

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION Nos.326 and 365 of 2011

COMMON ORDER:

Since respondents are common to these Revisions and there is a common issue arising for adjudication, these two Revisions are being disposed of by this common order.

2. There is no dispute that respondents own portions bearing H.Nos.8-3-316 to 319 (Old No.5008) situated at Second Bazar, Secunderabad. In these premises, petitioner No.1 in C.R.P.No.326 of 2011 and the sole petitioner in C.R.P.No.365 of 2011 are their tenants.

3. The respondents filed R.C.Nos.75 of 2008 and 76 of 2008 on the file of the Principal Rent Controller, Secunderabad to evict the

1st petitioner in C.R.P.No.326 of 2011 and sole petitioner in C.R.P.No.365 of 2011 invoking Section 10(3) (b), 10-B and 10-C of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act').

4. The respondents contended that they are joint co-owners of the above premises by virtue of judgment and

decree passed in a final decree in a partition suit in I.A.No.136 of 1975 in O.S.No.59 of 1969 on the file of the I Additional Chief Judge, City Civil Court, Secunderabad; that 1st petitioner in C.R.P.No.326 of 2011 was a tenant in a portion consisting of one room and carrying on laundry business in that portion, while the father of petitioner in C.R.P.No.365 of 2011 had taken another portion in the said premises on lease; that the tenancy was oral and the monthly rent was Rs.50/- exclusive of water and electricity consumption charges; the entire house including the portions in the occupation of the petitioners is in a dilapidated condition and a portion of the house had already collapsed; and they require the said premises for reconstruction and for self-occupation. They alleged that the petitioners were asked to vacate the portions in their occupation and having promised to so vacate, they failed to do so. They contended that they also gave a legal notice to petitioners on 08-01-2008. They also pleaded that the respondents' family had expanded and they require the premises for personal occupation and reconstruction. They contended that one of their family members is living in a rented house at Bhoiguda, Secunderabad, that

1st respondent had retired from service on 31-12-2005

and

4th respondent is a Senior Citizen and a widow and therefore they are entitled to evict the petitioners from the said premises.

5. The respective petitioners filed counters admitting the tenancy and the fact that the premises in their occupation are old premises, but denied that they had become dilapidated and un-inhabitable. They claimed that the father of respondent Nos.5 and 6 and the husband of 4th respondent by name Lakshmi Naryana Reddy assured them that they would be allowed to continue to occupy the premises for 30 years without any disturbance. They contended that respondents do not require the portions in their occupation for the purpose of reconstruction and self-occupation. They also denied that they had promised to vacate the portions in their occupation. They contended that respondents did not produce any sanction plan which is a necessity for construction or reconstruction of a house. They also stated that respondents have several other properties, some of which are lying vacant, and as such there is no genuine need since they can make use of the other vacant premises. They contended that respondents are

living in a double storied building admeasuring 400 sq. yds consisting of 14 rooms, that they also own premises bearing No.8-2-109 admeasuring 300 sq. yards and another premises bearing No.8-2-92 both of which are vacant and the petitions for eviction were filed with oblique motive. It was also denied that any of the respondents were Senior Citizens.

6. Before the Rent Controller, the 1st respondent was examined as P.W.1 in both the cases and 1st petitioner in C.R.P.No.326 of 2011 and the petitioner in C.R.P.No.365 of 2011 were examined respectively as R.W.1. While no documents were marked in R.C.No.75 of 2008, respondents marked Exs.P-1 to P-5 in R.C.No.76 of 2008.

7. By separate orders dt.20-11-2009, both R.C.No.75 of 2008 and 76 of 2008 were allowed. In both the cases, the Rent Controller held that respondents *bonafidely* require the R.C. schedule premises for self-occupation, that 1st respondent is a retired employee and 4th respondent is a Senior Citizen and they are entitled to evict the petitioners under Section 10(3) (b), 10-B and 10-C of the Act.

8. The Rent Controller held that the R.C. schedule

premises are each of extent 24 sq. ft. with its wooden shutters are old and their country tiled roof was damaged. The Rent Controller did not accept the contention of petitioners that they spent huge amount of money for repairing the premises in their occupation since they did not place any evidence on record to show that they had affected any repairs and renovation. She held that the petitioners failed to show that late Lakshmi Narayna Reddy had agreed to let the petitioners occupy the R.C. schedule premises for 30 years without any disturbance since there is nothing in writing to prove the same and Lakshmi Narayana Reddy himself was no more. She also referred to admissions of respective petitioners that because of the dilapidated state of the portions in their occupation, the remaining tenants had vacated the property. She held that the other premises allegedly in the possession of the respondents are also in dilapidated condition and some of those properties had collapsed. She also held that a tenant cannot dictate terms to the landlord as to how the landlord should adjust himself without getting possession of the tenanted premises. She held that in the counter filed by petitioners they did not deny specifically that 4th respondent is a Senior Citizen and 1st respondent is a retired employee and no question

was also put to P.W.1 in that regard and the respective petitioners as R.W.1 also did not state in their affidavit in lieu of chief-examination that 4th respondent is not a Senior Citizen and 1st respondent is not a retired employee.

9. Challenging the same, the 1st petitioner in C.R.P.No.326 of 2011 filed R.A.No.136 of 2009 and petitioner in C.R.P.No.365 of 2011 filed R.C.No.135 of 2009 before the Additional Chief Judge, City Small Causes Court, Hyderabad.

10. By separate orders dt.10-12-2010, both the appeals were dismissed. The appellate authority held that the benefit of Section 10-B and 10-C of the Act can be granted to respondents in R.C.No.136 of 2009 but the same cannot be granted to them in R.A.No.135 of 2009 since such benefit can be only given for one time during the lifetime of respondent Nos.1 and 4. She held that in the same premises there were four portions also, two of which had already collapsed and the respondents wish to reconstruct the available portion although there is an Income Tax proceeding pending. She also noted the admission of respective petitioners that the portions in their occupation are in a dilapidated condition. She

rejected the contention of petitioners that Section 12 of the Act is attracted and it was incumbent on respondents to give an undertaking that after reconstruction they should induct the petitioners again as tenants. She held that the petitioners failed to produce any rebuttal evidence to show that respondents, with an intention to sell the property to others, filed the eviction petitions and that the requirement of respondents is not *bona fide*. She also observed that since the building in occupation of petitioners is in a dilapidated condition, it may collapse at any time and cause danger to the life of the occupants who are living therein.

11. Challenging the orders in R.A.Nos.136 of 2009 and 135 of 2009 C.R.P.Nos.326 and 365 of 2011 have been filed by petitioners.

12. Pending C.R.P.No.326 of 2011, the petitioner therein died and his wife was impleaded as 2nd petitioner.

13. Learned counsel for petitioners primarily contended that since the portions in the occupation of petitioners are alleged to be in a damaged condition and respondents require the same for reconstruction, they should have sought for relief under Section 12 of the Act and they cannot be allowed to invoke Section 10(3)(b) of the Act.

He also contended that respondents had not given any undertaking as mandated by Section 12 of the Act that they would re-induct the respective petitioners in portions of the structure after its reconstruction and therefore the Courts below erred in directing eviction of respective petitioners. He relied upon the judgment of the Supreme Court in **Kondeti Suryanarayana and others Vs. Pinninathi Seshagiri Rao**^[1]. He, however, did not seriously dispute the finding of the Courts below that 1st respondent is a retired employee and 4th respondent is a Senior Citizen. But he contended that having sought eviction on the ground that the building is in a dilapidated condition and they require it for reconstruction, the respondents can only invoke Section 12 of the Act and not Section 10-B and 10 (1) of the Act.

14. Learned counsel for respondents, however, refuted the above contentions and contended that when application for eviction is filed not only on the ground that the premises is in a dilapidated condition requiring demolition and reconstruction but also on the ground of *bona fide* requirement, there is no necessity for the landlords to give an undertaking that they would put back the tenants in possession after reconstruction and that

judgment cited by the learned counsel for petitioners is inapplicable. He relied on **Savani Transport Pvt. Ltd (Now Savani Transport Ltd.) Rajahmundry Vs. Datti Venkateswara Rao**^[2] and **Shaik Sattar Vs. Thota Venkata Subbaiah alias Vijaya Kumar and another**^[3] in this regard. He also contended that it is not for the tenant to dictate terms to the landlord as to how the landlord should adjust himself without getting possession of the tenanted premises and relied on the decision in **Sarla Ahuja Vs. United India Insurance Company Limited**^[4] in support of the above proposition. He also pointed out that a petition for eviction can not only be filed on ground of *bonafide* requirement but also invoking Sec.10-B and Sec.10-C.

15. I have noted the submissions of both sides.

16. Both the Rent Controller as well as lower appellate authority have referred to the admissions of the respective petitioners that the portions in their occupation are in a dilapidated condition and that they need to be reconstructed.

17. Section 10(3)(a)(i)(b) of the Act states :

“Section 10 Eviction of tenants:

(1) xxx

(2) xxx

(3) 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) in case it is a residential building -

(a) xxx

(b) if the landlord who has more buildings than one in the city, town or village concerned is in occupation of one such building and he bona fide requires another building instead, for his own occupation.....”

18. Section 12 of the Act states :

“Section 12 Recovery of possession by landlord for repairs, alterations or additions or for reconstruction

(1) Notwithstanding anything in this Act, on an application made by a landlord, the Controller may, if he is satisfied

(a) that the building is reasonably and bona fide required by the landlord for carrying out repairs, alterations or additions which cannot be carried out without the building being vacated; or

(b) that the building consists of not more than two floors and is reasonably and bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.

(2) No order for recovery of possession under this section shall be passed unless the landlord gives an undertaking that the building on completion of repairs, alterations or additions or the new building on its completion will be offered to the tenant, who delivered possession in pursuance of an order under sub-section (1), for his occupation before the expiry of such period as may be specified by the Controller in this behalf.

(3) In case the tenant, to whom the building or the new building, as the case may be, is offered under sub-section (2) by the landlord does not want to occupy it the landlord shall give notice of vacancy in writing to the authorised officer under sub-section (1) of Section 3.

(4) Nothing in this section shall entitle the landlord, who has recovered possession of the building for repairs, alterations or

additions or for reconstruction to convert a residential building into a non-residential building or a non-residential building into a residential building unless such conversion is permitted by the Controller at the time of passing an order under sub-section (1)".

19. In **Kondeti Suryanarayana** (1 supra), a landlord wanted to evict the tenants on the ground that the building is reasonably and *bonafidely* required for him for demolition and reconstruction. He contended that after demolition, he would not have reconstructed since such reconstruction was advised to be inauspicious by Pundits of Vastu Shastra. The Rent Controller allowed the applications and accorded permission to the landlord to demolish the building without any direction to reconstruct the building as required under sub-clause (b) of sub-section (1) of Section 12 of the Act. This was confirmed by the High Court. The tenant approached the Supreme Court. The Supreme Court observed that when a landlord requires a building to be demolished, necessarily he has to reconstruct the building on the same site of building and on reconstruction of the new building, the tenant has a right to re-enter into the said premises.

20. This judgment of the Supreme Court did not deal with a claim of *bona fide* requirement under Section 10(3) (b) of the Act in respect of premises which is in a

dilapidated condition and which also requires reconstruction. Therefore this cannot be relied on by petitioners.

21. The question of a landlord who requires the premises which is in a dilapidated condition after reconstructing the same *bonafidely* for his own use or for the use of his family members was considered by this court in **Savani Transport Pvt. Ltd** (2 supra) and **Shaik Sattar** (3 supra).

22. In **New Peking Chinese Hotel Vs. Hindustan Builders** ^[5], a Division bench of this Court explained the ambit of section 12 of the Act and observed that the undertaking contemplated under section 12 of the Act is required when recovery of possession is ordered under that particular section and idea is to safeguard the interests of the tenant by providing him a provision for occupation of the premises after reconstruction but the same condition need not be imposed when eviction is ordered on grounds other than demolition and reconstruction.

23. In **Savani Transport Pvt. Ltd** (2 supra), eviction was sought for a non-residential building in dilapidated condition on the ground of *bona fide* requirement of the

landlord mentioning both section 10(3)(a)(iii) and 12(1)(a) of the Act. This Court held that the claim for eviction on the ground of repairs was not an independent one but is connected with the *bona fide* requirement of the landlord and a mere reference to Section 12 (1)(a) of the Act in the preamble of the petition does not make it an independent ground and so there was no question of the landlord giving an undertaking under Section 12(2) of the Act that he would redeliver the premises to the tenant after the repairs.

24. This principle was reiterated in **Shaik Sattar** (3 supra) by relying on **New Peking Chinese Hotel** (5 supra). The judgment of the Supreme court in **Kondeti Suryanarayana** (1 supra) was distinguished stating that in that case the Rent Controller had allowed the application for eviction under Section 12 of the Act and that was why the Supreme Court's decision would not apply if eviction is ordered on a different ground such as *bona fide* requirement.

25. In the present case, there is no dispute that the application for eviction was filed invoking Section 10(3)(b) and Section 12 of the Act and essentially the plea of respondents is that their family was expanding and they

require the portions in the occupation of the petitioners for their own use. Because the structure is in a dilapidated condition, they pleaded that they would like to demolish and reconstruct it.

26. Therefore, I do not agree with the learned counsel for petitioners that respondents' plea is to be considered as one under Section 12 of the Act and they should be compelled to give an undertaking to allot portions in the reconstructed premises to petitioners.

27. The concurrent findings of the both Courts below are that respondents *bonafidely* require the premises and that the other properties possessed by them are also in a dilapidated condition and are unfit to be used as residential purpose.

28. As held by the Supreme Court in **Sarla Ahuja** (4 supra), it is not for a tenant to dictate terms to landlord as to how the landlord should adjust himself without getting possession of the tenanted premises. Therefore, the petitioners cannot be allowed to contend that respondents should somehow adjust themselves in the other dilapidated premises instead of seeking their eviction from the subject premises.

29. In any event, the petitioners had not disputed that

the

1st respondent is a retired employee and 4th respondent is a widow and Senior Citizen. Therefore on this ground also the respondents are entitled to evict the petitioners.

30. In this view of the matter, I do not find any merit in these Revisions and they are accordingly dismissed. No costs.

31. The petitioners are granted three (03) months time from today to vacate the portions in their occupation subject to condition that they should pay the rents due for this period as well and also file an undertaking that they would vacate the R.C. schedule premises within the prescribed time. Such undertaking shall be filed within one month from today before the Rent Controller. In default filing of such undertaking or payment of rent, they shall be liable to evicted forthwith.

32. As a sequel, miscellaneous petitions pending if any, in these Civil Revision Petitions shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 15-03-2016

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[\[1\]](#) AIR 2000 SC 70

[\[2\]](#) 1997(2) ALD 249

[\[3\]](#) 2002 Suppl. (1) ALD 79

[\[4\]](#) (1998) 8 SCC 119

[\[5\]](#) 1989(3) ALT 138 (DB)