

S. Mohan Lal

Vs

R. Kondiah

Civil Appeal No. 2047 of 1969

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

02.02.1979

JUDGMENT

CHINNAPPA REDDY, J. -

1. The short question for consideration in this appeal is whether the practice of the legal profession is 'business' within the meaning of Section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The question arises this way. The respondent, an Advocate filed an application before the Rent Controller seeking eviction of the appellant, his tenant, from the premises in question on the ground that he required the premises for the purpose of carrying on his profession as an Advocate. The application was contested by the appellant who was carrying on the business of manufacturing art jewellery in the premises. We are not concerned in this appeal with the several defences which were raised by the appellant. Nor are we concerned with the vicissitudes which the case underwent. For the purposes of this appeal it is sufficient to say that the final Court of fact, namely, the Chief Judge of the Court of Small Causes, Hyderabad, found that the respondent bona fide required the premises for the purpose of carrying on his profession as an Advocate and that the tenancy was not such as could be split up. The Appellate authorities passed an order of eviction against the appellant. Before the High Court, in revision, it was contended by the appellant that the practice of the profession of an Advocate was not business within the meaning of Section 10(3)(a)(iii) and, therefore, the respondent could not seek the eviction of the appellant on the ground that he required the premises for the purposes of carrying on his profession as an Advocate. It was contended that Section 10(3)(a)(iii) used the expression 'business' only and not the expression 'profession'. The contention was negated by a Division Bench of the High Court of Andhra Pradesh consisting of Gopalrao Ekbote and Ramachandra Rao, JJ. The tenant has appealed by special leave to this Court.

2. Dr. Chitale learned Counsel for the appellant argued that there was a clear distinction between 'business' and 'profession' and that the practice of a liberal profession like that of an Advocate or a Doctor which had nothing commercial about it was not business within the meaning of Section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. He argued that though the Andhra Pradesh Act broadly classified buildings into residential and non-residential buildings, the landlord of a non-residential building could not seek to evict his tenant on the ground of his requirement unless it was for the purpose of carrying on a business. According to the learned Counsel this indicated that the expression 'business' was to be given a narrow meaning and was to be confined to activities of a commercial nature. The learned Counsel also urged that the Court should favour a construction which would be beneficent to the tenant. Dr. Chitale relied on M. P. Sethurama Menon V. Thaiparambath Kunhukutty Amma's daughter, Meenakshi Amma (AIR 1967 Ker 88), Bangalore Water-Supply & Sewerage Board v. R. Rajappa ((1978) 2 SCC 213 : 1978

SCC (L&S) 215 : (1978) 3 SCR 207) and *Stuchbery & Son v. General Accident Fire and Life Assurance Corporation Ltd* ((1949) 2 KB 256 : (1949) 1 All ER 1026 (CA)).

3. The expression 'business' has not been defined in the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It is a common expression which is sometimes used by itself and sometimes in a collocation of words as in "business, trade or profession". It is a word of large and wide import, capable of a variety of meanings. It is needless to refer to the meanings given to that term in the various dictionaries except to say that everyone of them notices a large number of meanings of the word. In a broad sense it is taken to mean 'everything that occupies the time, attention and labour of men for the purpose of livelihood or profit'. In a narrow sense it is confined to commercial activity. It is obvious that the meaning of the word must be gleaned from the context in which it is used. Reference to the provisions of the Constitution or other statutes where the expression is used cannot be of any assistance in determining its meaning in Section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act; more so if the two Acts in which the same word is used are not cognate Acts. Neither the meaning, nor the definition of the term in one statute affords a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally. On the other hand it is a sound, and, indeed, a well-known principle of construction that meaning of words and expressions used in an Act must take their colour from the context in which they appear. Dr. Chitale very frankly and fairly conceded as much.

4. Now the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, is an "Act to consolidate, and amend the law relating to the regulation of leasing of buildings, the control of rent thereof and the prevention of unreasonable eviction of tenants therefrom in the State of Andhra Pradesh". It applies to the cities of Hyderabad and Secunderabad and to all municipalities in the State of Andhra Pradesh. The provisions of the Act, however, do not apply to buildings owned by the Government and to buildings constructed on or after August 26, 1957. Building is broadly defined as meaning any house or hut or a part of a house or a hut, let or to be let separately for residential or non-residential purposes. Landlord is defined as the owner of a building, including a person who is receiving or is entitled to receive the rent of a building, on his own account or on behalf of another person, etc. Tenant is defined as a person by whom or on whose account rent is payable for a building. Section 4 provides for the determination of a fair rent of a building on the application of the tenant or landlord. Section 10(1) provides that a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of Sections 10, 12 and 13. Section 10(2) mentions several grounds on which a landlord may seek to evict a tenant. The grounds are default of payment of rent, sub-letting of premises, used for a purpose other than that for which it was leased, commission of acts of waste, conduct amounting to nuisance to the occupiers of the other portions in the same building, securing of alternative accommodation by the tenant and denial of the title of the landlord. The grounds mentioned in Section 10(2) apply both to residential and non-residential buildings. Section 10(3)(a)(i) provides for the eviction of a tenant where the landlord of a residential building requires it for his own occupation. Section 10(3)(a)(iii) provides for the eviction of a tenant from a non-residential building where the landlord is not occupying a non-residential building in a city, town or village concerned which is his own or to the possession of which he is entitled whether under the Act or otherwise - (a) for the purpose of a business which he is carrying on the date of the application, or (b) for the purpose of business which in the opinion of the Controller, the landlord bona fide proposes to commence.

Sections 12 and 13 contain special provisions relating to recovery of buildings by landlord for the purpose of effecting repairs, alterations or additions or for reconstruction. The scheme of the Act is to prevent unreasonable eviction of tenants by landlords and to provide for eviction on specified grounds. The Act is of general application and its protection not confined to any classes of tenants nor is the right to evict under the Act limited to any class of landlords. There is no reason why a landlord who is a member of the legal or medical profession and who requires the premises for carrying on the practice of his profession should be wholly debarred from obtaining possession of the premises. It is impossible to discover any reason for so making a discrimination against the liberal professions. But that would be the result if the expression 'business' is given a narrow meaning which the appellant wants us to give to that expression. It would indeed be anomalous to hold that all the provisions of the Act including Section 4 which provides for the determination of fair rent and Section 10(1) which bars the eviction of tenants apply to non-residential buildings owned by an Advocate but not Section 10(3)(a) (iii) only. In our view the expression 'business' Occurring in Section 10(3)(a)(iii) is used in a wide sense so as to include the practice of the profession of an Advocate.

5. The Kerala High Court in *M. P. Sethurama Menon v. Meenakshi Amma* (supra), construed the expression 'trade or business' as connoting commercial activity and as not including the practice of the legal profession. The learned Judges referred to Article 19(1)(g) of the Constitution, Section 49 of the Advocates Act, 1961, the Madras Shops and Establishments Act, 1947 and drew a distinction between the words 'business' and 'profession'. As mentioned by us earlier, we do not think that it is right to ascribe to the word 'business' occurring in the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, the same meaning that the word may have when it occurs in other statutory provisions. The word must be interpreted in the context of the statute in which it occurs and not in the context of other statutes or in a manner alien to the context of the statute concerned.

6. In *Bangalore Water-Supply & Sewerage Board v. R. Rajappa* (supra) Chandrachud, J. (as he then was), observed : (SCC p. 297)

.... I find myself unable to accept the broad formulation that a Solicitor's establishment cannot be an industry. A Solicitor, undoubtedly, does not carry on trade or business when he acts for his client or advises him or pleads for him, if and when pleading is permissible to him. He pursues a profession which is variously and justifiably described as learned, liberal or noble.

The observations of the learned Judge were made in the context of the question whether a Solicitor's establishment would fall within the definition of 'industry' under the Industrial Disputes Act. It would be most unwise to apply this observation to determine whether the practice of the liberal professions is within the meaning of the expression, 'business' in Rent Control Legislation.

7. In *Stuchbery & Son v. General Accident Fire and Life Assurance Corporation Ltd.* (supra), it was observed that the carrying on of a Solicitor's business was the carrying on of a profession and was not the carrying on of a trade or business within the meaning of that phrase in the Landlord and Tenant Act, 1927. The observation was made in the context of that Act which made a distinction between 'trade or business' and 'profession'. In fact sub-section (3)(a) of Section 17 of the Act expressly said : "for the purposes of this section premises shall not be deemed to be premises used for carrying on thereat a trade or business by reason of their being used for the purpose of carrying on thereat any profession". The question in that case was about the right to compensation for the goodwill attached to the premises where the "business" or "profession" was being carried on. We do

not think that the case is of any help to the appellant.

8. We may refer here to the decision of Danckwerts, J., in *Re Williams' Will Trusts, Chartered Bank of India, Australia and China v. Williams* ((1953) 1 All ER 536 (ch D) where the question was whether the bequest to a son for the purpose of starting him in 'business' was effective to start the son in medical practice. The learned Judge held that it did, observing that the word 'business' was capable of including the practice of a profession and that it plainly included the profession of a Doctor.

9. We may refer to just one more case, i.e. *Taramal v. Laxman Sewak Surey* (1971 MPLJ 888) where this very question whether the practice of law was a 'business' within the meaning of the Madhya Pradesh Accommodation Control Act came for consideration before A. P. Sen, J. The learned Judge held that in the context of the Madhya Pradesh Act, the word 'business' had to be given a wide meaning so as to include any profession.

10. We, therefore, agree with the High Court that the practice of law is 'business' within the meaning of that expression in Section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The appeal is, therefore, dismissed with costs.

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