

Raj Kumar Vs. Ganesh Rai

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Court : Andhra Pradesh

Decided On : Oct-09-1998

Reported in : 1998(6)ALD560; 1998(6)ALT304

Judge : P. Venkatarama Reddy, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 10(2 and 3) and 12

Appeal No. : CRP Nos. 1441 and 1442 of 1998

Appellant : Raj Kumar

Respondent : Ganesh Rai

Advocate for Def. : Mr. Bhajarang Singh Thakur, Adv.

Advocate for Pet/Ap. : Mr. S. Balchand, Adv.

Judgement :

ORDER

1. CRP No. 1441 of 1998 arises out of RC No.594 of 1992 and CRP No. 1442 of 1998 arises out of RC No.726 of 1993 on the file of the Second Additional Rent Controller, Hyderabad. In both the cases, the landlords sought eviction of the petitioner from the mulgi bearing No.4-3-646 at Rarnkote, Hyderabad in which the petitioner-tenant was carrying on hair-dressing saloon at the monthly rent of

Rs.250/-. In RC No.594 of 1992, the ground for eviction is that the landlord (respondent herein) wants to demolish and reconstruct the entire building as it is in a dilapidated condition. The petition was, therefore, filed under Section 12 of the Act. In RC No.726 of 1993, which is between the same parties in respect of the same mulgi, the respondent herein filed eviction petition under Section 10(3)(iii)(b) and Section 10(2)(v) of the Act read with Section 12. The first ground is that the shop is required for the personal requirements. The second ground is that the respondent-tenant secured alternative accommodation. Except the ground of personal requirement, the other grounds were accepted by the Rent Control Court and eviction was ordered. The appellate authority viz.. Additional Chief Judge, City Small Causes Court confirmed the order of eviction passed by the Rent Controller. Hence these CRPs.

2. As far as CRP No. 1441 of 1998 (arising out of RC 594 of 1992) is concerned, the only argument raised was that the landlord has to give an undertaking as prescribed by Section 12. The correctness of the decision in Kondari Suryanarayana v. Pinninti Sheshagiri Rao, 1995 (2) ALD 184, was assailed at one point of time. However, in the course of further arguments, the Court was informed that in the event of CRP No. 1442 of 1998 being decided against the landlord, the landlord is prepared to give an undertaking and therefore, I need not go into the merits of CRP No.1441 of 1998 at all. If the petitioner succeeds in CRP No. 1442 of 1998, he will have to vacate the premises subject to the undertaking being given by the landlord, as agreed to by the landlord himself. However, if the petitioner-tenant fails in CRP No.1442 of 1998. he will have to vacate unconditionally. The contest is, therefore, mainly in CRP No. 1442 of 1998 arising out of RC No.726 of 1993.

3. In Eviction Petition filed by the landlord in RC No.726 of 1993, it is alleged that the tenant secured alternative accommodation for his business of hair-dressing saloon. This is what is stated in the petition. The respondent has obtained mulgi at Sultanbazar, Basheerbagh, Badichowdi and also at Chappal Bazar. The tenant in his counter denied the fact that he obtained any mulgi at Sultan Bazar, Basheerbagh, Badichowdi and at Chappal Bazar. Nothing more was stated in the counter.

4. PW1 (landlord) deposed i.i his evidence that the tenant secured 'alternative accommodation' i.e., three mulgies in his residential accommodation bearing No.3-2-1310, at Chappal Bazar main road. PW1 further stated that he is also having a hair-cutting saloon at Mothi Market, Esamia Bazar in the same name. Another saloon is situated opposite to suit inulgi in the name ofNcw Komal Hair-Dressing Saloon. In the Petition-Schedule mulgi, he is running a saloon in the name of Komal Hair-Dressing Saloon.

5. The tenant who examined himself as RW1 reiterated in the Chief examination that he did not secure any alternative accommodation. But, in the cross-examination, he admitted certain facts and gave evasive answers to certain questions which made the Courts below to comment that he is not a truthful witness. It shall now refer to relevant portions in the cross-examination of RW1. RW1 was confronted with photographs Ex.P9 and P10 pertaining to the building which heowns at Chappal Bazar. He stated that he was residing in his father's building which is a double storeyed one at Chappat Bazar. He admitted that Ex.P9 photograph is a shuttered mulgi which is part of the double storeyed building. However, he asserted that the said mulgi was not lying vacant. It is being used for water storage tank and for keeping scooters and cycles. It is in this background, the learned Rent Controller rightly commented as follows:

'Thus the petitioner established that there is a non-residential mulgi in the building of the respondent. Then the burden shifts to the respondent to show that he is using the said mulgi for water tank and to keep his cycles and motor cycles but there is absolutely no evidence in support of his case.

The respondent failed to produce any photos to show that there is a water tank inside that mulgi which can easily be produced if really it is being used for that purpose. Non-production of this evidence by respondent clearly goes to support the case of the petitioner that the respondent secured alternative accommodation in his own building by constructing a non-residential mulgi and he is suppressing the said facts to avoid eviction".

6. The same comment was made by the learned Appellate Judge. From the deposition of RW1, it is evident that he admitted that he obtained a sanctioned

plan for the ground floor of his building at Chappal Bazar and his son obtained sanction for the first floor for his residence after the marriage. Indisputably, the tenancy of the petitioner was much earlier to the acquisition of this mulgi as an addition to the building which he owns at Chappal Bazar. According to the petitioner, the petition-schedule premises was taken on lease by his father about 50 years back and the petitioner continued thereafter. When there is evidence to the effect that the petitioner acquired the mulgi fit for non-residential purpose, the burden was on the petitioner to show that the said mulgi was either not vacant or unfit for commercial purpose, such as running a hair-dressing saloon. On the other hand, the petitioner made a bald denial in the counter and even after he was examined on this aspect, he did not come forward to rebut the presumption that could reasonably be drawn that he did in fact secure an alternative accommodation. The evidence about the existence of shuttered mulgi at Chappal Bazar which on the basis of evidence on record must be presumed to be vacant, is itself sufficient to order eviction under Section 12 of the Act, irrespective of the fact whether the other hair-dressing saloons either run by him or by his sons fall within the purview of alternative accommodation or not.

7. The learned Counsel for the respondent has drawn my attention to the deposition of RW1 that his two sons are running two separate hair-dressing saloons. But, that has no material bearing on the question whether the petitioner has secured alternative accommodation. It is not the plea of the respondent that the business run by the sons is the business of the petitioner himself or that it amounts to securing of alternative accommodation by the petitioner. The learned Counsel for the respondent then pointed out that RW3 who was examined in RC No.581 of 1992 (CRP against which is dismissed today) admitted that the petitioner herein is having another hair-dressing saloon in the same street. I do not think that the evidence tendered by a third party in a proceeding to which the petitioner was not a party can be relied upon by the respondent-landlord. But, as already stated, the availability of a shuttered mulgi in his reconstructed building at Chappal Bazar is itself sufficient to conclude that the petitioner had secured alternative accommodation within the meaning of Section 12 of the Act and, therefore, liable for eviction.

8. The learned Counsel heavily relied on the decision in *S. Ramalakshamma v. M/s. Lakshmi General Stores*, 1974 (2) APLJ 73 at 78, in which distinction between alternative and additional accommodation was pointed out by the Division Bench. The learned Judges observed:

'What follows from what is considered is that there is implicit in this conception of alternative existence of two buildings similarly circumstanced or so situated as to render a choice between the two fairly probable, The 'alternative building' within the meaning of Section 10(2)(v) of the Act would mean a building alternative to the one from which the eviction of the tenant is sought under the Act. While considering the question as to whether the building secured by the tenant can be said to be alternative to the building from which he is sought to be evicted, the Court could properly take into account not only the physical character of the two buildings but also environmental matters, either as a consideration affecting its suitability to the needs of the tenant.'

9. Ultimately, it was held by the Division Bench that the new Building constructed by the tenant was meant to be additional accommodation for his expanded business and it was not alternative accommodation. The ratio of that decision has no application to the present case. When once it is established that there is a mulgi with shutters available in the building owned by the tenant and such mulgi is located in an equally suitable locality, it is for the tenant to bring on record the facts which are within his exclusive knowledge so as to demonstrate that the said accommodation is not sufficient, suitable or really not an alternative. This is not a case where the tenant pleaded that the available vacant mulgi at Chappal Bazar is being used or required by him as additional accommodation and therefore it cannot be regarded as alternative accommodation. As already observed, no such facts justifying the plea were spoken to or proved by the petitioner. The only plea taken by him was that it was not vacant, but he failed to prove this fact.

10. In the light of the above discussion, CRP No. 1442 of 1998 is dismissed- As far as the CRP No. 1441 of 1998 is concerned, it is held that ordering eviction on the ground of demolition and reconstruction, is correct. However, it is not necessary to go into the question whether eviction is subject to landlord furnishing an

undertaking as required under Section 12 of the Act in view of the dismissal of CRP No. 1442 of 1998. Accordingly, CRP No. 1441 of 1998 is disposed of with the above observations. Three months time is granted for vacation of the premises.

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