MADHYA PRADESH HIGH COURT

Seetaram

Vs.

Smt. Ramabai

Misc. Petn. No. 23 of 1957
(M. Hidayatullah, C.J. and P.K. Tare, J.)

25.02.1958

ORDER

M. Hidayatullah, C.J.

1. This is a petition under Article 226 of the Constitution, by which the petitioners, who are landlords seek to get quashed an order of the Additional Deputy Commissioner, Sagar, invested with appellate powers, made on 26-11-1956.

2. The petitioners own a house, which has been given on tenancy to the first respondent Shrimati Rambai and for which she is paying Rs. 5/- per month as rent. The landlords applied to the Rent Controller for permission to serve a notice terminating the lease, on the first respondent, on three grounds, viz., (a) that she was a habitual defaulter in paying rent, (b) that the premises were old and dilapidated and needed repair and re-construction, and (c) that the tenant had sublet the house to other persons without the petitioner's written permission to do so.

3. The Rent Controller did not accept the first two contentions but granted permission on the third ground. He found that the tenant had inducted into the house five persons, of whom at least three were living there at the time of the application for permission to serve the quit notice, and that those persons were sub-tenants, inducted without the permission of the landlord, From this decision the tenant alone appealed. In appeal the landlords sought permission to urge that the order was justified on the two other grounds on which permission had been refused to him. But the Additional Deputy Commissioner held that the landlords could not urge those grounds as they had not preferred an appeal against the order of the Rent Controller. On the third ground the learned Additional Deputy Commissioner held that there was no evidence to prove

that the persons who were living in the house were sub-tenants inducted without the permission of the landlord and that therefore the application as a whole was liable to be dismissed. The learned Additional Deputy Commissioner accordingly reversed the order of the Rent Controller and dismissed the application.

4. In this petition by the landlords two contentions are raised before us. The first is that the burden of proof was wrongly placed upon the landlords to prove that the persons who were occupying the premises were not their sub-tenants. It was contended for the petitioners that it was open to the tenant to examine the persons who were living in the premises to establish that they were sub-tenants. On this part of the case we need not say anything because the finding as it happens, is one of fact. Whether certain persons were living in the premises as tenants or as guests or as licensees is essentially a question of fact, which cannot be agitated in a writ matter. It has been ruled in numerous cases that a finding given even on no evidence is not capable of bing interfered with by a writ of certiorari and that a finding of fact must be taken as final however erroneous it may be. In this connection their Lordships of the Supreme Court accepted the decision of the Privy Council in *Rex v. Nat Bell Liquors, Ltd.,* [1]

5. If the matter stood there, we would have had no hesitation in dismissing the present petition. The next question which has been urged on behalf of the petitioners is that the learned Additional Deputy Commissioner committed an error of law in not allowing the respondents before it to establish that the other two grounds on which permission was asked had been wrongly decided. The learned counsel for the petitioners contends that there was no need for the landlords to file an appeal and that they were not competent to do so in view of the fact that the order was entirely in their favor. The words of Clause 21 of the C. P. and Berar Letting of Houses and Rents Control Order, 1949, are as follows:

> "(1) Any person aggrieved by an order of the Controller may, within fifteen days from the date on which the order is communicated to him present an appeal in writing to the Deputy Commissioner of the district:

6. It is contended by the learned counsel for the answering respondent that the petitioners were persons aggrieved. No doubt, they were persons aggrieved inasmuch as a part of the order was not in their favor and had not accepted their contentions. The

words 'a person aggrieved' were defined by Lord Esher in Ex Parte Official Receiver, *In re Reed, Rowen and Co.,* [2] as follows:

> "a "person aggrieved" must be a man against whom a decision has been pronounced which has wrongfully refused him something which he tad a right to demand."

In this sense, it cannot be gainsaid that the landlords were persons aggrieved, because they had been refused permission to serve a notice of eviction on the ground that the tenant was a habitual defaulter and also that the house needed repair and reconstruction. But the clause to which we have referred does not say that any person aggrieved may appeal to the Deputy Commissioner. It says that any person aggrieved 'by an order' of the Controller may prefer an appeal. When the order was in favor of the landlords they were not aggrieved by the order. To borrow the language of their Lordships of the Privy Council in *Iswarayya v. Iswarayya,* [3] there was no reason why the landlords should appeal from the order which the Rent Controller had made; there was every reason why they should be satisfied therewith. A right of appeal is conferred to get an order set aside or out of the way. Even if a person has a grievance against a finding he cannot come by way of appeal unless he challenges the order itself and wants to get it interfered with. Unless we hold this way, even if the order is entirely in favor of a party he would be required to file an appeal against a finding if the other side were to appeal against the order is it is. In our opinion, the landlords here had very reason to be satisfied with the order, and they need not have appealed.

7. The question is whether they were entailed to set up an argument before the Additional Deputy Commissioner that the order passed by the Rent Controller was erroneous on the first two grounds which they had urged before him. In our opinion, they were. The learned counsel for the petitioners sought the analogy of Order 41, Rule 22 of the Code of Civil Procedure and wanted to apply it on the strength of section 141 of the Code. In our opinion, without having to decide whether Order 41, Rule 22 of the Code of Civil Procedure applies or not to rent control proceedings and appeals arising there from, we are quite justified that on general principles a party who is an order in its favor is entitled to show that the order is justified on some ground which was decided against it in the Court below. The learned Additional Deputy Commissioner stated as a point of law that unless the order was appealed from the landlords had no claims to justify the order on any other ground. In our opinion, this

was an error of law apparent on the face of the record. In *Prem Singh v. Deputy Custodian-General*,[4] their Lordships of the Supreme Court quoted from *Besappa v. Nagappa,*[5] and stated that the power of issuing a writ of certiorari can be exercised to correct an error of law apparent on the face of the record. In that case their Lordships felt some difficulty as to when an error of law can be said to be apparent on the face of the record and when not.

It appears that their Lordships' attention was not drawn to any ruling in which this line of demarcation had been laid down. With all due respect, we may point out that the test was laid down by Lord Dunedin, to which reference is made in *Haji Habib v. Bhikamchand Jankilal Shop,*[6] Lord Dunedin observed that an error in law apparent on the face of the award can be said to mean:

> "that you can find in the award or document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous."

In our opinion, an error of law apparent on the face of the record exists where a tribunal or Court states a proposition of law which is fundamental to the decision of the case and which, on examining it as a proposition of law, you can say is erroneous. If there is a general error in the application of the law, and the chain of reasoning has to be examined to find out the error, then there is not an error on the face of the record.

8. In this case, the learned Additional Deputy Commissioner stated it as a proposition of law that unless an appeal was filed by the respondents before him, they were not entitled to sustain the order on any ground which had been decided against them before the Rent Controller. In our opinion, this was an erroneous proposition of law, and as it was fundamental to the decision of the appeal before him, it can be described as an error of law apparent on the face of the record.

9. Having held that the proposition was erroneous, we think that a writ of certiorari should issue in this case. The order passed by the Additional Deputy Commissioner is accordingly quashed, and the case is remitted to the Additional Deputy Commissioner, who shall hear and determine the appeal in advertence to the remarks made above. Costs of this petition shall be borne as incurred, because the petitioners have succeeded on one part of the case and have failed on the other.

Petition allowed.

Cases Referred.

1. 1922-2 AC 128
2. (1887) 19 QBD 174
3. 58 Ind App 350 at p. 361: (AIR 1931 PC 234 at p. 239)
4. 1958 SCJ 29 at p. 35: (AIR 1957 SC 804 at p. 809)
5. 1955-1 SCR 250: AIR 1954 SC 440
6. ILR (1954) Nagpur 514: (AIR 1954 Nag 306)