

ANDHRA PRADESH HIGH COURT

Vijayalaxmi Printing Press

Vs

Nandula Shankar

(J Reddy, J Rao and S.S Quadri, JJ.)

25.01.1990

ORDER

Jagannadha Rao, J.

1. This revision has come up before us upon a reference, for the purpose of clarifying whether anything said in the judgment of the Full Bench of this Court in *Vidya Bai v. Shanker Lal*, , could be deemed to run counter to the decision of the Supreme Court in *Padmanabha Setty v. Papiiah Setty*, . The point arises in connection with a landlord, who is not in occupation of a non-residential premises of his own but who is conducting his business as a statutory tenant in a non-residential premises belonging to another person and as to whether he could, in such circumstances, be debarred from seeking possession of his own non-residential building in the occupation of a tenant. The reference has become necessary inasmuch as certain doubts have arisen as to whether the decision of the Supreme Court in *Padmanabha Setty v. Papiiah Setty* (2 supra) continues to hold the filed or not.
2. In the case before us, it is admitted that the respondent-landlord is not living in a non-residential premises of his own and that the landlord is himself a statutory tenant of a building belonging to a third party. It is argued for the petitioners by Sri P.S. Murthy that the respondent-landlord is disentitled to seek possession of the non-residential premises occupied by the petitioner as a tenant in view of the decision of the Madras High Court in *Thanappa Chetty v. Govindaswami Naicker*, . He further contends that the ratio of the Madras case appears to have been accepted by the Full Bench of this Court in *Vidya Bai v. Shanker Lal* (1 supra). On the other hand, it is contended by Sri Ravi Kiran Rao for the respondent-land lord that the question is directly covered by the decision of the Supreme Court in *Padmanabha Setty v. Papiiah Setty* (2 supra) wherein the above said judgment of the Madras High Court in *Thanappa Chetty v. Govindaswami Naicker*, , (3 supra) as been expressly over-ruled. It is pointed out further that the Supreme Court has approved the judgment of the Mysore High Court in *S.G. Narayanappa v. A.N. Narasimhaiah*, (1962) 40 Mys. L.J. 760, and that the language of the relevant provision in the Mysore-Act is identical with the language of the corresponding provision in the Andhra Pradesh Act.
3. Under Section 10 of the A.P. Buildings (Lease Rent and Eviction) Control Act, 1960

(hereinafter called the Act), the landlord is permitted to seek eviction of his tenant in respect of residential as well as non-residential premises on various grounds. One of the grounds for eviction is the bona fide requirement of the landlord. We are not here concerned with the more liberal grounds mentioned in the Act so far as eviction of tenants of residential premises. We are concerned with the special provision for eviction relating to non-residential premises and that too, limited to the ground of bona fide requirement of the landlord. These provisions are contained in Section 10 (3) (a) (iii). The relevant provision so far as it is material reads as follows:-

Section 10 (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 -

(i) in case it is a residential building-

(a)

(b)

(ii) in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use.....

(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 under 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 proposed to commence.."

It will be noticed that there are two parts in Section 10 (3) (a) (iii). The first part deals with a landlord who is already in occupation of a non-residential building of his own, and the second part, deals with a landlord who is merely in occupation of a non-residential premises, "to the possession of which he is entitled under this Act or otherwise".

4. The Full Bench in Vidya Bai v. Shankerlal (1 supra) was concerned with the first part of Section 10 (3) (a) (iii), as to whether a landlord who was occupying a non-residential building of his own was entitled to evict a tenant in occupation of another non-residential building occupied by the tenant. We have called for the records of the case before the Full Bench and we find that that was not a case where the landlord who sought eviction of the tenant was himself a statutory tenant under another landlord. It was a case where the landlord was already conducting business in a non-residential building of his own. Therefore, the Full Bench was concerned only with the first part of the sub-section. In this matter now before us, we are not concerned with the first part of the provision and we may state that we are not disturbing the decision of the Full Bench in Vidya Bai v. Shankerlal (1 supra) in so far as the said Full Bench decision relates to the first part of the sub-section viz., cases of landlords in occupation of their own non-residential building and who are seeking eviction of a tenant of another non-residential building belonging to them. In the present case we are concerned with the latter part of Section 10 (3) (a) (iii) and as to the meaning of the words 'to the possession of which he (landlord) is entitled whether under this Act or otherwise'. It is argued for the petitioner-tenant that the respondent-landlord may not be in occupation of his own non-residential building but inasmuch as he is a statutory tenant of a non-residential building belonging to another person, he can be said to be a person entitled to the possession of the non-residential building of which he is a tenant and the said right is in fact, created under the Act. It is argued that if such right is created under the Act or is even created

under any other law, such a landlord, who is in occupation of a building as a tenant, is still disentitled to seek eviction from his own non-residential building of his tenant.

5. In the Madras case in *Thanappa Chetty v. Govindaswami Naicker* (3 supra) Subba Rao, J. (as he then was) was also dealing with the case of landlord who was having statutory protection of a non-residential building as a tenant and was not the owner thereof. The question arose whether he could seek eviction of his tenant from the non-residential building, under occupation of his tenant. The learned Judge held that inasmuch as the landlord was entitled, as statutory tenant, to remain in possession of the non-residential premises in his occupation, he was debarred from seeking eviction. The said decision of the Madras High Court was cited in a case before the Mysore High Court in *S.G. Narayanappa v. A.N. Narasimhaiah* (4 supra) and was not followed. Thereafter, in another case which went up from the Mysore High Court, namely, *Padmanabha Setty v. Papiiah Setty* (2 supra) the conflict between the Madras view and the Mysore views was resolved by the Supreme Court. There the Supreme Court was dealing with the provisions of Section 8 (3) (a) (ii) of the Mysore House Rent and Accommodation Control Act, 1951 (Mysore Act XXX of 1951). It will be useful to extract the relevant provisions of the Mysore Act and they read as follows :-

Section 8 (3) (a): A landlord may, subject to the provisions of Clause (d) apply to the Court for an order directing the tenant to put the landlord in possession of the house-

(i) in case it is a residential building, if the landlord requires it for his own occupation or for the occupation of a member of his family and if he or such member, as the case may be, is not occupying a residential building of his own in the city, town or village concerned ;

(ii) in case it is a non-residential building, if the landlord requires it for a business which he or a member of his family is carrying on and if for the purposes of the said business is not in occupation of a non-residential building which is owned by or to the possession of which the landlord or such member, as the case may be, is entitled whether under this Act or otherwise".

It is not necessary to set out the Explanation or the first proviso but the second proviso is relevant and runs thus:

"Provided further that where a landlord has obtained possession of a house for his own use or occupation or for the use or occupation of a member of his family under this clause he shall not be entitled to apply again under this clause-

(i)

(ii) for possession of another non-residential building of his own, for himself or for the same member of his family, in case he has obtained possession of a non-residential building".

6. It will be noticed that Section 8(3) (a) (ii) of the Mysore Act is identical in language with Section 10 (3) (a) (iii) of the A.P. Act. Apart from using the words "to the possession of which the landlord is entitled", the Mysore Act also uses the words "whether under this Act or otherwise" found in Section 10 (3) (a) (iii) of the A.P. Act. The Supreme Court upheld the Mysore view and rejected the Madras view. Their Lordships pointed out that the right of statutory tenant to remain in possession is a 'right to stay' in possession and cannot be equated with a 'right to possession'. The relevant observations of the Supreme Court are as follows:-

"In our opinion, with great respect to Subba Rao, J., Ahmed AH Khan, J. (of the Mysore High Court) arrived at the correct conclusion. A tenant who can be evicted under the conditions prescribed in Section 8 (2) of the Act cannot be said, in our view, to be entitled to the possession of the premises of which he is a tenant. No doubt he cannot be evicted

till one or more of the conditions prescribed by the section are fulfilled, but it is difficult to equate his right to stay in the premises till he is evicted to an entitlement of the possession of the premises. Section 8 (3) (a) (ii) deals with two types of cases-first where the landlord is in occupation of a non-residential building which is owned by him and secondly, a non-residential building of which he is in occupation not as a landlord but otherwise. The object of the Act is to prevent unreasonable eviction of tenant. Can it be said that the Legislature is considering it to be unreasonable for a landlord to shift his own premises while he is in occupation of tenanted premises over which he has not an absolute light of possession but only a right to remain in possession till one of the conditions in Section 8 (2) is satisfied and over one of which he has no control?.. In our view, in the context, the words 'entitled to possession have a mere positive content and are more to akin to the right of possession which an owner has in respect of the building owned and occupied by him."

7. We accordingly hold that the landlord here, who is only a statutory tenant, is not debarred from seeking possession of his own non-residential building. It is not incumbent on such a landlord to first vacate the non- residential premises in his occupation as a condition precedent for maintaining an eviction petition in respect of his own non-residential premises in the occupation of his tenant.

8. We are, therefore, of the view that the decision of the Supreme Court is directly in point and is binding on us, and the same continues to hold good so far as the second part of Section 10(3)(a)(iii) of the A.P. Act is concerned.

9. We have read the judgment of the Full Bench in *Vidyabai v. Shankerlal* (1 supra) closely. It is true that the Full Bench said that for the conclusion drawn by it finds support from the judgment of the Madras High Court in *Thanappa Chetty v. Govindaswami Naicker* (3 supra). Assuming that there is something in the said judgment" which can be construed as disentitling a landlord, who is merely a statutory Tenant, from claiming possession of his own premises from a non-residential tenant, we hereby clarify that the Full Bench decision in *Vidyabai v. Shankerlal* (1 supra) is an authority only for the purpose of the first part of Section 10(3)(a)(iii) viz., the word: 'is not occupying a non-residential building in the city, town or village concerned which is his own. The Full Bench decision does not, it is hereby clarified, have any effect on the second part of the section which falls squarely within the scope of the Supreme Court judgment. In fact, that decision of the Supreme Court has been followed in our State right from 1966-see S.D.F. *Raj Seth v. Suleman Khans*¹, rendered by Madhava Reddy, J (as he then was) and *Vijayalakshmi Agencies v. K. Rama Rao*², decided by Seetharam Reddy, J.

10. In the result, we over-rule the objection raised by the petitioner-tenant. The revision petition will now be posted back before the learned single Judge for deciding whether the requirement of the landlord is bona fide and also for deciding whether the other points decided by the lower courts against the petitioner are correct or not. The reference is answered accordingly.

Per Jeevan Reddy, J.,

11. I agree with the order proposed by my learned brother, M. Jagannadha Rao, J. In view of the decision of the Supreme Court in *Padmanabha Seity* case (2 supra) (here is no alternative left to

this Court. However, I feel impelled to make a few observations.

12. The A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, has been enacted to provide, inter alia, for prevention of unreasonable eviction of tenants. Section 10 curtails the landlord's right to terminate the tenancy available to him under the Transfer of Property Act. It specifies the grounds upon which alone eviction can be granted by the Rent Controller. One of the grounds is the need of the landlord. Sub-section (3) of Section 10 deals with this ground. Unlike Sub-section (2) (general grounds of eviction), it makes a distinction between a residential and a non-residential building, in the matter of eviction. In case it is a residential building, the landlord is entitled to eviction of the tenant if he is not occupying a residential building of his own in the city, town, or village concerned, and he requires it for his own occupation. However, in case of a non-residential building (other than a building used for the purpose of keeping a vehicle or adapted for such use) the landlord is entitled to evict the tenant only if he 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, for the purpose of a business which he is carrying on or which he proposes to commence bona fide. It would be appropriate to read the relevant portion of the sub-section:

"10(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-

(i) in case it is a residential building-

(a) if the landlord is not occupying a residential building of his own in the city, town or village concerned and he requires it for his own occupation;

(b) if the landlord who has more buildings than one in the city, town or village concerned is in occupation of one such building and he bona fide requires another building instead for his own occupation;

(ii) in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord requires it for his own use and if he is not occupying any such 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;

(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 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 :

xxx

xxx

xxx

Provided further that where a landlord has obtained possession of a building under this clause he shall not be entitled to apply again under this clause -

(i) in case he has obtained possession of a residential building, for possession of another residential building of his own;

(ii) in case he has obtained possession of a non-residential building for possession of another non-residential building of his own.....

13. It is worth noticing that while in the case of residential building, it is enough if the landlord is not occupying a residential building of his own in the city, town or village concerned, in case of a non-residential building | the Act stipulates an additional requirement, viz., the landlord should not also be occupying a non-residential building to the possession of which he is entitled whether under this Act, or otherwise. Surely, the words "to the possession of which he is entitled whether under this Act or otherwise" must carry a meaning different and distinct from the preceding words "a non-residential building.....which is his own". Now, the only possession to which a person is entitled under this Act in respect of a building which is not his own is the possession secured to him by the Act. Evidently for this reason, identical words occurring in the Madras Act were construed by the Madras High Court (3 supra) as referring to statutory tenancy. It was held that where a landlord is in occupation of a non-residential building as a statutory tenant, he is precluded from applying for eviction of the tenant in a non-residential building owned by him. But this decision was clearly overruled by the Supreme Court in Padmanabha setty case (2 supra) wherein the Court held that possession of a statutory tenant is not the possession contemplated by the words "to the possession of which he is entitled under this Act". The possession of a statutory tenant is treated as a mere right to remain in possession till one or more of the conditions for eviction prescribed by the Act are satisfied. The decision in Padmanabha Setty was rendered as far back as 1966. The Mysore, Madras, and Andhra Acts employ identical language in this behalf. Yet, the A.P. Legislature has not thought it fit to clarify that the said words mean something different than what the Supreme Court has said, though the interpretation placed by the Supreme Court practically makes both the expressions occurring in the said sub-clause mean the same thing-thus doing away the distinction between residential and non-residential buildings, made by the Act in this behalf.

14. There is, however, one aspect which deserves mention. The possession of a statutory tenant cannot be likened to the possession of an owner. His possession is a precarious one. He may lose that possession for no fault of his, viz., where the landlord requires the premises for his, own occupation. (So far as the other grounds of eviction are concerned they all relate to his default, or his illegal acts, like subletting, conversion of use, causing damage, etc. The tenant cannot blame anyone except himself if he renders himself liable for eviction by his own acts and defaults) It is in this sense that his possession is a precarious one. Even so, that is the possession secured to the tenant by the Act. Be that as it may, the words "to the possession of which he is entitled under this Act" ought to mean something different than the preceding words "a non-residential building which is his own". This is certainly a situation which calls for the attention of the A.P. Legislature, if indeed it meant that the words "to the possession of which he is entitled under this Act" should carry a meaning different and distinct from the preceding words. Or it may clarify, what precisely these words mean. In this context, the practical difficulty that may arise from affirming the Madras High Court view may also have to be taken into account. But, so far as this Court is concerned, we have no other option except to follow the dicta of the Supreme Court implicitly. Per Syed Shah Mohammed Quadri, J.

15. I agree with the judgment delivered just now by my learned brother, Jagannadha Rao, J. The judgment of the Full Bench in Vidya Bai v. Shanker Lal (1 supra) was concerned with and dealt with only the first part of Section 10(3)(a)(iii) i.e., that the landlord not occupying a non-residential building in the city, town or village concerned, which is his own; but not with the second part i.e., the landlord not occupying a non-residential building in the city, town or village

concerned to the possession of which he is entitled whether under the Act or otherwise. The observation of the Full Bench that the view it had taken was supported by the judgment of the Madras High Court in *Thanappa Chetty v. Govindaswami Naicker* (3 supra), cannot be understood to mean that the Full Bench had expressed itself on the second part of Section 10(3)(a)(iii), namely, a landlord who is entitled to possession of any non-residential building whether under the Act or otherwise to have laid down law different from what is held by the Supreme Court in *Padmanabha Setty v. Papiiah Setty*. I also endorse the concurring opinion expressed by my learned brother Jeevan Reddy, J. on the interpretation of Section 10(3)(a)(iii) of the Act.

Cases Referred.

11972 (11) APLJ 301

21980 (1) An.W.R. 278