

(1997) 04 MP CK 0033

In the Madhya Pradesh High Court

Case No : Second Appeal No. 106 of 1994

Badamilal Dubey

APPELLANT

Vs

Chandraprakash Khairatilal Khanna and Others

RESPONDENT

Date of Decision : 17-04-1997

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)

Citation : AIR 1997 MP 214 : (1997) ILR (MP) 181 : (1997) JLJ 193 : (1997) 2 MPLJ 551

Hon'ble Judges : A.R. Tiwari, J

Bench : Single Bench

Advocate : M.S. Jain, for the Appellant; Umesh Mahashwari, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Tiwari, J.

Legal justice should not be allowed to become a teasing illusion or promise of unreality. When litigation goes on and on, it is time that litigants learnt three percepts, inscribed on the Wall of the Harvard Law School library, taken from Justinian's Institutes, of law -- "To live honorably, not to injure another, to render each his due". The object of law is to render each his due and to establish harmony, not antinomy, with justice.

This is one more lis between tenant and landlord which has attained the age of 14 years. Period of this enormity is prone to cause frustration in the minds of both the sides. Afterall, how long legal battle should continue ?

Unsuccess in the first appellate Court has led the tenant to take recourse to this second appeal u/s 100 of the Code of Civil Procedure. This appeal is directed against the judgment and decree dated 18th March, 1994 passed by First Additional District Judge, Ujjain, in Civil Regular Appeal No. 10-A/87, thereby dislodging the judgment and decree dated 24-12-1986 passed by Second Civil Judge, Class-II, Ujjain, in C.O.S. No. 145-A/84 and decreeing the suit for eviction

u/s 12(1)(c) of the M. P. Accommodation Control Act, 1961 (for short "the Act").

Briefly stated, the facts of the case are that the appellant is the tenant in three rooms of first floor of House No. 86, Kshapanak Marg, Free Ganj, Ujjain, at monthly rent of Rs. 135-00 for residential purpose. Sum of Rs. 7.00 is being separately paid towards water and electric charges as per meter. After quit notice, the suit for eviction was filed by original landlord Khairatilal. He expired during the pendency of the appeal. Respondents were brought on record as legal representatives. The trial Court, however, dismissed the suit. Chandra Prakash, one of the legal representatives, filed the first appeal impleading respondents No. 2 and 3 as respondents in the first appeal against the tenant. The first appeal was allowed and decree of eviction and recovery of rent/mesne profits u/s 12 (1) (c) of the Act was passed. Dissatisfied, the tenant has filed this second appeal.

This second appeal was admitted for final hearing on 1-9-1994 on the following substantial questions of law :--

"(A) Whether merely by putting a T. V. workshop in a small portion of verandah would change the purpose of residential lease when the leased premises consisting of two rooms are still exclusively used for residence only ?

(B) Whether under the facts and circumstances the case decree for ejectment u/s 12(1)(c) of the Act can be passed on the ground of nuisance in absence of a finding that the alleged mischief is likely to affect adversely & substantially the interest of landlord ?

I have heard Shri M. S. Jain, learned counsel for the appellant and Shri Umesh Maheshwari, learned counsel for respondent No. 1, today. None appeared for respondents No. 2 and 3.

The counsel for the appellant submitted that firstly mere installation of a TV/radio workshop in a small portion of tenanted accommodation does not cause change or inconsistent user in terms of Section 12(1)(c) of the Act and secondly decree is also subvertible in the absence of pleading and proof that such an activity was likely to affect adversely and substantially the interest of the landlord therein. He has pressed into service 1992 (1) MPWN 72 (D.C. Oswal v. V. K. Subbiah): 1983 MP LJ (SN) 61 (Sachchidanand Garg v. Govindlal); Smt. Aleamma Vs. Seth Meghraj, ; and 1992 MPLJ 449 (Shabbir Hussain Gulam Hussain v. Rubab Bai Inayat Hussain) in support of his submission. In the alternative, he urged that if this appeal is found unworthy of being allowed, then reasonable time to vacate may be granted.

The counsel for respondent No. 1 has dubbed the aforesaid contentions as non meritorious and has supported the decree. As to the prayer of time, he has signified "no objection".

I proceed to examine the worth of rival contentions.

The suit is preceded by notice dated 25-1-1983 (Ex P/I). It contains the

statement of inconsistent user via business of radio-repairing (Para 2). In reply, Ex. P/4, tenant denied allegation of business and averred that his son, an unemployed person, was learning the work of radio from his friends. PW-1 Khairatilal, (original landlord -- now dead) deposed in para 3 that the defendant is doing repairing job of Radio/Television in the verandah of tenanted accommodation as an activity of business. This is not disputed in cross-examination. The assertion, as held in K.K. Jain and Another Vs. Smt. Masroor Anwar and Others, , shall thus be taken as correct and truthful. He also stated that Ravindra Dubey, son of the tenant, has received training of radio and television from I.T.I. Ujjain and that the tenant is an electrical demonstrator (para 11). He further reiterated the factum of repairing job (para 17). PW-2 Rajendra Singh pledged his oath to say he had gone to the house of the tenant to get his radio repaired (Para 1). PW-3 Chandra Prakash stated about this business (para 1). To the same effect is the statement of PW-5 Gyaneshwar (para 1). PW-7 A. N. Batra spoke about quarrels with customers in connection with business of repairs and corroborated about business (para 2). DW-1 Badamilal (Appellant) denied allegation and deposed that his son was doing business of radio repairing in a shop situated in Gurunanak Market (para 2). His statement is contrary to reply Ex. P/4 (para 9). Son is not put in the witness box. True it is, that plaint describes the part of the premises as a room whereas the statement in Court is about Verandah. It is said in argument that it is a closed verandah and is thus like a room. Conclusion about business is on firm foundation. It is for this that questions, as formulated in this appeal, are about interpretation of Section 12(1)(c) on the linchpin of small portion of verandah and absence of likelihood of affecting interest of landlord adversely and substantially.

In Smt. Aleamma Vs. Seth Meghraj, it was held that homoeopathic practice will not be inconsistent user if done as a hobby and not as a business. In case of business, it was held therein that it would be inconsistent user. In Shabbir's case (1992 MPLJ 449) (supra), it is held that there was no pleading about change of user. In case of Sachchidanand (1983 MP LJ (SN) 61) (supra), it is held that there is no evidence about inconsistent user. In Oswal's case (1992 (1) MPWN 72), the Apex Court has held that if change of user in part accommodation took place before 7 years without objection, then landlord will be presumed to have accepted the change. In other words, minus presumption, it would constitute ground of eviction.

Now I come to the question whether change of user in small portion can constitute the ground u/s 12(1)(c) of the Act. That is Question No. (A) as noted above. This was not raised in two Courts below.

Section 12 (1)(c) of the Act provides the ground for eviction as extracted below :--

"(c) that the tenant or any person residing with him has created a nuisance or has done any act which is inconsistent with the purpose for which he was

admitted to the tenancy of the accommodation, or which is likely to affect adversely and substantially the interest of the landlord therein:"

The ingredients thus are that the tenant (i) has created a nuisance or (ii) has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation or (iii) has done any act which is likely to affect adversely and substantially the interest of the landlord therein.

Luculently ground of eviction under the clause is nuisance or inconsistent act or act which is likely to affect adversely and substantially the interest of the landlord therein. The employment of expression "or", instead of "and" seems to delink the last situation from inconsistent act which by itself seems to carve out a distinct feature to incur liability of eviction. The use of the word "which" at two places is indicative of two separate acts -- One-act inconsistent with the purpose and Two-act which has likelihood of affecting adversely and substantially the interest of the landlord therein. The other feature is that the provision does not speak of whole or part or substantial or small portion of the accommodation. In process of interpretation of law, it is not permissible to add or subtract any word or words. It is not given to Courts to alter the material. The maximum that can be done is to iron out the creases, i f any. Portion is indicated only in proviso.

Lord Denning in *Seaford Court Estates Ltd. v. Asher* (1949) 2 KB 481 stated in classic terms that:--

"A judge must not alter the material of which the Act is woven but he can and should iron out the creases."

As resolved in *Heydon's* case, the exercise is to give "force and life" bearing in mind the mischief sought to be remedied.

Reliance is placed on three single Bench decisions noted above. As noted, these are on different facts. At bottom, every decision turns on its own peculiar facts. The Division Bench decision of this Court, reported in *Balveer Singh Vs. Kishanlal*, overruled the decision of single Bench in the context of denial of title, which is not specifically provided, and held that mere disclaimer was sufficient to entitle a landlord to a decree for eviction without proving further that such disclaimer was likely to affect his interest adversely and substantially. It was ruled that mere disclaimer constituted an act which is likely to affect adversely and substantially the interest of the landlord. This meant that this is an act linked with last expression.

Now in the instant case it is an admitted position that accommodation is let for residential purpose and it is proved that part of it is converted to non-residential use. This is inconsistent act. Proviso excepts only office. 1979 MPRCH 110 DB -- para 18 (*Jagdeesh v. Manikchand*) is pertinent. It is not pleaded or proved that act is compatible with purpose. Three contingencies, as noted, are distinct. This is clear from 1979 MPRCJ (SN) 15 (*Madho Pd v. Firm Vidhichand*) also. It is thus not essential to prove that inconsistent act is likely to affect adversely and

substantially interest. Albeit, it is inbred that it leads to that Life style, in absence of composit tenancy, does shape profile of Law. This answers question No. (B).

Para 2 pleads inconsistency. Except denial, there was no special pleading or request for distinct issue about likelihood or compatibility under Order XIV Rule 1 of the Code. Points are raised here only without factual foundation. Theory of dominance was not pressed as such.

Section 12(1)(c) is in accord with clause (o) of Section 108 of the Transfer of Property Act, Inconsistent use is forbidden. Long use or acquiescence even, as held in 1995 SC 179 (Shrinivas v. Vithai -- SC) offers no shield. Sub-section (c) of Section 12 (1) of the Act makes it clear that with the exception of own office in portion all other acts, are inconsistent. Act inconsistent with purpose of tenancy, spin without any thing more, ground of eviction. Section 12 (1)(c) of the Act contains the ground when tenant has done any act which is inconsistent with the purpose and clause (o) of Section 108 of Transfer of Property Act inter alia requires that tenant must not use or permit another to use the property for different purpose. The position is luculent. The act is other than that for which it was leased". In Gulraj Singh Grewal Vs. Dr Harbans Singh and Another, , eviction on change of user was sustained when the part of the accommodation was used for purpose other than residence for which lease was created. In Dashrath Baburao Sangale and others Vs. Kashimath Bhaskar Data, eviction on inconsistent user was upheld when the accommodation was used for the business (of cloth and readymade clothes during off season) different from the specific business (of Sugarcane crushing) for which lease of piece of open land was created on 1-1-1953. The facts unfolded in the case on hand thus fully justified the decree of eviction on inconsistent user/change of user without written consent of the landlord.

Now the ground is there. The only question is whether there is delay in action or presumed acceptance or condonation of forbidden act. The suit is filed on 16-3-1983. Notice was issued on 25-1-1983. PW-1 Khairatilal, examined on 12-12-1983, spoke of about 5/7 years. The defence plea is not of duration but one of total denial. Notice and plaint do not contain the duration. There is no evidence to show the date of knowledge of the landlord. In the absence of such a defence or evidence, it becomes difficult to presume that landlord accepted or condoned the change. It is not an admitted position. In Oswal's case 1992 (1) MPLN 72 (supra) there was an admitted position. This decision is thus distinguishable on facts. Moreover, Shrinivas's case (1995 SC & FB Rent Cas 179); (supra) is pertinent.

The use of other two rooms for residence does not destory the ground of eviction. I, therefore, hold that there is no material on record, particularly in the face of mere denial, to permit inference of presumption of acceptance of change/ conversion to non-residential purpose.

Law has to lead to justice and avoid injustice. Rent Control Laws do not require

or rest on legal acrobates. Krishna Iyer J. described the current scene very graphically in the following words:--

"Law is a means to an end and justice is that end. But in actuality, Law and Justice are distant neighbours; some times even stage hostiles. If law shoots down justice, the people shoot down law."

The Courts have to act fairly and reasonably. In 1956, Lord Radcliffe put it elegantly in (1956) AC 696, 728 (Davis Contractors Ltd. v. Fareham Urban District Council) as under :--

"their actual persons should be allowed to rest in peace. In their place there rises the figure of the fair and reasonable man. And the spokesman of the fair and reasonable man, who represents after all no more than the anthropomorphic conception of justice, is and must be the court itself."

Mr. Justice Brennan expressed serious concern over injustices via famous words quoted below:--

"Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down."

In case of conversion of part of the accommodation from non-residential purpose to residential one, without anything more, this Court in Second Appeal No. 244 of 1986 (Sojiram dead-through LRs v. Abdul Ajij and Ors.) sustained the decree for eviction on sole ground of Section 12 (1)(c) of the Act on 11th April, 1997. This decision binds this case as well.

In view of the decisions of Gulraj Singh Grewal Vs. Dr Harbans Singh and Another, ; Dashrath Baburao Sangale and others Vs. Kashimath Bhaskar Data, and Sojiram's case (supra) and of factual matrix of the case, the decisions, relied upon by the counsel for the appellant, are clearly distinguishable and are thus unhelpful to the appellant. In the face of permanent feature of business, though in part of the accommodation, decree on inconsistent user u/s 12 (1)(c) of the Act is, therefore, sustainable and evidently and legally non-subvertible. Finding of fact is, as held in Kehar Singh Vs. Yash Pal and others, non-interferable. Case of 95 also draws curtain,

I, therefore, dismiss this appeal with costs. Counsel fee for each side is fixed at Rs. 750-00, if certified. Decree be drawn up.

As regards the question of reasonable time, I find it fit to grant time to the appellant to vacate the suit accommodation on or before 31st August, 1997, subject to filing usual undertaking, supported by affidavit, before the executing Court within fifteen days or within such further reasonable time as may be allowed by the executing Court on terms and conditions as may be fixed by the executing Court. If no such undertaking is filed or any terms and conditions is violated, the decree of eviction shall remain or become executable at once.

Record of the Courts below shall now be returned.