

Ashok Kumar Vs. Baboolal and anr.

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Court : Madhya Pradesh

Decided On : Mar-05-1998

Reported in : AIR1998MP267; 1998(1)MPLJ461

Judge : A.K. Mathur, C.J., ;Deepak Misra and ;S.K. Kulshrestha, JJ.

Acts : Madhya Pradesh Accommodation Control (Amendment) Act, 1983 - Sections 12; Madhya Pradesh Accommodation Control Act, 1961 - Sections 11A, 23-J, 23A and 45

Appeal No. : Civil Revn. No. 708 of 1995

Appellant : Ashok Kumar

Respondent : Baboolal and anr.

Advocate for Def. : V.S. Choudhary, Adv.

Advocate for Pet/Ap. : Quamaruddin, ;R.L. Swarnakar and ;Ramesh Shrivastava, Advs.;J.P. Sanghi, Sr. Adv., ;Ravish Agrawal and ;H.C. Kohli, Advs. for ;Amicus Curiae

Judgement :

A.K. MATHUR, C.J.

1. This is a reference made by the learned single Judge on the ground that there is a conflict between the two Full Benches judgments; therefore, the matter should

be referred to Larger Bench.

2. At the very outset, we may mention that it is not correct to say that there is a conflict between the two Full (Sic) Benches judgments of this Court, i.e. in 1985 MPLJ 675 : (AIR 1986 Madh Pra 72), B. Johnson Bernard v. C.S. Naidu) and 1987 MPLJ 137 : (AIR 1987 Madh Pra 50), Praschand v. Hemant Kumar). B. Johnson Bernard (supra) is a judgment by the Division Bench and Paraschand (supra) is a judgment given by the Full Bench. Therefore, it is wrong to say that there was a conflict between two Full (Sic) Benches decisions. In B. Johnson Beranard's case (supra), the Amending Act No. 27/83 and Act No. 7/85 were challenged being ultra vires of Articles 14 and 50 of the Constitution of India and their Lordships in, B Johnson Bernard's case (supra), held that both the provisions are intra vires and not ultra vires to the Article 14 of the Constitution of India. It was observed in para 13 of the judgment as under:

'P. 13:- Section 23-J specifies the categories of landlords, who alone are entitled to the benefit of Chapter III-A. These categories are retired servants of the Government or Defence Services; retired servants of Government owned or controlled companies; widow or a divorced wife; physically handicapped person; or a servant of any Government or Defence Services, who is not entitled by his service condition to Government accommodation, on his posting to a place where he owns a house or is entitled to Government accommodation only on payment of penal rent. The test laid down by the Supreme Court in Ravi Sharma v. Ratanlal Bhargava, AIR 1984 SC 967 for permissible classification amongst the landlords for conferral of the benefit of the special procedure is fully satisfied by Section 23-J. These landlords specified in Section 23-J belong to a special category distinct from the remaining landlords, who deserve the benefit of the special procedure on account of their need being more pressing and the handicap from which they suffer as compared to the remaining landlords, the object of the amendment being to provide for expeditious trial of eviction cases on the ground of bona fide requirement of the landlord. Confining this benefit only to these categories of the landlords specified in Section 23-J, on account of the greater handicap from which they suffer as compared to their landlords, after taking into account the misuse of the special procedure by certain landlords not falling in these categories, indicates

a reasonable nexus of the classification with the object sought to be achieved by the Legislature. Following the Supreme Court decision in, Ravi Dutt Sharma's case, (AIR 1984 SC 967) (supra), the challenge to the classification of the landlords by enacting Section 23-J specifying certain categories of landlords only and simultaneously by Section 11-A confining the applicability of Chapter III-A to landlords defined in Section 23-J, is rejected.'

Our attention was also invited to Para 32 of, B. Johnson Bernard, (AIR 1986 Madh Pra 72) (supra), which reads as under:

P. 32 :- The argument that option is given to the landlords defined in Section 23-J, to file proceedings on the grounds of bona fide personal need under Section 23-A before the Rent Controlling Authority and on the other grounds in the Civil Court, while other landlords have only to go to Civil Court, is difficult to appreciate. There is actually no option given to choose, there being only one forum for each ground for each category of landlord. It has already been shown that classification of the landlords is valid. No further consideration of this argument is necessary.'

In the case of, Praschand v. Hemant Kumar, 1987 MPLJ 137: (AIR 1987 Madh Pra 50) (FB)), this was a Full Bench decision and in that, the question arose with regard to the effect of Subsection (1) of Section 12 of the M.P. Accommodation Control Act (Amending Act, 1983). In that, their Lordships observed:

'Sub-section (1) of Section 12 of the M.P. Accommodation Control (Amendment) Act, 1983, relates to all those suits for eviction of tenants, wherein the grounds of eviction include the grounds of bona fide requirement of accommodation and unless the landlords withdraws the grounds of bona fide requirement in relation to the relief of eviction, such suits shall be heard and disposed of by the Civil Court as if the Amending Act of 1983 had not been passed. Sub-section (2) of Section 12 of the Amending Act enables the landlord, who wishes to evict a tenant exclusively on the ground of bona fide requirement under Section 23A, which is in Chapter III-A as inserted by the Amending Act of 1983, and in his suit pending in the Civil Court there is also a ground of eviction as provided under Clause (e) or Clause (f) of Sub-section (1) of Section 12 of the Act, as it stood prior to the Amending Act of 1983, to withdraw the suit in relation to the said ground for

eviction and proceed against the tenant in accordance with Section 23-A of the Principal Act. The language of Sub-section (2) of Section 12 of the Amending Act cannot be taken to mean that the suit pending in the Civil Court has to be exclusively on the grounds of bona fide requirement. This sub-section merely permits that if an eviction suit is pending in the Civil Court on different grounds including the ground of bona fide requirement, then if the landlord wishes to evict the tenant on the ground of bona fide requirement, he may withdraw the suit in relation to the ground of bona fide requirement with leave of the Court and proceed against the tenant in accordance with Section 23-A in Chapter III-A, which has been inserted by the Amending Act of 1983.'

A reading of both the decisions - one given by Division Bench in, B. Johnson Bernard, (AIR1986 Madh Pra 72), (supra) and another by the Full Bench in Paraschand's case, (AIR 1987 Madh Pra 50) (supra), we are of the opinion that there is no conflict between the two.

In the case of Bernard (supra), their Lordships have said that option is given to the landlords defined in Section 23-J, to file proceedings on the grounds of bona fide personal need under Section 23-A before the Rent Controlling Authority and on other grounds in the Civil Court. By this, it does not mean that there is only a single forum for a landlord defined in Section 23-J. By this, it would mean that if the landlord wants to proceed against the tenant on the ground of bona fide personal need alone then this matter can be agitated before the Rent Controlling Authority, but it does not mean that the Civil Court's jurisdiction is totally barred. The Full Bench decision of this Court in, Paraschand case (supra) while interpreting Sub-section (1) of Section 12 of the M.P. Accommodation Control Act (Amending Act), 1983, only provided that in case, a suit is pending before the Civil Court wherein the ground of bona fide necessity has been pleaded and if the landlord wants that the matter should be disposed of expeditiously before the Rent Controlling Authority then he can move an application before the Civil Court seeking permission of Civil Court for withdrawing this ground to be challenged before the Rent Controlling Authority. This observation only means that if the landlords defined under Section 23-J do not want to seek the benefit of special provision contained in Section 23-A of the Act, then the matter can proceed with

the Civil Court. Apparently, there is no conflict between the two decisions. In fact, the Full Bench had an occasion to consider the decision given by the Division Bench in the case of Bernard (supra). In this connection, it may be useful to refer to para 12 of the case of, Paraschand (AIR 1987 Madh Pra 50) (FB), (supra) and their Lordships after considering Bernard's case, (AIR 1986 Madh Pra 72), observed:

'Para 12: In B. Johnson's case (supra), the Division Bench, while considering the validity of the aforesaid A mending Act and the other Amending Act, had occasion to consider the meaning of Section 12 of the Amending Act of 1983. The Division Bench took the view that there could be withdrawal in a pending suit in respect to the grounds of eviction of 'bona fide requirement' and the landlord could proceed under Section 23-A, as was inserted by the said Amending Act. A close reading of paragraph 38 would clearly indicate that the Division Bench had taken the same view with regard to the meaning and construction of Section 12, as has been taken by us. The Division Bench, though on different reasoning, rightly held that, Nanuram's case, (1984 MPRC 5 (Notes) 10) (supra) and the case of Bankimchandra, (AIR 1985 Madh Pra 10) (supra) had not been correctly decided.'

Therefore, it is not a case of conflict between the decisions of Division Bench and the Full Bench. As a matter of fact, the Full Bench in the case of, Paraschand (supra), have exhaustively examined the ratio laid down in Bernard's case (supra). After having dealt with the effect of both the decisions, we are of the opinion that there is no conflict between the two judgments.

3. The learned counsel for the petitioner has invited our attention to the decision of the single Bench given in the case of, Mahendra Kumar v. Anand, 1989 MPLJ 281 : (AIR 1989 NOC 56) wherein the learned single Judge took a view that since a special forum has been created for the landlord defined in Section 23-J then those landlords have only a remedy for seeking eviction of a tenant on the ground of reasonable bona fide necessity before the Rent Controlling Authority and the jurisdiction of the Civil Court is barred to that extent. In that connection, the learned single ' Judge has invoked Section 45 of the Act, which reads as under:

'Section 45. Jurisdiction of Civil Courts barred in respect of certain matters.-

(1) Save as otherwise expressly provided in this Act, no Civil Court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any accommodation to which this Act applies or to any other matter which the Rent Controlling Authority is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Rent Controlling Authority under this Act shall be granted by any Civil Court or other Authority.

(2) Nothing in Sub-section (1) shall be construed as preventing a Civil Court from entertaining any suit or proceeding for the decision of any question of title to any accommodation to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such accommodation.'

4. We have to examine this aspect also before we deal with the judgment of the learned single Judge. A reference may be made to Section 11 -A of the Act, which reads as under:-

'Section 11-A. Certain provisions not to apply to certain categories of landlords. The provisions of this Chapter so far as they relate to matter specially provided in Chapter III-A shall not apply to the landlord defined in Section 23-J.'

This section was inserted by M.P. Act No.7/ 85. w.e.f. 16-1-1985. Prior to this, there was no such provision. It was laid down that the provision of this Chapter III Control of Eviction of Tenants, shall not be applicable to the landlords defined in Section 23-J. A bare reading of both the provisions show that a detailed procedure prescribed in this Chapter III shall not apply to the procedure contained in Chapter III-A, which has been specially incorporated for the summary proceedings for eviction of tenants by the landlords specially mentioned in Section 23-J. Chapter III which contains general provision, deals for eviction of tenants by the landlords. Section 12 defines various grounds mentioned therein for eviction of tenants in a Civil Court and other necessary provisions which governs the civil suit for eviction of a tenant by the landlords, whereas Chapter III-A deals with eviction of tenants on grounds of bona fide requirement and provides a summary procedure and creates a special Court known as 'Rent Controlling Authority.' Section 23-J, which defines landlord for the purposes of Chapter III-A, reads as under:

'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
- (ii) a retired servant of a company owned or controlled either by the Central or State Government; or
- (iii) a widow or a divorced wife; or (iv) physically handicapped person; or (v) a servant of any Government including a member of defence services who, according to his service conditions, is not entitled to Government accommodation on his posting to a place where he owns a house or is entitled to such accommodation only on payment of a penal rent on his posting to such a place.'

Therefore, the idea is that any of the landlords being a retired Government servant or a member of defence services or a retired servant of a company owned or controlled either by the Central or State Government, a widow or a divorced wife; or a physically handicapped person etc., if such persons require premises for bona fide requirement then on that count, they can choose the forum of Rent Controlling Authority under Chapter III-A. But, the learned Single Judge has construed Section 11-A to mean that since a special forum has been constituted for the landlords then those landlords can only invoke the particular forum i.e. Rent Controlling Authority for eviction of the tenant on the ground of bona fide requirements and jurisdiction of Civil Court is barred.

5. We have bestowed our best of consideration to the interpretation of Section 11 - A and we are of the opinion that the provision of Chapter III will not apply to Chapter III-A and not vice-versa. The learned Single Judge has only read it to mean that if the landlords defined in Section 23-J seek a remedy of eviction of the tenant then they have only one forum and they cannot take the benefit of going to Civil Court along with other ground, with great respect, is not correct. In fact, this is not the intention of Section 11-A. If any landlord wants to get a benefit of summary proceedings of the tenant, who is a landlord defined in Section 23-J, then he can

immediately invoke the remedy before the Rent Controlling Authority. But, if he does not want to invoke the benefit of that summary remedy then there is no prohibition for him to go to a Civil Court and seek remedy of eviction of the tenant on the basis of reasonable bona fide requirement or on other grounds mentioned in Section 12 of the Act. Section 45 does not prohibit the landlord defined in Section 23-J from seeking a remedy before the Civil Court. Section 45 only says that no Civil Court shall entertain any suitor proceeding in so far as it relates to fixation of standard rent in relation to any accommodation to which this Act applies or to any other matter which the Rent Controlling Authority is empowered by or under this Act to decide and no injunction in respect of any action taken or to be taken by the Rent Controlling Authority shall be granted. A close reading of this section means that so far as the matter relates to fixation of rent in relation to the accommodation concerned, the Rent Controlling Authority will have the jurisdiction to decide the matter and for any other matter, which the Rent Controlling Authority is empowered by or under this Act to decide, no injunction in respect of any action taken or to be taken by the Rent Controlling Authority shall be granted by any Civil Court or other authority. A simple meaning of this is that if any matter in which suit has been filed by the landlord as defined in Section 23-J, for eviction of the tenant on a reasonable bona fide requirement, then to that extent, the jurisdiction of the Civil Court is barred. But, if any landlord defined in Section 23-J, files suit before the Civil Court raising a ground of reasonable bona fide requirement or on other grounds mentioned in Section 12 of the Act, then the Civil Court can decide the matter and there is no prohibition. If the landlord defined in Section 23-J files a simpliciter suit on the ground of reasonable bona fide necessity before the Rent Controlling Authority then in that case, the Civil Court will have no jurisdiction whatsoever. But to interpret Section 45 to mean that the landlord defined in Section 23-J will have no right to approach the Civil Court for eviction of the tenant on the ground of a reasonable bona fide requirement, will not be a correct interpretation of Section 45. In fact, as already mentioned above, Section 11 -A is a restrictive provision that Chapter III will not be applicable to the landlords defined in Section 23-J under Chapter III-A. But, if the landlord does not want to avail the benefit of Chapter III-A and wants to litigate the matter before the Civil Court as ordinary landlord then Section 45 of the Act will not come in his way. In fact, the

benefit has been specially provided to the landlord defined in Section 23-J whereby he does not cease to be ordinary landlord. The landlord can avail the expeditious remedy under Chapter III-A and if they do not want to avail the remedy under Chapter III-A and wants to litigate as an ordinary citizen, then it is their choice and they cannot be restricted to one, particular forum. Alternative forum has been created for the benefit of these persons and that does not exclude the ordinary civil forum, if they do not want to avail the benefit of a privilege which has been created for them under the Act. Therefore, when Chapter III-A is specially inserted for the benefit of the landlords defined in Section 23-J and to read it that excludes other civil forum with reference to Section 45 will be frustrating the very purpose of the Act. Neither the Full Bench in the case of Paraschand, (AIR 1987 Madh Pra 50) (supra) nor the Division Bench in the case of Bernard, (AIR 1986 Madh Pra 72) (supra) has anywhere laid down that the jurisdiction of the Civil Court is barred for the landlords defined in Section 23-J of the Act. The view taken by the learned Single Judge that since a special forum has been created under Chapter III-A; therefore, reading with Section 45, the landlords defined in Section 23-J has to resort to that particular forum and they cannot have a remedy before the Civil Court, with great respect, it is not the correct view taken by the learned Single Judge.

6. It may be relevant to mention here that whenever the restrictive provision appeared then it has to be construed strictly. This is a settled principle of interpretation of statute that when a provision curbing the general jurisdiction of the Court is made then it has to receive a strict interpretation. In this connection, a reference may be made to (1966) 3 SCR 617 : (AIR 1966 SC 1718) (Abdul Waheed Khan v. Bhawani). This matter arose from this Court under the Bhopal State Land Revenue Act. 1932 and the question was whether under Section 200 (1) the Civil Court is barred from entertaining a suit with respect to any matter which a revenue officer is empowered by the Act to determine. In that connection, their Lordships observed (at p. 1719 of AIR):

'It is settled principle that it is for the party who seeks to oust the jurisdiction of a Civil Court to establish his contention. It is also equally well settled that a statute ousting the jurisdiction of a civil Court must be strictly construed.'

The same view has been recently reiterated by the Hon. Supreme Court in the case of Sachida Nand Singh v. State of Bihar, (1998) 1 JT (SC) 370 : (AIR 1998 SC 1121). In this case also, my Lord the Chief Justice Hon. Punchhi while interpreting Section 195 (i) (b) (ii) read with Section 340 of the Criminal Procedure Code, has categorically observed (at pp. 1122-23 of AIR):

'it is a well recognised canon of interpretation that provision curbing the general jurisdiction of the Court must normally received strict interpretation unless the statute or the context requires otherwise.'

Therefore. Chapter III-A which is of a restrictive nature, has to be construed strictly and should not be interpreted; to mean that the remedy of Civil Court is barred if the landlords defined in Section 23-J does not want to avail the special provision conferred under Chapter III-A.

7. In fact, Section 45 will only give the benefit to the landlords defined in Section 23-J. In case, they invoke Chapter III-A for eviction of the tenant on the reasonable bona fide requirement then the Civil Court will have no jurisdiction to interfere with the jurisdiction of the Rent Control-line Authority for that purpose. But, it cannot be read to mean that on account of creation of Chapter III-A. the landlords defined in Section 23-J cannot avail the benefit if they so choose before the Civil Court. The forum is for the benefit of the landlords defined in Section 23-J and if the landlords defined in Section 23-J do not want to avail that benefit and want to avail the litigation in the Civil Court, then they can certainly do it and there is no prohibition for invoking that provision. In fact, the Full Bench in the case of Parasehand (AIR 1987 Madh Pra 50) (supra) while interpreting Section 12 of the Amending Act, clearly observed that if any one wants to avail (the expeditious remedy of eviction of the tenant and if Civil Suit is pending on various grounds along with the ground of reasonable and bona fide requirement before the Civil Court then with the leave of the Court they can withdraw the ground of eviction of the tenant on the basis of bona fide requirement and can approach the Rent Controlling Authority for expeditious disposal of the matter. It never suggested that the forum of Civil Court is barred.

7-A. As a result of above discussion, we hold that there is no conflict between the two decisions i.e. Bernard's case, (AIR 1986 Madh Pra 72) (supra) and Parasehand's case, (AIR 1987 Madh Pra 50) (FB) (supra). However, we hold that the view taken by the learned single Judge in Mahendra Kumar's case (AIR 1989 NOC 56) (Madh Pra) (supra) is no more a good law.

8. If the landlords defined in Section 23-J, want to avail the benefit of Chapter III-A then they can maintain a suit for eviction of a tenant before the Rent Controlling Authority on the ground of bona fide requirement and in case, they do not want to avail the special forum created under the Chapter III-A and want to invoke the ordinary Civil Court remedy then that forum will be available to them and their suit will not be dismissed on the ground that they should invoke the remedy provided under Chapter III-A. It will be open for the landlords to file a Civil Suit before the Civil Court on the basis of the bona fide requirement or on any other grounds mentioned in Section 12 of the Act. Similarly, it will be open for the landlords defined in Section 23-J to maintain a suit before the Rent Controlling Authority on the ground of reasonable bona fide requirement. The forum is for the benefit of the landlords defined under Section 23-J and that does not exclude the jurisdiction of the Civil Court, if the landlords so choose. It is the choice of the landlord and it cannot be restricted that he can only avail the remedy for eviction on the ground of reasonable bona fide requirement before that forum alone.

9. This reference is answered accordingly.