
(2003) 12 AP CK 0082
In the Andhra Pradesh High Court
Case No : CRP No. 2061 of 2001

Singamsetty Siva Suryanarayana Murthy (died) per LRs. APPELLANT
Vs
Prapancham Sreenivasa Rao RESPONDENT

Date of Decision : 01-12-2003

Acts Referred:

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

Citation : (2004) 1 ALD 883 : (2004) 1 APLJ 404

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : P.R. Prasad, for the Appellant; V.S.R. Anjaneyulu, for the Respondent

Final Decision : Allowed

Judgement

T. Ch. Surya Rao, J.—This civil revision petition is directed against the order dated 29.10.1999 passed by the learned Principal Senior Civil Judge, Vijayawada, in R.C.C.M.A. No. 87 of 1992. The Petitioners 2 to 6 are the legal heirs of the first petitioner who since died.

2. The first petitioner was the owner of the premises in question. The father of the respondent was inducted as a tenant thereof who used to run a coffee hotel business therein. After his demise, the respondent continued as a tenant agreeing to pay a monthly rent of Rs. 35/- exclusive of water, latrine and electricity charges. The respondent has been using the premises in question for residential as well as non-residential purposes. The demised premises is situated in a prominent busy and business locality. It comprises of a big hall, a verandah with zinc sheet roofing and appurtenant site. On the premises that the respondent committed wilful default in paying the rents from January 1986 onwards and the, first petitioner requires the said premises bona fide for personal use and occupation to start business in the name of his son, the petitioner requested the respondent to vacate the demised premises. Since the respondent had not acceded to the request of the petitioner there was an

exchange of registered notices in between them. Anticipating an action by the first petitioner, the respondent filed R.C.C.No. 209 of 1987 u/s 8(5) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 ("the Act" for brevity). The first petitioner, therefore, filed the eviction petition against the respondent.

3. The case of the respondent was that he had been running a coffee hotel in the front room and had been residing with his family in the other rooms and had been paying the rents promptly and regularly. The first petitioner, who was rich, owned several buildings in Vijayawada, wanted the respondent to pay rents once in a year and accordingly he had been paying the rents and never committed default, much less wilful default. The first petitioner demanded for enhancement of rent from Rs. 35/- to Rs. 200/- per month. He had refused to receive the rent when offered by him and therefore, he started paying the rents by way of money order which too was refused to be received. When he had requested the petitioner to name the bank for depositing the rents, the first petitioner failed to do so and he had to file R.C.C. No. 209 of 1987. Therefore, the first petitioner filed the present eviction petition. It was his further case that the first petitioner owns three more very big buildings in the same road besides the demised building and they were let out for business purposes; and that the demised building was not at all suitable for the proposed business and the alleged requirement of the first petitioner was mala fide.

4. At the culmination of the enquiry, on an appreciation of evidence the learned Rent Controller dismissed the petition with costs. The learned Rent Controller was of the view, that having regard to Exs.B.1 to B.3 - rent receipts, that there had been a practice of paying the rents once in a year, the tenant never committed default, much less wilful default. He was of the further view that inasmuch as the demised building was let out for composite purpose of residential as well as non-residential purposes, the petition seeking eviction of the tenant for non-residential purpose was not maintainable. The appellate Court under the impugned Judgment concurred with the findings of the learned Rent Controller. The Petitioners 2 to 6, who are the legal heirs of the deceased first petitioner-landlord, are now assailing the said Judgment.

5. Sri P.R. Prasad, learned Counsel appearing for the revision petitioners, would contend that the eviction petition is maintainable eventhough it was a composite lease, and eviction could be sought for either one of the two purposes

6. Sri V.S.R. Anjaneyulu, learned Counsel appearing for the respondent, would contend that in case of composite lease, the Controller should first decide the nature of the building and if the purpose for which the eviction is sought is in conformity with the same then only the eviction can be ordered.

7. In view of the above contentions, the points that arise for my determination in this Revision Petition are

(1) Whether the eviction petition is maintainable in respect of the building let out

for composite purposes?

(2) Whether the landlord can seek eviction for any one of the purposes bona fide when the building was let out for composite purpose?

(3) To what relief?

8. There has been no gainsaying about the jural relationship in between the parties inter se. The quantum of rent too is not in dispute. The eviction in this case has been sought for on the premises of wilful default and bona fide personal requirement for doing business. Apropos the first ground, while it was the contention of the landlord that the tenant committed default, the plea of the tenant was that there had been a practice of paying the rents once in a year at the request of the landlord himself and, therefore, it was not a case of default, much less wilful default. Appreciating the evidence on the point adduced on either side, the learned Rent Controller was of the view that given the practice set up by the tenant which had been established, it could not be a case of default, much less wilful default. Under the impugned Judgment, the appellate Court concurred with the said finding. In view of the concurrent finding of fact that the tenant has not committed any default it has not been assailed seriously before me by the learned Counsel appearing for the revision petitioners.

9. Turning to the other ground of bona fide personal requirement, admittedly the tenant held the demised premises under a composite lease for residential as well as non-residential purposes. The landlord sought the eviction of the tenant for the purpose of his son's business who wanted to start stationery business in the demised premises. Inasmuch as the demised premises has been found to be used for residential as well as non-residential purposes, placing reliance upon the Judgment of this Court in *Dr. Madhusudan Mahuli v. Lambu Indira Bai* 1988 (1) APLJ 159 :1987 (2) ALT 504, both the Courts below held that the eviction of the tenant on the ground of personal requirement of the landlord for his son's business could not be ordered inasmuch as the Act had not envisaged the eviction of the tenant from the premises held under a composite lease. The said Judgment rendered by a learned Single Judge of this Court has been overruled by the Apex Court in *Boddu Narayanamma Vs. Venkatarama Aluminium Co. and Others*, . The Apex Court held in para 29 thus:

"There is nothing in the A.P. Act to suggest that the right of a landlord like the appellant to recover possession of the demised building from the respondent tenant is taken away either expressly or by necessary implication. Once it is held that a building having both residential and non-residential portions which are let out together under a composite lease is a building within the ambit of the Act, such a building has to fall within one or the other category, namely, residential or non-residential - the classification which is made in Section 2(iii) of A.P. Act. We find it difficult to infer that the legislature having brought such a building within the ambit of the Act and having provided for eviction of a tenant on the ground of personal requirement of the landlord from such a building when it is let out for

residential purpose or for non-residential purpose or separately for residential and/or non-residential purposes and having not taken away the right of the landlord to eject the tenant from such a building left him in the lurch without providing the remedy of eviction of tenant when let out under a composite lease. We have, therefore, to discern the remedy under the A.P. Act on the principle embodied in the maximum ubi jus ibi remedium."

10. In view of the authoritative pronouncement of the Apex Court the impugned Judgment as well as the order of the learned Rent Controller shall have to be set aside. Having regard to the fact that both the Courts below while concurrently holding that it was not a case of wilful default, had not adverted to the point as to whether the requirement of the landlord for his son's business was bona fide or not presumably for the reason that the eviction petition was not maintainable, the matter has to be necessarily remitted to the Court of the Rent Controller for determination on that point.

11. However, Sri V.S.R. Anjaneyulu, learned Counsel appearing for the respondent, seeks to contend that the eviction at the instance of the landlord cannot be ordered for one of the two purposes without deciding first the nature of the building and as to whether the requirement of the landlord is consistent with the nature of the building or not.

12. Sri P.R. Prasad, learned Counsel appearing for the petitioners, on the other hand, seeks to contend that in respect of a composite lease eviction can be sought for either of the purposes. Even otherwise, having regard to the factual matrix, it can be seen that predominant purpose for which the building was being used is non-residential purpose and, therefore, the only point for which the matter can be remitted to the Court of the Rent Controller is to decide as to whether the alleged personal requirement of the landlord for his son's business is bonafide or mala fide.

13. Having regard to the rival contentions, the law on the point need be noticed.

14. In Boddu Narayanamma's case (referred to hereinabove) the Apex Court after having considered the law on the point both for and against ultimately in para 29 held thus:

"The buildings under that Act are classified as (i) residential, and (ii) non-residential. In our view, a building having residential and non-residential portions and let out under a composite lease has to be categorised as either a residential or a non-residential building having regard to its nature, accommodation, dominant purpose of lease, primary use of the building and other relevant circumstances on the facts of each case. On such determination, the suit/petition of the landlord has to be decided under Sub-clause (i) or Sub-clauses (ii) or (iii) of Clause (a) of Section 10(3) of the A.P. Act, as the case may be. It may be noticed here that u/s 10(3)(a) of the A.P. Act, the relief is granted with reference to the nature of the building and not with reference to the purpose for which it is let."

Having regard to the indicia discernable from the factual matrix in that case that the dominant purpose for which the building was let out was residential purpose, non-residential activity being incidental; and that the demised premises is situated in a residential area where no non-residential activity is permitted to be carried on and that portion of the demised building let out for non-residential purpose can also be adapted with a little modification for residential purposes and indeed the claim of the landlord was to convert the same for residential purposes of the family, the Apex Court was of the considered view that the demised building had to be treated as a residential building.

15. In *Precision Steel and Engg. Works and Another Vs. Prem Deva Niranjana Deva Tayal*, , the Apex Court in para 9 held thus:

"In our opinion the expression "the premises let for residential purposes" should be construed liberally and not technically or narrowly: meaning thereby, where the premises are solely let for residential purposes they are undoubtedly covered by Section 14(1)(e) but even when the premises are let out for composite or mixed purposes, if the predominant or main purpose of letting is for residential purposes, the same would be included within the expression "the premises let for residential purposes". An incidental, a secondary or unauthorized user of the premises for purposes other than residence would not take the premises out of the meaning of the expression "the premises let for residential purposes".

In para 10, the Apex Court further held thus:

"Premises are capable of being classified into residential and non-residential depending on the purpose of letting. This is the broad classification. Question of construction and determining the purpose of letting may pose difficulty when the premises are let for mixed, composite or dual purposes i.e., where the entire premises are allowed to be used for an overlapping purpose or the premises forming the subject-matter of one tenancy are allowed to be used for purposes more than one. In such a case it cannot be said that the premises would cease to be of either category i.e., they would be neither residential nor non-residential. Rather it would be necessary to find out what is the "main and dominant purpose" of letting as distinguished from "subsidiary, ancillary or incidental purpose". The theory of determining the purpose of letting by reference to finding out the main and dominant purpose of letting has ample judicial authority to derive support from."

In the process, the Apex Court relied upon its Constitution Bench Judgment in *Allenbury Engineers Pvt. Ltd. Vs. Ramkrishna Dalmia and Others*, . According to the facts in that case the suit premises was situated in a residential area as can be seen from the master plan and zonal plan of the locality and predominant and main purpose for which the suit premises had been let out was residential. In that view of the matter, it was held to be a residential building.

16. In *Busching Schmitz Private Limited Vs. P.T. Menghani and Another*, , the Apex Court in para 19 held thus:

"A building which reasonably accommodates a residential user is a residential accommodation - nothing less, nothing else. The circumstances of the landlord are not altogether out of place in reaching a right judgment. The "purpose test" will enable officers who own houses to defeat the Government by pleading that they do not own "residential premises" because the lease is for commercial use, built though it was and suitable though it is, for residence. Similarly, the "possibility test" may make nonsense of the provision. The contrast in the phraseology between Section 14(1)(e) and Section 14A strengthens our inference. The legislature has, in the former provision, used the expression "premises let for residential purposes", thus investing the purpose of the lease with special significance. The deliberate omission of such words in Section 14A and, instead, the use of the flexible but potentially more comprehensive, though cryptic, expression "residential accommodation" cannot be dismissed as accidental."

17. In *T. Dakshinamoorthy Vs. Thulja Bai and Another*, , a Full Bench of the Madras High Court held thus:

"For the purpose of determining whether a building is a residential or non-residential building, one has to bear in mind a few salient considerations: (1) Where there is an instrument of tenancy specifically and explicitly declaring the purpose of the letting as residential or non-residential, no difficulty generally arises: (2) Where there is no such instrument of tenancy the question will have to be considered on the basis of direct evidence aliunde concerning the purpose of the letting, which may be adduced in a case: (3) If no such evidence too is forthcoming, the Court can only look at the evidence concerning the user of the premises by the tenant down to the date of the application for eviction as acquiesced in by the landlord; (4) Where there is evidence of such user, but there is no evidence of such acquiescence, the structural design, the antecedent user of the building by the landlord as known to the tenant and other surrounding circumstances, if any, will also have to enter into the determination of the question whether the building is or is not residential: (5) Difficulty may sometimes still remain, i.e., after applying the tests above indicated, if the building is found let for both kinds of purposes, residential and non-residential, no distinction being made between one part as let for one purpose and the other for the other purpose. In such a case what has to be determined as a question of fact is, what was the real, main and substantial purpose of the letter?"

18. The legal position seems to be obvious from a conspectus of the above judgments that in respect of a building held under a composite lease when the eviction is sought, the Rent Controller should in the first instance decide as to whether it is a residential building or non-residential building. In his endeavour to do so, the Rent Controller has to consider the nature, accommodation, predominant or main purpose of lease, primary use of the building and other relevant circumstances.

19. If for any reason, the building is held to be a residential building having due

regard to the above indicia and if the landlord seeks eviction for non-residential purpose, in view of the mandate contained in Section 18 of the Act that no residential building shall be converted into a non-residential building except with the permission in writing of the Controller, then the question arises as to whether the eviction in such cases be ordered in the absence of any such written permission from the Controller converting the residential building into a non-residential building. It is precisely on this point lengthy arguments have been sought to be addressed on either side.

20. Sri P.R. Prasad, learned Counsel appearing for the revision petitioners seeks to place firstly reliance upon the Judgment of the Madras High Court in *T. Dakshinamoorthy v. Thulja Bai* (supra) it was held in para 29 thus:

"It only remains to add that where the Court finds the letting to be equally for residential and non-residential purposes and not mainly or substantially for one or the other kind of purpose the application by the landlord may well stand whether filed u/s 7(3)(a)(i) or Section 7(3)(a)(ii) of the Act."

21. In *Tikamchand Mithalal Jain Vs. M.R. Narasimhachari*, , a learned Single Judge of the Madras High Court held that where the tenancy had equally let for both residential and non-residential use, the landlord could seek eviction of the tenant either for bona fide residential use or for non-residential use.

22. In *Jagit Kumar Vs. Jagdeeshchandra*, , the Madhya Pradesh High Court held that in the case of a composite tenancy if it is established that the landlord requires the non-residential part of accommodation or residential part of the accommodation, a decree for eviction of the tenant from the entire premises could be passed.

23. The learned Counsel to drive home the point that the Judgments of the Madras High Court rendered prior to the formation of Andhra State are binding upon the Andhra Pradesh High Court seeks to place reliance upon a Full Bench Judgment of the High Court in *Subbarayud v. The State* 1955 ALT 53 wherein it was held that the High Courts of Madras and Andhra are Courts of co-ordinate jurisdiction and the principle of stare decisis could be invoked. Therefore, the Andhra Pradesh High Court shall follow the Judgments of the Madras High Court rendered prior to 5.7.1954 in the same manner as the Madras High Court follows its own decisions subject to the same limitations.

24. There can be no quarrel about the legal position on the principle of stare decisis. The judgments of Madras High Court rendered prior to 5-7-1954 are binding upon this Court. In fact *Jagitkumar's* case and *T.M. Jain's* case have been referred to in *Boddu Narayanamma's* case. Having referred those cases and other cases rendered on the point the ultimate view expressed by the Apex Court seems to be otherwise.

25. In *Amtual Hafeez Vs. D. Mohammed Ibrahim (died) per L.Rs.*, , a learned Single Judge of this Court held that the words "own occupation" occurring in

Section 10(3)(a)(i) have to be interpreted as including the type of occupation as the structure of residential admits of and cannot be restricted to residential occupation only. On the other hand, non-residential premises can be let out only for non-residential purposes and will always remain as non-residential premises and can never be treated as residential premises unless its structure is altered. On facts, though it was a residential premises having been let out for non-residential purposes of sale of carpets without necessity of structural alteration and without the permission u/s 18 of the Act, the landlord is entitled to claim eviction on the ground that he requires it for his own business and he is also entitled to eviction for the reason that his son wants to reside in the premises besides doing business.

26. In *Kurminayaka Mothilal Vs. Mohd. Jahiruddin (died) and Others*, , a learned Single Judge of this Court held in para 5 thus:

"In case of composite lease, the landlord can seek eviction from the residential and non-residential portion on the grounds permitted under the Act in respect of each portion. But he cannot seek eviction of any one of the portions only as it will amount to splitting of contract into two. Applying this to the facts of this case, the petitioner is seeking eviction of tenant on the ground that he requires both the portions for his business purposes. As far as the portion occupied by the tenant for business purpose is concerned, there is no difficulty in holding that the petitioner can ask for eviction on the ground that he requires it for business. Now the question remains whether the petitioner can seek eviction from residential portion for his business purpose."

The learned Judge relying upon his earlier Judgment in *Amtual Hafeez's* case (supra) reiterated the same view.

27. In *Godavari Metal Rolling Mills (Contractor's Firm) Vs. Dara Satyamalli Viswanadha Anji Prakash*, , a learned Single Judge of this Court held that eviction petition in respect of a composite lease is maintainable before the Rent Controller provided that he is satisfied that in one and the same proceeding both the residential premises as well as non-residential premises are required for bona fide occupation of the landlord.

28. In *Laxmi Bai and Others Vs. Yashoda Bai and Others*, , a learned single Judge of this Court reiterated his earlier view taken in *Amtual Hafeez's* case (supra).

29. In *Bibijan and Others Vs. Chintakridi Narasimham and Sons*, , it was held that the Rent Controller Court has jurisdiction to effect partition of joint property u/s 15 in appropriate cases and order eviction of tenants from such portion of property to which landlords are entitled as per their shares therein."

30. In *Vijaya Kumar Patangay Vs. Kedarnath*, , a learned Single Judge of this Court held that eviction petition was maintainable under the Act in respect of a composite lease provided the landlord sought eviction from residential portion and non-residential portion on permissible grounds in respect of each portion,

such as bona fide requirement of both the premises and eviction could not be sought from any one of the portions only as it would amount to splitting of contract into two which is not permissible.

31. In *S. Basha Vs. D.B. Indiramma*, , it was held that a room which was a part of the residential house was let out for running a tailoring shop and that the rear portion of the house was purchased by the petitioner who got it demolished and constructed a non-residential building and when the eviction of the respondent was sought in respect of the room for running a fancy shop it was held that the application could be maintained and that it was not necessary that the room should be converted into a non-residential building under the orders of the Rent Controller.

32. The voluminous authority rendered by this Court either by a learned Single Judge or by a Division Bench and the Judgments of the Madras High Court rendered prior to 5.7.1954 although are binding on this Court, ultimately should give way to the judgment rendered by the Apex Court. The Judgment of the Apex Court in *Boddu Narayanamma's* case, therefore, holds the field. It has been categorically held that having regard to the definition of the "Building" enjoined u/s 2(iii) of the Act and since the Act specifically envisaged two categories of buildings, namely, residential and non-residential, in the case of a composite lease, it must firstly be considered by the Rent Controller as to whether the building in question is a residential building or non-residential building. Then the Rent Controller should proceed to consider the purpose for which the eviction was sought and as to whether the said purpose is consistent with the nature of the building.

33. This then takes us to consider the other aspect that a residential building has been found to be let out for non-residential purposes and is being used as such, can the landlord seek eviction of the said building for non-residential purposes.

34. In *Pokuru Varadarajam Vs. The State of Andhra Pradesh*, , a Division Bench of this Court held that having regard to Section 18 and other provisions of the Act, a residential building could not be converted into a non-residential building and in the absence of permission in writing of the Controller, the building continued to be a residential one despite the fact that the tenant used it for some time for locating its office in it.

35. In *P. Venkata Krishna Rao v. Dr. B. Seetharam*, 1989 (2) ALT 284 another Division Bench of this Court held that if a residential building even though was let out for a non-residential purpose for carrying a Nursing Home the building continued to be a residential building unless it is converted as a non-residential building by an order of the Rent Controller and in the absence of such an order, a residential building cannot be construed as a non-residential building notwithstanding the fact that the building was let out for a non-residential purpose. Furthermore, the Division Bench was of the view that the Full Bench Judgment of the Madras High Court in *T. Dakshinamoorthy's* case had not

considered the effect of Section 11 of the Madras Act corresponding to Section 18 of the present Act and the observations of the Full Bench had been correctly explained by a Division Bench of this Court in P. Varadarajam's case (supra).

36. In Vinod Kumar Arora Vs. Surjit Kaur, , the Apex Court held that where the statute mandates a written permission from the Controller for converting a residential building into a non-residential building one and when the parties had not obtained the consent in writing of the Rent Controller for such conversion, the tenant could not get over the embargo by pleading that the landlady was well aware of his running a clinic in the hall and that she had not raised objection at any time to the running of the clinic.

37. Having regard to the two Bench Judgments of this Court and the Judgment of the Apex Court discussed hereinabove and in view of the clear mandate contained in Section 18 of the Act, it is obvious that a building which is a residential building, although is found to have been let out for non-residential purposes or is found to have been used for non-residential purposes and the landlord acquiesced for the same, it will not lose its character of residential nature and remains to be a residential building for the purposes of the Act. Therefore, the landlord cannot seek eviction of such residential building on the ground of his bona fide personal requirement for non-residential purposes.

38. It may be reiterated here that the Apex Court in Boddu Narayanamma's case has categorically held that in all cases where the demised premises is held under a composite lease, the Controller has to first decide, in the event eviction is sought by the landlord, as to whether the building is a residential building or a non-residential building. If the building which is held under a composite lease by a tenant and the landlord could ask for the eviction of the same for either of the purposes, there is no need to decide at the threshold whether such a building is a residential building or a non-residential building. Therefore, in my considered view, if the demised premises is held by the tenant under a composite lease, the landlord can seek eviction of the tenant for residential purposes if the building is found to be a residential building regardless of the fact that it is being used by the tenant for non-residential purposes and if it is found to be a non-residential building the landlord can seek eviction for non-residential purposes.

39. Turning to the facts in the instant case, the demised premises was taken on lease for the purpose of running a coffee hotel business. It has been averred in the petition that the petition schedule premises is situated in a prominent busy and business locality. The respondent-tenant has been using the premises not only for the residence of his family but also for his business. It is the case of the tenant that the building was taken on lease for residence and coffee hotel business. It has been the further case of the tenant that the premises in question is most unsuitable for the proposed business of the son of the landlord and it is not in business locality. The nature of the building is that it comprises of a big hall in 75 square yards area and a verandah with zinc sheet roofing with 36 square yards area apart from adjacent vacant side of 116 square yards area. The

total area of the premises is thus 227 square yards. Admittedly, that the tenant has been residing in the back portion while doing hotel business in the front portion of the demised building.

40. Although it is stated that the building in question is not suitable for non-residential purposes, the fact that it is situate in a non-residential locality cannot be overlooked. The case of the respondent-tenant that there is other area where it is more suitable for business purposes will not have any effect of controverting the fact that the building is situate in a non-residential locality. However, there has been no finding as regards the nature of the building given by the learned Rent Controller. Such a finding is essentially a finding of fact. Therefore it is expedient to invite a finding on that aspect also.

41. For the foregoing reasons, the Civil Revision Petition is allowed and the impugned judgment of the Principal Senior Civil Judge, Vijayawada, is hereby set aside. Consequently, the matter is remitted to the Court of the Rent Controller for fresh determination in the light of the observations made herein above. The learned Rent Controller shall make every endeavour to dispose of the matter as expeditiously as possible, preferably within two months from the date of receipt of a copy this order. The costs shall abide the result.