

(2007) 01 AP CK 0058

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5958 of 2006

J. Shiv Kumar and Another

APPELLANT

Vs

P. Sattamma

RESPONDENT

Date of Decision : 31-01-2007

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 10(3), 15, 20, 22(1)

Citation : (2007) 2 ALD 580 : (2007) 3 ALT 111

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Vedula Venkataramana, for the Appellant; T.V. Rajeevan, for the Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—On four grounds, the eviction petition R.C. No. 207 of 2002 was filed by the landlady/respondent under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Andhra Pradesh Rent Control Act"). First petitioner is the tenant of the landlady. It was alleged by the landlady that the first petitioner sub-let the premises to the second petitioner. The grounds, on which the eviction petition was filed, are-

- (1) that the tenant had obtained alternative accommodation;
- (2) that he was creating nuisance;
- (3) that the landlady needed the schedule premises for her personal requirement and
- (4) that the tenant had sublet the schedule premises to the second petitioner.

2. The Rent Controller accepted the grounds of subletting, bona fide requirement of the schedule premises by the landlady and also securing alternative accommodation by the tenant and ordered eviction. Aggrieved by the same, the

tenant preferred R.A. No. 118 of 2004. The landlady also preferred R.A. No. 141 of 2004 against the dismissal of the eviction petition on the ground of acts of nuisance. The appellate Court framed the following points for consideration.

1. Whether the tenant Shiv Kumar parted with possession of schedule property or part thereof losing control over the enjoyment, if so, the tenant is liable to be evicted u/s 10(2)(ii)(a) of the Act?
2. Whether unloading stone by lorries during nights in the schedule premises causes any nuisance to the landlady and the neighbours?
3. Whether the tenant through Jaswant Rao closed the passage obstructing the landlady from using the same if so, does it amount to acts of nuisance and tenant is liable to be evicted from the schedule premises on the ground u/s 10(2)(iv) of the Act?
4. Whether the tenant secured a building alternative to the schedule premises if so, liable for eviction from the schedule premises u/s 10(2)(v) of the Act?
5. Whether the requirement of schedule premises to carry on bamboo, bamboo ballies and ladders business by the landlady and her widowed daughter is real, honest and bona fide if so, the tenant is liable to be evicted from the schedule premises u/s 10(3)(a)(iii)(b) of the Act?

3. The appellate Court dismissed R.A. No. 141 of 2004 filed by the landlady. The appellate Court came to the conclusion that the findings of the Rent Controller that R.W.2/second petitioner, was the sub-tenant for R.W.1/first petitioner, was not supported by any legal evidence and that the Rent Controller could not have recorded such a finding and accordingly held point No. 1, the ground of sub-tenancy, against the landlady and in favour of the tenant. The appellate Court also set aside the finding of the Rent Controller with regard to securing alternative accommodation by the tenant and decided point No. 4 against the landlady and point Nos. 2 and 3, acts of nuisance, were also held against the landlady, but it upheld the finding of the Rent Controller with regard to bona fide requirement of the schedule premises by the landlady and held point No. 5 in favour of the landlady and against the tenant. Hence, this revision. Learned Counsel for the petitioners contended that the landlady did not have the bona fide requirement of the schedule premises and the findings of the Courts below that the landlady required the premises for her personal requirement was absurd as she was aged 78 years. The contention of the landlady that she wanted to start a business of bamboos and ladders along with her daughter, who was aged 62 years, could not be accepted and her daughter was married and was not dependant on the landlady. It is also stated by the learned Counsel for the petitioners that the landlady had two other non-residential buildings in the city.

4. However, the appellate Court, on this point, found that the landlady belongs to Burudu caste. Her caste profession was sale of bamboos, bamboo baskets, ladders etc. The landlady was admittedly aged more than 75 years, but that was

not a disability to carry on the business. In addition to that the landlady had contended that she had a widowed daughter therefore, they needed the premises to run the business. She accepted that she had two other shops but both the shops were occupied by other tenants. I have not been shown any authority that where a lady aged more than 75 years, who had no source of income, and her daughter, who is a widow, aged 62 years, and who had also no source of income, can be deprived of the possession of the shop for earning their livelihood merely because of their age. Age may be a consideration in appropriate cases, but in the present case, where it has come in evidence that the landlady and her widowed daughter have no source of income and that they have sufficient knowledge of the business they intend to do because it has always been their family business, I do not think the Rent Controller or the appellate Court had committed any illegality by ordering eviction on this ground.

5. Learned Counsel for the respondent/landlady has also drawn my attention to the judgment of the Supreme Court in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*, to canvas that the scope of the revision is limited and on appreciation of evidence, this Court cannot come to conclusions different from the Rent Controller and the appellate Court unless the Court finds that the order of the Rent Controller and the appellate Court were not according to law. The Supreme Court in this case dealt with an eviction case under the Delhi Rent Control Act, 1958.

6. Sub-Section (1) of Section 22 of the Andhra Pradesh Rent Control Act, which deals with revisional powers of the High Court in these matters, lays down

The High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceeding taken under this Act by the Controller in execution u/s 15 or by the appellate authority on appeal u/s 20 for the purpose of satisfying itself as to the legality, regularity or of propriety of such order or proceeding, and may pass such order in reference thereto as it thinks fit.

7. Section 25-B of the Delhi Rent Control Act, which Section provides for a special procedure to be followed for the disposal of applications for eviction on the ground of bona fide need, reads as under

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this Section is according to law (or not), call for the records of the case and pass such order in respect thereto as it thinks fit.

8. Although the language between Section 25-B of the Delhi Rent Control Act and Section 22(1) of the Andhra Pradesh Rent Control Act is slightly different, but the mandate is same. In the case of the Andhra Pradesh Rent Control Act, the High Court is empowered to call for the records for the purpose of satisfying itself as to the legality, regularity or of propriety of such order, whereas in the case of Delhi Rent Control Act, the High Court may call for the record and satisfy itself that the order passed by the lower authority was in accordance with law.

9. The Supreme Court, while interpreting Section 25-B of the Rent Control Act in the aforesaid judgment, held-

The High Court cannot enter into appreciation or re- appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a Court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law". For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available.

10. In the present case, both the Courts have held that though the landlady is above 75 years and her widowed daughter is also of an advanced age need the property for the purpose of earning their livelihood and also it was held on facts by both the Courts below that both the ladies have requisite knowledge to start the business of selling bamboos and baskets, which has been their family profession.

11. For these reasons, I do not find any merit in the revision, which is accordingly dismissed. No order as to costs.

12. However, in the interest of justice, the petitioners are granted six months time from today to vacate the premises. They shall give an undertaking before the trial Court to the effect that they shall vacate the premises and handover the possession to the landlady before expiry of the period of six months. This undertaking shall be given within a period of two weeks. There shall be stay of eviction for this period of two weeks from today. If such an undertaking is given, the stay of eviction shall continue till the expiry of six months period. However, if the petitioners fail to give the undertaking, the respondent shall be at liberty to seek eviction. The petitioners shall continue to pay the rents till they vacate the premises.