
(1998) 06 AP CK 0031
In the Andhra Pradesh High Court
Case No : CRP No. 4961 of 1996

P. Rajaiah

APPELLANT

Vs

Veera Shaiva Vidyavardhak Sangh, Yadgir

RESPONDENT

Date of Decision : 24-06-1998

Acts Referred:

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

Citation : (1998) 4 ALD 443 : (1998) 4 ALT 275

Hon'ble Judges : R. Bayapu Reddy, J

Bench : Single Bench

Advocate : Mrs. C. Jayasree, Sarathy, for the Appellant; Mr. Vijayakumar Herror, for the Respondent

Judgement

1. This revision is filed by the tenant questioning the orders of the Addl. Chief Judge, City Small Causes Court, Hyderabad dated 4-10-1996 in R.A.No.66/94 which was filed questioning the order of the I Addl. Rent Controller, Hyderabad, dated 1-2-1994 in R.C.No. 233/86 filed by the landlord.

2. The respondent herein had filed R.C.No. 233/86 against the tenant who is the present petitioner for eviction on the ground of wilful default in payment of rent for the specific period and also wilful default in payment of the property tax due to be paid to the Municipality as per the rental agreement executed between the parties. The learned Rent Controller allowed the eviction petition by orders dated 1-2-1994 having come to the conclusion that the tenant has committed wilful default in payment of rent and also wilful default in payment of the property tax due to be paid to the Municipality; whereupon the tenant filed R.A.No.66 of 1994 before the Addl. Chief Judge, City Small Causes Court, Hyderabad, and the appellate authority came to the conclusion that there was no wilful default insofar as the payment of rent is concerned and that there is, however, wilful default in payment of the property tax due to the Municipality as per the rental agreement between the parties. On that ground the appeal was dismissed confirming the orders of eviction. Questioning the same, the present revision is

filed by the tenant.

3. Heard both the Counsel.

4. It is not in dispute and it is also clear from Ex.P4 rental agreement that was executed between the landlord and the tenant that the tenant agreed to pay the monthly rent to the landlord and also pay the Municipal taxes (property taxes) which is exclusive of the monthly rent payable to the landlord. It is also now not in dispute that the tenant failed to pay the property tax due to the Municipality for over a period of seven years between 1973 and 1978 and he made only part payments subsequently under Ex.R21 and 25. It is also clear from the evidence adduced before the Rent Controller that the Municipal authorities issued Ex.P2 notice to the landlord demanding him to pay the property tax and in pursuance thereof the landlord issued Ex.P3 notice to the tenant requiring him to pay the property tax to the Municipality and in spite of the same he failed to pay the property tax as agreed upon in the rental agreement. Therefore, it is a clear case where the tenant violated the terms of the agreement and committed wilful default in payment of property tax to the Municipal authorities. Under those circumstances the appellate authority came to the conclusion that the tenant is liable to be evicted for such wilful default in payment of rent.

5. The learned Counsel for the petitioner however, tries to contend that the rental agreement marked as Ex.P4 does not mention that the property tax is to be paid by the tenant to the landlord and that such tax is to be paid only by the tenant to the Municipal authority and that therefore even if there was any default committed in payment of property tax to the Municipality by the tenant it will not amount to default in payment of tax inasmuch as such tax was not liable to be paid to the landlord by the tenant. But it makes no difference whether the tax is to be paid directly to the Municipal authorities by the tenant as per the rental agreement or to the landlord. When once Ex.P4 rental agreement clearly mentions that the property tax due to the demised building is to be paid by the tenant over and above the rent that was specified in the agreement and when once a default is committed by the tenant in payment of such tax even directly to the Municipality, it will amount to violation of terms of the agreement and wilful default in payment of such property tax. Under these circumstances, the lower appellate authority has relied upon the decision of this Court reported in Smt. Kanta Bai Asawa and Others Vs. Kranti Swaroop Machine Tools Pvt. Ltd. and Another, , wherein it was observed that where the recitals in the lease-deed would indicate that the landlord on service of the demand notice in respect of tax is bound to intimate the tenant and on such intimation the tenant has to pay the tax and where the tenant has agreed to pay the Municipal taxes as per the rental agreement, non-payment of tax would amount to non-payment of rent and thus it will form a ground for eviction. The lower appellate authority has also relied upon another decision of this Court reported in S. Fatheuddin Akbar v. Ghanshamdas 1957 ALT 648 wherein also it is observed that "rent" includes what is ordinarily described as rent but also payments in respect of special amenities

provided by the landlord under the agreement between him and his tenant and that it is comprehensive enough to include all payments agreed to be paid by the tenant to his landlord and that non-payment of the taxes would amount to non-payment of rent and would attract Section 10 of the Rent Control Act.

6. So in view of such circumstances the lower appellate authority rightly held that wilful default in payment of property tax to the Municipality by the tenant as per the rental agreement will be a ground for eviction.

7. The learned Counsel for the petitioner has tried to rely upon another recent decision of this Court reported in Smt. K. Rachamma Vs. Smt. Bimal Bai and Another, , which is also infact referred to and discussed by the lower appellate Court. A perusal of the said decision clearly shows that the observations made therein have no application to the facts of the present case. In the said decision K.Rachamma's case (supra) the above said earlier decision of this Court in Kanta Bai Asawa's case, (supra) was also referred to and it was distinguished. In the decision reported in K.Rachamma's case, (supra) the amount to be paid towards rent was not specified and an amount of Rs.50/- per month was agreed to be paid by the tenant as an ad hoc sum towards property tax without reference to the actual amount of property tax payable to the Municipal Corporation.

8. In the present case it is specifically mentioned in Ex,P4 agreement that besides the rent the tenant has to pay the entire property tax due to the Municipality. Therefore the above cited recent decision of this Court K. Rachamma's case has no application to the facts of this case.

9. The learned Counsel for the petitioner further tries to rely upon some provisions of the Municipal Corporation Act and tries to contend that in case default is committed in payment of rent, the Municipal Corporation will have to proceed against the tenant for recovery of the tax and that therefore even if any such default is committed the landlord is not entitled to seek his eviction on the ground of such default. But the provisions of the Municipal Corporation Act have no relevancy insofar as the facts of this case as revealed from the rental agreement which clearly specifies that it is the duty of the tenant to pay the property tax to the Municipality and evidently such term was included after taking into consideration the quantum of rent that was actually payable as per the agreement and such rent was evidently fixed only after taking into consideration the payment of property tax to the Municipality by the tenant. Under those circumstances the property tax will form part of the rent that was payable to the landlord by the tenant and when once there was wilful default in payment of the property tax to the Municipality as per the agreement, it will be a ground for eviction as rightly found by the lower appellate Court. In these circumstances it is not a fit case where such orders of the lower Court can be interfered in this revision.

10. In the result, the revision is dismissed. No costs. In view of the facts and circumstances of the case, the petitioner, who is the tenant is granted time till

the end of August, 1998, for vacating the premises.