

(1997) 05 MP CK 0024

Madhya Pradesh High Court (Indore Bench)

Case No: Civil Revision No. 478 of 1995

Kailash Chandra and Bros. and
Others

APPELLANT

Vs

Dr. Kamla Chaudhary

RESPONDENT

Date of Decision: May 12, 1997

Acts Referred:

- Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 - Section 23A, 23E, 23J

Citation: (1998) ILR (MP) 425 : (1997) JLJ 122 : (1998) 1 MPLJ 110

Hon'ble Judges: Ramesh Surajmal Garg, J

Bench: Single Bench

Advocate: J.L. Jain, for the Appellant; N.K. Patni, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.S. Garg, J.

By this petition u/s 23-E of M. P. Accommodation Control Act, the tenant-applicants challenge the correctness, legality and propriety of the order dated 4-3-1995 passed by the Rent Controlling Authority on the application filed by the non-applicant landlady.

The brief facts necessary for the disposal of the application are that the landlord filed an application for eviction of the tenant on the ground that the premises in possession of the tenant were required by her bona fide for carrying on non-residential activity viz., the clinic/consultation services.

The defendant was granted leave to defend, taking advantage of the same he filed the written statement. The parties joined the issues, led evidence, the trial Court after hearing the parties, granted the application in favour of the non-applicant.

Being dissatisfied by the order passed by the Rent Controlling Authority, the tenant has come up in this- revision.

Shri J. L. Jain, learned counsel for the applicant contended that prior to filing of the suit and during the pendency of the petition for eviction, the landlady has re-let some of the premises, which came to her possession, at higher rent. He also submits that looking to her requirement the accommodation in her possession is more than sufficient and the tenant cannot be evicted from the premises. He also submits that the language in which issue No. 1 has been cast has caused serious prejudice to the applicant. Lastly relying upon the revisional powers of this Court and pressing into service 1985 MPLJ 675 : 1985 MPLJ 793, it was contended that this Court in a case like present must reappreciate the evidence to come to a finding that the landlady does not need the premises. He also raised the question that the Rent Controlling Authority had no jurisdiction as the premises were let out after the landlady was retired and also became widow. Shri Patni learned counsel for the non-applicant submits that the powers of this Court for re-appreciating the evidence can be exercised by this Court only if the appreciation made by the trial Court is patently illegal, perverse or suffers with vice of non-consideration of the evidence available on record. He also submits that the question regarding frame of the issue has already been considered in C.R. No. 512/95 and this Court has held that even if such an issue is framed, it is inconsequential. Shri Patni submits that the accommodation in possession of the landlady is certainly short and does not meet her requirement, therefore, the Rent Controlling Authority was justified in granting decree.

So far as the question of frame of issue is concerned, this Court in C. R. No. 512/95 has held that when the accommodation is let out for composite purpose, the entire accommodation could be got vacated on proof of even one of the needs. In the instant case, though the requirement of the landlord was for the non-residential accommodation, the Rent Controlling Authority framed the question as to whether the landlady is entitled to the accommodation for residential and non-residential requirement. In my opinion, if the Rent Controlling Authority has framed an issue including the need of the residential requirement, it would affect the jurisdiction of that Court because the findings recorded by that authority are in relation to the non-residential requirement alone. Even otherwise, that would not affect the jurisdiction of the said Court.

So far as powers of this Court u/s 23-E are concerned, true it is that in 1985 MPLJ 675 : 1985 MPLJ 793 this Court has observed that the powers of this Court u/s 23-E of the Act are more than the powers of a Court u/s 115, Civil Procedure Code, but the Court has simultaneously observed that the powers are comparatively lesser than an appellate Court. The question ultimately would be as to, to what extent on the principles of appreciation of evidence, this court is required to make an interference. If it is a simple case u/s 115, Civil Procedure Code, this Court would not touch a

finding unless it is shown that the same is perverse. As a second appellate Court again this Court would not touch the findings unless the same are shown to be perverse. It is only when this Court is exercising its powers u/s 96, Civil Procedure Code, it can reappreciate the evidence and reach to its own conclusions but as the Apex Court has observed that this Court is required to give reasons for setting aside the findings recorded by the trial Court and as to why the appellate Court does not approve the findings. Having gone through the evidence, I am of the opinion that the findings cannot be said to be perverse. The findings recorded by learned Rent Controlling Authority are clear. The Rent Controlling Authority has taken into consideration every aspect of the matter. The Rent Controlling Authority has also taken into consideration the accommodation which was available with the landlady. It has also come on record that the landlady has instituted suits against the other tenants also. From Gulabchand, Tarachand and Ramchand she has obtained possession but she still says that the available accommodation does not meet her requirement. The Court is not required to act as a rationing authority. The law is plain and simple. It says that if the landlord proves that the premises are needed bona fide for residential or non-residential requirement, the Court shall grant a decree. The Rent Controlling Authority certainly had jurisdiction to appreciate the evidence. In the opinion of this Court, it has not faltered in recording the said findings. I endorse the findings as correct.

So far as the question raised regarding applicability of section 23-A is concerned, section 23-A is required to be considered in its true perspective. Section 23-A reads as under :-

"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 (V 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."

Section 23-J provides the definition of landlord for the purpose of Chapter 3-A. It 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 divorced wife; or (iv) physically handicapped person; or
- (v) a servant of any Government including a member of defence services 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 place."

The provisions do not anywhere say that if the property is let out by a person when he was in the Government services, then alone he would be entitled to evict the tenant from the premises. The law says that a retired servant of any Government including a retired member of defence services. The law provides the qualifications for a tenant. It does not say that at what time the property is required to be let out. Similarly clause (iii) provides that the landlord means a widow or a divorced wife. The Section does not provide that the landlady shall not be entitled to maintain a suit if after becoming a widow she has let out the premises. The law nowhere says that a woman would be entitled to the benefit u/s 23-J read with section 23-A if the premises were let out when she was not a widow and the need arose only after she became a widow. The concession is shown to the persons and the cause of action would accrue in favour of such landlord only when they need the premises. The cause of action for eviction would not accrue on the date when the tenancy was created. According to section 23-J a landlord would mean a widow or a divorced wife. Admittedly the present applicant is a retired Government servant and is a widow also. Section 23-A says that a landlord may submit an application to the Rent Controlling Authority on one or more of the grounds well described u/s 23-A. Section 23-A also nowhere provides that the landlady or the Government servant or the landlord defined u/s 23-J shall be entitled to maintain an application for eviction before the Rent Controlling Authority only if the tenancy was created before the man fell within the mischief of definition of landlord as provided u/s 23-J. The law says that a landlord, as defined u/s 23-J, shall be entitled to evict the tenant on one or more grounds mentioned u/s 23-A. Assuming for the sake of arguments that the tenancy came into existence after the landlady is to retire or became widow, in view of the above findings, she would certainly be entitled to maintain a suit before the Rent Controlling Authority for eviction of the tenant. I do not see any force in this revision petition. It deserves to and is accordingly dismissed with costs. Costs quantified to Rs. 500/- (Rs. Five Hundred).

At this stage, Shri Jain submits that some time be granted to the tenant for vacating the premises.

Considering the totality of the circumstances it is directed that the tenant shall vacate the premises on or before 30th June, 1997, provided within fifteen days from today, he furnishes an unconditional undertaking before the Rent Controlling

Authority that he shall vacate the house on or before the date fixed above. He shall also be obliged to pay to the landlord the rent/mesne profits due up to 30th June, 1997 within the period aforesaid. He shall also furnish solvent security in a sum of Rs. 15,000/- (Rs. Fifteen Thousand) to the satisfaction of the Rent Controlling Authority for due performance of this order. If any of these conditions are not observed or violated, this order shall become executable immediately.