

(1997) 02 AP CK 0062

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 368 of 1991

Kailas Narayana Rao and Others

APPELLANT

Vs

Ankam Narasimha Rao

RESPONDENT

Date of Decision : 20-02-1997

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(3), 18

Citation : (1997) 5 ALT 286

Hon'ble Judges : V. Bhaskara Rao, J

Bench : Single Bench

Advocate : V.S.R. Anjaneyulu, for the Appellant; L.P.R. Vittal, for the Respondent

Final Decision : Allowed

Judgement

V. Bhaskara Rao, J.—The unsuccessful landlords filed this revision petition challenging the judgment in R.C.A. No. 1/1988 on the file of Principal Subordinate Judge, Tenali, dated 9-7-1990, who dismissed the appeal confirming the order of dismissal of the eviction petition in R.C.C. No. 36/1984 on the file of Rent Controller, Tenali. The parties will be referred to as the landlords and tenant.

2. The landlords-revision petitioners filed the eviction petition u/s 10(3)(a)(iii) of A.P. Buildings (Lease, Rent and Eviction) Control Act, for short the "Act", on two grounds viz., (1) wilful default in payment of rent, and (2) bonafide personal requirement for carrying on their gold and silver business. It is averred that the joint family of Gurram Alivelu Mangamma and her two sons sold the house including the demised shop on 15-5-1984 for a valuable consideration to the landlords herein for carrying on gold and silver business by installing the required machinery. The tenant was already in occupation of the demised shop and the landlords informed him about the said requirement. It is also averred that the tenant has not paid the rent and he became a defaulter and they got a registered notice issued requesting him to vacate the premises, but he sent a reply with false allegations. The tenant resisted the petition stating that the petition

schedule premises is part of a non-residential building and he has been sending the rent to the original owners who were residing at Tirupati by money order and the money order for May, 1984, was returned on 13-6-1984. His enquiries revealed that the landlords herein purchased the building including the shop, but the sale was not intimated to him. However, he tendered rent for May, 1984 to the Manager of the joint family of the landlords, but he refused to receive the same unless it is enhanced to Rs. 150/- per month and hence the rent of Rs. 70/- was sent to the said landlords by money order on 15-6-1984 and he also sent a notice requesting him to accept the rent, but both the notice and money order were returned. He then filed R.C.C. No. 20/1984 u/s 8 of the Act seeking permission to deposit the rents. The matter was adjusted between the parties and the landlords expressed readiness to receive the rents directly. Thus, R.C.C.No. 20/1984 was dismissed with the consent of the parties.

3. During the enquiry, one of the landlords, the revision petitioner No. 2 examined himself as P.W.I and he got Exs.A-1 to A-3 marked. Ex.A-1 dated 15-5-1984 and Ex.A-2 dated 10-5-1984 are registered sale deeds executed in favour of the revision petitioners. Ex.A-3 dated 4-4-1984 is certificate of recognition as goldsmith. The respondent-tenant examined himself as R.W.1 and he got Exs.B-1 to B-3 marked. Ex.B-1 dated 14-7-1987 is refused registered notice and Ex.B-2 is the returned money order coupon. Ex.B-3 dated 15-6-1984 is office copy of reply notice issued by the tenant. On a scrutiny of the above oral and documentary evidence, the learned Rent Controller held that the landlords in occupation of a non-residential building are not entitled to seek possession of another non-residential building in occupation of the tenant, and accordingly the eviction petition has been dismissed with costs. Aggrieved by the above order, the landlords carried the matter in appeal to the Principal Subordinate Judge, Tenali, who affirmed the findings of the Rent Controller. Hence this revision petition.

4. Sri V.S.R. Anjaneyulu, learned Counsel for the revision petitioners, strenuously contended that both the Courts below have erred in holding that the premises in their occupation is being used of a non-residential building, but it was a residential house originally and it continued to be a residential house as held by a Division Bench of this Court in *P. Venkata Krishna Rao v. Dr. B. Seetharam*, 1989 (2) ALT 284. He argued that if the above judgment is followed there is no non-residential building in occupation of the landlords and hence they would be entitled to seek eviction of the tenant from the demised shop. He stressed that it has been specifically pleaded in the petition that without the demised shop, the landlords will not be able to enjoy the building and that in other words, they are seeking the demised shop as additional accommodation. He relied on a judgment of this Court in *T. Satyamma v. Smt. T. Susheela*, 1979 (2) ALT 16. Thus he contended that the impugned judgment is to be set aside and the eviction petition may be allowed.

5. On the other hand, Sri L.P.R. Vittal, learned Counsel for the tenant contended

that Exs.A-1 and A-2 sale deeds show that the house was purchased for a non-residential purpose and in fact, the landlords have been running their goldsmith workshop therein and in such a situation they cannot seek eviction of the tenant from another non-residential building. He distinguished the judgment cited supra (1) stating that the building was originally a residential one and the landlords required the same for residential purpose, whereas in the case on hand, the landlords are in fact using the building in their occupation for non-residential purpose and their requirement of the demised premises is also for non-residential purpose and hence the ratio therein is not applicable to this case.

6. Having regard to the above contentions and findings of the Court below the following points arise for consideration:

(1) Whether the building which is in occupation of the landlords is a residential building or a non-residential building?

(2) If point No. 1 is answered affirmatively, are the landlords entitled for the demise premises which is a non-residential building? And

(3) If point No. 1 is negatived, are the landlords entitled for the demised premises as additional accommodation?

Point No. 1:

7. It is strenuously contended by Sri V.S.R. Anjaneyulu, learned Counsel for the landlords that the entire building was being used as a residential building by the original landlords and after the present landlords purchased the same they did not approach the Rent Controller u/s 18 of the Act for conversion of the same into non-residential building and hence the building continues to be a residential building, whereas Sri L.P.R. Vittal learned Counsel for the tenant contended that the sale deeds, Exs.A-1 and A-2 are containing recital that the building was purchased for the purpose of running their goldsmith workshop and it is in fact being used for the aforesaid purpose and in these circumstances, it was to be held, that it is no longer a residential building. I perused the evidence on record and I find that there can be no dispute about the building being used as residential building by the vendors. It is no doubt true that Exs.A-1 and A-2 are containing recital that the building is purchased for the purpose of business and there can be no doubt that it is being in fact used for the purpose of running their gold and silver business and also their workshop. It is also true that no permission is obtained for conversion of the building into non-residential building u/s 18 of the Act. In such a situation, the question is whether the building continues to be a residential building or it has to be treated as a non-residential building.

8. In *P. Venkata Krishna Rao v. Dr. B. Seetharam* (1 supra) a Division Bench of this Court considered a case where a residential building was let out to a practising doctor for the purpose of running nursing home. When the landlord therein filed a petition u/s 10(3)(a)(iii) for eviction of the tenant and in that

context this very question arose for consideration. It is held:

"A building continues to be a residential building unless it is converted as a non-residential building by an order of the Rent Controller and in the absence of such an order a residential building cannot be construed as a non-residential building notwithstanding the fact that the building was let out for a non-residential purpose."

It is further held:

"The building continues to be a residential building and the landlord can recover possession. Use or purpose for which the building is let out is not the conclusive test.

In this case, admittedly there is no order passed by the Controller much less in writing permitting the conversion. There is no corresponding requirement for conversion of non-residential buildings into residential buildings. Residential building should be allowed to retain its nature and character. Otherwise there could have been a converse requirement for conversion of non-residential buildings into residential buildings and the emphasis that the permission should be in writing strengthens this understanding of the intendment of the Legislature. The intention appears to be to avoid conversion of residential buildings into non-residential buildings unless the circumstances require it and the Controller gives his permission in writing. This intention is also evident from Section 12 which deals with recovery of possession by landlord for repairs, alterations or additions or for reconstruction."

It is crystal clear from the above judgment that a residential building continues to hold that character till it is converted into a non-residential building by an order of the Rent Controller u/s 18 of the Act. It is also clear that the user or purpose for which the building is let out is not at all the conclusive test. On the contrary the litmus test in such cases is whether permission u/s 18 for conversion of the residential building into the non-residential one is obtained or not; if it is not obtained, it follows that it continues to be a residential building.

9. Following the ratio in judgment supra (1) and having regard to the evidence on record that the building was originally a residential building and no permission of the Rent Controller is obtained for conversion of the same into non-residential building, I hold that the building in occupation of landlords is a residential building.

10. The point No. 1 is answered accordingly.

Points Nos. 2 and 3:

11. Turning to the evidence on record and findings of two Courts below, it may be seen that the landlords are in occupation of one building which is being used for a commercial purpose and on that ground it has been held that the landlords are not entitled for eviction of the tenant from another non-residential shop. But

I have held under point No. 1 that the above building continues to be a residential building in the eye of law and in that view of the matter there is no other non-residential building in occupation of the landlords and therefore, the ratio in *Vidyavathi Bai v. Shankerlal*, 1987 (2) ALT 550 is not applicable to this case. Therefore, the landlords will be entitled to seek eviction of the tenant from the demised shop as additional accommodation.

12. It may be recalled that in the eviction petition the landlords have asserted in so many words that they will not be able to enjoy the building without the demised shop. Evidently they are seeking this accommodation as additional accommodation. Another judgment of this Court in *T. Satyamma v. Smt. T. Susheela* (2 supra) is relied on. The facts in that case are as under:

"The respondent's family is carrying on business in the manufacture of beedis in the name of G.I. Beedi Works. Her husband took the ground floor of the suit premises for residence about 40 years back and due to necessity for larger accommodation for both residence and business the respondent landlady purchased the suit premises on 19-7-1972. The suit building has three municipal numbers to 8-2-77, 8-2-78 and 8-2-79. The landlady is residing in the ground floor. The petitioner is residing in the first floor, which bears No. 8-2-78. The landlady has got her beedi factory at Rasoolpura, Secunderabad paying a rent of Rs. 60/- towards rent. That apart, the respondent's family consists of herself, her husband, mother-in-law's two major daughters, a minor daughter and a maid servant. The present accommodation is three rooms and a kitchen, which is insufficient. She wants to shift her residence to the first floor which is in occupation of the petitioner and to use the ground floor as godown for keeping beedi leaves. After purchasing the suit premises the respondent issued a notice to the petitioner that she requires the premises in question for her own occupation." On consideration of the evidence in that case it is held:

"In the present case, the landlady sought additional accommodation on the ground that the ground floor occupied by her was not sufficient for accommodating the members of her family. It all depends upon the nature of adjustment of the premises, which the landlady may ultimately seek as to which portion she wants to retain for residential purpose and which one for non-residential purpose. This will be only after the landlady takes a final decision in the matter after the tenant has vacated the premises. If she does not seek for the necessary permission, it is only she must face the consequences therefor. For that purpose the eviction of the tenant need not be stayed."

13. The facts of the above case are almost identical to the facts of the case on hand. The landlords in this case are no doubt in occupation of the main building and they have approached the Rent Controller on the ground that they are unable to enjoy the building effectively without the demised shop. It is understandable that the shop in question appears to be on the front side and therefore, it has its location wise importance and therefore, there is nothing wrong in the landlords seeking eviction of the tenant on the ground of additional

accommodation. I am therefore, of the view that both the Courts below have fallen in error in dismissing the eviction petition on the sole ground of availability of another non-residential building to the landlords which in law is to be construed as a residential building. The revision petition is therefore, merited and fit to be allowed.

14. In the result the Revision Petition is allowed and the judgments of both the Courts below are set aside. Consequently, the eviction petition R.C.C. No. 36/1984 stands allowed. There will be no order as to costs. The tenant is granted two months time for vacating the premises, failing which the landlords will be entitled to evict him through the Rent Controller.