
(1966) 04 MP CK 0023

In the Madhya Pradesh High Court

Case No : Miscellaneous (Second) Appeal No. 197 of 1965

Singhai Bhaiyalal and others

APPELLANT

Vs

Rikhilal Jain

RESPONDENT

Date of Decision : 06-04-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 10

Citation : (1968) JLJ 333 : (1968) MPLJ 118

Hon'ble Judges : R.J. Bhavé, J

Bench : Single Bench

Advocate : P.R. Naolekar, for the Appellant; S.R. Nema, for the Respondent

Judgement

R.J. Bhavé, J.

This appeal is by the tenants whose application u/s 10 of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as "the Act") for fixation of standard rent was dismissed by the Rent Controlling Authority in default and the application for restoration thereof was also dismissed on the ground that there was no provision in the Act similar to Order 9, Rule 9, Code of Civil Procedure; nor is there any provision in the Act allowing the Rent Controlling Authority to review its previous orders; nor can the inherent powers be invoked in such a case.

Section 10 of the Act provides that the Rent Controlling Authority, shall, on an application made to it in this behalf, either by the landlord or by the tenant, in the prescribed manner, fix in respect of any accommodation the standard rent in accordance with the provisions of Section 7. Section 10, however, does not prescribe the procedure that should be followed by the Rent Controlling Authority. Section 29 of the Act provides that the Rent Controlling Authority shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, in any proceeding before it in respect of the enumerated matters; such as, summoning and enforcing the attendance of persons and

examining them on oath; requiring the discovery and production of documents; issuing commissions for the examination of witnesses; and any other matter which may be prescribed. No rules have been made by the State Government in this connection. Section 30 provides that no order shall be passed by the Rent Controlling Authority prejudicial to a party without affording him reasonable opportunity of raising objections and producing evidence in that behalf. Sections 31 and 32 provide for appeals against the orders of the Rent Controlling Authority, while Section 33 confers jurisdiction on the Rent Controlling Authority to correct clerical or arithmetical mistakes or errors arising from any accidental slip or omission. Section 36 provides that save as otherwise expressly provided in the Act, every order made by the Rent Controlling Authority shall, subject to decision in appeal, be final and shall not be called in question in any original suit, application or execution proceeding. It would be thus apparent from the provisions of the Act that the Act is absolutely silent as to what the Rent Controlling Authority is expected to do if the party applying for fixation of standard rent commits default and remains absent.

In such a case, only two alternatives appear to be possible. One is to file the proceedings to be revived if and when the applicant moves the Rent Controlling Authority for the purpose; and the other is to dismiss the application in default. To me it appears that the latter course is open to challenge inasmuch as the only authority conferred on the Rent Controlling Authority u/s 10 is to fix the standard rent. If the application is dismissed in default, there is a non-exercise of that jurisdiction, and to such an order no finality can be attached as prescribed u/s 36 of the Act; and, in my view, dismissal in default of such an application is not permitted by the provisions of the Act. The proper course to be followed by the Rent Controlling Authority is to file the papers.

In similar situation, the Bombay High Court in *Zakeria Suleman Vs. The Collector, Yeotmal and Others*, while interpreting the provisions of the C.P. and Berar Letting of Houses and Rent Control Order, 1949, Clause 13 (3), held that the Rent Controller acted in a quasi-judicial manner and even though there was no express provision in the order regarding dismissal for defaults or restoration of applications under it, it must be held by necessary implication that such a power exists in him and consequently the Rent Controller has power to dismiss for default an application of a landlord and to restore the same to file if the Rent Controller is satisfied that good cause exists for such restoration. At the same time, the Bombay High Court has held that the inherent powers referred to u/s 151 of the CPC can only be exercised by civil Courts having general jurisdiction and special tribunals are not entitled to such powers. The jurisdiction to dismiss in default such applications and to restore them under appropriate circumstances is, however, spelt out by the Bombay High Court by relying on the doctrine of implied authority. Their Lordships of the Bombay High Court say that if a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some detail which is of great importance (if not actually essential) to the proper and effectual performance of the work which the statute

has in contemplation, the Courts are at liberty to infer that the statute by implication empowers that detail be carried out.

The principles enunciated by the Bombay High Court in the above-cited case appear to be attractive; but there is difficulty in applying those principles to the provisions of the Act in the present case. By accepting the principle that such an application can be dismissed in default, subject to the possibility of its restoration under certain circumstances, it is conceded that the order is final so long as it is not set aside in restoration proceedings. Section 36 of the Act says that the order passed by the Rent Controlling Authority shall, subject to decision in appeal, be final. The setting aside of an order in restoration proceedings would amount to review of the order. There is no provision in the Act conferring any jurisdiction on the Rent Controlling Authority to review its orders. The only authority conferred on the tribunal is to correct certain enumerated mistakes. The power to review is not inherent in the tribunals and it is required to be specifically conferred. In *Ruplal Sitaram Bhagat v. Lala Sheo Shankar and Ors.* 1952 NLJ 404 a Division Bench of the Nagpur High Court held that in the absence of any provision similar to Order 9, Rule 13, Code of Civil Procedure, a Rent Controller has no inherent power to set aside an ex parte order. To set aside an ex parte order is in a sense reviewing a previous order. This decision of the Nagpur High Court was affirmed in *Raghunandan Lai v. Nemichand* Misc. Petition No. 6 of 1952 decided on 17-2-1953 and *Ramgulam v. Ganeshprasad* 1953 NLJ N 211 (Misc. Petition No. 241 of 1952 decided on 17.2-1953). This Court is bound by the decisions of the Nagpur High Court and it is, therefore, difficult to follow the Bombay decision.

The case of *Ruplal Sitaram Bhagat v. Lala Sheo Shankar* 1952 NLJ 404, however, can be distinguished on one point, namely, that in that case though an ex parte order was passed, the Rent Controller had exercised his jurisdiction inasmuch as he had fixed the fair rent, though the proceedings against the other party were continued in his absence. In the present case, no standard rent was fixed and there was, as a matter of fact, non-exercise of jurisdiction.

In *Jodhasirigh v. Vithalrao* 1954 NLJ 108 an ex parte order was "passed against a tenant granting the landlord permission to give quit notice. The tenant applied to the Rent Controller for setting aside the ex parte order on the ground that he was not served and came to know of the ex parte order only when he received the quit notice. The Rent Controller thereupon set aside the ex parte order. This action was challenged by the landlord under Article 226 of the Constitution. A Division Bench of the Nagpur High Court (Sinha C.J. and Bhutt J.) held that the provisions of Clause 13 of the CP. and Berar Rent Control Order, 1949, required due service of notice on the tenant, that the ex parte order passed by the Rent Controller was no order at all, that he had power to rectify his mistake, that though the Rent Controller purported to set aside the ex parte order, he should be deemed to be only ignoring the order which did not exist in the eye of law and that the order of the Rent Controller setting aside the previous order was not open to challenge. The above-said decision of the Nagpur High Court, though not

on all force with the present case, may be relied upon. The principle recognised in that case is that if any order is passed by the Rent Controlling Authority, which it has no jurisdiction "to pass, then that order must be ignored. It appears to me, for the reasons already stated, that a Rent Controlling Authority has no authority to dismiss in default an application u/s 10 of the Act; the only course open to him is either to fix the standard rent, if there is any material on record, or to file the papers. The order directing the dismissal of the application in default cannot be given finality as envisaged u/s 36 of the Act. The order of dismissal in default will have to be either ignored or will have to be treated as an order directing the filing of the application to be revived as and when an application is made by the applicant for that purpose. In this connection, it may be mentioned that under Sub-section (2) of Section 30 of the Act, in all proceedings before it, the Rent Controlling Authority is empowered to consider the question of costs and award such costs to or against any party as that Authority considers reasonable. When an application for reviving the application, which is filed by the Authority, is made, the inconvenience caused to the other side can be compensated by award of costs. The argument that there shall be unnecessary harassment to the other side if the applications are not dismissed in default but are merely allowed to be filed is thus without any force.

For the reasons given by me above, I am of the view that the Rent Controlling Authority was in error in dismissing the application in default and the proper course to be followed was to file the application. In the view I have taken, the decision of the first appellate Court as also the decision of the Rent Controlling Authority are set aside. The Rent Controlling Authority shall now proceed to consider the application filed by the tenants for setting aside the order, dated 5-3-1965, as an application for revival of the application u/s 10 of the Act which was dismissed for default of their appearance. In the circumstances of the case, I direct that the parties shall bear their own costs.