

Radhey Shyam and Others

Vs

Kalyan Mal

Durgabai

Vs

Kalyanmal and Others

Civil Appeals Nos. 750-53

(A. Varadarajan, Sabyasachi Mukharji JJ)

10.10.1984

ORDER

1. These appeals by special leave are by the tenants whose eviction has been ordered by all the courts below under Section 12(1)(f) and (h) of the Madhya Pradesh Accommodation Control Act, 1961 on the ground that the respondent landlord requires the premises bona fide for the purpose of having his gold and silver ornaments factory after demolishing the present building and putting up a new building at the place. The tenants were carrying on various kinds of business in the premises. Their defence was that the landlord has other alternative accommodation where he could locate his proposed factory and that his requirement is not bona fide. The courts below have found that the alternative accommodation alleged by the appellants to be available to the landlord is really a farm house which is used for the residential purpose, namely as accommodation for the farm servants of the landlord and it is situated about three miles away from the town and near a burial ground in a lonely place and that it is also not a suitable place where a factory for the manufacture of gold and silver ornaments could be carried on without risk to life and property. As regards the ground of bona fide requirement, the courts below have found that the requirement of the landlord is bona fide and they have ordered eviction of the appellants under Section 12(1)(f)(h) of the Act.

2. Mr. A. K. Sen, learned counsel for the appellants contended before us that alternative accommodation is available and that it is not possible to accept the finding of the courts below that it is not suitable. After going through the judgment of the first appellate court which has dealt with this question in depth we agree with the courts below that the alternative accommodation alleged to be available to the landlord is really a farm house where the farm servants of the landlord are accommodated and that it is not suitable for the purpose for which the landlord requires accommodation.

3. Mr. Sen submitted that the eviction ordered is under Section 12(1)(h) of the Act and that Section 18 of the Act is attracted and it is obligatory on the part of the landlord to provide accommodation of equal extent to the tenants in the new building to be constructed by him. The first appellate court has observed in its judgment that the order of eviction is sought on the main ground of the bona fide requirement of the landlord. Therefore there is no case for the application of Section 18 to the facts of the present case. Though the courts below have passed the order of eviction under Section

12(1)(f) and (h) we are of the opinion that the order of eviction is based really and substantially only under Section 12(1)(f) of the Act. The fact that Section 12(1)(h) is also mentioned in the order of the courts below does not make the order of eviction purely one under that section, for the main ground of requirement of the landlord is bona fide personal requirement for locating his proposed factory for the manufacture of gold and silver ornaments. A case more or less similar on facts had come up before this Court in *Ramniklal Pitambardas Mehta v. Indradaman Amratlal Sheth* (AIR 1964 SC 1676 : (1964) 8 SCR 1 : (1965) 2 SCJ 608) which arose from proceedings taken under the Bombay Rents, Hotel and Lodging House, Rates Control Act (57 of 1947). There the eviction was sought under Section 13(1)(g) and 13(1)(hh) of that Act. Section 13(1)(g) of the Act corresponds to Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act and Section 13(1)(hh) of that Act corresponds to Section 12(1)(g) namely that the building is required for effecting either repairs or alterations. This Court has observed in that case that once the landlord establishes that he bona fide requires the premises for his occupation, he is entitled to recover possession of it from the tenant under the provisions of sub-clause (g) of Section 13(1) irrespective of the fact whether he would occupy the premises without making any alternation or after making the necessary alterations.

4. Though the facts of that case are slightly different in that the requirement was for occupation after making some alterations whereas in the present case the requirement is for locating the landlord's factory after demolishing and re-constructing the building, the principle deducible from that decision would apply to the facts of even these cases. We agree with Mr. U. R. Lalit, learned counsel for the respondent landlord that the order of eviction is based mainly under Section 12(1)(f) of the Act and that from the mere fact that Section 12(1)(h) also is added would not make the order of eviction only one under Section 12(1)(h) of the Act and Section 18 of the Act will not be attracted. This fact was not raised in the courts below, perhaps due to proper undertaking of this position. For these reasons the appeals fail and are dismissed but under the circumstances of the case without costs.

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