ANDHRA PRADESH HIGH COURT

B. Balaiah

Vs.

Chandoor Lachaiah

Civil Revn. Petn. No. 1561 of 1963

(Basi Reddy and Gopal Rao Ekbote, JJ.)

18.01.1965

JUDGMENT

Ekbote, J.

1. The problem which this revision petition poses is :

> "Whether a father-cum-manager of a joint Hindu family, who is in possession of a non-residential building, cannot ask for eviction Wider Section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act 1960, of a tenant from another non-residential building belonging to the family, on the ground that his undivided major son requires it for carrying on his business ?"

It arises in the following circumstances.

2. The respondent-landlord filed a petition under Section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter called the Act) against the petitioner-tenant on two grounds, firstly that his son who had attained majority intends to start a new business and secondly, that the building requires re-construction. That petition was resisted by the tenant.

3. The Rent Controller, after the enquiry, directed the eviction of the tenant holding that the requirement of the undivided son would be deemed to be the personal requirement of the landlord and that the building requires re-construction. Eviction was however, directed only on the first ground.

4. The Appellate authority, on appeal by the tenant, agreed with the view of the Rent Controller and held that the landlord requires the building for his own use and thought in that view that it is unnecessary to take any undertaking from the landlord to offer the building after its re-construction to the tenant.

5. The tenant preferred a revision petition to this Court. When it came before our learned brother, Venkatesam, J. in view of the importance of the above question, the learned Judge referred the case to a Bench and that is how the matter is before us.

6. In order to find out an effective answer to the problem thus posed it is necessary to read Section 10(3)(a)(iii) of the Act which is in the following terms :

> "10(1). A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or Sections 12 and 13.
> 3(a) A landlord may subject to the provisions of clause (d) apply to the Controller for an order directing the tenant to put the landlord in possession of the building :
> (iii) in case it 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 this Act or otherwise
> (a) for the purpose of a 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 :"

7. On a closer examination of this provision it would appear that in order to attract the same the following four things must exist :

> (1) It must be any other non-residential building."
> (2) The landlord is not occupying a non-residential building (in the city, town or village) which is his own or to the possession of which he is entitled.
> (3) He requires it for the purpose of a business which he is carrying on or which he *bona fide* proposes to commence, and
> (4) his claim is *bona fide* (sub-cl. 3(e)).

8. In the instant case there is no dispute that the building in question comes within the meaning of "any other non-residential building" and that the claim of the landlord has been found to be *bona fide* by both the Courts below. Thus the first and the last requirements are not in controversy.

9. Now in regard to the third requirement what is necessary to find out is whether the landlord requires the building "for the purpose of a business which he is calling on or which the landlord *bona fide* proposes to commence." It seems now to be beyond any doubt that these expressions need not necessarily be confined to the physical requirement of the landlord himself. These and similar other expressions ought to be liberally construed and not in a narrow way. They are susceptible of a wide meaning. They include the landlord's "family and dependants find such persons - or persons who may be essential and necessary for occupation". In order to find out who are such persons.

> "It is not only permissible but it is proper and desirable for the Court to bear in mind the contest of the social order, the habits and ideas of living and the social and religious customs of the community to which the individual concerned belongs."

Whether the need of a particular person is the need of the landlord will naturally have to be decided in view of the circumstances of each case. Broadly stated, however, these phrases not only include the members of the landlord's family but also all those persons who are socially or economically dependent on him and whose responsibilities he has accepted. This is based on the necessity of realizing that the in India whether joint or separate is the social unit of Indian civilization and it is greater public importance to keep it together. That is why we find that

> (a) wife, a medical practitioner, who wanted to establish a maternity home - *V.M. Deshmukh v. K.M. Kothari*[1],
> (b) a partner who carried on his business along with other partners - Firm *Rajniklal and Co. v. Vithal Pandurang*[2],
> (c) a widowed daughter and her children - *Balabhadra v. Premchand*[3],
> (d) a co-parcener of a joint Hindu family - *Seshasayana Rao v. Venkatesa Kao*[4],
> (e) a married son, member of the family, who intended to live separately - *Kolandaivelu Chettiar v. Koolayana Chettiar*[5],
> (f) a *son-in-law - Kangu v. Ahmed Unnissa Begum*[6],
> (g) a sister's son - *Bidhubhusan v. Commr. Patna Division*[7].
> (h) children and the landlord's friend and his wife to look after the children - *Smith v. Penny*[8], and
> (i) a niece of the tenant's wife who had nursed the tenant and his wife - *Jones v. White-hill*[9],

Are held to come within the meaning of these expressions. It is thus quite plain that the expression 'landlord' or 'his' must include all normal emanations of the landlord, for instance, if the landlord is a married man, he must be entitled to include with himself his wife and children. It is clear, therefore, that one cannot construe the said expressions strictly as applying physically only to the landlord himself; it must, as we have said, include any normal emanations of the landlord. We have, therefore, no hesitation in holding that when the major son, a coparcener in a joint Hindu family, intends to start a business, the third requirement of the said provision would be deemed to have been satisfied, as this requirement would be the requirement of the landlord. Such a case, therefore, plainly falls within Section 10(3)(a)(iii).

10. The real difficulty arises in regard to the construction of Section 10(3)(a)(iii) in so far as the second requirement, viz., 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 under this Act or otherwise" is concerned. Stripped of all irrelevant parts, the relevant provision would read as follows :-

> "3(a) 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 it is any other non-residential building, if the landlord is not occupying a non-residential building which is his own for the purpose of the business which he is carrying on or which the landlord *bona fide* proposes to commence."

What is argued by Mr. K. Madhava Reddy, is that if the landlord is occupying a non-residential building in the city, then he cannot claim another non-residential building. His requirement may be for shifting his business to the non-residential building claimed, or it may be for expansion of his business, or it may be even for commencing altogether a new

[1] AIR 1951 Nagpur 51 [3] AIR 1953 Nagpur 144;
[2] AIR 1952 Nagpur 312 [4](1953) 2 Mad LJ 647: (AIR 1954 Mad 531)
[5](1961) 1 Mad LJ 184 [7] AIR 1955 Patna 496
[6](1963) 1 Mad LJ 97 [8](1946) 2 All England Reporter 672 [9](1950) 1 All England Reporter 71

business. His submission is that if the landlord is occupying a non-residential building in the city, it disentitles him from applying under Section 10(3)(a)(iii). His contention is that he can do so only in a case where he claims a non-residential building in a different city, town or village than the one which he is occupying, and not otherwise. The argument analyzed would mean that the landlord should not be in occupation of any non-residential building in the city whether it is his own or to the possession of which he is entitled, if he wants to claim a non-residential building for the purpose of his business which he is carrying on or which he proposes to commence. It would mean that if he is carrying on a business in the same city whether it is in his own premises or premises taken on rent, he cannot claim another non-residential building of his for the purpose of expansion of the same business, or for commencing a new one. At the first flush the argument seems undoubtedly attractive, but on a closer examination of Section 10 we have no doubt that the argument cannot be allowed to prevail.

11. If Section 10 is read stripped of all irrelevant provisions as stated earlier, it will be manifest that what it requires is that the landlord should not have in his occupation in the city a non-residential building for the purpose of the business which he is carrying on or which he proposes to commence, and in case he is in occupation of a non-residential building, he can take advantage of Section 10 only in a case where the said non-residential building is not his own or he is not entitled to its possession. These things must be satisfied before he is deprived of the right to get the tenant evicted. If the construction placed by the learned Advocate on Section 10 is accepted, it would, in our opinion, create absurd results which the Court must try to avoid. For example, if the first limb of the provision is taken literally and understood to mean that if he is not in occupation of a non-residential building for the purpose of the business which he is carrying on", it will have no meaning. When he is already carrying on a business unless it is in another city, he must have already got some non-residential building in the city. Then in no case will the landlord he able to claim any non-residential building unless, of course, the non-residential building which he is occupying is not his own or to the possession of which he is not entitled. It is difficult to visualise a situation where such a landlord can be said to be in occupation of a non-residential building in the city where he is carrying on a business, which building is not his own or to which be is not entitled, unless of course he is a trespasser. It is impossible to think that the Legislature wanted to provide only for such a situation. If this contention is accepted, then the business which the landlord is carrying on, cither must have been carried on at a place in the city, which is not his own or to the possession of which he is not entitled, or it must have been carried on in another city. Consequently a landlord who is carrying on the business in the city in a non-residential building whether of his own or which he has taken on rent, will in no case be entitled to claim another non-residential building of his for the purpose of expansion of his business or for the purpose of commencing a new business. We do not think that that is the situation which the Legislature wanted to create. That this is not so would be clear from the object with which Section 10 appears to have been enacted.

12. The object of the Act, we think, is well known. It is to protect the tenants who at the time when accommodation was and is exceedingly difficult to obtain, were and exposed to the risk of being charged exorbitant rents, and also to prevent unreasonable eviction of tenants, but it is an Act designed for the protection of the tenants and not for the penalization of the landlords. Its predecessor Act was passed at a time when the housing position was such that there was often no freedom of contract between the landlord and the tenant and the latter was to pay what was demanded or vacate whenever asked to do so, subject, of course, to the law of Transfer of Property Act. No doubt it was for these reasons that the Legislature did not confine the Act only to one aspect of tenancy. At the same time it does not follow that all landlords are rapacious or they can in no case get the tenants evicted. It is true that the Act puts a little more emphasis on the protection given to the tenant. But it is also clear that the Act does not disregard the legitimate and valid requirements of the landlord. That is why we find in several provisions that the tenants' and the landlords' rights and liabilities are attempted to be balanced. It is evident from Section 20(3)(c) that a landlord can claim a portion of the same building given on rent whatever may be the nature of his requirement, viz., residential or non-residential, subject of course to the satisfaction of other requirements of that provision. When a landlord can thus get a tenant evicted under Section 10(3)(c) in this manner, we fail to see why the landlord in au earlier clause would have been given altogether a different and diametrically opposite treatment. It is, therefore, impossible to construe Section 10(3)(c)(iii) to mean that the landlord cannot in any case evict a tenant from another of his non-residential building if he is in occupation of a non-residential building in the same city either for his business which he is carrying on or for a new business. We would, therefore, naturally prefer to so construe this provision which would be consistent with the legislative intent apparent from the subsequent clause, viz., 10(3)(c). That is another reason why we do not find any substance in the interpretation tried to be placed by the learned Advocate for the petitioner.

13. We are, therefore, of the clear opinion that what the said provision means is this : when a landlord, who is in occupation of a non-residential building in a city, town or village requires another non-residential building of his own in the same city, town or village, as the case may be, from his tenant, for the purpose of the business which he is carrying on - which can mean shifting or expansion of the business which he is carrying on or for commencing a new business can successfully claim eviction of his tenant if he is able to satisfy the Rent Controller that the non-residential building which he is occupying is not sufficient or suitable for the purpose of expansion of his business or for the purpose of a new business which he *bona fide* proposes to commence, or that the shifting of his business has, in the circumstances of the case, become inevitable. It would be open to him to prove that the non-residential building which he is occupying is not exclusively his own or that he is not entitled to its exclusive possession. Any one of the above mentioned cases falls, in our view, within the ambit of Section 10(3)(a)(iii).

14. The interpretation which we have placed on this provision is supported by the following decided cases.

15. In 1953-2 Mad LJ 647 : (AIR 1954 Madras 531), Venkatrama Ayyar, J., thought that the questions for determination were whether the house is required for the first applicant for his own use and whether he is in actual occupation of any other house of his own in the same place. The learned Judge answering these questions held that

> "when a coparcener, therefore, applies for possession under Section 7(3)(a)(i), he will be entitled to an Order, if he establishes that he requires the house for his own occupation; and he is not disentitled to that relief by reason of the fact that the family owns another house and members of the family are residing therein, if he is himself not in occupation of it. The contention that he must be deemed to be in constructive possession of that house because other members of the family are in occupation thereof must fail, when once it is held that the joint family as a juristic person is not the landlord for purposes of Section 7(3)(a)(i)."

16. In *Nagamanickam Chettiar v. Nallakanuu Servai*[10], the facts were that the landlord was carrying on business in camphor in a rented building, but he was not threatened with eviction therefrom. Yet he wanted to instal power-driven machinery for the said business. The rented building was unsuitable for that purpose. In those circumstances it was held by Rajamannar, C.J. that

> "he is not in occupation of a building for the purpose of carrying on the business of manufacturing camphor with the help of power-driven machinery. He would, therefore, be prima facie entitled to the benefit of Section 7(3)(a)(iii)."

Panchapakesa Ayyar, J., held in *Nataraja Achari v. Balasubramaniam*[11]. that

> "he can have an eviction order for carrying on a different business from the business he is carrying on in other premises. So the fact that the respondent has got, across the road, premises where he carries on a maligai trade will not prevent his applying for the eviction of the petitioner from these premises for carrying on his grain-trade, a different trade."

17. (1961) 1 Mad LJ 184, provides a close parallel to the present case. In that case the second son of the landlord was recently married. The landlord wanted to set up for the said married son an independent family of his own for which he claimed the residential building although the joint family members were living in a house of their own in the same city. It was held that the expression of his own" means that there should be a building independently of his own. He should have full ownership. The building should belong to a single individual. It is only in those circumstances it can be called a residential building of his own.

18. R. Mathrubutham and R. Srinivasan in their commentary on the Madras and the Andhra Pradesh Buildings (Lease and Rent Control) Act, 1960 made a reference at p. 244 to a case reported in *Giriraj Kishore v. Ramchandra*[12], The said High Court seems to have decided that :

> "there is no law which lays down that if the landlord is in possession of premises in which a partnership business is carried on, he must, if he wants to start an independent business of his own, carry on that business in the same premises in which the partnership business is carried on. The fact of his being in possession of the premises qua partner can be no ground for holding that he did not need the premises occupied by a tenant for starting

therein his own business."

19. In the instant case what is found by the Courts below is that the non-residential

[10]1957-1 Mad LJ 182 [12]1961 Jab LJ 311

[11](1957) 2 Mad LJ 492

building in question belongs to the joint family, where the petitioner as father and naturally the manager of the joint Hindu family, is carrying on the business. It is also found that the son who has become major and who is a member of the joint Hindu family, intends to start a business in the same city. It is not in doubt that the son intends to *bona fide* commence the business. Whether the business is the same which his father is carrying on, or altogether a different business, makes little difference. It can in any case come either under sub-Clause (a) or sub-Clause (b). It cannot be in doubt in the circumstances of the present case that the existing non-residential building occupied by the father as the manager of the joint Hindu family where he is carrying on the business, is unsuitable and insufficient for the purpose of starting the business by the son. Assuming therefore, that the non-residential building which the petitioner is occupying is a joint family building in which along with the petitioner, the son also would be considered in occupation, it does not necessarily mean that the son can claim the building as his own or for that matter even the father can claim the entire building as his own. It must be realized that it belongs to all the coparceners for the time being. The son may be notionally in occupation of the non-residential building belonging to the joint family but that cannot be a ground for rejecting the application. When it is held that he wants to start a business, it may be the same business which the petitioner is carrying on, but the son's requirement must be held to be the requirement of the father or of the joint family. It cannot be said in such case that the son is in possession of another non-residential building which is his own or to the possession of which he is entitled. Admittedly he is not the exclusive owner of the non-residential building occupied by the petitioner, but it belongs to the joint family. It is immaterial in such it case whether the petition under section 10 of the Act is filed by the father as a manager of the joint Hindu family or by the coparcener who *bona fide* intends to start a new business or intends to expand the business in the locality where the non-residential building claimed is situated as in the instant case. As long as such requirement is bona fide, the petitioner can certainly claim for a direction for the eviction of the tenant. This interpretation of ours dues not in any way go contrary to the interpretation which we have put on the second limb of that provision while considering the third requirement. We are, therefore, of opinion 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 Act, of a tenant 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.

20. As no other argument was advanced the result is that this revision petition fails and is dismissed. There will be however no order as to costs. The tenant may vacate the premises within two months from this day, failing which the order can be put in execution.

Petition dismissed.