

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 20.02.2018****Delivered on 22.02.2018****Writ Petition (227) No. 670 of 2017**

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- Ambumal S/o Chandumal Aged About 70 Years Caste Sindhi, R/o Gupta Gali, Korba Tahsil And District Korba, Chhattisgarh.

---- Petitioner**Versus**

1. Ramjilal Thawait S/o Late Sunderlal Thawait Caste Thawait, R/o Purani Basti, Korba, Tahsil And District - Korba, Chhattisgarh.
2. Gorelal Thawait S/o Late Sunderlal Thawait, Caste Thawait, R/o Purani Basti, Korba, Tahsil And District - Korba, Chhattisgarh.
3. Rajesh Kumar Thawait S/o Late Sunderlal Thawait, Caste Thawait, R/o Purani Basti, Korba, Tahsil And District - Korba, Chhattisgarh.
4. Jagdish Kumar Thawait S/o Late Sunderlal Thawait, Caste Thawait, R/o Purani Basti, Korba, Tahsil And District - Korba, Chhattisgarh.
5. The Rent Controlling Authority / Sub Divisional Officer, Korba District-Korba Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Samsun Samual Masih, Advocate
For Respondents No. 2 to 4:		Shri M. Paranjpe and Shri Vaibhav A. Goverdhan, Advocates

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 10.08.2017 passed by the Chhattisgarh Rent Control Tribunal, Raipur (for

short 'the Tribunal') in Appeal No.18A/2017 vide Annexure P-1 whereby and whereunder the Tribunal dismissed the appeal preferred by the petitioner/tenant challenging the order dated 27.01.2016 passed by the Rent Controller, Korba in Revenue Case No. 01/A-90/2013-2014 vide Annexure P-6, whereby and whereunder the petitioner was ordered to hand over the vacant possession of the disputed house to the respondents.

2. It is admitted by the petitioner that the disputed patrimonial house is situated in Guptagali, Ward No. 10, Korba, Tahsil and District Korba; the respondents are the landlord of the disputed house and he is tenant; the rent is Rs. 100/- p.m.; the respondent had given him notice dated 09.09.2002 wherein this had been mentioned that the disputed house is in dilapidated condition.

3. In brief, the respondent's case is that the disputed house is in shabby condition. He needs the disputed house for renovation.

4. In brief, the petitioner's case is that the disputed house is not in dilapidated condition. Earlier in the first round of litigation the respondents had filed civil suit for his eviction in the Civil Court, Korba which had been dismissed. The respondents' appeal was also dismissed. The respondents filed an application under Section 12 (3) and (7) of the Chhattisgarh Rent Control Act, 2011 (in brevity 'the Act, 2011') on 19.06.2014 for repairing the roof thatches and walls.

5. The Tribunal, Raipur and the Rent Controller, Korba pronounced the orders as aforesaid. Being aggrieved by the order Annexure P-1 the petitioner has preferred this writ petition.

6. Shri Samsun Samual Masih, counsel for the petitioner argued that as per the provisions of Clause 11(h) of 2nd Schedule under Section 12(2) of the

Act, 2011 this is mandatory for the landlord to give six months' prior notice in writing to the tenant for eviction. But in this case such mandatory provision has not been complied with. In first round of litigation the respondents were losers. The respondents had not adduced any evidence to show that the disputed house is required for renovation. Thus, the impugned order Annexure P-1 is bad in law and deserves to be set aside.

7. Shri M. Paranjpe, counsel for the respondents argued that the impugned order is in accordance with the law and based on clinching evidence. Thus, no interference is called for by this Court.

8. Earlier, in the first round of litigation this was not directly and substantially the matter in issue that the disputed house is in dilapidated condition and respondents need its vacant possession for renovation. Moreover, in the first round of litigation, the Appellate Court has given the finding that the application under Section 12 of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as "Act 1961") filed by the respondents for eviction of the appellant is not maintainable because Korba town is not included in First Schedule of the Act, 1961. In the second round of litigation the respondents had filed an application under Clause 11 (a) and (f) of 2nd Schedule under Section 12(2) of the Act, 2011, which is applicable from 06.11.2012. Thus, after this date the Civil Court was not competent to try the aforesaid application of second round of litigation filed by the respondents. Thus, earlier round of the litigation does not affect the second round of litigation and no question arises about *res judicata*. (please see: *Saroja -v- Chinnusamy (dead) by LRs and another* [(2007)8SCC 329], *Haryana State Electricity Board -v- Ms. Hamuman Rice Mill, Dhanauri and others* [2010 (9) SCC 145].

9. It would be pertinent to extract the provisions of Clause 11 (f) and (g) of the 2nd Schedule of Section 12(2) of the Act, 2011, which is as under:-

“11. Right to seek from the Rent Controller eviction of the tenant on the following grounds :-

.....

(f) For carrying out major renovation work which is not possible with the tenant housed in.

(g) On 3 months notice to the tenant in writing, if the accommodation is required for own occupation and / or occupation by any member of the family including spouse, parent(s), son(s), daughter, daughter(s)-in-law, son(s)-in-law.”

10. In the case in hand the respondents had not filed the application under Clause 11(g) of the 2nd Schedule of Section 12(2) of the Act, 2011 for getting the vacant possession of the disputed house on the ground that it is required for their occupation and/or occupation by any member of the family including spouse, parent(s), son(s), daughter, daughter(s)-in law, son(s)-in-law. Instead of it, the respondents had filed the application under Clause 11(f) of the 2nd Schedule of Section 12(2) of the Act, 2011 for getting vacant possession of the disputed house for carrying out major renovation work, which is not possible with the petitioner housed in. In provisions of Clause 11(f) of the 2nd Schedule of Section 12(2) of the Act, 2011 nowhere it is mentioned that notice is to be given to the tenant. Thus, this Court finds that if the landlord files the application under Clause 11(f) of the 2nd Schedule of Section 12(2) of the Act, 2011, then this is not necessary for him to give notice to the tenant before filing eviction application. Hence, this Court is not impressed with the argument of the learned counsel for the petitioner.

11. This is admitted by the petitioner that the respondents had given him

notice on 09.09.2002 wherein this was mentioned that the disputed house is in dilapidated condition. The petitioner had mentioned in his reply Annexure P-5 that he had filed an application under Section 12(3) and (7) of the Act, 2011 for repairing the roof tiles and walls before the Rent Controller, Korba. This is also the petitioner's case that the drain pipe of the disputed house has been removed. There is seepage on the wall of the disputed house.

12. In orders Annexure P-1 and Annexure P-6, this has been mentioned that the respondents had filed some photographs of the disputed house which were examined by the Rent Controller, Korba as well as the Tribunal, Raipur. This is also quite vivid in Annexure P-6 that the Rent Controller, Korba, after examining the photographs, had found that the disputed house is in highly dilapidated condition. The Petitioner had not challenged the genuineness of such photographs.

13. 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.

14. 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.

15. The findings given by the Tribunal, Raipur vide order Annexure P-1 is based on facts. Looking to the facts, circumstances, materials available on

the record and the judicial precedents laid down by the Hon'ble Supreme Court, this Court finds that the writ petition is devoid of merit and deserves to be dismissed. Thus, this Court disallows the argument raised by the counsel for the petitioner.

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

- (i) The impugned order dated 10.08.2017 Annexure P-1 of the Chhattisgarh Rent Control Tribunal, Raipur, is confirmed.
- (ii) The petitioner- Ambumal / tenant is granted 4 months time to vacate the disputed house.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge