
(1982) 04 OHC CK 0012

In the Orissa High Court

Case No : Original Jurn. Case No. 947 of 1977

D. Chaturbhuj Jain Bhansali and Another	APPELLANT
Vs	
Bijoy Chandra Bakshi and Others	RESPONDENT

Date of Decision : 06-04-1982

Acts Referred:

Orissa House Rent Control Act, 1958 — Section 7(2)

Citation : AIR 1982 Ori 178 : (1982) 53 CLT 529

Hon'ble Judges : R.C. Patnaik, J;N.K. Das, J

Bench : Division Bench

Advocate : A. Mukherjee, A.K. Misra and P.R. Barik, for the Appellant; G. Rath and P.C. Mohapatra and Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—Tenant in a proceeding for eviction under the Orissa House Rent Control Act is the petitioner. Admittedly, petitioner is a tenant under opposite party No. 1 in respect of a double-storeyed building on the main road of Jeypore town. Opposite party No. 1 filed a case for eviction on the ground that petitioner No. 1 has sublet the house to petitioner No. 2 and is in arrears of house rent and that opposite party No. 1 requires the house in good faith for his residence and for opening a shop.

2. The present petitioners in their counter contended that petitioner No. 2 is the son of petitioner No. 1 and there is no question of subletting. He is not a wilful defaulter. It is further stated that opposite party No. 1 has got sufficient other houses and at present he is residing in his ancestral house which has been divided into four equal portions. There is no need of opening any shop.

3. The House Rent Controller dismissed the application for eviction, but the appellate court set aside the judgment of the House Rent Controller and allowed the petition for eviction holding that opposite party No. 1 requires the house for his residence and also for starting a motor parts shop.

4. It is contended by Mr. Mukherjee, the learned counsel for the petitioners, that petitioner No. 2 being the son of petitioner No. 1, there is no question of subletting. He further contends that opposite party No. 1 has his ancestral house and he has not stated in the petition filed before the House Rent Controller that he requires the house for starting a motor parts shop and this fact has been developed at the time of hearing. Mr. Rath, the learned counsel for opposite party No. 1, contends that apart from the question whether petitioner No. 1 has sublet the house to petitioner No. 2, the concurrent finding is that opposite party No. 1 requires the house in good faith for his occupation and for starting a shop. The relationship of petitioner No. 1 with petitioner No. 2 being admitted, the question of subletting the house does not arise.

5. It is contended on behalf of the petitioners that opposite party No. 1 filed a petition for enhancement of house rent during the pendency of the application for eviction and also made a suggestion to the petitioners for sale of the property to them. The appellate court has not taken notice of these facts and, therefore, cannot be said to have any objective satisfaction for setting aside the judgment of the House Rent Controller. Petitioners have prayed for issuance of a writ of certiorari quashing the judgment of the appellate court. In *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , it has been held (at p. 479):

"A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can, similarly, be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which had influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain

the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ Court."

The Supreme Court relied upon three previous decisions of that Court, namely, Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, ; Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, and Kaushalya Devi and Others Vs. Bachittar Singh and Others, .

6. There is no dispute about the fact that there has been no wrong interpretation or misinterpretation of any provision of law. The only question, therefore, is whether a writ of certiorari can be issued to quash the appellate judgment simply on the fact that it has not taken into consideration the facts that opposite party No. 1, during the pendency of the eviction proceeding, demanded higher rate of rent and made a proposal to the petitioners for sale of the house. Further, opposite party No. 1 having his ancestral house which he is occupying, there is no bona fide requirement of the house in question and that opposite party No. 1 has not mentioned in the petition for eviction that he requires the house for starting a motor parts shop and has simply stated that he requires the house for opening a shop.

7. Admittedly, the house is a double-storeyed building and is situated on the main road of Jeypore town, It has been found by the appellate Court that the ancestral house of opposite party No. 1 has been partitioned and opposite party No. 1 is occupying a portion which he has got by partition towards the backside of the building and he has to pass through the house of his co-sharers in order to come to the main road. As opposite party No. 1 has to pass through the house of his co-sharers, there have been ill-feelings, quarrels and dissatisfaction. Therefore, the house in question being on the main road and a double storeyed building, opposite party No. 1 requires the same for his occupation, This is a finding of fact. As regards non-mention of the words "motor-parts shop" in the application before the House Rent Controller, it does not vitiate the claim of opposite party No. 1 for eviction of the petitioners-It has been provided in Section 7 of the Orissa House Rent Control Act that the landlord can claim possession of the house if he requires the house in good faith for occupation or use of himself, any member of his family or of any person or persons for whose benefit the house is held by him. The application is to be made in form "A" appended to the Rules under the Orissa House Rent Control Act. This form does not specify anywhere any heading as to details of the requirement. On the other hand, the form requires detailed description of the house. Opposite party No, 1 has also stated that he requires the house for opening a shop. This In our opinion was sufficient to specify the requirement. In view of the facts that opposite party No. 1 is occupying a portion of his ancestral house towards the backside and it is not convenient for his access to that house from the main road; he intends to occupy the house in question which is situated on the main road and that he requires the house for his residence and also to start a shop in

the ground floor as the house abuts the main road, there is sufficient proof of his bona fide requirement of the house.

8. Reliance has been placed by the petitioners on a decision reported in *Banke Ram Vs. Smt. Sarasti Devi*, . This case is distinguishable. That was a case where there was a provision u/s 13 of the East Punjab Urban Rent Restriction Act that it should be contained in the petition for eviction that the applicant is not occupying another residential building in the urban area concerned and that he has not vacated such building without sufficient cause after the commencement of the Act in the urban area. These two elements which were statutorily required to be stated in the petition had not been mentioned in the petition. It was, therefore, held that it was essential for the landlord to plead the ingredients of the Act in his eviction application. When the applicant had not pleaded, the prayer for eviction was refused. Under the Orissa House Rent Control Act, there is no such restriction, inasmuch as there is no such provision to be mentioned in the application. Therefore, the facts and circumstances of the Punjab & Haryana case are completely different from the instant case.

9. Petitioners have also relied upon *Health Stores and Others Vs. Musamat Rahima Bai and Others*, . That was a case in which the burden of proof had been wrongly placed and all the grounds taken were found to be not acceptable. Therefore, that case is of no help to the petitioners. It has also been held in *Banke Ram Vs. Smt. Sarasti Devi*, that if parties have entered into evidence and have, in fact, led evidence in the case, there can not be any question of prejudice. In the instant case, after opposite party No. 1 had led evidence claiming that he wanted the house for his occupation, inasmuch as the portion of his ancestral house occupied by him was not convenient for his occupation and that he wanted the house also to start a motor-parts shop in its ground floor as it is situated on the main road, the petitioners have also led counter-evidence. Therefore, there cannot be any question of prejudice.

10. The question of requirement and the reasons for requirement are to be considered at the time of making the application. Subsequently, if the landlord wants to increase the rate of rent or if the case for eviction drags on for a long time and being desperate and coming to a breaking point makes an offer for sale during the pendency of the case, the petitioners cannot take advantage of this situation, nor will it be a decisive question.

11. For the above reasons, we hold that the findings of the appellate Court cannot be said to be based on no evidence. There is no arbitrariness in the said findings.

12. On the aforesaid analysis, we hold that the writ petition has no merit. It is, accordingly, dismissed. But in the circumstances of the case, we award no costs. We, however, direct the petitioners to vacate the premises within six months from today.

R.C. Patnaik, J.

13. I agree.