

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

Civil Revision Petition Nos.2269 and 2271 of 2019

COMMON ORDER :

These two Civil Revision Petitions arise under Section 22 of the Andhra Pradesh (Buildings, Lease, Rent and Eviction Control) Act, 1960.

2. The respondent in both these Civil Revision Petitions is a Firm which is the landlord, while the petitioners are its tenants in respect of two non-residential premises bearing Municipal Nos.5-4-455/2 and 5-5-455/4 and 5 situate at Nampally Station Road, Hyderabad.

3. Since the ground in the eviction petitions filed by the respondent against the respective petitioners is one and the same, the Civil Revision Petitions are being disposed of by this common order.

4. The respondent is a partnership firm carrying on business under the name and style 'Hotel Paradise' in the ground floor and five upper floors forming part of a single composite Door No.5-4-455/1 to 6 at Nampally Station Road, Hyderabad. It runs a lodge business with 45 rooms with attached bathrooms.

5. The respective petitioners were inducted as tenants in the year 1970.

6. While the 1st petitioner in Civil Revision Petition No.2269 of 2019 is doing business in surgical instruments in the premises bearing Municipal No.5-4-455/2; the petitioner in Civil Revision Petition No.2271 of 2019 is in the adjoining shop having Municipal Nos.5-4-455/4 and 5 and is carrying on business in steel.

7. These premises which are let-out to the petitioners are in the ground floor but over and above the said shops, there are lodging rooms and behind the shops there is a reception area of the respondent.

The plea of the Respondent in the Eviction Petitions

8. According to respondent, on an application made by it for renewal of the police license, on 21.08.2007, the Office of the Deputy Commissioner of Police issued notice to petitioner referring to G.O.No.423 Municipal Administration Urban Department dt.31.07.1998, and rejected the request made by the respondent for renewal of licence stating that there is no adequate parking space available to the hotel building.

9. The respondent therefore filed the R.C.No.390 of 2010 against the petitioners in Civil Revision Petition No.2269 of 2019 and R.C.No.389 of 2010 against the petitioners in Civil Revision Petition No.2271 of 2019 before the II Additional Rent Controller, at Hyderabad for their eviction invoking Section 10(3)(c) and Section 10(2)(v) of the Act.

10. It was the contention of the respondent in both the eviction petitions that it requires the shops in the occupation of the respective petitioners for additional accommodation for the proposed parking to be provided to the hotel premises. It proposed to shift its reception area from ground floor to a portion of the 1st floor by making suitable additions and alterations and use the entire ground floor area for additional accommodation for the parking of vehicles.

11. The respondent contended in the eviction petitions that unless and until the requirement of G.O. is fulfilled by it, its license will not be renewed

by the police authorities, and it is mandatory to provide space for parking of vehicles in order to obtain license to run it's lodge business. It also contended that it received the notice dt.21.08.2007 from the Police department. It contended that all the shops in the occupation of petitioners have to be altered by removing the partition walls to provide parking area including the area behind the shops, and the said shops have to be demolished. It contended that lack of adequate parking has caused it a lot of inconvenience and the police are pressurizing the respondent to close down the hotel. It also contended that though notice has been issued to the respective petitioners on 15.03.2008 to vacate the premises in their occupation, they have not chosen to give a reply having received the notices.

12. It is contended by the respondent that the Nampally Station Road is a one-way road and it has to provide parking to its customers and at the time of filing of the eviction petition, the customers were parking vehicles on the road and thus causing inconvenience to the traffic.

13. It is also alleged that hardship caused to the respondent far outweighs the hardship caused to the respective petitioners.

14. It is further contended that the petitioner in Civil Revision Petition No.2271 of 2019 had secured alternative accommodation after sub-letting the premises to the 2nd respondent in Civil Revision Petition No.2271 of 2019, and so the petitioner in Civil Revision Petition No.2271 of 2019 had no right to continue in the premises bearing No.5-4-455/4 and 5 and is liable to be evicted therefrom.

The stand of the petitioners/tenants in the eviction petitions

15. Counter-affidavit is filed by the respective petitioners in both the eviction petitions.

16. The petitioner in Civil Revision Petition No.2269 of 2019 / 1st respondent in R.C.No.390 of 2010 filed a counter-affidavit stating that Section 10(3)(c) of the Act has no application, and that the respondent had filed R.C.No.390 of 2010 for his eviction with ulterior motive and dishonest intention.

17. He contended that having obtained the R.C. Schedule shop in the year 1974 for doing business in surgical and medical equipments he is doing business therein and that his business is an essential service covered under the Essential Services Maintenance Act category.

18. While admitting that there are lodging rooms on the upper floors, it is contended that there is a huge area behind the shops used as a reception area and for parking purpose.

19. He also denied that the Deputy Commissioner issued a notice to the respondent on 21.08.2007 or on any other date for application of renewal of police license referring to G.O.423 or that the police department rejected the request of the respondent for renewal for want of parking space for the respondent's hotel. He also contended that the hotel of the respondent was in existence since long time but no amenities are provided to the tenants.

20. According to the petitioner in Civil Revision Petition No.2269 of 2019, there are no customers as the hotel of the respondent is a low-budget

hotel and is always scantily occupied by persons requiring dormitory within the space for using the amenities. It is also pointed out that the respondent's hotel is not having a restaurant of its own to cater to the needs of the persons intending to stay during day and night, and most of the time the hotel rooms are occupied and utilized by labourers, servants and employees of the owners of the building having several businesses.

21. He denied that the respondent would shift its reception from the ground floor to portion of the 1st floor by making suitable additions and alterations.

22. It is also denied that the license of the respondent will not be renewed by the Police in view of the non-fulfillment of the parking requirement.

23. It is contended that the respondent intended to evict the petitioners by hook or crook and there is adequate parking for about 25 cars.

24. He stated that the Greater Hyderabad Municipal Corporation had provided parking on one-side of the road on the entire stretch starting from the Office of the Collector, Hyderabad to Hotel Kamat, Nampally and the respondent is utilizing the said space for parking apart from its own parking space available.

25. It is stated that the hardship caused to the petitioner in Civil Revision Petition No.2269 of 2019 is greater than that which the respondent would suffer. It is further alleged that there are other properties owned and belonging to the respondent in the surrounding area which could be used as a parking space. He therefore prayed that the R.C.No.390 of 2010 be dismissed.

26. The petitioner in Civil Revision Petition No.2271 of 2020 / 1st respondent in R.C.No.389 of 2010 also filed a counter-affidavit opposing the prayer for his eviction sought by the 1st respondent in the Civil Revision Petition.

27. He denied the plea of the 1st respondent in the Civil Revision Petition that the entire building has a composite Municipal No.5-4-455/1 to 6. According to him, there is an entrance to the upper floor from the western side of the property, and there was no inconvenience to the 1st respondent at any point of time.

28. He also contended that the two shops in his occupation are not part of the building which is in the occupation of the 1st respondent and other tenants, and that the proviso to Section 10(3)(c) is not applicable, and the 1st respondent cannot invoke it to seek his eviction.

29. He however admitted that the adjoining mulgi is also in occupation of the other tenants who are carrying on surgical business.

30. According to the petitioner in Civil Revision Petition No.2271 of 2019, the police department did not reject the request of the 1st respondent for renewal of his business for want of parking space, and that it had renewed such license and the 1st respondent was uninterruptedly carrying on its business prior to and after 2007.

31. He denied that there is any *bona fide* requirement of all the shops including the shops in his occupation for additional accommodation of the 1st respondent towards parking.

32. He denied that parking space is mandatory for renewing the police license, and that the respondent has created and fabricated a notice in collusion with the Greater Hyderabad Municipal Corporation and the Police Department.

33. He alleged that he was doing business in steel articles and had a large number of customers who are mostly Muslims coming from far off place and that he had established his business and got good reputation in the market.

34. According to him, more than five families are dependent on the business of the petitioner and they would come on the roads if the petitioner is evicted from the R.C. Schedule premises.

35. According to him, the 1st respondent had not approached the Greater Hyderabad Municipal Corporation to convert the commercial shops into parking space and had not applied or obtained any sanction plan.

36. It is also stated that the customers of the 1st respondent only come by train or bus from outside the city and there is no necessity to park vehicles for them. It is also alleged that by the date of filing of the eviction petition, thirteen years have elapsed after issuance of the above G.O. and the 1st respondent is conveniently carrying on business without any hindrance or disturbance.

37. He also denied that he had obtained another shop on rent close-by and that he did not know who the 2nd respondent in the Civil Revision Petition was and that there was no sub-tenancy of the property.

38. Before the II Additional Rent Controller, Hyderabad, the respondent in Civil Revision Petition No.2269 of 2019 examined P.W.1 and marked Exs.P.1 to P.19 while the petitioner in Civil Revision Petition No.2269 of 2019 examined R.W.1 and marked Exs.R.1 to R.3. CWs.1 and 2 were also examined and Exs.X.1 to X.9 were marked on their behalf.

39. Likewise, in R.C.No.398 of 2010, the respondent examined RW.1 and marked Ex.P.1 to P.12, while the 1st petitioner examined himself as R.W.1 and marked Exs.R.1 to R.12. CWs.1 and 2 were also examined and Exs.X.1 to X9 were marked therein.

The order of the Rent Controller

40. On 18.01.2018, the II Additional Rent Controller passed separate orders allowing R.C.No.390 of 2010 and R.C.No.389 of 2010.

41. After considering the contentions of the parties, the Rent Controller held that there is jural relationship of landlord and tenant between the respondent in Civil Revision Petition No.2269 of 2019 / 1st respondent in Civil Revision Petition No.2271 of 2019, and the respective petitioners.

42. The Rent Controller also held that the shops of respondents are under one single roof and the same was not denied during the course of cross-examination of the respective petitioners. He recorded a finding that the shops in the occupation of respective petitioners are part of the main structure in which the hotel itself is being run by the respondent though there are separate municipal numbers for the same. It accordingly held that Section 10(3)(c) of the Act is applicable.

43. It then considered the question whether there is a *bona fide* requirement of the respective shops of the petitioners by the respondent. It considered the evidence of CWs.1 and 2 who are police officers and Exs.X.1 to X.9 marked through them, and held that the said witnesses categorically stated that the police department rejected renewal of police license in 2007 to the respondent on the ground that sufficient parking space was not provided as per norms of the Greater Hyderabad Municipal Corporation.

44. It held that parking space is required for lodging business also and that the respondent should have exclusive parking for running its lodging business; and several notices issued by the Greater Hyderabad Municipal Corporation and the Police Department to the respondent clearly show that adequate parking space should be provided for renewal of the license.

45. It held that the respondent, through oral and documentary evidence, established that there is a genuine and pressing need for parking space and that the requirement of providing adequate parking is a requirement of law and the respondent cannot be exempted from the operation of the G.O.423. It held that the respondent was forced to use the parking space provided by the Greater Hyderabad Municipal Corporation because the parking space available was not adequate. It emphasized the requirement of having exclusive parking and held that availability of Municipal parking does not mean that the respondent cannot insist on having exclusive parking for its business.

46. It also noted that new constructions have come up in the locality where the R.C. Schedule shops were located and the business of petitioner in

the C.R.P.No.2269 of 2019 can even be done through telephone, since he is involved in supplying medical equipment to institutions.

47. Identical findings were also recorded in R.C.No.389 of 2010, and in addition, it was also held that the allegation made by the 1st respondent of sub-letting by the petitioner in Civil Revision Petition No.2271 of 2019 to the 2nd respondent was not proved.

48. It also held that the space on the western side is a common passage and is not a private parking facility and the 1st respondent was not the owner of the western side common passage. It also held that the admissions of the petitioner in Civil Revision Petition No.2271 of 2019 as R.W.1 indicate that he is involved in construction business and is not dependent on the R.C. Schedule property alone and that new malls have come up in the vicinity where it is possible to get alternative accommodation.

The orders of the Appellate authority

49. Challenging these orders, the petitioners in Civil Revision Petition No.2269 of 2019 filed R.C.A.No.22 of 2018 before the Chief Judge, City Small Causes Court, at Hyderabad, and the petitioner in Civil Revision Petition No.2271 of 2019 filed R.C.A. No.24 of 2018 before the same Court.

50. By separate orders dt.26.07.2019, both the Appeals were dismissed.

51. The Appellate Authority re-appreciated the evidence on record and took note of the evidence of C.W.1 who was the Circle Inspector of Police, Abids, Hyderabad who had given evidence and his statement that the lodge business being run by the respondent requires sufficient parking space as per

G.O.Ms.No.423 dt.31.07.1998 and also subsequent G.O.No.129 dt.02.07.2005 and G.O.No.86 dt.03.03.2006, viz., Exs.X4 to X.6. It held that as per the last G.O., the parking space should be 40% in the Municipal Corporation areas.

52. It also confirmed the findings of the Rent Controller that the entire building including the respective R.C. Schedule premises was assessed under a composite Door No.5-4-455/ 1 to 6.

53. It also took note of Ex.P.4 Notice dt.21.8.2007 given by the Office of the Deputy Commissioner of Police, Central Zone, Abids, Hyderabad which stated that the request of the respondent for renewal of police license is rejected on the ground that the respondent is not maintaining required parking space.

54. It took note of the evidence of the petitioner in Civil Revision Petition No.2269 of 2019 that after filing of the eviction petition his father acquired a property at Fateh Sultan Lane, Nampally, Hyderabad and recorded a finding that sufficient buildings and shopping malls have come up in the locality and even if eviction is ordered, the petitioner would be able to secure alternative accommodation in the same locality very easily. It therefore held that the hardship caused to the petitioner is not much, but the respondent would suffer extreme hardship if he is not able to provide sufficient parking space to his customers because his license to run the lodge cannot be renewed, and it would perpetuate to illegality.

55. It also gave a finding that the petitioner admitted that there are 45 rooms in the lodge being run by the respondent, but the hotel of the

respondent is having only parking space for two cars and eight two-wheelers and there is a dire necessity to the respondent to seek eviction of the petitioner on the ground of additional accommodation.

56. Identical findings were also recorded in R.C.A.No.24 of 2018 filed by the petitioner in Civil Revision Petition No.2271 of 2019 challenging the order dt.18.01.2018 in R.C.No.389 of 2010. It held that the location of the building entrance, composite municipal number, nature of construction, indicates that the four shop rooms in the ground floor are part of the same building, and the rest of the building is in possession of the 1st respondent.

57. It held that it has become necessary for the 1st respondent to obtain eviction of the petitioner from the R.C. Schedule property since it needs it for additional accommodation to provide more parking space since the Police department had rejected renewal of its license to run lodge business on the ground that the provision for parking space is not adequate.

58. It recorded a finding that the petitioner in Civil Revision Petition No.2271 of 2019 is doing construction business, but he was not filing income tax returns after 2009, and so even if eviction is ordered there is no hardship caused to the petitioner since he is not doing any business in the R.C. Schedule property.

The CRPs

59. Challenging the order dt.26-07-2019 in R.C.A.No.22 of 2018, the petitioners filed C.R.P.No.2269 of 2019. Likewise, challenging the order dt.26-07-2019 in R.C.A.No.24 of 2018, the petitioners filed C.R.P.No.2271 of 2019 was filed by the petitioners therein.

60. Heard Sri Raj Kumar Grandhi, learned counsel for the petitioners and Sri R.A.Atchutanand, learned counsel for respondents.

61. Learned counsel for petitioners contended that the findings recorded by the Rent Controller in both the R.C.No.390 of 2010 and 389 of 2010 which are confirmed by the appellate authority in R.C.A.Nos.22 of 2018 and 24 of 2018 are erroneous; that both the said Courts failed to appreciate that the Hotel/Lodge of the respondent and the shops of the petitioners had two separate Door Numbers and therefore they have to be construed as two separate and distinct properties and therefore the respondent cannot invoke Section 10(3)(c) of the Act. He also contended that even otherwise, the respondent had sufficient parking place; that the respondent cannot place reliance on Ex.X-2/Ex.P-4 notice dt.21-08-2007 and the same was a created one; that the Police never refused any permission to the respondent to run the lodge/Hotel; that forcing the petitioners to shift to other premises would cause greater hardship to the petitioners which outweighs the hardship caused to the respondent; and since the respondent continued to run the Lodge notwithstanding the lack of parking provision, the Rent Controller as well as the Appellate Authority could not have granted any relief to the respondent.

62. Learned counsel for respondent refuted the said contentions and supported the orders passed by the Rent Controller and the Appellate Authority.

The consideration by the Court

63. I have noted the contentions of both sides.

64. The respondent has filed R.C.Nos.389 and 390 of 2010 against the petitioners in both the cases on the ground that it requires the premises in the occupation of the petitioners as “additional accommodation” invoking Section 10(3)(c) of the Act contending that it had received a notice Ex.P-4/Ex.X-2 on 21-08-2007 from the Office of the Deputy Commissioner of Police in response to its application for a police licence referring to G.O.Ms.No.423 Municipal Administration and Urban Development Department dt.31-07-1998 rejecting respondent’s application for such licence on the ground that there is no adequate parking facility to its Lodge/Hotel building. The respondent contended that it *bona fide*ly required all the shops which are part of the premises bearing M.No.5-4-455/2 to 5 for ‘additional accommodation’ for the proposed parking to be provided by it for its Hotel/Lodge business.

65. Section 10(3)(c) of the Act states:

“10(3)(c) : A landlord who is occupying only a part of a building, whether residential or non-residential may, notwithstanding anything in clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for the purpose of a business which he is carrying on, as the case may be.”

66. There is a proviso to Section 10(3) of the Act which states that in the case of an application under Clause (c) of Section 10(3) of the Act, the Controller shall reject the application if he is satisfied that the *hardship* which may be caused to the tenant by granting it will outweigh the advantage to the landlord.

67. Therefore it has to be examined as to whether the premises in the occupation of the respondent is sufficiently proximate to the premises in the occupation of the petitioners so that the premises in the occupation of the petitioners, could be treated as part of the premises of the respondent and as additional accommodation.

68. In **Shri Balaganesan Metals vs. M.N. Shanmugham Chetty and Ors¹**, a landlord living in a upstairs portion of a building sought eviction of a tenant living in the down stairs portion of the said building on the ground that he requires additional accommodation under S. 10(3)(c) of the Tamilnadu Buildings (Lease, Rent and Eviction) Control Act, 1960 (which is in *pari materia* with S. 10(3)(c) of the Act). The Supreme Court held that Section 2(2) of the said Act defines a "building" to mean "*any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes.....*" unless the context otherwise requires; a part of a building which has been let out can also be construed as a separate and independent building without reference to the other portion or portions of the building where it is not necessary to treat the entire building as one whole and inseparable unit; but, *if the context otherwise requires and warrants, the entire building can be construed as one integral unit*; it would be inappropriate to view the building in question as consisting of several disintegrated units and not as one integrated structure; there is a vast difference between the words "residential building" and "non-residential building" used in Section 10(3)(a)(i) and (iii) on the one hand and Section 10(3)(c) on the other; that the former refers to the building only as a residential or non-residential but the latter refers to the landlord occupying a

¹ AIR 1987 SC 1668

part of a building, whether residential or non-residential; that Section 10(3)(c) states that a landlord may apply to the Controller for an order of eviction being passed against a tenant "occupying the whole or any portion of the remaining part of the building"; if as contended by the tenant, each portion of the building let out separately should always be construed as an independent unit by itself, then there is no scope for a landlord occupying "a part of a building" seeking eviction of a tenant occupying "the whole or any portion of the remaining part of the building"; and that such a construction would render the provisions of Section 10(3)(c) otiose because a landlord can never then ask for additional accommodation since section 10(3)(a) does not provide for eviction of tenants on the ground of additional accommodation for the landlord either for residential or non-residential purposes. It observed:

“ It is, therefore, obvious that insofar as Section 10(3)(c) is concerned the legislature has intended that the entire building, irrespective of one portion being occupied by the landlord and the other portion or portions being occupied by a tenant or tenants should be viewed as one whole and integrated unit and not as different entities. To import the expansive definition of the word "building: in Section 2(2) into Section 10(3)(c) would result in rendering meaningless the words "part of a building" occupied by the landlord and a tenant "occupying the whole or any portion of the remaining part of the building".

69. A Division Bench of this Court in **Bollabha Artho Thyadi and Ors. vs. Grandhi Kamaraju**² held that a reading of sections 10(3)(a)(i), (ii) and (iii) and Section 2(iii) do not lead to an inference that a building which is structurally one and the same ceases to be a building when it is leased out in

² AIR 1989 AP 220 (DB)

portions to more than one tenant. It held that if the building is such that it can be conveniently divided into different portions, it can be leased out in portions. But the unit as a whole does not cease to be a building on that count. Every premises let, or to be let, is a building within the meaning of the Act. Therefore, even if each portion of a house is let out and is a building for the purposes of the Act, the entire building as an integrated unit is also a building and if the requirement is for the integrated unit, there is no prohibition in law, subject of course to the restrictions or conditions mentioned in the 10(3)(a)(i) or Section 10(3)(a)(iii). The Bench held that there is nothing in Section 10(3)(a)(i) or Section 10(3)(a)(iii) which precludes a landlord seeking possession of the entire building let out to different tenants if his requirement is bona fide; If the context in a particular provision requires that the word "building" should not be understood as defined in Section 2(iii) of the Act, certainly it is open to the Court to give the normal, natural and ordinary meaning which it is capable of; a landlord can seek possession of the entire building or any one or more portions of the building depending on his requirements and if the competent authority is satisfied that the requirement is *bonafide*, he can be put in possession of the integrated unit. The Bench also referred to **Shri Bala Nageshan Metals** (1 supra) and held that the definition of the term "*building*" depends on the context and that if the context warrants the entire building to be taken as a single unit, it should be so taken and the issue of additional accommodation requirement of the landlord should be adjudicated.

70. In **T. Venkatakrishna Reddy v. T.K. Sreedhar and Others**³ this Court held that where a portion let out to a tenant is structurally part of the main building though it was given a separate municipal number, the landlord is entitled to seek eviction of the tenant on the ground of requiring additional accommodation by invoking Section 10(3)(c) of the Act.

71. In **K.C. Kanniyappan v. Y. Venkataramana Rao**⁴ this Court held that Section 10(3)(c) of the Act is an enabling provision to a landlord to seek eviction of a tenant from a portion of the building, which has been rented out for a non-residential purpose, so as to expand the business which he is already carrying on in a portion of that building.

72. In **Sri Srinvasa Enterprises and Ors. vs. Narayandas and Ors**⁵ this Court held:

“It is clearly a situation where the petitioner is in possession of a part of a non-residential building and it is seeking eviction of 1st respondent from another part of the same building on the ground that it requires additional accommodation for its business. Though 1st respondent can be said to be a tenant of a portion of the premises which by itself is a building within the meaning of Section 2(iii), yet, the portion in occupation of 1st respondent is not to be considered as a separate building when the petitioners admittedly are in possession of the remaining portion of the composite building. Merely because separate municipal members have been given to the premises in occupation of the 1st respondent, or that it was sold under a different sale deed on a different date to the petitioners, it does not become a separate building.”

73. Coming to the facts of the instant case, both the Rent Controller as well as the Appellate Authority considered the oral and documentary

³ 1979 (2) APLJ 141

⁴ 1988 (1) ALT 414

⁵ (2012) 3 ALD 777

evidence on record and gave findings that the shops in the occupation of the petitioners and the Lodge/Hotel being run by the respondent are under one single roof; and though there are separate Municipal numbers allotted to the shops of the petitioners and the Lodge/Hotel of the respondent, that by itself cannot mean that they are separate properties. These concurrent findings of fact are based on appreciation of evidence on record and cannot be said to be perverse or based on no evidence.

74. Construing Section 22 of the Act, the Supreme Court in *Vallampati*

Kalavathi v. Haji Ismail⁶ held:

“13. As the language of the section suggests, the revisional power vested in the High Court is to be used for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceeding, and if satisfied that the order/orders suffer from any such vice the High Court may pass such order in reference to the proceeding as it thinks fit. The expressions “legality”, “regularity” or “propriety” are undoubtedly wider than mere correction of jurisdictional error. But even such revisional power cannot be exercised to upset the concurrent findings of fact recorded by the forums below merely on the ground that the High Court is inclined to take a different view on the materials on record in the case. We should not be understood to be saying that the concurrent findings of fact can in no case be interfered with in revision. For such interference it has to be shown that the findings recorded by the forums below suffer from any inherent defect or are based on inadmissible or irrelevant materials or are so perverse that no reasonable person will come to such conclusion on the materials.”

75. In view of the above legal position, I am not inclined to interfere with the said finding of fact that the premises of the respondent and the shops of the petitioners are under one single roof and that the provisions of Section 10(3)(c) of the Act are attracted.

⁶ (2001) 4 SCC 426

76. Admittedly, the Lodge is located very close to the Nampally Railway Station in a busy locality and there are 45 rooms in the Lodge/Hotel run by the respondent and there would be need to provide adequate parking for customers who visit or stay in the said Lodge/Hotel.

77. R.W.1/petitioner in R.C.No.389 of 2010 admitted that behind the Lodge/Hotel building, the respondent is having parking for only two cars and 8 two wheelers and the respondent is availing the parking space provided by the Municipal Corporation to park 10 to 12 cars.

78. The business of the respondent would be difficult to carry on without adequate parking and there would be constant harassment of the respondent as well as his customers by the Police.

79. The evidence of P.W.1 that the Dy.Commissioner of Police has refused to renew the police licence to the respondent premises vide Ex.P-4 dt.21-08-2007 on the ground of inadequacy of parking facility for the Lodge/Hotel business being run by the respondent is corroborated by C.W.1, the Circle Inspector of Police, Abids, Hyderabad. The latter also reiterated that as per G.O.Ms.No.423 dt.31-07-1998 and also subsequent Government Orders in G.O.Ms.No.129 dt.02-07-2005 and G.O.Ms.No.86 dt.03-03-2006, marked as Exs.X-4 to X-6, there ought to be 40% space for Hotels, Restaurants and Lodges in the Municipal Corporation areas. C.W.2, the Assistant Commissioner of Police, Abids Division, Hyderabad also reiterated the same.

80. The petitioners cannot insist that the respondent should avail parking provided outside the Lodge/Hotel by the Municipal Corporation of

Hyderabad because such a parking would not be the exclusive parking for the respondent's business.

81. It is the contention of the respondent that he would like to demolish the shops in the occupation of the petitioners, shift its reception area from ground floor to a portion of the 1st floor by making suitable additions and alterations and use the entire ground floor area for purpose of parking of vehicles. It is the respondent's pleading that he would remove the partition walls dividing the shops in occupation of the petitioners to create more parking area.

82. As rightly held by the Rent Controller as well as the Appellate Authority, the petitioner in C.R.P.No.2269 of 2019 is doing business in surgical items and he has a godown 400 meters from the shop in his occupation; after filing of the R.C., he admitted that his father acquired another property at Fathe Sultan lane, Nampally, Hyderabad; several new constructions have come up in the neighbourhood and the petitioner can obtain other accommodation and the hardship caused to him would not be much.

83. Even with regard to the petitioner in C.R.P.No.2271 of 2019, who is doing business in steel, he admitted that he is doing property development business but he was not filing income tax returns after 2009 and he is not running the said business due to financial disputes. Therefore it was rightly held by both the Courts that the hardship suffered by him would not outweigh the hardship suffered by the respondent.

84. Therefore I do not find any error in the orders passed by the Rent Controller or the Appellate Authority warranting interference by this Court under Section 22 of the Act.

85. Accordingly, the Revisions fail and are dismissed. No costs.

86. However, the petitioners in both the Revisions are granted time till 30-06-2020 to handover vacant physical possession of the RC schedule shops in their possession; they shall pay the rent up to the said date without fail on or before 10th of every month and the arrears of rent, if any, from August, 2019 till date shall be deposited on or before 05-03-2020 before the II Additional Rent Controller, at Hyderabad; and an undertaking shall be filed by the petitioners that they would not only vacate and handover vacant physical possession of the shops in their occupation by the said date, but also pay the rents up to the said date, within two weeks from the date of receipt of copy of this order.

87. Pending miscellaneous petitions, if any, shall also stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10.02.2020

Ndr/Vsv