

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.5479 OF 2011

ORDER :

Heard Sri S.Lakshminarayana Reddy, learned counsel for the petitioner/tenant and Sri P.Venkatarao, learned counsel for the respondents/landlords.

With the consent of the learned counsel for both the parties, the main C.R.P. itself is disposed of on merits.

The instant Civil Revision Petition is filed by the tenant against an order passed by the learned lower Appellate Court confirming the order passed by the trial court/Rent Controller wherein and where under the trial court i.e., Rent Controller-cum-Principal Junior Civil Judge, Nellore, directed the tenant to vacate and deliver the vacant possession of the petition schedule property to the respondents/landlords within a period of one month from the said date on the ground of change of user and also subletting the shop to third parties.

The facts in brief are as under :

For the sake of convenience, the parties will hereinafter be referred to as arrayed in R.C.C.

The respondents herein i.e., the landlords filed R.C.C. No.44 of 2007 on the file of Rent Controller-cum-Principal Junior Civil Judge, Nellore, under Section 10(3)(a)(iii)(b) and (c) of A.P. Building (Lease, Rent and Eviction) Control Act, 1960, seeking eviction of the tenant i.e., the petitioner herein from the schedule shop.

The averments in the petition are that the petitioners purchased a house site bearing No.2 measuring 33 1/3 Ankanams, and got the same registered vide Document dated 24.12.1994. On the southern side of the

said site the petitioners constructed six shop rooms, each measuring 1 ½ Ankanams. The 3 shops which were on the western side were under petitioner No.2 while the other 3 shops on the eastern side were under petitioner No.1. In the year 1991, they constructed two houses, out of which southern side house was allotted to petitioner No.1 and northern side house was allotted to petitioner No.2. Accordingly, shop rooms were also interchanged to that effect and the petitioner No.1 became the owner of three shops on western side and petitioner No.2 became the owner of three shops on eastern side. An agreement was also executed between the parties to that effect. Prior to the said understanding-cum-settlement deed, the respondent/tenant approached the petitioner No.2, who let out the same to the respondent, for running a cool drink shop. A lease agreement was entered into for a period of one year on a monthly rent of Rs.300/-. An advance amount of Rs.3,000/- was also paid by the respondent. After the expiry of the lease agreement, the petitioner No.2 requested the respondent/tenant to vacate the shop room, who in turn requested further time to choose an alternative location and also pleaded mercy stating that he is getting subsistence from his business. Though enough time was given, the tenant failed to vacate the same. It is alleged that during the year 2003, the respondent deviated from the stipulations mentioned in the agreement and started a Tea stall in addition to cool drink business apart from committing encroachment on to the road in front of the shop. When the petitioner No.2 questioned him, the respondent replied that it was started to create employment to his relative who sustained loss in his earlier business and that he will stop the same within short time. It is stated that putting the said third person in Tea stall and cooldrink shop, the respondent became busy, in other businesses and was not attending the shop. Hence, it is stated that the respondent subleased the premises to a person who was running the shop. Since the petitioner No.2 had three sons, aged about 30 years, 26 years and 20 years respectively, and as the first and second sons were unemployed, and since her husband who is working in the Police Department was at the edge of his retirement, she preferred to start

business in the shop Nos.1 and 2 and hence requested the respondent to vacate the premises during the month of December 2005. Shop No.2 was vacated by the tenant but the respondent who is a tenant in shop No.1, did not vacate and prayed for time upto November, 2006. In the month of October, 2006 when the petitioner demanded the respondent to vacate the shop, the respondent stated that he will vacate the shop by 31.03.2007. In spite of the same, he did not vacate the premises. Hence, an application was filed seeking eviction.

The said application for eviction was resisted by the respondent stating that he joined as a tenant in the shop belonging to the petitioner on 04.08.1988 on monthly rent of Rs.250/- p.m. It is stated that he was running a cooldrink shop under the name and style of "Jaya cooldrinks" for a period of four years and subsequently changed the name as "Sai cooldrinks". In the year 2003, the respondent took another shop on the eastern side of the plaint shop room for a rent of Rs.1,000/- and started tea business in the said shop. Pursuant to the request made by the petitioner for vacating one of the shops, the respondent vacated the second shop on 10.08.2007 and handed over the same to the petitioner. It is stated that the petitioner failed to return the advance amount of Rs.15,000/- paid by the respondent to the petitioner. Learned counsel for the respondent contended that though the respondent requested the petitioner to adjust the advance towards the rents to be paid, the same was refused by the petitioner and demanded the respondent to vacate the said shop also. In view of the above, the respondent is alleged to have preferred O.S. No.1242 of 2007 on the file of III Additional Junior Civil Judge, Nellore, seeking permanent injunction and also filed R.C.C. under Section 8(5) of A.P. Buildings (Lease, Control and Eviction) Act.

Basing on the pleadings, the learned Rent Controller framed the following two points for consideration which are as under :

1. Whether the petitioners require premises for their personal occupation ?

2. Whether the respondent sub-let the schedule shop room ?

In support of their case, the petitioners examined P.Ws.1 to 3 and got marked Exs.P-1 to P-5. The respondent/tenant examined R.Ws.1 and 2 and got marked Exs.R-1 and R-2. After analyzing the evidence available on record, the learned Rent Controller negated the plea of the landlord with regard to bonafide requirement of the said premises. Coming to the second point, the Rent Controller held that the respondent is liable to be evicted from the schedule shop on the ground that respondent has changed the nature of business and also sublet the shop room to the third parties.

Challenging the same, the respondent in R.C.C. preferred R.C.A. No.10 of 2011 on the file of the Principal Senior Civil judge, Nellore. The lower Appellate court framed the following issues:

1. Whether the appeal is maintainable on the grounds urged by the appellant/tenant with regard to the plea of bonafide requirement?
2. Whether the impugned order of the learned Rent Controller-cum-Principal Junior Civil Judge, Nellore, dated 10.02.2011 in R.C.C. No.44/2007 requires interference?

Having considered the entire evidence and material available on record, the lower Appellate authority confirmed the findings recorded by the learned Rent Controller by holding that the petition schedule premises was permitted to be used as a Tea stall in addition to cooldrink business by subletting it to others without the permission of the petitioner/landlord and accordingly ordered eviction. Challenging the same, the tenant preferred the present Revision.

The learned counsel for the respondent/tenant mainly submits that eviction petition was filed by the petitioners/landlords under Section 10(3)(a) (iii)(b) and (c) which deal with the eviction of the tenant on a bonafide requirement. Having negated the plea of the landlords with regard to the requirement of the premises, the Rent Control Court as well as the lower Appellate Court erred in ordering eviction on the ground of subletting and

change of usage of premises, which according to the petitioner was not urged in the petition filed before the Rent Control Court. He further submits that even accepting the plea of running a Tea stall along with cooldrink business, the same does not amount to change in business. In support of the same, he relied upon the judgments of **Veera Swamy v. Dr.D.N.Domale**^[1], **A.Suryanarayana Rao v. C.Radhakrishnaiah**^[2], **Jagan Nath (deceased) through L.Rs., v. Chander Bhan and others**^[3], **Jagdish Prasad v. Smt. Angoori Devi**^[4], **Gundu Premsagar and others v. Nagabandi Jayashankar**^[5], **Jyothi Automobiles, Hyderabad and others v. Khet Bai and another**^[6] and **P.Rajanna v. K.Lalitha Reddy @ Chinnamma Devi and another**^[7].

Per contra, the learned counsel for the petitioners/landlords contends that initially an application was filed for bonafide requirement which was held against the landlords but the plea of sublease and change of use were held in favour of the petitioners/landlords. The said findings were challenged before the lower Appellate court, wherein the order of the trial court was confirmed. He further submits that since these two aspects are urged and pleaded, the argument of the learned counsel for the respondent/tenant that the pleas of sublease and change of usage were not mentioned in the petition, is incorrect. He further submits that since running of tea stall is not in dispute, the same amounts to change in usage of premises and as such the tenant is liable to be evicted. He further submits that the tenant failed to examine any of the workers in the business premises to show that they are his workers, working under him, and not running business on their own, to disprove the plea of subletting. Relying upon Section 108 of the Transfer of Property Act, the learned counsel for the landlords contends that the premises should be used for the purpose for which it was given, failing which the tenant is liable to be evicted. In any event he submits that quoting a wrong provision of law or non-quoting of a

correct provision does not *ipso facto* deny the landlords with the claim made. In support of the same, he relied upon the following judgments : (1) **Action for Welfare I Awakening in Rural Environment (AWARE), Hyderabad v. Deputy Commissioner of Income Tax, Circle 4(4), Hyderabad**^[8], (2) **Bongu Sarojanamma v. Nalla Venkatarama Siva Prasad Rao and another**^[9] and (3) **Vikram Singh Junior High school v. District Magistrate (Fin & Rev) and others**^[10].

I have noted the submissions of both sides.

The point for consideration is whether the concurrent findings of fact, that the respondent in the RCC had sub-let the subject premises and changed the usage of the premises, are liable for interference in exercise of Revisional jurisdiction conferred on this Court under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as 'the Act') ?

It is the contention of the petitioners that having taken the subject shop on lease for the purpose of running a cool drinks business only, the respondent has changed the business to selling of tea in addition to cool drinks and this is not permitted by Ex.P.1.

No doubt, no issue was framed in the RCC by the Rent Controller on the said question but whether this would be a ground to evict the respondent. However, it is clear on the basis of the pleadings and evidence adduced by both sides that the parties were aware about the existence of the said issue. In my opinion, therefore, no prejudice was caused to the respondent on the ground of non-framing of the said issue as respondent himself admitted about the usage of the above shop for selling tea and as such the proceedings are therefore not vitiated. (see **Sayed Akthar v. Abdul Ahad**^[11])

Section 10 (2) (ii) (b) of the Act states that a tenant is liable to be

evicted if he used the building for a purpose other than that for which it was leased.

Ex.P.1 rental agreement dt.01.12.1990 executed by respondent in favour of the petitioner clearly contained a covenant that the subject shop was given on lease to the respondent for running cool drink shop *only*. Another covenant provided is that the tenant shall not sub-let the premises to others without permission of the landlord.

The fact that the premises was taken on lease by him for running a cool drink shop only is admitted in the counter-affidavit filed by the respondent in the RCC. In his cross-examination also he admitted that he took the subject shop on rent only for starting business in cool drinks.

In the counter the respondent contended that he was also a tenant in another shop on the eastern side of the subject shop wherein he was doing tea business; that he was asked to vacate one of the shop rooms; accordingly, he vacated the same on 10.08.2007 and handed it over to the petitioners. Although in his evidence he stated that he started tea stall in the same shop room along with cool drink business, since the said evidence is contrary to his plea in the counter, it cannot be taken into account.

RW.2 who is examined by the respondent stated that respondent took the shop room on rent in 1988; that he joined in the said shop in 1988 itself to run tea stall jointly; both tea stall and cool drinks were there in 1988 itself.

Thus, the evidence of RW.1 and RW.2 clearly shows that tea business was also being done in the subject shop by the respondent.

In **A. Suryanarayana Rao (2 supra)**, cited by the learned counsel for the respondent, no doubt, this Court took a view that the term “use of a building for a purpose” in Section 10 (2) (ii) (b) of the Act means its use for residential or non-residential purpose and that if a building is let out for residential purpose and used for non-residential purpose and *vice versa*, it

is a ground for eviction and that no tenant can be evicted merely because there is a change in the nature of business. But no precedent in support of the said view is quoted therein.

In **Dashrath Baburao Sangale and others v. Kashimath Bhaskar Data** ^[12], the Apex Court was dealing with a case arising under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In that case, the respondent- landlord leased out a piece of open land to the 1st appellant on 01.01.1953 under a rent note which contained a clause that the premises was taken on lease for sugarcane crushing and the tenant would construct a temporary shed in the open land. But later, the tenant was found using the premises for selling cloth and ready-made clothes. The trial court as well as the High Court directed his eviction and the same was confirmed by Apex Court. The Apex Court considered Section 13(1)(a) of the said Act which enabled a landlord to evict a tenant who committed any act contrary to Section 108 (o) of the Transfer of Property Act, 1882. The said provision states that the “lessee must not use or permit another to use, the property for a purpose other than that for which it was leased”. The Court held that the tenant was using the premises for a purpose other than the one for which he had taken the said premises on lease. It held that in the face of clear stipulation in the lease deed, the tenant cannot be heard to say that he had taken the premises on lease for doing business and he was entitled to do any business of his choice.

In **M. Arul Jyothi and another v. Lajja Bal (deceased) and another** ^[13], the Apex Court considered the provisions of the Tamil Nadu Buildings (Lease and Rent Control), 1960 which contained a clause identical to Section 10(2)(ii)(b) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. In the said case, there was a clause in the lease deed which stated that the premises shall be used *only* for carrying on his own business dealing in radios, cycles, fans, clocks and steel furniture and for non-residential purposes and *the tenant shall not*

carry on any other business than the above said business. In that case it was alleged that the tenant started business in chillies, dals and other condiments, etc. which is other than the one for which he took the accommodation on rent. The Apex Court held that there is a distinction between cases of tenancies where there are clauses restricting the use of tenanted accommodation and those which did not contain such clause. It held that by the use of the word “*only*” with reference to the tenant doing business coupled with the last three lines, viz., “*the tenant shall not carry on any other business than the above said business*” clearly spells out the intent of the parties which restricts the user of the tenanted premises, only for the business which is stated therein and no other. It held that once parties enter into a contract, then every word stated therein has to be given its due meaning which reveals the rights and obligations between the parties and no part of the agreement or words used therein could be said to be redundant. It therefore held that the tenant was liable to be evicted for using the premises for a different purpose than the one for which he had obtained a lease.

A learned single Judge of this Court in **Mohd. Farooq Ali. v. Aktheri Begum** ^[14], a case dealing with Section 10(2)(ii)(b) of the Act, wherein there was a specific clause saying that the tenant shall use the premises for doing tailoring and shall not use it for any other purpose whatsoever, followed the decision in **Dashrath Baburao Sangale and others (12 supra)** and **M. Arul Jyothi (13 supra)**, and did not follow the decision in **A. Suryanarayana Rao (2 supra)**. It held that the case of the tenant fell within the class of cases where specifically permissible use is mentioned in the rental deed coupled with a negative covenant against any other use and the tenant is therefore liable to be evicted for using the premises for doing business in ice creams and cool drinks instead of tailoring.

Admittedly, Ex.P.1 contained a clause that the subject shop would be used for cool drink business *only*. The word “*only*” has to be given effect to and cannot be treated as redundant. In this view of the matter and in the

light of the decisions of the Apex Court in Dashrath Baburao Sangale and **others (12 supra) and M. Arul Jyothi (13 supra)**, I am of the opinion that the decision in **A. Suryanarayana Rao (2 supra)** is liable to be distinguished since in that case it does not appear that there was any written lease deed containing such restrictive words as "*only*".

Therefore, the respondent/tenant having admitted doing tea stall business in the subject shop has clearly violated the term in the lease deed Ex.P.1 which entitled him to do *only* cool drinks business and is therefore rightly directed to be evicted by the courts below.

In **Veeraswamy's case (1 supra)**, the allegation against the tenant was that premises which was let out for residence was also being used for bakery business. A finding of fact was recorded stating that the said bakery business was not being done in the leased premises but while residing in the leased premises he was also keeping eatable items and selling them. This decision does not apply because there was no restrictive clause in the terms of the lease as in the present case.

On the issue of sub-letting, the Rent Controller relied on the evidence of RW.2 that he was initially a partner in doing tea stall business with the respondent and he had left it in 2002 and one Narayana was working in the subject shop leased to the respondent. He also held that neither the said Narayana nor any of the workers presently working in the subject shop were examined by the respondent and he only examined RW.2 who left his shop ten years back. He therefore concluded that the respondent is not doing any business in the subject shop and he had given it to some other persons to run the same. This finding was confirmed in appeal by the lower Appellate Court under the Act and concluded that from Ex.R.1, the bunch of photographs, filed by the respondent do not indicate his active participation in running the tea stall business and that he has sub-let the premises to others.

Having regard to the finding as regards change of user by the

respondent, which is sufficient to direct his eviction, I do not find it necessary to consider the submission of the learned counsel for the tenant/respondent on the issue of sub-letting. Suffice it to say that the concurrent findings of fact of the Rent Controller and the lower Appellate Court on the issue of change of user are based on appreciation of evidence and cannot be said to be perverse warranting interference by this Court under Section 22 of the Act.

Therefore, the Revision fails and is accordingly dismissed. No costs.

C.PRAVEEN KUMAR,J

Dt: 23.03.2015

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[\[1\]](#) 2000(5) ALT 685
[\[2\]](#) 1999(4) ALT 684
[\[3\]](#) AIR 1988 SCC 1362
[\[4\]](#) AIR 1984 SC 1447
[\[5\]](#) 2002(1) ALD 554 (DB)
[\[6\]](#) 2000(1) ALD 627
[\[7\]](#) 1995(3) ALD 922
[\[8\]](#) 2003(5) ALT 15 (D.B)
[\[9\]](#) 2007(2) ALT 210
[\[10\]](#) 2002(9) SCC 509
[\[11\]](#) (2003) 7 SCC 52
[\[12\]](#) AIR 1993 SC 2646
[\[13\]](#) (2000) 3 SCC 723
[\[14\]](#) 2009 (1) ALD 139