

L. Eswar Vs. E. Raghupathi Naidu and Others

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Court : Karnataka

Decided On : Jan-14-1992

Reported in : AIR1992Kant403

Judge : K. Shivashankar Bhat, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1);

Appeal No. : C.R.P. Nos. 1946, 1947 and 1948 of 1988

Appellant : L. Eswar

Respondent : E. Raghupathi Naidu and Others

Advocate for Def. : Sri S. Shekhar Shetty, Adv.

Advocate for Pet/Ap. : Sri Narasimhamurthy, Sr. Counsel, ;for Sri D.S. Chandrasekhara Rao, Adv.

Judgement :

ORDER

1. These revision petitions are filed by the owner of the three premises in question against the rejection of his claim for evicting the tenants. All the three premises are non-residential and are part of a bigger property belonging to the petitioner. C.R.P. 1946/88 arises out of the proceeding in H.R.C. 2038/82. The subject-matter of the proceedings may be referred as premises No. 136. C.R.P. 1947/88 arises out of

H.R.C. 2039/82 and its subject-matter is premises No. 134. C.R.P. 1948/88 arises out of H.R.C. 2036/82 and its subject-matter is premises No. 133. In premises No. 133 the tenant was carrying on the tailoring business. In premises No. 134 the business that is being carried on pertains to photo frames and in premises No. 136 the tenant has been carrying on the business of auto works i.e., repairing the scooters, etc. These premises are adjacent to premises Nos. 130 and 131. The petitioner along with members of his family is carrying on the business of running a lodging house in the name of Sri Kamal Hotel in the said premises Nos. 130 and 131. However, the lodging house has no direct road approach from the main road called Cabinet Main road. These schedule premises (Nos. 133, 134 and 136) as well as another premises No. 135 face the Cabinet main road. In premises No. 135 there was a tenant running a business in the name of Bitco Sales Service. The petitioner filed an eviction petition against the said tenant also and the tenant agreed to vacate and thereafter the petitioner obtained possession of the same.

2. According to the petitioner there are about 33 rooms in the lodging house. There is no restaurant in the compound. The petitioner proposes to open a restaurant and accordingly obtained possession of premises No. 132 on the first floor. There is no direct access to the said premises from the road and in the evidence the landlord as P.W. 1 has asserted that he intends to put up steps or staircase to the said first floor by the side of premises No. 136.

3. In the eviction petition filed the petitioner stated that Sri Kamal Hotel started functioning on and from 3-12-1981. However, the lodgers are deprived of various amenities; there is no place for parking of vehicles and the present accommodation available for the purpose of Reception of the lodgers is hardly sufficient and there is also no restaurant and boarding to meet the compelling retirements of the lodgers. The premises are situated in a commercial locality and there is rush of lodgers to this hotel and the hotel finds it difficult to provide the necessary amenities stated earlier for want of accommodation. The petitioner further stated that he will make necessary alterations after securing possession of the premises to provide amenities of restaurant, boarding, reception and parking of vehicles. The eviction petitions were filed in July 1982. The requirements were further clarified by pointing out that premises Nos. 133 and 134 were required for

the purpose of providing reception room for the hotel and these two premises were adjacent to each other and that there was no other proper accommodation for a reception room. The petitioner further clarified that premises No. 135 was obtained by him as per the order made in HRC. 2035/82 but he could not utilise the same for parking vehicles because the said premises No. 135 will have to be utilised along with premises No. 136 for the same purpose after removing the eastern wall of premises No. 135. The petitioner also stated that he has been keeping premises No. 135 vacant with the sole purpose of making use of it for the parking space after he gets vacant possession of premises No. 136. The petitioner also stated that immediately after starting of the lodging house, all these tenants were intimated of the requirement, but they have not agreed to vacate the premises.

4. In addition to this plea the petitioner also claimed eviction of the tenant of the premises No. 134 on the ground that he had illegally sublet the premises as well as that the said tenant had acquired vacant possession of the suitable premises elsewhere wherein he has been running his business; these additional grounds fall within clauses (f) and (p) respectively of Section 21(1) of the Karnataka Rent Control Act, 1961, ('the Act' for short). The respective tenants denied the allegations made against them and also question the requirement of the petitioner. In the trial Court a Commissioner was appointed who has filed his report; he was also examined as C.W.1. The petitioner was examined as P.W. 1. Further, he examined an officer of the City Corporation, Bangalore, as P.W. 2, to speak to the alternative premises in which Radhakrishna Shetty is carrying on his business (the tenant of premises No. 134). The landlord also examined one consulting engineer as P.W. 3. Each of the tenants examined themselves in support of their cases. The trial Court has dismissed the eviction petition negating all the grounds urged on behalf of the petitioner.

5. The trial Court held that the Schedule premises are at a higher level from the road level and this fact was corroborated from the report of the Commissioner and therefore it is not possible to use the said premises for parking cars. The trial Court, however, refers to the statement made by the Commissioner that a Maruthi van was being kept in one of the premises. The trial Court, before discussing other aspects of the case, negated the contention of the tenants about the

maintainability of the eviction petitions and I may also refer to the said contention, only, to be rejected because I am not able to appreciate the nature of the contention at all. The hotel i.e., the lodging house was run by a firm of partners. Petitioner is the managing partner as claimed by him in his deposition as P.W. 1. Other partners are members of his family. Therefore the requirement of the said firm to provide amenities as part of the running of the lodging house can be met by the petitioner by providing appropriate space. Though Mr. Shekar Shetty contended that there was no such compulsion to provide space by the petitioner in the partnership deed, I find no reason to reject the claim of the petitioner on the said ground alone. Being a partner of the firm it is always open to the petitioner to provide sufficient space to the business of the firm. The requirement of the firm is as much his requirement as that of other partners. The trial Court has also given a definite finding that the petitioner never demanded higher rent from the tenants. Though a vague plea has been put forth by the tenants that the petitioner demanded higher rents, said plea was not pursued at the time of the trial.

6. The trial Court has mainly proceeded on the assumption that the schedule premises are at a higher level from the road level and therefore they are not convenient to be used for car parking. The difference between the road level and the premises in question is not much. In fact there is no dispute that already an auto works is being carried on by the tenant at premises No. 136. There is no serious dispute that the vehicle can be taken into the said premises. The other premises relevant for the purpose of car parking is premises No. 135 of which the petitioner has already obtained possession. In this premises the Commissioner found a Maruthi van being kept at the time of his inspection (vide the report of the Commissioner). The difference in level being marginal, it is not difficult at all to carry out some minor works to adjust the level so as to enable the vehicles to move into or come out of these premises Nos. 135 and 136. The difficulty found by the trial Court is more imaginary rather than real. The evidence of the consulting engineer P.W. 3 also supports the case of the petitioner. His evidence has been attacked on the ground that he is a mechanical engineer and not a civil engineer. That may be so, but he has been practising as a consulting engineer and he states that he has the experience of constructing the buildings. In fact a great technical experience is not necessary to know that marginal differences in the levels can be

got over without much damage to the building and vehicles can be brought into the higher level. The trial Court has not led any emphasis on the admitted facts to the effect that vehicles could be easily moved into premises No. 136 and already a vehicle was found in the premises No. 135. The case of the petitioner is that the bifurcating wall between premises Nos. 135 and 136 has to be removed to have a convenient parking space. The length of the premises will be about 20' (roughly); in fact it may be slightly more and each of these premises has an opening i.e., each premises has a width of more than 10'. Carpet area of premises No. 136 is given as 263.90 square feet and premises No. 135 also will be roughly of the same extent. Nowhere the Commissioner has opined that the bifurcation wall cannot be removed easily. He has made a remark that the building may get damaged after removal of a portion of foundation but no such damage has taken place by the removal of the plinth slab of the foundation in front of shop No. 135. P.W. 3 has spoken to the possibility of putting up a permanent ramp for movement of the vehicles into the premises in question. He has also stated that removal of the wall will not damage the building. Court Commissioner was examined as C.W. 1, was not cross-examined at all. He is a junior engineer working in the city corporation. Thus a reading of the deposition of P.W. 3 and of C.W. 1 read with the report of the Commissioner C.W. 1 amply supports the claim of the petitioner that vehicles can be moved into premises Nos. 135 and 136 and by removing the bifurcating wall the entire area can be used as a parking space. Both P.W. 3 and C.W. 1 are independent witnesses. Their credibility and reliability are not challenged seriously. The trial Court has picked up stray sentences and magnified them to give a finding that these premises Nos. 135 and 136 cannot be conveniently used as a parking space on the ground that they are on a higher level from the road.

7. The trial Court has further observed that providing car parking space and restaurant and boarding are not condition precedent for obtaining licence or for the renewal of the licence to run the lodging house. That is certainly so, but the trial Court missed the real point. The essence of the matter is whether a prudent businessman running a lodging house would consider it a proper requirement of the lodging house to have some space for parking the vehicles and also to have a restaurant and boarding. Providing some space for parking the vehicles in a busy

locality like Cabinet will be a reasonable amenity and will certainly add to the quality of services to the customers. It was unnecessary for the trial Court to question the requirement of the petitioner to have a restaurant because the petitioner had already obtained the premises No. 132 for the same. A restaurant in the same building wherein there is a lodging house will be a matter of commercial expediency; in addition to this, in so far as a place like Cabinet is concerned, running a restaurant will be certainly a good business enterprise and if a businessman desires to open a restaurant the said intention cannot be just brushed as a 'mere desire'. The concept of the reasonableness of the 'requirement' will have to be understood with reference to the person who moots the idea concerned and in the background of the person who proposes to start a particular business. For a lawyer or a medical practitioner business of running a restaurant may not appear and a proposal to start such business may be characterised as a mere desire. But with reference to the person who is already running a lodging house starting a restaurant cannot be in the realm of fancy but will be a reasonable idea and may be legally termed as a proper requirement. The petitioner as P.W. 1 has spoken to these requirements. To facilitate the customers going into the restaurant proposed in the first floor of premises No. 132, steps will have to be put up by the side of premises No. 136. P.W. 1 also states that he had already obtained a licence to open the restaurant as per Exhibit P-6. He further states that for want of a proper reception counter, car parking area and restaurant, the permitted rates for lodging were not being charged by his firm and the rates charged were lower than the one permitted by the licensing authority. P.W. 1 also stated that there is no difficulty to remove the bifurcating wall between premises Nos. 135 and 136. The trial Court has rejected the claim of the petitioner for additional space to open the Reception connected with the lodging business on the ground that all these years lodging house was being run without a Reception counter. This reasoning of the trial Court also does not appeal to me. Hardly within a few months of the opening of the lodging house the petitioner filed these eviction petitions. As P.W. 1 the petitioner has stated that 4' width space which is a passage is being used as the Reception for the present, as a temporary measure; the said space for Reception is insufficient and inconvenient. The persons visiting the lodge are compelled to stand on the road. Similarly the workers employed in

the lodging also are using the same passage; the lodgers have to stand on the road after booking trunk calls. Similarly the site-seeing visitors who are staying in the lodge are compelled to wait for the bus by standing outside on the road; there is no space even to read a newspaper; no place to sit and talk even if an occasion demands for such a space. The space available in premises Nos. 133 and 134 could be conveniently used as the Reception. The total extent will be about 600 square feet. The lodging has 33 rooms consisting of double or triple rooms. From the above facts (sic) and that large number of lodging rooms available there can be no doubt that a reasonable reception counter is necessary for running the business. It is also a fact that those who come to book the rooms require some space to keep their luggage-until they procure the rooms. The reception counter and a place called lounge are necessary amenities for any reasonable lodging house. In a city like Bangalore any business man who would like to expand his business in running the lodging house would naturally require such a space for reception including sufficient space for being used as lounge. There has been no cross examination, of P.W. 1 on these aspects and the evidences of tenants as R.W. 1, R.W. 2 and R.W. 3 in no way demolishes the case spoken to by P.W. 1. In fact the deposition of R.W. 2 Narayana Rao (the tenant of premises No. 133) shows that there are 35 rooms in the lodge and that the petitioner has no difficulty to run a restaurant as he is financially sound. He further stated that cars cannot be parked in front of his shop or in front of other shops and that there is no space for parking the cars in the lodging premises. He further states that he protested against parking the cars in front of his shop by the lodgers. The statement is quite revealing and highlights the difficulty experienced by the lodgers and the requirement to provide parking space by the petitioner. Just because the petitioner was able to carry on the business in lodging without a proper reception centre and a parking space all these years, it cannot be said that he should continue to do so. The difficulty experienced during the course of these years in running the business without the requisite space has been spoken to by him, which I have already observed, is not under serious challenge in the cross examination.

8. In these circumstances I am of the view that the trial Court was not just in negating the petitioner's claim that he required the schedule premises for the purpose of providing parking space for the vehicles and to open a reception centre

for the lodging business.

9. Mr. Shekar Shelly contended that there has been no proper pleading regarding the claim of the petitioner and that the petitioner has developed his case from stage to stage. This criticism of the learned Counsel cannot be accepted. In the matter of eviction petition under Section 21(1) of the Act the Court has been always liberal and generous in interpreting the pleadings. There are several decisions of this Court which I had occasion to refer in *M/ s. Mysore Champion Industriesv. Pukraj*, ILR 1992 Kar LJ 1222. It is necessary to note here that even in the case of a civil litigation the Courts in India have been always liberal in the matter of interpreting the pleadings and technicalities are not permitted to restrict the scope of the pleadings. This broad approach has been further developed in the matter of pleadings in the case of eviction petitions under the provisions of the Act. In *Champion Industries'* case it is stated at page 1227:

'In *K. Raghurama Rao v. H. Venkatesh Nayak* the landlord had pleaded that premises was required to start an independent business for his disabled son who was not too bright. Parties went to trial and adduced evidence with full knowledge of the respective cases of the parties. The basic fact on which rested the proof of landlord's requirement was thus averred in the petition and was understood by the tenant. It is in this background *Chandrakantaraj Urs, J.*, observed that every specific detail need not be set out in the pleadings in regard to the type and nature of business that the landlord intends to carry on, even if there is a general pleading that premises is required to start one's own business, one could look at the surrounding circumstance, the experience the landlord has in a particular trade, his financial ability to do independent business and his skill to carry on that business. With respect, I agree with this approach; the very nature of a prolonged Court proceeding renders it impossible to specify in detail the particular business to be started by the landlord in his premises. The nature of business may undergo a change during the course of proceedings. But that does not mean, the landlord need not state as to whether he intends to shift his existing business or start a new business and lead evidence as to his requirements. The nucleus of the requirement, at least should be averred. Law does not expect that only a person experienced in business should start a new business; there is nothing unnatural or

unreasonable if a person inexperienced in business, ventures into business provided he can command requisite capital. But the facts from which the Court has to infer the reasonableness of landlord's requirements should be forthcoming in evidence and the tenant should have full opportunity to meet the landlord's case. In Raghurama Rao's case, aforesaid, the pleading and the evidence were quite clear to establish the landlord's requirement as reasonable.'

In the subsequent paragraphs two more decisions were also referred. However, in the said Champion Industries Case I found the pleading insufficient because according to me the landlord has simply repeated the words of Section 21(1)(h) claiming eviction without properly explaining the requirement and hence I rejected the claim therein on the ground that the pleading as well as evidence as to the requirement of the landlord was bald (vide para 13 of the said decision). The said decision was, on facts reversed by the Supreme Court by holding that the pleading therein was sufficient and therefore the matter was remitted back to this Court for fresh consideration. It was implicit in the remand order that the basic averments were found in the eviction petition. Therefore it is clear that a highly technical approach to the pleading is unwarranted and so long as the nucleus of the requirement is averred in the eviction petition the same cannot be rejected as vague and insufficient. In the instant case the petitioner has pleaded that he required space for parking of cars and the present accommodation available for the purpose of reception was hardly sufficient and that there was no restaurant and boarding to meet the requirements of the lodgers. This requirement was further amplified by pointing out as to which of the premises was required for reception and which was required for providing parking facilities. Again as P.W. 1 the petitioner has explained these requirements.

10. The learned Counsel for the respondent further contended that the claim of the petitioner is only a desire and not a requirement and the facts established by the petitioner do not specify the test of requirement as observed by the Supreme Court in *Mattulal v. Radhe Lal* : [1975]1SCR127 . The Supreme Court observed that (at page 1603) :

'Mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the Court to determine the truth of the assertion and also whether it is bona fide. The test which has to be applied is an objective test and not a subjective one. The word 'required' signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show, the burden being upon him that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business.'

As I have already examined the evidence and given my finding; the objectivity required of the Court cannot ignore the background of the landlord and the attendant circumstances under which the claim for eviction is put forth. When a person who runs the lodging house claims additional space to provide amenities such as space for parking the vehicles, the question whether it is a reasonable requirement, has to be decided by taking into consideration the normal amenities provided in a lodging house. Similar is the situation regarding the space for reception counter (including the space which I have referred as a lounge). In this connection the decision of the Supreme Court in *Mrs. Bega Begum v. Abdul Ahad Khan* : [1979]2SCR1 , also will have to be borne in mind. At page 276 the Supreme Court observed :

'.....The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term 'need' or 'requirement' should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts prevalent in other States in the country. This Court has considered the import of the word 'requirement, and pointed out that it merely connotes that there should be an element of need.'

Further while considering the case under Section 21(1)(h), the factors that may weigh with the Court while examining the comparative hardship under Section 21(4) cannot be attracted. The case will have to be first decided as to whether the landlord has made out a case of requirement which is bona fide and reasonable and thereafter no doubt the Court will have to apply the requisite tests under Section 21(4) for the purpose of testing whether the order of eviction should be passed or not. Therefore the situation of the tenants has no bearing on the main question under Section 21(1)(h).

11. The trial Court has made an observation in para 10 of its judgment that the petitioner has not specifically stated in detail as to the purpose for which he requires the schedule premises. This I have already found to be incorrect and I am of the firm view that the pleading in the instant case is quite sufficient and whatever doubt that may exist was clarified by the petitioner subsequently before the matter went to trial.

12. As I am of the view that the petitioner has made out his case under Section 21(1)(h), it is necessary to consider the question of comparative hardship. In this connection it has to be noted that the tenant of the premises No. 133 is no more. His legal representatives have come on record. In the evidence given by the original tenant Narayana Rao as R.W. 2 he stated that he was doing tailoring business and that he had two machines. His son Anatha Kumar was helping him. At the same time he stated that he kept only one machine in this premises in question and other machine was kept in a shop belonging to his friend in Avenue Road where his son works. According to the petitioner the tenant can as well carry on his business in the said place. Further the tenant is residing in Kilari Road Cross which is commercial locality and the suggestion was that he can carry on his business in the house itself.

13. Petitioner as P.W. 1 has stated that alternative accommodations are available and the new buildings are coming up in the locality and there is no difficulty for these tenants to procure alternative accommodation.

No doubt shifting of the business may cause inconvenience and higher rents will have to be paid having regard to the prevailing circumstances. But nowhere R.W.

2 stated that he was incapable of paying any higher rent; already there is a working place for his son in Avenue Road which is more centrally located than Cabinet. The tenant of premises No. 134 is Radhakrishna Shetty. According to him his brother and himself were doing the business jointly in this tenanted premises. The petitioner has alleged that the tenant has sublet the premises to his brother. Admittedly the brother of this tenant R.W. 3 is residing separately and he was not examined. His children are employed and though in the examination chief R.W. 3 states that his elder son was employed in private business and another son was a secretary in Mysore Minerals, subsequently he stated that his son had a shop premises in Subedarchatram Road wherein he was carrying on similar business. The fact remains that the children of the tenant are comfortably settled. This apart he does not assert that he is incapable of getting an alternative accommodation for his business in the locality. Again it is a case of inconvenience and likelihood of paying higher rent when he shifts his business to another premises. The case of the tenant of premises No. 136 is equally the same. He is examined as R.W. 1. He states that he has been running a scooter garage in the premises in question. He has taken another premises just in front of the schedule premises where he is having a house and a shop. In the next sentence he asserts that he took on lease only a house and not the shop. The suggestion was that he is having another shop in front of the schedule premises. The document marked exhibit P. 13 and P. 14 indicates that this tenant has another shop premises in front of the schedule premises. He has four sons. They are all residing together according to him. A bangle shop is run in front of the schedule premises. His eldest son is a driver and two sons are working in the scooter garage. However he feigns ignorance as to whether the car bearing No. MEN 1484 is owned by his son or not. However, he admits that his son owns a tempo. This apart this witness is a freedom fighter getting an allowance of Rs. 650/- per month. He admits that he has not tried for any alternative accommodation and pleads ignorance of other constructions coming up near about in the area. Nowhere he pleads any difficulty in getting an alternative accommodation or that of any hardship that will result to him by an order of eviction. The tenant will have to speak to the hardship that will result to him by an order of eviction. Similarly, the landlord will also have to speak to the hardship that will result to him if an Order of eviction is not passed. There should

be evidence on both sides regarding their respective hardship. It is clear from the decision of the Supreme Court in *Phiroze Bamanji Desai v. Chandrakant M. Patel* : [1974]3SCR267 . The petitioner as P.W. 1 has spoken to the hardship that will result to the business if an order of eviction is not granted. In fact he is not able to start the restaurant business as he is not able to provide proper approach to the first floor. Similarly premises No. 135 obtained by him is being temporarily used for other purposes. The hardship to the business and the inconvenience to the customers without a proper reception centre has been explained by him as P. W.1.

14. Having regard to these factors I am of the view that the hardship that will result to the landlord will be greater if an order of eviction is not passed in his favour as against the hardship that may result to the tenant, by an order of eviction, in each of the cases.

15. The petitioner has claimed eviction of the tenant Radhakrishna Shetty on the ground of subletting and also on the ground that he has procured an alternative accommodation. In this regard there is no clear evidence as to when the alleged subletting took place. If the tenant was already carrying on the business already along with his brother it cannot be said that there was an illegal subletting. Similarly there is no clear evidence to establish that the tenant has secured a suitable premises entitling the landlord to seek his eviction under clause (p) of Section 21(1) of the Act. On these questions I concur with the finding given by the trial Court.

16. In the result, for the reasons stated above, these revision petitions are entitled to succeed. All the eviction petitions are allowed under Section 21(1)(h) of the Act. However, having regard to the circumstances of the case the respective tenants-respondents are granted time to handover vacant possession of the respective premises till the end of September 1992 subject to payment of rents promptly and regularly.

17. Petitions allowed.