

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.115 of 2011

ORDER:

This Civil Revision Petition under Section 22 of the A.P Buildings (Lease, Rent and Eviction) Control Act, 1960, (hereinafter 'Rent Control Act') is filed by the appellants/tenants assailing the judgment dated 19.10.2010 of the learned Appellate Authority-cum-Additional Chief Judge, City Small Causes Court, Hyderabad passed in R.A.No.185 of 2010, whereby, the learned Additional Chief Judge while dismissing the said appeal confirmed the decree and decretal orders dated 30.05.2009 of the learned I Additional Rent Controller, Hyderabad, passed in R.C.No.418 of 2002 filed under Section 10(2)(1) of the Rent Control Act by the landlord/ respondent herein for eviction of the tenants/ petitioners herein under.

2. I have heard the submissions of *Sri Nargis Afshan Khan*, learned counsel appearing for the revision petitioners/ tenants, and of *Sri S Balchand*, learned senior counsel appearing for the respondent/ landlord.

2.1 For convenience and clarity, the revision petitioners shall hereinafter be referred to as the tenants and the sole respondent as the landlord.

3. The case of the landlord, in brief, is this:

He is the owner of the premises bearing No.19-2-226/ G situated at Tadband, Miralam Tank Road, Hyderabad. While so, the tenants obtained one room in the said premises on rent under an oral tenancy, on 01.11.1999, on a monthly rent of Rs.500/- . There is no electricity service connection to the said room. The month of tenancy is English calendar month and the monthly rent is payable before the 10th of the succeeding month. On 01.04.1996, the tenants had obtained a portion of the above said building on lease for the purpose of running a service station on a rent of Rs.1800/- per month. The tenancy of the

said premises is separate and separate rent receipts are being given to the tenants for the said premises. The present petition schedule premises and the premises obtained on a monthly rent of Rs.1,800/- are adjacent to each other. Separate rent receipts are being issued to the tenants in respect of the two premiseses taken separately under separate leases and the two tenancies are being treated separately from one another. A rough sketch is also filed showing both the premiseses. The petition schedule premises was shown in blue colour and the other premises taken on a monthly rent of Rs.1800/- was shown in red colour in the said sketch. In respect of the said premises in red colour, the landlord filed a suit in O.S.No.6585 of 2002 on the file of the learned VIII Junior Civil Judge, City Civil Court, Hyderabad, for eviction and recovery of possession and for other reliefs and the said suit was decreed. The appeal in A.S.No.379 of 2006 preferred by the tenants was dismissed by the learned II Additional Chief Judge, City Civil Court, Hyderabad. The Second Appeal in S.A.No.210 of 2007 was dismissed by this Court on 15.12.2007. The tenants in the present schedule premises are irregular in payment of rents. The tenants paid rents in respect of the present petition schedule premises upto 31.12.1999 and thereafter, they failed to pay the monthly rents. Thus, the tenants are liable to pay arrears of rents from 01.01.2000 to 30.09.2002 @ Rs.500/- per month, for 33 months, i.e., Rs.16,500/- in all. Despite the demand made by the landlord, the tenants did not pay the said arrears of rents. Therefore, the landlord got issued a notice dated 26.03.2002 calling upon the tenants to pay the arrears of rent and vacate the premises. Notice was sent both by registered post acknowledgment due and under certificate of posting. The notice sent by registered post was not claimed. However, the notice sent under certificate of posting was served and received by the tenants. The tenants wilfully failed to pay the rents on the due dates and are wilful defaulters. Hence, the eviction petition is filed.

4. The tenants filed a counter denying each and every allegation in the petition and *inter alia* contending as follows:

The RCC is not maintainable. The petition schedule premises falls in Sy.No.253/30 situated at Mochi Colony, Narasareddynagar Colony, Tadban, Attapur, Hyderabad, as per the Government Lr. No. Memo A6/517/1973, dated 26.09.2003, issued by the Tahasildar, Hyderabad Urban Taluq, and the said property is a poramboke (Sarkari) land. As such, the landlord has no *locus standi* to file the present case; and, the District Collector and the Mandal Revenue Officer are necessary and proper parties for proper adjudication of the matter. On this ground alone, the petition is liable to be dismissed. The Rent Control Court is not having jurisdiction to entertain the case. As the land is a Government land, the tenants having come to know of the said fact, made an application in the required Format as per G.O.Ms.No.508 for assignment of the land. The said application is pending with the District Collector. The tenants are also taking appropriate steps before the High Court to protect their rights as they are the occupants of the Government land. Therefore, the allegation that the landlord is the owner of the building in which the schedule premises is a part and that the tenants obtained the same on a lease on 01.11.1999 on payment of rent @ Rs.500/- per month and that the tenancy month is English calendar month and that the rent is payable by the 10th of every succeeding month and that the tenants obtained on lease the other portion shown in red colour in the sketch filed by the landlord and that the tenants, after paying the rents for some months, later committed wilful defaults in payment of rents in respect of the present petition schedule property are all false. The landlord has no *locus standi* being not the owner of the property. The tenants are in occupation of the property since 1991 onwards and are running service station in the Government land. They have spent huge amount in constructing the service station and installing the machinery of the service station. After improvements made by the tenants,

the landlord approached the Court. He played fraud on the tenants and collected huge amount by cheating them. The amount paid is refundable to the tenants. Hence, the petition may be dismissed.

5. Having regard to the pleadings, the learned Rent Controller framed the following points for consideration:

1. Whether this Court has jurisdiction to entertain the eviction petition?
2. (i) Whether there is any jural relationship in between the petitioner and respondent as landlord and tenant?
- (ii) Denial of title of the petitioner by the respondent is bona fide?
3. Whether the tenant committed willful default in payment of rent from 01-01-2000 to 30-09-2002 for 33 months at the rate of Rs.500/- P.M totaling to Rs.16,500/-?
4. To what relief?

At the hearing, the landlord was examined as PW1 and exhibits P1 to P63 were marked on his side. On behalf of the tenants, RW1 was examined and exhibits R1 to R16 were marked. The learned Rent Controller having answered all the points in favour of the landlord ordered eviction of the tenants from the petition schedule premises and directed them to vacate and handover possession of the same to the landlord within three months from the date of the order in the Rent Control Case, i.e., 30.05.2009. Aggrieved thereof, the tenants preferred the Rent Appeal. As already noted, the Rent Appeal was dismissed. In fact, the tenants were evicted from the schedule premises, vide orders dated 01.02.2010 in E.P.No.8 of 2010 in R.C.No.418 of 2002 and the Field Assistant of the Court having executed the delivery warrant dated 08.02.2010 filed a report in that regard before the Court. Since that date, the tenants are not in possession of the petition schedule premises. Be that as it may.

6. Learned counsel for the tenants would contend as follows:

The landlord is not the owner of the property. The property in T.S.No.253/30 is a Government land. The survey report also shows that the

land in Sy.No.252 of Attapur village is a Government land. The land is a Government land even as per the sethwar of the Attapur village. The lower Court wrongly held that the tenants have not filed any documents to substantiate their case. Since the property is a Government land, the tenants applied to the District Collector for grant of patta in their name as they are in possession and occupation of the land since 1991. The said request of the tenants is under consideration of the District Collector. However, playing fraud, the landlord collected huge amount from the tenants. The tenants are entitled for return of the same. The Courts below without considering the facts properly and the oral and documentary evidence in correct perspective came to erroneous conclusions and wrongly held that there is jural relationship of landlord and tenant between the parties and that the tenants are wilful defaulters in payments of rents. Therefore, the orders impugned are liable to be set aside.

7. The learned senior counsel for the landlord while supporting the concurrent findings in the orders of the Court below contended that the Courts below after proper appreciation of the facts and the evidence brought on record recorded findings supported by valid reasons to the effect that there is jural relationship between the parties and that the denial of the title of the landlord by the tenants is not *bona fide* and that for that reason and for the reason that they failed to pay the rents and committed wilful defaults in payment of rents, they are liable for eviction and accordingly, eviction was ordered and the eviction order of the learned Rent Controller was already executed and possession was obtained by the landlord; and hence, in the facts and circumstances of the case, the revision is devoid of merit and is liable to be dismissed.

8. I have given earnest consideration to the facts and the submissions.

9. The case of the landlord, in brief, is this: - 'He is the owner of the premises bearing No.19-2-226/ G situated at Tadband, Miralam Tank Road, Hyderabad. While so, the tenants obtained one room in the said premises on rent under an oral tenancy on 01.11.1999 on a monthly rent of Rs.500/- . The said property which is the schedule property is shown in blue colour in the sketch annexed to the petition. The tenants also obtained another portion separately on lease on a monthly rent of Rs.1,800/- for running a service station and the said premises is shown in red colour in the said sketch annexed to the petition. The landlord filed a suit against the tenants for eviction and other reliefs in respect of the other premises shown in red colour and the said suit was decreed and the appeal and second appeal preferred by the tenants were dismissed. Now, the present petition is filed for eviction of the tenants from the present schedule property.' Per contra, the case of the tenants is that the landlord is not the owner of the premises bearing No.19-2-226/ G situated at Tadband, Miralam Tank Road, Hyderabad, and that the property, which falls in Sy.No.253/ 30 situated Mochi Colony, Narsa Reddy Nagar Colony, Tadbund, Attapur, Hyderabad, is a Government land and therefore, the landlord is not the owner and that there is no jural relationship of landlord and tenant between the parties and therefore, the landlord has no *locus standi* to seek eviction of the tenants from the petition schedule property and that they have already applied to the Collector for granting a patta in their favour as they are in occupation of the property since a long time; but, the landlord played fraud and collected huge amounts as rents from them and that they are entitled to return of the said amounts. During the course of enquiry, PW1 reiterated his stand in his evidence whereas the 1st respondent as RW1 also reiterated the defence of the tenants in his evidence. In fact, insofar as the other property, i.e., property which is shown in red colour in the petition schedule sketch, the landlord filed O.S.No.6585 of 2002 and got evicted the tenants from the said premises shown in red colour in the rough sketch, exhibit

P9. In the same sketch, the present petition schedule property is shown in blue colour. Exhibit P5 and P6 are the certified copies of the judgment and decree in the former suit. Assailing the decree and judgment in the said suit, the tenants filed A.S.No.379 of 2006. However, the said appeal suit was dismissed. Exhibits P7 and P8 are the certified copies of the judgment and decree in the said appeal suit. A perusal of the exhibits P5, P6, P7 and P8 would reflect that the tenants have taken similar pleas in the above suit and that the said contentions of the tenants were negatived and a decree of eviction was passed in the suit and the same was confirmed in the appeal preferred by the tenants. It is also to be noted that the second appeal in S.A.No.210 of 2007 was also dismissed by this Court. RW1, in fact, admitted about the eviction from the other premises shown in red colour in exhibit P9 sketch and that possession of the suit property covered by the said suit was also delivered to the landlord herein and that the subject matter of the said suit and the present RCC, i.e., the property covered by the subject matter of the former suit and the present matter are one and the same. RW1 also stated that there is power supply to part of the property and it is in the name of the landlord/petitioner. In the cross-examination, RW1 also admitted that in the former suit, he stated that water supply was also there to the property in the name of the petitioner. The landlord also exhibited exhibit P13, certified copy of the sale deed bearing Document No.916/ 73, exhibit P14, certified copy of sale deed bearing document No.934/ 60, exhibit P15, certified copy of letter dated 03.04.1989 bearing No.L.Dis.B/ 1226/ 88 and exhibit P16, certified copy of notice dated 17.09.1992 under Section 686 of the Hyderabad Municipal Corporation Act, besides exhibits P31 to P36, counter foils of rent receipts. Exhibit P15, certified copy of the letter dated 03.04.1989, addressed by the Mandal Revenue Officer, Rajender Nagar, to the Assistant Director, Survey and Land Records, Ranga Reddy District, would show that on preparation of the sketch with reference to Tippans and maps, it was revealed that the area occupied by

Mulchand does not form part of the Sy.No.253/30 and that therefore, interference with the possession of Mulchand does not arise and therefore, the issue was dropped. Thus, the above referred evidence brought on record clinches the issue that the landlord is the owner of the present petition schedule property and that the denial of the title of the landlord by the tenants is not *bona fide*. Be it noted that the following documents are marked in exhibit 'R' series: 'Exhibit R1 is the certified copy of memo dated 26.03.2004 got issued by the Government of Andhra Pradesh, Revenue Department; Exhibit R2 is the notice (served copy) dated 01.03.2005 got issued by the Government of AP, Revenue Department; Exhibit R3 is the memo dated 08.07.2005 issued by the Mandal Revenue Officer, Rajendernagar; Exhibit R4 is the attested copy of Survey report dated 18.02.2005; Exhibit R5 is the attested Survey Report, dated 21.10.2015 along with plan; Exhibit R6 is the true copy of the sketch of S.No.252 and 253/30; Exhibit R7 is the true copy of Survey report dated 10.08.2007; Exhibit R8 is the Memo dated 24.03.2007; Exhibit R9 is the copy of application dated 26.03.2007; Exhibit R10 is the MSLR and sketch, dated 31.03.2007; Exhibit R11 is the true copy of sketch dated 06.11.2007; Exhibit R12 is the copy of application dated 14.11.2006; Exhibit R13 is the copy of Sethwar along with translation dated 13.02.2007; Exhibit R14 is the memo dated 03.05.2008; Exhibit R15 is the report dated 04.04.2008; and, Exhibit R16 is the copy of application dated 14.11.2006.' None of the said documents in 'R' series are helpful to the tenants in substantiating their defence. Further, the overwhelming evidence on the side of the landlord adverted to supra including exhibit R15 clearly establishes that the land in question is not a Government land and that the property is that of the landlord. Admittedly, the tenants paid rents to the landlord for some time and later failed to pay the rents having denied the title of the landlord without any basis. In the light of the evidence, it can safely be held that the denial of title of the landlord by the tenants is not *bona fide*. It is undisputed and it is also borne out by the

evidence brought on record that the tenants have not paid rents to the landlord having set up a defence that there is no jural relationship and thus committed wilful defaults in payments rents as also concurrently held by the Courts below. Viewed thus, this Court finds that both the Courts below are justified in holding that denial of title is *bona fide* and that the tenants are liable for eviction on the said ground and also on the ground of wilful default in payment of rents. This Court while exercising revisional powers/jurisdiction under the rent control law shall confine itself to the aspects of legality, regularity and propriety of the order impugned before it. Having carefully examined the pleadings and the evidence, adverted supra, this Court does not find any illegality or irregularity or impropriety either in appreciation of the facts or the evidence by the Courts below and hence, finds no reason calling for interference.

10. In the result, the Civil Revision Petition is dismissed. Before parting, it is apt to note that the landlord had already obtained delivery of the petition schedule property from the tenants in the execution proceedings.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

05th January 2017
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