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Subhash Kumar Vs. Shankarlal

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Court : Madhya Pradesh

Decided On : Aug-07-2000

Reported in : 2000(4)MPHT151

Judge : Dipak Misra, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 115 - Order 6, Rules 14 and 15; Madhya Pradesh Accommodation Control Act, 1961 - Sections 23A, 23C and 23J

Appeal No. : Civil Revision No. 118/2000

Appellant : Subhash Kumar

Respondent : Shankarlal

Advocate for Def. : A.D. Mishra, Adv.

Advocate for Pet/Ap. : Ashok Chakrawarty, Adv.

Disposition : Revision allowed

Judgement :
ORDER

Dipak Misra, J.

1. Invoking the revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure (hereinafter referred to as 'the Code') the tenant/applicant has called in question the defensibility of the order dated 20-12-1999 passed by the Rent Controlling Authority, Betul, in Case No. 1-A-90 (B) 4/99-2000, wherein the said authority has passed the order of eviction against the applicant.

2. The facts as have been undraped are that the non-applicant filed an application for eviction of the applicant from the premises situate in Rajendra Ward, Betul. It was set forth in the application that he had bona fide need for accommodation to settle his son and his son's family and hence, accommodation was required. It is pertinent to state here that the application was filed under Section 23-A of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as 'the Act') on the ground that the non-applicant belonged to special category of landlord as defined under Section 23-J of the Act. The applicant after receipt of the notice filed an application for grant of leave under Section 23-C of the Act but the Rent Controlling Authority rejected the application for grant of leave by order dated 30-12-1998. Thereafter, Rent Controlling Authority framed three issues and passed the order of ejectment against the applicant.

3. It is worthwhile to note here that issue No. 1 pertained to the status of the non-applicant as a landlord under Section 23-J of the Act.

4. Mr. Chakrawarty, learned counsel for the applicant assailing the impugned order has contended that the non-applicant is not a landlord as defined under Section 23-J of the Act and, therefore, the application under Section 23-A of the Act is not maintainable. His further submission is that the non-applicant is a teacher in the Nagpur Municipal Corporation and, therefore, he is not covered in the category as mentioned under Section 23-J of the Act.

It is put forth by Mr. A.D. Mishra, learned counsel for the non-applicant that the non-applicant though is a teacher in Municipal Corporation, Nagpur, he will be covered within the ambit of Section 23-J of the Act inasmuch as a Municipal Corporation is a statutory Corporation. In support of his contention he has placed reliance on the Division Bench decision of this Court rendered in Ranjit Narayan Haksar v. Surendra Verma, 1995 MPLJ 21.

5. To appreciate the rival contentions advanced at the Bar, it is appropriate to refer to Section 23-A of the Act. It reads as under :

'23-A. Special provision for eviction of tenant on ground of bona fide requirement.-- Notwithstanding anything contained in any other law for the time being in force or contract to the contrary, a landlord may submit an application, signed and verified in a manner provided in Rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) as if it were a plaint to the Rent Controlling Authority on one or more of the following grounds for an order directing the tenant to put the landlord in possession of the accommodation, namely :

(a) that the accommodation let for residential purposes is required 'bona fide' by the landlord for occupation as residence for himself or for any member of his family, 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.

Explanation :-- For the purposes of this clause, 'accommodation let for residential purposes' includes--

(i) any accommodation which having been let for use as a residence is without the express consent of the landlord, used wholly or partly for any non-residential purposes;

(ii) any accommodation which has not been let under an express provision of contract for non-residential purposes;

(b) that the accommodation let for non-residential purpose 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 daughter, 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 :

Provided that where a person who is a landlord has acquired any accommodation or any interest therein by transfer, no application for eviction of tenant or such

accommodation shall be maintainable at the instance of such person unless a period of one year has elapsed from the date of such acquisition.

On a perusal of the aforesaid provision it is quite clear that this is a special provision whereby a landlord can evict a tenant on the ground of bona fide requirement. The aforesaid provision had to be read conjointly with Section 23-J of the Act which 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.'

The aforesaid provision defined a landlord for the purpose of Chapter III-A of the Act wherein both Sections 23-A and 23-J fall. As far as the non-applicant is concerned, he is not a retired employee of any Government nor is he a retired member of Defence Services. Learned counsel for the non-applicant has drawn inspiration from Clause (ii) of Section 23-J of the Act to highlight that the non-applicant would belong to the category of a retired servant of a company owned or controlled by the State Government.

6. In the case of Ranjit Narayan Haksar (supra) this Court while dealing with an employee of M.P. State Road Transport Corporation held that a retired employee of a Government owned or controlled statutory Corporation is a landlord as

defined in Section 23-J (ii) of the Act. The Division Bench further opined that as the M.P. State Road Transport Corporation is a statutory Corporation owned by the State Government, a retired employee will come within the ambit of definition of landlord under Section 23-J of the Act. In my considered view the decision rendered in Ranjit Narayan Haksar's case (supra) is not at all applicable to the present case as the Municipal Corporation can never be regarded as a statutory Corporation brought into existence by the State Government or controlled by the State Government. A Municipality or a Municipal Corporation is a body corporate having its perpetual seal and authority and it is a local body having its own independent existence. Mr. Chakrawarty has brought to the notice of this Court a decision rendered in Shiv Singh v. Krishna Gopal, 1986 MPRCJ 341, wherein a learned Single Judge of this Court has held that a retired servant of the Municipal Council does not fall within the definition of the term 'landlord' as defined under Section 23-J of the M.P. Accommodation Control Act, 1961. On a perusal of the aforesaid decision it is plain as noon day that the Municipality or Municipal Corporation is a local authority and an independent entity separate from Government and by no stretch of imagination it can be construed that the same is controlled by the State Government as a Government company or a statutory Corporation owned or controlled by the Government. Hence, the submission made by Mr. Chakrawarty has substantial force and I am inclined to accept it. I am conscious that the application for leave under Section 23-C of the Act sought for by the applicant was rejected by the Rent Controlling Authority and he accepted the said decision. But as a pure question of law arises and the impugned order of the Rent Controlling Authority is totally without jurisdiction the same has to be set aside and accordingly I so do. However, it is observed that it is open to the non-applicant to file a suit as contemplated under the provisions of M.P. Accommodation Control Act, 1961 seeking eviction of the tenant.

7. Resultantly, the revision is allowed. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs.

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