
(1995) 04 AP CK 0012

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 409, 462 and 463 of 1994

Kondeti Suryanarayana and Others

APPELLANT

Vs

Pinninti Seshagiri Rao

RESPONDENT

Date of Decision : 28-04-1995

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 12, 12(1)

Citation : (1995) 2 ALT 100 : (1995) 2 APLJ 67

Hon'ble Judges : S.V. Maruthi, J

Bench : Single Bench

Advocate : K. Chandrasekhar, P.R. Prasad and P. Suresh, for the Appellant; T. Veerabhadrayya and T.S. Anand, for the Respondent

Judgement

S.V. Maruthi, J.—These three Civil Revision Petitions are disposed of by a common order.

2. The interesting question involved in these Civil Revision Petitions is whether the landlord is entitled to seek eviction of the tenants u/s 12 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (in short "the Act").

3. The facts, in brief, are as follows:-

The landlord filed eviction petitions seeking eviction of the three tenants who were in three shops situated in the North-Eastern corner of the landlord's site on the ground that there was wilful default in payment of rent and also on the ground that the landlord's family has been advised for the last several years that as per Vasthu Sastra on the North-Eastern corner shops should not be constructed and that on account of those shops on the North-Eastern corner untold misery and grievance and evil was caused to the family and on account of which the landlord's father and mother were bed-ridden for several years before they passed away and the landlord's health also has been very indifferent for the last several years, therefore, he consulted pandits of the Vasthu Sastra and they

advised him to remove the three shops on the North- Eastern corner and that it would do good and bring welfare and auspicious period to the family. Therefore, the landlord decided to demolish the three shops on the North-Eastern corner. The tenants filed counter-affidavits denying the allegation of wilful default in payment of rent and also stating that the scheduled building has been in existence for the last 30 years and also denying the right of the landlord to demolish the building. The Rent Controller allowed the eviction petitions holding that the request of the landlord is reasonable and having purchased the property it is for him to deal with the property in his own way and also enjoy the same in his own way and there is no bar u/s 12 of the Act for eviction.

4. On appeal, the appellate authority confirmed the order, against which the tenants filed the present revisions. Before the Rent Controller as well as the appellate authority the landlord gave an assurance that in the event of reconstruction of the shops he would rent out the shops to the same tenants.

5. I would have dismissed the revisions in view of the concurrent finding of both the Courts below that the landlord is entitled to demolish the building which is a reasonable and bona fide requirement and in view of the assurance given by the landlord that he would rent out the shops in the event of the reconstruction to the tenants. However, in view of the controversy that was raised during the arguments I am dealing with the controversy in detail.

6. Mr. T. Veerabhadrayya, the learned Counsel appearing for the respondent, submitted that Section 12 of the Act is unreasonable and arbitrary as it imposes a restriction on the landlord to let it out to the same tenants in the event of the demolition of the shops on reconstruction. Counsel also submitted that under the Act G.O.Ms. No. 636, G.A.D. (Accommodation), dated 29-12-1983 (in short "the G.O.") was issued exempting the buildings from the provisions of the Act for a period of ten years from the date of construction of the building. Whether the building is newly constructed or constructed after demolition of the existing building it continues to be a new building. No distinction should be made between the building constructed for the first time and the building constructed after demolition of the existing building and, therefore, the G.O. should be extended to the shops which are to be constructed after demolishing the existing structures. If the G.O. is not extended Section 12 of the Act is hit by the vice of the arbitrariness and, therefore, violative of Article 14 of the Constitution of India. The learned Counsel also relied on a number of judgments in support of his contention. The relevant portion of Section 12 of the Act reads as follows:-

"12. Recovery of possession by landlord for repairs, alterations or additions or for reconstruction:- (1) Notwithstanding any thing in this Act, on an application made by a landlord the Controller may, if he is satisfied-

(a) xxxxx

(b) that the building consists of not more than two floors and is reasonably and bona fide required by the landlord for the immediate purpose of demolishing it

and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.

(2) No order for recovery for possession under this Section shall be passed unless the landlord gives an undertaking that the building on completion of the repairs, alterations or additions or the new building on its completion will be offered to the tenant, who delivered possession in pursuance of an order under sub-section (1), for his occupation before the expiry of such period as may be specified by the Controller in this behalf."

7. From a reading of Section 12 of the Act, it is clear that when an existing building is demolished for any purpose on reconstruction it should be offered for rent to the same tenant.

8. The Supreme Court in *Prabhakaran Nair and Others Vs. State of Tamil Nadu and Others*, . referred to the effect of a restriction imposed on the landlord on demolition of the existing building and reconstruction of the same and the consequent deletion of such a Clause while construing the scope of Section 14(1)(b) and 16 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The observations are apt to the present situation. It was observed:-

"The purpose underlying Section 14(1)(b) read with Section 16(2), Tamil Nadu Rent Act, is to remove or mitigate the disinclination on the part of landlords to expend moneys for demolition of dilapidated buildings and reconstruct new buildings in their places. It is a matter of which judicial notice can be taken that the return from old and dilapidated buildings is very meagre and in several cases such buildings deteriorates and there are even collapses of such buildings. It is for this purpose that the landlord is given by Section 14(1)(b) read with Section 16 an incentive in the form of exemption from the provisions of the Rent Act in respect of reconstructed building for the limited and short duration of five years. The policy u/s 14(1)(b) read with Section 16 is not in essence different from the policy adopted by different States of giving exemption for a limited duration to newly constructed buildings. These provisions, namely, exemption of new buildings from the provisions of the Rent Act for a period of five years or ten years has been upheld as constitutional."

9. Further the object of granting exemption to landlords who construct new buildings is to give incentives as in view of the rigours of Rent Control Legislation, persons with means may not be inclined to invest in construction of new houses, the Legislature to attract investment in construction of new houses considered it reasonable to provide for adequate incentives so that new constructions may come up. The Supreme Court in the same decision, referred to above, observed:-

"As acute scarcity of accommodation is to an extent responsible for the landlord and tenant problem, a measure adopted by the Legislature for seeking to meet

the situation by encouraging the construction of new buildings for the purpose of mitigating the hardship of tenants must be considered to be a step in the right direction."

It was also observed:-

"The provision for exemption from the operation of the Rent Control Legislation by way of incentive to persons with means to construct new houses has been made in Section 1(3) of the Act by the Legislature in the legitimate hope that construction of new buildings will ultimately result in mitigating of the hardship of the tenants. Such incentive has a clear nexus with the object to be achieved and cannot be considered to be unreasonable or arbitrary."

10. Keeping in view the above object the Government issued the G.O. which reads as under:-

"NOTIFICATION

G.O.Ms. No. 636, G.A.D. (Accommodation-A) dated 29-12-1983. In exercise of the powers conferred by Section 26 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (Andhra Pradesh Act XV of 1960), the Governor of Andhra Pradesh hereby exempts with effect on and from the 26th October, 1983, from the operation of the provisions of the said Act-

(a) all buildings for a period of ten years from the date on which their construction is completed; and

(b) buildings the monthly rent of which exceeds rupees one thousand,

xxxxxx"

11. The G.O. says that in exercise of the powers conferred by Section 26 of the Act the Governor exempted from the operation of the provisions of the Act all buildings for a period of ten years from the date on which their construction is completed. The language used is "all buildings are exempted for a period of ten years from the date on which their construction was completed." In other words, irrespective of the fact whether the building was constructed for the first time or by demolishing the existing building it is exempted from the provisions of the Act for a period of ten years from the date of completion of the construction of the building. The G.O. does not make any distinction between the building constructed for the first time and the building constructed by demolishing the existing building. It is true that the rent payable is Rs. 50/-. Therefore, the respondent is entitled to the benefit of the G.O. It is settled proposition that such G.Os., namely exempting new buildings from the chillings effect of the provisions of the Act are valid (refer to Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others,). If he is entitled to the benefit of the G.O. the question of the respondent giving an undertaking does not arise, as the provisions of the Act are not applicable for a period of ten years from the date of completion of the building, during this period the tenant's right of reinduction

gets suspended. It is true that in both the Courts below this was not the argument that was advanced; However, it is for the Court to mould the relief taking into account the existing facts and law that were brought before it. Therefore, it is not necessary for the respondent to give an undertaking as the provisions of the Rent Control Act are not applicable.

12. The next question to be considered is whether the eviction can be granted for the purpose of demolition on the ground that the existence of three shops are not in accordance with Vasthu Sastra and, therefore, it is causing untold misery, grievance and evil to the family of the respondent. Section 12(1)(b) of the Act empowers the Rent Controller to order eviction of the tenant provided that the landlord is reasonable and bona fide required the premises for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished. A reading of the Section, no doubt, makes it dear that the eviction of the tenant can be ordered provided the Rent Controller is satisfied that the requirement of the landlord is reasonable and bona fide and the demolition is for the purpose of erecting a new building, on the facts of the present case it is clear that the landlord has no intention to erect a new building. Under these circumstances is the Rent Controller empowered to evict the tenant is the issue in question. It is not disputed that the landlord is the owner of the premises. He has a right to use the premises according to his convenience keeping in view the welfare of his family members. In *Prabhakaran Nair v. State of Tamil Nadu* (supra) the Supreme Court referred to the observations made with approval in *Mehsin Bhai v. Hale and Company, G.T. Madras* (1964) 2 MLJ. 147. The observations are relevant in the present context. It was observed as under:-

"On the one hand, landlords may bona fide require such buildings, particularly old buildings, in their own interest, for demolition and reconstruction. On the other hand, it is equally possible that the mere fact that the building is old is taken advantage of by the landlord to put forward such pretext his real object being ulterior, and not bona fide for the purpose of reconstruction. The Courts have to apply several criteria, and to judge upon the totality of the facts, but the Courts cannot exclude the possibility that the ancient or relatively old character of the building which may nevertheless be in quite a good and sound condition in being taken advantage of by a landlord in order to make such an application with an ulterior purpose, which purpose might be, for instance, to obtain far more advantageous terms of rent in the future. What the section really contemplates is a bona fide requirement; that necessarily implied that it is in the interest of the landlord to demolish and reconstruct the building, and that the fact that the building is old is not merely a pretext for advancing the application, with the object of evicting the tenant, and of obtaining higher rentals."

13. It was also observed that if the Rent Controller had to be satisfied about the bona fide requirement of the landlord it meant genuineness of his claim in that behalf and the interest of the landlord. It is not disputed that in this area

particularly Andhra region people believe in "Vasthu Sastra" and the tenants have not disputed the genuineness of the claim of the landlord, but they contend that the said cause cannot be a ground for eviction u/s 12 of the Act. Both the Courts below found that the demolition is in the interest and for the welfare of the landlord's family. I have already pointed out that by virtue of the G.O. a tenant has no right of induction into the building which is sought to be reconstructed after demolition during the period of exemption. Further in case of reconstruction of building it is not practicable and would be anomalous to expect a landlord to take back a tenant after a long lapse of time during which time the tenant must necessarily have found some suitable accommodation elsewhere. If the right of induction is suspended for a period of 10 years from the completion of the construction of the building he has no right to challenge the purpose for which the demolition is to be made. His right is only the right of reinduction after a period of 10 years provided the building is reconstructed subject to fulfilment of other condition, namely, payment of rent. Therefore, a harmonious reading of Section 12 and the G.O. confers the power on the Rent Controller to evict the tenant for a purpose other than the purpose mentioned in Section 12(1) of the Act, so long as it is bona fide.

14. It is contended that the respondent cannot challenge the validity of Section 12(1) of the Act in a revision filed u/s 22 of the Act. In this context I may refer to a judgment of a learned single Judge of this Court in *Md. Ataur Rehman Khan v. Md. Kamaluddin Ahmed* 1987 (1) APLJ 215 wherein it was held:-

"The power under Article 226 and Article 227 of the Constitution of India could be exercised to declare as unconstitutional the offending provision while dealing with a revision under the Act."

However, in the light of the view which I have taken it is not necessary for me to deal with the said contention as Section 12(1) of the Act is not declared as violative of Article 14 of the Constitution of India.

15. In view of the above it follows that the respondent is entitled to seek eviction of the tenants for the purpose of demolition of the three shops whatever may be the purpose for which the demolition is to be effected. The Civil Revision Petitions are therefore dismissed, however, without costs.