

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.1999 of 2016

ORDER:

1 This Civil Revision Petition is filed by the tenant under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act'), assailing the order dated 11.02.2016 passed in R.A.No.62 of 2013 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad, wherein and whereby the order dated 06.07.2010 passed in R.C.No.227 of 2008 on the file of the Principal Rent Controller, Secunderabad ordering eviction of the petitioners herein from the petition schedule premises and handover the vacant physical possession of the same to the respondents-landlords, was confirmed.

2 The parties to this revision petition will hereinafter be referred to as they were arrayed before the Rent Control Court, to avoid confusion.

3 The facts leading to the filing of the present Civil Revision Petition are as follows:

4 The petitioners filed the petition on the file of the Rent Controller against the respondent under Sections 10(2)(i), 10(2)(v) and 10(3)(a)(i)(b) of the Act, alleging that the premises bearing D.No.6-6-191 to 226, admeasuring about 3,600 sft, situated at Gandhi Nagar (old Jeera), Kavadiguda, Secunderabad, popularly known as Neelam Balaiah Doddi, originally belong to late Neelam Balaiah. The petitioners

purchased a portion of the above said Neelam Balaiah Doddi/compound, admeasuring 577 sq. yards from the legal heirs of said Neelam Balaiah through a registered sale deed dated 07.9.2007. The portion of the property purchased by the petitioners comprises of nine tenaments with common open land. The petitioners informed about the purchase of the petition schedule property by them to all the tenants including the respondent. By the time of purchasing of the petition schedule property by the petitioners the respondent committed default in payment of rent. The vendor of the petitioners filed R.C.No.18 of 2004 against the respondent under Section 4 of the Act for fixation of fair rent. The Rent Controller allowed that petition on 17.3.2005 fixing the fair rent of the petition schedule property as Rs.540/-. Feeling aggrieved by the order of the Rent Controller in R.C.No.18 of 2004, the respondent filed R.A.No.73 of 2006 wherein the Rent Control Appellate Authority gave a specific finding that respondent is the tenant of the original vendor of the petitioners. The vendor of the petitioners issued a notice to the respondent intimating the sale of the petition schedule property in favour of the petitioners and the same was acknowledged by the respondent. The respondent committed wilful default in payment of rent for a period of 57 months with effect from 01.03.2004 to 30.11.2008. The petitioners need the petition schedule property for their personal requirement. Hence the petition.

5 The respondent filed counter denying all the averments made in the eviction petition *inter alia* contending that the petitioners are not the owners of the petition schedule property and that there is no jural relationship of landlord and tenant between the petitioners and the respondent. The respondent and others have occupied the petition schedule property which belongs to Sidhi Lingeswara Alaym. The respondent used to pay Rs.27/- per month to the temple authorities. The petitioners filed the petition with false and frivolous allegations with an ulterior motive to evict the respondent from the petition schedule property. Hence the petition is liable to be dismissed.

6 To substantiate the stand of the petitioners, before the Rent Control Court, the 4th petitioner was examined as P.W.1 and Exs.P.1 to P.18 were marked. To demolish the case of the petitioners, the respondent examined herself as R.W.1 and got marked Ex.R.1.

7 Basing on the oral, documentary evidence and other material available on record, the Rent Control Court allowed the petition on the following two grounds:

- i) The respondent committed wilful default in payment of the rent for a period of 57 months;
- ii) The petitioners require the petition schedule property for their *bona fide* requirement.

8 Feeling aggrieved by the order dated 06.07.2010 in R.C.No.227 of 2008, the respondent preferred R.A.No.62 of

2013. The Rent Control Appellate Authority, after reappraising the oral and documentary evidence, arrived at the conclusion that the respondent committed wilful default in payment of rent for a period of 57 months. However, the appellate authority reversed the finding of the Rent Controller that the petition schedule property was required by the petitioners for their *bona fide* purpose and consequently dismissed the appeal. For one reason or the other, the petitioners / landlords did not choose to file appeal challenging the above said finding of the appellate authority. Therefore, the finding of the Rent Control Appellate Authority, so far as *bona fide* requirement is concerned, has become final. Feeling aggrieved by the orders of the Rent Control Appellate Authority dated 11.02.2016 in R.A.No.62 of 2013, the respondent/tenant filed the present revision petition.

9 The contention of the learned counsel for the tenant / revision petitioner is that the Rent Controller as well as the Rent Control Appellate Authority failed to consider that there is no jural relationship of landlord and tenant between the petitioners and the respondent. He further submitted that authorities below failed to consider that the premises belong to Sidhi Lingeswara Alaym only but not to the legal heirs of Neelam Balaiah. He further submitted that the findings recorded by the authorities below are perverse, therefore, it is a fit case to allow the present Civil Revision Petition.

10 *Per contra*, the learned counsel for the landlords/ respondents submitted that the authorities below have assigned reasons much less cogent and convincing reasons while ordering eviction of the respondent. He further submitted that this Court shall not lightly interfere with the concurrent findings of fact recorded by the Authorities below, in view of the scope of Section 22 of the Act. He further submitted that the authorities below considered the oral and documentary evidence in right perspective and allowed the petition, therefore, it is not a fit case to interfere with the concurrent findings recorded by the authorities below and the present Civil Revision Petition is liable to be dismissed.

11 Basing on the rival contentions, the points that fall for consideration in this Civil Revision Petition are:

1. *“Whether there is any illegality, irregularity or impropriety in the orders passed by the authorities below, warranting interference of this Court while exercising revisional jurisdiction under Section 22 of the Act?”*
2. *Whether the findings recorded by the authorities below are perverse?”*

12 Both the points are intertwined with each other and hence I am inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

13 The petition schedule property, which consists of nine tenements with common open land, originally belongs to one Neelam Balaiah. As seen from the testimony of P.W.1, they purchased the petition schedule property from the legal

representatives of Neelam Balaiah under a registered sale deed dated 07.9.2007. Ex.P.1 is the certified copy of the registered sale deed. As per the testimony of P.W.1, the respondent is the tenant in the petition schedule property. As per the testimony of R.W.1, petition schedule property belongs to Sidheswara Alayam. As per the testimony of R.W.1 the petitioners are not the owners of the petition schedule property, therefore, the petition is not maintainable.

14 P.W.1 and R.W.1 being parties to the proceedings, the possibility of distortion of the facts in order to suit their claim cannot be ruled out completely. It is needless to say that the Court has to scrutinise the testimony of interested witnesses meticulously so as to eliminate the exaggerations, thereby to adjudicate the issue involved in the proceedings effectively.

15 Exs.P.2 and P.3 are the certified copies of the orders passed in R.C.No.18 of 2004 and R.A.No.73 of 2006. A perusal of the above two documents clearly reveals that late Balaiah filed R.C.No.18 of 2004 against the respondent under Section 4 of the Act for fixation of fair rent. The Rent Control Court fixed the fair rent of the petition schedule property as Rs.540/- p.m. Feeling aggrieved by the order passed by the Rent Controller in R.C.No.18 of 2004, the respondent preferred R.A.No.73 of 2006 wherein the Rent Control Appellate Authority gave a specific finding that the respondent is the tenant of the original vendors of the petitioners. A perusal of Exs.P.2 and P.3 clearly reveals

that the respondent is tenant of the petition schedule property. For one reason or the other, the respondent has not chosen to challenge the order passed in R.A.No.73 of 2006. Therefore, the findings recorded in R.A.No.73 of 2006 have become final and binding on the respondent. The respondent is estopped from taking the plea that the petitioners are not the owners of the petition schedule property in view of non-challenging of the orders in R.A.No.73 of 2006.

16 A perusal of Ex.P.4 reveals that the vendors of the petitioners issued a legal notice to the respondent intimating the sale of the petition schedule property in favour of the petitioners. R.W.1 in his cross examination admitted about the receipt of Ex.P.4 legal notice. The respondent, having received the attornment notice dated 11.01.2008, kept quiet. If not directly, but by necessary implication, the respondent has attorned that the petitioners are landlords of the petition schedule property. It is not the case of the respondent that after receipt of Ex.P.4 notice, he made any attempt to pay the rent to the petitioners without prejudice to his right. Even during the pendency of the R.C., the respondent did not take any steps to deposit the rent to prove his *bona fides*. The fact remains that the respondent did not pay rent to the petitioners from 23.2.2004 to 30.1.2008 i.e. for a period of 57 months. The material placed before the Court clinchingly establishes the jural relationship of landlord and tenant between the petitioners and the respondent. The

respondent being the tenant of the petition schedule property ought to have paid rent to the petitioners/ landlords.

17 It is a settled principle of law that intention of the parties can be gathered from the facts pleaded and proved. The material available on record clinchingly establishes that the respondent committed default much less wilful default in payment of rent to the petitioners for a period of 57 months.

18 The appellate court is the fact finding final court. This court shall not lightly interfere with the concurrent finding of fact recorded by the authorities below. This court can interfere even with the concurrent finding of fact recorded by the authorities below if the same are perverse. In the instant case, the findings recorded by the authorities below are based on evidence much less legally admissible evidence. In view of the foregoing discussion I am unable to countenance the submissions made by the learned counsel for the respondent that the findings recorded by the authorities below are perverse. There is no illegality, irregularity or impropriety in the orders passed by the authorities below, warranting interference of this court while exercising jurisdiction under Section 22 of the Act.

19 The learned counsel for the respondent submitted that one year time may be granted to the respondent / tenant to vacate the petition schedule property. The learned counsel for the petitioners / landlords submitted that six months time may be granted to the respondent / tenant to vacate the petition

schedule property. Having regard to the submissions made by both counsel, this court is inclined to grant six months time to the respondent / tenant to vacate the petition schedule property.

20 In the result, the Civil Revision Petition is dismissed. The revision petitioner-tenant is directed to vacate the petition schedule premises on or before 07.02.2019 and handover the vacant physical possession of the same to the petitioners-landlords. No order as to costs. Consequently, miscellaneous petitions, if any pending in this Civil Revision Petition shall stand closed.

Date: 07.08.2018
Kvsn

T.SUNIL CHOWDARY, J.

