

**(2006) 08 AP CK 0007**

**Andhra Pradesh High Court**

**Case No:** Civil Revision Petition No. 5758 of 2004

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

APPELLANT

Vs

Chunni Begum

RESPONDENT

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**Date of Decision:** Aug. 17, 2006

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

**Hon'ble Judges:** V. Esvaraiah, J

**Bench:** Single Bench

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

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

V. Esvaraiah, 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.