

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2563 of 2016

- Smt. Pushpa Sharma W/o Dr. Saroj Sharma, Aged About 53 Years
R/o Devenandan Nagar, Phase I, Sarkanda Bilaspur, Tah And
District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. Smt. Nashrin Bano W/o Mohammad Sahjada, Aged About 36 Years
2. Mohammad Shehjada, S/o Late Mohammad Ayub, Aged About 42
Years

Both R/o Village Khamhariya Tah Masturi, District Bilaspur CG

---- Respondents

And

WPC No. 2774 of 2016

- Dr. Saroj Sharma S/o Umashankar, Aged About 56 Years R/o
Devnandan, Nagar Phase I, Sarkanda, Bilaspur, Distirct Bilaspur
Chhattisgarh, Chhattisgarh

---- Petitioner

Versus

1. Smt. Nashrin Bano W/o Mohammad Shehjada, Aged About 37
Years
2. Mohammad Shehjada Aged About 43 Years

Both R/o Village & Post Khamahria, Tahsil Masturi, Distirct Bilaspur
Chhattisgarh

3. Smt. Pushpa Sharma, W/o Dr. Saroj Sharma, Aged About 54 Years
R/o Devnandan Nagar, Phase I, Sarkanda, Bilaspur, Distirct
Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh
4. The Rent Controlling Authority, Bilaspur Chhattisgarh

---- Respondents

For Petitioners	: Shri Neeraj Choubey, Advocate
For Respondents	: Shri KA Ansari, Senior Advocate with Shri Devesh G Kela, Advocate

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

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

05.02.2018

- 1) These two Writ Petitions are instituted challenging a decision of the Rent Control Tribunal which affirmed a decision of the Rent Controlling Authority, Bilaspur. Smt Pushpa Sharma and her husband Dr Saroj Sharma are the petitioners in WPC- 2563 of 2016 and WPC- 2774 of 2016 respectively.
- 2) We have heard the learned counsel for the parties.
- 3) The materials on record show that a parcel of land with a building belonged to Smt Pushpa Sharma. She sold it to Smt Nashrin Bano and Shri Mohammad Shehjada, who are respondents- 1 and 2 in both the Writ Petitions. However, instead of delivering possession to the Vendees, she continued to reside in the building with an offer to make payment of rent. When she defaulted in payment of rent and also in delivering possession when required, the transferees/ landlords namely, respondents- 1 and 2, invoked the provisions of the Chhattisgarh Rent Control Act, 2011, for short; 'Rent Act', on the ground of arrears of rent and on the failure of Smt Pushpa Sharma to vacate after due notice. They also sued her for arrears of rent. The Rent Controlling Authority granted an order in favour of respondents- 1 and 2, the landlords.

4) In the meanwhile, Dr Saroj Sharma, the husband of Smt Pushpa Sharma filed a suit before the Civil Court contending that Smt Pushpa Sharma was only a *benamidar* in relation to the property and also that she did not possess requisite mental faculties to effect the assignment in favour of respondents- 1 and 2. That suit was dismissed and such dismissal was confirmed by the Appellate Court.

5) Smt Pushpa Sharma did not contest the proceedings before the Rent Controlling Authority. Notwithstanding that, she filed an appeal before the Rent Control Tribunal. That was dismissed as barred by limitation. Smt Pushpa Sharma has instituted WPC- 2563 of 2016, challenging the decision of the Rent Control Tribunal.

6) Without seeking any relief against those orders from the Rent Controlling Authority and the Rent Control Tribunal, Dr Saroj Sharma instituted WPC- 2774 of 2016 before this Court holding out his eligibility to be protected under the decree of the Civil Court, in so far as his possession is concerned.

7) Both the aforesaid Writ Petitions which were instituted as if they are Writ Petitions under Article 226 of the Constitution of India happened to be listed before a learned Single Judge. Through a detail judgment, upon consideration of all relevant facts and law, the learned Single Judge dismissed both the Writ Petitions holding them as frivolous litigations. However, on an issue relating to jurisdiction *qua* the Tribunal's authority, the Division Bench interfered with that decision of the learned Single Judge and held that the Tribunal's order could not have been interfered with by the learned Single Judge under Article 226 of the Constitution of

India because, in terms of the Rent Act, 2011 and The High Court of Chhattisgarh Rules, 2007, such matters are to be considered by the Division Bench. Thus, after vacating the earlier verdict handed down by the learned Single Judge, these Writ Petitions are listed before the Division Bench.

8) Hearing the learned counsel for the petitioners and the learned Senior Counsel appearing for the contesting respondents 1 and 2, we may first answer the plea raised on behalf of the contesting respondents that these writ petitions ought not be entertained in view of the availability of a statutory appeal, provided in Section 13(2) of the Rent Act. That legislative provision is a statutory device by which an appeal is provided to the Supreme Court from the Tribunal's order. The Chhattisgarh Rent Control Tribunal is one notified by the State Government in terms of Article 323-B of the Constitution, in view of Section 6(1) of the Rent Act. It was held in **L. Chandra Kumar's case (L. Chandra Kumar Vs. Union of India and Others, (1997) 3 SCC 261)**, *inter alia*, that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Article 226/227 of the Constitution, before a Division Bench of the High Court within whose jurisdiction the particular Tribunal falls. Applying the law laid in that judicial precedent and following the procedure indicated therein, this Court has been entertaining applications under Article 227 of the Constitution as against the decision of the Rent Control Tribunal. We do not find any reason to take a different view on that issue, particularly when the Tribunal is itself an Appellate Tribunal and ends of justice will be secured if this Court considers challenge to the Tribunal's decision,

however ensuring that they would be entertained only within the jurisdictional contours of the supervisory jurisdiction under Article 227 of the Constitution. We, therefore, repel the plea on behalf of respondents 1 and 2 on this count.

9) However, we need to emphasize, here and now, that the power under Article 227 of the Constitution is not to be exercised as if it is a regular appellate power; or even a revisional power. The power and duty of the High Court under Article 227 is, essentially and fundamentally, to ensure that the Courts and Tribunals inferior to it have done what they were required to do. Erroneous assumption of jurisdiction or acting in excess of jurisdiction; as well as, refusal to exercise jurisdiction; may be grounds warranting interference under Article 227 of the Constitution. Arbitrary and capricious exercise of authority or discretion; thereby, arriving at palpably perverse findings, without any basis on facts and evidence; or, arriving at findings which are based on no material at all, would also be good grounds to exercise supervisory jurisdiction under Article 227 of the Constitution. In all such cases, the fundamental requirement is that there must be manifest injustice arising as the result of the aforesaid situations. While the High Court may be justified in exercising authority under Article 227 where findings of the fact arrived at by the inferior Court or Tribunal are perverse or lacking in factual basis, it would not be justified in interfering in cases where materials are considered and reasons are given by the inferior Court or Tribunal, and if such reasons are available on record. As repeatedly emphasized and cautioned by the Hon'ble Supreme Court, the power under Article 227 is supervisory and such power cannot be used as an appellate power. The

power under Article 227 of the Constitution cannot be used to indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences. The High Court shall not, under Article 227, proceed to re-appraise the evidence on which conclusions of Tribunal is based, or to go into the evidence, except in exceptional cases. It will not review or re-weigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based. This means that, while exercising jurisdiction under Article 227, the High Court would not allow itself to be converted into a court of pure questions of fact, which requires appreciation of evidence of fact; whether jurisdictional or not; which would require appreciation of evidence. For support by way of judicial precedents, as to these principles of law, see the law laid down by the Hon'ble Supreme Court of India in the cases enlisted hereinunder¹.

10) On to the merits, this is an abundantly fit case where we cannot but hold that there is gross abuse of the process of Court by Dr Saroj Sharma and Smt Pushpa Sharma, the petitioners in these Writ Petitions. The fact of the matter remains that Smt Pushpa Sharma's paramount title to the property was impeached by her husband only after she parted title thereof to respondents 1 and 2 and after disputes arose between the parties to this litigation. The Civil Court repelled his plea that Smt Pushpa Sharma was only a *benamidar*. The plea that was set up by the husband that the wife was insane and therefore, incapacitated from executing transfer of

¹ Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta -(1975) 1 SCC 858; Trimbak Gangadhar Telang Vs. Ramchandra Ganesh Bhide - (1977) 2 SCC 437; Gopala Ganu Wagale Vs. Shri Nageshwardeo Patas Abhishekh Anusthan Trust - AIR 1978 SC 347; Mrs. Labhkuwar Bhagwani Shaha Vs. Janardhan Mahadeo Kalan - (1982) 3 SCC 514; Mohd. Yunus Vs. Mohd. Mustaqim - AIR 1984 SC 38; Mohan Amba Prasad Agnihotri Vs. Bhaskar Balwant Aher - AIR 2000 SC 931; Khimji Vidhu Vs. Premier High School - AIR 2000 SC 3495; Estralla Rubber Vs. Dass Estate (P) Ltd. - (2001) 8 SCC 97; Surya Devi Rai Vs. Ram Chander Rai - AIR 2003 SC 3044 and Abdul Razak Vs. Mangesh Rajaram Wagle; (2010) 2 SCC 432.

title in favour of respondents 1 and 2 was also repelled by the Civil Court. That was affirmed in appellate jurisdiction. That issue ends there.

11) Insofar as the protection granted by the Civil Court to Dr. Saroj Sharma is concerned, we need to emphasise that he does not and has not set up any title independent of Smt. Pushpa Sharma. Obviously, he could not do that; particularly, in the light of the verdict of the Civil Court, noted in the preceding paragraph. At the best, he is only a person who could claim to be in occupation under Smt. Pushpa Sharma as her husband and co-occupant of the tenanted premises, which Smt. Pushpa Sharma was obliged to deliver. This is the effect of the finding rendered by the Rent Control Authority and the Appellate Tribunal.

12) Looking at the facts of the case, we cannot but see that Dr Saroj Sharma has no independent title to claim any right for judicial interference through Article 227 of the Constitution in relation to the order of the Rent Controlling Authority and the Rent Control Tribunal ordering dispossession of Smt Pushpa Sharma. Obviously, therefore, his Writ Petition is liable to be dismissed. We do not see any error of jurisdiction, illegality, impropriety or perversity in the appreciation of evidence, either by the Rent Controlling Authority or the Rent Control Tribunal. The Writ Petition filed by Smt Pushpa Sharma also, therefore, deserves only to be dismissed.

13) We are of the firm view that these Writ Petitions are nothing short of clear abuse of the process of Court and the contesting respondents- 1 and 2 have been grossly abused by these litigations at the instance of Dr Saroj Sharma and Smt Pushpa Sharma. Materials disclose that respondents- 1 and 2 had availed financial support, by way of bank loan, to purchase the

residential building in question, for their occupation. Continuing in possession even without paying rent; and raising frivolous contentions, which would not be countenanced by Courts; is by itself a ground where litigations of this species should find their end with orders as to exemplary costs against the losers and in favour of those who have been deprived from lawfully enjoying valuable property, by the petitioners in these writ petitions resorting to dubious tactics in the litigation sphere.

14) In the result, the order of the Rent Controlling Authority and the Rent Control Tribunal are affirmed and these Writ Petitions are dismissed with costs @ Rs.1,00,000/- (Rupees One Lakh only) payable on each of these Writ Petitions in favour of respondents- 1 and 2 jointly.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge