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N. ESWARI

v.

K.SWARAJYA LAKSHMI

(Civil Appeal No. 6261 of 2009)

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SEPTEMBER 15, 2009

[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

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Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 – s.10(3)(a)(i)(a) r/w s.10(2)(i) – Eviction petition on the ground of bonafide requirement and default in payment of rent – Rejection of by Rent Controller and appellate authority – Revision Petition – High Court set aside findings of courts below – On appeal, held : High Court in exercise of its revisional jurisdiction, not justified in interfering with concurrent finding of fact – Findings by Rent Controller and appellate authority are not perverse and arbitrary.

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Respondent/Land lady filed an application for eviction of the rented premises, against the appellant/tenant on the ground of *bonafide* requirement and default in payment of rent. Rent Controller rejected the application. Appellate Authority confirmed the order of Rent Controller. High Court in exercise of its revisional jurisdiction set aside the orders of courts below. Hence the present appeal.

Allowing the appeal, the Court

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HELD: The Rent Controller and the appellate authority had considered the entire materials on record and the arguments adduced by the parties and came to a finding that the requirement of the landlady/respondent was not genuine and there was no need to leave her permanent house at *Hyderabad*, where she has been living, to come over to *Vijayawada* to stay alone at the age

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of 70 years without there being anyone to look after her. This finding of fact arrived at by the Rent Controller and the Appellate Authority, cannot be said to be perverse and arbitrary. The High Court was not justified in interfering with such concurrent finding of fact in the exercise of its revisional jurisdiction and come to a different finding on the question of *bonafide* need of the landlady/respondent. The only ground on which the High Court had set aside the concurrent orders of the courts below is that since the landlady was not having any other residential house at *Vijayawada* where she was planning to settle, it must be held that the requirement was *bonafide*. According to the High Court, the landlady/respondent was the best judge for her residential requirement and she can choose any place where she can settle down for various reasons. It is an admitted position that the landlady, who is permanently residing in *Hyderabad* with her family consisting of a son and two daughters and she has got two houses there, only because she has expressed her desire to stay at this old age of 70 years in the tenanted premises, it cannot be said that the requirement of the landlady has been proved to be genuine. [Paras 9, 11, 12, 13 and 14] [503-G-H; 504-A; 505-A-F; 506-B-D]

Smt. Rajbir Kaur and Anr. vs. M/s S. Chokesiri and Co. 1989 (1) SCC 19, relied on.

Case Law Reference:

1989 (1) SCC 19

Relied on

Para 13

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6261 of 2009.

From the Judgment & Order dated 25.11.2008 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Civil Revision Petition No. 4311 of 2006.

A Prabha Swami for the Appellant.

Om Prakash Mishra, KRL Sarma, Ghan Shyam Vasisht
for the Respondent.

B The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. 1. Leave granted.

C 2. We are invited in this appeal to decide whether the High Court was justified, in the facts and circumstances of the present case in its revisional jurisdiction, in re-appreciating the facts and setting aside the order of the Rent Controller, Vijayawada dated 31st of October, 2001 and the order of the Appellate Authority, Vijayawada dated 21st of December, 2005.

D 3. In our view, the High Court was not justified in interfering with the concurrent findings of fact arrived at by the Courts below.

E 4. The appellant is a tenant in respect of the premises in question since 1982. In or about the year 2000, the landlady/ respondent herein filed an application for eviction of the tenant/ appellant under Section 10(3)(a)(i)(a) read with Section 10(2)(i) of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (in short, "the Act") before the Rent Controller on the ground that
F the landlady/respondent bonafide required the premises in question and also the tenant/appellant was a willful defaulter in payment of rent.

G 5. Parties adduced evidence and finally, the Rent Controller, Vijayawada, by its final order dated 31st of October, 2001, rejected the eviction petition *inter alia* holding that the landlady/respondent had failed to prove that the tenant/appellant was a defaulter in payment of rent and in so far as the bonafide need of the premises in question was concerned, it was held
H that the landlady/respondent had two houses at Hyderabad and the landlady was residing in Vijayawada with her family

members consisting of one son and two daughters for the last 31 years. A

6. Feeling aggrieved, an appeal was carried to the Appellate Authority, namely, Principal Senior Civil Judge-cum-Appellate Authority, Vijayawada. The Appellate Authority also affirmed the findings of the Rent Controller, Vijayawada and dismissed the appeal. A Civil Revision Petition was then filed in the High Court of Andhra Pradesh at Hyderabad by the landlady/respondent against the aforesaid concurrent orders of rejection of the eviction petition and by the impugned order, the High Court had set aside the concurrent orders of rejection and directed the eviction of the tenant/appellant. B C

7. Feeling aggrieved by the impugned order of the High Court, this Special Leave Petition has been filed at the instance of the tenant/appellant, which on grant of leave, was heard in presence of the learned counsel for the parties. D

8. So far as the ground of willful default was concerned, both the Rent Controller as well as the Appellate Authority held that there was no willful default in payment of rent for the months of December, 1998 and January, 1999. So far as this ground was concerned, the High Court also observed that the learned counsel for the landlady/respondent, not having urged the said ground i.e. willful default in payment of rent, the findings of the two Courts below must be affirmed. So far as the case of bonafide requirement of the landlady/respondent was concerned, the High Court has, by the impugned order, set aside the concurrent findings of fact arrived at by the Courts below. E F

9. In our view, the High Court was not justified in the present case to interfere with the concurrent orders of the Courts below rejecting the plea of bonafide requirement of the landlady/respondent. The only ground on which the High Court had set aside the concurrent orders of the Courts below is that since the husband of the landlady had retired from service in 1982 G H

A and was residing at Hyderabad and she was not having any other residential house at Vijayawada where she was planning to settle, it must be held that the requirement was bonafide.

B 10. In Paragraph 16 of the impugned Judgment, the High Court has given the reasons for setting aside the concurrent orders of rejection of the eviction petition. We feel it proper in this case to reproduce the said part of the impugned order, which runs as under :-

C "16. The evidence of P.W. 1 would go to show that he was retired from service in 1982, that at present he is residing at Hyderabad, that he was not having any other residential house at Vijayawada and he is planning to settle at Vijayawada. When a suggestion was given to the effect that with a view to evict the tenant so that he would get higher rent, the present petition was filed, but the same was denied. R W. 1, who is no other than the tenant stated that she is a tenant right from 1986 and she never committed any default in payment of rents. Having come to the Court, it is for the petitioner to establish that the premises in question is required for bona fide purpose. P.W. 1 admitted that he has got two own houses at Hyderabad and at present the landlady is staying with her children at Hyderabad, but at the same time, admittedly, the landlady is not having any residential premises at Hyderabad. She is aged about 70 years. Since the children of landlady are residing at Hyderabad, it cannot be said that there would be no one to look after her. Landlady is the best judge for his residential requirement. It is for the landlady to look after herself at that age. She can chose any place where she wanted to settle down for variety of reasons."

H 11. On a bare perusal of these findings of the High Court, it appears that PW1 has categorically admitted that he had got two houses of his own at Hyderabad and at present, the landlady/respondent is staying with her children at Hyderabad

but since she has no residential house at Vijayawada and her age is about 70 years, she wants to settle herself in Vijayawada in the disputed premises. According to the High Court, the landlady/respondent was the best judge for her residential requirement and she can choose any place where she can settle down for various reasons. In view of the above, the High Court had set aside the concurrent orders of the Courts below and granted eviction of the appellant.

12. We are unable to accept these findings of the High Court made in the impugned order. It is an admitted position that the landlady, who is permanently residing in Hyderabad with her family consisting of a son and two daughters and she has got two houses there, only because she has expressed her desire to stay at this old age of 70 years in the tenanted premises, it cannot be said that the requirement of the landlady has been proved to be genuine.

13. As noted hereinafter, the Rent Controller, Vijayawada and the Appellate Authority concurrently held on facts on proper appreciation of evidence on record that the landlady/respondent had failed to prove that she required the premises in question for her bonafide need. This concurrent finding of fact was upset by the High Court in its revisional jurisdiction. In our view, the High Court was not justified in interfering with such concurrent finding of fact in the exercise of its revisional jurisdiction and come to a different finding on the question of bonafide need of the landlady/respondent. In *Smt. Rajbir Kaur and Another vs. M/s S. Chokesiri and Co.* 1989 (1) SCC 19, this Court considered this aspect of the matter and at Page 43, has dealt with the aforesaid question elaborately –

“When the findings of fact recorded by the Courts-below are supportable on the evidence on record, the revisional Court must, indeed, be reluctant to embark upon an independent re-assessment of the evidence and to supplant a conclusion of its own, so long as the evidence on record admitted of and supported the one reached by

- A the Courts-below. With respect to the High Court, we are afraid, the exercise made by it in its revisional jurisdiction incurs the criticism that the concurrent-finding of fact of the Courts-below could not be dealt and supplanted by a different finding arrived at on an independent re-assessment of evidence as was done in this case".
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14. The Rent Controller and the Appellate Authority had considered the entire materials on record and the arguments adduced by the parties and came to a finding that the requirement of the landlady/respondent was not genuine and there was no need to leave her permanent house at Hyderabad, where she has been living, to come over to Vijayawada to stay alone at the age of 70 years without there being anyone to look after her. This finding of fact arrived at by the Rent Controller and the Appellate Authority, in our view, cannot be said to be perverse and arbitrary.
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15. That being the position, we are of the view that it was not open to the High Court, in the exercise of its revisional jurisdiction, to interfere with the concurrent findings of fact of the Rent Controller as well as of the Appellate Authority.
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16. For the reasons aforesaid, the impugned order is set aside and that of Rent Controller, Vijayawada and the Appellate Authority are restored.

- F 17. The application for eviction filed by the respondent stands rejected. The appeal is thus allowed. There will be no order as to costs.

K.K.T.

Appeal allowed.