

Andhra High Court

Linga Nagender Rao (Died) By Lrs. vs C.K. Yesovardhan on 30 June, 2005

Equivalent citations: 2005 (5) ALD 438

Author: P Narayana

Bench: P Narayana

ORDER P.S. Narayana, J.

1. Heard Sri S. Ganesh Rao, learned Counsel, representing the revision petitioners who are the legal representatives of the original landlord Linga Nagender Rao and Sri G.S. Prakash Rao, learned Counsel representing the respondent herein-tenant.

2. The present civil revision petition is filed, under Section 22 of the A.P. Buildings (Lease Rent and Eviction) Control Act (for short 'the Act'), against the reversing order dated 18-12-2000 made in R.A. No. 143 of 1997 on the file of the Additional Chief Judge, City Small Causes Court at Hyderabad.

3. Originally, the landlord, Linga Nagender Rao, who died during the pendency of this civil revision petition, filed R.C. No. 192 of 1995 on the file of the Additional Rent Controller at Secunderabad praying for eviction of the tenant on the ground that he requires the demised premises for his additional accommodation and also on another ground that the tenant ceased to occupy the petition schedule premises. The son of the landlord who is also the general power of attorney holder of the landlord was examined as PW-1 and the tenant was examined as RW-1 and Exs.R-1 to R-8 were marked.

4. The learned Rent Controller ordered eviction only on the ground of additional accommodation but negated the ground that the tenant ceased to occupy the petition schedule premises. Aggrieved by the order of eviction, the tenant carried the matter by way of an appeal in R.A.No. 143 of 1997 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad and before the appellate authority xerox copy of order, petition and counter in R.C.No. 114 of 1997 were marked as Exs.R-9 to R-11 with consent. The appellate authority had reversed the finding recorded by the learned Rent Controller relating to the additional accommodation. Attempt was also made by the landlord to sustain the order of the eviction raising the other ground, which had been negated by the learned Rent Controller, but however, not being satisfied, the appellate authority allowed the appeal. Hence the civil revision petition is preferred by the unsuccessful landlord.

5. In view of the fact that the said landlord passed away during the pendency of the civil revision petition, his legal representatives were brought on record and at present they are prosecuting the present litigation.

6. Sri S. Ganesh Rao, learned Counsel representing the revision petitioners would contend that it may be true that the considerations to be established for additional accommodation and bona fide personal requirement may vary upto some extent but they also overlap and hence on such a ground the reversal of the finding of the learned Rent Controller cannot be sustained. It was also pointed out that though provision mentioned is in relation to additional accommodation, the substance of

the pleading is the ground of bona fide personal requirement. The learned Counsel also would further maintain that it is not in serious controversy that the requirement is for the joint family and the son of the landlord, may be general power of attorney holder, but having knowledge about all the affairs, had deposed to the facts and hence the non-examination of landlord would not assume any importance whatsoever. Incidentally the learned Counsel also pointed out that at present Sri Kanth, who was examined as PW-1, one of the sons of landlord is shown as sixth revision petitioner, hence the Counsel would contend that the civil revision petition be allowed.

7. On the contrary, Sri G.S. Prakash Rao, learned Counsel representing the respondent-tenant would contend that during the findings recorded by the appellate authority, the documents, Exs.R-9 to R-11 were marked to show the proceedings in R.C. No. 114 of 1997 and establish that the ground of additional accommodation as stated by the landlord is not a sustainable ground. The learned Counsel also would contend that the requirements, which are essential for establishing the ground of additional accommodation, stand on a different footing when compared to bona fide personal requirement and hence the findings recorded by the appellate authority can be well sustained in law. The learned Counsel placed reliance on a decision of the Apex Court in *Janki Vahdeo Bhojwani and Anr. v. Indusind Bank Ltd. and Ors.*, 2005 (3) ALD 43 (SC) and would maintain that PW-1 did not enter into the witness box as the member of the family but as general power of attorney holder, and in this background his evidence may have to be appreciated.

8. The legal representatives of the original landlord are at present prosecuting the present litigation. For the purpose of convenience the parties would be referred to as landlord and tenant.

9. The landlord pleaded that he is a member of Hindu joint family owning a mulgi bearing No. 7-1-55 situated at Market Street, Secunderabad. The respondent is the tenant in respect of the said mulgi on a rent of Rs. 60/- per month exclusive of electricity charges. The tenancy is month to month and the rent is payable on or before 5th of the succeeding month. It was also further pleaded that the family of landlord consists of five sons and they are not in occupation of any non-residential premises of their own in twin cities, even though the landlord's joint family got four or five mulgies in a row. It was also pleaded that Sri Linga Srikanth (PW-1) is carrying on xerox machine business in a rented premises bearing No. 8-1-433 situate at R.P. Road, Secunderabad in the name and style of M/s. Veerabhadra Xerox Copying Centre on a monthly rent of Rs. 550/- per month. It was further pleaded that the other three sons propose to, commence a business in Kirana and General goods and hence the said premises is required for their own proposed business, as it is most suitable for the purpose of running the said business. It is also further pleaded that the tenant had ceased to occupy the petition schedule premises and kept the same under lock and key.

10. The tenant filed a counter admitting the relationship of landlord and tenant but had taken a stand that the landlord demanded to enhance the rent in respect of the said premises from Rs. 60/- to Rs. 250/- per month and the tenant refused to consider the demand and offered to enhance the rent to Rs. 125/- per month. As the landlord refused to receive the rent from April 1995 he was compelled to send the rent through money order. The tenant had also sent a notice dated 5-6-1995 to the landlord which was returned unserved. It was also further pleaded that five sons of the landlord are well settled in their own business and the claim of the said premises on the ground of

additional accommodation for commencing the business of Kirana and General goods is not a sustainable ground. The tenant while denying the aspect of joint family of the landlord pleaded that the tenant had not ceased to occupy the premises and he has been using the same for selling fire works as well as having a sales counter of "Sharada Women Welfare Co-operative Society" in respect of Nandi Lepakshi Note Books and Government Text Books.

11. The learned Rent Controller framed the following points for consideration:

1. Whether the petitioner requires the suit premises for additional accommodation.
2. Whether the respondent has ceased to occupy the suit premises?
3. To what relief?

12. The appellate authority framed the following points for consideration.

1. Whether the landlord's requirement of the petition schedule premises for additional accommodation is a bona fide one or not?
2. Whether the tenant has ceased to occupy the petition schedule premises and if so liable for eviction?

As stated above on the ground of additional accommodation only eviction was ordered.

13. The appellate authority had reversed the finding relating to additional accommodation and Exs.R-9 to R-11 were marked by consent of the parties on behalf of the appellant tenant before the appellate authority. On the aspect of additional accommodation the learned appellate authority observed as hereunder:

"The very pleadings in the eviction petition and the evidence of PW1 conclusively establishes that the landlord is not in possession of his own mulgi. By the time of filing the eviction petition or appeal the landlord is not in possession of any of his mulgi of his own. The aim of the landlord in this eviction petition is sought for eviction on the ground of additional accommodation under Section 10(3)(c) of the Act. This provision of law can be applicable only, when a landlord is occupying only a part of building whether residential or non-residential may notwithstanding anything in Clause (a) he can seek eviction of the tenant occupying the whole or any portion of the remaining part of the building. Admittedly, the landlord is not in possession of any of the seven mulgies which are situated in the same building. The landlord is not occupying any mulgi or doing any business in the said portions. On the other hand, it was stated that he filed another eviction petition and want additional accommodation. It is not the case of petitioner that he wants to commence the business in a large scale in both mulgies and not sought eviction for bona fide requirement. But it was established, he filed eviction petition under guise of bona fide requirement and withdrawn the same after enhancing rent. But it was not so. When the landlord is not having possession of any of the mulgi, the question of additional accommodation does not arise at all. Even

though it was mentioned in the pleadings that the demised premises is required by way of additional accommodation for kirana and general goods business but he has not stated as to what business he proposes to commence. But during the evidence PW1 stated that he requires the petition schedule premises for Xerox copy business. PW1 also claimed that the Xerox Machine fixed at Surya Towers, S.P. Road, Secunderabad in the ground floor is one of the biggest machine in India. PW1 further stated that as the said premises would not be sufficient, he require the petition schedule premises as additional accommodation, but the same was not maintainable as stated above. It was also contended on behalf of the tenant, that the landlord is doing lucrative business in rented premises and his need is not bona fide need. It is pertinent to note that the landlord is not having any possession of his own building, when the landlord is doing business in a rented premises he is not prohibited to seek eviction for self-occupation. But in this case, he wants eviction on the ground of additional accommodation and the same is not maintainable. Considering the above facts and circumstances of the case, the landlord failed to substantiate his claim and I am of the opinion that the findings of the lower Court are not correct in this regard and liable to be set aside and ordered accordingly.

14. It is no doubt true that as far as the other ground that the tenant ceased to occupy the premises is concerned both the Courts below recorded concurrent findings.

15. It is true that PW-1 is not only the general power of attorney holder of the landlord but also the son of the deceased landlord. The Apex Court in Janki Vashdeo Bhojwani's case (supra) while dealing with Order 3 Rules 1 and 2 of the Civil Procedure Code 1908, held that the power of attorney holder has no power to depose in place and instead of principal and word 'acts' used in Order 3 Rules 1 and 2 of Code confines only in respect of acts done by power of attorney holder in exercise of power granted by instrument and if he has rendered some "acts" in pursuance of power of attorney, he may depose for principal in respect of such acts, but he cannot depose for principal for acts done by principal and not by him and he cannot depose for principal in respect of matter which only principal can have personal knowledge and in respect of which principal is entitled to be cross-examined. There cannot be any doubt or controversy relating to the aforesaid proposition laid down in this decision. But, however, in the present case specific stand was taken that the family is a joint family and incidentally the son is having knowledge of all the family affairs. Merely because he is also the general power of attorney holder of the landlord it cannot be said that he has no knowledge of the family affairs and definitely it cannot be said that he is not the competent witness to speak about the additional requirement or additional accommodation required for the family and hence the evidence cannot be discarded on that ground. But however, the ground on which the eviction was ordered is the ground of additional accommodation simpliciter. The requirements to be established in this regard have not been satisfied. The appellate authority, in fact, had gone into all the aspects and recorded clear findings while reversing the order of the learned Rent Controller in this regard.

16. It is also to be borne in mind that though considerations may be just similar or akin in between the grounds of additional accommodation and also bona fide personal requirement under the rent control legislation, these are two different grounds and different considerations are required to be considered while ordering the eviction. In this view of the matter, the findings recorded by the

appellate authority, in this regard, cannot be found fault in any way. The evidence available on record had been appreciated at length.

17. There is some controversy whether the family of the landlord continues as joint family or there is disruption of the joint family and whether the brothers are living separately or they are joint. The actual pleading before the learned Rent Controller about the overall facts and circumstances would not alter the situation in any way especially in the light of the fact that several other mulgies are available and certain other rent control proceedings had been initiated. However, before the appellate authority, with the consent of the parties, some documentary evidence had been let in and the same had been taken into consideration for negating the relief on the ground of additional accommodation and when the appellate authority recorded a reversing finding it would be just and proper to give an opportunity to let in evidence in relation to the additional evidence which had been received at the appellate stage. Apart from this aspect of the matter the original landlord is no more and no doubt there is some controversy whether the family continues to be joint family or there is disruption of the joint family and whether the brothers are living separately or they are joint. Relating to the subsequent events absolutely no material is placed before this Court. Taking overall facts and circumstances into consideration this Court is of the considered opinion that the matter be remanded to the appellate authority for the purpose of affording opportunity to both the parties to let in evidence especially in view of the legal representatives of the landlord being brought on record who are at the present prosecuting the litigation and also in the light of the fact that some additional evidence had been marked with the consent of the parties at the appellate stage.

18. Accordingly the civil revision petition is allowed to the extent indicated above. No costs.