

(1987) 09 OHC CK 0018

In the Orissa High Court

Case No : Original Journ. Case No's. 561 and 562 of 1983

Kandula Prabhakar Rao

APPELLANT

Vs

Tumulu Lakshmanamurty and Another

RESPONDENT

Date of Decision : 01-09-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Orissa House Rent Control Act, 1968 — Section 12, 7

Citation : AIR 1988 Ori 263 : (1987) 64 CLT 713

Hon'ble Judges : L. Rath, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : N.C. Panigrahi, for the Appellant; R. Ch. Mohanty, R.K. Mohanty, A.K. Sahu, S.K. Padhi, A.K. Padhi and Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

L. Rath, J.—These two writ applications arise out of the same appellate judgment in a House Rent Control case disposing of two House Rent Control Appeals respectively preferred by the landlord and the tenant as against an order of the House Rent Controller dismissing the landlord's application for eviction even though recording adverse findings against the tenant as being a wilful defaulter and having negated the title of the landlord. Two writ petitions have been filed against the same order since originally there were two appeals before the appellate authority and both are being disposed of by this common judgment.

2. Two questions have been urged by Mr. Panigrahi, learned counsel appearing for the petitioner-tenant to press for reversal of the appellate judgment. The first is whether a person who was a tenant but was evicted from the house in execution of an ex parte order of eviction but occupied the house thereafter forcibly could still be called a tenant in the house rent control proceeding restored after setting aside of the ex parte order; and second, whether the House Rent Controller functioning under the Orissa House Rent Control Act, 1967 has the authority to set aside an ex parte order of eviction and restore the house

rent control case for fresh hearing.

3. The facts, shorn of details, are that the opposite party No. 1 filed the house rent control case seeking eviction of the petitioner on the ground of wilful default of the petitioner in payment of the rent and denying the landlord's title and also on the ground of bona fide requirement. Besides, he also filed a petition for fixation of fair rent. The learned House Rent Controller found in fact that the petitioner was a wilful defaulter and had denied the title of the landlord, but however rejected the petition finding that opposite party No. 1 had obtained an ex parte order of eviction of the petitioner which he had put into execution and had taken delivery of possession of the house, but the petitioner had thereafter forcibly occupied the house as a trespasser and hence no relationship of landlord and tenant subsisted between the parties so as to maintain the petition under the Orissa House Rent Control Act. Both the petitioner and opposite party No. 1 preferred appeals before the Chief Judicial Magistrate, Ganjam, Berhampur, who reversed the decision of the House Rent Controller and directed eviction of the petitioner and also fixed the fair rent of the house at Rs. 200/- per month.

4. So far as the first submission is concerned, it has no force since the petitioner came himself with a petition before the House Rent Controller for setting aside the ex parte order and after restoration contested the proceeding and thus accepted the fact that the proceeding against him could continue to determine the issue raised in the house rent control proceeding not only relating to the fact of wilful default and bona fide requirement, but also the question whether there was any relationship of landlord and tenant, on his plea of continuing in possession of the premises on account of a prior agreement with the original landlord to whom he also paid some advances. The eviction order in pursuance of which the petitioner was evicted had no independent existence than the house rent control case. When the order of eviction was itself set aside, any action taken in pursuance of such order of eviction would, in the eye of law, be non est and hence the eviction effected in execution of the order would no longer be deemed to have been carried out in view of the fact that the very order stood withdrawn and there was nothing left, by the fiction of law, which could have been put into execution. Consequently, it would follow that an eviction, in the eye of law, had never been carried out. The question of re-occupation by the petitioner forcibly also would not arise and he would continue to fill the same character in respect of the premises which he was originally holding prior to the purported eviction. The petitioner, if had continued to remain evicted even after the restoration of the House Rent Control case, could always file an application for restitution to be put back in the house. The House Rent Controller had found the petitioner to be a tenant under opposite party No. 1 who had denied the title of his landlord and also to be a wilful defaulter. The resultant situation, therefore, since the petitioner is not found to be a trespasser in respect of the premises, is that he being a tenant in respect of the house, was liable to suffer the consequence of the findings against him of the House Rent Controller. Thus, the order of the appellate authority directing eviction of the petitioner can be taken

no exception to on that account.

5. Faced with such difficulty, Mr. Panigrahi raised the second submission to challenge the powers of the House Rent Controller to direct restoration of the house rent control case after setting aside the ex parte order, even though the order of setting aside the ex parte order was obtained by the petitioner himself. It is urged that the petitioner's action would not debar him from raising the question since it is one relating to jurisdiction of the Controller. It is submitted that the restoration of the house rent control case being without jurisdiction, the execution of the order of eviction against the petitioner would no longer be deemed to have been not effective and hence the petitioner's possession of the premises would be that of a trespasser, not amenable to the jurisdiction of the House Rent Controller.

6. The submission requires careful consideration on the question of powers of the House Rent Controller for setting aside an ex parte order or even to restore an application dismissed for default.

7. Undoubtedly the House Rent Controller functioning under the Orissa House Rent Control Act is a tribunal with the trapping of a Court since it is vested with the powers to decide as a special forum preexisting civil rights of a class of landlords and tenants and for the purpose has been vested with powers u/s 12 directing that the enquiry under the Act shall be held, so far as practicable, in accordance with the provisions of the Code of Civil Procedure. Dealing with the question under the *Nimai Charan Kamila Vs. Sham Mohan Nandi*, , L. Panigrahi, J. (as he then was) held that the provisions of Order 9, C.P.C. are applicable to the proceedings before the House Rent Controller. In another Division Bench decision of this Court ILR (1970) Cut 987 (*Sarat Chandra Tripathy v. Hiranbala Debi*), with facts almost similar to the present one, the question again came up for consideration under the provisions of the Orissa House Rent Control Act (Act 31 of 1958). The case arose out of an appeal filed by the landlord against an order passed by the executing Court on an application u/s 144, C.P.C. restoring possession of the house to the tenant who had been evicted therefrom in pursuance of an ex parte order of eviction but the said order had been thereafter set aside by the House Rent Controller under Order 9 Rule 13, C.P.C. and the original case was pending before him. In the case, the earlier single Judge decision reported in *Nimai Charan Kamila Vs. Sham Mohan Nandi*, was approved holding that the proceeding before the House Rent Controller is undoubtedly a civil proceeding and that the provisions of the CPC apply to the proceedings under the House Rent Control Act as rules of natural justice unless there is any particular indication in the statute or the rules made thereunder for its non-application, or by implication it can be held that an alternate procedure is indicated. It was observed that once the provisions of Order 9, Rule 13, C.P.C. are held to be applicable, the subsequent direction for restoration of the case for fresh disposal cannot be questioned and that the jurisdiction of the House Rent Controller to pass orders invoking Order 9, Rule 13, C.P.C., setting aside an ex

parte order and restoring the case for a fresh disposal would be within his jurisdiction. In another Division Bench decision 41 (1975) CLT 721 (Sarachi Charan Adhikari v. Addl. District Magistrate (Judicial), Cuttack) it was held that the expression "so far as practicable" is significant, and means that Order 41, C.P.C. would not be applicable to appeals under the Act if there is inconsistency or repugnancy, which in other words means that if there is a specific provision in the Act to decide the appeal in a particular manner and there is a contrary provision in Order 41, then the provisions of the Act would prevail, the provisions of Order 41 being not applicable to the extent of the inconsistency. Because of specific provision in the Act relating to disposal of appeals, it was held that an appeal under the House Rent Control Act, unlike appeals under Civil P. C. cannot be dismissed for default of the appellant and that such an appeal dismissed for default also cannot be restored under Order 41, Rule 19, C.P.C. as it could not have been dismissed for default at all and the question of applicability of Order 41, Rule 19 would not arise, but however the appeal can be restored in exercise of the inherent power u/s 151, C.P.C. In a still further Bench decision of this Court in (1975) 1 CWR 447 (S. Ziauliah v. Smt. Kiranbala Devi), the law as laid down in 41 (1975) CLT 721 (supra) was reaffirmed and applying the same it was held that Order 8, Rule 5, C.P.C. can be applied in construing a written statement filed in a house rent control proceeding since there is nothing in the Act or the Rules which runs counter to the provision of Order 8, Rule 5, C.P.C. In a recent decision of this Court Smt. Debmeni " Devmani Atha Vs. Smt. Sarala Ben Mulji Bhinda, , S. C. Mohapatra, J. on a re"sume" of the earlier decisions, has also come to the conclusion that the House Rent Controller has jurisdiction to restore a case under Order 9, Rule 13. C.P.C. by setting aside the ex parte order.

8. In another decision (1973) 1 Cuttack WR 618 : 1974 Lab 1C 836 (The Management of the Dhenkanal Municipality, Dhenkanal v. Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar), it was held analysing the power of the Industrial Tribunal under the Industrial Disputes Act, 1947 that though the Industrial Disputes Act, 1947 and the Orissa Industrial Disputes Rules, 1959 do not specifically confer all the powers of a civil Court on the tribunal, yet under Rule 23, the tribunal has the authority, if sufficient cause is shown, to adjourn a case and had also been conferred under Rule 26 the power of granting adjournment as prescribed under the Code of Civil Procedure, which indicates that as provisions Order 17, C.P.C. are applicable under Rule 25(b), Order 9 also becomes applicable to such proceedings. Extending the same principles, since undoubtedly the House Rent Controller has the power to grant adjournments in view of the applicability of the provisions of C.P.C. u/s 12 of the Orissa House Rent Control Act, the provisions of Order 9 of the C.P.C. would be also applicable to proceedings before him. There is thus overwhelming authority in favour of the proposition that in any view of the matter, the provisions of Order 9, C.P.C. are applicable before the House Rent Controller.

9. The position that emerges is that there has been successive decisions of this Court prevailing over a long period deciding that the provisions of the Civil P. C.

can be applied by the House Rent Controller to proceedings before him as principles of natural justice and that such provisions apply unless any provision in the Act is inconsistent with the provision of the Civil P. C. making the applicability of the latter unworkable and that the power of restoration can also be exercised in respect of appeals under the Act as an inherent power u/s 151, C.P.C. even though there is no scope for dismissal of appeal for default at all. It is however doubtful whether the House Rent Controller being a tribunal would be possessed of any inherent power, in view of the decision of this Court in ILR (1971) Cut 1325 : (1972) Tax LR 1735 (State of Orissa v. Member, Sales Tax Tribunal), Chief Justice G. K. Misra, who incidentally also delivered the decision in (1975) 41 CLT 721 (supra), on a thorough analysis held that the distinction between inherent power and implied power must not be lost sight of and that only Courts having general jurisdiction like civil Courts have inherent power, but Courts or tribunals of limited jurisdiction created under special statutes have no inherent power though they are possessed of implied powers, which means a power of doing all such acts or employing all such means as are essentially necessary to the execution of the jurisdiction conferred upon them.

10. Mr. Panigrahi however placed reliance on Smt. Nirmala Ben Patel Vs. Indersingh Bagi and Another, to press his submission. We fail to see as to how the decision is of any help to him. All that the case decided, analysing the provisions of Section 13 of the Act, was that Order 41, Rule 23 of the Civil P. C. has no application to appeals under the Orissa House Rent Control Act and that the appellate authority has no power to remand in appeal. The decision has only relied on the earlier decisions of this Court and has rather reiterated the view that the provisions of C.P.C. would be applicable unless their application is excluded expressly or by necessary implication. It was held that the provisions of Order 41, Rule 23, C.P.C. are inconsistent with Section 13 of the Act which cast an obligation on the appellate authority to decide the appeal even after making further enquiries himself, if necessary.

11. Both the submissions raised by Mr. Panigrahi having failed, both the writ petitions have no merit and are accordingly dismissed with costs. Hearing fee is assessed at Rs. 200/-

G.B. Patnaik, J.

12. I agree.