IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

FRIDAY, THE TWELFTH DAY OF JUNE
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO: 636 AND 74 OF 2020

CIVIL REVISION PETITION NO: 636 OF 2020

Petition under Section 22 of Telangana Buildings (Lease, Rent and Eviction) Control Act, 1960, aggrieved by the Order dated.26.09.2019 passed in RCA No. 94 of 2018 on the file of the Court of the Additional Chief fudge, City Small Causes Court, Hyderabad, preferred against the Order dated.17.9.2018 passed in RC No. 239 of 2014 on the file of the Court of the II Additional Rent Controller, City Small Causes Court, Hyderabad

Between:

1. M Papi Reddy, S/o Late M.R.K.Reddy, aged about 65 years, Occ. Business, R/o H.No. 6-1-132/130/2, Padmarao Nagar, Secunderabad.
2. M.Janaki Devi, W/o M.Papi Reddy, aged about 58 years, Occ. Business, R/o H.No. 6-1-132/130/2, Padmarao Nagar, Secunderabad.

...Petitioners/Appellants/Respondents and Tenants in RC (in Both CRP's)

AND

1. Mr. Syed Nehaluddin Ahmed, S/o late Syed Qamaruddin Ahmed, aged about 80 years, Occ. Retired Central Government Servant, R/o H.No. 22-7-383, Kotla Akbarhah, Purani Haveli, Hyderabad.
2. Smt. Khatija Begum, W/o late Syed Viqoruddin Ahmed, aged 65 years, Occ. Household, Rep. by her GPA holder, Mr. Syed Nisaruddin Ahmed, S/o Syed Viquaruddin Ahmed, R/o H.No. 22-7-383, Kotla Akbarjah, Purani Haveli, Hyderabad.
3. Syed Laeequddin Ahmed, S/o late Syed Qamaruddin, aged 65 years, Occ. Retired Govt. Employee, R/o H.No. 22-7-383, Kotla Akbarjah, Purani Haveli, Hyderabad.

...Respondents/Respondents/Petitioners and Landlords in RC (in both CRP's)

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to suspend the order passed by the learned II Additional Rent Controller, City Small Causes Court, Hyderabad dated 17-09-2018 in R.C No. 239 of 2014 which was confirmed by the learned Additional Chief Judge, City Small Causes Court, Hyderabad in RCA No. 94 of 2018 by order dated 26-09-2019 pending disposal of the above CRP

CIVIL REVISION PETITION NO: 74 OF 2020

Petition under Section 22 of Telangana Buildings (Lease, Rent and Eviction) Control Act, 1960, aggrieved by the Order dated.26.09.2019 passed in RCA No. 95 of 2018 on the file of the Court of the Additional Chief Judge, City Small Causes Court, Hyderabad, preferred against the Order dated.17.9.2018 passed in RC No. 240 of 2014 on the file of the Court of the II Additional Rent Controller, City Small Causes Court, Hyderabad

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to suspend the order passed by the learned II Additional Rent Controller, City Small Causes Court, Hyderabad dated 17-09-2018 in R.C No. 240 of 2014 which was confirmed by the learned Additional Chief Judge, City Small Causes Court, Hyderabad in RCA No. 95 of 2018 by order dated 26-09-2019 pending disposal of the above CRP

Counsel for the Petitioners: SRI V. RAVI KIRAN RAO
(in both CRPs)

Counsel for the Respondents: SRI NAZIR AHMED KHAN
(in both CRPs)

The Court made the following: COMMON ORDER

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.636 of 2020
and
Civil Revision Petition No.74 of 2020

COMMON ORDER :

Civil Revision Petition No.74 of 2020 is filed by the petitioners challenging the order dt.26.09.2019 passed in R.C.A.No.95 of 2018 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad [Appellate Authority under Section 20 of the Telangana Buildings (Lease, Rent and Eviction) Control Act, 1960 **(for short, 'the Act')**] confirming the order passed by the II Additional Rent Controller, City Small Causes Court, Hyderabad on 17.09.2018 in R.C.No.240 of 2014 in respect of premises bearing No.1-1-258/19/1 situate at Chikkadpally, Hyderabad.

2. Civil Revision Petition No.636 of 2020 is filed by the same petitioner against the same respondents challenging the order dt.26.09.2019 passed in R.C.A.No.94 of 2018 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad confirming the order dt.17.09.2018 passed in R.C.No.239 of 2014 on the file of II Additional Rent Controller, City Small Causes Court, Hyderabad in respect of premises bearing Municipal No.1-1-258/19, Chikkadpally, Hyderabad.

3. The petitioners are tenants of the respondents in respect of these two properties which had been purchased by the respondents under a registered sale deeds dt.11.07.1967 and 18.03.1975 respectively.

4. The said premises had been let-out by the respondents to the petitioners on 07.09.1989 for doing electrical business in the name and style 'Emjay Electricals' by pooling the mulgies together. As on the commencement of the lease, the monthly rent was Rs.600/-. But, at the time of the filing of the R.C., the monthly rent for each mulgi was Rs.2,431/- and for both mulgies it was Rs.4,862/-.

5. The respondent nos.1 and 3 and the husband of 2nd respondent are brothers and are the landlords.

The case of the respondents/landlords in the Eviction Petition

6. The respondents contended that the son of the 2nd respondent by name Sri Syed Nizaruddin Ahmed, who is a General Power of Attorney holder of the 2nd respondent wanted to do hardware and sanitary business along with the sons of respondent nos.1 and 3, and he is a qualified mechanical engineer and both the mulgies were required for the said purpose.

7. They contended that they are all senior citizens and respondent nos.1 and 3 are also retired Government employees and respondent no.2 is a widow; and under Sections 10-B and 10-C of the Act, they are entitled to possession of the same by evicting the petitioners.

8. They stated that a portion of the subject premises was acquired in road-widening and consequently the area of mulgies was reduced.

9. It is further contended that petitioners made some alterations of the structure of the mulgies without obtaining any consent of the respondents, and this amounts to committing acts of nuisance.

10. It is also alleged that the petitioners are irregular in payment of monthly rents and that they had failed to pay the same for both the mulgies from September, 2014.

11. With the above allegations, the respondents filed both the R.C.s referred to above against the petitioners invoking Section 10(2)(i), 10(2)(iv), Sections 10(3)(a)(iii)(b) and Section 10 C(i) of the Act seeking eviction of the petitioners.

The case of the petitioners/tenants in the Eviction Petition

12. Counter-affidavit was filed by the petitioners in both the R.Cs admitting the relationship of landlord and tenant between the parties.

13. They contended that the respondents are well-settled; that the sons of the respondents are employed and settled in the United States of America and the plea of bona fide requirement of the premises for the son of the 2nd respondent is false.

14. They alleged that they have been regularly paying rents till August, 2014 and from September, 2014 they are sending rents through Money Order to the respondents, and that the respondents are refusing to receive the rents and returned the Money Orders.

15. They also alleged that the respondents wanted to sell the R.C. Schedule Mulgies and they have filed the eviction petitions only to get the petitioners evicted for the said purpose of selling the mulgies.

The events before the Rent Controller

16. The 1st respondent was examined as P.W.1 and the G.P.A. holder of the 2nd respondent, her son was examined as P.W.2. The elder son of 1st respondent was also examined as P.W.3 and Exs.P.1 to P.9 were marked on behalf of respondents.

17. During the cross-examination of P.W.1, Exs.R1 to R.4 were also marked by the counsel for petitioners.

18. The 1st petitioner was examined as R.W..1 and he marked Exs.R.5 to R.78.

The issues framed by the Rent Controller

19. The Rent Controller framed the following issues :

"(1) Whether the respondents have committed willful default in payment of rents from September 2014 onwards ?

(2) Whether the respondent nos.1 and 2 have committed act of nuisance in respect of petitioner schedule mulgi as alleged by the petitioners?

(3) Whether the requirement of the petitioner schedule mulgi by the petitioners for establishing the business for their sons is bonafide?

(4) Whether the petitioners are entitled for beneficial provisions U/s.10-B and 10-C of the A.P. Buildings (Lease, Rent and Eviction) Control Act ?

(5) To what relief ?"

The order of the Rent Controller

20. By order dt.17.09.2018, the Trial Court allowed the R.C.s and directed the petitioners to vacate the R.C. Schedule Mulgies and hand over vacant physical possession thereof to the respondents within two (02) months from the date of the order.

21. On the aspect of willful default in payment of rents, it referred to the oral and documentary evidence on record and held that the respondents could not prove willful default in payment of rents by the petitioners.

22. It also observed that the respondents could not establish that the petitioners committed any acts of nuisance against the respondents in respect of the R.C. Schedule Mulgies and that no evidence was adduced by the respondents in that regard.

23. On the aspect of bona fide requirement of the premises for the son of the 2nd respondent, the Court below referred to Ex.R.4 – Letter dt.23.05.2013 said to have been written by the respondents to the petitioners wherein the respondents gave a proposal to the petitioner for construction of a new commercial building.

24. But it considered the later document Ex.P.6 Reply Notice dt.15.09.2014 issued by the respondents wherein the respondents specifically mentioned that they needed two mulgies for their bona fide requirement.

25. It noted that the petitioners did not sent any reply to Ex.R.4; that in the cross-examination of PWs.1 to 3, the petitioners herein could not elicit anything to disprove the case of the respondents that their requirement of the R.C. Schedule Mulgies was not bona fide but mala fide.

26. It held that Exs.R.4 and P.6 clearly indicated that respondents informed the petitioners that they were in need of the R.C. Schedule Mulgies for starting their own business; that the respondents had no other property other than the R.C. Schedule Mulgies for starting their business and the petitioners could not prove that the respondents were having other commercial premises other than the R.C. Schedule Mulgies in the Twin Cities of Hyderabad and Secunderabad. It therefore concluded that the requirement of the R.C. Schedule Mulgies by the respondents is bona fide, pressing and genuine.

27. It however held that the respondents could not establish that respondent nos.1 and 3 were retired Government employees and no documentary evidence in support of the said plea had been filed , and so they cannot invoke Section 10-B of the Act.

28. It however observed that the 2nd respondent is a widow and respondent nos.1 to 3 are Senior Citizens and this was admitted in the cross-examination of R.W.1. It then held that under Section 10-C of the Act, they have a right to recover immediate possession of the premises and the petitioners are liable to vacate the same in two months.

The order of the Appellate Authority

29. Challenging the order of the Additional Rent Controller, the petitioners filed R.C.A.No.95 of 2018 and R.C.A.No.94 of 2018 before the Appellate Authority under the Act.

30. The lower Appellate Court re-appreciated the evidence on record and confirmed the findings of the Trial Court.

31. The lower Appellate Court observed that there was no legal infirmity in the order passed by the Rent Controller holding that the personal requirement of the R.C. Schedule premises by the respondents for setting up of hardware and sanitary business by PW.2 was established.

32. It also relied on the admission of the petitioners that the 2nd respondent is a widow and respondent nos.1 and 3 are Senior Citizens. It observed that the 1st respondent had retired as an Inspection Officer in B.E.L. in the year 1996. It observed that the respondents are entitled to invoke Section 10-B also.

33. It also observed that merely because the respondents are well-educated and some of their children are living abroad and they may not have any previous experience in hardware and sanitary business, that factor alone cannot be taken into consideration. It also observed that there is no bar for starting an hardware and sanitary business by a mechanical engineer (for the son of the 2nd respondent), and tenants

cannot dictate anything to the landlords regarding the use of the R.C. Schedule property.

34. It also took note of the admission by R.W.1 that he is having another shop near the R.C. Schedule Mulgies since 1982 and he is having a godown in the said shop which was taken on lease from the Greater Hyderabad Municipal Corporation. It also observed that the R.C. Schedule Mulgies were locked for the previous months since Metro Rail Works were going on resulting in huge dust in the locality and it was not possible to carry out business comfortably. It observed that once Sections 10-B and 10-C of the Act have been invoked by the respondents, the question of personal requirement of the landlords to set up business for the son of the 2nd respondent would take a back seat.

The present Revision

35. Assailing the same, the present Civil Revision Petitions are filed.

The consideration by the Court

36. The counsel for petitioners contended that both the Courts below have erred in directing eviction of the petitioners from the R.C. Schedule Mulgies and that they have misread the evidence on record. He contended that the respondents had offered the R.C. Schedule Mulgies and other properties constructed therein for sale and

prospective buyers / purchasers have visited the same, and this is clear from the evidence of P.W.1.

37. Admittedly, when such offer of re-construction of the property was made by the respondents to the petitioners, they did not accept it and the plan did not fructify. The re-construction was necessitated because of the Metro Rail Project which resulted in demolition of a portion of the constructed area by the State.

38. He next contended that PW.1 and 3 have admitted in their evidence that their sons were well settled and lived abroad, but he could not dispute the fact that the son of the 2nd respondent was not living abroad; and to enable him to start hardware and sanitary business in the R.C. Schedule Mulgies, eviction of the petitioners had been sought. Merely because the children of respondent nos.1 and 3 were settled abroad, the petitioners cannot say that the need of the 2nd respondent of the RC schedule mulgies for doing of business by her son, who is a qualified mechanical engineer, cannot be said to be not bona fide.

39. His further contention is that the respondent no.2 did not enter the witness box and that her son was examined as PW.2, and adverse inference should be drawn against her.

40. I do not agree with the said contention because, the 2nd respondent is a widowed Muslim lady and she intended the R.C. Schedule Mulgies to be used for the benefit of P.W.2 only and P.W.2

was therefore entitled to give evidence and support the plea of 2nd respondent, who because of her age, status and community would not normally be in a position to depose as witness. It is not proper to draw any adverse inference against her for the above reasons.

41. On the question whether the petitioners can use the other commercial space on the ground floor on the rear side, first floor, second floor and third floor which can be utilized, the Trial Court rightly relied on the decision of the Supreme Court in **Krishna Kumar Rastogi vs. Sumitra Devi**[1] wherein the Supreme Court had held that it is the choice of the landlord to choose the place for business which is most suitable for him, that he has complete freedom in the matter and the landlord is the best judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live.

42. The counsel further sought to contend that the respondents have put up a notice proposing to again let out the subject R.C. Schedule Mulgies through a advertisement on an flexi-board after the lower Appellate Court had passed the impugned order. But the respondents denied the same. Therefore, the said plea is rejected.

43. The evidence on record shows that all the three respondents are Senior Citizens and that the son of the 2nd respondent, for whose purpose the premises was sought to be got vacated, was living with the 2nd respondent; and in the eviction petition, it is specifically

[1] AIR 2014 S.C. 3635

pleaded that the son of the 2nd respondent intends to start a hardware and sanitary business in the R.C. Schedule Mulgies and the other newly constructed area.

44. The 2nd respondent's claim would certainly fall within the Section 10-C(i) of the Act which enables a widowed landlady to recover immediate possession of the R.C. Schedule Mulgies if it is required for use by her or her family or by anyone living with her for his or her use.

45. It is not the case of the petitioners that in respect of some other premises which is also non-residential, the 2nd respondent had made a similar application.

46. However, the counsel sought to rely upon a sentence in the cross-examination of P.W.1 that they had kept the R.C. Schedule Mulgies for sale. In the very same passage after three lines, P.W.1 denied the suggestion that there was no personal requirement for the respondents and only for the purpose of selling the R.C. Schedule Mulgies they had filed the eviction case.

47. One stray of sentence in the evidence cannot be relied upon by the petitioners to deny the relief of eviction to the respondents ignoring other circumstances.

48. It is settled law that in exercise of revisional jurisdiction under Section 22 of the Act, concurrent findings of fact recorded by the primary authority and the appellate authority cannot be interfered with

merely on the ground that a different view is possible, and except on the ground of perversity or non-consideration of the material evidence, concurrent findings of fact cannot be interfered with.

49. In this view of the matter, I do not find any merit in the Civil Revision Petitions, and they are accordingly dismissed.

50. The respondents are granted time till 15th of July, 2020 to hand over the vacant and peaceful possession of the R.C. Schedule Mulgies which are subject matter of both the R.C.s to the respondents.

51. They shall also file an undertaking within 10 days before the II Additional Rent Controller, City Small Causes Court, Hyderabad that they would vacate the R.C. Schedule Mulgies by the said date and that they would continue to pay the rents to the respondents till then.

52. No order as to costs.

53. As a sequel miscellaneous petitions pending if any, in these Civil Revision Petitions, shall stand closed.

SD/- K.SAILESHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,
1. The Additional Chief Judge, City Small Causes Court, Hyderabad,
2. The II Additional Rent Controller, City Small Causes Court, Hyderabad
3. One CC to Sri V. Ravi Kiran Rao, Advocate [OPUC]
4. One CC to Sri Nazir Ahmed Khan, Advocate [OPUC]
5. Two CD Copies

mmk

HIGH COURT

DATED: 12/06/2020



COMMON ORDER

CRP.No.636 and 74 of 2020

DISMISSING THE CRP

WITHOUT COSTS