

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 112 of 2018**

- Narendra Srivas, Aged About 34 Years, S/o Shri Vedram Srivas, R/o Dewaridih, Old Power House, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh. **---- Petitioner**

Versus

1. Jai Singh, Aged About 68 Years, S/o Late Veer Singh, R/o Dewaridih, Near Philips Gym, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.
2. Tulsibai, aged about 50 years, D/o Late Veer Singh, R/o Dewaridih, Old Power House, Near Petrol Pump, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.
3. Dinesh Singh, Aged About 42 Years, S/o Late Veer Singh,
4. Vinod Singh, Aged About 37 Years, S/o Late Veer Singh,

Both R/o Dewaridih, Old Power House, Near Petrol Pump, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner :- Shri Ajay Kumar Dwivedi, Advocate.

For Respondents No.1 & 2 :- Shri Atanu Ghosh, Advocate.

Hon'ble Shri Prashant Kumar Mishra, Ag.CJ
Hon'ble Shri Parth Prateem Sahu,J.

Order On Board**By****Prashant Kumar Mishra, Ag. CJ****18/04/2019**

1. The tenant has preferred this Writ application to assail the legality and validity of the Appellate order passed by the Rent

Control Tribunal which has set-aside the order dated 23.03.2017 passed by the Rent Controller directing his eviction from the tenanted premises.

2. Facts of the matter, as available on record, are that the petitioner was inducted as a tenant in the subject shop situated at Old Power House, Near Petrol Pump, Torwa, Bilaspur by Late Veer Singh. After his death, his widow Milapabai, executed rent note to continue to allow the petitioner to occupy the shop as tenant for the period for three years from 01.01.2012 to 31.12.2015 at a monthly rent of Rs.1,800/-. After the death of Milapabai, respondent Jai Singh, forcibly recovered the possession of the shop sometime in May, 2015 and evicted the petitioner without taking recourse to the provisions contained in the Chhattisgarh Rent Control Act, 2011 (for short 'the Act.')
3. On the basis of above cause of action, the petitioner/tenant moved an application for recovery of possession under Section 12(5) of the Act, 2011. The Rent Controller allowed the application on 23.03.2017 directing handing over possession of the said shop to the petitioner. It is stated, at the bar, that pursuant to the said order, the petitioner has been handed over possession of the shop, which he is presently occupying.

4. In an appeal preferred by the respondent Jai Singh and

Tulsibai, the Tribunal has set-aside the order passed by the Rent Controller on the ground that the tenant's application is not maintainable under Section 12 (5) of the Act, therefore, the Rent Controller has committed an error of law in allowing the application.

5. Challenging the order passed by the Tribunal, Shri Ajay Kumar Dwivedi, learned counsel for the petitioner, would argue that the tenant's application for protection of his rights was maintainable and the findings to the contrary is against the provisions contained in the Act.
6. Shri Atanu Ghosh, learned counsel for respondents No.1 and 2, would submit that the petitioner being not the tenant of the legal heirs, his possession was illegal, therefore, the respondents No.1 and 2 were within their rights to recover the possession.
7. Having considered the provisions of the Act, 2011, we have no hesitation in accepting the argument raised by the learned counsel for the petitioner, that the order passed by the tribunal is palpably illegal. We say so for the reason that Section 12 of the Act, clearly speaks about rights and obligations of landlords and tenants. The said provisions is re-produced hereunder for ready reference :

(1) Every tenant shall have rights according to Schedule 1. The Tribunal and Rent Controller(s)

shall act at all times to secure to the tenant these rights.

- (2) Every landlord shall have rights according to Schedule 2. The Tribunal and Rent Controller shall act at all times to secure to the landlord these rights :

Provided that-

- (a) In case of any clash of interests of the landlord and the tenant, and/or any point of doubt in respect of matters relating to rent, the benefit thereof shall be granted to the tenant.
 - (b) In case of any clash of interests of the landlord and the tenant, and/or any point of doubt in respect of matters relating to returning possession of the accommodation to the tenant, benefit thereof shall be granted to the landlord.
- (3) Every landlord shall have obligations according to Schedule 3. The Tribunal and Rent Controller(s) shall act at all times to enforce upon the landlord these obligations.
- (4) Every tenant shall have obligations according to Schedule 4. The Tribunal and Rent Controller(s) shall act at all times to enforce upon the tenant these obligations.
- (5) Any willful attempt or act by the landlord to undermine or deny to the tenant the rights available to him in terms of Schedule 1 shall constitute an offence under this Act, punishable with fine not exceeding Rs. 5,000 or simple imprisonment for a period not exceeding three months or both.
- (6) Any willful attempt or act by the tenant to undermine or deny to the landlord the rights available to him in terms of Schedule 2 shall constitute an offence under this Act, punishable with fine not exceeding Rs. 5,000 or simple imprisonment for a period not exceeding three months or both.
- (7) Any attempt by the landlord to neglect for unsubstantial and/or insufficient reasons the

obligations enjoined upon him in terms of Schedule 3 shall constitute an offence under this Act, punishable with fine not exceeding Rs. 5,000 or simple imprisonment for a period not exceeding three months or both.

(8) Any attempt by the tenant to neglect for unsubstantial and/or insufficient reasons the obligations enjoined upon him in terms of Schedule 4 shall constitute an offence under this Act, punishable with fine not exceeding Rs. 5,000 or simple imprisonment for a period not exceeding three months or both.

8. Schedule 1 of the Schedule appended to the Act provided for tenant's rights available under the Act. Clause 4 of the said Schedule provides that tenant has a right to enjoy quiet possession of the accommodation, subject to regular payment of rent, and subject to use of accommodation for the purpose(s) for which it was leased with proviso that in the event of death or mental incapacitation of the tenant, his widow/wife shall automatically be deemed to be the tenant, subject to her endorsing, through a supplemental agreement, to take upon herself, the rights and obligations contained in the agreement executed by her husband. Clause 8 of Schedule 1 further protects tenant's rights of security of tenancy, subject to non-impingement upon the rights of the landlords included in Schedule 2.

9. Schedule 2 of the Act provides for landlord's Rights available under the Act which includes, in clause 11, right to seek from the Rent Controller eviction of the tenant on the following grounds enumerated under the said clause:

- (a) If the tenant is a habitual defaulter in payment of rent and/ or other dues.
- (b) If the tenant causes, or allows to be caused, substantial damage to the accommodation, for any reason whatsoever.
- (c) If the tenant uses the accommodation for purpose(s) other than that for which it was leased out.
- (d) If the tenant becomes a social nuisance.
- (e) If the tenant is convicted under any section of the Indian Penal Code.
- (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.
- (h) On 6 months notice to the tenant in writing, without any obligation to assign any reason, but on the condition that the accommodation will not be leased out at a higher rent for atleast 12 months thereafter:

Provided, however, that in case of the following special categories of landlords and / or their spouse desiring the accommodation back for own use, the period of notice shall be one month: current or retired government servants, widows, personnel of the armed forces, persons coming to physical or mental handicap, and senior citizens (above the age of 65 years).

10. Schedule 3 of the Act provides for Landlord's obligations under the Act. It includes, amongst other obligation, an obligation to allow the tenant quiet enjoyment of the accommodation and all rights included in Schedule 1, so long

as he fulfills his obligations set forth in Schedule 4. Clause 12 obligates the landlord never to adopt or threaten to adopt extra-judicial methods for eviction to pressure the tenant to vacate the accommodation.

11. A conjoint reading of the provisions contained in Section 12, particularly sub-section (1) & (5) thereof read with the rights and obligations of the tenant and landlord as provided in Scheduled 1 to 4 would make it amply clear that any effort by the landlord which includes his legal heirs to recover possession of the tenanted premises by extra judicial means would be in violation of tenant's right to enjoy peaceful possession of the tenanted premises. Therefore, for redressal of grievance in such conditions, a tenant would be entitled to move an application under Section 12 (1) (5) of the Act.

12. True it is that Section 12 (5) of the Act speaks about punishment, which may be imposed on such landlord, who undermines or denies to the tenant's right available to him in terms of Schedule 1. However, the other provision contained in Section 12 (1) cannot be left out of consideration. That provision enjoins the Tribunal and the Rent Controller to act at all times to secure to the tenant's right available to him under Schedule 1. Merely because application filed by the tenant would not refer to Section 12 (1), would not snatch away the jurisdiction of the Rent Controller or the Tribunal,

which is otherwise available under sub-section (1) of Section 12. It is settled law that mere mention of wrong provision would not take away jurisdiction of the Court or Authority if it is otherwise available.

13. In our considered opinion, the Tribunal has failed to exercise the jurisdiction vested in it and has acted illegally and perversely while allowing the appeal preferred by the respondent No.1 to reject the tenant's application for recovery of possession.

14. The argument raised by learned counsel appearing for the respondent landlord to the effect that after the death of original landlord Veer Singh and thereafter his widow Milapabai, the tenancy agreement did not survive and the petitioner ceased to be the tenant of the legal heirs of Veer Singh or Milapabai, is referred only to be rejected at the threshold for the simple reason that the word '**landlord**' as defined under Section 2 (5) of the Act includes a person who is either receiving or is entitled to receive the rent of an accommodation, if the same is let to a tenant. When this definition of the word '**landlord**' is considered juxtaposition to the definition of the word '**tenant**' as occurring in Section 2 (14), which includes even the legal heirs of deceased tenant, it is to be readily inferred that the legal heirs of landlord, who would be entitled to receive the rent from a tenant or his legal

heirs, would be covered within the definition of the term 'landlord' or 'tenant', as the case may be.

15. It is the settled law that the meaning of the expression 'landlord' is not limited to denote owner of house but has to be understood in wide sense to include person to whom rent is payable as also his agent. (See: **Vasudha Shrivastava v Kamla Chouhan** reported in **AIR 1992 SC 1454**).

16. At this stage, we may profitably refer to a recent judgment rendered by the Supreme Court in the matter of **Dr. R. S. Grewal and others vs Chandan Parkash Soni and another** (Civil Appeal No.11086/2018, decided on **16.04.2019**), wherein the Supreme Court has negated the contention of the landlord that after the death of tenant, his legal heirs would become trespasser on the property and were liable to be removed from possession. It is held that the submission cannot be accepted both as a matter of first principle and having regard to the precedents on the subject with reference to **K. D. Diwan vs Harbhajan S. Parihar**¹, **B. Bal Reddy vs Teegala Narayana Reddy**², **Nandkishor Savalaram Malu (Dead) through Legal Representatives vs Hanumanmal G. Biyani (Dead) through Legal Representatives**³, **V. Dhanapal Chettiyar vs Yesodai**

1 (2002) 1 SCC 119

2 (2016) 15 SCC 102

3 (2017) 2 SCC 622

Ammal⁴ and Gian Devi vs Jeevan Kumar⁵. The Supreme Court thereafter proceeded to reiterate the law that statutory tenant status of legal heirs of the tenant cannot be disrupted or brought to an end except on the ground specified in the enactment and that the protection offered to statutory tenant can only be overcome by following the procedure laid down in the enactment. For this proposition, the Supreme Court referred to its earlier judgments in the matters of **Dahya Lata vs Rasul Mahomed Abdul Rahim⁶** and **G. Ponniah Thevar vs Nalleyam Perumal Pillai⁷**.

17. On applying the settled legal position, as extracted above, to the factual matrix available in the case, we have no hesitation in holding that the Tribunal's order deserves to be quashed. It is accordingly quashed and the order passed by the Rent Controller is restored. It is made clear that this order shall not affect the landlord's right to seek the petitioner's/tenant eviction in accordance with law as contained under the provisions of the Act.

18. In the result, the writ petition is allowed. No order as to costs.

Sd/-
(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Ayushi

4 (1979) 4 SCC 214
5 (1985) 2 SCC 683
6 (1963) 3 SCR 1
7 (1977) 1 SCC 500