M/S RAWALMAL NARAINDAS AND SONS

*v.*

B. AMARNATH AND ANR.

APRIL 8, 1999

[S. SAGHIR AHMAD AND R.P. SETHI, JJ.]

*Rent Control & Eviction :*

*A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 :*

*Eviction of tenant occupying a unit in a "building"—Held, continued to be a separate entity for the purpose of eviction—A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, Sections 10(3)(a)(iii) and 10(3)(c) and 2(iii).*

*Section 2(iii)—"Building"—May not be an indivisible single unit—Such separate unit has to be treated separately for the purpose of eviction..*

*Section 13—Conversion of building into nonresidential—Contention of appellant-tenant that the conversion of the building was contrary to Section 18 and disentitled the landlord from seeking eviction—Held, such plea was more hypothetical than real—Moreover this plea was not raised before the courts below.*

*Section 10(3)(a)(iii)—Bona fide requirement of landlord—Landlord needed additional accommodation in the same building for commercial purpose—Landlord entitled to an order of eviction whether he uses the premises for residential or non-residential purposes.*

*Words and Phrases—Word "building"—Meaning of—In the context of Section 2(iii) of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960.*

**Appellant-firm was granted lease in a unit on the ground floor of a building. Respondent No. 1, a co-owner filed a suit for eviction of the appellant before the Rent Controller on the ground of his bone fide requirement as he had decided to commence business. The eviction was allowed by the Rent Controller and confirmed by the appellate court and the High Court in revision. Hence this appeal.**

A It was contended by the appellant that respondent-landlord was not justified in invoking the provision of Section 10(3)(a)(iii) of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 as provision of Section 10(3)(c) was applicable and that conversion of the building was contrary to Section 18 of the Act.

B Dismissing the Appeal, this Court

HELD : 1. The building or part of the building as leased out has to be deemed to be a "building" for the purpose of eviction proceedings and a part of the building cannot be permitted to be a part of the whole building. The building, a unit with a separate door number on the ground floor which was C 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 A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. 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 D Rent Controller for an order directing the tenant to put him in possession thereof, if he requires additional accommodation for residential purpose 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 sub-section (3) of Section 10 of the Act has to be understood in the context of the definition of the word E "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". [527-E-H]

F 2. The plea that the conversion of the building being contrary to Section 18 of the Act, disentitled the landlord to seek eviction is more hypothetical than real. No such plea was raised before the courts below. [528-B]

*Vinod Kumar Arora* v. *Surjit Kaur,* [1987] 3 SCC 711 and *Shri* G *Balaganesan Chetty & Ors.,* [1987] 2 SCR 1173, distinguished.

3. If a landlord satisfies the Rent Controller that he wanted additional accommodation in the same building for his residential or non-residential requirements, then not withstanding the user to which the tenant was putting in the leased portion, the landlord was entitled to an order of eviction so that H he could re-adjust additional accommodation in the manner sought for should

**be used by the landlord for the same purpose for which the tenant sought to be evicted was using it. [529-E-F]** A

*K. Parasuramaih* v. *Laksmamma,* **AIR (1965) SC A.P. 220, approved.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2159 of 1999.

B

From the Judgment and Order dated 4.8.98 of the Andhra Pradesh High Court in C.R.P. No. 2169 of 1994.

P.S. Mishra, Mrs. Swarupa Reddy, Chandra Shekhar, Vishnu Sharma, Mrs. Upasana Dubey and Anil Kumar Tandale for the Appellant.

C

L. Nageswara Rao and R. Santhana Krishnan for the Respondents.

The Judgment of the Court was delivered by

**SETHI, J.** Leave granted.

D

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 E 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 begin 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.

F

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 G 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 begin in occupation of another H

A 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 B 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 C referring to the evidence 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 D 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, E 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 F 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) M.L.J. 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 G 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 manufactures. In the Division Bench decision of our own High Court reported in *P. Venkatarkrishna Rao* v. *Dr. B. Seetaram,* (1989) 3 A.L.T. 284 it is H 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."

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, a 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 widerned 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

A 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.

Shri Mishra has also tried to persuade us to hold that the conversion B 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 relevance 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] C 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 D 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 E enure to his aid in the case". Similarly, the reliance of the learned counsel for the appellant on the judgement of this Court in *Shri Balaganesan Metals* v. *Shri M.N. Shanmugham Chetty and Ors.*, [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 F praying for eviction of the tenant of 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 parimateria with Section 10(3) (c) of the Act. In that case, there was not 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 :-

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> "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 H 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. *Lakshmamma,* AIR (1965) A.P. 220 wherein it was held that if a landlord satisfied 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 to 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.

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.

We, however, find that as the appellant have been in possession of the leased premises for over a period of three decades, some time is required to

A the given to them for making alternative arrangements. While dismissing the civil appeal, were 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
B 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.

R.K.S. Appeal dismissed.