

(1985) 09 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.P. No. 2342 of 1963

Jayabai Deorambhai Jethwa

APPELLANT

Vs

Authorised Officer, Rent Control House Allotment Section,
Raipur and another

RESPONDENT

Date of Decision : 24-09-1985

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 39

Citation : (1986) MPLJ 243

Hon'ble Judges : Gulab C. Gupta, J; B.C. Varma, J

Bench : Division Bench

Advocate : R.K. Shukla, for the Appellant; R.K. Thakur, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.C. Varma, J.

The petitioner is the owner of house No. 4/130, Fafadih Rariput. This house was let out to one J.R. Dewangan. Shri Dewangan quitted the house. It fell vacant and, therefore, Authorised Officer i.e. respondent No. 1 started proceedings to allot that house in terms of Section 39 of the Madhya Pradesh Accommodation Control Act, 1961 which is undoubtedly, applicable to the accommodation situated within the limits of the Municipal Corporation, Raipur. As the respondent No. 1 proposed to allot the house to respondent No. 2, the petitioner appeared before the said authority and put forward her claim stating that she needed the accommodation for her own occupation and, therefore, the same be not allotted to either of the respondent No. 2 or to anyone else. The Authorised Officer got the spot inspected by Rent Control Inspector and also recorded some evidence. The petitioner also placed before the Authority, the area of house at present in her occupation and urged that looking to the number of family members in her family, the accommodation in her occupation was not sufficient to satisfy the need. She thus, urged the need for additional accommodation. The Rent Control

Authority rejected the petitioner's contention and allotted the house to the respondent No. 2 by its order dated 23-7-1983 (Annexure P-1). It is this order which is challenged in this petition under Article 226 of the Constitution of India and further prayer made is that looking to the petitioner's need of the house for her own occupation, she may be permitted to occupy the house herself.

The Madhya Pradesh Accommodation Control Act, 1961 like such other Rent Control legislations aims at regulating and controlling of letting and rent of accommodations and eviction of tenants therefrom. As a beneficial piece of legislation, it is intended to protect interest of tenants and to prevent rack-renting. One of the avowed objects of this piece of legislation is also to control letting of accommodation and to ensure occupation of the accommodation by them who need it. This necessarily has resulted in imposition of certain limitations on the rights of the landlords to use their accommodations and thus, from the landlord's point of view the Act is restrictive. The limitations so imposed by different provisions of the Act are reasonable and in the past the Courts turned down any challenge to these restrictions whenever made. Those restrictions have always been found to be reasonable and within legislative competence. Nevertheless, none of these restrictions has completely taken away the right of the landlord to occupy their accommodations if they need them for their residence or business and such need whenever put forward has to be considered.

Section 12 of the Act ensures continuance of occupation of the tenanted accommodation by a tenant. But for this provision, a landlord could evict his tenant by resort to the provisions of the Transfer of Property Act. Now, however, in view of the provisions contained in Section 12 of the Act, he cannot do so, notwithstanding the provision of the Transfer of Property Act. But again, this restriction on the rights of landlord is not absolute. He can eject his tenant on establishing any of the grounds mentioned in various clauses of Section 12(1) of the Act. One of such grounds is the need of the landlord to occupy the premises himself [(Section 12(1) and (g)].

At yet another place u/s 39 of the Act we find further clog enacted upon the right of the landlord to occupy and use his own accommodation. That Chapter relates to the control of letting of the accommodations. Since provision contained in Section 39 of the Act is our main concern here, it is reproduced. It reads:

39. Control of letting.-(1) The Collector or such other officer not below the rank of Deputy Collector, the Cantonment Executive Officer or any Military Officer authorised by the Station Commander as may be authorised by him in this behalf (hereinafter referred to in this Chapter as the Authorised Officer) may, on his own motion or an application made to him in this behalf, by general or special order, require a landlord to give information in writing of any accommodation which has fallen vacant or is likely to fall vacant and also require him to let or not such accommodation except in accordance with such order as he may give in accordance with the provisions of this Chapter.

(2) If any accommodation which has fallen vacant or is likely to fall vacant is required for occupation by any person holding an office of profit under the Union or State Government or any person in the service of a local authority, the Madhya Pradesh Electricity Board, the Board of Secondary Education, Madhya Pradesh or such other body corporate as may be specified by the State Government by a Notification in the Gazette "under the Union or the Government of the State of Madhya Pradesh or any person in the service of the Cantonment Board or of such other local authority or body corporate, as may be specified by the Central Government by notification in the Official Gazette" under the Central Govt. or any person in the service of Cantonment Board or such other person or body corporate as may be specified by the Central Govt. by a notification in the Gazette of India the Collector or the authorised officer, may, subject to the provisions of section 40, within 15 days of the date of order issued under sub-section (1), by order allot the accommodation to any such person as may be specified by him in the order and direct the landlord to put him in possession of the accommodation and the landlord shall place him in possession immediately if it is vacant or as soon as it becomes vacant:

Provided that if the landlord has, within fifteen days of the date of the order issued under sub-section (1), stated that he needs the accommodation for his own occupation, the Collector or the authorised officer, shall, if satisfied after due inquiry that the accommodation is so needed, permit the landlord to occupy the same:

Provided further that in allotting the accommodation to any person under this sub-section due regard will be had, as far as possible, to the wishes of the landlord as regards the type of the person to whom the accommodation may be allotted, as may be indicated by him within fifteen days of the date of the order issued under sub-section (1).

(3) If no order is passed and served upon the landlord within the period specified in sub-section (2), he shall be free to let the vacant accommodation to any person:

Provided that in a case falling under the first proviso to sub-section (2), the period spent in an enquiry shall be excluded.

Under the scheme of this section, the Collector of the district or any other officer not below the rank of Dy. Collector authorised by him has power to allot any accommodation if it has fallen vacant or is likely to fall vacant to any of the classes of persons specified in sub-section (2). On due allotment of accommodation, an obligation is imposed upon the landlord to put the allottee in possession of that accommodation and the Collector or authorised officer is even entitled to use force to give effect to the allotment in case any resistance is offered by the landlord or any other person. It is also clear that while exercising jurisdiction u/s 39 of the Act, the authority acts as a quasi judicial functionary and gets jurisdiction to allot any accommodation and thereby deprive the

landlord of the use and occupation of that accommodation only within four corners of the provisions contained in Section 39 of the Act. The Act does not provide for any appeal or any other remedy against the order passed by Collector or the authorised Officer u/s 39 of the Act. This Court, however, in appropriate cases can well issue writ of certiorari, mandamus, or prohibition against those orders. Thus, where landlord has not been given opportunity to be heard or where assumption of jurisdiction is shown to be wrong or the facts have been wrongly decided affecting the jurisdiction or where rules of natural justice have been disregarded, this Court will interfere with the orders passed by the Collector or the Authorised Officer.

One of the obligations cast upon the authority exercising jurisdiction u/s 39 of the Act is to consider the need of the accommodation by the landlord for his own occupation when such need is pressed into service. First proviso to sub-section (2) of section 39 of the Act contemplates an inquiry. Due inquiry postulates a proper consideration of whatever material and evidence the landlord offers in support of his claim. Notice of such enquiry must, therefore, be given to the landlord who should be afforded all opportunity of being heard. This will include an opportunity to the landlord of tendering evidence in support of the claim when the Authority is not prima facie prepared to accept the landlord's claim for release of the accommodation for his own use. The provisions contained in section 12(1)(e) and (f) of the Act are no doubt relevant and are entitled to due regard by the authority in reaching a satisfaction one way or the other as to the need of the landlord for occupation of the accommodation by himself.]See *Laljibhai Kalyanji v. Collector, Seoni and another* (1965 M.P.L.J. 302) and *Wali Mohammad v. Rent Control Authority, Raipur* (M.P. No. 162 of 1960 dt. 30-11-1960 (1961 M.P.L.J. 40]). However, the quantum of space needed by the landlord in this connection does not affect his right of occupation of the accommodation which has fallen vacant or is likely to fall vacant and has thus, become free from tenancy. Considering somewhat similar provisions contained in clause 23 of C. P. & Berar Letting of Houses and Rent Control Order, Bhatt J. as he then was, in *Gangadhar Madhao Chitnavis v. M.N. Phadke and another* (M.P. No. 93 of 1956) decided on 16-3-1956 (1956 N.L.J. 235) rightly held that after the house becomes free from tenancy, the landlord gets right to occupy it despite the right of the Authority to allot that accommodation to the needy person if the landlord needs the house for his personal use. The learned Judge observed that the quantum of space needed by the landlord may not affect his right to occupy the accommodation so freed from tenancy.

Coming now to the facts of the present case, we find that the petitioner has stated before the Authorised Officer that she has a large family consisting of 19 members including four couples. They have school going children. Unfortunately, this family has also a grown up daughter who is mentally imbalanced. The accommodation in possession of the petitioner at present, apart from the accommodation in question as appears from the map (Annexure P-4) consists of four small rooms of diamensions 8 x 12" and 10 x 12". The kitchen and dining-

room shown in the map are too small for such a family. Besides this, there is some open space and two varandahs and a room at the entrance of the house. The report of the Rent Control Inspector is also practically to the same effect. Thus, there is no serious dispute as to the accommodation and petitioner's occupation at present and other members in the family. The Authorised Officer while negating the petitioner's need for occupation of the accommodation in question has observed that no notice was given to the previous tenant, Shri Dewangan intimating any need for the accommodation. For want of any such notice, the Authorised Officer has drawn adverse inference against the petitioner. The Authorised Officer also seems to have been influenced by the fact that instead of examining herself, Smt. Jayabai Jethwa has put her son in the witness-box. Then in one sentence the conclusion reached is that the accommodation in petitioner's occupation cannot be said to be insufficient.

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We are of the opinion that the Authorised Officer has been influenced by extraneous and irrelevant considerations while throwing out the petitioner's claim for occupation of the accommodation in question. We fail to see what the Authorised Officer means by saying that the petitioner has not given strong proof (thos saboot). The order does not show that he has judicially applied his mind to the petitioner's need. There does not seem to be any justification for the Authority to observe that under the present circumstance, the accommodation in petitioner's possession is sufficient to satisfy the need of the members of petitioner's family. The authority failed to see that it is not Accommodation Rationing Authority under the Act. The need to be considered is the need of the landlord and the authority has no jurisdiction to substitute its own opinion as to the extent of accommodation required by the landlord. It has been rightly pointed out in *Kamal Kishore v. Narayandas* (1972 M.P.L.J. 137) that all that is to be seen is that the landlord is not actuated by any ulterior motive. We are of opinion that the Authorised Officer has acted arbitrarily and has taken into account irrelevant an extraneous considerations in not making the accommodation in question available to the petitioner for her occupation and in allotting it to the respondent No. 2. The order allotting the house in question to the respondent No. 2, therefore, cannot be allowed to stand.

The petition is allowed. The impugned order passed on 23-7-1983 by the respondent No. 1 in case No. 45-90-5 of 1982-83 *State of Madhya Pradesh v. Smt. Jayabai Jethwa* is quashed The allotment of the accommodation in favour of the respondent No. 2 is also set aside and it is directed that the accommodation in question shall stand released in favour of the petitioner who shall be at liberty to occupy the same. There shall be no order as to cost.

Gulab C. Gupta, J.

While I agree with the final order proposed by my learned brother, I consider it necessary to give my own reasonings for it, as the proposed order does not louch

an important and vital aspect of the matter, namely, the ambit and scope of the word "need" appearing in the first proviso to section 39(2) of the M. P. Accommodation Control Act. 1961 (hereinafter referred to as the "Act").

The proviso under consideration, reads as under:-

Provided that if the landlord has, within 15 days of the date of the order issued under sub-section (1), stated that he needs the accommodation for his own occupation, the Collector or the Authorised Officer shall, if satisfied after due enquiry that the accommodation is so needed, permit the landlord to occupy the same.

A plain reading of this proviso requires a landlord to state that he needs the accommodation for his own occupation and obliges the Collector or the Authorised Officer to be satisfied after due enquiry that the accommodation is so needed by the landlord. In case the Collector or the Authorised Officer is satisfied, he shall permit the landlord to occupy the premises. It is, thus, clear that "need" of the landlord is the first basic requirement of an order under this proviso. It is also clear that satisfaction of the Collector or the Authorised Officer has to be whether the landlord needs the accommodation for his own occupation. What is the meaning, ambit and scope of the word "need" in this context? is perhaps the most important aspect of the matter.

The Act is a piece of beneficent legislation meant for protection of tenants and hence it must be conceded that if there be any doubt about the meaning of some provision, that provision should be resolved in favour of the tenants. [See *Jivabhai v. Chhagan* (1961 M.P.L.J. 1089 S.C.)] But this spirit or object of the Act cannot be given effect to in opposition to the plain language of the section. In all such cases, the approach has to be made to the legislature as stated in *Rananjaya Singh Vs. Baijnath Singh and Others*, . The Act, as its long title itself suggests, aims at regulation and control of letting and rent of accommodation and the eviction of the tenants therefrom. It, therefore, restricts the right of the landlord to let out his premises at will or to increase its rent arbitrarily. The Act, however, does not extinguish all rights of the landlord and has in fact not done so. This intention of the legislature is amply clear from the provisions of section 39(2) itself. Main section permits the Collector or the Authorised Officer to allot the accommodation falling vacant to any entitled person by an order in writing and obliges the landlord to place such person in possession of the accommodation. The two provisos to this provisions act as exception to the general rule. The first proviso permits a landlord to get his accommodation released if he needs the same for his own occupation. The second proviso enables the landlord to have a tenant of his choice and, thereby, remove his inconvenience, if any. Clearly, therefore, the Statute, while empowering the Collector or the Authorised Officer to allot the premises, safeguards the right of the landlord to have the premises for himself if he needs the same or in the alternative have the tenant of his choice. Under the circumstances, any judicial interpretation of this provision should aim at achieving the aforesaid object and

give effect to the underlying policy.

All rent control legislations have been tested on the touchstone of Article 19 of the Constitution and have been held as only reasonably restricting the rights of the owner of the property in the wider public interest. It is true that right to property has now ceased to be fundamental right after 44th Amendment of Constitution and yet it is a constitutionally guaranteed right under Article 300-A. In view of this provision, landlords cannot be deprived of their property except by authority of law. The law in the instant case is the Act, which only restricts the right and does not deprive the landlords of the same. Under the circumstances, an interpretation of the proviso will have to be done in a manner that it does not result in deprivation of property of the landlord and does not come in conflict with Article 300-A of the Constitution.

In *D.N. Sanghavi and Sons Vs. Ambalal Tribhuwan Das*, , the Supreme Court considered the scheme of the Act including section 39(2) and held that, "clauses (e) and (f) of section 12(1) are complementary to the first proviso to section 39(2)". It also held that, "while the first proviso enables the landlord to obtain possession of a vacant accommodation for his own occupation by way of residence or business, section 12(1)(e) enables him to obtain a residential accommodation for his or his family's residence by ejecting a tenant." This brings out the distinction between the two provisions. In this view of the two provisions, the word "need" in the first proviso to section 39(2) should receive the same meaning and construction as the "required" in clause (e) of section 12(1). Any other meaning will render the allotment u/s 39(2) nugatory, as the landlord would be able to eject the tenant u/s 12(1) (e). This also appears to be the view of this Court in *Wali Mohammad v. R.C.A., Raipur* (1961 M.P.L.J. 40). Indeed, the word "requirement" as defined in Chambers Dictionary means "need". The Random House Dictionary also defines "requirement" as "need" or "necessity". Under the circumstances, the word "need" appearing in the first proviso to section 39(2) should be given the same meaning as the word "required" appearing in section 12(1) (e) of the Act.

It is, however, true that the word "need" in the first proviso to section 39(2) is unqualified unlike the word "required" in clauses (e) and (f) of section 12(1) which is qualified by the word "bona fide". This should, however, not make any vital difference. In *Mattulal Vs. Radhe Lal*, the Supreme Court considered the meaning of "required" as appearing in clause (f) of section 12(1) and held that, "the word "required" signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show the burden being upon him that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business,". The word "need" read in the context of aforesaid view of the Supreme Court, should mean the "genuine need". A genuine need must be distinguished from "mere whim or fancy" of the landlord. Under the circumstances, a landlord would not succeed in getting his accommodation released unless he proves that he really

and genuinely needs the same for his own occupation. This, however, does not mean that the landlord must also establish that he is reasonable in requiring the accommodation for his own occupation. The legislature has not intended so and that is why it has not qualified the word "need" by the word "reasonable" or "bona fide". This distinction has been considered by a Full Bench of this Court in *Damodar Sharma and Another Vs. Nandram Deviram*, which has observed as under:-

It is wrong to say that "genuinely requires" is the same as "reasonably requires". There is a distinction between the two phrases. The former phrase refers to a state of mind, the latter to an objective standard. "Genuine requirement" would vary according to idiosyncrasy of the individual and the time and circumstances in which he lives and thinks. "Reasonable requirement" belongs to the "knowledge of the law" and means reasonable not in the mind of the person requiring the accommodation, but reasonable according to actual facts.

Now, if the word "need" has the same meaning as the "genuine or real need" it would also mean the "real and genuine requirement" of the landlord. It should, therefore, mean the same thing as the "genuinely requires" in *Damodar's* case (*supra*). The need of the landlord should, therefore, vary from case to case and landlord to landlord but it must be real and genuine need, as distinguished from his mere fancy or whim. In this view of the matter, it would be open to the landlord to get the accommodation with number of rooms released, if he wants all of them for his own occupation, unless it can be said that he is acting with some ulterior purpose or intends to let out few of the rooms on higher rent. The Collector or the Authorised Officer cannot act as a rationing authority and determine the need of the landlord in terms of number of rooms or the floor area. The need of the landlord will have to be judged by the standard considered adequate by him and not by what is considered reasonable by the Collector or the Authorised Officer. That is how the distinction between "need" under action 39(2) proviso and "required bona fide in section 12(1) (e) of the Act would be maintained. Such an interpretation would, no doubt, give upper hand to the landlord in the matter and limit the satisfaction of the Collector or the Authorised Officer only to ascertaining if the need was "real" or "genuine"; but that is the clear intention of the Legislature and is the purpose behind the provision. After all, a landlord owning the accommodation is entitled to use and occupation of the same, as long as law does not deprive him of such use and occupation. The intendment of the Act is to balance the "need" of a tenant and the "need" of the landlord in such a manner that landlord, being assured of the accommodation when they actually need the same, do not get disinterested in constructing them and thereby these who are not able to construct for themselves continue getting the required shelter on reasonable terms. To put any other construction of the provision is likely to act as dis-incentive to the rich few and add acuteness to already acute social problem. The judicial process cannot agree to such a situation.

The need of the landlord has to be "for his own occupation. Since section 39(2) deals with residential as well as non-residential accommodation, the Supreme Court in D.N. Sanghavi's case (supra) amplified these words to mean "his own occupation by way of residence of business" and held that these words should be read in the context of section 12(1)(e) and (f) of the Act. The Supreme Court also held that the word "own" in the phrase "his own occupation" should not be discarded as redundant and observed that, "it seems to us that the Legislature has deliberately used it to add emphasis to the possessive force of pronoun "his". It connotes the idea that the accommodation is needed "directly and substantially for his occupation." This is, however not to say that the accommodation should be needed by the landlord exclusively for himself: it would be enough if the landlord needs the same not only for himself, but also for those who are dependent on him. But the requirement of the members of the family, independent of the landlord cannot be considered in this behalf. This is the vital distinction between this provision and provisions contained in section 12(1)(e) and (f) of the Act.

The Courts, while considering cases u/s 12(1)(e) and (f) of the Act, have laid down the ambit and scope of landlord's requirement and have evolved objective tests for determining the same. There is no reason why all those tests should not be applied to determine the ambit and scope of the "need" of the landlord for "his own occupation" under the first proviso to section 39(2) of the Act. That was perhaps the reason why in H.D. Choubey v. R.R. Dubey (M.P. No. 616/74, decided on 28-9-1979- 1980 M.P.L.J. 12) a Division Bench of this Court held that in deciding whether the landlord really needs the accommodation for his own occupation, the Authorised Officer is not required to take into consideration the need of a Government servant. According to the Division Bench, the Rent Controlling Authority has no option than to decide in favour of the landlord if needs of both of them be real.

While on the subject, it may also be clarified that though the proviso uses the word "satisfied", it is not the subjective satisfaction of the Authority. The satisfaction has to be arrived at after due enquiry, which, by itself, sufficiently indicates that the satisfaction of the Authority has to be objective and arrived at on application of well established tests to the facts and circumstances of the case. This part of the legal obligation of the Rent Controlling Authority is usually ignored while examining this power and that appears to be the reason why orders like the present one are passed in spite of the overwhelming material on record to justify the need of the landlord. The facts of the case, which are clearly stated in the order proposed by my learned brother, fully and sufficiently justify the conclusion that the Rent Controlling Authority has acted arbitrarily in the matter.

The petition is allowed The impugned order of allotment is quashed and the accommodation is released from allotment for landlord's own occupation. No order as to costs. The outstanding amount of security deposit, if any, shall be

refunded to the petitioner.