
(1991) 03 AP CK 0045

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 3560 of 1990 and 279 and 280 of 1991

Om Prakash

APPELLANT

Vs

Patangey Kishanji (died per L. Rs.) and Others

RESPONDENT

Date of Decision : 04-03-1991

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 11, 20, 22

Citation : (1991) 2 ALT 75

Hon'ble Judges : P.L. Narsimha Sarma, J

Bench : Single Bench

Advocate : M.N. Bung, for the Appellant; T. Anil Kumar, for the Respondent

Judgement

P.L. Narsimha Sarma, J.—All the three revisions arise out of the same proceedings and between the same parties and therefore, can be conveniently disposed of together. The parties in these proceedings are referred to as landlords and tenant for convenience sake.

2. C.R.P. No. 3560 of 1990 was filed by the tenant questioning the order of the Chief Judge, City Small Causes Court, Hyderabad in R. C. No. 40 of 1987 which itself was filed questioning the eviction order passed In R.C.No. 31 of 1977 on the file of Principal Rent Controller, Hyderabad.

3. C. R. P. No. 279 of 1991 was filed by the landlords against the order of the Chief Judge, City Small Causes Court, Hyderabad in R.A. No. 385 of 1986 which itself was filed against the order in I. A. No. 643 of 1977 in R.C. No. 31 of 1977 on the file of Principal Rent Controller, Hyderabad.

4. C. R. P. No. 280 of 1991 was filed by the landlords against the order of the Chief Judge, City Small Causes Court, Hyderabad in R. A. No. 40 of 1987 which itself was filed against R. C. No. 31 of 1977 on the file of Principal Rent Controller, Hyderabad.

5. C. R. P. Nos. 3560 of 1990 and 280 of 1991 were filed by the tenant and the

landlords respectively questioning the very same order to the extent it went against them.

6. The relevant facts are as follows : Landlords" predecessor-in-title filed R. C. No. 31 of 1977 on the file of Principal Rent Controller, Hyderabad for eviction of the tenant on the ground of wilful default in payment of rent from April, 1975 till the filing of the petition. In the said proceedings, the tenant raised a contention that there is no relationship of landlord and tenant between them from a particular date. The landlords filed an application I. A. No. 643 of 1977 u/s 11 of the A. P. Buildings (lease, Rent and Eviction) Control Act, 1960, hereinafter referred to as "the Act", claiming that there are arrears of rent due in respect of the building from the tenant and for a direction that the same should be paid or deposited, etc.

7. It may be made very clear that I am not going into the merits of the case as the proceedings are pending in the Court below.

8. The Principal Rent Controller recorded the entire evidence in I. A. No. 643 of 1977 and framed three points with regard to the relationship of landlord and tenant, wilful default in payment of rent and also whether the tenant has to deposit the rents as alleged by the landlords, and ultimately recorded findings on a consideration of the evidence holding that there is relationship of landlord and tenant and the tenant was in arrears of rent with effect from 1-4-1975 to 31-12-1976 amounting to 3,150/-and that there is a wilful default in payment of rent. So holding, while disposing of the application u/s 11 of the Act, he allowed the petition and the tenant was granted one month time to vacate the schedule premises. When R. C. No. 31 of 1977 was taken up, the Rent Controller stated that in view of the orders passed in I. A. No. 643 of 1977, eviction petition is allowed granting one month's time to vacate the schedule premises. Questioning these two orders, the tenant filed two appeals R.A. No. 385 of 1986 against the orders in I.A.No. 643 of 1977 and R. A. No. 40 of 1987 against the orders in R. C. No. 31 of 1977 to the Chief Judge, City Small Causes Court, Hyderabad. Both the matters were disposed of together by a common Judgment by the appellate Judge.

9. The Appellate Judge felt that it does not appear from the record that the parties have filed any memo to the effect that the Kent Controller can straightaway pass eviction order in I. A. No. 643 of 1977 filed u/s 11 of the Act without giving an opportunity to the tenant to deposit the arrears of rent and the tenant was also under the impression that he will be given an opportunity to contest the main R. C. No. 31 of 1977 and in that view of the matter, the appellate Judge felt that it is just and reasonable to set aside the orders passed by the Principal Rent Controller and directed the Rent Controller to hear the arguments on both sides in the eviction petition in view of the fact that the entire arrears as determined by the Rent Controller in I. A. No. 643 of 1977 filed u/s 11 of the Act was already deposited. Therefore, ultimately, the appellate Judge directed, in view of the fact that the entire evidence was already brought on

record, the Rent Controller to give an opportunity to both the counsel of being heard and dispose of the eviction petition within a period of one month from the date of the order. Questioning the order passed in eviction petition viz., R. A. No. 40 of 1987 to the extent it directed for disposal of the eviction petition on the evidence on record, the tenant filed C. R. P. No. 3560 of 1990, while the landlords filed C. R. P. Nos. 279 and 280 of 1991 questioning the orders both in R. A. No. 40 of 1987 as well as in R. A. No. 385 of 1986

10. Sri M. Narayana Bung, learned counsel appearing for the tenant raised the following contentions:

1) Though the appellate Court has no power of remand, still the order cannot be construed as one of remand and in any event, the landlords having participated in the enquiry after remand and submitted their arguments should be held to have waived the right to file revision and therefore, the revision filed against the main eviction petition by the tenant should not be entertained.

2) The order of remand directing the Rent Controller to dispose of the case on the evidence on record is incorrect in view of the fact that the evidence was only in Section 11 proceedings and not in R. C. No. 31 of 1977 and he should be given an opportunity to adduce evidence in so far as the question of wilful default in payment of rent is concerned.

11. On the other hand, Sri T. Anil Kumar, learned counsel for the landlords contended that the lower appellate Court has no power to remand while exercising the jurisdiction u/s 20 of the Act and that the entire evidence was already recorded in proceedings u/s 11 of the Act in I.A. No. 643 of 1977 and that itself is sufficient to dispose of the matter in R.C. No. 31 of 1977 and that no further opportunity need be given to the tenant to adduce any evidence whatsoever. The learned counsel also contended that in view of the finding recorded by the Rent Controller that there is relationship of landlord and tenant between the parties and that the denial of title by the tenant is mala fide, no further enquiry need be conducted in the main proceedings and the eviction order passed by the Rent Controller can be sustained on that ground alone. In support of his contention, he relied upon a judgment of a Full Bench of this Court in Chungalal and Others Vs. Narsingh Pershad, .

12. It is unfortunate that the proceedings taken under the provisions of the Act in the year 1977 are still pending. It is necessary to see that these matters are disposed of at the earliest.

13. The application for eviction on the ground of wilful default in payment of rent was filed by the predecessor-in-title of the landlords. A part from taking other pleas, the tenant raised a contention that there is no relationship of landlord and tenant between the parties. While so, an application u/s 11 of the Act was filed by the landlords to direct the tenant to pay all arrears of rent due in respect of the building up to the date of payment or deposit and to continue to pay or deposit any rent which may subsequently become due in respect of the building,

until the termination of the proceedings. In view of the fact that the relationship of landlord and tenant was denied by the tenant, the evidence was recorded, both oral and documentary, on all matters in dispute and the Rent Controller gave a finding that there is relationship of landlord and tenant between the parties that the denial of title by the tenant is mala fide. The Rent Controller also gave a finding after considering the evidence on record that the tenant himself as R.W. 3 admitted in his cross-examination that he has not paid the rent with effect from 1-4-1975 to 31-12-1976 amounting to Rs. 3,150/- and therefore held that the tenant has to deposit the rents from April, 1975 till the date of filing of the petition and continue to deposit for the subsequent period. In view of the findings recorded as above mentioned, the Rent Controller held that the tenant had committed wilful default in payment of rent for the period from 1-4-1975 to 31-12-1976 amounting to Rs. 3,150/-. In view of the findings recorded in the proceedings u/s 11 of the Act, the Rent Controller allowed the application and granted one month time to the tenant to vacate the schedule premises. As a consequence of his decision and direction in I.A. No. 643 of 1977, the Rent Controller allowed R.C. No. 31 of 1977 and granted a month's time for the tenant to vacate the schedule premises. As stated above, the Appellate Judge came to the conclusion that the direction given by the Rent Controller to vacate the schedule premises within a period of one month without giving the tenant an opportunity to deposit the rent after its determination u/s 11 of the Act is bad and the said direction of the Rent Controller is not in accordance with the scheme of Section 11 of the Act. The Appellate Judge, however, felt that in view of the fact that the entire amount of arrears of rent as determined by the Rent Controller was deposited at the time of filing of the appeal, the direction issued by the Rent Controller to vacate the schedule premises does not arise and, therefore, set aside the same. Questioning the said order, C.R.P. No. 279 of 1991 was filed by the landlords. The order of the Appellate Authority in R.A. No. 40 of 1987 setting aside the order of eviction granted by the Rent Controller in R.C. No. 31/77 as a consequence of his order in I.A. No. 643 of 1977 is the subject-matter of C.R.P. No. 280 of 1991 preferred by the landlords. The tenant filed C.R.P. No. 3560 of 1990 questioning the very same order of the Appellate Authority in R.A. No. 40 of 1987 in so far as it directed the Rent Controller to decide the matter on the evidence on record. The tenant's contention was that while directing the Rent Controller to dispose of the matter, the Appellate Authority should have given him a further opportunity to adduce evidence, if any, on the question of wilful default in payment of rent.

14. It is seen from the above that the landlords filed the application u/s 11 of the Act pending eviction petition for a direction to the tenant to deposit the arrears of rent and continue to do so during the pendency of the proceedings. The tenant denied the relationship of landlord and tenant. Therefore, evidence was let in, both oral and documentary, and a full-fledged enquiry was held by the Rent Controller. It is seen from the record that the parties adduced evidence on all aspects including the aspect of relationship of landlord and tenant as well as on

the question of wilful default in payment of rent. The Rent Controller recorded findings on the evidence on record. This procedure is permissible under the Act as well as in view of the judgment of this Court in Changanlal v. Narsingh Pershad referred to (supra 1). The learned Judges in the said case held as follows:

"That question of fact, being a jurisdictional fact even for the purpose of Section 11, has to be decided finally by means of a regular enquiry and it would become the determination in the main eviction petition itself."

The question that was the subject matter of the decision by the Full Bench was the fact whether there is relationship of landlord and tenant between the parties. Therefore, whenever a question arises as to whether there is relationship of landlord and tenant between the parties, the Rent Controller has jurisdiction to decide finally by means of a regular enquiry the said question, and that would become the determination in the main eviction petition. Therefore, in so far as the question whether there was relationship of landlord and tenant between the parties is concerned, the decision rendered by the Rent Controller in I.A. No. 643 of 1977 after holding the regular enquiry and after taking evidence will be the decision in the main proceedings for eviction itself viz., R.C. No. 31 of 1977. Therefore, in so far as R.C. No. 31 of 1977 is concerned, whatever is stated in the proceedings u/s 11 of the Act with regard to the relationship of landlord and tenant will be the decision in the main eviction petition.

15. It is true that the ultimate order of eviction passed by the Rent Controller without giving an opportunity to the tenant to deposit the arrears of rent as determined by him within a particular period is not sustainable. In fact the Rent Controller after making such an enquiry as he deems necessary and after determining the rent to be so paid or deposited must give him time to deposit the arrears of rent so determined. If the tenant fails to pay or deposit as directed by the Rent Controller and also fails to show sufficient cause for not depositing the amount, then the Rent Controller can make an order directing the tenant to put the landlord in possession of the schedule premises. Therefore, according to the scheme of Section 11 of the Act, there should be a determination of the amount of arrears of rent to be paid or deposited by the Rent Controller and that determination will be after such an enquiry as he deems necessary to conduct. After the determination is made by the Rent Controller with regard to the rent to be deposited, he should direct the tenant to deposit the rent and if the tenant does not deposit or fails to show sufficient cause for not depositing, then the Rent Controller gets jurisdiction to direct the tenant to put the landlord in vacant possession of the premises. This procedure envisaged u/s 11 of the Act was not followed by the Rent Controller while passing the order in I.A. No. 643 of 1977 and the tenant was not given an opportunity to deposit the arrears of rent or to show cause why he could not deposit the same. Straightaway, the Rent Controller passed eviction order which is not sustainable. Therefore, the order of the lower Appellate Court in R.A.No. 385 of 1986 to the extent it set aside the

eviction order is correct. There shall be a direction to the tenant to deposit the arrears of rent after the same was determined by the Rent Controller, failing which only the eviction order shall be passed. However, the appellate Judge is not right in setting aside the entire order. In view of the subsequent event, viz., that the amount of arrears of rent as determined by the Rent Controller was already paid at the time of presentation of the appeal, the eviction order becomes redundant. But the findings recorded in so far as the relationship of landlord and tenant between the parties is concerned, it stands and it will be the determination in the main proceedings in R.C. No. 31 of 1977 as stated by the Full Bench of this Court in the decision referred to supra (1). The said question can be gone into and decided by the lower appellate Court. Therefore, CR.P. No. 279 of 1991 is partly allowed and the appeal R.A. No. 385 of 1986 shall be restored to file of the Chief Judge, City Small Causes Court, Hyderabad and the same may be disposed of after giving opportunity to both the parties in accordance with law on merits on the question whether there is relationship of landlord and tenant between the parties.

16. In so far as the order passed in R.C. No. 31 of 1977 is concerned, the order of the appellate Court in R.A. No. 40 of 1987 setting aside the eviction order which was passed as a consequence of the order u/s 11 of the Act is correct. The Rent Controller has not decided the matter on merits. The Rent Controller merely followed the findings recorded in I.A. No. 643 of 1977. It does not appear from the record that the evidence was fully recorded on the aspect of wilful default in payment of rent. The learned counsel for the landlords contends that the entire evidence was recorded on the question of wilful default in payment of rent and no further opportunity need be given on that aspect. While the learned counsel for the tenant contends that he has some more evidence to adduce on the question of wilful default in payment of rent.

17. In the Full Bench judgment referred to supra (1), the learned Judges mentioned that even if the question of relationship of landlord and tenant is to be determined finally by a regular enquiry and not by a summary enquiry there will still be need in many cases for determination of other questions for disposing of the eviction petition. Section 11 enquiry is only with regard to the direction to deposit the arrears of rent, for which determination, in this case, the question of relationship of landlord and tenant had to be gone into and decided. There is still the question whether there is wilful default in payment of rent or not which is the question to be decided in the main eviction petition, viz., R.C.No. 31 of 1977. The appellate Judge is right in holding that R.C. No. 31 of 1977 will have to be decided on merits and the same cannot be disposed of as a consequence to the order u/s 11 of the Act. To that extent, the order of the appellate Judge is correct. However, the order of the appellate Judge remanding the matter to the Rent Controller with a direction to dispose of the eviction petition after giving opportunity to both the counsel is not sustainable. The Appellate Authority under the Act has no power of remand. The said question is no longer res integra.

18. Punneya, J. in Ammanachary v. Rahima Khatoon (1984 (2) ALT 364) held that u/s 20 (3) of the Act, the appellate authority has no power to remand the case to the Rent Controller. In coming to the said conclusion, the learned Judge followed the decision of Munikannaiah, J. in Mahboob Bi Vs. Alvala Lachmiah, and the decision of A.V. Krishna Rao, J in Ekramuddin v. Smt. Sheela Bai Ekbote (1972 APHN 3) respectively. In fact, a Division Bench of this Court in an unreported judgment in C.R.P. No. 2096 of 1982 dated 17-12-1987 held that the appellate Court has no power of remand under the Act.

19. In view of the above, it is clear that the order of the appellate Judge remanding the matter to the Rent Controller, to be decided on merits after giving an opportunity to be heard to both the parties is not sustainable. Therefore, to that extent the order of the appellate Judge in R.A. No. 40 of 1987 is set aside. The lower Appellate Court will now restore R.A No. 40 of 1987 to his file and proceed to decide the matter himself on merits. In this connection, it is necessary to refer to Sub-section (3) of Section 20 of the Act which is as follows:

"The appellate authority shall send for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as he thinks fit either personally or through the Controller, shall decide the appeal."

Therefore, the appellate authority himself after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as he thinks fit, shall decide the appeal R.A. No. 40 of 1987. The evidence which is already recorded in I.A. No. 643 of 1977 shall be treated as evidence in R.C. No. 31 of 1977 itself in view of the Judgment of the Full Bench of this Court referred to supra (1). The tenant, in view of his allegation that he was not given an opportunity to adduce evidence on the question of wilful default in payment of rent, will be given an opportunity to adduce any further evidence on the said question only. The landlords will be given an opportunity to cross-examine the witnesses, if any, on that aspect. R.A. No. 40 of 1987 will be decided by the appellate Court on merits in accordance with law.

20. In view of the fact that the eviction petition was filed in the year 1977 and pending all the while and taking into consideration this aspect, I deem it just and proper to direct the Appellate Authority to record the evidence which the tenant may choose to adduce on the question of wilful default in payment of rent only. The tenant is given one month time from the date of receipt of this order by the Appellate Authority to adduce evidence as mentioned supra and the Appellate Authority is directed to dispose of the matters within two months from the date of receipt of this order.

21. For the reasons stated above, the order of the Appellate Authority is one of remand. When once it is held that the order is one of remand, mere participation after remand by the landlords in arguing the matter in the trial court cannot be construed as waiving the right to question the order of remand. In fact, they

have questioned the order of remand in C.R.P. No. 280 of 1991. Therefore, the question of waiver does not arise. In view of the above, the first point raised by the learned counsel for the Tenant is not sustainable.

22. In view of what is stated above, second contention raised by the learned counsel for the petitioners is sustainable and therefore, the tenant is given an opportunity to adduce further evidence, if any, on the question of wilful default in payment of rent only.

23. With the above directions, all the three revisions are disposed of. No costs.