

(2006) 10 AP CK 0035
Andhra Pradesh High Court
Case No: CRP No. 1327 of 2002

IBP Co. Limited

APPELLANT

Vs

Habeeba Begum and Another

RESPONDENT

Date of Decision: Oct. 27, 2006

Acts Referred:

- Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 2, 22, 8(5)
- Transfer of Property Act, 1882 - Section 106

Citation: (2007) 2 ALD 265 : (2007) 2 ALT 141 : (2007) 1 APLJ 89

Hon'ble Judges: V. Eswaraiah, J

Bench: Single Bench

Advocate: Deepak Bhattacharjee, for the Appellant; K.V. Simhadri, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Eswaraiah, J.

Heard the learned Counsel appearing for both sides.

2. The petitioner filed R.C. No. 85 of 1997, on the file of the 1st Additional Rent Controller, Hyderabad, u/s 8(5) of the A.P. Building (Rent, Lease and Eviction) Control Act, 1960 (for brevity "the Act"), seeking permission of the Rent Controller to permit him to deposit rents before the Rent Controller, payable to the respondents.

3. It is stated that the petitioner obtained a piece of land admeasuring 22,500 sq. ft equivalent to 2032 sq. mts forming part of S. Nos. 64 and 65 on the old Hyderabad-Kurnool Road on lease under a Registered Lease Deed bearing Document No. 1158 of 1968 dated 11-6-1968 and lease commenced from 14-2-1967 for a period of 20 years with an option for renewal for a further period of 20 years for a monthly rent of Rs. 350/-. Thus the total period of lease is 40 years. It is stated

that the period of 40 years lease from 11-6-1968 expires on 11-6-2008. It is the case of the petitioner that he has been paying the rents regularly but the respondents refused to receive the rents from April 1996 onwards and therefore, he filed the said application to deposit the rents.

4. In the counter-affidavit filed by the respondents, it is stated that the petitioner obtained an open land on lease, to an extent of 2,500 sq. yards equivalent to 22,500 sq. ft out of the total land of 3,600 sq. yards belonging to the respondents, on a monthly rent of Rs. 350/- commencing from 14-2-1967 with an option to renew the same for a further period of 20 years, but no such option was exercised after an expiry of 20 years and the lease has already expired and therefore, termination notice was issued u/s 106 of the Transfer of Property Act, and a notice for eviction is also pending in O.S. No. 1660 of 1996, on the file of V Additional Judge, City Civil Court, Hyderabad.

5. The learned Rent Controller, on the above said pleadings, considered the point as to whether the petitioner is punctual in depositing the rents. After considering the rival contentions, lease deed, and the documentary evidence, it was held that the said building is not covered under the Rent Control Act, and therefore, the petitioner is not entitled to seek permission u/s 106 of the (TP) Act, to deposit the rents. Aggrieved by the said order of the Rent Controller dated 6th April 1980, the petitioner-M/s IBP Co. Limited, filed R.A. No. 186 of 1998 on the file of the Additional Chief Judge, City Small Causes Court at Hyderabad, which was also dismissed on 30th July, 2001. Against which, the present civil revision petition is filed u/s 22 of the Act.

6. The only question that arises for consideration is as to whether the respondent leased out the open land in favour of the petitioner-Company for getting protection and benefits under the said Act. Therefore, it is just and necessary to extract Section 2(iii)(a)(b) of the Act.

(iii) "Building" means any house or hut or part of a house or hut, let or to be let separately for residential or non-residential purposes and includes:

(a) the gardens, grounds, garages and outhouses if any, appurtenant to such house, hut or part of such house or hut and let or to be let along with such house or hut or part of such house or hut;

(b) any furniture supplied or any fittings affixed by the landlord for use in such house or hut or part of a house or hut, but does not include a room in a hotel or boarding house;

A perusal of the definition of "Building" that goes to show that the "building" means any house or hut or part of such house, hut let or to be let out separately for residential or non-residential, purposes including garden, garages within the apartment of such house any furniture supplied and any fittings fixed by the

landlord for using such house or hut or part of such house or hut, but does not include a room in a hotel or boarding house.

7. Therefore, the only question that arises for consideration is whether the respondent has let out any house or hut including appurtenant gardens, grounds, garages or furniture of the said house or hut.

8. Ex. A-20 is the certified copy of the registered lease deed, which was executed by the respondent in favour of the petitioner. The said registered lease deed dated 11-6-1968, which goes to show that the respondent is described as landlord and the petitioner herein is described as lessee in respect of the piece or part of the land described in the schedule and containing an area of 22,500 sq. ft. The schedule of the above said lease deed goes to show that the piece of land situated on Hyderabad-Kurnool Road, Hyderabad in Ward No. 3 admeasuring 22,500 sq. ft with specific boundaries. The lease deed further goes to show that what was leased out is only the land and the lease is initially for 20 years commencing from 14-2-1967 with an option to renew the same for a further period of 20 years on a monthly rent of Rs. 350/-. As per the conditions of the lease, the said premises shall be used for any lawful purpose which the lessees desire and especially as a depot for storage and sale of petroleum products, motor accessories etc., and for all such purposes the lessees shall have fully liberty to make excavations therein for tanks and construct and erect thereon any building, pumping plant and accessories as may be requisite. The lessees shall have the full freedom of access over suitable approaches for their workmen, servants, agents and customers and for the passage of lorries, carts and all other vehicles. The lessees shall have to take all precautionary measures against explosion of fire or other accident and they shall comply with all regulations as imposed by public authorities in that behalf. It is pertinent to note that as per Clause 5 of the said Deed, the entirety of such tanks, structures, plant and outfit as aforesaid shall remain the property of the lessees notwithstanding that they comprise fixtures embedded in or attached to the earth and the lessors shall have no claim thereto in any manner whatsoever. Therefore, it cannot be said that the lessor has leased out the building or a hut, but only leased out a vacant land and all the building structures etc., are constructed only by the lessees, therefore, the schedule property what was leased out, does not come within the meaning of "Building". It is not a building within the meaning of Section 2(iii) of the Act. Therefore, the petitioner cannot be treated as a tenant and respondent cannot be treated as a landlord within the meaning of Section 2(vi) and (ix) of the Act. That being so, the petitioner is not entitled to file an application, seeking permission to deposit the rents, as what was leased out is not a building under the Rent Control Act. Therefore, I do not see any illegality or irregularity or impropriety of the order of the Rent Controller which was rightly confirmed by the appellate authority.

9. Accordingly, the civil revision petition is dismissed. No order as to costs.