

PETITIONER:
RAKAPALLI RAJA RAMA GOPALA RAO

Vs.

RESPONDENT:
NARAGANI GOVINDA SEHARARAO & ANR.

DATE OF JUDGMENT 12/09/1989

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
SHETTY, K.J. (J)

CITATION:
1989 AIR 2185 1989 SCR Supl. (1) 115
1989 SCC (3) 255 JT 1989 (3) 629
1989 SCALE (2) 542

ACT:

A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960: Section 10(2)--Tenant--Eviction--On ground of 'wilful default'--To be shown default was intentional, deliberate, calculated and conscious with full knowledge, of its consequences.

Non-payment of rent by tenant under bona fide belief that he was entitled to purchase property under a prior oral agreement pursuant to which he paid earnest money--Whether 'wilful'.

Words and Phrases: 'Wilful'--Meaning of.

HEADNOTE:

The respondents purchased the demised premises by a registered sale-deed dated 7th December, 1977 for Rs.70,000. The appellant was in actual possession of a part of the premises as a tenant of the vendors at the date of purchase. After the purchase the respondents served the appellant with a notice dated 13th December, 1977 calling upon him to pay the rent due, and deliver vacant possession of the demised premises. The appellant replied to the notice on 29th December, 1977 alleging that the vendors had orally agreed on 14th October, 1977 to sell him the property for Rs.70,000, and had received Rs.5,000 as earnest money, and that he was under no obligation to pay the rent and vacate the premises, since he was ready and willing to purchase the property. The respondents sent a reply denying the existence of any such oral agreement.

A suit for eviction, was thereafter filed by the respondents claiming rent from December 1977 to May 1978 from the appellant, and since the same was not paid, the appellant it was contended had rendered himself liable to eviction on the ground of wilful default.

The courts below held that the appellant failed to pay the rent, and concluded that he was a wilful defaulter and passed a decree for ejection against him.

In the appeal to this Court, on the question: whether it can be said

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that the tenant's default to pay or tender rent from December 1977 to May 1978 was not wilful to avail of the benefit

of the proviso to clause (i) of the sub-section (2) of Section 10 of the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960. The Court, allowing the appeal.

HELD: 1. An act is said to be wilful if it is intentional, conscious and deliberate. [119A]

S. Sundaram Pillai etc. v. V.R. Pattabiraman etc., [1985] 2 SCR 643, referred to.

2. In order to secure eviction for non-payment of rent, it must be shown that the default was intentional deliberate, calculated and conscious with full knowledge of its consequences. [119G]

3. In cases where the tenant has defaulted to pay or tender the rent, he is entitled to an opportunity to pay or tender the same if his default is not wilful. The proviso to sub-section (2) of Section 10 is couched in negative form to reduce the rigour of the substantive provision in Section 10(2) of the Act. [118H; 119A]

4. The appellant-tenant in the instant case, did not pay or tender the rent from December 1977 to May 1978, not because he had no desire to pay the rent to the respondents but because he bona fide believed that he was entitled to purchase the property under the oral agreement of October 14, 1977. He had also paid Rs.5,000 by way of earnest under the said oral agreement. He, therefore, bona fide believed that he was entitled to purchase the property under the said oral agreement and since he had already paid Rs.5,000 by way of earnest thereunder he genuinely believed he was under no obligation to pay the rent to the respondents. [119E-F]

5. This is not a case of a tenant who has failed to pay the rent without any rhyme or reason. He was not averse to paying the rent but he genuinely believed that he was under no obligation to do so as he had a prior right to purchase the property. [119H; 120A]

6. This is a case where the Controller should have invoked the proviso to sub-section (2) of Section 10 of the Act and called upon the appellant to pay the arrears from December 1977 to May 1978 within a certain time. Failure to do so has resulted in miscarriage of justice. The

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ejection decree cannot therefore, be allowed to stand and is accordingly set aside. The matter will go back to the Controller who will give the benefit of the aforesaid proviso to the appellant. [120A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3812 of 1989.

From the Judgment and Order dated .1.2.89 of the Andhra Pradesh High Court in Revision Petition No. 302 of 1989.

K.N. Bhatt, M.J. Paul and Kailash Vasdev for the Appellant.

A. Subba Rao for the Respondents.

The Judgment of the Court was delivered by

AHMADI, J. Special leave granted.

This tenant's appeal raises the question whether a tenant who omits to pay or tender the rent in respect of the demised premises under the belief that he had a right to purchase the property under a prior agreement to sell and was, therefore, not obliged to pay the rent can be said to be a wilful defaulter within the meaning of the proviso to sub-section (2) of Section 10 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (hereinafter called 'the Act'). Section 10(1) lays down that a tenant shall not be evicted except in accordance with the provisions of this

section or sections 12 and 13 of the Act. Clause (i) of sub-section (2) of that section next provides that a landlord who seeks to evict his tenant may apply to the Controller for a direction in that behalf and the Controller on being satisfied that the tenant has not tendered the rent due by him within fifteen days after the expiry of the time fixed in the agreement of tenancy or in the absence of any such agreement by the last day of the month next following that for which the rent is due, shall make an order directing the tenant to put the landlord in possession. This is, however, subject to the proviso which reads under:

"Provided that in any case falling under clause (i), if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may notwithstanding anything in section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord upto the date of such payment or tender and

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on such payment or tender, the application shall be rejected."

The proviso, therefore, makes it clear that if the Controller is satisfied that the tenant's default is not wilful he may give the tenant an opportunity to pay or tender the rent due by him to the landlord and on such payment or tender being made within the time allowed, the landlord's application for eviction shall be rejected. The benefit of this proviso is available to only those tenant who are not guilty of wilful default. In the present case, the courts below have come to the conclusion that the tenant's default was wilful and hence the benefit of the proviso was not available to him. The question then is whether this conclusion reached by the courts below can be sustained on the facts found proved.

The facts lie in a narrow compass. The respondents purchased the demised premises by a registered sale-deed dated 7th December, 1977 for Rs.70,000. The appellant was in actual possession of a part of the premises as a tenant of the vendors at the date of purchase. After the purchase of the property the respondents served the appellant with a notice dated 13th December, 1977 calling upon him to pay the rent due and deliver vacant possession of the demised premises. The appellant replied to the notice on 29th December, 1977 alleging that the vendors had orally agreed on 14th October, 1977 to sell the property to him for Rs.70,000 and had received Rs.5,000 as earnest. The appellant, therefore, contended that he was under no obligation to pay the rent and vacate the premises since he was ready and willing to purchase the property. The respondents sent a reply denying the existence of any such oral agreement and filed a suit for eviction. It may here be mentioned that on the date of the purchase of the property the rent was paid to the vendors up to the end of November 1977. The respondents, therefore, claimed the rent from December 1977 to May 1978 from the appellant. Since the appellant failed to pay the rent for the said period the courts below came to the conclusion that he was a wilful defaulter and passed a decree in ejectment against him. The tenant has, therefore, come in appeal to this Court.

The short question then is whether it can be said that the tenant's default to pay or tender rent from December 1977 to May 1978 was not wilful to avail of the benefit of the proviso extracted above. It may be noticed that in cases

where the tenant has defaulted to pay or tender the rent he is entitled to an opportunity to pay or tender the same if his default is not wilful. The proviso is couched in negative form to reduce

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the rigour of the substantive provision in Section 10(2) of the Act. An Act is said to be wilful if it is intentional, conscious and deliberate. The expressions 'wilful' and 'wilful default' came up for consideration before this Court in *S. Sundaram Pillai etc. v. V.R. Pattabiraman etc.*, [1985] 2 SCR 643. After extracting the meaning of these expressions from different dictionaries (See: pp. 659 & 660) this Court concluded at p. 661 as under.

"Thus a consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom".

Since the proviso with which we are concerned is couched in negative form the tenant can prevent the decree by satisfying the Controller that his omission to pay or tender the rent was not wilful. If the Controller is so satisfied he must give an opportunity to the tenant to make good the arrears within a reasonable time and if the tenant does so within the time prescribed, he must reject the landlords application for eviction. In the present case, it is not in dispute that the tenant did not pay the rent from December 1977 to May 1978 before the institution of the suit. Under the eviction notice served on him in December 1977 he was called upon to pay the rent from December, 1977 only. The appellant-tenant did not pay or tender the rent from December 1977 to May 1978 not because he had no desire to pay the rent to the respondents but because the bona fide believed that he was entitled to purchase the property under the oral agreement of 14th October, 1977. He had also paid Rs.5,000 by way of earnest under the said oral agreement. True it is, his suit for specific performance of the said oral agreement has since been dismissed but he has filed an appeal which is pending. He, therefore, bona fide believed that he was entitled to purchase the property under the said oral agreement and since he had already paid Rs.5,000 by way of earnest thereunder he was under no obligation to pay the rent to the respondents. In order to secure eviction for non-payment of rent, it must be shown that the default was intentional, deliberate, calculated and conscious with full knowledge of its consequences. Here is a tenant who felt that even though he had invested Rs.5,000 as earnest the vendor has sold the property to the respondents in total disregard of his right to purchase the same. This is not a case of a tenant who has failed to pay the rent without any rhyme or reason. He was not averse to paying the rent but he genuinely believed that he was under no obligation to do so as he had a prior

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right to purchase the property. We are, therefore, of the opinion that this is a case in which the Controller should have invoked the proviso and called upon the appellant to pay the arrears from December 1977 to May 1978 within a certain time. Failure to do so has resulted in miscarriage of justice. We are, therefore, of the opinion that the ejectment decree cannot be allowed to stand.

In the result we allow this appeal and set aside the eviction decree. The matter will go back to the Controller with a direction that he will give the benefit of the provi-

so extracted above to the appellant in accordance with law.
Parties will bear their own costs.

N.V.K.
allowed.
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Appeal

JUDIS