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**Court :** Orissa

**Decided On :** Jan-24-1962

**Reported in :** AIR1962Ori173

**Judge :** R.L. Narasimham, C.J. and ;R.K. Das, J.

**Acts :** [Transfer of Property Act, 1882](#) - Sections 106; Orissa House Rent Control Act, 1958 - Sections 2(5), 6 and 7

**Appeal No. :** O.J.C. No. 34 of 1961

**Appellant :** Parfulla Kumar Das

**Respondent :** House Rent Controller and ors.

**Advocate for Def. :** Adv. General and ;R.K. Mohapatra and B.N. Patnaik

**Advocate for Pet/Ap. :** R.N. Das, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**R.K. Das, J.**

1. This is an application under Article 226 of the Constitution for issuing an appropriate Writ to quash the proceedings for eviction of the tenant-petitioner under Section 7 of the Orissa House Rent Control Act, 1958 (Orissa Act 31 of

1958), herein after called the Act, pending before the House Rent Controller (hereinafter called the Controller) in H. R. C. No. 44 of 1960.

2. The petitioner and his father (opposite party No. 4) were occupying the suit premises as monthly tenants of holding No. 150 in Ward No. 13 in the town of Cuttack under the landlords Harihar Satpathy and others. The said landlords sold the suit premises to opposite party Nos. 2 and 3 by a registered sale-deed dated 19-12-1959. After the said purchase, opposite party Nos. 2 and 3 became the owners of the suit house and called upon the petitioner and opposite party No. 4 to vacate the suit house, to deliver possession to them and also to pay arrears rent due on them, The tenants having failed to comply with the notice of the new landlords, the latter filed an application under Section 7 of the Act before the Rent Controller of Cuttack for ejectment of the tenants on the ground that they require the house for their own occupation and that the tenant was a defaulter in rent.

3. A preliminary objection was raised by the petitioner-tenant before the Controller that no proceeding for ejectment under Section 7 of the Act was maintainable without prior determination of the tenancy by a notice under Section 106 of the Transfer of property Act. This objection having been Overruled by the controller an appeal (H. R. C. appeal No. 43/60) was filed before the Additional District Magistrate, of Cuttack, where the same contention was raised. The learned Additional District Magistrate by his order dated 6-1-61 dismissed the appeal holding that no such notice was contemplated within the scope of the Act and as such a proceeding under Section 7 of the Act was maintainable. It is against this order the present petition under Article 226 of the Constitution has been filed.

4. It is not disputed that the petitioner was in arrears of rent for a long time. Before going to the question whether such a notice under Section 106, T. P. Act is a condition precedent for eviction proceeding, it is necessary to examine some of the provisions of the Act which admittedly cover this case. With a view to give protection to the tenants from illegal eviction by the landlords, the Orissa House Rent Control Order, 1942 was introduced and subsequently the Orissa House Rent Control Act (Orissa Act V of 1947), was introduced though in between 1942 order and 1947 Act Orissa Ordinance No. III of 1946 was promulgated to achieve

the very same object. Under the provisions of the Orissa Act V of 1947, the landlord was to file a suit for eviction of tenants in the Civil Court and that only after obtaining an exemption order from the Controller appointed under the said Act. To appreciate the position of law, it is necessary to have some of the relevant provisions of Sections 5 and 13 of Orissa Act V of 1947. They run as follows:

'5. Continuation of existing tenancies from month to month and bar against increase of rent: Subject to the provisions of this Act and notwithstanding anything to the contrary contained in the agreement or law where a tenant on a tenancy from month to month is, on the date of the commencement of this Act, in possession of any house:

(a) he shall not be liable to be ejected whether in execution of a decree or otherwise except for non-payment of rent or breach of the conditions of the tenancy,

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Provided further that a landlord may apply to the Controller for exemption from the provisions of Clause (a) in respect of any house and if Controller is satisfied:

(i) that the house is reasonably and in good' faith required by the landlord for the occupation of himself or any member of his family joint in mess with him, or for the occupation of any person or persons for whose benefit the house is held by him or,--

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Subsequently, however, the Orissa House Rent Control Act (Orissa Act XI) of 1951 came into force which practically engrafted the very same provisions as embodied in Orissa Act V of ;1947 with some slight modifications which are not material for the purpose of this case. The Orissa Act XI of 1951 expired on 3-12-1954 and after a gap of about four years, the present Act (Orissa Act XXXI of 1958) came into force on 1-1-1959 and the provisions of the Act apply to the preset case. In the Act, however, some drastic changes have been made, particularly with respect to the procedure for eviction of a tenant. In the Acts of

1947 and 1951, the landlord had to file a regular suit in the Civil Court for eviction of a tenant after obtaining necessary exemption order where necessary from the Controller. As would appear from the aforesaid provisions of Sections 5 and 13 of the Act of 1947, the landlord is debarred from filing a suit for eviction unless he is armed with an exemption order from the Controller. Of course no such exemption order was necessary in the case of an eviction sought on the ground of non-payment of rent and where a tenant is a regular defaulter or has violated some of the conditions of the tenancy etc. In the Act of 1958, however, the landlord has not to approach the Civil Court for eviction of a tenant and the said relief can be granted only by the Controller in accordance with the provisions of Section 7 of the Act.

5. At this stage it is necessary to examine some of the relevant provisions of the Act. They run as follows:

'6 Continuance of Tenancy.

Notwithstanding anything to the contrary contained in the agreement or law no tenant shall be liable to be ejected except as provided in Section 7.

7. Conditions under which a tenant can be ejected; (1) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied:

(i) that the tenant has not paid or tendered the rent due from him in respect of the house within thirty days after the expiry of the time fixed in the agreement of the tenancy with the landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable or

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(iv) that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim is not bona fide; the Controller shall make an order directing the tenant to put the landlord in possession of the house and if the Controller is not satisfied, he shall make an order rejecting the

application;

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(2) The landlord may, subject to the provisions of this Act, apply to the Controller for an Order directing the tenant to put him in possession of the house, if he requires the house in good faith for the occupation and use of himself, any member of his family or of any person or persons for whose benefit, the house is held by him.

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13. Court to deliver possession^-- The order of the Controller made under Sub-section (1) of Section 7 directing the tenant to put the landlord in possession of the house, shall be deemed to be a decree and executable as such in the Court of the Munsif within whose jurisdiction the house is situate.

According to these provisions a tenant can now be ejected only in the manner provided in Sec, 7 of the Act notwithstanding any agreement or law to the contrary; in other words, if there is any other mode or procedure laid down for the eviction of a tenant, the same shall remain abrogated for the time being and only the procedure that has been laid down in Section 7 of the Act has to be followed. Though there is no express provision as to the nature of the order that the Controller will pass in a case governed by Sub-section (2) of Section 7, yet a reasonable construction may be drawn from the context and title of those sections that the order passed by the Controller under Section 7(2) will be covered under Section 7(1) of the Act.

Section 13 of the Act provides that the order passed by the Controller under Section 7(1) shall be deemed to be a decree and will be executable as such in the court of the Munsif within whose Jurisdiction the house is situate. In view of this provision the order of eviction passed by the Controller will therefore, itself be a decree and the landlord has not to file a regular suit in the Civil Court for the same relief that is, for the eviction of the tenant.

Thus to that extent, the jurisdiction of the Civil Court is ousted.

6. Mr. JR. Das, the learned counsel for the petitioner, contended that even under the new provisions of the Act the landlord cannot evict a tenant unless he terminates the tenancy by a notice under Section 106 of the T. P Act. Section 106 of the T. P. Act, provides as follows:

'In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable on the part of either lessor or lessee, by fifteen days notice expiring with the end of a month of the tenancy.'

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Section 111(h) of the T. P. Act provides that a lease of immoveable property will be determined on the expiration of a notice to determine the lease or to quit or of the intention to quit the property leased duly given by one party to other. It is on the basis of these two provisions it was contended for the petitioner that unless and until a notice is given under Section 106 of the T. P. Act, the lease shall not be determined and unless and until it is determined, no proceeding for eviction can be maintained. It, is however to be seen that the provisions of Section 106 are themselves subject to any contract or local law or usage to the contrary, So the parties may by contract provide for the determination of the lease without any previous notice or vary the period provided in the Section. Similarly the general law as given in the T. P. Act may also be abrogated by a local law like the House Rent Control Act. Thus reading Sections 6 and 7 of the Act and Section 106 of the T. P. Act together, it may be reasonably construed that no notice contemplated under Section 106 of the T. P. Act was necessary before filing an application for eviction under Section 7 of the Act. It may be noted in this connection that the procedure laid down for eviction in the Act is more or less similar to that under the Madras buildings (Lease and Rent Control) Act, XXV of 1949. In the Madras Act provision has been made for eviction of tenant by the Controller under Section 7 and under Section 9 of the said Act the order passed by the Controller under

Section 7 shall be executed in the Civil Court as if it were a decree passed by the Civil Court itself.

7. The question of applicability of the provisions of the Transfer of property Act in a proceeding under the Madras Act came for consideration in a number of decisions of the Madras High Court. In the case of Parthasarathy v. Krishnamoorthy, AIR 1949 Mad 387, Subba Rao, J. held that the Rent Controller had no jurisdiction to order eviction under Section 7 where there had been no previous determination of a tenancy in accordance with the provisions of the T.P. Act. But this single Judge decision was not accepted as correct and was reversed in a Division Bench decision of that Court reported in AIR 1949 Mad 780, Krishnamurthy v. Parthasarathi. Their Lordships held that the provisions of Section 111(h) of the T. P. Act had no application to a proceeding under Section 7 of the Madras Act and prior determination of tenancy by a notice to quit was not necessary.

In another case reported in AIR 1949 Mad 139, Rangaswami Naidu v. Bangaru Chetty and Sons, Rajamannar Offi. C. J. while dealing with a case under the Madras Act held that it was not permissible to import conceptions, which belonged to the ordinary law of landlord and tenant obtaining either in England or under the provisions of the T. P. Act. In another decision of the same High Court reported in AIR 1950 Mad 746, Kuppuswami v. Mahadeva their Lordships relying upon a case reported in AIR 1949 FC 124, Kai Khushroo v. Rai Jerbai, held that Section 116, T. P. Act had no application to matters arising under the Rent Control Act. In this connection, a passage from the case reported in AIR 1949 FC 124 may be quoted since it has some bearing so far as the present case in concerned. There, B.K. Mukherjea, J., held:

'It may be pointed out that in cases of tenancies relating to dwelling houses to which Rent Restriction Acts apply, the tenant may enjoy a statutory immunity from eviction even after the lease has expired. The landlord cannot eject him except on specified grounds mentioned in the Acts themselves.'

In dealing with a case under the Rent Restriction Act of Bombay, their Lordships held that acceptance of rent by the landlord after eviction proceedings have been started would not create a new tenancy under the provisions of Section 116 of the

T. P. Act. This decision, therefore, settled beyond doubt that no notice under Section 106, T. P. Act is necessary to determine the tenancy before the eviction proceedings are started.

8. Mr. R. Das, however relied upon two decisions reported in AIR 1960 All 211 and AIR 1953 Sau 119. The Allahabad case, Janki Prasad v. Harish Chandra, AIR 1960 All 211, is one under the U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947). In the U. P. Act, however, there is no provision similar to Section 7 of the Act where the Controller has to pass an order for eviction which will be treated as a decree and will be sent for execution to the Civil Court. In the U. P. Act, like the Orissa Act of 1947, permission has to be obtained from the District Magistrate for filing a suit for eviction in Civil Court under certain circumstances as provided under Section 3 of the U. P. Act. The Allahabad case is easily distinguishable on facts and moreover there are no similar appropriate provisions in the U. P. Act comparable to the Orissa Act. The Allahabad case also does not support the contention of the petitioner as their Lordships held :

'A notice under Section 106 will not be dependent on the existence of permission under Section 3 of Act 3 of 1947. It can be given before the Permission simultaneously on the same date when the permission is sought, and accorded, or after the permission has been granted.'

So this decision also does not support the contention raised by the learned counsel for the petitioner that the termination of the tenancy under Section 106, T. P. Act is a condition precedent to the institution of the eviction proceeding under Section 7 of the Act.

The next decision reported in AIR 1953 Sau 119, Keshavlal v. Bai Ajawali is a case dealing with the Bombay (Rents, Hotel and Lodging House Rates Control) Act LVII of 1947. Under Section 12(2) of the Bombay Act a notice in the manner provided under Section 106, T. P. Act is a condition precedent prior to the institution of a suit for recovery of possession by a landlord against a (tenant, of course on the ground of non-payment of standard rent. The facts of this case are somewhat different. The lease, in question, was in Bhavanagar State and was anterior to the application of the T. P. Act in that State. Their Lordships held that to

such a lease the provisions of T. P. Act will not apply and as such it is not necessary for the landlord to determine the lease nor to give any notice to determine it and the suit itself should be taken as sufficient to prove the landlord's intention to determine the lease. Their Lordships decreed the plaintiff's suit for possession on the ground of non-payment of rent. In that case the main question for consideration was whether the landlord while giving a notice under Section 12(2) of the Bombay Act can reduce the notice period to 15 days, though one month is provided under the said section. Their Lordships held that the landlord may call upon the tenant to pay rent on any day and since the suit itself was filed after one month it was a sufficient compliance of Section 12(2). The observation regarding the applicability of the provisions of the T. P. Act can be taken to be casual and has no direct bearing for the decision of that case.

9. It may however, be noted that the definition of the word 'tenant' in the Orissa Act is sufficient to repel the contention of the learned counsel for the petitioner. In fact the word 'tenant' under the Act includes also a person whose tenancy might have been terminated by a notice under the T. P. Act. It is clear, therefore, that no notice under Section 106, T. P. Act is necessary or can be taken as a condition precedent before the institution of an eviction proceeding under Section 7 of the Act. The orders passed by the Controller is correct and there is no reason to Set aside the same.

10. In the result, therefore, the petition is dismissed, but in the circumstances of the case, there will be no order as to costs.

Narasimham, C.J.

11. I agree.

The main contention of Mr. R. Das for the petitioner is that notwithstanding the wide definition of the expression 'tenant' in Section 2 (5) of the Orissa House Rent Control Act, 1958, that expression should be given a narrow interpretation in Section 7 of that Act and that the right of the landlord to seek the eviction of his tenant by applying to the House Rent Controller under Section 7 would accrue only after the tenancy has been determined under the provisions of the Transfer of

property Act. According to him the provisions of the House Rent Control Act dealing with eviction of tenants should be construed as supplementary to the provisions of the Transfer of Property Act dealing with the circumstances under which a tenancy may be terminated.

12. This argument not only runs counter to the well known rules of statutory construction, but is also against the main objective of the Legislature in enacting the Orissa House Rent Control Act, 1958.

13. In Section 2(5) of that Act the expression 'tenant' has been defined so as to include not only a tenant as ordinarily understood, but also a tenant whose tenancy has been determined under the provisions of any other law, and also a tenant against whom a decree for eviction had been passed by a Civil Court but who has not been actually evicted. Section 6 of the Act says that

'notwithstanding anything to the contrary contained in any agreement or law, no tenant shall be ejected except as provided in Section 7.'

Section 7 of the Act describes, the procedure for the eviction of a tenant by application to the Rent Controller and also lays down the grounds on which a tenant could be evicted. Construing Sections 6 and 7 together, and applying the interpretations of the word 'tenant' as given in the definition clause (Section 2(5)) the reasonable inference is that the only grounds on which a tenant (as defined in the Act) can be evicted are those specified in Section 7. This must apply to all classes of tenants, whether their tenancy was determined under the provisions of the Transfer of Property Act or not. There is nothing in the subject or context, either of Section 6 or or Section 7 of the Act, to limit the word 'tenant' occurring in them to those tenants on whom a valid notice to quit had been served.

14. As pointed out by my learned brother, the Legislature made a radical departure while enacting the Orissa House Rent Control Act 1958. In the previous Orissa House Rent Control Act of 1950, the power of the Civil Court to evict a tenant on the termination of his tenancy under the provisions of the Transfer of Property Act was not taken away; and the only restriction on this power was the duty cast on the landlord to obtain the permission of the House Rent Controller before seeking

eviction. In the Orissa House Rent Control Act, 1958, however, the Civil Court's jurisdiction to entertain suits for eviction of a tenant was completely taken away and this power was conferred on the House Rent Controller by Section 7. The only right of the Civil Court was to execute the order of eviction passed by the House Rent Controller as if it were a decree (see Section 13). There is no provision in Section 7 for the House Rent Controller first to examine whether the tenancy had been validly determined in accordance with the provisions of the Transfer of property Act.

The vexed question as to whether the notice to quit was validly issued or not cannot ordinarily be decided by the House Rent Controller and can be properly adjudicated only by the Civil Court. If Mr. Das's contention is to be accepted, then the landlord must first apply to the Civil Court and obtain a declaration that the tenancy has been validly terminated under the provisions of the Transfer of Property Act and must then, apply to the House Rent Controller under Section 7 of the Orissa House Rent Control Act, for his eviction, and then again apply to the Civil Court, under Section 13 of the Act, for executing the order of the Controller. Such a construction of Section 7 is not warranted by the language used therein, and will moreover defeat the provisions of the Act which was passed primarily with a view to prevent unreasonable eviction of tenants and to provide a speedier method for their eviction on specified grounds.

15. Hence it must be held that the only grounds on which a tenant can be evicted are those specified in Section 7 of the Orissa House Rent Control Act 1958, and it is immaterial whether the tenancy was determined under the provisions of the Transfer of Property Act or not.