

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Civil Revision Petition No.744 of 2009

% 10-12-2015

Meer Mustafa Ali (Died);
and another

... Petitioners

-

Vs.

\$ Syed Afsar Ali Khan

... Respondent

-

! Counsel for the Petitioners: Sri Mohd. Ghulam Hussain

Counsel for the respondent : Sri Moosa Ahmed

< Gist:

> Head Note:

? Cases referred:

1. 1991(1) S.C. 301
2. 1997(5) ALT 493

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Civil Revision Petition No.744 of 2009

-
Between

-
Meer Mustafa Ali (Died);
and another

... Petitioners

-
Vs.

Syed Afsar Ali Khan

... Respondent

-
DATE OF JUDGMENT PRONOUNCED: 10-12-2015

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|---|---|---------------|
| 1 | <u>Whether Reporters of Local newspapers may be allowed to see the Judgment?</u> | <u>Yes/No</u> |
| 2 | <u>Whether the copies of judgment may be marked to Law Reports/Journals</u> | <u>Yes/No</u> |
| 3 | <u>Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?</u> | <u>Yes/No</u> |

HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition No.744 of 2009

Order:

The respondent is a tenant under the petitioners in respect of a mulgi which was leased out to him under a lease deed dated 01-01-1980. In the said mulgi, he was running a tea stall and a pan shop. Initially, the rent was Rs.300/- per month. As on the date of

filing of the R.C., the rent was Rs.850/- per month.

The petitioners filed the R.C., under Sections 10(2)(iii), 10(2)(iv) and 12 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (the Act, for short) seeking eviction of the respondent from the schedule premises. The eviction was sought on the grounds viz., that the respondent was committing acts of waste, causing nuisance and disturbance to the inhabitants of the other mulgies and that he has been keeping the shop till late night by playing music in a loud voice. The other ground is that the mulgi leased out to the respondent and the remaining mulgies, which were leased out to some other tenants, were constructed long ago, that the buildings in the vicinity have much demand for demolition and that the petitioners intend to develop the property by constructing a complex in the place of existing mulgies. As the respondent did not vacate the premises inspite of the *bona fide* requirement of the

1st petitioner, the 1st petitioner got issued a notice dated 17-02-2001 terminating the tenancy by the end of March, 2001 asking the respondent to deliver vacant possession of the premises on 01-4-2001. The respondent sent reply dated 06-3-2001 stating that the requirement is not *bona fide* and that he is not liable to vacate the premises.

On that, the petitioner filed R.C.No.158 of 2001 before the IV Additional Rent Controller, Hyderabad.

2. In the counter, the respondent contended in the R.C., as follows:

He did not commit any acts of waste, did not cause any nuisance or inconvenience to the occupants of the other mulgies in the neighbourhood of the demised premises. He also denied the alleged acts of waste mentioned in the R.C. He submitted that the mulgies are not very old requiring demolition. They do not require any major construction and that the petitioners wanted to evict the respondent on the false ground of development of the property. The requirement is not *bona fide* and therefore, the petition is liable to be dismissed.

3. After the death of the 1st petitioner, the 2nd petitioner, who is said to be her fostered daughter, came on record as his legal representative. She claims to be the owner under an oral gift dated 27-4-2001 and also a Memorandum of Gift Deed dated 26-5-2001 which was executed by the 1st petitioner in her favour. After the death of the 1st petitioner, by virtue of a registered gift deed dated 07-6-2003 the 2nd petitioner claims to have become the owner of the premises. According to the respondent, the 1st petitioner received the rents up to February, 2014 and he expired on 13-3-2014. It is the version of the respondent that during the life time of the 1st petitioner, he never directed the respondent to pay rents

to the 2nd petitioner.

4. The 2nd petitioner filed rejoinder stating that the respondent without any *bona fides* went to the extent of disputing the title of the petitioner which she acquired under a gift deed and therefore, the Court has to take into consideration the subsequent event of the respondent denying the title of the landlord with *mala fide* intention, therefore, he is liable to be evicted under Section 10(2)(vi) of the Act.

5. The learned Rent Controller examining the evidence adduced on either side in the light of the pleadings of the parties, arrived at the conclusion that the 2nd petitioner failed to prove that the respondent has been committing acts of waste and has been causing inconvenience and disturbance to the neighbouring tenants. Basing on the evidence forth-coming, the learned Rent Controller arrived at the conclusion that the 2nd petitioner acquired title to the schedule premises and also that she has financial capacity to reconstruct the building. Taking into consideration the undertaking submitted by the 2nd petitioner under Section 12(2) of the Act that on completion of the reconstruction of the building, the schedule premises will be offered to the respondent for occupation of the tenant, the learned Rent Controller took the view that no prejudice would be

caused to the respondent if the eviction order is passed in favour of the 2nd petitioner under Section 12 of the Act for the purpose of reconstruction of the building.

The learned Rent Controller further observed that the tenant is at liberty to take repossession if the landlady did not comply with the conditions provided under Section 12(2) of the Act by applying to the Court concerned for taking possession from the landlady. Holding as such, the learned Rent Controller allowed the petition and directed the respondent to vacate the premises within a period of two months from the date of order and handover vacant possession to the 2nd petitioner.

6. Feeling aggrieved, the respondent filed R.A.No.98 of 2006 before the Additional Chief Judge, City Small Causes Court, Hyderabad and the appellate Court reversed the finding solely on the ground that the 2nd petitioner failed to prove that the premises is in a dilapidated condition requiring reconstruction.

The appellate Court to record the said finding relied on **P.Orr and Sons (P) Ltd. v. Associated Publishers Madras Limited**^[1]. The Supreme Court rendered the said decision with reference to Section 14(b) of the Tamil Nadu Rent Control Act taking the view that if the crucial condition for demolition was absent, the eviction of the tenant cannot be ordered under Section 14(1)(b) of the

Act solely for the purpose of landlord's economic gains without regard to the condition of the building and consequently reversed the order passed by the Rent Controller directing the eviction of the respondent. Against the judgment passed by the appellate Court, the 2nd petitioner-landlady filed the present revision.

7. Sri Mohammed Ghulam Hussain, learned counsel appearing for the revision petitioner-landlady, submits that the provisions of the Tamil Nadu Rent Control Act and the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 are different, the decision rendered by the Supreme Court in **P.Orr and Sons (P) Ltd.** (1 *supra*) was wrongly applied by the appellate Court in the present case and therefore, the said judgment passed by the appellate Court is liable to be set aside in the present revision.

8. On the other hand, it is submitted by Sri Moosa Ahmed, learned counsel appearing for the respondent-tenant, that subsequent to the filing of the R.C., major portion of the building was demolished for the road widening by the Municipal Corporation, the petitioners did not obtain any permission for construction of the building from the Municipal Corporation and as there are absolutely no *bona fides* on the part of the 2nd petitioner, the revision is liable to be dismissed.

9. In support of his contention, the learned counsel appearing for the revision petitioner-landlady relied on **G.Krishna Rao vs. Lalit Kumar Mehta**^[2] wherein an identical case came to be decided by the learned single Judge of this Court. The learned single Judge took the view that the standards of tests for determining the *bona fide* requirement vary between the provisions of A.P. Rent Control Act and Tamil Nadu Rent Control Act under which Act hardship of tenant is absolute as possession need not be given to the tenant after reconstruction. Therefore, the learned single Judge held that if the landlord gives an undertaking to redeliver the possession after reconstruction, the hardship if any to the tenant is only temporary and if the Court considers that requirement is *bona fide*, it can order eviction under Section 12(1)(b) of the A.P. Rent Control Act. The learned single Judge further held that the landlord has a right to improve his property, the temporary hardship to the tenant should not outweigh the permanent benefit of the landlord. The decision rendered by the learned single Judge squarely applies to the facts of the present case. The petitioners took steps to evict the tenants of other mulgies and the cases in relation thereto have been pending. Therefore, I see no substance in the contention put-forth by the respondent that so far the petitioners did not obtain any permission from the Municipal Corporation for

reconstructing the building. If the 2nd petitioner-landlady satisfies the Court that she has financial capacity to reconstruct the building and her requirement is *bona fide*, then the Court can pass an order of eviction against the tenant under Section 12(2) of the Act. The 2nd petitioner-landlady need not prove that the building is in a dilapidated condition and therefore it requires reconstruction. For the purpose of development of the property, the 2nd petitioner can go for reconstruction and as the 2nd petitioner gave an undertaking as required under Section 12(2) of the Act, the respondent can be evicted from the schedule premises. The appellate Court, therefore, has fallen into error while taking the view that the 2nd petitioner-landlady is required to prove that the building is in a dilapidated condition. The learned appellate Court wrongly applied the judgment of the Supreme Court in **P.Orr and Sons (P) Ltd.** (1 *supra*) to the facts of the present case and the judgment of the Supreme Court referred above is not applicable to the provisions of the the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, which are entirely different from the Tamil Nadu Rent Control Act.

10. For the foregoing reasons, the judgment dated 19-8-2008 passed by the appellate Court in R.A.No.98 of 2006 is set aside and the order dated 05-12-2005 passed

by the Rent Controller in R.C.No.158 of 2001 is restored.
The respondent-tenant is directed to vacate the schedule premises within two months from the date of receipt of a copy of this order. The civil revision petition is accordingly allowed. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

R.KANTHA RAO, J.

10th December, 2015.

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Note:-

L.R. Copy to be marked.

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HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition No.744 of 2009

10th December, 2015.
(Ak)

[\[1\]](#) 1991(1) S.C. 301

[\[2\]](#) 1997(5) ALT 493