

Shaik Sattar Vs Thata Venkata Subbaiah alias Vijaya Kumar and Another

Court: Andhra Pradesh High Court

Date of Decision: Oct. 5, 2001

Acts Referred: Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 – Section 10, 11, 12, 22, 3(1)

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

Bench: Single Bench

Advocate: M.V.S. Suresh Kumar, for the Appellant; G. Pedda Babu, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

The Revision Petitioner is the 1st appellant in R.C.A. No. 16/98 on the file of Principal Senior Civil Judge, Ongole and

the 1st respondent in R.C.C. No. 55/95 on the file of Principal Junior Civil Judge-cum-Rent Controller, Ongole. The 2nd appellant in the appeal

and the 2nd respondent in the R.C.C. is the 2nd respondent in the C.R.P. The 1st respondent is the landlord who filed R.C.C. No. 55/95 on the

file of Principal Junior Civil Judge-cum-Rent Controller, Ongole for the relief of eviction on the grounds of wilful default, bonafide personal

requirement, sub-letting of the premises and also demolition and reconstruction of the building.

2. The parties are referred to hereinafter for the purpose of convenience as arrayed in the R.C.C.

3. The landlord-petitioner-1st respondent filed R.C.C. No. 55/95 on the file of Principal Junior Civil Judge-cum-Rent Controller, Ongole stating

that he is the owner of the petition schedule premises and the roof of the building had already collapsed and there is a necessity of demolishing the

building and constructing a new structure since the building is of 140 years old and it was further pleaded that the landlord is having two educated

sons and the second son is having knowledge in computer education and intends to commence computer business and hence the premises is

required for the personal occupation of his second son to do business in computers and as per the terms of the oral rental agreement, the 1st

respondent as a tenant agreed to vacate the building in the month of March 1995 and he is paying rent at Rs.800/- per month and has been

obtaining receipts and he failed to pay the rents from February 1995 onwards and also failed to vacate the building and consequently the

landlord's notice dated 20-4-1995 was issued and it was also further pleaded that there is sub-letting of building to Farooq Shaik and the 1st

respondent had filed a counter admitting the landlord and tenant relationship but denying all other allegations. It is his case that he took the petition

schedule building from the grand father of the present landlord and after his death the petitioner has been receiving rents and he is running killi bunk

in the petition schedule premises and he is paying a rent of Rs.675/- per month and he is not a defaulter and he is not doing any tailoring business

and he had not sublet the premises to anybody. It was also further pleaded that the petitioner-landlord has got number of properties for the

personal occupation of his sons and in fact they are doing S.T.D. business and the Eastern portion of the schedule property already had fallen

vacant and since the petitioner has got other buildings and shops at Lawyerpetta, Gandhi Road, Ongole and also an apartment in bye-pass road,

the bonafide personal requirement pleaded by the petitioner is not sustainable. It was further pleaded that in fact he had been requesting to effect

repairs and the petitioner is not inclined to do so. The learned Rent Controller had recorded the evidence of PW-1 and PW-2. PW-1 is the

landlord and PW-2 is the second son of PW-1 and Exs.A-1 and A-7 were marked. On behalf of the respondents in the R.C.C., RW-1 to RW-4

were examined and Exs.B-1 to B-9 were marked. Apart from it, Exs.X-1 to X-8 also were marked. The learned Rent Controller had framed the

following points:-

1. Whether the respondent sub-let the petition schedule building to Farooq Tailors ?
2. Whether the premises is required bonafidely ?
3. Whether the respondent committed wilful default in payment of rents ?
4. Whether the petition schedule building is required for demolition and reconstruction u/s 12(1) of the A.P. Rent Control Act ?
4. The learned Rent Controller while answering Points 1 to 3 had negated the contentions of the petitioner, but however after recording certain

reasons had observed that the circumstances disclose that the petitioner requires the premises for demolition and reconstruction and on the said

ground he had directed the respondents to vacate the petition schedule premises and deliver vacant possession of the premises to the petitioner

within two months from the date of the order. Aggrieved by the said order, the respondents in the R.C.C. filed R.C.A. No. 16/98 on the file of

Principal Senior Civil Judge, Ongole-cum-Appellate authority under the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960, hereinafter

referred to as ""Act"" and the petitioner-landlord filed Cross-objections attacking the findings of the learned Rent Controller on Points 1 to 3. The

learned Appellate authority by an order dated 4-3-1999 had dismissed the appeal granting three months time from 4-3-1999 and also allowing the

Cross-objections on the point of bonafide requirement or personal use, but negating the Cross-objection on the points of wilful default and sub-

letting. The first appellant alone aggrieved by the said order of eviction had filed the present Revision u/s 22 of the Act.

5. Sri Srinivas representing Sri M.V.S. Suresh Kumar, the learned counsel representing the Revision Petitioner-1st respondent in the R.C.C. had

contended that the courts below had failed to appreciate the scope and ambit of Sections 10 and 12 of the Act and since Section 10 of the Act is

totally different from Section 12 of the Act, a composite application under Sections 10 and 12 of the Act is not maintainable. The learned counsel

also had contended that the Court below had failed to understand the scope and significance of Sections 10(2)(i), 10(2)(ii)(a), 10(3)(iii)(a)(b),

12(1) and 23 of the Act. It was also contended that when a landlord is seeking eviction on the ground of bonafide personal requirement, the cause

of action u/s 12 of the Act ceases and as such the application is not maintainable. Even otherwise, the ingredients of bonafide personal requirement

was not established at all since Exs.X-1 to X-8 are all documents subsequent to filing of the R.C.C. The learned counsel also had contended that

though the building is old, it does not require any demolition and the report of the Commissioner on this aspect is clear that the building is not in a

dilapidated condition. The learned counsel also had contended that the landlord is in possession and enjoyment of alternative non-residential

building and hence he is not entitled to maintain the eviction petition for bonafide personal requirement and one of the tenants by name Sridhar

vacated the premises under his occupation which is adjacent to the shop in which the landlord and his son are doing S.T.D. business and hence the

claim of the landlord that he requires the petition schedule premises for bonafide personal requirement is not at all sustainable. The learned counsel

also had contended that inasmuch as the ground of wilful default and the ground of sub-letting had been negated by both the courts below, such

findings cannot be interfered with. As far as the other findings are concerned since the finding on the bonafide personal requirement is totally

contrary to the finding relating to the ground u/s 12 of the Act, the impugned order suffers from legal infirmity and the same is liable to be set-aside.

The learned counsel also had pointed out certain inconsistencies in the pleadings and the evidence and the learned counsel had drawn my attention

to the affidavit of Sridhar and also the agreement between the said Sridhar and the landlord and had contended that the sufficiency of this premises

which was vacated and which is a subsequent event has to be necessarily gone into. The learned counsel also had contended that the scope and

ambit and parameters of Sections 10 and 12 of the Act are totally different and since the ground of bonafide personal requirement is not

established by the landlord even if the grounds u/s 12 of the Act are available to the landlord, an undertaking shall be filed by the landlord by virtue

of provisions of Section 12 of the Act and this is a statutory undertaking and the provision is mandatory. The learned counsel also had taken me

through the cross-examination of PW-1 and also the evidence of PW-2 and the evidence of RW-2 to RW-4 also in this regard. The learned

counsel also had brought to my notice the relationship of the 1st and the 2nd respondents in the R.C.C. The learned counsel had placed reliance on

Kondeti Suryanarayana and Others Vs. Pinninithi Seshagiri Rao, and also Sree Balaji Krishna Hardware Stores Vs. Srinivasaiah, .

6. Sri Peda Babu, the learned counsel representing the landlord-petitioner in the R.C.C. and the 1st respondent in the C.R.P. had made the

following submissions. On the aspect of bonafide personal requirement, there is evidence of PW-1 and also the evidence of PW-2, the son of

PW-1 and hence the appellate authority on appreciation of evidence had arrived at a conclusion that the ground is established. The learned counsel

also had drawn my attention to Exs.X-3 to X-6 and had contended that all these documents are prior to the filing of the eviction petition. The

learned counsel also had drawn my attention to Exs.X-1 and X-2 and the evidence of PW-1 and PW-2 in detail and had contended that the

appellate authority had not committed any error in giving the finding relating to the ground of bonafide personal requirement. The learned counsel

also had pointed out that the suggestion to PW-2 that he is not going to commence any business had been specifically denied. The learned counsel

also had stated that the job which PW-2 got in Vaartha is a private job and there is no job guarantee as such. The learned counsel, as far as the

relief u/s 12 of the Act is concerned, had contended that the findings of both the courts below on this aspect are concurrent findings which cannot

be disturbed while exercising revisional jurisdiction. Since the eviction was ordered by the appellate authority not only u/s 12 of the Act, but also

on one of the grounds available to the landlord u/s 10 of the Act, the question of landlord giving an undertaking u/s 12 of the Act does not arise at

all. The learned counsel had drawn my attention to the relevant portions of the order of the appellate authority and also the learned Rent Controller.

The learned counsel also had made an attempt to explain the definition of the expression ""building"". The learned counsel had placed reliance on

NEW PEKING CHINESE HOTEL Vs. HINDUSTAN BUILDERS, 1989(3) ALT 138 , Metalware and Co. etc. Vs. Bansilal Sarma and Co.

etc., , KHAJA MOINUDDIN Vs. M/s. GAYATRI IRON COMPANY 1994(1) A.W.R. 157; Vishnu Prasad Bhatt Vs. K. Narayan Rao and

Others, , Savani Transport Pvt. Ltd. (Now Savani Transport Ltd.) Vs. Datti Venkateswara Rao, and Harishchandra Vidyarthi Vs. Meenakshi

Shah and others, .

7. Though the relationship of landlord and tenant is not in dispute there is some dispute relating to the quantum of rent. The ground of wilful default

and the ground of sub-letting had been negatived by both the courts below and the learned counsel representing both the parties had not advanced

any arguments relating to these aspects. In the present Civil Revision Petition, the affidavit of one Sridhar s/o. Koteswara Rao was filed to show

that possession of the other premises covered by the same door number was vacated by him and was delivered to the landlord on 21-11-1998.

The appellate authority had made the order on 4-3-1999 long thereafter. However, for reasons best known, the subsequent event was not brought

to the notice of the appellate authority. The appellate authority at paragraph-8 of the impugned order, on the strength of the evidence of PW-1 and

PW-2 and the documents which were marked a Exs.X-1 to X-8, had set-aside the finding of the Rent Controller given on Point No. 2 i.e.,

bonafide personal requirement of the landlord. In fact, it is the definite case of the landlord that he is having two sons and his second son is having

knowledge in computer course and he intends to start the computer business in the premises and to prove the same contention, his son was

examined as PW-2 and Exs.X-1 to X-8 were marked on his behalf and the documents reveal that he had obtained a computer certificate and also

loan from Andhra Bank for purchasing computer and it is also in his evidence that he got job in Vaarta Telugu daily in the same computer field, but

Vaarta Telugu daily is only a private institution and there is no job guarantee. As far as the suitability or otherwise of the premises is concerned, it is

for the landlord to decide and it cannot be at the dictates of the tenant. The case of the landlord is that he bonafide requires the premises for the

purpose of accommodating his son and the appellate authority after detailed discussion of both oral and documentary evidence had set-aside the

finding of the Rent Controller and had arrived at a conclusion that the landlord's bonafide requirement of the premises is established. In the

decision referred (2) supra, the Apex Court while dealing with the aspect of bonafide requirement of landlord for business of his son under T.N.

Buildings (Lease and Rent Control) Act, 1960, held that if during the tendency of a proceeding other shop premises behind the suit shop had fallen

vacant and the same was given to daughter-in-law of the landlord and it was not stated that her need was greater than the sons business and there

was no explanation as to why it was not found suitable for the business of his son, it was held that the action of the landlord was not bonafide and

eviction cannot be granted. In the present case, though the affidavit was filed at the stage of Revision, an application in the proper form was not

filed to bring the subsequent events to the notice of the revisional Court. Apart from it, though the events happened during the tendency of the

appeal, reasons are not forthcoming why this ground was not urged before the appellate authority. It is no doubt true that the ambit and scope and

parameters of Section 10 and Section 12 of the Act are totally different and the effect of an order passed u/s 12 of the Act is only temporary

cessation whereas an order of eviction made u/s 10 of the Act, inclusive of bonafide personal requirement is one putting an end to the very

relationship of landlord and tenant and consequently throwing the tenant out of the premises. As far as the relief prayed for u/s 12 of the Act is

concerned, both the Courts had arrived at a conclusion that the landlord-1st respondent is entitled to the said relief. In the decision referred (4)

supra, the Apex Court while dealing with the bonafide requirement by the landlord for immediate purpose of demolition and reconstruction under

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 it was observed that the age, the existing condition of the building, whether it is a recent

construction or old one and whether it is in a good and sound condition or has become decrepit or dilapidated are relevant factors forming part of

the circumstances that have to be considered while determining such bonafide requirement. Now, coming to our Act, it may be relevant to have a

glance at Section 12 of the Act, which reads as follows:-

Recovery of possession by landlord for repairs, alterations or additions or for reconstruction:-

(1) Notwithstanding anything in this Act, on an application made by a land-lord, the Controller may, if he is satisfied -

(a) that the building is reasonably and bonafide required by the land-lord for carrying out repairs, alterations or additions which cannot be carried

out without the building vacated; or

(b) that the building consists of not more than two floors and is reasonably and bonafide required by the landlord for the immediate purpose of

demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass

an order directing the tenant to deliver possession of the building to the land-lord before a specified date.

(2) No order for recovery of possession under this section shall be passed unless the land-lord gives an undertaking that the building on completion

of the repairs, alterations or additions or the new building on its completion will be offered to the tenant, who delivered possession in pursuance of

an order under sub-section (1), for his occupation before the expiry of such period as may be specified by the Controller in this behalf.

(3) In case the tenant, to whom the building or the new building, as the case may be, is offered under sub-section (2) by the landlord does not want

to occupy it the landlord shall give notice of vacancy in writing to the authorized officer under sub-section (1) of Section 3.

(4) Nothing in this section shall entitle the land-lord, who has recovered possession of the building for repairs, alterations or additions or for

reconstruction to convert a residential building into a non-residential building or a non-residential building into a residential building unless such

conversion is permitted by the Controller at the time of passing an order under sub-section (1).

8. It is no doubt true that sub-section (2) of Section 12 of the Act specifies that no order for recovery of possession under this Section shall be

passed unless the landlord gives an undertaking that the building on completion of repair, alterations or additions or the new building on its

completion, will be offered to the tenant. The words "No order for recovery of possession under this Section shall be passed....." assume lot of

importance in deciding the matters of this nature. In the decision referred (3) supra, a Division Bench of this Court while dealing with the scope and

ambit of Section 12 of the Act had observed that the undertaking contemplated u/s 12 of the Act is required when recovery of possession is

ordered under that particular Section and the idea is to safeguard the interests of the tenant by providing him a provision for occupation of the

premises after reconstruction but the same condition need not be imposed when eviction is ordered on grounds other than demolition and

reconstruction and it was also held that in the said case such condition was unnecessary. Even in the present case, the appellate authority had

recorded a clear finding relating to the bonafide personal requirement of the landlord in the light of Exhibit X series documents and also the

evidence of PW-1 and PW-2 in this regard. In the decision referred (7) supra, it was held that as the claim for eviction on the ground of repairs is

not an independent one, but is connected with bonafide requirement, mere reference to Section 12(1)(a) of the Act in the preamble of the petition

does not make it an independent ground and hence the question of landlord giving an undertaking u/s 12(2) of the Act that he will redeliver the

premises to the tenant after repairs does not arise nor can it be said that the requirement for personal occupation is not bonafide. In the decision

referred (8) supra, it was held that the landlord has a right to seek eviction of the tenant on any of the other grounds under Sections 10(2), 10(3)

and also simultaneously on the ground mentioned in Section 12 of the Act and the condition of giving an undertaking u/s 12(2) of the Act need not

be imposed when eviction is ordered on the ground other than demolition and reconstruction and when the landlord is successful on other grounds,

it is immaterial whether the landlord effects repairs or demolishes the building. In the decision referred (1) supra, the Apex Court had observed

while dealing with Section 12(1)(b) and (2) of the Act held that the landlord who had obtained an order of eviction u/s 12(1)(b) for demolishing

and reconstructing the building necessarily should reconstruct the new building on the same site to enable the tenant to reenter the premises and the

landlord cannot be allowed to say that after demolition he need not necessarily reconstruct the building and when the Rent Controller had allowed

the application for eviction on that ground necessarily a direction should be issued to the landlord to reconstruct the building. As already stated

supra, the 1st respondent in the C.R.P.-landlord-petitioner in the R.C.C. by adducing necessary evidence i.e., PW-1, PW-2 and also Exs.X-1 to

X-8, was able to establish the bonafide personal requirement of his own son, who is none other than his own family member. In S.A. SAMAD Vs.

P.RAMULAMMA 1987(1) ALT 649a Division Bench of this Court held that if the landlord has established that he is proposing to commence the

business in the concerned non-residential premises is bonafide, it is essentially a question of fact and this question has to be decided in the light of

the pleadings of the parties and the evidence adduced by them and it is not possible to lay down the manner in which the Rent Controller should

arrive at such finding and the courts have merely pointed out that it is not a mere wish of the landlord that is enough but that his requirement of the

said premises must be proved to be bonafide and real. In MANDALAL SRIKISHAN MALPANI Vs. AYODHYA DEVI ASWAS 1986(2)

APLJ 327 it was observed that the words are not ""for his occupation"", but ""for his own occupation"" and no landlord ordinarily lives alone and he

lives with his family and he cannot be dissociated from his family and this expression is not defined in the Act and it is neither possible nor desirable

to try to lay down exhaustively who are all included within its expression and the expression has to be understood and construed in a reasonable

and realistic manner and it is question of fact to be decided in each given case having regard to the facts of the case in the course of which the

social, cultural, religious, financial and even emotional ties have to be taken into account and what has to be decided in each case having regard to

the pleadings and proof is who can be said to be the members of the landlord's family and that the parents, dependent relatives, others upon whom

the landlord is dependent or those who have been living since quite some time as members of the family of the landlord, can be included within this

expression.

9. It is no doubt true that in the present case when the Rent Controller had allowed the eviction petition only u/s 12 of the Act there should have

been a direction relating to the filing of undertaking also. But however, the appellate authority had rectified the same by holding that the landlord is

entitled to the relief even on the ground of bonafide personal requirement u/s 10 of the Act.

10. In the light of the pleadings and also the evidence let in by the parties, the need of the son of the landlord is the need of the landlord's family as

such, and hence the bonafide personal requirement is clearly established by the 1st respondent-landlord in the present matter. Viewing the matter in

any angle, I am of the considered opinion that the Civil Revision Petition is devoid of merits and it is liable to be dismissed and it is accordingly

dismissed. However, in the facts and circumstances, the tenant is granted four months time to vacate the premises.