

(1969) 02 MP CK 0008
In the Madhya Pradesh High Court
Case No : M. P. No. 285 of 1967

M/s. Tulsiram Vishnudutta

APPELLANT

Vs

Rent Controlling Authority, Jabalpur and another

RESPONDENT

Date of Decision : 14-02-1969

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 39(2)

Citation : (1969) JLJ 681 : (1969) MPLJ 475

Hon'ble Judges : G. P. Singh, J;A. P. Sen, J

Bench : Division Bench

Advocate : R. K. Pandey, for the Appellant; M. L. Chansoria, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G. P. Singh, J.

The petitioner is a firm and owns house No. 2344 situated in Wright Town, Jabalpur, which was purchased by it by registered sale-deed on 7th February, 1967. The firm consists of three partners, one of them being Vishnudutta Dubey. At the time of purchase, the house was in occupation of one Shri Narayanan, a Deputy Collector. Narayanan was thereafter transferred and as the house was likely to fall vacant, the petitioner intimated the fact to the Rent Controlling Authority and also claimed that the house should not be allotted to any one, as it was needed by Vishnudutta, one of the partners of the petitioner firm for his own occupation because his son and brother were students studying in educational institutions at Jabalpur and they were living in a rented house, which was not suitable. The Rent Controlling Authority by its order passed on 19th June, 1967 allotted the house u/s 39 (2) of the Madhya Pradesh Accommodation Control Act, 1961 to Shri D. V. Singh, Deputy Director of Agriculture. He overruled the petitioner's objection to the allotment essentially on the ground that the need of one of the partners to occupy the house cannot be held to be a need of the firm which was the landlord of the house. The petitioner then filed this petition under

Articles 226 and 227 of the Constitution seeking a writ in the nature of certiorari to quash the order of allotment made, by the Rent Controlling Authority.

Section 39 of the Act deals with control of letting. Sub-section (1) enables the Collector or the Authorised Officer (who in the present case happened to be the Rent Controlling Authority) to require a landlord by general or special order to give information in writing when any accommodation has fallen vacant or is likely to fall vacant. Sub-section (2) empowers these Authorities to allot any accommodation which has fallen vacant or is likely to fall vacant in favour of a Government Officer. This power is subject to an important proviso which reads:

Provided that if the landlord has in the information given in pursuance of an 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;

There are certain classes of accommodations which are taken out of the ambit of section 39 and they are enumerated in sub-section (5) which provides:

(5) Nothing in this 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 non-residential purposes the monthly rent of which does not exceed fifty rupees;
- (c) any accommodation which has fallen vacant in pursuance of an order passed under this Act for the purpose of occupation by the landlord;
- (d) any accommodation belonging to a local authority, Company or Firm and bona fide intended solely for the occupation of its officers, servants and agents.

The contention raised by the learned counsel for the petitioner is that even if one of the partners of a firm, which is the landlord, needs the accommodation for his own occupation, the Collector or the Authorised Officer is bound to permit the landlord to occupy the same under the proviso to subsection (2) and cannot allot it in favour of any Government Officer. According to the learned counsel for the petitioner, in case of plurality of landlords if the need be even of one of them the proviso is attracted. The argument of the learned Government Advocate, on the other hand, is that the need, to come within the proviso, must be of all the landlords and further if the house be owned by a firm, the need must be for the purpose of the firm. It is also argued with reference to sub-section (5) that in a case where a firm is the landlord, the accommodation can always be allotted under sub section (2) unless it is intended solely for the occupation of its officers, servants or its agents.

The proviso to sub-section (2) is couched in Mandatory terms. If the landlord is able to establish to the satisfaction of the Collector or the Authorised Officer, as

the case may be, that he needs the accommodation for "his own occupation" the accommodation has to be released in favour of the landlord and cannot be allotted under sub-section (2). The first question raised in the instant case is as to the meaning of the word "his" in the proviso when there are several landlords. In case of plurality of landlords the word "his" in the expression "his own occupation" would strictly signify "their" and indeed that is the view taken in some of the English cases in similar context; see: *McIntyre v. Hardcastle* (1948) 1 All B R 696. *Wetherall and Co. Ltd. v. Stone* (1950) 2 All E R 208. but in a number of cases in our country the word "his" in such a context has been construed to signify "of them or of any one or more of them." In interpreting the words "where the premises are reasonably required by the landlord for his own occupation" as they found place in section 12 (1) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, it was held by the Calcutta High Court that the condition imposed by the sub-section was satisfied even when the premises held by two or more landlords were reasonably required by the landlords for occupation of one of them; *Kanika Devi v. A, N Roy Choudhary* 65 Cal. W N 1078, pp. 1080-1081. Identical language in section 13 (1) (H) of the West Bengal Premises Tenancy Act, 1956 was similarly construed by the same High Court and it was held that where there are several landlords the requirement of the premises by the landlords for the occupation of one or more of them is sufficient to bring the case within the section; this construction was accepted and was not challenged in the Supreme Court when the case went up in appeal to that Court; *B.M. Lall (Dead) by Lrs. Vs. Dunlop Rubber and Co. Ltd. and Others*, , p. 176. The Calcutta ruling in *Kanika Devi's* case (3) was followed by the Punjab High Court in interpreting section 13 (3) of the Punjab Urban Rent Restriction Act, 1949; *Vir Bhan v. Avtar Krishan* 64 P L R 1185. The view taken in Calcutta and Punjab cases was adopted in our High Court by Naik J. in applying Section 4 (h) of the Madhya Pradesh Accommodation Control Act, 1955 where the words were-"the landlord genuinely required the accommodation for continuing or starting his own business": *Capital Multipurpose Co-operative Society Ltd. Vs. Madhya Pradesh State Road Transport Co-operative and Others*, The Indian authorities thus differing from the English cases do not favour the strict or literal construction of the words "his own occupation" or "his own business". Under the general law one of the landlords is entitled with the consent of his co-landlords to occupy whole of the accommodation jointly held by them. When the Legislature intends to permit the benefit of the accommodation to the landlord if needed for his own occupation, it is difficult to infer in the absence of clear language that, that benefit is denied to one of the landlords in cases where the accommodation is held by several landlords. The first proviso to sub-section (2) of section 30 of the Accommodation Control Act, 1961 should be construed in this background. In our opinion, the words-"when he needs the accommodation for his own occupation"-- as they occur in the proviso would be satisfied if in case of plurality of landlords, "the landlords need the accommodation for the occupation of all or any one or more of them".

The next point is whether a different rule should apply when a firm is the landlord. Now, a firm, under our legal system, is not a legal entity except for fiscal purposes; it is merely a compendious name to describe its partners; *Purushottam Umedbhai and Co. Vs. Manilal and Sons*, . p. 330. *Mandalsa Devi v. M. Ram-narin P. Ltd.* A I R 1966 S C 1718, p. 1720. Because of this legal position in cases where a firm is the landlord, in reality and substance the partners constituting the firm are the landlords. It is true that ordinarily a partnership property can be used only for the purpose of the firm and not for the benefit of one of its partners; but when all partners consent there can be no objection to the use of any partnership property for the benefit of one of the partners. There is thus no legal basis for treating the ease of a firm differently. In our view, if the firm needs the accommodation for the occupation of all or any one of its partners, the requirement of "his own occupation" contained in the proviso would be satisfied. Similar view has been taken by the Madras High Court in *Nanjappa v. Dulabdas and Co.* I L R (1967) 2 Mad. 506.

We next come to the argument addressed with reference to sub-section (5) that any accommodation which is not bona fide intended solely for the occupation of officers, servants and agents of a firm can always be allotted under sub-section (2), Sub-section (5) excluded the operation of the section in respect of accommodations falling under its clauses (a) to (d). Clause (d) provides that nothing in section 39 shall apply to "any accommodation belonging to a local authority, company or firm and bona fide intended solely for the occupation of its officers, servants and agents". In cases where the accommodation falls within this clause, or under any other clause of sub-section (5), sub-sections (1) to (4) are not at all attracted. There is then complete lack of power to make any allotment and no question can arise of making any inquiry under the proviso to sub-section (2) whether the landlord needs the accommodation for his own occupation. But when an accommodation does not fall under sub-section (5), the power to make an allotment under sub-section (2) together with its limitation contained in the proviso is attracted. The proviso neither expressly nor impliedly excludes the case of a firm. Therefore, if an accommodation is held by a firm as landlord and if the need within the proviso in the manner we have explained is established, the Collector or the authorised officer ceases to have any power to allot it under sub-section (2).

The Rent Controlling Authority rejected the objection of the petitioner and allotted the house on an erroneous construction of the proviso to sub-section (2). The order of allotment cannot, therefore, stand.

The petition is allowed. The order of allotment dated 19th June 1967 is hereby quashed. In the circumstances of the case, there will be no order as to costs. The amount of security deposit shall be refunded to the petitioner.