
(2005) 12 AP CK 0077

In the Andhra Pradesh High Court

Case No : O.R.P. No's. 3349 and 3351 of 1997

D. Talupulu (died) per L.R.

APPELLANT

Vs

M. Venkata Raju and Another

RESPONDENT

Date of Decision : 22-12-2005

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(1), 10(2), 10(3), 22, 8
Transfer of Property Act, 1882 — Section 108

Citation : (2006) 2 ALD 470 : (2006) 1 ALT 684

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

Bench : Single Bench

Advocate : Bharat Babu and D. Ramalinga Swamy, for the Appellant; G. Rama Gopal, for the Respondent

Judgement

P.S. Narayana, J.—D. Talupulu, the unsuccessful tenant both before the learned Rent Controller and the appellate Authority had preferred these two C.R. Ps., u/s 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act 1960, hereinafter, in short, referred to as "the Act" for the purpose of convenience. The said D. Talupulu died and his son D.A. Raju was brought on record as legal representative, who is further prosecuting these C.R. Ps. The respondents in C.R.P. No. 3351 of 1997, M. Venkata Raju and M. Shanta Kumari filed R.C.C. No. 2 of 1994 which was re-numbered as R.C.C. No. 271 of 1995 on the file of Rent Controller praying for eviction of the tenant from the petition schedule premises u/s 10(1), 10(2) (ii) (a) and (b), 10(3) of the Act. The tenant filed R.C.C. No. 67 of 1993, which was renumbered as R.C.C. No. 297 of 1995 u/s 8 of the Act praying for permission to deposit the rents. The learned Rent Controller, Vishakapatnam after recording the evidence of P.W.1 and R.W.1 and marking Ex.A-1 to A-3, Ex.X-1 and Ex.C-1 and Ex.B-1 to B-19, ultimately ordered eviction granting two months time to vacate the premises and dismissed the R.C.C. wherein the relief praying for permission to deposit the rents had been prayed for. Aggrieved by the same, the tenant preferred R.C.A. No. 27 of 1997 as

against the order made in R.C.C. No. 271 of 1995 to the appellate Authority-Subordinate Judge, Vishakapatnam. Likewise, as against the order made in B.C. No. 247 of 1995, R.C.A. No. 38 of 1997 was preferred and the appellate authority by order dated 31-3-1997 had dismissed both the R.C.As., and aggrieved by the same, the present C.R. Ps., had been preferred by the unsuccessful tenant to this Court u/s 22 of the Act.

Contentions of Sri Bharat Babu:

2. Sri Bharat Babu, the learned Counsel representing the revision petitioner, the legal representative of tenant, made the following submissions:

The learned Counsel had taken this Court through the evidence available on record and the findings recorded by the learned Rent Controller and also the appellate authority had would contend that the learned Rent Controller had not recorded findings relating to all the grounds but had recorded findings only in relation to certain grounds and hence, such findings cannot be said to be concurrent findings. The learned Counsel also would point out that mere default will not amount to willful default and the conduct of the parties may have to be taken into consideration and at no point of time any notice as such had been issued relating to the non-payment or the delayed payments and when an attempt was made on the part of the landlord to evade the receipt of amounts the tenant had invoked the jurisdiction of the learned Rent Controller and without recording any reasons, the learned Rent Controller dismissed the said R.C.C. and the said order was confirmed even by the appellate authority. The learned Counsel also would contend that the change of user may have to be appreciated in the back drop of the factual situation. This is not a case where the residential premises had been converted into a non-residential premises and hence, the ground of using the premises for other purpose may not be attracted, since it may not amount to changing the business. In other words, the learned Counsel would contend that merely because for some additional purpose the premises is put into use, the same cannot fall under the ground of change of user. The learned Counsel also pointed out certain findings relating to the structural alterations and the acts of waste and would contend that merely because the glass cabin with wooden frames had been erected, by that itself it cannot be said that these grounds are attracted. Relating to the other grounds, the learned Counsel would contend that the evidence available on record is insufficient and hence, the eviction ordered by both the courts below cannot be sustained. The learned Counsel also placed reliance on certain decisions to substantiate his contentions.

Contentions of Sri Ram Gopal:

3. Sri Ram Gopal, the learned Counsel representing the respondents had taken this Court through the oral and documentary evidence available on record and would contend that both on the grounds of change of user and structural alterations, the findings recorded by both the courts below can be said to be

concurrent findings. The learned Counsel also would submit that in the light of Ex. A-2, it is clear that even in making deposit of rents, the tenant was not regular. This aspect also may be taken into consideration while deciding the ground of wilful default. The learned Counsel also pointed out that the eviction petition was suitably amended by taking the ground of denial of title also. The learned Counsel pointed out to the stand taken in the reply notice and also the stand taken in the counter in this regard and would maintain that this would amount to the denial of title. The learned Counsel also had pointed out that even the change of business may amount to change of user. The learned Counsel had drawn the attention of this Court to the evidence available on record and had pointed out that the evidence of R.W.1 is that occasionally he had been doing the tailoring business and the fact that the same had been changed into S.T.D. booth and there was subletting of the premises to the Laxmi Kumari, these aspects cannot be in serious controversy especially in the light of Ex.B-6. The counsel also placed reliance on certain decisions to substantiate his submissions. The learned Counsel also made an attempt to convince the Court that though no findings had been recorded by the learned Rent Controller on certain grounds, if this Court is satisfied that the appellate authority arrived at the correct conclusion relating to the other grounds also, the said findings are to be confirmed.

4. Heard the counsel on record and perused the oral and documentary evidence available on record, the findings recorded by the learned Rent Controller and also the appellate authority.

5. Respondents (sic. petitioners) in R.C.C. No. 271 of 1995 on the file of Rent Controller, Vishakapatnam filed the said R.C.C., praying for the relief of eviction. In substance, the case set up by them praying for eviction is that the tenant had taken the premises on a monthly rent of Rs. 150/- which had been let out for running a tailoring shop and the same was taken on lease during the life time of grand-father of M. Venkat Raju and father-in-law of M. Shanta Kumari more than 30 years ago and the tenant is extremely irregular in payment of rents and has not paid rents since January 1993, thus the tenant had committed wilful default. It was also stated that the tenant was given the premises for running the tailoring shop, but without consent in writing or at least oral consent, the tenant got installed a public telephone in the name of Smt. Laxmi Kumari. Thus the premises is being used for the purpose other than for which it was let out. It was also stated that they had issued a notice relating to the fact that the tenant had sublet the premises. But however, reply was given that Laxmi Kumari is his daughter-in-law and they were doing business by running a public telephone in partnership. It was also pleaded that the daughter-in-law of the tenant Laxmi Kumari with the consent of the tenant had stated in the said application that the tenant is the owner of the premises, hence, this would amount to denial of title. It was also further stated that without their consent structural alterations were made in the month of April 1993. The tenant having admitted the jural relationship of landlord-tenant, denied the other allegations. The tenant had

taken the stand that initially the premises was taken on a monthly rent of Rs. 50/-, which was enhanced from time to time up to Rs. 150/-and he has been paying the monthly rent regularly to the grandfather and thereafter to the father and thereafter to the present landlord. Only with an evil idea of evicting him allegations are made. It was also stated that the said M. Venkat Raju stopped receiving rents from February 1993 and the tenant had been sending rent by money orders and they were returned with an endorsement and thus he was avoiding to receive money orders and hence, he had invoked the jurisdiction of the Rent Controller u/s 8 of the Act. It was also stated that he was doing tailoring business and because of advancement of age he is unable to do tailoring business and as he is not eligible for a public telephone, as per the rules of telecommunication department, his daughter-in-law Laxmi Kumari obtained permission for installation of public telephone and hence, the said act cannot be said to be unauthorized. It was also pleaded by the tenant that he reliably learnt that the property claimed is also in litigation with the endowments department and the said property belongs to them.

6. Before the learned Rent Controller, the evidence of P.W.1, R.W.1, the first landlord and the tenant respectively had been recorded, Exs.A-1 to A-3, Ex.X-1, Ex.C-1, Exs.B-1 to B-19 were marked. The learned Rent Controller had at para-8 referred four grounds:

- (1) Wilful default in payment of rents.
- (2) Using the premises other than for the purpose for which it was let out.
- (3) Subletting and denial of title; and
- (4) Structural alternations.

7. The learned Rent Controller had recorded a positive finding relating to user of premises other than for the purpose for which it was let out and also recorded a finding relating to denial of title stating that as there is already a litigation pending it is a bona fide denial. A further finding had been recorded that by putting up glass cabins material alterations were made which would amount to structural alterations and ultimately ordered eviction. The appellate authority framed the following points for consideration:

- (1) Wilful default in payment of rents.
- (2) Using the premises other than for the purpose for which it was let out.
- (3) Subletting and denial of title.
- (4) Structural alterations.

8. The appellate authority not only confirmed the findings which had been recorded by the learned Rent Controller in relation to change of user and the structural alternations, but in addition thereto came to the conclusion that the tenant also committed wilful default in payment of rents. A finding had been

recorded even relating to the denial of title. However, on over all appreciation of the evidence, the learned appellate authority came to the conclusion that the order of eviction to be confirmed and accordingly, the dismissal of the application praying for the permission to deposit rents, also to be negatived. Though, several of the grounds had been raised, the main or principal ground on which the counsel representing the respondents in the C.R. Ps., had concentrated is on the ground of change of user. Incidentally, the learned Counsel also made an attempt to convince this Court that on other grounds also the tenant is liable to be evicted.

9. The learned Counsel representing the revision petitioners placed strong reliance on the decision reported in *A. Suryanarayana Rao Vs. C. Radhakrishnaiah*, and *Hari Rao Vs. N. Govindachari and Others*, . In *A. Suryanarayana Rao Vs. C. Radhakrishnaiah*, , a learned Judge of this Court while dealing with the meaning of "user of building let out for a purpose", where the building let out is for non-residential purpose and if it is used for residential purpose, it is a ground of eviction and no tenant can be evicted merely because there is a change in nature of business and the plea of landlord that the tenant having closed his wine business is not doing any business, does not amount to using the premises for residential purpose. Strong reliance was placed on the decision of *Hari Rao's case*² wherein the Apex Court while dealing with the similar question under the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 held that in the absence of any covenant in the lease prohibiting the user different from the particular one mentioned therein, tenant would be entitled to carry on any trade in the premises consistent with the location and nature thereof and alteration in the commodity traded in, expansion of trade or taking up other lines of trade would be permissible, however, change from commercial to residential use or from trading to manufacturing or production of goods, would be a user other than one for which building was let. Change of user as to make it alien to purpose for which building was let and if basic activity remains the same and there is only a variation in the manner or mode of carrying on of that activity, eviction on ground of change of user is to be denied.

Ultimately question would depend on facts of particular case, in the context of terms of letting and covenants governing the transaction and general spirit of Section 108(o) of Transfer of Property Act, 1882.

10. In *Smt. K. Rachamma Vs. Smt. Bimal Bai and Another*, . a learned Judge of this Court while dealing with the Section 10(2) (ii)(b) of the Act held that there was a definite change of user for general merchandise and kirana to textile business. That being so, the tenant respondent was bound to obtain a written consent for such a change and the law requires that for change of user the tenant has to obtain written consent of the landlord. Oral consent or conduct of allowing the tenant to change the user does not come to the help of the tenant. Admittedly in the present case there was no written consent obtained by the

tenant for changing the use. In the circumstances, the tenant was liable to be evicted under the Act. Reliance was also placed on *M. Arul Jothi and Anr. v. Lajja Bal* 2000(3) ALT 19(SC) wherein the Apex Court held that where the rent deed stipulated a prohibition to use the tenanted shop for any business other than the one mentioned therein, tenant using the portion of the shop for grocery business while it was let out for carrying on some other business like business in radios, etc., contrary to the specific term of the agreement, such user need not be in substantial portion of the shop and change in user of the building itself is a sufficient ground for ordering eviction of tenant. The said decision of the Apex Court had been referred to and distinguished in *Hari Rao* case (2supra). Reliance also was placed on *Dashrath Baburao Sangale and others Vs. Kashimath Bhaskar Data*, , wherein the Apex Court while dealing with the eviction for change of user under the Bombay Rents, Hotel and Lodging House Rates Control Act held that use of premises by lessee contemplated by agreement for a specific business and use of land for purpose, that is business in addition to the one contemplated under the lease agreement, plea of lessee that lease being for carrying on business any business can be carried on by him, negatived by the High Court, the Supreme Court declined to interfere.

11. The evidence of P.W.1 and R.W.1 is available on record. It is stated that the tenancy commenced during the lifetime of the grandfather of the first landlord. Though there is no written agreement between the parties as can be seen from the evidence of P.W.1 and R.W.1, it appears to be not in serious controversy that originally the premises was taken for the purpose of running the tailoring business. The stand taken by the tenant appears to be that unless the premises is put into residential use having taken it for non-residential purpose, by mere changing the business or by adding the business of some other form it may not fall under the ground of change of user. As already referred to supra, strong reliance was placed on *Hari Rao*" case (2 supra) to substantiate its contention.

12. Though no clear and acceptable evidence relating to the relationship of the tenant with Laxmi Kumari is available on record, it is stated by the tenant that she is the daughter-in-law. Ex.B-6 is the deed of partnership and Clause-2 of Ex.B-6 specifies that the nature of business shall be for running a public telephone booth and any other business as the partners may determine from time to time. Strong reliance was placed on *Ghulam Hussain (died) and Others Vs. D. Raj Kumar*, to substantiate the contention that despite Ex.B-6, the same may not amount to subletting. Reliance also was placed on *Sona Optics Vs. Shyam Sunderbhargava and Others*, , *Brijendra Nath Bhargava v. Shri Harshwardhan and Ors.* AIR 1998 SC 293. *G. Arunachalam (died) through L.Rs. and another Vs. Thondarperienambi and another*, . Further reliance was also placed on the decisions in *Vijaya Kumar Patangay Vs. Kedarnath*, and also *Ballani Ranganayakulu and others Vs. Mattupalli Nageswara Rao*,

13. It is no doubt true that on the ground of wilful default no findings had been recorded by the learned Rent Controller, but a positive finding had been recorded

by the appellate authority. Strong reliance was placed on Ex.A-2 to show about the irregular payments of rents. Whatever the reasons may be, the relief prayed for praying for permission to deposit rents had been negated. As already referred to supra, both on the grounds of change of user and structural alterations concurrent findings had been recorded and as far as additional grounds are concerned, the appellate authority had recorded findings on the strength of the evidence available on record. It is no doubt true that instead of appellate authority recording findings, for the first time at the appellate stage, it would have been just and proper to remit the matter to the learned Rent Controller for recording of findings relating to other grounds in the absence of recording of any findings in relation thereto by the Rent Controller. The term or expression of change of user in relation to a non-residential business premises may have to be decided in the context of a particular factual situation. The learned Judges taking into consideration the nature of business, which was being run and the alteration by addition which is akin to the prior nature of business, the said view was expressed. Here is a case where both the parties proceeded on the ground that initially during the time of grandfather of the first landlord, the tenant had taken the premises for running tailoring business. In view of the fact that the tenancy commenced long back, there may not be a written instrument governing the parties. It is also the case of the tenant that the same was taken for tailoring business and subsequent thereto it is being used even for the purpose of running the business of STD booth. At any stretch of imagination except these two kinds of business falling within the caption of non-residential, nothing is similar or akin to each other. In such a case, it cannot be said that there is no change of user. In view of the same this Court is of the considered opinion that the concurrent finding recorded relating to the change of the user need not be disturbed by this Court. The other concurrent finding recorded relating to the structural alterations also need not be disturbed even in the light of the admissions made by R.W.1, and hence, the said findings also are hereby confirmed. As far as the other grounds are concerned inasmuch as on these grounds there cannot be said to be concurrent findings though the evidence is available on record and inasmuch as for the first time the findings had been recorded by the appellate authority, this Court is not inclined to express any opinion relating to those grounds. Accordingly, in view of the limitations imposed on this revisional Court u/s 22 of the Act, taking into consideration the concurrent findings recorded by both the courts below, this Court is not inclined to interfere with the orders made by the learned appellate authority in both the appeals. It is needless to say that when the relief of eviction is being granted no further orders need be passed in the matter relating to the prayer praying for permission to deposit the rents.

14. In the light of the findings recorded above, the C.R. Ps., being devoid of merits, shall stand dismissed. No order as to costs. The revision petitioner is granted four months time to vacate the premises.