

PATNA HIGH COURT

Bidhubhusan Sen

Vs

Commissioner

Misc. Judl. Case No. 156 of 1954

(Das, C.J. and Kanhaiya Singh, J.)

24.08.1955

JUDGMENT

Kanhaiya Singh, J.

1. This is an application under Article 226 of the Constitution for an appropriate writ in respect of the order of the commissioner dated 1-3-1954. By this order the Commissioner set aside the concurrent decision the Rent Controller and the Collector and dismissed the application of the petitioner for ejection of the opposite party. The petitioner is a landlord of Municipal holding No.88 New Market, in the Mithapur Bazar, Ward No.2 within the Patna Municipal Corporation. Opposite party No.2, Rambilas Singh, is a tenant of one of the rooms in this house on a monthly rental of Rs.12/-. The room is on the north-eastern side of the aforesaid house. He has been in occupation of this house since 1943. The landlord petitioner made an application before the Collector under Sub-section (3)(a) of Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, for a direction to the opposite party to put him in possession of the room in question. His petition was rested on the ground that he required the room for setting up Amiya Ranjan Gupta in business. Amiya Ranjan Gupta is the sister's son of the landlord, and his case was that he was living with him and was maintained by him. The Rent Controller after hearing both the parties found that Amiya Ranjan Gupta was living with the landlord and was also economically dependent upon him. An appeal from his order was taken to the Collector who confirmed his decision. The opposite party then moved the Commissioner in revision. The learned Commissioner held that no evidence was led in the Court below to show that Amiya Ranjan Gupta was actually dependent upon the landlord. He further held that under Section 11(3)(a) of the Act, the landlord can obtain eviction of the tenant only when he requires the house for "his own occupation", and his relations and dependents, are not entitled to the benefit of this sub-section; The learned Commissioner, I think, put a narrow construction upon sub-section (3)(a) of Section 11 of the Act and dismissed the application of the petitioner for ejection of the opposite party.

2. So far as the question whether Amiya Ranjan Gupta was living with, and was dependent upon the landlord petitioner is concerned, it is concluded by the concurrent findings of the Rent Controller and the Collector. The Rent Collector has held that this question was not at all

agitated; rather there was no challenge of the fact that Amiya Ranjan Gupta was living with the petitioner and was maintained by him. The learned Collector came to the same conclusion. The learned Commissioner, however, fell into an error when he said that there was no evidence led in the Courts below, that he was economically dependent upon him. As a matter of fact, when the petitioner's allegation was not at all challenged, and both the parties proceeded on the footing that he was living with, and was economically dependent on the landlord petitioner, no evidence to substantiate it was called for. It is not open to us to examine a question of fact afresh, and since the learned Commissioner's observation is against the weight of evidence and the concurrent findings of the Rent Controller and the Collector, it must, therefore, be taken that Amiya Ranjan Gupta was living jointly with the petitioner landlord and was being maintained by him. The material question that falls for determination is whether the landlord can require possession of the house by ejection of the tenant for occupation not by himself but by his relation who is dependent upon him. Sub-section (3)(a) of Section 11, Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, is in these terms:

"A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession of a building if he requires it reasonably and in good faith for his own occupation or for the occupation of any person for whose benefit the building is held by him".

There is a proviso to this sub-section, but it is not relevant for the present enquiry. The determination of the question depends upon the significance of the expression "his own occupation" occurring in sub-section (3)(a). It was contended on behalf of the petitioner that the expression "his own occupation" should be given an extended meaning so as to include persons living with the landlord and maintained by him. On the other hand, learned Counsel for the opposite party contended that the protection of the said sub-section was not available to the landlord when he required the house not for his own personal occupation but for the occupation of a relation or a person not being a member of his family. In my opinion, the expression "his own occupation" is susceptible of a wider meaning and cannot be restricted only to the occupation of the landlord himself. A similar expression came up for consideration before the Calcutta High Court in the case of - '*Puspa Lata Devi v. Dinesh Chandra Das*', (A). Proviso (f) to Section 11(1), West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, reads as follows:

"Where the premises are *bona fide* required by the landlord either for purposes of building, or rebuilding, or for his own occupation, or for the occupation of any person for whose benefit the premises are held."

P.B. Mukherji, J., while considering the significance of this expression observed as follows:

"The expression 'his own' does not necessarily mean of the particular individual alone but must be interpreted to include the individual's family and dependents and such person or persons who may be essential and necessary for

the purpose of such occupation. In determining what is family or a dependant or a person essential and necessary for occupation it is not only permissible but it is proper and desirable for the Court to bear in mind the context of social order, the habits and ideas of living and the religious and socio-religious customs of the community to which the individual concerned belongs and then come to a conclusion on the facts of each case.'

In considering this question, we cannot, therefore, ignore the social customs and habits of the party and the limited and technical concept of a joint family should not be invoked. In construing this expression. The decision in the case of 85 Cal LJ 74 (A) was affirmed by the Calcutta High Court in - '*Bibhuti Bhusan v. Kshettra Gopal Datta*'¹,

3. The other High Courts have similarly put wider interpretation on such or similar expressions. The Bombay High Court, while interpreting the expression "his own occupation" in Section 11, Bombay Rent Restriction Act, 1939, has held that the words "his own occupation" mean occupation of himself and all persons who are dependent on him. '*Radio Technology Institute v. Pandurang Bapurao*'²; The present case is amply covered by these decisions, and I respectfully adopt the reasonings of the learned Judges of the Calcutta and the Bombay High Courts.

4. The C.P. and Berar Letting of Houses and Rent Control Order, 1947, provided for eviction of the tenant when the landlord needed the house for business of his own. Clause 13(3)(vi)(c) which is relevant for the purpose reads as follows:

"If after hearing the parties the Controller is satisfied that the landlord needs the house or a portion thereof for the purpose of a 'bona fide business of his own which he intends to start or is already carrying on in the city or town concerned.'"

The expression "business of his own" was interpreted by the Nagpur High Court in the widest sense so as to include the whole family. In the case of - '*V.M. Deshmukh v. K.M. Kothari*'³, their Lordships observed as follows:

"The word 'his' must be interpreted so as to include the family and not in a narrow way. This word is used in the last part of the clause in conjunction with the word 'own'. The question is whether the word 'own' is used along with the word 'his' to show that the 'business' must be one which the landlord himself is carrying on. We do not think that there is the purpose of using the word 'own'.

In our opinion, such an interpretation would be in conflict with the meaning accorded to the word 'his' in the clause. It would appear that what is meant by the word 'own' is something in which the landlord or his family have pecuniary interest. Looked at this way the business of running Maternity Home would clearly fall within sub-clause (vi) of Clause 13." This interpretation was later affirmed by the Nagpur High Court in the case of - '*Rajniklal and Co. v. Vithal Pandurang*'⁴, In the case of - '*Balbhadra Beharilal v. Premchand Lalchand*'⁵, the landlord sought the eviction of the tenant on the allegation that he needed the house for his own residence and also for the

residence of his widowed' daughter and her children who were dependent on him and who were staying in the rented house in Nagpur. The Rent Controller held that the landlord's need or his own residence was not *bona fide* and that the need of the widowed daughter and her children, though genuine, could not be regarded as the need of the landlord. A petition under Article 226 of the Constitution was filed before the Nagpur High Court for quashing the order of the Rent Controller. While quashing the order, their Lordships of the Nagpur High Court made the following significant observations:

"The main point canvassed before us was that the need of the widowed daughter and her children must be deemed to be the need of the landlord. In our opinion, the contention of the petitioner is correct and must be upheld. No doubt, after marriage the daughter passes out of the father's family and goes into that of the husband. But the fact of the marriage does not sever the blood relationship which exists between a father and his daughter. The existence of his relationship does give rise to certain moral obligations. Where, in pursuance of such moral obligation, a father affords support to his daughter and her children, their needs become his needs. There is nothing in the Rent Control Order which restricts a landlord's needs to his personal needs."

5. Similarly, the word 'family' occurring in Section 9(1)(e), Delhi and Ajmer-Merwara Rent Control Act (19 of 1947) was given a wider and extended meaning by the Punjab High Court. In the case of - *'Ram Pershad Singh v. Mukand Lal'*⁶, a landlord applied for eviction of his tenant on the ground that the existing accommodation was insufficient for him and his two nephews (brother's sons) who were his only heirs and the landlord had set them in business at Lahore by advancing them money and had got them married. One of them was actually living with him at Delhi. In these circumstances, Kapur, J., held that the nephews should be regarded as the members of the landlord's family and should be included in the word 'family' as used in Section 9(1)(e) and, therefore, he was entitled to evict his tenant. This view was later affirmed by the Punjab High Court in the case of - *'Nanak Chand v. Tara Devi'*⁷, Their Lordships quoted with approval the observation of the Calcutta High Court in the case of 'Puspa Lata Debi' referred to above. In - *'Price v. Gould'*⁸, the question that arose for decision was whether the word 'family' occurring in Section 12, sub-section (1)(g), Rent Restriction Act, 1920, includes brothers and sisters. In deciding that point Wright, J., said:

"I hold that in the section now under consideration the word 'family' includes brothers and sisters of the deceased living with her at the time of her death. I think that that meaning is required 'by the ordinary acceptance of the word in this connection, and that the Legislature has used the word 'family' to introduce a flexible and wide term."

Thus, even in England, the word 'family' has been interpreted liberally and there is no reason why a restricted meaning will be given to such expression in India where 'family' has, ordinarily, a wider connotation.

6. It is manifest that there is a consensus of judicial opinion that the expression "his own occupation", or "his own business", or "family" should be given a wider and liberal connotation so as to include persons who, though not members of the joint family of the landlord, are living

with him and dependent upon him. In my opinion, the expression "his own occupation" in the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, should be given an extended and liberal meaning. In the present case, the landlord wanted to set up his nephew (sister's son) Amiya Ranjan Gupta in business, and it is for this purpose that he wanted possession of the room at present occupied by the opposite party. From what I have said above, it follows that he requires the house *bona fide* and in good faith for the occupation of the nephew for whose maintenance he is responsible. Considered from this point of view, the petitioner was clearly entitled to an order from the Controller for occupation of the house so that his nephew may be established in business.

7. The only question is whether it is a fit case for issue of a writ of 'certiorari' under Section 226 of the Constitution. It would appear that there was on the part of the learned Commissioner an error with respect to the fact that Amiya Ranjan Gupta was economically dependent on the petitioner and that the expression "his own occupation" in Section 11(3)(a), Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, excluded the possession of persons dependent upon the landlord. Since this error is apparent on the face of the record, I would, following the decision of the Supreme Court in - '*Hari Vishnu Kamath v. Ahmad Ishaque*'⁹, issue a writ quashing the order of the learned Commissioner.

8. For these reasons, the application is allowed with costs; hearing fee Rs.32/- to be paid by opposite party No.2. The order of the learned Commissioner dated 1-3-1954 is set aside. The opposite Party No.2 is directed to vacate the house within three months from this date.

Das, C. J.

9. I agree with my learned brother that the application should be allowed and a writ in the nature of a writ of 'certiorari' should issue quashing the order of Mr. Commissioner Sohoni dated 1-3-1954. This case comes clearly within the principle laid down in - '*Rex v. Northumberland Compensation Appeal Tribunal*'¹⁰, a decision which has been approved by the Supreme Court in AIR 1955 SC 233. Mr. Commissioner Sohoni put an interpretation on sub-section (3)(a), Section 11, Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, which is clearly an error of law, an error apparent on the face of the record. Mr. Commissioner Sohoni proceeded primarily on the footing that the expression, 'his own occupation' occurring in sub-section (3)(a), Section 11, Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, meant the occupation or residence of the landlord himself and of no other

person. Such a construction of the expression was in the teeth of numerous decisions of the different High Courts of India which have laid down that the expression 'his own occupation' occurring in the sub-section does not mean only the occupation of the landlord himself, but includes the occupation of other persons who live with the landlord and are economically dependent on him. My learned brother has referred to these decisions, and some of those decisions were cited before Mr. Commissioner Sohoni. It is a matter of some surprise to me that in spite of those decisions the learned Commissioner put a construction on the expression which was clearly and manifestly erroneous.

10. In AIR 1955 SC 233, the Supreme Court considered the scope of Article 226 of the Constitution as respects the writs of prohibition and certiorari. With regard to the writ of

certiorari, several earlier decisions of the Supreme Court were referred to, and then his Lordship Venkatarama Ayyar, J., observed:

"On these authorities, the following propositions may be taken as established: (1) 'Certiorari' will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it (2) 'Certiorari' will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of 'certiorari' acts in exercise of a supervisory and not appellate jurisdiction."

Then his Lordship dealt with those orders which are known as 'speaking orders' and observed:

"The further question on which there has been some controversy is whether a writ can be issued, when the decision of the inferior Court or Tribunal is erroneous in law. This question came up for consideration in (1951) 1 KB 711, and it was held that when a Tribunal made a 'speaking order' and the reasons given in that order in support of the decision were bad in law, 'certiorari' could be granted."

His Lordship quoted with approval the observations made in an earlier decision, - *'Rex v. Nat Bell Liquors Ltd'*¹¹. It is now well settled that a writ of certiorari will issue in respect of an error of law which is apparent on the face of the record. As was aptly said by Morris, L.J., in - *'Re v. Northumberland Compensation Appeal Tribunal'*¹²,

"It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction where shown."

In the case before us, the learned Commissioner made a manifest and clear error of law when he held that the expression 'his own occupation' occurring in sub-section (3)(a) of Section 11, Bihar Building (Lease, Rent and Eviction) Control Act, 1947, meant only the occupation of the landlord. Such an error speaks for itself and is amenable to a writ of certiorari.

11. Learned counsel for the opposite party No.2 made an attempt before us to show that the learned Commissioner gave a finding of fact to the effect that Amiya Ranjan Gupta, nephew of the landlord, for whom the room in question was required, was not economically dependent on the landlord. Learned counsel's contention is that in view of the aforesaid finding of fact, over which we cannot sit in appeal, the application for the issue of a writ must be rejected. It is true that the learned Commissioner has stated in one part of his judgment that there was no evidence led in the Courts below that the nephew of the landlord was actually dependent on him. Here again, the learned Commissioner has committed another error which is apparent on the face of the record. The learned Rent Controller, who dealt with the case in the first instance, had stated in clear terms that the allegation that Amiya Ranjan Gupta was the nephew of the landlord and

dependent on him was not even challenged by the present opposite party No.2. That being the position Mr. Sohoni was clearly in error when he said that the question of the economic dependence of Amiya Ranjan Gupta on his uncle was still at large.

12. It is, therefore, clear that the whole judgment of the learned Commissioner rested on errors which speak for themselves and are apparent on the face of the record. That being the position, the order must be quashed.

13. For these reasons, I agree to the order proposed by my learned brother.
Application allowed.

Cases Referred.

¹ ILR (1951) 1 Cal 375

² AIR 1946 Bom 212

³ AIR 1951 Nag 51

⁴ AIR 1952 Nag 312

⁵ AIR 1953 Nag 144

⁶ AIR 1952 Pun 189

⁷ AIR 1953 Pun 156

⁸(1930) 143 LT 333

⁹ AIR 1955 SC 233

¹⁰(1951) 1 KB 711

¹¹1922 AC 128

¹²(1952) 1 KB 338