

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 24-1-2018****Pronounced on 31 -1-2018****WRIT PETITION (227) No. 83 of 2018**

Sushila Sonkar Widow of Late Shri S. D. Sonkar, Aged About 60 Years R/o Near House Of Guptaji, Nakapara, Sukma, District Sukma, Chhattisgarh. At Present D 181, Sector 1, Plan No. 016, Katora Talab, Raipur Development Authority, Tikrapara, Ward No. 41, Shaheed Brigadier Usman Ward, Raipur, Tehsil And District Raipur, Chhattisgarh.

---- Petitioner**Versus**

Smt. Shakuntala Sinha W/o Shri Ashok Sinha, R/o Near Balaji Furniture, Industrial, Akash Nagar, Rajeev Gandhi Ward, Jagdalpur, District Bastar, CG

---- Respondent

For petitioner	:	Mr. Sunil Otwani, Adv.
For respondent	:	None.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Sharad Kumar Gupta, Judge****CAV ORDER****Per Sharad Kumar Gupta, Judge**

1. In this writ petition challenge is levied to the order dated 17-11-2017 vide Annexure P-1 delivered by the CG Rent Control Tribunal, Raipur (hereinafter referred to as 'The Tribunal') in Appeal No. 42-A/2017 whereby and whereunder he dismissed the appeal preferred by the writ petitioner against the order dated 29-5-2017 vide Annexure P-2 delivered by the Rent Controller, Raipur whereby the writ petitioner was ordered to hand over the vacant possession of the disputed house to the respondent and pay arrears of rent Rs. 37,000/- within one month to respondent.

2. In brief, case of the respondent No. 1 is that she is the landlord of the disputed house; earlier the husband of the petitioner had taken the disputed house on rent at the rate of Rs.

5,000/- per month from her; after death of the husband, the petitioner became her tenant; rent of the disputed house has been paid till March 2011, thereafter no rent has been paid to her; she had given notice to the petitioner under Section 12 (2) of the CG Rent Control Act, 2011 (in brevity 'Act of 2011') for termination of the tenancy giving time of six months; and that tenancy has been terminated on 31-8-2014.

3. In brief, case of the petitioner is that she is not the tenant of the respondent; an agreement of sale of disputed house has been executed between them; she had already paid some amount to the respondent and remaining amount had to be paid at the time of registry; and, from the date of agreement dated 16-6-2003, she has become landlord of the disputed house.

4. Mr. Sunil Otwani, counsel for the petitioner argued that there is no landlord and tenant relationship between them and on the strength of the agreement for sale, the petitioner has become landlord. It is contended that thus the orders passed by the Rent Controller, Raipur and the Tribunal Raipur are not justified and those orders may be set aside.

5. It is well settled law that through an agreement for sale, title of the subject matter does not pass to the person in whose favour the agreement is executed. See: Suraj Lamp and Industries Private Limited -v- State of Haryana and another (2012) 1 SCC 656; Syndicate Bank -v- Estate Officer and Manager, APIIC Ltd. and others (2007) 8 SCC 361; and Patel Natwarlal Rupji -v- Kondh Group Kheti Vishayak and another (1996) 7 SCC 690.

6. During cross-examination of the respondent Smt.

Shakuntala Sinha, the petitioner had suggested her that she was getting rent till 2011. She had reached in the disputed house on 5-9-2013 for receiving the rent. It is not petitioner's case that she was paying rent continuously since March, 2011 to the respondent at the rate of Rs. 5,000/-.

7. Looking to the above mentioned facts and circumstances, materials placed on record, this Court finds that the Rent Controller, Raipur and the Tribunal, Raipur had not committed any illegality in giving the finding that the respondent is the landlord of the disputed house and the petitioner was her tenant or in holding that the petitioner was habitual defaulter in payment of aforesaid arrears of rent.

8. From the material available on record, it could not be said that the Rent Controller as well as the Tribunal, Raipur had committed illegality in giving the finding that prior six months notice under Clause 11(h) of Schedule II of Section 12(2) of the Act of 2011 was received by the petitioner on 21-2-2014.

9. 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. 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.

10. In the light of the facts and materials on record and the circumstances of the case and aforesaid judicial precedents, this Court finds that the writ petition being devoid of merit deserves to be dismissed. However, the learned Counsel appearing for the writ petitioner submitted that the writ petitioner may be given a reasonable time frame to deliver the possession. We record the submission.

11. In the result, this writ petition is ordered as follows :-

(i) The impugned order dated 17-11-2017 of the Chhattisgarh Rent Control Tribunal, Raipur, is confirmed.

(ii) The petitioner- Sushila Sonkar is granted 4 months time to vacate the premises on condition that she pays the Respondent, Smt. Shakuntala Sinha, the landlord, the arrears of rent from April, 2011 till 31-8-2014 at the rate of Rs. 5,000/- per month, within a period of 10 days from the date of this order and continues to pay the use and occupation charges at the same rate till the possession is delivered. If any amount has already been paid by the petitioner, the same shall be adjusted. If these conditions are satisfied, the petitioner will have four months time to continue in possession.

Sd/-
(**Thottathil B. Radhakrishnan**)
Chief Justice

Sd/-
(**Sharad Kumar Gupta**)
Judge

