

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4211 of 2017

O R D E R:

This Revision is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 challenging the order dt.27.06.2017 of the Chief Judge, City Small Causes Court, Hyderabad confirming the order dt.10.04.2013 in RC No.88 of 2010 of the Principal Rent Controller Hyderabad.

2. Respondent filed the above said RC against the petitioner alleging that petitioner is her tenant in respect of the RC schedule property bearing Municipal No.1-9-10/A/4 situated at Madibavi basthi, Ramnagar, Hyderabad; that the tenancy is an oral tenancy and it commenced on 01.06.2009; that monthly rent payable by the petitioner is Rs.1,000/-; and that the petitioner had committed willful default in payment of rent to her. She alleged that she gave a legal notice dt.27.08.2009 to the petitioner to vacate the premises but she did not do so.

3. Counter affidavit was filed by the petitioner opposing the RC and disputing the title of the respondent over the said property. It was specifically contended that

there is no jural relationship of landlady and tenant between the parties and the petitioner never entered into any tenancy with the respondent much less on 01.06.2009. It was contended that in the absence of tenancy, and in the absence of jural relationship of landlady and tenant between the respondent and petitioner, the question of payment of rents would not arise. It was contended that denial of title of the respondent by the petitioner is bonafide.

4. Petitioner also claimed that she is the absolute owner and possessor of premises bearing No.1-9-10/A/4/2 at Madibavi basthi, Ramnagar, Hyderabad by succession; that the property belongs to her father-in-law, late Balaiah, who had purchased it in the name of his elder son, A.Yadagiri, and it was their joint family property. According to her, there was a Gift Deed in her favour by late Yadagiri, her brother-in-law on 01.07.1990 and she also claimed to have filed suit O.S.No.4558 of 2009 before the X Junior Civil Judge, City Civil Court, Hyderabad and obtained an injunction against the respondent and wife of late Yadagiri. She also stated

that she obtained a *status quo* order in the said suit in an interim application filed therein.

5. Before the Rent Controller, respondent examined herself as PW1 and marked Exs.P1 to P3. Petitioner examined RWs.1 to 3 and marked Ex.R1.

6. By order dt.10.04.2013, the Court below allowed the RC and directed eviction of the petitioner from the RC schedule property. It observed that the property of which the petitioner claimed to be an owner i.e., property bearing Municipal No.1-9-10/A/4/2, is distinct and different from the RC schedule property; that in O.S.No.455 of 2009, the RC schedule property was not the subject matter, and the petitioner did not file any document to show that there is in existence property bearing No.1-9-10/A/4/2. It also observed that petitioner had not filed the Gift Deed allegedly executed in her favour. It then referred to a legal notice got issued by the respondent to the petitioner of which Ex.P3 is the postal receipt along with the notice, and held that in the said legal notice, respondent had demanded arrears of rent from 01.06.2009 from the petitioner and

also demanded petitioner to vacate the premises, since she failed to pay the rents. Receipt of this notice was admitted by RW1 in her cross-examination and though the petitioner claimed to have sent a reply notice, no such reply notice was filed before the Court. In the absence of any reply notice given by the petitioner to the legal notice sent by the respondent under Ex.P3, the Rent Controller drew a presumption that the petitioner admitted the contents of Ex.P3 and that she is the tenant of the respondent. It therefore concluded that there is jural relationship between the parties as landlady and tenant and it has jurisdiction to entertain the RC. It also found that there is default in payment of rent from 01.06.2009 and therefore directed eviction.

7. Challenging the said order, petitioner filed RA.No.78 of 2013.

8. Pending the appeal, petitioner filed I.A.No.702 of 2015 under Order VII Rule 14 CPC to receive 14 documents as additional evidence.

9. After hearing both sides, the said application was allowed on 24.03.2017.

10. On 27.06.2017, appeal was also dismissed by the Appellate Authority after hearing both sides confirming the findings of the RC. It held that there were rival claims to the RC schedule property, while the respondent was claiming the ownership thereof under Ex.P2 Sale Deed dt.22.05.2009, which *prima facie* showed that she was the owner thereof, the petitioner did not file any document in support of the alleged Gift to her by her brother-in-law, Yadagiri. It therefore concluded that the respondent is the owner of the RC schedule property and not the petitioner. It also relied on Ex.P3 and P2 to come to the conclusion that non-issuance of reply notice to the petitioner to the legal notice got issued by the respondent amounts to admission of the jural relationship of tenant and landlady between them; that the denial of title is not bonafide; and non payment of rents by her amounts to willful default in payment of rent.

11. Assailing the same, this Revision is filed.

12. Counsel for the petitioner contended, firstly, that title to the property cannot be gone into in Rent Control

proceedings; that the 14 documents filed by the petitioner in RA.No.78 of 2013 were not at all considered by the Appellate Authority; and that mere non giving of reply to a legal notice cannot be the basis for inferring an admission of the contents of the legal notice by the petitioner.

13. Counsel for the respondent refuted the said contentions and supported the order passed by both the Rent Controller and Appellate Authority, and contended that the petitioner tried to claim title to the RC schedule property, which was in fact different from the property she got under the alleged Gift from her brother-in-law; that the order passed in O.S.No.4558 of 2009 by the Civil Court cannot be applied for the benefit of the petitioner; and that both the Rent Controller and Appellate Authority did not commit any error of law in inferring an admission about the existence of landlady and tenant relationship between the parties on account of non-reply by the petitioner to the legal notice got issued by the respondent.

14. I have noted the contentions of both sides.

15. From the facts narrated above, it is clear that the respondent claims title to the RC schedule property under Ex.P1 dt.22.05.2009 registered sale deed and she claims that she got issued a legal notice dt.27.08.2009 to the petitioner and that the petitioner having received it did not reply to it, and since the petitioner is her tenant since 01.06.2009 on a monthly rent of Rs.1,000/- and the rents were not paid, petitioner should be evicted for committing willful default.

16. No doubt the petitioner set up title to property bearing Municipal No.1-9-10/A/4/2 and the said property is not the RC schedule property.

17. But it is settled law that while dealing with a suit of the plaintiffs for eviction of the defendant, the scope of the enquiry before the Courts is limited to the question as to whether the grounds for eviction of the defendant have been made out under the Act dealing with eviction of tenant by a landlord. The question of title of the parties to the premises is not relevant at all. Enquiry into title of the parties is unwarranted(see **Rajendra**

Tiwary v. Basudeo Prasad & Another¹ and **Tribhuvanshankar v. Amrutlal²**).

18. So the crucial questions which arise are, “(a) whether there is relationship of landlady and tenant between the respondent and the petitioner; and (b) whether both the Rent Controller and Appellate Authority can infer that there is an admission by the petitioner about the tenancy merely because the petitioner did not reply to the legal notice dt.27.08.2009 got issued by the respondent to her?”.

19. This issue is no longer *res integra* and has been considered by a Division Bench of this Court in **Manepalli Udaya Bhaskara Rao v. Kanuboyina Dharmaraju³** at para 11 it was held as under:

“11.From the above discussion, it makes clear that the admission has to be spelled out only from the positive acts on the part of the party, but cannot be culled out or cannot be based on any presumptions. The exchange of notices would only at the most constitute a demand and refusal in writing, but the absence thereof would not either way constitute an admission. Even failure to issue a notice cannot be said to be an absence of demand nor the failure to

¹ 2002(1) SCC 90

² 2014(2) SCC 788

³ 2004(1) ALD 269 (DB)

reply to such notice would amount to an admission of the claim made in the notice.”

20. Thus, from the above judgment, it is clear that admission has to be spelled out from the positive acts of the parties, but cannot be culled out or cannot be based on any presumptions; and exchange of notices would only at the most constitute a demand and refusal in writing; but the absence thereof would not either way constitute an admission.

21. Both the Rent Controller and the Appellate Authority did not notice this decision and erroneously held that conduct of the petitioner in not replying to the legal notice issued by the respondent amounts to an admission by the petitioner about the contents of the legal notice, wherein it is alleged that petitioner is the tenant of the respondent.

22. In the absence of any other evidence, other than the above factor, it cannot be said that the relationship of landlady and tenant has been established between the respondent and petitioner.

23. Therefore, both the Rent Controller as well as the Appellate Authority could not have held that there exists a jural relationship of landlady and tenant between the

respondent and petitioner. Once there is no jural relationship of landlady and tenant between the respondent and the petitioner, the Rent Controller would have no jurisdiction to entertain the RC.

24. Accordingly, this Civil Revision Petition is allowed; the orders dt.10.04.2013 in RC No.88 of 2010 of the Principal Rent Controller Hyderabad and the order dt.27.06.2017 in RA.No.78 of 2013 of the Chief Judge, City Small Causes Court, Hyderabad, are both set aside. It is held that the provisions of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 would not apply to the subject premises and liberty is granted to the respondent, if she so chooses, to approach an appropriate Civil Court for appropriate relief. No order as to costs.

25. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

24th April, 2019.

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