

(1987) 03 OHC CK 0034

In the Orissa High Court

Case No : Original Jurisdiction Case No. 301 of 1986

Smt. Renuka Padhi

APPELLANT

Vs

Chief Judicial Magistrate and Others

RESPONDENT

Date of Decision : 27-03-1987

Acts Referred:

Orissa House Rent Control Act, 1967 — Section 5, 7

Citation : (1987) 63 CLT 602

Hon'ble Judges : S.C. Mohapatra, J;K.P. Mohapatra, J

Bench : Division Bench

Advocate : S.S. Rao, for the Appellant; Addl. Standing Counsel for Opp. Party 1 and 2 and B. Pujari, for Opp. Party No. 3, for the Respondent

Judgement

K.P. Mohapatra, J.—This is a petition under Articles 226 and 227 of the Constitution of India for quashing Annexures 4 and 5 which are orders passed by the House Rent Controller and the House Rent Appellate Authority-Chief Judicial Magistrate, Ganjam, Berhampur.

2. Indisputedly the Petitioner is the tenant and opposite party No. 3 is the landlord of the disputed premises. Under a rent agreement the Petitioner took the same on rent at the rate of Rs. 100/- per day. On the ground that the Petitioner remained in arrears of rent, opposite party No. 3 filed a petition for eviction and recovery of arrears of rent u/s 7 of the Orissa House Rent Control Act (hereinafter referred to as "the Act") against the Petitioner before the House Rent Controller, Berhampur registered as H. R. C. Case No. 31 of 1984. The Petitioner similarly filed a petition u/s 5 of the said Act against opposite party No. 3 for fixation of fair rent at the rate of Rs. 400/- per month registered as H. R. C. Case No. 9 of 1984. During the pendency of the main eviction proceeding, opposite party No 3 made a petition u/s 7 (3) of the Act and after hearing both parties the learned House Rent Controller by the impugned order (Annexure-4) directed the Petitioner to pay arrears of rent at the rate of Rs. 100/- per day with effect from 7-2-1984 in default of which there was a further direction that he

shall not be permitted to contest the eviction proceeding. The Petitioner went up in appeal before the appellate authority (the Chief Judicial Magistrate, Ganjam, Berhampur), but without success.

3. Mr. Rao, learned Counsel appearing for the Petitioner urged that in the eviction proceeding the Petitioner did not admit that she was in arrears of house rent at the rate of Rs. 100/- per day. She admitted that the rent in arrears was at the rate of Rs. 400/- per month. Therefore, the impugned orders are unsupportable. Mr. Pujari, learned Counsel appearing for opposite party No. 3, on the other hand, contended that the agreed rate of rent was Rs. 100/- per day and the Petitioner further agreed during the pendency of the proceeding that she was in arrears at the same rate. Therefore, according to him, the impugned orders were correctly passed.

4. We have heard learned Counsel at length and we have considered the impugned orders passed by the learned House Rent Controller and the House Rent Appellate Authority. Obviously they have been taken into consideration the Bench decision of this Court reported in Rama Chandra Sahu Vs. Sanyasi Behera and Others, and M/s. Sambalpur Automobiles through Partner Kishori Prasanna Pati and Ors. v. Bidyabhusan Mohapatra and Ors. 41 (1975) C.L.T. 1137. in which the above named reported decisions have been referred to. The settled position of law so far as this Court is concerned is that the words "as admitted by him" appearing in Section 7 (3) of the Act obviously refer to "as admitted in the proceedings" before the Controller. It does not contemplate an enquiry into the matter at that stage and, therefore, in cases where the tenant denies the existence of any arrear of rent or otherwise does not admit the fact of existence of arrears of rent it is not open to the Controller to enter into an enquiry and decide that the tenant is actually in arrears of rent and thereupon call upon the tenant to either remit to the landlord the amount of arrears of rent or deposit the same with him and for non-compliance of such a direction he is not entitled to exclude the tenant from contest in the proceedings.

5. It is also well settled that though in fact there is arrears, the tenant may deny the same. Even in such a case the arrears of rent cannot be said to have been admitted. If the Petitioner denies in the written statement that she is not in arrears, she cannot be said to have admitted that she is in arrears. The duty of House Rent Controller is to study the written statement carefully and see if arrears of rent are admitted.

6. Para 15 of the written before the House Rent Controller which is quoted in para 8 of the writ petition is as follows:

The allegations in para 7 that the opposite party is a wilful defaulter is not true. The Respondent has to pay rent which effect from 7-8-1984 and the same remained unpaid due to refusal of the Petitioner to have the endorsements made on the rent deed with regard to the earlier payments made upto 6-2-1984. The opposite party filed H. R. C. Case No. 9/84 for fixation of fair rent " Rs. 400/- PM.

She has no objection to pay at that rate with effect from 7-2-1984 provided the Petitioner is agreeable to receive the same.

On a bare interpretation of the above it is apparent that the Petitioner though had admitted that the agreed rent was Rs. 100/ per day she denied that there was arrears. In fact, according to the admitted case, the rent per month was Rs. 400/- which was in arrears. It can, therefore, be said that during the house rent control proceedings the Petitioner denied being in arrears of rent at the rate of Rs. 100/- per day, but according to her the admitted rent was Rs. 400/- per month. This being the position we are unable to agree with the conclusion arrived at by the learned House Rent Controller and the House Rent Appellate Authority that the Petitioner had agreed in the house rent control proceedings to the effect that she was in arrears of rent at the rate of Rs. 100/- per day. Before closing the case it has been brought to our notice that as a consequence of the orders passed in Annex ures 4 and 5 the Petitioner was prevented from taking part in the eviction proceedings and as a matter of fact an order of eviction has already been passed ex parte against her, There is no doubt that the order that we are going to pass shall affect the ex parte order in the sense that on deposit of the admitted arrears of rent the ex parte order has to be automatically vacated so that the Petitioner shall get an opportunity of contesting the eviction proceedings.

7. For the reasons stated above, we direct the Petitioner to deposit the admitted arrears of rent at the rate of Rs. 400/per month with effect from 7-2-1984 upto the date of filing of the H. R. C. Case within four weeks hence and on such deposit being made, the ex parte order in the said case shall be vacated and the Petitioner shall be given opportunity of contesting the eviction proceedings initiated against her by opposite party No. 3. We make no order as to costs. The House Rent Controller is also directed to dispose of the case within a period of six months and intimate to the Court.

S.C. Mohapatra, J.

8. I agree.