

Dr. T. S. Subramanian (Deceased) By Lrs.

Vs

Andhra Bank Ltd

Civil Appeal No. 2055 of 1989

(CJI R. S. Pathak, L. M. Sharma, M. N. Vankatachaliah JJ)

29.03.1989

JUDGMENT

VENKATACHALIAH, J. –

1. This petition, for grant of special leave, is by the legal representatives of the landlord who died on September 19, 1987 after the order, dated August 10, 1987, sought to be appealed against, was passed by the High court of Madras in C.R.P. No. 2564 of 1985 setting aside, in exercise of its revisional powers, the concurrent orders of eviction passed by the Rent Controller, Madras in R.C.O.P. No. 4404 of 1983 and confirmed in appeal by the Appellant Authority in R.C.A. No. 41 of 1985. The Andhra Bank, a nationalised bank, is the respondent-tenant which has succeeded in the revision proceedings before the High court.

2. Special leave is granted and the appeal taken up for final hearing, heard and disposed of by this judgment.

3. The ground floor of a built area of 1960 sq. ft. in No. 116, Cutcherry Road, Mylapore, Madras-4, was leased to the Andhra Bank for a term certain of 10 years (with an option to the bank to renew the lease for two more years) under the registered lease deed, dated August 11, 1971 (Ex. P-1). The respondent-bank has been running one of its branches in the demised premises ever since. The landlord, Dr. T. S. Subramanian, along with the members of his family was residing in the first floor of the building.

4. In the year 1983, Dr. Subramanian sought eviction of the respondent-bank from the premises on ground envisaged in Section 10(3)(a)(iii) and 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent control) Act, 1960 ('Act'). The eviction petition, at para 3, refers to the purpose of the lease thus :

"As per terms of the lease the total area of 1960 sq. ft. was let out solely for the purpose of respondent's renting a banking business, and a small portion of the same for the purpose of agent of the bank to reside there ...."

5. Dr. Subramanian, it would appear, had undergone a major heart surgery at Ohio in USA; that his wife, it was alleged, was a patient of hypertension and that both of them were advised against climbing stairs; that the requirement of the members of his family for residential accommodation had been increasing and that the landlord desired to use the "front portion" of the ground floor for purpose of a business which one of his sons, Dr. Kumar Subramanian, who had resigned from professorship in the IIT. Madras had started. The averments of the landlord in support of the prayer for eviction are the following.

"The petitioner further states that he has got two sons one Mr. Ramji Subramanian and another Dr. Kumar Subramanian. His second son Dr. Kumar Subramanian was a Professor in IIT, Madras specialised in the field of computer science. Both his sons reside with him in the same building on the first floor ...

... At the same time, the petitioner submits that the house was built by him as a residential house for the occupation of his family but since in 1971 the family was small the petitioner gave the bank the ground floor on a long lease. During this 10 years of lease period the petitioner's son got married he got grandchildren and the upstairs which was sufficient originally for the family became insufficient .....

... The petitioner submits that within a year of giving the said premises on lease the petitioner started having heart trouble and the doctors advised him not to climb upstairs but he was helpless as he having already leased out the ground floor to the respondent and the lease being for 10 years could not approach them to vacate. Thus in 1973 the petitioner had an open heart surgery performed at Cleveland, Ohio, wherein the doctors had to go in for a coronary bypass when the petitioner was advised to avoid climbing upstairs ...

.... At the same time in the last few years the petitioner's wife became a patient of hypertension and both the petitioner and his wife were repeatedly requested and advised by the doctors not to climb upstairs ...

... The petitioner submits that he is planning to use the front portion of ground floor of his premises for the said company and the back portion he and his wife will shift to as their residence downstairs ..."

The bank resisted the petition and the matter went to trial before the Rent controller. The landlord tendered evidence as PW 1. The bank examined a certain Sri. Arunachalam as RW 1. The trial court and the appellate court, concurrently, held that the requirements of the landlord were bona fide and reasonable and recorded findings accordingly. On the question of comparative hardships also, the trial court and the appellate court found in favour of the landlord. The trial court accordingly, made an order granting possession, which was affirmed in appeal.

6. The respondent-bank preferred a revision application under Section 25(1) of the 'Act' before the High Court. The High court affirmed the findings of the courts below as to the bona fides and reasonableness of the requirements of the landlord. The High Court said :

"11. Both the courts below, therefore, have rightly held that the requirement of the respondent of the petition premises as additional accommodation under Section 10(3)(c) of the Act is bona fide and should be granted."

7. But the result of the proceedings of revision, however, appears to have taken a peculiar turn, owing to principally to an affidavit filed by the landlord by which he informed the court that the requirement of the son whose business was one of the grounds supporting the eviction petition did not survive as his son had closed down his business. The operative part of the said affidavit said :

".... Now that my son had stopped his business I am not pressing my eviction petition with reference to my claim under Section 10(3)(a)(iii) of the Act."

The impact of this submission on the fortunes of the eviction petition, as it will presently be seen,

was disastrous. In the eviction petition referring to the purpose of the lease it was mentioned that a small portion in the rear was intended for use by the bank's manager or agent for his residence. There was also a reference in the eviction petition that the "front portion" of the premises was intended by the landlord to be used for the business of his son. The High Court appears to have understood the effect of the affidavit to amount to the landlord giving up his claim for possession of the "front portion" and that what remained as the subject matter of the eviction was only the rear portion. The High Court also understood the reference to the "front portion", which had been referred to as intended for the use son's use to be co-extensive with the portions in which the bank was carrying on its banking business. The High Court, as a result, thought that the only portion of the leased ground floor premises respecting which the eviction petition survived was the small back portion which was referred to in the petition as intended for the agent's residence. This understanding by the High court of the situation is manifest from the following observations in its revisional order :

"It is, therefore, clear that the tenancy is single and indivisible and the predominant purpose is non-residential. Now that the claim under Section 10(3)(a)(ii) of the Act has been given up by the respondent, ordering eviction of the small portion at the back, used by the Manager of the bank for residence, for which alone the need for additional accommodation has been claimed, would amount to splitting up the tenancy ..."

8. The High Court, in relation to the ground under Section 10(3)(c), also appeared to be under the impression that the purpose of the tenancy being non-residential one it was no permissible for the landlord to seek eviction to use it for residential purpose. The High court said :

"... It is obvious, therefore, that the predominant object of the tenancy, was only for non-residential purpose viz., banking business. While that is so Section 10(3)(a)(c) viz., requiring a portion of the premises as additional accommodation for residential purpose, would not come in."

These then are the two grounds on which the High court - notwithstanding its affirmation of the findings as to the bona fides and reasonableness of the requirements of the landlord and on the point of comparative hardship - felt compelled to decline relief to the landlord, within a few days of this result, Dr. Subramanian died.

9. The first ground, as noticed earlier, was that the "front portion of the premises" which was intended for the use of the son's business ceased to be the subject matter of the eviction petition and that, therefore, grant of eviction even in respect of the other portions of the demised premises - would amount to a splitting up of the tenancy. The High Court noticed that there was no provision in the 'Act' for grant of partial eviction and that, therefore, the rule in *S. Sanyal v. Gian Chand* ((1968) 1 SCR 536 : AIR 1968 SC 438) was attracted to bar the relief.

10. The second ground was that Section 10(3)(c) did not enable a landlord to recover a non-residential premises for residential use.

11. On a careful consideration of the matter we find that on both the grounds the view of the High court is not supportable. The first ground turns on the construction of the pleadings and the effect of the affidavit filed by the landlord in the court of the proceedings before the High Court did the landlord, by his affidavit seek ground is a pure question of law as to the proper construction to be

placed on Section 10(3)(c) of the Act.

12. It requires to be pointed out that Dr. Subramanian sought possession of the entire leased ground floor premises. The grounds on which he sought eviction were both Sections 10(3)(a)(iii) and 10(3)(c) of the Act. By seeking voluntarily, to delete the ground in Section 10(3)(a)(iii), could it reasonably be presumed that he intended to delete the "front portion of the premises" from the eviction petition itself. There were no two eviction petitions with two separate schedules, one invoking Section 10(3)(a)(iii) respecting the "front portion" and the other under Section 10(3)(c) respecting the rest of the leased premises in the ground floor. As Dr. Subramanian had sought possession of the entire ground floor premises on two grounds, it is reasonable to assume that even if one of the grounds was not pressed the subject matter of the eviction petition remained unaltered and undiminished; but the question of eviction had to be considered only on the surviving ground. The landlord had not expressly sought to delete the "front portion" from the schedule of the eviction petition; nor expressly confined the relief to the remaining portion. The effect of the affidavit, on a reasonable construction, would be that Dr. Subramanian sought to maintain - of whatever it was worth - his claim for possession of the leased premises only on the ground under Section 10(3)(c). It is no doubt true that in assessing the merits of the case, having regard to the landlord's own admission that the "front portion" was intended for the use of his own son's business, detracts from and negates the bona fides and reasonableness of his requirement of the said "front portion" for residential purposes. But it cannot reasonably be said that the "front portion" stood deleted from the schedule of the eviction petition. We are afraid the understanding of the position by the High Court is not the result of a correct appraisal of the effect of Dr. Subramanian's affidavit by which he sought not to press the ground under Section 10(3)(a)(iii). But the question that yet remains to be considered is whether on the facts found, viz., that the landlord had established his bona fide requirement of the ground floor, excluding the "front portion" respecting which his requirement cannot be held to be a reasonable one, the landlord would be entitled to an order for possession of the whole of the leased ground floor premises. Of course, no partial eviction is possible as the 'Act', it is said, does not contain an enabling provision in that behalf. Landlord cannot, therefore, split up the integrity of the tenancy and seek a partial eviction.

13. What emerges, therefore, is that the landlord has established his bona fide and reasonable requirement of the ground floor except the "front portion". Can the eviction petition be dismissed on the ground that the need has not been shown to cover very portion of the leased premises? Or can the court, where a partial eviction is not permissible, make an order granting possession respecting the entire premises, if the need respecting a substantial part of it is established? The answer to these question must need to take into account the particularities of the facts of each case and whether the need is held established is in respect of a substantial or insubstantial portion of the premises. some observations made in *Mattulal v. Radhe Lal* ((1974) 2 SCC 365 : (1975) 1 SCR 127, 136) could be of some assistance. The question arose whether where bon fide requirement of the landlord is established in respect of a part alone of the demised premises and where partial eviction was not enabled by the statute the landlord could ask for possession for whole of the premises. This court observed : (SCC p. 375, para 13).

"... The Lohia Bazar shop was given rent under a single tenancy and even if the requirement of the respondent extended only to a portion of this shop, he had no other option but to terminate the tenancy and seek to recover possession of the whole shop ...."

14. Several High Courts have taken the view - which appears to us to be proper - that where bona

bona fide need for a substantial portion of the leased premises is established, and such need respecting a small portion is not shown, the decree for possession of the entire premises may have to pass, if the provisions of the statutes do not contemplate or enable a splitting up. In the present case, we think that, prima facie, the High Court was not justified in equating the "front portion" referred to in the eviction petition as intended for the son's business as equitable to the entire portion in which the bank was carrying on its banking business. Sri P. P. Singh, learned counsel, was not able to show to us, with reference to the material on record, that the "front portion" represented a substantial portion of the ground floor. Smt. Kumaramanglam, learned counsel for the petitioner, submitted that having regard to the very structural disposition and lay out of the ground floor. The "front portion" could only mean the front verandah and, perhaps, a front room in addition at the worst. In any case the "front portion" could not, it is urged constitute a substantial or major part of the ground floor. The conclusion of the High Court would not be supportable unless it was held that the effect of Dr. Subramanian's affidavit was to delete the "front portion" from the schedule of the eviction petition. That may not be a correct construction or understanding of the effect of the affidavit which merely did not press one of the legal grounds. The question which really required to be considered was whether the "front portion" of the ground floor was a substantial or major part of the ground floor and if it was not, then whether eviction in respect of the entirety of the ground floor could be ordered despite the fact that bona fide and reasonable requirement had not been established in respect of the said "front portion".

15. The second ground on which the High Court decided relief was its understanding that Section 10(3)(c) did not enable recovery of possession of a non-residential premises for residential use. This view of the High court is again incorrect. This is presumably based on some earlier judgments of the same High Court. In Sri. Balaganesan Metals v. M. N. Shanmugham Chetty ((1987) 2 SCC 707, AIR 1987 SC 1668) this Court had an occasion to examine the scope of Section 10(3)(c) of the "Act" in the context of a similar contention. The fact in that cases are similar to this case. The owner was using the first floor of her own residence and had leased out the ground floor to the appellant for non-residential purpose. The question arising for determination was noticed thus :

"... whether a landlord occupying a part of a building for residential purposes is entitled to seek eviction of a tenant occupying the whole or any portion of the remaining part of the building for non-residential purposes for his (landlord's) residential use and vice versa ..."

Referring to the hardship the contention urged for the tenant would, if accepted, produce, it was observed : (SCC p. 717. para 17)

"... Take for example, a case where a landlord has got grown up sons and daughters or there is a married son and growing daughters or there are old parents who cannot climb stairs etc. If the landlord is to be refused additional accommodation for residential purposes merely because the tenant is making use of the leased portion for non-residential purposes the landlord would be placed in an awful predicament ..."

Rejecting the construction of Section 10(3)(c) suggested for the tenant it was held : (SCC p. 712, para 8, SCC p. 719, para 22)

"A landlord who is occupying only a part of a building, whether residential or non-residential, may, notwithstanding anything contained in clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of

the remaining part of the building to put the landlord in possessing thereof, if he requires additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be.

... It, therefore, follows that once a landlord is able to satisfy the Controller that he is bona fide in need of additional accommodation for residential or non-residential purposes and that the advantage derived by him by an order of eviction will outweigh the hardship caused to the tenant, then he is entitled to an order of eviction irrespective of any other consideration."

16. This concludes the matter in favour of the landlord on the point. It has to be held that the second ground on which the High Court declined relief cannot be supported.

17. In regard to comparative hardship the trial court, the appellate court and the High Court have held in favour of the landlord. The High Court in particular said :

"A public body like a bank, could find accommodation elsewhere, but a private individual at the fag end of his life, with heart ailment and a sick wife, with a large family, could not be compelled to vacate his own premises and occupy rented premises when, his own premises, in the ground floor is available for him ..."

18. It was also urged for the respondent-bank that with the death of Dr. Subramanian the requirements became substantially diminished if not altogether eliminated. This subsequent event is no doubt one of a kind which courts ought to take a cautious cognizance of. But then, the eviction was sought also on ground of the increasing needs of the family. Two married sons of Dr. Subramanian, with the members of their respective families, and wife of Dr. Subramanian are also the beneficiaries of the proceedings and the death of Dr. Subramanian would not make any substantial difference as it was mentioned that the size of the family had enlarged over the years of the pendency of the proceedings.

19. We must add that having regard to the circumstances of this case, we considered that the case was one eminently fit for a reasonable settlement between the parties, with the respondent-bank agreeing to yield up possession of some portions in its occupation. Consensus was necessary as the statute did not enable a partial eviction. The appeal was adjourned for this purpose on a couple of occasions. It has to be observed that the attitude of the respondent-bank was not helpful towards such a settlement.

20. In the result, this appeal succeeds in part and the order dated July 10, 1987 of the High Court is set aside. The revision petition is remanded to the High Court for a fresh disposal in the light of the following directions :

"In the revision proceedings before the High court on remand, the High Court will proceed on the premises that the requirement of the appellants is bona fide and reasonable in respect of the entirety of the leased ground floor premises except the "front portion". The High court shall also treat the question of comparative hardship as concluded against the respondent-bank. The only point to be considered is as to what constitutes the "front portion" referred to in the eviction petition as then intended for the son's use and whether such "front portion" constitutes an insubstantial or minor portion compared with the rest of the ground floor area. If the High Court is persuaded to this view it shall proceed to confirm the order of eviction

passed by the courts below. If, however, upon a construction of the eviction petition and consideration of to their material the High Court holds that the said "front portion" of the ground for respecting which bona fide requirement cannot be held to have been established is a substantial or a major part of the ground floor the High Court will proceed to allow the revision petition and, in reversal of the order of eviction, dismiss the eviction petition."

21. It is further directed that the revision petition on remand shall, as far as may be practicable, be placed before the same learned Judge who heard and decided the matter on the earlier occasion. We hope and trust that it would possible for the High Court to dispose of the revision petition expeditiously.

22. The appeal is disposed of accordingly, In the circumstances, there will be no order as to costs.

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