



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3670 of 2022

- Sushil Dhanorkar S/o Shri Vitthalrao Dhanorkar, Aged About 68 Years R/o Near Hanuman Mandir, Basantpur, Rajnandgaon District Rajnandgaon Chhattisgarh. Throuh Power Of Attorney Holder -Sonal Dhanorkar S/o Shri Sushil Dhanorkar, Aged About 44 Years R/o Near Hanuman Mandir, Basantpur, Rajnadgaon District Rajnandgaon, Chhattisgarh.

---- **Petitioner**

Versus

1. Smt. Sushila Soni W/o Jagdish Prasad Soni, R/o Nagri, Post Nagri, P.S. Sihava, District Dhamtari Chhattisgarh.
2. Smt. Asha Valia D/o Chaituram Soni, W/o Vipin Valia, R/o Amrapali Colony, Raipur, Tahsil And District Raipur District Raipur Chhattisgarh.
3. Collector, Rajnandgaon, District Rajnandgaon Chhattisgarh.

---- **Respondent**

For Petitioner	:	Shri Mayak Chandrakar, Advocate
For Respondents No. 1 & 2	:	Shri Shashi Bhusan Tiwari, Advocate
For Respondent No. 3/ State	:	Shri D.C. Verma, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Hon'ble Shri Justice N.K. Chandravanshi

Order on Board



Per Goutam Bhaduri, J.

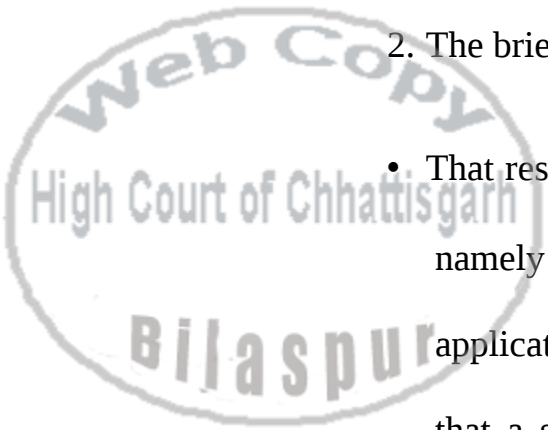
16/12/2022

Heard.

1. The present petition is filed against the order dated 21.04.2022 passed by the Rent Control Tribunal, whereby the order passed by the Rent Control Authority dated 23.12.2020 for eviction and payment of arrears of rent was affirmed.

2. The brief facts of the case are:-

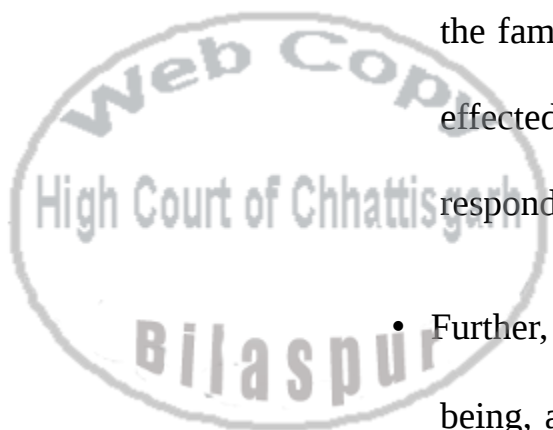
- That respondents No. 1 & 2 (hereinafter referred as landlords) namely Smt. Sushila Soni and Smt. Asha Valia filed an application before the Rent Control Authority, Rajnandgaon that a super structure/ shop is comprised over land bearing Sheet No. 48-A, plot No. 85/3 (part of plot No. 85/1) owned by them (landlords) has been let out to petitioner (herein after referred as tenant) at monthly rent of Rs. 800/ p.m.
- The landlords further contended that before the petition was filed before the Rent Control Authority, a civil suit bearing No. 23-A/ 2007 was filed before the Civil Judge Class-II in the year 2007. Subsequently, during the pendency of that suit





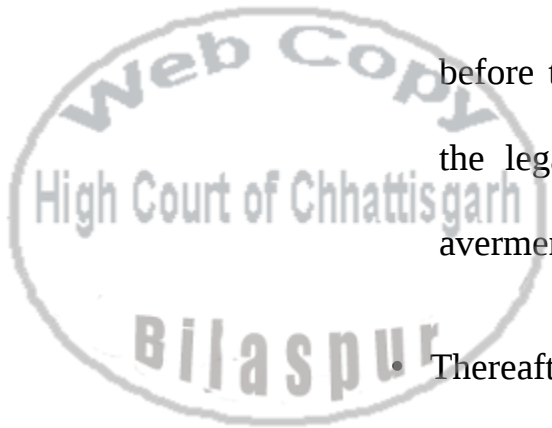
the new Act, C.G. Rent Control Act, 2011 (hereinafter referred to as "Act of 2011") came into being and the old Act namely C.G. Accommodation Control Act, 1961 was scrapped therefore the suit filed before Civil Court for ejection was withdrawn on 27.03.2017.

- The landlords further contended that in an another suit bearing No. 12-A of 2005 filed before the Third Civil Judge, Class II, Rajnandaon in between *Ramashray Vs. Rammanohar* who are the family members of the landlords certain compromise was effected and on the basis of compromise, it was held that the respondents No. 1 & 2 are the landlords/ owners.
- Further, it was stated that after the Act of 2011 came into being, a notice was served by the respondents on 12.04.2017 for vacating the premises within a period of 6 months which was received by the tenant on 13.04.2017. However, after receipt of such notice the tenant failed to vacate the premises within a period of 6 months.
- Thereafter, application was filed seeking eviction as the 6 months' period lapsed on 12.10.2017 and landlords further stated that arrears of rent was also not paid.





- Therefore, on joint grounds the petition was filed before the Rent Control Authority for eviction.
- Before the Rent Control Authority, the tenant filed his reply and admitted the fact that he is the tenant at monthly rent of Rs. 800/-. Further, in respect of the ownership, it was stated that it was required to be established by the landlords.
- The tenant further contended that the earlier Civil Suit having been withdrawn without any liberty, the subsequent petition before the Rent Control Authority was not maintainable and the legality of the notice was also put into question and averments were leveled.
- Thereafter, both the parties adduced their evidence and the learned Rent Control Authority passed the order of eviction with arrears of rent to be paid.
- Being aggrieved by such order, an appeal was preferred before the Rent Control Tribunal.
- The Rent Control Tribunal too dismissed the appeal.
- Hence this petition.





3. Learned counsel for the petitioner/ tenant raised solitary ground before this Court leaving other grounds, would submit that the documents which have been placed on record and before this Court would show that land belongs to government, being a *nazul* land. Therefore, as per Section 3 of the Act of 2011, the applicability of Act of 2011 would be exempted. He would further submit that in a similarly situated case, learned Supreme Court in *Parwati Bai Vs. Radhika* reported in *AIR 2003 SCC 3995* had occasion to discuss the similar situation with *pari materia* words like of of C.G. Accommodation Control Act, 1961 exists that when the ownership belong to the government, the private ejection suit would not be maintainable. Therefore, both the Courts below have exercised the jurisdiction not vested in it by law and committed mistake.

4. Per contra, learned counsel for the respondent/ landlord would submit that the ownership is vested to the respondent by virtue of settlement and as per the WILL they have become the owners. He further submits that the tenant has paid the rent to the respondents No. 1 & 2, therefore, he admits the factum of tenancy. He further submits that the land on which the property situates is a *nazul* land where in super structure is raised by the





landlords. Further, the tenancy having been admitted, therefore, both the authorities have correctly exercised the jurisdiction vested on it and therefore the order do not call for any interference.

5. We have heard learned counsel for the parties and perused the pleadings, evidence and documents placed on record.

6. Since the petitioner has raised single question about applicability of Act of 2011 on the basis of Section 3 of the Act of 2011 it would be apt to reproduce Section 3 of the Act of 2011.

The said section is reproduced herein under:-

"3. Exemptions. - Nothing in this Act shall apply to-

(1) Any accommodation belonging to or owned by any department of Government and/or Board and/or Corporation promoted by and/or owned by the Government.

(2) Any other building and/or category of building(s) specifically exempted in public interest by the Government through notification."

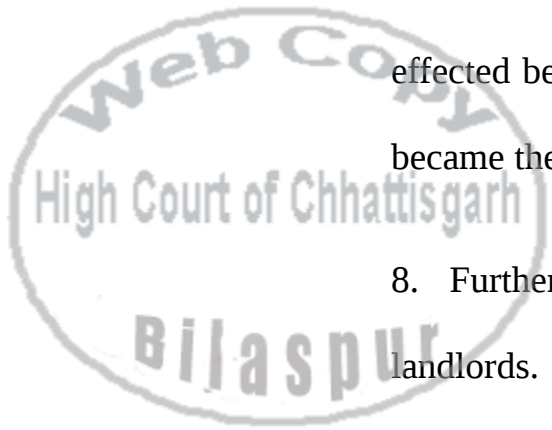
7. Now reverting back to the pleadings of the parties the respondents/ landlords contended that they are the owners of the shop/ accommodation situated over Sheet No. 48-A, plot No. 85/3 (Part of plot No. 85/1) and the description of the super structure is also shown in the map appended with the eviction





petition. The landlord avers that the petitioner is the tenant of the premises. In reply to the averments made, further the tenant admitted the tenancy @ Rs. 800/- per month and further stated that ownership is required to be established by the landlord. Before the Rent Control Authority, the order of the Third Civil Judge, Class-II Rajnandgaon dated 13.01.2015 was produced and is exhibited as P-4 and the decree is exhibited as P-5 with the appended map P-6. Perusal of such map shows that the super structure exists over the *nazul* land wherein the partition was effected between the parties and the landlords/ respondents have become the owner.

8. Further, Ex. P-7 to 15 are the rent receipts filed by the landlords. The affidavit of the petitioner namely Sushil Dhanorkar is in records, wherein, he admits that he is a tenant of the premises @ Rs. 800/-. Further, in cross examination, son of the petitioner namely Sonal Dhanorkar, he admits that in the accommodation/ premises they are in possession as tenant and are paying rent @ Rs. 800/- p.m. The cross examination of Sonal Dhanorkar shows that he admits the signature of his father in the rent receipts from P-7 to P-15 and also admits that they were depositing the rent @ 800/- p.m. in the earlier proceedings before





the Court. He admits the fact in the cross examination about the existence & area wherein it is situated is near *Manav Mandir* Road. Therefore, considering the pleadings and the evidence of the parties, it shows that tenancy was not with respect to an open place and instead it is a shop.

9. Section 2 (1) of the Act of 2011 defines word accommodation which purports that "Accommodation" means any building or part of a building, whether residential or non-residential, leased out by the landlord to the tenant and includes open space etc. For sake of convenience, Section 2 (1) of the Act of 2011 is

reproduced herein below:-

"2. Definition:-

(1) "Accommodation" means any building or part of a building, whether residential or non-residential, leased out by the landlord to the tenant and includes open space, staircase, grounds, garden, garage and all facilities and amenities forming part of the agreement between them of any land which is not being used for agricultural purposes;"

10. Likewise Section 2 (5) defines "landlord" which purports that a person who, for the time being, is receiving or is entitled to receive, the rent of any accommodation, whether on





his own account. For sake of brevity Section 2 (5) of the Act of 2011 is reproduced herein below:-

" 2. Definitions:-

(1) XXX

(2) XXX

(3) XXX

(4) XXX

(5) "Landlord" means a person who for the time being is receiving or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the accommodations were let to a tenant;

11. Reading the definitions of accommodation and landlord, along with the admission of parties it goes to establish that the property is a super structure which is also admitted by the tenant. Therefore, the super structure alone would be within the definition of accommodation under Section 2 (1) of the Act of 2011. Further the respondent was admitted to be landlord on the basis of the rent receipts filed and admission by the tenant.

12. In that view of the matter, the reliance placed by the





petitioner in the case *Parwati Bai Vs. Radhika* supra would be of no consequence, as in the facts situation of that case the ownership of the super structure belonged to the government. In the instant case, the owner of the accommodation is with the respondents i.e. the landlord which would be within the definition of accommodation which was let out to the tenant.

13. In view of this, the petition sans merit is liable to be and is hereby dismissed.

Sd/-

(Goutam Bhaduri)

Judge

Sd/-

(N.K. Chandravanshi)

Judge

Jyoti

