

(1993) 03 AP CK 0048

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 66 of 1985

The Tamarind Merchants Association

APPELLANT

Vs

Kaja Raghavaiah Son and Co.

RESPONDENT

Date of Decision : 26-03-1993

Acts Referred:

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

Citation : (1994) 1 ALT 696

Hon'ble Judges : Syed Shah Mohammed Quadri, J

Bench : Single Bench

Advocate : C. Poornaiah, for the Appellant; M.J. Sarma, for the Respondent

Final Decision : Allowed

Judgement

Syed Shah Mohammed Quadri, J.—In this revision filed u/s 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act XV of 1960 (in short the "Act") the landlord is the petitioner. He challenged the validity of the order passed by the learned Principal Subordinate Judge, Vijayawada in R.C.A. No. 114 of 1981 dated 16-4-1984 as being illegal and unsustainable in law.

2. The petitioner is an Association represented by its President. It owned the premises bearing Door No. 11-53-7 situate at Sobhanadri Street, Vijayawada. It is a two-storeyed building. The ground floor of the said building was let out to the respondent, who on the date of filing of the eviction petition was paying rent at the rate of Rs. 325/- p.m. The petitioner filed the eviction petition R.C.C. No. 5 of 1980 on the file of the learned Prl. District Munsif-cum-Rent Controller, Vijayawada on two grounds viz. (i) wilful default in payment of rent for the period commencing from 9-10-1977 to 8-11-1979 (the arrears of rent amounts to Rs. 7,475 /-) and (ii) bonafide requirement of the premises to establish a hospital / dispensary for his clients, customers and also general public. The tenant-respondent resisted the said application. He denied that there was any default in payment of rent as the petitioner-association itself refused to receive the rents sent by him and returned the money orders and stated that even if

there was default, it was not wilful. The respondent further stated that the claim for additional accommodation for personal occupation is neither true nor genuine and bonafide. It is a mere ruse invented by the petitioner to extract the abnormal enhancement in rent. It is asserted that the claim of personal occupation is mala fide. For these reasons the respondent prayed that the eviction petition be dismissed.

3. The petitioner examined one witness P.W.1 and marked Exs.A-1 to A-5. The respondent examined one witness R.W.1 and marked Exs.B-1 to B.-14.

4. On consideration of the material on record, the learned Rent Controller recorded the finding that wilful default was not committed by the respondent in payment of rent. On the question of bonafide requirement, he held that the landlord required the building for personal occupation bonafide and that after taking into consideration the relative advantages and disadvantages of the parties, he came to the conclusion that the respondent will not be put to such hardship to affect the business loss of business and money due from the customers. In view of the above findings, he allowed the eviction petition. The respondent carried the matter in appeal (R.C.A. No. 114/81) to the learned Prl. Subordinate Judge, Vijayawada. The learned Appellant Judge confirmed the finding with regard to the ground of wilful default in payment of rent, but reversed the finding of the learned Rent Controller on the question of personal occupation and in that view of the matter he allowed the appeal by his judgment dated 16-4-1984. It is the correctness of the said order that is assailed in this revision.

5. The only ground urged before me in this revision relates to the finding of the lower appellate Court on the ground of personal requirement. Sri C. Poornaiah, learned Counsel for the petitioner, contends that the approach of the lower appellate Court is wholly erroneous; it gravely erred in setting aside the well. Considered finding of the learned Rent Controller and prayed that the order under revision be set aside. Sri M.J. Sarma, learned Counsel for the respondent, on the other hand, contends that the landlord-petitioner is in possession of two floors which are said to be used by his clients, customers etc. and that there was no requirement of the petitioner for which the eviction could be ordered on the ground of bonafide personal requirement. He further submits that in a small place, establishment of a hospital or dispensary is not thinkable; therefore the lower appellate Court is perfectly right in reversing the finding of the learned Rent Controller.

6. The short question that arises for consideration in this revision is: Whether the finding of the lower appellate Court with regard to the bonafide requirement of the premises by the petitioner is sustainable in law?

7. Section 10(3)(c) of the Act, which is relevant for our purpose, reads as under:

"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."

From a perusal of the above section it is clear that when a landlord is occupying a part of the building, whether residential or non-residential, he can apply to the Controller for an order directing the tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession, if he requires additional accommodation for residential purposes or for purpose of business which he is carrying on as the case may be.

8. As stated above the petitioner is an association of tamarind merchants. Its intention is to run a dispensary for persons doing business in tamarind. For this purpose as long back as on 23-9-1975 (vide Ex.B-1) the association resolved in its General Body meeting to open a hospital and dispensary for the benefit of its members, customers, clerks, muta coolies etc. Pursuant to that resolution a notice Ex.B-1 was issued to the tenant requesting it to vacate the premises. After issuance of that notice, the respondent was allowed to continue on condition of enhancement of rent. Before issuing of notice Ex.B-1 the respondent was paying rent at Rs. 110/- p.m. which was enhanced to Rs. 190/- p.m. It appears the rent was again enhanced to Rs. 325/- p.m. On 14-9-1979 the petitioner informed the respondent of its intention (vide Ex.A-2) to establish a hospital in the ground floor-premises under the occupation of the respondent-and requested the respondent company to vacate the said premises. By notice dated 6-10-1979 (Ex.A-3) the respondent-tenant replied stating that initially the respondent obtained the premises on a rent of Rs. 8/- p.m. which was enhanced from time-to-time and on that date it was paying the rent at Rs. 325/- p.m. and that the ground of personal requirement was neither true nor tenable in law and offered to pay the fair rent for the ground floor. As the notice did not yield any result, the petitioner filed the eviction petition. In the eviction petition the petitioner stated that it intends to occupy the tenanted premises by way of additional accommodation by opening a hospital therein for providing medical aid to its clerical staff, coolies, customers and also poor sections of people free of charge. The respondent denied the claim of the petitioner and stated that the respondent who was a flourishing businessman, was using the said premises as a godown to stock all the merchandise which were necessary for daily use in his business and that in the said business the respondent had got serious commitments and its business activity would be paralised in case the tenanted premises was vacated. The respondent also added that the petitioner was in occupation of two floors which were almost vacant for many days in a month and the claim for personal use was neither true nor genuine nor bonafide and it was a ruse invented by the petitioner to extract the abnormal enhancement of rent. The lower appellate Court reversed the finding of the learned Rent Controller mainly on two grounds viz. (1) if the landlord association intended to start a hospital or atleast a dispensary, it would not have allowed the tenant to continue in the building

pursuant to issuance of notice Ex.B-1. He held that a resolution was passed to that effect on 30-7-1979 (Ex.A-5). But a similar resolution was passed earlier in 1975 before issuing Ex.B-1 notice; but the tenant was allowed to continue in the premises for a number of years. (2) The premises is not fit for starting a hospital; it consists of one hall, so it is fit for starting a dispensary, and that from the notice and the averments in the petition, it is clear that the petitioner-association wanted to start hospital. In my view the finding of the lower appellate Court cannot be sustained.

9. The learned appellate Judge had laid undue emphasis on the words "hospital" and "dispensary". In Chambers 20th Century Dictionary the word "dispensary" is defined as: a place where medicines are dispensed. esp. to the poor, gratis and advice given; an out-patient department of a hospital. In the same dictionary the word "hospital" is defined as: a building for the reception and treatment of the old, the sick and hurt; or for the support and education of the young. In Webster's dictionary the word "dispensary" is defined as: a place where medicines or medical or dental aid are dispensed to ambulant patients. In the same dictionary the word "hospital" is defined as: a charitable institution for the needy, aged, infirm; one for the education of the young (received his formal education at Christ's Hospital in London); an institution or place where sick or injured persons are given medical or surgical care. Etymologically the words "hospital" and "dispensary" are not two different things, though in common understanding the hospital is considered as a big building and a dispensary is considered as a small one. Having regard to the aims and objects expressed in the resolution of the petitioner-Association viz. to provide free medical aid to the clerical staff, coolies, customers etc. in the tenanted-premises-it would be immaterial whether the word "hospital" or "dispensary" is used.

10. I am unable to accept the contention of Mr. Sarma that under the provisions of the Act, mere desire by way of resolution is not sufficient and that there must be a business requirement to entitle the landlord to ask for possession of the tenanted premises. As this argument is based on the word "requires" used in Section 10(3)(c) of the Act, we shall now examine the import of that word in the context in which it was used. A plain reading of the provision extracted above, shows that if the landlord requires additional accommodation for residential purposes or for the purpose of a business which he is carrying on, as the case may be, he may apply to the Controller for an order directing the tenant of that part of the building, of which the other part is in the occupation of the landlord, by invoking the provisions of Section 10(3)(c) of the Act. The word "requires" in the context means that there should be existing need of the landlord for additional accommodation. That means the existing accommodation is not sufficient and that the landlord needs additional accommodation. The lower appellate Court did not advert to the fact as to whether the existing accommodation of two floors was sufficient for the landlord to start the proposed hospital /dispensary. This is so in view of the fact that in para 7 of the petition the landlord stated that it was not out of place to mention that the petitioner had

kept its first floor and second floor for general functions and for giving the same free of rent to its customers who come from all over India and for holding other functions and also for Association activities and meetings.

11. The lower appellate Court did not also record any finding under the first Proviso to Section 10(3)(e) of the Act, which reads thus:

"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:"

The learned Judge failed to note that the resolution was passed by the petitioner-association to establish a hospital/dispensary in 1975 itself. The office-bearers, contrary to that resolution, allowed the respondent to continue as tenant. That necessitated to pass a second resolution in 1979. No material was placed on record to show that the petitioner passed any other resolution subsequent to its first resolution agreeing for enhancement of rent and allowed the respondent to continue as tenant. Therefore it follows that the office bearers allowed the tenant to continue. It cannot be a ground to come to the conclusion that the requirement is not bonafide.

12. For the above reasons I am unable to sustain the order under revision. The order under revision is accordingly set aside. The revision is allowed and the matter is remanded to the lower appellate Court to record findings under the first Proviso to Section 10(3)(e) of the Act and to consider the case afresh in the light of the above observations and in accordance with law. Having regard to the fact that the eviction proceedings are pending from 1980, the lower appellate Court is directed to dispose of the R.C.A. as expeditiously as practicable. No costs.