

M/s San Fit Khaparganj Marwadi Line Bilaspur And Ors Vs Kishan Lal Tuteja

Court: Chhattisgarh High Court

Date of Decision: Sept. 6, 2018

Acts Referred: Chhattisgarh Accommodation Control Act, 1961 " Section 12(1)(f), 23A, 23E, 23J
Chhattisgarh Rent Control Act, 2011 " Section 7, 9, 14

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Amrito Das, K. Roshan, Peeyush Bhatia

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. This revision is preferred under Section 23-E of the Chhattisgarh Accommodation Control Act, 1961 (for short, "the Act, 1961") against the order

dated 7-8-2014 passed by the Rent Controlling Authority Bilaspur in Case No. 8/A-90(6)/2011-12 wherein the said authority passed eviction order

against the revisioners from the shop mentioned in the map as A,B,C & D situated at Nazul Sheet No. 29, area Khaparganj, Ward No.19, Marvadi

line, Bilaspur, Tahsil and District Bilaspur.

2. An application under Section 23-A of the Act, 1961 was filed by the non-revisioner/landlord against the revisioners/tenants for eviction on the

ground that the said premise is bona fide required for opening an electronic shop by him. The Rent Controlling Authority after recording the evidence

of both sides opined that non-revisioner has proved bona fide requirement of the said shop.

3. Learned counsel for the revisioners submits as under:

i) Non-revisioner was not landlord on the date of retirement and he subsequently purchased the shop after retirement, therefore, his case does not fall

within the ambit of Section 23-J of the Act, 1961 and he has to file eviction proceeding before the competent civil court having jurisdiction over the

matter. He placed reliance on the decision of Hon'ble Supreme Court in the matter of Sulochana vs. Rajinder Singh (2008) 15 SCC 538 wherein it is

held that if landlord became landlord after retirement, his case is not covered under Section 23-J of the Act, 1961 and civil suit is maintainable. He

further relied on the decisions of Hon'ble Supreme Court in the matter of Mrs. Winifred Rose vs. Mrs. Ivy Fonseca (1984) 1 SCC 288, J..P. Hingorani

vs. Ashok Kharbanda and another 1995 Supp (3) SCC 185 Laxmi Narayan Gupta vs. Janki Ballabh Bhargava & another 1997 (1) MPLJ 574 and

Dr. D.N. Malhotra vs. Kartar Singh 1988 1 SCC 656.

ii) Non-revisioner has not demonstrated that he is a retired servant of a company owned or controlled either by Central Government or State

Government because there is no material to show that Central Bank of India in which he was employee is owned by the State Government or Central

Government.

iii) Finding of the Rent Controlling Authority is perverse without due appreciation of evidence and law.

4. On the other hand, learned counsel for the non-revisioners submits as under:

i) Provisions of the Banks Nationalisation Act shows that the Nationalised Bank has been constituted as a distinct juristic person by the Act and it is

owned by the Central Government, therefore, employee of Nationalised Bank is employee of Central Government and he is a retired Government

servant. He placed reliance on the decision of Hon'ble supreme Court in the matter of R.C. Cooper vs. Union of India 1970 (1) SCC 248.

ii) As the non-revisioner is Ex-service man, he is entitled to get the benefit of eviction of tenant in a summary way as provided under Section 23-A of

the Act, 1961.

iii) The non-revisioner has purchased property for starting his own business of electronic items and as per report of Municipal Corporation, Bilaspur

CG, except the disputed property, there is no alternative accommodation for the non-revisioner for the said business.

iv) Revisioner has been given proper opportunity to rebut the contention of the non-revisioner but they failed to controvert the same.

v) After purchasing of property on 31-1-2009, non-revisioner served a notice to the revisioner for eviction on 1-11-2011 and their tenancy is

terminated.

5. I have heard learned counsel for the parties and perused the record of the court below in which order is passed by the trial Court.

6. The first question for consideration of this court is whether the non-revisioner has established his bona fide requirement of the suit property for

opening an electronic shop. His statement was recorded before the authority and as per his statement and as per report of Municipal Corporation,

Bilaspur, he has no alternative accommodation for opening the shop in the locality.

7. The revisioners have also appeared before the authority and they deposed that inconvenience would cause to them in vacating the shop. The

tribunal after evaluating the evidence opined that judgment of landlord shall prevail over regarding necessity of premise and tenants cannot dictate the

landlord casually in what manner the property will be used and for what purpose. The finding of the Rent Controlling Authority is based on proper

marshaling of the evidence adduced by both sides and this Court has no reason to interfere with the said finding.

8. The next question for consideration of this Court is whether the non-revisioner can be asked to file a civil suit for eviction as per Section 12(1)(f) of

the Act, 1961.

9. Learned counsel for the revisioners would submit that the non- revisioner was not the landlord on the date of his retirement, therefore, remedy lies in

filing civil suit as per law laid down in Sulochana vs. Rajinder Singh (supra) (para 39).

10. In view of this Court remedy of civil Court for filing a suit for eviction under Section 12(1)(f) of the Act, 1961 is not available to the non-revisioner.

Chhattisgarh Accommodation Control Act, 1961 is repealed by The Chhattisgarh Rent Control Act, 2011 (for short, "the Act, 2011") which is now in

force with effect from 6-11- 2012. Section 14 of the Act, 2011 reads as under: "Section 14 - Repeal and Savings (1) On this Act, becoming law,

through notification in the Official Gazette, the Chhattisgarh Accommodation Control Act, 1961 (No. XLI of 1961) in its application to the State of

Chhattisgarh is hereby repealed. (2) The repeal under sub-section (1) shall not affect the previous operation of this enactment so repealed and

anything done or action taken or deemed to have been done or taken (including any appointment or delegation made, notification, order, direction or

notice issued, or rules made), by or under the provisions of the repealed enactment shall, so far as it is not inconsistent, with provisions of this Act be

deemed to have been done or taken under the provisions of this Act and shall continue in force unless and until suspended by anything done or any

action taken under this Act".

11. Section 7 of the Act, 2011 reads as under:

Section 7 - Establishment of Rent Controller (1) For every district, the State Government shall appoint one or more officers not below the rank of a

Deputy Collector, as Rent Controller with territorial jurisdiction as to be specified by the District Collector.

(2) Rent Controller shall be subordinate to the Rent Control Tribunal".

12. From the provisions of the Act, 2011, it is clear that no civil suit would lie in civil court in relation to the matter between the tenant and landlord. All

the issues will be settled by the Rent Controller as per Section 9 of the Act, 2011, therefore, this court cannot direct the non-revisioner to file a civil

suit before the court having jurisdiction. As the jurisdiction of civil court regarding dispute between the tenant and landlord is ousted by the Act, 2011,

the remedy does not lie in civil court. The issue between the parties is already settled by the Rent Controlling Authority. Non-revisioner cannot be

asked to go twice before the Rent Controlling Authority for same cause of action.

13. Accordingly, the revision petition sans substratum is liable to be and is hereby dismissed.