

(1958) 09 MP CK 0010

Madhya Pradesh High Court

Case No: M.P. No. 21 of 1958

Shri Radhakishan
Temple, Sihora

APPELLANT

Vs

S.D.O., Sihora and
another

RESPONDENT

Date of Decision: Sept. 21, 1958

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1959) MPLJ 239

Hon'ble Judges: T.P. Naik, J

Bench: Single Bench

Advocate: D.L. Jain, for the Appellant; A.P. Sen, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T.P. Naik, J.

This is a petition under Article 226 of the Constitution for quashing the order of allotment in favour of Respondent No. 2 in respect of a house belonging to the Petitioner, i.e., Shri Radhakishan Temple, Sihora, the landlord.

The petition came to be made in the following circumstances. One Vishnuprasad, a tenant of the premises in question, created a sub-tenancy in favour of Respondent No. 2, Dayal Chand, without the written consent of the landlord as required by Clause 12-A of the Madhya Pradesh Letting of Housees and Rent Control Order, 1949. The landlord, therefore, applied for and obtained an order from the Rent Controller to determine the tenancy of Vishnuprasad. He then filed a civil suit (Civil Suit No. 4-A of 1957) for his ejectment, in which he also joined Respondent No. 2, the sub-tenant, as a party

Defendant.

During the pendency of the civil suit aforesaid, Respondent No. 2 on 25th April 1957 applied to the "Rent Controller and Letting of Accommodation, Sihora" in writing (Annexure 6) for being allotted the premises in question on the ground that they were likely to fall vacant on the termination of Civil Suit No. 4-A of 1957, and that he being a displaced person had a preferential claim to its tenancy. On 30th April 1957, the Rent Controller and House Allotment Officer, Sihora, passed the following order (Annexure 7):

Whereas information has been laid before me that the house No. 69 of ward No. 5 is likely to fall vacant, it is allotted to refugee (displaced person) Shri Dayalchand son of Lala Doulat Ram under Clause 24-A of the Rent Control Order on vacation on usual rent.

On the order being served on the landlord, he applied for its cancellation on 9th May 1957, but the Rent Controller by his order dated 27th December 1957 rejected the application. The Petitioner-landlord challenges the aforesaid order of allotment.

He contends that there was an error apparent on the face of the record, when the House Allotment Officer held that the house in question was "available for occupation" within the meaning of Clause 24-A of the Madhya Pradesh Letting of Houses and Rent Control Order, 1949 as soon as the tenancy of Vishnuprasad was "terminated by a valid notice to quit, and that therefore it was available for occupation on the date of the allotment order.

In my opinion, the contention is correct. Under Clause 24-A of the Madhya Pradesh Letting of Houses and Rent Control Order, 1949--

The Deputy Commissioner may, on information received to the effect that a house is likely to become vacant or available for occupation by a particular date, pass any order requiring the landlord of such house to let the same to... a displaced person... and such order shall be complied with by the landlord unless the house does not become vacant or available for occupation within one month from the date of receipt by him of the order of the Deputy Commissioner....

It would thus be seen that the likelihood of the house being vacant or becoming available for occupation by a particular date is a condition precedent to the exercise of the power of allotment by the House Allotment Officer. The House Allotment Officer did not dispute this, but he considered that the house became available for occupation as soon as the tenancy came to an end. But, in my opinion, the house does not become available for occupation as soon as the tenancy is terminated. The tenant still continues to be in physical possession of the premises and unless he vacates it or is ejected therefrom in execution of the civil Court's decree, the house cannot be said to be available for occupation. As it was not known when the tenant was likely to vacate the premises, nor when the civil Court's decree would be available for execution, it could not be predicated that the house was "likely to become vacant or available for occupation by a particular date". Consequently the House Allotment Officer had no jurisdiction to pass the impugned

order of allotment.

For the same reason, as the house did not become vacant or available for occupation within one month from the date of receipt by the Petitioner of the order of allotment, the order is no more binding on him.

The petition is, therefore, allowed and the orders of the House Allotment Officer and the Rent Controller dated 30th April 1957 and 27th December 1957 are quashed.

Respondent No. 2 shall be liable for the costs of the Petitioner. Counsel's fee Rs. 50.