

Mangilal

Vs

Shri Chaturbhuj Mandir

Civil Appeal No. 12559 of 1996

(A. P. Mishra, K. Venkataswami JJ)

01.04.1998

ORDER

1. Though notice was served on the respondent none appears for the respondent. We have heard learned Senior Counsel for the appellant. The appellant was a tenant under the respondent herein. The respondent filed a normal civil suit for ejection of the appellant. The suit was proceeded with as if the provisions of the Madhya Pradesh Accommodation Control Act (hereinafter called "the Act") are not applicable. The suit was dismissed. The appeal was allowed. A second appeal was filed in the High Court. It was contended on behalf of the appellant before the High Court that the Act applies inasmuch as the notification issued under Section 3(2) of the said Act was held by a Division Bench of the Madhya Pradesh in Chintamani Chandra Mohan Agarwal v. State of M.P. (1994 MPLJ 597) to be unconstitutional and invalid. Therefore, the suit was not maintainable. The High Court was of the view that the said judgment will not apply to the present case by a Mandir as that case was decided with reference to a Wakf. On that ground, the High Court upheld the decree for ejection.

2. We are of the view that the High Court was not right in proceeding as if the notification issued under Section 3(2) of the Act was considered by the Madhya Pradesh High Court in the said judgment with reference to its application for Wakf alone. The Division Bench of the Madhya Pradesh High Court after referring to judgments of this Court has expressly held that the notification dated 7-9-1989 was unconstitutional and invalid. The effect of that was that there was no notification under Section 3(2) of the Act. Section 3(2) of the Act reads as follows :

"3. Act not to apply to certain

#accommodations. - (1) \* \* \*##

(2) The Government may, by notification, exempt from all or any of the provisions of this Act any accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home, the whole of the income derived from which is utilised for that institution or nursing home or maternity home."

3. The notification issued on 7-9-1989 under the above section reads as follows :

"Notification No. F-24-(4)-83-XXXII-I, dated the 7th September, 1989. - In exercise of the powers conferred by sub-section (2) of Section 3 of the Madhya Pradesh Accommodation Control Act, 1961 (No. XLI of 1961), the State Government hereby

exempts all the accommodation owned by -

(i) the Wakf, registered under the Wakf Act, 1954 (No. 29 of 1954), or

(ii) the public trust registered under the Madhya Pradesh Public Trusts Act, 1951 (No. XXX of 1951), for an educational, religious or charitable purpose;

from all the provisions of the Madhya Pradesh Accommodation Control Act, 1961 (No. XLI of 1961)."

4. In the absence of such notification the respondent cannot file a suit simpliciter for ejection without resorting to the provisions of the Madhya Pradesh Accommodation Control Act, 1961. It was not brought to our notice that any other notification was subsequently issued. In the circumstances, the judgment of the High Court is set aside and the suit for ejection stands dismissed.