
(1974) 04 AP CK 0001
In the Andhra Pradesh High Court
Case No : C.R.P. No. 365 of 1974

Mohd. Mukaram Ali and two others	Vs	APPELLANT
Khursro Begum and two others		RESPONDENT

Date of Decision : 11-04-1974

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 1, 12, 12(2), 15, 22
Transfer of Property Act, 1882 — Section 112

Citation : (1974) 04 AP CK 0001

Hon'ble Judges : Chennakosav Reddy, J

Bench : Single Bench

Advocate : Tej Rai Kapoor and Syed Mohinuddin Hussain, for the Appellant; M.L. Ramakrishna Rao, for the Respondent

Final Decision : Dismissed

Judgement

Chennakosav Reddy

1. This is a revision petition preferred by the tenant u/s 22 the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, (hereinafter referred to as "the Act") seeking to revise the order of the Chief Judge, City Small Causes Court, in R. A. No. 557 of 1973, dated 27th November, 1973 upholding the order of the Principal Rent Controller, Hyderabad in I. A. No. 996 of 1972. The facts giving rise to this petition may be shortly set out. The respondents are the owners of a building consisting of four mulgies bearing Municipal No. 11-6-207 situated near Public Gardens, Nampally, Hyderabad. The petitioner is a tenant in one of the mulgies. The land-ladies filed applications for eviction of the tenants on the ground that the building required bona fide for reconstruction. Those applications were dismissed the Rent Controller. Aggrieved against the decision of the Rent Controller, the land-ladies preferred appeals which were allowed by the Chief Judge, City Small Causes Court, Hyderabad. The learned Judge also directed the land-ladies to complete the construction within a period of six

months from the date the possession of the building was handed over to them and of the premises to the tenants within 15 days after the completion of the reconstruction. The tenants were given a month's time to deliver the possession of the premises. The tenants preferred revision petitions to this Court. This Court dismissed the revision petitions on 25th June, 1971 with the following directions;

The short question is whether the order of the lower Court directing the eviction of the tenants enabling landlord to effect reconstruction should not be upheld. A question has been raised about the sufficiency of the undertaking. I find no substance in it.

In the event of the tenant not being put in possession after the reconstruction is effected appropriate action can be taken to move the Court for recovery of possession by the Tenants.

The order of eviction is now made conditional on the landlord... carrying out the reconstruction within six months from the date of the surrender of possession of the last of the mulgies or within such time as the rent-controller may allow on application. The order of eviction is made conditional also on the undertaking in terms of section 1 being filed in the lower Court within one month from today.

2. The land-ladies accordingly gave the required undertaking on 20th July, 1971, in compliance with the directions of this Court in the civil revision petitions. Subsequently an E.P. also was filed for the issue of warrant of eviction and the same was issued by the Rent Controller on 17th September, 1971 and the tenant delivered possession. The last tenant gave possession of this mulgi to the land-ladies on 1st October, 1971, while the other three tenants had vacated their mulgies earlier. The Land ladies again filed an application I.A. No. 450 of 1972 for extension of time by six months for the completion of reconstruction. After notice to the tenants the Rent Controller allowed that petition on 1st July, 1972, and extended time for completion of reconstruction till 1st October, 1972.

3. On 16th September, 1972 the land-ladies gave a notice to the petitioner tenant offering the mulgi on a monthly rent of Rs. 296 while the original rent was only Rs. 25 per month. The tenant replied refusing to pay the rent demanded and requiring the land-ladies to deliver possession of the mulgi. But the land-ladies refused to deliver possession. The tenant, therefore, filed I.A. No. 996 of 1972 on 9th October, 1972 before the Rent Controller for redelivery of the possession of the mulgi in compliance with the undertaking given by the land-ladies. The land-ladies filed a counter affidavit stating that the tenant failed to deliver possession within one month from the date of the order in accordance with the directions of this Court, that the land-ladies could only get the possession of the mulgi on 29th July, 1971 through the warrant of eviction issued by the Rent Controller, that there was delay of two months in handing over the possession of the mulgi by the tenant to the landladies and as such the tenant was not entitled, under law, for redelivery of the possession. The Rent Controller held that : (1) the petition u/s 12 (2) of the Act on the original side was not

maintainable; and (2) the tenant was not entitled to redelivery of the newly constructed mulgi since he undoubtedly failed to deliver the vacant possession of the mulgi within one month from the date of the order of High Court dismissing the civil revision petitions. An appeal preferred against this order was also dismissed on 20th November, 1973. The tenant has now filed this revision petition.

4. The learned Counsel for the petitioner has not assailed the conclusion of the authorities below that an application for redelivery u/s 12 (2) of the Act on the original (sic) not maintainable and that the proper remedy for the tenant should have been to move the Rent Controller for an order of delivery by filing an U.P. u/s 15 of the Act. It appears an E.P. has since been filed. This petition must therefore, fail.

5. The learned Counsel, however, assails the second finding that the (sic) was not entitled to redelivery and invites the decision of this Court, since that finding if it (sic), would necessarily prove fatal to the pending E.P. He submits that Section 12 of the Act itself contains no consequences of non-delivery of possession of the building to the landlord within a specified date, and, therefore, the landlord who had given an undertaking under sub-section (2) of section 12 is bound to offer the building for the reoccupation of the tenant after completion of the repairs, alterations or additions to the building within the time specified by the Controller in that behalf. He submits that decision in Ram Nath and Another Vs. Ram Nath Chhittar Mal and Others, relied upon by the authorities below is not applicable to the facts of this case as the provisions of section 12 (2) of the Act are different from the provisions of section 15 (2) of the Delhi and Ajmer Rent Control Act, the provisions of which fell for consideration before the Supreme Court. Section 12 of the Act reads as follows :

Recovery of possession by landlord for repairs, alterations or additions or for reconstruction :-- (1) Notwithstanding anything in this Act on an application made by a landlord, the controller may, if he is satisfied (a) that the building is reasonably and bona fide required by the landlord for carrying out repairs, alterations or additions which cannot be carried out without the building being vacated ; or (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 of possession under this section shall be passed unless the landlord gives an undertaking that the building on completion of the repair, alterations or additions or the new building on its completion will be offered to the tenant, who deliverer possession in pursuance of an order under sub-section (1), for his reoccupation before the expiry of such period as may be specified by the Controller in this behalf.

Section 12 (2) imposes an injunction on the Rent Controller from passing an order of eviction against the tenant when the landlord requires the building for repairs, alterations and additions or for reconstruction unless the landlord gives an undertaking that the building on the completion of the repairs, alterations or additions or the new building after completion will be offered to the tenant. But the tenant to whom such offer on completion of repairs or alterations or additions must be made shall be one who would have delivered possession in pursuance of an order passed by the Rent Controller under sub-section (1). Sub-section (1) enacts that the Rent Controller may pass an order directing the tenant to deliver possession of the building to the landlord before the specified date if he is satisfied that the building is required bona fide for carrying out the repairs, alterations or additions or for the purpose of demolishing and erecting a new building. It is an elementary rule of exposition of statutes to make construction of all the parts together and not of one part only by itself. Reading sub-sections (1) and (2) together, it is clear that a tenant who had failed to deliver vacant possession of the building to the landlord within the date specified by the Rent Controller is not entitled to enforce the landlord's undertaking of redelivery of the building for reoccupation of the tenant after the completion of the repairs, alterations or additions. In *Ram Nath and Another Vs. Ram Nath Chhittar Mal and Others*, the facts were these. In that case a suit was filed u/s 13 (1) of the Delhi and Ajmer Rent Control Act by the landlord for eviction of the tenant on the ground that he required the premises for rebuilding. The parties compromised and a compromise decree was passed. One of the terms of compromise was that the tenant should give possession of the shop by 4th March, 1953 to the landlord and that the landlord after constructing it afresh within six months from 4th March, 1953 should give it to the respondent tenant. But actually the tenant delivered the possession of the shop to the landlord between 7th and 15th March, of 1953. The tenant filed an application u/s 15 of the Delhi and Ajmer Rent Control Act for redelivery of the possession. The High Court ordered possession to be delivered to the tenants. Sub-sections 1 and 2 of section 15 of the Delhi and Ajmer Rent Control Act read as follows :

The Court shall, when passing any decree or order on the grounds specified in clause (f) or clause (g) of the proviso to sub-section (1) of section 13 ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenant so elects, shall record the fact of the election in the decree or order and specify therein the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs or building or rebuilding, as the case may be

(2) If the tenant delivers possession on or before the date specified in the decree or order, the landlord shall, on the completion of the work of repairs of building or rebuilding place the tenant in occupation of the premises or part thereof.

6. The Supreme Court allowed the appeal and observed as follows :

The decrees which were passed were substantially in accordance with the

provisions of section 15 of the Act and as was contended by the appellants they were decrees under which the premises had to be vacated by the respondents on a specified day. Under that section they had the right to elect and did elect to get possession after rebuilding; this possession was to be given by the landlords to the tenants within a reasonable time and six month's period was fixed by consent between the parties and the rent, if the respondents were not put into possession on the same terms as before, was to be settled by Court and that is what was done under the terms of the consent decree. The applications for being put into possession which were filed by the respondents were really u/s 15 (3) of the Act. As the respondents did not deliver possession to the appellants on or before the dates specified in the decree, the provisions of section 15 contained in sub-section (3) of the Act were not available to them and they were not entitled to be put into possession as prayed by them.

7. The decision of the Supreme Court, in my opinion, is directly applicable to the facts of this case. Here, as there, the tenant failed to deliver possession of the premises for the purpose of repairs, alterations or additions or reconstruction within the time specified, under sub-section (1) of section 12. Therefore, the tenant was not entitled for redelivery of the possession after the completion of the repairs or reconstruction.

8. But that does not conclude the matter, There still remains the more formidable contention of the learned Counsel that the land-ladies having offered the building after the completion of reconstruction on 16th September, 1972 must be deemed to have waived the right accrued to them, to refuse to offer the building to the tenant after repair and reconstruction on the ground that the tenant failed to deliver the premises within the stipulated time. In the registered notice issued on behalf of the land-ladies on 16th September, 1972 it is stated as follows :

Therefore my client in compliance with the orders passed by the Honourable High Court, dated 25th June, 1971, and as per the undertaking dated 20th July, 1971 filed in R.C. No. 2691 EV of 1966 on the file of the Principal Rent Controller. Hyderabad, hereby offers to you the said newly constructed building for your reoccupation within a week from the date of the receipt of the notice after paying to my client rent at the rate of Rs. 296 per month as one month's deposit.

9. This notice is clear and unambiguous. By this notice, the land-ladies undoubtedly waived the right which had accrued to them for non-compliance with the order under sub-section (1) of Sec. 12 and offered the premises to the tenant in compliance with their undertaking. Although the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act is a special enactment, there is nothing in the Act itself to show that the equitable principles of waiver embodied in section 112 of Transfer of Property Act would not be applicable. Ekbote, C.J. who delivered the opinion of the Full Bench in *Adapa Abbayi Vs. Reddipantulu Choudhry and Others*, observed as follows.

Merely because there is no provision parallel to section 112. Transfer of Property

Act or the Act makes no reference to waiver, we fail to see how the equitable principle can be said to have become inapplicable to cases under the special Act. In fact this artificial distinction in applying the principle of waiver between general law and special law is not based on any cogent reasons. As stated earlier, if the special law excludes the application, then and in that case alone the said principle would not apply because the law could prevail over equities. In the absence of any such provision, the equitable doctrine would apply even to special law.

10. Therefore, applying the equitable doctrine of waiver, I hold that the land-ladies had waived their right, which had accrued to them by the Failure of the tenant to vacate the premises within the stipulated time, by the offer made by them to the tenant on 16th September, 1972, for the reoccupation of the premises, and the tenant can, therefore, in any appropriate proceeding enforce the undertaking given by the land-ladies on 20th July, 1971 u/s 12 (2) of the Act. However, in view of my finding that an application on the original side is not maintainable and only an E.P. is maintainable, the revision petition has to be dismissed and it is accordingly dismissed with costs.