

(2003) 11 MP CK 0056
In the Madhya Pradesh High Court
Case No : Second Appeal No. 461/98

Moorti Bhagwan Shri Laxmi Narayanji and Baba Shri Shri
Chandji Maharaj

APPELLANT

Vs

Mool Chand Nandwani

RESPONDENT

Date of Decision : 21-11-2003

Acts Referred:

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

Citation : (2004) 1 MPHT 276 : (2004) 1 MPLJ 363

Hon'ble Judges : Subhash Samvatsar, J; S.S. Jha, J

Bench : Division Bench

Advocate : Prashant Sharma, for the Appellant; A.M. Naik and Rajeev
Raghuvanshi, for the Respondent

Judgement

S. Samvatsar, J.

This appeal came up for consideration before Single Bench of this Court on 3-7-2001 and the learned Single Judge referred the matter to the Larger Bench as he has reached to the conclusion that there is a conflict of opinion in the two Single Bench judgments of this Court in the case of Badrilal v. Digambar Jain Panchayat, Sonkutch, 1973 MPLJ 690 and Tamchand Gupta v. Smt. Annapurnabai, 1968 MPLJ 751, on the question of interpretation of the word "business" occurring in Section 12(1)(f) of the M.P. Accommodation Control Act (hereinafter referred to as "the Act"). In the case of Badrilal (supra), it is held that the word "business" has to be interpreted in narrower sense that means the word "business" will include only commercial activity while in the case of Tarachand Gupta (supra), it has been held that the word "business" is comprehensive enough to include the profession or any activity carried for earning livelihood. In another case that is in the case of Taramal v. Laxman Sewak Surey and Ors., 1971 MPLJ 888, it has been held that the word "business" should not be interpreted narrowly and it should be used in a wider sense. The word "business" is not synonymous with trade or commerce. It means practically

anything which is an occupation as distinguished from pleasure. Thus, as per this judgment the word "business" has to be interpreted widely to include any other non residential activity distinguished from pleasure.

In the present case the plaintiff has filed a suit for ejectment on the ground that he requires the suit accommodation bona fide for starting a medical clinic for charitable purpose. For this purpose he engaged doctors who are ready to provide their services free from any remuneration. The suit filed by the plaintiff is decreed by the Trial Court and it is held that the plaintiff is entitled to get decree for ejectment u/s 12(1) (f) of the Act as he requires the suit premises for opening clinic for charitable purpose. This judgment was challenged by the tenant by filing an appeal. This appeal was allowed by the 9th Additional District Judge, Gwalior by judgment and decree dated 14-7-98 and the judgment and decree passed by the Trial Court was set aside. Second appeal filed by landlord was admitted by this Court on following three substantial questions of law :--

" (1) Whether in the absence of any reasoning in respect of bona fide need recorded by the Trial Court, the judgment of Appellate Court holding that the suit does not fall within the ambit of Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, is proper and according to law ?

(2) Whether in the absence of any finding that plaintiff has committed nuisance by starting furnace in the premises, the suit u/s 12(1)(c) was rightly dismissed by the Trial Court ?

(3) Whether the suit for eviction for other than residential purpose in respect of starting charitable dispensary can be decreed under the provisions of Section 12(1)(f) of the M.P. Accommodation Control Act ?"

Learned Single Judge hearing the appeal was of the opinion that there is conflict of opinion about the interpretation of the word "business" and hence referred the matter to the Larger Bench.

For interpreting the word "business" occurring in Section 12(1)(f) of the Act, it is necessary to first find out the object of enacting Section 12(1)(f) of the Act and the reference and context in which the said word is used by legislature in the said section. It is, therefore, necessary to first refer Section 12(1)(f) of the Act which reads as under;--

"12. (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :--

f) that the accommodation let for non-residential purposes is required bona fide by the landlord 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."

Before enacting the M.P. Accommodation Control Act the suit between landlord and tenant were governed by the provisions of Transfer of Property Act. Section 12(1) was enacted to give protection to the tenant from eviction. After enactment of Section 12(1) the rights of landlord to evict his tenant are restricted. The landlord can now evict tenant only if any one or more of the grounds enumerated in Section 12(1) of the Act exists. Thus, this section is enacted to curtail the rights of landlord from evicting the tenant. Section 12(1) (c) and 12(1)(f) are the two clauses under which a landlord can evict the tenant for his personal requirements. u/s 12(1)(c) he can evict a tenant if he requires the suit accommodation for his residence or that of his family members while u/s 12(1)(f) he can evict the tenant if he bona fide requires the suit accommodation for starting his own business or that of his major son or unmarried daughter. A review of this provision would show that the Act is most strict with respect to eviction of a tenant from a non-residential accommodation than from a residential accommodation. While Clause (e) is more hospital to landlord, Clause (f) is more protective to tenant. At the same time the legislature never wanted to continue a tenant who commits a default or when the landlord bona fide requires the accommodation for his need. Considering this view we have to interpret the word "business" occurring in Section 12(1)(f) of the Act.

Normally, the word "business" is used in different shades at different places. As regards the meaning of word "business" occurring in Section 12(1)(f) of the Act is concerned, this Court has interpreted the said word keeping in view the object of the Act. In the case of Tarachand Gupta (supra) the question involved was that whether a landlord is entitled to get decree u/s 12(1)(f) of the Act for starting the profession of a lawyer and this Court has held that the activity carried out for earning livelihood is included in the term of business occurring in Section 12(1) (f) of the Act and decreed the suit. This Court has further held that the meaning of word "business" is not restricted only to the commercial activities. Thus, this judgment lays down that the word "business" can not be narrowly interpreted to include only commercial activities.

The next case is that of Badrilal (supra). In this case Panchayat wanted to start a school in its building. Counsel for the appellant urged that the school run by the Panchayat is always for charitable purpose and not for earning livelihood. He submitted that in this case a decree of ejectment was passed in favour of Panchayat for starting a school. Thus, according to him this Court has interpreted the word "business" in the aforesaid case to include the activities for charitable purpose.

After going through the said judgment we find that there is nothing in the judgment to indicate that the school run by the Panchayat was for charitable purpose. The schools may also be run for earning monetary gains. Hence from the reading of the said judgment it can not be said that this Court has laid down that the charitable purpose is included in the word "business. This case does not

support the contention of the learned Counsel for the appellant. The aforesaid case was considered by the Supreme Court in the case of S. Mohan Lal Vs. R. Kondiah, . While considering Badrilal case (supra), the Apex Court has stated that if the word "business" is interpreted in broader sense then it is taken to be everything that occupies the time, attention and labour of a man for the purpose of livelihood or profit. In narrow sense it is confined to commercial activities. Apex Court further held that the meaning of word must be gleaned from the context in which it is used. Thus, from reading of the said judgment it appears that the Apex Court has laid down that if the word "business" is widely interpreted then it will include any activity which is carried out for earning livelihood or profit.

In the case of Taramal (supra) this Court has held that the word "business" must be interpreted narrowly and has come to the conclusion that there is fundamental difference between profession, trade or business. The Court came to the conclusion that the profession of a lawyer will not be covered by the term "business". As per the said judgment, the strict meaning of the word "business" has to be given.

Shri Prashant Sharma, learned Counsel for the appellant invited our attention to the judgment of Apex Court in the case of Smt. Shanti Devi and Another Vs. Swami Ashanand and Another, . That case relates to U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Section 21(1)(a) of the said Act provides that a decree for ejectment can be passed in favour of tenant if the landlord requires the suit premises for occupation by himself or any member of his family, or any other person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust. Thus, the section itself provides that an accommodation can be vacated if the landlord requires it for any profession, trade or calling or for charitable objects. The definition is quite different from the M.P. Act.

From reading of Section 12(1)(f) of the M.P. Act it is clear that the intention of legislature is to provide right of ejectment to landlord if he requires suit accommodation for continuing or starting business for his major son or unmarried daughter. The act nowhere provides for passing an ejectment decree for continuing or starting business for any other member of family.

After going through these judgments we find that though the object of Section 12(1)(f) is to protect the tenant from eviction from non-residential accommodation and the said section is more protective to tenant still it confers a right on a landlord to evict a tenant if he requires the accommodation for his business purpose in such circumstances. The word "business" can not be interpreted only to include commercial transactions. On the other hand it will include all the activities carried on for earning livelihood or profit.

Section 20 of the Act provides for recovery of possession in certain cases and

Section 20D of the Act provides for recovery of possession of the accommodation which is required bona fide by public institution for further run of its activities. The explanation to said section provides that public institution includes educational institutions, library, hospital and charitable dispensary. The suit filed by the applicant is not u/s 20 and is u/s 12(1)(f) of the Act and the reference is made for interpreting the word "business". Considering these provisions the word "business" can not be so widely interpreted to include any non-residential activity but can be interpreted only to include any activity which is carried out for earning livelihood or profit.

Thus, the view taken in the case of Taramal (supra), stating that the word "business" will include commercial activity is not a correct law and the view taken in the case of Tarachand Gupta (supra), seems to be correct. Word "business" has to be interpreted to include any activity carried out for earning livelihood or profit but it will not include any other non-residential activity. Thus the question is answered accordingly. Now the case be fixed before the Single Bench for its decision.