

(2002) 04 AP CK 0119
In the Andhra Pradesh High Court
Case No : CRP No. 3603 of 2000

Pallicherla Suseelamma and Others

APPELLANT

Vs

Kondapalli Sarojanamma (Died per LRs)

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(3)

Citation : (2002) 4 ALD 486

Hon'ble Judges : Dubagunta Subrahmanyam, J

Bench : Single Bench

Advocate : Vilas V. Afzulpurkar, for the Appellant; M.V.S. Suresh Kumar, for Respondent Nos. 1 to 6, for the Respondent

Final Decision : Dismissed

Judgement

Dubagunta Subrahmanyam, J.—This revision petition is filed u/s 22 of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, against the order dated 7-6-2000 in CMA No.7 of 1994 on the file of senior Civil Judge, Nellore, setting aside the order dated 14-7-1994 in RCC No.23 of 1989 on the file of the Rent Controller-cum-Principal District Munsif, Nellore.

2. This revision petition is filed by the tenants. Smt. Sarojanamma filed eviction petition seeking the eviction of the tenants on the ground of personal requirement for occupying the petition schedule premises by her third son Murali (PW2) to carry on business in gunny bags. The tenants resisted the eviction petition taking the plea that the requirement of the landlady is not bona fide. On the basis of the oral and documentary evidence adduced by both the parties, the Rent Controller came to the conclusion that the requirement of the landlady for occupation for the business of her third son (PW2) is bona fide. However, on the ground that during the pendency of the eviction proceedings another tenant of the landlady vacated another shop room and it was occupied by another son of the landlady and as the landlady is already in possession of one non-residential shop room, she is not entitled to seek the eviction of another tenant for her non-

residential purposes. On that ground the Rent Controller dismissed the eviction petition. Aggrieved by the orders of the Rent Controller, the landlady preferred an appeal in CMA No.7 of 1994 before the appellate Court. During the pendency of the appeal, the landlady Sarojanamma died. Her husband and her sons came on record as the legal representatives of the deceased Sarojanamma in the appeal. The appellate Court also found that the requirement of the landlady is bona fide. He did not accept the reasoning given by the Rent Controller to dismiss the eviction petition. The appellate Court allowed the appeal and in the result, allowed RCC No.23 of 1989 filed by the landlady and ordered the eviction of the tenants. Aggrieved by that order, this revision petition is filed by the tenants.

3. The Rent Controller followed a decision of Full Bench of this Court in Vidyavathi Bai v. Shankerlal 1987 (2) ALT 550, and dismissed the eviction petition. The Full Bench of this Court in the above decision held as follows:

"Under Section 10(3)(a)(iii) of the Act a landlord in occupation of a non-residential building is not entitled, for carrying on his business or commencement of a business, to get back possession of another non-residential building in the occupation of a tenant, the bar under the section against securing eviction of the tenant of such non-residential building is absolute. Suitability, convenience and sufficiency of the non-residential building already in occupation of the landlord for carrying on the business of the applicant (landlord) or to meet the bona fide need of any other member of the family of the appellant (landlord), independent of and over and above the need of the applicant (landlord), are all irrelevant considerations in the context of construing the provisions in Section 10(3)(a)(iii) of the Act, which, in clear terms, interdicts the landlord, in absolute terms from seeking recovery of the non-residential building belonging to him in the occupation of the tenant."

4. The appellate Court relying upon a judgment of the Supreme Court in D. Dvaji v. K. Sudarshana Rao 1994 (1) APLJ 5 (SC), came to the conclusion that the Full Bench judgment of this Court in Vidyavathi Bai case (supra) cannot be made applicable in the factual context. The Supreme Court held in para 3 of its judgment that finding of Full Bench in Vidyavathi Bai case (supra) whether the bona fide need of any other member of the family of the landlord, independent of and over and above the need of the landlord, is left open, since that question did not arise in Vidyavathi Bai case and the same question does not arise on the facts of the case before the Supreme Court.

5. It is to be stated that in the present eviction proceedings itself the landlord clearly stated in her that petition that her another son wants another shop room for carrying on business and she is filing another eviction petition to seek the eviction of another tenant for her personal requirement to enable her another son to carry on business. In that eviction petition, after sometime, the tenant therein withdrew his defence, vacated that petition schedule premises and it fell vacant during the pendency of the present eviction proceedings. It is not in dispute that the said vacant shop room was occupied by another son of the

landlady. It is also to be made clear that the said shop room was not given for rent to any other third party by the landlady. The Rent Controller took into consideration that the landlady occupied the said shop room which fell vacant during the pendency of the present eviction proceeding and refused to order the eviction of the revision petitioners on the ground that the landlady is already in occupation of another non-residential premises. The Rent Controller followed the Full Bench decision of this Court in Vidyavathi Bai case (supra).

6. The learned Counsel for the respondents relied upon a later judgment of Supreme Court in V. Radhakrishnan Vs. S.N. Loganatha Mudaliar, . The Supreme Court interpreted the provision in Section 10(3)(a)(iii) of Tamil Nadu (Lease and Rent Control) Act. The said provision is *pari materia* of the provision in Section 10(3)(a)(iii) of A.P. Buildings (lease, Rent and Eviction) Control Act. In that decision the landlord was in possession of one non-residential building of his own. The landlord wanted the possession of another residential building for setting up business of landlord's son. The Supreme Court held that the fact of the landlord already in occupation of another non-residential building would not operate as bar for seeking eviction of tenant for the benefit of his son. Para 12 of the judgment of the Supreme Court is relevant and it is extracted hereunder.

"On a plain reading of Section 10(3)(a)(iii) of the Act, it appears to us that the Legislature intended trial a landlord seeking eviction of the tenant could be disentitled from claiming possession of the non-residential premises where he requires those premises for his own use, if he is occupying a non-residential building of his own. Similarly, the landlord would also be disentitled from claiming possession of non-residential premises for the benefit of a member of his family, if that member of the family was in occupation of a non-residential building of his own. Any other interpretation of this section would not only be doing violence to the plain language of the section but would result in absurdity inasmuch as the benefit of the provision would stand denied to the family members of the landlord, who do not occupy any premises of their own and for whose benefit eviction is sought, if the landlord himself is in occupation of a non-residential premises of his own. The fact that the landlord, who seeks eviction for the benefit of a member of his family is himself occupying a building of his own, cannot operate as a bar to the landlord seeking eviction for the benefit of a member of his family, who does not occupy any premises of his own."

7. The principle of law laid down by the Supreme Court in the above decision undoubtedly, impliedly overrules the decision of Full Bench of this Court in Vidyavathi Bai case (supra). It is, therefore, no longer good law. Therefore, in view of the latest judgment of the Supreme Court of India, notwithstanding the fact that the landlady is in occupation of one non-residential building, she is entitled to seek the eviction of another tenant in another non-residential building of her own for the purpose of her another son carrying on business.

8. The learned Counsel for the revision petitioners relied upon a judgment of the Supreme Court in Sree Balaji Krishna Hardware Stores Vs. Srinivasaiah, . The

landlord sought the eviction of the tenant for the purpose of business of glass and plywood carried on by one of the sons of the landlord. Another shop room fell vacant and the landlord allowed his daughters-in-law and other sons to use the same. In the above circumstances, the Supreme Court held that the requirement of the landlord is not bona fide and the shop room which fell vacant cannot be said to be unsuitable for business in glass and plywood. The facts in this decision are not applicable to the facts on hand. As already noticed, in the present eviction petition itself the landlady pleaded that she is seeking the eviction of another tenant for the business purpose of her another son. After that tenant vacated the premises, the landlady gave possession of that building to the son named in the eviction proceedings and not to any other person. It is the contention of the revision petitioners that another two shop rooms belonging to the landlady fell vacant and those two shop rooms should have been occupied by PW2 in the present case. The appellate Court clearly held that those two shop rooms are residential portions and not non-residential portions. There are no grounds to interfere with the said finding of fact recorded by the appellate Court regarding the nature of the other two premises which fell vacant during the pendency of the present eviction proceedings. It is thus clear that the order of the appellate Court need not be interfered within the present revision petition. There are no merits in the present revision petition.

9. In the result, the revision petition is dismissed confirming the orders of the appellate Court in CMA No.7 of 1994. The tenants-revision petitioners are granted three months time to vacate the petition schedule premises. No costs.