

Mahant Balkrishna Tarajekar

Vs

Gangaram Bajirao Walivakar

Civil Appeal No. 2579 of 1989

(Ranganath Misra, M. N. Venkatachaliah JJ)

27.04.1989

ORDER

1. In spite of service of notice the respondents does not appear.
2. Special leave granted.
3. The appellant-landlord which is a trust applied to the Controller under the provision of the C. P. Berar Letting of Houses and Rent Control Order, 1949 for permission to determine the tenancy of the respondent, and on April 20, 1977, the Controller rejected the application and on appeal the Resident Deputy Collector by order dated May 3, 1982 granted permission under clause 13 (3) (ii) of the Order. Notice of termination was given. The tenant challenged the appellate order granting permission by filing a writ petition before the High Court in 1983.
4. A suit for eviction was file don the basis of termination and was decreed. The writ petition was disposed of by order dated October 9, 1987 and the learned Judge set aside the appellate order granting permission and remanded the matter for a fresh disposed in accordance with law. This order of the High Court has been assailed by special leave.
5. Admittedly the tenant was in arrears and in this deposition dated November 23, 1976, before the Controller he had stated;

There is no agreement in writing. As per oral agreement the repairs are to be deducted from the rent. If the landlord repairs the house I am willing to pay the arrears of rent. Approximately Rs. 500 to Rs. 600 should be the arrears of rent. I have not paid the rent from 6 to 7 years...

Clause 16 of the Order deals with repairs and a scheme has been provided as to how notice has to be given to the landlord by the tenant and in the event of the landlord not undertaking the repairs the Controller has to be moved for a direction. Admittedly no steps have been taken in terms of clause 16 and the tenant had withheld payment of rent for a number of years. The High Court did not refer to clause 16 nor it did examine the material facts of the case on the basis of the statement of the tenant with reference to the requirements of law. We are satisfied that no case for interference by the High Court had been made out; much less was there any justification for a remand at such a distant point of time. The High Court shout have taken note of the fact that the tenant had not obtained any order of stay and the civil litigation had proceeded.

6. We allow the appeal set aside the order of the High Court and hold that the permission grants by the Controller shall be sustained.

7. As the respondent has not appeared there shall be no order for costs.

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