GANGARAM

v.

N. SHANKAR REDDY

OCTOBER 6, 1988

[R.S. PATHAK, CJ AND S. NATARAJAN, J.]

Andhra Pradesh Buildings (Lease Rent and Eviction) Control Act, 1960—Section 10(3)(c)—Landlord entitled to seek eviction of tenant occupying another portion or remaining portion of same building and not occupying portion in another building—What is envisaged is oneness of building and not oneness of ownership of two different buildings one occupied by landlord and another by tenant.

The respondent had acquired the building being premises No. 1.1.249 Chikkadpalli, Hyderabad, constructed two storeys over this building and utilised the upper floors for his residence and the ground floor for his business. Subsequently, he had purchased the adjacent building being premises No. 1-1-250. The appellant was a tenant in the suit premises No. 1.1.250 even before the respondent purchased it, and was running his shop in the front room and residing in the rear portion.

The respondent sought eviction of the appellant *inter alia* on the ground of requirement of additional space under section 10(3)(c) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, under which a landlord occupying only a part of a building was entitled to seek the eviction of a tenant occupying another portion or the remaining portion of the building if the landlord required additional accommodation for residential purpose or for carrying on his business.

The Rent Controller held that the respondent was not entitled to an order of eviction under s. 10(3)(c) because the leased premises was a separate building and did not form part of the building in which the respondent was carrying on his business.

The Appellate Authority however held that even though the leased premises had a separate municipal door number it could be treated as forming part of the building in the respondent's occupation because both the buildings were owned by the respondent and were separated only by a single wall.

A The High Court in revision held that if the respondent wanted the premises *bona fide* as an additional accommodation it did not matter whether it was a separate building or a portion of the same building.

Before this Court, the appellant contended that section 10(3)(c) would not apply to a case where the landlord and the tenant were B occupying different buildings even though the two buildings were owned by the same landlord. The respondent, on the other hand, contended that the two buildings could not be treated as independent and separate buildings because both the buildings were owned by the respondent and were separated only by a single wall.

C Allowing the appeal, it was,

HELD: (1) From a reading of clause (c) of section 10(3) it is obvious that provision has been made under that clause only to seek the eviction of a tenant occupying another portion or the remaining portion of the building in which the landlord is also residing or carrying on his D business in one portion. [437F]

(2) What s. 10(3)(c) envisages is the oneness of the building and not the oneness of ownership of two different buildings, one occupied by the landlord and the other by the tenant. [438G-H]

E (3) The significant words used in s. 10(3)(c) are "the landlord who is occupying only a part of a building" and "any tenant occupying the whole or any portion of the remaining part of the building." [438H; 439A]

(4) A practical test which can be applied to find out if two adjoining buildings form part of the same building or two different buildings F would be to see whether one of the two buildings can be sold by the landlord and the purchaser inducted into possession of the premises sold without the landlord's possession and enjoyment of the premises in his occupation being affected. [439B-C]

(5) The identity of two separate buildings is not to be judged on G the basis of the buildings being separated by a single wall or by two separate walls with intervening space in between them. [439E]

(6) There is no room or scope for the respondent to invoke section 2(iii), defining the word "building", to contend that two different premises should be treated as a single and integrated building for the H purposes of the Act if the two buildings adjoin each other and are

owned by the same person but under different occupation i.e. one by the landlord and the other by the tenant. [440C-D] A

(7) If the hardship experienced by landlords similar to the respondent is to be alleviated, then it is for the legislature to remedy the situation by making suitable amendments to the Act and it is not for the Court to read s. 10(3)(c) beyond its terms, oblivious to the limitations contained therein and hold that a separate tenanted building adjoining the building in the owner's occupation would also form part of the latter building. [441A-B] B

Balaiah **v.** *Lachaiah,* **AIR 1965 A.P. 435;** *Balaganesan Metals* **v.** *M.N. Shanmugham Chetty,* **JT 1987 2 S.C. 247 and** *N. Ramaswamy Naidu* **v.** *P. Venkateshwarlu,* **Vol. II 1961 1 A.W.R. page 400, referred to.** C

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 537 of 1978.

D

From the Judgment and Order dated 13.10.1977 of the Andhra Pradesh High Court in C.R.P. 250 of 1977.

P.P. Rao, K. Ram Kumar and Mrs. Janki Ramachandran for the Appellant.

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A.S. Nambiar and B. Parthasarthi for the Respondent.

The Judgment of the Court was delivered by

NATARAJAN, J. This appeal by special leave directed against a judgment of the Andhra Pradesh High Court lies within a narrow compass. F

The respondent/landlord filed a petition under Section 10(3) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short the 'Act') to seek the eviction of the tenant/appellant from premises bearing No. 1-1-250 Chikkadpalli, Hyderabad. The G appellant is running a pan shop and a hire cycle shop in the front room of the premises and residing in the rear portion. Besides the leased premises, the respondent owns the adjoining building bearing No. 1/1/249. In the said building the respondent was running a grocery shop in the ground floor and residing in the second and third floors subsequently constructed by him. It would appear that the respondent H

A has since changed over his business to retail sale of liquor. On the ground of requirement of additional space for the grocery shop, the respondent sought the eviction of the appellant. The Rent Controller held that the respondent was not entitled to an order of eviction either under Section 19(3)(a)(iii) or Section 10(3)(c) because the leased premises was a separate building and did not form part of the building in B which the respondent was carrying on his business. In the appeal preferred by the respondent, the Chief Judge, City Small Cause Court, Hyderabad, took a different view of the matter and held that even though the leased premises had a separate municipal door number it can be treated as forming part of the building in the respondent's occupation because both the buildings are owned by the second respondent and besides the two buildings are separated only by a C single wall. For reaching such a conclusion, the Appellate Authority followed the ratio laid down in *Balaiah* v. *Lachaiah,* AIR 1965 A.P. 435. As the Appellate Authority further found that the requirement of additional space by the respondent was a *bona fide* one, the Appellate Authority allowed the appeal and ordered the eviction of the appel-D lant. A civil revision filed by the appellant to the High Court did not meet with success and hence the appellant has preferred this appeal.

Though the proceedings before the Rent Controller and the Appellate Authority were conducted on the footing that the respondent was entitled to seek the appellant's eviction under Section E 10(3)(a)(iii) as well as under Section 10(3)(c), it was conceded before us by Mr. Nambiar, learned counsel for the respondent that the tenant's eviction was sought for only under Section 10(3)(c) viz. requirement of additional space for the respondent's business. In such circumstances the only factor for determination is whether the respondent can seek the appellant's eviction from the tenanted building on F the ground he requires additional accommodation for his business.

Before we proceed to deal with the question, it is necessary to state a few facts. Originally, a row of buildings comprised in door numbers 1-1-248 to 1-1-251 were owned by one R. Kistiyah and after him by one Rambai. The said Rambai sold the buildings in the row to G different persons. The respondent and his brother were two of such purchasers and they purchased premises no. 1-1-248 and 1-1-249. Subsequently, in a partition between them, premises No. 1-1-249 was allotted to the respondent and premises No. 1-1-248 was allotted to his brother. After the partition was effected, the respondent constructed two storeys over his building by erecting concrete pillars on both sides H of his building. At that time, the suit premises bearing No. 1-1-250 was

owned by an advocate by name Sri S. Sitaram Rao. When the concrete pillars were erected, Sitaram Rao complained of encroachment by the respondent and eventually, the dispute was resolved by the respondent himself purchasing Sitaram Rao's house viz. No. 1-1-250. After constructing the two floors, the respondent shifted his residence to those floors and utilised the entire ground floor for his business. The appellant who was a tenant of the suit premises even before the respondent purchased it attorned his tenancy to the respondent.

Under the Act, a landlord can seek the eviction of a tenant from a non-residential building under Section 10(3)(a)(iii) if he is not already occupying a non-residential building which is either his own or to the possession of which he is entitled or under Section 10(3)(c) by way of additional accommodation if the non-residential building occupied by him is not sufficient for the purpose of the business he is carrying on. Since we are concerned in this appeal only with Section 10(3)(c), we need extract only that clause which reads as under:

> "10(3)(c). A landlord who is occupying *only a part of a building*, whether residential or non-residential, may notwithstanding anything in clause (a), apply to the Controller for an order directing any tenant *occupying the whole or any portion or the remaining part of the building* to put the landlord in possession thereof, if he requires additional accommodation for residential purpose or for purpose of a business which he is carrying on, as the case may be."
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> (Emphasis supplied).

From a reading of clause (c), it is obvious that provision has been made under that clause only to seek the eviction of a tenant occupying another portion or the remaining portion of the building in which the landlord is also residing or carrying on his business in one portion. Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 which is identically worded as Section 10(3)(c) of the Andhra Pradesh Buildings (Rent, Eviction and Control) Act came to be construed in a different context by this Court in *Balaganesan Metals* v. *M.N. Shanmugham Chetty*, (JT 1987 (2) S.C. 247). It was held in that case that a landlord occupying only a part of a building for residential or non-residential purposes may seek the eviction of a tenant occupying the whole or any portion of the remaining part of the building if he requires additional accommodation for his residential or non-residential needs and that it is not necessary that there must be identical user of the leased portion by the tenant if the landlord wants to

A seek his eviction for his residential or business needs.

In this case, the controversy centres around the question whether a landlord can invoke Section 10(3)(c) of the Act to seek the eviction of a tenant who is not occupying a portion of the building occupied by the landlord himself but is occupying another building belonging to the B landlord. While the Rent Controller held that the two premises viz. 1/1/249 and 1/1/250 are separate and independent, the Appellate Authority has taken the view that by reason of the unity of ownership of the two buildings in the respondent and by reason of the two buildings being separated only by a single wall "it can be said that the mulgi constitutes additional accommodation to the appellant" and the fact that the two mulgies bear different municipal numbers should not C make any difference. The High Court has not construed the scope of Section 10(3)(c) but has sweepingly said that:

> "Whether both can be said to be same building or separate buildings it does not matter, if the respondent wants the D premises *bona fide* as an additional accommodation; whether it is a separate building or a portion of the same building, he can require it on that ground."

Before us it was canvassed by Mr. P.P. Rao, learned counsel for the appellant that Section 10(3)(c) would entitle a landlord to seek the E eviction of his tenant for purposes of additional accommodation for himself only if the portion occupied by the tenant forms part of the same building occupied by the landlord and that Section 10(3)(c) will not apply to a case where the landlord and the tenant are occupying different buildings even though the two buildings may be owned by the same landlord. Controverting this argument Mr. Nambiyar, learned F counsel for the respondent contended that the premises occupied by the appellant, though assigned a separate municipal door number cannot be treated as an independent and separate building because both the buildings are owned by the respondent and secondly the leased premises are separated from door number 1/1/249 only by a single wall.

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On a consideration of the matter, we find that the contention of Mr. Nambiyar, which has found acceptance with the Appellate Court and the High Court is not at all a tenable one. What Section 10(3)(c) envisages is the oneness of the building and not the oneness of ownership of two different buildings, one occupied by the landlord and the H other by the tenant. The significant words used in Section 10(3)(c) are

"the landlord who is occupying only a part of a building" and "any tenant occupying the whole or any portion of the remaining part of the building". Surely no one can say that two adjoining buildings bearing different door numbers, one occupied by the landlord and the other by the tenant would make them one and the same building if they are owned by one person and separate buildings if they are owned by two different persons. A practical test which can be applied to find out if two adjoining buildings form part of the same building or two different buildings would be to see whether one of the two buildings can be sold by the landlord and the purchaser inducted into possession of the premises sold without the landlord's possession and enjoyment of the premises in his occupation being affected. Viewed in that manner, it can at once be seen that the leased premises in the appellant's occupation can be independently sold and the purchaser delivered possession without the respondent's possession of door no. 1-1-249 being affected in any manner. As a matter of fact, the previous history of the building shows that before it was purchased by the respondent, it was owned by Sri Sitaram Rao and the respondent was owning only door no. 1-1-249. Such being the case, merely because the appellant has acquired title to door no. 1-1-250 also, it can never be said that the building under the tenancy of the appellant became part and parcel of the respondent's building no. 1-1-249. Similarly, the fact that the two buildings are separated only by a single wall with no intervening space between them would not alter the situation in any manner because the identity of two separate buildings is not to be judged on the basis of the buildings being separated by a single wall or by two separate walls with intervening space in between them.

Section 10(3)(c) which occurred as Section 7(3)(c) in the Madras Buildings (Lease and Rent Control) Act 1949 has been properly construed by Chandrasekhara Sastri, J. in *M. Ramaswamy Naidu* v. *P. Venkateswarlu,* (Vol. II) 1961(1) A.W.R. page 400. The learned judge has stated that Section 7(3)(c) "applies only to a case where the landlord is occupying a part of a building and still requires the remaining part for the purpose of his own business as additional accommodation." This decision has not been noticed by the Appellate Authority and the High Court and they have proceeded solely on the basis that as per the ratio in *Balaiah* v. *Lachaiah*, (supra) the respondent is entitled to an order of eviction even under Section 10(3)(a)(iii) for additional accommodation despite the fact that he is in occupation of a building of his own.

Mr. Nambiyar referred to the definition of the word "building"

in Section 2(iii) of the Act and argued that if for the purposes of the Act, where the context warrants it, different portions of the same building can be treated as separate buildings, it should conversely be held that if adjoining building are owned by the same person and one of them is in the occupation of the landlord and the other by a tenant, then for purposes of Section 10(3)(c) the two buildings should be treated as an integrated and composite building. We are unable to accept this argument because firstly the terms of Section 2(iii) do not afford scope for such a construction and secondly the argument fails to take note of the purpose and object lying behind the definition of "building" in the manner in which the clause is worded. Section 2(iii) has been provided so as to make the provisions of the Act applicable to the whole of the building as well as to parts of it depending upon whether the entirety of the building has been leased out to a tenant or different portions of it have been let out to different tenants. There is, therefore, no room or scope for the respondent to invoke Section 2(iii) to contend that two different premises should be treated as a single and integrated building for the purposes of the Act if the two buildings adjoin each other and are owned by the same person but under different occupation i.e. one by the landlord and the other by the tenant.

Mr. Nambiyar then argued that if section 10(3)(c) is to be construed as being applicable only when different portions of the same building are in the occupation of the landlord as well as one or more tenants, it would result in a landlord like the respondent who is genuinely in need of additional accommodation being left with no remedy whatever for securing additional accommodation for his business needs. We find it unnecessary to go into the merits of this submission because however genuine the respondent's need for additional accommodation may be and whatever be the hardship resulting to him by non-eviction of the appellant, we cannot grant any relief to the respondent under the Act as it now stands. As per the Act the relief of eviction of a tenant can be given to a landlord only under two situations viz. (1) where the landlord is not in occupation of a building of his own or to the possession of which he is entitled to by an order of eviction under Section 10(3)(a)(iii) and (2) where the landlord is in occupation of only a portion of his building and is *bona fide* in need of additional accommodation and another or the remaining portion of the building is in the occupation of a tenant or tenants by ordering his or their eviction under Section 10(3)(c). The Legislature has not provided for Section 10(3)(c) being made applicable to a landlord where he owns adjoining buildings and is in occupation of only one of those two buildings and the tenant is in occupation of the other and the land-

lord's *bona fide* in need of additional accommodation for his residential or business needs. If the hardship experienced by landlords similar to the respondent is to be alleviated, then it is for the Legislature to remedy the situation by making suitable amendments to the Act and it is not for the Court to read Section 10(3)(c) beyond its terms oblivious to the limitations contained therein and hold that a separate tenanted building adjoining the building in the owner's occupation would also form part of the latter building.

In the light of our conclusions, it follows that the judgment and order of the Appellate Authority and the High Court cannot be sustained and have to be set aside. In the result, the appeal succeeds and the order of the Rent Controller dismissing the respondent's petition for eviction will stand restored. There will, however, be no order as to costs

R.S.S. Appeal allowed.