

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.7530 of 2018
Sunita Gilda Vs. Paramlal Dhimar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.M. Ghare, Advocate for petitioner
Mr. P.R. Agrawal, Advocate for respondent

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 29, 2019

By this writ petition, the petitioner has challenged order dated 31/1/2018, passed by the Additional Collector, i.e. appellate authority under the provisions of the C.P. and Berar Rent Control Act, 1949, whereby appeal filed by the petitioner was only partly allowed and thereafter the matter was remitted to the original authority i.e. Rent Controller under the provisions of said Rent Control Order.

2. In the present case, the predecessors of the petitioner had filed an application under Clauses 13(3) (i) & (ii) of the aforesaid Rent Control Order against the respondent seeking permission for issuing quit notice to the respondent, who was a tenant in the premises in question. The said application was filed on 03/11/1995. In this application, evidence was led on behalf of the applicant and after a long period of about 20 years, the Rent Controller finally passed an order on

the said application on 08/12/2015. The Rent Controller took into consideration the material on record and came to a conclusion that the respondent was in arrears of rent. On this basis, as per Clause 13(3)(i) of the Rent Control Order, the Rent Controller passed an order directing the respondent to deposit entire arrears of rent within a period of 30 days from the date of the order.

3. The petitioner was aggrieved by the said order, as the Rent Controller had failed to notice mandate of Section 13(3)(i) of the Rent Control Order, which stipulates that if the tenant is in arrears of rent for any aggregate period of three months and he fails to deposit the amount of arrears with the Controller, within a fixed period of time, the permission sought under Clause 13(i) for issuing quit notice would be granted. The aspect of awarding 9% interest was completely missed by the Rent Controller and this aspect was highlighted in the appeal. Apart from this, the petitioner also raised ground in the appeal that the aspect of Clause 13(3)(ii) regarding the respondent being habitual defaulter in payment of rent and consequent necessity to grant of permission to issue quit notice was not even adverted to by the Rent Controller while passing the order. It is significant that the respondent never challenged the order passed by the Rent Controller.

4. By the impugned order, the appellate authority i.e. Additional Collector agreed with the petitioner that the direction pertaining to grant of 9% interest ought to have been included by the Rent Controller and to that extent appeal of the petitioner was allowed. But, as regards the other aspect of the claim of the petitioner for grant of permission to issue quit notice on the basis of Clause 13(3)(ii) of the Rent Control Order, instead of considering the matter on the basis of material on record, the Additional Collector remanded the matter for further consideration by the Rent Controller.

5. It is this order of remand against which the petitioner has approached this Court by way of the present writ petition. It is pointed out that admittedly the respondent had never challenged order dated 08/12/2015, passed by the Rent Controller, raising any grievance about the procedure adopted by the Rent Controller while passing the order. It is also pointed out that appeal was only filed by the petitioner contending that on the basis of material that has come on record after long period of 20 years pendency of the matter before the Rent Controller, findings ought to have been rendered by the Rent Controller on Clause 13(3)(ii) of the Rent Control Order.

6. The learned counsel for the petitioner submitted that there was no necessity for remanding

the matter to the Rent Controller on the alleged improper procedure adopted by the Rent Controller, when no such grievance was raised by either party and there was sufficient material on record to render finding in respect of Clause 13(3)(ii) of the Rent Control Order. It was also pointed out that the Additional Collector had closed the matter for orders sometime in the year 2016 and the impugned order was passed after 1½ years, further demonstrating the error committed by the Additional Collector.

7. The respondent supported the order passed by the Additional Collector, contending that the order of remand would meet the ends of justice.

8. It is an admitted position in the facts of the present case that the respondent never challenged order dated 18/12/2018, passed by the Rent Controller. By the said order, although direction was granted in favour of the petitioner that entire arrears of rent would be deposited by the respondent within a period of 30 days, statutory mandate of awarding 9% interest was ignored. This error was indeed rectified by the Appellate Court in the impugned order dated 31/1/2018 and, therefore, to that extent in so far as Clause (ii) of the impugned order is concerned, the same needs to be confirmed.

9. But, in so far as the consideration of claim

of the petitioner for grant of permission under Clause 13(3)(ii) of the Rent Control Order, the appellate authority i.e. the Additional Collector committed a grave error by remanding the matter to the Rent Controller. There was no occasion to remand the matter to the Rent Controller because the respondent had never challenged the order passed by the Rent Controller dated 08/2/2015, raising any grievance about the procedure adopted by the petitioner and the manner in which the order was passed by the Rent Controller. The petitioner desired a finding on Clause 13(3)(ii) of the Rent Control Order on the basis of material and evidence already placed on record on behalf of the petitioner.

10. In view of the above, it is found that the direction given by the Additional Collector in the impugned order under Clause (iii) of the impugned order is unsustainable. Accordingly, the same deserves to be set aside and the Additional Collector ought to decide the claim of the petitioner on Clause 13(3)(ii) of the Rent Control Order on the basis of material already on record. In view of the above, the writ petition is partly allowed and while Clause (ii) of the impugned order dated 31/1/2018, is confirmed, Clause (iii) of the said impugned order is quashed and set aside.

11. Consequently, the matter is remanded to

the Additional Collector, Amravati, for considering the claim of the petitioner under Clause 13(3)(ii) of the Rent Control Order on merits on the basis of material already available on record.

12. The Additional Collector shall decide the appeal filed by the petitioner on the aforementioned aspect concerning Clause 13(3)(ii) of the Rent Control Order within a period of two months from today. The Additional Collector shall also verify, on the basis of material that may be placed on record by the rival parties, as to whether direction given by the Rent Controller in order dated 08/12/2015, was complied with and as also directions given in Clause (ii) of the impugned order dated 31/1/2018.

13. Needless to say, an adverse finding on the said aspects would result in consequences that would follow as per Clause 13(3)(i) of the Rent Control Order.

14. Writ petition is disposed of in above terms.

JUDGE