

Mansaram

Vs

S. P. Pathak and Others

Civil Appeal No. 1262 (N) of 1978

(D. A. Desai, R. B. Misra JJ)

29.09.1983

JUDGMENT

DESAI, J. -

1. Appellant Shri Mansaram son of Shri Chanduram Sharma was serving in the telephone office at Nagpur and was thus holding an office of profit under the Union of India. He took on lease premises on a monthly rent of Rs. 75 per month, more particularly described in the application made to the House Allotment Officer, Nagpur by first respondent Shri S. P. Pathak, from the then owner of the premises one Shri Basantraï Sharma. He continued to be in possession even after his retirement from service in 1967. Shri Basantraï Sharma died and there is a dispute between respondents 3 and 4 and Shri Prabhakar about succession to the estate of the deceased Shri Basantraï Sharma. Respondents 3 and 4 claimed to be the legatees under a will of deceased Shri Basantraï Sharma. Respondent No. 1 Shri S. P. Pathak made an application to House Allotment Officer, Nagpur registered as Miscellaneous Case No. 51/A-71(2) 76-77 against the present appellant Mansaram alleging that the appellant had occupied the premises involved in the dispute in contravention of sub-clause (2) of Clause 22 of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 ('Rent Control Order' for short), in that he occupied the premises to which Chapter III of the Rent Control Order applies without obtaining an order under sub-clause (1) of Clause 23 or Clause 24 or without an assurance from the landlord that the premises are being permitted to be occupied in accordance with sub-clause (2) of Clause 23. To this petition, respondent 4 Smt. Usha Rani N. Sharma was also impleaded as a respondent but after having once appeared through advocate, she did not prefer to remain present along with her counsel and the House Allotment Officer proceeded against her ex parte. In the application made by Shri S. P. Pathak, first respondent on December 7, 1976, it was in terms stated that the appellant Shri Mansaram Sharma was a Government servant employed in the telephone department at Nagpur and the appellant has now retired from service and therefore, is not entitled to retain the demised premises. It was further alleged that the former owner of the premises Shri Basantraï Sharma has died. The premises have been inherited by respondent 4, Smt. Usha Rani N. Sharma and she and the tenant Mansaram Sharma have conspired together and are violating the provision of law by letting Shri Mansaram Sharma to continue to live in the premises. It was further alleged that the appellant Shri S. P. Pathak was badly in need of premises and therefore, the premises may be allotted to him.

2. Appellant Shri Mansaram Sharma appeared and filed a written statement inter alia contending that he occupied the premises on the assurance given by the then landlord Shri Basantraï Sharma that the house is being permitted to be occupied in accordance with sub-clause (2) of Clause 23. It was further contended that in a proceeding under the Rent Control Order, late Shri Basantraï Sharma, the deceased landlord, had sought possession of the premises on the ground of bona fide

personal requirement but he had lost the same. It was further alleged that Shri S. P. Pathak is a near relation of Shri Basantrai Sharma and that he has been put forward by Smt. Usha Rani N. Sharma for seeking a collusive order. It was further alleged that it is incorrect to say that he occupied the house under any allotment order. It was further stated that since his retirement in July, 1967, he has been accepted as tenant and therefore, no proceeding can be taken against him under Clause 28 of the Rent Control Order for alleged contravention of Clause 22.

3. The House Allotment Officer held that Shri Basantrai Sharma let out the premises to the appellant in the year 1954 in contravention of Clause 22(1)(b) of the Rent Control Order and the appellant occupied the premises in contravention of Clause 22(2) of the Rent Control Order and therefore, he was liable to be evicted under Clause 28. It was further held that the appellant had occupied the premises when he was holding an office of profit under the Union of India and now that he was retired, he is not entitled to continue in the premises and therefore, also he is liable to be evicted. Accordingly, the House Allotment Officer by his order dated November 2, 1977 gave a direction to the appellant to vacate the premises within a fortnight from the communication of the order and deliver the possession of the premises to Smt. Usha Rani N. Sharma failing which action will be taken under Clause 28(1) of the Rent Control Order.

4. Appellant filed a Special Civil Application No. 1957 of 1977 before the Nagpur Bench of the Bombay High Court. A learned single Judge dismissed the petition in limine. Hence this appeal by special leave.

5. At the outset, we must confess that the learned single Judge was completely in error in rejecting the petition under Article 227 of the Constitution in limine because various points raised by appellant are such that at least a reasoned decision by the High Court or at least a speaking order briefly showing why these contentions did not find favour with the High Court was a must. At one stage, we were toying with the idea to remit the matter to the High Court but that would merely be further delaying the already over-delayed proceedings.

6. Order 22 of the Rent Control Order reads as under :

Clause 23 provides that within fifteen days from the date of receipt of intimation of vacancy under Clause 22, the Collector may order the landlord to let the vacant premises to any persons holding an office of profit under the Union or the 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. There is a proviso to Clause 23 which provides that simultaneously while giving intimation of the vacancy, if the landlord intimates to the Collector that he needs the house which has fallen vacant or is likely to fall vacant for his occupation, the Collector shall, if satisfied after due enquiry that the house is so needed, permit the landlord to occupy the same. This proviso is not relevant for the present purpose. Sub-clause (2) of Clause 23 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 25 provides that where a person is allotted the premises and is put in possession thereof by an order under Clause 23 or 24-A, his tenancy shall stand terminated amongst others on the date from which he ceases to hold an office of profit under Union or a State Government etc. and such person shall vacate such premises within seven days of such date and the landlord and the tenant shall give the intimation about the same as prescribed in Clause 22 to the Collector in respect of such premises. There is a proviso which confers power on the Collector to extend the tenancy by a period not

exceeding four months. Clause 28 confers powers on the Collector to effectively carry out the duty and obligation cast on him under Chapter III. Clause 28 reads as under :

28. (1) The Collector may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be reasonably necessary for the purpose of securing compliance with, or for preventing or rectifying any contravention of this Order or for the effective exercise of such power.

7. The relevant provisions noticed hereinbefore will show that the landlord is under a statutory duty to intimate the existing or impending vacancy in the premises of which he is the landlord to the Collector [Clause 22(1)]. The object underlying the provision is to make available residential accommodation to the Collector for allotting the same to a specified class of persons set out in Clause 23. This class comprises any person holding an office of profit under the Union or State Government or any person holding a post under the Madhya Pradesh Electricity Board, or a displaced person or an evicted person. The Collector can allot the premises in respect of which he has received an intimation of vacancy under Clause 22, to anyone belonging to the specified class and none else. The very enumeration of the class would show that these are persons who cannot be left to the vagaries of the law of demand and supply of residential accommodation and they are required to be assisted in this behalf for efficient performance of public service or one who is roofless on account of being a displaced person or evicted person. It may be that at any given point of time, no one from class for whose benefit power is conferred on the Collector to allot vacant premises may be on the waiting list and therefore, sub-clause (2) of Clause 23 permits the landlord to let out such premises in respect of which he has intimated a vacancy to any person if within fifteen days from the date of intimation of vacancy to the Collector, an order of allotment is not served upon the landlord. As a sequel to the right to obtain allotment on the ground of being holder of office of profit under Union or State Government a corresponding obligation is cast upon such person to vacate the premises as soon as he ceases to hold office or the post which enabled him to obtain the order of allotment. To give full effect to these provisions, power is conferred on the Collector to take appropriate action to enforce provisions of Clauses 22 to 27.

8. The application made by first respondent Shri S. P. Pathak on December 7, 1976 to the House Allotment Officer complained of appellant not vacating the premises even though he has ceased to hold the office of profit. There was not the slightest complaint that when the appellant entered the premises in 1954, either he did it under an order of allotment made by the Collector or surreptitiously or in league with the then landlord Shri Basantraï Sharma or in violation of the mandatory requirement of Clause 22. Yet the House Allotment Officer proceeded to enquire as to whether Clauses 22(1)(b) and 22(2) were contravened when the appellant entered the premises in 1954.

9. The first question that should engage our attention is whether the House Allotment Officer was right in holding that there was any contravention of Clauses 22(1)(b) and 22(2) of the Rent Control Order at the time when appellant entered the premises in 1954. It is necessary to focus attention on the contention of the appellant in this behalf. He contended in the written statement that he entered the premises on an assurance from the landlord that the premises were being permitted to be occupied in accordance with sub-clauses (2) of Clause 23, which permits the landlord to let out the premises to whomsoever he considers proper if he has not received an allotment order from the Collector within fifteen days from the date of the receipt of the intimation of vacancy under Clause 22. No record was produced by the applicant before the House Allotment officer whether Shri Basantraï Sharma, who was then the landlord and the owner of the house intimated to the Collector

that a portion of the house which was then in his occupation was intended to be let out. There is not one word in the order of the House Allotment Officer as to how and in what circumstances Shri Basantrai Sharma, the then owner let out the premises to the appellant. If a landlord assures an incoming tenant that he has complied with the provisions of Clause 22, the tenant can enter the premises without being charged for having contravened sub-clause (2) of Clause 22. The legal liability of giving intimation of vacancy is squarely on the landlord as provided by Clause 22. If the landlord has given intimation of vacancy under Clause 22 and the statutory limit of 15 days for making an allotment order has expired, the landlord on his own can proceed to let out the premises in respect of which he has sent the intimation of vacancy to anyone he chooses to accept as tenant. In such a situation, the only duty cast on the tenant is to seek an assurance from the landlord that the premises are being permitted to be occupied in accordance with sub-clause (2) of Clause 23. The appellant specifically contended that he entered the premises on such an assurance from the landlord. In this state of pleading, it was incumbent upon the House Allotment Officer to enquire whether deceased Basantrai Sharma had given intimation of vacancy and whether any allotment order was issued within the period of 15 days from the date of the receipt of the intimation of it. If it was found that deceased Basantrai Sharma had given an intimation of vacancy and that no allotment order was issued within 15 days from the receipt of the same and that he gave an assurance to the appellant that the premises are being permitted to be occupied in accordance with sub-clause (2) of Clause 23, obviously even if the quondam tenant occupied the premises without an allotment order, he could not be charged with contravention of sub-clause (2) of Clause 23. Assuming that landlord Basantrai Sharma gave a false assurance in 1954 to the appellant that the landlord had sent an intimation of vacancy and that no allotment order is secured within fifteen days from the date of intimation of vacancy and accordingly false assurance was given, the tenant if he bona fide relied upon the assurance emanating from the landlord and is not shown to be in league with the landlord, he would nonetheless be protected and cannot be accused of entering premises in contravention of Clause 23(2). The House Allotment Officer has recorded no finding on this important point and therefore, on this short ground his order is liable to be set aside.

10. We however find a greater infirmity in the order of the House Allotment Officer. In the absence of an allotment order being produced by the appellant, three possible surmises are permissible; they are : (i) Shri Basantrai Sharma never sent the intimation of vacancy, (ii) that even though he did send the intimation of vacancy and yet he did not receive any allotment order within the prescribed period, and (iii) that he surreptitiously let out the premises to the appellant after giving him a false assurance that he has complied with Clause 22. If the allotment order was in fact issued, a copy of it would be with the appellant as well it must have been sent to the landlord. There would be an office copy in the file of the case. No such allotment order is forthcoming. In the absence of an allotment order, before the appellant could be charged with contravention of Clause 22(2), it was incumbent upon the House allotment Officer to enquire whether Basantrai Sharma had sent any intimation of vacancy to the Collector as required by Clause 22(1)(b). If it was not sent, could his successor-in-interest take advantage of his own wrong when Smt. Usha Rani N. Sharma who claims to be the inheritor of the premises deliberately remained absent to help the applicant Shri S. P. Pathak, who is alleged to be a near relation of the husband of Smt. Usha Rani N. Sharma and who is keen to enter the premises by allegation contravention of Clause 22(1)(b) nearly 22 years before the commencement of the proceedings. Further the tenant contended that deceased landlord gave him an assurance as required by Clause 23(2). In the light of this contention it was obligatory upon the landlord or his successor-in-interest to prove that no such assurance as claimed by the appellant was ever given to him. Shri S. P. Pathak, the applicant claims to be a stranger. Original landlord Basantrai Sharma was dead by the time the present proceedings commenced. His successor-in-

interest Smt. Usha Rani N. Sharma remained absent. Appellant gave evidence that he was given the assurance that the premises were being let out to him in accordance with sub-clause (2) of Clause 23. And sub-clause (2) of Clause 22 protects a tenant against charge of unauthorised occupation if he enters premises on the assurance as aforesaid as provided in Clause 23(2). The order made by the House Allotment Officer is conspicuously silent on this most relevant question why the allegation of assurance put forward by the appellant was not examined by him and why it was rejected sub silentio. The non-application of mind by the quasi-judicial authority to the most relevant point which goes to the root of the matter completely vitiates the order of the House Allotment Officer, because once the allegation of assurance canvassed for on behalf of the appellant is accepted, he is not liable to be evicted on the ground that he entered the premises in contravention of Clause 22(2).

11. There is a still further infirmity in the order of the House Allotment Officer. Admittedly, the appellant entered the premises in 1954. He was then serving in the telephone department which would permit an inference to be drawn that he was holding an office of profit in the Union of India. But in order to attract Clause 25 of the Rent Control Order which obligates such holder of the office of profit to vacate the premises on his ceasing to hold the office of profit, it must be shown that he entered the premises under an order of allotment made by the Collector either under Clause 23 or Clause 24-A. Existence of an order of allotment under Clause 23 or Clause 24-A in favour of a person holding an office of profit under the Union of India or the State Government is a sine qua non before the obligation under Clause 25 can be fastened upon him to vacate the premises on ceasing to hold the office of profit which enabled him to get an order of allotment in his favour. In the absence of an allotment order, it is not open to the House Allotment Officer to draw an inference that the premises were allotted to the appellant because he was holding an office of profit. If there is no order of allotment issued to the appellant on the ground that he is holding an office of profit, the House Allotment had no jurisdiction to call upon him to vacate the premises on the short ground that he has ceased to hold the office of profit. The House Allotment Officer has in terms held that as the appellant has retired in 1967, and therefore he is not entitled to continue to occupy the premises. This line of reasoning proceeds on the assumption that there was initially an order of allotment in favour of the appellant on the ground that he was holding an office of profit, the assumption being not borne out by the facts. In the absence of an allotment order, the House Allotment has no jurisdiction to call upon the appellant to vacate the premises on the short ground that he has ceased to hold the office of profit.

12. What is stated hereinbefore is sufficient to quash and set aside the order of the House Allotment Officer. However, there is one more aspect of the matter which we cannot overlook. The appellant entered the premises in 1954. There have been numerous proceedings between him and the late Basantraï Sharma who let out the premises to the appellant but no one ever raised the question whether the appellant had entered the premises in contravention of Clause 22(2). Till Basantraï Sharma died, no one raised the controversy about the entry of the appellant in the premises as being unauthorised or in contravention of Clause 22. Basantraï Sharma in his lifetime tried to obtain possession of the premises from the appellant alleging grounds available to him under the Rent Control Order other than unauthorised entry. This would permit an inference that Basantraï Sharma accepted the appellant as his tenant and his tenancy did not suffer from any infirmity. After Basantraï Sharma died, his successor-in-interest one Smt. Usha Rani N. Sharma did not raise any controversy about the occupation of the premises by the appellant. One Mr. S. P. Pathak, a total stranger has come forward to complain about the unauthorised entry of the appellant in the premises. The unauthorised entry according to the appellant was in the year 1954. Appellant retired in 1967. Basantraï Sharma was alive in 1967. If appellant came into the premises because he was holding an office of profit, obviously Basantraï Sharma would not miss the opportunity to evict the

appellant because he was otherwise also trying to do the same thing. Rent was accepted without question from the appellant by Basantraï Sharma till his death and thereafter. Could he be at this distance of time, thrown out on the ground that his initial entry was unauthorised. To slightly differently formulate the proposition, could the initial unauthorised entry, if there be any, permit a House Allotment Officer, 22 years after the entry, to evict the appellant on the short ground that he entered the premises in contravention of Clause 22(2) ? Undoubtedly, power is conferred on the Collector to see that the provisions of the Rent Control Order which disclosed a public policy are effectively implemented and if the Collector therefore, comes across information that there is a contravention, he is clothed with adequate power to set right the contravention by ejecting anyone who comes into the premises in contravention of the provisions. But when the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner. Exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time. Undoubtedly, no limitation is prescribed in this behalf but one would stand aghast that a landlord prescribed in this behalf but one would stand aghast that a landlord to some extent in pari delicto could turn the tables against the person who was in possession for 22 years as a tenant. In such a situation, even though the House Allotment Officer was to reach an affirmative conclusion that the initial entry 22 years back was an unauthorised entry and that failure to vacate premises till 9 years after retirement was not proper, yet it was not obligatory upon him to pass a peremptory order of eviction in the manner in which he has done. In such a situation, it would be open to him not to evict the appellant. In this connection, we may refer to *Murlidhar Agarwal v. State of U.P.* ((1975) 1 SCR 575 : (1974) 2 SCC 472 : AIR 1974 SC 1924) wherein one Ram Agyan Singh who came into possession of premises without an order of allotment in his favour as required by Section 7(2) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, was permitted to retain the premises by treating his occupation lawful and this Court declined to interfere with that order. No doubt it must be confessed that Section 7-A conferred power on the District Magistrate to take action against unauthorised occupation in contravention of the provisions of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, but there was a proviso to the section which enabled the District Magistrate not to evict a person found to be in unauthorised occupation, if the District Magistrate was satisfied that there has been undue delay or otherwise it is inexpedient to do so. There is no such proviso to Clause 28 which confers power on the Collector to take necessary action for the purpose of securing compliance with the Rent Control Order. But as stated earlier, where power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within a reasonable time. This is too well established to need buttressing by a precedent. However, one is readily available in *State of Gujarat v. Patel Raghav Natha* ((1970) 1 SCR 335 : AIR 1969 SC 1297 : (1969) 2 SCC 187). In that case Commissioner exercised suo motu revisional jurisdiction under Section 211 of the Bombay Land Revenue Code which did not prescribe any period of limitation for exercise of revisional jurisdiction. The Commissioner exercises revisional jurisdiction one year after the Collector made the order which was sought to be revised. The High Court set aside the order of the Commissioner. In the appeal by State of Gujarat, this Court declined to interfere holding inter alia that the revisional power in the absence of prescribed period of limitation must be exercised within a reasonable time and period of one year was held to be too late. This aspect must be present to the mind of House Allotment Officer before just rushing in on an unproved technical contravention brought to his notice contrived by the successor-in-interest of the deceased landlord, and evicting the appellant 22 years after his entry and 9 years after his retirement on the short ground that his entry in the year 1954 was in contravention of Clause 22(2).

13. Having examined all the aspects of the matter, we are satisfied that the order of the House

Allotment Officer suffers from numerous infirmities and is unsustainable and must be quashed and set aside as also the order of the High Court dismissing the Special Civil Application No. 1957 of 1977 preferred by the present appellant. Accordingly this appeal succeeds and is allowed and the application made by the first respondent to the House Allotment Officer is dismissed with no order as to costs throughout.

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