

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION Nos.5785 AND 5787 OF 2016

COMMON ORDER:

Having been unsuccessful throughout, the respondents in R.C.No.6 of 2012 on the file of Rent Controller - cum - Principal Junior Civil Judge, Nizamabad and in R.C.A.No.2 of 2015 on the file of Rent Appellate Authority (Senior Civil Judge), Nizamabad, whereby and where-under, suffered eviction of Mulgi bearing Municipal No.5-6-184 (old No.5-6-510/3&4/F1) with a built up area of 280 square feet, situated on Hyderabad Road, adjacent to Pragathi Trust Hospital, Saraswathinagar, Nizamabad, preferred the former revision viz., C.R.P. No.5785 of 2016. Whereas, respondent in R.C. No.5 of 2012 on the file of above Rent Controller and appellant in R.C.A. No.1 of 2015 on the file of the above Rent Appellate Authority, whereby and where-under, he suffered eviction of mulgi bearing No. 5-6-184 (old No.5-6-510/3&4/F1) with a built up area of 280 square feet, situated on Hyderabad Road, adjacent to Pragathi Trust Hospital, Saraswathinagar, Nizamabad, preferred the latter revision viz., C.R.P. No.5787 of 2016.

2. Both the mulgies are adjacent to each other, which fact is not in dispute. Therefore, it would suffice, if the fact-situation occurring in R.C.No.6 of 2012 is projected for the purpose of disposal of both these revisions by a common order.

3. The Rent Control Petitions referred to in the above were filed by the respondent herein viz., Dr.P.V. Ramakrishnan, alleging that he worked as physician for some time in Pragathi Hospital, Nizamabad, later shifted to Meenakshi Nursing Home, Dwarakanagar, Nizamabad, which clinic he has been running. The said Meenakshi Nursing Home is situated facing the lane back side of Pragathi Hospital and the said location has been disadvantageous to him in improvising the nursing home. The mulgies herein, which constitute a part of the entire structure, are facing the main road and that has been the reason, he intended to seek eviction of the respondents, so as to use both the mulgies as consultancy, examination room and waiting hall. Thus, on the ground that the requirement is *bona fide*, sought to grant the relief of eviction of the respondents in both the cases and to deliver the vacant possession to him and also on the ground that his repeated requests proved abortive as the respondents evaded to vacate by postponing his requests on one pretext or the other.

4. The revision petitioners stand before the Rent Controller has been that the petitioner requested rent of Rs.5,000/- per month and payment of Rs.1,00,000/- towards advance deposit and sought them to vacate the premises compelling to file suits in O.S.No.113 of 2012 and 136 of 2012, respectively, both on the file of Junior Civil Judge, Nizamabad, and getting a protection order. Stating that originally the lease was entered into by the predecessor of deceased respondent No.1 in the former revision and in case, they were evicted from the

mulgi, they would be thrown on to the streets, sought to dismiss the petitions.

5. Before the Rent Controller, the petitioner in R.C. No.6 of 2012, besides examining himself as PW.1, has examined one A. Ravinder as PW.2 and marked Exs.A1 to A3 in R.C.No.6 of 2012 which are office copy of legal notice, dated 30.05.2012, postal acknowledgement and reply notice, whereas, on behalf of the respondents, RWs.1 and 2 were examined and Ex.R1, which is certificate showing mortgage loan obtained by the deceased respondent No.1 from State Bank of Hyderabad, Nizamabad was marked as Ex.R-1. Whereas, in R.C.No.5 of 2012, the petitioner besides examining himself as PW.1, has examined the said Ravinder as PW.2 and marked Exs.A-1 and A-2, which are office copy of legal notice, dated 30.05.2012 and postal acknowledgment respectively. On behalf of respondent, he examined himself as RW.1 and no documents were filed.

6. The Rent Controller, on appraisal of evidence on record, examined the only question as to whether there was any *bona fide* requirement or whether there was any oblique motive. Having got convinced with the evidence let in by the petitioner and referring to the decision of this Court in **Mohd. Moinuddin v. A. Yadagiri**¹, and the principle laid down therein, and basing on the answers given by RWs.1 and 2 in their cross-examination, where they have

¹. 1983 (1) An.W.R. 168

categorically stated that they did not attempt to secure other premises for their business and holding that the respondents failed to prove the hardship to which they would be put, in case, eviction orders are passed convinced with the bona fide requirement and ordered the petition granting two months time for vacating the premises and to hand over vacant possession to the petitioners.

7. When the said orders were challenged in R.C.A. Nos.2 of 2015 and 1 of 2015 respectively, the Rent Appellate Authority, formulated two points and finding that the findings recorded by the Rent Controller do not suffer from any legal infirmity and also referring to certain authorities in paragraph Nos.21 to 25 of his judgment, dismissed the appeals upholding the orders and decrees passed by the Rent Controller.

8. Thus, the respondents were compelled to approach this Court by filing these revisions. Identical grounds have been agitated in both these appeals.

i) It is stated that the Courts below failed to appreciate that PW.1 is running his clinic/hospital in the name and style 'Meenakshi Nursing Home' situate backside of Pragathi Hospital, Nizamabad town, which is a double storeyed building (G + 2 upper floors) and the mulgi which is the demised premises herein is only in an extent of 280 square feet each which is not sufficient for a doctor to run a clinic and,

therefore, the requirement was not *bona fide* which the Courts below completely omitted to appreciate.

ii) It is stated that the evidence of PW.1 is totally inconsistent with the stand he has put forth in his pleading.

iii) Commenting on the admission of PW.1 in his cross-examination that his practice decreased considerably after he shifted to Meenakshi Nursing Home from Pragathi Hospital, as Meenakshi Nursing Home is situate behind Pragathi Hospital and has no access to main road, the revision petitioners would state that both the Courts below failed to see that a doctor will get recognition from the patients whom he treats, but not basing on the location of the hospital, and the patients come to the doctor for treatment on the basis of his treatment, name and fame, but not because of his clinic or hospital is situate on main road and, thus, arrived at a wrong conclusion.

iv) It is stated that the respondent - landlord demanded the revision petitioners to pay a rent of Rs.5,000/- per month and make Rs.1,00,000/- towards advance deposit as a pre-condition to continue the occupation, otherwise to vacate the mulgi, which compelled the revision petitioner in former revision to file a suit in O.S. No.113 of 2012 for perpetual injunction and obtaining temporary injunction and the Courts below also failed to see that they deposited a sum of Rs.35,000/- each with the original owner as security deposit. It is also stated that they have been paying rents regularly and there has been no

default in making payments, but the Courts below also failed to see that the landlord is running a hospital, which is a double storeyed, along with his wife, who is a Gynaecologist and, therefore, sought to set aside the order and decree under challenge herein.

9. Heard Smt. V. Dyumani, learned counsel for revision petitioners - tenants in both the revisions, and K. Sarala Mahender Reddy and Sri K. Ravi Mahender, learned counsel for respondent - landlord.

10. The learned counsel for revision petitioners - tenants would submit that the respondent - landlord has set up his practice in Meenakshi Nursing Home and there is absolutely no necessity for the respondent to ask the petitioners to vacate the mulgies, as the respondent failed to establish *bona fide* requirement, but, the Courts below, somehow, overlooked the said fact and the evidence on record and did not appreciate the evidence on record in proper perspective.

i) He has placed reliance on the decision of a full-bench of this Court in **Smt. Vidya Bai and another v. Shankerlal and another**², and the decisions of the Hon'ble Supreme Court in **D. Devaji v. K. Sudarshana Rao**³ and **Ramachander Rao v. K. Dayanand**⁴.

11. *Per contra*, the learned counsel for the respondent - landlord would submit that the landlord purchased both the mulgies

². AIR 1988 A.P. 184

³. 1994 Supp.(1) SCC 729

⁴. (2005) 13 SCC 159

from the original owners, Smt. Yasmeen Firdous Hashmi and another, who were owning 10 RCC roofed mulgies altogether, and the purchase was through a registered sale deed, dated 24.11.2011, and the landlord intended to shift his practice to these mulgies converting the demised premises for the purpose of waiting room for the patients and the other mulgi for consultation and examination, and that has been the reason, he has requested the tenants to vacate the demised mulgies, but they failed to vacate.

i) It is his submission that these revision petitions preferred by the tenants are directed against the concurrent findings rendered by the Courts below, the necessity to appreciate the evidence on record once again by this Court gets obviated, and in view of concurrent finding recorded by the Courts below, both the revisions are liable to be dismissed even at the stage of admission and, accordingly, request to dismiss both the revisions.

ii) The learned counsel for the respondent - landlord places reliance on a catena of decisions in **M. PadmanabhaSetty v. K.P. PapiiahSetty**⁵; **Sarla Ahuja v. United India Insurance Company Limited**⁶; **Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta**⁷; **VallampatiKalavathi v. Haji Ismail**⁸; and **DanduboinaMadhav Rao v. Kandi Atchiraju (died)**⁹; **G. Venkatamma (died) per L.Rs.**

⁵. AIR 1966 SC 1824

⁶. (1998) 8 SCC 119

⁷. (1999) 6 SCC 222

⁸. AIR 2001 SC 1441

⁹. 2013 (3) ALD 23

v. Dr. Vijay Chandra Mathur¹⁰; Hindustan Petroleum Corporation Limited v. Dilbahar Singh¹¹; and a judgment rendered by a learned Single Judge of this Court Rakesh Patel v. K.SudershanReddy¹².

12. Thus, the ground on which the eviction is sought relates to *bona fide* requirement alone. The title is not in dispute and the relationship of landlord and tenant is also not in dispute. Even, the payment of rents regularly without any default is also not in dispute.

13. It is well-settled that to seek indulgence of this Court, it is absolutely indispensable for the revision petitioners to show that the findings recorded by both the Courts below are patently illegal. To fortify the said principle, the learned counsel for the respondent - landlord placed reliance on the decision in **Shiv Sarup Gupta** (Supra), wherein it was held that the High Court cannot appreciate or re-appreciate the evidence, merely because it is inclined to take a different view of the facts, but the High Court is duty bound to test the order of the Rent Controller on the touch-stone of “whether it is according to law” and for that limited purpose, it may enter into reappraisal of the evidence and ascertain whether the conclusion arrived at by the Rent Controller is wholly unreasonable.

14. As could be seen from the evidence on record, PW.1 though, stated that Meenakshi Nursing Home is constructed in an

¹⁰. 2014 (1) ALD 347

¹¹. (2014) 9 SCC 78

¹². C.R.P. No.4128 & 4287 of 2015, dt.7.1.2016

extent of 300 square yards, but gives categorical answers in his cross-examination that the said Nursing Home belongs to his wife and does not belong to him. The said stand taken by the landlord is not tilted or shaken by the tenants. On the other hand, the suggestion was to the effect that the landlord was asking the tenants to vacate the said mulgies only in order to get higher rents and not for his personal use. It is no doubt true, the learned counsel for the revision petitioners would contend that Meenakshi Nursing Home, even if belonged to the wife of the landlord, it is a non-residential building and the landlord can continue his clinic in the said Nursing Home and there is absolutely no necessity to shift his clinic to the subject mulgies, which are small rooms with the measurement of 280 square feet each and, therefore, the *bona fide* requirement is absolutely untrue. The learned counsel, thus, relies on Section 10 (3) (a) (iii) of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'Act'), contending that the landlord is running his clinic in a non-residential building and, therefore, the *bona fide* requirement set up by him to evict the tenants cannot be acceded to.

15. The learned counsel for the respondent - landlord, on the other hand, would submit that the second part of Section 10 (3) (a) (iii) of the Act would attract the present fact-situation for the reason the landlord is not occupying a non-residential building belonging to him and the landlord is entitled for the possession of these two mulgies. It is also his submission that, tenant cannot dictate terms to

landlord as to how else he can adjust himself without getting possession of the tenanted premises as held by the Hon'ble Supreme Court in **Sarla Ahuja** (Supra).

16. Turning to the decisions relied on by the revision petitioners - tenants, in **Smt. Vidya Bai** (Supra), it was held that 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 and the bar under Section 10 (3) (a) (iii) of the Act against securing eviction of tenant of such non-residential building is absolute, and 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 any other member of the family of the applicant (landlord), independent of and over and above the need of the applicant (landlord), are all irrelevant considerations in the context of construing the said provisions 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. In the case in hand, admittedly, the landlord is not running his clinic in a non-residential building of his own; Meenakshi Nursing Home belongs to his wife and there is no reason why he should not intend to open a clinic in the demised premises herein, which belong to him by evicting the revision petitioners. So, the bar enacted by the

provisions of Section 10 (3) (a) (iii) of the Act is inapplicable to the landlord herein.

17. In **D. Devaji** (Supra) relied on by the learned counsel for the revision petitioners - tenants, in fact, the Hon'ble Supreme Court laid down the legal principle that landlord in possession of other non-residential buildings in the same area, is not entitled to evict the tenant in view of the bar contained in Section 10 (3) (a) (iii) of the Act is absolute.

18. In **P. Ramachander Rao** (Supra), the Hon'ble Supreme Court placing reliance on the decision of the full-bench of this Court in **Smt. Vidya Bai** (Supra), which is approved by the Hon'ble Supreme Court in **D. Devaji** (Supra), refused to interfere with the Civil Appeal preferred by the landlord.

19. As mentioned in the above, admittedly, the non-residential premises, in which the landlord herein is running his clinic as a Physician, does not stand in his name, nor he is owning it, and the evidence would definitely indicate that he was earlier working in Pragathi Hospital and later shifted to Meenakshi Nursing Home with an intention to establish his own clinic having purchased the demised premises in the year 2011 which are facing the main road, whereas, Meenakshi Nursing Home is located on the backside of the demised mulgies. Therefore, the submission of the learned counsel is that the bar under Section 10 (3) (a) (iii) of the Act would not attract the fact-situation occurring in these cases and the decisions relied on by the

learned counsel would not assist the revision petitioners - tenants to resist the request of the landlord.

20. Turning to the authorities relied on by the learned counsel for the respondent - landlord, in **M. Padmanabha Setty** (Supra), it was held that a tenant who can be evicted under the conditions prescribed in Section 8 (2) of Mysore Houses Rent and Accommodation Control Act (30 of 1951) cannot be said to be entitled to the possession of the premises of which he is a tenant; though, he cannot be evicted till one or more of the conditions prescribed by the section are fulfilled, but it is difficult to equate his right to stay in the premises till he is evicted to an entitlement of the possession of the premises; Section 8 (3) (a) (iii) deals with two types of cases; first, where the landlord is in occupation of a non-residential building which is owned by him, and secondly, a non-residential building of which he is in occupation not as a landlord but otherwise, and the object of the said Act is to prevent unreasonable evictions of tenants; and can it be said that the Legislature is considering it to be unreasonable for a landlord to shift to his own premises while he is in occupation of tenanted premises over which he has not an absolute right of possession but only a right to remain in possession till one of the conditions in Section 8 (2) is satisfied; and over one of which he has no control. This decision is relied on by the learned counsel to substantiate his stand that the non-residential building i.e. Meenakshi Nursing Home in which the landlord is running his clinic does not

belong to him, but he has been in occupation otherwise but not as a landlord and, thus, the second part of Section 8 (3) (a) (ii) of the Old Act which corresponds to Section 10 (3) (a) (iii) of the present Act would not lay down any statutory bar.

21. The learned counsel relied on **Sarla Ahuja** (Supra) for the proposition that a tenant cannot dictate how landlord should adjust himself without getting possession of the tenanted premises. The learned counsel relied on the decision in **Shiv Sarup Gupta** (Supra), in relation to assessing the need whether *bona fide* or otherwise, it was held that where on the facts substantiated by the landlord the need to occupy the tenanted premises can be said to be natural, real, sincere and honest, the need is *bona fide*. To the same effect is the decision in **Vallampati Kalavathi** (Supra). In **Joginder Pal** (Supra) in the context of explaining the meaning of expression 'for his own use' occurring in Section 13 (3) (a) (ii) of East Punjab Urban Rent Restriction Act, held that the said expression must be assigned wider, liberal and practical meaning and not confined in its meaning to actual physical user by the landlord personally, but also of the normal 'emanations' of the family is included therein.

22. In **Danduboina Madhav Rao** (Supra), a learned Single Judge of this Court while holding that the tenant cannot dictate to landlord as to how he should conduct his affairs, and it is for the landlord to decide how he should put his property to use subject to provisions of the Act, held that in deciding question of *bona fide*

requirement of landlord for additional accommodation and that advantage which would enure to his benefit is not outweighed by hardship which may be caused to the tenant.

23. In **Hindustan Petroleum Corporation Limited** (Supra), the larger bench of the Hon'ble Supreme Court held that Revision Court is not entitled to re-appreciate the evidence and substitute its own conclusion in place of conclusion of the Appellate Authority. In **Rakesh Patel** (Supra), a learned Single Judge of this Court dealt with the second part of Section 10 (3) (a) (iii) of the Act.

24. Since, on facts, the findings recorded by both the Courts below do not suffer from any legal infirmity and the revision petitioners - tenants are unsuccessful in showing that the orders of the Courts below are patently perverse and lacks appreciation of evidence on record, no interference is warranted.

25. Therefore, both the revision petitions are dismissed confirming the judgments and decrees passed by both the Courts below. The revision petitioners - tenants are directed to vacate the tenanted premises within three (3) months from today. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the revisions, stand disposed of.

A. SHANKAR NARAYANA, J

January 20, 2017.
MD/Mgr