

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 01.08.2017****Judgment Delivered on 17.08.2017****Writ Petition (227) No. 515 of 2017**

Balbhadra Kashyap S/o Shri Narmada Prasad Kashyap Aged About 55 Years
R/o Sarkanda, Bilaspur, Tahsil & District- Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. Smt. Jyoti Bala Dubey W/o Sharad Kumar Dubey Aged About 50 Years R/o Shubham Vihar, Bilaspur, Tahsil & District- Bilaspur, Chhattisgarh
2. The Rent Controlling Authority, Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri K.N. Nande on behalf of Shri D.K. Vishwakarma, Advocates
For Respondent -State	:	Shri Avinash Singh, Panel Lawyer

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. ORDER**Per Sharad Kumar Gupta, Judge**

1. In this writ petition, the challenge levied is to the order dated 04.07.2017 passed by the Chhattisgarh Rent Control Tribunal, Raipur; for short 'Tribunal', in Appeal No.5A/2017 whereby the Tribunal affirmed the order dated 12.01.2017 passed by the Rent Controller, Bilaspur in Case No. 25/A-90(6)/2015-2016, whereby and whereunder the petitioner was ordered to hand over the vacant possession of the disputed shop and to pay the arrears of rent to respondent No.1.

2. It is admitted by the petitioner that he is the tenant of respondent No.1 since 1995. The plaster of the disputed shop had fallen down in the year 2015. Respondent No.1 had given him a registered notice dated 27.01.2016 through her Advocate asking him to vacate the premise in question.
3. In brief, the case of respondent No.1 is that an agreement dated 01.06.2015 was executed between her and the petitioner. The rent of the said shop was agreed at Rs.1,340/- per month. She was in *bona fide* need of the said shop for the computer business of her son Sourabh Dubey and the required repairing work could not be carried out without vacating the said shop. The petitioner did not reply to the said notice.
4. In brief, the petitioner's case is that respondent No. 1 had no *bona fide* need of the said shop and she has other shops also. The said agreement is not registered, thus, respondent No.1 did not initiate any proceeding against him under the Chhattisgarh Rent Control Act, 2011; for short 'Act' and his tenancy has not been legally terminated.
5. Shri. K.N. Nande, learned counsel appearing on behalf of Shri D.K. Vishwakarma, Advocate emphatically argued that said agreement is in violation of Section 4, Serial No.1 of the Schedule 3 of the Landlord's Obligation under Section 12(3) of the Act, thus no order should be passed against him under the Act. Respondent No. 1 has not proved her *bona fide* need of the said shop. She has other shops adjacent to the shop in dispute in which her son can start his business. She has not given him 6 months prior notice before filing eviction application and his tenancy has not been terminated by proper notice.
6. Shri Avinash Singh, Panel Lawyer for the State argued that the orders passed by both the authorities are in accordance with law, hence the same

do not required to be interfered with.

7. Section 4(2) of the Act lays down the conditions to be followed for the tenancy created prior to the commencement of the Act and hence apt in the present case, which is as follows:

“4. Tenancy Agreement – (1).....

(2) Where, in relation to a tenancy created before the commencement of this Act, -

- (a) an agreement in writing was already entered into shall be filed before the Rent Controller.
- (b) no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing, with regard to that tenancy and file the same before the Rent Controller;

Provided that where the landlord and the tenant fail to present jointly a copy of tenancy agreement under clause (a) or fail to reach an agreement under clause (b) such landlord and the tenant shall separately file the particulars about such tenancy.”

8. The serial No.1 of Schedule 3, Section 12(3) of the Act lays down obligation upon landlord which is apt in present case and is as follows :

“Schedule 3 – (1) To admit a tenant only after executing agreement, duly notarized, as required under this Act. “

9. In the case in hand, the petitioner has also not filed the particulars about such tenancy as per the proviso to Section 4(2) of the Act. Moreover, tenancy is admitted by the petitioner. Thus, he could not take the advantage of non-filing of the particulars about such tenancy by respondent No.1 and non-notarization of Ex.P1, thus, we do not accept the argument advanced by learned counsel for the petitioner.

10. In the present case, it is admitted that the petitioner had received notice dated 27.01.2016. Respondent No.1 had filed the eviction application on 02.05.2016. Thus, it is clear that respondent No. 1 had given three months prior notice to the petitioner in accordance with Serial No. 11(g) of Schedule 2 of Section 12(2) of the Act. Thus, we reject the argument advanced by Shri Nande regarding this issue.

11. It is pertinent to mention the provisions of Serial No.12 of Ex.P1 to resolve the issue, which is as follows:

“12. पक्ष क्रमांक 02 के द्वारा रुपये 18000/- (अठारह हजार) सुरक्षा निधि के रूप में पक्ष क्रमांक 01 को आज दिनांक 01.06.2015 को नगद रूप से भुगतान किया जा रहा है, जिस पर किसी प्रकार का ब्याज पक्ष क्रमांक 01 के द्वारा देय नहीं होगा। यह सुरक्षा निधि अग्रिम राशि पक्ष क्रमांक के पास जमा रहगी। दुकान खाली करने के समय किसी प्रकार के लेने देन में राशि को समायोजित करने के पश्चात बाकी रकम पक्ष क्रमांक 01 के द्वारा आवश्यक रूप से दी जावेगी।”

12. Going through the said provision of Ex.-P1, the petitioner could not take the advantage of non-refund of said security amount. Therefore, we do not accept the argument advanced by the Shri Nande in this regard. In present case the respondent No. 1 had given 3-months prior notice on the ground of her *bona fide* need, thus it is not essential for the respondent No. 1 to give six month's prior notice as per the provision of Serial No. 11(h) of Second Schedule under Section 12(2) of the Act.

13. There is no material on record on the strength of which it could be said that the disputed shop is not required for the son of respondent No. 1, namely Sourabh Dubey. Thus, respondent No. 1 successfully proved the grounds mentioned in serial No.11(g) of Schedule 2 under Section 12(2) of the Act.

14. It is admitted by the petitioner that the plaster of the said shop had fallen down. Thus, the respondent No. 1 successfully proved the ground mentioned in serial No.11(f) of Schedule 2 under Section 12(2) of the Act.
15. On the aforesaid facts and circumstances, we do not find any ground to interfere with the impugned order passed by the Tribunal. Hence this petition is liable to be dismissed.
16. Accordingly, this writ petition is dismissed. There is no order for the costs.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge