

(1999) 05 OHC CK 0012

In the Orissa High Court

Case No : Original Jurn. Case No. 4343 of 1992

Bishnu Kumar Shah

APPELLANT

Vs

C.J.M.-cum-House Rent Control Authority, Balasore and
Others

RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Orissa House Rent Control Act, 1968 — Section 7

Citation : AIR 2000 Ori 24 : (1999) 2 OLR 592

Hon'ble Judges : P.K. Mohanty, J;P.C. Naik, J

Bench : Division Bench

Advocate : S.P. Mishra, A.K. Mishra and N. Lenka, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanty, J.—The landlord is the petitioner who challenges the order of the House Rent Control Authorities rejecting his prayer for eviction of opp. parties 3 to 10 on the ground of wilful and habitual default in payment of rent and on the ground of bona fide requirement of the landlord.

2. The short fact of the petitioner's case is that he filed an application unclear Sections 7(2)(1) and 7 (4) of the Orissa House Rent Control Act (hereinafter called as "the O.M.R.C. Act") for eviction of opp. parties 3 to 10 from the suit premises on the ground of wilful and habitual default in payment of monthly rent and on the ground of his bona fide requirement. The properties described in Schedule "A" of the application, originally belonged to one Gouri Dutta Rameswar Lal a Hindu undivided family and Rameswar Lal Saha, the grandfather of the petitioner who was the Karta of the family till his death in the year 1965. After the death of Rameswar Lal Saha, Gokula Charidra Saha, the father of the petitioner became the Karta of the family so far as the properties are concerned. Sometimes in the year 1978, the co-sharers of Gokula Charidra Shah filed a partition suit of the joint family proportions in the Court of the Subordinate

Judge, Balasore registered as Title suit No. GG of 1978 which was compromised on 24-3-1979. In terms of the compromise decree the premises in question fell to the share of the petitioner and the petitioner became the absolute owner thereof. The Opposite party-firm was inducted as a tenant in respect of the case house by late grandfather of the petitioner Rameswar Lal Saha in the year 1959 and the firm continued as a tenant under the father of the petitioner and thereafter remained as a tenant under (he petitioner. The partition and change of ownership was intimated to opp.-party-firm. From the date of partition, the petitioner has been collecting rent from the opp.-party-tenant. But however, the opp.-party-firm was not regular in the matter of payment of rent.

Since from the month of January, 1983 till the filing of the application for eviction, it was alleged that rent had not been paid and in the process the opp party firm is a wilful and habitual defaulter in the matter of payment of rent and thus, incurred liability to be evicted on that ground. The further ease of the petitioner was that he was running his business as a dealer in cement and asbestos from a rented house belonging to Manulal Gauri Dutta Pvt. Ltd. of which his father is one of the shareholders. The present shop room of the petitioner in which the opp.-party-firm is a tenant is spacious and convenient to run the business because of its situation and locality and, therefore, the petitioner requires the same bona fidely in good faith to run his aforesaid business therefrom. It is further asserted that the house in question is situated in the heart of Balasore town and is convenient for running the business in a most profitable manner and, therefore. The petitioner sought for eviction of the tenant from the premises in question also on the ground of bona fide requirement.

3. Opposite parties 1,2, 5 and 8, who arc present opposite parties 3, 4, 7 and 10 entered their appearance and contested the proceeding by filing a written statement and as the other opposite parties were set ex parte. The contesting opp.parties denied the allegations made in the application for eviction and took the specific stand that the firm was never a wilful and habitual defaulter in payment of rent and the present application was filed by the petitioners to enhance the house rent and to claim higher rate of Salami. The opposite parties father took the stand that the petitioner does not require the premises for running his business since he runs his business in his own house and not in a rented house as alleged and the application is filed with mala fide intention. In support of their ease, the petitioner as well as the opp.parties adduced two witnesses each and have filed certain documents marked as Exts. 1 to 11 and Exts. A to C series respectively. The certified copies of the evidence adduced by the P.Ws. 1 and 2 and O. P. No. 1 and 2 arc filed as Annexures 3, 4, 5 and 6 to this writ application.

4. The House Rent Controller after hearing the application on its merit, having not believed the plea of wilful and habitual default in payment of rent and the plea of bona fide requirement by the petitioner, dismissed the H.R.C. Case by order dated 11-12-1980. a copy of which is Annexure-7. Being aggrieved, the

petitioner filed H.R.C. Appeal before the C.J.M.-cum House Rent Control Appellate authority who has dismissed the appeal and confined the order of the House Rent Controller, a copy of which is Annex -urc 9.

5. Mr. B.P. Misra, learned counsel appearing for the petitioner submitted that the orders passed by the House Rent Controller in Annexures 7 and 9 are erroneous and illegal and against the materials available on record and, therefore, liable to be quashed. It is his submission that the learned House Rent Commissioner has misconstrued and misconceived the position of law in respect of payment of house rent and the scope of a plea of habitual and wilful defaulter in coming to a finding that the tenant is not a habitual defaulter. It is submitted that the opposite party tenant had not paid the rent from the month of January, 1983 till March 1983 which is beyond the statutory period inasmuch as in absence of any agreement to the contrary and in view of the merits of documents, Ext. 4 series and Exts. A and C series the House Rent Control authorities should have held that the tenant is a wilful and habitual defaulter in payment of rent, there was no scope to arrive at a different conclusion. A single default by a tenant in payment of rent can be construed as a default in the eye of law. It is further submitted that the finding of the House Rent Control Authorities that the petitioner does not require the premises in question bona fide for his own use and occupation is contrary to law and against the materials available on record. It is submitted that admittedly the witnesses examined on behalf of the opposite party-tenant i.e. opp party witnesses 1 and 2 have clearly deposed that the premises in which the landlord-petitioner runs his business belongs to a Private Limited company known as Manulal Gauri Dutta Pvt. Ltd. in which the petitioner has got no connection and it is the specific case of the petitioner that he runs his business from the rented premises and therefore, the learned Courts below could not have come to a conclusion that the premises in question are not required bona fide. The learned counsel submits that it is the option of the landlord to decide in which premises he is to run his business and moreover when his own house is available to him for running his business which is more suitable because of the situation and location of the place.

6. In view of the aforesaid pleadings of the parties, the question that arises for consideration is as to whether the tenant-opp party, in the facts and circumstances of the present case, can be termed as wilful and habitual defaulter in payment of rent and as to whether the plea of bona fide requirements of the rented premises taken by the landlord was just and proper calling for an eviction order of the tenant.

7. The receipt of notice by Gokula Chander Saha on 3-5-1979 and the notice from the petitioner dated 9-5-1979 have been admitted inasmuch as it has been stated in paragraph-16 of the written statement that the opposite parties after coming to know of the civil suit and the fact that the premises having fallen to the share of the petitioner, went to pay the monthly rent to the petitioner and his father, but however, it is stated that they demanded higher rent at the rate of Rs.

360/- per month and the opposite party had to pay the same.

8. Now let us consider the question of bona fide requirement of the landlord-petitioner and whether the landlord has been able to prove its case of bona fide requirement. It appears from the impugned order of the learned Chief Judicial Magistrate-cum -House Rent Control Authority that he did not find satisfactory evidence that the ease house will be more suitable for his business than the house in which he is running his business on payment of rent to a private company. The learned Appellate Authority has taken the view that since the petitioner has got other houses at other places suitable for his business, there is no bona fide requirement at the suit house. The learned House Rent Control Authorities, it appears, have relied on the decision in *Basudeb Sahu v. Balabhadra Sahu* 65(1988) CLT 635 to put the onus on the landlord to prove the need or necessity which must be obvious and not mere wish. Undisputedly the petitioner having his business in a rented house belonging to a Company and according to him, the suit premises, which is located in the main bazar area is more suitable for the purpose of his business.

9. The Apex Court in *Mrs. Meenal Eknath Kshirsagar Vs. M/s. Traders and Agencies and another*, has observed that, it is for the landlord to decide how and in what manner he should live and he is the best judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis is either insecure or inconvenient, it is not for the Courts to dictate to him to continue to occupy such premises. In the case at hand, it is not disputed that the petitioner is running his business from a rented house inasmuch as it is also not denied that the residential accommodation in the share of the petitioner is not sufficient for accommodating him and his family, he having married and begotten children. A reference has been made to the decision in *Pusharlal Poddar v. Guljarilal Poddar* 72 (1991) CLT 583 to contend that it is for the landlord to select which one of the house is suitable for his personal use, if he has more than one houses, and the High Court cannot thrust upon him its decision. Yet in another decision reported in *Smt. Radha Nayakani Vs. Konchada Narayana Murty and Others*, , this Court has also taken the view that even if therein some houses standing in the name of the landlord, which would be an appropriate premises for the landlord is a matter exclusively left to him to decide and it would become difficult for the Court to determine such a dispute.

10. In view of the settled position of law discussed above that it is for the landlord to decide which house or premises is suitable to him for his residential purpose and business and in view of the undisputed position that the petitioner is running his business in a rented premises, it could not be for the Court to decide as to which of the two would be more beneficial to him. The Court ought not to have lost sight of the fact that the petitioner being a landlord in respect of the disputed house, he has an indivisible right to enjoy it in the manner he likes and he cannot be forced to continue in a rented house only because he or his

predecessors-in-interest at any point of time let out the premises to the opposite party. In that view of the matter, the finding of the Court below on that score has to be set aside.

11. Now coming to the question of wilful and habitual default, in view of our findings on the question of bona fide requirement, this question may not have more significance but however, on going through the findings of the learned Courts below, we do not find any merit in the contention of the learned counsel for the petitioner that the tenant-opposite party was a wilful defaulter.

12. In view of our discussions in the foregoing paragraphs, we are of the considered opinion that the judgments of the learned Courts below cannot be sustained in law and therefore need to be and are hereby quashed. The petitioner in the facts and circumstances of the case having established its case of bona fide requirement, he is entitled to an order of eviction in his favour as against the opposite party.

Accordingly, we allow the writ petition, quash the judgment of the Courts below and direct eviction of the opp. party from the disputed house on the ground of bona fide requirement of the landlord. But however, in the facts and circumstances of the case, there shall be no order as to cost.

P.C. Naik, J.

13. I agree.