

Arya Samaj, Sagar and Others

Vs

Pinjamal and Another

Civil Appeal No. 2637 of 1977

(K. N. Singh, Sabyasachi Mukharji JJ)

08.08.1986

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is an appeal by special leave arising from the judgment and order of the High Court of Madhya Pradesh at Jabalpur dated October 26, 1977. The landlord-appellant filed the eviction suit against the tenant, the predecessor-in-interest of the respondents. The appellant runs a girls' school, being covered by one of its objects. It needed additional accommodation for the said purpose. The building was also in dilapidated condition. The learned trial judge as well as appellate court ordered eviction under Section 12(f) of the Madhya Pradesh Accommodation Control Act, 1961. The respondents were in occupation of an old shed as a tenant in the said house.

2. Section 12(f) of the aforesaid Act gives the landlord the right to evict on the grounds, inter alia, as follows :

that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or of any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

3. Section 12(g) deals with the situation where the building has become unsafe or unfit and the landlord wants the premises for carrying out repairs. Section 12(h) on the other hand deals with the case where the accommodation is required bona fide by the landlord for the purpose of building or re-building or making thereto any substantial additions or alterations and such additions or alterations cannot be carried out without the accommodation in the occupation of tenant being vacated. Similar provision is Section 31(1)(g) under the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 came up for consideration before this Court in Ramniklal Pitambardas Mehta v. Indradaman Amritlal Sheth [(1964) 8 SCR 1 : AIR 1964 SC 1676]. This Court held that the case in question fell under clause (g) which is similar to clause (f) of the instant case before us of Madhya Pradesh Accommodation Control Act, Section 12. This Court further held that the mere fact that the landlord intended to make alterations in the house either on account of his sweet will or on account of absolute necessity in view of the condition of the house, would not affect the question of his requiring the house bona fide and reasonably for his occupation, when he had proved his need for occupying the house. Nothing further need be proved. In this case, the case of the landlord-appellant is clearly covered by Section 12(1)(f). The fact that the building had to be reconstructed

for the said purpose is irrelevant. The learned trial judge as well as the learned appellate court read the sanctioned plan and came to the conclusion that the appellant had proved in this case all the need for expansion of the building for girls' education which was one of the objects of the appellant society. The High Court, in our opinion, misread the sanctioned plan which is Ex. 4, which according to the High Court showed in front side of the building abutting the road, a series of shops are to be constructed. The High Court was of the view that these shops were meant to be let out to tenants. We are of the opinion that this was a misreading of the plan. These shops were not indicated as shops to be reconstructed, but as existing building was to be reconstructed for the propose of school, there was no intention of construction of shops and let these out. There was no intention of the landlord-appellant to build for the purpose of letting it out. The learned trial judge as well as appellate judge held that the object was to get the building back for expansion of the activities of the appellant society. The High Court, therefore, in our opinion fell into error in misconstruing the plan and in holding that the landlord's claim for eviction was on the ground of reconstruction. In that view of the matter the High Court went on to examine whether Section 12(h) of the said Act had been complied with. There was no such necessity, in view of the facts as found by the two courts below. In any case, in second appeal the High Court should not have interfered with such a question of fact. This was unwarranted under the facts and circumstances of the case and on the evidence on record and in view of the decision in Ramniklal case [(1964) 8 SCR 1 : AIR 1964 SC 1676].

4. Mr Jain appearing for the tenant sought to urge before us that the plan indicated that the shops were intended to be reconstructed in the new plan. Shri Rameshwar Nath, counsel for the appellant assured us that it was the intention of the society to reconstruct the building for the purpose of running the school. In order to avoid any apprehension, though we allow the appeal and restore the order of the learned appellate court as well as learned trial court, we make it clear that in case if any part of the building is used for shops or let out as shops, the first option should be given to the respondents. We further direct that the building must be constructed on the basis of the plan sanctioned and as appended in the records of this case. In view of the fact that the respondents were carrying on business for quite long time, they should have some time to vacate. We direct that the respondents should vacate the premises in their occupation by December 31, 1986 and handover the same to the appellant to enable the appellant to proceed with construction. The respondent will file an undertaking on usual terms within a month from today.

5. The order of the High Court is set aside. The orders of the learned Additional District Judge and the trial court are restored subject to the modifications indicated above. We further direct that after obtaining the possession of the premises from the respondents, the appellant should proceed to construct as quickly as possible. In the facts and circumstances of the case the parties will pay and bear their own costs.

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