

(1997) 3 ALT 209

Andhra Pradesh High Court

Case No: C.R.P. No. 2610 of 1996

Motamarri Surya
Kameswara Rao

APPELLANT

Vs

Namburu
Satyanarayanamma
(died) per L.Rs.

RESPONDENT

Date of Decision: April 2, 1997

Acts Referred:

- Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 10(2), 18

Citation: (1997) 3 ALT 209

Hon'ble Judges: C.V.N. Sastri, J

Bench: Single Bench

Advocate: T. Veerabhadrayya, for the Appellant; Nayani Ramesh Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.V.N. Sastri, J.

This is a tenant's revision against the orders of eviction concurrently passed against him by the Rent Controller and the appellate authority under the provisions of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, (for short "the Act"). The petition for eviction was filed by the landlady on the following grounds:

(1) bona fide requirement;

(2) that the tenant has secured alternative accommodation and ceased to occupy the building for a continuous period of four months;

(3) that the tenant used the building for the purpose other than that for which it was leased;

(4) wilful default in payment of rents;

2. The Rent Controller ordered eviction upholding the first three grounds and rejected the last ground.

3. On appeal, the appellate authority confirmed the order of eviction on all the three grounds which found favour with the Rent Controller. It may be mentioned that during the pendency of the appeal before the appellate authority the landlady died and her legal representatives have been brought on record.

4. Sri T. Veerabhadraiah, the learned Counsel for the petitioner-tenant, has contended that on the death of the landlady the ground of bonafide requirement pleaded by her in the eviction petition has disappeared and it no longer survived and the appellate authority has totally ignored this aspect. Its judgment is thereby vitiated. In the eviction petition, the landlady pleaded that she required additional accommodation for the purpose of housing her sister's grand-children Chikkala Venkatrama, Chikkala Venkata Radha, and Chikkala Venkata Rajanikumar who lost their mother. She wanted to educate them at Vizianagaram and keep them with her as they would be of some assistance to her. The landlady was a widow who had no children of her own. The tenant resisted the plea of the land-lady by contending that the landlady, who was already in occupation and enjoyment of a major portion of the building did not need any additional accommodation and that the alleged requirement set up by her is far-fetched and it is only a ruse as she did not make any whisper about it either in the notice issued by her or in the suit O.S. No. 211 of 1983 which was earlier filed by her against him.

5. The learned Subordinate Judge (appellate authority), while dealing with this question, adverted to the fact that the landlady died during the pendency of the appeal but failed to consider the question whether the requirement originally pleaded by the landlady survived after her death. The learned Subordinate Judge merely brushed aside the argument advanced by the learned Counsel for the appellant-tenant with the following observations:

"Perhaps the landlady might have wanted to get the grand-children of her sister to assist her in her old-age days. Therefore, I find no force in the argument advanced by the learned Counsel for the appellant-tenant and also the contention of the appellant-tenant that the landlady is not having any bona fide requirement of petition schedule building for her personal use and occupation cannot be accepted."

The appellate authority nowhere considered the effect of the death of the landlady on the question of bona fide requirement originally pleaded in the petition. I am, therefore, inclined to agree with the submission of the learned Counsel for the petitioner that the finding of the appellate authority on this question is vitiated and it is unsustainable. This, however, does not conclude the matter since the eviction has been ordered on two other grounds also.

6. As regards the next ground of eviction, namely, that the tenant secured alternative accommodation and ceased to occupy the petition schedule building for more than four months, it was admitted by the tenant in the counter filed by him in the eviction petition that he shifted his residence along with his family members to another building in Hajsharif street which was owned by his wife. It was, however, his plea in the counter that he shifted to the said building with his family members for the purpose of residence only and that he continued to carry on his business in the petition schedule building. In his evidence as R.W.1, the tenant, however, deposed that he and his wife along with his two married sons only shifted to the other building and his unmarried sons, who were studying in higher classes were staying in the petition schedule building. Sri T. Veerabhadraiah, the learned Counsel for the petitioner, has contended that inasmuch as some members of the petitioner's family continued to reside in the petition schedule building and as the petitioner also continued to carry on his business in the petition schedule building and the other building belonged to the petitioner's wife, it cannot be said that the petitioner either secured alternative accommodation or that he ceased to occupy the building. Section 10(2)(v) of the Act provides that if the Controller is satisfied that the tenant has secured alternative building or ceased to occupy the building for a continuous period of four months without reasonable cause, the Controller shall make an order directing the tenant to put the landlord in possession of the building. The use of the word "Or" in the said provision is disjunctive and not conjunctive. The word "Or" cannot be read as "And". It means that a tenant will be liable for eviction if he has secured alternative building even though he has not ceased to occupy the demised premises. Admittedly the petition schedule building is a residential building which is let out for residential purpose as evidenced by the terms and conditions of the lease deed Ex.A-1. The fact that the petitioner has been also carrying on business in the same building does not alter the nature and character of the building. As the petitioner has categorically admitted in his counter that he shifted along with his family members to the other building owned by his wife for the purpose of residence, the first part of clause (v) of Sub-section (2) of Section 10 is clearly attracted and the petitioner is liable for eviction on the ground that he has secured alternative accommodation. In view of the categorical admission made in the counter, the subsequent improvement sought to be made in his evidence to the effect that some of his family members continued to reside in the petition schedule building cannot be accepted. The petitioner's claim that he or his family members can be simultaneously in occupation and enjoyment of both the buildings goes against the intendment and the scheme of the Act. If such a contention were to be accepted, it would enable the tenant to claim the possession of several buildings simultaneously by keeping one or the other member of his family in each of the buildings. That would defeat the wholesome object with which the above provision is made in the Act. This will be evident by looking at it from the standpoint of the landlord also. The Act precludes a landlord, who is already in possession of a non-residential building, which is either his own or to the possession of which he is entitled, from seeking eviction of the tenant from another building on the ground that he requires it for his own occupation. Just as a landlord cannot be permitted to claim the possession of several houses simultaneously, so also the tenant cannot be

permitted to claim that he is entitled to retain the possession of the demised premises for the purpose of his business even after he secured alternative accommodation. When once the tenant is shown to have secured alternative accommodation, it follows that he cannot claim a right to be in occupation of the demised premises also simultaneously as it would not only go against the object of the Act but it is also contrary to the terms and conditions of the lease deed. This reasoning finds support, though not directly, in a judgment of the Madras High Court in [Dr. Mohammad Ibrahim Vs. Syed Ahmed Khan and Another](#), which has been cited by the learned Counsel for the respondents in this context. Sri Veerabhadraiah, however, sought to place reliance on the judgment in *G. Muthulingam v. K. Markandeya* 1985 (1) ALT 306 : 1985 (2) APLJ 233. In that case the plea of the land-lord was that the tenants have ceased to occupy the premises for six months before the filing of the eviction petition on 18-8-1978. But the Court, however, found from the account books of the tenants that there were certain transactions even as on 22-7-1978 and the bill books also showed some transactions even on 18-7-1978 and as such there was no basis for the finding of the Courts below that the tenants ceased to occupy the premises within a period of four months from the date of the petition. I fail to see how this decision renders any help to the petitioner in the instant case which is one of securing alternative accommodation but not one of ceasing to occupy the building continuously for a period of four months without any justification. I am, therefore, unable to accept the submissions of the learned Counsel for the petitioner on this point and I do not find any error in the concurrent findings recorded by the authorities below on this question.

7. Coming to the third ground of eviction, that is, the user of the building for a purpose other than that for which it was leased out, in view of the specific recitals in the lease deed Ex.A-1 both the authorities below have concurrently held that the building is a residential building and the same was let out to the tenant for the purpose of residence only, that the user of the ground floor of the building by the tenant for the purpose of his business is unauthorised and is contrary to the terms of Ex. A-1 and as such the tenant is liable for eviction. The learned Counsel for the petitioner, however, sought to contend that from the inception of the tenancy in 1969, the tenant has been using the ground floor for business and the first floor for the residence to the knowledge of the landlady, that the landlady acquiesced in it and she never raised any objection for such user and it amounts to waiver. The landlady was, therefore, estopped from urging this ground of eviction. Section 10(2)(ii)(b) of the Act clearly provides that the tenant will be liable for eviction if the tenant has, without the written consent of the landlord, used the building for a purpose other than that for which it was leased. Admittedly the petitioner did not obtain any written consent from the landlady for using the building for the purpose of his business. There was also no order passed by the Rent Controller u/s 18 of the Act permitting the conversion of the building into a non-residential building. It is well settled that there can be no estoppel against statute. The fact that the landlady did not raise any objection for the petitioner carrying on his business in the building is, therefore, of no consequence. In *P. Venkatakrishna Rao v. Dr. B. Seetharam* 1989 (3) ALT 284 :1989 (2) APLJ 261, A

Division Bench of this Court held that a residential building continues to retain its character as a residential building even though it was let out or used for a non-residential purpose unless it is converted as a non-residential building by an order of the Rent Controller and in the absence of such an order, a residential building cannot be construed as a non-residential building notwithstanding the fact that the building was let out for a non-residential purpose. It was further held in the same judgment that in such a case no question of estoppel arises and if in law the building continues to be a residential building, notwithstanding the fact of its being let out for a non-residential purpose, it can be claimed for residential use subject to fulfilment of other conditions mentioned therein. I do not, therefore find any error in the conclusion reached by the Courts below on this question also. 8. Inasmuch as the findings of the Courts below on grounds Nos. 2 and 3 are confirmed, it makes no difference as far as the result is concerned. The revision thus fails and it is accordingly dismissed. The petitioner is, however, granted three months" time from to-day for vacating the premises. There will be no order as to costs.