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**(1993) 12 AP CK 0001**

**Andhra Pradesh High Court**

**Case No:** Civil Revision Petition No. 2454 of 1992

D.L. Satyanarayana

APPELLANT

Vs

Kalasantha Radha Krishnaiah

RESPONDENT

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**Date of Decision:** Dec. 13, 1993

**Acts Referred:**

- Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 10, 22

**Citation:** (1994) 1 ALT 526 : (1994) 1 APLJ 328

**Hon'ble Judges:** J. Eswara Prasad, J

**Bench:** Single Bench

**Advocate:** R. Radhakrishna Reddy, for the Appellant; A. Bhaskarachary, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

J. Eswara Prasad, J.

Petitioner is the tenant in a residential premises. The tenancy is oral, and the rent is Rs. 150/- per month. The respondent landlord filed RCC No. 3/1989 before the Principal District Munsif (Rent Controller), Punganur for eviction of the petitioner on four grounds, viz., that he bona fide requires the premises for personal occupation, that the petitioner committed wilful default in payment of rents from July, 1986 to June, 1988, that the petitioner committed some acts of waste and that the petitioner had secured alternative accommodation. The learned Rent Controller negated all the contentions except the contention relating to wilful default in payment of rents and directed eviction of the petitioner. On appeal by the petitioner, the appellate authority agreed with the Rent Controller that there was wilful default in payment of rents and confirmed the Order of eviction leading to filing of this Revision Petition by the tenant.

2. Before the Rent Controller, the petitioner filed an additional counter to the effect that the Rent Controller has no jurisdiction inasmuch as the petition for eviction is

filed within 10 years from the date of completion of the construction of the premises in question, basing on G.O.Ms.No. 636, GAD (Accommodation-A) dated 29-12-1983. The learned Rent Controller found that the period of 10 years has elapsed from the date of occupation of the premises in question before the filing of the petition for eviction on 1-5-1989.

3. Before the appellate authority, the petitioner has not raised the ground relating to the jurisdiction of the Rent Controller, and the appellate authority had no occasion to deal with the said objection. In the Revision Petition, the learned Counsel for the petitioner has raised the question of jurisdiction and contended that the evidence of the respondent himself reveals that the 10 years period did not elapse before the filing of the petition for eviction. The learned Rent Controller relied on Ex.B-5 which is an affidavit of the petitioner dated 30-5-1988, wherein it is stated that for the past 9 years he was the tenant in the premises. Based on the said admission, the learned Rent Controller held that the period of more than 10 years had elapsed before the petition for eviction was filed on 1-5-1989. This being a finding of fact, should have been questioned before the appellate authority which is the appropriate forum to go into the said question of fact. The petitioner did not choose to raise the ground relating to jurisdiction before the appellate authority.

4. In [Rajagopal Vandaiyar and Sons and another Vs. Joseph Nadar](#), it was held that the plea raised before the Rent Controller but abandoned before the appellate authority cannot be allowed to be raised again in revision. In [Oriental Insurance Co. Ltd. Vs. T. Mohammed Raisuli Hassan](#), it was held that the finding of the trial Court which is not challenged before the Appellate Court cannot be permitted to be raised in the Second Appeal. The question of lack of jurisdiction is a question of fact that has to be decided on evidence. In the explanation to G.O.Ms.No. 636 dated 29-12-1983, for the purpose of Clause A of the said CO., the construction of the building shall be deemed to have been completed on the date on which the completion therefore is reported to or otherwise recorded by the local authority having jurisdiction, and in the absence of any such report or record, the date on which it is actually occupied (not including occupation merely for the purpose of supervising the construction or guarding the building under construction) for the first time. So, it was open to the respondent to show to the Court the date on which the premises in question was actually occupied. Though there was no record of completion of construction of the building, the date of actual occupation was made out by the respondent and the Rent Controller found that the actual date of occupation was beyond 10 years from the date of filing of the rent control petition for eviction. The learned Rent Controller has given sufficient reasons for arriving at that finding of fact which is based on evidence, particularly on the admission of the petitioner as contained in Ex.B-5. The petitioner having not raised a ground relating to jurisdiction before the appellate authority and having abandoned the said plea, cannot be permitted to raise the same in revision before this Court.

5. The learned Counsel for the petitioner next contended that there was no finding with regard to wilful default for the period from July, 1986 to June, 1988 mentioned in the eviction petition. He further contended that even though there was some delay in depositing the rents during the pendency of the eviction proceedings, such delay in depositing of rents does not amount to wilful default. In support of the said contention, he relied on the decisions of this Court in *A. Subbaiah v. Sunder Raj (Dead)* and *Anr.* in CRP No. 3352/1982 dt.9-12-1982 (NRC) 1983 (2) ALT 16 , *A.J.D. Souza v. C.K. Govind Rao* 1990 (1) ALT 52 and *Syed Dastagiri Khadri v. K.S. Saleem Basha and Ors.* 1993 (2) APLJ 59 These are all cases where there was irregular payment of rents by the tenant and in the absence of any stipulation for regular payment of rents, this Court held that there was no wilful default in payment of rents. In the present case, the Rent Control proceedings have already commenced and it was the duty of the tenant to pay or deposit the rents regularly. In the said circumstances this Court held in [G. Murali Krishna and Another Vs. P. Mahalakshmi and Others](#), that the default committed by tenants during the pendency of proceedings will amount to wilful default and eviction can be ordered on the basis of such wilful default.

6. Both the learned Rent Controller as well as the appellate authority have concurrently found that there was wilful default in payment of rents by the tenant in depositing the rents. Sufficient reasons are given by both the authorities based on Ex.A-7 to A-9. It was held that the rent payable for the month of December, 1988 was paid by the petitioner on the date of the judgment in RCC on 4-8-1992. It was further held that the rent due for the month of April 1991 was paid on 17-6-1991 under Ex. A-9. Apart from this, it is pertinent to note that there is no denial that the petitioner did not pay the rents from July, 1986 to June, 1988 till June, 1988 when he filed RCC No. 2/1988 under Sections of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. When this is the factual situation, when the petitioner has failed to pay the rents for a long period of nearly two years from July, 1986 to June, 1988 and deposited the rent before the Rent Controller in June, 1988, both the Courts were perfectly justified in finding that the petitioner has committed wilful default in payment of rents. They were further justified in taking note of the subsequent events of the petitioner committing default in payment of rents during the pendency of the rent control proceedings. The learned Rent Controller also relied on the deposition of the petitioner as R.W.1 to the effect that he did not pay the rent from 1986 to 1988 as there was no demand for payment, which clearly shows that there was supine indifference and wilful default in payments of rents.

7. The findings of fact arrived at by both the authorities which are based on evidence need no interference by this Court sitting in revision. I see no reason to interfere with the Orders of the Courts below. The C.R.P. is accordingly dismissed. No costs.