

(1977) 08 MP CK 0019

In the Madhya Pradesh High Court

Case No : Civil Revision No. 440 of 1977

Shankarlal Debiprasad Rathore

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-08-1977

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 39, 45

Citation : (1979) ILR (MP) 74 : (1978) JIJ 51 : (1978) MPLJ 419 : (1978) MPLJ 415

Hon'ble Judges : G.P. Singh, J

Bench : Single Bench

Advocate : J.P. Sanghi with S.C. Jain, for the Appellant; M.V. Tamaskar, Government Advocate for non-applicants Nos. 1 and 2 and Fakhruddin for non-applicant No. 3, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, J.

By order, dated 9th July 1975, passed u/s 39 of the Madhya Pradesh Accommodation Control Act, 1961, the Authorised Officer allotted House No. 572, Sarafa Ward, Jabalpur, in favour of one Ikram Hussain who is employed as a welder in the Vehicle Factory, a Government of India Undertaking. Shankarlal Rathore instituted the suit, in which this revision arises, on 10th July 1975 for a declaration that the order of allotment is without jurisdiction. Relief of permanent injunction is also claimed in the suit. The State, the Authorised Officer and Ikram Hussain are joined in the suit as Defendants 1, 2 and 3. An application for temporary injunction was made by the Plaintiff. The trial Court rejected the application. On appeal, the District Judge, Jabalpur, issued a temporary injunction restraining Ikram Hussain from taking possession of the house and also restraining the Authorised Officer from enforcing the order of allotment. Ikram Hussain filed a revision being Civil Revision No. 719 of 1976. This revision was allowed on 22nd March 1977 by Hon"ble the Chief Justice and the appeal

was remanded to the District Judge for fresh disposal. The District Judge was directed to find out prima facie whether the Plaintiff is in actual occupation of the suit house. After remand, the District Judge by his order, dated 19th April 1977, dismissed the appeal. In paragraph 45 of the order, the District Judge found that before the order of allotment was passed, one Jagdish Prasad with his family used to reside in the house in suit and the Plaintiff did not live in the house and that after Jagdish Prasad left the house, the Plaintiff started using it as a godown for storing tobacco. Aggrieved by the order of the District Judge, the Plaintiff has come to this Court in revision.

The order of allotment passed by the Authorised Officer proceeds on the finding that the house in suit was in occupation of Jagdish Prasad as tenant on a rent of Rs. 40 per month and that the house fell vacant when Jagdish Prasad vacated it on 4th April 1975. This order is challenged in the suit by the Plaintiff on the allegations that Jagdish Prasad was not a tenant and was living with the Plaintiff in the house being a relation, that the house never fell vacant and that the monthly rent of the house did not exceed Rs. 25. Sub-section (2) of Section 39 empowers the Authorised Officer to make an order of allotment in respect of an accommodation "which has fallen vacant or is likely to fall vacant". Section 39, as provided in Sub-section (5) of that section, has no application to any accommodation used for residential purposes the monthly rent of which does not exceed Rs. 25. The Plaintiff first contends that the Authorised Officer assumed jurisdiction u/s 39 by wrongly finding on wholly inadmissible evidence that the rent of the house was Rs. 40 per month. The second contention of the Plaintiff is that Jagdish Prasad was living in the house with the Plaintiff as his licensee and, therefore, the house did not fall vacant when Jagdish Prasad ceased to live in the house because the Plaintiff continues in occupation of the house. The Plaintiff's argument is that by holding wrongly that the house was in occupation of Jagdish Prasad as a tenant on a monthly rent of Rs. 40, the Authorised Officer assumed jurisdiction which he did not possess.

It is conceded before me that a civil suit to challenge an order of allotment passed by the Authorised Officer on the ground that it is in excess of jurisdiction is not barred. Section 45 of the Act bars the jurisdiction of the civil Court in matters relating to fixation of standard rent and other matters which the Rent Controlling Authority is empowered to decide under the Act. This section further forbids issuance of any injunction in respect of any action taken by the Rent Controlling Authority. The Act, however, makes no provision similar to Section 45 ousting the jurisdiction of the civil Court for challenging an order of allotment made by the Authorised Officer or forbidding issuance of an injunction to the Authorised Officer in respect of any allotment made by him. A suit, therefore, lies for challenging an order of allotment made by the Authorised Officer at least on the ground that the order is in excess of jurisdiction. If the Court comes to the conclusion that the order is in excess of authority, it can issue an injunction forbidding implementation of the order.

The question that falls for determination in this revision is whether the Plaintiff has made out a case for grant of temporary injunction. This requires examination of the principles on which temporary injunctions are granted. Although it is often said that a Plaintiff must show a prima facie case in support of the right claimed by him in the suit before he can be granted temporary injunction, the real thing to be seen only is that the Plaintiff's claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. It is not the function of the Court at this stage to resolve disputed questions of fact or difficult questions of law which should be left to be decided at the conclusion of the trial. After the Plaintiff succeeds in showing that there is a serious question to be tried, he has further to show that the balance of convenience lies in favour of granting temporary injunction. In this connection, it is relevant to enquire whether the Plaintiff can be adequately compensated by an award of damages if he succeeds in establishing the right claimed. The Court should also consider whether the Defendant can be adequately compensated if the Plaintiff is directed to pay damages for the loss resulting to him from the grant of injunction in case ultimately the suit fails. The extent of disadvantages to each party which cannot be compensated by award of damages in the event of his succeeding in the suit is a very material consideration for determining where balance of convenience lies. If such disadvantages may be of equal strength, the relative strength of each party's case as shown from documents and affidavits may be assessed. If relevant competing factors are equally balanced, prudence may lie in maintaining the status quo. These principles are to be generally observed in the grant of temporary injunctions, but there may be special factors of a particular case which may require a different approach. For example, in cases where the Plaintiff and Defendant both claim to be in possession of the suit property, temporary injunction should not be granted restraining the Defendant from interfering with the Plaintiff's possession unless the Court finds a very strong probability that the Plaintiff is in possession. Further, the grant of injunction in such cases must be on the condition that the Plaintiff will pay damages to the Defendant in case ultimately he is found to be out of possession.

The principles on which temporary injunctions are issued were recently examined by the House of Lords in *American Cyanamid v. Ethicon* (1975) 1 All ER 504. The following passages from the speech of Lord Diplock are instructive on the point:

The use of such expressions as "a probability", "a prima facie case", or "a strong prima facie case" in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The Court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.

It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for

detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages on the grant of an interlocutory injunction was that "it aided the Court in doing that which was its great object, viz. abstaining from expressing any opinion upon the merits of the case until the hearing" [Wakefield v. Duke of Buccleuch (1865) 12 LT 628 at p. 629. So unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the Plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the Court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

As to that, the governing principle is that the Court should first consider whether if the Plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the Defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the Defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however, strong the Plaintiff's claim appeared to be at that stage. If on the other hand, damages would not provide an adequate remedy for the Plaintiff in the event of his succeeding at the trial, the Court should then consider whether, on the contrary hypothesis that the Defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the Plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the Plaintiff would be in a financial position to pay them, there would be no reason on this ground to refuse an interlocutory injunction.

It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. If the Defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark on a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause

much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial.

Save in the simplest cases, the decision to grant or to refuse an interlocutory injunction will cause to whichever party is unsuccessful on the application some disadvantages which his ultimate success at the trial may show he ought to have been spared and the disadvantages may be such that the recovery of damages to which he would then be entitled either in the action or under the Plaintiff's undertaking would not be sufficient to compensate him fully for all of them. The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies; and if the extent of the uncompensatable disadvantage to each party would not differ widely, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence adduced on the hearing of the application. This, however, should be done only where it is apparent on the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party. The Court is not justified in embarking on anything resembling a trial of the action on conflicting affidavits in order to evaluate the strength of either party's case.

I would reiterate that, in addition to those to which I have referred, there may be many other special factors to be taken into consideration in the particular circumstances of individual cases.

The principle that generally the Plaintiff is not required to make out a clear legal title, but has only to satisfy the Court that he has a fair question to raise as to the existence of the legal right claimed by him in the suit is well recognised in India. The following two passages from Woodroffe's *The law relating to Injunctions* (Tagore Law Lectures, 1897; 1964 Edition) are relevant on this point:

An applicant is not required to make out a clear legal title, but to satisfy the Court that he has a fair question to raise as to the existence of the legal right which he sets up, and that there are substantial grounds for doubting the existence of the alleged legal right, the exercise of which he seeks to prevent. (page 104)

The Court will, in many cases, interfere to preserve property in status quo during the pendency of a suit in which the rights to it are to be decided, and that, without expressing, and often without having the means of forming, any opinion as to such rights. It is true the Court will not interfere if it thinks that there is no real question between the parties, but if it sees that there is a substantial question to be decided, it will preserve the property until such question can be regularly disposed of; and in order to support an injunction for such purpose it is not necessary for the Court to decide upon the merits in favour of the Plaintiff. If the plaintiff states a substantial question between the parties the title to the

Injunction may be good, although the title to the relief prayed may ultimately fail. (pp. 105-106)

The question then is whether on the application of the aforesaid principles a temporary injunction can be granted in the Plaintiff's favour. The first thing to be seen is whether the Plaintiff's challenge to the allotment order in the suit raises serious questions for trial. I have already stated that the contention of the Plaintiff is that the order of allotment went beyond the jurisdiction of the Authorised Officer because the rent of the accommodation was less than Rs. 25 per month and the house did not fall vacant. As earlier pointed out, Section 39 has no application to an accommodation the monthly rent of which does not exceed Rs. 25. Further, even when Section 39 applies, no allotment can be made unless the house has fallen vacant or is likely to fall vacant. All these questions are jurisdictional questions and it appears to be a reasonably good argument that the Authorised Officer cannot assume jurisdiction by wrongly deciding jurisdictional questions of fact. The Authorised Officer's conclusion that Jagdish Prasad occupied the house as a tenant and paid Rs. 40 per month as rent to the Plaintiff is based on the statement of a relation of the allottee that Jagdish Prasad had told him that the rent was Rs. 40 per month. The Plaintiff and Jagdish Prasad both have filed affidavits that Jagdish Prasad was not a tenant and that he never paid any rent. The Plaintiff has also produced certified copies of the entries in the assessment register of the Corporation which show that the rent of the house in suit at the relevant time was Rs. 17 per month. In the circumstances, in my opinion, the Plaintiff has raised serious questions as to the jurisdiction of the Authorised Officer.

The next point is whether balance of convenience lies in the Plaintiff's favour for issuance of injunction. It is not disputed before me by the learned Counsel for the Defendant, and it is also the finding of the District Judge, that the Plaintiff at least on the date of the suit was in possession of the house and was using it as a godown for storing tobacco. It has also been shown by the Plaintiff that the house is a licenced godown under the Central Excises and Salt Act. If the Plaintiff is required to vacate the house and give possession to the allottee and if he ultimately establishes his right claimed in the suit, he will suffer inconvenience and loss in business which cannot be satisfactorily compensated by award of damages. As regards the allottee. I am informed that he is living with his brother-in-law. No doubt it will be more convenient for him to live in the suit house and his continuing to live with his brother-in-law during the pendency of the suit would make him suffer some inconvenience which cannot be easily compensated in terms of money. However, inconvenience to the Plaintiff would be much more if he is required to vacate the suit house. One of the principles noticed above is: "Where other factors appear to be evenly balanced, it is a counsel of prudence to take such measures as are calculated to preserve the status quo." Having regard to all the circumstances of the case, in my opinion the balance of convenience lies in favour of granting interim injunction to the Plaintiff.

In the order, dated 22nd March 1977, passed in the earlier Revision by Hon''ble the Chief Justice, it has been observed that if the Plaintiff is not in occupation, he has no case for temporary injunction. It is further observed that "the result may be different, if he is in physical occupation of the suit house." The finding of the District Judge is that the Plaintiff uses the suit house as a godown for storing his tobacco. This is, in my opinion, physical occupation. The District Judge did not apply correct principles for holding that the Plaintiff did not make out a case for issue of temporary injunction.

The revision is allowed. The order of the District Judge dismissing the appeal and the order of the trial Court dismissing the application for temporary injunction are set aside. A temporary injunction is issued forbidding the Defendants to dispossess the Plaintiff from the house in suit during the pendency of the suit. The trial Court shall dispose of the suit as early as possible and real effort shall be made to decide it within three months. The records shall be sent to the Court below immediately. The parties shall appear before the trial Court to take directions for proceeding with the suit on 16-8-1977.