

(2002) 03 AP CK 0066
In the Andhra Pradesh High Court
Case No : CRP No. 2521 of 1991

Konagandla Saraswathi and Others

APPELLANT

Vs

Pulipaty Kumarswamy

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

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

Citation : (2002) 3 ALD 315 : (2002) 5 ALT 23 : (2002) 1 APLJ 354

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : P. Veera Swamy, for the Appellant; Panduranga Rao Kulkarni, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—This civil revision petition has been preferred by the legal heirs of the deceased Lakshmayya who is the tenant against the decree and judgment passed in RC No. 45 of 1985, on 28th June, 1991 by the Principal Subordinate Judge, Guntur confirming the decree and judgment of the learned Rent Controller, Guntur.

2. In Rent control proceedings, one Konagandla Lakshmayya is the tenant and during the pendency of RCA 45 of 1985, he died and subsequently, his legal representatives i.e., petitioners 1 to 4 herein are brought on record. In this background of the case, the parties will be arrayed as landlord and tenant for the sake of convenience.

3. The backdrop of the facts of the case, which are relevant for appreciation of point involved in this revision, is as under: The land lord filed a petition u/s 10 of the Rent Control Act alleging that the property originally belonged to one Kotharaju Bhaskararao and the same was leased to the tenant on a monthly rent of Rs. 125/-. The landlord has been carrying on business in gunnies for the past 15 years. The petitioner purchased the property from the said Kotharaju

Bhaskararao and allowed the tenant on a monthly rent of Rs. 125A prior to the purchase of the property, the said Kotharaju Bhaskararao filed RCC 35 of 1975 against the tenant for eviction and the same was dismissed, against which RCA No. 50 of 1977 was filed and the same allowed, against which a revision was preferred before this Court and this Court allowed the revision and remanded the matter to the lower appellate Court. The petitioner has no other premises of his own to carry on the business and now he requires the premises in question on the ground of bonafides requirement.

4. The tenant filed the counter admitting the tenancy, the ownership of the building and the rent. The tenant had been continuing in the premises for the past 12 years by doing business. The petitioner out of jealousy in business competition, purchased the building from the original owner. There are no grounds to allow the present application.

5. Before the Rent Controller, PW1 was examined on behalf of the landlord and Exs.A1 to A3 were marked. RWs.1 and 2 were marked on behalf of the tenant, but no documents were marked. The learned Rent Controller having considered the facts and circumstances of the case in the evidence adduced on either side, found that the landlord is in need of the present building for his personal use and occupation. Having aggrieved by the same, the tenant preferred an appeal in RCA No. 45 of 1985 before the Rent Control Appellate Court, Guntur. The learned Rent Control Appellate Court having considered the contentions of both the parties, found that the requirement of the landlord is a bona fides one and the order of the Rent Controller in allowing the petition filed by the landlord, is not erroneous and the same does not warrant any interference. Aggrieved by the same, the present revision has been preferred.

6. Heard Mr. A. Veeraswamy, the learned Counsel for the tenant-revision petitioners and Mr. Pandurangarao, Kulkarni the learned Counsel for the landlord.

7. It is contended by the learned Counsel for the tenant that, the landlord is in safe occupation of a rented premises and he has not made out a case requiring the present premises. Since the tenant filed CMP seeking to take additional evidence viz., the lease deed enhancing the rent subsequently for 11 months, and also the sale deed in favour of daughter-in-law the matter has to be remanded back so as to adduce evidence on either side for fresh disposal of the case. The consequent purchase of the property in the name of daughter-in-law by the landlord, disentitles his claim for bonafide requirement. This Court can also take cognizance of the events and developments subsequent to the filing of the case while deciding the facts on hand.

8. In support of his contentions, he relied on a decision of the Apex Court reported in *Pasupuleti Venkateswara Rao v. Motor and General Traders*, 1975 (1) SCC 771, wherein it is held thus:

"For making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and

in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceedings provided the rules of fairness to both sides are scrupulously obeyed."

9. He further relied on a decision of the Apex Court reported in *Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina*, , wherein it is held thus:

"It cannot be overlooked that three Courts have held concurrently in this case that the respondent has proved that he requires the suit premises bona fide for his personal need. Such concurrence, undoubtedly, has relevance on the question whether this Court should exercise its jurisdiction under Article 136 of the Constitution to review a particular decision. That jurisdiction has to be exercised sparingly. But, that cannot possibly mean that injustice must be perpetuated because it has been done three times in a case. The burden of showing that a concurrent decision of two or more Courts or Tribunals in manifestly unjust lies on the appellant. But once that burden is discharged, it is not only the right but the duty of this Court to remedy the injustice."

In *P.V. Papanna and others Vs. K. Padmanabhaiah*, , it is held thus:

"This Court has consistently held that when eviction of a tenant is sought for on the ground of personal need of the landlord, such need must not only exist on the date of suit but must also exist when higher Courts deal with the order of eviction in appeal or in revision. Reference in this connection may first be made to *Hasmat Raj v. Raghunath Prasad* where relying upon its earlier decision in the case of *P. Venkateswarlu v. Motor and General Traders*, this Court held that it was incontrovertible that where possession was sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction was made. This Court emphasized that if during the progress and passage of the proceeding from. Court to Court subsequent events had occurred which, if noticed, would non-suit the landlord, the Court had to examine and evaluate the same and mould the decree accordingly. This Court observed that the tenant was entitled to demonstrate that the need or requirement of the landlord no more existed by pointing out such subsequent events to the Court, including the appellate Court. In such a situation, it could be incorrect to say that as the decree or order for eviction was passed against the tenant he could not invite the Court to take into consideration subsequent events."

In *Govind v. Dr. Jeetsingh* (1988) 1 SCJ 66, it is held thus:

"It might have been possible in the instant case to hold that the High Court was in error in interfering with the findings of the first appellate Court but in the facts of this case, we need not rest our decision on that basis, because subsequent to the decision of the High Court the first wife of the landlord had died and three rooms which were in her occupation have become vacant. In that view of the matter and taking into cautious consideration all the subsequent events it must be held that there was no more bona fide need of the landlord to evict the tenant

of the premises in question."

In Ramesh Kumar Vs. Kesho Ram, , it is held thus:

"The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Whenever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a "cautious cognizance of the subsequent changes of fact and law to mould the relief"

In Smt. Vidayavathi Bai v. Shanker Lal 1987 (2) ALT 550, it is held thus:

"Under Section 10 (3) (a)(iii) of the Act, a landlord in occupation of a non-residential building is not entitled, for carrying on his business or commencement of a business, to get back possession of another non-residential building in the occupation of tenant; the bar under the section against securing eviction of the tenant of such non-residential building is absolute. Suitability, convenience and sufficiency of the non-residential building already in occupation of the landlord for carrying on the business of the applicant (landlord) or to meet the bona fides need of any other member of the family of the landlord, independent of and over and above the context of construing the provisions in Section 10(3) (a)(iii) of the Act, which in clear terms, interdicts the landlord, in absolute terms from seeking recovery of the non-residential building belonging to him in the occupation of the tenant."

10. On the other hand, it is contended by the learned Counsel for the landlord that, the concurrent findings of both the Courts below, do not warrant any interference by this Court. The subsequent event does not prohibit the landlord from seeking eviction by the landlord. In support of his contention, he relied on a decision reported in S. Gopinath Pillai and others Vs. Karamsetti Venkateswarlu and another, , it is held thus:

"The Courts below have concurrently found that the landlord has made out a case for bona fides requirement of premises for running the saw mill. In fact the landlord himself constructed a building for running a saw mill for himself, but for various reasons, he could not run, but that does not mean that the landlord is incapable of doing any business. It is also to be noted that one of the members of the family of the tenant are doing business in Country Wood Depot, but that would not in any way prohibit the landlord for making claim for eviction. What is required to be established is a bona fides requirement for running the proposed business. Even if some of the members of the joint family are doing other business, that would not be a bar for another member of the same joint family to seek eviction on the ground of bona fides requirement.

The bona fides need or requirement of landlord must be judged with reference to the need and not desire. Therefore, it must be established that it is necessary for

him to occupy and the necessity must be bona fides or genuine. The Act is basically conceived in the interest of the tenant protecting them from being evicted illegally and arbitrarily. Therefore, the onus is heavy on the landlord to establish the bona fides requirement. Once such a finding is reached on the basis of the evidence adduced by the parties, it cannot be disturbed, unless the findings suffer from legal infirmity."

In *Vallampati Kalavathi v. Hari Ismail* 2001 (3) ALD 20, the Apex Court held thus:

"As the language of the section suggests, the revisional power vested in the High Court is to be used for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceeding, and if satisfied that the order/orders suffer any such vice the High Court may pass such order in reference to the proceeding as it thinks fit. The expression "legality" "regularity" or "propriety" are undoubtedly wider than mere correction of jurisdictional error. But even such revisional power cannot be exercised to upset the concurrent findings of fact recorded by the Forums below merely on the ground that the High Court is inclined to take a different view on the materials on record in the case. We should not be understood to be saying that the concurrent findings of fact can in no case be interfered with in revision. For such interference it has to be shown that the findings recorded by the Forums below suffer from any inherent defect or are based on inadmissible or irrelevant materials or are so perverse that no reasonable person will come to such conclusion on the materials."

In *Smt. G. Kaushalya Devi Vs. Ghanshyamdas*,

"It will be seen that provisions of Section 8(3)(a)(ii) of the Mysore Act are quite in pari materia with the provisions of Section 10(3) (a)(i) of the Act. We, therefore, cannot accept the contention of the appellant that since the respondent is already having his business in a leased premises of which he is in possession, he cannot seek eviction of the appellant. It is not disputed that order conditions of Section 10(3)(a)(iii) are satisfied in favour of the landlord. A contention was also raised that another shop had been purchased by the mother of the respondent with the amount loaned by the respondent and that on that ground it could also be said that the respondent was entitled to possession of that shop as well. This contention has been repelled by the High Court and rightly so. High Court upheld the finding of the Courts below that the respondent required the suit premises for his personal occupation for conducting the business and that these findings were neither perverse or based on any extraneous or relevant material. High Court was also of the view that the Act did not prohibit eviction of the tenant by the landlord if the members of the family of the landlord possessed other non-residential premises. Even though the respondent and his brothers were conducting business on partnership basis in M/s. Seetha Traders, yet it was no ground to contend that the requirements of respondent is not bona fide. We agree. No other submission has been made before us to take any different view other than that taken by the High Court."

11. In a Full Bench judgment of this Court reported in Vijayalaxmi Printing Press Vs. Nandula Shankar and Others, , it is held thus:

"A.P. Buildings, (Lease, Rent and Eviction) Control Act, 1960 (Act 15 of 1960) Section 10(3)(a)(iii) Landlord not in occupation of a non-residential premises of his own but conducting his business as a tenant in a non-residential premises belonging to another person. Not barred from seeking possession of his building in occupation of tenant for his bona fides requirement Landlord need not vacate the non-residential premises in his occupation before filing the eviction petition against his tenant"

12. I have perused the judgments of both the Courts. The landlord has admittedly occupied a rented building carrying on business, but that does not preclude him from seeking eviction of his own non-residential building. In such an event, the stress made on the subsequent events i.e., the alleged execution of the lease deed for a period of 11 months during the pendency of the proceedings and the alleged purchase of the building in the name of daughter-in-law, has no material bearing on the facts of the case. Taking cognizance of subsequent events, depends upon the factual and situational differences characterizing a particular case, and, there is even as a matter of fact no hard and fast rule governing the same, and, it cannot be construed as a general rule. But, the fact remains to be considered is that in an eviction proceedings on the ground of bonafide requirement of premises by the landlord, the subsequent events may be taken into consideration so as to find out whether the landlord still requires the premises in possession of the tenant. At this juncture, it is pertinent to note that originally, the rent control proceedings in RCC No. 18 of 1979 have been launched in the year 1979 and the said case was allowed holding that the landlord is in need of the premises in question. Having aggrieved by the same, the tenant carried the matter in appeal in RCA No. 45 of 1985 which was dismissed on 28th June, 1991, holding that the landlord has no other non-residential building of his own and he is not in occupation of his own building for carrying on his business and that he has been in occupation of the rented premises for his business purpose and therefore, the landlord is entitled for eviction of the tenant. Having aggrieved by the same, the present revision petition has been preferred in the year 1991. Thus, this is a chronic lis consuming two decades from the year 1979, the intendment of the Act is to enable the landlord to revere possession of his non-residential building on occupation of tenant, if his requirement is bonafide for the purpose of business which he is carrying on. In the instant case, the concurrent findings of both the Courts below as to the bona fides requirement of the landlord are not disturbed due to any substantial subsequent changes.

13. The Rent Controller is justified in ordering eviction of the tenant holding that the landlord is in need of the premises in question for his personal use and occupation. The lower appellate Court below is justified in holding that since the landlord has no other non-residential building of his own and he is not in

occupation of his own building for carrying on his business and he has been in occupation of the rented premises for his business purpose, the landlord is entitled for eviction of the tenant, and that the requirement of the landlord is a bona fides one.

14. The learned Counsel for the tenant having placed reliance on the subsequent events and legal propositions, has taken much strain to convince the Court that due to subsequent events, the landlord is not entitled for the relief sought for. But, in the present facts and circumstances of the case, the legal propositions relied on by the learned Counsel for the tenant, have no bearing on the present facts of the case and apart from that, much weight cannot be attached to the alleged subsequent events, which are not material one inasmuch as the purchase of the building in the name of daughter-in-law has no basis and no bearing and likewise, the alleged lease deed is confined to a particular period alone, which was already expired. On the other hand, the decisions relied on by the learned Counsel for the landlord lend support to the case of the landlord.

15. In the facts and circumstances of the case, in my considered opinion, the findings recorded by both the Courts below, do not suffer from any inherent defect or are based on inadmissible or irrelevant material and they do not warrant any interference by this Court.

16. In the result, the civil revision petition filed by the tenant, is dismissed confirming the concurrent findings of the both the Courts below. However, the tenant is hereby granted 6 months time to vacate the premises. There will be no order as to costs.