

Madhukar S/O M. Lapalikar

Vs

D. V. Hingwe and Others

Civil Appeal No. 1769 of 1981

(K. N. Singh, Sabyasachi Mukharji JJ)

04.12.1986

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. The story behind this appeal, though not very relevant, reveals interesting facts. One N. H. Ray of Calcutta either abandoned or disappeared or died since about 1929 and his house being the premises in dispute in Nagpur lay abandoned and his heirs were not known, letters written by authorities in Nagpur and by the tenants in Nagpur to the address 'N. H. Ray, Calcutta' naturally remained unanswered. It is alleged that a notice of sale of the premises in question was given in the name of one Tapan Roy in the local newspaper. But one Bratindranath Roy describing himself to be the holder of the power of attorney on behalf of the heirs of late N. H. Ray is alleged to have sold the premises in question. The southern portion was sold to the respondent D. V. Hingwe and one M. Lapalikar became the allottee of the premises in question in 1960. He wants to stay on in the premises. The alleged transferee or alienee of the property from the alleged heirs of N. H. Ray fights this appeal in this Court after the allotment has been cancelled by the House Allotment Officer in favour of the appellant, Lapalikar. But in this appeal this Court is concerned with a very short question - whether the appellant was granted allotment as a government employee or evictee in terms of the Central Provinces and Berar Letting of House and Rent Control Order, 1949 (hereinafter called the said 'Rent Control Order').

2. In order to appreciate the point, it is necessary to bear in mind that the appellant previously was residing in another house since 1941 at House No. 546 situated at Dhantoli area at Nagpur. The landlord of the appellant sued for permission to evict the appellant from the said premises on the grounds of bona fide need of the landlord. Such permission was granted against the appellant in respect of the said house on May 23, 1955. The appeal in respect of the same was dismissed by an order dated November 26, 1955. Since then the appellant had been evicted from the premises which was in his occupation and has no residential accommodation of his own. He was a Central Government employee - being an employee of the Post and Telegraph Department of the Government of India. He made an application for allotment of the premises in dispute, namely 406/1 in Nagpur under Clause 24-A under the said Rent Control Order.

3. It is necessary in order to appreciate the controversy in this appeal to refer to certain documents in this connection. On or about January 25, 1960, Shri Lapalikar, the appellant herein, wrote a letter to the Additional Collector, Nagpur. In the said letter the appellant described himself after stating his name 'Clerk P.M.G. Office, Nagpur and a registered evictee'. In the said letter, the appellant stated that one Dr Shirali, occupied the premises in question which belonged to one Shri N. H. Ray. As Dr Shirali proposed to vacate the premises in near future, she had agreed to let it out to the

appellant in case permission was granted to him to that effect. He, therefore, prayed that the said house might be allotted to him in his own name in view of his difficulties and priorities. This document appears in the paper book as 'a copy'. Thereafter on January 27, 1960, the Additional Deputy Collector, Nagpur, communicated to the appellant at P.M.G. Office, Nagpur that the premises in question has been 'provisionally allotted to you under Clause 24-A of the C.P. and Berar Letting of Houses and Rent Control Order, 1948 subject to further orders by the Additional Deputy Collector, Nagpur'. This is also a copy which appears in the paper book and which was produced by the appellant. It is necessary to emphasise this aspect of the production by the appellant in order to consider a contention urged by Shri Lalit, the learned advocate on behalf of the appellant.

4. On the same date, intimation was given to one 'Shri N. H. Ray, Calcutta' without any further address and intimation was sent that information had been received that the said house belonging to Shri N. H. Ray would fall vacant on or about January 15. He was further informed that the house was provisionally allotted to the appellant, P.M.G. Office, Nagpur. He was informed that in case he had objection, he might submit the same within a fortnight thereof. This is also a copy produced by the appellant. Though not relevant for the present purpose, it makes interesting reading as to how government functioned in the past. It is not known whether it has improved since then. It was addressed to one 'Shri N. H. Ray, Calcutta'. How a letter addressed in such manner could ever be conceived by anybody to be received by the addressee is beyond imagination. It informs on January 27, 1960 that the house would fall vacant 'on 15th instant'. What happened to that letter no one knows. There is a copy of Misc. Document No. 33/a/71(6-A) of 59-60. This is regarding the allotment of the premises in question. The order sheet notes that this was an application from Dr Shirali who proposed to let out the house belonging to Shri N. H. Ray of Calcutta. She had proposed to let it out to the applicant, employee of the P.M.G. Office. Further it was stated that he is an evictee. This sentence was underlined. The said document indicated that the officer concerned had directed registration of the case and for issue of a provisional order of allotment and one copy to be addressed to the landlord on address given, another copy pasted on the house. The copy of the landlord was addressed to N. H. Ray, Calcutta which was naturally returned to the sender for full address. The order sheet further recorded that on February 16, 1960, Dr Shirali had informed that she had handed over the possession to the appellant as per orders of allotment. The order further recorded that no objection was received from landlord as invited. To the same effect there is a copy of a letter from Dr Shirali to the Additional Collector, Nagpur. A copy of the certified copy of Record Room Register was also produced by the appellant. The same read as follows :

Application No. 3615/79 - Office of the Collector, Nagpur Name of the Register - Rent Controller, Nagpur Certified copy of Record Room Register No. 10 Form 'C' - Record from register for Kuliya Papers (Rule 6)-----
 -----Serial No. of Name Name of Nature of Date of Date of in and of Revenue case with deposit elimination Record minor case Officer date and of case with initials Room head in purport of in record of eliminati-Register office final room ng officer Register register order & abstract of the order passed in appeal or in revision, if any-----1220 A-71(6-A) A.G. Applicant : 5-8-60 A. file 33/59-60 Nagpur Shri M. M. destroyed. Lapalikar Subject : Allotment of house Order : 16-2-60 - provisional allotment sd/-illegible confirmed. 4-2-67 (True translation) Advocate.###

5. On September 10, 1979, there was an application by one Shri Mude who is one of the respondents in this appeal stating that the appellant was a government servant and had retired two years back and should vacate the premises in dispute.

6. Written statement was filed on behalf of the appellant wherein he stated after dealing with the facts that the appellant was previously staying at premises No. 406/1 standing on plot number (Sheet No. 20-B) which was in occupation of one Dr Shirali with whom the appellant had intimate relations and who was knowing the evictee position of the appellant herein non-applicant therein stated that the appellant came to know from them that they wanted to shift to some other place for their family reasons. So both of them had approached the Rent Controller, Nagpur and submitted an application and thereafter the order had been made. The contention of the appellant was that he was given the premises in question as an evictee though his description included that he was a government servant.

7. The short question that falls for consideration in this case, is, whether the summary procedure contemplated by Clause 25 of the said Rent Control Order was applicable for obtaining possession from the appellant. The appellant retired indisputably on May 1, 1978 and the House Allotment Officer was moved by an application filed by one Vijay Mude, the respondent herein for taking action under Clause 25 of the said Rent Control Order. The Additional District Magistrate and House Allotment Officer, Nagpur passed an order dated March 13, 1980 and ordered the appellant to vacate the premises in question within one month from the date of the order. The said order had been challenged by the appellant by a petition filed before the High Court under Article 226 of the Constitution. The High Court by its judgment and order upheld the eviction order.

8. The appellant challenged the same in this Court and special leave was sought for. In the meantime the appellant was dispossessed by virtue of the order of eviction which was confirmed by the High Court. In the special leave petition on December 16, 1980, this Court had directed restoration of possession and had further directed the House Allotment Officer to make a report. The House Allotment Officer has made a report. Special leave was granted and this appeal was expedited. The documents annexed to the report of the House Allotment Officer are the same which have been noticed herein.

9. Clause 2(2) of the said Rent Control Order defines 'displaced person' is defined under sub-clause (2-a) of Clause 2 of the said Order. There is no dispute that the appellant is and was an evicted person. Clause 22 of the Order deals with the collection of information and letting of accommodation. Clause 23 is important and the relevant part of the same is as follows :

23(1) On receipt of the intimation in accordance with Clause 22, the Collector 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.

10. Clauses 24, 24-A and 24-B deal with the power to allot the house in the manner indicated in those clauses of the Order. Clause 25 is relevant and is as follows :

25. The tenancy of 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 and placed in possession of a house by an order under Clause 23 or 24-A shall terminate on the date of the transfer of, or grant of leave other than casual leave, to

such person or on the date from which such person ceases to hold an office of profit under the Union or State Government or ceases to hold a post under the Madhya Pradesh Electricity Board, as the case may be, and the said person shall vacate the said house within seven days of such date and the landlord and tenant shall give the intimation prescribed in Clause 22 to the Collector in respect of such house :

Provided that on sufficient cause being shown to the Collector he may, in his discretion, extend the tenancy by a period not exceeding four months.

11. The position is that the appellant is both an evictee as well as a government servant of the category contemplated under Clause 23. The fact that the appellant is an evictee is indisputable. The fact that the appellant is a government servant of the category contemplated by Clause 23 is also indisputable. The fact that the appellant has retired from government service is also indisputable. The question, is, whether he could be evicted under the summary procedure contemplated under Clause 25. This will depend upon in what category or in what capacity the appellant was allotted the premises in question. There is no evidence of the application made by the appellant for the allotment. No copy is available in the records and no copy was produced by the appellant. The appellant has produced other documents relevant to this issue as we have indicated hereinbefore. Shri Bobde appearing for the appellant contends in this appeal that the appellant was allotted the premises in question as an evictee. He draws our attention to the documents produced as we have indicated before. He submits that the appellant was allotted the premises in question as an evictee. He was not entitled to be evicted on his retirement.

12. On the other hand, Shri Lalit, advocate for the transferee of the landlord as supported by Shri Bandra, advocate for the claimant-respondent submits that from the order it was apparent that the premises in question was given as a government servant. The priority in which the appellant was classed was because of his being a government servant. He drew our attention to the relevant clauses of the Order. On the scheme of the different clauses, we are of the opinion that it was only when a person was granted an allotment as a government servant, then the then only can Clause 25 be invoked for his eviction. In other cases, Clause 13 will be relevant. The summary procedure of Clause 25 could only be available in case of recovery of possession given to a person as a government servant on his retirement. Indeed the provisions are peculiar. Even if a government servant goes on earned leave or is transferred even then he becomes disentitled to remain in possession of the premises in question and would be liable to be evicted by virtue of Clause 25 of the said Rent Control Order. Being drastic in nature, therefore, one who seeks allottee's eviction has to establish that the allotment to the person whose eviction is sought was made in the capacity contemplated under Clause 25. Shri Lalit contends strenuously that the appellant had the chance to produce all the documents before the Allotment Officer, but he failed to do so. He had another chance to produce the relevant documents after the order of this Court when the matter was remanded back for fresh enquiry. He failed to do so. Shri Lalit contends that on this ground, adverse presumption should be drawn against the appellant as he has produced other documents in his custody. It is undisputed that the original records are not available, and are destroyed. There is nothing on evidence to show that the copy of the original application of allotment made by the appellant was still in possession of the appellant. That is not in evidence. It was submitted that he was given an opportunity to give evidence and as such subject himself to cross-examination when there was an enquiry ordered by the Enquiry Officer directed by this Court, but the appellant failed to avail of that opportunity. Therefore adverse presumption was to be drawn against him. It is not, however, possible to draw such adverse presumption in the facts and circumstances of this case. No ground has been made for compelling the appellant to step into the witness box and subject himself

to cross-examination. It cannot be presumed simply because some documents or some copies of some documents were in the custody of the party, all other documents or all copies relevant for the issue would be in the custody of that person and non-production of such documents cannot expose him open to adverse presumption. Such argument cannot be sustained.

13. It was submitted before the High Court that Clause 25 applies only to the premises which were let out to a person under Clauses 23 and 24-A of the Rent Control Order and where the allottee was an evictee, Clause 25 had no application. The High Court was of the view that it is clear from Clause 25 that two conditions were required to be fulfilled before the said clause could be applied namely, (i) the allottee must be holding an office of profit under the Union or the State Government, or holding a post under the Madhya Pradesh Electricity Board, and (ii) that he was placed in possession of the premises under Clause 23 or Clause 24-A. But it is clear that Clause 25 read as a whole indicates clearly that the person against whom the clause would be operative must be an allottee of the premises allotted to him in his capacity as a government servant and was placed in possession of the premises as a government servant. We are unable to accept the High Court's view, that the clause does not make any exception in case of a government servant who happened to be an evictee. These clauses deal with three independent categories of persons and the summary procedure on proper construction of Clause 25 was applicable only where allotment is given to a tenant as a government servant. The High Court was of the view that even if a government servant happened to be the evictee on his retirement, Clause 25 would operate. We are unable to sustain this reasoning. If allotment was made to an allottee in his capacity as an evictee then Clause 25, in our opinion, on a proper construction of the said clause, would have no application. Further on a construction of the various documents and the evidence adduced in this appeal under these proceedings, it is clear that allotment was given to the appellant as an evictee who happened to be at the relevant time a government servant. Therefore, on his retirement from the government service, he did not cease to be an evictee and did not come within the mischief of Clause 25 of the said Rent Control Order.

14. We are further of the opinion that even if allotment is made to a person who is both an evictee as well as a government servant then if one of the grounds of the order namely, that he was a government servant ceases to exist on retirement, the other person operates i.e. he was an evictee and still continues to be an evictee then the allotment would continue. See in this connection the observations of this Court in *State of Maharashtra v. B. K. Takkamore* ((1967) 2 SCR 583 : AIR 1967 SC 1353) where this Court reiterated that an administrative or quasi-judicial order based on several grounds, all taken together, could not be sustained if it was found that some of the grounds were non-existent or irrelevant and there was nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds. But, an order based on several grounds some of which were found to be non-existent or irrelevant could be sustained if the court was satisfied that the authority would have passed the order on the basis of other relevant and existing grounds and the exclusion of the irrelevant or non-existent grounds would not have affected the ultimate opinion or decision.

15. In this case even if it be held that it cannot be conclusively determined that the order of allotment was made in favour of the appellant only on the ground that the appellant was an evictee but it was made also on the ground that the appellant was a government servant, and after his retirement the other ground namely the allottee still being an evictee remained valid it can be sustained.

16. In the premises we are of the opinion that the High Court was in error and the appeal must be allowed. We, however, make it quite clear that this order will not prejudice the rights, if any, of the

respondents or whoever may be entitled to get possession to proceed under Clause 13 of the said Rent Control Order to evict the appellant.

17. In the premises this appeal is allowed. The order and judgment of the High Court are set aside. In the facts and circumstances of the case, we direct that the parties will pay and bear their own costs.

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