

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 10.10.2017****Delivered on 13.10.2017****Writ Petition (C) No. 1391 of 2016**

(Arising out of order dated 13.01.2014. in Case No. 01-90(6) year 2011-12 of the learned
Rent Controlling Authority, Raipur)

- Rakesh Shriwas S/o Late Shri Dau Ram Shriwas, Aged About 33 Years R/o Behind Sinha Chal Choti Railway Crossing, P. S. Fafadih, Fafadih Raipur (Chhattisgarh).

---- Petitioner**Versus**

1. Ganpatlal Dewangan S/o Shri Ghasidas Dewangan, Aged About 43 Years R/o Opp. Khamtarai School, Near Sulabh Shouchalaya, Santoshi Nagar, Khamtarai, P. S. Khamtarai, District-Raipur (Chhattisgarh).
2. Rent Controlling Authority, Collectorate Campus, District Raipur (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Sunil Pillai, Advocate
For Respondent No.1	:	Shri M.H. Baig, Advocate
For Respondent -State	:	Shri R.K. Gupta, Deputy Advocate General

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 13.01.2014 (Annexure P/1) passed by the Rent Controlling Authority, Raipur, in Case No. 01-90(6) year 2011-12, whereby and whereunder the petitioner was ordered to hand over the vacant possession of the disputed house and to pay the

arrears of rent to respondent No.1 within two months.

2. It is admitted by the petitioner that he is the tenant of respondent No.1 at the disputed house situated in Ward No. 19, Fafadih, Raipur on the rent of Rs. 1000/- per month. For the last few months respondent No.1 is not accepting the rent from him.
3. In brief, the case of respondent No.1 is that for the last two-three years the petitioner is not tendering rent to him. He wants to marry his adult son Toran Dewangan, thus he has the *bona fide* need of the disputed house. He has his own house in Santoshi Nagar, Khamtarai at Raipur which is not suitable for accommodating his family.
4. In brief, the petitioner's case is that respondent No. 1 himself is not accepting the rent, he has not committed any wrong act regarding the tenancy. He is not getting any other rented house despite of serious attempts.
5. Respondent No. 1 had filed an application under Section 12 of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as 'the Act, 1961') before the Rent Controlling Authority, Raipur which had passed the aforesaid order. Being aggrieved with the said order, the petitioner preferred an appeal before the Rent Control Tribunal, Raipur (hereafter called as 'the Tribunal') whereby and whereunder the said appeal was dismissed vide the order dated 22.04.2016 (Annexure P/5) on the ground that the said appeal is not maintainable.
6. Shri Sunil Pillai, counsel for the petitioner emphatically argued that at the time of filing of the aforesaid application, the Act, 1961 was applicable and the Chhattisgarh Rent Control Act, 2011 (hereinafter called as the Act, 2011) was not applicable, thus jurisdiction was vested with the Civil Court and the Rent Controlling Authority has no jurisdiction to decide the said application.

Respondent No. 1 had not given him two months' prior notice regarding the arrears of rent under the provisions of the Act, 1961. Thus, the aforesaid impugned order (Annexure P/1) passed by the Rent Controlling Authority deserves to be set aside.

7. Shri M.H. Baig, counsel for respondent No.1 and Shri R.K. Gupta, Deputy Advocate General for the State/respondent No.2 argued that the impugned order is in accordance with law. The petitioner has not raised any objection before the Rent Controlling Authority that it has no jurisdiction to entertain and decide the said application. Hence, the same does not require to be interfered with.
8. Respondent No.1 had filed said application before the Rent Controlling Authority on 27.02.2012. The Act, 2011 came into force from the date of its publication in the official Gazette i.e. 06.11.2012. Thus, it is very clear that on 27.02.2012, the Act, 1961 was in force and the Act, 2011 was not applicable.
9. As per the provisions of Section 12 of the Act, 1961 a landlord may file suit for eviction before Civil Court on specific grounds mentioned therein against the tenant.
10. As per the provisions of Section 23-J of the Act, 1961 a landlord of special category mentioned therein only may file application for the eviction of the tenant before the Rent Controlling Authority on the ground of *bona fide* requirement.
11. The learned counsel for the petitioner placed reliance on the full Bench decision of the High Court of Madhya Pradesh in **Harbans Singh v. Smt. Margrat G. Bhingardive {AIR 1990 MP 191}** wherein the High Court has observed that the widow who falls in the special category of 'landlord' as defined in Section 23-J (iii) of the Act, 1961 can maintain an application

before the Rent Controlling Authority under Section 23-A(a) of the Act, 1961 for the joint need of herself and her married sons who do not fall in the special category of the landlord defined in Section 23-J of the Act, 1961.

12. He further relied on **Urban Improvement Trust, Jodhpur v. Gokul Narain (Dead) By Lrs. And Another** {(1996) 4 SCC 178} wherein the Hon'ble Supreme Court has held in para-15 as under:-

“15. The question then is: whether the objections can be raised in execution? This controversy is no longer *res integra*. In *Sushil Kumar Mehta vs. Govind Ram Bohra (Dead) through his Lrs.* [(1990) 1 SCC 193] a three-Judge Bench of this Court was to consider whether the nullity of a decree can be raised in execution. Under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973) the building was governed by the provisions of the said Act. The Civil Court granted decree of eviction. When objection was raised in execution the executing Court rejected the same. On appeal, this Court had held that a decree passed by a Court without jurisdiction over the subject-matter or on any other ground which goes to the root of its exercise of jurisdiction or inherent jurisdiction, is a nullity. A decree passed by such a court is a nullity and is *non est*. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. If the court has jurisdiction but there is any defect in its exercise of jurisdiction it does not go to the root of its authority. Such a defect like territorial jurisdiction could be waived by the party which could be corrected only by way of an appeal or revision. In that case it was held that since the decree was a nullity the validity was upheld in execution.”

13. In the case in hand, this is not the case of respondent No.1 that the

provisions of Section 23-J of the Act, 1961 were attracted in his case.

14. Looking to the above mentioned factual matrix of the case, the provisions of the Act, 1961 and the judicial precedents, this Court finds that at the time of filing of the said application dated 27.02.2012, the Act, 1961 was in force and the Act, 2011 was not in force. The provisions of Section 23-J of the Act, 1961 were not applicable to the case in hand. In other words, the competent forum which had the jurisdiction to entertain and decide that application was only the Civil Court and jurisdiction was vested with that Court. The Rent Controlling Authority, Raipur was not legally competent to entertain and decide the said matter. Therefore, the impugned order passed by the Rent Controlling Authority, Raipur is null and void and bad in the eyes of law.
15. In **Khimji Vidhu v. Premier High School {AIR 2000 SC 3495}** the Hon'ble Supreme Court has laid down that findings of fact could not have been interfered by the High Court in exercise of its jurisdiction under Article 227 of the Constitution. Jurisdiction under Article 227 of the Constitution must be sparingly exercised and may be exercised to correct errors of jurisdiction and the like but not to upset pure findings of fact, which falls in the domain of an Appellate Court only.
16. In **D.N. Banerji v. P.R. Mukherjee {AIR 1953 SC 58}** the Hon'ble Supreme Court observed that unless there has been grave miscarriage of justice or flagrant violation of law calling for interference, it is not for the High Court under Articles 226 and 227 of the Constitution to interfere.
17. In **Vakkom Purushothaman v. State of Kerala {2005 CriLJ 3166(Ker)}** the High Court of Kerala observed that where original summons were issued to petitioner to attend and produce (or cause to be produced) documents referred to in summons. Petitioner had submitted before Court in writing that

since he ceased to be Speaker of Assembly, he was not in possession of documents mentioned in summons. Subsequent order by Magistrate was issued directing petitioner to appear in Court to give oral evidence. As illegality had been committed by Magistrate to be rectified either in exercise of powers conferred on Court under Section 482 Cr.P.C. or under Article 227 of Constitution, hence, writ petition challenging order passed by Magistrate was maintainable.

18. This has already been decided that the impugned order is bad in law and passed by the Rent Controlling Authority who had no jurisdiction, therefore, in the light of the aforesaid judicial precedents this Court finds that it is the fit case where jurisdiction under Article 227 of the Constitution may be exercised.
19. Accordingly, we allow the Writ Petition. The impugned order dated 13.01.2014 (Annexure P/1) is hereby set aside. The respondents shall bear their own costs as well as cost of the petitioner.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge