

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 696 of 2019**

- Ajay Gupta S/o Late Anujram Gupta Aged About 53 Years R/o Gandhi Ward Mungeli, Police Station, Tahsil And District Mungeli Chhattisgarh.

---- Petitioner

Versus

- Khem Singh Barmate S/o Late Vishesar Barmate, Aged About 71 Years R/o Subhash Ward Bada Bazar Mungeli, Tahsil And District Mungeli Chhattisgarh.

---- Respondent

For Petitioner : Shri KA Ansari, Sr. Advocate with Shri Kripesh G Kela, Advocate.
For Respondent : Shri Aman Kesharwani, Advocate.

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

Order On Board By Prashant Kumar Mishra, Ag CJ**11/04/2019 :**

1. Challenge in this writ petition is to the order passed by the Rent Control Tribunal, Raipur (for short 'the Tribunal') refusing to entertain the appeal preferred by the petitioner against the order passed by the Collector, Mungeli on 6.11.2017, dismissing the petitioner's eviction application as not maintainable.
2. In view of the nature of order we propose to pass herein, we are not

referring to the facts of the matter in detail. Suffice it would be to mention that the petitioner moved an application before the Rent Controller (hereinafter referred to as 'the RC') Mungeli for respondent's eviction under Section 12 (2)(11) of the Chhattisgarh Rent Control Act, 2011 (for short 'the Act of 2011'). The said application was initially entertained and the proceedings were drawn by the Additional Collector, Mungeli, who is admittedly notified as Rent Controller for Mungeli district, as is apparent from the work distribution memo issued by the Collector, Mungeli on 25th March, 2017 (Annexure-P/8).

3. When the matter was thus pending consideration before the Rent Controller, Mungeli, the respondent moved an application before the Collector under Section 30 of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code') for transferring the matter to any other competent Court of jurisdiction. The Collector forgot that the matter is not related to the Land Revenue Code but this proceeding is for eviction under the provisions of the Act, 2011. Under assumed jurisdiction the Collector passed an order on 26.8.2016 calling record of the RC Mungeli for disposal by himself. The Collector thereafter passed an order on 6.11.2017 allowing the respondent's application under Order 7 Rule 11 of the CPC to dismiss the eviction application as not maintainable. A detailed order has been passed by the Collector but we are not referring to those details so that it may not prejudice the Rent Controller either for or against any of the party. This order of Collector

was challenged before the Tribunal which has refused to entertain the appeal.

4. The very caption of the application for eviction would demonstrate that the petitioner had moved the eviction application under Section 12 (2) (11) of the Act of 2011. Once jurisdiction of the Rent Controller has been invoked, whether or not the said authority has jurisdiction to entertain the application for eviction is to be decided by the said authority himself and not by any other authority, who has not been notified as Rent Controller by notification issued by the State Government under Section 7 of the Act of 2011. The work distribution memo (Annexure-P/8) issued by the Collector, Mungeli clearly provides that at the relevant point of time one Sharif Mohammed, Additional Collector, Mungeli was functioning as District Rent Controlling Authority i.e. Rent Controller. For the same reason that the proceeding was initiated by invoking the provisions of the Act of 2011, the Collector could not have entertained the application for transfer under Section 30 of the Code because proceedings under the Act of 2011 are not the proceedings drawn by the Revenue Officer under the Code but the same is exercised by the Revenue Officer in the capacity of Rent Controlling Authority. It is for the purposes of conferring jurisdiction, Section 7 refers to expression 'not below the rank of a Deputy Collector', but that by itself would not mean that the proceeding under the Act of 2011 is in the nature of revenue proceeding under the Code.

5. Learned counsel for the respondent would argue that an order passed by the Tribunal in exercise of its appellate jurisdiction can be challenged before the Supreme Court by way of appeal under Section 13 of the Act of 2011, therefore, this Writ Application is not maintainable.
6. Submission of learned counsel for the respondent might have been considered on merits if the Collector as well as the Rent Controller have passed the order on merits in exercise of jurisdiction conferred upon them under the Act of 2011. However, neither the Collector has acted in the capacity of Rent Controller while passing the order on 6.11.2017 nor the Tribunal has exercised the appellate power. As a matter of fact, the Tribunal has refused to exercise the appellate jurisdiction saying that the order passed by the Collector is not under the Act of 2011. Under this factual background, when both the impugned orders have not been passed either by the Collector or by the Tribunal under the Act of 2011, the appellate remedy under Section 13 of the Act of 2011 is not available to the petitioner and this Writ Application would be maintainable before this Court.
7. In view of the above discussion, the Collector, Mungeli having not been notified as Rent Controller for Mungeli district, the order passed on 6.11.2017 by the Collector Mungeli is without jurisdiction. It deserves to be and is hereby set aside. The eviction application preferred by the petitioner is remitted back to the Rent Controller, Mungeli for decision on merits. It will remain open for the respondent to raise the plea of

maintainability of the eviction application before the Rent Controller, who shall decide the issue, while disposing of the eviction application finally, without being influenced by the order passed by the Collector, which has been set aside by this Court.

8. The Rent Controller of Mungeli shall conclude the proceeding within a period of 6 months from today. Let both the parties appear before the Rent Controller, Mungeli on 25.4.2019.
9. With the aforesaid observations/directions, the Writ Petition stands disposed of.

Sd/-
(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Barve