
(2017) 11 AP CK 0014
In the Andhra Pradesh High Court
Case No : 6465 of 2016

Radhi Raney and another

APPELLANT

Vs

Nanki Feroze

RESPONDENT

Date of Decision : 10-11-2017

Acts Referred:

Constitution of India, Article 141 -
Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1973, Section 4,
Section 32, Section 10

Citation : (2017) 11 AP CK 0014

Hon'ble Judges : Suresh Kumar Kait, D.V.S.S. Somaya Julu

Bench : DIVISON BENCH

Advocate : R.A. Achuthanand, Mohd. Imran Khan

Judgement

1. Vide the present petition, the petitioners have challenged the order dated 16.08.2016 passed in R.A.No.176 of 2013 by the Chief Judge, City Small Causes Court, Hyderabad, whereby, the appeal filed by them against the order passed in RC No.69 of 2011, dated 31.07.2013 by the Additional Rent Controller, Secunderabad, has been dismissed.

2. When the present petition was listed before the learned Single Judge, Sri Justice M. Satyanarayana Murthy, on 01.08.2017, an order was passed, which reads as under: In view of present anomalous situation, I am unable to express any view with regard to correctness of either of the judgments. Hence, the following question is formulated to answer by Division Bench: Whether fair rent fixed by Rent Controller exceeding the upper limit of jurisdiction of Rent controller fixed under Section 32 of the Act from the date of petition under Section 4(1) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, takes away the jurisdiction that conferred on the Rent Controller in a petition filed under Section 10 of the Act, subsequent to filing of petition under Section 4(1) of the Act?.

3. Thus, the present petition is listed before this Court to answer the reference.

4. The facts of the case are that: The respondent is a landlady who filed RC No.68 of 2011 on 11.07.2011 for fixation of fair rent of premises from Rs.2,600/- per month to Rs.15,000/- per month. Meanwhile, the respondent/landlady filed R.C.No.69 of 2011 for eviction of tenants on 14.11.2011 on various grounds. The fixation of fair rent application i.e., RC No.69 of 2011 was allowed on 31.07.2013 enhancing the rent to Rs.5,000/- per month. Being aggrieved by the aforesaid order, the petitioners/ tenants had filed R.A. No.176 of 2013 on the file of Chief Judge, City Small Causes Court, Hyderabad and the same was dismissed on 16.08.2016 confirming the order of the lower Court.

5. Being aggrieved again, the tenants preferred present CRP and canvassed that the Rent Control Court has no jurisdiction to pass an order of eviction as the rent is enhanced beyond the pecuniary jurisdiction of the Rent Controller.

6. Learned counsel for the petitioners/tenants argued that prior to amendment Act No. 17/2005, the pecuniary jurisdiction of the Rent Control Court was if rent is up to Rs.1,000/- per month. In view of the Government having issued G.O.Ms.No.636 dated 24.12.1983 the operation of the provisions of the Act on all the newly constructed buildings were exempted, irrespective of date of construction, for a period of 10 years from the date on which their construction was completed and those premises where the rent was more than Rs.1,000/- per month, from the provisions of Rent Control Act. The application for fixation of fair rent was filed on 11.07.2011 and an eviction petition was filed in the same year, but on a later date.

7. Learned counsel for the petitioners/tenants submits that the judgment rendered in 2012 Law Suits AP Page 8 or 2013 (3) ALT page 421 of JCB para 7 of the judgment also refers to an identical question which fell for consideration by the Court in Anil Kumar R. Kamdar (died per LRs) Vs. Dasari Vaikuntam (died per LRs) in CRP No.5025 of 2009 dated 21.07.2010. The learned Single Judge by the aforesaid judgment dated 21.07.2010 repelled the submissions and held that since the Rent Controller has jurisdiction to entertain the eviction on the date of filing the petition, subsequent event of fixation of fair rent albeit with retrospective effect will not oust the jurisdiction of the Court and a reliance was made by learned judge relying on a Full Bench of this Court in Ram Vilas Bajaj Vs. Ashok Kumar . Similarly, the judgment cited in 2012 Law Suit AP 45 also refers to the said judgment. The reference is confined to the judgments of Justice Sri C.V. Nagarjuna Reddy and Dr.Justice Sri B. Siva Sankara Rao. The aforesaid two judgments are conflicting judgments. The judgment rendered by justice C.V. Nagarjuna Reddy relies upon the other judgments relied upon wherein the learned judge has observed that change in the pecuniary jurisdiction will not oust the jurisdiction that the suit was lawfully instituted. The judgment relied upon deals with the payment of Court fee act which was changed during pendency of the suit. It does not directly deal with Section 4(1) of the Act.

8. Learned counsel for the petitioners submits that the judgment in Sai Kiran General Stores, Secunderabad Vs. Sai Anand Prasad has been referred to,

wherein Justice Surya Rao, had observed that the Rent Control Court has jurisdiction to fix the fair rent exceeding the jurisdiction. The said judgment also deals with issues arising from the G.O.Ms.No.636 dated 18.12.1983 when the Government issued Gazette after Section 32 (b) (Act was not applied to any building constructed on or after 26.8.1957) was struck down by the Honble Supreme Court holding that it is unconstitutional and the Government issued the said G.O.Ms.No.636, wherein all the buildings, which were constructed 10 years were exempted from the purview of the Rent Control Act and if the rent is more than Rs.1,000/-, the Act will not apply to those buildings.

9. As per the said G.O., a question raised, before the then Justice Surya Rao was that the Rent Controller has no jurisdiction to fix the fair rent beyond its pecuniary jurisdiction. It was argued there that once the rent is fixed beyond Rs.1,000/-, the property comes out from the jurisdiction of the Rent Control Act. Justice T.Ch.Surya Rao negated the said contention and held that the Rent Controller does not lose jurisdiction over the case even if the fair rent is fixed above the limits prescribed. The said judgment was also relied upon by the learned Justice C.V.Nagarjuna Reddy in the matter mentioned above.

10. Learned counsel for the petitioners submits that Sri Justice C.V.Nagarjuna Reddy did not deal with Section 4 (1) of the Act correctly and the fixation of fair rent relates back to the date of application. As such, the Rent control Court would lose its jurisdiction once the rent is fixed beyond Rs.3,500/- per month.

11. Learned counsel for the petitioners further submits that in the judgment referred by Dr.Justice B. Siva Sankara Rao in CRP Nos.3516 and 3570 of 2016, the learned judge has dealt with the issue relying upon the judgments of the Apex Courts and relied upon a case in Boolchand and Company Vs. Qamarunnisa Begum. The Division Bench of this Court has observed that : invariably if the premises, rent was Rs.9,000/- per month, the provisions of the Act invariably applied to it, since the stipulated rent was Rs.1,000/- or below at a relevant point of time. If during the pendency of the proceedings, the rent is determined either with the agreement of parties or through a determination of the Court at Rs.1,500/-, the act will cease to exist.

12. As submitted by the learned counsel for the petitioners that the aforesaid observation directly deals with Section 4(1) of the Rent Control Act. However, Justice C.V.Nagarjuna Reddy and other learned judges do not deal with the effect of Section 4 (1) of the Act.

13. It is pertinent to mention here that the judgment passed by Dr.Justice B. Siva Sankara Rao in CRP Nos.3516 and 3570 of 2016 dated 07.11.2016 is conflicting with the decision of Justice C.V.Nagarjuna Reddy passed in CRP No.5842 of 2011, dated 09.02.2012, as reported in 2012 (3) ALD at page No.155. Hence, the reference is made before this Court.

14. Justice C.V. Nagarjuna Reddy has concluded in para-14 of the above mentioned judgment, as follows : 14. On the analysis as above, I hold that as

the Rent Controller had pecuniary jurisdiction to entertain the eviction petition when it was instituted, the subsequent fixation of fair rent, even with effect from the date of application, would not bar the jurisdiction of the Rent controller to decide the eviction petition.

15. The said matter has been dealt with exactly same situation as is being attempted to be projected in the present matter. It is held that the Rent Controller has pecuniary jurisdiction to entertain the eviction petition when it is instituted and the subsequent fixation of fair rent, even with effect from the date of application, would not bar the jurisdiction of Rent Controller to decide the eviction petition.

16. The learned counsel for the respondent submits that the judgment in CRP Nos.3516 and 3570 of 2016 dated 07.11.2016 does not refer to the prior decision as reported in 2012 (3) ALD 155. Thus, the later decision is per incuriam, and hence, liable to be totally ignored.

17. He relies upon the principles of per incuriam and relies on Dr Reddys Formulations case (5 supra), where it was held in para 23, as under: 23. Also both the decisions in Panyam Cements Employees Union (5 supra) and I Srinivasa Rao (3 supra) have been rendered in ignorance of the decision of O. Chinnappa Reddy, J in HMT Employees Union (7 Supra) and the decision in All India Reserve Bank Employees Federation (8 Supra) and have therefore to be held to be per incuriam. and in para 34, as under:

34. In Union of India v. R.P. Singh (9) 2014 (3) ALT 55 (SC) = 2014 (5) SCJ 28 = (2014) 7 SCC 340, the Supreme Court held that if a decision has been rendered per incuriam, a Court can ignore it. It followed the seven Judge Bench judgment of the Supreme Court in A.R. Antulay v. S.R Naik (10) AIR 1988 SC 1531 and the decision in Siddharam Satilingappa Mhetre v. State of Maharashtra and others (11) 2011 (1) ALT (CrL.) 69 (SC) = 2011 (1) SCJ 36 = (2011) 1 SCC 694. Several judgments of the apex court have been considered in the latter judgment and it was reiterated that a decision of the Supreme Court which did not consider a Constitution Bench judgment of the said Court would be per incuriam and the Constitution Bench judgment should be followed and not the decision which ignored it. Accordingly, it is held that the decision rendered in ignorance of a prior judgment can be treated as per incuriam and when a decision is rendered per incuriam, court can ignore the same. It need not be referred to a larger bench. Subsequently, another case law reported in Lanka Babus case (6 supra) para Nos. 81 and 82, as under:

81. In State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139, the Supreme Court declared: Incuria literally means carelessness. In practice per incuriam appears to mean per ignoratium. English Courts have developed this principle in relaxation of the rule of Stare decisis. The quotable in law is avoided and ignored if it is rendered, in ignoratium of a statute or other binding authority. (Young v. Bristol Aeroplane Co. Ltd (Supra). Same has been accepted, approved

and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu v. Rajdewan Dubey*, AIR 1962 SC 83, this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted a passage from Halsburys Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

82. The exception to the doctrine of binding nature of precedent referred to in the above decision from its earlier decision in *Jaisri Sahu v. Rajdewan Dubey*, AIR 1962 SC 83, is:

The court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a Court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.

18. The said decision rendered by Justice Siva Shankar Rao relies on an earlier decision rendered by a Division Bench (2013 (5) ALD 223). The decision of the Division Bench was delivered without reference to an earlier decision on the same point. There is no reference to any case law in the Judgment 2013 (5) ALD 223. The operative finding in the said judgment i.e., 2013 (5) ALD 223(DB), whereby it is held in para 17, as under: "17. Before parting with the appeals, we intend to make an observation about the impact of the determination in IA No.1582 of 2000 about the question of jurisdiction. Even where the provisions of the Act apply to the premises, but the fair rent is determined under Section 4 of the Act at an amount, that exceeds the one stipulated for bringing the premises under the Act, the provisions of the Act cease to apply. For instance, if the rent of the premises was Rs.900/- per month, the provisions of the Act invariably apply to it, since the stipulated rent, in this regard was Rs.1,000/- or below at the relevant time. If during the pendency of any proceedings, the rent is determined either with the agreement of the parties or through a determination by the Court at Rs.1,500/-, the premises ceased to be under the purview of the Act. From this point of view, with the determination of the rent at Rs.4,000/- per month, with periodical enhancement, even the remote possibility of the provisions of the Act being made applicable, ceases to exist, This finding is not supported by any case law at all.

19. After perusal of the aforesaid para, in respect of the order passed in I.A.No.1582 of 2000 whereby mesne profit at Rs.4,000/- per month was fixed, the said judgment of Division Bench was in fact dealing with fixation of mesne profit and categorically held that if during the pendency of any proceedings rents are fixed, in such an eventuality, the Rent control Act would not be applicable. In other words, once the fair rent of any property have been fixed at a rate more than Rs.3,500/- per month, thereafter an application seeking eviction or any other relief in respect of the property could not be filed before the Rent

Controller. But in the present matter, as on date of filing of the eviction petition, no fair rent had been fixed. Therefore, the judgment of a Division Bench is not at all applicable to the facts of the present case.

20. Be that as it may, the said matter also having been decided on 19.06.2013 i.e., later than Case Law 2012 (3) ALD 155 supra. Thus case law 2013 (5) ALD 223 (DB) supra also would be per incuriam, as it did not consider earlier case law albeit that of a Single Judge.

21. In fact the case law as reported in 2013 (5) ALD at page 223 (DB) never arose out of the Rent Control Act and the same pertains to two appeals vide CCCA Nos.23 of 1997 and 331 of 2003, which originated out of a suit for partition (O.S. No.38 of 1964 and O.S No.901 of 1985). The case law as reported in 2004(1) ALD 296 in para 29, categorically held as under:

29. From the above, it is obvious that the Rent controller who has undoubtedly the inherent jurisdiction to fix the fair rent and has the initial jurisdiction to entertain the petition, while in the process of fixation of fair rent comes to the conclusion that the quantum might exceed the limit of Rs.1000/-; which limit is prescribed under the statute for convenience sake and on account of the policy of the Government and is susceptible of change; will not cease to have jurisdiction and cannot at that stage direct the petitioner to approach the Municipal Courts.

22. On a perusal of the said para, it holds that even by the consent of parties if the rent of premises is increased beyond the statutory limit, still the Rent Controller would continue to have jurisdiction. Hence, in view of the aforesaid case law, the Rent Controller Legislation continued to hold sway over and upon the petition schedule premises in spite of the fair rent of the petition schedule premises having been fixed at Rs.5,000/- per month and therefore this Court as well as Appellate Authority and the Primary authority under the Rent Control Legislation would have the jurisdiction to continue to try the matter. This aspect was not considered at all by the learned Single Judge in CRP Nos.3516 of 2016 and 3570 of 2016.

23. Insofar as even subsequent legislation is concerned, the same would also not take away the jurisdiction of the Court in which the matter was instituted, subject to the condition that as on the date of such institution the particular court had jurisdiction over the matter as held in a judgment dated 18.10.2016 deferred by the Honble Supreme Court of India in Civil Appeal No.8194 of 2016.

24. It is well settled principle that right of parties crystallizes to the date of institution of the suit, as held in AIR 1998 SC at page No.2031. The said decision speaks about the weightage that has to be given to the meaning of words, language, back ground and context of the legislation in seeking to interpret any statute.

25. Apart from the above, it is also important to note that a Full Bench of this Court in a decision reported in Ramvilas Bajaj v. Ashok Kumar and Another was

called upon to decide an issue under the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1973, wherein the validity of Section 32 of the said Act was called into question. The said Bench was dealing with the applicability of the above said Section and was called upon to decide whether the same was prospective or retrospective. In the context, while deciding the said issue, the Full Bench clearly relied upon the settled position of law, whereby it is clarified that the rights of the parties as on the date of the institution of the proceedings are important.

26. In para 24 of the Full Bench decision, the judgment of the Honble the Supreme Court reported in *Atmaram Mittal v. Eswar Singh* was considered. In that case, the land lord filed a suit for recovery of possession of a building within the exemption period. During the pendency of the suit, the period of 10 years expired. The tenant then moved an application for disposal of the suit on the ground that the exemption period expired and consequently, the jurisdiction of the civil Court is barred. The Supreme Court clearly negated the contention and stated that it is well settled that the rights of the parties will have to be determined on the basis of the rights available to them on the date of the suit. Similarly, the Full Bench of this High Court also reiterated the findings of the Supreme Court in various cases that when a lis commences, all the rights get crystallized on the date of filing of the case. In addition, *Om Prakash Gupta v. Dig Vijendrapal Gupta* was also considered by the Full Bench of this Court. Although reference to the Full Bench was on the question of the prospective/retrospective application of a particular Section, still the important pronouncement is about the rights of parties which get crystallized on the date of which lis or a suit is commenced. Both the single Judges in the judgments reported in *Mohammadiya & Co. v. Uma and others* and *Sai Krishna General Stores vs B. Sai Anand Prasad* considered earlier Full Bench decision of the Madras High Court reported in *Putta Kannayya v. Venkata Narasayya* and held that : We are therefore of the opinion that in every case, when the Court is seized of jurisdiction, it can not and does not lose it by any change in the value of the subject matter of the suit after the institution of the suit or by the precise ascertainment of its value in cases which do not admit of such ascertainment at the time of institution, except when the plaint is allowed to be amended; and that is not really an exception. On the same principle we think that the Court can award such a sum as it finds due to the plaintiff, although such a sum is above the pecuniary limits of its jurisdiction

27. This Full Bench judgment of the Madras High Court was not considered by the learned single Judge in CRP.Nos.3516 and 3570 of 2016. Neither the principle that the rights get crystallized on the date of the lis nor the Full Bench of the Madras High Court reported in *Putta Kannayya* case was considered by the Division Bench in the judgment reported in *Bulchand and company v. Khamrunnisa Begum and others* . Hence, we are constrained to hold that *Bulchand and companys* case is a judgment rendered per incuriam and does not lay down good law.

28. For both these reasons, we hold that the judgment of the learned single Judge dated 07.11.2016 in CRP.Nos.3516 and 3570 of 2016 are per incuriam and does not laid down correct law.

29. In the case in hand, dual purpose of the Rent Control Legislation is on one hand to safeguard the unlawful eviction of the tenants and on the other hand the same has to see to it that tenants do not exploit the landlords by defaulting in payment of rents and occupying the property when they have the property of their own. The fixation of fair rent is only an incidental issue of the matter and therefore the same is of no avail and would not impact the eviction of the tenant if the landlord has been found to be in need of the premises and the tenant is found to have own premises as well as the tenant having defaulted in payment of rents as has been found on all three grounds in the present matter.

30. In view of the above, we hold in the present reference that, the Rent controller Court would continue to have jurisdiction, in spite of fixation of fair rent of the premises at any amount more than Rs.3,500/-, if the rent of the premises when eviction proceedings were filed was less than Rs.3,500/-.

31. The reference is answered accordingly.

32. List the petition before the Roster Bench for disposal as per law.