

(2001) 07 AP CK 0137
In the Andhra Pradesh High Court
Case No : CRP No. 3720 of 1993

Majeti Butchi Viswanadham and Others	APPELLANT
Vs	
Bathula Suryanarayana Murty	RESPONDENT

Date of Decision : 27-07-2001

Acts Referred:

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

Citation : (2001) 6 ALD 355 : (2001) 6 ALT 650

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : G. Subba Rao, for the Appellant; Venkata Ramana, representing D.V. Seetharama Murthy, for the Respondent

Final Decision : Allowed

Judgement

1. This revision is directed against the order made in RCA No. 18 of 1992 on the file of Principal Subordinate Judge, Visakhapatnam, reversing the order made in RCC No.38 of 1985 on the file of Principal District Munsif-cum-Rent Controller, Visakhapatnam.
2. For the purpose of convenience, the parties will be referred to as arrayed in the Court of first instance, as landlords and tenant.
3. The landlords had filed RCC No.38 of 1985 on the file of Principal District Munsif-cum-Rent Controller, Visakhapatnam against the tenant on the ground of wilful default and also on certain other grounds including the ground of change of user of the premises. Originally, the rent was Rs. 50/- and the premises was taken for the purpose of running cloth business and subsequently it was changed to kirana business. Originally, the tenancy commenced during the life time of the father of the tenant and after his death, his son is continuing the business in the same premises. But there is some material to show that there is change of business. It is not also in dispute, but the stand taken by the tenant is that the change of business is with the oral consent of the landlords. The tenant had

denied all the allegations. PWs.1 and 2 were examined. PW1 is the son of the 1st revision petitioner i.e., the first landlord and PW2 is the clerk. Exs. A1 to A3 were marked. The tenant had examined himself as RW 1 and apart from it RW2 was also examined and Exs.B1 to B19 were marked and the Court of first instance had ordered eviction on the ground of wilful default only and aggrieved by the same, an appeal was preferred by the tenant and the appeal was allowed on 16-7-1993 and aggrieved by the said order made in RCA No.18 of 1992, the present revision is filed.

4. Sri C. Subba Rao, the learned Counsel representing the landlords revision petitioners had submitted that as far as the ground of wilful default is concerned, the material available on record may not be sufficient to substantiate the same as against the tenant and hence the learned Counsel had proceeded to make his submissions relating to the ground of change of user only. The learned Counsel had drawn my attention to the findings of both the Courts relating to Point No.2 and had pointed out how the appellate authority had gone wrong while deciding this aspect. The learned Counsel had drawn my attention to Section 10(2)(ii)(b) of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, for short hereinafter called "the Act" and had contended that in the absence of written consent by the landlords, the tenant is precluded from using the premises for any other purpose other than the purpose for which it was let-out. The learned Counsel had strongly placed reliance on Smt. K. Rachamma Vs. Smt. Bimal Bai and Another, , and had drawn my attention to the relevant observations in the said judgment.

5. Sri Venkata Ramana, representing Sri D. V. Seetharama Murthy, the learned Counsel for the respondent white making his submissions on behalf of the tenant had drawn my attention to the pleadings and also to the respective portions of the evidence which had been recorded in the RCC. The learned Counsel had contended that the father was not examined at all and hence the contention of the landlords that there was no consent for the change of business cannot be believed and they failed to substantiate the same. The learned Counsel also had drawn my attention to the pleading in the RCC and had stated that the eviction petition was filed u/s 10(2)(i) of the Act only and the provision relating to the change of user was not mentioned. The learned Counsel also had drawn my attention to ground (j) i.e.,

"The respondent is liable to be evicted on the grounds of wilful default, denial of title, acts of waste, acts of nuisance, from the schedule premises."

After drawing my attention to the relevant portions of the pleadings, the learned Counsel contended that there is no plea relating to the change of user and in the absence of a specific plea, the landlords cannot be permitted to raise this ground and to argue this ground as the main ground at the stage of revision. The learned Counsel also had stressed on the word "purpose" in Section 10(2)(ii)(b) of the Act The learned Counsel also contended that the words "purpose" in the said provision has to be understood as one of change of user from residential to

non-residential or non-residential to residential and it cannot be understood as change of user of business as such in normal parlance.

6. The facts are not in serious dispute. The learned Rent Controller while deciding point No.2 on this aspect had observed as follows:

"Except the allegation in the petition and in the evidence of PW1 that the respondent sublet the premises to others there is neither oral nor documentary evidence to support the same hence the said allegation cannot be accepted. It is alleged by the petitioner that the permission was taken by the father of the respondent to carry on cloth business but the respondent set up kirana business without the permission of the petitioner and caused damage to the petition schedule premises. The respondent admitted that he has set up the kirana business in the petition schedule premises in the year 1985 but contended that with the permission of the 1st petitioner he can started the kirana business. The 1st petitioner did not choose to examine himself to deny the said allegation. Though the respondent has started kirana business in the petition schedule shop room no notice was issued by the petitioner questioning the change of the business. RW1 categorically deposed that the 1st petitioner gave oral permission to change the cloth business into kirana business and the kirana business into silver jewel business and he has also attended the inaugural function of the silver shop but the 1st petitioner did not choose to examine or get him examined on commission to deny the said allegation. Hence I hold that the 1st petitioner must have given his consent to change the business otherwise he could have denied the same by examining himself as a witness. Except the bare allegation in the petition or in the evidence of PW1 that the respondent he caused damage to the petition schedule premises there is neither oral nor documentary evidence to support the same hence the said allegation cannot be believed. If really the petitioner has not given any oral permission he would have issued notice questioning the change of the business hence I have no hesitation to come to the conclusion that the 1st petitioner has given oral permission to change the cloth business into kirana business and from kirana business to silver jewellery business otherwise the petitioner would not have kept quiet without questioning the same."

The appellate authority while deciding point No. 2 had observed;

"The change of use of the premises alleged against the tenant is that he has changed the business from cloth to kirana and thereafter to jewellery. Significantly for both the conversions, the tenant claims that he has got consent from the 1st respondent-landlord, but the 1st respondent - landlord was not examined in Court on the ground of ill-health, or not even examination commission to deny the assertion of the tenant that there was his consent. Even otherwise, inspite of the conversion of business much prior to the filing of the eviction petition, there is no complaint by the landlord, though same cannot be said with regard to the conversion of kirana business into jewellery business. Moreover, I am of the view simply because the tenant has changed the business,

it cannot be termed as putting the premises for the purpose other than which it was leased out. When the tenant himself is using the premises, and obviously for his own reasons is changing his business, it cannot be termed as change of user, above all, when there is no evidence that the tenant has to continue business in cloth only as per agreement between them. The written consent, being mandatory as pleaded by the landlord is required only when the purpose of lease itself is changed from residential to non-residential vice versa which requires the written consent of the land u/s 18 of the Act."

7. From a reading of the orders passed by the learned Rent Controller and also the appellate authority, it is evident that both the parties are conscious of the fact of the change of user also and in fact it had been taken as a ground by the landlords and both the parties had gone on trial, let in evidence and invited a finding and it is very peculiar that at the stage of revision, the tenant is taking a stand that he is being taken by surprise. Apart from this, even in the pleading at paragraph III(a) it is stated as follows:

"The petitioners are the owners of the plaint schedule property. Originally the respondent's father has taken the said premises for lease to run cloth shop. The building in question was constructed long ago and it is situated on the main road, Visakhapatnam. The respondent has occupied the same after the death of his father. Originally the schedule premises was taken only to run the cloth shop but not for any other business."

At page 3 of the pleading, in ground III(e) it is stated:

"The respondent is doing kirana business without the permission from the petitioners and due to the said kirana business the building was badly damaged on account of rats etc. Therefore, the utility and value of the building is diminished to a great extent".

Thus, from the pleadings it is clear that though the provision is not mentioned, the ground of change of user had been specifically stated. Section 10(2)(ii)(b) of the Act reads as follows:

A land-lord who seeks to evict his tenant shall apply to the Controller or a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied-

(i)

(ii) that the tenant has, in the Andhra area after 23rd October, 1945, and in the Telangana area after the commencement of the Hyderabad House Rent Controller Order, 1353 Fasli, without the written consent of the landlord-

(a).....

(b) used the building for a purpose other than that for which it was leased, or

Hence there is a specific statutory requirement relating to the obtaining of the

written consent of the landlord for change of user of the building for a purpose other than for which it was leased. It is the case of the tenant also that oral consent had been taken. The main ground of rejecting this ground is that the father was not examined and the father might have given consent and the non-examination of the father will go against the landlords. This is just a factual aspect. But the main question is whether the written consent of the landlord is essential for change of user. The expression "change of user" or the expression "purpose" in Section 10(2)(ii)(b) of the Act cannot be interpreted as contended by Sri Venkata Ramana, the learned Counsel for the tenant in a narrow and strict sense. "Change of user" has to be understood in its broad sense to the effect that when a business of a particular type is being run, in a non-residential premises and when there is change of business without the written consent of the landlord, even such a change of user, will fall within the meaning of the provision, if not it will amount to doing violence to the statutory protection given in relation to the rights of the landlords. In fact, in the decision cited supra, this Court had an occasion to deal with this aspect and while dealing with this aspect, it was observed:

"There was a definite change of user from general merchandise and kirana to textile business. That being so, the tenant-respondent was bound to obtain a written consent for such a change. The argument made in the Courts below that the conduct of the petitioner in not taking objection for so many years estopped him from taking the objection cannot be accepted. In fact this argument was not advanced before me. The law requires that for change of user the tenant has to obtain written consent of the landlord. Oral consent or conduct of allowing the tenant to change the user does not come to the help of the tenant. Admittedly in the present case there was no written consent obtained by the tenant for changing the use. In the circumstances the tenant was liable to be evicted u/s 10(2)(ii)(b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act."

The learned Counsel for the tenant had strongly placed reliance on the decision of Apex Court in Mohan Lal Vs. Jai Bhagwan, , and had contended that in view of the ratio laid down by the Apex Court, the decision of the learned single Judge of this Court may not be of much consequence. But it is pertinent to note that the learned Judge had referred to the said decision also and after detailed discussion had arrived at the conclusion that the statutory provision under the Act whereunder the obtaining of the written consent by the tenant from the landlord for the purpose of change of user is mandatory and it is a statutory requirement. Several factual aspects narrated by Sri Venkata Ramana, the learned Counsel for the tenant, may not improve the case of the tenant in any way in view of the settled legal position on this aspect. For the foregoing reasons, I am of the opinion that the revision petitioners-landlords are bound to succeed on this ground and the tenant is liable to be evicted on this ground.

8. In the result, the impugned order made in RCA No. 18 of 1992 on the file of the Principal Subordinate Judge, Visakhapatnam dated 16-7-1993 is hereby set

aside and the civil revision petition is allowed. However, inasmuch as it is a non-residential premises, the tenant is given a period of six months to vacate the premises and to put the landlords in possession of the premises. No costs.