

**(1973) 06 OHC CK 0014**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 89 of 1972**

Sadhana Ausadhalaya and Another

APPELLANT

Vs

Moningi Nookama and Others

RESPONDENT

**Date of Decision :** 18-06-1973

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Orissa House Rent Control Act, 1967 — Section 7(4)

**Citation :** (1973) 39 CLT 946

**Hon'ble Judges :** S.K. Ray, J; K.B. Panda, J

**Bench :** Division Bench

**Advocate :** B.K. Pal and M. Hazra, for the Appellant; N.V. Ramdas and N.B.K. Murty, for the Respondent

## **Judgement**

K.B. Panda, J.—This is an application under Articles 226 and 227 of the Constitution of India, filed by the tenants for quashing the Appellate order, dated 19-1-1972 (Annexure 2), reversing the decision of the House Rent Controller, Berhampur, dismissing the petition, filed by the landlords (Opposite parties) for eviction of the tenants u/s 7(4) of the Orissa House Rent Control Act of 1967, hereinafter referred to as the Act.

2. The background of the petition is thus:

The house, in question, is a tiled one in Victoria Market, Berhampur, initially leased out to the tenants on a monthly rent of Rs. 50/- on 1-1-1952, on 10-5-1955, the landlords noticed the tenants for vacating the house on the ground that they wanted to extend the cinema house and to have staff quarters there. Thereafter, T.S. No. 209/55 was filed by the landlords to enhance the rent. The suit was compromised and the rent was enhanced to Rs. 100/- per month. On 23-10-1956, a fresh lease for seven years was executed (Exhibit 1) with the condition that the tenants would pay house rent at the rate of Rs. 100/- per month. Towards the expiry of that lease, the landlords on 6-7-1963 issued notice (Exhibit 2) demanding the tenants to vacate the house as it was intended to

extend the cinema house (Vijaya Talkies), belonging to the landlords. Thus, House Rent Control Case No. 54/63 was filed for eviction of the tenants on the ground of extension of the cinema house and for construction of staff quarters, which was allowed. The tenants took the matter in appeal (30/68) and while it was pending, permission was accorded to withdraw the proceeding with permission to file a fresh one on the same cause of action (Ext. 6).

Thereafter, the present House Rent Control Case No. 16/69 was filed on the ground that "the Applicants needed the suit house for the purpose of enlarging the parking area and thus extending facilities to the picture goers". The Applicant-landlords examined three witnesses and the tenant (Petitioner No. 2) examined himself. The House Rent Controller, Berhampur held as a fact that the registered notice, issued by the landlords (Exhibit 2) only mentioned that the house was required for extension of the cinema house building and not for enlarging the parking area; that the situation of the suit house is such that it could not be utilised as parking area; that the landlords failed to prove insufficiency of parking area as at present; that the landlords were guilty of suppressing the alleged Government circular, issued to the cinema-house owners directing them for making provisions for parking area and that even if there was any such, circular, that was just a letter of general character which could not tilt the issue. He also, inter alia, held that the need of the landlords for enlarging the parking area was not such as to justify the eviction of the tenants; that prior to the purchase of the cinema house by the landlords, the tenants were in possession of the suit house from 1952 that in the context of the long litigation between the parties, the alleged need of the landlords did not appear to be honest; and further that the previous conduct of the landlords indicate that they were more anxious to enhance the rent than for occupation of the house. His further finding was that the plea of extension of the cinema house being from the year 1955 which had not taken any concrete shape, did not appear to be a plea advanced in good faith for evicting the tenants, and lastly, that the mere desire of the landlords for embarking upon a scheme of re-construction of the house was not enough to entitle them for the eviction of the tenants. See *Neta Ram Vs. Jiwan Lal*, So the House Rent Controller, ultimately holding that the ingredients of Section 7(4) of the Orissa House Rent Control Act were not satisfied, dismissed the application of the landlords for eviction.

3. The landlords preferred an appeal which was disposed of by Shri P.K. Mohapatra. Additional District Magistrate (Judicial), Berhampur on 4-11-1971. He, however, allowed the appeal and directed vacant possession of the house within three months of the order i.e. by 3-2-1972 (Annexure-2)- which is under challenge in this writ application.

4. Mr. B.K. Pal, appearing on behalf of the Petitioners, contended that the Appellate authority fell into error in applying the provisions of Section 7(4) of the Act to the landlords' case. His argument in this context was that enlarging the parking area which might or might not materialise, is nor an indispensable

necessity coming under the purview of the Act as "requiring the house in good faith." Thus, his contention was two fold namely, (i) Section 7(4) of the Act was inapplicable to the facts and circumstances of the case and (ii) assuming it is applicable the finding that the house was required by the landlords in "good faith" was incorrect.

On facts, Mr. Pal contended that the learned Appellate Court has committed many errors on record. He assailed the following findings of the Appellate Court that the parking accommodation within the premises of Vijaya Talkies is insufficient for parking all the vehicles, brought by cinema goers; that the landlords intend to demolish the disputed house for the purpose of enlarging the parking space; that the cinema goers never park their cars near the triangular traffic island apprehending police prohibition; and that the house is very convenient for parking of vehicles to be all presumptions, not based on evidence.

5. Mr. N.V. Ramdas, appearing on behalf of the opposite parties, while supporting the order of the Appellate Court, contended that evicting the tenant from the house means eviction from the space on which the house stands and since it is necessary for the expansion of the cinema business to afford greater facilities to the cinema goers by providing facilities for the parking of their cars, the prayer of the landlords for evicting the tenants is fully justified. He, however, faintly added that the house would be available for parking area and there would be reconstruction also in some portions. Relying on certain decisions of Bombay and Kerala High Courts, Mr. N.V. Ramdas strenuously urged that the sole question for consideration is if the landlords required the house in "good faith". He conceded that the Orissa House Rent Control Act does not specify what are the bona fide needs of the landlord unlike similar Acts of other States. Thus, according to him, it casts a duty on the Court to come to a positive finding whether the need of the landlord is bona fide or not. Viewed thus, he urged that the need of the landlord in the instant case is genuine and there is ample evidence to justify the finding of the learned Appellate Court.

6. Section 7(4) of the Orissa House-Rent Control Act, 1967 lays down:

The landlord may, subject to the provisions of this Act, apply to the Controller for an order directing the tenant to put him in possession of the house, if he requires the house in good faith for the occupation or use of himself, any member of his family or of any person or persons for whose benefit the house is held by him.

From the tenor of the section, there can be no doubt that what the Legislature contemplated is that the house must be required by the owner "as a house" and not as a vacant space after demolishing the same. Atleast, such an interpretation is incompatible with the italic portions wherein all emphasis has been laid on "the house" as such. Of course, if any particular rented house has become dilapidated and the owner needs it for his own occupation and use, he can bring a proceeding for eviction of the tenant, the ultimate object being to pull down the dilapidated house, reconstruct it and then use it as a house. But it is doubtful, at

least as the wordings of Section 7(4) indicate, if the landlord can legitimately bring an eviction proceeding for demolishing a house so as to use the vacant surface, for example, either for having a lawn, a badminton Court or a swimming pool as in the present case for enlarging the parking area. Though sufficient opportunity was given to Mr. Ramdas to cite any authority for the proposition that the landlord can claim eviction of the tenant for demolishing the house to use the flat surface by levelling it to the ground, yet he could not cite any. Referring to Bombay State Law and, Kerala State Law on the subject which are not *pari materia* with the present Act, he only reiterated how the empty space is also a part of the house and therefore under the present Orissa Act such a petition for eviction can lie. We are not much impressed with this argument. The reason is two fold. Firstly, the section does not postulate it and secondly, it would be contrary to the very scheme of the Act, the main object of which is to give certain protection to the tenants. Be that as it may, the present case does not appear to have been approached from that angle, at least by the Appellate Court. The learned House Rent Controller though has not explicitly said so, yet his ultimate finding is that "The ingredients of Section 7(4) of the Orissa House Rent Control Act has not been satisfied.

7. In the case of *Jamula Narasimhulu v. Kotini Sitaram and Anr.* 30 (1964) C.L.T. 331, in the expression "Good faith" appearing in Section 7(4) of the Orissa House Rent Control Act have been given the following interpretation:

The expression "good faith" has been inserted obviously with a view to prevent the landlord from using the machinery of the Act as a device for turning out a tenant under the cloak of "requiring it for his own use", though in reality for letting it out to another person on a more profitable basis. Again the words "requires the house" have been construed to mean something more than mere wish and involve the element of need to some extent at least. The need must obviously be the need at the time of the application for eviction and it cannot refer to any possible use to which the building might be put at a future date.

In paragraph 9 referring to the observations of their Lordships of the Supreme Court in the case of *Neta Ram Vs. Jiwan Lal*, in it is said:

There the question for consideration was whether a landlord could evict a tenant if he could show that the building was required bona fide for re-erection or for its replacement by another building. Their Lordships pointed out that the Controller must be satisfied about the genuineness of the claim of the landlord and for that purpose, it would not suffice, the landlord comes forward and says that he entertains a particular intention, however strong it might be. To quote their Lordships, "it is therefore impossible to hold that the investigation by the Controller should be confined only to the existence of an intention in the mind of the landlord to reconstruct; this intention must be honestly held in relation to the surrounding circumstances. Here also a mere statement by the landlord that he wanted the shop room in question for the purpose of expanding his business as an iron dealer will not suffice.

On the same analogy, in the instant case, it would not suffice if the landlord brings a vague case that "he intends to expand the parking area for cars of the cinema goers." We think the approach of the Controller to the question in issue is more rational than the presumptive nature of the finding of the Appellate authority.

Another Bench of this Court in the case of Kasi Rout v. Mohamed Saleh and Ors. 37 (1971) C.L.T. 532, have interpreted the meaning of "requires" and "good faith" in the following manner:

The word "requires" involves something more than a mere wish and it involves an element of need to some extent at least. To "require" is not the same thing as to "desire". The landlord must show certain circumstances or facts proving some need or necessity. The statute does not however, insist that a need must be an absolute one in the sense that the landlord will not have any accommodation of any description and that he must actually be in the streets before he can demand his own house for his own occupation. Even if the landlord is in occupation of a rented house he is not bound to continue his residence in the same. Rented premises carry certain amount of uncertainty of the tenure.

Whether the landlords require the house in good faith is always a question of fact. The Court is entitled to look to relevant facts or circumstances affecting the landlords and their position. The nature and character of the landlords temporary accommodation at the time when they are asking for the decree for possession, insecurity or otherwise of the tenure that they might be holding at the time, the fact that they themselves are under a notice to quit, the scope, size and character of their requirement are all relevant factors that the Court might consider in that context.

8. The law, as laid down from the above quotation by this Court, seems to have been lost sight of by the Appellate authority.

9. Coming to the factual aspect of good faith, we are also not satisfied in the manner the case has been dealt with by the Appellate Court. The case of the landlord was, in substance, for extension of the parking area for cars of the cinema goers. It was hinted that the authorities had issued a circular for expansion of parking area. That circular was not filed. At least, we do not find it on record though said to be exhibit 8(sic). Rather the finding of the House Rent Controller is that the authorities found the parking to be "satisfactory". If it was so, it cuts at the very root of the landlords' case. The Appellate Court does not appear to have attached any importance to the same. Besides, for the landlords to succeed with such allegations they must specifically mention in the petition what is the actual parking area available and how many cars, it can accommodate; the number of normal assemblage of cars and how many cars, the vacant space of the house, sought to be vacated, can accommodate and that would solve the problem. To say the least, everything has been left vague. Without expressing any definite opinion, we doubt if the house, in question, is

big enough to provide accommodation for two ordinary vehicles to be parked there and that too conveniently. Further, it is not a case that there is no parking area, available within the cinema house or in the vicinity. Averting to the business aspect of it, the house, in question, yields a monthly rent of Rs. 100/- but when made flat to form a parking area of cars, will yield absolutely nothing.

10. The legal aspect and the factual aspect, referred to above, have not been dealt with as it should have been by the Appellate Court. In exercising our powers under a writ of certiorari, it is not desirable to substitute our opinion for that of the Courts concerned. We have formulated the questions as to how the problem has to be approached and we leave it to the Appellate authority to apply them to the facts and circumstances of the case and dispose of the matter according to law. Let a writ of certiorari be issued for quashing Annexure-2.

11. In the result, the petition is allowed and the case is remanded to the first Appellate Court for disposal. The costs will abide the result.

S.K. Ray, J.

12. I agree.