

CASE NO.:
Appeal (civil) 2309 of 2001

PETITIONER:
VALLAMPATI KALAVATHI

Vs.

RESPONDENT:
HAJI ISMAIL

DATE OF JUDGMENT: 23/03/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil.

JUDGMENT:

D.P. MOHAPATRA, J.
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Leave granted.

The appellant Vallampati Kalavathi is the landlady of the building bearing door No.2-11-38-A of Vulli Street, Vizianagaram, in the State of Andhra Pradesh and the respondent Haji Ismail is the tenant of the said premises.

The appellant filed the petition under section 10 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short the Act) seeking eviction of the tenant on two grounds: (1) that the tenant has committed default to pay or tender the rent in respect of the said building in time and (2) that the landlady requires the premises for shifting her residence to Vizianagaram to educate her children, a son and a daughter, who are to join courses there for their higher education. The tenant refuted the allegations made by the landlady on both the grounds. He denied that the landlady has any bona fide requirement for occupying the premises.

The Rent Controller, on appreciation of the evidence placed on the record, held in favour of the landlady and ordered eviction of the tenant on both the grounds vide the order dated 15.4.88 in R.C.C. No.9/82. On appeal, the Rent Control Appellate Authority on independent appraisal of the evidence in the case, set aside the finding of the rent controller regarding default in payment/tender of the rent but confirmed the finding regarding bona fide requirement of the landlady and maintained the order of eviction passed by the rent controller vide the order dated 11.6.97 in RCA No.15/88.

The tenant filed the civil writ petition No.3126/97 in the High Court of Andhra Pradesh under Section 22 of the Act challenging the order of the Appellate Authority. A single Judge of the High Court by order dated 25.1.1999 interfered with the concurrent findings of fact recorded by the Rent Controller and the Appellate Authority that the landlady

required the premises bona fide for her occupation, set aside the order passed by the Appellate Authority confirming the eviction order passed by the Rent Controller. The said judgment/order is under challenge in this appeal filed by special leave.

In the order passed on 26.11.1999 this Court took note of the contention raised by the senior counsel appearing for the appellant that the respondent who was the petitioner in the High Court had not filed any additional affidavit showing the subsequent events and that the learned Judges observation at page 4 of the judgment appears to have been based on the basis of available record before the Courts below and according to the learned counsel there is nothing on record to show that after getting the MBBS degree her son was working elsewhere. In the said order it was also noted that the case of the landlady on evidence was that her son wanted to establish his practice in the premises in question. On the above statement notice was issued in the case.

The main thrust of the arguments of the counsel for the appellant was that the High Court committed error in disturbing the concurrent findings of fact recorded by the Rent Controller and the Appellate Authority that the landlady bona fide required the house for her occupation for the purpose of educating her children at Vizianagaram. The learned counsel further contended that the so called subsequent developments in the case on the basis of which the High Court has disturbed the concurrent findings of fact, are that the daughter of the landlady has been given in marriage and the son of the landlady has completed his education are not based on any material on record. According to the learned counsel for the appellant no application was filed to bring on record any additional material relating to the aforementioned matters before the Rent Controller or even before the Appellate Authority. The learned counsel for the appellant also raised the contention that it was not open to the High Court to disturb the concurrent findings of facts recorded by the forums within limited scope of revisional jurisdictional vested in it under Section 22 of the Act.

The learned counsel appearing for the respondent supported the judgment/order of the High Court.

In the year 1982 when the landlady filed the petition for eviction of the tenant which was registered as RCC No.9/1982 her son had completed intermediate course and her daughter was studying in the intermediate class. She had pleaded that she and her family members intend to shift residence from Parvatipuram to Vizianagaram with a view to provide better facilities for higher education to the children. Since there was delay in getting the possession of the house the landlady had to send her son to Anakapalli for studying B.Sc. As the litigation lingered on her son completed the B.Sc. course and joined MBBS course at Visakhapatnam and the marriage of the daughter was performed. As noted earlier, both the Rent Controller and the Appellate Authority had accepted the case of bona fide requirement of the landlady of the premises for residential purpose. Referring to the deposition of the husband of the landlady who was examined as PW1 the Appellate Authority

took note of the fact that the son was studying in 3rd year Medicine in Visakhapatnam and the daughter was married and living with her husband. The witness further stated that he and his wife (landlady) intend to reside in the building in question and their son intends to set up medical practice at Vizianagaram and he (witness) also intends to carry on business there. The Appellate Authority also took note of the fact that the tenant was not using the premises in question which is a residential building for residential purpose but is using it for running cloth business; that he resides in another building owned by him. On appreciation of the evidence led by both the parties the Appellate Authority held that the personal requirement of the house as pleaded by the landlady is bona fide and genuine. Accordingly, the Appellate Authority confirmed the order of eviction passed by the Rent Controller on the ground of personal requirement of the landlady.

The High Court, as appears from the discussions in the Judgment, has set aside the concurrent findings of the Forums below merely taking note of the fact that the son of the landlady was studying in 3rd year Medicine at Visakhapatnam and might have completed his MBBS Course in the meanwhile and that her daughter, after marriage, is living with her husband.

Taking note of these facts the High Court appears to have rushed to the conclusion that the requirement of the landlady for providing facility for higher education to her children no longer subsists and on that ground set aside the concurrent findings recorded by the Courts below. The question is since one of the two children of the landlady, the daughter, has left her parental home for her matrimonial home and the son is due to complete the MBBS course, can it be said that the need as pleaded in the petition no longer subsists? Connected with it is the question whether the High Court in revision could interfere with the concurrent findings of fact taking a different view on the materials which were considered by the Forums below for accepting the case of the landlady? When the litigation lingers on for years certain factual developments are bound to take place. All such developments are not necessarily relevant for adjudication of the case. No doubt, in proceeding for eviction of the tenant on the ground of personal requirement of the landlord sometime subsequent developments may be relevant to be looked into for enabling the authorities to make a fair and proper adjudication of the controversy. While taking note of subsequent developments the Authorities/Courts should keep in mind whether such material is relevant and can turn the balance in the case, the controversy should be decided with reference to the pleadings of the parties and the findings placed on record. In the present case, as noted earlier, the husband of the landlady stated in his deposition that their daughter, after marriage, was living with her husband and their son was studying in 3rd year Medicine at Visakhapatnam. Therefore, this was not a subsequent development which was not considered by the Rent Controller or the Appellate Authority. The finding recorded by the High Court in the revisional proceeding amounts to taking a view different from those recorded by the Forums below on the evidence available on the record. Was this permissible within the purview of the revisional power vested in the High Court under section 22 of the Act? The said section reads as follows:

22. Revision:- (1)The High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceeding taken under this Act by the Controller in execution under Section 15 or by the appellate authority on appeal under Section 20, for the purpose of satisfying itself as to the legality, regularity or of propriety of such order or proceeding, and may pass such order in reference thereto as it thinks fit.

(2) The costs of and incident to all proceedings, before the High Court under sub-section (1), shall be in its discretion.

As the language of the section suggests, the revisional power vested in the High Court is to be used for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceeding, and if satisfied that the order/orders suffer any such vice the High Court may pass such order in reference to the proceeding as it thinks fit. The expression legality, regularity or propriety are undoubtedly wider than mere correction of jurisdictional error. But even such revisional power cannot be exercised to upset the concurrent findings of fact recorded by the Forums below merely on the ground that the High Court is inclined to take a different view on the materials on record in the case. We should not be understood to be saying that the concurrent findings of fact can in no case be interfered with in revision. For such interference it has to be shown that the findings recorded by the Forums below suffer from any inherent defect or are based on inadmissible or irrelevant materials or are so perverse that no reasonable person will come to such conclusion on the materials.

On the facts and circumstances of the case, we have no hesitation to hold that the case in hand is not such a case. It follows that the High Court was not right in interfering with the order of eviction passed by the Rent Controller as confirmed by the Appellate Authority.

The appeal is accordingly allowed. The Judgment of the High Court under challenge is set aside and the Judgment/order passed by the Rent Controller, at Vizianagaram dated 15.4.1988 which was confirmed by the Rent Control Appellate Authority- cum- Subordinate Judge at Vizianagaram by order dated 11.6.1997 is restored. There will, however, be no order for costs.