Mudigonda Chandra Mouli Sastry

Vs

Bhimanepalli Bikshalu

Civil Appeal No. 2590 of 1997

(V. N. Khare, S. S. Mohammed Quadri JJ)

04.08.1999

JUDGMENT

V.N. Khare, J. –

1. This is a landlord's appeal. The landlord filed a petition for eviction of the respondent-tenant from the premises in dispute on the grounds, namely, (a) he required the said premises for his own needs; (b) the tenant has committed default in payment of rent; (c) the tenant has acquired an alternative accommodation; and (d) the premises was in a dilapidated condition which required reconstruction. The Rent Controller, after having satisfied that the grounds for eviction were well-substantiated, allowed the petition filed by the landlord. Aggrieved, the tenant preferred an appeal. The appellate authority dismissed the appeal filed by the tenant. The High Court, however, in the Civil Revision Petition filed by the tenant held, that by virtue of sub-section (4)(i) of Section 10 of A.P. Building (Lease Rent & Eviction) Control Act, 1960 (hereinafter referred to as the `Act') no order of eviction can be passed against the tenant, as the tenant is in the employment in a department which has been declared as an essential service. The High Court further, after re-assessing the evidence reversed the finding of facts as regard other grounds for eviction of the tenant arrived at by the two courts below. Consequently, the revision petition filed by the tenant was allowed and the petition filed by the landlord for eviction of the tenant was rejected.

2. Learned counsel for the appellant has assailed the order of the High Court on two grounds. Firstly, that the tenant having been transferred from Tenali to Marcherla - another town, the protection under sub-section 4(i) of Section 10, was not available to the tenant and, secondly, it was not open to the High Court, while exercising its revisional jurisdiction to re-assess the evidence and arrive at a different finding contrary to the concurrent finding of facts recorded by the two courts below.

3. After we heard the matter, we find that both the submissions of learned counsel for the appellant are well-substantiated. So far as the first submission is concerned, it is worthwhile to reproduce Section 10(4)(i) of the Act, which is as under :-

> "Section 10(4) - No order for eviction shall be passed under sub-section (3) -
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> (i) against any tenant who is engaged in any employment or class of employment notified by the Government as an essential service for the purposes of this sub-section unless the landlord is himself engaged in any employment or class of employment which has been so notified; or".....

A perusal of the aforesaid provision shows that no order of eviction can be passed under sub-section (3) of Section 10 of the Act against any tenant, who is engaged in any employment or class of employment notified by the Government as an essential service for the purposes of this sub-section. In the present case, the tenant was working as Senior Assistant (Accounts) in I.T.I. Tenali. The Government issued a notification under sub-section (4)(i) of Section 10 declaring service in I.T.I. as an essential service. Therefore, any person in employment in I.T.I. enjoyed immunity from eviction from any order that may be passed under sub-section (3) of Section 10 of the Act. But, in the present case, the tenant was transferred from Tenali to Marcherla - a place which is about 110 miles from Tenali. Under such circumstances, the question that arises for consideration is whether a tenant employed in a departmental catering essential services if transferred to another city or town, will he still enjoy the protection from eviction from any order that may be passed under sub-section (3) of Section 10 of the Act ? The aforesaid provisions show that the object behind clause (i) of sub-section (4) of Section 10 is that an employee who is employed for rendering an essential service is not to be ejected from the premises of which he is a tenant lest he would put to a hardship and inconvenience which may, ultimately, interfere in his working in catering essential services to the society. keeping in mind the object we are of the view that once a tenant, who was engaged in catering essential services, has been transferred to another city or town, the protection to such a tenant against an order passed under sub-section (3) of Section 10 of the Act ceases to be available to him as he is no longer required to cater essential services. If we give a literal interpretation to clause (i) of sub-section (4) of Section 10, then it would lead to an anomaious position. For example, if a tenant working in a department which is rendering essential services is transferred to another city or town where he is posted in a department which is also engaged in providing essential service's and he takes a premises on rent for his residence does it mean that such a tenant enjoys protection against eviction at both places, namely, in the original place of posting and subsequent place of posting. But that is not the object behind the provision of Section 10(4)(i) of the Act. It was pointed out before the High Court by the appellant that in view of transfer of the tenant from Tenali, the protection from ejectment under Section 10(4)(i) is not available to him but the High Court rejected the said submission on the ground that the transfer of tenant from Tenali would not come in the way of protection available to the tenant. This view of the High Court is repugnant to the object behind the provisions of the Act. Therefore, we find that the view taken by the High Court in applying sub-section (4)(i) of Section 10 of the Act in the present case, was totally misplaced.

4. Coming to the second submission what we find is that, that the Rent Controller and the First Appellate Authority after assessing the evidence recorded concurrent finding of facts that the need of the landlord was *bona fide.* It was not pointed out that the said finding suffered from any legal infirmity. Under such circumstances, it was also not open to the High Court in exercise of its revisional jurisdiction to have indulged in re-assessment of evidence and thereby interfered with the concurrent finding of facts recorded by the two courts below, especially when it was found by the High Court that by the tenant's wife had already acquired a vacant accommodation in the town of Tenali and the tenant himself was transferred from Tenali to Marcherla. Since the petition deserve to succeed on these two grounds, we are not inclined to go into the other grounds on which the landlord sought eviction of the respondent-tenant.

5. For the aforesaid reasons, we find that the judgment and order passed by the High Court under appeal is not sustainable in law and, therefore, liable to be set aside. We order accordingly. The appeal is, therefore, allowed. However, there shall be no order as to costs.

6. After the order was dictated, learned counsel appearing for the tenant prayed that the respondent-tenant may be granted some time to vacate the premises. To this, counsel for the appellant has no objection. We, therefore, direct that the respondent-tenant shall not be dispossessed from the premises in question for a period of six months i.e. upto 31st of January, 2000 provided the respondent-tenant deposits the arrears of rent/damages, if any, before the Rent Controller within two months and continues to pay month to month rent/damages to the landlord. The respondent-tenant on the expiry of the aforesaid period shall had over the vacant and peaceful possession of the premises to the landlord.