

IN THE S U P R E M E C O U R T O F I N D I A

C I V I L A P P E L L A T E J U R I S D I C T I O N

C I V I L A P P E A L N O . 8 4 9 O F 2 0 0 2

Gula b Cha n d Pu k h r a j .. Appell a n t

Ver s u s

R.B. Ji ne n de r Raj & Anot h e r .. Respon de n t s

J U D G M E N T

Dalvee r Bhan d a r i, J.

1. This appeal is directe d again s t the judg m e n t of the High Cour t of And h r a Pra de s h at Hyder a b a d dated 26. 4. 2 0 0 1 delive r e d in Civil Revisio n Peti tion No.4 0 0 9 of 19 9 8 .

2. The shor t quest ion w h ic h arise s for conside r a t i o n in this appeal is - w h e t h e r a co-ow ne r occupy i n g a non- reside n t i a l pre mi se s can seek eviction of a tena n t in posse s si o n of anot h e r non- residen t i a l pre mi se s for his bona fide requi r e m e n t s ?

3. The appella n t is a tena n t of the pre mi s e s beari n g No.7- 2-76 4 situa t e d at Pot Mar ke t, Secu n de r a b a d, And h r a Pra de s h . The respon de n t s are the co-ow ne r s of t w o non- reside n t i a l pre mi se s beari n g Municipal Houses Nos. 7- 2-76 3 and 7-2-76 4 situ a t e d at Pot Mar ke t, Secu n d e r a b a d. The se t w o non- reside n t i a l pre mi s e s fell to thei r sha re by vir t u e of the 'Will' execu te d by thei r fat h e r . The respon de n t landlor d s have been conduc t i n g the busi ne s s in one shop only. The Fir s t respon de n t has been car r y i n g on busine s s of mone y lendin g in a por tion of the pre mi se s 7-2-76 3 and the second respon de n t has been conduc t i n g a busi ne s s in je we lle r y in the rem a i ni n g por tion of the sa me shop. It w a s the case of the second respon de n t tha t he requi r e d the pre mi s e s (shop) in quest ion fro m the tena n t for sta r t i n g the busi ne s s exclu si v el y for je we lle r y in a

separate shop.

4. The respondent landlords filed a claim petition before the Rent Controller in R.C. No.231 of 1994 under section 10(3)(a)(iii) of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 [hereinafter referred to as "the 1960 Act"] seeking eviction of the appellant tenant from the scheduled premises namely 7-2-764 situated at Pot Market, Secunderabad.

5. The appellant contended that the landlords are already in possession of a non-residential premises and, therefore, their petition seeking eviction of another non-residential premises is not maintainable in law.

6. The parties led evidence before the Rent Controller. The Rent Controller after recording the evidence held that the landlords are the joint owners of non-residential premises bearing nos.7-2-763 and 7-2-764. However, the landlords are in possession of only one shop in the premises bearing no.7-2-763. The Rent Controller relying on the decision of the Full Bench of the High Court in Vidya Bai & Another v. Shanker Lal & Another AIR 1988 AP 184 held that since the landlords are already in possession of one non-residential premises, they cannot seek eviction of tenant from another non-residential premises. The petition filed by the respondent landlords was dismissed by an order dated 4.12.1995.

7. The respondent landlords carried the matter in appeal in R.A. No.10 of 1996. The First Appellate Court held that the respondent landlords have proved the bona fide requirement for starting business in jewellery and also held that respondent is a co-owner and not an exclusive owner and hence not entitled to maintain application for eviction of another residential premises. The First Appellate Court allowed the

appeal and set aside the order of the Rent Controller.

8. The appellant tenant aggrieved by the order of the First

Appellate Court in RA No.10 of 1996 preferred a Civil Revision Petition No.4009 of 1998 before the High Court.

9. The plea taken by the appellant tenant is that the

respondent landlords are the co-owners of one non-residential

premises and, therefore, they are not entitled to seek eviction of

the appellant tenant occupying another non-residential premises.

The appellant relied on the decision of this court in Super

Forgings & Steels (Sales) Pvt. Ltd. v. Thyabally Rasuljee (1995) 1

SCC 410 and Vidya Bai (supra). On the other hand

respondent landlords placed reliance on Boorgu Jagadeshwaraiiah

& Sons v. Pushpa Trading Co. (1998) 5 SCC 572, according to which

a landlord is not precluded to seek eviction of tenant from any

non-residential building even if he is having another non-

residential building. Reliance has been also placed on Rasi Auto

Stores & Others v. Navin V. Hantodkar & Another (1998) 8 SCC 177

and Om Prakash v. Basanthilal (1999) 9 SCC 618.

10. The issue that arises for consideration is - whether under

section 10(3)(a)(iii) of the 1960 Act, the co-owner can be treated

as owner of the premises and whether he is entitled to seek

eviction of tenant from another non-residential premises?

11. For proper appreciation of law, it is necessary to set out section 10(3)(a) of the 1960 Act as under:

"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) & (ii) x x x x x

(iii) in case it is any other non-residential building, if the landlord is not occupying a non-

reside n t i a l buildi ng in the city, to w n or village
conce r n e d w h i c h i s h i s o w n o r t o t h e p o s s e s s i o n
o f w h i c h h e i s e n t i t l e d w h e t h e r u n d e r t h i s A c t
o r o t h e r w i s e-

- a) for the pur po se of a busine s s w h i c h h e i s
car r y i n g o n, o n t h e d a t e o f t h e a p p l i c a t i o n,
o r
- b) for the pur po se of a busi ne s s w h i c h i n t h e
o p i n i o n o f t h e C o n t r o l l e r, t h e l a n d l o r d
b o n a f i d e p r o p o s e s t o c o m m e n c e."

12. In J. Pand u v. R. Nars u b a i (1 9 8 7) 1 S C C 5 7 3, t h i s c o u r t h e l d
t h a t a l a n d l o r d, n o t w i t h s t a n d i n g h i s o c c u p a t i o n o f a n o n -
r e s i d e n t i a l b u i l d i n g, c a n s t i l l s e e k e v i c t i o n o f h i s t e n a n t f r o m h i s
b u s i n e s s p r e m i s e s i f t h e l a n d l o r d i s a b l e t o s a t i s f y t h a t t h e n o n -
r e s i d e n t i a l b u i l d i n g o c c u p i e d b y h i m i s n o t s u f f i c i e n t a n d s u i t a b l e
f o r t h e p u r p o s e o f e x p a n s i o n o f h i s b u s i n e s s o r f o r t h e p u r p o s e o f
a n e w b u s i n e s s w h i c h h e b o n a f i d e p r o p o s e s t o c o m m e n c e o r t h a t
t h e s h i f t i n g o f h i s b u s i n e s s h a s b e c o m e i n e v i t a b l e. T h i s C o u r t h a s
t a k e n t h e s a m e v i e w i n S a r o j K u m a r D a s (D r .) v. A r j u n P r a s a d
J o g a n i (1 9 8 7) 4 S C C 2 6 2.

13. I t m a y b e p e r t i n e n t t o m e n t i o n t h a t t h i s c o u r t i n D. D e v a j i
v. K. S u d a r a s h a n a R a o 1 9 9 4 S u p p. (1) S C C 7 2 9 h a d a n o c c a s i o n t o
d e a l w i t h s e c t i o n 1 0 (3) (a) (i i i) o f t h e 1 9 6 0 A c t. I n t h a t c a s e, t h i s
c o u r t t o o k a c o n t r a r y v i e w a n d c a t e g o r i c a l l y h e l d t h a t a l a n d l o r d
i n p o s s e s s i o n o f o t h e r n o n - r e s i d e n t i a l b u i l d i n g s i s n o t e n t i t l e d t o
e v i c t t e n a n t f r o m a n o n - r e s i d e n t i a l b u i l d i n g.

14. O b v i o u s l y, t h e r e i s c l e a r c o n f l i c t o f o p i n i o n s o f t h i s c o u r t i n
t h e a f o r e m e n t i o n e d c a s e s. I n B o o r g u J a g a d e s h w a r a i a h & S o n s
(s u p r a), a t h r e e - J u d g e B e n c h o f t h i s c o u r t e x a m i n e d a l l t h e s e
t h r e e d e c i s i o n s g i v e n i n D. D e v a j i (s u p r a), D r. S a r o j K u m a r D a s
(s u p r a) a n d J. P a n d u (s u p r a) a n d c a m e t o t h e c o n c l u s i o n t h a t t h e
a s p e c t s o f q u a l i t y, s i z e a n d s u i t a b i l i t y o f t h e b u i l d i n g h a v e b e e n
t o t a l l y p u t o u t o f c o n s i d e r a t i o n . N o n - c o n s i d e r a t i o n o f t h e q u a l i t y,
s i z e a n d s u i t a b i l i t y o f t h e b u i l d i n g w o u l d b e t o f r u s t r a t e t h e
p u r p o s e s o f t h e A c t. T h e C o u r t o b s e r v e d a s u n d e r:

" 5. T h e e x p r e s s i o n " r e a s o n a b l y s u i t a b l e
a c c o m m o d a t i o n " i s t h e p i v o t o f t h e p r o v i s i o n p e r m i t t i n g
t h e c o u r t g o i n g i n t o t h e q u e s t i o n w h e t h e r t h e p r e m i s e s
i n v o l v e d w e r e r e a s o n a b l y s u i t a b l e f o r t h e p u r p o s e. I t i s o n

that count that Dr Saroj Kumar Das case was decided by making the following observation :

"So far as the law on the question is concerned it is well settled that the alternative accommodation must be reasonably suitable and if it is not so then mere availability of alternative accommodation will not be a ground to refuse a decree for eviction if otherwise the courts are satisfied about the genuine requirement of the landlord and to this counsel for both the parties also agreed but the main contention was that on the facts appearing in evidence in this case whether the inference could be drawn that the flat on the third floor in South Calcutta was reasonably suitable to satisfy the need of the appellant-landlord."

6. J. Pandu case is closer being one under Section 10(3)(a)(iii) of the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960 which we are examining. That case apparently was decided on its own facts as would be evident from the findings culled therefrom :

"The fact that the respondent has been using the entire house purchased in 1970 i.e. including the 'malgis' for residential purposes and that the respondent is forced to run the family businesses in a rented premises in the same locality where the lease premises are situated have weighed with the Rent Controller and the appellate authority to concurrently hold that the respondent's requirement of the building is undoubtedly bona fide. The findings have been sustained by the High Court as well. We cannot, therefore, accept the argument of Mr. Subba Rao that the order of eviction passed by the courts below and affirmed by the High Court is vitiated because of the ownership of four 'malgis' by the respondent. The 'malgis' have ceased to be non-residential premises from 1970 onwards and hence their mere ownership cannot preclude the respondent from seeking the eviction of the appellant under Section 10(3)(a)(iii)."

7. It, thus, becomes evident that there is no conflict as such between the said decisions and they have gone on in the context of their own facts and the provisions of law. Even so, the argument of the appellant's learned counsel carries weight that the intention of the legislature in D. Devaji case has been substantially put in an extremely narrow and literal construction on the provision. It has been observed therein as under: (SCC p. 732, para 4)

"The landlord should not be in possession of another non-residential building or of which he is entitled to be in possession in the city, town or village concerned. The intention of the legislature the reply is clear that a landlord who is in occupation of a non-residential building which is his own or to the possession of which he is entitled under the Act or any other law should not be permitted to recover possession of another non-residential building belonging to him by evicting the tenants therefrom."

8. The aspects of quality, size and suitability of the building have been totally put out of consideration. We

think this would frustrate the purposes of the Act. Here was a claim set up by the landlord that the non-residential premises he owned did not serve the purpose of his need of setting up a textile and cloth business and that the need could only be met in seeking eviction of the tenant from the premises sought. As we view it there is no difficulty in D. Devaji case standing in the way of the landlord-appellant to have the issue examined from the point of view which would carry out the purposes of the Act. We refrain from mentioning any facts on the basis of which the landlord's claim is based lest the manner they are recounted cause prejudice to either of the parties."

15. In *Boorgu Jagadeshwaraiiah & Sons (supra)*, this court was clearly of the opinion that the aspects of quality, size and suitability of the building cannot be out of consideration and doing so would be to frustrate the purposes of the Act. In the said case, the court remitted the matter to the High Court for considering the objection of the tenant as to the claim of the landlord.

16. The three-Judge Bench decision in *Boorgu Jagadeshwaraiiah & Sons (supra)* seems to be a reasonable view and of course is binding on us.

17. Consequently, we allow the appeal and set aside the impugned judgment and remit the matter to the Rent Controller for considering the objection of the tenant as well as the claim of the landlords. The Rent Controller may permit the parties to lead additional evidence.

18. In the facts and circumstances of this case, we deem it appropriate to request the concerned Rent Controller to decide the case as expeditiously as possible. We direct the parties to bear their own costs.

.....J.
(Dalveer Bhandari)

.....J.
(Harjit Singh Bedi)

IT EM NO.1 B
(Fo r J u d g m e n t)

COUR T NO.6

S E C T I O N XII A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

C I V I L A P P E A L NO. 84 9 OF 20 0 2

GUL A B CHA N D PU K H R A J
V E R S U S

Appell a n t (s)

R.B. J I N E N D E R RA J A N D A N R .

Respo n d e n t (s)

Date: 27/0 8/ 2 0 0 9

This mat t e r w a s called on for pronou n c e m e n t
of judg m e n t toda y.

For Appell a n t (s)

Mr. A. Ven a y a g a m Bala n, A d v .

For Respo n d e n t (s)

Mr. A. Su bb a Rao, A d v .
Mr. Nai k H.K., A d v .

Hon'ble Mr. J u s t i c e Dalvee r Bhan d a r i pronou n c e d
the judg m e n t of the Bench comp r i s i n g of his Lord s h i p
and Hon'ble Mr. J u s t i c e Harji t Sing h Bedi.

The imp u g n e d judg m e n t is set aside, the mat t e r is
remi t t e d to the Ren t Con t r o l l e r for consider i n g
the
the
the
objectio n of the tena n t as well as the clai m of
landlo r d s and the appeal is allo w e d in ter m s of the signed
judg m e n t . The par tie s are directed to bear thei r
ow n
costs.

(A. S . BISH T)
COUR T MAS T E R

(Repo r t a b l e signed judg m e n t is placed on the file)

(N E E R U BA L A VI J)
COUR T MAS T E R