
(1966) 09 MP CK 0026
In the Madhya Pradesh High Court
Case No : M.P. No. 140 of 1966

Sheo Prasad

APPELLANT

Vs

The Rent Controlling Authority and the Authorised Officer,
Sagar and Another

RESPONDENT

Date of Decision : 28-09-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 39

Citation : (1970) ILR (MP) 77 : (1966) JLJ 1067 : (1966) MPLJ 1171

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhawe, J

Bench : Division Bench

Advocate : V.S. Pandit, for the Appellant; K.K. Dubey, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.J. Bhawe, J.

The petitioner owns a house in Gopalganj Ward, Sagar, of which a medical practitioner, by name Dr. Shastri was a tenant from before 1957. Dr. Shastri constructed his own house and he was to shift there Chaturvedi, Assistant Jailor, Sagar, intimated the Rent Controlling Authority and the Authorised Officer, Sagar (respondent No. 1) that the house belonging to The petitioner was to fall vacant and applied for the same being allotted to him. Other Government servants also applied for allotment of the said house. The petitioner objected to the allotment on the ground that the rent of the house was not more than Rs. 25 per month and that the respondent No, 1 had no jurisdiction to allot the same. The petitioner also claimed that he needed the house for occupation of his family. Both the objections were negatived by the respondent No. 1 and the house was allotted to the respondent No. 2 by order, dated 3-3-1966, That order is under challenge in this petition under Article 226 of the Constitution.

Section 39 of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter

referred to as the Act) confers power on the Collector or the Authorised Officer of allotting houses falling vacant to persons holding office of profit under the Government or to other categories of persons enumerated in the said section. But sub-section (5) excludes certain types of accommodation from the operation of rest of the provisions of section 39. Sub-section (5) reads:

(5) Nothing in this section shall apply to-

(a) any accommodation used for residential purposes of 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 of 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.

In the present case, clause (a) of Sub-section (5) is alone attracted; it refers to accommodation used for residential purposes. It may be in possession of the tenant or with a licensee or in possession of the landlord himself. If it is in possession of the tenant, it may be said that the rent of the accommodation is the rent that is fixed between the landlord and the tenant under the contract of lease. But if the accommodation is in possession of the licensee or that of the landlord himself, the question may arise as to what is the rent of the accommodation. In that case, necessarily it will have to be determined as to how much rent the accommodation is likely to fetch. In other words, the rent of such accommodation would be the standard rent to be determined under the provisions of the Act. This involves the interpretation of the term "rent" in two different manners depending on whether the house was given on rent or not. This difficulty can be avoided by holding that the provisions of Sub-section (5) of section 39 apply to only that accommodation which was, before it fell vacant, given on rent and to no other accommodation. This interpretation will unnecessarily narrow the application of the exemption under Sub-section (5) to a limited class of houses and will also result in making discrimination. On this interpretation a house which is already leased out will not be subject to allotment if the rent is not in excess of Rs. 25 per month, while the house which was not given on rent before but which the landlord wishes to let out shall be subject to allotment. We are, therefore, inclined to hold that under Sub-section (5) of section 39 the accommodation, which fetches rent not exceeding Rs. 25 per month, as also the accommodation, the standard rent of which, if fixed under the Act, does not exceed Rs. 25 per month, is exempted from the operation of the provisions of section 39. Interpreted that way, it follows that when the accommodation is already given on rent, the agreed rent between the landlord and the tenant should be the determining factor; in other cases, the standard rent may be taken to be the rent of the accommodation. The Collector or the

Authorised Officer has to accept the proved rent as the basis for determining as to whether the accommodation is excluded from the operation of section 39 or not and the Authorised Officer can have no jurisdiction to determine the rent himself where the accommodation was already let out.

before the respondent No. 1, Br. Shastri was examined and he stated on oath that he was paying only Rs. 25 per month as rent. The receipts issued to Dr. Shastri between 1958 to 1963 were also produced. No evidence, such as copies of Municipal Assessment Registers, was produced to contradict the evidence produced by The petitioner. The respondent No. 1, however, felt that looking to the locality of the house, its size and other facilities the accommodation offered, the rent of Rs. 25 per month was too low. For this reason, the respondent No. 1 reached the conclusion that it could not be believed that the house was in fact given on rent of Rs. 25 per month only. The respondent No. 1 observe;

This is not a correct approach. The respondent No. 1, instead of deciding as to whether the evidence produced by The petitioner was reliable or not, in reality tried to determine the standard rent of the house and, having done that, doubted the truthfulness of the evidence of Dr. Shastri. Such a finding cannot be sustained. From the evidence on record, it is obvious that the accommodation fetched rent not exceeding Rs. 25 per month and to the accommodation the provisions of section 39 of the Act are not applicable. The allotment order passed by the respondent No. 1 is, therefore, liable to be quashed.

For the reasons stated above, The petition is allowed with costs. The order, dated 3-3-1966, passed by the respondent No. 1 is quashed. Hearing fee Rs. 100. The security amount shall be refunded to The petitioner.