

(2006) 06 AP CK 0060

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 4683 of 2002

Kanamarlapudi Venkataratnamma and Others

APPELLANT

Vs

Chunduru Padmavathi

RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

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

Citation : (2006) 6 ALD 89 : (2006) 6 ALT 138

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; V. Amar Kumar, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—Petitioners herein are the tenants and the respondent is the landlady. The landlady filed R.C.C. No. 38 of 1993 on the file of the Rent Controller, Nellore for eviction of the tenant-Ranganayakulu, the sole respondent therein. During the pendency of the said case he died and his wife and two sons were brought on record as his legal representatives as respondents 2 to 4 who are the petitioners herein. The said eviction petition was filed u/s 10(2) (1) and 10(3) (a) (1) (b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for brevity, "the Act") seeking eviction of the tenant from the petition schedule property bearing D. No. 18/210 situated in Sikharamvari Street, Nellore Town on the ground of wilful default in payment of rents and that the premises is bonafidely required for the personal occupation. The rent payable as on the date of filing the eviction petition was Rs. 250/- per month. The tenancy is oral and the rents are payable on or before the 5th day of the succeeding month and the said premises is a residential premises let out to the 1st respondent therein.

2. For the purpose of convenience, the parties are hereinafter referred to as they are arrayed in the trial Court.

3. There is no dispute that the petitioner is the landlady and the 1st respondent was the tenant. After the death of the 1st respondent his legal representatives, respondents 2 to 4 are the tenants. According to the petitioner the tenant has been paying the rents regularly, but thereafter started paying the rents irregularly in spite of the objections taken by the landlady.

4. It is stated that there are irregular payments of rents from August, 1982 to December, 1992 without any reason or justification for the delay in payment of the rent. The said payments are evidenced by the entries in the notebook maintained by the 1st respondent. Thus it is the case of the petitioner that the 1st respondent committed wilful default in payment of rents from August, 1982 to December, 1992. It is stated that the rents for February, 1993, March, 1993 were sent by Money Order which were received and thereafter the rent for the month of May, 1993 was sent in June, 1993. Since the rent for the month of April, 1993 was not sent the rent sent for the month of May, 1993 was refused. Accordingly, the subsequent Money Orders sent towards the rents payable for the months of July, August and September were also refused on the ground that the rent for the month of April, 1993 was not paid. It is further stated that the rent for the month of April, 1993 is still in arrears and therefore there is a wilful default.

5. Insofar as the bona fide requirement of the premises is concerned, it is stated that the petitioner's family, consisting of herself, her husband, two sons and one daughter, are living in a house jointly owned by the husband of the petitioner and his two brothers and all the three families are residing therein and the petitioner's children have grown up and their marriages have to be performed and the petitioner has been experiencing much inconvenience and trouble in the said house since the same is insufficient and unsuitable for their residence. The other averments made in the eviction petition with regard to other contentions may not be just and proper as the Rent Control Appellate Court considered the aforesaid two grounds of wilful default and bona fide requirement only.

6. In fact, the 1st respondent filed a counter admitting the monthly rent of Rs. 250/- and stated that the petition schedule property was originally owned by one Kalyanamma and after her death the same was succeeded by her daughter-Nancharamma and subsequently after her death the said property devolved on her daughter, namely Padmathi, i.e., the petitioner. Thus the petitioner succeeded the said property and he is the tenant of the said premises for the last thirty one years. It is stated that the petitioner's husband or the petitioner used to come to the house of the tenant and take the rent at different intervals at their convenience and used to endorse the receipt of the monthly rents in a pocket notebook maintained by the tenant. As such it cannot be said that there was a default muchless wilful default. It is further stated that as per the convenience of the petitioner only they used to collect the rents and therefore it cannot be said that there was irregular payment and also it cannot be said that the tenant was a wilful defaulter in payment of rents. It is stated that though the

tenant has not committed any wilful default in payment of rents, all of a sudden the landlady wanted to enhance the rent from the month of March, 1993 from Rs. 250/- to Rs. 1000/- per month and when the tenant expressed his inability to pay the enhanced rent they have started interfering with the peaceful possession and enjoyment of the same and therefore the tenant filed O.S. No. 408 of 1993 and obtained a temporary injunction in I.A. No. 612 of 1993 on the file of the III Additional District Munsif, Nellore. It is stated that the rent payable for the months of February and March, 1993 was sent by Money Order and rent for the month of April, 1993 was also sent by Money Order, but the landlady refused to receive the same. The monthly rents payable for the months of July, August and September were also sent by Money Order and the petitioner refused to receive the same. It is stated that a draft for a sum of Rs. 1500/- towards the rent of April, 1993 to September, 1993 was sent with a request to inform the bank account of the landlady to deposit the monthly rents but she refused to receive the said demand draft and therefore the tenant filed an application u/s 8 of the Act in R.C.C. No. 34 of 1993 seeking permission to deposit the rents before the Rent Controller and pursuant to the directions of the Rent Controller the rents were deposited from April, 1993 to April, 1994 and subsequent rents were also deposited in the account of the petitioner in the State Bank of India and Indian Bank, Nawabpet, Nellore and the landlady received the said rents. Thus, it is the case of the tenant that there was no wilful default.

7. Insofar as the bona fide requirement of the residential house is concerned it is stated that the petitioner is having three more buildings in Nellore Town and the averment that the said petition schedule property is bonafidely required is incorrect and not genuine. After the death of the 1st respondent his legal heirs, the respondents 3 and 4, also filed a counter reiterating the same reply and on the aforesaid pleadings the Rent Controller framed the following points for consideration:

1. Whether the appellants/tenants have committed default in payment of rents in respect of the petition schedule property, if so, the default committed by them is willful and deliberate?
2. Whether the petitioner bonafidely requires the petition schedule property for her personal occupation ?

The learned Judge answered both the points in favour of the landlady and ordered eviction of the petition schedule property by order, dated 17-08-1998, against which the tenants filed C.M.A. No. 12 of 1998 on the file of the Principal Senior Civil Judge, Nellore and the Rent Control Appellate Court also dismissed the same confirming the order of the Rent Controller on both the grounds.

8. On behalf of the petitioner the petitioner herself was examined as P.W.1, her husband was examined as P.W.2 and her husband's brother was examined as P.W.3. Exs.A1 to A6 were marked. On behalf of the respondent the elder son of the original tenant who is the 1st petitioner herein was examined as R.W.1 and

another tenant was examined as R.W.2. Exs.B.1 to B.6 were marked.

9. It is not in dispute that the landlady never refused to receive the rents nor made any objection for irregular payments. Even according to her own evidence and according to the evidence of her husband there is no dispute with regard to the payment of the rent upto March, 1993. Insofar as the rent payable for the month of April, 1993 is concerned it was sent by Money Order under Ex.A4 but the same was refused by the landlady. Thereafter the rent payable for the month of May, 1993 onwards was also sent by Money Orders under Exs.B.3 to B.6. In fact, the rent sent by way of Money Order for the month of May was also received without any protest under Ex.B.2. The rents sent by way of Money Orders payable for the months of March onwards were not received on the ground that the rent for the month of April has not been sent. In fact, the rent for the month of April was also sent but the same was refused to be received. Therefore the tenant having issued a legal notice under Ex.A5 by way of a demand draft for a sum of Rs. 1500/- towards the arrears of rent, requested the petitioner to inform the bank account so as to enable her to deposit the monthly rents regularly. As the Money Order was refused and the bank account was also not intimated the tenant has to file R.C.C. No. 34 of 1993 on the file of the Rent Controller u/s 8 of the Act to permit her to deposit the monthly rents of the petition schedule property into the Court and after the learned Judge accorded permission to her the rents were being continuously deposited and the entire rents have been withdrawn by the landlady.

10. In the light of the aforesaid evidence the learned Counsel appearing for the petitioners submits that there is no wilful default in payment of rents on the part of the tenants.

11. u/s 10(2) (a) (1) of the Act if the Rent Controller satisfies that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of the tenancy with the land lord or in the absence of any such agreement by the last day of the month following that for which the rent is payable. The question that arises for consideration is Whether the tenant has not paid or tendered the rents. If there is a delay in payment and if the rents are not tendered intentionally then only it is to be considered that there is a wilful default in payment of rents. Admittedly, the practice that was in vogue in between the parties is that the landlady herself used to go to the tenants' place and collect the rents irregularly and used to make endorsement in a notebook maintained by the tenants under Ex.A.3. Admittedly the landlady never objected or protested with regard to the irregular payment of rents.

12. Both the Courts held that there is a wilful default in payment of rents in not tendering the rents regularly. Having regard to the facts and circumstances I am of the opinion that the said finding recorded by both the Courts below is against the settled principles of law laid down by this Court and the Apex Court.

13. The Apex Court in Premchand Ranka v. A. Vasanthraj Khatod and Ors. 1992(1) An.W.R.41 held that if payment made in lumpsum has been accepted by the landlady and this method of payment went on for quite a long time it cannot be said that there is wilful default on the part of the tenants.

14. The Full Bench of this Court in Vinukonda Venkata Ramana Vs. Mootha Venkateswara Rao and Another, held that it is required to take into consideration the fact that the landlord may waive his right to maintain a petition for eviction only by reason of unequivocal acceptance of rent but also by reason of his other conduct.

15. When the Rent Controller is satisfied that the tenants' venture to pay or tender the rents is wilful he can order eviction of the tenant. The question of wilful default to pay or tender rent to the landlord by the tenant is a mixed question of law and fact. Where the finding recorded by the Appellate authority is illegal, erroneous or frivolous, the High Court having regard to the ambit of the revisional jurisdiction u/s 22 of the Act will be well within the jurisdiction to reverse the finding impugned before it.

16. In view of the aforesaid facts and circumstances of the case and in view of the decision of the Full Bench of this Court and the judgment of the Apex Court, I am of the opinion that the landlady was not particular in collecting the rents regularly and either the landlady or her family members used to accept the rent as and when it was tendered by the tenant and used to make an endorsement in the notebook. It appears that only when the landlady demanded to enhance the rent to Rs. 1000/- and started interfering with the peaceful possession and enjoyment, the tenant filed a civil suit and obtained injunction and therefore the relations have been strained only for the first time during the month of March, 1993. Admittedly the rent for the month of March sent by Money Order was received by the petitioner but the subsequent rents sent by Money Orders were refused and therefore it cannot be said that the tenant has failed to tender the rents. In fact, the tenant filed application u/s 8 of the Act and continuously paying the rents. Therefore, I am of the opinion that there was no wilful default on the part of the appellants-tenants to pay the rents and accordingly the respondent herein is not entitled to seek eviction on the ground of wilful default in payment of rents.

17. Insofar as the bona fide requirement is concerned, I am of the opinion that as a matter of fact, the landlady is entitled to seek eviction of the tenant in respect of the residential building. Admittedly, she is not the exclusive owner of the building in which she is residing and therefore there is no bar u/s 10(3) (a) (1) (b) of the Act in seeking eviction of the tenant. However, u/s 10(3) (a) (1) (b) of the Act if the land lord is having more than one building and if there is a bona fide requirement of another building instead of the existing building in which he was in occupation and also seeks eviction of the tenant in occupation of residential building, even u/s 10(3) (a) (1) (b) of the Act it cannot be said that the land lady is in occupation of one building as that building is not exclusively

owned and possessed by her and that building is owned by her husband along with his two brothers and therefore she requires the said premises in occupation of the tenant for her occupation. It is clearly stated in her petition that her family consists of her husband, two sons and one daughter and the existing building is not sufficient for the three families and therefore she would like to occupy the building in occupation of the tenant and in view of the facts and circumstances, I am of the opinion that both the Courts below rightly held that the landlady bonafidely requires the said premises for her self-occupation. In view of the aforesaid facts and circumstances I do not see any infirmity or otherwise in the said finding of fact recorded by both the Courts below in ordering eviction of the tenant for the bona fide requirement of the said petition schedule property for her own occupation.

18. Accordingly, the Civil Revision Petition is dismissed confirming the order of the Courts below ordering eviction only on the ground of bona fide requirement. However, the tenant is granted five months time from today to vacate and hand over the vacant possession of the same to the landlady.