
Konda Veeraiah and Sons Vs Swastik Book Depot and Others

Civil Revision Petition No. 1355 of 1994

Court: Andhra Pradesh High Court

Date of Decision: Sept. 12, 1995

Acts Referred:

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

Citation: (1995) 3 ALT 395

Hon'ble Judges: V. Bhaskar Rao, J

Bench: Single Bench

Advocate: J. Prabhakar and B. Srinivasa Reddy, for the Appellant; A. Veera Swamy, for Respondents 1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Bhaskar Rao, J.

This Civil Revision Petition is directed against the judgment and decree of the Chief Judge, City Small Causes Court,

Hyderabad, in R.A. No. 167/1988, dated 8-3-1994. The tenants are the appellants herein.

2. The facts giving rise to this Revision Petition are that the landlords filed an eviction petition against the tenants u/s 10(2)(i) and 10(3)(iii)(a) of

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, for short the "Act", in respect of a non-residential premises bearing No. 15-1-

506, Old Feelkhana, Hyderabad, on two grounds viz., (1) wilful default in payment of rent and (2) bonafide personal requirement. The Rent

Controller found that the landlords succeeded in establishing both the grounds and consequently RC. No. 296/1982 was allowed and the tenants

were directed to vacate the demised premises within two months and deliver vacant possession to the landlords. Aggrieved by the above order,

the tenants preferred R.A. No. 167/1988, A preliminary objection was raised as to the maintainability of the petition on the ground that the

landlords constitute a firm, but all the partners of the said firm are not brought on record. Thereupon I.A. No.272 /1990 was filed and all the

partners of the firm are brought on record by an order dated 10-9-1990. The partition deed dated 30-9-1975 has been marked as Ex.P-11 and

registration certificate is marked as Ex.P-10. Then the learned Chief Judge, City Small Causes Court, considered the merits and found that ground

No. 1 viz., wilful default in payment of rent has not been made out, but he found on ground No. 2 that there is a bona fide requirement of the

premises inasmuch as the present landlords who have purchased the demised premises under a registered sale deed and to whom the above

tenants have been attorned by a due notice are running their business in a rented premises and that they have no other non-residential premises of

their own in twin cities of Hyderabad and Secunderabad. Hence, the appeal has been dismissed and time for eviction is fixed as three months.

Thereupon the tenants have preferred this revision petition.

3. The short question that arises for consideration in this Revision is whether the personal requirement of the demised premises is bona fide.

4. The learned Counsel for the Revision petitioners contended that it is essential for the landlords to establish the bonafide requirement as held by

this Court in Arjun Dass v. Mandanlal Madi 1982 (2) ALT 333 : 1982 (2) APLJ 430., and that it is not enough if the landlord merely shows that

he himself is running a business in a rented premises. The learned Counsel for the respondents/landlords on the other hand contended that two

witnesses have been examined on the side of the landlords and Exs.P-1 to P-12 have been marked, but no evidence is adduced by the appellants

/tenants in the lower Court and that the Rent Controller as well as the Chief Judge, City Small Causes Court, have concurrently found on the basis

of the above evidence that the landlords have established bona fide requirement for running their business in the demised premises and hence the

impugned order is sustainable.

5. It is not necessary for me to go into the first ground viz., wilful default in payment of rent. The only ground on which the eviction has been

ordered is the bona fide personal requirement of the landlords. The law on the subject is well settled by a Division Bench of this Court in *supra* (1).

6. The above decision has been rendered on a reference to the Division Bench, as a conflict had arisen on account of two judgments of learned

single Judges of this Court, one reported in *Somisetti v. Guravaiah and Sons* 1975 (2) APLJ 321., and another in *Sitaramachandra Prasad v.*

Chalapati Rao 1981 (1) An.W.R. 440. While A.V. Krishna Rao, J., held that the landlord has to satisfy the Controller that the bona fide requires

the building either as residential or non-residential for his own occupation in each and every case whether it falls under clause "a" or clause "b" or

clause "c" of Section 10 of the Act; Mukhtadar, J., expressed a different view that since the word "bonafide" is not used in Section 10(3)(a)(i)(a)

and whereas the above word is used in clause "b" thereof, the Legislature has intended that the landlord has to establish bona fide requirement only

in cases falling under clause "b" and not so in other cases falling under clause "a".

7. On a consideration of the relevant provisions occurring in various Rent Control enactments, the Division Bench concluded that Section 10(3)(e)

controls the other provisions viz., Section 10(3)(a)(i)(a) and 10(3)(a)(iii) and in every case where an eviction petition is filed u/s 10(3)(a)(i) or

10(3)(a)(iii), it is the duty of the Controller to satisfy himself that the claim of the landlord is bona fide.

8. In view of the above authoritative pronouncement of the Division Bench, it is crystal clear that it is the duty of the landlord to make out bona fide

requirement to the satisfaction of the Controller. It may now be seen whether there is sufficient evidence to satisfy the Court that there is bona fide

personal requirement.

9. It is not in dispute that the landlords are running a Book Shop under name and style of Swastik Book Depot and they are having their head

office at Rajahmundry and branches at Vijayawada and Hyderabad. Their Hyderabad business is located in malgi No. 5-2-486, Risala Abdulla,

and it is a rented premises. That has not been challenged by the appellant herein. It is asserted by P.W. 1 that he has no other non-residential

premises of his own in the twin cities and he required the same for his own business. The only ground set up by the appellants/ respondents to

oppose the eviction petition before the Rent Controller was that they have been in occupation of the demised premises since about 35 years and

that they have a right of pre-emption to purchase the same. This aspect has been considered by the Controller though not by the appellate Judge. It

is on record that a publication was made before finalising the sale transaction between the erstwhile owner and the present landlords. A copy of the

publication has been filed and it is marked as Ex.P-12. It is found by the Controller that in spite of paper publication, the tenants did not move in

the matter and hence the erstwhile landlord had no other alternative except to finalise the sale transaction with the present landlords. In view of the

above finding which is sustainable on the basis of Ex.P-12, I do not find any material to come to a different conclusion. When there is a valid sale

deed in favour of the present landlords and when they are running a Book Shop in a rented premises, there can be no doubt about the bona fide

requirement for personal use and that too when there is no other non-residential premises of their own in twin cities. I am therefore satisfied that

there is sufficient evidence to sustain the finding regarding bona fide personal requirement of the landlords. The learned Counsel for the appellants

contended that the matter may be remanded to the lower Court to enable the parties to adduce evidence on this aspect, but in my view there is no

necessity to remand the matter as there is acceptable evidence on this point. It is true that no evidence is adduced by the appellants in spite of

several opportunities and that does not mean that the matter should be remanded to enable them to adduce evidence. On the contrary that would

amount to filling up the gaps and this Court sitting in revision is not expected to come to the aid of a party, who failed to adduce evidence when

called upon to do so.

10. For all the reasons given above. I am unable to find any merit in this revision petition and the same is fit to be dismissed.

11. In the result, the Revision Petition is dismissed with costs. The tenant is directed to hand over vacant possession of the demised premises within

two months, failing which the landlords shall be entitled to evict them in due course of law.