PETITIONER:
RAFAT ALL V.

Vs.

RESPONDENT:
SUGNI BAI AND OTHERS

DATE OF JUDGMENT: 18/11/1998

BENCH:
S. Saghir Ahmad, K.T. Thomas.

JUDGMENT:

Thomas J.

Leave granted.

A building situate at Mahboob Gunj, Hyderabad belonged to one Babu Lal. He leased it out to the appellant in 1970 wherein appellant has been running a business by name M/s Royal Agro Industries. Lathe and machinery have been installed therein for the purpose of the business. Babu Lal died leaving behind him the present respondents as his legal heirs who are his widow and children. In the year 1988 respondents/landlords launched a litigation against the appellant for evicting him from the leased premises. Though the respondents failed in the Rent Control court as well as in the Appellate Authority they succeeded in the High Court of Andhra Pradesh, where in a revision the concurrent findings were reversed and an order of eviction was granted in favour of the landlords. Hence, appellant has filed this appeal by special leave.

Three distinct grounds have been set up by the respondents in their petition filed under the provisions of Andhra Pradesh Buildings (Lease, Rent and Eviction) CONTROL Act, 1960 (For short 'the Act'). They are: (1) that the tenant had committed default In paying rent of the building from 1.11.1986 to 30.4.986, (2)thatthe tenant committed acts or waste by which damage has been caused to the building. (3) that the tenant has been committing acts of nuisance to other occupants of the buildings in the neighbour-hood.

All the three grounds were found against the respondent by the Rent Control Court which dismissed the petition for eviction. When respondents filed appeal under Section 20 of the Act. the Appellate Authority also found, in concurrence with the findings of the Rent Control Court, that the landlord failed to make out any one of the grounds. The appeal was accordingly dismissed. It was when repondents moved the High Court in revision under Section 22 of the Act that they succeeded as a learned single Judge Interfered with the concurrent findings regarding all the three grounds.

Learned single judge has stated as follows in the concluding part of the impugned order.

"The findings of the Courts below are

quite arbitrary, perverse and capricious. The orders under challenge cannot be said as free from legal lacunae. The Courts failed to take into consideration the events started subsequent to leasing out the premises, namely, causing nuisance prior lo the filing of eviction petition. The evidence given clearly establishes that the tenant was a defaulter, had caused damage to the premises and causing nuisance to the landlords and other occupiers. Having found that the orders under challenge suffer from illegality, the same deserves to be set aside. Accordingly, the CRP is allowed and the orders under challenge are set aside and consequently, the eviction sought by the landlords is granted."

It is contended before us that learned single judge made those observations without considering the reasoning of the fact finding courts and without adverting to the evidence and without keeping within the bounds of revisional jurisdiction conferred by Section 22 of the Act. Learned counsel for the respondents, on the other hand, made an endeavour to show that the revisional powers under the Act are not so limited as in other similar enactments and that the High Court has wide powers to interfere even with the concurring findings of fact, and looking from that angle the High Court has not acted beyond its jurisdiction.

Section 22 of the Act reads:

"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."

The appellation given to the Section makes it unmistakably clear that the power conferred thereunder is revisional which means, it is a power of supervision. It is well neigh settled that a revisional Jurisdiction cannot be equated with appeal powers in all its parameters. The power to call for and examine the records is for the purpose of the High Court to satisfy itself as to the "legality, regularity or propriety" of the order of the lower authority. Even such a widely worded frame of the Section may at best indicate that the revisional powers are not so restricted as in the enactments wherein the words are not so widely framed. Nonetheless, they remain in the realm of Supervisory jurisdiction. in a recent decision we had occasion to consider the scope of revisional jurisdiction

under certain Rent Control enactments vide Sarla Ahuja vs. United India Insurance Company Limited JT 1998(7) SC 297. Reference was then made to a decision wherein words used under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 were considered [vide Sri Raj Lakshmi Dyeing Works vs Rangaswamy 1980 (4) SCC 259]. A two judge bench has observed therein that "despite wide language employed in the Section, the High Court quite obviously should not interfere with the findings of fact merely because it does not agree with to the finding of the subordinate authority." After adverting to it we have stated in Sarla Ahuja:

> "The High Court in the present case has re-assessed and re-appraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a re-appraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact finding court is wholly unreasonable."

Coming back to the impugned order it is pertinent to notice that the Rent Control Court, while dealing with the first ground i.e. default in payment of rent from 1.11.1986 to 30.4.1986 has pointed out the averments of the landlords in their petition that rent of the building was Rs.250/- per month till 30.10.19^5 and thereafter the rent was enhanced to Rs.650/- per month from 1.11.1985 onwards and that the tenant committed default in paying rent at the enhanced rate from 1.11.1986. Petition for eviction was filed by the landlords on 4.5.1988. Appellant repudiated the case of the landlord regarding such enhancement. According to him the rent remained Rs.250/- per month and he paid it without default till March 19. 1988, and when he tendered rent for the next month (April) the landlord refused to accept as they wanted the tenant to vacate the building. He was then compelled to issue a notice to the landlords on 30.4.1988 complaining of such refusal. It was while replying to the said notice that the landlords have mentioned, for the first time, that rent of the building was Rs.650/- and that it was not paid from 1.11.1986 onwards.

Rent Control Court has considered the evidence on record regarding that dispute in detail. The reasoning of the Rent Controller that if there was enhancement of monthly rent to Rs.650/from 1-11-1985 the landlords would have mentioned that fact in the Ext. R-73 reply which they sent to the appellant on 6-5-1988. The absence of such a fact in the said reply notice when taken along with the fact that landlord amended the original petition claiming rent at the enhanced rate only after a lapse of one year from the date of institution thereof persuaded the Rent Control Court to conclude that it was an afterthought. The court also relied on Ext. R-74 to R-82 (assessment orders and the tax returns under the Income Tax Act, 1961 for the period starting from 1985-86) supported by the certified copies of statements of income and expenditure account in which monthly rent of Rs.250/was mentioned for the relevant period. The appellate authority has also adverted to the above materials. The counterfoils (P-1 to P-5) produced by the landlords did not give a good impression as to its genuineness on both the

authorities. The appellate authority felt that they were concocted for the purpose of evicting the tenants.

For interfering with the findings made on the above reasoning learned Single Judge has. unfortunately, used only one sentence which is the following:

> "If we compare the evidence adduced in this case and wading of the same by both the courts below, it can be said without hesitation that the courts below are not justified in ignoring the evidence available which warrants this court to hold that the tenant was a defaulter and he had caused nuisance."

Learned Single Judge has committed a jurisdictional error in upsetting the concurrent finding in such a manner as it has been done. Of course in that sweep learned Single Judge covered the nuisance aspect also.

It is clause (iv) of section 10(2) of the Act that makes nuisance as a ground for eviction. It is worded like this:

"That the tenant has been guilty of such acts and conduct which are a nuisance to the occupiers of other portions in the same binding or buildings in The neighbourhood."

Though the word "nuisance" is not defined it can be inferred from the context that what is meant therein is the actionable nuisance which is recognized Common Law. Nuisance as understood in law is broadly divided into two classes public nuisance and private nuisance. The former consists of some acts or omissions which result in violation of rights which one enjoys in common with other members of the public. But the fatter i.e. private nuisance, is one which interfere with a person’s use and enjoyment of immovable property or some right in respect of it.

In Halsbury’s Laws of England (vol.34 of the fourth edition at page 102)essentials of common law of nuisance arc mentioned as under

> "309: Both unlawful act and damage necessary. In order to constitute nuisance there must be both (1) an unlawful act, and (2) damage, actual or presumed. Damage alone gives no right action, the mere fact that an act causes loss to another does not make that act a nuisance.
>
> For the purposes of the law of nuisance an unlawful act is the interference by act or omission with a person’s use or enjoyment of land or some right over or in connection with land."

Suffering of damage must be proved in a case of nuisance unless it can be presumed by law to exist. But the damage to amount to actionable nuisance must be substantial or at-least of some significance. In other words. If the

damage is insignificant or evanescent or trivial it would not be actionable nuisance. The following passage in para 312 of the same volume in Halsbury's Laws of England is worth extracting in this context:

> "312. Damage essential. Damage, actual, prospective or presumed, is one of the essentials of nuisance. Its existence must be proved, except in those cases in which it is presumed by law to exist.
>
> The damage need not consist of pecuniary loss, but it must be material or substantial, that is, it must not be merely sentimental, speculative or trifling, or damage that is merely temporary, fleeting or evanescent."

It is clear from clause (iv) of Section 10(2) of the Act that what is envisaged therein is only private nuisance and not public nuisance. This can be discerned from the words "nuisance to the occupiers of other portions in the same building or buildings in the neighborhood" Perhaps in a wide sense any industrial activity may create some sound while such activities are in operation. Such sound may be uncomfortable to those who are over sensitive to such noise. But then care must be taken because every inconvenience cannot become actionable nuisance. To make it actionable the nuisance must be of a reasonably perceptible degree as pointed out earlier.

Rent Control Court considered landlords' case regarding nuisance Landlords said that the tenant was quarreling with them "whenever they go for collection of rents." They have also alleged that appellant was running machines late in the night and thereby causing nuisance to the other occupiers of the building. As the appellant was running high business with the same machines right from the beginning, Rent Control Court was not inclined to treat such noise as amounting to nuisance. Appellate authority pointed out that there was no complaint prior to the filing of the eviction petition at any time against the tenant that he caused damage to the building." On the other hand, the Rent Control Court noticed that machinery was installed in this building way back in 1970 and the same is under operation even now. On the above reasoning both the authorities uniformly concluded that tenant has not committed any act of nuisance to attract the ground of eviction. But the High Court upset such a finding in a very casual manner unmindful of the inherent limitations of the revislonal jurisdiction.

The third ground for eviction is related to causing damage to the building. For damage to the building to amount to a ground for eviction, its proportion must be as delineated in clause (iii) of Section 10(2) of the Act:

> "That the tenant has committed such acts of waste as are likely to impair materially the value or utility of the building."

All acts of waste do not amount to a ground for eviction. It is only those acts of waste which would very probably impair the value of the building or its utility.

The word "likely" in the above clause must be understood as a condition which is reasonably probable that such acts would cause impairment to the value or utility of the building. However, it is not enough that some impairment has been caused to the building. The value of the building or utility thereof should have been lessened in a reasonably substantial degree. Then only it can be said that the acts of waste are likely to impair the value or utility of the building "materially". In Om Pal vs. Anand Swarup 1988 (4) SCC 545 the Court, while considering a similarly worded clause in another Rent control enactment, has observed thus:

> "In order to attract Section 13(2)(iii) the construction must not only be one affecting or diminishing the value or utility of the building but such impairment must be of a material nature i.e. of a substantial and significant nature. When a construction is alleged to materially impair the value or utility of a building, the construction should be of such a nature as to substantially diminish the value of the building either from the commercial and monetary point of view or from the utilitarian aspect of the building. The burden of proof of such material impairment is on the landlord."

An Advocate-Commissioner visited the building and pointed out the following features in his report regarding the damage noticed by him: "There is only concrete flooring with uneven surface. Due to the use of machinery there is a hole in the flooring on the eastern side and it was meant for inserting pipe. There was no damage to the roof and walls. Some nail-holes were also noticed. When the lathe machines were operated the advocate commissioner noticed that there was no vibration either on the ground floor or on the walls of the main building, though very slight vibration was noticed on the parapet walls of the first floor."

Both the fact finding courts found that the above items of damage are only trivial and will not affect the building. But the High Court found that "the landlords proved that the tenant caused damage to the demised premises by causing holes and leaving spaces between the shutter and the wall as seen from the Commissioner's report." It was not open to the High Court to substitute the findings of the lower courts with its own findings so easily as that while exercising the limited supervisory jurisdiction.

For the aforementioned reasons we are unable to sustain the impugned judgment of the High Court which has manifestly crossed.

its jurisdiction. We, therefore, allow this appeal and set aside the impugned judgment.