
(1995) 03 AP CK 0019

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 61 of 1992

Vankayala Veeraraghavulu

APPELLANT

Vs

Godavari Metral Rolling Mills Contractor's Firm

RESPONDENT

Date of Decision : 20-03-1995

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 10(3), 22, 23, 28

Citation : (1995) 2 ALT 227 : (1995) 2 APLJ 60

Hon'ble Judges : S. Parvatha Rao, J

Bench : Single Bench

Advocate : M.S.K. Sastry, for the Appellant; T. Veerabhadrayya, for the Respondent

Judgement

S. Parvatha Rao, J.—This revision petition is preferred by the unsuccessful landlord against the order dated 9-10-1991 of the appellate authority under the Rent Control Act (Subordinate Judge), Rajahmundry rejecting his appeal R.C.A. No. 37 of 1989 and confirming the order dated 26-10-1989 of the Rent Controller (Principal District Munsif), Rajahmundry dismissing the eviction petition R.C.C. No. 72 of 1983 for evicting the respondent herein who is his tenant.

2. The respondent is a partnership firm. It has been the tenant of the petition schedule building belonging to the petitioner herein, for a number of years. The petition schedule building is in Rajahmundry town. The respondent has been using the same for storing Copper, Brass, Zinc etc. materials.

3. The petitioner sought eviction of the respondent u/s 10(3)(b) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act") on the ground of bona fide personal requirement of the petition schedule building. The case of the petitioner is that he was originally doing business in cut pieces cloth and that some years after the petition schedule building was let out to the respondent, he started wholesale cloth business and that he requires a big godown to keep the cloth bales he receives for the wholesale business and that

he requires the said building to keep his stocks because he has no other place available for that purpose. It is his case that inspite of several requests made by him the respondent did not vacate the petition schedule building. Under the circumstances, he gave a registered notice dated 12-10-1982 to the respondent requesting him to vacate the same and deliver it to him; the respondent refused in a reply dated 23-2-1983. It was under those circumstances that the petitioner filed the eviction petition. In the eviction petition the petitioner also alleges that the respondent owns several other buildings in Rajahmundry which he let out for higher rents and that no inconvenience would be caused to him as it has got several buildings to use as godown. The petitioner also alleges that the respondent has not been keeping the petition schedule building in a proper condition and that he was causing nuisance and disturbance and committing acts of waste resulting in deterioration of the value of the building.

4. In the counter affidavit filed by the respondent the bona fides of the petitioner's claim that he requires the petition schedule building for his personal occupation, is questioned. It is stated that originally the leasehold consisted of two halls and two rooms in the ground floor and that some years prior to the filing of the eviction petition the petitioner wanted the front hall which formed part of the leasehold, for his own use and that believing the said representation the respondent surrendered the front hall reducing the rent from Rs. 230/- to Rs. 160/- per month. After the petitioner took the front hall, he converted it into rooms and let them out to the tenants for rent. The respondent contends that this clearly establishes the lack of bona fides of the petitioner's present requirement. It is also stated that the petitioner evaded to receive rents when tendered with a view to invent a ground of wilful default and that the respondent was constrained to file R.C.C. No. 2 of 1980 before the Rent Controller u/s 8(4) and (5) of the Act after prior notice to the petitioner and that the said R.C.C. was allowed on 27-3-1980 and that ever since the respondent has been paying the monthly rents into the Court every month regularly. According to the respondent, this further establishes the lack of bona fides of the petitioner in filing the eviction petition. The respondent denied the allegation of the petitioner that it was not keeping the petition schedule building in proper condition and that it was causing nuisance and disturbance etc. It is the case of the respondent that it has been using the petition schedule building for the past 16 years for storing materials such as Copper etc. and that there was no change in the usage. As regards the allegation in the eviction petition that the respondent is in possession of several buildings and that no inconvenience would be caused to it, it is stated that when the requirement of the petitioner is not bona fide, even if the respondent is in possession of several buildings, that by itself would not give any right to the petitioner to claim eviction if he really does not require the petition schedule building for his own use and that therefore the said consideration is irrelevant.

5. The Rent Controller found that the petitioner established bona fides in the requirement of the petition schedule building for his personal occupation as

godown and that the respondent would not be put to any inconvenience even if eviction was ordered. However, he also held that it was not in dispute that by the date of filing of the eviction petition, the petitioner was carrying on business in a rented premises and that subsequent to the filing of the eviction petition he shifted his business to his own premises in the new cloth market complex and that it was not in dispute that in the said new complex the petitioner was having two shop rooms. In view of this finding, the Rent Controller held that the petitioner was debarred from seeking eviction because he was in possession and occupation of another non-residential premises of his own, relying on the decision of a Full Bench of this Court in Vidya Bai and Another Vs. Shankerlal and Another, . So holding he dismissed the eviction petition.

6. The appellate authority rejected the appeal on the ground that the landlord did not require the petition schedule building bona fide for the purpose of his godown. In arriving at this conclusion the appellate authority observed that at the time of filing of the eviction petition before the Rent Controller, the petitioner was carrying on his business in rented premises in Narayana market and that it was not his case that he wanted the petition schedule building for the purpose of his existing business, but for godown purposes and that subsequent to the filing of the eviction petition the petitioner purchased two shops in Mahatma Gandhi wholesale cloth market in Rajahmundry and shifted his existing business into one of those shops and his son-in-law was allowed to carry on business in the other shop. He also observed that, that was not in dispute. Earlier, the respondent surrendered the front hall to the petitioner and the petitioner used the same for godown purposes for few years and subsequently even prior to the filing of the eviction petition he let out the front hall to tenants by converting the hall into shops on the ground that that was not suitable for a godown. On this the appellate authority observed:

"I do not understand as to why the front hall was not suitable for the purpose of using it as godown when he (petitioner herein) was already using the same as such for few years after the tenant (respondent herein) surrendered the same to him. But, by the date of filing the eviction petitioner, P.W.I was not in possession of any non-residential premises of his own."

Thereafter, the appellate authority upholds the view of the Rent Controller holding that as the petitioner came into possession of a non-residential building of his own subsequent to. the filing of the eviction petition and had been carrying on his wholesale cloth business in his own premises, Section 10 (3)(a)(iii) of the Act could not be availed for evicting the respondent from the petition schedule building "irrespective of the fact whether the requirement of the landlord of the schedule premises is bona fide or not". The appellate authority further held:

"The Full Bench decision of our High Court reported in Vidya Bai and Another Vs. Shankerlal and Another, is a clear bar for the landlord's claim in this case on the ground of bona fide requirement."

The appellate authority also held that simply because the respondent's managing partner and his family were owning several non-residential buildings, it could not be a ground for eviction of the respondent-firm from the petition schedule building. The appellate authority also observed that the contention of the petitioner based on alleged acts of waste and nuisance on the part of the respondent were not urged before the Rent Controller or before it.

7. The learned Counsel for the petitioner faintly contends that the petition schedule building is not a non-residential building because it is used by the respondent only as a godown. I do not find any substance in his contention because the eviction petition itself is on the basis that the said building is a nonresidential one. The particulars furnished along with the eviction petition as required by Section 28 of the Act, clearly state that the building leased out is a non-residential one.

8. The learned Counsel for the petitioner next contends that the eviction petition should be treated also as one u/s 10(2)(v) of the Act, ie., on the ground that the tenant secured alternative building. He submits that though it was clearly alleged in the eviction petition that the respondent purchased recently another big building which could be used by him for godowns, that was not denied by the respondent in its counter. He contends that, therefore it should be treated as an admission on the part of the respondent that it secured alternative building. He also submits that mere non-mention of Section 10(2)(v) of the Act or that the eviction is being sought also under that provision will not dis-entitle the petitioner from seeking eviction on that basis also. The learned Counsel relies on the decision of a learned single Judge of this Court in Abdul Raheem by G.P.A., Mohd. Phiroze Ali Vs. Srinivasa Dyeing Works and Others, .. Even assuming that such a contention can be raised though not expressly pleaded by the petitioner in his eviction petition, the appellate authority has answered that by pointing out that the respondentfirm itself is not owning or possessing any non-residential building in Rajahmundry and that merely because some of its partners are owning nonresidential buildings that could not be the basis for holding that the respondentfirm owned or possessed alternative accommodation. I do not find any basis for taking a different view.

9. I do not find any error in the order of the appellate authority warranting interference in exercise of the revisional jurisdiction u/s 22 of the Act. The learned Counsel for the petitioner does not dispute the finding of the Rent Controller as well as of the appellate authority that subsequent to the filing of the eviction petition the petitioner came to own and possess non-residential premises of his own for his business. In view of this finding, the bar u/s 10(3)(a) (iii) of the Act is attracted as laid by the Full Bench of this Court in Vidya Bai's case (1 supra). That view of the Full Bench was upheld by the Supreme Court in D. Devaji Vs. K. Sudarashana Rao, .. The Supreme Court held as follows:

"The landlord should not be in possession of another non-residential building or of which he is entitled to be in possession in the city, town or village concerned.

The intendment of the legislature thereby is clear that a landlord who is in occupation of a non-residential building which is his own or to the possession of which he is entitled to under the Act or any other law should not be permitted to recover possession of another nonresidential building belonging to him by evicting the tenants therefrom. In *Vidya Bai v. Shankerlal*, a Full Bench considered this question afresh and held that u/s 10(3)(a)(iii) a landlord in occupation of a nonresidential building is not entitled for carrying on his business or for commencement of business to get back possession of another nonresidential building in the occupation of a tenant. The bar u/s 10 against securing eviction of the tenant of such non-residential building is absolute. The suitability, convenience and sufficiency of the nonresidential building already in the occupation of the landlord for carrying on the business of the landlord are not relevant,"

10. In *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, . the Supreme Court considered the jurisdiction and propriety of the Court taking note of the circumstances which come into being after the commencement of the eviction proceeding under a Rent Control legislation and held as follows:

"We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

This view was upheld by the Supreme Court in the very recent decision in *Super Forgings and Steels (Sales) Pvt. Ltd. Vs. Thyabally Rasuljee (Dead) through Lrs.*, .