Asif Ali Vs. Rahandomal

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Court : Madhya Pradesh

Decided On : Jan-28-1985

Reported in : AIR1986MP143; 1987MPLJ70

Judge : S.K. Seth, J.

Acts : Madhya Pradesh Accomodation Control Act, 1961 - Sections 12(1)

Appeal No. : Second Appeal No. 283 of 1981

Appellant : Asif Ali

Respondent : Rahandomal

Advocate for Def. : N.K. Patel, Adv.

Advocate for Pet/Ap. : Fakhruddin, Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Seth, J.

1. The plaintiff, Rahando-mal, filed a suit for eviction of the defendant, Asif All, from the suit accommodation on the ground specified in Clause (f) of Sub-section. (1) of Section 12 of the M.P. Accommodation Control Act, 1961 thereinafter referred to as 'the Act'). The trial Court dismissed the suit. On an appeal having

been filed by the plaintiff, the first appellate Court allowed the same and decreed the Suit. It is being aggrieved by it that the defendant has filed the present appeal in this Court.

2. It was found by the first appellate Courtthat the suit accommodation which had beenlet by the plaintiff to the defendant for a non:residential purpose was required bona fide bythe plaintiff for starting his business. It was alsofound by the first appellate Court that theplaintiff had no other reasonably suitable non-residential accommodation of his own in thetown concerned. The said two findings of thefirst appellate Court are findings of fact and donot suffer from any error of law. In thecircumstances, the question of this Courtinterfering with the said findings in the presentsecond appeal does not arise. -

3. However, there is one particular aspect of the case which raises an important question of law. The plaintiff had obtained lease of a plot of land from the Municipal Council a few years prior to the institution of the suit. He had built a Tapra (wooden shed) over the said plot of land. It was in respect of the said Tapra that he obtained the abovesaid decree for eviction of the defendant from the first appellate Court on the ground specified in Clause (f) of Sub-section. (1) of Section 12 of the Act as mentioned above.

4.. Now, Clause (f) of Sub-section. (1) of Section 12 of the Act reads as follows : .

'12 (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely;

*** *** ***(f) that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major son or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.'

5. It is argued by the learned counsel for the defendant that the words 'if he is the owner thereof occurring in Clause (f) of Section 12(1) of the Act are of great significance. According to the learned counsel, for claiming eviction of a tenant under the said Clause, it is not sufficient for a person to be a 'landlord -- it is further necessary that he must also be the 'owner' of the accommodation. It is argued by the learned counsel that it is Clear from the manner in which the word 'owner' has been used in the abovesaid Clause that it is synonymous with 'absolute owner' i.e. it means a person who has the paramount title to the accommodation. It is contended by him that though it is true that in spite of his being a 'tenant' in relation to the Municipal Council the plaintiff was a 'landlord' in relation to the defendant, who was his subtenant, he was not entitled to evict the defendant under the abovesaid Clause for the reason that he was not the 'owner' of the plot of land on which the accommodation stood.

6. In the opinion of this Court, there are quite a few good reasons to think that the word 'owner1 as used in Clauses (e) and (f) of Section 12(1) of the Act does not postulate 'absolute ownership' in the sense that he has an- absolutely unrestricted right to deal with the property as he likes. It is to be borne in mind that the Act was enacted to provide for the regulation and control of letting and rent of accommodation and the eviction of the tenants therefrom. In the context of the said objects of the Act, it is reasonable to assume that the word 'owner' as used in its different provisions had the restricted meaning circumscribed by the relationship between 'lessor' and 'lessee1 or 'landlord' and 'tenant'. In fact, Sub-section. (1) of Section 12 of the Act opened with the words '.....no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation.....' and Clause (f) thereof spoke of'..... the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business.....'. It is apparent that the words 'if he is the owner thereof used in such a context were intended to be given the meaning which was within the framework of the relationship of 'lessor' and 'lessee' or 'landlord' and 'tenant' and not outside the said framework.

7. There is a very good reason why even when the Act was intended to operate within the framework of the relationship of 'lessor' and 'lessee' or 'landlord' and

'tenant' it became necessary for the legislature to use the words 'if he is die owner thereof in the context of certain Clauses like (e) and (f) of Sub-section. (1) of Section 12 of the Act. The purpose of the Act was not merely to regulate and control the eviction of tenant from die accommodation but also to regulate and control rent of accommodation and other aspects connected with letting. It is bearing in mind the said wide scope of the Act that in Section 2 of the Act which opened with the words 'in this Act, unless the context otherwise requires' the term 'landlord' was also defined very widely in the following manner -- 'the '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 be so receiving the rent or be entitled to receive rent, if the accommodation let to a tenant and includes every person not being a tenant who from time to time derives title under the landlord'.

8. The effect of the abovesaid wide definition of the term 'landlord' was that it included not only a person who had a right to occupy the accommodation for himself and in his own right but also a person who was an agent, guardian, trustee or the receiver who did not have the right to occupy if in his own right but had the said right only for the benefit of another. But, then, in the context of Sub-section (1) of Section 12 of the Act, which related to regulation and control of eviction of tenants from the accommodation, while permitting the eviction of tenants from the accommodation on the ground of the landlord's bona fide requirement for residential or non-residential purposes, it was but proper that the Legislature thought it fit to allow only such a 'landlord' to claim eviction who had a right to occupy the accommodation for himself and in his own right. It is obvious that there was no question of a 'landlord' who was a mere agent, guardian, trustee or the receiver who did not have the right to occupy the accommodation in his own right being made entitled to obtain eviction on the ground of his bona fide requirement for residential or non-residential purposes. It is for the said reason that to make it clear that the right to claim eviction under Clauses (e) and (f) of Sub-section. (1) of Section 12 of the Act was available only to such a 'landlord' who had a right to occupy the accommodation for himself and in his own right that the Legislature thought it fit to qualify the use of the term 'landlord' in the said Clause by the words

'if he is the owner thereof'.

9. The abovesaid view of this Court, with regard to the meaning of the word 'owner' as used in Clauses (e)and(f) of Sub-section. (1) of Section 12of the Act, finds support from two well reasoned decisions of the Delhi High Court. The Clause that was under consideration by the said Court was Clause (e) of Sub-section. (1) of Section 14 of the Delhi Rent Control Act, 1958. The language used in the said Clause was substantially the same as used in Clause (e) of Sub-section. (1) of Section 12 of the M.P. Act.

Now, in T.C. Rekhi v. Smt. Usha Gujral, ILR (1969) Del 9, ID. Dua C.J. (as he then was)observed as follows : ,

"Whether or not this proviso has the effect of ..making Smt. Usha Gujral a full-fledged owner as against the Government, I do not think the mere fact of Smt. Usha Gujral being a lessee from the Government of the site would take her out of the category of 'owner' within the contemplation of Section 14(1)(e) of the Act. The word 'owner' as used in this clause has to be construed in the background of the purpose and object of enacting it. The use of the word 'owner' in this clause seems to me to Have been inspired by the definition of the word 'landlord' as contained in Section 2(a) of the Act which is wide enough to include a person receiving or entitled to receive the rent of any premises on account of or on behalf of or for the benefit of any other person. Construed in the context in which the word 'owner' is used in Clause (e), it seems to me to include all persons in the position of Smt. Usha Gujral, who have taken a long lease of sites from the Government for the purposes of building houses thereon. The concept of ownership seems now to be eclipsed, by its social and political significance and the idea of ownership in cases like the present, is one of the better right to be in possession and to obtain it. To accede to the contention raised by Shri Kapur would virtually nullify the effect of Clause (e) and would render all such landlords remedyless against tenants however badly they may need the premises for their own personal residence. 1 do not think such a result was intended by the legislature and I repel the appellant's contention.'

In Kanwal Kishore Chopra v. O.P.Diwedi AIR 1978 Del 53, B.C. Misra, J. following the view expressed by I.D. Dua CJ. in the-abovementioned case, observed as follows : --

'Under the Rent Act, the word 'owner' occurring in Clause (e) of the relevant proviso is not used in the sense of absolute owner. It is only used in contradistinction with a landlord as defined who is not an owner, but who holds the property for the benefit of another person. It is obvious that the word 'landlord' as defined includes a person who is receiving or is entitled to receive the rent of any premises whether on his own account or on account of or on behalf of or for the benefit of any other person. For the purpose of imposing the obligations on the landlord the definition has been widened to include the agent, guardian, trustee or the receiver of the property. Such persons may not be entitled to obtain eviction on the ground specified in Clause (e) for their own occupation, in order to obtain eviction the petitioner must necessarily be the landlord as defined and be also an owner. A landlord as defined, who is holding the property for himself and his own benefit and not for the benefit of another person, is certainly the owner landlord'.

10. The-abovesaid view of this Court also finds indirect support from a recent decision of the Supreme Court. In Section 2(d) of the Bihar Act i.e. Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, the term 'landlord' was defined in similar wide terms so as to include not only a person who was receiving' or was entitled to receive the rent of building on his own account but also a person who was doing so on behalf of another. The provisions relating to eviction of tenants were contained in Section 11(1) of the said Act. The particular Clause which was under consideration of the Supreme Court in its decision in M.M. Quasim v. Manohar Lal Sharma, AIR 1981 SC 1113 was Clause (e) of Section 11(1) of the Act. The said Clause related to eviction of a tenant on the ground of bona fide requirement of the landlord for his own occupation or, for the occupation of the person for whose benefit the building was held by the landlord. Though the words 'if he is the owner thereof were not used in the said Clause, the Explanation appended to it did say that 'in this Clause the word 'landlord' shall not include an agent referred in Clause (d) of Section 2'.

11. Interpreting the ingredients of Clause (c) of Section 11 (1) of the Bihar Act, the Supreme Court observed thus in M.M. Quasim's case (AIR 1981SC 1113) (supra) :-

'.....while taking advantage of the enabling provision enacted in Section 11 (l)(c), the person claiming possession on the ground of his reasonable requirement of the leased building must show that he is a landlord in the sense that he is owner of the building and has a right to occupy the same in his own right. A mere rent collector, though may be included in the expression landlord in its wide amplitude, cannot be treated as a landlord for the purpose of Section 11(l)(c). This becomes manifestly clear from the explanation appended to the subsection. By restricting the meaning of expression landlord for the purpose of Section 11(1)(c), the legislature manifested its intention namely that the landlord alone can seek eviction on the ground of his personal requirement if he is one who has a right against the whole world to occupy the building himself and exclude any one holding a title lesser than his own. Such landlord who is owner and who would have a right to occupy the building in his own right, can seek possession for his own use.'

At another place, in the abovesaid case, it was observed by the Supreme Court as follows :--

'Assuming that the expression 'landlord' has to be understood with the same connotation as is spelt out by the definition clause, even a rent collector or a receiver of the property appointed by the Court in bankruptcy proceedings would be able to evict the tenant alleging that he wants the building for his own occupation, a right which he could not have claimed against the real owner. Therefore, the explanation to Clause (c) which cuts down the wide amplitude of the expression 'landlord' would unmistakably show that for the purposes of Clause (c) such landlord who in the sense in which the word 'owner' is understood can claim as of right to the exclusion of everyone, to occupy the house, would be entitled to evict the tenant for his own occupation.'

12. Thus, whether the words used in the relevant Clauses relating to eviction of tenants on the ground of bona fide requirement of the landlord were 'if he is the

owner thereof as was the position in the M.P, Act or they were 'in this clause the word 'landlord' shall not include an agent referred to in Clause (d)of Section 2' as was the position in the Bihar Act, it is clear from the abovesaid observations of the Supreme Court in M.M. Quasim's case (AIR 1981 SC 1113) (supra) that the basic idea behind using the said words was to make it clear in view of very wide definition of the word 'landlord' contained in the rent Acts that right to evict a tenant on the ground of bona fide requirement would be available only to such landlord who was receiving or was entitled to receive rent on his own account i.e. the person who in the event of reversion of tenancy of the tenant had the right to occupy the accommodation in his own right. While using the words in the abovesaid Clauses it was not intended that the person concerned i.e. the landlord must necessarily be the 'absolute owner' of the plot of land on which the accommodation stood.

13. In the above connection, it may be pointed out that a similar need to resolve the language of the Clause relating to eviction of tenants in the light of widely worded definition of the word landlord' used in the definition Clause had arisen before a Division Bench of this Court in Mohammad Nurul Huda v. Kikabhay, AIR 1953 Nag 251 under the old C.P. and Berar Letting of Houses and Rent Control Order, 1949. The word landlord' was defined in Clause 2(4) of the said Order. The Clause relating to eviction of tenants was Clause 13(1). It is true that the words 'if he is the owner thereof were not used in Clause 13(1). But, then it is interesting to note how even in the absence of the said words it became necessary for the Court to proceed to interpret the two provisions in reasonable way. In the said regard, the relevant observations of the Division Bench were as follows --

'It is, no doubt, true that the word 'landlord' as defined in Clause 2(4), Rent Control Order, would include a person like the petitioner who manages the property of some one else and collects rent thereof. In our opinion, however the term 'landlord' as' used in Clause 13(1) cannot be given such an extended meaning and that that term must mean only a lessor or a person in whom the reversion of the lease has actually vested..... If the contention of the learned counsel for the petitioner were to be accepted and the word 'landlord' given the meaning accorded to it by the definition, then it would also be open to the agent of the landlord to ret out his own

need for terminating 'the tenancy of the tenant. Quite clearly, that is not the object of the clause at all. The needs in the sub-clause are necessarily the needs of the lessor or someone else who is dependant upon the lessor and not those of the agent.'

14. In the opinion of this Court, from the abovesaid discussion it is clear that the words 'if he is the owner thereof as used in Clauses (e) and(f)of Section 12(1) of the M.P. Accommodation Control Act, 1961, do not mean that apart from being a landlord the plaintiff seeking eviction of his tenant under the said Clauses must necessarily be the 'absolute owner' of the accommodation or of the land on which the accommodation stands. It may be that the absolute ownership of the accommodation or of the land on which the accommodation stands vests in another person and the plaintiff himself is only a tenant of the said person. It may be that the person having absolute ownership may be in a position to dispossess the plaintiff on the basis of his title or on the basis of any breach of the lease . Yet, as against the defendant i.e. his tenant, the plaintiff remains the 'owner' in case he is receiving or entitled to receive rent from the defendant on his own account i.e. in case he is the person who in the event of reversion of tenancy of the defendant has the right to occupy the accommodation in his own right.

15. The attention of this Court is drawn by the learned counsel for the defendant-appellant to a decision of this Court in Shambhoo Khan v Alka Lodge S A.No. 225 of 1975, decided on the 26th Oct. 1976 reported as in 1977 MPU (Notes) 2. It is no doubt true that in the said case the word 'owner' occurring in Clauses (e) and (f) of Section 12(1) of the Act was interpreted to mean 'absolute owner' and it was held that as a 'tenant' in relation to his sub-tenant could not be deemed to be the 'owner of the accommodation he had no Tight to evict the 'sub-tenant'-under the said Clause on the ground of his bona fide requirement However, in view of the various decisions as mentioned above, including that of the Division Bench of this court in Mohammad Nurul Hilda's case (AIR 1953 Nag 251) (supra) and that of the Supreme Court in M.M. puasim's case (AIR 1981 SC 1113) (supra), it is submitted with due respect that Shambhoo Khan's case is not correctly decided.

16. For the reason stated above, there is no merit in the present second appeal. The same is accordingly dismissed 'with costs. Counsel's fee as per schedule, or a certificate, whichever is less.