

(2000) 04 MP CK 0041
In the Madhya Pradesh High Court
Case No : Second Appeal No. 319/99

A.M. Qureshi

APPELLANT

Vs

M/s Shakti Pictures Circuit Limited, Amravati

RESPONDENT

Date of Decision : 06-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 14, 14(2), 15, 16, 3

Citation : (2002) ILR (MP) 328 : (2001) 2 MPHT 215 : (2001) 1 MPLJ 119

Hon'ble Judges : Mr. S.C. Pandey, J

Bench : Single Bench

Advocate : Shri Alok Aradhe, for the Appellant; Shri Pranay Verma, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.

This is an appeal filed by the tenant u/s 100 of the CPC against the judgment and decree dated 18-1-99, passed by the Additional District Judge, Raipur, in Civil Appeal No. 43-A of 1997, arising out of judgment and decree dated 17-5-96, passed by IVth Civil Judge Class-II, Raipur, in Civil Suit No. 342-A of 1992. The learned Additional District Judge has reversed the judgment and decree of the Trial Court and granted a decree of eviction against him.

The disposal of this appeal shall also govern Second Appeal Nos. 320 of 1999, 321 of 1999, 322 of 1999 and 323 of 1999.

The point that has been sought to be urged in this case is that the appellant is a lessee of the respondent. However, the respondent itself is the lessee of Dudhadhari Shri Vaishnava Trust Fund, Raipur. It is not in dispute that the accommodation belonging to the aforesaid Trust has been exempted from the operation of Madhya Pradesh Accommodation Control Act, 1961 by a notification

issued by the State Government u/s 3 (2) of the said Act. The notification reads as under :--

"Notification No. 2037-1100/II-A (3)-- In exercise of the powers conferred by sub-section (2) of Section 3 of the Madhya Pradesh Accommodation Control Act, 1961 (No. 41 of 1961) the State Government hereby exempts the plot of land bearing Khasra No. 260-2 Mahal No. 2, Baijnath Para, Raipur, in the Raipur District, together with the cinema house called Kamal Talkies, (now known as Amardeep Talkies) and with the out houses, stalls and other structures, standing thereon, which is owned by Dudhadhari Shri Vaishnava Trust Fund, Raipur and Educational and religious Institutions, from all the provisions of the said Act."

The aforesaid notification was issued by the State Government on 13th of May, 1964 and was published in the M.P. Gazette dated 22nd May, 1964.

It is not disputed before me that the decision rendered by this Court in the case of Chintamani Chandra Mohan Agrawal Vs. State of M.P., reported in 1994 MPLJ 597, was set aside by the Supreme Court by its decision in Civil Appeal No. 9909 of 1995, arising from SLP (Civil) No. 4360 of 1994, decided on 19th of October, 1995. However, the decision of the Supreme Court in the aforesaid appeal was not brought to the notice of Their Lordships of the Supreme Court in the case of Mangilal Vs. Shri Chaturbhuj Mandir, reported in JT 1998 (6) SC 491 and, therefore, the appeal filed by Mangilal against Shri Chaturbhuj Mandir, which was a Trust, was allowed and the suit for ejectment was dismissed on the ground that it was not based on Madhya Pradesh Accommodation Control Act, 1961 (henceforth "the Act"). Subsequently, another decision has been rendered by the Supreme Court in Betibai and Others Vs. Nathooram and Others, . In that case it has been noticed in Paragraph 6 of the judgment that the decision of this Court in Chintamani Chandra Mohan Agrawal's case (supra) has been set aside upholding the notification dated 7-9-1989. This decision was rendered on 19th of October, 1995, as stated above, in Civil Appeal No. 9909 of 1995. Their Lordships distinguished the case of Mangilal (supra) holding that in that case the point regarding the vires of notification was not raised and considered. It appears to this Court the decision of the Supreme Court in Mangilal's case (supra) that the fact of setting aside the decision of this Court in Chintamani Chandra Mohan Agrawal's case (supra) was not brought to the notice of Their Lordships of the Supreme Court. The decision of the Supreme Court in the said Betibai's case (supra) confines the legal position that the notification issued on 7-9-1989 u/s 3 (2) of the Act is a valid piece of legislation.

The above facts have been mentioned in order to show that in the cases which have been brought to my notice during motion hearing of this case, the vires of sub-section (2) of Section 3 of the Act was have challenged. In this case also there is no dispute that sub-section (2) of Section 3 aforesaid is intravires. This case is not concerned with the notification dated 7-9-1989 but with the specific notification quoted above, exempting the accommodation belonging to paramount landlord Dudhadhari Shri Vaishnava Trust Fund, Raipur from the

operation of the Act.

The real question that has been raised in these appeals is that the exemption given by the notification aforesaid is limited to a case where the aforesaid Trust files a suit for eviction. The exemption given in the notification cannot be applied to a lessee who has entered into a lease from the lessee of the Trust. In other words, the Act would operate in case, the lessee wants to evict the sub-lessee. The Section 3 of the Act reads as under :--

"3. Act not to apply to certain accommodations.-- (1) Nothing in this Act shall apply to-

(a) accommodation which is the property of the Government;

(b) accommodation which is the property of a local authority used exclusively for a non-residential purpose;

(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."

The sub-section (1) of Section 3 of the Act deals with the accommodation which is the property of the Government and also which is the property of local authority. In case of local authority it has been provided that the property should be exclusively used for non-residential purposes. No such restriction is in case of the property belonging to the Government. The initial words of sub-section (1) are significant. It says that nothing in this Act shall apply to the property mentioned in clause (a) and clause (b) of that sub-section. It is apparent that the use of word "nothing" shows that the Act itself declares that the property mentioned in Section 3 (1) of the Act shall not be subject to the Act. Sub-section (2) of Section 3 of the Act, however, is differently worded. It delegates power of exemption to the State Government by way of subordinate legislation in shape of a notification issued by the State Government. It is not necessary that the State Government in the notification, may exempt any property from all the provisions of the Act. The State Government is given discretion to exempt any accommodation from provision of the Act, provided-it is owned by (i) any educational, (ii) religious or charitable institution; or (iii) by any nursing home or maternity home. It is provided further that it is necessary that the whole income derived from the aforesaid institutions should be utilised for the purpose of-- (a) institution; or (b) nursing home or maternity home. In case, the aforesaid conditions are fulfilled, the State Government is competent to issue notification of exemption. It can exempt the accommodation from the operation of the Act wholly or partially, as we have already seen that such a notification has already been issued by the State Government in respect of paramount landlord - Dudhadhari Shri Vaishnava Trust Fund, Raipur.

Despite the exemption of the accommodation, it has been argued that this notification cannot operate in favour of a lessee who has created a sub-lease. One of the objects of the Act, no doubt, is to protect the tenants from summary eviction by terminating the tenancy u/s 106 of the Transfer of Property Act with a view to enhance rent. The other object is to control the residential and non-residential accommodations. However, the Legislature in its wisdom thought that such control shall not be necessary to the property belonging to the Government or the non-residential accommodation of a local authority. Therefore, in so many words, it exempted the operation of the Act by enacting Sections 3 (1) (a) and 3 (1) (b) of the Act. Similarly, the Legislature in its wisdom thought that it would be proper to delegate power of exemption to the State Government by issuing notification in cases of the accommodation belonging to the institutions and Trusts mentioned in Paragraph 7 above. The State Government was, therefore, empowered to issue notification in respect of the accommodations mentioned in Section 3 of the Act.

Now, the notification issued under sub-section (2) of Section 3 of the Act is confined to the immovable properties defines "accommodation" under the Act. It does not and cannot deal in terms who shall be the beneficiary of the notification. The contract of tenancy does not come into play in the context of our case. The notification is equally applicable to a lessee and sub-lessee because in such a case, the lessee becomes the landlord and the sub-lessee becomes the tenant under the Act. The paramount landlord, i.e., Dudhadhari Shri Vaishnava Trust Fund, Raipur may be lesser qua plaintiff in this case and by virtue of this relationship, the notification issued by the State Government exempts the accommodation belonging to the paramount landlord. It is neither here nor there to argue that sub-lessee had let out the property to him. In fact, the Act itself provides that a sub-lease can be granted only as per Section 14 (2) of the Act having obtained the consent therefor, from the paramount landlord in writing. There are elaborate provisions in Sections 14, 15 and 16 of the Act in what cases how a sub-tenant can be treated as tenant. There appears to be no valid reason to hold that a sub-lessee shall be governed by these provisions, in case where the notification exempts the accommodation mentioned in Section 3 (2) of the Act. A lessee can create a sub-lease in accordance with the general law of contract and Transfer of Property Act. It would be anomalous to hold that the exemption from the operation of the Act applies to these sections on account of the notification but it does not apply to a case where a sub-lessee files a suit to evict another sub-lessee under the general law. This Court is firmly of the view that the provisions of Section 3 (2) of the Act should be given full effect and not piecemeal effect. Section 3 (2) of the Act and notification made thereunder apply to the accommodation alone and it is not affected by a contract between lessee and a sub-lessee. If the accommodation is exempted, then it does not matter, whether the suit is filed by a paramount landlord or the lessee against the sub-lessee, and the Act would not come into operation.

For all these reasons, this Court does not find any merit in the contention of the

learned counsel for the appellant. The appeal is, accordingly, dismissed with no order as to costs, so also the connected second appeals mentioned in Paragraph 2 of this order.

However, at this stage, the learned counsel for the appellant prayed this Court that the appellant may be granted time of few months to vacate the suit-accommodation. Having heard the learned counsel for the parties, under the facts and circumstances of the case and in the interest of justice, the appellant is granted six months" time from today, to vacate the suit-accommodation on the following conditions :--

(i) That the appellant shall vacate the suit-premises on or before 6th of October, 2000 and handover its vacant possession to the respondent/landlord by that date.

(ii) The appellant shall pay to the respondent/landlord all the arrears of rent of the suit-premises, if any, due against him within three months from today and shall further pay to the respondent/landlord monthly rent of the suit-premises due against him by every 15th of each succeeding month, for the period he resides in the suit-premises upto the aforesaid date on which he has been directed to vacate the suit-premises.

(iii) The appellant shall furnish an undertaking before the Trial Court within a period of two months from today stating that he shall comply with the conditions aforesaid imposed upon him; and shall vacate the suit-premises and handover its vacant possession to the respondent/landlord on or before 6th of October, 2000 failing which the respondent/landlord shall be entitled to execute the decree granted by the Lower Appellate Court on 18th of January, 1999, in favour of the respondent/ landlord in Civil Appeal No. 43-A of 1997.

Second Appeal dismissed.