
(1999) 07 AP CK 0113
In the Andhra Pradesh High Court
Case No : CRP No. 4588 of 1998

Nalivela Komaraiah and others	Vs	APPELLANT
Gannu Nagamani and another		RESPONDENT

Date of Decision : 15-07-1999

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 11, 22, 8

Citation : (1999) 4 ALD 483 : (1999) 4 ALT 595

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Mr. T. Veerabhadrayya, for the Appellant; Mr. T. Sudhakar Reddy, for the Respondent

Judgement

1. The Civil Revision Petition is filed u/s 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, against the order and decree of the learned Principal Senior Civil Judge, Warangal in CMA No.15/96 setting aside the order and decree of the learned Principal District Munsif, Warangal in RCC No.34/ 1984, dated 22-7-1996.

2. The petitioners are the tenants and respondents in RCC No.34/1984. An application was filed by the landlord Ravulapalli Basavalingam in RCC No.34/ J984 seeking eviction of the respondents/ tenants on the ground of sub-lease, wilful default and bona fide requirement. However, during the pendency of the application, the landlord died and consequently, the LRs were brought on record. The application was resisted by the tenants. One witness was examined for landlord and four witnesses were examined for tenants. Ex.A1 to A14 were marked for the landlord while Ex.B1 to B93 were marked for tenants. The learned Rent Controller after considering the evidence and the records found that all the grounds urged in the application for eviction were not established. Accordingly, dismissed the application by a judgment dated 22-7-1996. Aggrieved by the said judgment, the landlord carried the matter in appeal before the Principal Senior Civil Judge, Warangal, appellate authority under the Act, in

CMA No.15/1996. However, the learned appellate Court by orders dated 14-9-1998 set aside the judgment and decree of the Court below and allowed the appeal and directed to hand over the vacant possession of the demised premises within sixty days from the date of receipt of the order. Against the said order of the appellate authority, the present Revision Petition has been filed by the petitioner-tenants.

3. It is urged by Sri Veerabhadrayya, learned Counsel for the petitioner that the reversing order of the appellate Court was contrary to the evidence on record and the lower appellate Court did not consider the matter in a proper perspective and thus he committed errors apparent on the face of the record. He further submits that there was no evidence whatsoever at all to hold that the petitioners have sublet the premises to the 4th respondent firm. There was no wilful default in payment of rents. The appellate Court, however, confirmed the finding of the lower Court on the question of bona fide requirement, which held that the bona fide requirement was not established. However, the learned Counsel for the respondent-Landlord Sri J. V. Suryananyana Rao submits that the appellate Court has properly assessed the evidence and came to the conclusion that the subletting was established. It also found that the wilful default was established by the record itself and therefore such findings of the appellate Court cannot be interfered with under revisional jurisdiction of this Court. He further submits that it is not open for this Court to again reappraise the evidence and come to a different conclusion.

4. Let us consider whether the appellate Court was justified in arriving at a conclusion that the premises was sublet to the 4th respondent. It was the case of the landlord that the premises was let out to only Respondents No.1 to 3 namely Nalivela Komaraiah, Sankathala Mogili and Ellamsetti Chandramouli and it was not let out to the partnership firm M/s. Adarsha Medical Hall. The said partners are no more running the business and one Nalivela China Komaraiah became the partner of respondent No.4 firm and therefore the respondents had sublet the premises to Adarsha Medical Hall of which Mr. China Komaraiah was a partner. On the other hand, it was contended before the lower Court that the premises was let out to the three persons mentioned above for running M/s. Adarsha Medical Hall. The said Medical Hall is a partnership firm and the partners are changing from time to time. Therefore, the very lease itself is for the benefit of partnership. Hence, it cannot be construed that the premises was sublet to the firm.

5. There is no dispute that the medical shop was being run by the respondents for the last several years right from 1966 and the premises was let out to the individuals for running the medical hall. Even when a fresh lease deed was executed in 1978 Ex.A8, the landlord did not make any objections. Though the learned Counsel for the respondent seriously contended that it is a clear case of subletting, but when the learned Counsel for the petitioner referred to the deposition of the landlord in RCC No.34/1984 he reconciled to the situation. In

the cross-examination he had categorically stated as follows:

"The Adarsha Medical Hall is a tenant in the premises bearing M.No.9/21 and 22 since 1966. A lease deed was executed in favour of me by the said tenant. The original lease in 1966 might be for 11 months. The last rental deed was executed in the year 1978. Since 1966 to till date Adarsha Medical Hall is in occupation as tenant."

In view of this categorical admission of the landlord, the learned Counsel for the respondent did not press the issue and submits that findings of the appellate Court that there was subletting was not sustainable. Therefore, considering the facts and circumstances of the case and basing on the admission of the landlord itself, it has to be held that respondent No.4 was treated as a tenant and the question of subletting the premises did not arise. Accordingly, the findings of the appellate Court on this aspect is unsustainable under law and the same is set aside.

6. With regard to the second aspect that there was a wilful default in payment of rent, the learned Counsel for the petitioners submit that there was no default at all and that the rent was being paid in time, the findings of the appellate Court are not sustainable on this aspect.

7. The averments in the petition filed by the landlord in RCC No.34/1984 with regard to the wilful default states that the respondents did not pay the rent from 1-6-1980 and that they were liable to pay the rent from the said date till the date of filing of the application amounting to Rs.16,800/-. Thus, the respondents became wilful defaults and therefore they are liable to be evicted. The trial Court found that there was no default and that the respondents-tenants did not commit any default in payment of rents. But, however, the appellate Court recorded the finding to the effect that the respondents-tenants committed default in payment of rent for the month of June, 1980 and March and April, 1991 and also in respect of irregular deposits. It is the case of the tenants that the subsequent events to the filing of the application cannot be taken into account for constituting a wilful default thereby rendering the tenants to be evicted. The learned Counsel for the petitioners submit that the matter is referred to the Full Bench on this aspect. But, however, as on today the position is very clear that the subsequent default in payment can also be pleaded by the landlord for seeking eviction of the tenants. The question is whether there was any default on the part of the tenants. As regards the alleged default for the month of June, 1980 it is stated that the amount was paid. It was the contention of the tenants that it was paid in cash in person to the landlord on 10-7-1980. But, however, no receipt was passed on. The appellate Court found that the rent for the month of June, 1980 was not paid which appears to be factually not correct. F.x.B!6 is the day book and the said book was maintained in the normal course of business. Therefore, it is a piece of admissible evidence and the contents thereof cannot be disputed. The payment of rent for the month of June, 1980 was entered in the day book on 10-7-1980 showing the payment towards the rent for the month of

June, 1980. Therefore, the appellate Court came to an erroneous conclusion that the rent was not paid. The contention of the tenants that it was paid in cash and the landlord refused to issue receipt for the cash payment cannot be said to be without any basis in view of the entry made in Ex.B16. Therefore, I have to necessarily hold that the appellate Court failed to consider the document which is relevant for the purpose of deciding the issue. Accordingly, it has to be held that the rent for the month of June, 1980 has been paid.

8. Coming to the rent of March and April, 1991, the finding of the appellate Court is also contrary to the evidence on record. In the instant case, the landlord filed suit initially for eviction. The suit in OS No.505/1980 was decreed directing the eviction and also payment of damages from 1-6-1980. But, however, the matter was carried in appeal by the tenants in AS No.38/ 1983 and in view of the judgment of the Supreme Court reported in Motor General Traders v. State of A.P., 1983(2) APLJ 49, it was held that the suit was not maintainable and the landlord was directed to file appropriate application before the Rent Controller. Thereafter, the landlord filed RCC No.34/1984. The tenants also filed an application in RCC No.36/1984 u/s 8 of the A.P. Buildings (Lease, Rent and Eviction) Control Act and in the said petition they deposited the rents from April, 1984 to October, 1991. But, however, the said application in RCC No.36/1984 was dismissed for default. Consequent on the dismissal, notice issued to the landlord (Ex.B22) on 14-11-1991, whether he would require the tenants to deposit the rents in RCC No.34/1984 which was filed by the landlord for eviction or whether he would receive the rents in person when tendered to him. The landlord by letter dated 26-11-1991 (Ex.B18) expressed his intention that the rents should be deposited in SBA/C No. 12!07 of Central Bank of India. Therefore, it cannot be said that the amounts were not deposited in RCC No.36/1984 filed by the tenants. It is also not disputed that thereafter the rents deposited by the tenants during the pendency of the appeal and also RCC No.36/1984 were withdrawn by the landlord without prejudice. The learned appellate Court also found that there was an irregularity in payment of rents for various period and thus constitutes default. In the instant case, we are concerned with the wilful default on the part of the tenants. u/s 10(2) of the A.P. Buildings (Lease, Rent and Eviction) Control Act (for brief the "Act"), the landlord is entitled to seek eviction of the tenant on the ground that the tenant has not paid or tendered the rent due by him in respect of the buildings within 15 days after the expiry of the time fixed in the agreement of tenancy. In the absence of any such agreement by the last day of the month next following that for which the rent is payable. For proper appreciation of the matter, Section 10(2) of the A.P. Buildings (Rent, Lease and Eviction) Control Act, is extracted below:

"10(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied-

(i) that the tenant not paid or tendered the rent due by him in respect of the

building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable, or

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

(a) transferred his right under the lease or sub-let the entire building or any portion thereof if the lease does not confer on him any right to do so, or

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

(iii) that the tenant has committed such acts of waste as are likely to impair materially the value or utility of the building, or

(iv) that the tenant has been guilty of such acts and conduct which are a nuisance to the occupiers of other portions in the same building or buildings in the neighbourhood, or

(v) that the tenant has secured alternative building or ceased to occupy the building for a continuous period of four months without reasonable cause, or

(vi) that the tenant has denied the title of the land-lord or claimed a right of permanent tenancy and that such denial or claim was not bona fide.

The Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application :

Provided that in any case falling under clause (i), if, the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may, notwithstanding anything in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord upto the date of such payment or tender and on such payment or tender, the application shall be rejected."

It is to be noted that if the agreement stipulates the time for payment of rent, it is permissible for the tenants to pay the said rent within 15 days after the expiry of the time fixed in the agreement and if no such agreement is concluded, the rent shall be paid by the last date of the month i.e. the rent must be paid by 1st of every month in advance, next following that for which the rent is payable.

9. It is not in dispute that the rents were paid, but according to the appellate Court, the rents were not paid in conformity with the Section 10 of the Act nor according to the agreement. However, the appellate Court only swayed away by the Lodgment Schedules and some recitals in the agreement. But, the relevant clause was not referred to by the appellate Court. The lease agreement Ex.A1 in clause 3, it is stated that the lease was for six months. The 2nd party (tenants) agreed to pay the rent for the month according to calendar month. But, however,

the further clause 3 of Ex.A1 reads as follows;

"Whether the rent is paid by the 2nd party to the 1st party either before or after or in anticipation, it shall be treated as if the rent was paid on the 1st of the month".

(Translated from Telugu version)

From this it is seen that whether the rent is paid before or after the calendar month or in anticipation it was treated as if the rent was paid on the 1st day of the month. Thus, the agreement itself stipulates that the payment of rent need not be on the 1st of every month. The statutory conditions stipulated in Section 10 that it shall be paid within 15 days from the date fixed in the agreement whether can be waived by the landlord by making a stipulation that irrespective of the fact that it was paid earlier or after it shall be treated as if it was paid on the 1st day of the month. When once the landlord himself agreed to treat the rent whether it was received either before or after the calendar month, it was treated as if it was paid in time. But, however, clause 10 further stipulates that the rent for every six months should be paid in advance and receipt should be obtained from the 1st party or a debit entry may be made in the account book and the signature of the 1st party shall be obtained. If they act in violation of the conditions, the partners in 2nd party shall be responsible to pay the entire rent. This clause only relates to payment of rent for every six months in advance and this was neither followed by the tenants nor was there any objection by the landlord at any point of time. In fact the rent was being accepted by the landlord for every two months. Thus, clause 10 was not made a ground for eviction. Moreover, if that condition was not fulfilled, the inevitable conclusion is that all the partners will be made liable to pay the entire rent and necessary corollary that can be inferred is that they are not liable for eviction. Therefore, a reading of clause 3 would clearly establish that an agreement itself contemplated that the irregular payments to be treated as a regular. It is true that the rent was being paid for most of the period once in two months which constituted an irregular payment. But, it cannot be treated as a default much less a wilful default. The terms of the agreement itself stipulates that the payment even if it is made beyond the calendar month shall be treated as if it was paid on the 1st day of the month. Therefore, the contention of the learned Counsel for the respondent/landlord that the irregular payment itself constitutes a wilful default and therefore, there need not be any further enquiry into this aspect and that irregularity is home out by the record itself cannot be appreciated. He also submits that the various decisions of this Court and also the Supreme Court that if the default is committed during the pendency of the proceedings it has to be treated as a wilful default.

10. The learned single Judge in the case reported in *G. Murali Krishna v. P. Mahalakshmi*, 1993 (1) APLJ 31, held that subsequent events can be taken into account in pending proceedings. Any default committed in payment of rents subsequent to the filing of the application for eviction can be treated as a wilful

default. But, the question is whether there was any default at all in terms of agreement. As already held, the Agreement gave full liberty to the tenants to deposit the amount at anytime, it can be before or after or in anticipation and all the payments were treated as if they are paid in 1st of each month.

11. He also relied on *Narasaiah v. P. Narasimha Reddy*, 1995 (1) ALD 851. This is not applicable to the facts of the case as the Agreement itself treated the payments made either before or after the calendar month or during the month or in anticipation are treated as if they are paid on the 1st day of the month.

12. The learned Counsel for the Respondents relied on the decision of the Supreme Court in *Govind Prasad Vs. R.G. Parsad and Others*, , where the Supreme Court interpreted the word "other amounts" occurring in Section 14 in Himachal Pradesh Urban Rent Control Act, 1987, to include the rentals which fall due during the pendency of proceedings and not merely the arrears of rent as stood on and up-to-the date and eviction of the petitioner. Even assuming that subsequent events can be taken into account for the purpose of eviction on the ground that the tenant committed default in payment of rent even after filing the petition, in the instant case, it is found that there was no default at all on the part of the tenants. Therefore, the decision of the Supreme Court does not assist the respondent.

13. The learned Counsel for the Respondents also relied on the decision of the Supreme Court reported in *Krishnalal Buxi v. Sudarshan Pani* . In that case, the Rent Controller found wilful default and ordered eviction. The appellate Court set aside on the ground that the landlord waived the default. However, in the writ petition, the High Court interfered with the decision of the appellate Court and held that the appellant had not proved that the landlord agreed to receive the rent at irregular intervals. The Supreme Court distinguishing the judgment in the case reported in *S.P. Deshmukh Vs. Shah Nihal Chand Waghajibai Gujarati*, , held that when a tenant committed default for two months pending proceedings for eviction the necessary inference drawn was that the act of the tenant in committing default was wilful and eviction was perfectly justified. In this case, there was no default at all as can be seen from the terms of the agreement.

14. The further question that would arise for consideration is whether he could waive the statutory stipulation u/s 10 of the Act and conclude the agreement. It may be stated as a general rule that if the statute is solely for the benefit of a person, he may waive his right or the benefit, if he thinks fit, or give up the rights of a personal or private nature created under an agreement but he cannot waive a benefit conferred by a statute which has public policy for its object. There is a difference between a statute solely meant for the benefit of an individual, and a statute which has public policy for its benefit, that is, an advantage or benefit intended for an individual and one in which the public have an interest. And therefore an individual who has been conferred with the benefit by a statute may waive it if he thinks fit, but he cannot waive it where the public have an interest.

In *Graham v. Ingleby*, (1848) 1 Ex.651, it has been stated:

"..... that an individual cannot waive a matter in which the public have an interest."

The aforesaid principle is based on maxim of law "Quilibet potest renunciare juri pro se introducto", meaning "an individual may renounce a law made for his special benefit."

15. Therefore, a mandatory provision aimed at protecting the individual interest and not conceived in public interest can be waived by the beneficiary individual (See: *Vellayan Chettiar v. Government of the Province of Madras*, AIR 1947 PC 197, *Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others*, , *Shri Lachoo Mal Vs. Shri Radhey Shyam*, , *Indira Bai Vs. Nand Kishore*, , and *Krishan Lal Vs. State of Jammu & Kashmir*, .

16. Similar views were taken by the reputed authors on interpretation of statutes as well as the administrative law.

17. In Maxwell's *The Interpretation of Statutes* (12th Edn. Pages 328-330) it has been stated that if the benefit be for the protection of an individual in his private capacity the same can be waived.

18. Craies in his *Statute Law* (7th Edn. at P.269), opined that if a statute is not one of general policy, or if the thing which is being done will benefit only a particular person or a class of persons, then the conditions prescribed by the statute are not considered as being indispensable.

19. Crawford in his *Interpretation of Laws* (1989 Reprint Pages 540-542), takes the same view. So also Francis Bennion in his *Statutory Interpretation* (1984 Edn. at P.27), stated that if the performance of statutory duty be one which would come within the maxim referred to above, the person entitled to the performance can effectively waive performance of duty by the person bound.

20. In this regard, it is necessary to extract the observations made by the Supreme Court in *S.P. Deshmukh's case* (supra), which read thus:

"Normally, a monthly tenant is under an obligation to pay the rent from month to month but this obligation is subject to a contract to the contrary. Such a contract need not be reflected in a formal document and can be spelt out from the conduct of the parties, spread over a fairly long period of time. The evidence in the case, which was believed by the two Tribunals of fact, shows that the tenant has been paying rent at an interval of 3 or 4 months, which the landlord has been willingly accepting and always without even so much as a murmur. The landlord never complained of any irregularity on the part of the tenant in paying rent and indeed the tenant was not in arrears of a paisa when the present proceedings for his eviction were commenced by the landlord. In these circumstances, the judgment of the High Court is calculated to cause, rather than correct, a grave injustice. The High Court, therefore, ought not to have interfered

in the matter."

But, in the instant case, we need not even refer to the conduct of the landlord, but the contract itself stipulated the payment of rent without any definite time and the conduct of the landlord confirmed that the rent whenever was received by him without protest. Thus, this case fully covers the case on hand.

21. Thus, I have to necessarily come to a conclusion that the landlord is entitled to waive the statutory protections contained in Section 10 of the Act which are solely meant for his benefit. Section 10(2) has been grafted in the Act in the individual interest of the landlord and it cannot be said that the public policy or public interest is involved. Therefore, the stipulation made in the agreement to the effect that the rent paid before or after or in anticipation shall be treated as if it is paid on 1st of every month cannot be said to be contrary to the provisions of Section 10(2) as the landlord shall be deemed to have consciously waived his statutory right by executing an agreement and exhibiting the same by his own conduct. Under these circumstances, it is not open for the landlord to contend that there was wilful default during the pendency of the proceedings before the Rent Controller and the appellate Court. This aspect was last sight of by the appellate Court. It has only concentrated on the provisions of Section 10(2) without referring to the contents of agreement and the commitment made by the landlord in the agreement.

22. For the aforesaid reasons, I hold that the order of the appellate Court in CMA No. 15/1996 is not sustainable. Accordingly, it is set aside conforming the order of the Rent Controller in RCC No.34/ 1984 dated 22-7-1996. The CRP is allowed accordingly. No costs.