

(2003) 02 AP CK 0079
In the Andhra Pradesh High Court
Case No : CRP No. 3293 of 2000

Manchukonda Srinivasam	Vs	APPELLANT
Vempolu Brahmananda Rao (died) by LRs.		RESPONDENT

Date of Decision : 10-02-2003

Acts Referred:

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

Citation : (2003) 3 ALD 300

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : M. Bhaskara Lakshmi, for the Appellant; A.V.S.S. Prabhakar, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—Heard the learned Counsel for the petitioner. When the case was taken up for hearing on 20-1-2003 and on 21-1-2003 there was no representation on behalf of the respondents.

2. This Civil Revision Petition is directed against the judgment and decree dated 18-1-2000 passed in R.C.A.11/96 on the file of Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Visakhapatnam, whereby the learned Rent Control Appellate Authority set aside the order dated 18-4-1996 passed in R.C.C.255/ 95 on the file of the Rent Controller, Visakhapatnam and consequently the petition filed by the petitioner/landlord for eviction of V. Brahmananda Rao, the tenant and father of respondents herein, from the building specified in the schedule appended to the eviction petition has ended in dismissal.

3. The petitioner herein is the owner of the petition schedule premises. Manchukonda Srinivas took the premises on a monthly rent of Rs. 100/-. He has two sons and both of them are unemployed. His father and brothers are carrying on business in gold and silver ornaments which is their family trade. He retired

from service and therefore he intends to start the business in making gold and silver ornaments with the assistance of his eldest son who is an unemployed. As he has no accommodation to start his business, he has been demanding the tenant/V. Brahmananda Rao to vacate the scheduled premises. The scheduled premises is in the business locality and it is best suited for gold and silver business. The tenant allegedly demanded huge amount of Rs. 50,000/- for vacating the premises. As the tenant failed to oblige the petitioner, he filed R.C.C.255/ 95 (old 7/93) on the file of Rent Controller, Visakhapatnam u/s 10(3) of A.P. Building Lease, Rent and Eviction Control Act (in short the Act) for eviction of the tenant/V. Brahmananda Rao. The tenant filed R.C.C.251/95 (old 72/93) u/s 19 of the Act to direct the landlord to make repairs to the scheduled premises. It is the case of the tenant that the scheduled premises is an old one with tiled roofing in a dilapidated condition and it is unsafe to occupy and to run the business. It is further the case of the tenant that the landlord and his sons constituted joint family and that the eldest son is working in Bommana Brothers and whereas the landlord and his second son are doing business in one of their shops. The landlord filed counter to the petition filed by the tenant u/s 19 of the Act contending that he has been attending to periodical repairs to the scheduled premises. The Rent Controller clubbed both the RCCs and passed common order on 18-4-1996 dismissing the R.C.C.251/95 filed by the tenant u/s 19 of the Act and allowing the R.C.C.255/95 filed by the landlord u/s 10(3) of the Act. The tenant filed Rent Control Appeals Aggrieved by the order dated 18-1-2000 before the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Visakhapatnam, R.C.A.11/96 is filed against the order passed in R.C.C.251/ 95. Pending disposal of the RCAs the tenant died and the respondent herein came on record as his legal representative as per I.A.64/99 dated 1.4.1999 in R.C.I 1/96 and as per orders in I.A.65/99 dated 8.4.1999 in R.C.A.12/96. The learned Rent Control Appellate Authority by order dated 18-1-2000 allowed R.C.A.11/96 setting aside the order of Rent Controller passed in R.C.C.255/95 dated 18-4-1996 and consequently dismissed the application of the petitioner/landlord filed u/s 10(3) of the Act seeking eviction of the tenant. Feeling aggrieved by the order of the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Visakhapatnam passed in R.C.11/96, the petitioner/ landlord has filed this Civil Revision Petition.

4. Learned Counsel for the revision petitioner/landlord assailed the judgment of the appellate authority contending that the appellate authority erred in reversing the well considered judgment of the Rent Controller. She further contended that the appellate authority mis-interpreted Section 10(3)(a)(iii) of the Act and thereby committed error in dismissing the application of the petitioner/landlord. She also contends that the bona fide requirement of the petitioner/ landlord has to be viewed from the objective point of the landlord but not on the subjective satisfaction of the tenant.

5. The petitioner/landlord filed R.C.C.No.255 of 1995 on the file of the Rent Controller, Visakhapatnam u/s 10(3) of the Rent Control Act on the ground that

he required the premises to carry on gold and silver business which is his family trade along with his eldest son who is an unemployee and who has no accommodation to start the business. The tenant filed counter disputing the requirement of the landlord. It is pleaded by him that the petitioner/landlord is already in possession of one non-residential building wherein the petitioner along with his two sons carries on gold and silver business and therefore the petitioner/landlord is not entitled to seek eviction of the other non-residential building. It is also pleaded by him that the petitioner and his two sons were residing jointly and carrying on the business in their own non-residential building. There appears to be no dispute that the petitioner/landlord owns four shops in the same alignment abutting the road leading to town hall. One of the four shops is in possession of the petitioner/landlord and he is carrying on gold and silver business in the said shop. The other three shops are in the possession of the tenants. The present R.C.C relates to one of those three shops. The petitioner filed the petition on the ground that the petition scheduled shop is required for him to carry on gold and silver business which is their family trade along with his eldest son. According to him, his second son is carrying on the business in one of the shops and he along with his eldest son intends to start gold and silver business separately in the petition schedule shop. The question is when the petitioner is already in possession of one non-residential building wherein his second son is carrying on gold and silver business can file petition seeking eviction of another non-residential building on the ground that the premises is required to carry on business by him along with one of the members of his family i.e., his eldest son. Before dwelling on the point, I feel it apposite to refer the evidence of P.W.I who is the petitioner/landlord to know whether he and his sons were residing together as on the date of the application and whether the second son of the petitioner was carrying on his business on his behalf or on behalf of the joint family. I may refer to the relevant portion of the evidence of P.W.1 and it is thus:

"Witness recalled and sworn in for cross-examination by Sri P.P.s dated 18-8-1994:-My paternal grandfather's name is Appadu. My father's name is Satyanarayana. Both died. Respondent's father's name is Sangamayya. I do not know whether Sangamayya 's father's name is Subbarao. My brothers' names are M. Sitaramayya, M. Appalaraju, M. Gopalakrishna, M. Suryanarayana and Manchukonda Jagannadham. The respondent's grandfather took the petition schedule premises and he did the business in it. The respondents are goldsmiths by caste. I cannot identify the signatures of any of my brothers. When we are joint, rents receipts were issued by Satyanarayana. This is the receipt issued by my brother M. Appalaraju and it is Ex.B1. I issued Ex.B.2 receipt. By the date of Ex.B.2 there was no partition. I issued Ex.B.3 receipt on behalf of my father. But there is no recital to issue Exs.B.2 and B.3 on behalf of my father. I was retired as Junior Accounts Officer in Hindustan Shipyard. The shops are situated on the town hall road. There are four shop rooms. The first shop room is gold shop room belonging to us. Myself and my sons are carrying in business in it. The next shop also belongs to me and the same was under the tenancy in which hotel

business is carrying on. The 3rd shop is the petition schedule building. The 4th shop room is under the tenancy of Gouri Pattapu Sanyasirao.

I filed RC.C. 19/85 on the file of this Court against the said G. Sanyasirao when I was in service and the said RCC was dismissed.

I have pleaded in the said RCC that premises is required for my eldest son's personal occupation. Ex.B.4 is the C.C. of the decretal order in RCC. 19/85. I have also deposed as P.W.1 in RCC. 19/85. It is not true to say that on the date of RCC. 19/85 the first shop room is kept vacant. In the said RCC my son deposed as P.W.2.1 preferred an appeal in the said RCC and the said appeal was dismissed and the C.C. of the decretal order is Ex.B.5. The 1st room was vacated on my request and I have been carrying on business in it. The shop room is having tiled roof. It is not true to say that the schedule building roof and the walls was damaged. It is not true to say that I have deposed in R.C.C 19/85 that the first shop room was kept vacant. It is true that I deposed in RCC 19/85 as P.W.1 that Ganapatirao vacated the shop room but I cannot say whether it was vacated prior to the filing of this petition or not. It is true that I let out the premises vacated by Ganapatirao to carry on hotel business. Witness again says a portion of the building was vacated by the said Ganapatirao was carrying on my hotel business."

6. At the cost of repetition I may state that the petitioner/ landlord owns four shops abetting town hall road. The western shop is in the occupation of the petitioner. The evidence of petitioner/PW.1 shows that he and his sons are carrying on the business in the said shop. Of the other three shops one shop fell vacant but the petitioner let out the shop for hotel business. These are the facts admitted by the petitioner while being examined as P.W.1. The petitioner/ landlord filed the petition for eviction of the respondent/tenant on the ground that the premises is required to carry on his own business with the assistance of his second son. At this juncture, I feel it apposite to refer Section 10(3)(a) of the Rent Control Act.

"A landlord may, subject to the provisions of Clause (d), apply to the control for an order directing the tenant to put the landlord in possession of the building :--

..... In case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise - (a) For the purpose of a business which he is carrying on, on the date of the application or (b) for the purpose of a business which in the opinion of the controller, the landlord bona fide proposes to commence.

(c) A landlord who is occupying only a portion of a building, whether residential or non-residential, may notwithstanding anything in Clause (a) apply to the controller for an order directing any tenant occupying the whole or any portion of the permanent part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for the purposes of

business which he is carrying on, as the case may be."

7. A Full Bench of our High Court in *Vidyavathi Bai v. Shankerlal*, 1987 (2) ALT 550, held that u/s 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 a tenant. A 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 fide need of any other member of the family of the applicant (landlord) independent of and over and above the need of the applicant (landlord), are all irrelevant considerations in 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 occupation of the tenant.

8. This decision has been followed in *Apparao v. Eshwaramma*, 1998 (2) LS 43. In *K. Koteswara Rao v. S. Narayana Rao* 1989 ALT (3) 526, *Radhakrishna Rao, J.*, held that the landlord who has got a non-residential building of his own in the same town and is running business with the assistance of his eldest son cannot be permitted to file an eviction petition for eviction of the tenant of another non-residential building for the purpose of running a business by his eldest son who is living with him and doing business in another portion of his non-residential building.

9. The Apex Court in *B. Jagadeshwaraiah and Sons v. Pushpa Trading Company* 1998 (3) ALT 26 (SC), held that mere owning a non-residential building by landlord other than the demised non-residential building is not enough to non-suit him in evicting the tenant. Aspect of quality, size and suitability of the building owned by the landlord are relevant considerations to be looked into in deciding eviction petition to carry out the purposes of the Act. The Apex Court in *V. Radhakrishnan Vs. S.N. Loganatha Mudaliar*, , while considering the concept of bona fide requirement of landlord has held that the fact that the landlord is in occupation of a non-residential building in the same city would not be bar for eviction of a tenant from non-residential building for the business of a landlord's family member if such family member is not in occupation of any other non-residential building in the city. The fact that the landlord, who seeks eviction for the benefit of a member of his family, is himself occupying a building of his own, cannot operate as a bar to the landlord seeking eviction for the benefit of a member of his family, who does not occupy any premises of his own. A Division Bench of our High Court in *Penugonda Rajeswari Vs. Jaladi Anasuyamma*, , held that the landlord having more buildings than one and occupying one such building, can seek eviction of the tenant from another building for bona fide requirement as additional accommodation without surrendering the building in his occupation. The Apex Court in *J.R. Ramesh Kumar @ Rameshji Vs. N.*

Prabhakar Rao, , held that the Court cannot adopt a narrow or pedantic approach and further restrict the rights of the landlord to recover possession when the landlord is not in a position to accommodate all the members of his family in one building and to say even then he has no right to recover another building can never be the intention of the legislation. In *Manoj Kumar Jain Vs. Lalchand Ahuja*, , a Single Judge of our High Court held that the bona fide requirement of the landlord has to be viewed from his convenience and that the landlord is the best Judge of his requirement. It is clear that the need of the landlord takes priority than the necessity of the tenant to stay in the tenanted premises. The Supreme Court in *Joginder Pal Vs. Naval Kishore Behal*, , held that the expression "for his own use" as occurring in Section 13(3)(a)(ii) of the East Punjab Urban Restriction Act, 1949 cannot be narrowly construed. It must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfil the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In *Akhileshwar Kumar and Others Vs. Mustaqim and Others*, , it is held that once it has been proved by a landlord that the suit accommodation is required bona fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot trust its own choice upon the needy. Of course the choice has to be exercised reasonably and not whimsical. It has been further held that independent business for educated, unemployed son remains genuine need even if son provisionally involved in the family business.

10. By examining the authoritative pronouncements on the aspect of bona fide requirement, it can safely be held that the landlord who is in possession of a non-residential building can maintain an application for eviction of the tenant of another non-residential building for the need of his unemployed son to start a business. Indeed such view has been upheld by our High Court in *B. Balaiah Vs. Chandoor Lachaiah*, and this view has been confirmed by the Supreme Court in *Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others*, . The requirement of a major son in a Joint Hindu family intending to start a business is deemed to be the requirement of the landlord himself.

11. The appellate authority did not consider the proposition of law laid down in *B. Balaiah v. Chandoor Lachaiah* on the ground that the view expressed therein has been overruled by a Full Bench of our High Court in *Vidyavathi v. Shankarlal (FB)*. But the learned appellate authority missed to note that the view expressed by the Division Bench of our High Court in *B. Balaiah v. Chandoor Lachaiah* has been approved by the Apex Court in *Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others*, . The Supreme Court also approved the proposition of law laid down in *Balayya v. Chandulal* with regard to the

maintainability of a petition by the landlord for eviction of a tenant of a non-residential building on the ground that the tenanted house is required to carry on business of one of the members of the family in *Joginder Pal Vs. Naval Kishore Behal*, . In view of the settled position of law the question whether the sons of the petitioner/landlord residing together or separately has no significance in considering the application filed by the petitioner/landlord for eviction of the respondent/tenant. Even otherwise there is enough evidence on record to show that the petitioner and his two sons were residing together and they are carrying on business in one of the non-residential premises. At the cost of repetition, I may state that the petitioner/landlord owns four shops abutting Town Hall road. The shops are running from east to west. One of the four shops is in the occupation of the petitioner/landlord wherein he and two sons are carrying on business in gold and silver. Of the other three shops, one is the subject matter of this case. It is the contention of the respondent/ tenant that the petitioner did not choose to occupy one of the shops when the tenant of that shop vacated and therefore his requirement of the shop in the occupation of the respondent/tenant cannot be said to be bona fide. I find force in the plea set up by the respondent/tenant. It is apposite to refer the evidence of the petitioner/landlord who has been examined as PW1 and it is thus:

"I filed RCC 19/85 on the file of this Court against the said G. Sanyasirao when I was in service and the said RCC. was dismissed.

I have pleaded in the said RCC that premises is required for my eldest son's personal occupation. Ex.B.4 is the CC of the decretal order in RCC 19/85. I have also deposed as PW1 in RCC 19/85. It is not true to say that on the date of RCC 19/85 the first shop room is kept vacant. In the said RCC my son deposed as PW2. I preferred an appeal in the said RCC and the said appeal was dismissed and the CC of the decretal order is Ex.B.5. The 1st room was vacated on my request and I have been carrying on business in it. The shop room is having tiled roof. It is not true to say that the schedule building roof and the walls was damaged. It is not true to say that I have deposed in RCC 19/85 that the first shop room was kept vacant. It is true that I deposed in RCC 19/85 as PW1 that Ganapatirao vacated the shop room but I cannot say whether it was vacated prior to the filing of this petition or not. It is true that I let out the premises vacated by Ganapatirao to carry on hotel business. Witness again says a portion of the building was vacated by the said Ganapatirao was carrying on my hotel business."

12. It is also categorically admitted by PW1 that G.Sanyasirao vacated the shop and he let out the shop to some other person. If at all the petitioner needs one of the shops to carry on business by him along with his eldest son, he should have opted the shop, which G.Sanyasirao vacated. No reasons are forthcoming from the petitioner/ landlord for his not occupying the shop vacated by G.Sanyasirao. On thorough reading of the evidence of PW1 I am in no doubt to conclude that the requirement of the premises in occupation of the respondent/ tenant by the

petitioner/landlord is not bona fide.

13. In view of the above discussion, I find that this Civil Revision Petition is devoid of merits. In the result, this Civil Revision Petition fails and it is hereby dismissed confirming the order dated 18-1-2000 passed in RCA 11/96 on the file of the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Visakhapatnam. No order as to costs.