AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 650 of 2020

- Shrawan Kumar Saraf S/o Late Shri Baijnath Saraf, Proprietor Of Maa Sheetal Jewelers, Udal Chowk, Sadar Bazar , Bilaspur , Tahsil And District Bilaspur , Chhattisgarh , Other Address Infront Of Maya Dubey Nursing Home, Gondpara , Bilaspur, Tahsil And District Bilaspur , Chhattisgarh (Since Died) Through Its Legal Representative And Son Jitendra Soni, S/o Shrawan Kumar Saraf , Aged 50 Years , R/o Gondpara, Subash Nagar , Bilaspur, Tahsil And District Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. Ravikant Mishra S/o Late Shri Krishnabihari Mishra Aged About 62 Years

2. Shashikant Mishra S/o Late Shri Krishnabihari Mishra Aged About 53 Years

   Both are R/o Near VIP Colony, Opposite State Bank , Sarkanda, Bilaspur , Tahsil And District Bilaspur Chhattisgarh

3. Rashmikant Mishra D/o Late Shri Krishnabihari Mishra Aged About 59 Years R/o T.I. Kotwali Colony, Janjgir , Tahsil Janjgir , District Janjgir Champa Chhattisgarh.

4. Laxmi Devi Mishra W/o Late Shri Shrikant Mishra D/o late Shri Krishnabihari Mishra, Aged About 62 Years

5. Dhiraj Mishra S/o Late Shri Krishnakant Mishra Aged About 37 Years Proprietor Satashri Jewelers,

   Respondents 4 & 5 R/o Sadar Bazar , Bilaspur, Tahsil And District Bilaspur Chhattisgarh.

---- Respondent

For Petitioner	Mr. Rajeev Shrivastava, Senior Advocate with Mr. Malay Shrivastava, Advocate
For Respondents	Mr. Anup Majumdar, Advocate

DB.: **Hon'ble Mr. Justice Goutam Bhaduri &**

Hon'ble Mr. Justice Deepak Kumar Tiwari

Judgment on Board by Goutam Bhaduri, J.

18/7/2022

1. Heard.

2. The instant petition is directed against the order of the Rent Control Tribunal, Raipur dated 19.1.2017 passed in Appeal No.33-A/2016, whereby, the order of eviction has been passed against the petitioner from the subject suit premises, which is a shop situated at Sadar Bazar, Bilaspur. The petition is filed by the tenant.

3. The background of the facts is that a shop was taken on rent 42 years back from one Krishna Bihari Mishra and thereafter, the shop was being run under the name and style of 'M/s. Maa Sheetla Jewellers'. After the death of Krishna Bihari Mishra, respondent Ravikant Mishra and others stepped into his shoes and were receiving rent. Eventually, a notice dated 15.12.2014

was served to the tenant under the Chhattisgarh Rent Control Act, 2011 (in short "the Act, 2011") and despite service of notice, since the tenant failed to vacate the premises within a period of 6 months, an application was filed before the Rent Controlling Authority for ejectment. Before the Rent Controlling Authority, the petitioner herein came with a reply that he has not defaulted any payment of rent and the intention of the landlord is to get the premises vacated so as to further lease out the premises on higher rent. The Rent Controlling Authority dismissed the application filed by the landlord, which was primarily under clause 11 (h) appended with Schedule 2 of the Act, 2011. The Schedule 2 of the Act, which lays down the Landlord's Rights available under the Act, is framed under Section 12(2) of the Act, 2011. Being aggrieved by the said order, the respondents filed an appeal before the Rent Control Tribunal and the same was allowed and the ejectment order was passed. Hence, this petition.

4. (a) Mr. Rajeev Shrivastava, learned Senior Advocate with Mr. Malay Shrivastava would submit that the facts of the instant case would reveal that the property in question was Nazul land, which was given on grant by the State Government long back. He would submit that the documents filed along with the petition, which are the proceedings of the revenue case, would show that the area was granted to the respondents through their predecessor and they have executed the sale-deed in part and parcel of the land over and above of their holdee. He

further submits that under these circumstances, when this fact came to the fore, an application was filed before the Revenue Authority to demarcate the land. The Revenue Authority held that the issue of title cannot be decided by the Revenue Court and as such, directed the petitioners therein to file a civil suit. Thereafter, a Civil Suit was filed wherein this issue is completely within its seisin.

4(b) He would further submit that an application was also filed before the Revenue Authority to demarcate the land but despite issuance of notice, the respondents have not made any participation. He further submits that under the Act, 2011, Section 4 mandates the agreement to be in existence and in absence thereof, the Act, 2011 cannot be pressed into motion. He submits that since the requirement under Section 4 of the Act, 2011 was not complied with, the proceedings before the Rent Controlling Authority was a nullity. He places reliance on the judgments rendered by Hon'ble the Supreme Court in the matters of **Shamshad Ahmad Versus Tilak Raj Bajaj (deceased) through L.Rs., (2008) 9 SCC 1** and **Hasmat Rai and another Versus Raghunath Prasad**, **(1981) 3 SCC 103**, to advance the arguments that when it came to knowledge that frequent sale-deed was executed and the subject suit property has undergone a drastic change, the Court was required to take note of it and in absence thereof, it will have a disastrous effect.

4(c) He further submits that vide order dated 18.11.2019, the application filed by the petitioner for spot inspection and measurement of the property has been rejected by the Nazul Officer, Bilaspur, which was subject of challenge before this Court. This Court vide order dated 7.1.2020 passed in WPC No.21/2020, remitted back the matter and directed the Nazul Officer to re-consider the application and pass a fresh order on merits. Learned counsel submits that as a result, if it is found that the land, which was initially held under the grant, has been parted with more and above the grant, it will have an effect on the order of eviction and the grant may be evaluated before the Tribunal itself. Therefore, the impugned order of the Rent Control Tribunal, which has failed to take into notice the mandatory provisions of Section 4, deserves to be set-aside. He further submits that clause 11 (h) appended with Schedule 2 of the Act, 2011 provides that it is mandatory that after the eviction, the subject suit is not to be rented out on a higher rent for a period of 12 months and that part is completely absent either in the pleadings or in the evidence and consequently, the order passed by the Rent Controlling Authority at its very inception needs to be restored.

5. Per contra, Mr. Anup Majumdar, learned counsel for the respondents, would submit that the petitioner has tried to deny the title of the respondents. He would submit that in a litigation between the landlord and the tenant, the issue cannot be stretched too far, which would be against Section 116

of the Indian Evidence Act 1872 (in short "the Act, 1872"). He would further submit that the rent agreement between the parties was much beyond the period of time and the Chhattisgarh Rent Control Adaptaion Rules came into being in the year 2016. Therefore, as held by the Division Bench of this Court, in the matter of **Smt. Nirmala Ratre** Vs. **Amrit Lal Wadhwani (WPC No.1284 of 2018 decided on 8.10.2018)**, that in absence of any agreement, which is prescribed under the Rules, the respondents cannot be non suited and the judgment of the Rent Control Tribunal is well-merited and do not call for any interference.

6. We have heard learned counsel for the parties at length, perused the documents and the evidence on record.

7. The Rent Controlling Authority is the first authority the landlord is required to approach under the Act, 2011 for eviction of tenant. The application filed as Annexure P/10 would show that the pleading was made that a notice was given on 15.12.2014 by the registered post to the tenant, which was received on 16.12.2014, and the landlord sought ejectment on the ground mentioned in clause 11 (h) appended with Schedule 2 of the Act, 2011. For the sake of brevity, Section 12 (2) and subsequent clause 11 (h) of Schedule 2 of the Act, 2011 is reproduced hereunder :

12. Rights and Obligations of Landlords and Tenants. -

(1) xxx xxx xxx

(2) Every landlord shall have rights according to Schedule 2. The Tribunal and Rent Controller shall act at all times to secure to the landlord these rights:

Provided that--

(a) In case of any clash of interests of the landlord and the tenant and/or any point of doubt in respect of matters relating to rent, the benefit thereof shall be granted to the tenant.
(b) In case of any clash of interests of the landlord and the tenant, and/or any point of doubt in respect of matters relating to returning possession of the accommodation to the tenant, benefit thereof shall be granted to the landlord.

Clause 11 (h) appended with Schedule 2 of the Act, 2011 reads as under :-

11. Right to seek from the Rent Controller eviction of the tenant on the following grounds :-
(a) xxx xxx xxx
(b) xxx xxx xxx
(c) xxx xxx xxx
(d) xxx xxx xxx
(e) xxx xxx xxx
(f) xxx xxx xxx
(g) xxx xxx xxx
(h) On 6 months notice to the tenant in writing, without any obligation to assign any reason, but on the condition that the accommodation will not be leased out at a higher rent for atleast 12 months thereafter:

Provided, however, that in case of the following special categories of landlords and/or their spouse desiring the accommodation back for own use, the period of notice shall be one month: current or retired government servants, widows, personnel of the armed forces, persons coming to physical or mental handicap, and senior citizens (above the age of 65 years)."

8. In response to the petition, it was stated that apart from respondent Chandrakanta, as she then was, there are other share holders too in respect of the property and they are the

owners and the respondents herein by concealing this fact have preferred the case before the RCA. It also reflects that the subject premises was taken on rent about 42 years back from one Krishna Bihari Mishra. Therefore, this contention when examined along with the provisions of Section 116 of the Act, 1872, it creates a bar for a tenant to deny the title of the landlord particularly when payment of rent was not disputed. It purports that no tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. For the sake of brevity, Section 116 of the Act, 1872 is reproduced hereunder:

> "116. **Estoppel of tenant; and of licensee of person in possession** –No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given."

9. On reading of the pleadings, it appears prima facie the fact of ownership in respect of the subject tenanted property was admitted by the tenant. We further went through the statement

of Shrawan Kumar Saraf (since deceased), the tenant. A statement was made by Shrawan Kumar Saraf that he has paid the rent to the landlord till December 2014 but subsequently, it was refused from January 2015 and thereafter, the rent from January to March 2015 was paid to the respondents by way of money order. The money order receipts have been exhibited by the tenant as Ex.D1 & D2. Therefore, we have no doubt about the veracity of such statement made. Consequently, on admission of the pleading and the statement made before the Rent Controlling Authority by the tenant, he would be estopped under Section 116 of the Act, 1872 to subsequently deny the title of the respondents.

10. We are aware of the fact that this tenancy suit cannot be turned into a title suit and the parties having well aware of the fact that the issue was confined to be adjudicated before the Rent Controlling Authority, the parties went for trial. The documents and the subsequent proceedings which were carried out before the Revenue Authority would show that the evidence was adduced by the tenant to disown the title of the landlord, which falls against the ambit of the obligation imposed on a tenant under Schedule 4 of the Act, 2011, which casts a duty on the tenant to acknowledge at all times the title of the landlord over the accommodation, and to respect and honour without demur his rights as set forth in Schedule 2.

11. Consequently, we are convinced of the fact that the evidence

which was subsequently generated to deny the title of the landlord was an afterthought. The further submission of the petitioner is that the tenancy agreement did not comply with the requirement of sub-section (3) of Section 4 of the Act, 2011. For the sake of brevity, Section 4 of the Act is reproduced in its entirety :

> **"Section 4 - Tenancy Agreement** (1) Notwithstanding anything contained in Section 107 of the Transfer of Property Act, 1882 (Central Act 4 of 1882), no person shall, after the commencement of this Act, let or take on rent any accommodation except by an agreement in writing.
>
> (2) Where, in relation to a tenancy created before the commencement of this Act,--
>
> (a) an agreement in writing was already entered into shall be filed before the Rent Controller.
>
> (b) no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing with regard to that tenancy and file the same before the Rent Controller;
>
> Provided that where the landlord and the tenant fail to present jointly a copy of tenancy agreement under clause (a) or fail to reach an agreement under clause (b) such landlord and the tenant shall separately file the particulars about such tenancy.
>
> (3) Every agreement referred to in sub-section (1) or required to be executed under sub-section (2) shall be in such format and in such manner and within such period as may be prescribed."

12. This fact cannot be ignored at this stage by this Court that the

tenancy according to the tenant himself commenced 42 years back. Naturally it would be before the Act, 2011 came into being. Sub-section (3) of Section 4 prescribes that every agreement referred to in sub-section (1) or required to be executed under sub-section (2) shall be in such format and in such manner and within such period as may be prescribed. In **Smt. Nirmala Ratre (supra)**, this Court has held that the Chhattisgarh Rent Control Adaptation Rules, 2016 came into effect only on 1.3.2016 and the petition for eviction was filed in the month of June 2015. We are also of the view that the rigor of sub-section (3) of Section 4 of the Act, 2011 may not be mechanically applied in the facts of the present case.

13. Sub-section (2) of Section 4 of the Act, 2011 purports that an agreement into writing if it is existing before the commencement of the Act, 2011, shall be filed. In this case, as the tenancy commenced much prior to 2011, therefore, the question arose as to the effect of non-filing of such application under the Act, 2011 as to whether would disallow any eviction proceeding under the Act of 2011. The Act is completely silent on this issue, qua the effect of eviction proceedings initiated by the landlord. It is nobody's case that there was an agreement in writing but it was said to be oral, then, what would be the effect if after commencement of Act, 2011, no agreement is executed and compliance is not made. Whether the statute in this regard would be directory or mandatory in nature, has to be looked into. The Hon'ble Supreme Court in the matter of **Balwant**

Singh and others Vs. Anand Kumar Sharma and others, (2003) 2 SCC 433, has held therein that the rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions.

14. The Act, 2011 came into operation in 2012. By new Act, parsimonious chance of flashing smiles of landlord is created and is balanced with the rights of the tenants.

15. The Supreme Court in the case of State of **Uttar Pradesh and others Vs. Babu Ram Upadhyay {AIR 1961 SC 751}** has held that it is well established that an enactment in form mandatory might in substance be directory. It was further held that it is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed. The reference is made to Maxwell on "The Interpretation of Statutes", 10th edition, at page 381 and the Court ruled the following:-

> "On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them."

> This passage was accepted by the Judicial Committee of the Privy Council in the case of Montreal Street Rly. Co. v. Normandin 1917 AC 170: (AIR 1917 PC 142) and by this Court in 1958 SCR 533: ((S) AIR 1957 SC 912).

16. The Supreme Court in the case law of **Mohan Singh and others Versus International Airport Authority of India {(1997) 9 SCC 132}** has made a reference to the book of mandate on the construction of statute and has fortified the principle the question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the pharaseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way of the other. The Supreme Court in this case further laid down that Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.

17. Reading of Section 4 of the Act of 2011 speaks about the tenancy agreement. It shows that notwithstanding anything contained in Section 107 of the Transfer of Property Act, 1882 (Central Act 4 of 1882), the lease shall not be created on rent of any accommodation except by in writing and the tenancy which is continuing before the commencement of the Act and the existing agreement is required to be filed before the Rent Controller and in case of no agreement is existing, the same is

required to be executed and thereafter to be filed before the Rent Controller. Reading of Section 4 for the non-compliance thereof, no consequence is provided in the Act of 2011 qua eviction proceeding.

18. The General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. It further held that the scope and language of the statute and consideration of policy at times may, however, create exception showing that legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the Court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under Consideration. In the context of the aforesaid principle, the language of Section 4 is examined, it do not create a duty for non-compliance. Therefore, it can very well be presumed that the obligation as has been provided under Section 4 of the Act of 2011 is directory in nature as non compliance of it do not indicate any consequence qua seeking eviction.

19. Therefore, we are constrained to hold that the rigor of Section 4

of the Act, 2011 would not create a bar for the landlord to pursue a petition for ejectment before the Rent Controller.

20. Now turning back to the issue of compliance of clause 11 (h) appended with Schedule 2 of the Act, 2011, would show the landlord would be within his rights to send a notice of 6 months to the tenant in writing without any obligation to assign any reason but the accommodation will not be leased out at a higher rent for at least 12 months thereafter. The heading of Schedule 2 starts with "the Landlord's right available under the Act' therefore, the object of the Act, 2011 and considering the evidence and pleadings available on record would show that the application categorically purports that the eviction is prayed under clause 11 (h) appended with Schedule 2 of the Act, 2011.

21. In the evidence of the landlord (PW-1), in the cross examination, a suggestion given by the tenant that when they refused to accept the rent, it was sent by money order and a specific question was asked that after getting the premises vacated, whether they would let out the premises at a higher rent. In answer to it, the landlord reiterated that they do not want to sell the subject premises or want to let it out at a higher rent. The reading of the pleadings and the cross-examination of the landlord therefore would show that such reply was made on a suggestion made by the tenant and both the parties were well aware of the mandate of clause 11 (h) appended with Schedule 2 of the Act, 2011. This mandate of clause 11 (h) is further

lamented by the direction given by the Rent Control Tribunal wherein it is ordered that the tenanted premises shall not be rented out for a period of 12 months meaning thereby if the order is violated then right may accrue in favour of the tenant to re-enter over the subject premises. Therefore, when the pleading was made that the landlord wants to get the rented premises vacated as per clause 11(h) of the Act, 2011 with a statement that it would not be let out for further period of 12 months, the requirement of law is fulfilled.

22. In the result, we are not inclined to interfere with the impugned order 19.1.2017 passed by the Chhattisgarh Rent Control Tribunal, Raipur. Accordingly, the writ petition is dismissed.

23. According to the tenant, no rent was paid from January to March 2015, which is @ Rs.700/- per month. Considering the fact that much time has elapsed till date, we deem it appropriate to hold that the tenant would be liable to pay damages @ Rs.1500/- per month from the date of the termination of the tenancy i.e. 1.7.2015.

24. No order as to other costs.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Deepak Kumar Tiwari)
Judge

Shyna

WPC No. 650 of 2020

HEAD-NOTE

Non-compliance of Section 4 of the CG Rent Control Act, 2011 shall not debar the landlord to pursue petition for eviction.

छ.ग. भाड़ा नियंत्रण अधिनियम, 2011 की धारा 4 के अननुपालन की दशा में भूस्वामी को बेदखली का वाद प्रस्तुत करने से विवर्जित नहीं किया जाएगा।