

Param Lal Burman Vs. Ravi Kumar Sharma

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Court : Madhya Pradesh

Decided On : Apr-26-2000

Reported in : AIR2000MP299; 2000(3)MPHT303; 2000(3)MPLJ104

Judge : Dipak Misra, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 38 and 45;
[Constitution of India](#) - Article 21

Appeal No. : C.R. No. 1397 of 1999

Appellant : Param Lal Burman

Respondent : Ravi Kumar Sharma

Advocate for Def. : Virendra Verma, Adv.

Advocate for Pet/Ap. : H.C. Kohli, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Dipak Misra, J.

1. In this Civil Revision preferred under Section 115 of the Code of Civil Procedure, the defendant-petitioner has called in question the legal validity of the

order dt. 31-3-99 passed by IIIrd Civil Judge, Class-II, Jabalpur in C.S. No. 115-A/98 whereby he has refused to exercise his jurisdiction under Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code') for directing the landlord to reconnect the electricity supply to the tenanted premises.

2. The non-applicant as plaintiff instituted the aforesaid suit for ejectment of the applicant-non-member of grounds enumerated under Section 12 of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as 'the Act'). The defendant-tenant filed his written statement contending, inter alia, that he is in occupation of the suit premises for past 35 to 40 years and he is not in arrears of rent and the plaintiff has plenty of accommodation to live but has filed the suit in a mala fide manner to get the defendant vacated and thereafter give the premises to a builder for construction of Apartments. In paragraph nine of the written statement it was pleaded that the plaintiff had illegally cut off the electricity supply to put pressure on the tenant-applicant to vacate the suit premises.

3. During the pendency of the suit the defendant-petitioner filed an application on 3-11-98 under Section 151 of the Code that the plaintiff-non-applicant had illegally disconnected the supply of electricity though he has been collecting electricity charges from the applicant and, therefore a direction should be issued to restore electricity supply which is an essential supply.

4. The said application was resisted by the plaintiff-non-applicant on the ground that it was misconceived and untenable in law. It was further pleaded that the jurisdiction to decide the same vests with the Rent Controlling Authority under Section 38 of the Act and the tenant had applied before the Rent Controlling Authority but his application had been rejected by order dt. 5-2-97. The learned trial Judge upon hearing the learned Counsel for the parties came to hold that the application preferred under Section 151 of the Code was not maintainable as the aggrieved party can take resort to Section 38 of the Act by moving the Rent Controlling Authority.

5. I have heard Mr. H. C. Kohli, learned Counsel for the applicant and Mr. Virendra Verma, learned Counsel for the non-applicant.

6. Mr. Kohli, learned Counsel for the petitioner has contended that electricity supply is an essential supply and when the suit is pending for adjudication it cannot be said that the Civil Court is bereft of jurisdiction to pass any order in this regard. His further submission is that by disconnection of electricity supply his right to live with dignity is affected and, therefore, the whole action of the non-applicant is hit by Article 21 of the Constitution and hence, the Civil Court would have been within its domain to issue a direction.

7. Combating the aforesaid submission Mr. Verma, learned Counsel has canvassed that under the Act the Rent Controlling Authority has been conferred jurisdiction to deal with such matters and when it comes exclusively within the jurisdiction of the Rent Controlling Authority the same cannot be adjudicated by the Civil Court. He has further submitted that the petitioner's approach is not a bona fide one inasmuch as his application before the Rent Controlling Authority was rejected before institution of the suit and the present application has been filed to mislead the Court and to procrastinate the litigation.

8. To appreciate the rival submissions raised at the Bar. I have perused Section 12 of the Act. Under the aforesaid Section certain grounds are envisaged upon which a landlord can seek eviction of the tenant. No power is conferred on the Civil Court to pass any orders for directing supply of electricity to the landlord or to the M.P.E.B. On the contrary Section 38 confers power on the Rent Controlling Authority to deal with such matters, Section 38 reads as under :--

Section 38. Cutting off or withholding essential supply or service.-

(1) No landlord either himself or through any person purporting to act on his behalf shall without just and sufficient cause cutoff or withhold any essential supply or service enjoyed by the tenant in respect of the accommodation let to him.

(2) If a landlord contravenes the provisions of Sub-section (1), the tenant may make an application to the Rent Controlling Authority complaining of such contravention.

(3) If the Rent Controlling Authority on inquiry finds that the essential supply or service enjoyed by the tenant in respect of the accommodation was cut-off or withheld by the landlord without Just and sufficient cause, it shall make an order directing the landlord to restore such supply or service.

(4) The Rent Controlling Authority may in its discretion direct that compensation not exceeding fifty rupees-

(a) be paid to the landlord by the tenant, if the application under Sub-section (2) was made frivolously or vexatiously;

(b) be paid to the tenant by the landlord, if the landlord had cut-off or withheld the supply or service without just and sufficient cause.

Explanation I.-- In this section, 'essential supply or service' includes supply of water, electricity, lights in passages and on stair-cases, conservancy and sanitary services.

Explanation II.-- For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cutoff by the local authority or any other competent authority.'

On a bare reading of the aforesaid provision it is plain as noon-day, that certain proceedings are to be adjudicated by the Rent Controlling Authority. He has the exclusive jurisdiction to pass appropriate order. In this context, I may profitably refer to Section 45 of the Act. It 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 insofar 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.'

On a fair and objective reading of Section 45 it is quite vivid that whatever is cognizable and is within the domain of Rent Controlling Authority the same is not to be adjudicated by the Civil Court. Irrefragably the supply of electricity is one such aspect which is to be dealt with under Section 38 of the Act by the Rent Controlling Authority. Thus it is in the exclusive jurisdiction of the said authority. Section 45 has to be given full play and the Civil Court cannot assume jurisdiction to deal with such matters. Mr. Kohli, learned Counsel in course of his argument advanced a contention that Section 38 is attracted when the suit is not pending but once a suit for eviction is pending it is open to the tenant to challenge the action of the landlord in the Civil Court and seek appropriate direction. I am afraid such a contention is not acceptable in view of the language used under Sections 38 and 45 of the Act. The pendency of the suit is not the test for exercise of power under Section 38 of the Act. Quite apart from the above as has been stated earlier such a power vests with the Rent Controlling Authority and hence, Section 45 bars exercise of such power by the Civil Court.

9. As far as the other limb of argument of Mr. Kohli relating to Article 21 of the Constitution is concerned, true it is right to live means to live with dignity. No human being should be allowed to live like an unperson. To live without electricity is definitely not an acceptable condition but the Act has made provision for dealing with such remedies and the landlord has not been allowed to be the master of his flying wishes. Once there is provision in the Act, in my humble opinion the plea of Article 21 of the Constitution is not attracted.

10. As the submissions raised by Mr. Kohli are devoid of substance, the Civil Revision fails and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

