

**Mohandas Vs. Devandas**

**Mohandas Vs. Devandas**

**SooperKanoon Citation :** [sooperkanoon.com/499539](http://sooperkanoon.com/499539)

**Court :** Madhya Pradesh

**Decided On :** Mar-16-1994

**Reported in :** AIR1995MP185

**Judge :** K.L. Issrani, J.

**Acts :** Madhya Pradesh Accommodation Control Act, 1961 - Sections 23J; Madhya Pradesh Municipal Corporations Act, 1956 - Sections 58; [Constitution of India](#) - Article 311

**Appeal No. :** Civil Revn. No. 501 of 1992

**Appellant :** Mohandas

**Respondent :** Devandas

**Advocate for Def. :** R.D. Hundikar, Adv.

**Advocate for Pet/Ap. :** S.L. Saxena, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**K.L. Issrani, J.**

1. The order in this revision petition shall also govern the disposal of Kishore Kumar Nagurkar v. Devan Das, C. R. No. 524 of 1993, decided on 16th March, 1994,

2. In these revision petitions the point raised is as to whether an employee of a Municipal Corporation is a Government Servant within the meaning of Section 23-J of the M.P. Accommodation Control Act, 1961?

3. In these revision petitions admittedly the non-applicant Devan Das is a common landlord. He was working as Lower Division Clerk in Municipal Corporation, Bhopal and retired on 31-7-1989. After retirement he filed an application before the Rent Controlling Authority, Bhopal under Section 23-A of Chapter III for eviction of the applicants-tenants.

4. According to the applicants, the non-applicant is not covered in the definition of the landlord as defined under Section 23-J of the M.P. Accommodation Control Act, 1961 (Hereinafter referred to as 'the Act'). Therefore, the application before the Rent Controlling Authority is not maintainable. They have, therefore, challenged the impugned order passed by the Rent Controlling Authority on the ground that the Rent Controlling Authority committed an error in law in allowing the application of the non-applicant/landlord. The employees of the Municipal Corporation are not Government Servants as the State Government does not come into the picture so far as the recruitment and conditions of services of such employees are concerned. Municipal Council of Corporation is a body corporate and a distinct entity than the State in law. Application for ejection filed by such retired Municipal Corporation employee, therefore, does not lie before the Rent Controlling Authority. For this learned counsel for the applicants have relied on the decision of this Court reported in Shiv Singh v. Krishan Gopal, 1986 MRRCJ 341, as also that of Apex Court reported in Union of India v. Komal Charan, AIR 1992 SC 1479.

5. Learned counsel for the non-applicant landlord has opposed the submissions of the learned counsel for the applicants and submitted that such landlords are covered within the definition of Section 23-J Clause (i) of the Act. According to him any Government including the local-self-Government like Municipal Corporation as

defined in Schedule VII, List II, Item 5 given under the [Constitution of India](#) is a 'State' because it has powers to impose tax and penalties as is done by the State Government. He has relied on Commissioner v. Patiram, 1986 MPLJ 726 and Asstt. Director, C.I. v. Harnam Chand, AIR 1979 J & K 33 (FB), where the word 'Government' is defined by Full Bench, but according to him Schedule VII, List II, Item 5 was taken into consideration in that decision. He, therefore, supports the order passed by the Rent Controlling Authority.

6. In the case of Shiv Singh v. Krishnan Gopal, 1986 MPRCJ 341 (supra), the landlord was an employee as Accounts Officer in Dabra Municipality and retired on 16-9-1983. Thereafter, on 5-10-1993 he filed an application before the Rent Controlling Authority, Dabra under Section 23-A of the Act. The tenant had raised an objection that the application was not maintainable because the landlord was not a retired Government servant. The objection was repelled by the Rent Controlling Authority but allowed by this Court.

This Court held that the servant of Municipal Council is not a Government servant. Thus, he does not fall within the definition of the term 'Landlord' as defined under Section 23-J of the Act.

7. The submission of the learned counsel for the landlord herein is that there is difference between the Municipal Council and Municipal Corporation and the Municipal Corporation will be covered in the word 'any Government' as defined under Clause (i) of Section 23-J of the Act. Section 23-J(i) of the Act is reproduced hereunder for proper understanding:--

'23-J. Definition of landlord for the purposes of Chapter III-A-- For the purposes of this Chapter 'Landlord' means a landlord who is- (i)a retired servant of any Government including a retired member of Defence Services; or'

List II of Schedule VII of the [Constitution of India](#) is a State list which includes Local Government, that is to say, the constitution and powers of Municipal Corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration. Thus it only means that the Munciapal Corporation is authorised to

impose certain taxes which conferred on it by the State Legislature upon a local or municipal authority but it does not mean that the State Legislature loses its power to impose a tax on the same subject-matter as long as the authorisation in favour of the local authority subsists or that the same subject-matter cannot be taxed by the State Legislature and the local or municipal authority as held in *Cantonment Board v. W.I. Theatres*, AIR 1954 Bom 261. Municipal Corporation in such a case may fall within Article 12 of the [Constitution of India](#) being the State for the purposes of entertaining the petition for and against Municipal Corporation within the meaning of Articles 226 or 227 of the [Constitution of India](#), but it cannot be said to be a 'State' otherwise. In *Asstt. Director, C.I. v. Harnam Chand* (AIR 1979 J&K; 33) (FB) (supra), the term 'Government' has been defined. Term 'Government' also includes Union Government. But the learned counsel for the non-applicant landlord submits that the aforesaid case does not take into consideration the word 'local self-government' as mentioned in List II of Schedule VII of the [Constitution of India](#). I do not think that the word 'any Government' includes local self-government for the purposes of Government servant, who fall within the purview of definition of Section 23-J of the Act. Municipal employees have their own recruitment rules laying down the terms and conditions of their services. They are appointed and terminated by the municipal authorities only. No approval of the State Government is required for the same. Moreover, their salary is also not drawn from the State Exchequer. They are not civil servants. Fundamental rules are not applicable to them. The provisions of Article 311 of the [Constitution of India](#) are also not attracted in their cases. As such they cannot be said to be the Government servant or civil servants. The appointment of Municipal Corporations employees is governed by Section 58 of the Municipal Corporation Act, which gives authority to the Corporation to appoint a City Engineer, a Health Officer, a Revenue Officer, a Municipal Secretary and an Accounts Officer and a Deputy Municipal Commissioner, and such other officers and servants as are necessary for the efficient carrying out of the purposes of this Act.

8. In the present case admittedly the non-applicant/landlord was not appointed by the State Govt. As such he cannot be said to be an employee of the State Government or Government servant. *Union of India v. Komal Charan* (AIR 1992 SC 1479) (supra) was a case of Officers of National Cadet Corps, whose age of

retirement was under challenge. It has been held that the fundamental rules are not applicable to the Officers appointed even on whole-time basis in National Cadet Corps. N.C.C. Officers employed on whole-time basis are paid exclusively by the Central Government from the Defence Services Estimates. Therefore, the pay of such Officers is not debitable to the Civil Estimates, as required by Fundamental Rule 2 for the application of the Fundamental Rules, it was held that the Fundamental Rules would not therefore be attracted in their case. Therefore, in the present case, Municipal Corporation employees also cannot be said to be Government Servants. That being so, they will not be covered within the definition of Section 23-J of the Act. Case of Commissioner v. Patiram (1986 MPLJ 726) (supra) relied on by the learned counsel for the landlord for the purposes of Article 12 of the [Constitution of India](#) is also not applicable to the facts of the present case.

9. Consequently, the revision petition is allowed. The impugned order passed by the Rent Controlling Authority, Bhopal is hereby quashed. However, there shall be no order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**