

iqbal Hyder Vs. Mohammed Wazeeruddin

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Court : Andhra Pradesh

Decided On : Jan-19-2001

Reported in : 2001(1)ALD531; 2001(1)ALT597

Judge : T. Ch. Surya Rao, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 2; Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1966; Estates Land Act, - Sections 18(5); UP Zamindari Abolition and Land Reforms Act - Sections 9

Appeal No. : CRP No. 3843 of 1999

Appellant : iqbal Hyder

Respondent : Mohammed Wazeeruddin

Advocate for Def. : Mr. Vilas V. Afzalpurkar, Adv.

Advocate for Pet/Ap. : Mr. Challa Dhanamjaya, Adv.

Judgement :

ORDER

1. The petitioner tenant assails the order dated 4-8-1999 passed by the learned Additional Chief Judge, City Small Causes Court, Hyderabad in RA No.193 of 1994. RA No.193 of 1994 was filed by the revision petitioner assailing the eviction

order passed against him in RC No.648 of 1987 by the learned II Additional Rent Controller by his order dated 21-3-1994. The Eviction petition was filed by the respondent landlord herein on the premise that the revision petitioner is the tenant under him and he committed wilful default in paying the rents besides creating nuisance and denial of title. It is better to refer the parties as landlord and tenant to avoid any confusion.

2. At the enquiry conducted in this regard by the learned II Additional Rent Controller, the landlord was examined as PW1 besides getting the documents Ex.P1 to Ex.P20 marked on his side and the tenant was examined as RW1 besides getting Ex.R1 to Ex.R26 marked on his side. Upon considering the evidence both oral and documentary adduced on either side, the learned Rent Controller allowed the petition directing the tenant to handover vacant possession of the suit premises within two months from the date of the order to the landlord. In the appeal, the learned Additional Chief Judge after having come to a clear conclusion, that the appellant was tenant under the respondent landlord in respect of the demised premises viz., the Wooden Bunk and that the provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1966 (for short the 'Act') apply to the same and that the appellant denied the title of the respondent mala fide and committed default, dismissed the appeal. Having been aggrieved by the said order, the tenant filed the present revision.

3. There has been a concurrent finding on the contentious issue of jural relationship of land and tenant between the parties inter se. The said finding has been arrived at by both the Courts below on an appreciation of oral and documentary evidence adduced on the point on either side.

4. In this revision there is nothing to upset the said finding, since it is a pure question of fact. It goes without saying therefore, that there has been denial of title of the landlord by the tenant. Although it has been pleaded in the eviction petition that the tenant committed wilful default in paying the rents from 1-1-1985 to 31-5-1987, there has been no finding on that issue either by the Rent Controller or by the Appellate Court. Only one point for determination has been framed by the learned Rent Controller and the same is in regard to the jural relationship of

landlord and tenant between the parties inter se and about the bona fides of denial of title of the Eviction petitioner. The learned Rent Controller had ultimately come to the conclusion that the Rent Control Act applies to a wooden Bunk or wooden Box and ordered eviction. Even the Appellate Court had not adverted to the issue of wilful default. It may be mentioned here that the tenant while denying the title of the landlord pleaded inter alia in his counter that he never paid the rents to the landlord and that he had been paying the rents to the Mutavalli of the Wakf and that the petition schedule premises was the Wakf property. Despite the fact there has been no finding on the issue of wilful default, given the plea taken by the tenant in his counter denying title of the landlord over the demised premises, once the jural relationship of landlord and tenant is established it goes without saying that there has been wilful default on the part of the tenant.

5. In this revision the only point that arises for determination is whether the petition schedule premises is a building or not. It has been specifically averred in the eviction petition in RC No.648 of 1987 that the petition schedule property is a wooden Bunk attached to the petitioner's shop Mulgi bearing No.24-1232 situated at Lad Bazar, Hyderabad. There has been no gainsaying about the nature of the property on the side of the tenant. Whether this Wooden Bunk answers the definition of a 'building' as given in the A.P. (Buildings, Rent and Eviction) Control Act is the moot question.

6. Section 2(iii) of the Act, which seeks to define the word 'Building', may be extracted hereunder for brevity and better understanding of the matter before proceeding to decide the issue. The provision reads thus:

'Building' means any house or hut or part of a house or hut, let or to be let separately for residential or non-residential purposes and includes:

(a) the gardens, grounds, garages and out-houses if any, appurtenant to such house, hut or part of such house or hut and let or to be let along with such house or hut or part of such house or hut;

(b) any furniture supplied or any fittings affixed by the landlord for use in such house or hut or part of a house or hut, but does not include a room in a hotel or

boarding house.

7. A perusal of the above provision shows that any house or hut with its appurtenant gardens, grounds, garages and out-houses if any, with any furniture supplied or any fittings affixed for use in such house or hut when let separately for residential or non-residential purposes is a building. The only exception being a room in a hotel or boarding house. The exclusion of a room in a hotel or boarding house is an indicia that excepting the above, all others come within the definition of a building and the qualification being that it should be let separately for the residential or non-residential purpose. The dominant purpose for which the building was let-out gains significance in deciding whether a property in question is a building or not. The Apex Court in *Koti Sarroj Anamma v. Jonnalagada Malleswara Rao*, : AIR 1995 SC1401 , has considered the Section 2(iii) of the Act and held as hereunder thus:

'In order that the lease should be covered by the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, the lease should be of a building as defined in Section 2 (iii). It should, therefore, be lease of any house or a hut or a part of a house or a hut let for residential or non-residential purposes. It would include gardens, grounds, garages and out-houses appurtenant to such a house or a hut. In the present case, however, the lease is not of any house or a hut or part of a house or a hut. The lease is of sawmill machinery, which is covered by a zinc sheet shed. The dominant purpose of the lease is to lease out the machinery. The shed is only an adjunct. It is also pointed out that a covering over the machinery in the shape of a structure consisting of zinc sheets supported on poles can hardly be called a house or even a hut. In any case, looking to the dominant purpose of the lease, the two Courts below have rightly come to the conclusion that the lease is not covered by the provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction Control) Act, 1960'.

8. That was a case where on facts it was concluded that the dominant purpose of lease was to lease-out the sawmill machinery, which was covered by zinc sheet shed. Under those circumstances it was held, that the shed being only an adjunct it was not covered by the lease. Ofcourse, incidentally it was observed by the

Apex Court that covering over the machinery in the shape of a structure consisting of zinc sheets supported on poles can hardly be called a house or even hut. But what is to be taken note of is the purpose for which the premises has been let-out. It is also necessary here to consider the definition of hut. In the Concise Oxford Dictionary, 9th Edition, the meaning of hut is given as hereunder:

'A small simple or crudely made house or shelter; a temporary wooden etc., house for troops.'

9. It is thus obvious that a simple shelter may be of a wooden structure comes within the meaning of hut.

10. In *V. Chandramani v. Collector of Visakhapatnam*, AIR 1957 AP 867, a learned single Judge of this Court held as follows:

'From the various authorities cited therein it appears to me that any super structure which is intended for the use and occupation as a habitation or purposes of trade, manufacture or commerce or some other structure constituting a fabric or edifice will be deemed to be a building. A mere wall or a fence or a gate enclosing lands certainly cannot come under that definition. From this point of view the market has not only a compound wall enclosing a site but it has structures, which can be utilized for commercial purposes viz., market. Therefore it comes within the definition of building under Section 18(5) of the Estates Land Act.'

11. The Supreme Court in *Ghansham Das v. Debi Prasad*, AIR 1966 SC 1966, has sought to define the word 'building' within the meaning of Section 9 of the UP Zamindari Abolition and Land Reforms Act which may profitably be extracted hereunder thus:

'The word 'building' has not been defined in the Act and must, therefore, be construed in its ordinary grammatical sense unless there is something in the context or object of the statute to show that it is used in a special sense different from its ordinary grammatical sense. In the Webster's New International Dictionary the word 'building' has been defined as follows: 'That which is built special; (a) as now generally used as fabric or edifice, framed or constructed,

designed to stand more or less permanently and covering a space of land for use as a dwelling, store-house, factory, shelter for beasts or some other useful purpose. Building in this sense does not include a mere wall, fence, monument, hoarding or similar structure though designed for a permanent use where it stands, nor a steamboat, ship or other vessel of navigation.' From this definition it does not appear that the existence of a roof is always necessary for a structure to be regarded as a building. Residential buildings ordinarily have roofs but there can be non-residential building for which a roof is not necessary. A large stadium or an open air swimming pool constructed at a considerable expense would be a building as it is a permanent structure and designed for a useful purpose.'

12. In *Thangakani Ammal v. A.K.A. Khaja Mohideen Shib*, 91 LW 659, the Madras High Court held as follows:

'The real test would be how one party intended to give and how the other party intended to take the structures. If the structures, as they stood and demised, though not with roofing were so demised to serve a useful purpose, residential or non-residential, as they stood, they may come within the meaning of 'building' under the Act. If the structures, as they stood and demised are capable of occupation a falling within the residential class or within the class connected with commercial industry in some way or other, they may come within the definition of 'building'. If, however, the structures, which could not fit with the conventional meaning of a 'building', were demised and they could not be occupied and utilised for residential or non-residential purposes as they stood and were demised, they cannot come within the definition of 'building' under the Act. Hence, not only the nature of the structures, but also the manner and the purpose for which they were let out as they stood and demised will be the deciding factors depending upon the facts of each case.'

13. The learned Counsel for the respondent seeks to rely upon a judgment in *Chikka Venkatarayappa v. Laxminarasimhaiah* by LRs., 1984 (1) RCJ 229. The property in question therein was a Bunk shop or the Box shop. It was also a wooden structure constructed out of a Mango plank with Iron hooks. Since that structure was let out for business purposes, the Karnataka High Court was of the

view that, it answers the definition of building.

14. It is obvious thus from a conspectus of the decisions referred to supra that nature of use and permanent nature of the structure are the twin requirements to be considered for construing a structure as a building in general sense unless the context or object is shown in the relevant Statute a special sense. These twin considerations are again to be considered with reference to the facts of each case.

15. Turning to the instant case the premises in question is a wooden bunk attached to the shop mulgi. The permanent nature of the structure can therefore be seen, since it is attached to the shop mulgi. Obviously it was let out for the purpose of carrying business therein i.e., for non-residential purpose. The description of the property and the purpose for which it was let out would go in favour of the conclusion that it is nothing but a building as defined under Section 2 (iii) of the Act. That view is further re-enforced by the judgment of the Karnataka High Court. Therefore, the premises in question comes clearly within the definition of building as given in the Act.

16. In view of the concurrent findings of both the Courts below about the denial of the title of the landlord and about the jural relationship of landlord and tenant between the parties inter se and as the premises in question sufficiently answers the definition of building, the order of eviction passed by the learned Rent Controller and affirmed by the Appellate Court is impeccable. I see no illegality or any material irregularity that has been committed by both the Courts below in adjudicating the matter, and consequently the revision must fail.

17. In the result the revision petition is dismissed. Under the circumstances no order as to costs. Two months time is granted for the revision petitioner for vacating the Suit premises from the date of this order.