
(2004) 12 AP CK 0111
In the Andhra Pradesh High Court
Case No : CRP No. 1447 of 2003

Satyanarayana

APPELLANT

Vs

Moizuddin Khan

RESPONDENT

Date of Decision : 14-12-2004

Acts Referred:

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

Citation : (2005) 4 ALD 249

Hon'ble Judges : S.R.K. Prasad, J

Bench : Single Bench

Advocate : M. Basith Ali Yavar, for the Appellant; J. Prabhakar, for the Respondent

Final Decision : Allowed

Judgement

S.R.K. Prasad, J.—The tenant has preferred this revision against the order dated 21-1-2003 passed by the Additional Chief Judge, City Small Causes Court, Hyderabad in R.A.No. 123 of 2001 confirming the order of the Rent Controller in R.C.No. 526 of 1998, dated 31-1-2001 ordering eviction of the petitioner-tenant. The respondent being the landlord has presented the R.C.No. 526 of 1998, seeking eviction of the revision petitioner herein on the grounds of wilful default in payment of rent and subletting the premises to some third party, and requiring the premises for personal occupation.

2. The brief facts, that are necessary in this case are follows:

The respondent herein claimed that the petition schedule premises was taken on lease by the revision petitioner from his father by executing a rental deed, dated 1-7-1978, Initially, the rent was stipulated at Rs. 200.00 per month and subsequently, it was enhanced to Rs. 250.00. It is also alleged by the respondent that his father gifted the schedule premises to him on 24-2-1989 and the petitioner was also informed of the said gift by a letter dated 1-3-1989. Thereafter, the tenant has attorned the tenancy in favour of the respondent

herein on the same terms and conditions in the rental deed, dated 1-7-1978. The rent is said to be payable by 10th of the same month. It is alleged by the landlord that as per the terms of the tenancy, the rent is exclusive of electricity consumption charges and property tax payable to M.C.H., and the tenant has to pay the electricity consumption charges directly to the APSEB and the property tax as levied by MCH., directly to the M.C.H., on due dates. The respondent sought the eviction of the petitioner from the premises for non-payment of property taxes covering the period from 1-4-1994 to 31-3-1998. He also sought the premises for personal use on the ground that the tenant has secured alternative accommodation at his own by purchasing the property in the name of his wife Smt. Jeti Bai.

3. The execution of the rental deed and the rent are not disputed by the tenant who is the revision petitioner. The revision petitioner has contended that the property was not acquired in the name of his wife and he denied about the acquisition of residential portion on the first floor and non-residential portion on the ground floor with 3 shops. He also denied about securing alternative accommodation.

4. It appears that the landlord earlier filed R.C.No. 28 of 1994 on the file of III Additional Rent Controller, Hyderabad, for eviction and the same was dismissed. It is also not is dispute that the appellate authority dismissed the R.A.205 of 1996 preferred against the order of the Rent Controller in R.C.No. 28 of 1994 and no revision has been preferred against the said order. Therefore, the landlord again filed R.C.No. 526 of 1998 before the Rent Controller to order eviction of the tenant on the grounds of wilful default and securing alternative accommodation. The Rent Controller allowed R.C.No. 526 of 1998 on the sole ground of securing alternative accommodation by the tenant, while rejecting the plea of wilful default. Thereupon the tenant carried the matter in appeal before the Additional Chief Judge, City Small Causes Court, Hyderabad. The appellate authority in R.A. No. 123 of 2001 confirmed the finding given by the Rent Controller in respect of securing alternative accommodation and ordered for eviction. Thereupon, the tenant has preferred this revision before this Court, namely C.R.P. No. 1447 of 2003.

5. During the pendency of the petition, the landlord who is the respondent herein has filed two petitions to receive additional evidence, and the same has been opposed by the tenant. The short point for consideration is whether the concurrent findings of facts given by both Courts are on the basis of proper appreciation of the evidence, and whether there is any need to interfere with the findings arrived at by both Courts.

6. This revision is preferred u/s 22 of A.P. Buildings (Lease Rent and Eviction) Control Act, 1960. This Court has got power to judge the illegality of such order or proceedings passed by the Appellate Court.

7. Strangely, the landlord is trying to place large number of documents as

additional evidence before the revisional authority. The Court can receive such documentary evidence only if a finding cannot be given on the available material, and those documents are absolutely necessary for a just decision in this case. I am of the considered view that the documents produced before this Court as additional evidence need not be received in this case. It is the landlord who is at fault in not taking steps to send for the documents filed in the earlier proceedings seeking eviction. Moreover, the decision can be given in this case even without looking into those documents.

8. The learned Counsel appearing for the revision petitioner mainly canvasses that acquiring of alternative accommodation by the petitioner's wife took place long prior to the tenancy that was commenced after attornment to the present landlord and hence that cannot be taken into consideration. Where as the learned Counsel appearing for the landlord contends that the respondent has no knowledge about the acquiring of alternative premises by the petitioner in the name of his wife and it has come to his notice only recently before filing of the eviction petition.

9. As per the averments in the petition and as per the record, it is clear that the landlord has filed two eviction petitions simultaneously one after the other seeking eviction. It is a desperate attempt made by the landlord to secure the premises by seeking one ground or other. When such is the case it cannot be said that he will not have any knowledge about the acquisition of the premises by the tenant. Moreover, the attornment of lease had taken place only on 1-3-1989, and later the petitioner became tenant under the landlord, namely the respondent herein. No doubt the revision petitioner has even denied in his counter filed before the Trial Court about acquiring the premises in the name of his wife and constructions thereon. But he admitted in his evidence as R.W.1 that the premises, namely house with bearing No. 7-1-81/A of Ameerpet, is in the name of his wife Smt. Jeti Bai and that property was purchased in April, 1973 from M. Rukkamma. It is further elicited in the evidence of R.W.1 that they purchased ground floor and later they constructed the first floor. It is also further in the evidence of R.W.1 that there are seven mulgies in their ground floor and first floor is residential, and the taxes are being paid in the name of his wife.

10. The learned Counsel appearing for the respondent relying on the said admissions made by R.W.1 canvasses that R.W.1 has acquired alternative premises including residential and non-residential, and hence he is liable to be evicted from the schedule premises.

11. The contention of the revision petitioner's Counsel that the property was purchased in the name of petitioner's wife long prior to the attornment, appears to be correct. The eviction petition was filed before the Rent Controller in the year, 1998, whereas the property is said to have been acquired in the year 1973. The admissions made by R.W.1 and the other materials on record disclose that the alternative accommodation was acquired long prior to attornment. What is canvassed by the respondent's Counsel is that as the lease is long prior to 1973

and the petitioner was a tenant under his father, the present landlord i.e., respondent is entitled to take advantage of the acquisition of alternative accommodation by the tenant.

12. Be that as it may, the attornment of lease took place on 1-3-1989 and terms and conditions have been settled afresh by means of rental deed dated 1-7-1978. It cannot be believed by this Court that the respondent has no knowledge about the additional accommodation of the tenant and also the constructions thereon.

13. The lower Court has disbelieved the plea of wilful default and ordered eviction on the ground of securing alternative accommodation. It is for the landlord to show that the tenant has secured alternative building in order to seek eviction at any time during the period of subsistence of lease, namely after commencement of the rental deed. Anything done or any act made, which are prior to the rental deed, cannot be considered and the landlord cannot seek for eviction on that ground. By the date of attornment i.e., by the date of execution of a fresh rental deed, the tenant had already got accommodation in the name of his wife.

14. It is also stated in KVSS Prasada Rao Vs. Godavari Bai and Others, , that the purchase made in the name of the wife is sufficient to come within the meaning of Section (10)(2)(V) of the Act, and eviction can be ordered by considering it as securing alternative accommodation.

15. It is also stated in Sathaiah Vs. Smt. Savithri Bai, , that the tenant securing accommodation by purchasing a house in the name of his wife bigger than the house in question, is liable to be evicted.

16. I state here that tenant has acquired alternative building even prior to the attornment and such acquisitions made even prior to entering into the rental deed or attornment of the lease cannot be taken into consideration for the purpose of seeking eviction of the tenant. It is a case where both Courts have given concurrent findings without proper appreciation of the facts. They have not considered about the legal aspect that emanates from attornment of lease and execution of a rental deed. The acts which are prior to the attornment cannot be considered. In this case both Courts have committed error in taking into consideration the said aspect, which is prior to the attornment of lease and it cannot give rise to a cause of action for the present landlord to approach the Rent Controller seeking eviction on that ground. On a reappraisal of the entire material, I am of the considered view that both Courts have failed to look at the facts from proper angle and did not arrive at correct conclusions by considering the legal rights that flow from rental deed and attornment of lease. The past conduct of the tenant prior to attornment cannot be considered and the present landlord cannot take advantage thereof. That led to miscarriage of justice and the concurrent findings arrived at due to misappreciation of law and are liable to be set aside. Accordingly, I set aside the finding of fact arrived at by the Rent

Controller that the additional accommodation acquired by the tenant can form the basis for eviction, which has been confirmed by the Appellate Court.

17. I find that the additional accommodation acquired by the tenant prior to attornment of lease and prior to execution of the rental deed cannot be taken into consideration and cannot form the basis for ordering eviction of the tenant.

18. In the result, the judgment of the Appellate Court is set aside and consequently the order of the Rent Controller shall stand set aside. Accordingly, the civil revision petition is allowed.