

(1982) 01 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6720 of 1981

M. Jaganmohan Reddy and Another

APPELLANT

Vs

Deputy Secretary to Government, GA, Administration

RESPONDENT

Date of Decision : 27-01-1982

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 3(1), 3(3), 3(8)

Citation : AIR 1982 AP 182

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Advocate : B. Siva Reddy, for the Appellant; Govt. Pleader, for the Respondent

Judgement

1. The first petitioner is an Assistant Section Officer in the Home Department of the Government of Andhra Pradesh. He along with the second petitioner are residing as tenants in House No. 3-6-766 Himayatnagar, Hyderabad, for more than ten years. The house in which these two petitioners are living is a house which belongs to the third respondent-landlady and falls under the Andhra Pradesh Buildings (lease, Rent and Eviction) Control Act, 1960 A house that so falls under the Rent Control Act could not have been let out privately except in compliance with the requirements of Sec, 3 (1) (a) of the Rent Control Act. That section requires a lady owner to first notify vacancy of her building and wait for fifteen days. After expiry of that period alone, the landlady could have privately let out her building provided the building is not within that period legally allotted by the authorised officer. The landlady in this case violated all this law. On the ground that the third respondent-landlady did not notify the vacancy of the building to the Authorised Officer as contemplated by Section 3 (1) (a) of the Rent Control Act and that she had unauthorisedly let out the building to the petitioners by private negotiations, the Authorised Officer had first issued a notice on 12-6-1930 directing the summary dispossession of the petitioners. The Authorised Officer had allotted the building to the Tehsildar, Musheerabad Taluk , Hyderabad, for locating his office, From that time, the petitioners have been

making several representations to the Authorised Officer for staying their eviction. The petitioners did succeed in getting their eviction postponed though not canceled. Finally, the Authorised Officer by his order dated 9-9-1981 directed the summary eviction of the petitioners and now allotted the building to the Director of Treasuries and Accounts, Hyderabad, to locate the Pension Payment branch. It is against this order of the Authorised Officer dated 9-9-1981, the present writ has been filed.

2. It is not disputed that the building in the present case is one which is governed by the provisions of the Andhra Pradesh Buildings (lease, Rent and Eviction) Control Act. 1960. If so, under Sec, 3 (!) (A), the third respondent-landlady should have informed the Authorised Officer in writing the fact that her building had fallen vacant and waited for a fortnight before letting the building. Under the Rent Control Act, it is recognised that the need of the State which represents the public interest is greater than the private right of the landlady to lease out her property. Under Sec. 3 (3), the landlady can let out that building, the vacancy of which she has first notified to the Authorised Officer, only if she receives no intimation from the authorised officer within a period of fifteen days of the receipt by him of the landlady's notice. Now in this case, the landlady has never notified the vacancy to the Authorised Officer and the question of her waiting for fifteen days has never arisen. This is a clear violation of a statutory provision of the Rent Control Act and if allowed unchecked, public good underlying the Act would suffer. Letting out a building covered by the Rent Control Act without giving a notice as required by Sec, 3 (1) (a) of that Act, therefore, empowers the Authorised Officer to summarily dispossess any landlady, tenant or other person occupying any building in contravention of the provisions of Sec. 3. This power is contained in sub-cl. (8) of sec. 3 which reads as follows:-

"3 (8) (a): Any Officer empowered by the Government in this behalf may summarily dispossess-

(I) any landlord, tenant or other person occupying any building in contravention of the provisions of this section or any landlord who fails to deliver to the Government possession of the any building in respect of which they are deemed to be the tenant by virtue of this section and"

The impugned order passed by the Authorised Officer either on 17-7-1981 or 9-9-1981 is, therefore, justified by the language of S. 3 (8) (a) of the Act. But Sri Siva Reddy raised a very interesting contention which is to the effect that although his clients- tenants have been in unauthorised occupation of the building in contravention of S. 3 (8) (a). Mr. Siva Reddys argument is that S. 3 (8) (a) which speaks of summary dispossession of a tenant or other person occupying any building in contra within of the provisions of this section, is not absolute because it uses the words "may sum merely dispossess." According to this argument the authorised officer may or may not. According to this argument the authorised officer has a discretion either to summarily dispossess or not to

dispossess a person occupying any building in contravention of S. 3 (1) (a).

Now when is this discretion to be exercised? Mr. Siva Reddy argued that this discretion is contemplated to be exercised by the authorised officer u/s 3 (8) not according to his flight of fancy or fit of mood but by keeping in view all the broader purposes of the Act. These purposes do not merely consist in punishing a person in unauthorised occupation. The main purpose of the Act is to provide accommodation. Use of discretion to dispossess must therefore subserve that main purpose. He therefore, argued that even where the building was in (unauthorised occupation of a person having been let out in contravention of S. 3 (1), summary dispossession would not be justified unless that building is presently required for a public purpose. In support of this attractive argument, the learned counsel for the petitioners has not only relied upon the use of the word " may" in the section but also relied upon the practice of the authorised officers merely warning the landlady against future contravention of the Rent Control Act. In all those cases, no summary dispossession was ordered. I think the argument of Sri Siva Reddy though novel is correct. Sec. 3 (1) (a) no doubt makes it obligatory on the part of landlady to give a notice of the vacancy of the building and wait for a period of fifteen days before privately letting out that building. Sec. 3 (8) speaks of summary dispossession of a person occupying any building in contravention of the provisions of Sec. 3. But considering the use of the permissive word "may" in sub-cl. (8) of Sec. 3 and considering the object underlying the Act. I think it cannot be said to be the intention of the Act that contravention of Sec 3 (1) (a) of the Act that should invariably result in summary dispossession. It is no doubt possible to argue that the purpose of sub-cl. (8) of Sec. 3 (1) (a) of the Act as a disciplinary measure. But by dispossessing a tenant, the punishment does not fall exactly on the guilt-doer. Punishment in many cases may come to be imposed on a tenant who in a given case, may not even be aware of the fact that the landlady had contravened the provisions of S. 3 (1) (a) of the Act.

In other words, by holding summary dispossession as mandatory, the innocent and the ignorant person may in a given case suffer evil consequences flowing out of the action taken by the avaricious landlady. This consideration clearly points out to the need to individualize the punishment of summary dispossession. Once that is done, "may" will have to be read as permissive only. Of course, where public interest is so compelling, private miseries do not generally matter. But it may not be reasonable to interpret the language of the statute in this case in such a way that public interest or no public interest the innocent should suffer along with the informed. That would clearly be the result of reading "may" as "shall". If the broad purposes of the Act which are to provide accommodation for the State Government or the Central Government or any local authority etc, are taken into account in interpreting the provision relating to summary dispossession, it would appear to be wholly unreasonable to hold that even where the State need to occupy such a building was not there either at the time when the building had fallen vacant or even to-day, summary dispossession

should mechanically be imposed. By the use of the word "may" in sub-cl. (8). the statute clearly leaves a discretion to the Authorised Officer either to order summary dispossession or not.

For the above reasons. I agree that a mechanical order passed by the authorised Officer summarily dispossessing the tenants would not be justified under Sec. 3 (8) (a) of the Act. Before passing such an order, the Authorised Officer must consider the need to provide accommodation to the various persons mentioned in Sec. 3 (3) of the Act. He must also consider on a minor key whether the tenant was an innocent party. But this argument as applied to the facts of this case may not be of any use to the petitioners. The building, when it first came to the notice of the Authorised Officer, had been allotted to the Tahsildar and later on to the Director of Treasuries and Accounts, Hyderabad. These allotment orders would clearly show that the building is needed for the statutory purposes of the Act. The fulfillment of those purposes would clearly justify the summary eviction of the petitioners.

3. But Sir Siva Reddy argued that the allotment ordered in this case should be disregarded because they were bad for two reasons. He said that the allotment made by the authorised officer first to the Tahsildar and later to the Director is for a non-residential purpose and that would involve the conversion of a residential building into a non-residential building. According to the learned counsel, this would not be permissible under the Act. Secondly, he argued that when once the Tahsildar had not accepted the first allotment, the Authorised Officer loses his power to make a second order of allotment in favour of the Director with respect to the same building. I cannot agree with any one of these contentions. There is nothing in the Act to support this part of the contention of the petitioners. Under Sec. 3 (8) (a). Where summary dispossession takes places, the Government is authorised to take possession of the building including any portion thereof which may have been sublet. After the Government takes possession of the building, it becomes the tenant of the landlord under S. 3 sub-cl. (6).

It appears to me that it is within the contemplation of the Act that the building, of which the Government thus becomes the tenant, may be occupied by the officers specified in sub-sec (3) of S. 3. The judgment of Gopal Rao Ekbote J., in *Amatul Kubra V. Authorised officer under A. P. Buildings (Lease, Rent and Eviction) Control Act No. XV of 1960*, 1970 (1) Andh WR 15 (or (1970) 1 Andh LT 15) is a case which dealt with the question whether the Authorised Officer could convert a residential building into a non-residential building without the written permission from the Controller. That question was answered by the learned Judge in that case in the negative on the basis of the language of the proviso to Section 3(6) of the Act. To start with the that case, the building in question had been treated as a residential building under the Act and was allotted as such. But in our case, there is no such recognition given to the building was never occupied under the Act. The question of conversion would not, therefore arise in this case

at all. In the aforementioned judgment, Gopal Rao Ekbote J also held that an allotment cannot be made by the Authorised Officer beyond fifteen days. But this is again because of Sec.3 of the Rent Control Act which empowers the Authorised Officer to make an allotment order and fix a time limit of fifteen days.

An implied power contrary to an express power is denied to the authorised officer. That is all. It

is clear that case has no application to the facts of the present case. In the present case, the authorised officer had directed the summary dispossession of the tenants but did not yet take possession of the building. Because the petitioners are still continuing. The effect of the order when implemented would be to give possession to the Government. In case falling under sub-s.3(8), there is no limitation to change the allottee. There is no such limitation even under Sec.3 (3) of the Act so long as the second order of allotment is made within fifteen days. The decision of Gopal Rao Eknote J , in Amatul Kubra v. Authorised Officer (1970 1 ALT 15) (supra) is a decision which arose under Sec.3 (3) and Sec.3(6) proviso(5) and it has no application to the facts of this case. In the circumstances, the write petition fails and is dismissed. But the petitioners shall not be evicted till the end of May 1982 provided that the petitioners pay all the arrears of rent within thirty days from to-day and continue to pay the current rent at the end of every month. If the petitioners fail to comply with this condition. it shall be open for the authorised officer to evict them summarily.

4. In view of the novel point raised I make no order as to costs. Advocate's fee Rs.120/-

5. Petition dismissed.