
(2003) 01 AP CK 0095
In the Andhra Pradesh High Court
Case No : CRP No. 3224 of 1999

Shaik Basheer Ahmed and Others

APPELLANT

Vs

Sardar Mahender Singh

RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

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

Citation : (2003) 2 ALD 572 : (2003) 2 ALT 414

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : I. Aga Reddy, for the Appellant; Bankatlal Mandhani, for the Respondent

Final Decision : Allowed

Judgement

R. Subhash Reddy, J.—This revision raises an interpretation of the words "for his own occupation" used in Section 10 (3)(i)(b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 ("the Act" for brevity) and whether such words would apply for personal use of the landlord alone or for his requirements also. The said question arises under the following circumstances.

2. The petitioners herein, who are brought on record as legal representatives of the deceased, sole petitioner in RCC No. 40 of 1980 on the file of the Rent Controller-cum-Principal District Munsif, Warangal, are the landlords of the petition schedule premises bearing Municipal No. 14-2-102, 14-2-103 and 14-2-104 and the respondent herein is the tenant. Originally the deceased-landlord filed the application seeking eviction of the tenant on the grounds of wilful default in payment of rents and also on the ground that the landlord needs the petition schedule premises bona fide for providing accommodation to his employees, who are working in his tannery and office. It is the case of the landlord that he is the partner in M/s. Shaik Mohammed and Company, Warangal and the employees are not local persons and do not have their own

accommodation for their own residence in the Warangal City. It is further stated that as per the agreement entered into, accommodation has to be provided to them. The said employees are experienced technicians and their performance is satisfactory. If those employees are not provided with accommodation, they will leave job and in which event, there will be irreparable loss to them. The respondent-tenant has resisted the said petition denying the allegation of wilful default in payment of rent. The tenant also denied the bona fide requirement of the petition schedule premises and he further alleged that the requirement shown does not satisfy the provisions of law. It is further stated by the tenant that after the death of the first petitioner, the second petitioner is managing the affairs of the family and business and at his instance rent was also increased. It is further pleaded that after the demise of the first petitioner-landlord, no agreement was entered into and as such, eviction petition is not maintainable.

3. Before the Trial Court, PWs.1 to 3 were examined and Exs.A-1 to A-9 were examined on behalf of the petitioner. On behalf of the respondent, R.Ws.1 and 2 were examined and Exs.B-1 to B-71 were marked.

4. The learned Rent Controller after elaborate discussion with reference to the evidence on record, negated the contention of the petitioners that the respondent-tenant is the defaulter in payment of rents and answered the said issue in favour of the respondent-tenant. With reference to the second issue of bona fide requirement of the petitioner-landlord, the Rent Controller has recorded a finding that the plea of requirement as pleaded by the petitioner-landlord to provide accommodation to their staff is bona fide one and after discussing the evidence with reference to Section 10(3) of the Act has come to conclusion that the petition schedule premises are bona fide required for the petitioner-landlord to accommodate the staff of tannery factory and ordered eviction of the respondent-tenant by judgment dated 13-12-1993. As against the same, the respondent-tenant has preferred statutory appeal before the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Warangal. The lower appellate Court by judgment dated 24-11-1998 in RCA No. 1 of 1994 has reversed the finding of the Rent Controller with reference to the claim of the petitioners herein for bona fide requirement, interpreting Section 10(3) of the Act stating that eviction can be ordered u/s 10(3) of the Act with reference to the requirement of the landlord and also to accommodate his family members, but not for providing accommodation to his employees working in the tannery. On the ground that need of the landlord will not fall within the meaning of Section 10(3) of the Act, the lower Appellate Court reversed the said finding and set aside the orders of eviction passed by the Rent Controller.

5. Aggrieved by the same, the legal representatives of the original landlord, who came on record before the Rent Controller has preferred the present revision u/s 22 of the Act.

6. Heard Sri J. Aga Reddy, learned Counsel for the petitioners and Sri Bankatlal Mandani, learned Counsel for the respondent, at length.

7. It is submitted by Sri I.Aga Reddy the learned Counsel for the petitioners that interpretation of the provision as made by the lower Appellate Tribunal is not correct and the words "bona fide requirement of the landlord for his own occupation" used u/s 10(3)(i)(b) are to be liberally construed with wide meaning so as to include requirements of his employees also. In support of his contention, he relied on the decision of the Division Bench of this Court in B. Balaiah v. Chandoor Lachaiah 1965 (2) ALT 252; wherein the scope of Section 10(3)(a)(iii) was interpreted so as to include the members of the landlord's family. The learned Counsel also relied on the decisions in Madanlal Srikrishan Malpani v. Ayodhya Devi Aswas 1986 (2) ALT 492 (DB), wherein the expression "his own occupation" used in Section 10(3) (a)(iii) came for interpretation. As such it is submitted that bona fide requirement pleaded by the petitioner-landlord falls within the meaning of Section 10(3)(i)(b) of the Act and that the appellate Tribunal is not correct in reversing the well considered judgment of the Trial Court. The learned Counsel for the petitioners also relied on the decision of the Single Judge of this Court in Sri Venkata Rama Aluminium Company v. Boddu Narayanamma 1997 (5) ALD 403, wherein it was held that requirement of premises for the family members of the landlord is requirement of landlord to seek eviction u/s 10(3)(a) of the Act.

8. The learned Counsel appearing for the respondent has submitted that in view of the death of the original landlord, the very cause of action for filing the petition did not survive and in view of the provision under of Section 42(c) of the Partnership Act, 1932, the very firm stood dissolved and as the requirement of the premises pleaded is for the employees working in the firm, no eviction petition can be maintained. In support of his contention, he relied on the decision of the Supreme Court in Hasmat Rai and Another Vs. Raghunath Prasad, , wherein it was held that eviction suit filed on composite grounds and one of the two grounds falling in view of landlord's admission in that regard and when composite nature of the grounds having disappeared, the Court must examine the case afresh considering the surviving ground as the sole and independent ground with reference to the facts and circumstances of the case. In my view, the said decision is not helpful to the respondent-tenant. The said ratio decided by the Apex Court is not helpful to the respondent-tenant in view of the facts and circumstances of the present case. The learned Counsel for the respondent also relied on the decision of the learned Single Judge of this Court in M Surya Kameswara Rao v. N. Satyanarayanamma (died) and Ors. 1997 (2) LS 12. The said decision is relied on, in support of his argument that the effect of the death of the original landlord has to be considered to order eviction on the ground of bona fide requirement. But in the present case, though the original landlord has died during the pendency of the proceedings before the primary Tribunal, sufficient pleadings were not advanced and no supporting evidence was let in, to consider the said pleading. As such the said decision is also not helpful to the respondent tenant. In the present case, it is not open to the respondent-tenant to plead that the firm stood dissolved in view of the provision u/s 42(c) of the

Partnership Act, 1932. The dissolution of the partnership firm on the death of the partner is one of the contingencies and the same is subject to the contract. In the instant case, there is no pleading and supporting evidence on the part of the respondent-tenant to plead that the partnership stood dissolved by applying the provision u/s 42(c) of the Partnership Act and there is no other contract regarding partnership. The mere pleading of the death of the partner is not sufficient because the dissolution on the death of the partner is not unconditional and the same is subject to the contract. In absence of further pleading that there is no other contract and factual foundation, it is not open to the respondent to plead that cause did not survive questioning the maintainability of the petition and it was for the tenant to make suitable amendments to the pleadings and lead evidence to prove that there is no other contract between the parties so as to take benefit of the provision u/s 42(c) of the Partnership Act. In absence of any factual foundation and finding thereon, it is not possible to accept the contention of the learned Counsel for the respondent-tenant. The judgment of the Apex Court cited supra and relied on by the learned Counsel for the respondent is not helpful to the facts of this case; as such I reject the contention of the learned Counsel for the respondent-tenant that the cause of action did not survive so as to maintain eviction petition. It is further submitted by the learned Counsel for the respondent-tenant that the Appellate Court has interpreted the provision u/s 10(3)(a)(i-b) the Act correctly and the words used in Section 10(3)(a)(i-b) "bona fide requires for his own occupation" shall not be construed widely and it shall not be extended widely for the occupation of other persons. The said provision reads as under:

"10(3) 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) xxxx xxxxx xxxx (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".

9. I have closely examined the above referred provision. Though the object of the Act is to restrict the increase of rents and eviction of tenant in urban areas, still the Legislature has taken care to provide grounds for eviction on various grounds and, one of them being the requirement of landlord. The words "for his own occupation" used under the said provision has to be construed meaningfully to give benefit of the said provision in its real spirit to the landlord who is given benefit under the very statute for eviction when he needs accommodation.

10. In the instant case, it is categorically pleaded by the landlord that some persons are employed in his partnership firm and there is a contract for giving accommodations to them. The expression, the landlord requires the premises in question ".....for his own use", is not confined to its meaning to the actual

physical uses by the landlord only. The requirement not only of the landlord himself, but also of the normal emanations of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by some one else, would amount to occupation or uses by the landlord himself cannot be exhaustively enumerated. It will depend on facts and circumstances of each case. Having regard to the facts and material available in this case, the landlord proved the need to occupy the premises sincerely and honestly for his own requirement. As such it has to be construed that the landlord require the premises for his own occupation for bona fide purpose.

11. The learned Counsel for the respondent has relied on the judgment in *Joginder Pal v. Naval Kishore* 2002 (4) Sup 280. A reading of the said judgment reveals that it is not helpful to him, but, more or less, the ratio laid down in the said judgment supports the plea of the appellant-landlord.

12. Further the learned Counsel for the respondent also referred to the decision *Bhupendra N. Patel and others Vs. Harshavardhan Chokkani*, , in which case the scope of revisional jurisdiction u/s 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, is discussed. There is no dispute on the proposition laid down in the said decision and it is held by this Court in catena of decisions that the scope of revisional jurisdiction u/s 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 is wider than the scope of revisional jurisdiction u/s 115 CPC.

13. The learned Counsel for the respondent has given list of some more decisions and I have perused the said decisions. All those decisions are cited in support of the proposition that pure question of law can be raised at the belated stage also. There is no dispute on the said proposition. Then it has to be seen in each case, that the proposition sought to be raised is, whether pure question of law, or mixed question of law and fact. In the present case, the question sought to be raised is mixed question of facts and law. Having failed to take proper steps to amend the pleadings after the death of the original landlord, it is not open for the respondent-tenant to plead that, in view of the death of the original landlord, cause of action did not survive, by seeking application of the provision u/s 42 of the Partnership Act. As such the decisions cited are not helpful to the respondent-tenant.

14. As the landlord pleaded requirement of the premises for providing accommodation to the employees working in the tannery, and his office, the lower Appellate Court found fault with the judgment of the Trial Court in interpreting Section 10(3) of the Act in favour of the landlord. In this regard I hold that the finding recorded by the lower Appellate Court is without assigning valid reasons and without discussing the purport and object of the said provision. Accordingly I hold that the requirement pleaded by the landlord is a bona fide requirement and it falls within the meaning of the words "for his own occupation" so as to give benefit of eviction of the petition schedule premises to the petitioner-landlord and the petition for eviction is maintainable. As no other

ground is pleaded and the bona fide requirement of the appellant-landlord is established, I set aside the judgment and decree of the lower Appellate Court, i.e., the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Warangal passed in RCA No. 1 of 1994, dated 24-11-1998 and consequently the judgment and decree passed by the Trial Court, i.e., Rent Controller-cum-Principal District Munsif, Warangal passed in RCC No. 40 of 1980, dated 13-12-1993 stands restored confirming eviction of the respondent-tenant from the petition schedule premises on the ground of bona fide requirement.

15. As much as the respondent-tenant is staying in the petition schedule premises for the last several years, I grant four months time to vacate the premises and to handover the vacant possession to the petitioner-landlord.

16. The Civil Revision Petition is accordingly allowed. No costs.