(2002) 4 ALD 360 : (2002) 2 AnWR 645

Andhra Pradesh High Court

Case No: CRP No. 3806 of 2000

Madigela Rukminiamma @ Ruknamma	APPELLANT
Vs	
Mir Karrar Ali	RESPONDENT

Date of Decision: June 7, 2002

Acts Referred:
Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 â€" Section 12, 12(1), 12(2)

Citation: (2002) 4 ALD 360 : (2002) 2 AnWR 645

Hon'ble Judges: G. Rohini, J

Bench: Single Bench

Advocate: Bajarang Singh Thakur, for the Appellant; Dilip Kumar Shivadkar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G. Rohini, J.
The landlady is the petitioner in this civil revision petition, filed u/s 22 of the A.P. Buildings (Lease, Rent and Eviction) Control

Act, 1960 against the judgment of the Additional Chief Judge, City Small Causes, Hyderabad in RA No. 518 of 1994 confirming the order dated

24-6-1994 in RC No.897 of 1992 on the file of the Court of the II Additional Rent Controller, Hyderabad.

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

The revision petitioner is the owner of the premises bearing No. 16-7-401 situated at Azampura, Hyderabad. The said premises was let out to the

respondent herein for the purpose of carrying on milk business on a monthly rent of Rs.175/-. The petitioner landlady filed RC No. 897 of 1992

u/s 12(l)(b) of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 -hereinafter called "the Act", seeking eviction of the respondent-tenant

on the ground that the premises is required for reconstruction. In the said petition it has been stated by the petitioner-landlady that the petition

schedule premises was constructed 70 years ago and was in dilapidated condition. It was further pleaded that the premises was unfit for habitation

and requires reconstruction and accordingly sought eviction of the tenant u/s 12(l)(b) of the Act. The respondent-tenant contested the said petition

contending that the condition of the building was not so bad and it does not require demolition. He also contended that he has already filed OS

No.4331 of 1992 on the file of the Court of the Vth Assistant Judge City Civil Court, challenging the notice issued by the Municipal Corporation

of Hyderabad for demolition of the structure and the present petition is filed by the landlady with ulterior motive though the premises does not

require immediate reconstruction.

3. Before the Rent Controller on behalf of the petitioner two witnesses were examined and Exs.P1 to P10 documents were marked to substantiate

her claim. The respondent was examined as RW1 and no documentary evidence was filed on his behalf.

4. On appreciation of the evidence on record and after hearing both the parties the Rent Controller by order dated 24-6-1994 held that the

petition schedule building is in a dangerous condition and the same has to be reconstructed as claimed by the petitioner-landlady and accordingly

directed the respondent-tenant to handover vacant possession of the premises to the petitioner within one month from the date of the order, and

thereafter the petitioner shall complete reconstruction after demolishing the old structure and handover similar accommodation to the respondent

within eight months from the date of taking vacant possession of the premises.

5. In pursuance of the said order, the respondent-tenant handed over vacant possession of the premises, however, the petitioner-landlady

preferred RA No.518 of 1994 on the file of the Court of the Additional Chief Judge, City Small Causes, Hyderabad contending that the tenant is

not entitled to seek redelivery of the newly constructed premises. The appellate authority having considered the entire material on record as well as

the relevant provisions of law, by judgment dated 23-6-1999, held that claim of the landlady is not tenable and accordingly dismissed the appeal

with costs directing the petitioner to comply with the order of the Rent Controller. Challenging the said judgement the petitioner-landlady has come

up with the present civil revision petition.

6. Heard the learned Counsel for the petitioner as well as the learned Counsel for the respondent.

7. The learned Counsel for the petitioner has reiterated the contentions that were raised before the appellate authority and vehemently contended

that the order under revision is a erroneous since the appellate authority has failed to take into consideration the circumstances under which the

petitioner is unable to comply with the order of the Rent Controller. Accordingly the learned Counsel pleaded to modify the order of the Rent

Controller declaring that the petitioner is not liable to deliver similar accommodation to the tenant after reconstruction.

8. On the other hand the learned Counsel for the respondent submits that the order of the Rent Controller as affirmed by the appellate authority is

in accordance with law and does not warrant any interference and particularly the modification as sought by the petitioner is untenable and not

bona fide.

9. It is pertinent to note that the petitioner sought eviction of the respondent invoking Section 12(1) of the Act, which provides for recovery of

possession by landlord for repairs, alterations or additions or for reconstruction. Sub-section (2) of Section 12 mandates that no order for

recovery of possession u/s 12 shall be passed unless the landlord gives an undertaking that the building after completion of repairs or alterations of

the new building on its completion will be offered to the tenant who delivered possession in pursuance of an order u/s 12(1) for his reoccupation

before the expiry of the period specified by the Controller.

10. It is clear from the order of the Rent Controller as well as the appellate authority that the petitioner undertook to provide similar

accommodation to the respondent after reconstruction of the building within six months after demolition. In view of the said undertaking given by

the landlady the Rent Controller ordered the respondent to handover vacant possession of the schedule premises to the petitioner within one

month, and further directed the petitioner to complete reconstruction and handover similar accommodation to the respondent within 8 months from

the date of taking vacant possession of the premises. Strangely the petitioner-landlady having obtained possession of the petition schedule premises

from the respondent-tenant did not commence reconstruction in accordance with the sanction plan, which was admittedly issued by the Municipal

Corporation of Hyderabad even before the order of the Rent Controller. On the other hand, she preferred an appeal against the order of the Rent

Controller contending that the respondent is not entitled to seek redelivery of the newly constructed premises as per the provisions of law. Her

specific case before the appellate authority was that there is no necessity to deliver possession after reconstruction. It is clear from the judgment of

the appellate authority that even pending appeal the landlady did not commence reconstruction and as a matter of fact the learned Counsel for the

petitioner states that even as on today reconstruction has not been commenced.

11. When eviction is sought invoking the provisions u/s 12(1) of the Act, it is essential for the landlord to offer the building on completion of repairs

or reconstruction to the same tenant who delivered possession in pursuance of the order under Sub-section (1) of Section 12 for his reoccupation.

Sub-section (2) of Section 12 requires the landlord to give an undertaking to that effect before the Rent Controller. Before making an order of

eviction u/s 12(1) of the Act not only the satisfaction of the Rent Controller that the building in question is reasonably and bona fide required by the

landlord for carrying out repairs or alterations or demolition is mandatory but giving an undertaking by the landlord that the building on completion

of repairs or after reconstruction as the case may be, will be offered to the same tenant is also mandatory. On a careful analysis of Sub-sections (1)

and (2) of Section 12 it is clear that the statutory requirement under Sub-section (2) postulates continuance of tenancy with only a short

interruption to enable the landlord to effect repairs or to reconstruct the building in question. Section 12 does not provide for outright eviction and

as such there is no option for the landlord to retain the building for himself after repairs or reconstruction. Once an order of eviction is passed under

Sub-section (1), the landlord is bound to offer the building after repairs or reconstruction to the same tenant for reoccupation. Hence the

contention raised by the landlord before the appellate authority that there is no necessity to redeliver the possession to the tenant is without any

substance and the appellate authority has rightly rejected the same.

12. In this civil revision petition the petitioner filed CMP No.17152 of 2000 to receive a letter of the Hyderabad Urban Development Authority

dated 30-7-1999 as additional evidence and to consider the same as subsequent event and to pass appropriate orders in the civil revision petition.

The learned Counsel for the petitioner contends that in the schedule premises the respondent was originally carrying on business, but by virtue of

the proceedings of the Hyderabad Urban Development Authority dated 30-7-1999 the area wherein the premises is located has been declared as

Residential Zone, and therefore, it is not possible for the petitioner to offer the premises after reconstruction to the tenant for non-residential

purpose. He further submits that in the circumstances it is impossible for the petitioner to comply with the directions of the Rent Controller and

therefore it is necessary to take into consideration the subsequent developments and to mould the relief by setting aside the orders of the Courts

below to the extent of delivery of similar accommodation to the tenant after reconstruction.

13. The letter dated 30-7-1999 issued by the Hyderabad Urban Development Authority shows that in reply to the application of the petitioner

dated 19-7-1999 he was informed that the land where the suit schedule premises is located is covered by the zonal development plan of Zone X,

according to which the said land is earmarked for Residential Zone and affected by 50'' road. Basing on the said letter the petitioner contends that

it is not permissible to construct a non-residential premises and offer the same to the respondent to carry on business. He further contends that as

per the proceedings of the HUDA if 50'' wide road is maintained, only a small piece of land will be available to the petitioner for reconstruction of

building and therefore it is not possible for him to comply with the direction of the Rent Controller to handover similar accommodation to the

tenant.

14. It is true that the Court has power to take note of subsequent events and to mould the relief accordingly to promote substantial justice to the

parties. However it is well settled that the Court should be cautious in taking cognizance of the subsequent events and developments and

scrupulously comply with the rules of fairness to both sides. In Om Prakash Gupta v. Kanbir B. Goyal AIR 2002 SCW 278, the Supreme Court

held as follows:

...subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before

acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the

course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which

consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment or pleadings

under Order 6, Rule 17 of the CPC. Such subsequent event the Court may permit being introduced into the pleadings by way of amendment as it

would be necessary to do so for the purpose of determining real question in controversy between the parties.

15. In the instant case it is clear from the record that the petitioner/landlady as PW1 deposed before the Rent Controller that since the Municipal

Corporation of Hyderabad did not sanction plan for construction of a mulgi, she obtained plan for residential purpose and therefore she can easily

provide accommodation to the respondent after reconstruction. That was not objected by the tenant and the learned Rent Controller while

accepting the undertaking of the petitioner/landlady ordered eviction u/s 12(1) of the Act. Therefore, as rightly pointed out by the learned Counsel

for the respondent the inability of the landlord to construct non-residential premises was already considered by the Rent Controller while directing

eviction u/s 12(1) the Act. Hence the same cannot be taken as a subsequent event. The petitioner after construction of residential premises is

bound to offer accommodation to the tenant as undertook by her before the Rent Controller.

16. The further contention of the petitioner is that in view of the orders of HUDA to maintain 50'' wide road, it is not possible to comply with the

order of the Rent Controller to handover the premises to the tenant after reconstruction. It is pertinent to note that whereas the learned Rent

Controller ordered eviction on 24-6-1994, the petitioner has come up with the plea expressing her inability to execute the order for the first time in

this revision petition filed in the year 2000. Whether the orders of HUDA earmarking the area in question for Residential Zone were issued

subsequent to the institution of the proceedings before the Rent Controller and how it would affect the petition schedule premises and what would

be the exact extent of land available to the petitioner after leaving space for road widening are all being pure questions of fact, in the absence of

necessary amendment to the pleadings, the same cannot be taken into consideration by this Court at the stage of revision. That apart, Section 12 is

a special provision under which eviction can be ordered subject to the condition that the building after reconstruction will be offered to the same

tenant. Hence if the plea of petitioner that she is unable to offer accommodation for reoccupation of the tenant is accepted the very object of

Section 12 will be frustrated. Such an amendment is impermissible since the same would be contrary to the scope of Section 12 itself. Therefore, I

am unable to agree with the contention of the learned Counsel for the petitioner. The petitioner having given an undertaking that she would provide

accommodation to the tenant and having obtained possession of the premises from the tenant cannot be permitted at the stage of revision to plead

inability to offer the premises after reconstruction for reoccupation of the tenant under the guise of subsequent events. Hence CMP No. 17151 of

2000 is dismissed.

17. However, in the facts and circumstances of the case it is open to the petitioner to move the Rent Controller furnishing particulars of space lost

by her for road widening and explaining her inability to offer similar accommodation to the tenant-respondent on reconstruction of the building. In

the event of any such application being filed, the learned Rent Controller, after affording due opportunity to the respondent, shall decide as to the

genuineness of the contention of the petitioner-landlady regarding the space utilised for road widening and pass appropriate orders as to the extent

of premises to be handed over to the tenant after reconstruction.

18. For the aforesaid reasons, the civil revision petition is devoid of any merit and the petitioner is not entitled to any relief. Accordingly the civil

revision petition is dismissed subject to the above observation. There shall be no order as to costs.