

**(2008) 09 AP CK 0025**

**Andhra Pradesh High Court**

**Case No:** CRP No. 1177 of 2007

P. Lingamma and Another

APPELLANT

Vs

Dr. P. Venugopal

RESPONDENT

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**Date of Decision:** Sept. 30, 2008

**Acts Referred:**

- Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 10(3)

**Citation:** (2008) 6 ALD 663 : (2009) 1 ALT 457

**Hon'ble Judges:** Vilas V. Afzulpurkar, J

**Bench:** Single Bench

**Advocate:** V.L.N.G.K. Murthy, for the Appellant; Praveen Vyapari, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Vilas V. Afzulpurkar, J.

This revision is preferred by the landlords against the order dated 8.12.2006 passed by the Appellate Authority under the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act"-Chief Judge, City Small Causes Court), Hyderabad in R.A. No. 258 of 2004. The parties are being referred to as "the landlords" and "the tenant".

2. The brief facts of the case are as follows:

The landlords filed an eviction petition on the ground that the tenant has committed wilful default in payment of rents as well as property tax. The second ground alleged was that the second petitioner-landlord is carrying on professional business in a rented mulgi and requires the demised mulgi for his own purpose. The third ground of the tenant having an alternative accommodation was also alleged. The learned Rent Controller, on trial, accepted all the grounds and ordered eviction of the tenant. Aggrieved thereby, the landlords filed an appeal before the lower Appellate

Authority. Under the impugned order the lower Appellate Authority rejected the grounds of wilful default in payment of rents as well as property tax and also the ground of the tenant having an alternative accommodation. The said grounds are not seriously pressed in this revision. However the ground of personal requirement which was also rejected by the lower Appellate Authority is seriously contested and it requires consideration.

3. It is the case of the landlords that the demised mulgi is required by the second petitioner-landlord for carrying on business as he is presently carrying on such business in a rented premises. The plea of personal requirement which was taken in Para-5 of the eviction petition was disputed by the tenant on the ground that the second petitioner-landlord is not under the threat of eviction from the rented premises and secondly on the ground that the landlord owns an adjacent mulgi situated on the eastern side of the mulgi in question. It was also further alleged by the tenant that the said mulgi was previously used by the landlords for running a kirana and general stores which was later closed and recently it has been let out for a ready made garments business on a higher rent and as such the requirement was strongly disputed. The second petitioner-landlord examined himself as P.W.I and his brother as P.W.2 and marked Exs.A1 to A4 which are rental deed dated 3.3.1987, transfer certificate issued by Government Boys Upper Primary School, certificate issued by civil surgeon orthopaedic and photographs. The tenant examined himself as R.W.1 and marked Exs.R1 to R6 which are in the nature of receipts and acknowledgements.

4. As mentioned above, since the ground of personal requirement is only seriously pressed for adjudication, the documentary evidence produced by the parties has hardly any relevance. The learned Counsel for the landlords has made submissions to substantiate the plea of personal requirement primarily on the ground that there is no evidence to show that the second petitioner-landlord is entitled to any alternative premises other than the petition schedule premises. He has also urged that so far as the personal requirement is concerned, the second petitioner-landlord is carrying on business in a rented premises and he requires the demised premises for carrying on such business and that he is not owning any other non-residential premises and as such the said requirement ought to have been upheld by the lower Appellate Authority. He also relies upon the evidence of P.W.I and P.W.2 and cross-examination of R.W.1 in support of these contentions, reference to which will be made later on.

5. Per contra, the learned Counsel for the tenant contends that the findings of the lower Appellate Authority even on the ground of personal requirement do not deserve to be interfered with. The learned Counsel submits that the plea of partition between PWs.1 and 2 is not substantiated. He also claims that there is no pleading in the eviction petition that the landlords did not own or possess any other premises which is mandatory requirement and secondly he claims that when the tenant has

specifically pointed out that the landlord is having adjacent premises bearing No. 3-1-195 which is recently let out, there is no rejoinder filed by the landlords.

6. The learned Counsel, therefore, submits that the personal requirement pleaded by the second petitioner-landlord is non-existent, especially when the second petitioner-landlord's rented premises is not under threat of eviction and claims that the requirement pleaded is only to harass the tenant.

7. I have considered the pleadings and the evidence in the light of the contentions of both the learned Counsel for the parties. It is to be appreciated that the eviction petition was specifically filed by alleging in Para 5 that the second petitioner-landlord is carrying on professional business in a rented mulgi bearing No. 3-1-227 belonging to Smt. Afzal Bibi situated in the same locality at a distance of one furlong from the petition schedule premises and he is paying Rs. 750/- per month.

8. The second petitioner-landlord claims that he is in need of the demised mulgi for carrying on the same professional business. While it is true that there is no averment as pointed out by the learned Counsel for the tenant, but even otherwise the tenant is not able to point out any other premises to which the second petitioner-landlord can be said to be entitled to.

9. The evidence of P.W.1 in cross-examination clarifies that the neighbouring mulgi bearing No. 3-1-195 was earlier occupied by a tenant by name Sheela and it is now let out for a kirana shop for the last three or four years. In his further cross-examination he explains that the said premises bearing No. 3-1-195 has fallen to the share of his brother (P.W.2) and it is not owned by the first or second petitioner-landlord and as such he says that he is not in a position to produce the documents relating to the said premises. The second petitioner-landlord also examined P.W.2, his brother who has deposed that he is the owner of the adjacent premises bearing No. 3-1-195 and claims that his late father was the original owner of both the mulgies bearing Nos. 3-1-194 and 3-1-195 and in a partition, the mulgi bearing No. 3-1-194 has fallen to the share of the second petitioner-landlord and the mulgi bearing No. 3-1-195 has fallen to his share. He further stated that the partition took place in 1995 and he also asserted that the said mulgi bearing No. 3-1-195 belongs exclusively to him. The aforesaid evidence of PWs.1 and 2 is consistent and remained uncontroverted by the tenant and except the allegation that the second petitioner-landlord owns mulgi bearing No. 3-1-195, there is no material on record. In fact, the tenant could not deny that the father of PWs.1 and 2 was the original owner of both the mulgies and both the brothers are sharing the demise mulgi No. 3-1-194 or other mulgi No. 3-1-195. The lower Appellate Authority has also laid a great stress on the lack of pleading by the landlord with respect to his not being entitled to any other premises. The requirement of such pleading in the eviction petition would assume more importance in the event the tenant is able to show that the landlord does hold or is otherwise entitled to any other non-residential

premises.

10. The requirement of such pleading has, therefore, to be understood in the said sense and not in such a way so as to throw out the requirement pleaded and disallow the personal requirement of the second petitioner-landlord. Not pleading the same in the eviction case would not make any difference. As a fact in this case there is no evidence or material before the Court that the second petitioner-landlord owns or is otherwise entitled to any other premises.

11. In fact, a similar contention was raised before the Hon'ble Supreme Court in [Duggi Veera Venkata Gopala Satyanarayana Vs. Sakala Veera Raghavaiah and Another](#), which was repelled by the Supreme Court in para-8 which is extracted below:

8. It is true that all the ingredients of Sub-section (3)(a)(iii) of Section 10 have not been pleaded in the petition for eviction. The respondents have only pleaded their bona fide requirement of the disputed shop-room for the purpose of commencing a business therein. There is no pleading that the respondents are not occupying any non-residential building in the city, town or village concerned either belonging to them or to the possession of which they are entitled under the Act. The respondents, however, did not suppress any fact at the trial and disclosed the non-residential buildings owned by the respondent No. 1, but not in their occupation. It has also been-observed by the High Court that the respondents have come forward with a clean and clear case and with reasons as to why they chose the disputed shop-room for the proposed business to be commenced by the respondent No. 2. Even if we set aside the eviction order and send the case back on remand to the Rent Controller allowing the parties to amend the pleadings and to adduce further evidence, it will be a futile exercise inasmuch as all the materials are already on record. It is not the case of the appellant that if he is given an opportunity to adduce further evidence after amendment of pleadings, he would be able to furnish any new material showing that the respondents are occupying any non-residential building suitable for commencing the proposed business therein and, as such, they are not entitled to an order for eviction. It is also not in dispute that the other non-residential buildings belonging to the respondent No. 1 are in occupation of tenants. The principal contention of the appellant before the Courts below was that the respondents had no reasonable justification, for choosing the disputed shop-room for the purpose of commencing a business therein for the respondent No. 2. This contention has been overruled by the Courts below and also by the High Court inasmuch as the respondents had given sufficient reasons for selecting the disputed shop-room for the purpose of commencing a business in readymade garments. Indeed, it is the case of the respondents that the disputed shop-room is centrally located in the heart of Guntur City in a business locality, that there are a number of readymade garment shops in that locality, and that the disputed shop-room is the best place for commencing such a business.

12. In view of the same, therefore, the aforesaid contention has no merits.

13. The lower Appellate Authority has thus committed an error of law in denying the requirement of the second petitioner-landlord on the said ground. The other adjacent mulgi bearing No. 3-1-195, as stated above, has already fallen to the share of P.W.2 as is evident from the depositions of PWs.1 and 2 and whether the said premises is occupied or vacant and whether the said premises is let out or not etc., becomes wholly irrelevant to consider the requirement of the second petitioner-landlord. When once it is found that the second petitioner-landlord is not entitled to the said adjacent mulgi bearing No. 3-1-195, his requirement of the demised premises cannot be denied.

14. The lower Appellate Authority also gave another strange reason in Para 34 of the impugned judgment. It proceeds to think that the second petitioner-landlord having not evicted the tenant for his business at an earlier stage, it is not open to him to initiate the eviction proceedings now. The requirement or feeling of its need is entirely for the landlord to say. Merely because at an earlier stage the landlord could not initiate the eviction proceedings, it would only mean that at that stage he did not feel the requirement and as such did not initiate the eviction proceedings. If such standards are applied, the landlord would never be entitled to seek eviction on the ground of personal requirement because in every case it could be said that having let out the premises earlier, the landlord cannot ask for eviction on the ground of personal requirement. The aforesaid approach adopted by the lower Appellate Authority is, therefore, clearly opposed to the provisions of the Act permitting the landlord to seek eviction on the ground of bona fide personal requirement. The findings of the lower Appellate Authority on this aspect are clearly unsustainable and perverse and liable to be set aside and accordingly set aside.

15. This revision petition is accordingly allowed and the order of the learned Rent Controller to the extent of allowing the eviction petition on the ground of bona fide personal requirement of the second petitioner-landlord is restored. There shall be no order as to costs.

16. However, to offset the hardship, if any, that may be caused to the tenant in vacating the petition schedule premises, I deem it appropriate to grant time to him till 31st December, 2008 to vacate the petition schedule premises subject to following conditions:

(1) That the tenant shall file an undertaking before the Rent Controller on or before 20th October, 2008 that he shall vacate the schedule premises by or before 31st December, 2008, pay the arrears of rent, if any, and shall continue to pay the monthly rents to the landlord during the period of occupation and file the receipts thereof before the Rent Controller or deposit the rents to the credit of RCC before the Rent Controller; and he shall also undertake that

(a) That the tenant shall not alienate, transfer or otherwise part with the possession or create any third party interest over the schedule premises, and;

(b) That the tenant shall handover peaceful and vacant possession of the schedule property to the landlord on or before 31st December, 2008;

(2) That in default of fulfilling of any of the above conditions, the landlord shall be free to approach the executing Court for execution of the decree.