

M/s. Rawalmal Naraindas and Sons

Vs

B. Amarnath

Civil Appeal No. 2159 of 1999

(S. Saghir Ahmad, R.P. Sethi JJ)

08.04.1999

JUDGMENT

R.P. Sethi, J.

1. Leave granted.

2. The appellant, a tenant of the non-residential premises in building bearing No. 3-2-106, General Bazar, Secunderabad, has assailed the judgment of the High Court passed in Civil Revision Petition 2169/94 by which the order of the Chief Judge, City Small Causes Court, Hyderabad, passed in R.A. No. 440/89 was confirmed. The City Small Causes Court vide its order dated 6.4.1994 had confirmed the order dated 2.8.1989 of the Rent Controller passed in R.C. NO. 506/85 directing the eviction of the appellant-tenant. It is contended that the judgment and orders of the High Court, Chief Judge, City Small Causes Court, Hyderabad, and that of the Rent Controller being against the provisions of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as 'the Act') are liable to be quashed.

3. The relevant facts giving rise to the filing of the present appeal are that the appellant-firm was granted lease in a unit on the ground floor of the building bearing No. 3-2-106, General Bazar, Secunderabad in the year 1967 for a rent of Rs. 175/- per month. The rent was enhanced to Rs. 600/- in November 1984. Respondent NO. 1 a co-owner of the premises filed a petition for eviction of the appellant-firm before the Rent Controller on the ground of his *bona fide* requirement as he had decided to commence business in electrical and hardware. The petition was allowed by the Rent Controller and the order of eviction was confirmed by the appellate court and the High Court in revision as noticed earlier. In the Civil Revision Petition No. 2169/94 filed in the High Court, the appellant had contended that the respondent being in occupation of another non-residential building of his own was not entitled to seek eviction on the ground of *bona fide* requirement under Section 10(3)(a)(iii) of the Act. It was further contended that the demised building be treated as a non-residential premises and not as a residential premises. It was also submitted that as the landlord was allegedly carrying on his business in an another unit bearing door number 3-2-131 which was situated in the first and second floors of the main building, the whole of the building was to be considered as a non-residential building and the landlord not entitled to the order of eviction against the appellant. While rejecting such a plea, the High Court held :-

"Such contention was considered by both the courts below by referring to the eviction placed on record and was rejected having come to the conclusion that the building bearing Door No. 3-2-131 situated in the first and second floors is only a residential building where the landlord and his family members are admittedly

residing and it cannot be considered as a non-residential building on account of the fact that the landlord has chosen to set up his office for doing his business by way of temporary arrangement and for want of accommodation anywhere else. A perusal of the evidence adduced on behalf of both sides in this matter clearly shows that such concurrent finding arrived at by both the courts below is just and proper and is based on the evidence. Simply on account of the fact that the landlord, who wanted to start his own business after submitting his resignation to the job which he was doing in a Private Company some time prior to the filing of the present petition, had chosen to set up his office for want of accommodation anywhere else in order to carry on his business, it cannot be said that the said building in the first and second floors bearing Door No. 3-2-131 which is admittedly a residential building, has acquired the character of a non-residential building, has acquired the character of a non-residential building. In the decision of the Madras High Court reported in Krishna Nair v. Valliammal (1) 1949 MLJ 74 it is observed that in determining whether a premises is residential or non-residential, the main or primary purpose for which it is let out or taken or used must be considered and that a premises must be deemed to be taken and used for residential purpose though a portion of the premises may be used for manufacturing some eatables when people are not sleeping there and used for sleeping purpose when such eatables are not manufactured. In the Division Bench decision of our own High Court reported in P. Venkatarkrishna Rao v. Dr. B. Seetaram, 1989(3) ALT 282 it is observed that a building which is a residential building, continues to be a residential building unless it is converted as a non-residential building by an order of the Rent Controller under the provisions of Section 18 of the Rent Control Act and that in the absence of such an order, a residential building cannot be construed as a non-residential building notwithstanding the fact that the building was used or let out for non-residential purpose. Under these circumstances, the finding of the Courts below that the building bearing Door No. 3-2-131 situated in the first and second floors is a residential building, cannot be interfered with in the present revision as such finding is based on facts revealed from the evidence placed on record. The other building bearing Door No. 3-2-129 in the ground floor is only a residential building."

4. Realising that the findings of fact have been returned by all the courts below against the tenant, Shri Mishra, the learned senior counsel appearing for the appellant contended that the respondent-landlord was not justified in invoking the provisions of Section 10(3)(a)(iii) of the Act as according to him the provision applicable in the case was as incorporated in Section 10(3)(c) of the Act. Accepting such a plea at this stage would render the provisions of the Act ineffective inasmuch as the definition of the word 'building' incorporated in Section 2(iii) of the Act would be rendered futile. The building or part of the building as leased out has to be deemed to be a 'building' for the purposes of eviction proceedings and a part of the building cannot be permitted to be a part thereof the whole building. The building, a unit with separate door number on the ground floor which was leased out to the appellant-tenant was admittedly a non-residential 'building', which attracted the applicability of the provisions of Section 10(3)(a)(iii) of the Act. Section 10(3)(c) would apply in a case where out of the leased premises, a part thereof is in occupation of the landlord who in that event can apply to the Rent Controller for an order directing the tenant to put him in possession thereof, if he requires additional accommodation for residential purposes or for purposes of a business which he was carrying on, as the case may be. Part of the building referred to in clause (c) of the sub-section 3 of Section 10 of the Act has to be understood in the context of the definition of

the word 'building' under Section 2(iii) of the Act. If the building within the meaning of Section 2(iii) is indivisible, the same has to be taken as an entity for the purpose of deciding the issue regarding eviction and cannot be further split or its scope widened by having regard to the loose general meaning of the word 'building'. We are of the opinion that the appellant is not justified in contending that the entire building was a single unit though having different door numbers for different portions of the building and that all the courts below have rightly overruled such a contention.

5. Shri Mishra has also tried to persuade us to hold that the conversion of the building being contrary to Section 18 of the Act, disentitled the landlord to seek eviction. Such a plea is more hypothetical than real. The decisions relied upon have no reliance in the instant case particularly when no such plea was raised before the courts below. The reliance of the appellant on the judgment of this Court in *Vinod Kumar Arora v. Surjit Kaur*, 1987(3) SCC 711 is of no help to him. In that case, this Court while dealing with East Punjab Rent Restriction (Chandigarh Amendment) Act, 1982 found that the Amending Act therein had enlarged the definition of 'non residential building' in the parent Act by making 'a building let out under a single tenancy for use for the purpose of business or trade and also for the purpose of residence' to be also a non-residential building. Such is not the position under the Act. Even in that case the Court had observed, "having taken up such a stand the appellant cannot reprobate and contend that the lease of the hall was of a composite nature and as such the benefit of the enlarged definition of a 'non-residential building' given in the Amendment Act would ensure to his aid in the case." Similarly, the reliance of the learned counsel for the appellant on the judgment of this Court in *Shri Balaganesan Metals v. Shri M.N. Shammugham Chetty and others*, 1987(2) SCR 1173 is of no help to him. In that case admittedly, the landlords had filed a petition under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 praying for eviction of the tenant on the ground of *bona fide* requirement for the purpose of additional accommodation for their residential needs. Section 10(3)(c) of Tamil Nadu Act is in *pari materia* with Section 10(3)(c) of the Act. In that case, there was no dispute regarding the applicability of Section 10(3)(a)(i) and (iii) as admittedly the landlords had sought eviction under Section 10(3)(c). In that context it was observed :-

"Yet another noteworthy feature to be borne in mind is that Section 10(3)(c) is governed by two provisos which is not the case when eviction orders are made under any of the sub-clauses of Section 10(3)(a). The first proviso enjoins the Controller to reject the application of landlord under Section 10(3)(c) for additional accommodation, even where the need of the landlord is found to be genuine, if the hardship caused to the tenant by an order of eviction will outweigh the advantage to the landlord by the said order. The second proviso empowers the controller to give the tenant a reasonable time not exceeding three months in the aggregate to vacate the portion in his occupation and put the landlord in possession thereof. Obviously the second proviso has been made to facilitate the tenant to find alternate residential or non-residential accommodation elsewhere, since the landlord who is already in possession of a portion of the building can put up with the hardship of inadequate accommodation for a period of three months at the most. The above analytical consideration of the relevant provisions bring out clearly the fallacy contained in and the untenability of the contention that the ground floor occupied by the appellant is a distinct and separate unit and as such the respondents cannot seek his eviction under Section 10(3)(c) of the Act."

This court also referred to the judgment of the Andhra Pradesh High Court in *K. Parasuramaih v.*

*Lakshamma, AIR 1965 A.P. 220* wherein it was held that if a landlord satisfies the Controller that he wanted additional accommodation in the same building for his residential or non-residential requirements, then notwithstanding the user to which the tenant was putting in the leased portion, the landlord was entitled to an order of eviction so that he could re-adjust additional accommodation in the manner convenient to him and it was not necessary that the additional accommodation sought for should be used by the landlord for the same purpose for which the tenant sought to be evicted was using it.

6. We are satisfied that the judgment impugned is based upon concurrent findings of fact of the Rent Controller and of the Chief Judge, City Small Causes Court, which have been appropriately appreciated by the High Court, in the light of the provisions of the Act requiring no interference. The pleas raised before us are not tenable being bereft of sound legal foundations. The appeal which has no merit is liable to be dismissed.

7. We, however, find that as the appellant have been in possession of the learned premises for over a period of three decades, some time is required to be given to them for making alternative arrangements. While dismissing the civil appeal, we direct that the order of eviction passed against the appellant shall not be given effect to till 30.9.1999 subject to their furnishing the usual undertaking to deliver possession without objection on or before the date specified by us and continue to pay the compensation for use and occupation at the rate of the rent which they were paying at the time of initiation of the eviction proceeding against them. They will undertake not to change the nature of the building during this period. Costs made easy.