

(1983) 04 OHC CK 0002

In the Orissa High Court

Case No : Original Jurn. Case No. 169 of 1978

Smt. Radha Nayakani

APPELLANT

Vs

Konchada Narayana Murty and Others

RESPONDENT

Date of Decision : 29-04-1983

Acts Referred:

Constitution of India, 1950 — Article 227
Orissa House Rent Control Act, 1958 — Section 12

Citation : AIR 1983 Ori 233 : (1983) 56 CLT 1

Hon'ble Judges : J.K. Mohanty, J;B.K. Behera, J

Bench : Division Bench

Advocate : S. Mohanty, for the Appellant; B.B. Ratho, S.N. Padhi and S.K. Das, for the Respondent

Final Decision : Allowed

Judgement

J. K. Mohanty, J.—Petitioner, an old lady, now aged about 75 years filed House Bent Control Case No. 91/76 against opposite party No. I--tenant for evicting him from the disputed house on the ground that she has no other house to live in and the disputed house is the only house which is required for her bona fide use and occupation. She only examined herself in support of her case and produced two documents (Exts. 1 and 2) before the House Rent Controller which a have been annexed as Annexirres 1 and 2 in this case. Opposite Party No. I--tenant opposed the application on the ground that the petitioner has got three houses besides the house in question out of which she has let out two houses and is residing in one. The opposite party No. 1 examined himself as O. P. W. No. 2 and another witness as O. P. W. 1, who is a clerk in the Berhampur Municipality and has produced the Demand Register of the Municipality to prove Exts. C, D and E to the effect that the petitioner has three more houses standing in her name. The House Rent Controller accepted the plea of bona fide requirement of the petitioner and directed opposite party No. 1 vide his order in Annexure-5 to deliver vacant possession of the disputed house to the petitioner within two months. In appeal before the Chief Judicial Magistrate (H. R. C. Appeal No. 10/

"77) the order passed by the House Rent Controller was reversed vide Annexure-6. Petitioner has come up with this writ application for issue of a writ of certiorari to quash Annexure-6, the order of the Chief Judicial Magistrate and to restore the order passed by the House Kent Controller in H. R. C. Case No. 91/7,6 vide Annexure-5.

2. Mr. Mohanty, learned counsel appearing for the petitioner, submitted that the petitioner, who is an old lady, had been trying to find out a roof for herself and wanted to remain in her own house as she has been living with her nephew where she is experiencing great inconvenience. She required the house in good faith for occupation/use of herself and her adopted son. She has clearly averred that she has no other house except the disputed house which is in occupation of opposite party No. 1. She had served a registered notice dated 4-9-76 vide Annexure-1 ("Ext. 1 in the court below) through her advocate on opposite party No. 1 requiring him to vacate the house as she required the house for her own use and occupation. Opposite party No. 1 in reply sent Annexure-2 (Ext. ,2 in the court below) stating that he had no objection to vacate the house provided the petitioner arranges another house at a vexy near-by place in the same locality and at the same rent which he was paying. As opposite party No. 1 did not vacate the house the petitioner was forced to file the H. it. C. case before the House Rent Controller for his eviction from the disputed house. Though opposite party No. 1 acknowledged the fact that the petitioner required the house for her own use and occupation, in his counter vide Annexure-4 he has turned round and has taken the plea before the trial court that the house did not belong to the petitioner, but to Gopinath Naik, who is a nephew fof the petitioner and that this is not the only house of the petitioner and she has other houses standing in her name. According to Mr. Mohanty, the trial court accepted the case of the petitioner that she requires the house in good faith for the occupation/use of herself and directed eviction. But the learned appellate court without considering the materials on record held that the landlady has come with a false pretext. The tenant first served a registered notice to the land-lady for repair of the house and the H. R. C. case is the outcome of that notice. Prior to the filing of the H. R. C. case landlady never demanded eviction of the tenant and never expressed her inlention that the house was required by her for her own use. It has been proved that the petitioner has three more houses and it is not the case of the petitioner that out of the houses she prefers the suit house. On these findings the order of the House Rent Controller was reversed. Mr. Mohanty argued that these findings are not tenable in the facts and circumstances of the present case and are also no based on record. On the other hand, the appellate court has not considered the two documents, namely, Exts. 1 and 2, which conclusively establish the case of the petitioner.

Mr. Rath, learned counsel for opposite party No. 1 argued that this Court should not interfere with the findings arrived at by the appellate court; that it has been found by the appellate court that the petitioner has three more houses and nothing has been shown why she requires this particular house in preference to

other houses that the petitioner has taken contradictory stand, one in her petition, for eviction, i. e. Annexure-3 and another during the stage of evidence; and. that in any view of the matter this is a case where this Court should not interfere with the order of the appellate court. In support of his, contentions, he relied on the decisions reported in Mattulal Vs. Radhe Lal, and Chinta Narayanamma Vs. Kholli Sahu and Others, wherein it has been held that the concurrent findings of fact should not be interfered in a writ of certiorari. It has been further held that the word "requires" involves some element of need and the onus is on the landlord to show fact and circumstances proving the necessity which must be an honest one. It should not be the outcome of an oblique motive or a false pretence,

3. Normally we would not have interfered in a case where the finding is based on a consideration of entire evidence both oral and documentary. But in this case the appellate court has not at all considered the two documents, Annexures 1 and 2 (Exts. 1 and 2 in the court below). Annexure-1 is a notice served by the petitioner's advocate on opposite party No. 1 wherein it has been categorically mentioned that the petitioner requires the house for her own, use and occupation and requested opposite party No. 1 to deliver vacant possession of the same to her. It has further been mentioned that the tenant has been promising from time to time to deliver vacant possession of the house and without doing so he is prolonging the matter. In reply to the above, opposite party No. 1 sent a registered letter vide Annexure-2 (Ext. 2 in the court below) wherein he has mentioned that if the petitioner arranges any other suitable shop house at a very nearby place in the same locality and at the same cent which he was paying, he has no objection to vacate the house. These two documents have not been considered by the appellate court. By Annexure-2 opposite party Not 1 has categorically acknowledged that the petitioner requires the house in good faith for her own use and occupation and her requirement was bona fide. Instead of vacating the house opposite party No. 1 has dragged the old lady to litigation which has prolonged for the last seven years. The findings of the learned appellate court that the eviction case was started as aftermath of the notice served by the tenant for repairing the house cannot be accepted as in EXT. 2 no such thing has been mentioned by opposite party No. 1. of course, in this case some documents have been produced to show that in the name of the petitioner some other houses stand recorded in the municipal register, but this has been categorically denied by the landlady-petitioner. Even assuming that there are some houses standing in the name of the petitioner it has been the consistent view of this Court that which would be an appropriate premises for the landlord is a matter exclusively left to him to decide and it would become difficult for the court to determine such a dispute. (Vide Health Stores and Others Vs. Musamat Rahima Bai and Others, ,

4. After careful consideration of the facts and circumstances of the case, we are of the view that the order of the appellate court vide Annexure-6 cannot be sustained and is to be quashed.

5. In the result, therefore, the order of the appellate court in H. R. C. Appeal No. 10 of 1977 vide Annexure-6 is quashed and the order of House Rent Controller passed in H. R. C. Case No. 91/76 vide Annexure-5 is restored. Hearing fee is assessed at Rupees one hundred.

Behera, J.

6. I agree. No doubt, while exercising jurisdiction under Article 227 of the Constitution this Court is not to correct a finding of fact arrived at by the subordinate Court or authority like an appellate Court and the power of superintendence under Article 227 has been given to see that such subordinate Court or Tribunal functions within the limits of its authority and this Court is not to correct mere errors of fact by examining the evidence and re-appreciating it. In the instant case, however, concurrent findings have not been recorded by the two authorities and the appellate authority has reversed the finding recorded by the House Rent Controller without just, legal and reasonable grounds. The findings of the appellate authority in favour of the opposite party No. 1 have also been based on error of record in that although prior to the institution of the case under the House Rent Control Act, the petitioner had demanded vacation of the rented house by the opposite party No. 1 as she required it for her own use and occupation by sending a notice (Annexure-1) and in reply, the opposite party No. 1 had no objection to vacate the house if the petitioner arranged another shop house nearby at the same rent he was paying, the appellate authority wrongly recorded:

".....Prior to the filing of this H. R. C. case the landlord never demanded eviction of the tenant and never expressed her intention that the house is required by the landlord for her own use..."

For the reasons recorded by us, it is found that the impugned order had been passed by the appellate authority without proper application of mind and without even taking due notice of important documents in favour of the petitioner. The impugned appellate order is unreasonable and unfounded and cannot be allowed to stand.