

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1463 of 2013

ORDER :

The late 1st revision petitioner was originally sole petitioner-cum-landlord of the eviction petition against the respondent in R.C.C. No.167 of 2006. The revision petitioners 2 and 3, as legal representatives of the late 1st revision petitioner, since died, were impleaded as parties as per orders in I.A. No.785 of 2008 dated 02.07.2009 in the said eviction petition maintained against the tenant-revision respondent under Section 10(2) of the Andhra Pradesh Building (lease, rent and eviction) Control Act, 1960, (for short, 'the Act'). It is in relation to the premises bearing Door No.27-2-15-17, asbestos cement roofed room of 1954 in the ground floor of the premises at M.S. Street, Governorpet, Vijayawada of Krishna District. The learned Rent Controller vide order dated 22.12.2011 allowed the eviction petition for personal occupation and on willful default. It is impugning the same, when the respondent-tenant of R.C.C. No.167 of 2006 maintained R.C.M.A. No.14 of 2012, the learned Rent Control Appellate Tribunal reversed said finding by allowing the appeal by setting aside the order and dismissing the eviction petition. It is impugning the same, the present revision is maintained.

2) The contentions in the grounds of revision in nutshell are that the lower appellate Tribunal went wrong in interfering with the well considered order of the Rent Controller and in reversing the same on surmises and assumptions which is an erroneous outcome and when the premises is required for their parking the car and there is no dispute on the factum of owning and possessing the car for the necessity of parking as a bonafide requirement and thereby the order passed by the Appellate Tribunal is liable to be set aside by restoring the Rent Controller's order.

3) Whereas, it is the contention of the learned counsel for the tenant-respondent to the revision that the lower appellate Tribunal's order is a well considered one and the scope of the revision under Section 22 of the Act is very limited and for this Court, against the reasoned reversal finding of the lower appellate Tribunal, there is nothing to interfere.

4) Heard both sides at length and perused the material on record.

5) Before coming to the facts, it is necessary to mention the law on the scope of revision, particularly from the constitutional bench expression of the Apex Court in *Hindustan Petroleum Corporation Limited V. Dilbahar*

*Singh*¹ referring to Section 20 of the Kerala Act and Section 25 of the Tamilnadu Act among other Rent Control Act provisions of other State Acts, the wording is almost similar to Section 22 of the State Act which speaks that, the High Court may call for and examine the records relating to any order passed or proceeding taken by the Rent Controller or by the appellate authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order in reference thereto as it thinks fit and thus what the Constitution bench laid down in the expression of *Dilbahar Singh* supra interpreting the three terms 'legality, regularity or propriety' that was also considered by this Court referring to the Constitution Bench expression in *Thumuguntla Enterprises V. Majeti Venkata Ramakoti Mutyalu*² on the scope of law and what was laid down by the Constitution Bench of the power of revision either under Section 22 of the Act or Section 115 of C.P.C or even under Article 227 of the Constitution is limited to decide whether the impugned order is according to law or not but not as a second Court of first appeal. Thus, it is the caution saying it is not a first appellate Court to re-appreciate the entire facts afresh but for to the extent relevant to decide the legality, regularity or propriety of the orders impugned in the revision.

¹ (2014)9 SCC 78

² 2016(2) ALD 763

6) From the above, coming back to the facts on hand, the late first petitioner in the eviction petition claimed that he was repeatedly requesting the respondent-tenant to vacate the premises in question as is necessary for personal occupation and respondent-tenant also filed a frivolous suit in O.S. No.4078 of 2004 alleging as if the landlords made an attempt to evict him forcibly from the premises. The 1st petitioner by then was residing with the 2nd petitioner herein and in the upstairs portion and the tenanted premises abutting the ground floor claimed required for their car parking purpose, for no other place available for said purpose and because the 1st petitioner and his wife (2nd petitioner) are aged persons, they are in need of the car facility and it is for its parking in the premises, for their requirement of regular visiting to hospital and other places bonafide and also issued for his failure to vacate, Ex.P-1 legal notice which the respondent-tenant acknowledged and issued a false reply and thereby liable to be evicted.

7) The contest of the tenant, before the Rent Controller, was that his father was the original tenant of the petition schedule under the father of the 1st petitioner in the year 1963 on rent of Rs.20/- per month for office purpose and the respondent's father obtained electrical connection with own funds for the premises and after death of the respondent's

father, the respondent is continuing and in October, 2004, the 1st petitioner insisted for enhancement of rent from Rs.700/- per month to Rs.1,500/- per month with such an exorbitant rate without even prevailing such rate in the vicinity and for that response he bore grudge and when tried to dispossess by use of force, he maintained the injunction suit supra, that was decreed in his favour on 02.08.2006, for not to evict except through due process of law. It is also the contention that the 1st petitioner is residing at Hyderabad since 2004, and there is still vacant site of 100 Sq. yards to the northern side of the schedule premises if at all required for their car parking and thereby the eviction petition is liable to be dismissed.

8) It is from the respective contentions, in the course of enquiry, the second petitioner, since 1st petitioner died, being his wife examined herself as P.W-1 on behalf of her and her married daughter (3rd petitioner) of Hyderabad, and placed reliance on Exs.A-1 to A-5 which include the notice, acknowledgement and reply covered by Exs.A-1 to A-3 and the ration card showing the petitioners' particulars, pan card of late 1st petitioner. The respondent came to the witness box as R.W-1 and placed reliance on four photos with C.Ds marked as Exs.B-1 to B-4.

9) The evidence on record discussed by the learned Rent Controller in coming to the findings for ordering eviction are that prior to the filing of the eviction petition in 2006 and giving of Ex.A-1 notice dated 06.02.2005 and its reply, the tenant filed injunction suit, in O.S No.4078 of 2002 that was later decreed on 02.08.2006 during pendency of R.C.C supra and after death of the 1st petitioner while residing in the first floor of the premises in which the petition schedule building is part, the 2nd petitioner claims residing, by now and then going to her daughter (3rd petitioner) at Hyderabad and she reiterated the factum as pleaded in the eviction petition of the premises is required for her car parking because it was a shed already constructed being useful and convenient for the car parking purpose. No doubt, in her cross-examination she stated that there is no willful default in payment of rents and she maintained eviction against other tenants who were troubling her. The respondents' evidence as R.W-1 is that he is continuing as a tenant, after his father, that was commenced though 48 years back, his tenancy is since 2004 and the rent paying by the time of eviction petition was Rs.1,200/- per month and he admitted that in the petition schedule premises a car can be parked. He deposed that P.W-1/ 2nd petitioner is residing in the first floor. What he deposed further is that in the schedule premises, he is running R.T.

licencing agency. According to him, he is accustomed to do the business in the premises which is convenient since long time by residing in the schedule premises and it is a hardship to him if being evicted, when compared with that of the landlords. Undisputedly the purpose even sought in the eviction petition by the late 1st petitioner of the petition schedule premises which is a shed is in need for parking of their car, which can serve as a car shed. Though much evidence adduced before the Rent Controller regarding the validity of the notice practically, it is not an eviction case to be preceded by quit notice under Transfer of Property Act, for no such prior notice is contemplated for Rent Control eviction matter under the provisions of the Act. It is no doubt, one of the contentions that the legal representatives cannot continue the purpose of the original landlord in seeking eviction. In fact, each case depends on own facts and once it is for the car parking sought by the late 1st petitioner saying he and his wife are in requirement of the car and keeping the same for their residing in first floor, for regular medical check-up and outings and other purpose, same purpose even when continues for the 2nd petitioner who is residing in the premises after death of her husband. The Rent Controller observed that there is no other car parking similar to the existing premises like a shed covered by the petition schedule when it is

required for the purpose of keeping the car for their going to continuous medical check up and other purposes and outing from the residence in the first floor, it outweighs the so called hardship from the purpose of the tenant to continue the business saying accustomed to customers since long time even. It is observed that it is the landlady to decide which of the premises is convenient and not for the tenant to dictate terms. Even otherwise from any vacant site lying nearby, there is no shed there and the petition schedule is with existing shed to serve as a car shed.

10) It is those findings when challenged before the lower appellate Tribunal, what the appellate Tribunal observed in reversing the findings is so far as the availability of the other vacant site that can be used as car parking of the so called bonafide requirement concerned when the tenant since his father's time for more than four decades is continuing the business in the premises, even landlady/ P.W-1 admitted about the vacant site, available nearby, but for saying the petition schedule premises is with existing shed which she intended to use without any construction of shed in other vacant site. Having admitted with no default in payment of rents, even Ex.A-4 is household card in the name of late 1st petitioner, shows the household card was obtained with residential address at Gandhi Nagar, Hyderabad showing they were not

residents of Vijayawada, muchless near the petition schedule premises and P.W-1 in the cross-examination admitted about their having a house at Hyderabad, where the 3rd petitioner is residing and what R.W-1 respondent deposed is the 2nd petitioner is often visiting Hyderabad and residing with 3rd petitioner and there are no documents filed to show possessing of car, to park at the Vijayawada premises, when the Apex Court in *Smt.Poolrani V. S.H.Nowbatrai*³ at para No.11, observed about the personal requirement of the original landlord perishes from his death for having not shown the cause of such requirement survives to the legal representatives to succeed the eviction petition and when P.W-1/ 2nd petitioner admitted about her houses one at Hyderabad and the other which is the building in which petition schedule is part and she is aged about 70 years, though the landlady is the best judge, it is hardly believable of she is residing at Vijayawada, but not at Hyderabad with (3rd petitioner), her daughter, and the hardship of the tenant outweighs in the facts over that of the landlady besides the requirement no way survives and thereby the Rent Controller's order is unsustainable.

11) It is in the revision, thereby to decide whether the findings of the Rent Controller required to be reversed by the

³ AIR 1973 SC 2110

lower Appellate Tribunal and whether justified and it is how far legal and correct in its propriety to survive, for this Court while sitting in revision without further reappreciation of the entire facts, but for to the extent relevant in deciding the legal requirements with in the scope of the revision as per the expression in Dilbar Singh supra.

12) Coming to the scope of the revision lis supra, from the facts not in dispute and even the car is a Fiat car is an admitted fact. The original eviction petition requirement is for car parking of the 1st petitioner and his wife(2nd petitioner) residing at Vijayawada in the first floor and it is in part of the ground floor with vacant site, the tenancy petition schedule shed is lying and the requirement sought is for him and his wife/ P.W-1 (2nd petitioner), being aged and in continuous need of medical care, they regularly to attend by having the car which they possess by parking in the premises which is with existing shed and the other area is only vacant land with no shed and thereby it is a bonafide requirement. Even by then third petitioner being married woman and daughter of petitioners 1 and 2 residing at Hyderabad in the other house that is described in Ex.A-4 civil supplies card of the petitioners not in dispute. However, the fact remains that the 1st petitioner and his wife (2nd petitioner) were residing only at Vijayawada by the time of the eviction petition filed

and not at Hyderabad and that fact is not even disputed by the respondent-tenant in his counter against the specific averment even made in the petition. Once such is the case and there is nothing to show 2nd petitioner totally shifted her residence to the 3rd petitioner at Hyderabad and not residing at the premises covered by the petition schedule as part of it at Vijayawada, the lower appellate Tribunal is not correct not only in reversing the well considered finding of the Rent Controller but also in acting on surmises and assumptions without factual foundation even under the guise of consideration of the outweighing hardship. Even from the respondent-tenants own showing the petition schedule premises is with a shed and it serves the purpose as car shed for car parking of the petitioner and the other side site stated in the main premises is only a vacant land with no existing shed and that can be used by constructing a shed is not a ground nor a consideration to outweigh continuation of the tenant for alleged business continuation despite the landlords bonafide requirement for their car parking as an additional accommodation.

13) The decision in *Hameedia Hardware Stores V. B.Mohanlal Sowcar*⁴ which is a case under Tamilnadu Rent Control Act placed reliance, it is in relation to eviction of a

⁴ AIR 1988 SC 1060

tenant from a non-residential premises what the landlord held required to establish business was the premises claiming required, though for own use or use of family members of the landlord of the non-residential building and to show not occupying any other non-residential building in the town, city or village concerned, for such own use by the landlord or his family members. Even from this expression, there is nothing to show there is any similar premises useful as a car shed of the landlords lying at Vijayawada with possession of the landlord and left unoccupied and in the absence of which, the decision is no way helpful to support the lower appellate Court's reversal order muchless to claim by the tenant to continue, saying it is outweighing of hardship of him from the necessity when compared to that of the landlords. The decision of *N.Eswari V. K.Swarajya Lakshmi*⁵a case under the Act on bonafide requirement and willful default, so far as willful default, there is a failure to prove and the landlady having one son and two daughters having two houses at Hyderabad, where she is residing at Hyderabad with her children and nothing to show in need of coming Vijayawada to stay at Vijayawada for the first time, muchless showing anybody to look after her, as held by the Rent Controller and confirmed by the lower appellate Tribunal, it was held there from that there is no basis for the Court sitting in revision to

⁵ 2010(1) ALD 3 (SC)

reverse for the requirement not proved genuine. In fact, even a little change the facts have an impact on the conclusion to arrive to give findings, for no precedents on facts, coming to the case on hand, the 1st petitioner maintained the eviction petition as discussed supra, for the car parking of him and his wife (PW1) residing at Vijayawada and after his death, the 2nd petitioner as P.W-1, deposed of the purpose continuous and she requires and resides at Vijayawada, merely because her daughter/ 3rd petitioner is resident of Hyderabad, it is not a ground to say 2nd petitioner is also residing there with the daughter and not continuing at Vijayawada after death of her husband for the requirement of car parking place while so residing. Thus, the decision also has no application to the facts on hand. Having regard to the above, the order of the Rent Control Appellate Tribunal is unsustainable and it requires restoration of the order of the Rent Controller. Accordingly, the revision petition is liable to be allowed.

14) In the result, the revision is allowed and the order of the appellate Tribunal in R.C.C.M.A. No.14 of 2012, dated 19.11.2012 is set aside and the eviction order of the Rent Controller in R.C.C. No.167 of 2006 dated 22.12.2011 is restored and time for vacating the premises granted nine months from today considering the fact that the tenant has to search alternate and his long standing customers are to be

turned to new place of his business. In the meantime the respondent-tenant is liable to pay the same amount which he has been paying as damages for use and occupation without prejudice to make a further claim, if any, by the landlords. If the tenant failed to vacate within the nine months time, the landlords can execute and evict him through the process of law before the rent control Tribunal. There shall be no order as to costs. Pending miscellaneous petitions, if any, shall stand closed.

17.10.2016
ksh

Dr. B. SIVA SANKARA RAO, J

