

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.R.P. Nos.434, 446, 461 and 474 of 2019

ORDER :

1. These four Civil Revision Petitions arise under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for brevity "the Act") between the same parties and so, they are being disposed of by this common order.

2. The respondent herein had filed O.S.No.1503 of 1996 before the I Senior Civil Judge, City Civil Court, Hyderabad, for declaration of her title, recovery of possession, recovery of Rs.5,000/- per month towards compensation from 18.01.1996 till the date of delivery of possession and also for perpetual injunction in respect of the house property bearing Municipal Door No.14-4-95, admeasuring 113 square yards, situated at Multanipura, Hyderabad, against Rajeshwar Prasad, the husband of petitioner No.1 and others.

3. Pending the said suit, the husband of petitioner No.1 died and petitioner Nos.1 to 6 were impleaded as his legal representatives.

4. The said suit was partly decreed on 30.12.2011 declaring the ownership of the respondent over the suit schedule property and a perpetual injunction was granted restraining the petitioners and other defendants in the suit from changing the nature of the suit property and from inducting the third parties into possession of the suit schedule property, but the reliefs of recovery of possession,

compensation of Rs.5,000/- per month claimed by the respondent were denied and liberty was granted to the respondent to invoke the provisions of the Act for the relief of eviction and recovery of arrears of rent.

5. The respondent then filed RC.No.213 of 2012 under Section 10(2)(i), 10(2)(ii)(a), 10(2)(iv), 10(2)(v) and 10(2)(vi) of the Act against the petitioners herein on the grounds of (i) willful default in payment of rent/non-payment of rent from 10.11.1987 onwards, (ii) ceasing personally to occupy or continue to occupy the RC premises, (iii) securing alternative accommodation, (iv) unauthorized sub-letting of the petition schedule premises and (v) denial of title, which is not bonafide.

6. She also filed RC.No.323 of 2012 before the Principal Rent Controller, Hyderabad, under Section 4 of the Act for fixation of fair rent @ Rs.30,000/- per month from 01.10.2012 onwards for the RC schedule premises with a direction to the petitioners to pay the said rate of rent, exclusive of Electricity charges, water charges and Municipal Property Tax, etc., to the respondent from the date of the petition and costs.

7. I shall first deal with CRPs 461 of 2019 and 474 of 2019. These arise out of RC.No.213 of 2012.

A. CRPs 461 of 2019 and 474 of 2019.

Pleadings of respondent in RC.No.213 of 2012

8. In this RC, it is the contention of the respondent that she had purchased the RC schedule premises under a

registered Sale Deed dt. 10.11.1987 from the three daughters of its previous owner Smt. Ghousia Bee by name Smt. Turab Bee, Smt. Zahoor Bee and Smt. Maqbool Bee. She contended that Rajeshwar Prasad, the husband of petitioner No.1 was a tenant under her vendors, that the husband of petitioner No.1 was well aware about the purchase of the property by the respondent, and by operation of law or otherwise, jural relationship of landlady and tenant came into existence between herself and Rajeshwar Prasad.

9. She contended that she filed RC.No.116 of 1988 before the II Additional Rent Controller, Hyderabad seeking eviction of Rajeshwar Prasad on the ground of willful default in payment of rent, that an *exparte* order of eviction was passed by the Court below on 18.04.1988, that it was also executed in E.P.No.15 of 1988 and possession was delivered by the Court Bailiff to her on 04.05.1988, but the *exparte* eviction order was later set aside on 02.05.1994 and possession was restored to Rajeshwar Prasad on the same day in I.A.No.332 of 1988 and I.A.No.429 of 1988.

10. She contended that though she challenged the said orders in RA.No.244 of 1994 and RA.No.243 of 1994, they were dismissed by the City Small Causes Court, Hyderabad; and CRP.Nos.4030 and 4032 of 1994 respectively filed by her in the High Court against the appellate orders were also dismissed on 28.10.1995.

11. She contended that thereafter possession was taken back from her by Rajeshwar Prasad on 18.01.1996 by filing E.P.No.1 of 1996.

12. She contended that Rajeshwar Prasad died on 31.12.2006 and petitioner Nos.1 to 6, being his wife and children, stepped into his shoes and by operation of law, they became her tenants. She stated that she did not pursue RC.No.116 of 1988 and it was later dismissed for default.

13. She contended that from the date of purchase of the property by her i.e., 10.11.1987 till eviction i.e., 04.05.1988 he did not pay the rents; after securing possession from her, Rajeshwar Prasad failed to pay the rents from 18.01.1996 to her and he is due a sum of Rs.49,857/- towards arrears of rent upto 30.06.2012. She also contended that water cess arrears amounting to Rs.86,298-29 ps, which were payable by Rajeshwar Prasad by 01.06.2012, were not paid, and this also amounts to willful default rendering the petitioners for eviction.

14. She further contended that the petitioners ceased to personally occupy the RC schedule premises and, in fact, they secured alternative accommodation and are residing at the premises bearing No.14-10-1352/1, Jali Hanuman, Near Kavili Ki Masjid, Dhoolpet, Puranapool, Hyderabad, which she believed was purchased by Rajeshwar Prasad along with the petitioners.

15. She alleged that the petitioners, after obtaining possession of the scheduled premises from 18.01.1996 sub-

let the premises to different sub-tenants and had been collecting rents from them.

16. According to her, the RC schedule premises consists of Ground and First Floor and two rooms WC, bath etc., in the Second Floor and the sub-tenants were actually in possession and enjoyment of the respective portions and their names were also found recorded in the Voters Lists prepared by the Statutory authorities and this ground is also available to her to evict the petitioners. She mentioned the names of different sub-tenants in the RC schedule premises in RC.No.213 of 2012.

17. She next alleged that there were some unauthorized constructions made by petitioners in the Second Floor of the existing structure by adding two more rooms, WC, bath etc., which were allotted Municipal bearing Nos.14-4-95/A and 14-4-95/B and in the schedule to the RC, she had included these additional premises also.

18. According to her, the denial of title of the respondent by the petitioners is malafide and not bonafide and the pleadings of Rajeshwar Prasad in various proceedings at various stages in different Courts amounts to denial of her title. The details of the pleadings of Rajeshwar Prasad in various proceedings between himself and the respondent are mentioned in the Eviction Petition.

The pleadings of petitioners in the RC.No.213 of 2012

19. Counter was filed in RC.No.213 of 2012 by the petitioners denying the said allegations.

20. They alleged that the instant litigation is the fourth round of litigation filed by the respondent against them and the respondent had lost all the previous litigations and so, she was debarred from initiating any fresh litigation.

21. It was contended that when the respondent filed a Civil Suit for declaration and possession specifically pleading that only the Civil Court had jurisdiction and the Rent Controller had no jurisdiction, she cannot file RC.No.213 of 2012 for their eviction.

22. They contended that Mohd. Jaffar was one of the children of Smt. Ghousia Bee; that the said Mohd. Jaffar was the absolute owner of the suit schedule property and he had entered into an Agreement of Sale with petitioner No.1 on 05.07.1981 and also received substantial amounts towards sale consideration; that prior thereto Rajeshwar Prasad was the tenant of the said property and Mohd. Jaffar was the landlord; and in view of the execution of the agreement of sale, possession of petitioner No.1 over the RC schedule property was real and equitable under Section 53-A of the Transfer of Property Act, 1882.

23. The petitioners denied the ownership of the respondent over the RC schedule property and contended that petitioner No.1 was the owner of the said property having purchased the same in 1981 and being in possession in part

performance of the said agreement of sale. They contended that petitioner No.1 had denied the title of the respondent and her vendors in 1983 itself in the earlier litigation. It is contended that the respondent knew about the agreement of sale executed by Mohd. Jaffar in favour of petitioner No.1, but she did not take any steps for its cancellation.

24. It was contended that there is no relationship of landlord and tenant between Rajeshwar Prasad and the respondent at any time and so the question of payment of rents to the respondent or her husband does not arise.

25. It was contended that the respondent had filed a false eviction case in RC.No.116 of 1988 before the II Additional Rent Controller, Hyderabad, and by suppressing the material facts, played fraud on the Court and managed to get an *exparte* eviction order and got evicted Rajeshwar Prasad illegally; and thereafter possession was restored to the petitioners and the same was also confirmed by the High Court.

26. It was contended that there is no willful default in payment of rents by the petitioners, since there is no relationship of landlady and tenant between the respondent and the petitioners.

27. It was contended that the petitioners paid water charges till there was water supply regularly and that non-payment of water cess would not amount to willful default under the Act.

28. It was also denied that the petitioners ceased to occupy the RC schedule property and had secured alternative accommodation at Puranapool, Hyderabad, and since the respondent was not a landlady, such a plea was not available to her.

29. It is contended that there is no sub-letting of the RC schedule premises and petitioner No.1, as owner of the RC schedule premises, had every right to maintain the property and had been exercising the said right to keep the same in habitable condition. They also contended that there is no renouncement of status as tenant or any malafide denial of title because the petitioners or Rajeshwar Prasad were never the tenants of the respondent.

30. Lastly, it is contended that the respondent had sought damages from the petitioners in the suit O.S.No.1503 of 1996 for use and occupation of the RC schedule premises and so, she is not entitled to claim either arrears of rent or eviction when petitioner No.1 is in possession of the property as an owner in part performance of the agreement of sale. It is contended that the proper Forum is the Civil Court for the issues being raised by the respondent and the Rent Controller has no jurisdiction to entertain the case.

Order dt.08.11.2016 in R.C.No.213 of 2012:

31. Before the Rent Controller, in R.C.No.213 of 2012, the respondent/Landlady marked Exs.P1 to P19 and examined PW1. Petitioner marked Exs.R1 to R11 and examined RW1.

32. By order dt.08.11.2016, the Rent Controller allowed R.C.No.213 of 2012.

33. After noting the contentions of both sides and evidence on record, the Rent Controller noted that the property which was subject matter of O.S.No.1503 of 1996 is also subject matter of RC.No.213 of 2012.

34. The Rent Controller noted the fact that RW1 stated in cross-examination that the RC schedule property belongs to Mohd.Jaffar and that Rajeshwar Prasad, his father was tenant of the schedule property and he had obtained the RC schedule property on lease in 1970 or 1971 from Mohd. Jaffar. He then held that Rajeshwar Prasad, husband of 1st petitioner was in occupation of the RC schedule property as a tenant along with his family members and the contention of the petitioners that 1st petitioner became owner of the RC schedule property by virtue of agreement of sale cannot be accepted, since the title of the respondent had been declared by the I Senior Civil Judge, City Civil Court, Hyderabad in O.S.No.1503 of 1996, and so the petitioners could not establish that they are in possession of the RC schedule property as owners.

35. The Rent Controller held that since the ownership of the 1st petitioner in respect of the RC schedule property was not confirmed by the Civil Court, possession of the petitioners is a continuation of the tenancy of the RC schedule property as successors of said Rajeshwar Prasad.

36. The Rent Controller then accepted the evidence of PW1, son of the respondent that though no written rental agreement was executed between the respondent and the 1st petitioner, the respondent had orally instructed the 1st petitioner to pay rents and that his father told him that his mother orally informed the same to the 1st petitioner with regard to the tenancy, though at no point of time 1st petitioner or her husband paid rents to the respondent, and there were no rent receipts. The Rent Controller therefore held that there is a jural relationship between the petitioners and respondent as tenants and landlady in respect of the RC schedule property.

37. The Rent Controller also held that denial of title by the respondent of the 1st petitioner is not bonafide since the Civil Court in OS.No.1503 of 1996 had already declared the title of the RC schedule property in favour of the respondent and the petitioners could not establish the title of the 1st petitioner in respect of the RC schedule property.

38. He also held that Rajeshwar Prasad, failed to pay rents to the respondent from 10.11.1987 till 4.5.1988 and thereafter from 18.1.1996 till 31-12-2006 during his life time and thereafter the petitioners failed to pay rents from 1-1-2007 till 30-6-2012 at Rs.245/- per month and committed willful default; and since the jural relationship of landlord and tenant is established between the respondent and the petitioners, petitioners did not pay rents from the date of attornment of the tenancy and thus committed willful default.

39. The Rent Controller rejected the plea of the respondent that the petitioners had secured alternate accommodation and chose to occupy the RC schedule property without reasonable cause on the ground that the respondent did not plead requirement of the RC schedule premises at all for their eviction.

40. The Rent Controller also rejected the plea of the respondent that petitioners have sublet the RC schedule property to several sub-tenants on the ground that no documentary evidence was filed by the respondent to show that petitioners were collecting Rs.30,000/- per month towards rents from sub-tenants.

41. The Rent Controller also rejected the plea of the respondent that petitioners had constructed unauthorizedly additional portions in the RC schedule property. It observed that the RC schedule premises was dismantled on 15.01.1996 by the husband of the respondent, and that the dismantled portion was constructed at the cost of the respondent under the supervision of Advocate-Commissioner appointed by the High Court.

42. However he directed eviction of petitioners on grounds of denial of title and willful default in payment of rents.

R.A.No.214 of 2016 and RA.No.2 of 2017

43. Challenging the order dt.08.11.2016 in RC.No.213 of 2012 passed by the Principal Rent Controller, City Small Causes Court, Hyderabad, directing their eviction, petitioners

filed R.A.No.2 of 2017; and the respondent/Landlady filed R.A.No.214 of 2016 with regard to the adverse findings given by the Principal Rent Controller in RC.No.213 of 2012 on the aspects of securing alternate accommodation, subletting and change of user, before the Additional Chief Judge, City Small Causes Court, Hyderabad/Appellate Authority under the Act.

44. By separate orders dt.28.02.2018, the Appellate Authority dismissed RA.No.2 of 2017 with costs and granted two months time to the petitioners to vacate and deliver peaceful vacant possession of the RC Schedule property to the respondent.

45. It however allowed RA.No.214 of 2016 in part with costs and set aside the order of the Principal Rent Controller in regard to grounds on securing alternate accommodation by the petitioners and subletting of the RC schedule property and upheld the eviction of the petitioners on the said ground also. It confirmed the finding of the Principal Rent Controller as regards the finding on change of user of the RC schedule property.

46. As against the order dt.28.12.2018 in RA.No.2 of 2017 of the Additional Chief Judge, City Small Causes Court, Hyderabad, petitioners filed CRP.No.461 of 2019 and as against the order dt.28.12.2018 in RA.No.214 of 2016 of the Additional Chief Judge, City Small Causes Court, Hyderabad, petitioners filed CRP.No.474 of 2019.

Submissions of Counsel on both sides:

47. Heard Sri Pramod Singh, counsel for revision petitioners and Sri S.Balchand, counsel for respondent.

48. Counsel for the petitioners contended that both Rent Controller and Appellate Court failed to appreciate that there was no jural relationship of landlord and tenant between the respondent and the petitioners and the Rent Controller therefore did not have jurisdiction to direct eviction of the petitioners.

49. According to him, the judgment dt.30.12.2011 in O.S.No.1503 of 1996 of the I Senior Civil Judge, City Civil Court, Hyderabad, was also challenged by way of appeals in AS.Nos.140 and 186 of 2012 in the High Court; that the judgment in the suit did not attain finality and the findings therein therefore cannot be relied upon. He also contended that the respondent did not plead that the possession of the petitioners was as tenants and so there was no obligation on the part of the petitioners to pay rent and they could not be said to have committed willful default in payment of rent.

50. According to him, there was an Agreement of Sale executed by Mohd.Jaffar in 1981 in favour of 1st petitioner and so possession of the premises by the petitioners was in the capacity of owners and not as tenants. He therefore contended that denial of title of the respondent by the petitioners is bonafide.

51. Counsel for petitioners also challenged the findings in RA.No.214 of 2016 with regard to securing

alternate accommodation by the petitioners and subletting by the petitioners.

52. Counsel for the respondent, while supporting the reasoning of the Rent Controller as regards the finding regarding willful default and denial of title, contended that there was no suspension of the judgment dt.30.12.2011 of the I Senior Civil Judge, City Civil Court, Hyderabad in O.S.No.1503 of 1996 in the Appeals preferred by the parties in the High Court, and so the findings therein regarding acquisition of title by the respondent from three daughters of Smt Ghousia Bee has to be accepted.

53. He contended that Mohd. Jaffar was a son of Smt Ghousia Bee, but he died on 19.08.1983; and at the time of purchase by the respondent of the RC schedule premises on 10.11.1987 from the three daughters of Smt Ghousia Bee, her husband and son-Mohd.Jaffar, were both not alive; and the 1st petitioner, not having filed any suit for specific performance of the alleged agreement of sale dt.05.07.1981 executed by Mohd.Jaffar, cannot claim to be the owner of the RC schedule premises.

54. It was also contended that Mohd.Jaffar was not the sole owner of the premises at the time of execution of the said agreement of sale because his mother, Smt Ghousia Bee, having died on 28.10.1966, her husband Mohd.Abdullah, Mohd.Jaffar and the three daughters were alive and were also co-owners of the RC schedule property.

55. According to him, at the time of purchase of the RC schedule premises on 10.11.1987, husband of the 1st petitioner-Rajeshwar Prasad, was a tenant and on his death, petitioners became the tenants and thus jural relationship came into existence between the petitioners and the respondent as tenants and landlady.

56. He also stated that ever since the purchase by the respondent no rents were paid by the petitioners and consequently they have to be evicted because of willful default in payment of rents and also denial of title.

57. Counsel also supported the finding in RA.No.214 of 2016 with regard to securing alternate accommodation by the petitioners and subletting of the RC schedule premises by the petitioners.

The Consideration by this Court:

58. It is pertinent to note that the alleged agreement of sale executed by Mohd. Jaffar in favour of the 1st petitioner was on 05.07.1981 and it has not even been filed in RC.No.213 of 2012 by the petitioners.

59. Assuming that there is any such agreement of sale, the question that arises is, *“whether by the mere execution of such agreement, there is an automatic determination of the lease and severance of relationship of landlord and tenant in relation to lease property?”*.

60. This issue fell for consideration in ***H.K.Sharma v. Ram Lal***¹ where the Supreme Court held that it depends upon the terms of agreement of sale; and since the terms of the agreement in that case did not indicate what would be the fate of the tenancy after the execution of the agreement of sale, i.e., there was no intention of the parties to surrender the tenancy, it held that there would not be a determination of the lease under Section 111 of the Transfer of Property Act, 1882 by mere execution of such agreement. It clarified that there has to be specific intention in the agreement that the parties intended the tenants, in whose favour the agreement was executed, to surrender their tenancy rights on execution of the agreement of sale and bring to an end their jural relationship of landlord and tenants.

61. Thus when there is no evidence of such intention of surrender of tenancy, notwithstanding the execution of the agreement of sale by a landlord in favour of a tenant, the jural relationship of landlord and tenant would continue till the sale deed is executed pursuant to the agreement of sale.

62. In the instant case when the very agreement of sale is not placed before the Court, it has to be held that there is no evidence of any intention that the execution of the agreement of sale by the landlord in favour of a tenant ends the jural relationship of landlord and tenant. So it has to be held that the said relationship would continue till the sale deed is executed pursuant to the agreement of sale.

¹ 2019 (2) SCALE 165

63. Consequently, it has to be held that there is no termination of the landlady-tenant relationship between Rajeshwar Prasad, and the family members of Ghousia Bee, the original owner of the property, on the execution of the alleged agreement of sale.

64. So on the death of Rajeshwar Prasad on 31-12-2006, the petitioners became the tenants of the property and continued to be so till the date of filing of the RCs and thereafter too.

65. Also the plea of the petitioners that Mohd.Jaffar was the sole owner of the RC schedule property is not correct.

66. Admittedly Smt Ghousia Bee, is the original owner of the RC schedule property and she died on 28.10.1966 intestate. After her death, the property would be inherited as tenants in common by her husband Mohd.Abdulla, son Mohd.Jaffar, and the 3 daughters as per Mohammedan law.

67. In the judgment in O.S.No.1503 of 1996, this was the finding and it was held that there is no material to show that Mohd.Jaffar became the exclusive owner of the property when his father and sisters were alive.

68. Admittedly he died on 19.08.1983 unmarried and Mohd.Abdulla, husband of Smt Ghousia Bee also died on 6.10.1981. Thus, by the date of execution of the sale deed on 10.11.1987 in favour of the respondent, only the three

daughters of Smt Ghousia Bee were alive and the respondent acquired title from them under regd.sale deed dt.10-11-1987.

69. Though the judgment in O.S.No.1503 of 1996 is challenged before this Court by filing AS.No.140 and 186 of 2012, there is no suspension by this Court of the judgment rendered in O.S.No.1503 of 1996. In that view of the matter, since all the petitioners herein are parties to O.S.No.1503 of 1996, the findings therein would bind them and they cannot now contend that their denial of title is bonafide.

70. Also though petitioners are claiming that there is an agreement of sale executed in 1981 by Mohd.Jaffar, son of Ghousia Bee, no suit for specific performance of the said agreement of sale had been filed by the 1st petitioner to obtain a sale deed till date and title to immoveable property does not get conveyed under an agreement of sale.

71. I also reject the plea of petitioners that there is no specific attornment of tenancy in favour of the respondent. In my opinion, attornment took place by operation of law under Sec.109 of the Transfer of Property Act, 1882 once title passed to respondent under the sale deed dt.10-11-1987 executed by the daughters of Smt. Ghousia Bee.

72. Section 109 of the Transfer of Property Act, 1882 reads as follows:

“109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred

so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased."

73. In **Ambica Prasad v. Mohd. Alam and Another**²

the Supreme Court held that:

"it is manifest that after the transfer of lessor's right in favour of the transferee, the latter gets all rights and liabilities of the lessor in respect of subsisting tenancy. The Section does not insist that transfer will take effect only when the tenant attorns. It is well settled that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights. Since attornment by the tenant is not required, a notice under Section 106 in terms of the old terms of lease by the transferor landlord would be proper and so also the suit for ejectment."

74. Thus attornment of tenancy happened between the petitioners and the respondent by operation of law i.e Sec.109 of the Transfer of Property Act, 1882 and the rights of

² 2015(13) SCC 13

the daughters of Smt.Ghousia Bee in the property stood transferred to respondent automatically.

75. Consequently, the petitioners had an obligation to pay the rents regularly and since they did not do so, there is a willful default in payment of rents, rendering them liable for eviction.

76. Therefore, I hold that the Rent Controller as well as the Appellate Authority under the Act did not commit any error of law or fact in holding that there is jural relationship of landlady and tenants between the respondent and the petitioners and that the denial of title of the respondent by the petitioners is not bonafide and also that there is willful default in payment of rents to the respondent by the petitioners for the period 10.11.1987 to 04.05.1988 at the rate of Rs.1445/- per month and from 18.01.1896 till 31.12.2006 at the rate of Rs.245/- per month, and thereafter from 01.01.2007 to 30.06.2012 at the same rate.

77. Though the Rent Controller had held that respondent did not prove that petitioners had alternative accommodation or that petitioners had sublet the property, the Appellate Authority had reversed these findings.

78. In the RC petition, the respondent had specifically alleged in para 8 that petitioners have ceased to personally occupy the RC schedule premises and they had secured alternative accommodation and are residing at premises No.14-10-1352/1, Jali Hanuman, near Kavili Ki Masjid,

Dhoolpet, Puranapool, Hyderabad. The Rent Controller noted the pleading but held that since respondent did not plead bonafide requirement of the property, she cannot seek eviction on this ground.

79. Under section 10(2)(v), landlord can seek eviction of a tenant on the ground that the tenant had secured alternative building or ceased to occupy the building let out to him for a continuous period of four months without reasonable cause. This plea under that provision is different from the plea under Section 10(3)(a)(i) of the Act where eviction on ground of bonafide requirement of the landlord is sought. Therefore, the finding of the Rent Controller that since respondent did not plead bonafide requirement of the property, she cannot seek eviction on the ground of tenant ceasing to occupy the RC schedule property, is incorrect.

80. The Electoral Roll Ex.P11 (for 2011-2012) for the Gosha Mahal Constituency for polling stations Nos.137 where premises No.14-10-1352/1, Dhoolpet falls, shows the names of the petitioners/tenants as residents of the said property. The electoral roll Ex.P12(for 2011-2012) of Gosha Mahal Constituency for polling stations No.111 where the RC schedule premises falls shows four persons, who are not the petitioners, as occupants.

81. The statement in cross-examination of RW1, the witness for the petitioners, that petitioners are residing in both the houses at once and at the same time, cannot be

believed and the Appellate Authority rightly relied on the same to hold not only that petitioners had secured alternative accommodation and had ceased to occupy the RC schedule property, but also held that the occupation by others is evidence of subletting. Therefore, these findings of the Appellate Authority are not liable to be interfered with in exercise of revisional jurisdiction.

82. Though the plea of the respondent that petitioners made additional constructions was not accepted by the Rent Controller and the Appellate Authority, the findings of the Appellate Authority on grounds of willful default, ceasing personally to occupy the RC schedule property, denial of title and unauthorized subletting are sufficient grounds to direct the eviction of the petitioners from the RC schedule property.

83. Therefore, I do not find any merit in CRP.No.474 of 2019 and 461 of 2019, and they are dismissed, but without costs. However, the petitioners are granted time up to 30.06.2019 to vacate the RC schedule property, subject to the petitioners paying all the arrears of rent for the period for which the RC.No.213 of 2012 was filed by the respondent at Rs.8 per sq.ft as determined in this order (see below) within four weeks from the date of receipt of the copy of the order and filing an undertaking before this Court within one week from the date of receipt of copy of this order that they would vacate the RC schedule premises and handover vacant possession of the same to the respondent by 30.6.2019 and also pay the arrears of rent as above. In default of

compliance with either of these conditions, the petitioners are liable to be evicted forthwith.

B. CRP No.434 of 2019 and 446 of 2019

Pleadings of respondent in RC.No.323 of 2012

84. In RC.No.323 of 2012 filed under Section 4 of the Act respondent sought fixation of fair rent @ Rs.30,000/- per month from 01.10.2012 onwards for the RC schedule premises with a direction to the petitioners to pay the said rate of rent, exclusive of Electricity charges, water charges and Municipal Property Tax, etc., to the respondent from the date of the application and to award costs.

85. In the said application, it was mentioned that the respondent had already filed RC.No.213 of 2012 seeking eviction of the petitioners on various grounds; that RC schedule premises is Reinforced Cement Concrete structure with ground floor and first floor and additional structure in second floor and the petitioners are receiving a monthly rent of Rs.30,000/-, exclusive of Electricity charges, Municipal Property Tax, etc., from the sub-tenants inducted by them.

86. It is contended that there is a heavy demand for the premises on rent in the locality, since it is surrounded by the commercial activities and there is a wholesale and semi-wholesale market in various types of goods and material in the nature of kirana, stationary, pulses, rice, cloth, readymade garments, near the RC schedule premises, which would fetch a rent of Rs.30,000/- per month.

Counter of petitioners in RC.323 of 2012

87. A Counter was filed by petitioner No.1, which was adopted by petitioner Nos.2 to 6, stating that the respondent was debarred from initiating this RC, since she had already filed a civil suit O.S.No.1503 of 1996.

88. Petitioners reiterated that there is no relationship of landlord and tenants between the respondent and the petitioners and, therefore, there is no question of fixing fair rent.

89. It is contended that petitioner No.1 is the owner of the RC schedule premises and it is denied that it would fetch a rent of Rs.30,000/- per month in view of the nature and location of the property. It is also denied that there is heavy demand for the premises in the locality because of the existence of wholesale market in various types of goods nearby.

Order dt.08.11.2016 in RC.No.323 of 2012

90. In this RC, the respondent examined PW1 and marked Exs.P1 to P20, and the petitioners examined RW1 but did not mark any exhibits.

91. The Principal Rent Controller, Hyderabad held that the respondent is the owner of the RC schedule property as per the judgment and decree dt.30.12.2011 in OS.No.1503 of 1996; that the ownership of the 1st petitioner in respect of the RC schedule property was not accepted by the Civil Court; that the possession of the petitioners of the RC schedule

property is continuation of the tenancy as successors of Rajeshwar Prasad, the husband of the 1st petitioner.

92. It took note of the fact that after the purchase of the RC schedule property, petitioners never paid rents to the respondent.

93. It then observed that the age of the RC schedule property is more than 15 years and monthly rent was Rs.245/- and as per the evidence of the respondent's witness, PW1, there is a wholesale and semi-wholesale market in various types of goods and materials, such as, kirana, cutlery, stationary, pulses, rice, cloth, and readymade garments near the RC schedule property.

94. As regards the plea of respondent that it would fetch standard and reasonable rent of Rs.30,000/- per month exclusive of municipal taxes, electricity and water charges; and that the petitioners were realizing and collecting monthly rent of Rs.30,000/- from sub-tenants, it observed that the respondent did not establish from any source of evidence the prevailing rate of rent in the locality where the RC schedule premises was located was Rs.30,000/- p.m., except merely stating that neighboring tenants are paying rents of Rs.4,000/- and Rs.4,500/- p.m.; that the age of the property is more than 20 years and some portion was constructed later, and the entire premises was used for residential purpose.

95. It observed that the petitioners could not rebut the evidence of respondent on the extent of the RC schedule

premises as 113 sq.ft., and that there was no enhancement of rent since the date of purchase of the RC schedule premises by the respondent.

96. It held that respondent did establish that RC schedule property was located in a commercial area and would fetch more rent than the rent the petitioners were paying; and taking into account the location of the RC schedule premises in Begumbazar, Hyderabad, which is a commercial area, it held that fair rent ought to be Rs.15/- per sq. ft., for the extent of 113 sq. ft which would come to Rs.1,695/- per month and directed the petitioners to pay fair rent at that rate to the respondent from the date of filing of the RC.No.323 of 2012 and also directed for further enhancement @ 10% for every two years.

RA.No.211 of 2016 and RA.No.213 of 2016

97. Challenging the order dt.08.11.2016 in RC.No.323 of 2012 of the Principal Rent Controller, City Small Causes Court, Hyderabad, petitioners filed RA.No.211 of 2016 before the Additional Chief Judge, City Small Causes Court, Hyderabad, contending that fixation of fair rent @ 15/- per sq.ft is not valid; and the respondent/Landlady filed RA.No.213 of 2016 before Additional Chief Judge, City Small Causes Court, Hyderabad, stating that the area of the RC schedule premises is 2184 sq.ft and not 113 sq.ft., as held by the Principal Rent Controller in his order passed in

RC.No.323 of 2012, and also praying for fixation of fair rent @ Rs.30,000/- per month.

98. Both these appeals were disposed of on 27.12.2018; R.A.No.211 of 2016 filed by the petitioners was dismissed with costs, and RA.No.213 of 2016 preferred by the respondent was allowed with costs; and though the quantum of rent @ 15/- per sq. feet was confirmed, the area taken as 113 sq.ft. by the trial Court was altered to 2184 sq.ft , and the petitioners were directed to pay rent at the said rate of Rs.15/- per sq.ft from the date of filing of the RC petition, i.e., from 01.10.2012, with periodical enhancement of rent @ 5% every year on the existing rent; and three months time was granted to the petitioners to pay all the arrears of fair rent determined by the appellate Court.

99. As against the order dt.28.12.2018 in RA.No.2 of 2017 of the Additional Chief Judge, City Small Causes Court, Hyderabad, petitioners filed CRP.No.461 of 2019 and as against the order dt.28.12.2018 in RA.No.214 of 2016 of the Additional Chief Judge, City Small Causes Court, Hyderabad, respondent filed CRP.No.474 of 2019.

100. Counsel for the petitioners contended that the finding of both Rent Controller and the Appellate Authority that the fair rent of the RC schedule premises is Rs.15/- per sq.ft., is not supported by any evidence.

101. He did not dispute that the area of the RC schedule premises is not 113 sq.ft., as determined by the

Rent Controller but 2184 sq.ft. as determined by the Appellate Authority.

102. Counsel for the respondent however sought to sustain the findings of the Rent Controller and the Appellate Authority that the fair rent would be Rs.15/- per sq.ft., in view of the location of the RC schedule premises.

103. No doubt, the initial rent of the RC schedule premises was Rs.245/- p.m., prior to 1987 when the respondent purchased the property, and it was at that rate that the respondent alleged in RC.No.213 of 2012 that petitioners did not pay rents and committed willful default in payment of rents.

104. In RC.No.323 of 2012 respondent sought fixation of fair rent @ Rs.30,000/- p.m., from 01.10.2012 onwards.

105. If fair rent is taken at Rs.15/- per sq.ft., for the area of RC schedule premises of 2184 sq.ft., it comes to Rs.32,760/- p.m., which is much more than what the respondent had asked for.

106. So the said fixation of fair rent @ Rs.15/- per sq.ft., for the area of 2184 sq.ft., cannot be sustained.

107. Admittedly, respondent did not file any documentary evidence to prove that prevailing rents in the locality range between Rs.4,000/- p.m., to Rs.50/- per sq.ft., claimed by PW1.

108. However, it is not in dispute that the RC schedule premises is located in a commercial area in Begumbazar, Hyderabad, though it is being used for residential purpose.

109. If any remand of the case is made at this stage, it would cause serious prejudice to both parties since they have been litigating for more than 30 years.

110. Therefore, taking into account the location of the RC schedule premises, its potentiality and the fact that it is a 20 year old building, I deem it appropriate to fix the fair rent @ Rs.8/- per sq.ft., and modify the orders of the Rent Controller and the Appellate Authority fixing the fair rent @ Rs.15/- per sq.ft. However, the area of the RC schedule premises as determined by the Appellate Authority @ 2184 sq.ft., is confirmed, since this is not disputed by both sides.

111. But the direction of the Appellate Authority that there would be periodic increase of rents @ 5% every year from 1.10.2012 is set aside in view of Sec 5 (1) of the Act which requires filing of fresh application for increase of rents except in circumstances mentioned therein.

112. Accordingly, CRP.Nos.434 and 446 of 2019 are allowed in part and the fair rent for the RC Schedule premises is fixed at Rs.8/- per sq.ft., for the area of 2184 sq.ft from 1.10.2012. No order as to costs.

CONCLUSION:

113. CRP.No.474 of 2019 and 461 of 2019 are dismissed, but without costs. The petitioners are granted time up to 30.06.2019 to vacate the RC schedule property, subject to the petitioners paying all the arrears of rent for the period for which the RC.No.213 of 2012 was filed by the

respondent at Rs.8 per sq.ft as determined in this order within four weeks from the date of receipt of the copy of the order and also filing an undertaking before this Court within one week from the date of receipt of copy of this order that they would vacate the RC schedule premises and handover vacant possession of the same to the respondent by 30.6.2019 and also pay the arrears of rent as above. In default of compliance with either of these conditions, the petitioners are liable to be evicted forthwith.

114. CRP.Nos.434 and 446 of 2019 are allowed in part and the fair rent for the RC Schedule premises is fixed at Rs.8/- per sq.ft., for the area of 2184 sq.ft. from 1.10.2012. No order as to costs.

115. As a sequel, the miscellaneous petitions pending, if any, in all these revisions, shall stand closed.

M.S. RAMACHANDRA RAO, J

02.04.2019.
Msr/gra

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.R.P. Nos.434, 446, 461 and 474 of 2019



02.04.2019
Msr/gra