

(1974) 02 AP CK 0003

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1701 of 1973

Kilari Sreenivasulu Naidu

APPELLANT

Vs

Kandapalli Subrahmanyam

RESPONDENT

Date of Decision : 28-02-1974

Acts Referred:

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

Citation : AIR 1974 AP 211

Hon'ble Judges : Ramachandra Rao, J

Bench : Single Bench

Advocate : P. Anjeneya Sarma, for the Appellant; A. Gangadhara Rao, for the Respondent

Judgement

1. This is an application by a tenant challenging the order of eviction passed against him by the Rent Controller in R.C.P. No. 15 of 1970 which was confirmed by the Subordinate Judge, Nellore in C.M.A. No. 16 of 1972. The eviction was sought only on the ground that the building was a non-residential one was required by the landlord for carrying on grocery business. This application was resisted by the tenant alleging that the requirement of the landlord was not bona fide. The Rent Controller held that the landlord bona fide required the building for his personal occupation to do business therein and accordingly allowed the petition and ordered the eviction of the tenant. The petitioner carried the matter in appeal to the Court of the Subordinate Judge, Nellore and the learned Subordinate Judge confirmed the order of eviction. Hence the revision petition.

2. In this revision petition Sri Anjeneya Sarma , the learned counsel for the petitioner firstly sought to challenge the concurrent findings of the Courts below that the requirement of the building by the landlord was not bona fide. But I do not think there is any merit in this submission. Both the Courts below on a proper appreciation of the relevant evidence came to the conclusion that the landlord requires the building for carrying on his business and that it is bona fide. I do not, therefore, find any ground for interfering with the same.

3. But it is strongly contended by Sri Anjeneya Sarma, the learned counsel for the petitioner that the landlord himself was evicted from another building, which he was occupying as a tenant that the landlord of that building did not personally occupy the same within the time prescribed by the Act and that the landlord-respondent is therefore entitled to ask for restoration of possession of the said building u/s 10 (5) (a) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act. If so, it cannot be said that the landlord-respondent is not entitled to a building of his own or to the possession of which he is entitled u/s 10 (8) (a) (iii) and therefore the eviction petition is liable to be dismissed. The argument of the learned counsel for the petitioner is that in as much as the landlord is entitled to ask for possession of the building from which he was evicted u/s 10 (5) (a), it cannot be said that he is not occupying a non-residential building to the possession of which he is entitled under the Act and hence he cannot ask for eviction of the petitioner from the building in question. But I am not persuaded that there is any merit in this contention. The Supreme Court has held in *M. Padmanabha Setty Vs. K.P. Papiiah Setty*, , dealing with similar provisions of the Mysore House Rent and Accommodation Control Act, as follows :

"The object of the Act is to prevent unreasonable evictions of tenants. Can it be said that the Legislature is considering it to be unreasonable for a landlord to shift to his own premises while he is in occupation of tenanted premises over which he has not an absolute right of possession but only a right to remain in possession till one of the conditions in S. 8 (2) is satisfied and over one of which he has no control? For instance the landlord may require the premises for repairs or reconstruction to the neighbours may complain that the tenant is guilty of nuisance or annoyance , or the landlord may think that the tenant has committed some acts of waste as are likely to impair materially the value or utility of the house. If any of these conditions is proved, he is liable to be evicted. In our view in the context the words "entitled to possession" have a more positive context and are more akin to the right of possession which an owner has in respect of the building owned or occupied by him."

In view of this clear pronouncement of the Supreme Court I do not think the submission of the learned counsel for the petitioner is well founded. Further in the instant case the petitioner has actually been evicted from the non-residential building which he was occupying as a tenant. Therefore this is a stronger case than the one considered by their Lordships of the Supreme Court in the above ruling. Sri Anjaneya Sarma relies upon another decision of the Supreme Court in *P. Malaichami Vs. M. Andi Ambalam and Others*, and contends that so long there is any alternative remedy available under the Act, it is not open to the landlord to seek eviction of the tenant. But I do not think this submission can be accepted. The above ruling relied upon by him arises out of Representation of the People Act and has no application to the facts of the present case. Further u/s 10 (5) (a) of the Act it is not obligatory on the part of the landlord to ask for restoration of possession of building from which he was evicted. Nor can it be said that there is

an alternative remedy provided under the Act as contended by the learned counsel for the petitioner. Moreover I do not see why the landlord, instead of seeking possession of his own non-residential building on the ground that it is required for his personal occupation for carrying on business, should seek restoration of possession of a building in which he was a tenant and from which he was evicted. In the circumstances I am unable to agree with the contention of the learned counsel for the petitioner that the petition for eviction was not maintainable. In this view the revision petition fails and is dismissed with costs. The petitioner is given time till 31-3-1974 to vacate the premises.

4. Petition dismissed.