

(1965) 01 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.P. No. 431 of 1964

Lalji Bhai Kalyanji

APPELLANT

Vs

Collector, Seoni and another

RESPONDENT

Date of Decision : 05-01-1965

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 39, 39(1)

Citation : (1965) JLJ 378 : (1965) MPLJ 302

Hon'ble Judges : P.V. Dixit, C.J.; Shiv Dayal, J

Bench : Division Bench

Advocate : J.V. Jakatdar, for the Appellant;

Judgement

P.V. Dixit, C.J.

The Petitioner in this case seeks a writ of certiorari for quashing two orders of the Collector, Seoni, made u/s 39 of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as the Act) one, first allotting the ground floor of a house belonging to the applicant to the Divisional Forest Officer, North Division, Seoni, for the purpose of his office and the other allotting the same accommodation subsequently to the District Publicity Assistant, Seoni, for the District Publicity Office.

The material facts are that the house in question is a two-floored structure. It has also two out-houses attached to it. The first floor, two rooms on the ground floor and one outhouse were allotted by the Collector to the Divisional Forest Officer, North Division, Seoni, for the purpose of locating his office. The applicant had let out the remaining accommodation on the ground floor to Shri Sharma, the then Divisional Forest Officer, North Division, Seoni, for his residence. When Shri Sharma was transferred and was succeeded by Shri Solanki, the latter occupied the accommodation on the ground floor which was vacated by Shri Sharma. and which was being used by him for his residence. Shri Solanki, also used the accommodation for his residential purposes. On or about 18th June

1964 Shri Solanki left the accommodation. Thereafter, the Petitioner in compliance with an order issued to him by the Collector on 22nd June 1964 u/s 39(1) of the Act informed the Collector, that the accommodation which was in the occupation of Shri Solanki had fallen vacant; that he did not intend to let out the accommodation to anyone as he himself needed it; that the accommodation which was in his occupation was insufficient and unsuitable for the members of his family; that his youngest son had also come from Ugli with his wife and children for residing with him; and that his own wife was suffering from high blood pressure and cardiac asthma.

The Collector held an enquiry in regard to the requirement of the Petitioner as regards the accommodation in question. At the end of the enquiry he, however, came to the conclusion that the applicant did not genuinely need the ground floor of the house for his own occupation. The Collector then made an order on 20th August 1964 allotting the accommodation on the ground floor vacated by Shri Solanki, as also the two rooms on the ground floor which were in the occupation of the Divisional Forest Officer, North Division, Seoni, for the purpose of his office, and directing the applicant to let out the aforesaid accommodation to the Divisional Forest Officer, North Division, Seoni, for the above-mentioned purpose. Later on, on 31st August 1964 the Collector cancelled the order of allotment in favour of the Divisional Forest Officer and allotted the accommodation on the ground floor to the District Publicity Assistant, Seoni, for locating the District Publicity Office.

Shri Jakatdar, Learned Counsel appearing for the Petitioner, assailed the orders of allotment passed by the Collector on 20th and 31st August 1964 mainly on the ground that the accommodation on the ground floor which was vacated by Shri Solanki having been admittedly let out to him for residential purposes, the Collector had no jurisdiction u/s 39 to make an allotment of that accommodation for non-residential purposes, to wit, for the location of the office of the Divisional Forest Officer or of the District Publicity Assistant, and had no power to compel the Petitioner to let out the accommodation for non-residential purposes.

In our judgment, this contention must be accepted. The Accommodation Control Act, 1961, classifies "accommodation" into two categories, namely, residential and non-residential. Section 2(a) of the Act defines "accommodation" as meaning "any building or part of a building, whether residential or non-residential" and as including land, which is not being used for agricultural purposes, and gardens, garages, outhouses and grounds, if any, appurtenant to the building. The word "residence" has not been defined in the Act. But the ordinary connotation of the word is a "place where a person eats, drinks and sleeps". [See Sri Sri Sri Kishore Chandra Singh Deo Vs. Babu Ganesh Prasad Bhagat and Others, at p. 320]. The classification of the accommodation in the Act into residential and non-residential purposes is according to the purpose for which the accommodation has been let out to a person. This is manifest from Section 12(1), Clauses (e) and (f). Under Clause (a), if the accommodation has been let out for residential purposes, then

the landlord can evict a tenant on the ground that the accommodation so let out is required bona fide by him "for occupation as a residence for himself or for any member of his family, if he is the owner thereof, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in the City or Town concerned." If, on the other hand, the accommodation has been let out for nonresidential purposes, then in order to evict the tenant on the ground of his requirement in respect of the accommodation, the landlord must show, as laid down in Clause (f), that the accommodation is required bona fide by him "for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the City or Town concerned." Thus, it is the purpose of letting agreed to between the landlord and the tenant that determines the character of letting for the purpose of Clauses (e) and (f) of Section 12(1). This agreed purpose of letting cannot be varied either by the tenant or by the landlord unilaterally so as to take away the right of the landlord under Clause (e) or Clause (f) or affect the protection given to the tenant against ejectment by those clauses. The Act does not in any way control the freedom of the landlord to determine for what purpose he will let out the accommodation. But having let out the accommodation for a specific purpose and the tenant having agreed to take the accommodation for that purpose, the landlord cannot unilaterally change the purpose; nor can the tenant do so.

This distinction between residential and non-residential accommodation has been recognized even in Section 39 of the Act. That section applies both to residential as well as non-residential accommodation. Any accommodation used for residential purposes the monthly rent of which exceeds Rs. 25 can be the subject-matter of allotment u/s 39. So also any accommodation used for non-residential purposes the monthly rent of which exceeds Rs. 50 can be allotted under the provision. This is clear from Sub-section (5) of Section 39 which inter alia, says that nothing in the section shall apply to-

- (a) any accommodation used for residential purposes the monthly rent of which does not exceed twenty-five rupees;
- (b) any accommodation used for nonresidential purposes the monthly rent of which does not exceed fifty rupees;

* * *

It is obvious that where it is proposed to allot any accommodation vacated by a tenant, then the limit of rent and the nature of accommodation for the purpose of Section 39 must be determined with reference to the rent which was being paid or payable by the vacating tenant and the purpose for which the accommodation had been let out to him. In the case of accommodation which

was not in the occupation of a tenant but was in the occupation of the landlord himself and the landlord had vacated that accommodation, the character of the accommodation and the limit of rent for it for the purpose of Section 39 would be according to the purpose for which the landlord intends to let out the accommodation and the rent which he can legally charge under the Act for the accommodation. The point to be noted is that for the purpose of Section 39 the nature of the accommodation has to be determined either with reference to the purpose for which the accommodation had been let out to the vacating tenant or in other "cases with reference to the purpose for which the landlord intends to let out the accommodation. The Collector or the competent authority u/s 39 has no power to say that the accommodation which was let out to the vacating tenant for residential or non-residential purpose is of the other character and to make an order of allotment accordingly. So also these authorities cannot force a landlord to let out an accommodation, which was in his occupation and which has fallen vacant for non-residential purposes when the landlord wishes to let it out only for residential purposes or vice versa. So to give this power to the Collector would mean affecting the right of the landlord to claim eviction of a tenant from residential or non-residential accommodation on the ground of the landlord's bona fide requirement and would be utterly inconsistent with the position that the Act in no way restricts the freedom of the landlord to decide the purpose for which he will let out an accommodation owned by him.

Now, in the present case, the Collector himself in his order dated 20th August 1964 accepted that the accommodation on the ground floor vacated by Shri Solanki had been let out to him for residential purposes. He observed that this was an "undisputed fact". The Petitioner objected to the allotment of the accommodation on the ground that he needed it for the residence of the members of his family, namely, his wife, son, daughter-in-law and grandchildren. The Collector was not satisfied that the applicant's requirement was genuine. But the Collector, instead of allotting the accommodation in question for the residence of the Divisional Forest Officer or the District Publicity Assistant, allotted it for locating the office of these officers. Apart from the fact that before the Collector the enquiry that was held being with regard to the allotment of residential accommodation the applicant had no opportunity whatsoever of preferring any objection to the allotment of the accommodation treating it as a non-residential accommodation, the allotment of the accommodation by the Collector for location of the office of the Divisional Forest Officer or the District Publicity Assistant, affected the Petitioner's right to file a suit for eviction of the tenant to whom the accommodation was allotted on the ground of his bona fide requirement. It is easy to see that if the Collector had allotted the accommodation vacated by Shri Solanki to some officer for residential purposes rejecting the Petitioner's objection about his requirement in regard to that accommodation, then the applicant could have filed a suit for eviction on the ground that he required the accommodation for his own residence or for the residence of any member of his family. The right of eviction of the tenant on this

ground cannot be availed of by the Petitioner if he is compelled under the order made by the Collector u/s 39 to let out the accommodation for non-residential purposes. A person to whom accommodation is allotted under Sections 39 and 40 of the Act is, u/s 41, deemed to be a tenant of the landlord of the accommodation. That being so, if the Petitioner is now required to let out the accommodation for the office of the Divisional Forest Officer or the District Publicity Assistant, then for the purpose of Clause (f) of Section 12(1) the character of the accommodation would be that for which the applicant has been directed by the Collector to let out the accommodation; and the applicant, if he wishes to evict the tenant on the ground of his bona fide requirement of the accommodation by filing a suit, must establish in that suit that he needs the accommodation for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters. The applicant's requirement in respect of the accommodation as a residential accommodation may be genuine and he may be able to establish it in a civil suit for eviction. But he may have no business or may not intend starting one, and thus may not need the accommodation if treated as a non-residential accommodation for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters. He would thus be compelled to file a suit for eviction on a ground which he may never be able to establish. It is thus plain that by the impugned orders of the Collector the Petitioner's right to file a suit for eviction of the tenant of an accommodation, which was previously in the occupation of a tenant for residential purposes, on the ground of his requirement in respect of that accommodation has been vitally affected.

In our opinion, having regard to the scheme of the Act and the classification of accommodation into two categories, namely, residential and nonresidential, according to the purpose for which it is let out, as also the fact that the Act does not in any way control the liberty of the landlord to determine the purpose for which he will let out any accommodation owned by him, the Collector has no power u/s 39 of the Act to make an order of allotment for non-residential purposes of an accommodation vacated by a tenant and let out to him for residential purposes. Therefore, the Collector's order, in so far as it relates to the allotment of accommodation vacated by Shri Solanki for the location of the office of the Divisional Forest Officer or the District Publicity Assistant, cannot be sustained. It is quashed. If the Petitioner is not already in occupation of the accommodation vacated by Shri Solanki, the opponents should deliver possession of the same to him. The applicant shall have costs of this petition. Counsel's fee is fixed at Rs. 75. The outstanding amount of the security deposit shall be refunded to the Petitioner.