
(1994) 10 AP CK 0021
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3318 of 1989

Srikakulam Subrahmanyam (died) per L.Rs.	APPELLANT
Vs	
Pandeshwara Janardhan Rao	RESPONDENT

Date of Decision : 03-10-1994

Acts Referred:

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

Citation : (1994) 3 ALT 204 : (1995) 1 APLJ 144

Hon'ble Judges : P.L.N. Sarma, J;B.S. Raikote, J

Bench : Division Bench

Advocate : J. Venugopala Rao, A.V. Parthasarathy and N. Johnson, for the Appellant; T. Veerabhadraiah, for the Respondent

Final Decision : Dismissed

Judgement

P.L.N. Sarma, J.—This revision has been referred to a Division Bench by Neeladti Rao, J. by his order dated 7-3-1990. The learned Judge felt that in view of the Judgments of the Supreme Court in M/s. Central Tobacco Co., Bangalore v. Chandra Prakash, IX -1969 All India Rent Control Journal, p.702 and Phiroze Bamanji Desai Vs. Chandrakant N. Patel and Others, the Judgment of the Division Bench of this Court in K. Parasuramaiah Vs. Pokurl Lakshamma, requires reconsideration, as the said Judgment of the Division Bench cast the burden of pleading and proving that the hardship caused to him by passing the eviction order will outweigh the advantage to the landlord. Accordingly, the Civil Revision Petition has come up before us.

2. Since the entire C.R.P. is placed before us, it is necessary for us to refer to the facts and the findings recorded by the lower tribunals.

3. Tenant is the petitioner in this revision. Landlord is the respondent. The landlord filed an application for eviction u/s 10(3) (a) (iii) and (c) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (Act 15 of 1960), (for short "The Act"), seeking eviction of the tenant from petition schedule

premises on the ground that he requires the same for additional accommodation for the hotel business which he is running. It is stated in the application filed for eviction that originally the landlord is the tenant of the petition schedule building and that he has been running a hotel by name Bharat Cafe at main Bazar, Etukuru Road, Guntur, Though the premises was taken by him on lease earlier from one Tripuramallu Radhakrishna Murthy, subsequently the same was purchased by him from the said owner. He also stated that he had taken on lease the contiguous buildings from others for the purpose of expanding his business. The tenant took the petition schedule premises on lease on 30-7-1978 for his business on a monthly rent of Rs. 150/agreeing to vacate by 30-7-1982, which he failed to do. The hotel business required A.C. section also for the convenience of the customers and therefore, the same is required for the said purpose bona fide by him. A registered notice dated 26-7-1982 was issued to the tenant on his failure to vacate the premises. A reply dated 10-8-1982 has been sent by the tenant raising false and untenable pleas including the one attributing oblique motive to the landlord for enhancement of the rent. He has also stated in the petition that he will undergo lot of inconvenience for the business for which he requires the premises, if the eviction is not ordered, and, therefore, the petition has been filed seeking eviction of the tenant.

4. The tenant filed a counter resisting the application. He denied all the allegations made in the petition. He further stated that the alleged need to have the A.C. section for the hotel business is mala fide and it is a false pretext raised for seeking eviction and extracting higher rent. He also stated that in the said area, number of hotels and sweet-meat shops are available along the road and the demand for hotel business is decreasing, that the landlord took on rent the adjoining premises for lower rents from the persons mentioned in the petition and that the landlord and his son demanded enhancement of rent from Rs. 150/- to Rs. 300/- per month and on his refusal, this application has been filed. He stated that he has been running a small retail shop in the petition schedule premises, the area of which is less than 9 Square Yards. He also referred to the notices exchanged between the parties earlier and also filing an application u/s 8 of the Act by him when the landlord avoided receiving the rents. He referred to the enhancement of rents with regard to certain other tenants in respect of other premises and ultimately said that there is absolutely no need for the landlord to arrange A.C. section and it is a make believe affair raised only for the purpose of extracting higher rent, etc.

5. The son of the landlord was examined as P.W.I. He stated that he is the Power of Attorney Holder of his father i.e., landlord, under Ex.A-1. He spoke to the fact that the landlord was running a hotel business since 40 years, that in the year 1975, they purchased the building, which was originally taken on lease in which the hotel business was being run, that the hotel being run by the landlord is one of the leading hotels in the entire Guntur town; that in that area, there is no A.C. restaurant and it is in the heart of the town; that there are about 32 workers in the same hotel and he produced Ex.A-3 muster roll for 1980 and likewise, he

also produced Ex.A-4 muster roll for the year 1985-86 and ultimately stated that the staff working in the hotel business now are 45; that every year the business is improving and having regard to the passage of time, the modern amenities like A.C. room, etc., are required for the business and for that purpose they bona fide require the petition schedule premises. He stated in the cross-examination that there are about three hotels in the same area, but none of them is having A.C. room and denied the suggestion that this eviction petition has been filed with an oblique motive of extracting higher rent from the tenant.

6. The landlord examined the customers as P.Ws.3 to 6. All of them stated in their evidence that the business run by the landlord is very popular and it is always over-crowded and sometimes during morning hours, customers will have to wait at least half-an-hour to get a seat and they always wanted that the landlord should provide A.C. room, etc.

7. On the other hand, the tenant examined himself as R.W.I. He stated that the petition schedule premises is only of the area of 9 sq. yards and he has been running a retail shop, which is being looked after by himself and his son and he opened the shop in the year 1941. He also stated that an application was filed earlier by the landlord seeking eviction on the ground that the premises requires repairs under Ex.A-1 (Sic. B-I), which was dismissed. Thereafter, the rent was enhanced to Rs. 150/- with effect from 31-7-1978 and he has been continuing as a tenant in the petition schedule premises, paying the said rent of Rs. 150/-. He also spoke to the fact that he filed an application u/s 8 of the Act when the landlord refused to receive the rent of Rs. 40/- per month. He exhibited the copy of the said application as Ex.B-3 and the order passed thereon dated 25-9-1975 as Ex.B-4. He admitted in the cross-examination that there are no A.C. hotels in the area and only villagers will visit the hotels. He denied the suggestion that the requirement of the landlord is bona fide. He further stated that the landlord demanded that the rent should be enhanced to Rs. 300/- per month and when he pleaded his inability to comply with his demand, this application has been filed. He also stated that he is residing at Nallacheruvu in a house, which belongs to his wife and in a portion of that house, his mother-in-law is selling vegetables. He stated in the cross-examination that he has been doing business for the last 45 years while the landlord has been doing hotel business for the last 40 years. He denied the suggestion that except the landlord's hotel and another Udayasankar Meals Hotel, there is no other hotel in the area. He, of course, denied the suggestion that the landlord is having a good business in his hotel. Ultimately, he stated he will file a document to show that the business at Indiranagar is being done by his mother-in-law while denying the allegation that he has purchased a house at Indiranagar and doing business and residing there.

8. On a consideration of the material placed before the tribunals below, both the tribunals held that the landlord bona fide required the schedule premises for additional accommodation for expanding hotel business run under the name and style of "Bharat Cafe" for providing A.C. room in the petition schedule premises.

The Appellate Tribunal clearly stated that for the sake of obtaining enhancement of rent, the landlord would not set up the plea of opening A.C. section, which will cost him heavily and cause more loss than the rent received from the tenant. The learned appellate Judge also referred to the Commissioner's report regarding the space available in the petition schedule premises and stated that when once the other tenant Vittal Rao also vacates the premises, the said premises together with the petition schedule premises, the landlord can have a bigger area for opening A.C. section.

9. Assailing the said Judgments of the tribunals below granting eviction and holding that the requirement of the landlord for additional accommodation is bona fide, the present C.R.P. has been preferred and it has come before us in view of the reference made by the learned Judge referred to above.

10. The learned Counsel Mrs. M. Vidyavathi appearing for the tenant relying upon the Judgments of the Supreme Court in *M/s. Central Tobacco Co., Bangalore v. Chandra Prakash*, (1 supra) and *Phiroze Bamanji Desai v. Chandrakant M. Patel and Ors.* (2 supra) and also the judgment in *Bhaichand Ratanshi Vs. Laxmishanker Tribhoyan*, contended that it is incumbent on both the landlord and tenant to plead and prove regarding the greater hardship that would be caused by passing a decree than by refusing it, and the decision of a division Bench of this Court in *Parasuramiah's case* (3 supra) throwing the burden of proof for establishing the hardship on the tenant requires reconsideration and it is not correct.

11. To appreciate this connection, it is necessary to refer to the Judgment of the Division Bench of this Court in *Parasuramiah's case* (3 supra). In this Judgment, the provisions of Section 10 (3) (a) (iii) and (c) and the first proviso of the Act fell for consideration. The learned Judges on this aspect stated, on a consideration of the provisions of the Act, that when once the bona fide requirement of the landlord is established, then the onus is on the tenant to allege and prove that the hardship caused to him by granting eviction outweighs the advantage to the landlord. The learned Judges stated in that connection as follows:-

"What is required is a careful consideration of all the relevant factors in weighing the relative hardship which is likely to be caused to the tenant with the likely advantage of the landlord on the basis of the available material on record."

It was further held as under:-

"It must also be remembered that when once the bona fide requirement of the landlord brings himself within that provision, then the onus is on the tenant to allege and prove the various factors which he wants the Rent Controller to take into account for weighing the relative hardship which may be caused to the tenant in case He is evicted, and establish that it outweighs the advantage which might accrue to the landlord. If he succeeds in establishing that, the rejection of the petition would naturally follow. In case he neither alleges nor proves the

relevant factors the benefit of Section 10 (3) (c) will naturally go to the landlord."

12. The learned Counsel for the petitioner-tenant contended that this view is no longer good law having regard to the judgments in *M/s. Central Tobacco Co., Bangalore v. Chandra Prakash and Phiroze Bamanji Desai v. Chandrakant M. Patel and Ors.* (1 and 2 supra).

13. In *M/s. Central Tobacco Co., Bangalore v. Chandra Prakash* (1 supra), Section 21(4) of the Mysore Rent Control Act (Act 72 of 1961) fell for consideration. The relevant provisions of the said Act have been extracted in the Judgment of the Supreme Court. For the purpose of this case, it may be sufficient if we extract clause (h) of Section 21(1) and sub-section (4) of Section 21 of the Mysore Rent Control Act, which read as under:-

"21(1): Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or other authority in favour of the landlord against the tenant:

Provided that the Court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only namely:-

(a) to (g) xx xx xx

(h) That the premises are reasonably and bona fide required by the landlord for occupation by himself or any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust, that the premises are required for occupation for the purposes of the trust:

Sub-section (4) of this section provides that:-

"No decree for eviction shall be passed on the ground specified in clause (h) of the proviso to sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant greater hardship would be caused by passing the decree than by refusing to pass it."

In construing the said provision viz., sub-section (4) of Section 21 of the Mysore Rent Control Act, the learned Judges of the Supreme Court stated that:-

"The whole object of the Act is to provide for the control of rents and evictions, for the leasing of buildings, etc., and Section 21 specifically enumerates the grounds which alone will entitle a landlord to evict his tenant. Clause (h) of Section 21 contains one of such grounds, namely, that the premises are reasonably and bona fide required by the landlord for occupation by himself. The onus of proof of this is certainly on the landlord. We see no sufficient reason for holding that once that onus is discharged by the landlord it shifts to the tenant making it obligatory on him to show that greater hardship would be caused to him by passing the decree than by refusing to pass it. In our opinion both sides

must adduce all relevant evidence before the Court; the landlord must show that other reasonable accommodation was not available to him and the tenant must also adduce evidence to that effect. It is only after such evidence that the Court must form its conclusion on consideration of all the circumstances of the case as to whether greater hardship would be caused by passing the decree than by refusing to pass it."

14. Similar is the Judgment of the Supreme Court in *Phiroze Bamanji Desai v. Chandrakant M. Patel and Ors.* (2 supra), which considered the provisions of Section 13 (1) (g) and sub-section (2) of Section 13 of Bombay Rents, Hotel and Lodging House Rates Control Act (Act 57 of 1947). The said provision is as under:-

"13 (2) No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1) if the Court is satisfied that having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, great hardship would be caused by passing the decree than by refusing to pass it.

Where the Court is satisfied that no hardship would be caused either to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only."

15. While dealing with the said provision, the learned Judges held that throwing the burden of proof only on the tenant to prove greater hardship is not correct. In arriving at the said conclusion, the learned Judges referred to and followed the Judgment in *M/s. Central Tobacco Co., v. Chandra Prakash* (1 supra). The provisions of Bombay Rents, Hotel and Lodging House Rates Control Act and the provisions of Mysore Rent Control Act are almost identical.

16. To a similar effect is the Judgment in *Bhaichand Ratanshi v. Laxmishanker Tribhoyan* (4 supra).

17. It is apparent that the provisions of A.P., Act 15 of 1960 are not similar to the provisions of Mysore Rent Control Act and Bombay Rents, Hotel and Lodging House Rates Control Act, which fell for consideration by the Supreme Court in the above decisions *M/s. Central Tobacco Co., Bangalore v. Chandra Prakash* and *Phiroze Bamanji Desai v. Chandrakant M. Patel and Ors.* (1 and 2 supra). In A.P. Act 15 of 1960, the proviso to Section 10 (3) (c) is as under:-

"Provided that, in the case of an application under clause (c) the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord."

While in the other two Acts, the provision reads as under:-

"No decree for eviction shall be passed on the ground specified in clause (h) of the proviso to sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable

accommodation is available for the landlord or the tenant greater hardship would be caused by passing the decree than by refusing to pass it."

18. It is immediately clear that according to this provision, pleading of hardship is both on the landlord as well as the tenant and it is then for the Court to consider which side lay the greater hardship. Having regard to this provision, the Supreme Court in the decisions (1, 2 and 4 supra) held that even after establishing bona fide requirements by the landlord, the landlord as well as the tenant will have to plead and prove their respective hardships and the Court will have to consider to whom greater hardship would be caused.

19. When we come to the proviso to Section 10 (3) (c) of "The Act", it is to the effect that the application for eviction shall be rejected, if the Rent Controller is satisfied that the hardship which may be caused to the tenant by granting eviction will outweigh the advantage to the landlord. On a plain reading of the section, we are of the opinion that it is for the tenant to plead and prove that the hardship caused to him, in case of eviction, outweighs the advantage to the landlord. In view of this difference in the language in the respective provisions of the Act 15 of 1960 and the provisions of Mysore Rent Control Act and the Bombay Rents, Hotel and Lodging House Rates Control Act, we are of the opinion that it is not possible to say that the judgment of this Court in Parasuramaiah's case (3 supra) is no longer good law. We are of the opinion that it lays down the correct position of law. Further, it should be noticed that in a decision rendered by the Supreme Court in Shri Balaganesan Metals v. Shri M.N. Shanmugham Chetty and Ors., 1987(2)APLJ17(SC) the Judgment of this Court in Parasuramaiah's case (3 supra), referred to above was approved. The Supreme Court in the decision (5 supra) had to consider the scope and ambit of Section 10 (3) (c) of the Act. The learned Judges extracted the entire provision including the proviso and then stated that the first proviso enjoins the Controller to balance the interests of the landlord and the tenant and refuse eviction if the hardship caused to the tenant outweighs the advantage of the landlord by reason of the eviction. Ultimately the learned Judges approved the judgment of this Court in Parasuramaiah's case (3 supra). It is true that the learned Judges in the last portion of paragraph-23 stated that:

"Once a landlord is able to satisfy the controller that he is bona fide in need of additional accommodation for residential or non-residential purposes and that the advantage derived by him by an order of eviction will outweigh the hardship caused to the tenant, then he is entitled to an order of eviction irrespective of any other consideration".

These observations were made in the context of the facts of the said case, in which the tenant pleaded and adduced evidence that if eviction is ordered, hardship will be caused to him and findings were also recorded with regard to the relative hardship by the Tribunals. In the said context, the learned Judges made the observations extracted above. The learned Judges of the Supreme Court are of the opinion that in a situation where the tenant pleads and proves that

hardship will be caused to him, if an order of eviction is granted, then of course, the landlord will have to show that the hardship caused to the tenant will not outweigh the advantage to the landlord.

20. It is pertinent to notice that the learned Judges of the Supreme Court in the decision (5 supra) approved the ratio of the decision (3 supra) of this Court after referring to the very same provisions of the Act. Therefore, we are of the opinion that it will not be open to us to accept the contention advanced by the learned Counsel appearing, for the tenant that the said judgment requires reconsideration. Accordingly, we reject the said contention.

21. Having regard to the Law laid down by the Division Bench of this Court as well as the Supreme Court, the landlord will be entitled to an order of eviction, provided the other requirements are proved, in the present case. The landlord clearly pleaded that if additional accommodation is not granted to him for establishing A.C section in his hotel, any amount of inconvenience or " hardship will be caused to him and he also adduced evidence of the customers i.e., R.Ws. 3 to 6. The tenant did not even plead any hardship that may be caused to him, if an eviction order is granted in favour of the landlord much less any evidence adduced in that regard.

22. Having regard to the above, we are clearly of the opinion that the burden placed on the tenant by the statute has not been discharged.

23. Both the tribunals, on the evidence on record, concurrently held that the landlord requires the petition schedule premises bona fide for additional accommodation for his hotel business for locating A.C. section. The finding is a concurrent finding of fact and no argument is advanced on that aspect to show that there is any serious defect or infirmity in the same.

24. For all the reasons stated above, this revision petition is dismissed, but in the circumstances of the case, without costs. The tenant is given three months time from to-day to vacate the petition schedule premises.