
N.G. Shah Vs T.N. Mohan Raj

CRP No. 3554 of 2000

Court: Andhra Pradesh High Court

Date of Decision: June 25, 2003

Acts Referred:

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

Citation: (2003) 4 ALD 838 : (2004) 1 ALT 470

Hon'ble Judges: T. Ch. Surya Rao, J

Bench: Single Bench

Advocate: S. Bal Chand, for the Appellant; P. Venugopal, for the Respondent

Final Decision: Dismissed

Judgement

T. Ch. Surya Rao, J.

The unsuccessful tenant is the revision petitioner who filed the Civil Revision Petition assailing the order dated

28.7.2000 passed by the learned Additional Chief Judge, City Small Causes Court, Hyderabad, in R.A.No. 254 of 1996. The respondent

landlord filed the eviction petition seeking eviction of the tenant in R.C.No. 199 of 1995.

2. It is expedient to refer the parties as they were originally arrayed to avoid confusion.

3. The facts lie in a narrow compass: The petitioner is the owner and landlord of the premises bearing No. 8569 popularly known as ""Natesan

Compound"". The respondent is a tenant in a portion thereof comprising of one mulgi on the condition of paying a monthly rent of Rs. 200/- doing

hardware business in the name and style of M/s.Asiatic Hardware. However, he is highly irregular in payment of rent. He committed default from

December, 1994 onwards, which is wilful and deliberate. He has further undertaken alterations to the premises without the knowledge and consent

of the petitioner by replacing the wooden door with the rolling shutters and by making internal alterations. He obtained a three-phase electricity

connection to the premises without the knowledge of the petitioner. That apart, the son of the petitioner by name T.N. Basant Kumar has been

carrying on business as interior decorator having the office at his residence only. The petitioner's son intends to open his office in the petition

scheduled premises. Since he has no other commercial premises of their own within the twin cities, the petitioner bona fide requires the petition

scheduled premises for his son's business.

4. The respondent resisted the petition by mentioning inter alia in the counter that he did not undertake any alterations to the premises and fixing of

a rolling shutter in place of wooden door could not be an alteration. The respondent carried out the necessary repairs and the cement mortar

plastering to avoid leakage with the knowledge and consent of the petitioner. He bore the expenses thereof, On account of the said repairs the

value and utility of the building was increased. When the single phase electricity meter which was available in the premises was not sufficient for the

purpose of the business requirement of the respondent, he got the single phase converted into three phase and the expenses involved therefore

were borne by him. When the Board demanded the deposit of the amount, the respondent deposited the said amount. Besides the respondent,

there are 12 other tenants and there have been also some portions available which could be used and utilized by the petitioner. The requirement of

the petitioner is, therefore, not bona fide. That apart, son's requirement cannot be the petitioner's requirement and, therefore, the petition is liable

to be dismissed.

5. Appreciating the evidence on the point, the learned Rent Controller negated the plea of the petitioner about the alleged unauthorized alterations

to the building by the, respondent. On point No. 2 about the default also, the finding went against the petitioner. Only on point No. 3 about the

bona fide requirement he found in the affirmative and consequently directed the tenant to be evicted. In R.A.No. 254 of 1996, the learned

Additional Chief Judge while concurring with the learned Rent Controller found that the petitioner required the premises bona fide and dismissed

the appeal. The respondent is now assailing the said concurrent finding.

6. There has been no gainsaying about the jural relationship of landlord and tenant between the petitioner and the respondent inter se. The quantum

of rent is also not in dispute. Admittedly, the demised premises is a non-residential building and indeed the very lease in favour of the respondent

was for the purpose of carrying on the business. Having regard to the material on record, it is obvious that the tenant has not committed any wilful

default in paying the rents and he has not carried out any alterations to the building as alleged. Indeed, those points have not been urged before me.

The only point that has been sought to be canvassed in this Civil Revision Petition is whether the need of the son of the landlord can be considered

as bona fide requirement of the landlord.

7. Sri S. Balchand, learned Counsel appearing for the respondent-tenant would contend that the demised premises is the self-acquired property of

the landlord; and that the landlord and his son are residing separately and therefore, having regard to the same, the landlord is not entitled to seek

eviction for the personal requirement of his son.

8. Per contra the learned Counsel for the petitioner-landlord, would contend that since the father and the son belong to a joint family and the father

can seek eviction of the demised premises for the bona fide requirement of the son.

9. In view of the competing claims, it is appropriate here to consider the relevant provision of The Andhra Pradesh Buildings (Lease, Rent and

Eviction) Control Act, 1960 ("the Rent Control Act" for brevity) at the outset. The provision insofar as it is relevant for the present purposes reads

as under:

10. Eviction of tenants:-

(1).....

(2).....

(3) (a) A landlord may subject to the provisions of Clause (d), apply to the Controller for an order directing the tenant to put the landlord in

possession of the building

(i).....

(ii).....

(iii) in case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned

which is his own or to the possession of which he is entitled whether under this Act or otherwise

(a) for the purpose of a business which he is carrying on, on the date of the application, or

(b) for the purpose of a business which in the opinion of the Controller, the landlord bona fide proposes to commence:

(4) to (8).....

[Emphasis is mine]

10. Laying much emphasis on the phraseology ""which he is carrying on"", it is sought to be contended that it is the requirement of the landlord

himself alone but not others, that is the criterion. The expression ""which he is carrying on"" has been the subject-matter of discussion in many a

judgment. The first judgment upon which the learned Counsel for the respondent seeks to place reliance is the Bench Judgment of this Court in

Mandalal Srikjshan Malpani v. Ayodhya Devi Asaws 1986 (2) APLJ 327. It has been held in the said judgment that as to whether the business in

question is that of the landlord or not is always a question of fact to be determined by the Court in each case in the light of the pleadings, and the

evidence adduced by the parties and that the burden, however, is upon the landlord to allege and prove all the necessary facts to satisfy the

requirement of the said clause. In para 31 it was held thus:

While it is not possible nor desirable to lay down exhaustively all the situations, a few situations may be mentioned: Where a business is being

carried on or proposed to be commenced by a family or for the benefit of family- family being understood as a unit comprising relatives living

together and jointly carrying on business a non-residential building owned by a member of such family can be sought for by the family. In such a

case, it would be the business of landlord-on the principle that it is not possible to dissociate the landlord from his family, nor can he be reasonably

asked to separate himself before asking for eviction of the tenant. Similarly, where the building is owned by a landlord, the need of his spouse

and/or his undivided sons/ unmarried daughters would be the need of the landlord, since all of them constitute one family unit, and cannot be asked

to disrupt itself as a precondition for suing for eviction.

11. The learned Counsel further relies upon a judgment of the Apex Court in D.N. Sanghavi and Sons Vs. Ambalal Tribhuwan Das, . That was a

case where under the provisions of the Madhya Pradesh Accommodation Control Act. The respondent filed a suit for ejectment against the

appellants on the premise that he needed the premises in question for continuing his business. However, the evidence disclosed that the premises

was needed for the partnership business. The respondent was one of the partners of the firm. Two other partners are the brothers of the

respondent. The Trial Court dismissed the suit. However, the appellate Court allowed the suit on the premise that the business was thus of the

family alone. The High Court confirmed the said finding of the first appellate Court. However, the Apex Court while interpreting the provision of

the said Act held that it was necessary for the landlord to prove that the accommodation was needed directly and substantially for the purpose of

continuing or starting his business. On facts, the Apex Court was of the view that because the landlord required the accommodation for his

partnership business, it did not fulfil the conditions of Section 12(1)(f) in the absence of the original partnership deed.

12. The learned Counsel further seeks to place reliance upon a Bench Judgment of this Court in B. Balaiah Vs. Chandoor Lachaiah, . That was a

case where the question that fell for consideration was as to whether a father-cum-manager of a joint Hindu family who was in possession of a

non-residential building could not ask for eviction u/s 10(3)(a)(iii) of the Rent Control Act of a tenant from another non-residential building

belonging to the family in the same city on the ground that his undivided major son requires it for carrying on his business. The Bench ultimately

answered the point in the affirmative. Obviously, it was a case where the father and the son belonged to a joint family and the demised premises

too belonged to the joint family.

13. Recently the Apex Court in Joginder Pal v. Naval Kishore Behal AIR 2002 SCW 2374, considered the phraseology ""for his own use"". That

was a case emanating from East Punjab Urban Rent Restriction Act, 1949. It was held in para 23 thus:

We are of the opinion that the expression "for his own use" as occurring in Section 13(3)(a)(ii) of the Act cannot be narrowly construed. It must

be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must

for himself require the accommodation and to fulfil the requirement he must himself physically occupy the premises. The requirement of a member

of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of

the landlord for his own use. In the several decided cases referred to hereinabove, we have found the *pari materia* provisions being interpreted so

as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners,

members of family and dependants and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the

social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may

be, obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or

the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the

landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire:

(i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation

or identity nexus between such person and the landlord so as to satisfy the requirement of the first query.

14. Relying on the said judgment very recently the Apex Court in *Dwarkaprasad v. Niranjan* AIR 2003 SCW 1539, interpreted the expression

for occupation by himself." That was a case again emanating from Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Section

13(1)(g) thereof enables the landlord to seek eviction on the ground of bonafide requirement. In para 8 of its judgment, the Apex Court held thus:

This brings us to the legal question about the meaning to be given to the word "himself used in Sub-section (g) of Section 13(1) of the Act.

Normally, the rent legislations are meant for the benefit of the tenants but the rent statutes contain exceptions in favour of the landlord which give

him a right to evict the tenant, the most important being to ensure that he gets payment of rent regularly and promptly and that in case the tenanted

premises is required by him for his personal need, he is able to get its possession from the tenant. So the provision regarding eviction of tenant to

meet the personal requirement of the landlord with respect to the premises is a provision for the benefit of the landlord. The question arises that

should such a provision be construed strictly so as to confine it to the requirement of the landlord alone or can it be extended to include the

requirement of members of landlords' family. In the present case, the plaintiff has pleaded right from the beginning that he constitutes a joint family

with his mother and brothers and sisters. It is also in evidence that the plaintiff holds the property for the benefit of the entire family. Even when the

plaintiff is sole owner of the property, it is open to him to use the property for the benefit of his larger family which includes his brothers and sisters.

The respondent-tenant cannot dispute the fact about the plaintiffs constituting a joint family because it is specifically provided in the lease deed

which is an admitted document. Moreover, the defendant had not led any evidence to contradict or dispute this plea. The way the case has been

argued before the Courts below also clearly suggests that the only objection raised on behalf of the tenant was a legal objection that the need of the

brothers and sisters of the landlord cannot be considered under Sub-section (g). The fact that the plaintiff constituted a joint family with his brothers

and sisters was never disputed.

15. Having due regard to the line of authority referred to hereinabove, it is obvious that it is not the personal requirement of the landlord himself

alone and it may be a requirement of any member of the family of the landlord. In this regard two tests have been laid down by the Apex Court,

namely, (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement and (ii) whether on the facts

and circumstances of a given case, actual occupation and user by a person other than the landlord would be deemed by the landlord as "his own

occupation or user. Insofar as the second requirement is concerned, the answer would depend on the nature and degree of relationship and/or

dependence between the landlord pleading the requirement as "his own" and the person who actually would use the premises; the circumstances in

which the claim arises and is put forward; and the intrinsic tenability of the claim. If the Court is satisfied of the reasonability and genuineness of the

claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

16. Turning to the instant case, Sri S. Balachand, learned Counsel appearing for the respondent-tenant, seeks to place emphasis on the fact that

there has been no plea and proof that the demised premises is the joint family property of the landlord and his son and it is a case where admittedly

the son is residing separately from the father and, therefore, the learned Counsel would contend that the requirement of the son in the facts and

circumstances of the case cannot be considered as the requirement of the father. Obviously, it is a pure question of fact. It is no doubt true that it

has not been specifically pleaded in the petition that the petitioner and the son together constitute a joint family. In para 5 of the eviction petition it

has been pleaded thus:

Petitioner submits that his son T.N.Basant Kumar is carrying on business as Interior Decorator. He is having his office at the residence only.

Petitioner's son intends to open his office in the petition schedule premises. Petitioner as well as his son have no other commercial premises of their

own within the twin cities. As the petitioner bona fide requires the premises under occupation of the respondent, for the petitioner's son's use, the

respondent is, therefore, liable to be evicted from the petition schedule premises.

17. On a holistic view of the entire passage excerpted hereinabove, it is obvious that the father and the son have no other premises of their own

within the twin cities except the one in question. At any rate, the averments cannot be read to construe that the father and the son are the divided

members. Nor it is discernible that the property in question is the self-acquired property of the father. In the counter filed by the respondent-tenant,

in para 4, while adverting to the averments made in para 5 of the petition, a specific plea has been sought to be taken that son's requirement

cannot be the petitioner's requirement. At any rate, it is not the case of the respondent in his counter that the son of the petitioner is the divided

member of the family and the petition scheduled premises is not the joint family property of the father and the son. Apart from the respective pleas,

in the evidence of P.W.1, he admitted that after the death of his father, he and his brother in their own rights divided the property, namely, the

Natesan Compound. P.W.2 stated in his evidence that he is having his office in his house and his residential address is second floor, Gupta

Nilayam, Opposite Deccan Club, East Maredpalli, Secunderabad. One room in the said house is being used as his office. Basing upon these

admissions, it is now sought to be contended by the learned Counsel appearing for the respondent-tenant that the son of the petitioner is a

separated member of the family so as to buttress ultimately his case that the petitioner and the son do not belong to a joint family. I am afraid, I

cannot accede to the said contention. As discussed hereinabove, the main plea in the counter taken by the respondent being that the requirement of

the son is not the requirement of the petitioner and it shall be the petitioner's requirement as enjoined u/s 10(3)(a)(i) of the Rent Control Act, the

subsequent development that the father and the son do not belong to a joint family is quite inconsistent with the original plea taken by the

respondent in the counter. Merely because P.W.2 is residing in a house which is separate, it cannot be concluded as a necessary corollary that he

and his father are the divided members of the joint family. It is nobody's case as can be seen from the respective pleadings. It is, obvious that

certain of the admissions elicited in the evidence of the witness are now being sought to be taken advantage of so as to construct a case. Such an

attempt on the part of the respondent cannot be countenanced. The fact remains that P.W.2 is the son of the landlord. Now the petitioner is

seeking eviction for the bona fide requirement of the son's business. There is nothing on record to show that the requirement is mala fide and is a

ruse to see that the tenant is evicted. Therefore, the bona fide requirement as concurrently held by both the Courts below cannot be assailed when

there is bona fide requirement for the son's business and as discussed hereinabove, the law is that it shall be the business of the landlord or the

business of any member of his family. Under the circumstances, I see no legal bar for obtaining possession by the petitioner-landlord. For the

foregoing reasons, there is nothing to interfere with the impugned order of eviction.

18. In the result, the Civil Revision Petition must fail and is dismissed. Consequently two months time given from this date to the respondent-tenant

for vacating and handing over the petition scheduled premises to the petitioner-land lord. No costs.