
(1992) 08 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 3444 of 1988

Mohammad Zahid alias Zahid Mohammad	APPELLANT
Vs	
Binoy Krushna Dey and Others	RESPONDENT

Date of Decision : 05-08-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa House Rent Control Act, 1968 — Section 7(4)

Citation : AIR 1993 Ori 149 : (1993) 75 CLT 775

Hon'ble Judges : S.K. Mohanty, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : S. Misra, for the Appellant; P. Kar, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—This writ application is directed against the appellate order of the Chief Judicial Magistrate, Balasore H.R.C. Appeal No. 7 of 1985 (Annexure 3) wherein he confirmed the order passed by the House Rent Controller, Balasore in H.R.C. Case No. 14 of 1983 (Annexure 1) directing eviction of the petitioner from the shop room in his possession.

2. The proceeding was initiated on the application filed by landlord opposite party No. 1 seeking eviction of his tenant, the petitioner from the shop room. The eviction was sought on the grounds of personal requirement of the landlord and wilful default on the part of the tenant in payment of rent. The opposite party No. 1 also prayed for fixation of fair rent and for enhancement of rent from Rs. 100/- to Rs. 300/- per month. The case of the opposite party No. 1, shortly stated, was that he was threatened with eviction from the rented house in which he was running his printing press under the name and style of Orient Press" and therefore, it is necessary for him to get vacant possession of the shop room in occupation of the petitioner.

The petitioner refuted the claim of opposite party No. 1 and contested the case.

The opposite party No. 1 examined himself as the sole witness in support of his case. No evidence was adduced by the petitioner.

3. The Controller on consideration declined to accept the plea of wilful default in payment of rent by the petitioner. He however accepted the plea of bona fide requirement of the opposite party No. 1 and directed eviction of the petitioner on that ground. The petitioner assailed the order in appeal. No appeal or cross objection was filed by opposite party No. 1 challenging the order rejecting the plea of wilful default in payment of rent. The appellate authority, as the discussions in the judgment reveal, permitted the petitioner to further cross-examine the opposite party No. 1 and to adduce evidence from his side. In the evidence the petitioner brought on record certain subsequent events in the case, i.e. during pendency of the proceeding the opposite party No. 1 had got vacant possession of two other shop rooms in the locality in the eviction proceedings initiated by him against other tenants which were disposed of on compromise between the parties and that he had shifted his printing press to the said rooms. The appellate authority on consideration of the evidence not only upheld the finding of the Controller that the opposite party No. 1 had bona fide requirement of the shop room in occupation of the petitioner but also accepted the plea of wilful default in payment of rent. He ordered enhancement of rent from Rs. 100/- to Rs. 200/- per month. Regarding the subsequent events introduced in the evidence adduced by the petitioner, the appellate authority was of the view that he was to dispose of the proceeding considering the factual position as it stood on the date of initiation of the proceeding and could not take into account subsequent events in the case. He dismissed the appeal. The judgment of the appellate authority is under challenge in this writ application.

4. The submissions of Shri S. Misra(2), learned counsel for the petitioner, are twofold : that in the absence of appeal or cross objection by the opposite party No. 1, the appellate authority had no jurisdiction to consider the correctness of the finding of the Controller negating the plea of wilful default in payment of rent by the petitioner and that the appellate authority erred in refusing to consider the evidence relating to subsequent events in the case which materially affected the right of the opposite party No. 1 to evict the petitioner. Shri Misra did not challenge the finding regarding enhancement of rent.

5. Shri P. Kar, learned counsel for opposite party No. 1, on the other hand, contended that the appellate authority rightly refused to consider the subsequent events introduced in evidence at appellate stage.

6. The position of law relating to relevance of subsequent events in a case of eviction on the ground of bona fide requirement has to be taken as well settled in view of the decision of the Apex Court reported in Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina, , in which the Court ruled that in a suit for eviction on the ground of bona fide requirement of premises by landlord the subsequent events ought to be taken into account for the purpose of finding out whether the landlord still required the premises in possession of" the tenant; in appropriate

cases, the Court must have regard to events as they present themselves at the time when it is hearing the proceeding before it and mould the "relief in the light of those events. The Court relied on its earlier decision in the case of Hasmat Rai and Another Vs. Raghunath Prasad, . It has therefore to be held that in the present case the appellate authority clearly erred in refusing to consider the subsequent events brought on record by the petitioner.

7. The next question for consideration is to what extent the subsequent events can be said to have affected/influenced the case of opposite party No. 1 for eviction of the petitioner on the ground of personal requirement. As noted earlier, the opposite party No. 1 was further cross-examined by the petitioner with leave of the appellate authority. In paragraph 29 of his deposition he stated as follows:

"1 had filed H.R.C. Cases Nos. 20/83 and 21/83 against two other tenants for their eviction on the ground of bona fide requirement. Those two proceedings have ended in compromise and they have delivered vacant possession in my favour. I run my press in the name and style "Orient Press" in the two rooms left by those two tenants. The witness volunteers that with much difficulties the press has however been accommodated in those rooms. My residential house adjoins the rooms let out on rent. It is not a fact that in Ext. 12 I have not whispered anything about my bona fide requirement of the case house. It is not a fact that the case house is not at all required by me for the purpose of running my press."

From the above statement it is manifest that during pendency of the present proceeding the opposite party No. 1 got vacant possession of the two rooms which were in occupation of other tenants and he had shifted his press to the said rooms. Shri Kar strenuously urged that the two rooms now being used by the opposite party No. 1 are not sufficient for accommodating the press and he is managing his business with difficulty from the said premises. We, therefore, called upon him to satisfy us with reference to the pleading and the evidence adduced by opposite party No. 1 if any such case had been made out; if it was the case opposite party No. 1 that he needed all the rooms in occupation of the petitioner as well as the other tenants and in the absence of any one of the rooms his press cannot be conveniently accommodated and his business will suffer. Shri Kar could not point out any statement in the pleadings or in the evidence excepting the statement of the opposite party No. 1 "The witness volunteers that with much difficulties the press has however been accommodated in those two rooms." He however contended that difficulty in running the press from the rooms in question can be visualised from the fact that in the rented house the petitioner had an area of 30" x 20" whereas the area in his occupation at present is 19" x 11 1/2. On careful consideration, we are unable to accept the submission of Shri Kar. As noted earlier, the appellate authority permitted the petitioner to lead evidence at the appellate stage presumably because the Controller had disposed of the proceeding on ex parte evidence. It was open to the opposite party No. 1 to lead further evidence regarding the subsequent

events which were introduced in the evidence at the appellate stage, if so desired. He appears to have made no attempt to lead any further evidence. Therefore it is difficult for us, at this stage of the proceeding, to infer that notwithstanding the admitted factual position that he has got vacant possession of two rooms from other tenants and he has already shifted his press to the said rooms, his bona fide requirement for the petitioner's shop room still persists and eviction order against the petitioner should be maintained on that ground. Concededly the burden to establish bona fide requirement is on the opposite party No. 1 and it was for him to establish the fact by adducing trustworthy and acceptable evidence. In the absence of any such evidence, it is not possible for this Court to maintain the order of eviction of the petitioner under the House Rent Control Act which is a piece of beneficial legislation meant for the benefit of tenants.

8. There remains the contention raised by Shri Kar that the case should be remanded either to the Controller or to the appellate authority to record a specific finding whether bona fide requirement of the opposite party No. 1 still persists notwithstanding the subsequent events noticed earlier. We do not feel persuaded to accept this contention also. As noted earlier, no specific case was made out either in the pleading or in the evidence that the opposite party No. 1 required all the rooms in possession of the different tenants against whom he had filed separate eviction proceedings. No specific material was also brought on record by the opposite party No. 1 to show the exact area necessary for conveniently accommodating his press. On the other hand, it appears from the evidence on record that he had taken two different premises on rent to accommodate his press and godown. The printing press was running from the house of Rabindranath Sen in Cinema Bazar and his godown was situated in the house of Debendra Nath Sen. Therefore, we feel that remand of the case in such circumstances will only be providing yet another opportunity to the opposite party No. 1 to fill up the lacunae in his case. We are therefore not inclined to accept this contention.

9. On the discussion and the analysis in the foregoing paragraphs, it is clear that the order of eviction passed against the petitioner vide Annexure 1 which was confirmed by the appellate authority vide Annexure 3 is unsustainable. Accordingly the writ application is allowed, both the orders are quashed and H.R.C. Case No. 14 of 1983 is dismissed. Both parties will bear their respective costs of this proceeding.

S.K. Mohanty, J.

10. I agree.