

**Jagnandan Mallik and ors. Vs. Accommodation Controller and Dy. Secretary to Government, General Administration (Accom. C) Department and anr.**

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**Court :** Andhra Pradesh

**Decided On :** Feb-08-1995

**Reported in :** 1995(2)ALT217

**Judge :** B. Subhashan Reddy, J.

**Acts :** Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 3; [Evidence Act, 1872](#) - Sections 116

**Appeal No. :** W.P. No. 4323 of 1987

**Appellant :** Jagnandan Mallik and ors.

**Respondent :** Accommodation Controller and Dy. Secretary to Government, General Administration (Accom. C) Department

**Advocate for Def. :** Government Pleader

**Advocate for Pet/Ap. :** R.C. Misra, Adv.

**Judgement :**

ORDER

**B. Subhashan Reddy, J.**

1. The residential premises bearing Municipal No. 5-8-329 situate in Chapal Road, Hyderabad, originally belonged to Ms. Mary E. Leake and Miss Theresa Lawlor. The same was sold to the petitioners under a registered sale deed. At the time of sale, the above premises was under the occupation of one D.Kannan as tenant by virtue of allotment made by the Government under Section 3 of the A.P. Buildings (Lease, Rent and Eviction) Control Act XV of 1960 (hereinafter referred to as 'the Act'). When the petitioners filed an application seeking the payment of rents by virtue of their becoming owners of the said premises, the same was acceded to by the Government and the said D.Kannan was directed to pay the rents to the petitioners. D. Kannan had vacated the said building and the petitioners filed an application for release of the building for repairs and for redelivery of the same to the Government. That application was ordered in Memo No. 4862/Accom.C2/76-28, dated 11-4-1980 by the 1st respondent. Then the said building was allotted to one P. V. Hanumantha Rao by the Government and he was paying rents to the petitioners. Later on, he had vacated the premises in the year 1987 and informed about the same to the 1st respondent. At that time, one Clement Leake filed a petition that he is the owner of the said premises and not the petitioners. Then the impugned proceedings in Memo. No. 1578/Accom.C2/80-15, dated 28-3-1987 was issued wherein the 1st respondent stated that as there was a dispute with regard to the ownership of the house in question, the same was allotted to one J. Ravinder, a Draftsman in the Office of the Electrical Engineer (Genl.), P.W.D. (R & B), Nampally, Hyderabad for his residential purpose as a tenant. This approach of the 1st respondent is totally perverse and wrong. When once the 1st respondent has accepted the petitioners as owners of the house in question, the 1st respondent became a statutory tenant under Section 3 of the Act. In view of the 1st respondent becoming the tenant, the allottee's claims are only through the 1st respondent, but not independently. Actually, the lis is inter se the 1st respondent and the petitioners. When the tenant takes the premises on lease from the landlord, there is statutory estoppel under Section 116 of the Indian Evidence Act from denying the title of the landlord or setting up title in somebody else. In fact, the tenant is estopped even from entertaining any claim with regard to the invalidity of title of the landlord/landlady. Whatever may be the dispute raised by the third parties, when a premises is vacated by the allottee of the 1st respondent

and if the said premises is sought to be redelivered, the re-delivery could only be in favour of the petitioners and not to anybody else. In the instant case, the 1st respondent did not exercise his mind properly in allotting the premises to the third party- J. Ravinder. The 1st respondent is not entitled to take cognizance of the claim made by Clement Leake. The 1st respondent should hand over the premises only to the petitioners, subject to the satisfaction that the petitioners needed the same for their personal occupation. In the circumstances, the impugned proceedings is set aside and the matter is remitted back to the 1st respondent to conduct enquiry as to whether the plea of the petitioners is bona fide or not. If the plea of the petitioners is bona fide, then the premises has to be redelivered to the petitioners only. The claims of Clement Leake or any other third party shall not be entertained by the 1st respondent and such disputes can only be adjudicated in a civil Court. The 1st respondent shall make the above exercise within three months from the date of receipt of a copy of this order.

2. With the above directions, the Writ Petition is disposed of. No order as to costs.

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