

J. Pandu

Vs

R. Narsubai

Civil Appeal No. 1469 of 1980

(Sabyasachi Mukharji, S. Natarajan JJ)

28.01.1987

JUDGMENT

NATARAJAN, J. -

1. This appeal by special leave is by a tenant to challenge an order of eviction passed against him under Section 10 (2)(vi) and Section 10(3)(a)(iii) of the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960 (hereinafter the Act) by the Additional Rent Controller, Hyderabad and confirmed by the appellate Authority and also by the High Court in revision proceedings.

2. The appellant took the suit premises viz. a 'malgi' (shop) on lease on March 21, 1972 from one Jameelunnisa Begum on a monthly rent of Rs. 200 for a period of three years. On November 6, 1974 the respondent purchased the suit premises from the said Jameelunnisa Begum and had the tenancy attorney in her favour. In 1975 the respondent filed a petition for eviction of the appellant on three grounds. The Rent Controller ordered eviction on two grounds viz. bona fide requirement of the premises by the respondent for business purposes and secondly claim of permanent tenancy rights without bona fides by the tenant. The Appellate Authority and the High Court confirmed the order of eviction. The appellant produced additional evidence (Ex. R-1 Sale Deed and Ex. R-2 plan) before the Appellate Authority to reinforce his contention that the respondent was owning a house with four 'malgis' in it from 1970 and as such she is not entitled to seek his eviction under Section 10(3)(a)(iii) of the Act. The Appellate Authority rejected the contention on the ground that the 'malgis' comprised in the house were also being used for residential purposes and ceased to be shops and furthermore the 'malgis' were situate in a non-commercial area.

3. Mr A Subba Rao, learned counsel for the appellant contended that the order of eviction is unsustainable as Section 10 (2)(vi) and 10(3)(a)(iii) of the Act have not been properly construed. For evaluating the counsel contentions the two provisions of the Act have to be set out. Section 10(2)(vi) lays down that if the Controller is satisfied that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and such denial or claim was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the building. Section 10(3)(a)(iii) lays down that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession of the building :

(iii) in case 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 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.

4. We may now deal with the contentions of Mr. Subba Rao. Insofar as the contravention of Section 10(2)(vi) of the Act is concerned it is not in dispute that the appellant laid claim to permanent tenancy rights in the reply notice (Ex. p-4) sent by him to the respondent. The rent Controller and the Appellate Authority have concurrently held that his claim was not a bona fide one and, therefore, the respondent was entitled to an order of eviction under Section 10(2)(vi). Mr. Subba Rao argued that unless a tenant had denied the title of the landlord also while making a wrongful claim of permanent tenancy he cannot be ordered eviction under Section 10(2)(vi). The contention is manifestly unsustainable because sub-section (2)(vi) disjunctively sets out the two grounds of eviction viz. denial of title of the landlord without bona fides and claim of permanent tenancy rights without bona fides. Consequently, either denial of title or claim of permanent tenancy without bona fides will itself be enough to attract Section 10(2)(vi). The order of eviction on this ground has, therefore, to be sustained. By reason of this conclusion alone the appeal can be dismissed but since the major portion of the arguments of Mr Subba Rao was with reference to the ground of eviction under Section 10(3)(a)(iii) of the Act, we deem it necessary to deal with those contentions also.

5. Mr Subba Rao argued that since the respondent wanted the lease premises for the business of her son and not for her own business, she is not entitled to seek eviction of the appellant because the words used in sub section 3(a)(iii)(a) are "business which he is carrying on". In support of his argument the learned counsel referred to the decision in D. N. Sanghavi and Sons v. Ambalal ((1974) 3 SCR 55 : (1974) 1 SCC 708 : AIR 1974 SC 1026). The decision pertains to a case under the Madhya Pradesh Accommodation Control Act, 1961 and construing the provisions of the Act it was observed that while a landlord can seek the eviction of a tenant from a residential building for bona fide occupation of a member of the family, he cannot seek eviction of the tenant from a non-residential building for enabling a married daughter or a brother to start a business. Mr Ghosh learned counsel for the respondent controverted the submission and invited our attention to a decision in Balaiah v. Lachaiah (AIR 1965 AO 135 : (1965) 2 Andh WR 95 : 1965) 2 Andh LT 252) where it was held that a father-cum-manager of a Joint Hindu Family who is in occupation of a non residential building can validly ask for eviction under Section 10(3)(a)(iii) of the very Act under consideration from another non-residential building in the same city belonging to the family on the ground that his undivided major son requires it for carrying on his business. The facts of this case do not evoke the controversy sought to be raised by Mr Subba Rao because the requirement of the lease premises is for running the family business and not for the exclusive or personal business of the respondent son. It may incidentally be stated here that the appellant as well as the respondent's son are both having photographic studios. The business run by the respondent's business as her son's. In view of this position there is no scope for contending that the respondent does not required the premises for herself but for her son's business and as such she is not entitled to an order of eviction under Section 10(3)(iii)(a). Therefore, even assuming that Section 10(3)(a)(iii) should be construed in a restricted manner as contended by Mr. Subba Rao we find that the respondent's requirement of the premises satisfies the conditions imposed by the sub-section.

6. Another argument seriously pressed before us was that when the respondent was owning property with four 'malgis' in the very same city she is not entitled to seek eviction of the appellant because sub-clause (iii) clearly lays down that only a landlord who is not occupying a non-residential building of his own or to the possession of which he is entitled can seek the eviction of his own or

to the possession of which he is entitled can seek the eviction of his tenant. It is no doubt true that he respondent has purchased a house in 1970 and the house comprises four shop portions also. The Rent Controller and the Appellate Authority have, however found that the 'malgis' were never used as shops and have along been used for residential purposes only. They have further held that the 'malgis' owned by the respondent are not in a business locality but in a non-commercial area and this is a relevant factor to be taken note of. They have, therefore, held that the mere ownership of the 'malgis' which are neither being used as shops nor suited for the purpose will not disentitle the respondent to seek recovery of possession of the premises from the appellant. The findings, apart from being concurrent ones, are factual in character and have, therefore, to be sustained. We may also point out that if the 'malgis' were really suited for running the photographic studio, the respondent and her son would not be running the studio in a rented premises and using their own 'malgis' for residential purposes. Mr Subba Rao referred to a decision of the Madras High Court in L. Chettiar v. K. Subbarayan (AIR 1971 Mad 163 : 83 Mad LW 696) and argued that when a landlord is occupying a non-residential premises of his own and is carrying on his business in it, he is precluded from seeking eviction of a tenant from his business premises even if the landlord is faced with problems like shortage of space etc. Mr Ghosh countered this argument by referring to another portion of the decision in Balaiah v. Lachaiiah (AIR 1965 AP 435 : (1965) 2 Andh WR 95 : (1965) 2 Andh LT 252) where it was held, that a landlord, notwithstanding his occupation of a non-residential building, can still seek eviction of his tenant from his business premises if the landlord is able to satisfy the Rent Controller that the non residential building occupied by him is not sufficient or suitable for the purpose of expansion of his business or the purpose of a new business which which he bona fide proposes to commence or that the shifting of his business has become inevitable. Examining the matter we find ourselves unable to accept the contentions of Mr Subba Rao. The fact that the respondent has been using the entire house purchased in 1970 i.e. including the 'malgis' for residential purpose and that the respondent is force to run the family business in a rented premises in the same locality where the lease premises are situate have weighed with the Rent Controller and the Appellate Authority to concurrently hold that the respondent's requirement of the building is undoubtedly bona fide. The findings have been sustained by the High Court is vitiated because of the ownership of four 'malgis' by the respondent. The malgis have ceased to be non-residential premises from 1970 onwards and hence their mere ownership cannot preclude the respondent from seeking the eviction of the appellant under section 10(3)(a)(iii).

7. In the result, the appeal fails and is accordingly dismissed but there will be no order as to costs.

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