabad, dated 3-12-2004. the said application was moved by the revision petitioner herein, the respondent in R.A. No. 87 of 2003 - Land-lord - u/s 12(1)(b) of the Act, LA. No. 640 of 2004 requesting the Court to direct the appellant in R.A. No. 87 of 2003 - tenant - to deliver vacant possession of the schedule premises bearing No. 21-5-13/1, Charmahal, Opposite: City College, Hyderabad to the landlord for construction of a new building demolishing the old structures. Several factual details had been narrated in the affidavit filed in support of the application. The tenant filed a counter in elaboration opposing the same. Learned Judge having observed that the relief sought for may be granted in the main appeal and definitely not in an interlocutory application and having observed so, further proceed to discuss certain decisions and recorded certain

reasons at Paragraph Nos. 11, 12, 13 and 14 of the impugned order and ultimately dismissed the said application. Aggrieved by the same, the present revision petition is preferred.

3. Sri Ugranarsimha, learned Counsel representing the petitioner would contend that u/s 12 of the Act, an application before the learned Rent Controller had been preferred to and on the interpretation of the language, it cannot be said that an interlocutory application claiming the relief in a pending appeal cannot be maintained. Learned Counsel had also drawn the attention of this Court to the language employed in Sections 12, 10, 11 and 20 of the Act and would maintain that the view expressed by the learned Judge cannot be sustained. Learned Counsel would also submit that the landlord, in fact, had been successful before the learned Rent Controller, though one of the grounds had gone against him, which also had been challenged. Learned Counsel had drawn the attention of this Court to Point No. 4 before the learned Rent Controller and also had drawn the attention of this Court to Paragraph No. 43 of the said order, as against which the appeal had been preferred wherein positive findings have been recorded relating to the relief u/s 12 of the Act.

4. Hence the learned Counsel would maintain that even in a pending appeal, when an application is moved especially in the light of the positive findings recorded by the learned Rent Controller, the relief could have been granted and the dismissal of application is not justified.

5. Per contra, learned Counsel for the respondent opposing the matter had taken this Court through the reasons which had been recorded by the learned Judge and would maintain that it may be that this relief also can be granted at the time of disposal of the appeal as such, but definitely not by way of an interlocutory application.

6. Heard the learned Counsel. The other factual details narrated in the impugned order need no serious consideration in the light of reasons recorded by the learned Judge. Section 12 of the Act reads as under :

12. Recovery of possession by landlord for repairs, alterations or additions or for reconstruction:-(1) Notwithstanding anything in this Act on an application made by a landlord, the Controller may, if he is satisfied-

(a) that the building is reasonable and bona fide, required by the landlord for carrying out repairs, alterations or additions which cannot be carried out without the building vacated; or

(b) that the building consists of not more than two floors and is reasonably and bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the land-lord before a specified date.

(2) No order for recovery of possession under this section shall be passed unless the landlord gives an undertaking that the building on completion of the repair, alternations or additions or the new building on its completion will be offered to the tenant, who delivered possession in pursuance of an order under sub-section (1), for his occupation before the expiry of such period as may be specified by the Controller in this behalf.

(3) In case the tenant, to whom the building or the new building, as the case may be, is offered under sub-section (2) by the landlord does not want to occupy it the landlord shall give notice of vacancy in writing to the authorized officer under Sub-section (1) of Section 3.

(4) Nothing in this section shall entitle the landlord, who has recovered possession of the building for repairs, alterations or additions or for reconstruction to convert a residential building into a non-residential building or a non-residential building into a residential building unless such conversion is permitted by the Controller at the time of passing an order under sub-section (1).

Paragraph No. 43 of the order in R.C. No. 593 of 1998 reads as under :

"The plea of the petitioner is that the residence of the petitioner which is located opposite to the demised premises is sought to be taken over by the Municipal Corporation of Hyderabad for construction of parallel bridge over Moosi River and therefore the petitioner requires the demised premises for construction of the house. The contention of the respondent is that the personal requirement for construction of the house is not correct and the petitioner does not require the schedule premises, the alleged construction is purely created and an after thought and as such the ground of personal requirement is false and concocted one.

Section 12(1)(b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, reads as follows :

"That the building consists of not more than two floors and is reasonably and bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date."

When the requirement of the demised premises is for the immediate purpose of erecting a new building on the site, and the building sought to be demolished, the landlords have right to claim, eviction of the tenant u/s 12(1)(b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. The petitioner who examined as P.W.1 deposed that the premises in which he is residing is acquired by the Municipal Corporation of Hyderabad and as such he requires the schedule premises bona fide for his personal occupation. Ex.P.4 is the letter issued by the Municipal Corporation of Hyderabad; Ex.P.5 is the property tax receipt. On

perusal of Ex.P.4, it is the letter issued by the Chief City Planner, Town Planning Section, Municipal Corporation of Hyderabad dated 14-9-1999 addressed to the petitioner herein Sri D. Anil Kumar, to co-operate with the Municipal Corporation of Hyderabad and hand over the property bearing municipal No. 21-5-5 and 5/1, opposite to the City College, Muslim Jung, bridge under Public interest, which belongs to the petitioner Sri D. Anil Kumar. The contention of the respondent, the grounds alleged by the petitioner is created and an after thought, is "no" way creditworthy in the light of Ex.P.4. It is also undisputed fact that the petitioner is residing opposing to the demised premises. The respondent who examined as R.W.1 denied the requirement of the petitioner for construction of the house. There is no relevant cogent material placed by the respondent that the alleged construction of the petitioner is created and an after thought. Ex.P.6 goes to show that the demised premises fallen to the share of the petitioner and at present, the present petitioner is asking to vacate the respondent for his personal requirement i.e., to construct a house in view of widening of the road by the Municipal Corporation of Hyderabad under Ex.P.4 under the public interest. The plea of the petitioner is rightly justified coupled with Ex.P.4. As already hold that there is no relevant record placed by the respondent in support of his contention stating that the alleged requirement is created, false and an after thought, it is well established principle and settled law that the landlord can sought for his premises which belongs to him when he required for personal occupation. In the instant case, there is justified reason and ground pleaded by the petitioner that there is necessity to the Municipal Corporation of Hyderabad to take the possession of the premises in which the petitioner is residing, more particularly the demised premises is just opposite to the house of the petitioner and the intention of the petitioner to construct a house for his personal occupation is a bona fide one. As already held that there is default on the part of the respondent while answering Point No. 3 and as such the personal bona fide requirement is also established by the petitioner and accordingly the petitioner is entitled to the relief of personal requirement. Hence, the point No. 4 is answered accordingly in favour of the petitioner and against the respondent."

7. In *Bhoopathi Gowri Shankar v. Nathmal Hari Krishna Bros.*, 1987 (2) DRCR 384 it was held as follows :

"Section 12 enables the land-lord to get possession of the premises from the tenant to effect alteration of repairs or demolish the building if it is dilapidated or otherwise in the application satisfying the requirements u/s 12 Rent Controller is empowered to direct the tenant to deliver possession of the premises subject to an undertaking by the land-lord to re-deliver the premises within the time stipulated by the Rent Controller. Section 12 is prefaced by blanket non-obstante clause. Section 12 envisages the transitory arrangement of delivery and re-delivery to facilitate the landlord to carry out major repairs or demolish the building. The necessities provided in sub-section (1)(a) and (b) in conjunction with the undertaking by the landlord are preconditions of passing the necessary orders u/s 12. The undertaking by the landlord to redeliver after restructuring is

in-built in the provision and the tenancy is not terminated. Section 12 postulates temporary cessation of tenancy to enable the landlord to make the building trim or construct a new building and after renovation of the full-fledged tenancy is reverted. The operation of Section 12 should not be confused with eviction or commencement of new tenancy. The tenancy does not abate tenancy continues to subsist within interruption for a short time."

8. In the light of the same, submissions were made that inasmuch as by virtue of order made u/s 12 of the Act, the tenancy as such would not come to an end, but just would be suspended for a limited period so as to enable the landlord to get the benefit u/s 12 of the Act, and hence such relief can be granted on an interlocutory application. Learned Counsel representing the revision petitioner also represented before this Court that the landlord is willing to make an undertaking as required u/s 12 of the Act.

9. On the aspect of mutual compatibility and incompatibility of Sections 10 and 12 of the Act in Vishnu Prasad Bhatt Vs. K. Narayan Rao and Others, , a learned Single Judge of this Court at Paragraph No. 10 observed :

"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 the 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."

10. On a careful reading of the language employed in Sections 10 and 11 and also Section 20 of the Act read along with the language of Section 12 of the Act, though positive relief was granted by the learned Rent Controller u/s 12 of the Act, by way of an interlocutory application, such relief cannot be granted in 9 a pending appeal especially in the light of the language employed in Section 20 of the Act. However, it is made clear that while disposing of the appeal, appropriate reliefs can be granted inclusive of the relief u/s 12 of the Act. The mere fact that some special procedure is to be followed u/s 12 of the Act, relating to the rights of the landlord vis-a-vis the rights of tenant in relation to the tenancy, it would not alter the situation in any way and hence in this view of the matter, the learned Judge had arrived at the correct conclusion that such relief u/s 12 of the Act cannot be prayed for by filing an interlocutory application in an appeal pending before the appellate authority under the Act. Hence the said application is a misconceived remedy and accordingly the impugned order is hereby confirmed. The revision petition is dismissed. But, however, inasmuch as the landlord is making a bona fide attempt to get at the property by invoking Section 12 of the Act, especially in the light of the positive findings recorded by the learned Rent Controller, it is a fit matter wherein the main appeal may have to be disposed of at an early date.

11. At this stage, it is brought to the notice of this Court that R.A. No. 87 of 2003 on the file of learned Additional Chief Judge, City Small Causes Court, Hyderabad was transferred to the learned Chief Judge, City Civil Court, Hyderabad, by an order dated 22-6-2005 of this Court in Tr.C.M.P. No. 172 of 2005 to be disposed of along with R.A. No. 11 of 2005. It would be just and proper in the light of the facts and circumstances referred to supra that the learned Chief Judge, City Civil Court, Hyderabad to expedite the hearing of the appeals and dispose of the same at the earliest point of time, preferably within a period of two months from the date of communication of this order. No costs.