

THE HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3582 OF 2016

ORDER:

This civil revision petition, under Section 22 of the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960 (for short, 'A.P. Act XV of 1960') is filed by the respondent in RC No.157 of 2005 on the file of Principal Rent Controller Court, Hyderabad, and the appellant in R.A.No.140 of 2008 on the file of Chief Judge, City Small Causes Court, at Hyderabad, aggrieved by the order of eviction on the ground of bonafide requirement under Section 10(3)(iii)(a) and (b) of the A.P. Act XV of 1960, while declining his claim on the ground of willful default and ceased to occupy the premises.

The parties to the revision petition will hereinafter be referred to as the petitioner and respondent as arrayed before the Principal Rent Controller in RC No.157 of 2005, through out the order.

The facts necessary for deciding the present revision, in brief, are that the petitioner is the owner of petition schedule premises bearing No.19-2-106, Mulgi No.103 admeasuring 9 x 12 feet situated at Tadban, Hyderabad, let out the same to the respondent. As the petitioner required the petition schedule premises bonafidely for occupation of his wife to run beauty parlour and besides other grounds, willful default and ceased to occupy the premises under Sections 10(2)(i) and 10(3) (iii) (a) and (b) of the Act. The trial court ordered eviction only on the grounds

provided under Section 10(3)(iii)(a) and (b) of the Act, while rejecting the claim under Sections 10(2)(i) and 10(2)(v) of the Act.

Aggrieved by the eviction order, the respondent filed an appeal before the Chief Judge, City Small Causes Court, Hyderabad, in RA No.140 of 2008. It was ended in dismissal by order dated 12.08.2010, the same was carried to the High Court in revision under Section 22 of the Act in CRP No.4720 of 2010. This Court by order dated 06.12.2014 allowed the revision setting aside the eviction order passed by the Principal Rent Controller and affirmed by the appellate court, remanded the matter, to afford opportunity to adduce evidence with regard to subsequent events.

After remand, both the parties adduced additional evidence before the Principal Rent Controller, to establish the bonafide requirements and to consider the subsequent events. But the respondent did not adduce any further evidence before the Principal Rent Controller.

Upon hearing both the counsel, the Principal Rent Controller allowed the eviction petition on the sole ground of bonafide personal requirement. The order passed by the Rent Controller was again challenged before the Chief Judge, City Small Causes Court in RA No.140 of 2008 which was ended in dismissal affirming the order passed by the Rent Controller. Aggrieved by the concurrent finding recorded by both the courts, the present revision is filed under Section 22 of the Act, on various grounds.

The main contention raised in the grounds of revision are,

a) the petitioner is already in occupation of another Mulgi and the size and quality of construction of the Mulgi is not suitable for running beauty parlour and the beauty parlour always requires a washroom and other facilities, but no such facilities are available. Apart from that the Mulgi is 9 x 12 feet in size, which will not accommodate a beauty parlour being proposed to be run by wife of the petitioner.

(b) In addition to non suitability of premises for running beauty parlour, wife of the petitioner is not in a position to run beauty parlour, as she underwent bypass surgery in the recent past. On this ground the eviction petition is liable to be dismissed.

(c) It is also the contention of the respondent that the petitioner is in possession of another Mulgi, which is double in size of the petition schedule property, and the same is suitable for the proposed business of the wife of the petitioner. Instead of running business in the bigger premises, which is gifted by the petitioner to his son under gift deed dated 30.03.2009, the petitioner sought for eviction of the tenant without bonafide requirement.

Therefore, the order passed by the Principal Rent Controller and affirmed by the Chief Judge, City Small Causes Court, are not in accordance with law and prayed to set aside the same.

During hearing, Sri Kowturu Pavan Kumar, learned counsel for the respondent (revision petitioner herein), would contend that the petition schedule building is not suitable for occupation of the petitioner (respondent herein) to run beauty parlour, since premises is not provided facilities like washroom, parking place etc., and unless the Rent Controller records a finding that the requirement is genuine, cannot order eviction and the appellate court is not supposed to affirm the same and the premises is not suitable, the requirement cannot be said to be a bonafide. He

placed reliance on the Judgment of the Apex Court in **OMER BIN SALAM ASKARI v. Dr.YOUSUF**¹.

He further contended that when the possession of the premises was obtained after evicting the premises and let out the same, the magnitude of the business of the landlord is to be considered, then court may pass a suitable order for partial eviction, placing reliance on the Judgment of the Apex Court in **DINESH KUMAR v. YUSUF ALI**². Finally it is contended that the subsequent events that took place during pendency of the petition, defeats the right of the petitioner to claim eviction, since he executed gift deed in favour of his son with an ulterior motive to get the respondent evicted from the schedule premises, placing reliance on **M.RANGAIAH NAIDU (DIED) BY L.Rs. V. ABDUL KAREEM KHAN AND ORS.**³

On the strength of the law declared by this Court and the Apex Court, Sri Kowturu Pavan Kumar, counsel for the respondent, requested this Court to allow the revision petition setting aside the order passed by the Principal Rent Controller, affirmed by the Chief Judge, City Small Causes Court in RA No.140 of 2008.

Per contra, Sri N. Pramod, learned counsel for the petitioner (respondent herein) would contend that the tenant already delivered vacant possession of the schedule premises in execution of the order passed by the Rent Controller, he is not in possession as on today and therefore, no further enquiry need be taken up.

¹ 1998(2) ALD 258

² AIR 2010 SC 2679

³ 1992(1) ALT 336

Further he supported the order in all respects, while contending that the jurisdiction of this Court under Section 22 of the Act is limited and fact finding recorded by the Rent Controller and affirmed by the appellate court cannot be interfered, while exercising power under Section 22 of the Act, placing reliance on the Judgment of the Apex Court in **SHAIK MOHD. BIN ALI RAMZAM⁴, KANCHUMANU VENKATESWARA RAO v. CHUKKA RAJA REDDY⁵** and **KESAR BAI v. S.D.KAMAL KUMAR⁶**. Finally, it is contended that the jurisdiction of this Court in rent control cases is limited and when the trial court and appellate court came to a definite conclusion, then the revisional court can exercise limited jurisdiction and the court cannot disturb the fact finding, if they are supported by the evidence on record, placing reliance on the Judgment of the Apex Court in **M/S BOORUGU MAHADEV AND SONS AND ANOTHER v. SIRIGIRI NARASING RAO AND OTHERS⁷** and prayed to confirm the order passed by the Chief Judge, City Small Causes Court in RA No.140 of 2008.

Considering rival contentions perusing the order under challenge, the point that arise for consideration is,

“Whether the requirement of the Mulgi bearing No.19-2-106 by the respondent for bonafide occupation to run beauty parlour by his wife. If so, is the order passed by the Principal Rent Controller in RC No.157 of 2005 and affirmed by the Chief Judge, City Small Causes Court, in RA No.140 of 2008 be sustained?”

⁴ Laws (aph)-2014-6-140

⁵ LAWS(APH)-2014-12-95

⁶ LAWS(APH)-2014-11-122

⁷ LAWS (SC)-2016-1-36

POINT:

Undisputedly, the respondent is in occupation of the Mulgi bearing No.19-2-106 as a tenant and the only ground on which the rent controller ordered eviction of the respondent is bonafide requirement of the premises by the petitioner for his wife occupation, to run beauty parlour therein. The said requirement of the petitioner was denied before the rent controller by filing counter contending that the requirement is not bonafide and that the premises is not suitable for the proposed business, since it is located in a slum area and smaller in size without amenities to run beauty parlour.

To substantiate the contention of the petitioner, he was examined as P.W.1 and his wife-Vijayalaxmi, who is a trained Beautician, proposed to commence beauty parlour in the schedule premises was examined as P.W.2.

Admittedly, the mulgi is facing towards the main road and there is a passage which leads to Eastern side situated by the petition schedule property and if a door is fixed to the North Eastern side abutting to the passage, mulgi will be convenient to enter into.

P.W.1 also supported the requirement of the mulgi by his wife to run beauty parlour. Ex.P.3 is the Certificate issued by Shivani Herbal Training Institute, Malakpet. It is sufficient to accept the contention that wife of the petitioner is a trained beautician, who prosecuted the beautician course from 01.07.2003 to 31.12.2003 for six months. Ex.P.4 is an experience certificate issued by Shivani Herbal Beauty Parlour and Training Institute, it

would establish that she worked as trained beautician since 05.02.2004.

Thus, P.W.2 is an experienced beautician and her qualification is not disputed by producing any amount of evidence except contending that Exs.P.3 and P.4 are created for the purpose of filing the present petition and got denial, but failed to elicit anything in the evidence of P.Ws.1 and 2 regarding the qualification of P.W.2 and experience to commence the proposed beauty parlour in the schedule premises.

Yet, another contention raised by the counsel for the respondent is that the premises is not suitable to run beauty parlour, since it is situated in slum area, but that was not accepted by the rent controller holding that the petitioner is chosen the mulgi to run business by his wife and the tenant cannot dictate the landlord to choose any premises for ordering eviction.

In the appeal, Chief Judge, City Small Causes Court in the order under challenge after an elaborate consideration of the material on record upheld the order passed by the rent controller.

No doubt, the size of the mulgi is only 9x12 feet situated at Tadban, which is dominated by Muslims, but the mulgi is facing towards Eastern side by the side of main road and when the schedule premises alone is available for occupation, it is for the petitioner to chose the premises of his choice, since the landlord himself is running business. The order passed by the Chief Judge was set aside in the revision, only on the ground that the petitioner

did not disclose particulars of mulgies owned by him as on the date of filing eviction petition, affording opportunity to both the parties to adduce, if they so desire.

When the eviction petition is filed for bonafide occupation to run business by the wife of the petitioner, the initial onus of proof is on the petitioner to prove that requirement is genuine.

The petitioner, to substantiate his contention, besides examining his wife as P.W.2 produced Exs.P.3 and P.4 to prove that his wife is a trained and experienced beautician, that is sufficient to accept the contention that she is able to run beauty parlour in the schedule premises.

Learned counsel for the respondent contended that no amenities are provided to run beauty parlour including ingress and egress on the strength of Ex.R.1 photographs.

But convenience or inconvenience are irrelevant and it is the choice of the petitioner to run such business and if the petitioner can make it convenient and suitable to run such business, the respondent can be evicted. Therefore, on the ground of insufficiency of premises etc., eviction cannot be denied, since the landlord alone is competent person to choose the premises suitable for his wife's business and the tenant cannot dictate the landlord to seek eviction of a particular premises and this finding is fortified by a judgment of the Apex Court in **DEEP CHANDRA JUNEJA v. LAJWANTI KATHURIA (DEAD) THROUGH L.Rs.**⁸ and the same legal position was laid down earlier by this Court in **BASANTHILAL**

⁸ 2008(4) ALD 130 (SC)

v. OMPRAKASH⁹. Therefore, in view of the law declared by the Apex Court and this Court, it is headache of the petitioner to run proposed business, the premises suitable for the business of his wife, and the tenant has no say to dictate the landlord to choose a particular for occupation.

Therefore, the suitability of the particular premises for the proposed business of P.W.2 i.e. beauty parlour is not a ground to deny eviction of the respondent in possession of the premises. It is also brought to the notice of this Court, during argument, that the premises is in slum area. But no evidence is brought on record. Even, if it is in slum area, it is for the petitioner to take the risk of running such business in the premises. Hence, the suitability and inconvenience are not at all relevant to deny eviction of the respondent from the premises on the ground of bonafide requirement.

Yet, one of the contention raised by the counsel for the respondent is that in the further evidence of P.Ws.1 and 3, it is elicited that P.W.2 underwent bypass surgery and not in a position to run beauty parlour as on today.

Now a days undergoing bypass surgery is not a hurdle to run beauty parlour, such subsequent event is not a relevant consideration to decide the bonafide requirement unless it is proved that wife of petitioner totally became crippled and enable to carry on such business, but no evidence is produced to that effect. However, the learned counsel for the respondent placed reliance on the Judgment of this Court in **M.RANGAIAH NAIDU**'s case referred

⁹ 2005(2) ALT 620

to supra, wherein this Court at paragraph 9 of the Judgment held as follows;

“9. It is a well settled principle that in Rent Control cases where a particular requirement is made by the landlord for eviction of the tenant and where subsequent events either during the pendency of the appeal or revision petition reveal that the requisite condition as pleaded by the landlord and as accepted by the Rent Controller has lost its significance, the Court can take cognizance of the subsequent events and mould the relief. In moulding the relief to be granted in an appeal or revision arising under the Rent Control Act, the Court of appeal or revision is entitled to take into account even the facts and events which have come into existence after an order was passed by the Rent Controller.”

From reading the principle laid down in the above Judgment, it is clear that subsequent events can be taken if eviction is sought on the ground of bonafide requirement and lost its significance.

Here, the only contention is that on account of undergoing bypass surgery, she is not in a position to run beauty parlour, but undergoing bypass surgery would not disable wife of P.W.1 to run beauty parlour, unless she became totally crippled on account of such treatment for her ailment. Therefore, it is not a ground to deny the eviction of the tenant. He further contended that while ordering eviction, rent controller has to record its finding that the requirement is bonafide under Section 10(3) (a) & (b) of the Act XV of 1960. But, here the rent controller and appellate authority recorded a finding that the requirement of mulgi by the petitioner for his wife's occupation to run beauty palour is bonafide.

Learned counsel for the petitioner drawn attention of this Court to **OMER BIN SALAM ASKARI**'s case referred to supra, wherein this Court held as follows:

“In sub-clause (b) of Clause (iii) of Section 10(3)(a) of the Act emphasis is laid on the fact that the landlord 'bona fide' proposes to commence business. The meaning in which the term 'bona fide' is used in this provision could be effectively applied only if the landlord is likely to be exposed to any hardship if he is prevented from commencing a new business from the demised premises. If there is no hardship, the requirement certainly is not bona fide. Even if any hardship is going to be caused, greater hardship is likely to be caused to the tenant because he has no other means of livelihood. The landlord who is a Doctor by profession is not shown to be a person of any scanty means. In that view of the matter, therefore, there can be no constraint on recording a finding that the landlord cannot be held to be bona fide proposing to commence new business from the demised premises and, therefore, on that ground also the landlord fails in establishing his case to secure the eviction of the tenant from the demised premises.”

In the above judgment, this Court considered hardship being caused to the landlord and tenant in case eviction is ordered under Section 10(iii)(a) and (b) of the Act XV of 9160.

In the present case, the landlord subsequent to filing the petition gifted the non residential property to his son-P.W.3 and he is carrying business in the said premises and that he has no other means except to run proposed business in the schedule premises and whereas the tenant is carrying on small business and the respondent was unable to show that respondent has not possessed property and any other source of income.

However, before the rent controller and before the appellate court, no contention was raised regarding hardship being caused to the respondent is greater than the hardship being caused to the landlord in case eviction is ordered, but for the first time, this contention was raised in the revision petition and on that ground, the revision petition cannot be dismissed, for the reason that after execution of gift deed in favour of son of the petitioner, he has no other premises to run business, to eke out his livelihood irrespective of the premises, if any, own and possessed by the petitioner.

When the petitioner has no other premises to run business, hardship being caused to him would be greater than the hardship being caused to the respondent in case eviction is not ordered. There is absolutely no evidence with regard to hardship before the trial court and when it is not raised before the courts below, for the first time it cannot be permitted. Therefore, on the strength of the principle laid down in **OMER BIN SALAM ASKARI's** case, eviction cannot be denied.

Learned counsel for the respondent further drawn the attention of this court to the Judgment of the Apex Court in **DINESH KUMAR's** referred to supra, wherein the Apex Court held that when the hardship being caused to the landlord and considering the magnitude of the business of landlord, ordered partial eviction depending upon the circumstances and facts of the case.

But the principle laid down in the above judgment would not come to the aid of the respondent to decline the eviction from the premises.

Learned counsel for the respondent contended that the subsequent events are not relevant to decide genuineness of requirement of the schedule premises by the petitioner and the court cannot set aside the orders while exercising power under Section 22 of the A.P. Act XV of 1960 cannot interfere with the fact finding recorded by the trial court, drawn the attention of this Court to **M/s. BOORUGU MAHADEV AND SONS AND ANOTHER's** case referred to supra, wherein the Apex Court held that when first appellate court properly appreciated the facts and evidence adduced by the parties and on that basis recorded all necessary findings in favour of the appellants. The appellate court could do and, in our opinion, rightly did in the facts of this case.

Thus, it indirectly indicates that when the first appellate court appreciated the evidence before it and recorded finding in view of limited jurisdiction of this court under Section 22 of the Act XV of 1960 cannot interfere.

In another Judgment of this Court in **SHAIK MOHD. BIN ABDUL BIN ALI RAMZAM's** case, this Court reiterated the same principle. Whereas in **KANCHUMANU VENKATESWARA RAO's** case referred to supra, at paragraph 15, held that the judicial tardiness, for which unfortunately our system has acquired notoriety, causes the *lis* to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are

bound to take place which might happen in relation to the parties as well as the subject matter of the *lis*. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.

Basing on the strength of the above principle, it is contended that the subsequent events cannot be taken into consideration as the date of filing the petition would determine the bonafide requirement and similarly in **KESAR BAI's** case referred to supra when an application is filed under Section 10(3)(b)(iii) of the Act, even if bonafide requirement is proved for self occupation of commencing business, the landlord should fail if he is in occupation or deemed to be in occupation of a building owned by him. In such an event, the purpose of self occupation is legally not bonafide. However, if the landlord is in occupation of a rented building, the same is not a bar for seeking eviction under Section 10(3)(b)(iii). The principle laid down in the above judgment has no application to the present facts of the case, but on the contrary it appears against him.

In any view of the matter, a clear evidence of record shows that the petitioner was in occupation of the building is immaterial and his wife wanted to run beauty parlour and subsequently he executed gift deed also to prove that he has no separate means to eke out his livelihood to carrying on any business. Therefore, taking into consideration of the fact situation as on the date of filing the petition and proof of qualification and experience of P.W.2 Vijayalaxmi to run beauty parlour can be said to be bonafide,

possessing non residential portion in building or possessing are at best relevant fact, but would not determine the genuineness of requirement of the petitioner and apart from that the subsequent events pointed out and suitability of the premises to run beauty parlour were not accepted by the trial court and appellate court after elaborate discussion based on law laid down by the Apex Court and this Court.

In those circumstances, in view of jurisdiction conferred on this Court under section 22 of the Act XV of 9160, I find no other alternative except to affirm the concurrent finding recorded by the trial court and the appellate court. Hence, finding of the first appellate court is hereby confirmed, holding this point in favour of the petitioner and against the respondent.

In view of my foregoing discussion, I find no merit in the revision.

In the result, the civil revision petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date:18.11.2016

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