

A DUGGI VEERA VENKATA GOPALA SATYANARAYANA
v.
SAKALA VEERA RAGHAIAH & ANR.

DECEMBER 19, 1986

B [RANGANATH MISRA AND MURARI MOHON DUTT, JJ.]

Andhra Pradesh Buildings, (Lease, Rent and Eviction) Control Act, 1960, s.10(3)(a)(iii)—Non-residential building—Eviction of tenant on the ground of Landlord's own occupation—Facts to be pleaded in petition and proved at the trial.

C The respondents filed an eviction petition against the appellant-tenant in respect of a shop-room under s.10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, rent and eviction) Control Act 1960 on the ground of bona fide requirement for starting a business in readymade garments. The Rent Controller, passed the eviction order against the appellant holding that the respondents required the suit shop for their personal occupation. The Appellate Authority as well as the High Court affirmed the findings of the Rent Controller in the appeal and revision respectively.

E In appeal to this Court by the appellant-tenant, it was contended for the first time that since there was no averment of the facts constituting the grounds or conditions of eviction as contained in sub-s. (3)(a)(iii) of s.10 of the Act, the courts below were not justified in passing the order of eviction against the appellant.

F Dismissing the appeal,

G HELD: 1. Under the law of pleadings facts mentioned in sub-cl.(iii) of s.10(3)(a) of the Act are to be pleaded in the petition and thereafter proved at the trial for the purpose of an order of eviction against the tenant. Further, any amount of proof offered without appropriate pleading is generally of no relevance. Therefore, the landlord has to plead and establish (i) that he bona fide requires the accommodation let to the tenant for non-residential purposes for the purpose of continuing or starting the business; and (ii) that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or the town concerned. [677H; 678A-B]

H *Hasmat Rai v. Raghunath Prasad*, [1981] 3 SCR 601, relied upon,

2. The point regarding absence of any averment of the facts constituting the grounds or conditions of eviction as contained in sub-s.(3)(a)(iii) of s.10 of the Act was not taken in any of the courts below nor has it been taken in the Special Leave Petition. For the first time, it has been raised in the argument. Therefore, there is no justification to interfere with the order of eviction. [679D]

In the instant case, the respondents did not suppress any fact at the trial and disclosed the non-residential buildings owned by the respondent no. 1 but not in their occupation. Indeed it is the case of the respondents that the disputed shop-room is centrally located in the heart of Guntur city in a business locality, that there are a number of readymade garment shops in that locality, and that the disputed shop-room is the best place for commencing such a business. It has also been observed by the High Court that the respondents have come forward with a clean and clear case and with reasons as to why they chose the disputed shop-room for the proposed business to be commenced by the respondent No. 2. Moreover, it is not the case of the appellant that if he is given an opportunity to adduce further evidence after amendment of pleadings, he would be able to furnish any new material showing that the respondents are occupying any non-residential building suitable for commencing the proposed business therein and, as such, they are not entitled to an order for eviction. In view of the aforesaid facts also, the appeal is liable to be dismissed. [678E-H]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2714 of 1984.

From the Judgment and Order dated 24.2.1984 of the High Court of Andhra Pradesh at Hyderabad in Civil Revision Petition No. 2053 of 1981.

T. V.S.N. Chari for the Appellant.

Govind Mukhoty, P.K. Gupta and K.V. Upendra Gupta for the Respondents.

The Judgment of the Court was delivered by

DUTT, J. This appeal by special leave is directed against the judgment of the Andhra Pradesh High Court dismissing the revision petition of the appellant against the order of the Subordinate Judge, Guntur, whereby he affirmed the order of the Rent Controller,

A Guntur, directing the eviction of the appellant from the disputed shop-room.

B The respondents Nos. 1 and 2 are respectively the father and son. The respondents filed a petition under section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, hereinafter referred to as 'the Act', before the Rent Controller, Guntur, praying for an order of eviction against the appellant from the disputed shop-room on the ground that it was bona fide required for the respondent No.2, who had passed the B.Com. examination, and would start a business in readymade garments in the disputed shop-room. The petition was contested by the appellant. It was inter alia denied by the appellant that the shop-room was bona fide required by the respondents as alleged.

C The learned Rent Controller after considering the evidence adduced by the parties passed the eviction order against the appellant holding, inter alia, as follows:—

D “Thus, after careful scrutiny of the entire evidence I had no two minds in coming to the conclusion that the petitioners required the suit shop for their personal occupation, namely, for the business of P.W.2. I find there is an element of need and it is a bona fide one and not actuated by any oblique motive. I find there is absolute necessity for P.W.2 to have his business in the suit shop. Thus, I find the petitioners had brought home the point in their favour. I find that there are valid grounds to order eviction of the respondent.”

E F Being aggrieved by the said order of the learned Rent Controller, the appellants preferred an appeal to the Subordinate Judge, Guntur, who, however, affirmed the findings of the learned Rent controller and dismissed the appeal. The appellant preferred a revision petition under section 21 of the Act before the High Court of Andhra Pradesh against the order of the learned Subordinate Judge. As stated already, the High Court dismissed the revision petition. Hence, this appeal by special leave.

G H The only point that has been urged on behalf of the appellant is that in the absence of any averment of the facts constituting the grounds or conditions of eviction, as contained in sub-section(3)(a)(iii) of section 10 of the Act, the courts below were not justified in passing

the order of eviction against the appellant. Sub-section(3)(a)(iii) provides as follows:— A

“(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:— B

.....
.....
(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— C

(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.” D

[The provisos are not relevant for our purpose and, as such, they are omitted.] E

The conditions which are necessary to be fulfilled for the purpose of getting an order of eviction under sub-clause (iii) are:—

- (1) The building is a non-residential building.
- (2) The landlord is not occupying a non-residential building in the city, town or village concerned, either belonging to him or to the possession of which he is entitled under the Act or otherwise. F
- (3) Either he requires the building for the purpose of business which he is carrying on or he bona fide proposes to commence a business. C

There can be no doubt that under the law of pleadings facts mentioned in sub-clause (iii) are to be pleaded in the petition and thereafter proved at the trial for the purpose of an order of eviction against the tenant. In a decision of this Court in *Hasmat Rai v.* H.

A *Raghunath Prasad*, [1981] 3 SCR 605, it has been observed by Desai, J. that in order to obtain an order of eviction of a tenant under section 12(1)(m) of Madhya Pradesh Accommodation Control Act, 1961, the landlord has to plead and establish (i) that he bona fide requires the accommodation let to the tenant for non-residential purposes for the purpose of continuing or starting his business; and (ii) that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or the town concerned. Further, it has been observed that any amount of proof offered without appropriate pleading is generally of no relevance. We respectfully agree with the above statement of law and reiterate the same. We are, however, not inclined to interfere with the impugned order of eviction in the instant case for the reasons stated hereinafter.

C
The point was not taken in any of the courts below, nor has it been taken in the special leave petition. For the first time, it has been raised in the argument before us. Mr. P.P. Rao, learned counsel appearing on behalf of the appellant, has produced before us a copy of the memorandum of Civil Revision Petition that was filed in the High Court. We do not, however, find that the point has been specifically taken in the grounds of revision. It is not disputed that the point was not also argued before the High Court.

E It is true that all the ingredients of sub-section(3)(a)(iii) of section 10 have not been pleaded in the petition for eviction. The respondents have only pleaded their bona fide requirement of the disputed shop-room for the purpose of commencing a business therein. There is no pleading that the respondents are not occupying any non-residential building in the city, town or village concerned either belonging to them or to the possession of which they are entitled under the Act.

F The respondents, however, did not suppress any fact at the trial and disclosed the non-residential buildings owned by the respondent No. 1, but not in their occupation. It has also been observed by the High Court that the respondents have come forward with a clean and clear case and with reasons as to why they chose the disputed shop-room for the proposed business to be commenced by the respondent No. 2.

G Even if we set aside the eviction order and send the case back on remand to the Rent Controller allowing the parties to amend the pleadings and to adduce further evidence, it will be a futile exercise inasmuch as all the materials are already on record. It is not the case of the appellant that if he is given an opportunity to adduce further evidence after amendment of pleadings, he would be able to furnish

H any new material showing that the respondents are occupying any

non-residential building suitable for commencing the proposed business therein and, as such, they are not entitled to an order for eviction. It is also not in dispute that the other non-residential buildings belonging to the respondent No. 1 are in occupation of tenants. The principal contention of the appellant before the courts below was that the respondents had no reasonable justification for choosing the disputed shop-room for the purpose of commencing a business therein for the respondent No. 2. This contention has been overruled by the courts below and also by the High Court inasmuch as the respondents had given sufficient reasons for selecting the disputed shop-room for the purpose of commencing a business in readymade garments. Indeed, it is the case of the respondents that the disputed shop-room is centrally located in the heart of Guntur city in a business locality, that there are a number of readymade garment shops in that locality, and that the disputed shop-room is the best place for commencing such a business.

In view of the facts stated above, particularly of the fact that the point was not raised at any stage of the proceedings, we do not think that we shall be justified in interfering with the order of eviction.

For the reasons aforesaid, the appeal is dismissed. There will, however, be no order as to costs.

We, however, direct that the order for eviction of the appellant from the disputed shop-room shall not be executed till March 31, 1988 provided the appellant gives an undertaking to this Court in writing within four weeks from date that he will vacate and deliver up vacant and peaceful possession of the disputed shop-room on or before March 31, 1988 and regularly keep paying the respondents monthly damages calculated at the rate of rent for use and occupation in the meanwhile.

M.L.A.

Appeal dismissed.