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Court : Andhra Pradesh

Decided On : Dec-31-2004

Reported in : 2005(2)ALD284; 2005(2)ALT620

Judge : S.R.K. Prasad, J.

Acts : Rent Control Law; Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 10(3); Constitution of India - Article 21

Appeal No. : CRP No. 3984 of 2003

Appellant : Basanthilal

Respondent : Omprakash

Advocate for Def. : Vilas V. Afzul Purkar, Adv.

Advocate for Pet/Ap. : C. Jayasree Sarathy, Adv.

Disposition : Petition allowed

Judgement :
ORDER

S.R.K. Prasad, J.

1. This revision is directed by the landlord against the tenant seeking the premises under bona fide requirement for running the cloth business by his son.

2. A brief resume of the background of facts is necessary in this case. Originally the landlord has sought for eviction of the tenant by presenting RC No. 368 of 1979 before the I Additional Rent Controller, Hyderabad. The schedule premises bear Nos. 21-1-756 and 757 as mentioned in the schedule. The said eviction is sought on the ground of bona fide requirement for personal occupation of non-residential premises for his son viz., Shiv Kumar @ Shankatial to carry on wholesale business and also on the ground that the tenant has secured alternative accommodation and ceased to occupy the suit premises continuously for more than four months without any reasonable ground and also guilty of such acts of waste which have materially impaired with the value and utility of the suit premises.

3. The same is resisted by the tenant, stating that the landlord himself is already doing business in the premises bearing Nos. 21-1-754 and 755 in a big area and the suit schedule premises is not required for the bona fide requirement of son of landlord and as the tenant failed to enhance the rent, landlord presented the eviction petition.

4. After enquiry, the Rent Controller dismissed the application having been not satisfied with the grounds on which eviction is sought. Thereupon, the landlord preferred an appeal in RA No. 150 of 1987 before the Chief Judge, City Small Causes Court, Hyderabad. The Appellate Authority confirmed the findings of the Rent Controller on the counts of acts of waste and securing the alternative accommodation, but in respect of the bona fide requirement, the Appellate Authority has not gone into the merits of the requirement, duly observing that the landlord is not legally entitled to seek the eviction of the tenant from the schedule premises for his occupation and basing on the decision reported in AIR 1988 AP 185 (Vidya Bai v. Shankerlal), rejected the case of the landlord for eviction. Thereupon the landlord has preferred CRP No. 2029 of 1991. During the pendency of the revision, number of applications are filed to amend the counter as well as the petition and also rejoinder has been filed. They were all received. This Court remanded the matter in its judgment dated 17-12-1999. The matter is remanded by this Court to the Appellate Court with the following observations:

'The issue of bona fide requirement cannot be considered with reference to the suitability, size and quality of the building etc. The factum of vacation of one mulgi by another tenant during the appeal pending is also required to be taken note of as it is now well established that the subsequent events also can be considered for the purpose of deciding the issues. Therefore, I am not inclined to record the finding whether the petitioner bona fide required the premises for establishing the business of his son. It is for the Appellate Court to consider the matter afresh keeping in view of the evidence on record and the decisions of the Supreme Court on this aspect and also taking into consideration of the subsequent events.'

5. It is also observed that Supreme Court in Boorgu Jagadeshwaraiah v. Pushpa Trading Company, : (1998)5SCC572 , has made it clear that it is still open for the landlord to claim non-residential portion even if he is having another non-residential portion on the ground of suitable size and nature of living.

6. The witnesses were recalled once again and they were examined and Appellate Court once again disbelieved the bona fide requirement of the landlord. Thereupon, the landlord once again approached this Court by preferring present revision.

7. It is not in dispute that another premises, which is located at Pathargatti has been gifted to his nephew by the landlord and another premises occupied by Mohd. Qasim has fallen vacant, which is a non-residential premises and the same has been occupied by the landlord. It is mainly contended by the landlord that he is entitled to choose his own premises according to his suitability, size of the shop for running the business and the tenant cannot dictate. It is now well settled law that the Court has to take consideration of the landlord's need regarding his requirement relating to size and suitability of the premises etc., and the Court cannot totally ignore it.

8. It is mainly contended by the learned Senior Counsel Smt. C.J. Sarathy, appearing for the petitioner/landlord, that the premises which fell vacant is only a 9 feet x 9 feet and it is not suitable for running a wholesale cloth business. It is also contended that the present premises is of 22 feet x 10 feet and it is suitable for running the said wholesale cloth business.

9. Both the Courts below have given concurrent finding regarding the bona fide requirement by stating that landlord has not utilized the premises when it has fallen vacant.

10. The learned Counsel for the respondent contends that the landlord has to show that his requirement is a need and a genuine one and both the Courts below have given concurrent finding on the said facts and there is no need to interfere by way of revision. He also placed reliance mainly on Section 10(3) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for brevity, 'the Act'). He further contends that when the landlord has got more buildings than one in the city, town or village concerned is in occupation of one such building and he bona fide requires another building instead, for his own occupation, the landlord may apply for an order directing the tenant to put the landlord in possession of the building. No doubt, Section 10(3)(a)(i)(b) puts an embargo to seek eviction of the tenant if the landlord owns more buildings than one in the city, town or village and falls vacant, but he fails to occupy the said premises.

11. In order to decide about the embargo placed by the statute, Court has to take into consideration of the need of the landlord and also with respect to the size and suitability of the building to run the business. The landlord is always entitled to choose the premises, which is required bona fide for running the business. The Court has to take into consideration the size and utility etc., for running the business by the landlord. In view of the principles laid down by the Apex Court, it cannot be said that they need not be taken into consideration. The landlord can always deal with the property, as he likes. It is for the tenant to establish the link in gifting the non-residential premises to his nephew by the landlord with a view to get over the provisions of Section 10(3) of the Act. If it is not shown nothing turns out by gifting the property. Moroever, it is a subsequent event that was placed before the Court namely gifting the property to his nephew.

12. It is also contended by the learned Counsel for respondent that one of the non-residential premises fell vacant and the landlord was using it for residential purpose.

13. The learned Senior Counsel Sri C.P. Sarathy, appearing for the revision petitioner contends that the family has increased and the landlord has no other go except to use the said non-residential premises for residential purpose. He is entitled to put the premises to his own, use, according to his requirements.

14. The short point that has to be considered in this case is, whether the requirement is bona fide?

15. Obviously, the son of the landlord was a minor by the date of presenting the application seeking bona fide requirement. He has no capacity to contract at that time and if the requirement on the date of the presentation of the petition is taken into consideration, it can never be said that it is a bona fide requirement, since, it cannot be said that he is entitled to commence the business. It is stated in Section 10(3)(a)(iii) (a)(b) of the Act, which reads as follows:

Section 10(3)(a)(iii) in case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise-

(a) for the purpose of a business which he is carrying on, on the date of application, or

(b) for the purpose of a business which in the opinion of the Controller, the landlord bona fide proposes to commence;

16. The entire thing depends upon interpretation of Section 10(3)(a)(iii) Clause (b). It is clear from the words used that Court has to take into consideration of the bona fide nature of the business, which is proposed to commence. This Court has an occasion to interpret the above provisions at Para 11 in T. Sunil Kumar v. S.G. Edulgi and Sons, : AIR 1993 AP205 , which reads as follows:

'11. As the petitioners were studying at the time of filing of the petition and as one of them was a minor it was contended that there was no bona fide requirement of the premises at the time when they filed the petition for eviction. It is not necessary that the need for starting business should exist on the date of suit and the plaintiff

can file a suit in respect of his requirement, which is to be in near future. Vide Hemraj Nima v. Rajnarayan, 1980 M.P. RCJ Page 65. In another decision reported in 1974 RCR between Padma Ramamurthy v. M. Ragha, 1974 RCR (Mysore) 197) it was held that it is true that the need for personal occupation must be present, but it cannot also be lost sight of the fact that disposal of rent cases do take time and therefore, a petition filed in the year 1969 for requirement of the premises in 1971 on the ground that the landlord would retire and thereafter he wishes to settle down, cannot be dismissed that the need is not present.'

17. The section covers such business, which are proposed to commence. When it is proposed to commence, the actual commencement of business is not necessary. It should be a bona fide one and the opinion of the Controller shall be final subject to the consideration by the Higher Courts. Both the Courts below have given concurrent finding that as the landlord has not occupied other premises, which fell vacant to commence business for his son, the requirement of the petitioner is not bona fide.

18. This finding is sought to be impugned before this Court by the revision petitioner. Obviously, the reason is while assisting his father in the business, the son of the landlord has learnt the intricacies of the business. The landlord is having several premises, but the landlord is entitled to choose the premises which is suitable and required for the running of the proposed business namely, wholesale cloth business by his son. 9 feet x 9 feet premises is to be compared with the premises of 22 feet x 10 feet. This 22 feet x 10 feet premises is certainly a better premises to run a business than a premises of 9 feet x 9 feet and in particular, wholesale cloth business. If that is taken into consideration, certainly the requirement of landlord appears to be bona fide and it cannot be totally ignored. I am of the considered view that the requirement of the landlord proposing the business to be run by his own son is a bona fide and I disagree with all the findings given by both the Courts below as they have not considered the aspect of the suitability, which is the prerequisite and the right to choose the suitable premises is always in the hands of landlord and no Court can decide about the suitability. It is a case where the rent control litigation is going on unending from 1979. The landlord and tenant are going round the Courts since 1979. The matter

was even placed before the Lok Adalat and did not fructify. This Court has to dispose of the matter when the efforts by Lok Adalat has not fructified. It shows that a time limit has to be prescribed in the Legislation to put an end to pending litigation for rent control matters, failing which justice cannot be rendered. If necessary Special Courts have to be constituted for the purpose of quick disposal and rendering quick and speedy justice, which is a fundamental right as enshrined under Article 21 of the Constitution of India.

19. Hence, I find that the requirement of landlord is bona fide and the tenant is directed to vacate the premises and put the landlord in possession, within two months from today, failing which the landlord is at liberty to execute the order of this Court.

20. Accordingly, the civil revision petition is allowed. No order as to costs.

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