

Jai Kishan

Vs

Mst. Mumtaz Begum

Civil Appeal No. 2465 of 1980

(R. S. Pathak, M. P. Thakkar JJ)

24.09.1984

JUDGMENT

THAKKAR J. -

1. A tenant, against whom a decree for eviction has been passed under Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as the 'Act') on the ground that the landlady bona fide requires the premises in question for personal use and occupation, has approached this Court by way of the present appeal by special leave.
2. The premises in question consist of a shop abutting on a main road along with two rooms on the back side of the shop, one room above the kitchen, and a store room and a latrine. The appellant-tenant has taken the premises on lease for non-residential purposes namely, for running of an eating house in the name of 'Standard Bhojnalaya'.
3. The premises are owned by Mst. Mumtaz Begum. She instituted the suit giving rise to the present appeal, for eviction, on the ground that she required the premises for the purpose of enabling her sons, who had no suitable accommodation, to carry on their business in the said premises. The trial court and the appellate court have recorded a concurrent finding of fact that the premises are bona fide required by the owner of the premises to enable her sons to start their business in the premises in question. The High Court has confirmed this finding.
4. Unless it is shown that the finding of fact as regards the requirement of the landlady is perverse, or that the relevant provisions of law have either been misinterpreted or misapplied, the appellant cannot successfully assail the finding. The respondent-landlady, presumable a widow or a divorcee, is struggling to eke out her livelihood and wants to provide her sons, presently engaged in petty business, with suitable accommodation to carry on their business. That one of her sons is doing tailoring business in a passage of 3 Ft. x 10 Ft. is not even disputed. Another son earning his livelihood by doing radio repairing business has no shop and needs a shop for this purpose. Her third son intends to start laundry business as and when the premises are vacated. The trial court, the appellate court, and the High Court are unanimously of the opinion that the requirement is genuine and bona fide. This Court cannot, in the circumstances of the case, be expected to upturn such a finding of fact in an appeal by special leave. We therefore refuse to disturb the said finding.
5. In the view we are taking, we need not pause to consider the impact of the facts pertaining to a subsequent event disclosed by the affidavits filed in this Court. The affidavits go to show that the tenant is constructing a building of his own on a plot situated between two well known hotels of Gwalior, namely, Hotel Gurjimal and Hotel Manmandir. The building consists of two big halls

measuring 6.09 x 4.57 meters and 5.00 x 3.4 meters, two rooms each measuring 3.4 x 2.35 meters and one room measuring 3.4 x 2.13 meters in addition to verandah and toilet etc. The tenant has admitted that such a building is under construction but has asserted that it is still incomplete. Only the walls and the roofing have been made. The plastering has still to be made. But according to him the building is being constructed for the purpose of his residence, and not for the purpose of carrying on his hotel business. Be that as it may, one thing is clear. This is not a case of an owner who wants to throw out a helpless tenant on the street on the pretext or under the guise of such a requirement for personal use and occupation.

6. The only other ground urged by learned counsel for the appellant-tenant is that in reality the suit was for eviction under Section 12(1)(h) of the Act and that inasmuch as there was no compliance with the requirements of the provision, the decree for eviction passed against him deserved to be set aside. Section 12(1)(h) insofar as material runs thus :

12. Restriction on eviction of tenants. - (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

#(a) \* \* \*(b) \* \* \*(c) \* \* \*(d) \* \* \*(e) \* \* \*(f) \* \* \*(g) \* \* \*##

(h) that the accommodation is required bona fide by the landlord for the purpose of building or rebuilding or making thereto any substantial additions or alternations and that such building or alterations cannot be carried out without the accommodation being vacated;

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(7) No order for the eviction of a tenant shall be made on the ground specified in clause (h) of sub-section (1), unless the Court is satisfied that the proposed reconstruction will not radically alter the purpose for which the accommodation was let or that radical alteration is in the public interest, and that the plans and estimates of such reconstruction have been properly prepared and that necessary funds of the purpose are available with the landlord.

7. In the first place, no such plea was raised in the trial court and there is no such issue. In the second place, even before the High Court, it was admitted that even though the suit was not under Section 12(1)(h) still the plaintiff ought to have proved that she had prepared the necessary map and estimate and that she was possessed of sufficient funds. This will be evident from the following passage extracted from the judgment of the appellate court :

As regards the circumstances the learned counsel for the appellant has argued that though this case is not based on Section 12(1)(h) of the Act and based on Section 12(1)(f) as held in Ramnik Lal v. Pitambar Das Mehta, AIR 1964 SC 1676 and M/s. Motwani Cycle Store v. Shrimati Ranibai, 1974 MPLJ Short Note 53, but still the plaintiff ought to have proved that she has prepared the necessary map and estimate and that she possesses sufficient money.

8. The appellate court has, while rejecting the contention, recorded a clear finding that even these two requirement contemplated by Section 12(1)(h) have, in fact, been satisfied. Says the learned

Additional Judge :

But still the plaintiff has proved these facts also. It is not the statement of the plaintiff that she would demolish the whole house and would construct new shops. Shops will be constructed by making changes in the disputed premises as has been stated by Sarfarajali, PW. 3.

9. The learned Additional Judge has also recorded a clear finding that she was in possession of requisite resources for making changes in the shop. It will be seen that the view taken by the appellate court is, in fact, that the portion appurtenant to the shop is sought to be utilised as shops after making minor changes in the premises. In any view of the matter, since the suit is not rooted in Section 12(1)(h), the appellant cannot succeed. In fact, it hardly lies in the mouth of the appellant, who himself in terms contended before the appellate court that Section 12(1)(h) did not apply, to invite us to hold otherwise in this appeal by special leave.

10. There is no substance in the appeal. It fails and is dismissed.

11. In order that the appellant may not have to wind up abruptly, reasonable time requires to be granted to him to vacate. Time till June 30, 1985 is therefore granted to the appellant to vacate and hand over peaceful physical possession of the premises to the respondent on condition that the appellant filed the usual undertaking within four weeks from the date of this judgment and further provided that he does not commit breach of such undertaking.

12. There will be no order regarding costs.

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