
(1975) 03 AP CK 0008
In the Andhra Pradesh High Court
Case No : W.A. No. 481/73

Shampant Susheela Bai

APPELLANT

Vs

M/s. Chandulal T. Parikh and another

RESPONDENT

Date of Decision : 03-03-1975

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 10(3)(c), 2(g), 26

Citation : (1975) 03 AP CK 0008

Hon'ble Judges : A. Sambasiva Rao, Acting C.J.; Raghuvir, J

Bench : Division Bench

Advocate : H.S. Gururaja Rao, for the Appellant; C. Poornaiah for the Respondent No. 1 and The Government Pleader for G.A.D., on behalf of the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Mr. A. Sambasiva Rao, Acting Chief Justice

1. This Writ appeal is against the decision of Obul Reddi, J. (as he then was) in Writ Petition 21 of 1972. The first respondent therein is the appellant. The writ petition was filed to quash the proceedings in G.O. Ms. 933 of 1971, General Administration (Accommodation A) Department, dated 16th of October, 1971, whereby the Government exempted the first respondent's building bearing No. 155 on the Rashtrapathi Road, Secunderabad in occupation of Respondent 1 from the provisions of Section 10 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act. The petitioner (first respondent) challenged the exemption on the ground that the Government was wrong in thinking that the provisions of the Act did not provide for moving the Rent Controller and that even in the case of non-residential building the Jurisdiction of the Rent Controller was not barred, provided a case was made out for eviction under the provisions of the Act. It was also contended that Section 26 of the Act could not be invoked by the Government so as to defeat the very object of the Act. On the other hand, the

appellant argued that there was nothing in the Act which provided for moving the Rent Controller where the building happened to be both residential and non-residential one and therefore the Government was justified in granting exemption in exercise of its powers u/s 26 of the Act.

2. Our learned brother allowed the writ petition following the decisions of the Supreme Court in *Dr. Gopal Dass Verma Vs. Dr. S.K. Bhardwaj and Another*, and *S. Sanyal Vs. Gian Chand*, In the former case, Gajendragrdkar, J. (as he then was) observed:

The three kinds of user to which the definition of the word "Premises" in S. 2 (g) refers are residence, commerce and any other purpose which necessarily must include residence and commerce combined. It may also include other purpose such as charity. As soon as it is shown that the premises have been let both for the use of residence and for commercial purposes it does not follow that the premises cease to be premises under S. 2 (g); they continue to be premises under the last clause of S.2 (g). This position is wholly consistent with the division of the premises made with reference to their user.

3. In the light of this and other decisions, the learned Judge observed that:

Where there is a composite lease.....it is not open to the landlord to split the lease into two parts and ask for eviction relying upon one part of the contract.

4. Holding that the Act, namely, the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 provides for remedy under the provisions thereof, the learned Judge found that the order of the Government exempting the building from the operation of the provisions of the Act is bad. In that view, he struck down the order of the Government and allowed the writ petition.

5. In the light of the decisions of the Supreme Court above referred to relied upon by our learned brother, we are in perfect agreement with him. The lease is a single one and it may be that the tenant is using part of it for residential purpose and the other part of it for his business purposes. It is not permissible to the landlord to split the lease and say that there is no provision in the Act under which he can seek eviction under the provisions of the Rent Control Act. Here, we may point out that, in the writ petition it was clearly alleged by the petitioner that earlier there were eviction proceedings. After evidence was recorded therein, both parties compromised whereunder it was agreed that the land-lady should give vacant possession of the right wing portion of the building in the ground floor consisting of two rooms, kitchen, bath-room, and lavatory by 1st December, 1954 and deliver the same to the tenant; and he, in turn should vacate the first three rooms, kitchen, bath-room, lavatory out of the portion in his occupation in the right wing of the first floor. The rent was fixed at Rs. 200/- and the terms of the compromise was accordingly implemented, and the tenant occupied the ground floor and was paying the rent accordingly. It is thus his categorical case that only a portion of the building was in his possession and

occupation, and the other in the possession of the land-lady. As against this, in her counter-affidavit, the land-lady said that the matter was compromised, but there was no enhancement of rent. The tenant recognised her bona fide requirement for more accommodation and vacated the upstairs portion and instead occupied the portion in the downstairs: In view of this, the rent was reduced, and the tenant parted with the portion of the premises which was let out to him. This assertion in the petition and the statement contained in the counter conceding what has been stated in the petition shows that only a part of the building was in the tenancy of the tenant, the other part being in the possession of the land-lady. If such is the case, clearly section 10(3) (c) would come into operation. That lays down that:

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.

6. In this case, the land-lady requires the rest of the premises for her business purposes. If that is so, it is quite open to her to apply u/s 10(3) (c) for eviction of the tenant, Thus, a remedy under the Act is clearly available to the land-lady.

7. Mr. H.S. Gururaja Rao still argues that even if such a remedy is available under the Act, the Government can nevertheless exercise its power of exemption conferred on it under Sec. 26. In particular, he emphasises the non-obstante clause which says that notwithstanding anything in this Act, the Government may, by notification, exempt any building or class of buildings from all or any of the provisions of this Act. We do not think that Sec. 26, despite the non-obstante clause, is intended by the Legislature to confer unbridled power on the Government to exempt any building or class of buildings from all or any of the provisions of the Act. The very purpose of the Act is to regulate the leasing of buildings, the control of rent thereof and the prevention of unreasonable eviction of tenants therefrom. Certainly, a provision of such an enactment cannot be permitted to be utilised for defeating these purposes. In other words, if a statute has provided for securing a relief in a particular manner, that cannot be given a go-by and recourse cannot be taken to the power of exemption thereby defeating the provisions of the statute and the purposes for which the Act has been made. This is what has been held in *Abdul Subhan Sahib & Sons v. State of Madras* 1959 (II) Mad. L.J. 387. *Jaganmohan Reddy, J.* (as he then was) expressed the same view in *Dr. (Miss) J.V. Raj v. Dr. P. Siva Reddy and Others* 1966 I.A.L.T. 79. The learned Judge observed at page 85 that.

It is only where eviction cannot be ordered under the provisions of the Act and that, the Special power vested in the Government (under section 26) can be exercised in special cases.

8. This is to say, if eviction can be sought under the provisions of the Act, resort cannot be taken to the power vested in the Government u/s 26. We are, therefore, firmly of the opinion that the land-lady in this case could have taken proceedings u/s 10 (3) (c) for eviction ; and in such an event, section 26 cannot be invoked and exemption cannot be granted thereunder. For these reasons, we are in agreement with our learned brother in striking down the impugned G. O. granting exemption. The writ appeal is dismissed with costs. Advocate's fee Rs. 100/- (Rupees one hundred only).