

Nathulal and ors. Vs. Ratansi

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Court : Madhya Pradesh

Decided On : Aug-20-1957

Reported in : AIR1958MP218

Judge : M. Hidayatullah, C.J., ;V.R. Sen and ;B.K. Choudhuri, JJ.

Acts : C.P. and Berar Letting of Houses and Rent Control Order, 1949 - Sections 2; C.P. and Berar Regulation of Letting of Accommodation Act, 1946 - Sections 6; Transfer of Property Act

Appeal No. : Second Appeal No. 800 of 1954

Appellant : Nathulal and ors.

Respondent : Ratansi

Advocate for Def. : V.K. Sanghi and ;J.P. Sanghi, Adv.

Advocate for Pet/Ap. : D.L. Jayawant, Adv.

Judgement :

ORDER

1. This case comes before the Full Bench on a reference by Choudhuri J. The appeal arises out of a civil suit filed after notice with the permission of the Rent Controller, and the dispute is as to the validity of the notice which has been served upon the tenant. Admittedly, the tenant was asked to be evicted from only a

portion of the house, and the contention of the tenant is that the notice served on him, was invalid and further that if the notice were held to flow from the C. P. and Berar Letting of Houses and Rent Control Order, 1949, the C. P. and Berar Regulation of Letting of Accommodation Act, 1946, and the House Rent Control Order are ultra vires in material particulars.

2. The case was sent to this Full Bench for final decision, but we think it better that we should express ourselves only on the questions of Law which have been raised before us and leave the matter to the learned Single Judge. Fortunately the referring Judge is with us and he agrees that this is the best course.

3. The first contention of the tenant is that under the Transfer of Property Act, there can be no splitting up of a tenancy, and either the tenancy has to continue as a whole or has to be terminated in its entirety. By giving permission to the landlord to evict the tenant from a portion of the premises there is a splitting up of tenancy and a new tenancy in respect of the portion retained by the tenant will emerge. According to the tenant, this is not possible under the Transfer of Property Act and therefore, the order made by the Rent Controller was illegal and cannot be given effect to.

In the alternative, the tenant asks that if such a permission naturally flows from Sub-clause (8) of clause 13 of the Rent Control Order, then the clause itself is ultra vires being in conflict not only with the general scheme of the C. P. and Berar Regulation of Letting of Accommodation Act, but also in conflict with the Transfer of Property Act. The learned Counsel for the tenant contends that if the clause be effective and valid under the Act, then the Act itself is illegal and ultra vires.

4. Beginning with the last argument first, it has been laid down in a Full Bench decision of the Nagpur High Court reported in *Balkishan, v. Totaldas*, (S) AIR 1955 Nag 246 (A) that the Act is intra vires the provincial legislature. Indeed, the same result follows on analogy from a decision of their Lordships of the Supreme Court reported in *Harishankar Bagla v. State of Madhya Pradesh*, 1958 SCR 380 : (AIR 1954 SC 465) (B). Section G of the C. P. and Berar Regulation of Letting of Accommodation Act was impugned before the Full Bench of the Nagpur High Court and was held to be valid and effective. As a consequence of the validity of

section 6 of the Act, the House Rent Control Order, which has been made, makes room in the existing law for the rules contained in that Order-Those rules therefore become paramount, and though they do not abrogate or repeal the existing law, they have to be enforced without the bar of the ordinary existing law. The result thus reached is that the Rent Control Order is effective notwithstanding the Transfer of Property Act or any other law that may be in existence for the time being.

5. It was contended that Sub-clause (8) of clause 13 of the House Rent Control Order does not flow naturally from the C. P. and Berar Regulation of Letting of Accommodation Act, and it is argued that that merely envisages the regulating of accommodation as laid down in Section 2 of the Act. The opening portion of section 2 clearly envisages the regulating of accommodation, and the rule which has been enacted in the House Rent Control Order does not more than that. The power to control or regulate accommodation is a power conceded to the State Legislature by the State List.

It is so not only now but was so even under the Government of India Act, 1935. The power, therefore, was properly exercised and Sub-clause (8) does no more than regulate the occupation of houses and the allocation of accommodation, between the landlord and tenant. It may be that under the original agreement the landlord had given the entire house to the tenant, but in spite of this fact, the landlord's needs have to be considered, and the clause says that a portion of it may be asked to be vacated for his residence. In view of this, we do not think that Sub-clause (8) in any way goes beyond the provisions of section 2 of the C. P. and Berar Regulation of Letting of Accommodation Act.

6. It was pointed out that there is a conflict between the decisions of the Nagpur High Court which are mentioned in the order of reference, In *Sakharampant v. K.L. Lodhi*, 1953 Nag LJ 235 : (AIR 1953 Nag 265) (C) it was observed that a tenancy cannot be split up and the order to vacate the premises must be in respect of the entire premises or not at all. In that case there was an error in reading the number of the item in Sub-clause (8). As pointed out in the later case *Gokuldas v. Babulal*, 1955 Nag LJ 716 (D), item (vii) was mentioned by mistake for item (vi). Indeed,

there was an amendment existing on the date on which these two cases were decided, which apparently got overlooked.

In view of this, the reasoning which is contained in the previous decision reported in *Sakharampant v. K.L. Lodhi* (C) (cit. sup) needs to be reconsidered. If item (vi) had been mentioned in Sub-clause (8) of Clause 13, it is likely that the plain language of the clause would have enabled the learned Judges to reach a different conclusion. In view of the fact that in the later case the number of the item was correctly mentioned, a different conclusion was reached.

7. In our opinion, under Sub-clause (8) of Clause 13 there is room for permission for vacating only a portion of the premises, and it is not necessary in every case, that the landlord must be given permission to terminate the entire tenancy if he himself wants only a portion. Even, if the landlord wants the entire portion, the words of Sub-clause (8), enable the Rent Controller to decide what portion of the house would meet the needs of the landlord and he can make an order only in respect of that portion.

8. These were the only points which were raised before us and we answer them against the tenant. As we have already pointed out, the case shall go before the learned Single Judge for his decision. Costs of this matter shall be costs in the appeal.