

**(1979) 03 MP CK 0016**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 641 of 1978**

Pritamchand

APPELLANT

Vs

Rent Controlling Authority

RESPONDENT

**Date of Decision : 30-03-1979**

**Acts Referred:**

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 39(1), 39(2)

**Citation :** AIR 1979 MP 148 : (1979) JLJ 589 : (1979) 24 MPLJ 741 : (1979) MPLJ 741

**Hon'ble Judges :** G.P. Singh, C.J;B.C. Verma, J

**Bench :** Division Bench

**Advocate :** Ku. Kanti Rao and P.R. Padhye, for the Appellant; M.V. Tamaskar, Government Advocate, for the Respondent

**Final Decision :** Allowed

## Judgement

G.P. Singh, C.J.

By this petition under Article 226 of the Constitution, the petitioner challenges an order dated 16th Oct. 1978 (Annexure-9), passed by the Authorised Officer, Seoni, u/s 39 of the Madhya Pradesh Accommodation Control Act, 1961, asking the petitioner to give his option for allotment of a house situated on Station Road, Seoni, belonging to the petitioner, in favour of Shri S. D. Mudgal, District Education Officer, or Shri Pandey, Assistant Settlement Officer.

The house was in occupation of one Shri G. K. Shrivastava who was Deputy Collector and Authorised Officer. Shri Shrivastava was transferred from Seoni. The petitioner, therefore on 11th Aug. 1978, gave information as required by Section 39 (1) of the Act to the Authorised Officer that the house was likely to fall vacant and that the petitioner needed it for his personal residence. A notice was issued to the petitioner by the Authorised Officer on 4th Sept. 1978 which was received by the petitioner on 6th Sept. 1978 requiring him to appear on 7th Sept. 1978 in connection with the enquiry envisaged under the first proviso to

Section 39 (2) for satisfaction of the Authorised Officer that the accommodation was really needed by the petitioner. On 5th Oct. 1978, the Authorised Officer held against the petitioner that his need was not genuine. On 6th Oct. 1978, an allotment order was issued in favour of Shri K. P. Dixit, Deputy Collector; but as he was allotted another accommodation, the Authorised Officer issued the impugned order dated 16th Oct. 1978.

The argument of Miss Kanti Rao, learned counsel for the petitioner, is that the enquiry under the first proviso to Section 39 (2) of the Act must begin within 15 days from the date of receipt of the information given by the landlord that the house has fallen vacant or is likely to fall vacant and that after the expiry of fifteen days from the date of the information the Authorised Officer loses jurisdiction to commence an enquiry or to take any action for allotment of the house. The learned counsel relies upon Sub-section (3) of Section 39.

It is not in dispute that there is a general order made under Sub-section (1) requiring every landlord to give information of an accommodation which has fallen vacant or is likely to fall vacant. It was in pursuance of this general order that the petitioner gave information on 11th August 1978 that the house was likely to fall vacant.

Section 39, in so far as relevant, reads as follows;

"39. Control of Letting. -- (1) The Collector or such other officer not below the rank of a Deputy Collector 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 on an application made to him in this behalf, by general or special order, require a landlord to give information in writing within such time as may be specified therein of any accommodation which has fallen vacant or is likely to fall vacant and also require him to let or not to let 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, Madhy Pradesh, or such other body corporate as may be specified by the State Government by a Notification in the Gazette, the Collector or the Authorised Officer may, subject to the provisions of Section 40, within 15 days from the date of receipt of the information given by the landlord in pursuance of an 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 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 :

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 in the information given in pursuance of an 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".

From a perusal of the section it will be seen that Sub-section (2) authorises the Authorised Officer to allot the accommodation "within 15 days from the date of receipt of the information given by the landlord in pursuance of an order issued under Sub-section (1)". The power of allotment conferred by subsection (2) is, therefore, to be exercised within this period of limitation. The first proviso to Sub-section (2) enjoins upon the Authorised Officer to make an enquiry in cases where the landlord has in the information given by him stated that he needs the accommodation for his own occupation; and if the Authorised Officer is satisfied, after due enquiry, that the accommodation is so needed, he has to permit the landlord to occupy the same. Sub-section (3) of Section 39 provides that 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. The proviso to Sub-section (3) says that in a case falling under the first proviso to Sub-section (2) the period spent in an enquiry shall be excluded. Now, Sub-sections (2) and (3) must be read together. The period within which an allotment order can be made is prescribed by Sub-section (2) to be 15 days from the date of receipt of the information given by the landlord in pursuance of an order issued under Sub-section (1). The prescription of a period of limitation within which an order of allotment can be made gives rise to an inference that no order of allotment can be made after the expiry of the period of 15 days from the date of receipt of the information given by the landlord. However, in cases where the landlord in his information claims the house for his own residence, an enquiry has to be held and it may not be possible to make an order of allotment within the period of 15 days and hence the proviso to Sub-section (3) makes a provision for exclusion of the period spent in the enquiry in counting 15 days. The proviso excludes in counting the period of limitation of 15 days the period spent in an enquiry which is designed to find out whether the landlord really needs the house for his own residence. Now, as even after the exclusion of the period spent in an enquiry, the period within which an order of allotment can be made is 15 days, it stands to reason that the enquiry must commence within 15

days. It is only then that the question of excluding the period spent in the enquiry can really arise.

In the instant case, as already stated by us, the information was given by the petitioner on 11th Aug. 1978. The notice to the petitioner on this information for enquiry was issued on 4th September 1978. Before that, no action was taken by the Authorised Officer. The issuance of notice, therefore, is the date of commencement of the enquiry. The enquiry clearly did not commence within 15 days from the date of receipt of the information given by the petitioner. So no allotment order was made within the period provided in Sub-section (2). What is then the effect of the expiry of the period ? Did the Authorised Officer cease to have jurisdiction to make an order of allotment and is it open to the petitioner to occupy the accommodation ?

Section 39 deals with the subject of control of letting of an accommodation which has fallen vacant or is likely to fall vacant. The prohibition of the general or special order issued under Sub-section (1) is not to let such accommodation except in accordance with such order as may be given in accordance With the provisions of Chap. VI in which Section 39 occurs. But the landlord of the house which has fallen vacant or is likely to fall vacant cannot be kept in suspense for a long time. Sub-section (2), therefore, provides a period of limitation within which the Authorised Officer can make an order of allotment. If no order of allotment is made by the Authorised Officer within this period, the landlord, as provided in Sub-section (3), is free to let the vacant accommodation to any person. The effect of Sub-section (3) is that the control of letting which Sub-section (1) imposes on the landlord is lifted after the expiry of the period provided for allotment in Sub-section (2). Although not in terms provided in Sub-section (3), in such an eventuality the landlord would also be free to occupy the vacant accommodation as the control on letting is lifted. The first proviso to Sub-section (2) relating to the enquiry of the need of the landlord applies when the enquiry commences within the period provided in the said Sub-section. It is then that an order permitting the landlord to occupy the accommodation will be necessary. But if no action is taken to commence an enquiry within the period of limitation and no allotment order is made within that period, the control of letting will cease. The Authorised Officer can then have no jurisdiction to make an order of allotment and the landlord will be free to occupy the accommodation. The control will revive if the accommodation again falls vacant or is likely to fall vacant.

Our attention was drawn to a decision of a Division Bench of this Court in Shankuntala Bai v. Authorised Officer for House Allotment, M. P. No. 437 of 1964 D/- 23-12-1964. In this case it was observed that the Authorised Officer must make the order of allotment within 15 days as provided in Sub-section (2) of Section 39 and an order of allotment made beyond that period is invalid. Our attention was also drawn to another decision of a Division Bench in Parmanand Bajpai v. Authorised Officer, M. P. No. 407 of 1965 D/- 2-2-1966. In this case it was held that an allotment order made beyond 15 days, if consented to by the

landlord, is not void because the landlord can waive the benefit that he acquires after the expiry of the period of limitation. This decision does not go counter to the decision in Shakuntala Bai's case. In the case before us, the petitioner never consented to have allotment made after the expiry of 15 days, As the period of limitation of 15 days provided in Sub-section (2) had expired before the issue of the order dated 5th Oct. 1978 or 16th Oct. 1978 and as the enquiry contemplated by the first proviso to Sub-section (2) did not commence within 15 days, the impugned order dated 16th Oct. 1978 issued to the petitioner to give his choice for allotment of the accommodation in respect of the two persons mentioned in that order cannot be sustained.

The petition is allowed. The order dated 16th Oct. 1978 (Annexure-9) is quashed. There shall be no order as to costs, the security amount be refunded to the petitioner.