

उपायुक्त का न्यायालय, दुमका

एच.आर.सी.ए. सं०- 01/2020-21

फिरोज खान.....अपीलकर्ता
बनाम
राजेन्द्र कुमार मेहरिया.....उत्तरकारी

आदेश

03.08.2021

यह एच.आर.सी.ए. अपील वाद अनुमंडल दण्डाधिकारी, दुमका के एच.आर.सी. वाद सं०-01/18 में पारित आदेश दिनांक-28.01.19 के विरुद्ध दायर किया गया। अनुमंडल पदाधिकारी द्वारा अपीलकर्ता को उनके द्वारा लिया किराये के मकान को खाली कर एक पक्ष के अन्दर मकान मालिक उत्तरकारी को सुरक्षित हालत में सौंपने का आदेश दिया गया है।

उभयपक्षों के विद्वान अधिवक्ताओं को सुना तथा अभिलेख में उपलब्ध कागजातों का अवलोकन किया।

अपीलकर्ता द्वारा अपने दावे के समर्थन में माननीय उच्च न्यायालय पटना के (1) सिविल रिविजन सं०-262/1988 (2) Civil Revision No 607/1997 (3) Civil Revision No 90/1997 (4) अरुण कुमार साह बनाम वसीर अहमद Air 1981 PAT 230,1981(29) BL J.R-466 तथा उच्चतम न्यायालय का कृष्ण मुरारी प्रसाद बनाम मितार सिंह के वाद में पारित आदेश की प्रति जो Air 1994 SC 489 Supp (i) SCC 439 में प्रकाशित है, को दाखिल किया गया है। उनके द्वारा कहा गया कि निम्न न्यायालय द्वारा आदेश पारित करने के पूर्व इन तथ्यों पर विचार नहीं किया गया है, जो उच्च न्यायालय तथा उच्चतम न्यायालय के आदेश तथा Jharkhand Building (Lease, Rent & Eviction) Control Act, 2011 Sec 19 (C) में उल्लेखित है। Jharkhand Building (Lease, Rent, & Eviction) Control Act 2011 के Sec 19 के (c) में निम्न प्रकार उल्लेखित है :-

Where the building is reasonably and in good faith required by the landlord for his own occupation or for the

occupation of any person, for whose benefit the building is held by the landlord:

Provided that where the Controller thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing that tenant to continue occupation, the Controller shall pass an order accordingly; and fix proportionately the standard rent for the portion in occupation of the tenant, which portion shall henceforth constitute the building within the meaning of Clause (b) of Section 2 and the rent so fixed shall be deemed to be the standard rent fixed under Section 12.

माननीय उच्च न्यायालय पटना के सिविल रिविजन नं०-262/1988 रामचंद्र अग्रवाल बनाम भूषण राम में पारित आदेश दिनांक-11.05.1988 के अनुसार:- It is well established that if a finding of fact is arrived at ignoring important and relevant evidence, the finding is bad in law.

इसी रिविजन वाद में पारित आदेश के पारा 22, M/S Bihar Alloy Steels Ltd. V. Hari Shankar Worah Ltd. and anr. Reported in 1987 PLJR 868 a Division Bench of this Hon'ble High Court तथा पारा 23 Smt. Sushtla Devi and ors. V. Arinash Chandra and anr. Reported in 1987 SC 1150 उच्चतम न्यायालय द्वारा Finding of fact के संबंध में उल्लेख किया गया है:-

(22) "That the building is reasonably and in good faith required can be determined only by taking notice of the facts pleaded by the parties and even after it is found by the court that the building is reasonably and in good faith required by the landlord, it has a duty to determine whether the reasonable requirement of such occupation will be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest or not. The legislature has chosen to qualify the word satisfied by the expression substantially, with a view to keep the interest of the tenant protected by providing occupation to him of the building in part, and granting to the landlord occupation to meet his requirements."

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(23) While the landlord is entitled to the beneficial enjoyment of his property, the law still insists as a measure of social necessity that the Court should be satisfied as to the genuineness of requirement of the landlord under Section 14(1)(e). It has to keep in view that there is acute shortage of housing accommodation in the metropolitan city of Delhi and therefore unless there is compelling necessity, there can be no order for eviction under Section 14(1) (e) is meant to subserve a public interest and to strike a just balance between the competing needs of the landlord and the tenant. It is axiomatic that when a landlord applies for eviction of a tenant under section 14(1) (e) of the Act. There is a duty cast on the Court to consider question on merits on the basis of evidence adduced by the parties. Again, there has to be in such cases an objective determination of the claim of the landlord. It is necessary to emphasize that unlike Section 115 of the C.P.C. 1908 where the High Court power of the High Court power of interference in revision touches jurisdiction, the power of High Court to interfere in revision under sub-section (8) of Section 25-B of the Act is much wider in scope and enables the High Court to satisfy itself as to whether the decision rendered by the Rent Controller on the facts in issue is in accordance with law. That is to say, in accordance with the well-settled principles."

उसी प्रकार माननीय उच्च न्यायालय पटना के सिविल रिवीजन 607/1997 बिरेन्द्र सिंह बनाम शंकर साह एवं अन्य में पारित आदेश दिनांक-23.01.1998 में भी इस तथ्य के संबंध में निम्न प्रकार उल्लेख किया गया है :-

It is well settled that proviso to section 11(1) (c) of the Bihar Buildings (Leas. Rent & Eviction) Control Act, 1982 casts a duty upon the court to give finding whether a decree for partial eviction will satisfy the requirement of the plaintiffs irrespective of the fact that there is pleading or not.

सिविल रिवीजन 90/1997 (R) नागेन्द्र प्रसाद वर्णवाल बनाम जितेन्द्र वर्णवाल में पारित आदेश दिनांक-09.03.1998 के पारा 06 एवं 08 :-

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(6) The trial court should have considered the case of both the parties if at all the partial eviction of the defendant-tenant will serve the purpose of the landlord and the defendant also agrees to occupy the remaining portion of the suit premises on payment of rent to be fixed by the court. The court is required, in such a situation, to record a specific finding if the partial eviction will serve the purpose or the entire suit premises is required by the landlord for his bonafide requirement.

(8) In the instant case also parties had not led evidence to show that if the entire suit premises is required for bonafide use of the landlord for opening a shop or the partial eviction as required under Section. 11 (c) of the Control Act will serve the purpose of the landlord and as such in view of the principle laid down by the Apex Court and that of our High Court as mentioned above the finding of the trial court that there is relationship of the landlord and tenant between the parties and the landlord is in need and the suit premises is reasonably required for the occupation of the landlord for obtaining a shop is though, hereby confirmed) but the operative portion of the order of the trial court for eviction of the defendant from the entire suit premises is hereby set aside and the suit is again remitted back to the trial court i.e. Munsif, Giridih with this observation that his finding on other issues. are confirmed but the trial court will give opportunity to both the parties to adduce additional evidence only on limited point if at all the partial eviction of the suit premises of the tenant-petitioner will serve bonafide need and requirement of the landlord and the defendant is also willing to occupy a portion of the suit premises in such a situation, on payment of rent to be fixed by the court as required under the Act or entire suit premises is required by the landlord to serve his personal need and requirement. The trial court will try to dispose of this matter expeditiously and preferably within four months from the dated of receipt of the record. Office is directed to remit the Lower court record without any further delay. Accordingly this revision is allowed only in part as mentioned above but without any costs.

उपरोक्त वर्णित तथ्यों के आलोक में निम्न न्यायालय के आदेश को विलोपित करते हुए Jharkhand Building (Lease,

Handwritten signature

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Rent & eviction) control Act 2011 के धारा 19(1)(c) के परंतुक के आलोक में सम्यक विचारोपरांत युक्तियुक्त निर्णय हेतु अनुमंडल पदाधिकारी, दुमका के न्यायालय में पूर्णविचार हेतु प्रतिप्रेषित किया जाता है कि उभय पक्षों को "Partial eviction" की संभावना के संबंध में सुनवाई करने हेतु आदेश पारित किया जाय।

इसी समीक्षा के साथ वाद की कार्रवाई समाप्त की जाती है।

लेखापित एवं संशोधित।

उपायुक्त,
दुमका।

उपायुक्त,
दुमका।

228 mt/8/10/21
L.C.R. Retoni

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