
(2001) 09 AP CK 0088

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 4589 of 1998

Nalam Naga Venkata Maruthi Rao and Others

APPELLANT

Vs

Tammu Satyavathi

RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 22

Citation : (2001) 09 AP CK 0088

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

Bench : Single Bench

Advocate : T. Veerabhadrayya, for the Appellant; Sanaka Venkateswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The Civil Revision Petition is filed u/s 22 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960, hereinafter referred to as "Act", by the unsuccessful tenants in both the courts below. The respondent is the landlady who filed R.C.C. No. 2/89 on the file of Rent Controller-cum-Principal District Munsif, Machilipatnam initially on the ground of bonafide requirement and subsequently by filing I.A. No. 349/92 seeking amendment of the petition raising additional ground of sub-tenancy. As far as the ground of sub-tenancy is concerned, both the learned Rent Controller and the appellate authority had negatived the same, but however as far as the ground of bonafide requirement is concerned, both the courts had arrived at a concurrent finding that the respondent herein, hereinafter referred to as "landlady" for the purpose of convenience, requires the petition schedule premises bonafide and had ordered eviction. The Revision Petitioners, hereinafter for the purpose of convenience referred to as "tenants" being aggrieved of the order made in C.M.A. No. 1/97 on the file of Senior Civil Judge-appellate authority, Machilipatnam confirming the order of eviction in R.C.C. No. 2/89 on the file of Rent Controller, Machilipatnam, had preferred the present Civil Revision Petition. The pleadings of both the

parties are elaborate. The tenants also had filed additional counter apart from the counter initially filed opposing the eviction petition. In support of their respective contentions, the landlady had examined herself as PW-1 and also had examined P.Ws.2 to 5 and had marked Exs.A-1 and A-2 and on behalf of the tenants RWs.1 and 2 were examined and Exs.B-1 to B-53 were marked.

2. Sri T. Veerabhadrayya, the learned counsel representing the Revision Petitioners in his own style had vehemently argued that even if it is a case of concurrent findings by both the courts below, both the courts below had totally erred in appreciating the pleadings and also the evidence in this regard and also had failed to appreciate the legal position relating to bonafide requirement properly. The learned counsel also had contended that the requirement for running the business of daughter's son cannot be bonafide requirement and the two daughters are elsewhere. There is absolutely no necessity for anyone of them requiring this premises and only with a view to sell away this property after throwing the Revision Petitioners out of the property this eviction proceeding was thought of under the Act. In as much as the original tenant died, the legal representatives came on record and at present they are pursuing the litigation. The learned counsel also had submitted that it is a non-residential premises and it cannot be required for residential purpose. The learned counsel also had placed reliance on MANDALAL SRIKRISHNA MALPANI Vs. AYODYA DEVI ASAWA 1986(2) APLJ 327 and had contended that the "test of social and economic dependence" laid down by the Division Bench had not been properly applied and properly appreciated by both the courts below. The learned counsel also had submitted that the daughter's son cannot be said to be a member of the family of the landlady. The learned counsel also had placed reliance on the decision of Apex Court in Vinod Kumar Arora Vs. Surjit Kaur, and PENDYALA VENKATAKRISHNA RAO Vs. Dr. B.SEETHARAM 1989(2) APLJ 269 and had pointed out the nature of pleadings and also the evidence which had been let-in in this regard and had submitted that this aspect had not been appreciated at all in proper perspective by both the courts below and in such circumstances even if it is a matter of concurrent findings, in exercise of revisional jurisdiction u/s 22 of the Act, it is a fit matter where the revisional Court can interfere with an order of this nature.

3. Sri Sanaka Venkateswara Rao, the learned counsel representing the respondent-landlady in his own style had emphatically contended that though the ground of sub-letting was rejected by both the courts below, as far as the ground of bonafide requirement is concerned, both the courts below had concurrently held that the respondent-landlady is entitled to the relief of eviction since she bonafide requires the petition schedule premises. The learned counsel also had contended that the husband of the landlady died in the year 1984 and they were blessed only with two daughters without any male issues and both the daughters are married and one daughter had settled at Madras and another daughter had settled at Hyderabad and there is no one to attend to her at Machilipatnam and the elder son of her elder daughter by name Kishore intended to shift to Machilipatnam where he can attend to his grand mother and the grandson is an

unemployed youth having financial resources and inasmuch as the family is involved in business, i.e., manufacture of masala powder, they intend to open an industry at Machilipatnam for manufacture of masala powder with the backing of the family reputation in the said trade and her grandson is very eager to exploit and explore the potential markets regarding the same. The learned counsel also had submitted that the landlady wants to start business with the assistance of her grandson i.e., the son of one of the co-owners and hence it can be said that a member of the family of the landlady intends to assist the landlady in commencing such a business. The learned counsel also had contended that the aspect that grandson's requirement is not the requirement of the landlady and hence it does not fall under bonafide requirement was not even pleaded in the counter. Further, the learned counsel had taken me through the chief-examination of PW-1 and other witnesses and also RW-1 and had pointed out that the bonafide requirement is clearly established. The learned counsel also had contended that the parties had gone to trial knowing the respective contentions and hence the Revision Petitioners cannot contend otherwise taking advantage of the pleading to the effect that the grandson of the landlady wants to commence the business and hence it cannot be said to be bonafide requirement of the landlady as such. The learned counsel also had placed reliance on the decision cited (1) above and also S.A. SAMAD Vs. P.RAMULAMMA 1987(1) ALT 649. The learned counsel also had contended that at the best it is a need of a co-owner and the findings given by the courts below cannot be said to be perverse findings warranting interference in Revision. The learned counsel also had contended that the pleadings are to be construed liberally and the substance of the pleadings alone may have to be looked into. The learned counsel also had placed reliance on Ram Dass Vs. Ishwar Chander and Others, ; LACHMAN DAS Vs. SANTOKH SINGH, (1995) 4 SCC 201; Bhagwati Prasad Vs. Shri Chandramaul, ; Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others, ; S.B. Noronah Vs. Prem Kumari Khanna, ; KALI PRASAD Vs. M/s. BHARAT COKING COAL LTD, AIR 1989 SC 1530.

4. Heard both the counsel at length. Both the courts below on appreciation of both oral and documentary evidence, i.e., the evidence of PWs.1 to 5, RWs.1 and 2, Exs.A-1 and A-2 and Exs.B-1 to B-53, had arrived at the conclusion that the landlady had established the bonafide requirement. The term "bona fide" u/s 10(iii)(b) of the Act had not been defined in the Act. In Prativa Devi Vs. T.V. Krishnan, while dealing with the aspect of bonafide requirement it was observed :

"The landlord is the best judge of his residential requirement. He is a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how and in what manner, he should live or to prescribe for his residential standard of their own. There is no law which deprives the landlord of the beneficial enjoyment of his property"

5. In Smt. Sabitri Bala Mallick and Others Vs. Alak Ranjan Paul and Others, while dealing with the aspect of bonafide requirement the tests specified are (1) that

the landlord requires the premises, (2) that such requirement is for his own occupation and (3) that his requirement is bonafide. In Mrs. MEENAL EKNATH KSHIRASAGAR Vs. M/s. TRADERS AND AGENCIES AND ANOTHER 1996(3) CCR 155 (SC) the Apex Court held :

"It is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis either insecure or inconvenient it is not for the courts to dictate him to continue to occupy such premises".

6. The main contention of the learned counsel for the Revision Petitioners is that the requirement of daughter's son of the landlady cannot be said to be bonafide requirement. The learned counsel had placed strong reliance on the decision 1st cited and had drawn my attention to paragraph-10 at page 332 wherein it was observed as follows:-

"Let us first examine the language of the Act shorn of authority. It says in the case of a residential building the landlord can evict the tenant if "he requires it for his own occupation:" The words are not merely "for his occupation", but "for his own occupation". Now, what does this mean ? No landlord ordinarily lives alone. He lives with his family. He cannot be disassociated from his family. But then, what does a family mean ? Who are included within that expression and who are not ? This expression is not defined in the Act. Indeed, the Act, does not employ this expression at all, hence there was no occasion for defining it. It is only by a process of interpretation that family is brought in. The Andhra Pradesh General Clauses Act too does not define this expression. In our opinion it is neither possible or desirable to try to lay down exhaustively who are all included within this expression. The expression has to be understood and construed in a reasonable and realistic manner. It is a question of fact to be decided in each given case, having regard to the facts of the case, in the course of which, social, cultural, religious, financial and even emotional ties have to be taken into account. What has to be decided in each case, having regard to the pleadings and proof, is who can be said to be members of the landlord's family. Parents, dependent relatives, others upon whom the landlord is dependent or those who have been living since quite some time as members of the family of the landlord can be included within this expression. The need for such persons by itself is not relevant. They come in and their need becomes relevant because they are the members of the landlord's family. Since the landlord cannot be dissociated from his family, his family's need is treated as his need. It goes without saying that it is for the landlord to plead and prove all the necessary facts. It is for him to show why another person (apart from wife and children) is to be treated as member of his family."

7. While deciding the aspect of bonafide requirement, it is always essential to look into all the facts and circumstances. PW-4 is the grandson of the landlady who wanted to commence business and PW-3 is the father of PW-4 and their

evidence is that they are running a similar type of business at Madras and they have capacity to commence the same business. PW-5 is the brother-in-law of the landlady who had supported the same and PW-2 is another son-in-law of the landlady. Though it was contended on behalf of the Revision Petitioners that the landlady intends to sell away the property after eviction, it was specifically denied. The evidence of RW-1 and also RW-2 goes to show that since it is a commercial area, it is not easy to get such a place or shop in that area. It is pertinent to note that the landlady is not having any male children and she got only two daughters and PW-4, the grandson of the landlady wants to settle at Machilipatnam and also to assist the landlady by commencing the business and by running the business. In the said circumstances it can be said that the purpose for which the landlady requires the premises is to run the business with the assistance of her grandson which will virtually amount to family business only in view of the fact that the landlady is not having any male issues. In the light of this background, the pleadings and also the evidence of PWs.1 to 5 may have to be understood. In fact, in the decision referred (1) supra at page 340 it was also observed as follows:-

"While it is not possible nor desirable to lay down exhaustively all the situations, a few situations may be mentioned: Where a business is being carried on or proposed to be commenced by a family or for the benefit of family - family being understood as a unit comprising relatives living together and jointly carrying on business a non-residential building owned by a member of such family can be sought for by the family. In such a case, it would be the business of landlord - on the principle that it is not possible to dissociate the landlord from his family, nor can he be reasonably asked to separate himself before asking for eviction of the tenant. Similarly, where the building is owned by a landlord, the need of his spouse and/or his undivided sons/unmarried daughters would be the need of the landlord, since all of them constitute one family unit and cannot be asked to disrupt itself as a precondition for suing for eviction.

In case of a non-residential building owned by a Hindu Joint family, the requirement of a member of the joint family would be the requirement of the landlord and the business being carried on or proposed to be carried on by a member of such family would satisfy the requirement of the clause. Similarly, where one or more of the several co-owners propose to commence a business, or require the premises for the purpose of a business which they are carrying on the requirement of the clause would be satisfied."

8. In K. Nagappa Vs. T.D. Krishansa and Another, it was observed that bonafide requirement of the landlord does not mean his absolute personal requirement without which it is impossible for him to get on and bonafide requirement is no other than transferable requirement and the requirement of the tenant may be greater than that of the landlord, but being the owner, as long as the right of private ownership is recognized by law the requirement of the landlord has to be taken as bonafide if it is for occupational requirement and is not vitiated by any

oblique motive intended to harass the tenant in extracting of more rent or otherwise to let out to some other tenant and should be taken that the requirement of the landlord should be supreme. Much had been argued by both the counsel about pleadings, the nature of pleadings and also the evidence let in by both the parties in this regard. The pleadings, in a rent control proceeding, being a summary proceeding, normally may have to be construed liberally and if the parties had understood the respective contentions and had gone on trial by adducing the necessary evidence to establish their respective contentions, the substance of the pleadings can be taken into consideration instead of strictly looking into the pleadings as such. It is very relevant to note that there is clear evidence of PWs.1 to 5 relating to bonafide requirement of the premises by the landlady. It is also pertinent to note that the grandson of the landlady, PW-4, is no other than the son of one of the co-owners and by virtue of the death of the husband of the landlady, the landlady and her daughters become the co-owners of the property and thus even the mother of Pw-4 will be one of the co-owners and since there are no male issues to the family of the landlady, the daughters and the heirs of the daughters are the persons who are interested in the affairs of the and hence for the purpose of bonafide requirement it can be taken as a requirement for the purpose of running the business on behalf of the family of the landlady since the expression "family" may have to be understood in the context of the facts and circumstances in view of the fact that there are no male issues available to the family of the landlady and the female issues alone are the other co-sharers in the family property by virtue of the death of their father.

9. In the light of the detailed discussion of the complete evidence by both the courts below and the concurrent findings relating to facts recorded by the courts below and in the light of the foregoing discussion since such findings cannot be said to be perverse, but based on evidence, I am of the considered opinion that it is not a case warranting interference u/s 22 of the Act.

10. For the foregoing reasons, the order of the courts below are hereby confirmed and the C.R.P. is dismissed, with costs. But however in view of the fact that the Revision Petitioners have been in possession of the premises for sufficiently a long time, in the interests of justice, six months time is granted to vacate the premises.