

SMT. G. KAUSHALYA DEVI

v.

GHANSHYAMDAS

JANUARY 12, 2000

[S. SAGIR AHMED AND D.P. WADHWA, JJ.]

Rent Control & Eviction :

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960—Section 10(3)(a)(iii)—Bonafide requirement of Landlord "to the possession of which he is entitled"—Connotation of—Held: does not include possession otherwise than as owner.

The respondent landlord filed an eviction petition against the appellant tenant under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 on the ground of wilful default in payment of rent, *bonafide* requirement for personal occupation and that the tenant had secured alternative accommodation. The suit premises was non-residential.

Before the Rent Controller, the ground of securing alternative accommodation was not pressed. The Rent Controller held that there was default in payment of rent, and that the premises was required *bonafide* by the landlord for conducting his business, and accordingly ordered eviction. On appeal by the tenant the Appellate Authority affirmed the findings of the Rent Controller and upheld the eviction order. On revision, the High Court under Section 22 of the Act, held that there was no wilful default in the payment of rent by the tenant, but concurred with the findings of both the courts below on the ground of *bonafide* requirement of the landlord, and dismissed the revision petition.

In appeal to this Court it was contended on behalf of the tenant that the order of eviction of the tenant on the ground of *bonafide* requirement of the landlord was bad in law as it was contrary to the provisions of Section 10(3)(a)(iii) as the landlord was already in occupation of certain shop premises though on lease, in the same city where he was running his business in partnership. Under Section 10(3)(a)(iii) it was immaterial whether the landlord was in possession of the premises as tenant or

A otherwise.

Dismissing the Appeal, this Court

B HELD : 1. The provisions of Section 10(3)(a)(iii) of the A.P. Rent Control Act are in *pari materia* with the provisions of Section 8(3)(a)(ii) of the Mysore Rent and Accommodation Control Act, 1951. The expression "to the possession which he is entitled" is found in the said provision in the Mysore Act and was the subject matter of interpretation by the Constitution Bench in *M. Padmanabha Setty's* case wherein it was held that the words "entitled to possession" have a more positive content and are more akin to the right of possession which an owner has in respect of the building owned and occupied by him. [197-C-E; 199-A-B]

C *M. Padmanabha Setty v. K.P. Papiiah Setty*, [1966] 3 SCR 868 relied on.

D 2. The contention of the appellant that since the respondent is already having his business in a leased premises of which he is in possession, he cannot seek eviction of the appellant, cannot be accepted. [199-B-C]

E 3. The High Court upheld the findings of the courts below that the respondent required the suit premises for his personal occupation for conducting his business and that these findings were neither perverse nor based on any extraneous or irrelevant material. [199-D-E]

F 4. The High Court was also of the view that the Act did not prohibit eviction of the tenant by the landlord if the members of the family of the landlord possessed other non-residential premises. Even though the respondent and his brothers were conducting business on partnership basis yet it was no ground that the requirement of respondent is not *bonafide*. [199-E-F]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 194 of 2000.

From the Judgment and Order dated 5.11.99 of the Andhra Pradesh High Court in C.R.P. No. 1906 of 1999.

H Dhruv Mehta, Ms. Shobha, Srinivas Rao, S.K. Mehta for the Appellant.

F.S. Nariman, Krishna Mandwal, P. Venugopal, P.S. Sudheer and K.J. John and M/s. K.J. John & Co. for the Respondent. A

The Judgment of the Court was delivered by

D.P. WADHWA, J. Leave granted. B

Appellant is a tenant. His eviction from suit premises has been affirmed by the High Court in revision filed by him. Feeling aggrieved, he has filed this appeal.

Respondent-landlord filed eviction petition against the appellant under the provisions of Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960 (for short, the 'Act') on three grounds, namely, (1) willful default in payment of rent; (2) *bona fide* requirement for personal occupation; and (3) the tenant does not require the premises as he had secured alternative accommodation. Premises are non-residential. During the course of proceedings before the Rent Controller, the ground of securing alternative accommodation was not pressed. Rent Controller held that there was default in payment of rent and also that the premises were required *bona fide* by the landlord for conducting his business. He ordered eviction of the appellant. The Appellate Authority under the Act affirmed the findings of the Rent Controller upholding the eviction of the appellant. Against that order, the appellant filed revision in the High Court under Section 22 of the Act. High Court by the impugned judgment was of the view that there was no willful default in payment of rent by the appellant and on that finding order of eviction on that ground was set aside. On the remaining ground of *bona fide* requirement of the landlord, High Court concurred with the findings of both the courts. This finding has been assailed before us by the Appellant. C D E F

Mr. Dhruv Mehta, learned counsel appearing for the appellant, submitted that the order of eviction of the appellant on the ground of *bona fide* requirement of the landlord was bad in law as it was contrary to the provisions of sub-clause (iii) of clause (a) of sub-section (3) of Section 10 of the Act. He said the landlord was already in occupation of certain shop premises, though on lease, in the same city where he was running his business in partnership. It was, therefore, submitted that the landlord was thus entitled to remain in possession of the shop premises. Section 10(3)(a)(iii) of the Act provides for eviction of the tenant when it is found G H

A that the landlord requires the building whether residential or non-residential for his own occupation. This section, in relevant part, we set out as under :

10. Eviction of tenants : (1).....

B (2)

(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 --

C (i)

(ii)

D (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

E (b) for the purpose of a business which in the opinion of the Controller, the landlord *bona fide* proposes to commence :

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument *inter vivos* shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered :

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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 -

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(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.

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(b) to (e) ...

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(4) to (8) ..."

Suit premises were purchased by the respondent-landlord by sale deed dated 4.11.1991 wherein it was provided that respondent was purchasing the premises to provide accommodation for himself for the purpose of carrying on his own independent business. Admittedly respondent was already having an established business dealing in Readymade Garments in the name and style of M/s. Seetha Traders in partnership in the premises which were leased by the partnership. It was thus submitted that since the respondent was already in possession of a non-residential premises in the same very town, ground for eviction as contained in Section 10(3)(a)(iii) of the Act was not available to him. It was submitted that it was immaterial whether the respondent was in possession of the premises as tenant or otherwise. We do not think the expression "to the possession of which he is entitled" would mean possession otherwise than as an owner or in that capacity or having a superior right or under any of the grounds under the Act. The expression "to the possession of which he is entitled" was construed by the Constitution Bench of this Court in *M. Padmanabha Setty v. K.P. Pappiah Setty*, [1966] 3 SCR 868.

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This expression was also found in the Mysore House Rent and Accommodation Control Act, 1951 and was the subject matter of interpretation in the case of *M. Padmanabhai Setty v. K.P. Pappiah Setty*, [1966] 3 SCR 868. In that case, landlord filed an application under Section 8(3)(a)(ii) of the Mysore Act for eviction of the tenant on the ground that he required the premises in dispute for his own right and occupation. This section in the Mysore Act is as under :

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"(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 -

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(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 ;

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A (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".....

B "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 -

C (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."

D The Court held :

E "A tenant who can be evicted under the conditions prescribed in s.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 evictions of tenants. Can it be said that the Legislature is considering it to be unreasonable for a landlord to shift to his own premises while he is in occupation of tenanted premises over which he has not an absolute right of possession but only a right to remain in possession till one of the conditions in s.8(2) is satisfied, and over one of which he has no control. For instance, the landlord may require the premises for repairs or reconstruction or the neighbours may complain that the tenant is guilty of nuisance or annoyance, or the landlord may think that the tenant has committed some acts of

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waste as are likely to impair materially the value or utility of the house. If any of these conditions is proved, he is liable to be evicted. In our view, in the context the words "entitled to possession" have a more positive content and are more akin to the right of possession which an owner has in respect of the building owned and occupied by him."

It will be seen that provisions of Section 8(3)(a)(ii) of the Mysore Act are quite in *pari materia* with the provisions of Section 10(3)(a)(iii) of the Act. We, therefore, cannot accept the contention of the appellant that since the respondent is already having his business in a leased premises of which he is in possession, he cannot seek eviction of the appellant. It is not disputed that other conditions of Section 10(3)(a)(iii) are satisfied in favour of the landlord. A contention was also raised that another shop had been purchased by the mother of the respondent with the amount loaned by the respondent and that on that ground it could also be said that the respondent was entitled to possession of that shop as well. This contention has been repelled by the High Court and rightly so. High Court upheld the finding of the courts below that the respondent required the suit premises for his personal occupation for conducting the business and that these findings were neither perverse or based on any extraneous or irrelevant material. High Court was also of the view that the Act did not prohibit eviction of the tenant by the landlord if the members of the family of the landlord possessed other non-residential premises. Even though the respondent and his brothers were conducting business on partnership basis in M/s. Seetha Traders, yet it was no ground to contend that the requirements of respondent is not *bona fide*. We agree. No other submission has been made before us to take any different view other than that taken by the High Court.

We, therefore, dismiss this appeal. However, with the consent of both the parties, we grant time up to October 31, 2000 for the appellant to vacate the suit premises on his filing of a usual undertaking within four weeks from today. There will be no order as to costs.

P.K.S.

Appeal dismissed.