

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

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**CIVIL REVISION PETITION Nos.4128 and 4287 of 2015**

Between:

Rakesh Patel

....Petitioner

and

K.Sudershan Reddy

....Respondent

JUDGMENT PRONOUNCED ON : 07.01.2016

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :**

1. Whether Reporters of Local newspapers : Yes  
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No  
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No  
see the fair copy of the Judgment?

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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**CIVIL REVISION PETITION Nos.4128 and 4287 of 2015**

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**COMMON ORDER:**

These two Civil Revision Petitions are being disposed of by this common order as they are filed by two tenants against the same landlord.

C.R.P.No.4128 of 2015 arises out of an order dated 30.07.2015 in R.C.A.No.5 of 2014 passed by the learned Rent Appellate Authority (Senior Civil Judge), Nizamabad, confirming the order dated 10.11.2014 in R.C.C.No.8 of 2012 passed by the learned Rent Controller (Principal Junior Civil Judge), Nizamabad. C.R.P.No.4287 of 2015 arises out of an

order dated 30.07.2015 in R.C.A.No.4 of 2014 passed by the learned Rent Appellate Authority (Senior Civil Judge), Nizamabad, confirming the order dated 10.11.2014 in R.C.C.No.7 of 2012 passed by the learned Rent Controller (Principal Junior Civil Judge), Nizamabad.

The respondent herein is the landlord. He filed R.C.C.Nos.7 and 8 of 2012 against the tenants for eviction from mulgies bearing Municipal No.5-6-183 with a built up area of 280 square feet each situated on Hyderabad road, adjacent to Pragathi Trust Hospital, Saraswathinagar, Nizamabad. They were filed with the allegation that the petitioners herein were tenants of the earlier owners and were running a battery shop and an auto mobile shop on a monthly rent of Rs.2,000/- and 1,800/- respectively. The respondent herein purchased the two RCC roofed mulgies and the tin shed roofed mulgi with rear open land (out of the total 10 RCC roofed mulgies and one tin shed roofed mulgi) from the original owners under a registered sale deed dated 24.11.2011. After purchase of the said property the petitioners herein have been paying the rents up to June 2012 to the respondent herein. The respondent has been carrying on the business in automobile vehicles under the name and style of M/s.Sai Motors, Nizamabad, in a leased premises bearing Municipal No.5-6-517/13, which is opposite to the mulgies purchased by him. Earlier he was doing the business in two wheeler vehicles and now he is carrying on the business of purchase and sale of old tractors in the said leased premises. He purchased the two mulgies and tin shed mulgi along with rear open land to dismantle the old existing structures and construct a new building to shift his automobile vehicle business in his own premises. He has been continuing the business in the leased premises under lease since 02.02.1993. His landlord filed O.S.No.87 of 1999 on the file of the learned Senior Civil Judge, Nizamabad, for his eviction and the said suit was decreed on 21.02.2008. He had preferred an appeal before this Court in A.S.No.516 of 2008 and by virtue of the stay granted by this Court on 14.10.2008, he has been continuing in the leased premises. His continuance would be temporary till the disposal of

the appeal. The respondent orally requested the petitioners herein to vacate the mulgies and handover the same to him. But, they evaded. He issued a notice on 28.05.2012 calling upon them to vacate the premises and in spite of the same, they did not vacate. Thus, he required the mulgies for his *bona fide* personal requirement. He stated that he is not having any other non-residential building of his own anywhere within the limits of Nizamabad Municipality to shift his business, except the above premises purchased by him.

The respondent in R.C.C.No.7 of 2012 filed a counter affidavit stating that he has been paying the rents without default. He has no other source of income, except the income from the demised premises and the petitioner therein has got shops situated at other places. Accordingly, he sought dismissal of the petition. The counter affidavit of the respondent in R.C.C.No.8 of 2012 is also to the same effect.

The learned Rent Controller framed the following points for consideration:

- “1. Whether the requirement of the petitioner is genuine and bonafide?
2. Whether the petitioner is entitled for eviction of the respondent?
3. To what relief?”

The respondent herein was examined as P.W.1 and marked Exs.P1 to P4 in R.C.C.No.7 of 2012 and Exs.P1 to P3 in R.C.C.No.8 of 2012. The petitioners were examined as R.W.1 and marked Ex.R1 in R.C.C.No.8 of 2012.

The learned Rent Controller noticed that this Court dismissed A.S.No.516 of 2008 filed by the landlord granting nine months time to the respondent herein to vacate the leased premises, which expired in March, 2014. He also observed that there is no dispute with regard to the relationship between the petitioner and the respondents therein. He

disbelieved the plea of the tenants that the landlord is not carrying on any business of selling old tractors, demand to increase the rent ten times and having other non-residential premises. Ultimately, the petition filed by the landlord was allowed by order dated 10.11.2014 against which the tenant in R.C.C.No.7 of 2012 filed R.C.A.No.4 of 2014 and the tenant in R.C.C.No.8 of 2012 filed R.C.A.No.5 of 2014.

Before the lower appellate Court a new contention was raised stating that the landlord had shifted his business to another premises situated at Vinayaknagar, Nizamabad, and hence, the relief sought by him has become extinct. The lower appellate Court observed that merely because the landlord had shifted his business to another premises, which is a rented premises, the tenants cannot say that the bonafide requirement of the landlord ceased. It also observed that the very intention of purchasing the demised premises and the adjacent premises by the landlord was to shift his business to his own premises. The lower appellate Court, accordingly dismissed the appeals by separate orders dated 30.07.2015 while confirming the findings recorded by the learned Rent Controller. Challenging the said orders, the present revisions are filed.

Learned Counsel for the petitioner in C.R.P.No.4128 of 2015 submitted that the bonafide requirement should, not only exist as on the date of filing of the petition, but also should continue during the pendency of the proceedings and since the landlord has been continuing the business in another premises, the requirement of the landlord ceased. He further submitted that one mulgi is already vacant and he cannot seek vacation of another mulgi for his business. Even otherwise also, he submitted that the demised premises is hardly of any use as he requires large accommodation for the purpose of his business. He relied on **Kunji Bai G. Chugani v. Fashions, Secunderabad**<sup>[1]</sup>, **Yashoda Devi Sarada v. Poornima Dresses**<sup>[2]</sup>, **Mohammed Abdul Rahman v.**

B.Manorama<sup>[3]</sup>, Smt.Vidya Bai v. Shankerlal<sup>[4]</sup>, D.Devaji v. K.Sudarashana Rao<sup>[5]</sup>, Seshambal (dead) through LRs v. M/s.Chelur Corporation, Chelur Building<sup>[6]</sup>, Hasmat Rai v. Raghunath Prasad<sup>[7]</sup>, Pasupuleti Venkateshwarlu v. The Motor and General Traders<sup>[8]</sup> and Amarjit Singh v. Smt.Khatoon Quamarain<sup>[9]</sup>.

The aforesaid arguments of the learned Counsel for the petitioner were adopted by the learned Counsel for the petitioner in C.R.P.No.4287 of 2015.

Learned Counsel for the landlord, on the other hand, submitted that the landlord has been continuing the business in the rented premises and he needs the petition mulgies for the purpose of his own requirement. He submitted that the landlord purchased the property in order to demolish the old premises and construct a new building for the purpose of his business. He relied on **Chander Bhan v. Ram Dayal**<sup>[10]</sup>, **Joginder Pal v. Naval Kishore Behal**<sup>[11]</sup>, **Vallampati Kalavathi v. Haji Ismail**<sup>[12]</sup>, **Shiv Sarup Gupta v. Dr.Mahesh Chand Gupta**<sup>[13]</sup>, **Sarla Ahuja v. United India Insurance Company Ltd.**<sup>[14]</sup>, **G.Venkatamma (died) per LR v. Dr.Vijay Chandra Mathur**<sup>[15]</sup>, **Danduboina Madhav Rao v. Kandi Alchiraju**<sup>[16]</sup>, **Kiron's Partnership Firm v. Mangalagiri Mohammed Ibrahim**<sup>[17]</sup>, **Garipalli Rajasree v. Kondapuram Mallesha and Brothers**<sup>[18]</sup>, **Challa Maheswara Rao v. Vadagam Venkata Subba Rao**<sup>[19]</sup>, **P.Lingamma v. Dr.P.Venugopal**<sup>[20]</sup>, **Amir Ali v. Maneck H.Ghadiali**<sup>[21]</sup>, **M.Padmanabha Setty v. K.P.Papiiah**<sup>[22]</sup>, **M/s.Vijayalaxmi Printing Press v. Nandula Shankar**<sup>[23]</sup> and **Smt.Vidya Bai's case** (supra).

In the light of the above contentions, the following points arise for consideration:

- i) Whether the landlord, who is in occupation of a rented premises, is entitled for eviction of the tenant from his own premises on the ground of bonafide requirement?
- ii) Whether the bonafide requirement raised by the landlord in his petition ceases to operate by acquisition of another rented premises during the pendency of the proceedings?

The facts in this case are not disputed. The respondent in these two Civil Revision Petitions is the landlord, whereas the petitioners are tenants. The landlord purchased three mulgies for the purpose of construction of a building to suit his requirements. Though he was doing business earlier dealing in two wheeler vehicles, now he is doing the business in purchase and sale of tractors. The tenants also do not dispute that the landlord is a businessman and is continuing his business. The only ground that is urged by the tenants is that, during the pendency of the proceedings, the landlord acquired a larger accommodation and opened new showrooms and by virtue of the opening of the said showrooms, the original requirement does not exist.

In view of the above facts, the law and the binding precedents have to be examined. The application was filed by the landlord under Section 10(3)(a)(iii)(a) of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960. It reads as follows:

“10(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 -

...

(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

...”

A Constitution Bench of the Supreme Court in **M.Padmanabha Setty's** case (supra), while construing the provisions of the Mysore Houses Rent and Accommodation Control Act, held that it cannot be said to be unreasonable for the landlord to shift to his own premises while he is in occupation of a tenanted premises over which he has no right of possession.

A Full Bench of this Court in **Smt.Vidya Bai's** case (supra) considered the following question:

“What we are more concerned with in this revision petition is the legal question as to whether a landlord having a non-residential building in his occupation is entitled to recover possession of another non-residential building situate in the same city, owned by him, in the occupation of a tenant, for the purpose of carrying on his business or for commencing a business in that premises...”

Ultimately it was held as follows:

“13. It is our considered opinion that under Sec. 10(3) (a)(iii) of the Act, a landlord in occupation of a non-residential building is not entitled, for carrying on his business or for commencing a business, to get back possession of another non-residential building in the occupation of a tenant; the bar under the Section against securing eviction of the tenant of such non-residential building is absolute; suitability, convenience and sufficiency of the non-residential building already in the occupation of the landlord for carrying on the business of the applicant (landlord) or to meet the bona fide need of other member of the family of the applicant (landlord), independent of and over above the need of the applicant (landlord), are all, in our view, irrelevant considerations in the context of construing the provisions in S.10(3)(a)(iii) of the Act which, in clear terms interdicts the landlord, in absolute terms, from seeking recovery of the non-residential building belonging to him in the occupation of the tenant.”

A later Full Bench of this Court in **M/s.Vijayalaxmi Printing Press's** case (supra) explained the situation and held that the landlord, who is only a statutory tenant, is not debarred from seeking possession of his own non-residential building and it is not incumbent on him to first vacate the non-residential premises in his occupation as a condition precedent for maintaining eviction petition in respect of his own non-

residential premises in the occupation of his tenant. The Court held that the decision of the Supreme Court in **M.Padmanabha Setty's** case (supra) is directly on the point. Accordingly, it held that the judgment of the Full bench in **Smt.Vidya Bai's** case (supra) was concerned with and dealt with only the first part of Section 10(3)(a)(iii) i.e., that the landlord not occupying a non-residential building in the city, town or village concerned, which is his own; but not with the second part i.e., the landlord not occupying a non-residential building in the city, town or village concerned to the possession of which he is entitled whether under the Act or otherwise.

Now I would consider the decisions relied on by the learned Counsel for the petitioners.

In **Amarjit Singh's** case (supra) the Supreme Court considered Section 14(1)(c) of the Delhi Rent Control Act and it was held that in order to establish his bonafide requirement, the landlord should not have any other suitable accommodation and the said provision does not violate Articles 14 and 21 of the Constitution. It was also held that subsequent events also can be taken into consideration in rent control proceedings. The said judgment does not lay down any ratio with regard to the nature of reasonable suitable accommodation by the landlord.

The possession of a non-residential building to which he is entitled was already explained by the decision of the Full Bench of our High Court supra.

The decision in **Pasupuleti Venkateshwarlu's** case (supra) is also to the effect of enabling the Court to take subsequent events into consideration.

In **Hasmat Rai's** case (supra) the Supreme Court was considering a case where the landlord acquired possession of one of the premises during the pendency of the proceedings and his application for eviction of

tenant in another premises on the ground of need for residence was negatived. In the said case, it was also held that if the landlord comes in possession of larger premises during eviction proceedings and if he proves his interest in rebuilding the similar premises also, necessary directions can be given under Section 18 of the Madhya Pradesh Accommodation Control Act. The decision in **Seshambal's** case (supra) is not applicable to the facts of the present case.

In **D.Devaji's** case (supra) the Supreme Court upheld the ratio laid down in **Smt.Vidya Bai's** case (supra) and **M/s.Vijayalaxmi Printing Press's** case (supra). But, on the facts of the said case, the Supreme Court held that the landlord does not require the demised building for bonafide purpose.

A learned single Judge of this Court in **Mohammed Abdul Rahman's** case (supra) considered a case where the tenant handed over possession of two mulgies during the pendency of the appeals, and it was held that it operated as bar for evicting tenants from the other mulgies.

In this case, the eviction of one mulgi is not sufficient for the purpose of the landlord and his opening of show room in a rented premises is not a bar for seeking eviction from the demised premises.

The decision in **Yashoda Devi Sarada's** case (supra) does not help the case of the petitioners.

Similarly, the decision in **Kunji Bai G. Chugani's** case (supra) also does not help the case of the petitioners herein as it was held therein that, if the landlord proves that the possession of other non-residential premises is not sufficient, considering the quality, size and suitability of the building, his claim can be accepted. It was also held that the landlord can seek eviction of the tenant provided he is not occupying a non-residential building in the city which is owned or to the

possession of which he is entitled to.

A perusal of the decisions relied on by the learned Counsel for the respondent show that the Supreme Court in **Sarla Ahuja's** case (supra) held that the tenant cannot dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. It was held that what was required is that the requirement of the landlord should be bonafide.

In **Shiv Sarup Gupta's** case (supra) it was held that the High Court cannot appreciate or re-appreciate evidence merely because it is inclined to take a different view of the facts. However, it was held that the High Court is duty bound to test the order of the Rent Controller on the touchstone of 'whether it is according to law' and for that limited purpose it may enter into re-appraisal of evidence and ascertain whether the conclusion arrived at by the Rent Controller is wholly unreasonable. In the said decision it was also held that the landlord may convince the Court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need and he cannot be squeezed into less suitable premises just to protect the tenant's occupancy.

A learned single Judge of this Court in **G.Venkatamma's** case (supra) held that when the tenant was unable to show that the landlady was having other non-residential premises and the same is vacant, the petition of the landlady cannot be dismissed.

In **Challa Maheswara Rao's** case (supra) a learned single Judge of this Court considered the case of the landlord who wanted to construct new premises to suit his business and it was held that the said plea is acceptable under Section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act.

Another learned single Judge of this Court in **P.Lingamma's** case

(supra) considered the case of the landlord carrying on professional business in a rented mulgi and it was held that the bonafide personal requirement of the landlord was proved on the facts of that case.

The decision in **Amir Ali**'s case (supra) is also to the same effect.

Coming to the facts of this case, it is the case of the landlord from the beginning that he purchased the demised mulgies to shift his business after dismantling and constructing a new building. By the date of purchase itself he was doing business in automobile vehicles. He suffered a decree in an eviction suit and hence he needed the premises for his bonafide requirement. Though he opened show rooms in rented premises, that would not disentitle him to maintain the eviction proceedings against the petitioners. The learned Rent Controller as well as the Rent Appellate Authority concurrently held that the landlord required the premises for his requirement and the said requirement was genuine and bonafide. The petitioners could not show the said finding to be perverse or not based on material available on record. Hence both the points are held against the petitioners/tenants and in favour of the landlord.

Consequently, the Civil Revision Petitions are dismissed. However, in view of the nature of the premises, the tenants are given time to vacate the premises till 31.05.2016 on the condition of tenants filing an undertaking before the learned Rent Controller to handover vacant possession of the demised mulgies on or before the said date and continuing to pay the agreed rent till then, within fifteen days from the date of receipt of a copy of this order. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

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**(A.RAMALINGESWARA RAO, J)**

07.01.2016

vs

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- [\[1\]](#) 2012 (3) ALD 132
- [\[2\]](#) 2011 (3) ALT 570
- [\[3\]](#) 2008 (4) ALT 702
- [\[4\]](#) AIR 1988 AP 184
- [\[5\]](#) 1994 Supp (1) SCC 729
- [\[6\]](#) AIR 2010 SC 1521 : (2010) 3 SCC 470
- [\[7\]](#) AIR 1981 SC 1711
- [\[8\]](#) AIR 1975 SC 1409
- [\[9\]](#) AIR 1987 SC 741
- [\[10\]](#) (2004) 10 SCC 150
- [\[11\]](#) AIR 2002 SC 2256
- [\[12\]](#) AIR 2001 SC 1441
- [\[13\]](#) (1999) 6 SCC 222
- [\[14\]](#) (1998) 8 SCC 119
- [\[15\]](#) 2014 (1) ALD 347
- [\[16\]](#) 2013 (3) ALD 23
- [\[17\]](#) 2012 (3) ALD 519
- [\[18\]](#) 2008 (5) ALD 46
- [\[19\]](#) 2008 (5) ALD 814
- [\[20\]](#) 2008 (6) ALD 663
- [\[21\]](#) 2008 (2) ALD 261
- [\[22\]](#) AIR 1966 SC 1824
- [\[23\]](#) 1991 (1) ALT 249