
(2005) 08 AP CK 0082
In the Andhra Pradesh High Court
Case No : CRP No. 1740 of 2002

Y.V. Krishna Rao	Vs	APPELLANT
T.S.R. Anjaneyulu		RESPONDENT

Date of Decision : 11-08-2005

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 22, 32, 8, 8(2), 8(5)

Citation : (2006) 1 ALD 241

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : T. Rajendra Prasad, for Korrapati Subba Rao, for the Appellant; P. Prabhakar Rao, for N. Guru Gopal, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The tenant, aggrieved by the reversing order, had preferred the present civil revision petition u/s 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, in short hereinafter referred to as "Act" for the purpose of convenience. The landlord/respondent herein filed R.C.C.No. 50/84 on the file of Rent Controller-Principal Junior Civil Judge, Warangal praying for the relief of eviction on the grounds of wilful default, wastage and damage and bona fide personal requirement. It is no doubt stated that the change of user also was made a ground but the said point had not been adverted to by the learned Rent Controller. The learned Rent Controller recorded the evidence of PW-1, PW-2, RW-1 and RW-2, marked Exs.A-1 and A-2 and Exs.B-1 to B-37 and ultimately came to the conclusion that the landlord is not entitled for the relief of eviction. Aggrieved by the same the landlord preferred R.C.A.No. 3/2001 on the file of Rent Control Appellate Authority/Principal Senior Civil Judge, Warangal and the learned Judge after framing the Points for determination having negated the other grounds ordered eviction on the ground of wilful default and also yet another ground of change of user. It is pertinent to note that the learned Rent Controller had not framed any specific point for consideration in relation to

change of user. Be that as it may in the light of the respective pleadings of the parties and the evidence available on record, the Appellate Authority thought it fit to consider the ground of change of user also and framed the same as Point No. 3 in Points for determination and had given finding in favour of the landlord. Thus on grounds of wilful default and change of user of the premises the eviction had been ordered by the Appellate Authority and aggrieved by the same the present civil revision petition is preferred.

2. Sri Rajendra Prasad, the learned Counsel representing the revision petitioner would maintain that even on appreciation of evidence the ground of default is not made out inasmuch as the tenant always had been prompt in paying the rents and in view of the refusal on the part of the landlord to receive rents the tenant had, invoked the jurisdiction of the learned Rent Controller u/s 8(5) of the Act and since no specific order was passed during the relevant period the tenant was unable to make the deposit and hence it was due to the conduct of the landlord the tenant was prevented from making the payments or from making deposit and hence the same cannot be termed as wilful default. Even otherwise the Counsel would contend that even if it is to be taken that it is default, definitely the same is not wilful in the light of the conduct of the tenant who made serious attempt to make deposit by seeking permission by invoking the jurisdiction of the learned Rent Controller. The learned Counsel also would maintain that a fresh ground had been thought of by the Appellate Authority by framing an additional Point for consideration which had not been considered by the learned Rent Controller. Even otherwise the learned Counsel would contend that the mere fact that the premises was taken for the purpose of running a meals hotel in addition thereto lodging is being run subsequent thereto it would not amount to change of user since the business is the same and the purpose for which it had taken also being one and the same.

3. Per contra Sri P. Prabhakar Rao, Counsel representing the landlord would contend that unfortunately the landlord unsuccessfully fought the litigation by filing O.S. No. 83/82. No doubt a finding had been recorded that the said findings would not operate as res judicata. Having been unsuccessful in the regular eviction suit on the original side the landlord was driven to the present Rent Control proceedings. The learned Counsel also would submit that in the pleading specific ground of change of user also had been taken and merely because the same had not been considered though evidence was available on record by the learned Rent Controller it cannot be said that the Appellate Authority in any way would be precluded from going into the said question and hence the Appellate Authority is well justified in framing the said Point also for consideration. The learned Counsel also pointed out to the findings recorded by the Appellate Authority in this regard and would contend that in view of the limitations in reappraisal of evidence by a Revisional Court unless perversity had been pointed out the said findings recorded by the Appellate Authority need not be disturbed in the present Revision.

4. Heard both the Counsel.

5. It is the case of the landlord that he is the owner of the first and second floors of building bearing No. M.No. 8/762/1, Station Road, Warangal and the tenant had taken the schedule premises on lease in October 1981 on an oral lease of Rs. 800/-per month for the purpose of running meals hotel under the name and style of Annapurna Hotel. It was further pleaded by the landlord that the landlord requires the said premises for the residence of his elder son Babu Rao who is living in quarters within the rice mill at Kareemabad road, Warangal and he intends to shift to the schedule premises for comfortable living and convenience for the sake of the school going children. It is also stated that the landlord has no other building for residential purpose. After the expiry of the period it is stated that notice was issued demanding the tenant to vacate the premises but however a reply notice was given with all false and untenable allegations. Filing of the suit O.S. No. 83/82 and also the striking down of Section 32(b) of the Act and consequent thereupon invoking the jurisdiction of the Rent Controller also had been pleaded. It was also further pleaded that the tenant paid rents only upto the end of March 1982 and intentionally and wilfully the tenant was avoiding payment of rent in the ordinary course and had invoked the jurisdiction of the Rent Controller by filing R.C.C.No. 21/82 on 7-6-1982 seeking permission of the Court to deposit rents. It was further specifically pleaded that the tenant had not taken steps to get the said petition allowed and kept silent from 7-6-1982 to 31-12-1983 and thus deliberately failed to pay the rents during the said period. It was further pleaded that in spite of the specific orders made by the Court, the tenant had taken sufficient time to deposit the amount of Rs. 16,800/-and hence the tenant is a clear wilful defaulter. It is pertinent to note that in the pleading the landlord also had taken a specific plea that the premises was taken to carry on meals hotel under the name and style of Annapurna Hotel but however in contravention of the terms agreed between the parties, closed the meals hotel and converted the same into a lodging. The specific case of the landlord is that the said conversion was made without the consent of the landlord and without any authorization from the side of the landlord. No doubt the landlord also pleaded bona fide personal requirement by narrating certain facts in the pleadings.

6. The tenant filed a counter in detail denying all the allegations and denying the stand that there is no bona fide need or requirement as pleaded by the landlord. It was also specifically pleaded that in view of the status of the landlord the contention that for the purpose of comfortable living the premises in question is required cannot be believed. The historical back ground of the litigation O.S.No. 83/82 and also filing of R.C.C.No. 21/82 and when the permission to deposit rents had been made and consequent thereupon how the deposit had been made and the other particulars had been narrated in detail.

7. On the strength of the respective pleadings of the parties the learned Rent Controller recorded the evidence of PW-1 and PW-2 and RW-1 and RW-2 and

marked Exs.A-1 and A-2 and Exs.B-1 to B-38. The learned Rent Controller framed the following Points for consideration :

1. Whether the respondent is a wilful defaulter in payment of rents ?
2. Whether the respondent is liable to vacate the premises for waste and damage the schedule premises ?
3. Whether the schedule premises is required by the petitioner for his bona fide requirement ?

The learned Rent Controller ultimately negated all the grounds and the R.C.C. was dismissed. The matter was carried by way of Appeal and the Appellate Authority framed the following Points for determination :

1. Whether the respondent committed wilful default in payment of rent ?
2. Whether the respondent caused wastage and damage to the petition schedule premises ?
3. Whether the respondent changed the user of the premises ? If so, what is its effect ?
4. Whether the petitioner is having bona fide requirements in the changed circumstances ?
5. Whether the judgment in O.S.No. 83/82 operates as res judicata against this R.C.C. ?

8. There cannot be any doubt or controversy that inasmuch as O.S. No. 83/82 was dismissed on the ground of jurisdiction of the Civil Court to entertain the suit, the said findings may not operate as res judicata. The parties are not at serious controversy on this aspect. It is no doubt true that as far as Point No. 3 is concerned, the change of user, no specific Point had been framed by the learned Rent Controller but there is evidence available on record, the evidence of PW-1 and PW-2 and a specific ground raised even in the pleadings. Hence it cannot be said that the tenant was taken by surprise as far as this ground is concerned and hence the Appellate Authority is well justified in framing the said Point for consideration as Point No. 3. It is true that the Appellate Authority had negated all the other grounds like wastage and damage, bona fide personal requirement but had ordered eviction on the ground of wilful default and also on the ground of change of user. The learned Judge while answering Point No. 1, the ground of wilful default, commencing from paras 7 to 11 discussed all the aspects and ultimately arrived at the conclusion that the tenant committed wilful default. Reliance was placed on the decision of the Division Bench of this Court in Nimmagadda Krishna Hari and Another Vs. Manepalli Mangamma, , wherein it was held that Section 8(2) of the Act is not mandatory and when the landlord refused to receive rent from the tenant it is not obligatory on the part of the tenant to adopt the procedure u/s 8 by depositing the rents in Court and the tenant cannot be treated as a wilful defaulter on the mere ground that he does

not do so, but when the tenant opted to adopt the said procedure, he should be regular in depositing the rents in Court. There cannot be any quarrel relating to the proposition of law which had been laid down in the aforesaid decision. But however the evidence of PW-1 is clear and categorical on this aspect. Apart from this aspect of the matter, there is specific pleading also to the effect that despite invoking the jurisdiction of the Rent Controller the tenant intentionally and deliberately had procrastinated the proceedings by not inviting an order. Be that as it may, having invoked the jurisdiction when there was non-diligence on the part of the tenant the said conduct of the tenant also may have to be taken into consideration in toto to decide whether the default committed is wilful or not. The fact that there was delay for a period of 18 months in making the payment or deposit of rents is not in serious controversy. The question which had been agitated is that because of the delay in permitting the deposit by the learned Rent Controller the deposit could not be made in time and hence it will not amount to wilful default. The specific stand taken by the landlord in this regard is even after making of the order sufficient time had been taken to deposit the total amount of Rs. 16,800/-. This aspect also had been taken into consideration by the Appellate Authority. In the light of the findings recorded in detail by the Appellate Authority commencing from paras 7 to 11, this Court is of the considered opinion that the said findings cannot be said by the perverse in any manner whatsoever and hence the said findings are hereby confirmed.

9. Point No. 3, which had been discussed in elaboration by the Appellate Authority at paras 13 and 14 also would go to show that the change of user was made by the tenant without the written consent of the landlord. The evidence on record had been appreciated and reliance also was placed on *Majeti Butchi Viswanadham and Others Vs. Bathula Suryanarayana Murty, and Smt. K. Rachamma Vs. Smt. Bimal Bai and Another*, . There cannot be any doubt whatsoever on the legal position relating to this aspect. It is true that the learned Rent Controller had not framed a specific Point for consideration relating to change of user but there is specific pleading raising this ground and there is factual foundation. There is the evidence of PW-1 on record also and hence the tenant is not taken by surprise. Merely because the Appellate Authority had framed the Point for consideration which ought to have been considered by the learned Rent Controller, the same would not alter the situation in any way provided there is factual foundation in relation to the said ground. In that view of the matter, this Court is of the considered opinion that no prejudice is caused to the tenant merely because of the fact that the Appellate Authority had framed this Point for consideration which is having ample factual foundation. Hence in the light of the reasons recorded by the Appellate Authority the said findings relating to the change of user also are liable to be confirmed. It is needless to say that the other grounds had been negated even by the Appellate Authority and hence the said grounds need not be adverted to in detail. Viewed from any angle, this Court is of the considered opinion that the civil revision petition is devoid of merit and the same is liable to be dismissed.

10. Accordingly the civil revision petition shall stand dismissed. It is represented that the tenant is running some business. In view of the peculiar facts and circumstances the tenant is granted six months time to vacate the premises. No costs.