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(1999) 08 BOM CK 0007

In the Bombay High Court

Case No : Second Appeal No. 138 of 1985

Dastagir Saheb APPELLANT

Vs

Guljarkhan since deceased Smt. Halimabi and others RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:

Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 — Section 2

Citation : (2000) 1 ALLMR 542 : (2000) 3 BomCR 516 : (2000) 2 MhLj 207

Hon'ble Judges : A.B. Palkar, J

Bench : Single Bench

Advocate : G.E. Moharir, for the Appellant; Smt. K.V. Sirpurkar and M.B. Badiye, for the Respondent

Judgement

A.B. Palkar, J.—After hearing the learned Counsel for the parties, Civil Application No. 2465 of 1999 for joining the applicant as respondent No. 5 is allowed. Amendment be carried out immediately.

2. This second appeal is filed by the original defendant-tenant against the decree of eviction in R.C.S. No. 30/79 passed by the 2nd Joint Civil Judge, Junior Division, Chandrapur and confirmed in R.C.A. No. 61/83 by the District Judge, Chandrapur vide judgment dated 1-4-1985.

3. In view of the position that on purely a question of law the matter is to be disposed of, it is not necessary to go into the controversy regarding the facts. Suffice it to say that the decree for eviction in respect of residential premises described in the plaint was passed. It is an admitted fact that the suit was filed under the provisions of Transfer of Property Act without seeking permission of the Rent Controller to issue quit notice. In view of the fact that as per Notification No. 659-66-11 dated 6th February, 1952 issued by the then Provincial Government of C.P. and Berar in accordance with the authority conferred on it by Clause 30 of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued u/s 2 of the C.P. and Berar Regulation of

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Letting of Accommodation Act, 1946 which exempted the houses used for residential purpose constructed on a site lying vacant on 1st January, 1951 from operation of all the provisions of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 (for short Rent Control Order). In view of this exemption granted to the premises which are admittedly residential premises, the Courts below have held that the premises are not governed by Rent Control Order. The decree of the 1st Appellate Court is dated 1st April 1985 and it can be said that the legal position as held by the Courts below was then probably the accepted view of law. However, the situation has changed in view of the judgment of the Division Bench of this Court in the case of Prabhakar Tanbaji Rokde and another v. State of Maharashtra, reported in 1985 Mah.L.J. 548 delivered on 19-6-1998 i.e. after the judgment of the 1st Appellate Court. By the aforesaid judgment, 3 writ petitions challenging the vires of the said notification were decided and the Division Bench has struck down the said notification and the same is declared as null and void being unconstitutional. The exception which the Division Bench made was for the cases in which decree of eviction has become final and the landlord has taken possession of the building in question in pursuance of such decree. This is not, admittedly, the case herein.

4. By another judgment in the case of Namdeo Borkar Vs. Prakash Kondawar, , this Court held that the decree passed on compromise in favour of the landlord and subsequently the exemption provision declared ultra vires resulting in all non-residential houses being subject to the provisions of Rent Control Order, then the decree without permission of the Rent Controller is illegal, void and liable to be set aside in revision challenging the same. Although this judgment pertained to the later notification in respect of non-residential premises constructed on or after 1-1-1967, it is clear that the principal applying is the same.

5. This being the legal position, there was no much scope for argument to be advanced on behalf of the respondents by their Counsel, as admittedly the Courts have held that the premises are not governed by the Rent Control Order in view of the exemption granted by the notification stated in the earlier part of the judgment having been struck down by the High Court in judgment cited (supra).

6. The 2nd notification of 24-10-1968 exempting the non-residential premises constructed on a site lying vacant on 1-1-1967 or made vacant thereafter was also struck down by another decision of Division Bench of this Court in the case of Vidarbha Bhadekaru Sangh v. State of Maharashtra, reported in 1986 Mah.L.J. 883.

7. The notification of 1952 having been struck down by this Court, the provisions are covered by the Rent Control Order and a suit without seeking permission of the Rent Controller to issue quit notice was not tenable and as such no decree could have been passed for eviction and the decree of the trial Court as confirmed by the 1st Appellate Court will have to be set aside.

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8. The appeal, therefore, succeeds and is allowed. The decree passed by the 2nd Joint Civil Judge, Junior Division, Chandrapur in R.C.S. No. 30/79 and confirmed by the District Judge, Chandrapur in R.C.A. 61/83 on 1-4-1984 so far as it pertains to eviction and delivery of possession of suit premises is hereby set aside. The decree pertaining to payment of arrears of rent and damages is confirmed. In view of the fact that because of later notification the plaintiff is not entitled to the decree which was passed in his favour, there shall be no order as to costs and parties shall bear their own costs throughout.

9. Appeal allowed.

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