

(1992) 01 OHC CK 0027

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2480 of 1990

Ramesh Chandra Agrawal

APPELLANT

Vs

Smt. V. Sugyana Kumari Deo and Others

RESPONDENT

Date of Decision : 09-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa House Rent Control Act, 1967 — Section 5, 7

Citation : (1992) 2 OLR 150

Hon'ble Judges : B.L. Hansaria, C.J.;B.N. Dash, J

Bench : Division Bench

Advocate : B.H. Mohanty, R.K. Nayak, B. Das, B.B. Bhuyan, V. Narasingh and D.P. Mohanty, for the Appellant; Y.S.N. Murty, P. Misra and M.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, C.J.—The petitioner is a tenant. Opp. party No. 1 instituted a proceeding under Sees. 5 and 7 of the Orissa House Rent Control Act, 1967, seeking eviction of the petitioner from the premises in question on the ground that he was a wilful defaulter. The wilful default alleged related to the month of October, 1987 only. The case of the petitioner was that he had paid rent for that month also. The two Courts below have, however, held that rent for October, 1987 had not been paid. This being a finding of fact for which due reasons had been assigned, it is not open to us in this proceeding to disturb the same. We would, therefore, confine our attention to the question whether the default in paying rent for the month of October, 1987 can be regarded in the eye of law as wilful default to permit the landlady to get an order of eviction on this ground.

2. Shri Murty appearing for the landlady opp. party No. 1, contends that the finding not only about the petitioner being a defaulter, but also his being a wilful defaulter is one of fact which is not ordinarily amenable to interference by this Court in a writ proceeding. In this connection, learned counsel first refers to a

Bench decision of this Court in *Chinta Narayanamma v. Kholli Sahu and Ors.*, AIR 1982 Orissa 183 in paragraph-4 of which it was observed that good and clear reasons had been given by the authorities holding as a fact that the tenant was "not a wilful defaulter". Belying on this observation, Shri Murty contends that the question whether a tenant is a wilful defaulter is also one of fact. We are then referred to another Bench decision of this Court in *Smt. Sabitri Devi and Anr. v. Madanlal Chapolia* 1962 O. J. D. 292 of which it was observed :

"On the question of fact, the judgment of the Additional District Magistrate does not indicate the evidence or the circumstances on the basis of which the finding that the default was not wilful was arrived at."

This shows, according to the learned counsel, that a finding on the question whether the default is wilful or not, is also a question of fact.

3. We would agree with Shri Murty that if a finding relating to a tenant being a wilful defaulter is arrived at by bearing in mind the principles of law as to when default would be wilful, could be regarded as a finding of fact, But then if this finding is arrived at without properly applying mind to the question, as to when default would be wilful, such a finding can even be regarded as perverse. If no person properly instructed in law could have arrived at that finding, the same would become amenable to interference by this Court even in writ jurisdiction which proposition is fairly not disputed by Shri Murty because of a long line of decisions of the apex Court in which it has been clearly laid down that if no person properly instructed in law could have reached a particular decision, the Court may proceed with the assumption, as pointed out by Lord Radcliffe in *Edwards v. Bairstow* (1955) 2 All. E. R. 48 that a misconception of law has been reasonable for the determination.

4. Let it, therefore, be seen whether the finding in the present case that the petitioner was a wilful defaulter because of non-payment of rent for October, 1987, could be said to have been arrived at after bearing in mind the relevant principles of law. In this connection, we would like to refer to *Mahavir Singh Vs. Staff Selection Committee and Another*, in which the following was stated in para-25 in this regard ;

"Thus, a consensus of the meaning of the words "wilful default" appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or by other Acts referred to above."

5. This decision of the apex Court was noted by this Court in its Full Bench case of *Souri Prasad Swain Vs. Rani Jayashree Devi and Others*, .

6. Let it, therefore, be seen whether from the facts as found by the two Courts below, it can be said that the petitioner's default in the present case was "intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. The case of the petitioner in this regard being that he was not a defaulter for October, 1987 because of the payment of rent for February, 1987 to the predecessor-in-interest of the landlady would itself show that the default cannot be regarded as intentional and deliberate. It is a different matter that this plea of the tenant has not been accepted by the Courts below because of which he has to be regarded as a defaulter, but then to be a wilful defaulter, the default must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. As the finding regarding wilful default was arrived at without hearing the aforesaid principles of law in mind, we are of the view that the same can be regarded as arrived at which no person properly instructed in law could have reached.

7. We may, however, make it clear that in taking this view we have not been influenced by the fact that the default related to one month only inasmuch as in the aforesaid Full Bench decision, it was stated by Agrawal, C. J. that a single default may be wilful in a particular case. This was also the view taken in *Ganesh Chandra Banerjee v. Sridharchandra Kar* 38 (1972) C.L.T. 382. As against these decisions, Shri Mohanty appearing for the petitioner draws our attention to what was observed by the apex Court in *S.P. Deshmukh Vs. Shah Nihal Chand Waghajibai Gujarati*, dealing with the question of a tenant being habitual defaulter by stating that though normally a monthly tenant is under an obligation to pay the rent from month to month but this obligation is subject to a contract to the contrary, which contract need not be reflected in a formal document and can be spelt out from the conduct of the parties spread over a fairly long period of time. Shri Mohanty has referred to this judgment because the petitioner's case is that rent was being realised from him in spells of months and so, non-payment of rent for one month would not render him a habitual defaulter. To buttress this submission, we are also referred to *Mohanlal Agarwalla v. Bidyadhar Puruseth and Ors.* 47 (1979) C.L.T. 286 wherein a Bench of this Court stated that where the default is only on one occasion, the authorities under the Act had an obligation to find out whether the default was not wilful so as to extend the benefit of the proviso to the tenant. This view was taken because a statute like the House Rent Control Act has to be regarded as a beneficial legislation and the advantage of the same has to be extended to the tenant which would fulfil the legislative intention.

8. In view of all the above, we would hold that the finding regarding the petitioner being a wilful defaulter for non-payment of rent for the month of October, 1987 cannot be sustained. The petition is, therefore, allowed and the order of eviction is set aside.

B.N. Dash, J.

9. I agree.