Chimandas Bagomal Sindhi

Vs

Jogeshwar and Another

Civil Appeal No. 201/60

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Gupta JJ)

08.11.1962

JUDGMENT

GAJENDRAGADKAR, J. –

This appeal raises a short question about the construction of clauses 23, 24 and 24-A in The Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter called the Order). Jogeshwar s/o Parmanand Bhishikar (hereinafter called the respondent) owns a house known as the Bhishikar Bhawan in Nagpur. Block No. 2A had been let out by him to a firm known as the Dayalbagh Stores for carrying on business. Since the tenant was in arrears as to rent, the respondent obtained from the Rent Control Authorities permission to terminate the said tenancy. Meanwhile, the tenant intimated to the respondent by telegram on July 24, 1955, that it had vacated the said premises on that day. Prior to the receipt of this telegram, however, the appellant Chimandas Bagomal Sindhi had made an application to the Addl. Dy. Commissioner, Nagpur, on July 15, 1955, that the premises occupied by the said tenant were likely to fall vacant, and prayed that the same should be allotted to him as he was a displaced person within the meaning of the Order. The Addl. D. C. passed an order of provisional allotment in favour of the appellant on the same day and since then, the appellant has been in possession of the said premises.

The respondent then came to know about the said provisional allotment and gave intimation to the Addl. D.C. that he needed the premises for his own purposes, and so, he moved for the cancellation of the said provisional allotment order. On July 23, 1956, the Addl. D.C. purporting to exercise his powers under clause 23(1) of the Order confirmed the provisional allotment in favour of the appellant.

The respondent then moved the Nagpur High Court by a writ petition No. 307 of 1955 for cancellation of the said order. On April 10, 1956, Mr. Justice Bhutt set aside the order of allotment and remanded the case for disposal in accordance with law. That is how the fist stage of this dispute came to an end.

On remand, the Addl. Dy. Commissioner confirmed the earlier order. He held that the respondent did not need the premises for his own occupation and he thought that there was no going back on the earlier provisional order of allotment in favour of the appellant. This second order was challenged by the respondent by another writ petition filed in the Nagpur High Court (No. 391 of 1956). Meanwhile, the appellant had filed a Letters Patent Appeal (No. 95 of 1956) against the decision of Bhutt, J., on the earlier writ petition filed by the respondent. By consent, the said Letters Patent Appeal and the subsequent writ petition filed by the respondent were heard together by a Division Bench of the High Court. The Division Bench has set aside the order of allotment passed in

favour of the appellant and allowed the subsequent writ petition filed by the respondent. It is against this order that the appellant has come to this Court by special leave.

It appears that after remand, the respondent brought it to the notice of the Addl. D.C. that the appellant owned As.-/4/- share in the Hindi Vastra Bhandar and that he had, therefore a place where he could carry on his business. This allegation was repeated by the respondent in his second writ petition and it was urged by him that in view of the fact that the appellant had a place of business of his own, he was not entitled to the accommodation allotted to him by the impugned order. This plea was met by the appellant on the ground that the business mentioned by the respondent had been dissolved. From the affidavit filed by the appellant in that behalf it does appear that the appellant had a share in the Hind Vastra Bhandar and Krishna Watch Co., both of which partnerships carried on their business at Nagpur, but on April 8, 1957 the said partnerships had been dissolved and so, after the said date of dissolution there was no place of business to which the appellant could lay any claim. In support of this plea, the appellant has filed the deed of Dissolution in question.

The High Court has held that reading the definition of the words 'displaced person' prescribed by clause 2(2) together with the relevant clause of the Order under which the impugned allotment had been made in favour of the appellants it must be held that the appellant was not a displaced person and as such, he was not entitled to the said allotment. That is how the main point which arises for our decision in the present appeal is about the construction of the said relevant clauses of the Order.

The order had been passed by the Government of the Central Provinces and Berar by virtue of the powers conferred on it by section 2 of the Central Provinces and Berar Act No. XI of 1946. Sub-clause (2) of clause 2 defines a displaced person as meaning any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or fear of such disturbances in any area now forming part of Pakistan, has been displaced from or has left his place of residence in such area after the 1st day of March, 1947, and who has subsequently been residing in India. The Appellant claims to be such a displaced person.

Clause 13 provides, inter alia, that the landlord would be entitled to claim ejectment of his tenant if he shows that he needs the house or portion thereof for the purpose of his bona fide residence, provided he is not occupying any other residential house of his own in the city or town concerned. He can also obtain ejectment of his tenant if it is shown that the tenant has secured alternative accommodation or has left the area for a continuous period of four months and does not reasonably need the house.

Clauses 22 to 27 form part of Chapter III which deals with the collection of information and letting of accommodation. Clause 22(1) provides that every landlord of a house situate in an area to which this Chapter applies, shall give intimation about the impending vacancy as specified by sub-clauses (a) and (b). Clause 22(2) lays down that no person shall occupy any house in respect of which this Chapter applies except under an order under sub-clause (1) of clause 23 or clause 24 or on an assurance from the landlord that the house is being permitted to be occupied in accordance with sub-clause (2) of clause 23. It would thus be noticed that all vacancies occuring in houses governed by Chapter III have to be filled in the manner specified by clause 22(2).

Clause 23(1) provides that on receipt of the intimation under clause 22, the Dy. Commissioner may within fifteen days from the date of receipt of the said intimation, order the landlord to let the vacant house to any person holding an office of profit under the Union or State Government or to any person holding a post under the Madhya Pradesh Electricity Board, or to a displaced person or

to an evicted person and thereupon, notwithstanding any agreement to the contrary, the landlord shall let the house to such person and place him in possession thereof immediately, if it is vacant or as soon as it becomes vacant. The proviso to this sub-clause gives right to the landlord to plead that he needs the house for his own occupation, and if such a plea is accepted by the Dy. Commissioner, the landlord would be allowed to occupy the same. In other words, in cases falling under clause 23(1) before the D.C. makes an order directing the landlord to let the house to one of the persons specified in the different categories by that clause, it would be open to the landlord to urge his own need and if that need is established, an order under clause 23(1) would not be passed against him. Clause 23(2) provides that if no order is passed and served upon the landlord within the period specified in sub-clause (1), he shall be free to let the vacant house to any person.

Clause 24 provides for the penalty for non-compliance with the requirements of clause 22(1). Under this clause, the Dy. Commissioner is empowered to order the landlord to let the house forthwith to any of the persons falling under the categories specified by that clause. Since the power conferred on the D.C. to make an order under this clause is intended, in a sense, to punish the landlord for his contravention of clause 22, it prima facie appears that the landlord is not given an opportunity to prove his own need as under the proviso to 23(1).

Clause 24-A deals with cases where the Dy. Commissioner receives information to the effect that a house is likely to become vacant or available for occupation by a particular date; and in such cases it empowers the Dy. Commissioner to make an order on the same lines as provided by clause 23(1). This clause lays down that the order passed under it 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 said order, or the landlord applies for the cancellation of the said order stating his grounds thereof. This provision means that an order passed under clause 24A can be challenged by the landlord by pleading that he needs the premises for himself. That, in brief, is the scheme of the relevant provisions.

The High Court has taken the view that in allotting the premises in question to the appellant' the Addl. D.C. has failed to notice the fact that on July 15, 1955, when the provisional allotment order was passed, the appellant had a place of business of his own inasmuch as he was a 4 annas sharer in a partnership which had its place of business. According to the High Court, as soon as it appeared that the appellant had a place of business of his own, he ceased to be a displaced person within the meaning of clause 23(1) and the other relevant clauses. This conclusion proceeded on the basis that though the appellant may be taken to have satisfied the requirements of the definition of the expression "displaced person" under clause 2(2), that definition had to be read in the light of the context of clause 23(1) and its meaning had to be controlled by the said context. Clause 2 begins with the words that in this Order, unless there is anything repugnant in the subject or context, the defined terms will carry the meaning assigned to them by the respective definitions. The whole object of enabling the Dy. Commissioner to make an order of allotment in respect of the persons specified in different categories by the relevant clause, is to provide accommodation to those persons who were without any accommodation. Since that object is implicit in the relevant provision, the definition must be construed in the light of the said implicit assumption of the relevant provision. It is on this view that the impugned order has been set aside by the High Court.

It may be conceded that prima facie the view taken by the High Court appears to be attractive. It does appear to be reasonable that provisions of the kind contained in Chapter III would normally be expected to assist persons of specified categories to obtain accommodation and that would impliedly postulate that such persons have no accommodation which they can claim their own. If the words of

the relevant provision are ambiguous, or if their effect can reasonably be said to be a matter of doubt, it may be permissible to construe the said provisions in the light of the assumption made by the High Court. But, are the words of the relevant provision in any sense ambiguous, or is the effect of those words doubtful ? In our opinion, the answer to these questions must be in the negative.

Clause 23(1) refers to the persons in the specified categories, and empowers the D.C. to make an order of allotment in their favour. There are no terms of limitation qualifying the said persons, and the scheme of the relevant provisions does not seem to contemplate any such limitation. It is significant that the said persons are not entitled as a matter of right to an order of allotment. What clause 23(1) does is to confer power on the D.C. to make an order of allotment if he thought it expedient, just as fair to do so in a particular case. It is only where an order is made by the D.C. that an obligation is imposed on the landlord to let the premises to the person named in the order. Having regard to the words used in describing the persons and the categories, it seems plain that the provision contemplated that a person belonging to one of those categories may be entitled to claim its benefit on the ground that accommodation already available to him was patently insufficient or unsuitable. When such a plea is made, the D.C. may have to consider it and in doing so, he may have to examine the contentions raised by the landlord against such a plea as well as the claim that the landlord may make for his own personal occupation. The enquiry which would thus become necessary would be in the nature of a quasi-judicial enquiry and the power conferred on the D.C. may have to be exercised in a fair and just manner. We do not think that clause 23(1) as well as clauses 24 and 24A necessarily exclude the cases of persons specified in them of the ground that the said persons already have an accommodation which they can call their own. Persons there specified would no doubt have a much better claim for accommodation if it is shown that they have no accommodation at all. But even if such persons have accommodation, their claims cannot be ruled out on the preliminary ground that the very fact that they have accommodation takes them out of the provisions of the respective clauses. It is quite true that if a person belonging to the specified categories has suitable and sufficient accommodation, he would normally not be entitled to claim the benefit of clause 23(1). That, however, is a matter to be considered by the Dy. Commissioner on the merits. We are, therefore, satisfied that the High Court was in error in assuming that the provisions of clause 23(1) and clauses 24 and 24A impliedly postulate that the persons belonging to the respective categories specified by them can receive allotment only if they have no previous accommodation of their own. That being so, we must hold that the appellant's case cannot be thrown out merely on the ground that he had other accommodation by virtue of the fact that he was a partner in two concerns to which we have already referred.

This conclusion cannot, however, finally dispose of the appeal before us because it seems to us that after the remand order was passed by Mr. Justice Bhutt, the Addl. D.C. has not dealt with the matter in accordance with law as he was required to do. He appears to have taken the view that since a provisional order had already been passed, there was "no going back" upon it. He thought that after remand, the scope of the enquiry was confined to the examination of the question as to whether the respondent proved that he needed the premises for his own occupation. It is true that he has incidentally mentioned the fact that the appellant owned a -/4/- share in the business which was carried on in Nagpur, but he has added that the said fact does not preclude him from obtaining a shop for starting a business exclusively of his own. This observation shows that the Addl. D.C. did not properly appreciate the scope and effect of the provision contained in the relevant clause. Besides, reading the order as a whole, it is quite clear that he took an unduly narrow view of the limits of the enquiry which he was bound to hold as a result of the remand order and that has vitiated his final conclusion. We, therefore, think that it is necessary that the matter should be sent back to the Addl. Dy. Commissioner, Nagpur, with a direction that he should consider the case on

the merits afresh. We wish to make it clear that the question as to whether the appellant should be given allotment of the premises in question should be determined by the Addl. D.C. in the light of the position as it stood on July 15, 1955. We are making this observation because there has been some controversy before us as to whether the appellant has lost his right in the premises belonging to the partnership of which admittedly he was a member by reason of the fact that the said partnership is alleged to have been dissolved on April 8, 1957. The learned Attorney-General has contended that if the matter has to go back, the Addl. D.C. should be free to consider the subsequent events that have taken place, and the appellant's case should, therefore, be dealt with on the basis that he has no longer any shares in the said partnerships. We are not inclined to accept this contention. The fact that the present proceedings have been protracted would not entitle the appellant to ask the Addl. D.C. to take subsequent events into account. It is clear that the dissolution of the partnership took place long after the appellant obtained the provisional allotment from the Addl. D.C. and it is by no means clear that if the Addl. D.C. had been then told that the appellant had a place of business of his own, he would have granted accommodation to him in the present premises on the same day that he moved him in that behalf. We are satisfied that the question about the propriety and validity of the said provisional order must be judged in the light of the facts as they obtained on that day.

Mr. Kherdekar for the respondents wanted to argue before us that under cl. 2(2) the appellant was not a displaced person on that day and he has relied on the fact that the appellant had been carrying on business in several places in India since 1945. This point has not been considered either by the Addl. D.C. or the High Court. If so advised, the respondents may take this point before the Addl. D.C. and we have no doubt that if raised, it would be dealt with by the Addl. D.C. in accordance with law.

The result is, the appeal is allowed, the order passed by the High Court on the writ petition is set aside and the matter is remanded to the Addl. Dy. Commissioner, Nagpur, with a direction that he should deal with the dispute between the parties afresh in accordance with law. Costs incurred by the parties so far would be costs in the final order which may be passed after remand.

Appeal allowed.

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