
(2012) 03 AP CK 0093

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 426 of 2012

Smt. T.M. Nagarani and others

APPELLANT

Vs

M/s. Andhra Tiles

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 10(3), 32
Cantonments Act, 1924 — Section 60

Citation : (2012) 4 ALD 584 : (2012) 4 ALT 551

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : R. Chandrashekar Reddy, for the Appellant; K. Mohan, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy

1. This civil revision petition arises out of order, dated 22.12.2011, in R.A. No. 116 of 2011, on the file of the learned Chief Judge, City Small Causes Court, Hyderabad, whereby he has reversed the order, dated 13.04.2011, in R.C. No. 26 of 2010, on the file of the learned Principal Rent Controller, Secunderabad. The petitioners filed R.C. No. 26 of 2010 seeking eviction of the respondent under Sections 10(2)(i) and 10(3)(iii)(a) of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short "the Act"). The respondent raised an objection on the maintainability of eviction petition on the ground that even according to the petitioners, the rent of the building in question is Rs. 3,500/- per month and that as per the amended provisions of Section 32(c) of the Act, if the rent of the building exceeds Rs. 2,000/- in the areas other than the Municipal Corporation areas, the Rent Controller will cease to have jurisdiction to entertain the application for eviction. The respondent further pleaded that the demised premises is admittedly situated in the Secunderabad Cantonment area and that

therefore, it does not form part of the Hyderabad Municipal Corporation area and consequently it falls within the expression "in other areas" u/s 32(c) of the Act. The petitioners contested the said plea of the respondent.

2. The learned Principal Rent Controller, Secunderabad vide her order, dated 13.04.2011, rejected the preliminary objection of the respondent. Feeling aggrieved by the said order, the respondent filed R.A. No. 116 of 2011 in the Court of the learned Chief Judge, City Small Causes Court, Hyderabad. The said appeal was allowed by the lower appellate Court by order, dated 22.12.2011.

3. Before dealing with the case on merits, it needs to be noted that the order passed by the learned Principal Rent Controller is hard to decipher. The effort made by this Court to understand the said order has not paid off. Therefore, this Court delved into the reasons contained in the order of the lower appellate Court.

4. As noted above, the sum and substance of the case of the respondent is that on the facts pleaded by the petitioners, the Rent Controller has no jurisdiction. The fact that the demised premises is situated within the Secunderabad Cantonment area is not in dispute. But, the question is whether the said Cantonment area falls within the Hyderabad Municipal Area or not.

5. The Government of India issued S.R.O.15-E, dated 08.08.1973, published in Gazette of India Extraordinary August 10, 1973, whereby the Central Government has extended the provisions of the Act to the Secunderabad Cantonment area. By virtue of this notification, all the rent control cases under the Cantonment area are filed under the provisions of the Act. It is not in dispute that the Cantonment areas are under the control of the Central Government and being administered by separate Boards constituted under Chapter-III of the Cantonment Act, 2006. Therefore, it cannot be said that the Secunderabad Cantonment area forms part of the Hyderabad Municipal Corporation area. But for the Government of India's notification referred to above, the provisions of the Act would not have attracted the buildings situated in the Secunderabad Cantonment area.

6. The learned counsel for the petitioners placed reliance on the judgment of the Supreme Court in Cantonment Board, Secunderabad Vs. G. Venketram Reddy and Others, . On a careful reading of the judgment, I am of the opinion that the same does not advance the case of the petitioners. In that case, the question was whether the expression "Municipality in State" in Section 60 of the Cantonments Act, 1924 takes within its sweep the Hyderabad Municipal Corporation also. The issue, namely, whether the Cantonment was part of the Municipal Corporation or not has not fallen for consideration of the Supreme Court.

7. u/s 32(c) of the Act, if the rent of a building situated in the areas covered by Municipal Corporations in the State exceeds Rs. 3,500/- per month and in other areas Rs. 2,000/- per month, the provisions of the Act will have no application. It is the pleaded case of the petitioners that the rent of the building is Rs. 3,500/-.

Even though the respondent appeared to have pleaded that the rent is only Rs. 1,500/-, it is eventually the plea of the petitioners which is relevant for the purpose of ascertaining the applicability of the provisions of the Act and consequently, the jurisdiction of the Rent Controller. For this purpose, the petitioners cannot be permitted to rely on the stand of the respondent.

8. In view of the above undisputed position, as the rent is shown to have been in excess of Rs. 2,000/- and the demised premises falls in "other areas" as per Section 32(c) of the Act, the Act has no application and consequently, the Rent Controller is denuded of the jurisdiction to entertain the eviction petition filed by the petitioners.

9. Sri R. Chandrashekar Reddy, learned counsel for the petitioners, has strenuously contended that the learned Principal Rent Controller ought not to have entertained the preliminary objection as it is not a civil Court.

10. In my opinion, this contention is raised only in despair. Nothing is brought to this Court's notice that the petitioners have raised any such objection before the learned Principal Rent Controller. They have taken their chance before the learned Principal Rent Controller and succeeded before her. However, when they have lost the case before the lower appellate Court, they have turned around and raised this plea for the first time before this Court. Be that as it may, there is no bar under the provisions of the Act on the Rent Controller deciding an issue which goes to the root of the case as a preliminary issue. Since the question of very jurisdiction of the Principal Rent Controller is raised which did not require recording of oral evidence, there is nothing wrong in the Rent Controller deciding the issue in the first instance.

11. The judgment of this Court in Ch. Suryanarayana Raju v. Duvvuri Suryanarayana 1969 APLJ 12 (SN), does not help the case of the petitioners. The said judgment does not lay down that there is any prohibition on the Rent Controller in deciding an issue as a preliminary issue in appropriate case. That was obviously a case where the party wanted the Rent Controller to decide an issue as a preliminary issue under Order XIV Rule 12 CPC. This Court has rejected the said plea.

12. While ordinarily the Rent Controller will not entertain the preliminary objections, where it was thought fit to entertain such objection and a decision is taken, the party who did not raise any demur on the Rent Controller's power has succeeded before the learned Principal Rent Controller and lost before the lower appellate Court cannot be permitted to resile and plead that the learned Principal Rent Controller ought not to have entertained the preliminary objection. Perhaps, it is too late in the day for the petitioners to raise such contention in this revision petition.

13. For the above-mentioned reasons, I do not find any illegality in the order passed by the learned Chief Judge, City Small Causes Court, Hyderabad in R.A. No. 116 of 2011 and the civil revision petition is accordingly dismissed. As a

sequel to dismissal of the civil revision petition, C.R.P.M.P. No. 599 of 2012 shall stand disposed of as infructuous.