
(2019) 10 JH CK 0048
In the Jharkhand High Court
Case No : Wirt Petition (c) No. 464 Of 2017

Rabi Bhushan

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 16-10-2019

Acts Referred:

Jharkhand Building (Lease, Rent And Eviction) Control Act, 2011 — Section 1(3), 7, 9, 11, 12, 12(1), 14
Bihar Building (Lease, Rent And Eviction) Control Act, 1982 — Section 5
Constitution Of India, 1950 — Article 226

Citation : (2019) 10 JH CK 0048

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Tejo Mistry, Ram Narayan Upadhyay, Atanu Banerjee, D.C. Mishra, Shankar Lal Agarwal

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder orders dated 19.10.2016 and 07.11.2016 passed in HRC Case No.28 of 2013 by the Sub-Divisional Magistrate-cum-House Rent Controller, Dhalbhum, Jamshedpur has been sought to be quashed.

2. It is the case of the petitioner that a proceeding has been initiated by making an application by the respondent-landlord for fair fixation of rent as required to be fixed under the Jharkhand Building (Lease, Rent and Eviction) Control Act.

Although the same has been filed under the provision of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2011 (hereinafter referred to as the Act, 2011) being HRC Case No.28 of 2013 which was decided vide order dated 28.06.2014 against which the present writ petitioner has preferred an appeal before the appellate forum being HRC Appeal No.18 of 2014-15 wherein the appellate authority by taking into consideration the effective date of implementation of the Act, 2011 since came into effect from 15.04.2015 by

virtue of notification issued in exercise of power conferred under Section 1(3) of the Act, 2011 dated 16.08.2016, as such the order passed by the Rent Controller in HRC Case No.28 of 2013 has been held to be without jurisdiction but the grievance of the petitioner is that the Rent Controller has again proceeded afresh which according to the petitioner is not permissible.

3. This Court has heard the learned counsel on 03.09.2019 and after considering the aforesaid submission, learned counsel for the State has been called upon to file affidavit as also the notice has been issued upon the respondent No.3.

The respondent No.3 has put his appearance through his counsel who has been represented by Mr. Shankar Lal Agarwal.

4. Learned counsel for the respondent-State as also the respondent No.3 have jointly submitted that there is no infirmity in the impugned order as because the contention which has been raised by the petitioner about the jurisdictional error on the basis of applicability of the provision of the Act, 2011 which although came into being on 15.04.2015 and as such, prior to 15.04.2015 the consideration/adjudication of the issue have been raised by parties pertaining to the tenancy laws will be governed by the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000 (hereinafter referred to as the Act, 2000), although the application has been filed by the respondent No.3 under Section 12 of the Act, 2011 in pursuance thereto, a proceeding has commenced which ultimately resulted into an order passed by Rent Controller on 28.06.2014 in HRC Case No.28 of 2013 but the same has been challenged by the petitioner who happens to be the tenant/respondent herein, raising jurisdictional error on the ground of applicability of the provision of the Act, 2011 and as such the appellate court after taking into consideration the legal position about the applicability of the Act, 2011 w.e.f. 15.04.2015 has rightly set aside the order passed by the Rent Controller on 28.06.2014 but thereafter if proceeding has again been initiated by the Rent Controller, no illegality can be said to have been committed by the Rent Controller since the order passed by the appellate authority reflects that the order passed by the Rent Controller has not been gone into its merit rather solely on the ground of jurisdiction the same has been set aside, thereafter the matter has been referred before the Rent Controller for necessary legal action which does suggest that the appellate authority has passed an order by way of remand to proceed afresh.

Further submission has been made by them that the said part of the observation as contained in the impugned order about referring the matter to the Rent Controller to take legal action has not been challenged by the petitioner and as such the same is conclusive, in pursuance thereto, the Rent Controller has proceeded, as such also no illegality is there.

5. In response, Mr. Tejo Mistry, learned counsel for the petitioner has submitted that even accepting the submission as has been advanced by the learned counsel for the respondents even though it cannot be denied and disputed about date of

filing of the application which was during the period when the Act, 2000 was in vogue and as such there is inherent defect in the said application since being filed in course of applicability of the Act, 2000 and hence, the same cannot be converted into the proceeding by taking into consideration the applicability of the Act, 2011.

6. Heard the learned counsel for the parties and after going across the pleading made in the writ petition and appreciating their rival submission, this Court, before entering into the legality and propriety of the order deem it fit and proper to discuss about the legal provision which is relevant for the purpose.

Prior to bifurcation of the State of Bihar there was Bihar Building (Lease, Rent and Eviction) Control Act, 1982 wherein under Section 5 provision has been made conferring power upon the Rent Controller for fixation of fair rent.

After bifurcation of the State of Bihar w.e.f. 15.11.2000, the State of Jharkhand came into being and in consequence thereof, a new act has been given effect in the name of Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000 wherein a pari materia provision to that of Section 5 as contained in the Act, 1982 has been provided, which reads hereunder as:

"5. Determination of fair rent of buildings in occupation of tenants. -(1) When, on application by the landlord or by the tenant in possession of a building or otherwise, the Controller has reason to believe that the rent of that building is low or excessive, he shall hold a summary enquiry and record a finding.

(2) If, on a consideration of all the circumstances of the case including any amount paid by the tenant by way of premium or any other like sum in addition to the rent, the Controller is satisfied that the rent of the building is low or excessive he shall determine the fair rent for such building."

In the year 2011, the State of Jharkhand came with a new Act, in the name of Jharkhand Building (Lease, Rent and Eviction) Control Act, 2011.

In the said provision, although it has been notified but the Act contains a provision under Section 1 (3) that Act would only be applicable by way of separate notification issued in this regard to be notified in the Gazette Notification, meaning thereby, Act has been implemented the day when the Act has been notified in the Gazette Notification.

The State of Jharkhand came out with a notification in exercise of power conferred under Section 1 (3) of the Act, 2011 on 16.08.2016 making the Act, 2011 applicable w.e.f. 15.04.2015.

The new Act, 2011 is pari materia provision to that of Section 5 either contained under the Act, 1982 or under the Act, 2000 as also incorporated in the Act, 2011 as under Section 7 of the said Act, which reads hereunder as:

"7. Rent Payable. -(1) The rent payable in relation to a building shall be:(a) the rent agreed to between the landlord and the tenant in writing, or (b) the

Standard Rent as specified under Section 9.

(2) In the case of a tenancy entered into before the commencement of this Act, the landlord may, make an application to the Controller within six months from the date of such commencement to fix the standard rent under sub-section (1) of Section 12 and the rent so fixed shall be payable from the date of such commencement."

It is evident from conjoint reading of Section 5 either of the Act, 1982 or of the Act, 2000 or Section 7 of the Act, 2011 that the Rent Controller has been conferred with the power to exercise in fixation of fair rent.

The departure only has been made with respect to conferment of power about eviction.

7. Under the Act, 1982 or Act, 2000 the power of eviction has been conferred upon the competent court of civil jurisdiction but under the Act, 2011 the power of eviction has been conferred also to the Rent Controller as would appear from Section 11 or Section 14 in case of personal necessity.

8. Now the question which has been raised by the learned counsel for the petitioner that the issue which fell for consideration before this Court about proceeding afresh by the Rent Controller in pursuance to the application filed by the respondent during the applicability of the Act, 2000 since this application has been filed by making reference of Section 12 of the Act, 2011.

Further contention has been raised that even though the matter is presumed to be remitted before the Rent Controller by the appellate authority then also the application which was filed in course of applicability of the Act, 2000 would not have been proceeded by proceeding afresh.

9. To answer this issue, reference of judgment rendered by Hon'ble Supreme Court needs to be made wherein the issue fell for consideration pertaining to jurisdiction. Reference in this regard be made to the judgment rendered in the case of P.K. Palanisamy vs. N. Arumugham & Anr., reported in (2007) 9 SCALE 197 (Civil Appeal No.2308 of 2009).

10. The subject matter of the aforesaid judgment is that if an authority/office bearer is having power of adjudication but under different law, the entire proceeding is not to be vitiated otherwise if the authority is having no power in any of the Act, then certainly it goes to the root of the jurisdiction and if the proceeding will be vitiated it will be held to be without jurisdiction.

11. This Court after going across the said judgments has examined the legal position as reflected hereinabove vis-a-viz the date of application filed by the respondent for fixation of fair rent. On critical scrutiny of the factual aspect it is not in dispute that there is jurisdictional error committed by the Rent Controller in exercising the power under Section 11 but the same cannot be said to be in true sense the jurisdictional error, under the Act, 2011, the Rent Controller has

been conferred with the power for following the rule since we are living in a rule of law.

The appellate authority has taken into consideration the non-applicability of the provision of Act, 2011 the day when the application was filed for fixation of fair rent since admittedly on that date the provision of Act, 2000 was applicable but the question is, merely on that ground can the entire proceeding be vitiated.

The answer of this Court would be in negative, it is for the reason that either under the Act of 1982 or 2000 or 2011, the Rent Controller has been vested with the power to fix fair rent, meaning thereby, there was no jurisdiction conferred upon the Rent Controller both under the old Act or the new Act.

That if in such technicality the entire proceeding will be vitiated without considering that the Rent Controller has been conferred with the power either under the old Act of the year 2000 and has been vested with the power under the new Act of the year 2011 it will be nothing but will lead to protracting proceeding.

12. In view thereof, this Court, by taking into consideration the judgment rendered by Hon'ble Apex Court with respect to jurisdiction, is of the view that while passing the orders by Sub-Divisional Magistrate as has been impugned in this writ petition dated 19.10.2016 and 07.11.2016, no jurisdictional error has been committed, accordingly, this Court is not inclined to interfere with the same by issuing writ of certiorari since there is no error apparent on the face of the order.

13. Accordingly, the writ petition fails and stands dismissed.