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HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 59 of 2014****Judgment reserved on : 08.09.2016****Judgment delivered on : 22.09.2016**

Abdul Aziz Khan, Age 79 Years, Retired Govt. Teacher, S/o Late Hasan Khan, R/o Baijnath Para, Raipur, P.S.- City Kotwali, Raipur, District Raipur (C.G.)

---- Petitioner**Versus**

1. Hazi Ismail Khan, Age about 70 Years, S/o Late Usman Khan, R/o House No.382, Raju Hosierly Wale, Moulana Abdul Raouf Ward, Baijnathpara, Raipur District- Raipur
2. Ahmad Khan, Aged about 42 Years, S/o Late Shabaz Khan, R/o behind Hotel Noorzahan, Baijnathpara, Moulana Abdul Raouf Ward, Raipur, District Raipur (C.G.)
3. Mohamad Khan, Aged about 40 Years, S/o Late Shabaz Khan, R/o. Near Evergreen Chowk, House No. 22/498, Baijnathpara, Moulana Abdul Raouf Ward, Raipur, District Raipur (C.G.)
4. Moin Khan, Age about 34 Years, S/o Hazi Ismail Khan, R/o. Near Evergreen Chowk, R/o House No. 22/498, Baijnathpara, Moulana Abdul Raouf Ward, Raipur, District Raipur (C.G.)
5. Habib Khan, Age about 32 Years, S/o Hazi Ismail Khan, Near Evergreen Chowk, R/o House No. 22/498, Baijnathpara, Moulana Abdul Raouf Ward, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner:	Mr. Jitendra Nath Nande, Advocate.
For Respondents :	Mr. B.P. Sharma and Mr. Manaynath Thakur, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**JUDGMENT [C.A.V.]**

(1) Impugning legality, validity and correctness of the order dated 4.4.2014 passed by Rent Controlling Authority, Raipur (henceforth 'RCA') in Case No.1/90(8) year 2001-2002, this revision has been filed by the applicant/landlord under Section 23-E of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter referred to as 'Act,1961') whereby RCA has rejected the application of the applicant/landlord for eviction of respondents from the suit house as not maintainable under Section 23-J of the Act, 1961.

(2) In order to judge the correctness of the order passed by RCA, Raipur following facts are essential to be noticed in this revision which are as under:-

(2.1) The applicant herein filed an application under Section 23-J of the Act, 1961 claiming to be the landlord of special category being a retired Government Servant stating *inter alia* that the suit accommodation was let out to original tenant Usman Khan for monthly rent of Rs.30/-, and after death of Usman Khan, his two sons namely Hazi Ismial Khan and Shabaz Khan were residing in the suit accommodation and after the death of Shahbaz Khan, his two sons namely Ahmad Khan and Mohammad Khan (respondents No. 2 & 3) were residing with Hazi Ismail Khan (respondent No.1). The rent was being paid by respondent No.1- Hazi Ismail Khan on behalf of all persons to the applicant/landlord.

(2.2) It was further pleaded that the suit accommodation is jointly owned by applicant and his three sisters. The sisters have given consent to the applicant to get it vacated for his residence as they are married and residing in their in-laws' house. The applicant has retired from the

Department of School Education on 31.07.1996 and has no other reasonably suitable alternative accommodation in the township of Raipur for his residential purposes.

(2.3) It was also pleaded that notice Annexure P-5 was served to respondent No.1 – Hazi Ismail Khan for vacating the suit accommodation but it was not vacated though the relationship of landlord and tenant was admitted by respondent No.1/tenant Hazi Ismail Khan in his reply to the notice vide Ex.P-8.

(3) Rent Controlling Authority, Raipur firstly by order dated 8.11.2002 granted landlord's application for eviction, which was set aside by this Court vide order dated 8.3.2006 passed in Civil Revision No.721/2002 and the matter was remitted to RCA to consider the application filed by respondent No.1/tenant under Section 23-C of the Act, 1961 to contest the application filed by applicant/landlord under Section 23-A of the Act and to decide the same in accordance with law.

(4) RCA, after complying the order of this Court, again by its order dated 14.09.2007 rejected the application holding that there is no relationship of landlord and tenant between the parties. The said order was challenged by the applicant in Civil Revision 149 of 2007 before this Court.

(5) This Court by its order dated 23rd March, 2010, set aside the order of RCA and again remitted the matter for hearing and disposal in accordance with law after impleading the sons of late Shahbaj Khan as co-tenants in the matter.

(6) The applicant impleaded sons of Shahbaj Khan as co-tenants in the matter and thereafter RCA by its impugned order dated 4.4.2014 rejected the application filed by the applicant holding that the applicant has not proved the fact that he is retired government servant falling within the mischief of landlord of special category under Section 23-J of the Act, 1961; and it has also not been proved that he is in need of suit accommodation *bonafidely* for the residential purpose.

(7) Mr. J.N. Nande, learned counsel for the applicant/landlord would submit that the RCA has committed grave legal error in rejecting the application for eviction filed under Section 23-J of the Act, 1961. He would further submit that applicant has clearly proved the fact that he is the landlord of special category being the retired government servant; and further proved that suit accommodation is required bonafidely by him and, therefore, the impugned order deserves to be set aside.

(8) Mr. B.P. Sharma & Mr. Manay Nath Thakur, learned counsel appearing for the respondents/tenants would submit that the Rent Controlling Authority has rightly held that the applicant has failed to establish the fact that he is the landlord of special category within the meaning of Section 23-J of the Act, 1961. He would further submit that the applicant has also failed to prove the fact that he is the retired government servant and mere exhibiting the documents does not dispense with the proof of the documents. He relied upon the judgment of the Supreme Court in the matters of ***Mukhtiar Singh Vs. State of Punjab***¹ & ***H. Siddiqui (DEAD) by Lrs. Vs. A. Ramalingam***² and, therefore, the civil revision deserves to be dismissed.

1 AIR 1971 SC 1864

2 (2011) 4 SCC 240

(9) I have heard learned counsel appearing for the parties; perused the order impugned and also considered their rival submissions made therein with utmost circumspection.

(10) The question for consideration would be whether finding of fact recorded by Rent Controlling Authority holding that the applicant is not the landlord of special category within the meaning of Section 23-J of the Act, 1961, and whether the applicant has failed to prove his *bonafide* need for suit accommodation are perverse and contrary to the record.

(11) In order to consider the plea raised at the bar, it would be appropriate to reproduce the relevant provisions contained in Section 23-J (l) & 23-A(a) which read as under:-

“23-J. Definition of landlord for the purposes of Chapter III-A.-

For the purpose of this Chapter 'landlord' means a landlord who is
(i) a retired servant of any Government including a retired member
of Defence Services; or

- | | | | |
|-------|-----|-----|-----|
| (ii) | xxx | xxx | xxx |
| (iii) | xxx | xxx | xxx |
| (iv) | xxx | xxx | xxx |
| (v) | xxx | xxx | xxx |

23-A. Special provision for eviction of tenant on ground of bonafide requirement.- Notwithstanding anything contained in any other law for the time being in force or contract to the contrary, a landlord may submit an application, signed and verified in a manner provided in Rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) as if it were a plaint to the Rent Controlling Authority on one or more of the following grounds for an order directing the tenant to put the landlord in possession of the accommodation, namely :-

(a) that the accommodation let for residential purposes is required "bonafide" by the landlord for occupation as residence for himself or for any member of his family, or for any person for whose benefit, the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned.

Explanation.- For the purpose of this clause, “accommodation let for residential purposes” includes-

(i) any accommodation which having been let for use as a residence is without the express consent of the landlord, used wholly or partly for any non-residential purpose;

(ii) any accommodation which has not been let under an express provision of contract for non-residential purpose;

(b) xxxx xxxx xxxx

(12) From a perusal of the aforesaid provisions of the Act, it is clear that once it is *prima facie* found as a fact that the requirements of the person as contemplated by law exist, it shall be presumed, unless contrary is proved, that the requirement of the landlord with reference to Clause A or Clause B, as the case may be, of Section 23-A, is *bonafide*.

(13) It is well settled that the revisional power conferred by Section 23-E of the Act is larger than the revisional jurisdiction under Section 115 of the C.P.C. but lesser than appellate power. Indication is that an attempt should be made to keep as nearly as possible to the limits of power of revision under Section 115 of the C.P.C. exceeding the same only to the extent necessary for preventing miscarriage of justice. The finding of fact arrived at by the R.C.A. regarding the bonafide requirement of the landlord can be disturbed in revision if it is perverse and not simply on the ground that another view is possible on re-appreciation of the evidence.

(14) The Madhya Pradesh High Court in case of **B. Johnson Bernard Vs. C.S. Naidu**³ has held as under:-

“The first part of sub-section (2) of Section 23-E of the M.P. Act has, therefore, to be construed similarly, as conferring a power of revision wider than that given by Section 115 Civil Procedure, but narrower than the power of appeal which permits interference where ‘there was a taint of such unreasonableness resulting in a miscarriage

of justice.”

(15) Again the Madhya Pradesh High Court in case of **Mahendra Kumar Jain Vs. Dharamchand Jain**⁴ has held as under;-

“6 The serious submission, however, appears to be regarding the correctness of finding about the *bona fide* need. Before this Court can appreciate the submission of the learned counsel, it must ascertain its own jurisdiction in the matter. A revisional jurisdiction, particularly under section 115, Civil Procedure Code is a limited jurisdiction and does not extend to examining the correctness or otherwise of the finding. The present revision, however, is failed under Section 23-E of Act which authorizes the High Court to satisfy itself as to the legality, propriety or correctness of an order passed by the Rent Controlling Authority. These words are apparently of wider magnitude and scope. In *Kewal Singh V. Lajwanti*⁵ the Supreme Court has considered a similar provision in Delhi Rent Control Act and has held that “The Highest Court of the State has been given a wide power of revision where the said Court can examine the case of the tenant and the landlord and the validity of the order passed by the Controller.” In Delhi Rent Control Act the powers of the High Court are limited to examining if an order passed by the Controller is according to law. The wordings of our are not only different but wider than Delhi Act and hence it must be held that this Court’s power of revision do not suffer from limitations under Section 115, C.P.C. This view is also supported by an earlier decision of the Supreme Court in *Hari Shankar V. Girdharilal Chowdhary*⁶. Clearly, therefore, this Court while exercising its revisional jurisdiction has the power to look into the correctness of

4 1986 MPLJ 80

5 AIR 1980 SC 161

6 AIR 1963 SC 698

the finding regarding *bonafide* need of the landlord. This is, however, not to say that in examining the correctness of the finding this Court would Act as a Court of appeal and reappreciate evidence to come to its own conclusion. That is how the present provision will have to be distinguished from appellate powers.”

(16) The Supreme Court in case of **Chaman Prakash Puri Vs. Ishwar Das Rajput and another**⁷ has held under:-

“3. The Rent Controller on appreciation of the evidence found that the appellant-landlord was in *bonafide* need of the premises in question and his application for eviction of the tenant under Section 14(1) (e) of the Delhi Rent Control Act was allowed. The tenant approached the High Court in revision. The High Court, Reappreciating the evidence, held that the landlord was not in requirement of the premises in question. This the High Court was not entitled to do in revision proceedings.”

(17) The Supreme Court in case of **Fatima Bee (smt.) Vs. Mahamood Siddiqui**⁸ has held as under:-

“7. The learned counsel for the appellant contended that the High Court committed not only an error of law but went beyond its jurisdiction in re-appreciating the evidence and reversing the finding regarding the *bonafide* requirement of the landlady. The High Court also committed a grave error in doubting correctness of the finding recorded by the Courts below that she is engaged in the business of manufacturing and selling bangles along with her family members. In our opinion, this contention raised on behalf of the appellant deserves to be accepted. We are also of the opinion that the High Court committed a grave error in reversing the finding that

7 1995 Supp (4) SCC 445

8 (1996) 9 SCC 450

the claim of permanent tenancy was *malafide*. The Rent Controller after appreciating the evidence led on behalf of the landlady and that of the tenants had recorded the finding that the landlady requires the suit premises *bonafide* for carrying on her business. The Rent Controller had also recorded the finding after appreciating the rival evidence that she was carrying on business as averred by her along with other family members. These were the findings of facts recorded after appreciation of evidence. These findings were confirmed by the appellate Court again after appreciating the evidence. No part of the evidence was misread by the Courts below. Therefore, there was no justification for the High court to reverse the said findings of facts.”

(18) Further, the Supreme Court in case of **Prativa Devi (smt.) Vs. T.V.**

Krishnan⁹ has held as under:-

“4. In the premises, the judgment of the High Court disallowing the appellant’s claim cannot be supported. In considering the availability of alternative accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such accommodation. The appellant had established her *bonfide* personal requirement of the demised premises under Section 14(1) (e) of the Act and her claim could not be disallowed merely on the ground that she was staying as a guest with a family friend by force of circumstances.”

(19) Likewise, the Supreme Court in the matter of **Ram Dass Vs.**

Ishwar Chander and others¹⁰ has held as under :-

“12. On the first contention that the revisional powers do not extend to interference with and upsetting of findings of fact, it needs to be observed that, subject to the well

9 (1996) 5 SCC 353

10 (1988) 3 SCC 131 = AIR 1988 SC 1422

known limitations inherent in all revisional jurisdiction, the matter essentially turns on the language of the statute investing the jurisdiction.”

(20) Having examined the scope of interference in the revisional jurisdiction, turning back to the facts of the case, it appears that the application was filed by the applicant/landlord under Section 23-A(a) of the Act claiming that the suit accommodation is required bonafidely for his residential purpose as he has no other alternative suitable accommodation of his own in the city of Raipur.

(21) Before proceeding further, it would be appropriate to notice that this is third round of litigation before this Court. In the first round, order of Rent Controlling Authority granting eviction was set aside by this Court and the RCA was directed to consider application filed by the application under Section 23-C of the Act, 1961 to contest the petition filed by the applicant/landlord under Section 23-A of the Act, 1961, thereafter, application of the applicant was rejected by the RCA on 14.09.2007 on the ground that relationship of landlord & tenant between the parties is not established. This Court in Civil Revision No. 149/2007 set aside the above finding of RCA by recording following findings, which are as under:-

“11. So far as, the finding recorded by the RCA that there is no relationship of landlord and tenant between the parties is concerned, the same is certainly patently illegal. Sons of non-applicant are living in the suit house as his family members along with him and not as joint tenants. There is no denial by the respondent regarding relationship of landlord and tenant and dismissal of the petition on the said ground is certainly without jurisdiction, but in the opinion of

this Court, the sons of Shahbaj Khan who are joint tenants along with non-applicant ought to have been impleaded as a co-tenant in the matter in order to avoid any future controversy between the parties in the facts and circumstances of the case.

12. In view of above, the revision is partly allowed and the order passed by the RCA is set aside. The matter is remitted back to the RCA for decision afresh after affording petitioner opportunity to implead the sons of late Shahbaj Khan as a cotenant in the matter and then to proceed with the matter in accordance with law on its own merits after affording opportunity to such impleaded respondents to file their defence, if any.”

(22) The order of this Court passed in Civil Revision No.149/2007 has attained finality as the relationship of landlord and tenant between the parties is duly established. Even otherwise, respondent No.1/tenant – Hazi Ismail Khan replied the notice sent by the applicant/landlord vide Ex.P-8, in which, he has not disputed the relationship of landlord and tenant between him and the applicant.

(23) Now, the question would be whether the applicant is the landlord of special category/retired government servant within the meaning of Section 23-J of the Act, 1961 or not.

(24) The applicant/landlord in his notice dated dated 9.2.2001 (Ex,P-5) , which was served to respondent No.1/tenant- Hazi Ismial Khan clearly indicated in para 2 that he has retired from the Government Service in the year 1996, which was replied by respondent No.1 vide Ex.P-8 denying the contents of paragraph two of the notice for want of knowledge.

(25) The applicant has filed document Ex.P-9 dated 18.01.1996 i.e. order issued by the Deputy Director, Public Instructions, in which the applicant stood at Serial Number 64 which states that that he is retired from the service of State Government with effect from 31.07.1996.

(26) The applicant/landlord in his affidavit filed before the RCA under Order 18 Rule 4 of the Code of Civil Procedure clearly indicated that he has retired from service on 31.07.1996 and is entitled to file application under Section 23-J of the Act, 1961.

(27) On behalf of the applicant, he has examined himself before the RCA; and he has clearly stated in para 3 of his statement that he is retired from the Govt. Middle School, Saheed Smarak, Raipur from the post of Assistant Teacher on 31.7.1996. The applicant has maintained his version in his cross-examination that he is retired from Govt. Middle School, Saheet Smarak, Raipur and presently working in the *Madarsa* School on honorarium.

(28) Faizul Kabeer Khan, who is son of the applicant/landlord, has stated in his evidence that his father, applicant herein has retired from the Department of Education, Government of Madhya Pradesh and filed certified copy of the order dated 18.1.1996 which has been issued by Authrized Officer of the Department as Ex.P-9.

(29) From the afore-stated discussion, it emerges that the applicant, who was working as Assistant Teacher in the Govt. Middle School, Saheed Smarak, Raipur, has retired from the Government service with effect from 31.07.1996. The fact of applicant having been retired from the Government service has even not been disputed seriously by respondent

No.1; and in reply to the notice sent by applicant/landlord, respondent No. 1 has denied the above-stated facts for want of knowledge, which is deemed to have been admitted by the tenant/respondents.

(30) In the matter of Jahuri Sah & others V. Dwarika Prasad Jhunjhunwala¹¹, Their Lordships of the Supreme Court has clearly held that fact not denied specifically or necessary implication by defendant shall taken to be admitted. Para 10 of the report states as under :-

“**10**.....Bearing in mind that O. VIII, R.5, C.P.C. Provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant shall be taken to be admitted, to say that a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of the existence of that fact, not even an implied denial.....”

(31) Very recently, the Supreme Court in the matter of Muddasani Venkata Narsaiah Vs. Muddasani Sarojana¹² has reiterated the principle laid down in Jahuri Sah (supra) holding that knowledge for want of knowledge is no denial at all and held as under:-

“**15**.It is settled law that denial for want of knowledge is no denial at all. The execution of the sale deed was not specifically denied in the written statement. Once the execution of the sale deed was not disputed it was not necessary to examine Buchamma to prove it. The provisions contained in Order 8, Rule 5 require pleadings to be answered specifically in written statement. This Court in Jahuri Sah & Ors. v. Dwarika Prasad Jhunjhunwala, AIR 1967 SC 109 has laid down that if a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of existence of fact, not even an implied denial. Same

11 AIR 1967 SC 109

12 AIR 2016 SC 2250

decision has been followed by Madhya Pradesh High Court in Dhambai D/o Late Shri Cowash v. State of M.P. & Ors. 1978 MPLJ 717 : (AIR 1979 MP 17). The High Court of Madhya Pradesh in Samrathmal & Anr. v. Union of India, Ministry of Railway & Ors. AIR 1959 MP 305 relying on P.L.N.K.L. Chettyar Firm v. Kolu Doke, AIR 1934 Rang 278 and Lakhmi Chand v. Ram Lal AIR 1931 All. 423, had also opined that if the defendant did not know of a fact, denial of the knowledge of a particular fact is not a denial of the fact and has not even the effect of putting the fact in issue.”

(32) From the evidence available on record, it is clearly established that the applicant is retired from the School Education Department vide order dated 18.1.1996 with effect from 31.7.2016 and, therefore, finding recorded by Rent Controlling Authority is wholly perverse and liable to be set aside. The judgment relied upon by the learned counsel for non-applicant is clearly inapplicable. The applicant has clearly proved that he is Retired Government Servant.

(33) In his statement before the Court on affidavit, the applicant/landlord has also stated that he has no other reasonably suitable accommodation for his residential purposes and after his retirement, he along with his family members is staying in the *Yateemkhana (Anathayalay)* owned by Muslim Community, and he is teaching orphan children of the School owned by Madarsa. He has been cross-examined at length by the opposite party but his testimony remains unshaken. His statement is also supported by Amna Khatun, who is sister of the applicant/landlord and who has clearly stated in her evidence that the applicant is staying in the house owned by Madarsa along with his family as he has no other alternative suitable accommodation of his own

“Section 23-D. Procedure to be followed by Rent Controlling Authority or grant of leave to tenant to contest.-

(2) xxxx xxxxx xxxxx

(3) In respect of an application by a landlord, it shall be presumed; unless the contrary is proved, the requirement by the landlord with reference to clause (a) or clause (b), as the case may be of Section 23-A is *bona fide*.”

(35) The applicant/landlord has discharged his initial burden of showing that he requires the suit accommodation bonafidely and he has no other suitable accommodation in his possession in the city of Raipur and, therefore, it was the duty on the part of the respondents to discharge their burden by proving their case as there is presumption under Section 23 D (3) of the Act, 1961 with regard to *bonafide* need and the said burden has not been discharged by the non-applicants. Thus, the finding of the fact recorded by the R.C.A. that suit accommodation is not bonafidely required by the applicant/landlord for his residential purpose is a finding of fact based on no evidence and contrary to the material available on record.

(36) In view of the aforesaid legal analysis, this Court is of the opinion that the order passed by the Rent Controlling Authority rejecting the application filed by the applicant for eviction is liable to be and it is accordingly set aside. The applicant/landlord is held entitled to get the the suit accommodation vacated for residential purpose. The respondents

are directed to handover the vacant possession of the suit accommodation to the applicant within a period of two weeks from the date of receipt of a copy of this order, failing which order will be executable forthwith.

(37) Accordingly, the civil revision is allowed to the extent indicated above. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-