

Jagitkumar Vs. Jagdeeshchandra

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Court : Madhya Pradesh

Decided On : Mar-03-1982

Reported in : AIR1982MP144

Judge : G.G. Sohani and ;K.N. Shukla, JJ.

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

Appeal No. : S.A. No. 478 of 1976

Appellant : Jagitkumar

Respondent : Jagdeeshchandra

Advocate for Def. : P.K. Saxena, Adv.

Advocate for Pet/Ap. : G.M. Chaphekar, Adv.

Judgement :

Sohani, J.

1. The following question has been referred to this Bench by the learned single Judge hearing this appeal:

'In the case of a composite tenancy, if it is established that the landlord requires the non-residential part of the accommodation or residential part of the accommodation. Whether a decree for eviction of the tenant from the entire

premises can be passed.'

2. Shri Chaphekar, the learned counsel for the appellant, contended that if a landlord was able to make out a ground specified in Section 12(1) of Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as the Act), he became entitled to a decree for eviction in respect of that portion of the premises, the requirements for which was established by him and as a contract of tenancy could not be split up a decree for eviction of the tenant from the entire premises had to be passed.

3. In reply, Shri Saxena, the learned counsel for the respondent, contended that in the case of a composite tenancy, the landlord had to establish requirement of residential as well as the non-residential part of the accommodation and unless that was done, he was not entitled to a decree for eviction of the tenant from the premises. Reliance was placed on the decisions of the Supreme Court in Dr. Gopal Dass Verma v. Dr. S. K. Bhardwaj (AIR 1963 SC 337), Miss S. Sanyal v. Gianchand (AIR 1968 SC 438) and Has-mat Rai v. Raghunath Prasad (AIR 1961 SC 1711).

4. Before we proceed to appreciate the contentions advanced on behalf of the parties, it would be useful to refer to the relevant provisions of the Act. Section 2(a) defines, 'accommodation' as follows:

'2 (a) 'accommodation means any building or part of a building whether residential or non-residential and includes :

(i) any land which is not being used for agricultural purposes;

(ii) garden, grounds, garages and outhouses, if any, appurtenant to such building or part of the building;

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

(iv) any furniture supplied by the landlord for use in such building or part of building.'

Section 12 (1) of the Act limits the right of a landlord to seek eviction of his tenant. The provisions lay down that unless one of the grounds specified in that subsection has been made out, a decree for eviction of a tenant from any accommodation cannot be passed. The grounds material for the purpose of this case are those specified in Clauses (c) and (f) of Section 12 (1) of the Act which read as under:--

'12 (1) (e) that the accommodation let for residential purposes is required bona fide by the landlord for occupation as a residence for himself or for any members of his family, 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 residential accommodation of his own in his occupation in the city or town concerned.'

'12 (1) (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 sons 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.'

As stated in the preamble, the Act provides for the regulation and control of letting and rent of accommodation and the eviction of the tenants therefrom. It is true that the object of the Act is to give protection to the tenants, as urged on behalf of the respondent, by preventing unscrupulous and veracious landlords from charging exorbitant rent from tenants and evicting tenants, who refused to agree to the enhancement of their rent. It is, however, obvious that the aim of the legislature was not to extinguish all the rights of a landlord. Restrictions to the extent they are necessary for the purpose of preventing rack-renting and ejection of tenants for the purpose of rack-renting have been imposed on the rights of a landlord. It is true that a preamble cannot be used to control or qualify precise and unambiguous language of an enactment, but it is a key to open the mind of the legislature, as observed by the Supreme Court in *Tribhuban Purkash Nayyar v. The Union of India* (AIR 1970 SC 540).

5. Now, the earlier view prevailing in this court was that the Act with respect to the bona fide requirement of the landlord has put the accommodation into two categories, residential and non-residential and that there was no third category viz., residential cum business. Therefore, when an accommodation was let for both residential and non-residential purpose, the courts tried to ascertain the primary purpose, for which the accommodation was let and classified the accommodation accordingly. However, after the decision of the Supreme Court in *Firm Panjmal Daulatram v. Sekhi Gopal* (AIR 1977 SC 2077), it is clear that the composite purpose of the lease would not put it out of the grounds set out for eviction under Section 12 of the Act. The Supreme Court held that an accommodation can be residential, non-residential or both. The following observations of the Supreme Court are pertinent (at p. 2079):--

'The residential portion is a part of the building and is an accommodation by definition. The non-residential portion is also a part of the building and is an accommodation by definition. The lease has been given for residential as well as non-residential purposes. The landlord is entitled to eviction of the residential portion if he makes out a bona fide residential requirement. Likewise he is entitled to eviction of the non-residential portion which is an accommodation if he makes out a non-residential requirement.'

6. It is thus clear that a landlord is entitled to eviction of the residential portion if he makes out a bona fide residential requirement. Similarly, he is entitled to eviction of the non-residential portion if he makes out a non-residential requirement. In a case, where a dual requirement has been made out by a landlord, there is no difficulty in holding that he becomes entitled to eviction of the entire premises. The question that arises for consideration is whether a landlord is entitled to a decree for eviction from the entire premises when he has established the requirement of only the non-residential part or the residential part of the accommodation.

7. As held by the Supreme Court in AIR 1977 SC 2077 (*supra*), a landlord became entitled to residential or non-residential part of the accommodation when residential or non-residential requirement is established. But a decree for a part of the accommodation let out to a tenant cannot be passed because it is not

permissible for a court to split up a contract of tenancy. To non-suit a landlord in such a case would mean that even though he has become entitled under Section 12 of the Act to the relief of eviction of a part of the accommodation, he is denied that relief. On the other hand, to grant, to the landlord a relief of eviction from the entire premises, would mean that even though he has established his requirement for a part of the accommodation only, he is granted the relief of eviction from the entire premises.

8. That brings us to the question as to whether the Act enjoins a landlord the duty to establish his requirement of the entire premises before he can be held entitled to eviction. It was conceded on behalf of the respondent that to entitle a landlord to the relief of eviction on the ground of requirement, it was not necessary for him to prove requirement for every inch of the accommodation for the same purpose for which it was let out. Thus, in a case where accommodation is let out for non-residential purpose, a landlord would be entitled to the relief of eviction if he is able to make out his requirement for non-residential purpose of a part of the premises let out, even though it is established that the remaining portion of the premises is not required by him for non-residential purpose but is required for residential purpose. This is clear from the decision of the Supreme Court in *Smt. Nai Bahu v. Lala Ram Narayan* (AIR 1978 SC 22), where it has been held that there is nothing in the Madhya Pradesh Act to bar an eviction from a building as non-residential accommodation is genuinely required not only for non-residential use but also a portion of it for personal use. It is true that in AIR 1978 SC 22 (supra), the Supreme Court was dealing with the provisions of Madhya Pradesh Accommodation Control Act, 1955, but for the purpose of the present enquiry, there is not material difference in the relevant provisions of the 1955 and 1961 Acts. The learned counsel for the respondent referred to the decision of the Supreme Court in AIR 1981 SC 1711 (supra) and contended that requirement of the landlord for the entire accommodation must be of the same class to which the accommodation belonged. But the decision in AIR 1981 SC 1711 (supra) does not take a view different from that taken in AIR 1978 SC 22 (supra). The Supreme Court in AIR 1981 SC 1711 (supra) was considering the question as to whether the landlord would require the non-residential accommodation, eviction from which was sought, when his requirement of non-residential accommodation would end by

obtaining vacant possession at other premises during the pendency of the proceedings. In that context, the supreme Court held that it was not permissible for the High Court, in the absence of any pleadings in that behalf, to go in search for some imaginary requirement of the landlord of accommodation for his residence. That decision is not an authority for the proposition that a landlord cannot seek eviction from a non-residential accommodation if it is established that he required only a part of that accommodation for non-residential purpose and that the remaining part is required by him for residence.

9. It is thus clear that even though it is established that a landlord requires a part of an accommodation let out and that that requirement is for the purpose for which the accommodation was let out, a landlord becomes entitled to seek eviction from the entire accommodation, provided the other conditions specified in Clause (e) or (f) of Section 12 (1) of the Act are satisfied.

10. The decision of the Supreme Court in AIR 1963 SC 337 (supra) and AIR 1968 SC 438 (supra) are distinguishable on facts. In AIR 1963 SC 337 (supra), the Supreme Court was considering the provisions of Delhi and Ajmer Rent Control Act, 1952. In this connection, we may usefully refer to the following observations of the Supreme Court in AIR 1978 SC 22 (supra), where the distinguishing features have been pointed out (at p. 27):--

'According to Mr. Sanghi when the house was let for non-residential purpose, the appellant cannot succeed in ejecting the tenant from the house for a composite purpose of residence as well as business and he submits that the principles laid down in Dr. Gopal Varma (AIR 1963 SC 337) (supra) fully support him.'

In Dr. Gopal Dass Varma (supra) this court was dealing with the provisions of Delhi and Ajmer Rent Control Act, 1952 (briefly the Delhi Act). Section 2 (g) defines premises under that Act thus:

'Premises means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose.....'

We may contrast the definition of accommodation in the M.P. Act with which we are concerned. Under Section 3 (a) of the M.P. Act 'accommodation' means:--

(x) any land which is not being used for cultivation:

(y) any building or part of a building and it includes:

(i) garden, open land and outhouses, if any, appurtenant to such building or part of a building.

(2) any furniture supplied by the landlord for use in such building or part of a building.

(3) any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof.'

It is significant that in Delhi Act, intention to let separately for use as a residence or for commercial use or for any other purpose is expressly mentioned under Section 2 (g) thereof. The principle underlying the scheme for letting separately for different uses is reflected in the second schedule to the Delhi Act in both parts A and B (see paras 3 to 5 both in parts A and B). The said differentiation of purpose for separate letting does not find such significant importance in the M. P. Act as has been found by this court in the Delhi Act.' Thus under the Delhi Act, 1952 a landlord could not seek eviction of a tenant from the premises let for commercial use. In AIR 1968 SC 438 (supra), the Supreme Court held that the jurisdiction of the court under Section 13 (1) (e) of the Delhi Act dealing with eviction from premises let for residential purposes, can be exercised only when the premises are let for residential purpose and not when premises are let for composite purpose, because in that case, the premises are not let separately for use as a residence, to attract the provisions to Section 13 (1) (e) of the Delhi Act. What is clear to us is that in the case of a composite tenancy, if it is established that the landlord requires the non-residential part of the accommodation or residential part of the accommodation, a decree for eviction of the tenant from the entire premises can be passed.

12. Let the case be now fixed before the learned single Judge for disposal.

13. Parties shall bear their own costs of this reference.

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