
**Sri Mohd. Yousuf Quershi (died) as per LRs Smt. Zahida Begum and
Others Vs Chunni Begum**

Civil Revision Petition No. 5758 of 2004

Court: Andhra Pradesh High Court

Date of Decision: Aug. 17, 2006

Citation: (2006) 6 ALD 420 : (2006) 6 ALT 768

Hon'ble Judges: V. Eswaraiah, J

Bench: Single Bench

Advocate: K. Mahipathy Rao, for the Appellant; K.N. Vijayalakshmi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Eswaraiah, J.

This Civil Revision Petition is filed against the judgment, dated 11-08-2004, passed in R.A. No. 117 of 2000 by the

Additional Chief Judge, City Small Causes Court, Hyderabad, setting aside the dismissal order, dated 23-03-1998, in R.C.No. 405 of 1995 on

the file of the III Additional Rent Controller, Hyderabad.

2. Petitioners are the tenants and the respondent is the landlady. The eviction petition filed by the land lady in R.C.No. 405 of 1995 on the file of

the III Additional Rent Controller, Hyderabad, seeking eviction of the original sole tenant, Yousuf Qureshi, on the ground of bona fide requirement

of the premises was dismissed by order dated 23-03-1988. Aggrieved by the same, the landlady filed R.A.No. 117 of 2000 on the file of the

Additional Chief Judge, City Small Causes Court, Hyderabad and the Rent Control Appellate Authority by order dated 11-08-2004 allowed the

same on the ground that the said premises is bonafidely required by the landlady for starting the business of general stores and during pendency of

the appeal before the Rent Control Appellate Authority the sole tenant died and an application was filed to bring the legal representatives of the

deceased on record and his legal representatives were brought on record. The legal representatives of the sole tenant filed this Civil Revision

Petition.

3. R.C.No. 405 of 1995 was filed seeking eviction of the tenant from the petition schedule property bearing mulgi No. 5-7-512/1 situated at

Nampalli, Hyderabad. There is no dispute with regard to the rent payable by the tenant, i.e., Rs. 135/- . It is the case of the landlady that her

husband died on 05-07- 1994 and that she is unable to maintain herself and on account of the death of her husband she has to borrow certain

amounts towards the obsequies of her husband and thereafter the landlady requested the tenant to vacate the suit premises as the same is required

for the purpose of opening a general stores. It is stated that there is no source of income to eke out her livelihood and she is not in occupation of

any other non-residential premises in the twin cities except the suit mulgi and the suit mulgi is suitable for her personal requirement to start the

business of general stores. It is stated that she is having one more mulgi i.e., 5-1-512/2, but the same was alienated by her in 1978 due to financial

crisis and therefore except the petition schedule mulgi she has no other premises. The said petition was filed on 14-06-1995 and a counter has

been filed by the tenant admitting the landlord and tenant relationship and also the monthly rent @ Rs. 135/- per month but the allegation that the

landlady borrowed certain amounts for the obsequies of her husband was denied. It is stated that as the landlady refused to receive the admitted

rent the tenant filed R.C.C.No. 255 of 1995 and as a counterblast R.C.C.No.405 of 1995 has been filed seeking the said premises for personal

occupation. It is stated that the landlady is not in bona fide requirement of the said premises and therefore the landlady is not entitled for eviction of

the tenant.

4. The landlady was examined as P.W.1 and one Ghulam Jeelani was examined as P.W.2 for the purpose of proving that she has borrowed

certain amount for the medical expenses and for the obsequies of her husband. Exs.P.1 to P.5 were marked and Exs.X1 to X41, medical bills,

were marked on behalf of the landlady. The original tenant, Yousuf Qureshi, was examined as R.W.1 and two more witnesses were examined as

R.Ws.2 and 3 and Exs.R1 to R.28 were marked.

5. It is the case of the landlady that her husband was suffering from Cancer and three years prior to his death she has borrowed Rs. 20,000/- and

15,000/- respectively for the treatment of her husband and she requires the said mulgi for her personal requirement i.e., for her self-occupation to

start a General stores. It is stated that when her husband was alive she used to help her husband in the said business and that she has got certain

experience in running the general stores and therefore she requires the said mulgi for her personal occupation to run a general stores.

6. It is the case of the tenant that the landlady demanded for enhancement of rent from Rs. 135/- to Rs. 400/- and as the tenant refused to pay the

same, eviction petition has been filed. It is stated that as the landlady refused to receive the rent the tenant filed R.C.C. No. 255 of 1995 on the file

of the I Additional Rent Controller, Hyderabad, seeking permission to deposit the rent to the credit of the eviction petition and the same was

allowed on 06-07-1995 and that the said premises is not bonafidely required by the landlady for opening a general stores. R.W.2 stated that in

fact the landlady never used to assist her husband since she is a pardanshin lady and the husband of the landlady also never done the said business.

It is further stated that the said premises is not bonafidely required by the landlady.

7. The question that arises for consideration is whether the landlady is entitled for eviction of the tenant for the purpose of commencing business in

the said premises and for the said purpose whether the said intention of the landlady is bona fide or not.

8. u/s 10(3) (a) (iii) (b) of the Act if the landlady is not occupying any non-residential building in the twin cities which is her own or to the

possession of which she is entitled then she is entitled to seek eviction of the tenant for the purpose of business which in the opinion of the

Controller, the landlady bona fide proposes to commence.

9. u/s 10(3) (iii) (a) of the Act if the landlord or the landlady is also carrying on the business on the date of application he/she can also seek eviction

of the tenant for the purpose of carrying on the business.

10. In the instant case the eviction petition is filed for the purpose of commencing a business and it is for the Rent Controller to come to a

conclusion whether the landlady bona fide proposes to commence. The only short question that is to be considered is whether her intention to

commence the business is bona fide or not.

11. Admittedly, the landlady has no other non-residential building in the twin cities of Hyderabad and Secunderabad. Whether she is a pardanshin

lady or not and whether she has financial capacity to commence the business or not may not be relevant factors as it is common knowledge that in

a old city like Nampalli, where the suit non-residential mulgi is situated, the landlady need not invest huge amount for opening a general stores and

even in a small place she can start the same. It is stated that she is having certain dues payable to others and if she starts the said business she can

earn much more than the meagre rent, i.e., Rs. 135/- , that is being paid by the tenant. Therefore when there is a right vested in the landlord to

commence the business in the non-residential portion I am of the opinion that the tenant cannot dictate terms to the landlady on the ground that she

has no financial capacity and that she is a pardanshin lady and that the said business proposed to be commenced is not bona fide. The eviction

petition is based on the ground that she has no other non-residential building except the suit premises and she used to assist her husband in the

business of general stores. Even assuming that the landlady has no previous experience in dealing the kirana stores, in fact, no experience is

required for the same. However, the lower Appellate Court rightly appreciated the oral and documentary evidence holding that she bonafidely

requires the said premises to commence the business and the grounds on which the Rent Controller dismissed the application, that she is a

pardanshin lady and that she has no financial capacity and that she has no past experience, are illegal and unsustainable. Having regard to the facts

and circumstances of the case I am of the opinion that the lower Appellate Court rightly came to the conclusion that the said premises is bonafidely

required by the landlady for the purpose of commencing general stores. Insofar as the other contention that the respondents 3 and 6 are minors

and the Court below failed to appoint a Court guardian and therefore their interest is not safely represented and allowing the appeal is illegal and

not binding on the respondents 3 and 6 is concerned, it is stated that the landlady and the tenants are residing in the same locality and the landlady

knows about the legal heirs, their ages etc., and in fact, after the death of the original tenant the legal representatives filed a memo stating that there

are only four legal heirs to obstruct the execution proceedings. In fact, the landlady knows all the family members of the deceased tenant, i.e., the

wife, sons and daughter of the deceased tenant, who were sought to be brought on record by filing I.A.No.1226 of 2001 and the main tenant died

on 02-11-2001 and the I.A. was filed on 08-11-2001 and as no counter has been filed disputing their ages etc., the said I.A. was allowed on 05-

07-2003. Admittedly, all the legal heirs were majors as on the date of allowing the said application and therefore, it may not be said that the

respondents 3 and 6 are minors and that their right has not been sufficiently represented. In fact all the legal heirs contested and the same Advocate

filed vakalat on their behalf and therefore it cannot be said that they are minors and their interest has not been represented. Having regard to the

said ground taken by the tenant which was also rightly rejected by the lower Appellate Court, I do not see any infirmity legal or otherwise in the

impugned order calling for the interference of this Court.

12. Accordingly the Civil Revision Petition is dismissed. However having regard to the fact that the tenant is a longstanding tenant, the tenant is

granted five months time from today to vacate and hand over the vacant possession of the premises.