

(2000) 06 AP CK 0060

In the Andhra Pradesh High Court

Case No : RCMP No. 3978 of 2000 in CRP No. 2304 of 1994

Jagan Prashad (died) by LR.s. and others

APPELLANT

Vs

Shanta Bai and others

RESPONDENT

Date of Decision : 27-06-2000

Acts Referred:

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

Civil Procedure Code, 1908 (CPC) — Section 117

Constitution of India, 1950 — Article 215, 226, 227

Citation : (2000) 4 ALD 470 : (2000) 4 ALT 359

Hon'ble Judges : Venkatanarayana, J

Bench : Single Bench

Advocate : Mr. G. Vidyasagar, for the Appellant; Mr. V. Ravinder Rao, for the Respondent

Judgement

1. This is a review petition filed by the petitioner-tenant seeking to review the order dated 25-2-2000 passed by this Court in CRP No 2304 of 1994.

2. The respondent-landlord filed RC No. 189 of 1989 on the file of the First Additional Rent Controller, Hyderabad seeking eviction of the petitioner-tenant from the petition schedule raulgi on grounds of wilful default in payment of rent and bona fide personal requirement and the said RC No. 189 of 1989 was allowed and eviction was ordered by the trial Court. The appeal preferred by the tenant in RA No.49 of 1989 on the file of the Chief Judge, City small Causes Court, Hyderabad was also dismissed by his order dated 16-4-1994 against which CRP No.2304 of 1994 was filed by the tenant before this Court. This Court, after hearing both parties at length, dismissed the said revision by order dated 25-2-2000. After the dismissal of the revision petition, the petitioner-tenant has filed the present review petition seeking to review my order dated 25-2-2000.

3. Sri J. V. Suryanarayana, the learned senior Counsel appearing for the respondent-landlord raised a preliminary objection on the maintainability of the

review petition. Sri S. Venkata Reddy, learned senior Counsel appearing for the review petitioner contended that the review petition is maintainable inspite of the fact that the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (Act XV of 1960) (hereinafter referred to for short as "the Rent Control Act") does not provide for such a review.

4. It was agreed by both the learned senior Counsel that they would address arguments regarding the maintainability of the review petition in the first instance and requested this Court to decide this issue as a preliminary issue. Accordingly arguments were heard on the preliminary issue as to the maintainability of the review petition.

5. Sri J. V. Suryanarayana, the learned senior Counsel for the respondent has contended that when once this Court has disposed of the Revision petition, this Court becomes *functus officio* and the power of review cannot be imported. It is his contention that the inherent power of review is not available to this Court since the statute has not conferred such power. In short, it is his submission that this Court, having exercised its jurisdiction u/s 22 of the Rent Control Act, is now precluded from reviewing its order. He further contended that Section 114 and Order 47 of the Code of Civil Procedure, 1908 have no application to this case since this Court has already exercised jurisdiction under a special enactment. In other words, it is his contention that right of review is a substantive right and it cannot be imported in the special Act. He placed strong reliance on the judgment of a Division Bench of this Court reported in *Gantasala Eswara Rao Vs. Gundimi Somasckhar and Another*, . In that case the Division Bench had an occasion to consider the point as to whether power of review conferred u/s 114 and Order 47 of the Code of Civil Procedure, 1908 is applicable to the Rent Control Act. The Division Bench has held as follows:

"When the Us is disposed of by the Court it becomes *functus officio* in respect of the same issue. The Court cannot arrogate power to itself and rehear the matter which has decided rights of the parties after becoming final. Power of review under the CPC is granted on very limited grounds. In the absence of express or implied conferment of the jurisdiction, Court cannot infer power. Therefore, the power of review conferred under Order 47, on the civil Court or even the High Court while exercising jurisdiction under other laws cannot be imported into the provisions of the Special Act, in the absence of any express provision or gathered by necessary implication. The Act in question is a special and self-contained Act. As such, application for review of an order passed in revision by the High Court is not maintainable."

6. The learned senior Counsel has also placed strong reliance on the earliest judgment of the Madras High Court reported in *S.J.S. Fernandes Vs. V. Ranganayakulu Chetty*, . In that case the learned single Judge had an occasion to deal with an identical question under the Madras Buildings (Lease, Rent and Eviction) Control Act. While dealing with the inherent power of review, it was held in that case that the power of review is not inherent power and such a right

must be conferred by statute. The learned senior Counsel has also relied on a judgment of the Apex Court reported in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, . The Apex Court has also held that the power of review is not an inherent power and it must be conferred by law, either specially or by necessary implication. The learned senior Counsel has placed reliance on a recent judgment of the Supreme Court reported in *Lily Thomas, Vs. Union of India and Others*, Wherein the Apex Court has held that the power of review can be exercised within the limits of the statute. In short, the leaned senior Counsel appearing for the respondent has contended that since the power of review has not been conferred by the special enactment, the same cannot be exercised by this Court. He has also contended that this Court is bound by the Judgment of the Division Bench of this Court and the judgment of the Apex Court.

7. Sri S. Venkata Reddy, learned senior Counsel appearing for the review petitioner, on the other hand, has contended that the power of review is an inherent power vested with the Court. It is his contention that the High Court being a Court of record and being an Apex Court in the State has inherent jurisdiction to review its own order. Section 22 of the Rent Control Act has not specially debarred the right of review which is within the domain of the High Court. The learned senior Counsel has also contended that the power of review is a basic feature of the Constitution and such power cannot be prevented by any special enactment. The learned Senior Counsel has placed strong reliance on the judgment of the Supreme Court reported in *M.M. Thomas Vs. State of Kerala and Another*, . In that case the Supreme Court had an occasion to deal with the power conferred under Kerala Private Forests (Vesting and Assignment) Act, 1971 and considered the power of review u/s 8-C(2) of the Act and Article 2(5) of the Constitution of India. The Apex Court while interpreting Section 8-C(2) of the said Act has held that the power of review can be exercised de hors Section 8-C(2). The Apex Court also held that where the Court is satisfied that there is error apparent on the face of the record, the Court can exercise power of review to correct such error. The learned senior Counsel has further contended that this Court is not bound to follow the judgment of the Division Bench of this Court in *Ganlasala Eswara Rao v. Gimdimi Somasekhar* (supra) and the Judgment of the Apex Court in *P.N. Thakershi v. Pradyumansinghji* (supra) since the judgments suffer from per incuria. The learned senior Counsel relied on the judgment of the Delhi High Court reported in *Bharat Steel Tubes Limited Vs. Ram Piari Setm*, . In that case a learned single Judge of Delhi High Court has held that a review petition against the revisional order of the High Court passed u/s 25-B(8) of the Delhi Rent Control Act, 1958 is maintainable but they are to be invoked on the grounds analogous to the grounds mentioned in Order 47, Rule t of the Civil Procedure Code. The learned senior Counsel finally contended that this Court being a Court of record it can correct the error apparent on the face of record.

8. Taking into consideration the rival submissions made by both the learned senior Counsel, I will address myself to the short question whether a review petition is maintainable in the absence of such a provision in the special

enactment.

9. For proper appreciation of the rival contentions, it is necessary to reproduce Section 22 of the Rent Control Act which is as follows:

"22. Revision :-(1) 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.

(2) The costs of and incident to all proceedings, before the High Court under sub-section (1) shall be in its discretion".

10. Thus it is seen from the above Section that power of revision is conferred on the High Court to call for and examine the records relating to any order passed or proceedings taken under the Rent Control 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 propriety of such reference. This being a special enactment this Court while exercising jurisdiction u/s 22 of the Rent Control Act cannot abrogate itself to a constitutional authority and function under Article 226 or 227 of the Constitution of India. Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 is a self-contained enactment and it does not contemplate power of review and the same cannot be exercised under the guise of exercising, inherent jurisdiction, more so when the Apex Court and a Division Bench of this Court have held that such power of review cannot be exercised. The decision relied on by the learned senior Counsel Sri S. Venkata Reddy reported in *M. Thomas v. State of Kerala* (supra) is not applicable to the facts of this case since this Court has already exercised its jurisdiction u/s 22 of the Rent Control Act and this Court has to address itself whether such a power of review can be exercised on the face of the judgments of the Apex Court and the judgment of the Division Bench of this Court, referred to supra.

11. Following the judgment of the Division Bench of this Court reported in *Gantasala Eswara Rao v. Gundini Somasekhar* (supra) and also the judgment of the Apex Court reported in *P.N. Thakershi v. Pradyumansinghji* (supra) I hold that the review petition is not maintainable and therefore it is liable to be dismissed. In view of the fact that I have held that the review petition is not maintainable, I do not wish to go into the merits of the review petition.

12. In the result, the review petition is dismissed. There will be no order as to costs.