Jahabdurunnisa Begum And Anr. vs S. Balakrishna on 2 November, 2001

Equivalent citations: 2002(1)ALD696

Author: E. Dharma Rao

Bench: E. Dharma Rao

JUDGMENT

1. Since both the CRPs are filed against the judgment of the learned Additional Chief Judge, City Small Causes Court, Hyderabad passed in RA No. 380 of 1993 dated 23-8-1996, they are clubbed and heard together and are being disposed of by this Common order. Under the orders impugned, the learned Additional Chief Judge set aside the order of eviction passed by the learned Rent Controller dated 5-7-1983 made in RC No. 1191 of 1988 and dismissed the said RC and the cross objections in IA No. 1722 of 1993 filed by the petitioners-landladies.

2. The petitioners herein are the landladies and the respondents herein is the tenant.

3. The petitioners filed RC No. 1191 of 1988 under Section 10(2) (i)(ii)(a) and 10(3)(a)(iii)(a and b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short the 'Act') seeking eviction of the respondent and to deliver vacant possession of the premises bearing Municipal No. 3-5-784/A/2, King Kothi, Hyderabad, alleging that they purchased the petition schedule premises from one Mujeeb Yar Jung Bahadur under two registered sale deeds dated 18-2-1988 for a consideration of Rs. 3 lakhs and the said premises was let out by their vendor to the respondent-tenant on 5-12-1982 under a rental agreement for 11 months on a monthly rent of Rs. 550/-excluding other charges. The terms of the rental agreement are that the respondent should not change the name of the business or make additions or alterations in the building or sublet to anybody without the consent of the landlord and that the tenant is liable and responsible to pay the property tax for the leased out premises. It is alleged that after purchase of the said property, the 1st petitioner received a letter along with a Draft for Rs. 550/- from the respondent-tenant informing that he came to know that the property was sold to the 1st petitioner only. For that the petitioners sent a reply to the respondent informing that the property was purchased by both the petitioners, but not by the 1st petitioner alone. It is further alleged that after obtaining lease from the vendor of the petitioners, the respondent changed the name of the business concern on the first occasion as "Sheela Automobiles" by obtaining the permission to that effect from the previous owner and again changed the name of the business as 'Krishna Motors' for the second time, without the consent of the petitioners-landladies. Therefore, in view of the above breach of the terms of the agreement, the petitioners-landladies informed the respondent that the tenancy was terminated and he was asked to vacate the premises by 30-4-1988. The respondent instead of vacating the premises filed OS No. 1787 of 1988 on the file of the X Assistant Judge, City Civil Court, Hyderabad with false allegations and obtained ex parte interim injunction restraining the 1st petitioner and her Vendor viz., Mujeeb

Yar Jung Bahadur from interfering with the peaceful possession of the petition schedule premises. It is also alleged that the 1st petitioner is having a Beauty Parlour and the 2nd petitioner is having a Medical Shop 50 yards away from the petition schedule premises and that they wanted to run their commercial establishment in the petition schedule premises for their better advantage and therefore, they required the petition schedule premises for their bona fide requirement. It is further alleged that as per the terms of the rental agreement, the respondent has to pay the Municipal taxes regularly to the Municipality, but the respondent did not pay the taxes in respect of the property from 1983 onwards and the respondent only after coming to know that the property was purchased by the petitioners, paid the taxes in October, 1988 for the period from 1982, 1983 to 1986-87 and it is also alleged that the respondent sub-let the premises without their consent. Therefore, they filed the above RC seeking eviction of the respondent from the petition schedule premises on the ground of bona fide personal requirement, subletting of the premises by the respondent to others without their consent, changing the nature of the business concern and also for default in payment of Municipal Taxes regularly to the Municipality.

4. The respondent filed a counter denying the averments of the petition. He stated that the alleged purchase by the petitioners from Mujeeb Yar Jung Bahadur is illegal and void as the said purchase was without notice to the respondent. According to the respondent he requested Mujeeb Yar Jung Bahadur to sell the property to him only if he wanted to sell the property, but instead of selling the property to him, he sold the property to the petitioners without his knowledge. He stated that he never committed any breach of the terms of the agreement. According to the respondent, the change in the name of the shop was only made for business purpose, but the partnership is not changed. He denied the allegation that he sublet the premises. He stated that he filed OS No. 1787 of 1988 against the 1st petitioner and her vendor only when the 1st petitioner tried to interfere with his possession and obtained interim injunction. He stated that he does not know whether the 1st petitioner was having Beauty parlour but admitted that there is a medical shop and he does not know who is the owner of it. He stated that he was paying the rents regularly to the 1st petitioner and she received the same without any protest. He denied the allegation that the petitioners required the petition schedule premises for their bona fide requirement. He further stated that he repaired the petition schedule premises by spending about Rs. 2 lakhs with the permission of the previous owner who promised to adjust the same, when premises would be sold to him, and hence, the previous owner asked him not to pay the Municipal taxes and as such he has not paid the Municipal Taxes to the Corporation, and hence the non-payment of Municipal Taxes to the Corporation does not constitute wilful default.

5. Before the learned Rent Controller three witnesses were examined on behalf of the petitioners and Ex.P1 to Ex.P10 and Ex.X1 documents were marked on their behalf. On the side of the respondent, two witnesses were examined and Ex.R1 to Ex.R4 documents were marked.

6. PW1 is the husband of the 1st petitioner and father of the 2nd petitioner, PW2 is the original owner of the property and PW3 is an employee in the house of the petitioners.

7. The respondent himself was examined as RW1 and got examined one T.V.V. Satyanarayana Murthy, who deposed that he is working as the Manager in the respondent's concern.

8. Basing on the rival pleadings, the Rent Controller framed the following points for determination;

1. Whether the petitioners require the petition property for their personal use and occupation?

2. Whether the respondent has sublet the petition property as alleged?

3. Whether the respondent is liable to pay the Municipal taxes to the MCH of Hyderabad from 1983 onward and if so, the respondent can be directed to vacate the petition property on that ground?

4. Whether the respondent changed the name of his shop with the consent of the original landlord and if so, whether it is a ground for eviction of the respondent from the petition property?

9. Upon considering the oral and documentary evidence adduced on either side, on point No. 1 as to whether the petitioners require the petition property for their personal use and occupation, the learned Rent Controller relying on a decision of the Bombay High Court in Nandlal Goverdhandas and Company v. Samratbai, , wherein it was held "the bona fide requirement is in the first place a state of mind though it may be something more. It must therefore, be deposed to by the person who is requiring the premises under Section 13(1)(g) namely, the landlord. If the landlord does not step into the witness box to bring before the Court legal evidence for proving his requirement, then it cannot be said that the reasonably and bona fidely requires the premises as mentioned in Section 13(1)(g). The landlord can delegate the authority to conduct a case but he cannot delegate the duty to depose." Relying on the above decision, the learned Rent Controller in his order on point No. 1 observed that that "since the petitioners did not choose to come into the witness box and they have not placed any material before the Court to show that they had taken any single step to commence their business after they purchased the property, and since it is an admitted fact that the burden of proof lies on the landlord to prove that his requirement is bona fide, the petitioners have not established their bona fide requirement in respect of the petition property. Observing so, the held that point in favour of the respondent and against the petitioners-landladies.

10. With regard to point No. 2 i.e., regarding subletting of the premises to others by the respondent-tenant, without the consent of the landladies, the learned Rent Controller relying on Ex.P5, the advertisement given by RTW.2, Murthy said to be the Manager of M/s. Sri Krishna Motors, he observed that from Ex.P5 it can be inferred that the respondent has parted with the possession of the property in favour of RW2 and therefore, held that the respondent sublet the petition schedule premises to RW2 Murthy, without the consent of the petitioners-landladies and held that point in favour of the petitioner-landladies and against the respondent-tenant.

11. On point No. 3 as to whether the respondent is liable to pay Municipal Taxes to the Municipality from 1983 onwards, the learned Rent Controller held that the respondent has not committed any default in payment of rent, though there is a wilful default in payment of property tax in respect of the petition schedule property and accordingly held that point in favour of the respondent and against the petitioners-landladies.

12. On point No. 4 with regard to change of the name of the business, the learned Rent Controller held that the Rent Controller has no right to enforce the contractual obligation to evict the respondent-tenant from the petition schedule premises only on that ground.

13. In view of his finding on point No. 2 that the respondent has sub-let the premises to RW2 Murthy without the consent of the petitioners-landlords, the learned Rent Controller allowed the RC and ordered eviction of the respondent from the petition schedule premises.

14. Aggrieved by the said eviction order of the Rent Controller, the respondent-tenant filed appeal in RA No. 380 of 1993.

15. In the said Appeal, the petitioners-landlordies also filed cross objections in IA No. 1722 of 1993 questioning the correctness of the findings of the Rent Controller on points 1, 3 and 4 which were held in favour of the respondent-tenant.

16. The lower Appellate Court on consideration of the material on record framed the following points for his determination.

1. Whether the findings of the learned Rent Controller that the respondent had sub-let the tenanted premises to Murthy is not correct and is liable to be set aside?

2. Whether the findings of the learned Rent Controller that the petitioners requirement of the demised premises for personal occupation is not bona fide is not correct and is liable to be set aside?

3. Whether the findings of the learned Rent Controller that the petitioners are not entitled to seek eviction of the respondent from the demised premises on the ground that he committed default in payment of the municipal taxes is not correct and is liable to be set aside?

4. Whether the findings of the learned Rent Controller that the respondent changed the name of his shop without the consent of the petitioners and that the respondent is not liable to for eviction on the ground that he changed the business name is not correct and is liable to be set aside?

17. The lower appellate Court upon consideration of the material on record on point No. 1 held that the finding recorded by the learned Rent Controller that the respondent has sub-let the tenanted premises in favour of Murthy RW2, without the consent of the petitioners-landladies is not correct and accordingly reversed the said finding.

18. On point No. 2 with regard to bona fide requirement of the petition schedule premises by the petitioners-landladies, he held that the finding of the learned Rent Controller that the petitioners have not established their bona fide requirement in respect of the demised premises is correct and accordingly confirmed the said finding.

19. On point No. 3 with regard to payment of Municipal Taxes also, the lower appellate Court held that the finding recorded by the learned Rent Controller that the respondent has not committed

default in payment of rent, though it appears that there is wilful default in payment of property tax on the part of the respondent is correct and accordingly he confirmed the said finding of the learned Rent Controller.

20. On point No. 4 with regard to change of the name of the shop, also the lower appellate Judge, held that the finding of the Rent Controller that the respondent cannot be evicted on the ground that he changed the name of the business without the permission of the landlords, is correct and accordingly confirmed the said finding.

21. Therefore, in view of his findings arrived on points 1 to 4, the learned Appellate Judge allowed the appeal and set aside the order of eviction passed by the learned Rent Controller in RC No. 1191 of 1988 dated 5-7-1993 and also dismissed the cross-objections filed by the petitioners - landladies in IA No. 1722 of 1993. Aggrieved by the same, the petitioners - landladies filed the present CRPs. contending that the learned Appellate Judge failed to consider Ex.X1 in regard to the respondent herein being shown as an employee of Sri Krishna Motors which is a partnership concern and Ex.X1 does not contain the respondent's name as a partner.

22. He contended that the lower Appellate Court erred in holding that there was no specific pleading as to the names of sub-tenants, a situation which could be known to the petitioners only after the Sales Tax Department sent the document marked as Ex.X1 during the pendency of RC 1191 of 1988 wherein it is clearly shown that R1 become a partner only in 1990 i.e., long after the RC in filed. Therefore, the lower appellate Court ought to have seen that except noticing strangers in the demised premises doing independent transactions the petitioners could not come to know the details despit diligent enquiries. It is further contended that the Lower Appellate Court ought to have seen that Ex.P10 is the bill for an item shown therein was actually sold by another concern in the same business in the same premises enforces the contention that there was subletting of premises, an act which statutorily terminates the lease and the lease stands forfeited.

23. It is further contended that the Lower Appellate Court ought to have seen that having marked the agreement to form partnership and received the same in evidence; it is impermissible to negative the requirement for personal occupation.

24. That the learned Judge ought to have seen that the facts reported in AIR 1981 Bom. 1 are altogether different and the ratio therein having been arrived on a different set of facts is not applicable to the present facts of the case and the learned Judge ought to have seen that the terms of Ex.P6 Rental Deed do not breach any violation and in the event any breach of even a single term will entail forfeiture of the lease, and that the learned Judge ought to have seen that the specific mention that the respondent should pay municipal taxes regularly has to be complied with to the last letter and the failure of the respondent results in forfeiture of the deed and that the learned Judge erred in having held that the respondent cannot claim any compensation/ reimbursement for the repairs and ought to have held that the change of name without prior permission of the landlords entails termination of lease and is liable to be evicted. Therefore, he contended that the CRPs be allowed.

25. On the other hand, the learned Counsel for the respondent reiterated the same contentions and arguments as were put-forth before the Courts below, it is brought to the notice of this Court that during the pendency of the proceedings, the respondent has paid the rents up to date as per the Provisional Receipt dated 27-7-1991.

26. I have gone through the judgments of both the Courts below and perused the entire material on record. After going through the record, I hold that the finding recorded by both the Courts below on the point of bona fide requirement that the petitioners failed to establish their bona fide requirement in respect of the petition schedule premises is correct and it does not call for any interference by this Court and accordingly the said finding is confirmed.

27. With regard to subletting of the premises by the respondent to RW2, Murthy, relying on Ex.P5, the paper advertisement, the learned Rent Controller held that the respondent has not proved that RW2 Murthy is the Manager of his firm and therefore, it can be inferred from it that the respondent-tenant has parted with the possession of the property in favour of RW2 and accordingly held that the respondent sub-let the petition schedule property to Murthy, RW2. On this point the Lower Appellate Court in its order observed that the conclusion of the Rent Controller solely basing on Ex.P5 that the respondent has parted with the possession of the premises to others is not correct. The Lower Appellate Court observed that there is absolutely no material whatsoever, available on record to show as to when it was sub-let and on what rent etc. Observing so, he held that point in favour of the respondent-tenant and reversed the finding of the learned Rent Controller.

28. I am of the view that the learned Rent Controller has given valid reasons for placing reliance on Ex.P5 and also on Ex.X1, the certificate issued by the Sales Tax Department. But the Lower Appellate failed to consider the said documents. Therefore, I hold that the Lower Appellate Court was wrong in holding that the respondent did not sublet the premises to Murthy. Accordingly I confirm the finding recorded by the Rent Controller that the respondent has parted with the possession of the property to others without the consent of the petitioners-landladies.

29. With regard to change of name of the shop, both the Courts below have concurrently held that the respondent cannot be evicted on the ground that he changed the name of the business without the permission of the landlord. Normally, it will be the endeavour of every business man to get his business developed and to get more profits, and for that purpose, he may change the name of his business. Merely on the ground that he changes the name of his business concern, he cannot be evicted. In that view of the matter, the said concurrent finding recorded by both the Courts below does not call for any interference by this Court.

30. The main issue that has to be considered is whether default committed by the respondent in paying the Municipal Tax amounts to non-payment of rent or not.

31. The learned Counsel for the respondent contends that with the permission of the previous landlord, he carried repairs of the petition schedule property by spending Rs. 2 lakhs and that the previous landlord promised him to adjust the same when the premises would be sold to him and not to pay the property tax to the Municipality and as such he did not pay the property tax and after

coming to that the petition schedule property was purchased by the petitioner, the respondent has paid the Municipal Tax for the period of 1983 to 1988 and hence, there is no wilful default in payment of rents. Therefore, he contended that the petitioners are barred from seeking eviction of the respondent from the petition schedule premises.

32. The learned Counsel for the petitioners on the other hand contend that the rent includes the payment of property tax, and therefore, any default committed by the tenant in payment of property tax as stipulated under the terms of the rental agreement amounts wilful default in payment of rents and since the respondent-tenant failed to pay the property tax as stipulated under the rental agreement, it amounts to wilful default in payment of rents and therefore he is liable to be evicted form the petition schedule premises. In support of his contention, the learned Counsel for the petitioners relied on the judgment of the Supreme Court in Fatheudin Akbar v. Ghanshamdas, 1957 ALT 648. That was a matter arose under the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954. Wherein it was held that 'rent' includes not only what is ordinarily described as rent but also payments in respect of special amenities provided by the landlord under the agreement between him and his tenant. It is comprehensive enough to include all payments agreed to be paid by the tenant to his landlord. Non-payment of the taxes would amount to non-payment of rent and would attract Section 10 of the Act. This finding was arrived at by a learned single Judge of this Court following the judgment in Wilkes v. Goodwill (1957 SCJ 77)"

33. The learned Counsel for the petitioners also relied on a judgment in P. Rajaiah v. Veera Shaiv Vidyavardhak Singh, 1998 (4) ALT 175, wherein a learned single Judge of this Court held as under:

> "It makes no difference whether the tax is to be paid directly to the Municipal Authorities by the tenant as per the rental agreement or to the landlord. When once Ex.P4 rental agreement clearly mentions that the property tax due to the demised building is to be paid by the tenant over and above the rent that was specified in the agreement and when once a default is committed by the tenant in payment of such tax even directly to the Municipality, it will amount to violation of terms of the agreement and wilful default in payment of such property tax. Where the tenant has agreed to pay the Municipal taxes as per the rental agreement, non-payment of tax would amount to nonpayment of rent and thus it will form a ground for eviction."

34. According to the learned Counsel for the petitioners, in the instant case the respondent has not paid the property tax to the Municipality from 1982 to 1986 and he paid the said tax in 1988, only after coming to know of the filing of the eviction petition by the petitioners-landladies and his subsequent payment of rents from 1987 to 1991 during the pendnecy of the eviction proceedings do not help the respondent and as the respondent failed to pay the property tax to the Municipality as stipulated under the agreement, it amounts to nonpayment of rent and therefore, he is liable for eviction.

35. The learned Counsel for the respondent on the other hand contended that as per Clause 16 of the Rent Agreement, the petitioners are entitled to recover the property tax dues by following due process of law and non-payment of property tax is not a ground to evict the respondent from the

petition schedule premises. He also contended that the decisions relied on by the learned Counsel for the petitioners are the cases where the rent was either not paid or the tenant committed default in payment of rents and therefore, those authorities are not applicable to the instant case. Placing reliance on Exs.R2 and R3, which are the receipts showing payment of municipal tax up to 1991, the learned Counsel for the respondent contends that the Municipal authorities would not have accepted the property tax for the current year, had the respondent not paid the tax for the previous periods.

36. In support of his contention that that non-payment of property tax is not a default in payment of rent and the property tax does not form part of rent he relied on a judgment of this Court in K. Rachamma v. Bimal Bai and Anr., . In the above case, the rent payable by the tenant therein as per the terms of Rental Agreement was Rs. 400/-per month and only an ad hoc amount of Rs. 50/- was fixed to be paid by the tenant therein towards property tax. In those circumstances, on the facts and circumstance of that case a learned single Judge of this Court held that the amount of Rs. 50/-per month was not part and parcel of the rent, and if it was not rent, non-payment of it cannot become default and the recovery of the said amount has to made by a separate and appropriate proceedings as a means for recovery of the said amount which is wither premium or other amount apart from rent.

37. But it is pertinent to note that in the above judgment, learned single Judge of this Court also referred to the judgment of other High Courts reported in Someshwar Dayal Seth v. Dwarakadhish Ji Maharaj, , Raval and Company v. K.G. Ramachandran (Minor) and Ors., 1968 (II) MLJ 50 and Rupeswari Debi v. Lokenath Hosiery Mills, , wherein in was held that the exact amount of tax which was being demanded by the Municipality was agreed to be paid by the tenants therein and therefore, it was held by the Courts that the amount of tax was part and parcel of the rent as it was as [per the demand of the Municipality and as the tenants therein committed default of payment of property tax, it was held that the amount of tax is the part and parcel of the rent and it was as per the demand of the Municipality and it will form part and parcel of the rent and non-payment of the property tax amounts to wilful default in payment of rent.

38. In the instant case also Clause 10 of Ex.P6 Rental Deed stipulates that the 1st Party, the tenant herein shall alone be liable and responsible for the payment of property tax present or enhanced, monthly electricity consumption charges and other charges concerned to the rented out premises. The respondent-tenant herein has agreed for payment of property tax present or enhanced as demanded by the Municipality in respect of the petition schedule premises and he failed to pay the same, which amounts to wilful default in payment of rent. Therefore, the judgment of the learned single Judge of this Court relied on by the learned Counsel for the respondent in K. Rachamma's case (supra) has no applicability to the facts and circumstances of this case. In the present case, as per the rental deed Ex.P6, the respondent-tenant has agreed to pay the property as being demanded by the Municipality tax from 1983 onwards and failed to pay the same as stipulated and thereby committed wilful default in payment of rents.

39. In view of the aforesaid discussion, I hold that when there is a condition in the rental agreement entered into by and between the landlord and tenant to pay the property tax by the tenant as

demanded by the Municipality, it becomes part and parcel of the rent. If there is a clause in the rental agreement to pay some specified amount towards the property tax as a premium by the tenant, it does not form part of rent. Therefore, even if any default is committed by the tenant in payment of such specified amount, it would not amount to wilful default in payment of rent. But if the tenant agrees to pay the entire property tax as demanded by the Municipality and if he commits default in payment of property tax, as agreed, it would amount to wilful default in payment of rent.

40. The Rent Controller though prima facie convinced that there is wilful default in payment of property tax, but since the decisions rendered by the Supreme Court and this High Court and other High Courts were not placed before him, he came to the conclusion that non-payment of property tax does not amount to wilful default in payment of rents. Had these authorities been placed before the learned Rent Controller, he would have considered the same and would have certainly held that there is a wilful default in payment of rents on the part of the respondent-tenant. Therefore, I hold that the finding of the Lower Appellate Court as well as the Rent Controller that the respondent has not committed any wilful default in payment of rents is not correct and the same is liable to be set aside.

41. In the light of the foregoing discussion, I hold that the respondent-tenant has sub-let the petition schedule premises without the consent of the petitioners-landladies and committed wilful default in payment of rents and therefore, he is liable to be evicted from the petition schedule premises.

42. In the result, the CRPs are allowed and the orders impugned are set aside. The cross objections are dismissed. However, the respondent-tenant is granted six months' time from today to vacate the petition schedule premises and handover the vacant possession of the same to the petitioners-landladies, and he shall give an undertaking before the trial Court to that effect. No costs.