

**Babulal (Died) Per L.Rs. Vs. Lalchand**

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**SooperKanoon Citation :** [sooperkanoon.com/440606](http://sooperkanoon.com/440606)

**Court :** Andhra Pradesh

**Decided On :** Aug-25-2006

**Reported in :** 2006(6)ALD157; 2006(6)ALT102

**Judge :** V. Eswaraiah, J.

**Acts :** Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 8(5), 10(2), 10(3) and 16

**Appeal No. :** C.R.P. Nos. 410 and 435 of 2003

**Appellant :** Babulal (Died) Per L.Rs.

**Respondent :** Lalchand

**Advocate for Def. :** B. Adinarayana Rao, Adv.

**Advocate for Pet/Ap. :** Pratap Narayan Sanghi, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**V. Eswaraiah, J.**

1. The petitioners in both the Civil Revision Petitions are the landlords and the respondent in both the Civil Revision Petitions is the sole tenant of the same

landlords. The Rent Control Case Nos. 305 of 1997 and 362 of 1997 filed by the original landlord-Babulal against the tenant on the file of the I-Additional Rent Controller, Hyderabad were disposed of on 27-12-2000, allowing the Rent Control Cases, ordering eviction. Aggrieved by the said orders, the tenant filed Rent Appeal Nos.98 of 2001 and 99 of 2001 on the file of the Additional Chief Judge, City Small Causes Court/Rent Appellate Court, Hyderabad. During the pendency of the appeals, the original landlord Babulal died and his legal representatives were brought on record. The said Rent Appeals were allowed on the same day by orders dated 1-11-2002 and aggrieved by the same, the landlords filed these two Civil Revision Petitions. The parties herein are referred to as they are referred in Rent Control Cases before the Rent Controller.

2. There is no dispute with regard to the landlord and tenant relationship. The premises bearing mulgi No. 4-1-543, which is the subject matter of R.C.no.305 of 1997 and premises bearing mulgi No. 4-1-545 which is the subjectmatterof R.C. No. 362 of 1997 were leased out in favour of the tenant. The said premises were situated at Troop Bazar, Hyderabad hereinafter referred to as the schedule premises. There is also no dispute with regard to the monthly rent payable at the rate of Rs. 300/- to each of the premises. It is stated that the said mulgies were given to the tenant for the purpose of running Kirana shop i.e., Government Ration Shop.

3. Though the landlords have taken several grounds seeking eviction i.e., wilful default in payment of rent, closing of business of M/s. Ganeshlal Bansilal and the tenant kept the mulgi under the lock and key and the tenant has got sufficient alternative accommodation and that the tenant committed acts of waste in such a way causing nuisance to the landlords and the landlords require the said schedule premises for their bona fide requirement but, the learned Counsel appearing for the landlords advanced his arguments on two grounds alone i .e., the tenant changed the nature of business and that the tenant kept the premises closed under lock and key for more than four months. The other grounds i.e., wilful default, acts of waste and personal requirement etc., have been given up as the Rent Appellate Court considered the said issues in detail and held that there was no wilful default in view of the advance available with the landlord and also on the

ground that the petition filed by the tenant under Section 8(5) of the Andhra Pradesh Buildings(Lease, Rent and Eviction) Control Act, 1960 hereinafter referred to as 'the Act' was allowed and no acts of waste or nuisance caused to the landlord and that the petitioner has not bonafidely required the premises. Therefore, the relevant pleadings relating to the aforesaid two issues are required to be considered.

4. It is just and proper to extract that part of pleadings in Rent Control Case, seeking eviction on the ground of nature of change of business and to consider the contention as to whether the premises was closed under the lock and key continuously for a period of 4 months. Para-4 of the Rent Control Case No. 305 of 1997 is as follows: 'The respondent who obtained the schedule premises for running Government Ration Shop, now using as godown. The respondent is guilty of use of the building for the purpose other than the same was leased out. On this ground, the respondent is liable to be evicted from the schedule premises.'

5. In para 5 it is stated that the respondent kept the schedule premises closed and the air and light is not reaching inside the schedule premises. The acts of the respondent amounts to waste as the same are likely to impair materially the value and utility of the said premises. On this ground also, the respondent is liable to be evicted from the schedule premises. In para-7 it is stated that the respondent kept the schedule premises under lock and key and so many rats are grown up in the shop and causing damage to the schedule premises and now to the landlord and other neighbours. In para 10 it is stated that the respondent's licence for Government Ration Shop was cancelled and he converted the schedule premises into godown without the consent and permission of the petitioner, as such, the respondent stopped carrying out business of Government Ration Shop in the schedule premises.

6. In other Rent Control Case RC.No. 362/ 1997, the landlord has not at all taken the ground of change of user of premises, but it is stated that the tenant kept the premises under lock since last four months without any valid cause.

7. A counter has been filed by the tenant, stating that the landlord has filed the suit O.S. No. 529 of 1988 on the file of the X Assistant Judge, City Civil Court,

Hyderabad, seeking eviction of the tenant on the ground of personal requirement and he also filed O.S. No. 3484 of 1979 on the file of the X Assistant Judge, City Civil Court, Hyderabad and O.S. No. 3739 of 1979 on the file of the VI Assistant Judge, City Civil Court, Hyderabad and they were dismissed. Thereafter, the landlord filed R.C. No. 559 of 1993 on the file of the I-Additional Rent Controller, Hyderabad on the ground of personal requirement and the respondent has got alternative accommodation and the said case was dismissed on 29-11-1996. Therefore, the landlord is precluded from seeking eviction on the aforesaid grounds under Section 16 of the Act.

8. It is stated that in respect of other Rent Control Case R.C.362 of 1997, O.S. No. 529 of 1988 seeking eviction on the ground of personal requirement and R.C. No. 564 of 1993 was filed, which was also dismissed, against which Rent Appeal No. 17 of 1997 on the file of Chief Judge, City Small Causes Court, Hyderabad was filed and the same was dismissed. It is further stated that the tenant has obtained the said mulgies for the purpose of carrying on business, but the nature of particular business was not prescribed at the time of commencement of tenancy and therefore, it cannot be said that there is a change in the nature of business. It is stated that in fact, the initial rent of Rs. 150/- was increased to Rs. 300A and the landlord obtained a deposit of Rs. 15,000/- in respect of each of the shop and that the landlord is in the habit of filing frivolous eviction petitions and settle the matters by taking huge advances and increasing the rents.

9. The contention that the shop was kept closed and it was under lock and key was denied, stating that it is absolutely false and baseless to state that the tenant was keeping the premises under lock and closed the shop and that the air and light is not reaching the mulgi. In fact, the Rent Controller held in the previous R.C. No. 559 of 1993 that there was no acts of waste or any damage caused to the mulgi. It is stated that the premises is not kept under lock and key and the allegation that many rats are growing up and causing damage to the mulgi was denied. It is stated that in fact the tenant is continuously using the premises and not kept it under lock and key. It is stated that the aforesaid ground is invented only with oblique motives and to enhance the rent. It is stated that in fact, similar contention that the shop was kept closed for more than 4 months was taken in

R.C.No. 559 of 1993 and that the said contention was already rejected and therefore, self same ground cannot be taken once again under Section 16 of the Act.

10. To substantiate the allegations, seeking eviction on the aforesaid two grounds, the landlord was examined as P. W. 1 and marked Exs.P-1 to P-5 Ex.P-1 is the certified copy of the order in R.C. No. 593 of 1997 and Exs.P-2 to P-4 are the photographs with negatives and Ex.P-5 is the marriage invitation card. The tenant is examined as R.W.1 and Exs.R-1 to R-34 were marked on his behalf.

11. It is stated by the landlord in his deposition that the tenant obtained the premises for running Ration Shop and now he has converted the same into godown and the said shop was not leased out for godown purpose and the tenant kept the premises under lock. Due to continuous closure of the shop, the light does not pass through and thereby the premises is getting damaged.

12. In the other Rent Control Case, it is stated that the tenant kept the premises under lock and key for the last 4 months as on the date of filing of the Rent Control Case and he also secured alternative accommodation. Certain photographs also have been filed showing that the shop was kept closed when the photographs were taken. That is all the evidence adduced to substantiate the aforesaid two grounds by the landlord.

13. In the cross-examination, the landlord admitted that the earlier suits and Rent Control Case Nos.559 of 1993 and 554 of 1993 filed seeking eviction were dismissed. In the cross-examination, the landlord stated that the grounds of eviction were same in the earlier Rent Control Cases against the tenant. The suggestion that the tenant has been carrying on the business continuously in the sit mulgies and that he has not ceased to occupy the said premises was denied, but it is accepted that the tenant gets income from the business of said two mulgies in the name of Ganeshlal and Bansilal.

14. The tenant in his deposition stated that he is not using the mulgi as godown and no damage is caused to the said mulgi as contended by the landlord and there is no act of waste. He has obtained the mulgi for carrying on business and

there was no condition with regard to the nature of business to be carried on in the said mulgi. The suggestion that the ration shop licence was cancelled was denied. Of course no document has been filed showing the nature of business that is being carried on by the tenant. The suggestion that the tenant closed the firm and thereby ceased to occupy the schedule premises is denied. The photographs which were marked as Exs.P-2 and P-3 shows that the schedule premises in both the cases and the shops are Poornima Torch and Konark Enterprises and the shutters were closed and the mulgi of Poornima Torch and Konark Enterprises is the mulgi in R.C. No. 362 of 1997.

15. On the aforesaid evidence, the Rent Controller held that the firm Ganeshlal Bansilal is not doing business as on date and there is no material before the Court to believe that the tenant has obtained the premises from the landlord to start another business in the schedule mulgi and the photographs shows that the shutters of the mulgies were kept closed and there was no sign board in front of the said mulgi except the sign board Poornima Torch and as per the contention of the landlord, the mulgi is used as a godown, which is the subject matter of R.C. No. 362 of 1997. Non-production of material by the tenant regarding the business goes to show that the tenant is not carrying on any business in the schedule mulgi and there is no material before the Court to believe that the tenant has been carrying on the business of Ganeshlal Bansilal in the schedule premises as the schedule premises was kept closed. Accordingly, the Rent Controller held that the tenant cannot be permitted to hold the tenancy premises even after closure of the premises (sic. business of) Ganeshlal Bansilal, for which the schedule mulgi was obtained on lease.

16. The Rent Control court considered the very same issues as to whether having closed the business of M/s. Ganeshlal Bansilal, the tenant kept the premises under lock and key.

17. In fact, the two independent points that have been raised by the learned Counsel for the landlord i.e., there is a change in the user of the mulgi from business to godown was not at all independently considered. The only point that was considered as to whether M/s. Ganeshlal Bansilal closed the business and

the tenant kept the mulgi under lock and key as a single point only, which was considered, but the learned Counsel appearing for the landlord submits that there are two independent grounds seeking eviction, one is the change of business for using the said premises from business to godown and the other is that the shop was kept closed for more than four months and therefore, under Section 10(3)(iii) (sic. (2)(v)) of the Act if the tenant ceased to occupy the building for a continuous period of 4 months, without reasonable cause, is liable to be evicted.

18. There is no dispute with regard to the legal contention that as per the Judgment of the Supreme Court in *Bharat Lal Baranwal v. Virendra Kumar Agarwal* : AIR 2003 SC1056 . and *GOA Urban Cooperative Bank Ltd. v. NoorMohd. Sheikh Mussa and Anr.* : AIR 2004 SC3886 . if there is a change of user from business to manufacture and where the suit premises were let out for particular business purpose and the tenant after some years used the same for manufacturing etc., and if the premises is taken for office purpose and used the same as godown without the consent of the landlord would constitute a ground for eviction of the tenant. The Apex Court broadly considered that the building can be let out either for residential or business or manufacturing. In the first case, admittedly, the premises was given for business purpose i.e., for selling books etc, but the said premises were used for manufacturing purpose. In the latter case, the premises were given only for office purpose under the terms of the lease deed, but the same was used as godown. In those circumstances, the Apex Court while approving the Full Bench Judgment of the Punjab and Haryana High Court in the case of *Das Raj v. Sham Lal*. held that putting to use the demised premises to a purpose, which the given description or identification of the demised building in the rent note did not warrant, would amount tantamount to the change of user. The premises in respect of the said two cases were ceased to occupy either for business or office and they were being used for manufacturing/godown respectively, which was a different purpose other than the identified in the lease deed.

19. Admittedly, in these two cases, there is no lease deed and the tenancy is oral only. What is the nature of business is not specified or proved. Therefore, in the absence of any specific agreement for the user of the premises, it cannot be said

that the respondent has changed the use of the premises from business. Even assuming that the premises is being used for godown purpose, in the absence of any prescription for making use of the said premises as not for godown, it cannot be said that the tenant has changed the user of the building contrary to the specific conditions of the lease agreement. Even other wise, the evidence on record goes to show that the tenant is carrying on the business and deriving income from the schedule premises as admitted by the landlord in his cross-examination. There are two mulgies under the occupation of the tenant. Even if one mulgi is being used for storage of his material in respect of the business carried on in the other shop, it cannot be said that the tenant has changed the user of the said premises.

20. The Apex Court in the case of Hari Rao v. N. Govindachari and Ors. : AIR 2005 SC3389 . wherein, the building was given for the purpose of business, it is held that while construing the provision of law imposing a liability for eviction, like Section 10(2)(ii)(b) of the Act one must see whether there has been such a change of user of the premises as to make it alien to the purpose for which the building was let and deny eviction when the basic activity remains the same and there is only a variation in the manner or mode of carrying on that activity. The purpose has to be understood, as the purpose of trade and in the business sic. absence of a covenant barring the use of it for any other trade, it will be open to the tenant to use the premises for expanding his trade or even for taking up other lines of trade as benefits a prudent trader. Accordingly held that the Rent Controller, the Appellate Court and High Court erred in evicting the tenant and the eviction petition filed by the landlord was dismissed.

21. Therefore, the only question that arises for consideration as to whether there was any change in the user of the building and whether the building was kept waste for more than four months?

22. The Court below held that the business of M/s. Ganeshlal Bansilal was closed and the tenant kept the premises under the lock and key. There is no dispute of relationship between the landlord and tenant. If that be so, whether the business is carried on in the name of Ganeshlal Bansilal or in the name of respondent is immaterial. Admittedly, the respondent was the tenant and was paying rent and as

admitted by the landlord, the tenant was carrying on the business. With regard to the closure of the premises, merely because certain photographs have shown, in which there was no sign board and shutter of one mulgi was kept closed, it cannot be assumed and presumed that the schedule premises was closed for more than four months. If the premises is continuously closed or the tenant secures alternative accommodation and if the tenant fails to explain the reasons as to why the shop was kept closed for more than four months, then it constitutes a ground for ordering eviction. If any premises is continuously closed for a period of four months or more, it is of the common knowledge that there will be some acts of waste that will affect the building. Therefore, if any act of waste is caused or not, the landlord has not taken any steps to prove that there was an act of waste and that the building was kept closed for a period of four months. If there is any act of waste, the landlord ought to have got appointed an Advocate Commissioner to note down the physical features inside the godown, whether there were any acts of waste and whether there was any sign of keeping the premises continuously (closed) for a period of four months. It is not known whether the photographs were taken on a Sunday or any holiday and even keeping the premises closed for a few days, it cannot be assumed and presumed that the shop was continuously closed for a period of four months. Therefore, I am of the opinion that the landlord has not at all established the grounds taken for ordering eviction either on the ground that the building was used for some other purpose, other than that for which it was leased out under Section 10(2)(ii)(b) of the Act or the other ground that the tenant ceased to occupy the building for a continuous period of four months without any reasonable cause. These two grounds have been considered by the lower appellate Court and rightly allowed the appeal filed by the tenant.

23. In view of the aforesaid facts and circumstances of the case, I am of the opinion that the landlord has failed to establish that the tenant has illegally changed the user of the building and that the shops were kept closed continuously for a period of four months.

24. For the aforesaid reasons, I do not see any illegality or irregularity or impropriety to interfere with the order of the Rent Appellate Court and the Civil Revision Petitions are accordingly dismissed. No order as to costs.

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