

(1994) 02 OHC CK 0003

In the Orissa High Court

Case No : Original Jurn. Case No. 4483 of 1990

Giridhari Prusty

APPELLANT

Vs

The House Rent Controller-cum-S.D.J.M., Puri and Others

RESPONDENT

Date of Decision : 04-02-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa House Rent Control Act, 1968 — Section 7(2)

Citation : AIR 1994 Ori 293

Hon'ble Judges : G.B. Patnaik, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : P.K. Misra, for the Appellant; S.K. Mund, D.P. Das and J.K. Panda, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—Tenant is the petitioner and an order of eviction having been passed by the Controller under the provisions of the Orissa House Rent Control Act and the said order having been affirmed by the appellate authority, the petitioner has approached this Court.

2. The landlords filed an application for eviction of the tenant alleging therein that the tenant has wilfully defaulted in payment of rent and that the premises in question is needed by the landlord for bona fide use. It was alleged in the application for eviction that the disputed room had been rented put to the tenant on a monthly rent of Rs. 150/- and since May, 1985, the tenant has not paid any rent. So far as the plea of bona fide requirement is concerned, the averment in the application for eviction was that the disputed room is required to open a passage to the upstairs of the building as the existing, passage is not convenient.

3. The tenant-petitioner filed his written statement denying the averments made in the application for eviction and it was stated that the rent was Rs. 40/- per month and not Rs. 150/- and the plea of bona fide requirement is a mere ruse for eviction. It was also averred that the landlord had filed application for eviction

earlier, but the matter was compromised after the tenant agreed to enhance the rent and the present application has essentially been filed for enhancement of the rent in question. So far as the default is concerned, it was alleged that the tenant submitted the rent for the month of May, 1985, by money order and the landlord refused the same. Again, the rent was remitted for the months of May, June and July together by money order which was also refused. When the landlord continuously refused to accept rent, the tenant opened a Savings Bank account and deposited the rent from time to time and, therefore, there cannot be said to be any deliberate default on the part of the tenant in payment of rent. It was also indicated that the existing passage is sufficient and the landlord does not require the disputed room for broadening the passage in question.

4. Before the Controller, parties led evidence and on consideration of the same, the House Rent Controller came to the conclusion that the rent for the premises had not been paid by the tenant since May, 1985, and for the first time it was deposited in the Bank in May, 1986. The Controller did not accept the plea of the tenant that the rent being remitted by money order, the same was not accepted and was refused as the two money order coupons (Exts. B and C) do not bear any postal seal and consequently, it was held that the tenant has wilfully defaulted in payment of rent. So far as the plea of bona fide requirement is concerned, the Controller also scrutinised the entire evidence on record and came to the conclusion that the existing entrance of the lodging is a narrow one of three feet wide and, therefore, the requirement of the landlord for widening the passage must be held to be a bona fide requirement. With these conclusions, the order of eviction having been passed, the tenant preferred an appeal which was registered as House Rent Control Appeal No. 5 of 1989. The order of the Controller has been annexed as Annexure-1.

5. The appellate authority re-appraised the entire materials on record and affirmed the findings of the Controller. Agreeing with the Controller, the appellate authority also came to hold that Exts. B and C could not be taken into credence as those do not appear to be genuine and do not bear any seal of the post office and the entries thereon are the unilateral act of the tenant. After discarding Exts. B and C as suspicious, he also considered other materials on record and came to hold that the tenant has wilfully defaulted in payment of rent. On the question of bona fide requirement, he also elaborately discussed the materials and ultimately came to the conclusion that the requirement of the disputed premises for widening of a passage to the upstairs cannot but be held to be a bona fide requirement. With these conclusions, the appeal having been dismissed and the order of eviction having been affirmed, the petitioner has approached this Court.

6. Mr. Misra, the learned counsel for the petitioner, contends that the forums below illegally excluded Exts. B and C from consideration notwithstanding the evidence of the Postal Peon who categorically stated that he offered the amount and the money was refused and such illegal exclusion of material piece of evidence vitiates the ultimate conclusion. Mr. Misra further contends that the

refusal on the part of the appellate a authority to take into consideration the receipt indicating the sending of the amount by money order as an additional evidence tantamounts to denying the opportunity to the tenant to prove his case of regular payment and this refusal vitiates the ultimate conclusion. Mr. Misra further urges that similar applications for eviction by the same landlord having been filed on the ground that the premises is required for widening of the passage and those applications having been compromised, and order of eviction not having been given effect to, this Court would be entitled to take into consideration these subsequent events and come to hold that the requirement is not bona fide and, on the other hand, is a device for enhancement of rent by way of compulsion.

The learned counsel for the landlords-opposite parties, on the other hand, contends that the questions of wilful default and bona fide requirement being questions of fact and the two forums below having considered the entire materials on record and having given their findings thereon, the said findings are not liable to be interfered with by this Court in a writ of certiorari unless the Court finds any apparent error on the face of those orders. According to the learned counsel since there does not exist any apparent error, the conclusions are not to be interfered with.

7. At the outset, it may be stated that the jurisdiction of this Court in a writ of certiorari is a supervisory one and this Court would be entitled to interfere in a certiorari proceeding with the order of an inferior tribunal to correct errors of jurisdiction where the inferior tribunal acts without jurisdiction or in excess of it or fails to exercise jurisdiction vested in it. Similarly, this Court would be entitled to interfere if it comes to the conclusion that the tribunal has decided the matter without giving an opportunity of hearing to the parties concerned, or there has been any violation of the principles of natural justice. But by no stretch of imagination, this Court would be justified in sitting in appeal over the conclusion of the inferior tribunal. The power of this Court with regard to the findings of the inferior tribunal in a writ of certiorari has been lucidly indicated by their Lordships of the Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, . The entire object of a writ of certiorari is to examine the records of the inferior tribunal and be satisfied that the tribunal has not gone beyond its jurisdiction and has exercised the jurisdiction without the limits fixed by law. It has been laid down by the apex Court that the High Court in exercise of its power under Articles 226 and 227 of the Constitution can interfere with the findings of the inferior tribunal and correct an error of law apparent on the face of the order and it has been further held that an error can be said to be apparent on the face of the order when the tribunal in arriving at its conclusion ignores admissible piece of evidence or takes into consideration inadmissible evidence, or exercises jurisdiction which it does not possess or refuses to exercise jurisdiction vested in it. It has also been held that where a conclusion is based on no evidence, or no reasonable man can come to such a conclusion on the evidence on record, it would be a case of an error apparent on the face of the order. But the High Court

will not be justified in re-appreciating the materials in coming to its own conclusion.

8. Bearing in mind the aforesaid principles, we would now examine the contentions raised by Mr. Misra appearing for the petitioner. There cannot be any dispute that the questions of wilful default and bona fide requirement are questions of fact and if on the ancillary findings of the tribunal, the conclusion is justified, the same cannot be interfered with. So far as the first contention of Mr. Misra is concerned, the Controller as well as the appellate authority came to the finding that there had been no payment of rent since 1985. According to the tenant since 1985 money had been remitted to the landlord by money order, but as he refused to accept the rent, then it was deposited in a Savings Bank account. The factum of remittance of money by money order and its refusal by the landlord has not been established since the two money order coupons pressed into service by the tenant for establishing the same have been found to be not genuine and suspicious. We see no infirmity with the aforesaid findings of the tribunals since Exts. B and C do not bear any seal of the postal authority and rightly, the appellate authority observed that it could be a unilateral act on the part of the tenant. Excluding Exts. B and C which, in our view, have rightly been excluded from consideration, the finding that the tenant has failed to establish his plea of remitting the money and refusal by the landlord to accept the same cannot be interfered with by this Court in a certiorari proceeding since there is no other material to establish the same. Then again, the plea that after its refusal, the tenant has been depositing the same in a Savings Bank account, has also been considered, but it was found that only in May, 1986, the deposit was made. Therefore, for about a year, there has been no offer of rent by the tenant and necessarily, therefore, the tenant has been held to be a wilful defaulter in payment of rent. In view of the statutory obligation of the tenant to pay rent for every month by the first week of the succeeding month and the tenant having failed to pay the rent on or before the said date for more than one year, the Controller and the appellate authority were fully justified in coming to the conclusion that there has been a wilful default in payment of rent and the said conclusion is immune from interference by this Court.

9. So far as the second submission of Mr. Misra, the learned counsel for the petitioner, is concerned, no doubt, it appears that at the appellate stage the tenant wanted to produce the receipt in token of sending of rent for 3 months by money order and the appellate authority did not grant the said permission on the ground that no justifiable reason has been indicated for not adducing the same before the Controller. But in view of the fact that the basic materials, namely Exts. B and C were found to be not genuine and spurious and the receipt which was sought to be adduced as additional evidence could not have established the fact that the money had been remitted for three months by money order in May, 1985. That apart, the further conclusion that for the rest nine months, the money was deposited only in May, 1985, which itself indicates the default on the part of the tenant in making the deposit in time, remains unaltered and,

therefore, the ultimate conclusion that there has been wilful default on the part of the tenant to pay the rent cannot be interfered with by this Court, as there is no error of law apparent on the face of the orders of the two forums below. The second contention of Mr. Misra also is devoid of any substance.

10. So far as the third contention of Mr. Misra, the learned counsel for the petitioner, is concerned, we have also carefully scrutinised the order of the appellate authority as well as that of the Controller and we do not find any material in those orders to support the said contention, namely : landlord's similar applications filed against other tenants were not ultimately pressed, which according to Mr. Misra would belie the case of bonafide requirement. This contention is advanced on the basis that though application for eviction against two other tenants had been filed for the purpose of widening of the passage and orders of eviction had been obtained, but the landlord entered into compromise with them and that factor can be taken into account by this, Court which came into existence subsequent to the filing of the writ petition. The question that arises for consideration in the context, therefore, is whether any event subsequent to the order of eviction passed and affirmed by the appellate authority can at all be taken note of in a certiorari proceeding. Mr, Misra in support of his contention relies upon a Bench decision of this Court in O.J.C. No. 4972 of 1990 (Shanti Devi v. Radhakrishna Shah, decided on 12-8-1993, Chief Justice Hansaria speaking for the Court held that the law does not prohibit the High Court to take note of the subsequent facts brought to the notice of the Court for the first time while examining an eviction order in a proceeding under Article 227 of the Constitution. Though the aforesaid decision supports Mr. Misra's contention fully, but the same appears to be contrary to several Supreme Court decisions as well as earlier decisions of this Court of which we will now take note of. In the case of Kota Sarathi Senapati v. Kotini Narayan Murty (1972) 2 CLR 1456 a Bench of this Court held that in a proceeding asking for certiorari, fresh evidence is not taken into account, but if there has been any change in the circumstances of the parties in such a manner, then such change may be taken into consideration. The High Court exercises its powers of supervision to find out whether the order of the inferior tribunal is within jurisdiction or not and that power being a supervisory one and not an appellate one, it will not be appropriate for the Court to take into account any subsequent course of events that had taken place in order to find out whether the impugned order suffers from any manifest error of law. In the case of Shambho Nath Vs. Radhey Shyam and Others, , the Allahabad High Court held that in a writ petition by a tenant against an order of eviction the High Court exercising jurisdiction under Article 226 could not act like a court of appeal and take into consideration the events subsequent to the impugned order. The Supreme Court in the case of Bachan Singh and Others Vs. Gauri Shankar Agarwal and Others, , had observed that while exercising jurisdiction under Article 226. High Court does not and cannot usurp the function of a court of appeal and for that reason cannot permit a party to raise a fresh point for the first time before it particularly when, the said point

depends upon certain facts. In a certiorari proceeding the High Court is entitled to examine the order of the inferior tribunal to find out whether it contains any error on the face of the record so as to be interfered with by the Court. That being the position, the finding of the inferior tribunal on the question of bona fide requirement has to be adjudged on the materials on record and the requirement in question. It would not be permissible to examine the correctness of the said finding with reference to some other case filed by the same landlord for eviction. The bona fide requirement in question in respect of the premises for which application for eviction has been filed is a point in issue and, therefore, it would not be permissible to examine whether the said finding is justifiable in view of any subsequent facts in some other case. That apart, there is no material on record to indicate that in some other eviction proceeding filed by the same landlord, the landlord has not pursued the proceeding. Neither the orders of those proceedings are before us, nor the so-called compromise between the parties is before us and, therefore, there does not exist any material which could be examined by this Court for entertaining the plea that in fact, there did not exist any bona fide requirement. Merely on some vague assertion made in the writ application, it would not be permissible for the Court to take that into account to find out the correctness of the conclusions arrived at by the inferior tribunal. As has been stated earlier, the requirement of the landlord for eviction is widening of a passage and that requirement has been found by the Controller as well as the appellate authority to be a bona fide one on the materials placed in the proceedings. There is no grievance that any material has not been considered or any irrelevant material has been considered. Since the finding on a question of fact has been arrived at by the two forums below on consideration of the entire relevant materials on record, the said finding is immune from interference by this Court. We are unable to accept the third contention of Mr. Misra appearing for the petitioner.

11. Since all the contentions raised fail, the writ application fails and is dismissed, but in the circumstances, there will be no order as to costs.

The interim orders stand vacated.

A.K. Patnaik, J.

12. I agree.