

## **D.Devaji vs K.Sudarashana Rao on 7 October, 1993**

**Equivalent citations: 1994 SCC, SUPL. (1) 729 JT 1993 (6) 421, AIR ONLINE 1993 SC 617**

**Author: K. Ramaswamy**

**Bench: K. Ramaswamy, N.P Singh**

PETITIONER:

D.DEVAJI

Vs.

RESPONDENT:

K.SUDARASHANA RAO

DATE OF JUDGMENT 07/10/1993

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

SINGH N.P. (J)

CITATION:

1994 SCC Supl. (1) 729 JT 1993 (6) 421

1993 SCALE (4) 41

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K.RAMASWAMY, J.- The respondent filed eviction petition under Section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act (15 of 1960), for short 'the Act' on the ground of bona fide requirement of the demised building. The Rent Controller directed eviction of the appellant. On appeal, the Principal Subordinate Judge reversed the decree holding that the respondent had several non-residential buildings as well as shops in K.V.R. Swamy Road and other buildings in Rajahmundry town. As the demand for enhancement of rent from Rs 100 to Rs 500 p.m., though the appellant had agreed to enhance to Rs 300 per month, was not agreed, the respondent filed the application for eviction.

Therefore, it smacked of bona fides. On revision under Section 122, the High Court reversed the appellate court's order and confirmed the decree of the trial court. Thus this appeal by special leave.

2.The question of law that arises in this case is the interpretation of Section 10(3)(a)(iii) of the Act which reads thus :

" 10. (3)(a) A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building :

(i) in case it is a residential building

(a) if the landlord is not occupying a residential building of his own in the city or village concerned and he requires it for his own occupation;

(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 the application; or

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

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered : , Provided further that where a landlord has obtained possession of a building under this clause he shall not be entitled to apply again under this clause

(i) in case he has obtained possession of a residential building for possession of another residential building of his own;

(ii) in case he has obtained possession of non-residential building for possession of another non-residential building of his own."

3.The learned Single Judge placed reliance on *Balaiah v. Chandoor Lachiah*<sup>1</sup> wherein the Division Bench held that when a landlord, who is in occupation of a non-residential building in a city, town or village, requires another non-residential building of his own in the same city, town or village, as the case may be, from his tenant, for the purpose of the business which he is carrying on which he can be shifting or for expansion of the business which he is carrying on or for commencing a new business, he can successfully claim eviction of his tenant, if he is able to satisfy the Rent Controller that the nonresidential building which he is occupying is not sufficient or suitable for the purpose of

expansion of his business or for the purpose of a new business which he bona fide proposes to commence, or that the shifting of his business has, in the circumstances of the case become inevitable. It would be open to him to prove that the non-residential building which he is occupying is not exclusively his own or that he is not entitled to its exclusive possession. Any one of the above mentioned cases would fall within the ambit of Section 10(3)(a)(iii) of the Act. This view was consistently being followed. The learned Single Judge too followed the view and allowed the revision.

4.A reading of the above-quoted provision requires a critical analysis for its application. The landlord is required to prove his bona fide requirement of the non-residential building to carry on or commence a business. At the relevant time the landlord is not in occupation of another 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 the Act or otherwise. The object of the Act is to enable the landlord to recover possession of his non-residential building in occupation of a tenant, if his requirement is bona fide for the purpose of the business which he is carrying on or which he bona fide proposes to commence. The landlord should not be in possession of another non-residential building or of which he is entitled to be in possession in the city, town or village concerned. The intendment of the legislature thereby is clear that a landlord who is in occupation of a non-residential building which is his own or to the possession of which he is entitled to under the Act or any other law should not be permitted to recover possession of another non-residential building belonging to him by evicting the tenants therefrom. In *Vidya Bai v. Shankerlal*<sup>2</sup> a Full Bench considered this question afresh and held that under Section 10(3)(a)(iii) a landlord in occupation of a non-residential building is not entitled for carrying on his business or for commencement of business to get back possession of another non-residential building in the occupation of a tenant. The bar under Section 10 against securing eviction of the tenant of such non-residential building is absolute. The suitability, convenience and sufficiency of the nonresidential building already in the occupation of the landlord for carrying on the business of the landlord are not relevant. This Full Bench decision was again reconsidered by another Full Bench in *Vijayalaxmi Printing Press v. Nandula Shankar*<sup>3</sup>. The question therein was whether the landlord in occupation of a tenanted premises where he was threatened of ejection under the Act is entitled to possession of his non-residential building for his self-occupation. In 1 AIR 1965 AP 435 : (1965) 2 Andh LT 252 2 AIR 1988 AP 184: (1987) 2 Andh LT 550: (1988) 1 Ren CR 15 3 (1991) 1 Andh LT 249 view of the ratio in *Vidya Bai* case<sup>2</sup> it was contended that the landlord is not entitled to the possession since he has already been in possession of the tenanted premises. Rejecting the contention, the Full Bench held that when the threat of eviction looms large at the instance of his landlord, operation of later clause in Section 10(3)(a)(iii) is not a bar to seek eviction of the tenant. It was also held that the ratio in *Vidya Bai* case<sup>2</sup> should be confined to the first case namely whether the landlord who was occupying a non-residential building of his own was not entitled to evict a tenant in occupation of another non-residential building. It was held that it is not incumbent on a landlord to first vacate the non-residential premises in his own occupation as a condition precedent for maintaining an eviction petition in respect of his own non-residential premises in the occupation of his tenant. We agree with the ratio of both the Full Bench decisions in that behalf. Further the finding of the first Full Bench in *Vidya Bai* case<sup>2</sup> whether the bona fide need of any other member of the family of the landlord, independent of and over and above the need of the landlord, is left open,

since that question did not arise in that case and the same question does not arise on the facts of this case.

5. Shri Madhava Reddy, learned senior counsel, placing reliance on *E.K Nagamanickam Chettiar v. Nallakanna Servai*<sup>4</sup>; *Janab Abdul Khader v. Hussain Ali & Sons*<sup>5</sup> and *J. Pandu v. R. Narsubai*<sup>6</sup> contended that when the landlord proves that he bona fide requires the building for his business it must also be further found that the building which he seeks for eviction is suitable to him to carry on his business or to commence his business or other buildings of which he is the owner, are not suitable for the said business or whether he is also entitled to another building in addition to the building in his occupation for his additional business or a new business and that, therefore, Section 10(3)(a)(iii) needs interpretation in that behalf. Such interpretation was accepted by this Court in *Pandu case*<sup>6</sup>. Therefore, the view of the Division Bench in *Balaiah case*<sup>1</sup> stands approved by this Court. We find no force in the contention. The analysis of the provisions made hereinbefore indicates that the landlord must be in possession of a non-residential building in the city, town or village and if he requires another non-residential building for expansion of his business or to establish another business or needs additional accommodation of a nonresidential building in the same city, town or village, Section 10(3)(a)(iii) creates an embargo. Suitability or convenience does not appear to have, from the language found therein, been envisaged by the legislature. As pointed out in *Vijayalaxmi Printing Press case*<sup>3</sup> it would be open to the legislature to clarify the position, but on the explicit language, it is difficult to give countenance to the respondent's contention. In *Pandu case*<sup>6</sup> the finding was that the nonresidential building which the appellant sought for eviction ceased to be a non- residential building by virtue of its conversion into a residential building. Therefore, this question had not arisen in *Pandu case*<sup>6</sup> for decision. The ratio therein would be confined to those facts and circumstances. The decisions of the Madras High Court relied on by the learned counsel do not appear to have laid down the law correctly. The language in the Madras Act in pari materia is the 4 (1957) 1 MLJ 182 5 (1962) 2 MLJ 446 6 (1987) 1 SCC 573 same as in Section 10(3)(a)(iii). In the light of the above interpretation, the construction put up by the learned Judges of the Madras High Court is not correct. Therefore, the Division Bench of the Andhra Pradesh High Court in *Balaiah case*<sup>1</sup> has not correctly laid the law.

6. Even on merits also the High Court is not right in its conclusion. The appellate court pointed out, on appreciation of evidence, that the respondent has been in possession of 8 shops in the same locality. He also has two houses in the same area and also has his independent office. He has another building in other place in the town. He stated that he needs the demised building in which hotel business is being carried on for storage of fire clay, pursuant to mining lease granted by the District Collector. When he had 8 shops, he did not use them or any one of them for storage and when he already has an independent office for carrying on his business, the requirement does not appear to be bona fide as found by the appellate court. The evidence adduced and accepted by the appellate court which is a final court of facts and finding recorded in that behalf, shows that the respondent demanded enhancement of rent at Rs 500 per month as stated by the appellant and corroborated by mediators RW 2 and 3. Though the appellant had agreed to enhance the rent to a sum of Rs 300, the respondent did not agree and insisted to pay Rs 500 per month. It is obvious from the above background that the respondent had taken the advantage of the mining lease granted in his favour. Therefore, apart from the fact that he had already 8 shops and other houses to

carry on his business, the bona fide claim is belied from the above evidence and his conduct. The finding of the appellate court that the respondent does not bona fide require the demised building for business is wellfounded. The High Court has not considered this question in its proper perspective.

7.The appeal is accordingly allowed. The judgment of the High Court is set aside and that of the appellate court is confirmed. Consequently the respondent's application for eviction stands rejected. But in the circumstances of the case parties are directed to bear their own costs.