CASE NO.:
Appeal (civil) 1542 of 1999

PETITIONER:
A. SATYANARAYAN SHAH

RESPONDENT:
M. YADIGIRI

DATE OF JUDGMENT: 21/11/2002

BENCH:
R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:
JUDGMENT

2002 Supp(4) SCR 313

The following Order of the Court was delivered :

The appellant is a landlord, who having lost from the High Court in a proceeding for eviction of tenant, has come up in appeal. The litigation has a chequered history. A brief resume of events would suffice.

The suit premises consists of a piece of land over which stands a wooden structure of the dimension of 5'x3.8'. The eviction was sought for on the ground available under sub-clause (iii) of clause (a) of sub-section (3) of Section 10 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (hereinafter "the Act" for short), which provides inter alia for a non-residential building being directed to be vacated by the tenant and the landlord being put in possession of the same if the same was required by the landlord for the purpose of a business bonafide proposed to be commenced by the landlord and the landlord was not in possession of any other non-residential building. The proceedings were initiated before the Controller. Before the Controller, the tenant not only denied the bonafide requirement of the landlord but also submitted that the tenant was holding on tenancy from the landlord only the ground on which the structure stands and the wooden structure placed on the ground was of his own ownership purchased by him from his predecessor tenant. The Controller found that so far as the tenancy is concerned, the subject matter thereof was not the ground alone but the ground along with the wooden structure standing thereon. The plea of the tenant that he was the owner of the structure having purchased it from his predecessor was found not proved and hence was discarded. However, in the opinion of the Controller, the bonafide requirement of the landlord was not proved and, therefore, relief of eviction was not granted to the landlord.

The landlord preferred an appeal. The Chief Judge, City Small Causes Court Hyderabad, who heard the appeal reversed the finding of the Controller on the issue as to bonafide requirement of the landlord and held that availability of the ground for eviction was proved. On the issue as to subject matter of tenancy, the learned Chief Judge confirmed the finding of the Controller upon' an independent evaluation of the evidence and found that the ground along with the wooden structure was let out by the landlord to the tenant. The finding arrived at by the learned Chief Judge is based on appreciation of evidence including certain admissions made by the tenant in his deposition as also on the fact that the tenant had not produced the material evidence which should have been available to substantiate his plea taken in the written statement. The tenant preferred a revision in the High Court under Section 22 of the Act. The High Court reversed the finding of the Appellate Court on the ground of bonafide requirement and negatived the same. The landlord preferred an appeal by special leave to this Court. This Court vide its order dated 31.7.1998 set aside the order of the High Court forming an opinion that while hearing a revision under Section 22 of the

Act the manner in which the High Court had reappreciated the evidence like an Appellate Court amounted to exceeding the revisional jurisdiction vesting in the High Court and, therefore, the finding of the High Court could not be sustained. This Court allowed the appeal and remanded the revision to the High Court for hearing and decision afresh.

On remand vide its impugned order dated 22nd December, 1998, the High Court has held that the finding as to bonafide requirement of the landlord was one of fact and hence not open to interference in exercise of revisional jurisdiction of the High Court. As to the nature of wooden structure and the issue as to whether the wooden structure along with the ground was let out by the landlord to the tenant and formed subject of the tenancy, the finding of the learned Chief Judge has been maintained by the High Court. However, the High Court permitted the tenant-respondent to raise the plea that the wooden structure standing on the ground did not fall within the meaning of building as defined in clause (iii) of Section 2 of the Act and as the proceedings for eviction under Section 10 of the Act were maintainable before the Controller only in respect of a 'building', the Controller could not have entertained the proceedings and, therefore, the proceedings as initiated by the landlord suffered from want of jurisdiction and were vitiated. On this finding the High Court has allowed the revision preferred by the tenant and directed the eviction proceedings to be dismissed. Feeling aggrieved, the landlord has filed this appeal by special leave.

We have perused the impugned judgment of the High Court as also the record of proceedings. In our opinion, the High Court has rightly held that so far as the finding on the question of bonafides of the landlord is concerned, the same was purely a finding of fact and hence concluded by the judgment in appeal. The serious question that arises for decision in this appeal is whether the land along with the structure standing thereon falls within the definition of 'building' or not?

It will be useful to notice the finding arrived at by the learned Chief Judge in this regard. Admittedly, the structure is wooden and stands on the ground. The learned Chief Judge has held that the structure (called 'dabba', that is, a box) is a permanent structure, that it belongs to the landlord by purchase and that the tenant-respondent had attorney the tenancy in favour of the landlord-appellant for the demised structure and has been paying the rent to him and that the wooden structure was in existence there from the very beginning and it was the property of the vendor of the landlord sold to the present landlord-appellant along with the main building. Thus, in view of the findings arrived at by the Controller as also by the Appellate Court, there is no manner of doubt that the wooden structure is a permanent structure standing on the land.

The term 'building' has been defined in the Act as under :-

"Section 2(iii) - 'Building' means any house or hut or part of a house or hut, let or to be let separately for residential or non-residential purposes and includes ;-

(a) the gardens, grounds, garages and out-houses if any. appurtenant to such house, hut or part of such house or hut and let or to be let along with such house or hut or part of such house or hut;

(b) any furniture supplied or any fittings affixed by the landlord for use in such house or hut or part of a house or hut, but does not include a room in a hotel or boarding house."

The learned counsel for the appellant has placed reliance on a decision of this Court in Suryakumar Govindjee v. Krishnammal and Ors., [1990] 4 SCC 343, wherein part materia definition of 'building' contained in clause (ii) of Section 2 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, came up for the consideration of this Court wherein the structure was

described as 'kaichalai', a tamil word denoting a structure or a roof put up by hand. This Court held that whatever may be the precise meaning of the term 'kaichalai', it was clearly included in the definition of building. The expression 'hut' cannot be restricted only to huts or cottages intended to be lived in. It will also take any shed, hut or other crude or third class construction consisting of an enclosure made of mud or by poles supporting a tin or asbestos roof that can be put to use for any purpose - residential or non-residential, in the same manner as any other first class construction. Certain observations made by this Court in Ashok Kapil v. Sana Ullah (dead) and Ors., [1996] 6 SCC 342, are also apposite, wherein the term 'building' as defined in U.P. Urban Buildings (Regulation of Letting, Rent and Eviction Act, 1972 came up for the consideration of this Court. The definition is not similarly worded. However, during the course of its order, this Court quoted with approval Stroud's Judicial Dictionary (Vol. 1, 5th Edn.) stating that 'what is a building must always be a question of degree and circumstances'. Again citing with approval Victoria City Corpn. v. Bishop of Vancouver Island, (1921) 2 AC 384 and quoting therefrom this Court approved the observation of a celebrated lexicographer that 'the ordinary and natural meaning of the word building includes the fabric and the ground on which it stands'. Black's Law Dictionary (5th Edn.) was also cited with approval, which gives the meaning of the building as ' a structure or a edifice enclosing a space within its wall, and usually, but not necessarily, covered with a roof. A roofless structure was held to be a building.

On the authority of abovesaid decided cases, it can be concluded that the term 'building' has to be interpreted liberally and not narrowly. In our opinion, a wooden structure, which is in the nature of a permanent structure standing on the land and which has walls and roofs though made of wood, would fall within the definition of building as defined in clause (iii) of Section 2 of the Act. In the context in which the term 'building' has been used and keeping in view the purpose of the Act, the term 'building', as defined, ought to be so interpreted as to include therein a structure having some sort of permanancy and capable of being used for residential or non-residential purpose.

For two reasons, we are clearly of the opinion that the High Court has erred in disposing of the revision in the manner it has done. Firstly, the High Court was not right in holding the permanent wooden structure standing on the land falling outside the definition of building. Secondly, whether the wooden structure forming subject matter of tenancy premises in the present case, fell within the definition of building or not, was a mixed question of law and fact. That it was not a building within the meaning of Section 2(iii) of the Act and, therefore, the proceedings for eviction therefrom did not lay before the Controller was not the plea taken in the written statement and never even upto this Court when vide order dated 31 st July, 1998, this Court remanded the matter to the High Court. The plea should not have been allowed to be raised for the first time before the High Court in the revision petition and that too at such a belated stage.

The appeal is allowed. The impugned judgment of the High Court is set aside; instead the order dated 26.4.1994 passed by the Chief Judge, City Small Causes, Court, Hyderabad is restored.

As the tenant-respondent has remained ex-parte in spite of service and has not participated in hearing before this Court, it is directed that the landlord shall be at liberty to execute the order for recovery of possession by filing an appropriate execution application before the Controller, who shall after noticing the tenant-respondent and affording him a reasonable opportunity of vacating the premises, if sought for, direct delivery possession over the ground along with the wooden structure to the landlord-appellant.

The appeal stands disposed of in the abovesaid terms.