

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

Tr.CMP.No.96, 105, 106 & 242 of 2016

Date:12.08.2016

Tr.CMP.No.96/2016:

Between:

Santhosh Kumar Agarwal and
others.

... Petitioners.

AND

Devender Kumar

...Respondent.

Tr.CMP.No.105/2016:

Between:

Santhosh Kumar Agarwal and
others.

... Petitioners.

AND

Devender Kumar

...Respondent.

Tr.CMP.No.106/2016:

Between:

Santhosh Kumar Agarwal and
others.

... Petitioners.

AND

Devender Kumar

...Respondent.

Tr.CMP.No.242/2016:

Between:

Smt Devi Bai and another.

... Petitioners.

AND

Umesh Kumar Agarwal

...Respondent.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

Tr.CMP.No.96, 105, 106 & 242 of 2016

COMMON ORDER:

Tr.CMP.Nos.96, 105 & 106/2016 are filed seeking to transfer R.C.Nos.195/2015, 196/2015, 197/2015 from the file of I Additional Rent Controller, Hyderabad to XI Additional Chief Judge, City Civil Court, Hyderabad to be tried along with suit in O.S.Nos.429 to 433/2015 on the file of XI Additional Chief Judge, City Civil Court, Hyderabad.

2. Tr.CMP.No.242/2016 is filed seeking transfer of R.C.No.11/2016 from the file of IV Additional Rent Controller, Hyderabad to XI Additional Chief Judge, City Civil Court, Hyderabad to try along with O.S.No.922/2015 on the file of XI Additional Chief Judge, City Civil Court, Hyderabad.

3. Respondents opposed all these petitions mainly on the ground that Tr.CMPs are not maintainable and the case pending before the Rent Controller cannot be transferred to a Civil Court.

4. Heard both sides.

5. Both side advocates submitted arguments at length in support of their respective contentions.

6. There is no dispute with regard to factual aspect and the only point involved in these applications is a legal point particularly power

of this Court under Section 24 of CPC.

7. Now the point that would arise for my consideration in these Tr.CMPs is whether R.C.Nos.195, 196 & 197/2015 and R.C.No.242/2016 are liable to be transferred to a Civil Court or not?

8. **Point:-** Advocate for transfer petitioners submitted that the land lord filed petitions before the Rent Controller for fixation of fair rent and as there is an agreement between parties in respect of quantum of rent and as petitioners filed suits for enforcing that agreement, these matters have to be tried by one Court to avoid conflicting decisions and conflicting findings.

On the other hand, it is the contention of the tenants that the petitions under Section 24 CPC are not maintainable as the Rent Control Act provide provision for transfer of cases. According to respondents, Rent Control Courts are created under special enactments and as per the provisions of the Rent Control Act, Appellate Authority alone has power to transfer cases from one Rent Control Court to another, therefore petitioners are not entitled to the relief claimed. The other objection of the respondents is that a Civil Court cannot fix the fair rent and petitioners can only plead this agreement as a defence and Rent Controller cannot decide the genuineness or enforceability of agreement and therefore, the issue before the Civil Court and the issue before the Rent Controller are distinct and separate therefore, the apprehension of petitioners is not well founded.

9. Advocate for petitioners referred to decisions of Hon'ble Supreme Court and this Court in **S. SRINIVAS RAO v. HIGH COURT OF A.P.,** ^[1] **MULKI GOPALAN v. CHEPPILAT PUTHANPURAYIL**

ABOOBACKER^[2], PENUMATSA NARSIMHA RAJU v. ANDHRA
PRADESH VIDYA PARISHAD, MACHILIPATNAM^[3], SRI SAIBABA
CLOTH EMPORIUM, ADOM v. KOLLI SANJEEVAMMA^[4], POKURI
VENKATA SUBBA RAO v. VINNAKOTA PEDA NAGESWARA
RAO^[5], J.J. LAL PVT.LTD., v, M.R. MURALI^[6], GUNDA
RAJANNA v. P. ANNAPURNA^[7], S. PURNACHANDRA RAO v.
PALETI LINGA RAO^[8], DILIP v. MOHD. AZIZUL HAQ^[9] and ALL
KERALA ONLINE LOTTERY DEALERS ASSOCIATION v. STATE
OF KERALA^[10].

10. In all those decisions, the point before the Courts was whether Rent Control is a *persona designata* or a Court and with regard to application of provisions of Limitation Act.

11. Advocate for respondents also referred to the following decisions of Hon'ble Supreme Court and High Court:-

“MANTA SUBBARAMAYYA v. V. BATCHU
NARASIMHA SWAMY^[11], S. MOHD. ALI AND SONS
v. V. MADHAVARAO^[12], JEETH KAUR v.
P. KONDALAMMA (S.A.No.69/1980 18.11.1982),
VEERABAHUTLA ADINARAYANA v. BALUSU
RAJARAO^[13], BINODLAL SAGARMAL (M/s.) v.
PREM PRAKASH GUPTA (CRP No.5173/2003, Dated
24.06.2003), BEVARA SRIRAMULU v. GORTHI
RAMAKRISHNA RAO (CRP No.3454/2012, dated
23.12.2013), SHAKUNTALA DEVI v. AVTAR SINGH
(S.A.No.171/1988, dated 18.8.2004), GOLLU BHAVANI
SANKAR v. BHOGAVALLI RAJESWARA RAO (CRP
No.3644/1999, dated 29.10.1999) and MUKRI
GOPALAN v. CHEPPILAT PUTHANPURAYIL
ABOOBACKER (CIVIL APPEAL No.1305/1995, dated
12.07.1995)”.

12. The above referred decisions, are also on the point of application of the Limitation Act and the point whether Rent Controller is a *persona designata* or Court. In these petitions, the main controversy is whether a Rent Control Case can be withdrawn and transferred to a Civil Court to be tried along with a civil suit. This aspect was earlier decided by this Court in

L.K. PHANESH BABU v. MOHD. AKBAR^[14]. A similar dispute was involved in that case. A Tr.CMP., was filed seeking transfer of RCC from the file of II Additional Rent Controller, Hyderabad to the Court of XIII Additional Chief Judge, City Civil Court, Hyderabad to be tried along with a suit pending there.

This Court, after examining decisions of Hon'ble Supreme Court and this Court held as follows:-

“ If we examine the facts of the present case, in the light of the above decisions relied upon both the parties, though it was held that the Rent Control Court is a Civil Court, but not in terms of the provisions of the Code of Civil Procedure. Further, though it was held that where the provisions of the Rent Control Act are silent, the provisions of the Code of Civil Procedure are applicable, but, as already held that the Rent Control Act and the Rules made thereunder are complete Code covering the proceedings under the said Act. Even with reference to the transfer of the Proceedings before the Rent Controller as well as before the Appellate Authority, it is provided under the Act and the Rules made thereunder. But, however, there is no provision for transfer of a proceeding from the Rent Control Court to any other Civil Court. In fact, the powers of ordering eviction under the grounds specified under the Act are exclusively conferred on the specified or notified Courts or the authorities. Therefore, such power conferred by Notification under the provisions of the Act, cannot be conferred by this Court by transferring a rent control proceeding pending on the file of the Rent Controller to any Civil Court, as such powers are vested only in Government. Therefore, there is no merit in the contention of the learned Counsel for the petitioners seeking transfer of the proceedings pending before the Rent Controller to the Civil Court.”

13. The above decision squarely applies to the case on hand and it was held in the above decision that it is not permissible to transfer Rent Control case to a Civil Court under Section 24 of CPC. Considering the above referred principle, the objection raised by respondents is upheld.

14. For these reasons, all the transfer petitions are dismissed and the Rent Controller & Civil Court shall decide the respective proceedings pending before them in accordance with law not being influenced by any of the observations made in this common order. No costs.

15. As a sequel, miscellaneous petitions, if any, pending in these Tr.CMPs., shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:12.08.2016

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[1] AIR 1989 ANDHRA PRADESH 258

[2] AIR 1995 SUPREME COURT 2272 (1)

[3] AIR 2010 ANDHRA PRADESH 90

[4] AIR 1991 ANDHRA PRADESH 106

[5] 2000 (2) ALD 249

[6] AIR 2002 SUPREME COURT 1061

[7] 2005 (1) ALD 447

[8] 2005 (4) ALD 183

[9] AIR 2000 SUPREME COURT 1976

[10] (2016) 2 SUPREME COURT CASES 161

[11] AIR 1972 ANDHRA PRADESH 186 (V.59 C 42(1)

[12] AIR 1964 ANDHRA PRADESH 132 (Vol.51, C.36 (1)

[13] 2008 LawSuit (AP) 156

[\[14\]](#) 2003 (1) ALD 778