

(1993) 08 OHC CK 0017

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3854 of 1989

Sivendranath Sinha

APPELLANT

Vs

Artatrana Mohanty and Others

RESPONDENT

Date of Decision : 16-08-1993

Acts Referred:

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

Citation : AIR 1994 Ori 134 : (1993) 76 CLT 864

Hon'ble Judges : G.B. Patnaik, J; B.N. Dash, J

Bench : Division Bench

Advocate : P.K. Misra, for the Appellant; B.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—The landlord, a retired Chief Engineer, is the petitioner assailing the order of the appellate authority under the Orissa House Rent Control Act affirming the decision of the Controller and rejecting petitioner's application for eviction of the tenant from the premises in question. The tenant is a practising advocate of this Court. This litigation has a chequered career and is in this Court for the third time.

2. Admittedly, the petitioner is the owner of the premises in question and while he was continuing in service had inducted opposite party No. 1 as a tenant in respect of the ground floor of the building. After the retirement of the petitioner from service, as the first floor of the building which was under the possession of the petitioner became insufficient, he requested the tenant-opposite party No. 1 to vacate the premises in question and having failed in his attempt to get the ground floor vacated through persuasion had to knock the doors of the House Rent Controller by filing an application u/s 7 of the Orissa House Rent Control Act alleging that the tenant has incurred the liability of being evicted u/s 7(2)(i) being a wilful defaulter in payment of rent as well as the tenant is liable to be evicted as the landlord requires the house in good faith for his own occupation u/

s 7(4) of the Act. The Controller by his order dated 18-12-1982 came to hold that neither the tenant has committed any default in making the payment of rent, nor the landlord has been able to establish his bona fide requirement of the house in question and accordingly dismissed the application of the landlord which order has been annexed as Annexure-4 to the writ application. Being aggrieved by the said order, the landlord filed an appeal which was registered as H.R.C. Appeal No. 7 of 1983 and that appeal was allowed by order dated 7-8-1984 on a finding that the landlord requires the premises in question bona fide for his own use. So far as the plea of wilful default is concerned, the appellate authority, however, affirmed the finding of the Controller and held that there has been no wilful default by the tenant in payment of rent. Against the aforesaid order, the tenant approached this Court in O.J.C. No. 2291 of 1984. This Court came to the conclusion that the appellate authority had not borne in mind the decision of the Supreme Court in the case of Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, , while deciding the question of bona fide requirement and since rent control law has been enacted for the purpose of giving protection to tenants against unreasonable eviction and for the purpose of ensuring equitable distribution of buildings amongst persons who are in need of them, the mere wish of the landlord cannot be held to be sufficient and it must be examined and found out whether the need is genuine and bona fide. An objective test has to be applied and it is for the landlord to establish that his need is genuine and for his use. Since this Court came to the conclusion that the appellate authority has not examined the problem from proper perspective, the order of the appellate authority was set aside and the matter was remitted back to the appellate authority. The judgment of this Court in O.J.C. No. 2291 of 1984 has since been reported in 68 (1989) C.I.T. 618 (Artatrana Mohanty v. Sibendranath Sinha and others).

After the matter went back on remand, the landlord-petitioner filed an application on 1-7-1989 under Order 41, Rule 27, Code of Civil Procedure, for adducing additional evidence to the effect that in the meantime, the landlord has undergone a by-pass surgery and the necessary certificate of the doctor as well as his advice should be taken into account. The tenant-opposite party vehemently objected to the application for additional evidence and finally the appellate authority dismissed the appeal by his order dated 15-7-1989, annexed as Annexure-7. The landlord then moved this Court in O.J.C. No. 3854 of 1989 and this Court disposed of the writ petition by its judgment dated 30th of October, 1991, coming to the conclusion that the landlord requires the house for his own use and bona fide and the Controller as well as the appellate authority committed error in coming to a finding to the contrary. This Court accordingly passed an order of eviction of the tenant. Against the aforesaid judgment of this Court, the tenant went to the Supreme Court in SLP (Civil) No. 6112 of 1992 which was registered as Civil Appeal after leave being granted, being Civil Appeal No. 3827 of 1992. The Supreme Court came to the conclusion that the High Court was not justified to examine the evidence and circumstances and decide

the issue of bona fide requirement on merits as the High Court is not entitled to decide the issue of fact by re-consideration of the evidence. But their Lordships of the Supreme Court did not finally decide the matter and remanded the matter to this Court by setting aside the earlier judgment with a direction that the writ application should be disposed of afresh and that is how the matter has been placed again before us.

3. Mr. P. K. Misra, the learned counsel for the petitioner, argues with vehemence that the conclusion of the appellate authority, constitutes an error apparent on the order as he has committed several errors of record which have a vital bearing in adjudicating the question whether the landlord requires the house bona fide for his own use and such error has vitiated the ultimate conclusion. According to Mr. Misra even though the landlord has given positive evidence to the effect that the rooms in his occupation are not sufficient to accommodate the excess furnitures and other articles, but the appellate authority proceeds on the assumption with no evidence was adduced to establish the said fact. He further contends that without considering the size of the rooms and the available space for the landlord to store his articles, the conclusion of the appellate authority that there were number of rooms in the occupation of the landlord both in the ground floor and first floor for storing and placing the furnitures is a conclusion based upon non-consideration of the relevant materials and, therefore, the said conclusion can be interfered with by this Court in a writ of certiorari. Mr. Misra further contends that the plea of the landlord that he requires additional space for his consultancy work which he is not able to pursue on account of shortage of space has been negatived on the ground that there is an admission on the part of the landlord (P.W. 1) that the consultancy work is sparingly done and no space is required for the same since it can be done with the available datas collected by the landlord in his own house. According to Mr. Misra the appellate authority committed gross error of law in coming to this conclusion, inasmuch as for any professional work, the necessary infrastructure is the minimum decent space being appropriately furnished and, therefore, the conclusion of the appellate authority is based rather on surmises and not on appreciation of the evidence. Mr. Misra also urges that the plea of the landlord that he requires the additional space for the visit of his son and daughter-in-law who are away in the United States has been rejected by the appellate authority on the ground that since admittedly, the landlord has three rooms under his occupation, his son and daughter-in-law in the event of their visit can occupy any such room and this approach, according to Mr. Misra, is contrary to law. Lastly, Mr. Misra contends that an application for additional evidence on the ground of landlord having undergone bypass surgery has been illegally rejected since Section 13 of the Orissa House Rent Control Act not only authorises the appellate authority to examine the records of the case by calling for the same from the Controller, but also entitles him to make such further enquiry as he thinks fit, which power includes even taking of oral evidence by the appellate authority in appropriate case and, therefore, the application for additional evidence indicating illness of

the landlord and the advice of the doctor was illegally excluded from consideration and such erroneous exclusion vitiates the ultimate decision.

Mr. B. K. Mohanty appearing for the tenant-opposite party No. 1 has submitted an elaborate written notes of submissions wherein the main contention urged is that the plea of bona fide requirement having been rejected by the Controller and confirmed by the appellate authority, it is not open for this Court in a writ of certiorari to interfere with the said conclusion, particularly when, the appellate authority has fully discussed the entire materials on record. According to Mr. Mohanty, the expression "requires the house in good faith" implies an honest intention on the part of the landlord and the fact that the landlord himself had concealed the actual number of rooms in his occupation itself is sufficient to hold that the requirement is not bona fide. He has relied upon a large number of decisions of the Supreme Court and of this Court indicating the parameters within which the High Court can in a writ of certiorari interfere with the conclusions of an inferior tribunal.

4. Before examining the correctness of the rival submissions as well as the law on the subject, certain admitted features of the case may be noticed. The petitioner was a Government servant and is the owner of the double-storeyed building which consists of three rooms in the down floor and corresponding three rooms in the first floor apart from some additional small spaces. The size of the rooms is roughly 6 feet x 11 feet; 6 feet x 11 feet and 6 feet x 10 feet as is apparent from Ext. 2. There exists a passage room through which one can go to the upstairs and a garage and one or two other small rooms which can be utilised for kitchen and puja room. The said petitioner as was serving outside Cuttack at different places had rented out the down floor to the opposite party No. 1 in the year 1971 and after retirement from service in the year 1980 he approached the tenant to vacate the premises as he had no other house excepting one at Cuttack and having failed in his attempt to get the vacant possession of the premises through persuasion, he filed the application before the Controller. The basic requirement for which the ground floor which had been tenanted to opposite party No. 1 is required by the petitioner is to accommodate all his furnitures etcetera; to have some space for his consultancy work and to have a comfortable living by occupying both the ground floor and the first floor. Unfortunately for the petitioner, during the pendency of the proceeding, he has suffered a heart attack and has undergone some bypass surgery which fact he wanted to bring to the notice of the appellate authority by way of additional evidence, but his prayer had been rejected. In the aforesaid setting, the appellate authority was called upon to decide as to whether the requirement of the petitioner is bona fide or not. It may be noticed at this stage that the Orissa House Rent Control Act has lapsed since 1988 and there has been no fresh legislation or continuance of the old legislation for the last five years. But this being a pending proceeding before the expiry of the Act has to be continued and disposed of under the Act in question.

5. We will now notice some of the decisions of the apex Court with regard to the parameters within which the High Court in a writ of certiorari can interfere with the conclusions of the inferior tribunals. It is not necessary for us to notice any decision of any other High Court including this Court in view of the plethora of case-laws of the apex Court itself. In the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, a Constitution Bench of the apex Court considered this question and has held that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals and these are cases where orders are passed by inferior courts or tribunals without jurisdiction or in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted in dealing with the dispute is opposed to the principles of natural justice. The Court further indicated:--

"The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari."

The learned Judges have further observed that the adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and such a point cannot be agitated before a writ Court. As to what is the correct meaning of the expression "error apparent on the face of the record", the apex Court further held :--

"It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari....."

Having held so, the Court further added :--

".....In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

This enunciation of law has been accepted in subsequent decisions of the apex Court with some modifications in some cases, but it is undisputed that the aforesaid decision still governs the field with regard to the parameters within which the High Court would interfere with the conclusions of the inferior tribunal in a writ of certiorari.

In the case of T. Prem Sagar Vs. The Standard Vacuum Oil Company Madras and Others, their Lordships of the Supreme Court held that a writ of certiorari can be issued when the order of the inferior tribunal is shown to suffer from an error which is apparent on the face of the record and it is not correct to say that unless an error of jurisdiction is established or fraud proved, no writ of certiorari can be issued.

In the case of Sub-divisional Officer and Collector, Shivasagar Vs. Shri Gopal Chandra Khound and Another, their Lordships of the Supreme Court observed that apart from the question of jurisdiction, a writ of certiorari can also be issued where the Tribunal had committed mistakes apparent on the face of the record or committed flagrant violation of the law.

In the case of Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, the apex Court held that if a finding is based on irrelevant consideration, it becomes a case of error apparent on the face of the record and the finding can be struck down while exercising power under Article 226 of the Constitution.

6. Bearing in mind the ratio of the aforesaid cases laid down by the Apex Court, it has to be considered whether the impugned appellate order under the Orissa House Rent Control Act contains any error apparent on the face of the order so as to be interfered with by this Court. But before examining the said order, we think it appropriate also to notice as to what is the true meaning of the expression ".....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" used in Sub-section (4) of Section 7 of the Act. It is this plea of the landlord which only survived for consideration by the appellate authority. In our considered opinion, the aforesaid expression postulates that there must be a requirement of the house and said requirement must be in good faith and the purpose is for the occupation or use of himself or any member of his family. The expression "requires" connotes that there should be an element of need, an element of need as opposed to a mere desire or wish. That being the

position, the Tribunal has to consider the need objectively and should not surrender its judgment to the desire of the landlord. The expression "good faith" would connote that the need of the landlord is honest and bona fide. It has been held by their Lordships of the Supreme Court that whether the requirement of the landlord is in good faith and bona fide is a mixed question of law and fact (see *Mattulal Vs. Radhe Lal*,) and if in arriving at a conclusion on the aforesaid question any important and relevant evidence is not taken into consideration, then the finding will be vitiated. In the case of *Budhwanti and Another Vs. Gulab Chand Prasad*, their Lordships of the Supreme Court were considering the question of bona fide requirement of the landlord. In that case, the conclusion of the High Court in a second appeal was the subject-matter of consideration before their Lordships of the Supreme Court and one of the questions that had been raised before the apex Court was that in view of the provisions contained in sections 100 and 101 of the Code of Civil Procedure, will the High Court be justified in interfering with a finding of fact? The Supreme Court observed that if the appellate judge had rendered his finding on the question of bona fide requirement of the shop by the landlord on baseless assumptions and wrong principles of law, the High Court would be justified in setting aside the finding even though it was factual in character. The Court went on to add that where it is found that the finding is vitiated by application of wrong tests or on the basis of conjectures and assumptions, then the High Court will be well within its right in setting aside in a second appeal a patently erroneous finding in order to render justice to the party affected by the erroneous finding. What has been said in the aforesaid case with regard to the power of the High Court to interfere in a second appeal, would also apply to a case where the order of an inferior tribunal is assailed in a writ of certiorari.

In yet another case of *Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others*, the provisions of Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, came up for consideration before the Apex Court. It was observed that if the findings of the appellate authority under the Rent Control Act are vitiated because of its non-advertence to the evidence and the apparent errors are noticed in its assessment of the comparative hardship between the parties, the High Court would be justified in interfering with such conclusion. It was also indicated that the High Court was fully entitled to interfere with the conclusion of the appellate authority if the appellate order indicates that the appellate authority had applied wrong tests and the order suffers from manifest errors in exercise of its jurisdiction.

It is not necessary for us to multiply authorities on the subject and bearing in mind the tests laid down in these decisions, we will now examine the findings of the appellate authority and his ultimate conclusion in dismissing the petitioner's appeal.

7. The appellate authority in his order, annexed as Annexure-7, has noticed in para-graph-12 of the judgment as to the rooms under occupation of the landlord-

petitioner and the rooms under occupation of the tenant-opposite party and has come to a conclusion that the landlord was occupying three big rooms in the first floor which itself is not correct, as by no stretch of imagination rooms of the size 10" x 6" or 11" x 6" can be said to be "big rooms". Then in paragraph-13 of the judgment, he comes to a conclusion that there are number of rooms in the occupation of the landlord both in the first floor and ground floor for storing of furnitures and articles alleged to have been kept below the cot and, therefore, it is difficult to accept the contention that the disputed premises are required for accommodating household articles of the landlord. This approach is basically erroneous, as the authorities under the House Rent Control Act must examine the question from the standpoint that while the landlord was in service and was not staying at Cuttack he had given the ground floor on rent keeping the first floor in his occupation and substantially the building consists of six rooms, three in the ground floor and three in the first floor with dimension of 10 feet x 6 feet or 11 feet x 6 feet each. The other alleged rooms are merely covered spaces and when the landlord retires from service and decides to settle down in his own building at Cuttack and requires the ground floor rooms which had been tenanted to opposite party No. 1, can it be said to be a bona fide requirement or not? In other words, can it be said that the requirement is in good faith for the use of the landlord or not? It has to be adjudged from that standpoint and not from any other standard. Therefore, the basic approach of the appellate authority has been erroneous. The landlord has retired as a Chief Engineer in the Public Works Department under the State of Orissa and the house in question is the ancestral house and admittedly the landlord has settled down there only in the first floor and requires the down floor for the purposes as indicated. The authorities under the Act are to examine whether such requirement is in good faith or not bearing in mind the legal principles for such requirement. In our considered opinion, the basic approach of the appellate authority has become erroneous and such erroneous approach has vitiated the ultimate conclusion.

Then again, so far as the requirement of the landlord for his consultancy job is concerned, the appellate authority has proceeded on the assumption that until and unless the landlord establishes that he is unable to pursue his consultancy work due to the shortage of space in the first floor, the requirement cannot be held to be in good faith. We have no hesitation to come to the conclusion that the aforesaid reasoning and approach of the appellate authority is wholly erroneous. As has been observed by the appellate authority, out of the three rooms in the occupation of the petitioner in the first floor, one is used as his bed room, one is used as his drawing room and one is used as his dining room. In such setting if the landlord requires the down floor for his consultancy work, then the question that requires adjudication is whether that requirement is in good faith or not. If the authority finds that in fact, the landlord has no consultancy work, then the court would be justified in saying that the requirement is not in good faith. But if, on the other hand, the authority finds that the landlord has taken up the consultancy work, then in deciding the question as to whether the

requirement is a mere desire or there is an element of need, has to be gone into and in that context it must be found out as to whether the requirement is reasonable or not and has been made in good faith or not. It cannot be disputed that whenever any person takes up any professional avocation like a lawyer or a consultancy chamber or an architect, certain minimum infrastructure like a well-furnished room is absolutely necessary to attract clientele. So, if for that purpose, additional space in the down floor is required, then the authority has to examine whether such requirement is in good faith or not, so as to bring the requirement within the ambit of Sub-section (4) of Section 7 of the Act. Obviously, the appellate statutory has not approached the problem from the aforesaid standpoint and consequently, the ultimate conclusion is vitiated because of the erroneous approach of the appellate authority.

Then again, as stated by the landlord in his application under Order 41, Rule 27, Code of Civil Procedure, that he suffered from a heart attacks and has undergone some bypass surgery and in that connection the doctor has rendered some advice, it is in that connection the application had been filed. If the appellate authority u/s 13 of the Act is empowered to hold such further enquiry as he thinks fit, there was no embargo on his power to take the subsequent facts sought to be adduced by way of additional evidence into consideration. Rejection of the application for additional evidence, there are, in our considered opinion, was not justified and such rejection order passed by the appellate authority has vitiated the ultimate conclusion.

8. In the premises, as aforesaid, we are of the considered opinion that the impugned order of the appellate authority under Annexure-7 is vitiated or account of manifest erroneous approach of the appellate authority as indicated by us earlier and on account of certain errors of record as observed by us and, therefore, the said conclusion is liable to be interfered with by this Court in a writ of certiorari. We accordingly quash the impugned order under Annexure-7 and remit the matter to the appellate authority for re-disposal of the same in accordance with law and bearing in mind the observation made by us in this judgment. Since the proceeding is pending since 1982 and more than 11 years have lapsed in the meantime, we would call upon the appellate authority to dispose of the matter within two months from the date of receipt of our order. The parties through their counsel are directed to appear before the appellate authority on 30th of August, 1993, who shall thereafter fix up the date of hearing and proceed with the matter. The records of the proceedings be sent back to the appellate authority forthwith.

The writ application is accordingly allowed. There will, however, be no order as to costs.

B.N. Dash, J.

9. I agree.