

(1990) 04 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 801 of 1983

Manilal

APPELLANT

Vs

Dasarathi Sahu and Others

RESPONDENT

Date of Decision : 09-04-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1990) 69 CLT 860

Hon'ble Judges : R.C. Patnaik, J;K.P. Mohapatra, J

Bench : Division Bench

Advocate : P. Mohanty and Deepak Misra, for the Appellant; Jitamitra Mohanty and Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Patnaik, J.—This is an action by the landlord for the quashing of the appellate judgment passed in House Rent Control Appeal No. 2 of 1982 by the Chief Judicial Magistrate, Dhenkanal, by judicial review under Articles 226 and 227 of the Constitution of India.

2. The premises in question belonging to the Petitioner is located in Ward No. VIII of Angul town and is being utilised for holding a shop. The premises had been let out to the opposite parties 1 and 2, who are brothers, in 1967 on a monthly rental of Rs. 115/-. Later the rent was increased to Rs. 175/- per month. The tenants, however, committed default in payment of rent and were habitual defaulters. Having regard to the requirements of the Petitioner they had undertaken to quit the premises in January, 1977. Besides, the Petitioner required the premises for his son to run a shop there. When opposite parties did not honour their promise, application was filed for their eviction on two grounds, namely, (a) wilful default and (b) requirement bona fide for personal use.

3. On the evidence, the House Rent Controller held that the Petitioner has failed to establish that the default, if any, was wilful but answered the other ground in

favour of the Petitioner and directed opposite, parties 1 and 2 to vacate the premises. In H.R.C. Appeal No. 2 of 1980 carried by opposite party No. 2, it was contended that having regard to the materials on record, namely, the landlord had other vacant premises, which could be used by him, the order of eviction was not sustainable. Accepting the said contention, the appellate authority remanded the matter for disposal of the question afresh by the Controller after affording the parties opportunity of adducing further evidence. On evidence led by the parties, the Controller reiterated his finding that the premises were required by the Petitioner bona fide for his use and directed eviction of opposite parties 1 and 2. In H.R.C. Appeal No. 2 of 1982 carried by opposite party No. 2, it was urged that there having been vacant premises no less inferior to the premises in dispute which could as well be utilised for the purpose for which eviction of opposite parties 1 and 2 was sought from the disputed premises, the requirement of the Petitioner was not bona fide, but was motivated. This submission found acceptance in appeal and the motion of the Petitioner for eviction of opposite parties 1 and 2 was dismissed.

4. Mr. Deepak Misra, learned Counsel appearing for the landlord, has strenuously urged that the decision of the appellate Court is perverse having been rendered ignoring relevant materials and the assessment of the evidence not having been made from the correct legal perspective. He has made copious references to the evidence of witnesses examined by the parties in course of argument and in the note submitted by him. He has tried to show that the premises which were available to the Petitioner were smaller in size whereas the premises in dispute, as deposed to by the witnesses, was more suitable and better situated having regard to the location and the size. He has vehemently criticised the reasonings of the appellate authority in discarding the bonafides of personal use. He has argued that the criticism of the appellate Court for failure of the Petitioner's son to obtain a licence for starting a drug shop or to engage a Pharmacist etc. were uncalled for as it was premature to seek a licence or engage a Pharmacist when possession of the premises was still to be recovered. There was evidence that the medicine shop at Bagedia was not running well and was to be shifted to Angul. He has also contended that the appellate Court has leaned in favour of the tenants unjustifiably.

Mr. J. Mohanty, learned Counsel for opposite parties 1 and 2, on the other hand, has repelled the submissions urging that this Court while exercising jurisdiction on certiorari, does not function as an appellate Court. Sufficiency or adequacy of evidence are not valid grounds for review of judgment of subordinate authority. Nothing has been placed before the Court to show that the view that has been reached by the appellate Court was not available to be reached on the evidence. He too has referred us to some evidence relied upon by the appellate Court. He has tried to show that the conclusion of the Controller, the original authority, was unsustainable and has been rightly vacated by the appellate authority.

5. The criticism that a Court is pro-tenant or pro-landlord is misconceived.

Sometimes bald allegations are made forgetting the object and purpose of the statute which prescribes different approach and different consideration at variance with the orthodox ones. The Courts effectuate the object and purpose embodied under the Act and according to the guidelines prescribed. The Orissa House Rent Control Act, 1967, for that matter, the various rent Acts in the country were enacted with an avowed purpose "of relieving the tenants of the harsh terms and conditions in which as a weaker bargaining party they condescend to occupy the premises on rent. Rent Acts deal with problems of renting and shortage of accommodation. The time honoured notion that the right of reentry is unfettered and that the owner landlord is the sole Judge of his requirement has been made to yield to the needs of the society which had to enact the Rent Acts specifically devised to curb and fetter the unrestricted right of re-entry and to provide that only on proving some enabling grounds set out in the Rent Act the landlord can re-enter and to fetter the right to enhancement of rent at the pleasure of the landlord. The Acts are beneficial legislation for the protection of the weaker party and for ensuring regular payment of rent by the tenant. Harmony has been sought to be struck whereby the bonafide requirements of the landlords and the tenants in the expanding explosion of need and population and shortage of accommodation are sought to be harmonised by requiring that the landlord must require the premises in good faith (See *M.M. Quasim Vs. Manohar Lal Sharma and others*, and *Amarjit Singh Vs. Smt. Khatoon Quamarain*,).

6. The landlord was successful in satisfying the Controller that his requirement was bonafide for use as a medicine shop. The House Rent Controller relied upon the evidence led on behalf of the Petitioner and held that there was nothing on record to show that he was taking the plea with any malafide or ulterior intention. The plea of opposite parties 1 and 2 was that, which had necessitated a remand, assuming that the medicine shop at Bagedia run by his son was not running well and was to be shifted, there were two shop rooms belonging to the Petitioner located adjacent to the disputed premises whereto the medicine/drug shop could be shifted and carried on. It was not, therefore, necessary to evict opposite parties 1 and 2. Since any of the two shop rooms could meet the requirement of the Petitioner, his motion for eviction of opposite parties 1 and 2 was not in good faith. He may be requiring the shop premises for his use or use of his son, but when another premises which was not less suitable was available, his insisting on the premises in dispute was actuated by ulterior motives. The Controller accepted that the Petitioner had constructed two shop rooms which were situated close to the disputed premises, vide paragraph. So He further accepted the evidence tendered on behalf of the Petitioner that the two shop rooms which were lying vacant were smaller in size and were not suitable for opening medicine shop. In one of the shop rooms which had been constructed newly, a cloth shop has been opened by somebody but it has been alleged that the Petitioner had a share therein but no satisfactory material was placed before the Court except the verbal statement. The Controller accepting the aforesaid

version held that the landlord required the premises in dispute bona fide. In appeal, the finding of the controller was liassailed, inter alia, on the ground that the evidence clearly estabshed thAt the newly constructed shop rooms were in size larger than the disputed premises and there was evidence that medicine shops were being run at Angul in premises smaller in size and if it was held that any of the newly constructed shop rooms was no less suitable, the requirement would cease to be bona fide. This contention found favour with the appellate Court which analysed the evidence and his assessment can be best appreciated by extracting the discussion:

The learned advocate for the Appellant drew my attention to the evidence recorded by the House Rent Controller after remand, i.e., the evidence of landlord after remand on record and the evidence of his son Haraprasad examined as P.W. 4 after remand and submitted that the landlord had earlier given in his evidence the dimension of the case house as 20 feet X 12 feet and the newly constructed rooms to be 20 ft. X 18 ft. but after recall he gave a different version with regard toihe dimension of the case house and stated the case house to be 14 feet X 25 feet and as such this statement made by the landlord should not be relied on. He also drew my attention to the evidence of the landlord recorded after remand that one of the newly constructed rooms has been let out for a cloth shop styled as "Bhai Bhai" and submitted that this conduct of the landlord in letting out one of the rooms is sufficient to show the malafides of the landlord in seeking eviction of the Appellant from the house. He also drew my attention to the evidence recorded after remand of P.W. 4 to the effect that there are other medicine shops at Angul which are located in places of lesser dimensions as admitted by his son and besides that he also drew my attention to the evidence of this P.W. 4 in which he has admitted that he has not yet arranged loan for the shop and that he has got licence as "c" class contractor since for the last 5 years. As regards the Drug Licence this wit ness has stated simply that he has applied for it, but no document has been proved to show that really such an application has been made for Drug Licence. In view of the evidence as referred above, I am of the view that the landlord has not been able to establish the bonafides of his prayer seeking eviction of the tenant from the case house.

It then concluded that having regard to the location and size of the rooms newly constructed, the conduct of the Petitioner in letting out one of the same after remand belied the plea of bonafide requirement and it reversed the decision of the Controller and dismissed the application for eviction. For the purpose of clarity, we may refer to the evidence of the Petitioner in regard to the location and size:

I am constructing two shop rooms which are going to be completed The length of the rooms are 20 feet and width 18 feet. The house in question of occupied by Brundaban is 12 feet in width and 20 teet in length.

The house in question and my newly constructed house are adjacent to the road

and are in the same road." Having regard to the aforesaid evidence of the Petitioner himself, a notice was made before the appellate authority on the first round for a reconsideration by the Controller. Upon remand, the Petitioner denied that he had made any statement referred to above, namely, the two newly constructed rooms were larger in size than the premises in dispute. Such retract to cannot be held to be bonafide and if the appellate authority accepted the version made before remand, it was within its competence. The question is If on the aforesaid evidence of the Petitioner, namely, he had shop rooms abutting on the road on which the disputed premises stands, the appellate authority held that the Petitioner could as well use one of the shop rooms without seeking eviction of the opposite parties 1 and 2, it cannot be said that he has committed any error. Such a finding can reasonably be reached on the materials. Law is well settled that the requirement of the house must not only be present at the time of institution of the proceeding, but should continue to exist till disposal. It is no more correct statement of the law that the landlord has an unfettered right to choose whatever premises he wants. That would be a bald statement. It is not open to a landlord to say that though he may be having some vacant premises in his possession which is no less suitable for his purpose, nevertheless the tenant should be evicted. If the vacant premises is equally suitable for the purpose of occupation or for the purpose for which he requires the premises in respect of which action has commenced, he would be disentitled to the reliefs. In M.M. Quasim's case (supra), it was observed:

When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very raison d'être of the Rent Act.

Undoubtedly, if it is shown by the tenant that the landlord has some other vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the Court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises..." It was further observed that to curb the tendency of landlords to throw out tenants paying lower rent and let out the premises at the market rate, the Rent Act was enacted, and therefore it becomes the duty of the Court administering the Rent Act to bear in mind the object and intentment of the legislature in enacting the same." (see M.M. Quasim Vs. Manohar Lal Sharma and others,)

If the landlord could have reasonable accommodation after his need arose but by his conduct he disentitled himself to the "property by letting it out for higher income, he was disentitled to evict the tenant on the ground of need. The philosophy and principle of rent restriction law have nothing to do with the private exploitation of property by the owners of the property in derogation of the tenant's need of protection from eviction in a society of shortage of

accommodation see Amarjit's case (supra).

7. We close this judgment by referring to an oft cited decision of the Supreme Court in Syed Yakoob Vs. K.S. Radhakrishnan and Others, , where the ambit and scope of certiorari were lucidly delineated:

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 a result of 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. As regards 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 has 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.

8. Though we could have given a decision on the authority of Syed Yakoob's case (supra) alone, we thought the arguments advanced strenuously and, with vehemence, perhaps, justified a detailed examination. On the analysis as aforesaid, we see no merit in this writ application which is dismissed. There would be no order as to costs.

K.P. Mohapatra, J.

I agree.

Application dismissed.