

(2000) 03 AP CK 0092
In the Andhra Pradesh High Court
Case No : CRP No. 5547 of 1999

S. Gopinath Pillai and others

APPELLANT

Vs

Karamsetti Venkateswarlu and another

RESPONDENT

Date of Decision : 24-03-2000

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(3), 11, 12, 13, 14(1)

Citation : (2000) 3 ALD 243 : (2000) 3 ALT 75 : (2000) 2 APLJ 493

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Mr. M. Ravindranath Reddy, for the Appellant; Mr. M.V.S. Suresh Kumar, for the Respondent

Judgement

1. The CRP is filed assailing the Order of the learned Rent Controller Appellate Authority-cum-Senior Civil Judge, Nellore in CMA No.14 of 1992 affirming the Order of the learned Rent Controller-cum-District Munsif in RCC No.44 of 1985 dated 14-9-1992.

2. The petitioners are the tenants. The respondent-land lord tiled petition for eviction ill RCC No.44 of 1985 on the ground of wilful default, bona fide requirement and that the tenant committed acts of damage which materially affected the utility of the premises.

3. Before the lower Court it is the case of the respondents-landlords that the premises which is the petition schedule property fell to their share in a partnership dissolution proceedings in the year 1970. Subsequently, in 1971, they constructed the buildings and installed machinery in the premises for running a sawmill. But, however, the same was let out to the 1st respondent-tenant in the year 1976, for the purpose of running the mill, on a monthly rent of Rs.700/-. The tenancy was month to month and the rent was payable on 1st of every succeeding month. The tenant committed wilful default in payment of rent for the month of January and February, 1985 and even though the rent was paid

at a later stage, it amounted to wilful default and therefore, the tenant was liable to be evicted.

4. With regard to the bona fide requirement, it is the case of the petitioners that they were partners in a timber depot and in the year 1970, the partnership was dissolved and therefore, the vacant site fell to the share of the petitioners and buildings were constructed for running the sawmill and necessary machinery was also installed. However, they could not personally, see the sawmill but it was leased out to the tenants. The petitioners, however, were carrying on the business under the partnership under the name and style of Sri Venkateswara Finance and Pawn Brokers, Santhapet, Nellore. However as the years went on, the business did not flourish, and the petitioners have been demanding for evicting the premises to enable them to run the sawmill business. While so, the tenants filed OS No. 124 of 1985 seeking permanent injunction in the Court of I Additional District Munsif Court, Nellore. It is also stated that the tenants have caused damage to the compound wall by putting the timber in pelmel with the result, the entire walls fell down. Thus, the damage had materially affected the utility of the building. Further, it is stated that the respondents secured alternative accommodation by purchasing the property in Nawabpet, Nellore and they are liable to be evicted. The petition was resisted by the tenants. Basing on the respective contentions, the learned Rent Controller framed the following issues:

1. Whether the 1st respondent committed wilful default in payment of rents? If so whether the respondents are liable to be evicted?
2. Whether the requirement of the petitioner is bona fide, if so whether the respondents are liable to be evicted from the petition schedule premises?
3. Whether the 1st respondent committed any acts of damage which materially affected the utility of premises? If so whether the respondents are liable to be evicted from petition schedule premises?
4. To what relief?
5. On behalf of the landlords, one witness was examined and Ex.A1 was marked. On behalf of the tenants three witnesses were examined and Exs.B1 to B6 were marked.
6. The learned trial Court after considering the matter with reference to the evidence and documents available on record, held that the tenants committed wilful default in payment of rent and the respondents-landlords established bona fide requirement. However, they could not establish that the damage has been caused by the tenants materially affecting the utility of the premises. Therefore, the petition was decreed directing the respondents to vacate the premises by an Order dated 14-9-1992. Aggrieved by the said Order of eviction, the tenants filed an appeal in CMA No. 14 of 1992. Before the appellate authority the issue of wilful default was not pressed into service and the parties only concentrated on

the bona fide requirement. The learned appellate Court held that the landlords established case for bona fide requirement. Accordingly, passed an Order on 5-11-1999 confirming the Order of the lower Court to the extent indicated above and directed the eviction of the tenants duly granting time of three months from the date of receipt of a copy of the Order. Against the said Order of the eviction, the tenants carried the matter in the present revision.

7. The learned Senior Counsel Mr. M. V. Ramana Reddy, appearing for the petitioners-tenants submit that the trial Court and appellate Court had misconstrued the scope of bona fide requirement of the petitioners and erroneously held that the bona fide requirement was established. He submits that as per the evidence on record, the landlords also conducting the business in the name and style of Sri Raja Rajeshwari Country Wood Depot. But, however, the finding of the trial Court that the said business cannot be treated as own business of the petitioners is not sustainable in law. He also points out that the wife of the tenant purchased 50 cents of land in Nawabpet and a sawmill was established there. But, however, the Courts below took that aspect into consideration for ordering eviction on the ground that the wife of the petitioner had already established the business. Thus, the authorities adopted different yard-stick in respect of the same proposition while in case of the landlords it was held that it cannot be treated as a joint family business, at the same time in the case of the tenant, the business set up by the wife was taken as one of the ground for ordering the eviction. Therefore, he submits that the findings of the Courts below are wholly erroneous and run contrary to law.

8. He also submits that the relative hardships of both landlords and the tenants were not properly appreciated. The site purchased by the wife of the landlord, was registered in the name of the wife and she is the rightful owner and the property of the wife cannot be treated as the property of her husband and the finding that no hardship will be caused to the tenant as the wife had already established a sawmill is untenable and he relies on the decision of the Supreme Court reported in B. Kandasamy Reddiar Vs. O. Gomathi Ammal, . On the other hand, the learned Counsel for the respondents-landlords submit that the Court had considered all the aspects in accordance with law and held that the bona fide requirement was concurrently established before the Courts below, can such a finding be disturbed in a revisional proceedings u/s 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for brief the "Act"). He also submits that the land was purchased by the tenant himself in the name of his wife and it is borne out by evidence on record and the sawmill was also established and taking into consideration that as one of the relevant factors cannot be said to be illegal or contrary to law. He relies on the decision of the Supreme Court reported in Smt. Fatima Bee Vs. Mahamood Siddiqui and Mohd. Omer Siddiqui, and Mudigonda Chandra Mouli Sastry Vs. Bhimanepalli Bikshalu and Others, .

9. There is no dispute that before the appellate Court only one issue fell for

consideration namely whether the respondents-landlords bona fide required the premises for their personal use and occupation and whether they proposed to commence the business bona fide. The evidence was lead in by the landlords to the effect that the said site fell to their share in pursuance of a dissolution of partnership and they made certain constructions and installed the machinery for sawmill and the said sawmill was leased out to the tenants. The petitioners continued to engage in another business of pawn brokers and finance. But, they were not successful in the said business. It is also borne out by the record that some of the members of the family of the landlords also commenced running Country Wood Depot at Vedayapalcm in the name of Rajarajeswari Country Wood Depot. On the other hand, it is also in evidence that during the pendency of the proceedings, the tenant purchased a site of 50 cents in Allipuram Gram Panchayat limits which is in the outskirts of Nellore Municipality and that the sawmill is being run by them in the name and style of Krishna sawmill. It was sought to be stressed by the tenant that it is the property of his wife and she is exclusive owner and conducting the business in a sawmill. Hence, it cannot be said to be running a business by the tenant himself. The lower Court found it that the plot it self was purchased by the tenant in the name of wife and the sawmill is being run. Therefore, in such an event, the running of the sawmill by the tenants was taken note of while considering the matter of bona fide requirement. The grounds on which the landlord can seek eviction of the tenants under the provisions of the Act is contained in Section 10(2) of the Act. Admittedly, the application is filed on various grounds including the bona fide requirement. In this case, we are concerned with eviction of a non-residential building by the tenant for the purpose of running the sawmill. Therefore, Section 10(3)(a)(iii)(b) is relevant for the purpose of deciding the issue. However, for comprehensive understanding of the provision, Section 10 of the Act in its entirety is reproduced below:

""Eviction of tenants :-- (1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or Sections 12 and 13 :

Provided that where the tenant, denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall he entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said section, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

(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 Houses 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 landlord 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 up to the date of such payment or tender and on such payment or tender, the application shall be rejected.

(3)(a) A landlord may subject to the provisions of clause (d), apply to the Controller for an Order directing the tenant to put the landlord in possession of the building-

(i) in case it is a residential building-

(a) if the landlord is not occupying a residential building of his own in the city, town or village concerned and he requires it for his own occupation;

(b) if the landlord who has more buildings than one in the city, town or village concerned is in occupation of one such building and he bona fide requires another building instead, for his own occupation;

(ii) in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord requires it for his own

use and if he is not occupying any such building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise;

(iii) in case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise-

(a) for the purpose of a business which he is carrying on, on the date of the application, or

(b) for the purpose of a business which in the opinion of the Controller, the landlord bona fide proposes to commence :

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered;

Provided further that where a landlord has obtained possession of a building under this clause he shall not be entitled to apply again under this clause-

(i) in case he has obtained possession of a residential building, for possession of another residential building of his own;

(ii) In case he has obtained possession of a non-residential building, for possession of another non-residential building of his own.

(b) Where the landlord of a building, whether residential or non-residential, is a religious, charitable educational or other public institution, it may, if the building is required for the purposes of the institution apply to the Controller, subject to the provisions of clause (a) for an order directing the tenant to put the institution in possession of the building;

(c) a landlord who is occupying only a part of a building, whether residential or non-residential, may, notwithstanding anything in clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for the purpose of a business which he is carrying on as the case may be.

(d) Where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this subsection before the expiry of such period.

(e) The Controller shall, if he is satisfied that the claim of the landlord is bona fide, makes an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application :

Provided that, in the case of an application under (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting will outweigh the advantage to landlord;

Provided further that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building and may extend such time so as not to exceed three months in the aggregate.

(4) No order for eviction shall be passed under sub-section (3)-

(i) against any tenant who is engaged in any employment or class of employment notified by the Government as an essential service for the purposes of this sub-section unless the landlord is himself engaged in any employment or class of employment which has been so notified: or

(ii) in respect of any building which has been left for use as an educational institution and is actually being used as such, provided that the institution has been recognised by the Government or any authority empowered by them in this behalf, so long as such recognition continues.

(5)(a) Where a landlord who has obtained possession of a building in pursuance of an order under sub-section (3) does not himself occupy it and for the purpose specified in the order within one month of the date of obtaining possession, or having so occupied it, vacates it without reasonable cause within six months of such date, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of the building and the Controller shall make an order accordingly notwithstanding anything in Section 3.

(b) Where a tenant who is entitled to apply for possession under clause (a) fails to do so within one month from the date on which the right to make the application accrued to him, the Government or the authorised officer shall have power, if the building is required for any of the purposes, or for occupation by any of the officers specified in sub-section (3) of that section, to give intimation to the landlord that the building is so required, and thereupon the provisions of sub-sections (6) and (8) of Section 3 shall apply to the building ;

Provided that this clause shall not apply to a residential building the monthly rent of which does not exceed twenty-five rupees or to a non-residential building the monthly rent of which does not exceed fifty rupees.

(6) Where the Controller is satisfied that any application made by the landlord for the eviction of a tenant is frivolous or vexatious, the Controller may direct that compensation, not exceeding fifty rupees be paid by such landlord or the tenant.

(7) When an application under subsection (2) or sub-section (3) for evicting a tenant has been rejected by the Controller, the tenancy shall, subject to the provisions of this Act be deemed to continue on the same terms and conditions as before and shall not be terminable by the landlord except on one or more of the grounds mentioned in sub-section (2) or sub-section (3).

(8) Notwithstanding anything in this section, no person who is receiving or is entitled to receive the rent of a building merely as an agent of the landlord shall, except with the previous written consent of the landlord, be entitled to apply for the eviction of a tenant."

10. The decision relied on by the learned Counsel for the petitioner in B. Kandasamy Reddiar's case (supra) does not assist him in any manner. It was a case where an application was filed for eviction of the tenant under Sections 10(3)(c) and 14(1)(b) of the T.N. Buildings (Lease and Rent Control) Act, 1960. Section 10(3)(c) of the T.N. Act is in para materia with Section 10(3)(c) of the A.F. Rent Control Act namely the ground of eviction for the requirement of additional accommodation. The Supreme Court held that while dealing with the matter u/s 10(3)(c), the consideration of hardship is necessary ingredient and it is a mandatory requirement. The Supreme Court observed as follows:

"Having heard the learned Counsel for the appellants and the respondents, we are of the view that the factual aspects of the case need not be gone into as these appeals must be allowed for the simple reason that in disposing of the revision petitions, the High Court did not at all take into consideration the following proviso, which finds place under clause (3) of Section 10(3) and reads as under:

"Provided that in the case of an application under clause (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord.

Apart from the fact that while dealing with the question of eviction of a tenant on the ground of requirement of additional accommodation, the consideration of the above proviso is mandatory, in the instant case, it is all the more necessary in view of the admitted facts that the respondent has now taken possession of Door No. 143, earlier occupied by Co-optex, and that she has also initiated execution proceeding for eviction of the tenant of Door No. 147-A. As the mandatory requirement of the above quoted proviso has not at all been adverted to by the High Court in the light of the materials already on record and the above subsequent events, we set aside the impugned judgment so far as it relates to the three appellants and remand the matter to it for fresh disposal of the three connected revision petitions in accordance with law and in the light of the observations made hereinbefore. Since the matter is long pending, the High Court is requested to dispose of the above petitions as expeditiously as possible, preferably within a period of six months from the date of communication of this Order. There shall be no order as to costs."

11. It is to be noted in this regard that u/s 10(3)(c), the landlord can seek eviction of the tenant. He should be occupying a part of the building either residential or non-residential accommodation and seek eviction of the tenant occupying the whole or any portion of the remaining part of the building for requirement of additional accommodation. While considering the application

under the said provision, the proviso referred to above comes into play viz., the Rent Controller has to consider the comparative hardships likely to be suffered by the landlord and the tenant before passing the Order of eviction. Failing to consider that aspect is a material irregularity. In the instant case, it is not an application u/s 10(3)(c) of the Act. The landlord is seeking eviction of a different non-residential premises. It is also not a case where the landlords are staying in the premises in which asking for the schedule non-residential premises and the tenant is staying in the very same premises and that the landlords require the same as additional accommodation. Therefore, the requirement of a comparative hardship which is held to be mandatory by the Supreme Court only in respect of an application made for eviction on the ground mentioned in Section 10(3)(c) of the Act in other cases, it would not arise. Therefore, the Rent Controller is only required to consider whether the landlord bona fide requires premises for the proposed business. The Courts did not proceed on the ground that the tenant had acquired alternative non-residential accommodation and eviction was ordered. On the other hand, the requirement of the landlord was considered and it was found that he requires bona fide for the purpose of commencing the sawmill business. It may be that the authorities also took note of the fact that the tenant has purchased a piece of land at the outskirts of Municipal limits and another sawmill business was established in the name of the wife of the tenant, but yet, that was not the ground which influenced the authorities to Order eviction.

12. The Courts below have concurrently found that the landlord has made out a case for bona fide requirement of premises for running the sawmill business. In fact the landlord himself constructed a building for running a sawmill for himself, but for various reasons, he could not run, but that does not mean that the landlord is incapable of doing any business. It is also to be noted that one of the members of the family of the tenant are doing business in Country Wood Depot, but that would not in any way prohibit the landlord for making claim for eviction. What is required to be established is a bona fide requirement for running the proposed business. Even if some of the members of the joint family are doing other business, that would not be a bar for another member of the same joint family to seek eviction on the ground of bona fide requirement. The word "bona" means good and "fide" means faith. The term bona fide (good faith) used in innumerable legal phrases as bona fide purchaser, bona fide belief etc. We are concerned here with the phrase bona fide requirement.

13. The word "bona fide" means in good faith, honestly, without fraud, collusion or participation in wrong doing (Sec: Osborn's Concise Law Dictionary eighth edn. P. 52).

14. In Black's Law Dictionary 6th edn. P. 176, "bona fide" means - In the Civil Law, of good faith, in good faith.

15. The bona fide need or requirement of landlord must be judged with reference to the need and not desire. Therefore, it must be established that it is necessary

for him to occupy and the necessity must be bona fide, or genuine. The Act is basically conceived in the interest of the tenants protecting them from being evicted illegally and arbitrarily. Therefore, the onus is heavy on the landlord to establish the bona fide requirement. Once such a finding is reached on the basis of the evidence adduced by the panics, it cannot be disturbed, unless the finding suffers from legal infirmity as held by Supreme Court in M. Chandra Mouli Sastry's case (supra), which is extracted below:

""Coming to the second submission what we find is that, that the Rent Controller and the First Appellate Authority after assessing the evidence recorded concurrent finding of facts that the need of the landlord was bona fide. It was not pointed out that the said finding suffered from any legal infirmity. Under such circumstances, it was also not open to the High Court in exercise of its revisional jurisdiction to have indulged in reassessment of evidence and thereby interfered with the concurrent finding of facts recorded by two Courts below, especially when it was found by the High Court that the tenant's wife had already acquired a vacant accommodation in the town of Tenali and the tenant himself was transferred from Tenali to Macherla. Since the petition deserve to succeed on these two grounds, we are not inclined to go into the other grounds on which the landlord sought eviction of the respondent-tenant.""

16. The Supreme Court held that where the findings recorded by the appellate authority are illegal, erroneous or per verse. The High Court having regard to the ambit of its revisional jurisdiction, will be well within its jurisdiction in reversing the finding impugned before it and recording its own findings (Sec: C. Chandramohan Vs. Sengottaiyan (Dead) By Lrs. and Others, .

17. In V. Radhakrishnan Vs. S.N. Loganatha Mudaliar, the Supreme Court was interpreting a provision of Section 10(3)(a) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 which is almost in pun materiel with Section 10(3)(a)(iii) of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, which reads as follows:

"10.(3)(a). A landlord, may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building-

(iii) in case it is any other non-residential building, if the landlord or any member of his family is not occupying for purposes of a business which he or any member of his family is carrying on. a non-residential building in the city, town or village concerned which is his own."

18. Interpreting the said provision, the Supreme Court observed as follows:

""On a plain reading of Section 10(3)(a)(iii) of the Act, it appears to us that the Legislature intended that 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. Thus, it follows and we hold that the law laid down in Jagannatha Chettiar case (97 LW 182 (Mad.)) is not the correct law. The learned Single Judge in Chettiar case did not notice, let alone consider the three earlier judgments in Indian Plywood, 99 LW 49 (Mad.). K. Chettiar, 1961 (1) MLJ 184 and Annamalai and Co., 1975 (1) MLJ 337. In our opinion, the judgments in Kannia case, 100 LW 213 "(Mad.), Indian Plywood Manufacturing Co. case. 99 LW 49 (Mad.), K. Chettiar case (1961) I MIJ 184) and Annamalai and Co, case, 1975 (1) MLJ 337 (supra), lay down the correct law, which we hereby approve."

19. In the case on hand, it was held by the learned Rent Controller and the appellate authority that the respondents-landlords required the premises bona fide. It is not the case that the premises was required for one of the members of the joint family, but for the personal occupation of the landlord. Applying the principles settled by the Supreme Court referred to above, I do not find any legal infirmity in the findings of the Courts below. It is well settled principle that concurrent findings cannot be interfered with under revisional jurisdiction with the exceptions as contained in the preceding decisions of the Supreme Court.

20. For the foregoing reasons, I do not find any illegality or irregularity in the impugned Order. Accordingly, the CRP is dismissed. Consequently, the petitioner-tenant shall vacate the premises. However, keeping in view the circumstances of the case, I am inclined to grant some more time for vacating the premises. Accordingly, the petitioners shall vacate the premises on or before 31st May, 2000.