

FIRM PANJUMAL DAULATRAM

v.

SAKHI GOPAL

May 3, 1977

[V. R. KRISHNA IYER, R. S. SARKARIA AND JASWANT SINGH, JJ.]

Madhya Pradesh Accommodation Control Act, 1961 S. 12(1)(e) & (f)—Scope of—Bona fide requirement—Requirement of the land-lord of accommodation of both residential and non-residential part of the building, if proved entitled eviction of the tenant.

Under sub clauses (e) and (f) of S. 12(1) of the Madhya Pradesh Accommodation Control Act, 1961, a landlord can evict a tenant, if the residential and the non-residential accommodation respectively let out to the latter is required *bona fide* by him for occupation as a residence and for the purpose of continuing or starting his business. Accommodation under the Act means any building or part of a building, whether residential or non-residential.

The appellant-tenant was inducted in by the respondent in 1955 for the dual purposes of residential and non-residential purpose of running a cloth shop. The landlord, *bona fide* required the building for his residence and also for starting his business of running a Chemist shop. The Eviction Suit filed by him was dismissed by the trial court, but the appellant and the High Court granted him the eviction decree.

Discussing the appeal by special leave, the Court.

HELD : The residential portion as well as a non-residential portion are parts of the building and each is an accommodation by definition. The landlord is entitled to eviction of the "accommodation" if he makes out a *bona fide* residential and non-residential requirement of the portions. In the instant case the contract was integral but had dual purpose. The landlord has put forward dual requirements which neatly fit into S. 12(1)(e) and (f) of the Madhya Pradesh Accommodation Control Act, 1961. The findings of the appellate Court regarding the *bona fide* requirement of the landlord, not having been challenged in the High Court and in this Court in the memorandum of Appeal, the consequence viz. eviction is inevitable. [769 E-G]

S. Sanyal v. Gianchand [1968] 1 S.C.R. 536, distinguished.

[The Court, however granted time to the appellants for vacating the building till 1-1-1978, in terms of equity].

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 991/76.

(Appeal by Special Leave from the Judgment and Order dated the 21.1.1976 of the Madhya Pradesh High Court in Second Appeal No. 415 of 1971)

S. Choudhury, D. N. Mishra, O. C. Mathur and *Shri Narain* for the appellant.

G. L. Sanghi, V. K. Sanghi, R. K. Sanghi and *S. S. Khanduja* for the respondent.

The Judgment of the Court was delivered by

KRISHNA IYER, J. A suit for eviction of an accommodation from the tenant to whom it had been let for residential and non-residential

A purposes resulted in dismissal by the trial Judge. But in an appeal, the final court of fact took the view that the landlord (respondent) was entitled to eviction. The tenant challenged the appellate decree before the High Court in Second Appeal without success and has therefore come up to this Court with this appeal by special leave.

B A short point has been raised which deserves only a short answer. Since we agree with the High Court which in turn has agreed with the first appellate court, our judgment can afford to be brief.

A statement of necessary facts may now be given. The landlord had let out the premises, which is a storeyed building, to be tenant as per Ex. P-1 of 1955. The significant clause in the lease deed runs thus :

C "1 xxx

2. I take your house for my own use i.e. for opening a cloth shop and for residential purposes and I will not sub-let your house to anybody.

xxx xxx xxx xxx."

D The tenant has thus put the building to business and residential purposes. The landlord, who is an M. Sc., claimed the building back on the score that he wanted to run a medical store on the ground floor—a non-residential purpose--and stay on the first floor with his wife—a residential purpose. Thus the accommodation was let out for dual purposes, was being used presumably for these requirements and was being claimed back by the landlord for the twin purposes mentioned above. The final court of fact has held that the landlord needs the building for his chemist's shop and for his residential use. The High Court in Second Appeal has upheld this finding and added that

F "the finding as to his bonafide requirement was rightly not challenged before me. The conclusion that the courts have reached is the only conclusion possible on the evidence on record in the light of the circumstances appearing."

G This statement by the High Court that the bonafide requirement of the landlord was not challenged before it has not been questioned in the memorandum of appeal to this Court. It must therefore be taken that the bonafide need of the landlord is validly made out.

The short point that survives is as to whether the composite purposes of the lease would put it out of the ground set out for eviction under s. 2 of the Madhya Pradesh Accommodation Control Act, 1961. The said Act defines 'accommodation' thus :

H " 'accommodation' means any building or part of a building, whether residential or non-residential and includes,--

xx

xxx

xxx."

- A It is seen that the tenant has been doing a thriving cloth business, with goodwill attached to it, for well nigh 30 years. It is therefore but fair that the tenant is given sometime to rehabilitate himself by securing an alternative but suitable accommodation. In our towns where scarcity of accommodation is the rule it is not that easy to secure alternative premises. Taking due note of this reality, we direct that while dismissing the appeal the eviction order shall not be put
- B into execution, before 1st January, 1978.

Parties will bear their respective costs.

S.R.

Appeal dismissed.