

Ranjit Narayan Haksar

v.

Surendra Verma

(Supreme Court of India)

HON'BLE CHIEF JUSTICE MR. U.L. BHAT HON'BLE MR. JUSTICE R.D. SHUKLA

Civil Revision No. 61 Of 1991 | 07-09-1994

(1.) THE common petitioner in these revision petitions has challenged the orders passed by the Rent Controlling Authority in two different proceedings for eviction against his tenants, upholding the objection raised by the tenants that the proceedings cannot lie under Section 23-A of the M. P. Accommodation Control Act, 1961 (for short the Act).

(2.) THE landlord seeks eviction of tenants from different premises, under Section 23-A (a) of the Act on the ground of bona fide requirement for residence of himself and for members of his family, alleging that he has no other reasonable suitable accommodation of his own in the city or town concerned. Section 23-A is in Chapter III A which has been incorporated by the M. P. Act 27 of 1983. This chapter contains special provisions in regard to certain categories of landlords. 'landlord' means a person who is a retired servant of any Government including a retired member of Defence Services or a retired servant of a company owned or controlled either by the Central or State Government, or a widow or a divorced wife, or physically handicapped person or a servant of any Government including a member of defence services 'who, according to his service conditions, is not entitled to Government accommodation on his posting to a place where he owns a house or is entitled to such accommodation only on payment of a penal rent on his posting to such a place. ' 'landlord' as defined in Section 23-J of the Act can apply to the Rent Controlling Authority under Section 23-A of the Act for eviction of the tenant on grounds specified therein. Sections 23b to 231 deal with procedure, revision and incidental matters. These provisions constitute a departure from the general provisions and procedure provided in Chapter III of the Act dealing with eviction of tenants. Section 11-A states that the provisions of Chapter III in so far as they relate to matters specially provided in Chapter IIIA shall not apply to the landlord defined in Section 23-J of the Act. The general provisions of

eviction on the ground of bona fide requirement is contained in clauses (e) and (f) of Section 12 (1) of the Act. But eviction under Section 12 has to be sought by filing a suit before the competent Civil Court. The purpose of Chapter IIIA is to provide for expeditious remedy to certain categories of landlords before a different forum.

(3.) THE landlord in these cases who has filed eviction petitions under Section 23-A of the Act is a retired employee of the M P. State Road Transport Corporation, a statutory body which came into existence under the provisions of the Road Transport Corporation Act, 1950 which is admittedly owned, if not controlled by the State Government.

(4.) THE controversy is whether a retired employee of the Corporation is attracted by definition of 'landlord' in Section 23-J (ii) of the Act, i. e. "a retired servant of a company owned or controlled either by the Central or State Government". According to the petitioner, 'company' referred to in Section 23j (ii) is not restricted to company incorporated under the Companies Act but has to be understood in the general legal sense. The tenants contend that the word 'company' in Section 23j (ii) has to be understood as a company incorporated under the Companies Act, that the Corporation is not a company incorporated under the Companies Act, 1956, but a statutory Corporation and hence would not be a 'company contemplated in Section 23j (ii) of the Act. The learned Single Judge (Qureshi, J.) who heard the revision petitions noticed conflicting decisions of Single Judge of this Court on this aspect and referred the question involved to a larger Bench. We have heard the revision petitions and propose to dispose of the same.

(5.) WE will first advert to the conflicting decision referred to by the learned Single Judge. In Vipin v. Ranajitnarayan and others, 1986 MPRCJ Note No. 11, Mulye, J. held that a retired employee of the M. P. State Road Transport Corporation is governed by Section 23-J (ii) of the Act on the ground that the petitioner's counsel was unable to point out that the Corporation was not controlled by the State Government. The next decision is Shiv Singh v. Krishan Gopal, 1986 MPRCJ 341, in which Shrivastava, J. held that the employee of a Municipality is not an employee of a Company. In Sobhagyamal v. Prakash Pharmaceuticals, Indore, AIR 1990 M. P. 345, Dube, J. held that a retired employee of L. I. C. is riot covered under Section 23-J (ii) of the Act, and

cannot invoke the provisions of Chapter IIIA of the Act. The learned Judge indicated that the expression 'company' has to be understood as company incorporated under the provisions of the Companies Act and as defined in the provisions of that Act. In *Mohandas v. Deven Das*, 1994 (1) MPJR 259, Issarani, J. held that Municipal Corporation is not a company and retired servant of the Municipal Corporation is not a 'landlord' under Section 23-J (ii) of the Act. A reading of these decisions shows that direct conflict exists only between *Vipin v. Ranajitnarayan*, 1986 MPRCJ Note 11, and *Sobhagyamal v. Prakash Pharmaceuticals, Indore*, AIR 1990 M. P. 345. The other decisions deal with Municipality or Municipal Corporation.

(6.) SECTION 23-J (ii) refers to Company owned or controlled by the Central or the State Government. The expression 'company' is not defined under the Act. Section 2 (10) of the Companies Act, 1956 defines 'company' as meaning 'company' as defined in Section 3. Section 3 states, inter alia that in the Companies Act, unless the context otherwise requires, the expression 'company' means a company formed and registered under that Act or an existing company as defined in clause (ii). Clause (ii) defines 'existing company' as meaning a company formed and registered under any of the previous companies laws specified therein. Section 616 of the Companies Act deals with application of the provisions of the Companies Act to insurance, banking, electricity supply and other companies governed by special Acts. Clause (a) refers to insurance company, (b) to banking companies, (c) to the companies engaged in the generation or supply of electricity, (d) to any other company governed by any special Act. Clause (e) of Section 616 reads as follows : "to such body corporate, incorporated by any Act for the time being in force as the Central Government may, by notification in official gazette, specify in this behalf, subject to such exceptions, modifications, or adaptation as may be specified in the notification. " Though Companies Act is intended to apply to companies as defined in that Act, the Legislature has provided for application of the provisions of the Act to a body incorporated by any Act.

(7.) M. P. S. R. T. Corporation is not a company incorporated under or as defined in the Companies Act. It is a Corporation incorporated by Road Transport Corporation Act. 'company' is not necessarily restricted to the meaning assigned to it under the provisions of the Companies Act. In Wharton's Law Lexicon, Fourteenth Edn. , at page 224 it is stated that a company has its origin either (1) in a charter, as the Bank of England and many insurance

companies; or (2) in a special Act of Parliament with which as authorizing an undertaking of a public nature such as a railway, the Companies Clauses Consolidation Act, 1845 (8 and 9) Vict. c. 16, is necessarily incorporated; or (3) in registration under the Companies Act, 1862 and subsequent Acts, now consolidated into the Companies Act, 1925. In Webster's Dictionary at page 204 meaning of 'company' is given as, fellowship, society, an assemblage of individuals, society in general, people assembled for social intercourse, an association of persons for a joint purpose, esp. for carrying on business etc. In Halsbury's Laws of England, Fourth Edn. , Vol. 7 at page 11, it is stated as follows :

"the word 'company' imports an association of a number of individuals formed for some common purpose. Such an association may be incorporated (that is, a body incorporate with perpetual succession and a common seal) or it may be unincorporated. . . . . There are many other bodies corporate which although they may largely or partially engage in trading or comparable activities, are not commonly described as companies. These fall broadly into three categories. There are first those which are incorporated pursuant to some general Act or Parliament permitting incorporation to be effected by any body of persons which fulfils certain specified conditions :. . . . . The second category (which is a large and growing one and which is economically a very important one) companies that are known as public corporations. These are each the creation of a royal charter or, more commonly, a special Act of a Parliament which defines the objects, constitution and powers of Corporation. They are created to fulfil in each case some special social or economic purpose. . . . . "

(8.) LET us now examine the amplitude of the expression 'corporation'. Law Lexicon b y Justice T. P. Mukherjee. (Vol. I) Edn. 1989 at page 381 describes 'corporation' as collection of natural persons joined by or under the authority of an Act of the Legislature. The expression 'corporation' occurring in Order 29 of the Code of Civil Procedure though not defined in the Code, has been held to include not only a statutory corporation, but also a company registered under the Indian Companies Act. (See- Hakamsingh v. Gammon (India) Ltd. , AIR 1971 SC 740). According to Halsbury's Laws of England 4th Edn. Vol. 9 para 1201 :

"corporation may be defined as body of persons (in the case of corporation aggregate) or an office (in the case of a corporation sole) which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question. "

(9.) CORPORATION could be of different kinds. Halsbury's Laws of England at para 1201 states that

"the usual examples of a trading corporation are (1) charter companies, (2) companies incorporated by special Act of Parliament, (3) Companies registered under the Companies Act etc. Non-trading corporations, are illustrated by (1) Municipal Corporations. . . . "

In Principles of Company Law by J. Charesworth, fourth edn. , at page 234 under the heading "statutory Companies" it is stated as follows :

"railways canal dock and water companies and other companies formed for the purpose of public undertakings are usually incorporated by a special Act of Parliament because they usually require powers and privileges which they could not obtain under the Companies Act, 1929. Such companies are accordingly governed by the Companies Clauses Act, 1845 to 1889, except in so far as those Acts are modified or excluded by the Special Acts which incorporate them. Of these Acts, the Companies Clauses Consolidation Act, 1845 applied to all companies incorporated by special Act after 1845, unless it is expressly excepted, while parts I and II of the Companies Clauses Consolidation Act, 1863 only apply if they are expressly incorporated. "

(10.) THUS we see the expression 'company' has a specific and restricted meaning as contained in the provisions of the Companies Act, 1956 as also a general meaning in the legal sense as in an association, collection of individuals or as a company incorporated by a Special Act of the legislature. Company for the purpose of the Companies Act, 1956 is not one incorporated by the Act but are incorporated under that Act. 'company' in the general legal sense can include

what is known as statutory corporation, which is also regarded as a statutory company.

(11.) THE question for consideration is which is the meaning attributed to the expression 'company' in Section 23j (ii) of the Act. A brief reference to the legislative history is instructive. M. P. Accommodation Control Act, 1961 as it originally stood did not contain any special provision for the benefit of any category of landlords. The Act was amended in 1964 introducing Section 20a enabling an expeditious or special remedy to members of armed forces of the Union or member of the family of a deceased member of such forces. Section 20aa was introduced in 1981 extending the benefit to the retired Government employees and members of the family of deceased retired Government employees. Sections 20a and 20aa were deleted and Chapter III (a) was introduced without Section 23-J (ii) in 1981 making the special benefit available to all categories of landlords. Section 23-J was incorporated in 1985 defining expression 'landlord' for the purpose of the chapter and thereby limiting the benefit only to such specified categories of landlords.

(12.) THE Statement of objects and reasons accompanying the amending Bill does not explain the reason for introducing clause (ii) of Section 23j of the Act. Therefore, we shall look at the scheme of the Act. and the scheme underlying Chapter IIIA to find out the purpose of the amendment.

(13.) THE general provisions relating to eviction viz. Section 12 onwards of the Act serves to restrict the grounds of eviction which can be invoked by a landlord in a suit in a civil Court. The purpose of Chapter IIIA is to provide expeditious remedy to certain categories of landlords on whom restrictions are imposed by Section 12 of the Act. This purpose is sought to be achieved by changing the forum and substituting a right of revision to High Court for the right of appeal and second appeal which is otherwise available. Section 23j specifies certain categories of landlords, namely, a retired servant of any Government including a retired member of defence services, a retired servant of a company owned or controlled either by the Central or State Government, a widow or a divorced wife, physically handicapped person etcetera. It was thought that widows, divorced women and physically handicapped persons should not be driven to the necessity of going through the elaborate procedure followed in civil courts and that more expeditious remedy should be available to

them. The same view was taken in regard to other categories viz. retired government servants, retired servants of Government owned or controlled company and certain categories of the Government employees. They were or continue to be public servants, instruments through which the State acts for public benefit. In the generality of such servants, transfer is an incident of service and this factor may inhibit meritorious candidates entering such services. Meritorious candidates may own buildings or they may construct buildings while in service. If they are to face the prospect of not securing possession of their building at the time of retirement or their posting in places where the buildings are situated, they may render the employment unattractive. The Legislature therefore thought it necessary to give special treatment to landlords of buildings who belong to these special categories.

(14.) FROM such legislative perspective, there could not be any discrimination between retired employees of Government owned or controlled companies, or corporation. Of course we are not called upon to decide if Section 23j (ii) if understood as being applicable only to companies incorporated under the Companies Act, 1956 will violate Article 14 of the Constitution. Nevertheless in considering the legislative intent, regard must be had to the equality clause in the Constitution in case of an ambiguity. We sought the assistance of learned counsel in finding the possible reasons for treating retired employees of companies under the Indian Companies Act and statutory corporation differently. The only reason suggested at the bar is that the corporations are more in number and larger in size and have large number of employees and the legislature did not desire to extend the benefit of Chapter IIIA to such a large number of landlords to the detriment of the tenants. This reason is not sound in view of Section 23j (i) which includes the very large number of retired Government employees in the definition of landlord. There is nothing in the language or context of Section 23j (ii) indicating any intention to give a restricted meaning to the expression 'company'. The legislature did not refer to the Companies Act in Section 23j (ii) and did not specifically exclude statutory corporation. The expression 'company' has been used in its general legal sense and takes in Government owned or controlled statutory Corporations. We hold that retired employee of a Government owned or controlled statutory corporation is a landlord as defined in Section 23j (ii) of the Act.

(15.) WITH great respect we approve the ratio in Vipin's case and hold that Sobhagyamal case does not lay down good law.

(16.) THE impugned order is therefore set aside and the preliminary objections raised by the tenants before the Controlling Authority are overruled. The Rent Controlling Authority will proceed with the eviction petitions pending before it in accordance with law.

(17.) CIVIL Revisions are allowed, but in the circumstances of the case, without costs.