

Vishwanath and Another

Vs

Hidayatt Ullah

Civil Appeals Nos. 5383-5384 of 1997

(Dr. A. S. Anand, V. N. Khare JJ)

19.08.1998

ORDER

1. The appellant is the landlord while the respondent is the tenant. The appellant who is a retired government servant filed a petition seeking eviction of the tenant under Section 23-A(b) of the Madhya Pradesh Accommodation Control Act, 1961, on the ground of bona fide personal requirement for starting his business. It was also pleaded in the eviction petition that the son of Appellant 1 was an unemployed youth having no source of income and that he was also to join the father in running the business. The precise pleadings in this behalf were contained in para 10 of the petition. That paragraph reads thus :

"10. That Applicant 2 is a widow and Applicant 1 is a retired government servant from the Ordnance Factory, Jabalpur. Applicant 2 is a widow and is unemployed at present. Similarly, Applicant 1's son Sudhir Kumar is also unemployed having no source of income. The shop in occupation of the non-applicant is bona fide needed by the applicants and for need of the son of Applicant 1 to start a kirana shop therein. The applicants have no other alternative suitable accommodation of their own in the city of Jabalpur to start a kirana business. The non-applicant is, therefore, liable to be evicted from the suit premises for the need of the applicants under Section 23-A(b) of the Act."

2. The petition for eviction was contested. Evidence was led by the parties. While the proceedings were pending before the Rent Controlling Authority, an application was filed by the tenant stating that the son of the appellant, for whose benefit also the shop was required to be got vacated, had since joined employment at Jabalpur and, therefore, the bona fide need of the son no longer subsisted. To that application, a reply was filed by the landlord stating that the employment of the son was not relevant, since the disputed premises were required by the landlord for running his own business where the son was going to join him and, therefore, the premises were required by the landlord for his bona fide need of starting his business. After considering the evidence on the record, the learned Rent Controlling Authority, vide order dated 2-7-1996, came to the conclusion that the appellant had established his bona fide need and consequently allowing the petition, directed the tenant to hand over the possession of the suit premises to the landlord. The order of the Rent Controlling Authority was put in issue by the tenant through a revision petition in the High Court. On 1-11-1996, the High Court set aside the order of eviction passed by the Rent Controlling Authority. The landlord is in appeal before us by special leave.

3. In upsetting the findings of fact recorded by the Rent Controlling Authority, the High Court observed that there had been no clear pleadings to assert that the landlord required the premises for

opening a kirana shop for himself and, therefore, eviction on the ground of personal bona fide need of the landlord was not established.

4. There appears to be a complete misreading of the pleadings by the High Court. Even a cursory look at para 10 of the petition (supra) shows that the landlord had unequivocally pleaded that the premises were required for starting a business for himself as well as for the benefit of his son. There was therefore, no warrant to say that pleadings in that behalf were lacking. Besides the pleadings, the High Court also failed to appreciate the evidence on the record which clearly that the landlord bona fide required the premises for starting his own business. The opinion of the High Court that since the landlord, a retired government servant, had not stated that his pension was not adequate, it implied that there was no bona fide need for him to start any business is wholly unsustainable and not at all rational. There is no presumption that a pensioner who has adequate pension cannot have bona fide need to start his business after retirement. The High Court not only misread and misunderstood the pleadings, but also ignored the vital evidence which had been brought on the record to establish the bona fide need of the landlord. The order of the High Court, interfering with that of the Rent Controlling Authority, is clearly erroneous and cannot be sustained. These appeals, therefore, succeed and are allowed. The impugned order is, consequently, set aside. The order of the Rent Controlling Authority is hereby restored. No costs.

5. At this stage, learned counsel for the tenant submits that since the tenant has been in occupation of the shop for more than three decades, he would require sufficient time to look for some alternative accommodation and to shift to that place. Learned counsel for the appellant-landlord does not oppose the prayer for grant of time but submits that some reasonable time may be granted to him.

6. After hearing learned counsel for the parties on this aspect of the case, we grant time to the tenant-respondent to vacate and hand over the vacant possession of the premises to the landlord on or before 31-7-1999, on his filing the usual undertaking in this Court within four weeks.