

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3972 of 2016

ORDER:

This Revision is filed under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control, Act, 1960 (for short 'the A.P.Act, 1960'), questioning the order in R.C.No.373 of 2008 passed by the III Additional Rent Controller at Hyderabad, and the order in R.A.No.270 of 2014 passed by the Additional Chief Judge, City Small Causes Court, Hyderabad, ordering eviction of revision petitioner-tenant on the ground that the revision petitioner denied title of the landlord without bonafides and that the tenant secured alternative accommodation.

2. The respondents herein filed Eviction Petition under various provisions of law i.e., Sections 10 (2)(i), 10 (2)(iv), 10 (2)(b) and 10 (2)(v) of the A.P.Act, 1960, alleging that they are the owners and landlords of mulgi bearing Nos.16-5-281/1 and 16-5-289/4 situated at Dabeerpura, Hyderabad and that the revision petitioner is in occupation of the above mulgis as a tenant on a monthly rent of Rs.2000/-.

3. Petitioner further contended that his father by name Mohd.Yousuf obtained two Mulgis. Mulgi No.1 bearing No.16-5-281/1 is for both residential and non-residential purpose and 16-5-289/4 is exclusively for non-residential purpose under two separate lease deeds dated 01.09.1974 and 01.10.1977 respectively, initially on monthly rent of Rs.125/- and 175/-.

4. The specific contention of the landlord-respondents herein is that their father purchased 33.70 Square yards of vacant land at Dabeerpura from Andhra Pradesh Housing Board and after purchase he erected a shed and let out the said premises/tin shed to the revision petitioner for his hotel business and parking.

5. Though the respondents raised several contentions for eviction of the tenant, the relevant grounds urged in the Eviction Petition are only denial of title of the landlord by the revision petitioner without any bonafides and securing alternative residential accommodation by the revision petitioner. On the above two grounds only the rent controller ordered eviction and confirmed by the appellate Court.

6. The revision petitioner-tenant filed counter denying material allegations *inter alia* contending that the revision petitioner obtained only residential premises for his occupation and that the lease for all the two premises is separate and he is in occupation of only vacant site without any rent and therefore the said premises i.e., vacant site of 33.70 square yards is not a demised premises and is not governed by the A.P.Act, 1960. Pleading ignorance about purchase of vacant site from the A.P. Housing Board does not amount to denial of title without any bonafides and therefore on that ground the eviction of the tenant from the schedule premises cannot be ordered.

7. During the course of enquiry before the Rent Controller, the PWs.1 and 2 were examined, marked Exs.P.1 to P.8, X.1 and X.2 on behalf of the landlord. On behalf of the revision petitioner-

tenant RWs.1 to 3 were examined and got marked Exs.R.1 to R.137.

8. Upon hearing argument of both the counsel, the Rent Controller believed only securing alternative accommodation and denial of title for the third premises i.e., 33.70 Square yards without any bonafides and ordered eviction.

9. Aggrieved by the eviction order passed by the Rent Controller, the revision petitioner herein preferred appeal in R.A.No.270 of 2014 and the appellate Court upon considering oral and documentary evidence, and hearing the argument of both the counsel, affirmed the order passed by the Rent Controller dated 03.11.2014.

10. In the present revision, though several grounds were raised pointing out several irregularities in the order under challenge, during the course of hearing Sri.J.Prabhakar learned counsel for the petitioner would contend that the alleged three premises though forming one schedule in the schedule annexed to the petition, the two premises/Mulgi Nos.16-5-281/1 and 16-5-289/4 were obtained under two different leases for different purposes. Whereas the other part of the premises shown in the schedule which is vacant site of 33.70 Square yards was not obtained on lease but being used for parking purpose and even the landlord-respondents herein also admitted that no rent was fixed for the said premises. Pleading ignorance about the title to vacant site would not amount to denial of title without any bonafide and at the same time, the second premises i.e., 16-5-289/4 is a composite lease and the dominant purpose for which the premises put to use

alone shall be considered for ordering eviction. But both the Rent Controller and appellate authority did not consider these contentions and therefore the order passed by the Rent Controller as confirmed by the appellate authority is not in accordance with law and prayed to set aside the same.

11. Whereas Sri Mehdi Hussain learned counsel appearing for the respondents contended that the open site is an appurtenant site which forms part of building as defined under Section 2(iii) of the A.P.Act, 1960 and thereby denial of title to the open site without bonafides is sufficient to order eviction and simultaneously the revision petitioner admittedly secured residential premises and occupied the same. Therefore, securing alternative accommodation is a ground to order eviction of the tenant i.e., revision petitioner from both the muglis including the vacant site.

12. Considering rival contentions, perusal of the orders of the Rent Controller in R.C.No.373 of 2008 and R.A.No.270 of 2014 the points that arise for determination are as follows :

1. Whether the vacant site of 33.70 Square yards allegedly purchased by the father of the respondents is governed by the provisions of the A.P.Act, 1960, if not pleading ignorance about title amount to malafide denial of title and the tenant in Muglis is liable to be evicted ?

2. Whether securing residential premises is an alternative to the muglis obtained exclusively for non-residential and non-residential and residential purpose, if so, eviction order passed by the Rent Controller and affirmed by the appellate authority are liable to be confirmed by this Court, while exercising power under Section 22 of the A.P.Act, 1960 ?

POINT NO.1 :

13. To decide the real controversy with regard to application of provisions of the A.P.Act, 1960, the pleadings in R.C., are relevant. In para No.2 of the petition, the respondents herein specifically contended that the revision petitioner is in occupation of Mulgi bearing Nos.16-5-281/1 and 16-5-289/4 on a monthly rent of Rs.2000/- which is exclusive of water and electricity consumption charges and that the monthly rent is agreed to be paid on or before 5th of each succeeding month. Later the petition was amended claiming eviction on the ground of denial of title without bonafides and securing alternative premises. In the amended petition in Para 2 (a) it is averred that father of the respondent (petitioner herein) by name Mohammed Yousuf has originally obtained three premises/Mulgis, one for his residential, second for commercial, business purpose and third one for parking. Mohammed Yousuf has originally obtained the first premises/Mulgi bearing No.16-5-281/1 for his residential purpose by executing Rental deed dated 01.09.1974 and monthly rent was Rs.125/-. Thereafter premises bearing No.16-5-289/4 was obtained by the father of the respondent therein vide rental deed dated 01.10.1977 on monthly rent of Rs.175/-, exclusively for commercial purpose.

14. Thereafter, the father of the petitioners therein late Sri K.R.Kannayalal, purchased open land of 33.70 square yards adjacent to the mulgis under sale deed dated 23.02.1979, raised a tin sheet shed, let out to the father of the respondent without any rent. Thus, the revision petitioner's father obtained all the three portions of the schedule premises, two mulgis on payment of rent

and the third vacant site where the respondents father allegedly raised tin sheet shed was without any rent. Therefore denial of title to the vacant site where the tin sheet shed was allegedly raised amounts to denial of title and also on the ground of securing alternative accommodation i.e., residential premises.

15. The respondent-tenant filed additional counter denying the alleged denial of title for the vacant site i.e., 33.70 square yards without any bonafides while contending that he pleaded ignorance about the purchase and raising of tin sheet shed therein while admitting securing of alternative residential accommodation.

16. As seen from the pleadings, father of the respondents herein raised tin sheet shed in the vacant site of 33.70 square yards which was purchased subsequent to letting out of mulgi Nos.16-5-281/1 and 16-5-289/4. In the affidavit filed in lieu of examination in chief, reiterated the pleas raised by the petitioner therein, in the amended petition. In the cross-examination he admitted that initially there is a mention of open land in the petition. Thereafter he pleaded that a tin sheet shed was raised in the open site. But there is no material to establish that the respondents or their father raised tin sheet shed and a subsequent pleading, totally contrary to the earlier pleading, where the respondent therein claimed that it was only an open land of 33.70 square yards. In the absence of proof of raising any tin sheet shed as contended in the amended eviction petition, the premises is only a vacant land of 33.70 square yards and it is not a building within the definition of Building under Section 2(iii) of the A.P.Act, 1960, thereby it would not fall within the ambit of the A.P.Act, 1960 and the tenant

in occupation of such premises cannot be evicted under the provisions of the A.P.Act, 1960.

17. The only contention of learned counsel for the respondents is that the building appurtenant site is part of the building and drawn the attention of this Court to Section 2 (iii) of the A.P.Act, 1960 which defines the word Building as follows :

(iii) 'Building' means any house or hut or part of a house or hut, let or to be let separately for residential or non-residential purposes and includes :-

(a) the garden, grounds, garages and out-houses if any, appurtenant to such house, hut or part of such house or hut and let or to be let along with such house or hut or part of such house or hut;

(b) any furniture supplied or any fittings affixed by the landlord for use in such house or hut or part of a house or hut, but does not include a room in a hotel or boarding house;

18. Taking advantage of the definition of Building under Section 2 (iii) of the A.P.Act, 1960, it is contended that the appurtenant would form part of the building. No doubt if it is covered by a lease deed dated 01.09.1974 and 01.10.1977, certainly it would form part of the building. But here it is an admitted fact that the vacant land was not let out along with the mulgis, since it was purchased subsequently and allegedly let out as per oral lease without payment of any rent.

19. The word 'lease' is defined under Section 105 of the Transfer of Property Act, as follows :

105 : Lease defined.—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain

time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, Lessee, premium and rent defined – *The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.*

20. As per the definition under Section 105 of the Transfer of Property Act, the amount agreed to be paid is the rent for the premises let out by the landlord. But here no amount is agreed to be paid either as premium or rent or in any other form. Therefore, the alleged oral lease in respect of vacant land of 33.70 Square yards would not fall within the ambit of the A.P.Act, 1960. The remedy to vacate the person in occupation either permissive or unauthorised is somewhere else but not before the Rent controller. Denial of title assuming not bonafide to such vacant land not governed by the provisions of the A.P.Act, 1960, is not a ground to order eviction under Section 10 (2) (vi) the A.P.Act, 1960. According to Section 10 (2) (vi) where the tenant has denied title of the landlord or such claim was not bonafide, the Rent controller has to pass order of eviction of tenant after recording a specific finding. When the vacant land is not a building within the definition of Building under Section 2 (iii) the A.P.Act, 1960, and not governed by the provisions of the A.P.Act, 1960, such denial would not fall within the ambit of Section 10 (2) (vi) of the A.P.Act, 1960. Hence, the order of eviction of tenant on the ground of denial of title of the premises vacant site of 33.70 Square yards is not governed by the provisions of the A.P.Act, 1960 and would not fall

under Section 2 (vi) of the A.P.Act, 1960. But the rent controller and appellate authority unable to draw distinction between the premises governed by the provisions of the A.P.Act, 1960 and the premises out side the provisions of the A.P.Act, 1960 and ordered eviction erroneously.

21. Learned counsel for the respondents drawn attention of this Court to a judgment reported in **B.Narsing Rao Vs Gopal Gir**¹ and another judgment of this Court in **K. Narayana Rao and others Vs The Vysya Bank Limited, Secunderabad, rep., by the Branch Manager, A.Balaiah**².

22. The principle laid down in the above two judgments is only with reference to definition of Building under Section 2 (iii)(b) of the A.P.Act, 1960. There is no dispute about the law declared by this Court in the above two judgments. However, as discussed above, the open land which was separately leased out allegedly by the father of the respondents to the father of the revision petitioner is not governed by the provisions of the A.P.Act, 1960. Consequently, denial of title or pleading ignorance about the title of the landlord cannot be said to be bonafide and hence it is not a ground to order eviction under Section 10 (2) (vi) of the A.P.Act, 1960. Therefore, the order passed by the Rent Controller and affirmed by the appellate authority ordering eviction of the revision petitioner from two mulgis and vacant site is erroneous and the same is liable to be set aside.

23. Accordingly, I hold that the revision petitioner cannot be evicted from all the three different premises with different mulgi

¹ LAWS (APH)-1975-10-11

² 1994 (3) ALT 645

numbers. Accordingly, point is held in favour of the revision petitioner.

POINT NO.2:

24. One of the grounds urged for eviction of the petitioner is securing alternative accommodation i.e., shifting to other residential premises and using the premises bearing Nos.16-5-281/1 and 16-5-289/4 for non-residential purpose i.e., to carry on tea stall and chat Bandar is a ground to evict.

25. The revision petitioner admitted about securing residential premises and shifting his residence to that premises.

26. As seen from the allegations made in the petition the premises bearing No.16-5-281/1 was obtained on lease for residential purpose. As per the allegations of the petitioner in the lease deed Exs.P.2 and P.3, the premises bearing No.16-5-281/1 was obtained on lease for residential- cum-non-residential purpose. Thus, the lease in respect of premises bearing No.16-5-281/1 obtained is a composite lease and the other premises i.e., 16-5-289/4 was obtained exclusively for non-residential purpose.

27. Whether shifting the residence of revision petitioner to other residential premises amounts to securing alternative accommodation is a question to be decided by the Courts. To decide the nature of premises, the dominant purpose to which the premises was put to has to be taken into consideration. When composite lease was entered into both for residential and non-residential premises, the eviction petition is maintainable before the Rent Controller provided that he is satisfied in one

and the same proceedings both residence and non-residence are required to be bonafide for occupation. The dominant purpose for which the premises was put to, alone has to be taken into consideration for ordering eviction. The premises in question are residential cum non-residential and non-residential, thus dominant use is for non-residential, one mulgi was obtained on composite lease, normally mulgi cannot be used for residential purpose. Therefore, the dominant use of the building is relevant and if the tenant secured reasonably suitable premises as alternative, it is a ground for eviction but the tenant secured only residential premises for residence while carrying on his business, i.e., tea stall and chat Bandar in the premises.

28. Here, the entire building consists of two mulgis and the dominant purpose to which it is put to is commercial, and residential purpose is only ancillary to the main purpose of commercial use of mulgis. In such case lease is only a composite lease and mere securing residential premises shifting residence to other building cannot be said to be an alternative accommodation to the commercial premises of Mulgi No.16-5-289/4 and for the premises bearing No.16-5-281/1 which was obtained both for residential and non-residential purpose as admitted by PW.1 in the evidence and the recitals in Exs.P.2 and P.3 would directly establish that the premises was obtained for both residential and non-residential purposes. Therefore, taking into consideration the dominant purpose of putting the premises for use, securing residential premises would not constitute a ground under Section 10 (2) (vi) of the A.P.Act, 1960. But the Rent Controller basing on the averment in the petition, and without considering the evidence

in proper perspective ordered eviction of the tenant under Section 10 (2) (v) of the A.P.Act, 1960 and the appellate authority also affirmed the order without adverting to the dominant purpose for which the building was put to.

29. Learned counsel for the respondents drawn the attention of this Court in **K.Narayana Rao's** case supra, where this Court held that on all fours, the building has to be taken into consideration as one building for the purpose of ordering eviction. But in the present case, the two mulgis were let out under two different lease deeds on different dates and for different purposes. The Mulgi No.16-5-289/4 was exclusively used for commercial purpose and Mulgi No.16-5-281/1 is for both residential and commercial purpose. But as a whole the building was put to commercial use and residential purpose is ancillary to the commercial use. Therefore, on the ground that securing alternative residential accommodation, a tenant cannot be evicted under Section 10 (2) (v) of the A.P.Act, 1960. Thus, the Rent Controller and the appellate authority erroneously ordered eviction of the revision petitioner from the schedule premises under Section 10 (2) (v) of the A.P.Act, 1960 and the same are liable to be set aside and accordingly set aside.

30. In the result, the Civil Revision Petition is allowed setting aside the concurrent findings recorded by the Rent Controller in R.C.No.373 of 2008 dated 03.11.2014 and the order dated 01.06.2016 passed in R.A.No.270 of 2014 by the Additional Chief Judge, City Small Causes Court, Hyderabad, dismissing the eviction petition in toto. No costs.

Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

M. SATYANARAYANA MURTHY, J

26th September, 2016.
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CIVIL REVISION PETITION No.3972 of 2016

Dated : 26.09.2016

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