

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 06.02.2018****Delivered on 13.02.2018****Writ Petition (C) No. 324 of 2018**

- Benlal Tamrkar S/o Sukhru Prasad Tamrkar Aged About 63 Years R/o Punjabipara, Bemetara, District : Bemetara, Chhattisgarh

---- Petitioner**Versus**

1. Chhattisgarh Rent Control Authority Bemetara, District : Bemetara, Chhattisgarh
2. Gurubaksh Singh S/o Prem Singh Saluja Aged About 61 Years R/o Punjabipara, Bemetara, District : Bemetara, Chhattisgarh
3. Nirmolak Singh S/o Sujeet Singh Saluja Aged About 46 Years R/o Punjabipara, Bemetara, District : Bemetara, Chhattisgarh

---- Respondents

For Petitioner	:	Ms. Sharmila Singhai, Advocate
For Respondent	:	None.

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 06.11.2017 passed by the Chhattisgarh Rent Control Tribunal, Raipur; for short 'Tribunal', in Appeal No.40A/2017 vide Annexure P/1 whereby and whereunder he confirmed the order dated 22.06.2017 passed by the Rent Controller, Bemetara in Case No. 01/A-90(7)/2016-2017 vide Annexure P/2, whereby and whereunder he rejected the eviction application filed by the

Petitioner- Benlal Tamrkar.

2. This is admitted by respondents No. 2 & 3 that they are running the business in the disputed shops. Raj Kumar is the son of Guru Dayal Singh Saluja.

3. In brief, the petitioner's case is that he had purchased the disputed shops from Raj Kumar Saluja by registered sale deed dated 22.04.2004. The respondents No. 2 and 3 are tenants. The rent of each shop is Rs. 1000/- per month. The respondents are defaulters in payment of rent. The disputed shops are required for his own occupation and occupation of his adult sons.

4. In brief, the case of respondents No.2 and 3 is that father of the petitioner and respondent No. 2 are real brothers. The father of the petitioner had given the disputed shop to respondent No. 2 as a gift. The father of the petitioner had also sold another disputed shop to respondent No.3. They were never tenants in the disputed shops. The application of the petitioner is not maintainable under the Chhattisgarh Rent Control Act, 2011; in brief 'the Act, 2011'.

5. The Rent Controller, Bemetara and the Tribunal, Raipur passed the orders as aforesaid. Being aggrieved with the order Annexure P/1 the petitioner preferred this writ petition.

6. Ms. Sharmila Singh, counsel for the petitioner argued that the petitioner has purchased the disputed shops, thus he is entitled to receive the rent because respondents No.2 and 3 are the tenants of the petitioner. Thus, the Rent Controller, Bemetara as well as the Tribunal, Raipur had committed gross illegality. The aforesaid orders may be set aside.

7. In a landlord-tenant case, title of the disputed accommodation is wholly irrelevant. In eviction application or suit based on the landlord-tenant

relationship, it is essential for the applicant/s to prove the landlord-tenant relationship, he is the landlord and the opponent is tenant. Not proving these facts leads to dismissal of the eviction application or suit.

8. The question for consideration before us is that whether the Rent Controller, Bemetara and the Tribunal, Raipur have committed illegality or perversity while passing the orders Annexure P/2 and Annexure P/1 respectively.

9. As per the alleged photocopy of the registered sale deed Annexure P/3, Raj Kumar had sold the disputed shops to the petitioner on 22.04.2004. Respondent's witness Nirmolak Singh says in para-3 during his cross examination that this is true that Raj Kumar has sold the disputed shops to petitioner by registered sale deed. The respondent's witness Guru Baksh Singh says in para 4 during his cross examination that he got notice in 2004 that the disputed shops have been sold. Thus, this Court finds that the Rent Controller, Bemetara as well as the Tribunal, Raipur have not committed any illegality in giving the finding that the petitioner had purchased the disputed shops.

10. In the eviction application Annexure P/4, the registered notice Annexure P/7, examination-in-chief of the petitioner, affidavits of his witnesses Sita Ram Sinha and Ram Sahay Verma this has not been clearly and strongly mentioned that respondents No. 2 and 3 were allegedly the tenants of Raj Kumar Saluja from such date and at such rate. For not doing so there is no explanation from the petitioner.

11. The Petitioner has not suggested to respondent's witnesses Nirmolak Singh, Guru Baksh Singh, Tejawant Singh and Manmohan Singh during their cross examination that respondents No. 2 and 3 were allegedly the tenants

in the disputed shops of landlord Raj Kumar Saluja from such date and at such rate.

12. The petitioner witness Benlal says in para-9 during his cross-examination that this is true that he was running his photostudio beside the disputed shops. Thus, it is expected that he had knowledge that the respondents were running business in the disputed shops under what capacity.

13. The petitioner witness Benlal says during his cross-examination that he does not know that on which date he has given the disputed shops to respondents No. 2 and 3 on rent. He does not have any receipt regarding the rent. This is true that in his application this has not been mentioned that on which date he had given the disputed shops on rent to respondents No. 2 and 3. The petitioner's witness Ram Sahay Verma says in para-2 during his cross-examination that no proceeding regarding rent has been taken place before him.

14. Twelve years after purchasing the disputed shops, the petitioner preferred the eviction application before the Rent Controller, Bemetara. He has failed to give any plausible explanation as to why soon after purchasing the disputed shops he has not taken legal recourse for getting the vacant possession and rent of the disputed shops.

15. It would be worthwhile to mention the provisions of Section 4 of the Act, 2011, which reads as under:-

“4. Tenancy Agreement – (1) Notwithstanding anything contained in Section 107 of the Transfer of Property Act, 1882 (Central Act 4 of 1882), no person shall, after the commencement of this Act, let or take on rent any accommodation except by an agreement in writing.

(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

(3) Every agreement referred to in sub-section (1) or required to be executed under sub-section (2) shall be in such format and in such manner and within such period as may be prescribed.”

16. In the case in hand the petitioner failed to give any plausible explanation as to why he, respondent No.2 and respondent No.3 did not enter into any agreement in writing with regard to the tenancy and filed the same before the Rent Controller, Bemetara, why he did not separately file the particulars about such tenancy.

17. It would be pertinent to mention the definitions of Section 2(5) and 2(14) of the Act, 2011 which are extracted below:-

“2 Definitions – (1)..

....

(5) “landlord” means a person, who for the time being is receiving, or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of, any other persons or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the accommodation were let to a tenant;

....

(14) “Tenant” means - (i) the person by whom or on whose

account or behalf rent is, or but for, a contract express or implied, would be payable for any accommodation to his landlord including the person who is continuing its possession after the termination of his tenancy otherwise than by an order or decree for eviction under the provisions of this Act and

(ii) In the event of death of the person referred to in sub-clause (i) -

(a) in case of accommodation let out for residential purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily residing with him in such accommodation as member of his family upto his death;

(b) in case of accommodation let out for commercial or business purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily carrying on business with him in such accommodation as member of his family upto his death.”

18. Looking to the above mentioned facts, circumstances, materials placed on record and the provisions of the Act, 2011, we find that the Rent Controller, Bemetara and the Tribunal, Raipur had not committed any illegality or perversity while passing the orders Annexure P/2 and Annexure P/1 respectively and giving the finding that respondents No. 2 and 3 are not the tenant of the petitioner in disputed shops, there is no relationship of landlord and tenant between the petitioner and the respondents No. 2 & 3.

19. 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.

20. 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.

21. Looking to the above mentioned circumstances and the judicial precedents laid down by the Hon'ble Supreme Court, this Court finds that writ petition is devoid of merit and deserved to be dismissed. However, the learned Counsel appearing for the writ petitioner submitted that the writ petitioner may be given a liberty to file civil suit. We record this submission.

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

(i) The Writ Petition is dismissed and the impugned order dated 06.11.2017 of the Tribunal, Raipur, Annexure P/1 and order dated 22.06.2017 of the Rent Controller, Bemetara , Annexure P/2 are confirmed.

(ii) The petitioner- Benlal Tamrkar is granted liberty to file civil suit before the appropriate forum. If any such civil suit is filed by the petitioner, the findings given by this Court should not come in way in deciding the matter in accordance with law.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge