

Basant Kumar Nahar Vs. the Rent Controlling Authority and anr.

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Court : Madhya Pradesh

Decided On : Dec-07-1978

Reported in : AIR1979MP139; 1979MPLJ112

Judge : G.G. Sohani and ;B.R. Dube, JJ.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 39(2), 39(4) and 42

Appeal No. : Misc. Petn. No. 15 of 1978

Appellant : Basant Kumar Nahar

Respondent : The Rent Controlling Authority and anr.

Advocate for Def. : S.R. Joshi, Govt. Adv. and ;K.L. Goyal, Adv.

Advocate for Pet/Ap. : S.N. Gupta, Adv.

Disposition : Petition dismissed

Judgement :

Dube, J.

1. The petitioner Basant Kumar Nahar by this petition under Article 226 of the Constitution of India, seeks to quash the order dated 3-12-77 (Annexure D), passed by respondent No. 1, Authorised Officer under the M. P. Accommodation

Control Act, 1961 (hereinafter referred to as the Act) in exercise of the powers under Section 39 (4) of the Act.

2. The petitioner is a Division Development Officer, M. P. Khadi and Village Industries Board and was posted in that capacity at Indore. On 8-5-75 the respondent No. 1 under Section 39 (2) of the Act allotted residential accommodation consisting of six rooms on the ground floor of house No. 16, Race Course Road Indore, belonging to Firm Sobharam Gambhirmal. The petitioner occupied the said premises on 10-5-75. In the month of June, 1976 the petitioner was transferred to Bilaspur and from there he was transferred to Bhopal in June, 1977. The respondent No. 1 issued the impugned order and got its copy pasted at the premises which was allotted to the petitioner, in which he was directed to vacate the premises by 19th Dec., 1977 otherwise he shall be forcibly ejected. These facts are not disputed.

3. The petitioner has challenged the impugned order inter alia on the grounds that the petitioner was neither served with any notice nor he was given an opportunity of being heard before passing the impugned order, that after the allotment of the premises in question the petitioner became the tenant of the landlord; that the petitioner's family resides in the said accommodation and the petitioner also occasionally comes from Bhopal and lives with his family; that the respondent No. 1 had no legal sanction to evict the petitioner by the use of force and that the consequential order dated 27-12-77 calling upon the Police to evict the petitioner was contrary to law.

4. The respondents in their return resisted the petition on the grounds that the petitioner having been transferred to Bilaspur, he ought to have vacated the premises within 7 days or at least within 4 months as per provisions of Section 42 of the Act, that after the transfer a Government servant is supposed to take his family to the place of his posting and in any case he has got no legal right to retain the possession of the accommodation allotted to him under the Act, that the Rent Control Inspector during his routine inspection found on 30-8-77 that the petitioner was transferred long back from Indore and yet he was occupying the premises allotted to him, that on the report of the Rent Control Inspector, show cause notice

was issued to the petitioner on 3-9-77; that attempts were made to serve the notice on the petitioner both at this Indore and Bhopal addresses but it could not be served, that lastly the notice dated 3-12-1977 was issued at his Bhopal address by register-ed post and a copy of the same was also got affixed at the disputed premises; that in spite of that the petitioner never cared to give any reply of the notice and, therefore, the action taken by the respondent No. 1 was quite in accordance with law.

5. Having heard the learned counsel for the petitioner as well as the Additional Government Advocate and on perusal of the record we are of the view that this petition must be dismissed. In a case where an accommodation is allotted by the Authorised Officer under Section 39 (2) of the Act, the tenancy terminates by the statutory provision contained in Section 42 of the Act which reads thus :

'The tenancy of any person who has been allotted an accommodation by virtue of this office shall terminate on the date on which he ceases to hold such office on account of transfer, retirement or otherwise and the said person shall vacate such accommodation within seven days of such date : Provided that the Collector or the authorised Officer may, for reasons to be recorded in writing extend the period for vacating the accommodation by a further period not exceeding four months.'

6. It is not disputed that the residential accommodation in the instant case was allotted to the petitioner by virtue of his office of Division Development Officer M. P. Khadi and Village Industries, held by him at Indore. It cannot be doubted that he has ceased to hold that office at Indore on account of his transfer to Bilaspur. The contention of the learned counsel for the petitioner is that the term 'transfer' used in Section 42 of the Act has not been defined and that merely on account of change in the place of posting the petitioner cannot be said to have ceased to hold the office of Division Development Officer M. P. Khadi and Village Industries. It is, therefore, urged that Section 42 of the Act is not attracted in the instant case, In our opinion the contention is fallacious. The disputed premises were not allotted to the petitioner at Indore simply because he was appointed as a Division Development Officer, M. P. Khadi and Village Industries but on account of the fact that he was posted at Indore in that capacity. The language of Section 42 of the

Act does not indicate that the word 'transfer' was used as a term of art, so as to require legal definition. Therefore, the use of the word 'transfer' in the context of the expression 'cease to hold such office on account of transfer' would ordinarily mean the change in the place of posting in the same capacity or even otherwise. After the transfer of the petitioner from Indore, it cannot be said that he is still a Division Development Officer, M. P. Khadi and Village Industries Board, Indore.

7. In case it were to be held that on account of the transfer of a Government servant from one place to another in the same capacity tenancy under Section 42 is not terminated with respect to an accommodation which was allotted to him at the place from where he has been transferred, it will lead to an absurdity. In that case a Government servant would claim allotment of accommodation at every new place of posting and on getting the same he may retain all the accommodations at different places. This would be nothing but abuse of the process of law. We are, therefore, clearly of the view that in a case of allotment of an accommodation under Section 39 (2) of the Act at a particular place no sooner a Government servant is transferred from that place he ceases to hold the office there by virtue of which the allotment was made and, therefore, there would be statutory termination of the tenancy under Section 42 of the Act.

8. It is, thus, clear that under Section 42 the petitioner was under a statutory obligation to vacate the disputed premises within seven days from the date on which he ceased to hold his office at Indore or with the permission of the Collector or the authorised officer within a period not exceeding four months. The petitioner having not complied with the said provision of law the Authorised Officer acted within his jurisdiction to take action under Section 39 (4) of the Act.

9. The contention of the learned counsel for the petitioner that no opportunity was given to the petitioner of being heard before the passing of the impugned order, has got no basis. On getting the report of the Rent Control Inspector (Annexure-1) the Authorised Officer passed the order dated 31-8-1977 (vide Annexure R-II) to issue notice to the petitioner. From the order sheets of the record of the Authorised Officer it is clear that the notice was not served for the dates 12-9-1977, 21-9-1977, 1-10-1977, 13-10-1977, 31-10-1977, 14-11-1977 and 30-11-1977 on 30-11-1977

the Authorised Officer ordered to serve the petitioner by registered post and another date 19-12-77 was fixed. From the order-sheet dated 19-12-77 it is clear that the petitioner's son had sent a reply by post to the effect that since 1-12-77 tenancy was created between him and the landlord. The petitioner in the petition does not say that after the statutory termination of the tenancy separate and independent tenancy was created by the landlord in favour of his son. The petitioner has stated that after his transfer his son resides in the accommodation in question and he also occasionally comes to stay with him. The petitioner admits in his petition that the copy of the order dated 3-12-1977 was pasted on the allotted accommodation on 13-12-1977 in which he was called upon to vacate the premises by 19-12-77. The petitioner had thus sufficient notice of the intended action of the respondent No. 1.

10. It may also be noted that, when the respondent No. 1 directed Tukoganj police to evict the petitioner, his son Dr. Nahar appeared before the Authorised Officer on 7-1-78 and prayed for some time. The Authorised Officer, therefore, gave further time up to 16-1-78. Within this time the petitioner filed the present petition and obtained the stay order from this Court. It is thus clear that the petitioner got ample opportunity to show that he was not liable to be dispossessed. The petitioner instead of availing of that opportunity indulged in such tactics by which he could gain time. As a matter of fact the petitioner had no legal basis to resist possession. Even now the learned counsel for the petitioner could not, before us, satisfactorily contend that he is not liable to be ejected despite his transfer from Indore.

11. The learned counsel for the petitioner lastly contended that no machinery is provided by the law to eject an allottee-tenant on the termination of his tenancy. Even this contention is also not well founded. Section 42 makes provision for the termination of the tenancy and imposes an obligation on the allottee to vacate the premises. When he does not comply with that provision, Section 39 (4) empowers the Collector or the Authorised Officer to take such steps as he deems fit, including the use of police force; for securing the compliance of Section 42 of the Act. Section 39 (4) therefore contains self-sufficient provision and the Collector or Authorised Officer can with the help of the police get a person evicted from his allotted accommodation on his failure to vacate the premises as required by

Section 42 of the Act. Therefore, the impugned action of respondent No. 1 is neither contrary to law nor it is likely to result in substantial failure of justice.

12. For the above reasons this petition having got no force is hereby dismissed with cost. Rs. 100/- be taxed as counsel's fee, if certified. The balance of security deposit, if any, shall be refunded to the petitioner.

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