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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 789 of 2017**

Brijmohan Dua S/o Late Shri Sitaram Dua, Aged About 67 Years, R/o in front of Bukhari Petrol Pump, Link Raod, Police Station Civil Line Bilaspur, Tahsil and District- Bilaspur, C.G.

---- Petitioner**Versus**

Chhotu @ Sayed Abu Bakar Ali, Aged About 48 Years, S/o Late Mohammed Jalil, R/o Auto Electrical Mechanic, Samta Colony, Burjesh School Ke Pichhe Wali Gate Ke Samne Wali Road, Bilaspur, Tahsil And District Bilaspur C.G.

---- Respondent**WPC No. 394 of 2017**

Chotu @ Saiyyad Abu Bakar Ali S/o. Late Mohammad Jalil, Aged About 48 Years, Occupation- Auto Electrical Mechanic, R/o. Samta Colony, Behind Barjesh School Gate, Biaspur, P. S. Civil Lines, Tehsil Bilaspur, Revenue and Civil District Bilaspur C.G..

---- Petitioner**Versus**

1. Brijmohan Dua S/o Late Sitaram Dua, Aged About 67 Years, R/o. Link Road, in front of Bukhari Petrol Pump, Bilaspur, P. S. Civil Lines, Tehsil Bilaspur, Revenue and Civil District Bilaspur, C.G.
2. State of Chhattisgarh Through Rent Controlling Authority, Bilaspur, District Bilaspur C.G.

---- Respondents

WPC No. 789/2017

For Petitioner : Shri Ratnesh Kumar Agrawal,
Advocate
For Respondent : Shri Ahmad Hussain, Advocate

WPC No.394/2017

For Petitioner : Shri Ahmad Hussain, Advocate
For Respondent No. 1 : Shri Ratnesh Kumar Agrawal,
Advocate
For Respondent No. 2/State : Shri Vikram Sharma, P. L.

Hon'ble Shri Prashant Kumar Mishra, Acting Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

By

Prashant Kumar Mishra, Acting Chief Justice

15/04/2019

1. In a proceeding for eviction initiated by landlord-Brijmohan Dua before the Rent Controller, Bilaspur under Section 9 of the Chhattisgarh Rent Control Act, 2011 (hereinafter referred to as 'the Act of 2011') invoking the grounds of eviction as contained in Schedule 2(11)(g) read with Proviso, the Rent Controller as well as the Rent Control Tribunal have passed concurrent orders directing eviction of the respondent- tenant Chhotu @ Sayed Abu Bakar Ali.
2. Writ Petition (C) No.789 of 2017 has been preferred by

landlord- Brijmohan Dua challenging the said part of the order passed by the Rent Control Tribunal whereby it has allowed arrears of rent at the rate of Rs.2,500/- per month as against his claim at the rate of Rs.12,000/- per month.

3. Writ Petition (C) No.394 of 2017 has been preferred by tenant Chhotu @ Sayed Abu Bakar Ali challenging the concurrent orders of the eviction passed by Rent Controller as well as the Rent Control Tribunal.

4. Landlord moved eviction application submitting that respondent- Chhotu @ Sayed Abu Bakar Ali is his tenant on a monthly rent of Rs.12,000/- with effect from 01/02/2015 till 30/09/2015 i.e. for a period of 8 months. However, despite sending a legal notice dated 26/08/2015 which the tenant refused to accept on 28/08/2015, possession was not delivered even after 30th September 2015, therefore, the landlord who is a senior citizen and being in the requirement of the premises, is entitled to seek eviction.

5. It was the tenant's case that he is in possession of subject premises for last 17 years and the rent is only Rs.2,500/- per month. The tenant further pleaded that the subject premise is his only source of livelihood, therefore, he having paid all the arrears within time, the eviction application

having been filed to harass him, deserves to be rejected.

6. The Rent Controller having found that the respondent is tenant at the rate of Rs.12,000/- per month and is in arrears since April 2015, directed eviction and payment of arrears at the rate of Rs.12,000/- per month from April 2015 onwards. On appeal by tenant before the Rent Control Tribunal, the eviction part of the order has been affirmed while arrears of rent has been directed to be paid from April 2015 at the rate of Rs.2,500/- per month.

7. Admittedly, there is neither any rent note nor any receipt of payment of a particular rent. Landlord has not filed any other documentary evidence like income tax return or any other statutory documentation, wherein he has shown to have received rent from the respondent at the rate of Rs.12,000/- per month. Likewise, respondent has also not filed any receipt to establish that he has paid rent at the rate of Rs.2,500/- per month.

8. The case of either parties is thus based on oral evidence insofar as the rate of rent is concerned. There is no evidence either to the effect that rate of rent of adjoining shops is much higher than what is pleaded by the tenant, although landlord claims to have several shops in the same street line. It was

very easy for the landlord to have produced evidence of rent being paid by other tenant at the rate of Rs.12,000/- or in the similar range by other tenants. If the landlord has not come forward with such evidence, in this writ jurisdiction, we are not inclined to interfere as to what has been found by the Rent Control Tribunal on appreciation of evidence adduced by the parties, for the reason that the Rent Control Tribunal being the final Court in respect of finding of fact, the same is not liable to be disturbed ordinarily, unless there is absolute perversity in the approach of the Rent Control Tribunal while marshalling the evidence. Thus, we affirm the finding of the Rent Control Tribunal which has allowed arrears of rent from April 2015 till possession at the rate of Rs.2,500/- per month.

9. Now, reverting to the writ petition filed by the tenant challenging the eviction, it is to be seen that the landlord is a senior citizen being 67 years of age in 2015 when the eviction application was filed. Schedule 2(11)(g) and (h) along with proviso of the Act of 2011, invoking which the eviction application was filed, is reproduced herein below :-

“SCHEDULE 2
[See Section 12(2) of the Act]
Landlord's Rights available under
the Act

X X X X

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

x x x x

x x x x

“(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. The landlord served notice to the respondent-tenant giving him one month time to handover the possession. This notice was sent on 26/08/2015 to which, respondent refused to accept by postal endorsement of refusal dated 28/08/2015. The eviction application was filed on 06/10/2015. In the eviction application, landlord would state that he is a senior citizen and requires the premises for his own occupation therefore, the prerequisites of law as contained in Schedule 2(11)(g) and (h) read with proviso, has been satisfied in the eviction application.

11. Under the present Rent Control Act, comparative hardship of tenant is not one of the ground of defence available to the tenant. It is also not required of the landlord that he has to prove “bonafide need” for seeking eviction of the tenant. It is suffice if the landlord states that he requires the premises for his own occupation. These essential ingredients, as provided under law having been satisfied, the eviction application has rightly been allowed by Rent Controller and further rightly been maintained by the Rent Control Tribunal.

12. In view of the above, we do not find any error committed by the Rent Controller as well as the Rent Control Tribunal while rendering the impugned order directing eviction of the tenant. Therefore, writ petition preferred by tenant deserves to

be and is hereby dismissed.

13. Resultantly, both the Writ Petition (C) Nos.789 of 2017 and 394 of 2017 are dismissed.

Sd/-
(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh