

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE –CUM-
SPECIAL JUDGE, CBI-II, BHUBANESWAR.**

PRESENT:

Dr.A.K.Mishra,

Addl. District Judge –cum-
Special Judge, CBI-II, Bhubaneswar.

R.F.A. No.10/53 of 2015/2013.

(Arising out of Judgment and decree dated
15.4.2013 passed by the Civil Judge, (Junior
Division) Bhubaneswa in C.S. No. 413 of
2002)

Sarat Kumar Patra, aged about 65 years,
Son of Kartikeswar Patra, At/P.O. Jiral,
P.S. Kamakshyanagar, Dist. Dhenkanal
At/P. residing at- House No. MIG-II(S)-25,
Phase-VI, Sailashree Vihar, P.O. Bhubaneswar-21
P.S. Chandrasekharapur, Dist. Khurda.

... Appellant.

Versus.

The Secretary, Odisha State Housing Board,
Sachivalaya Marg, Unit-III, P.S. Kharavelanagar,
Bhubaneswar-751001, Dist. Khurda.

...Respondent.

For the Appellant: Sri P.C.Rath & Associates, Advocate.

For the Respondent: Sri K.Panda & Associates, Advocates.

Date of argument : 22.6.2016.

Date of Judgment : 5.7.2016.

JUDGMENT

The unsuccessful plaintiff is the appellant to assail the judgment and decree dated 15.4.2013 in dismissing the suit in C.S. 413 of 2002 by learned Civil Judge (Jr. Dvn.) Bhubaneswar. The sole defendant is the respondent.

2. On 12.11.2002 the plaintiff presented the plaint with following prayers:-

“Therefore, it is prayed that the Hon’ble Court would be pleased to declare that the order passed by the defendant (to) cancel the house allotted in favour of the plaintiff and the subsequent order in respect of the cancelation of house and eviction of the plaintiff from his house is illegal.

And the defendant to adjust the interest of the deposited amount from 18.10.1986 to be adjusted towards escalation cost and any other relief as the Hon’ble Court may deem fit and proper.

And cost of the suit may be decreed in favour of plaintiff

And any other relief / reliefs may the Hon’ble (court) deem fit and proper”.

3. The specific case of the plaintiff, in a nutshell, is that he applied to get an allotment of house on 18.10.1986 from Orissa State Housing Board, an organisation under Orissa State Housing Board Act, 1968. That was for Patia housing scheme subjected to allotment by lottery. The plaintiff had deposited Rs.10,000/- on 21.12.1988 and Rs.16,250/- on 26.9.1988. The plaintiff could not succeed. On the request of the defendant, the plaintiff deposited Rs.8300/- on 21.8.1989 for purchase of a Minor Income Group (MIG) house under self financing scheme at Chandrasekharpur. Thereafter, on 21.3.1992 on allotment of a MIG House No.98, the possession was handed over to the plaintiff by the defendant. But on the consent of another house owner, the plaintiff's house was exchanged with MIG House No.25 allotted to Md. Fedar Rahaman. After such re-allotment, the defendant did not rectify the defects and plaintiff repaired the same at his own cost. The plaintiff had requested the defendant to adjust the interest accrued on his deposited amount towards outstanding dues but defendant did not respond. All on a sudden on 28.6.2001 the plaintiff received a

notice to show cause for cancellation of allotment for non-payment of outstanding dues. The plaintiff replied on 11.7.2001. Without considering the said reply, the defendant on 15.9.2001 issued eviction notice under Section 45 of Orissa State Housing Board Act, 1968 to which the plaintiff replied on 18.9.2001. The defendant got the eviction published in the local news paper "The Sambad" on 17.3.2002. The plaintiff apprehending forcible eviction filed this suit seeking the aforesaid reliefs.

4. The defendant filed the written statement challenging the maintainability, cause of action, limitation and jurisdiction of the court. The defendant admits that on 28.9.1988 plaintiff had deposited Rs.16, 700/- and on 23.12.1988 Rs.10, 000/- for allotment of one MIG house at Patia. On 17.8.1989 the defendant allotted an MIG house under self financing scheme at Chandrasekharapur with a provisional cost Rs.1,50,000/- and taking into account the deposit of Rs.16,750/- earlier, the plaintiff was called upon to pay Rs.18,030/-. The plaintiff voluntarily deposited Rs.10,000/- and thereafter on being asked Rs.8,300/- on 31.8.1989. On 4.11.1989 the allotment of MIG house was made in favour of the plaintiff at the provisional cost of Rs.1,90,000/-. The plaintiff accepted the terms and conditions. On 21.3.1992 the final cost of the house No.98 was intimated to be Rs.2,08,200/- and the plaintiff was requested to deposit the differential cost Rs.18,200/-. Thereafter by mutual exchange the plaintiff got re-allotment of house No. 25 on 5.9.1992 and was called upon by the defendant to pay differential cost of Rs.23,334/-. An agreement of lease was executed between the plaintiff and the defendant on 15.9.1992 which is Ext.A. The plaintiff agreed to pay the same but failed to make payment. The defendant invoked the clause -2 of the agreement and initiated proceeding u/s. 45 of the Orissa Housing

Board Act before competent authority. The plaintiff's reply to show cause being baseless, the allotment was cancelled and notice of eviction was issued.

Basing upon above material facts, the defendant has pleaded that this court lacks jurisdiction in view of appeal provision available u/s. 48 of O.S.H.B. Act, 1968 against order of the competent authority before the District Judge and more so when no notice as mandated u/s. 60 of OSHB Act was given. It is averred that as the adjustment was refused by defendant on 4.9.1999, the filing of suit three years thereafter is barred by limitation. Further the appellant authority u/s. 48 of the OSHB Act being the District Judge, the suit before Civil Judge (Jr.Dvn.) is not maintainable u/s. 41(b) of the Specific Relief Act. The prayer has been made to dismiss the suit.

6. Learned lower court has framed as many as six issues. The sole witness examined in this case is the plaintiff as P.W.1. Both parties have adduced documentary evidence. The learned lower court in answering the issue No.III, IV and V has recorded finding that in re-allotting MIG house No. 25, an agreement Ext.A was executed and the plaintiff had admitted therein that outstanding amount was Rs.23, 334/- to be payable at six installments and the said condition of repayment having been violated the competent authority had rightly issued notice and cancellation of allotment was proper. Learned lower court also found that during pendency of the suit the plaintiff had deposited an amount of Rs.23,334/- on 8.6.2006 and thereby exhibited a conduct of admitting outstanding defendant's dues.

With regard to jurisdiction in answering issue no. I, II and VI, learned lower court has recorded finding that no notice as required u/s. 60 of the OSHB Act was given by the plaintiff for filing of the

suit and appeal forum being available u/s. 48 of the OSHB Act, the court has no jurisdiction.

7. Learned counsel for appellant questioned the impugned judgment by setting forth following two folds argument.

Firstly, the prayer as made out in the suit having not m questioned the validity of the order passed u/s. 45 of the OSHB Act, the question of preferring appeal u/s. 48 of the said Act does not arise. The plaintiff having issued notice to the defendant u/s. 80 CPC on 6.4.2002, the requirement of Section 60 of OSHB Act is substantially complied with and for that neither the Civil Court lacks jurisdiction nor was the suit defective for non-compliance of provision of Section 60 of OSHB Act.

Secondly, the plaintiff having made deposit of Rs.23, 334/- under Ext.10 on 8.6.2010 during pendency of the suit, the question of contravention of agreement does not arise and the interest accrued from the deposit made in the year 1989 should have been adjusted towards the outstanding.

8. Per contra, learned counsel for respondent submitted that when plaintiff has voluntarily deposited Rs.23334/- during pendency of the suit under Ext.10 to which he had agreed in the agreement dated 15.9.1992, no fault can be found in the lower court's judgment and the jurisdiction of civil court is ousted under OSHB Act, 1968 in view of availability of the appeal forum against the order of the competent authority. He buttressed his argument that when no notice is exhibited for the purpose of record, it cannot be said that notice u/s.80 CPC was given and thereby section 60 of the OSHB Act has been complied with.

9. Rival contentions have occasioned to pose following points for determination in this appeal:-

- I. Whether the deposit of money under Ext.10 during pendency of the suit is admission of outstanding agreed in the lease deed Ext.A?
- II. In view of order issuing notice u/s. 45 of the OSHB Act, 1968, the plaintiff could avoid the appellate forum under OSHB Act, 1968?

10. ANSWER TO ISSUE NO.I.

The importance of prayer made in the suit can be explored from the facts admitted by plaintiff in the suit. The plaintiff had executed an agreement Ext.A on 15.9.1992 under nomenclator "Lease of Houses at Bhubaneswar". The Orissa State Housing Board represented by its Secretary is the other party. As per clause-II, the plaintiff was under obligation to pay balance differential amount Rs.23,334/- along with interest by six monthly installments commencing from September, 1992. A penalty clause is provided under clause-14 of that agreement which provides inter alia to invoke action under Chapter-VI of OSHB Act, 1968. The suit was filed on 12.11.2002. Plaintiff deposited Rs.23,334/- on 8.6.2010 vide Ext.10. Ext.11, a letter of plaintiff to the Recovery Officer of the defendant reveals that plaintiff had intimated the deposit of such amount and had requested him to attend the court on 7.8.2010. It is fairly admitted by the learned counsel for the appellant that such a development i.e. deposit by plaintiff was without intervention or order of the court. In the conspectus of the above fact, it is crystal clear that plaintiff as per agreement with defendant had agreed to pay the outstanding and after filing of the suit made payment on 8.6.2010 and thereby the plaintiff has no

other option but to honour the lease agreement Ext.A dated 15.9.1992. Under law the sanctity of the agreement is to be honoured. Both parties have held out a potent and promised agreement Ext.A which determines the path of growth of real dispute i.e. interest clause. This is not available. This being the position, no infirmity is found in the impugned judgment that defendant had not agreed at any point of time with plaintiff that interest would be adjusted on his deposited amount. Rather deposit of some amount by plaintiff on his own volition is proof of his liability under lease deed Ext-A.

11. ANSWER TO POINT NO.II.

The plaintiff has admitted in the plaint para-10 that defendant on 15.9.2001 had issued eviction notice u/s.45 of OSHB Act, 1968 and he had replied to the same on 18.9.2001. In fact such notice dated 15.9.2001 is marked Ext.7. No notice u/s. 80 CPC as claimed by plaintiff is proved. Learned counsel for appellant has also failed to show any such notice. In the premises, notice u/s.60 of OSHB Act is found to have not been given to the defendant. What law mandates, cannot be given good bye. A glance of relevant provisions of OSHB Act, 1968 would clear the shadow.

The same is extracted below: -

"Sec-45. Power to evict certain persons from Board premises-

(1) If the competent authority is satisfied-

(a) that the person authorised to occupy any Board premises has

(i) not paid rent lawfully due from him in respect of such premises for a period of more than two months; or

(ii) sub-let, without the permission of the Board the whole or any part of such premises; or

(iii) made, or is making, material additions to, or alterations in such premises without the previous written permission of the Board; or

(iv) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises; or

(b) that any person is in unauthorised occupation of any Board premises, he may, notwithstanding anything contained in any law for the time being in force, by notice served (i) by post, or

(ii) by affixing a copy of it on the outer-door or some other conspicuous part of such premises, or

(iii) in such other manner as may be prescribed, other than such person as well as any other person who may be in occupation of the

Sec-48. Appeal-(1) Any person aggrieved by an order of the competent authority under Section 45 or Section 46 may, within one month of the date of the service of notice under Section 45 or Section 46, as the case may be, prefer an appeal to the District Judge of the district in which the premises are situate: Provided that the appellate authority may entertain the appeal after the expiry of the said period of one month, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (2) On receipt of an appeal under Sub-section (1) the appellate authority may, after calling for a report from the competent authority and after making such further enquiry, as may be necessary, pass such orders as he thinks fit. (3) Where an appeal is preferred under Sub-section (1) the appellate authority may stay the enforcement of the order of the competent authority for such period and on such conditions as he thinks fit.

Sec-60. Notice of suit against Board - No person shall commence any suit against the Board or against any officer or employee of the Board or any person acting under the orders of the Board, for anything done or purporting to be done in pursuance of this Act, without giving to the Board, officer or employee or person concerned two months previous notice in writing of the intended suit and of the cause thereof nor after six months from the date of the act complained of".

12. On the closer scrutiny of admission of plaintiff that he had replied to the notice u/s. 45 of the Competent Authority, there is no escape from the remedy available u/s. 48 of the OSHB Act noted above. Once the remedy of section 45 of OSHB Act is

available, the jurisdiction of the Civil Court as invoked for this suit is found ousted. Learned lower court has rightly arrived at the conclusion regarding ouster of jurisdiction.

13. Sequel to the above analysis, no infirmity is found in the impugned judgment. The appeal is to be dismissed. Hence, it is ordered.

ORDER.

The appeal be and the same is dismissed on contest without cost.

Addl. District Judge-cum-Special
Judge, C.B.I. Court No. II, Bhubaneswar.

Typed to my dictation and corrected by me. Judgment is pronounced in the open Court today, this the 5th July, 2016.

Addl. District Judge-cum-Special Judge,
C.B.I.Court No.II, Bhubaneswar.