
(2011) 01 MP CK 0041
In the Madhya Pradesh High Court
Case No : Second Appeal No. 478 of 2004

Shri Badrilal

APPELLANT

Vs

Smt. Sita Bai and Others

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Central Provinces and Berar Letting of Houses and Rent Control Act, 1949 — Section 13, 13(3)

Madhya Bharat Accommodation Control Act, 1955 — Section 4

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1), 2, 39(2)

Citation : AIR 2011 MP 181 : (2011) ILR (MP) 586 : (2011) 1 JLJ 254 : (2011) 2 MPHT 74 : (2011) 2 RCR(Rent) 497

Hon'ble Judges : S.S. Kemkar, J;S.K. Seth, J;Prakash Shrivastava, J

Bench : Full Bench

Judgement

Prakash Shrivastava, J.—This Full Bench has been constituted for deciding the following question:

(i) Whether the decision in Nandkishore v. Sarjudevi reported in 1974 MPLJ 293 is no longer good law in view of the subsequent decisions of the Supreme Court and as such, has it lost efficacy as a binding precedent?

2. A brief background is that a suit was filed by the Respondent-landlord for eviction of the Appellant-tenant inter alia on the ground of bonafide need of starting the business of her grand-son from the suit accommodation u/s 12(1)(f) of Madhya Pradesh Accommodation Control Act, 1961 (for short hereinafter referred to as "the M.P. Act"). The suit was decreed by the Trial Court and the eviction decree was affirmed by the First Appellate Court and the second appeal was admitted by this Court on the substantial question relating to recognizing the business need of grandson of landlord u/s 12(1)(f) of the M.P. Act.

3. At the time of hearing of the second appeal before the learned Single Judge, Counsel for the Appellant had placed reliance upon the Division Bench judgment

of this Court in the matter of Nandkishore v. Sarjudevi reported in 1974 MPLJ 293, wherein the need of a landlord's spouse for eviction was not recognized u/s 12(1)(f) of the M.P. Act. As against this the learned Counsel for the Respondent had advanced arguments based upon the Division Bench judgment of Nagpur High Court in the matter of V.N. Deshmukh v. KM. Kothari reported in 1951 NLJ 250 , and the judgments of the Supreme Court in the matter of K.V. Muthu Vs. Angamuthu Ammal, , Joginder Pal Vs. Naval Kishore Behal, and Dwarkaprasad Vs. Niranjana and Another, , and had submitted that in view of these subsequent judgments of the Supreme Court the need of the grandson of the landlord was covered u/s 12(1)(f) of the M.P. Act and the earlier Division Bench judgment in the matter of Nandkishore (supra), was no longer a good law. Learned Single Judge further referring to the judgment of the Supreme Court in the matter of Kailash Chand and Another Vs. Dharam Das, observed that in all these decisions while construing other rent legislations, Their Lordships of the Supreme Court have preferred dynamic and purposive interpretation and refused to take a narrow and parochial view of the expression "of his own" in the context of eviction of a tenant on the ground of bonafide requirement, therefore, the learned Single Judge had directed for placing the matter before the Hon'ble Chief Justice for referring the above quoted question for decision to a Larger Bench and accordingly this Full Bench has been constituted.

4. Shri B.L. Pavecha, learned Senior Counsel appearing for the Appellant-tenant submitted that the subject of legislation relating to the rent Act is a State subject, due to which different States have differently worded rent enactments, therefore, they are to be interpreted in the light of the expressed language used therein. Referring to the Legislative history of rent enactment in Madhya Pradesh, he submitted that the Section 12(1)(f) of the M.P. Act has been intentionally worded in such a manner that only the need of the landlord, his major sons or unmarried daughters is covered under this Section. He has also referred to the report of the Select Committee to emphasize his argument relating to the Legislative intent. He has submitted that subsequent judgments of the Supreme Court noted in the reference order are on the interpretation of the provisions of the rent Acts of other States, the wordings of which are different from M.P. Act, therefore, those judgments cannot be relied upon for interpreting the provisions of the M.P. Act. He has further submitted that interpretation of Section 12(1)(f) of the M.P. Act done by this Court in the matter of Nandkishore (supra) is correct. He has relied upon the judgment of the Supreme Court in the matter of D.N. Sanghavi and Sons Vs. Ambalal Tribhuwan Das, and submitted that the question referred is concluded by this judgment.

5. Shri S.R. Saraf, learned Counsel appearing for the Respondent-landlord referring to the judgments of the Supreme Court has submitted that the words "his business" in Section 12(1)(f) of the M.P. Act cannot be narrowly constituted so as to exclude the business need of the other family members of the landlord. He submitted that the judgment of the Supreme Court in the matter of D.N. Sanghvi (supra), was on a different issue and the question referred to this Full

Bench is not concluded by the said judgment. He has further submitted that in view of the subsequent judgments of the Supreme Court, the earlier Division Bench judgment of this Court in the matter of Nandkishore (supra), is no longer a good law.

6. Shri G.M. Chaphekar, learned Senior Advocate and the amicus curiae appointed by this Court, has submitted that looking to the object and purpose of the M.P. Act, a meaningful interpretation is required to be given to Section 12(1)(f) of the M.P. Act keeping in view the changing social milieu. Referring to the several judgments of the Supreme Court he submitted that phrase "his business" in Section 12(1)(f) of the M.P. Act includes the business need of any family member of the landlord whose need is connected with the need of the landlord. He has further submitted that while interpreting Section 12(1)(f) of the M.P. Act, intention of the Legislature and the purpose of the enactment is to be kept in mind and the narrow interpretation given by the Division Bench of this Court in the matter of Nandkishore (supra), is no longer a good law in the changed circumstances and in view of the subsequent judgments of the Supreme Court.

7. We have heard the learned Counsel for the parties and perused the judgment cited by them.

8. Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961 provides for eviction of a tenant for the bonafide need of the landlord for the propose of continuing or starting "his business or that of his major sons or unmarried daughters" and 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, namely:

* * * * (f) that the accommodation let for non-residential purpose is required bonafide 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 nonresidential accommodation of his own in his occupation in the city or town concerned.

9. Following is the Section 2(e) of the M.P. Act, which defines member of the family:

2. (e) "Member of the family" in case of any person means the spouse, son, unmarried daughter, father, grandfather, mother, grandmother, brother, unmarried sister, paternal uncle, paternal uncle's wife or widow or brother's son or unmarried daughter living jointly with, or any other relation dependent on him.

10. Prior to the M.P. Act of 1961, u/s 13(3)(vi)(c) of C.P. and Berar Letting of Houses and Rent Control Order, 1949 the landlord could seek eviction for the need of a bonafide business of his own which he intended to start or was already

carrying on in the city or town concerned and u/s 4(h) of Madhya Bharat Accommodation Control Act, 1955 the suit for eviction could be filed by the landlord in the case of non-residential accommodation on the ground that the landlord genuinely required the accommodation for continuing or starting "his own business" or that of any person of his family bonafidely residing or to reside with him.

11. The Division Bench of this Court in the matter of Nandkishore (supra), had held that in view of the clear wordings of Section 12(1)(f) of the M.P. Act, there is no scope for liberal interpretation of the phrase "his business" so as to include the business of a spouse of the landlord since the Legislature wanted to restrict the right of eviction regarding the non-residential accommodation, whereas in the subsequent judgments the Supreme Court, while interpreting the similar or slightly different worded provisions of the rent Acts of other States, has given wider meaning to the business need of the landlord and has included therein the need of the other family members of the landlord subject to satisfaction of certain conditions. Thus, we are required to interpret Section 12(1)(f) of the M.P. Act keeping in view the settled principle of interpretation of statutes and to examine if the earlier Division Bench judgment of this Court in the matter of Nandkishore (supra), delivered on 15-12-1973, i.e., about 37 years back, is still a good law.

12. It is the settled principle of interpretation that when the words of statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the Courts are bound to give interpretation to that meaning. The intention of the Legislature is to be gathered from the language used taking into account what has been said or what has not been said.

13. While interpreting the rent Legislation, we must keep in mind that some provisions of the rent Act are beneficial to the landlord and some are to the tenant and a balance is required to be struck so that equal treatment is meted out to both the sections of the society. The Supreme Court in various decisions has reiterated the principles which are required to be followed in interpreting the Rent Legislation.

14. In the matter of Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, the Supreme Court has guarded against any artificial extension, entailing, stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction by observing that such a course would defeat the very purpose of the rent Act. In the matter of Kewal Singh Vs. Smt. Lajwanti, it is held that the provision regarding bonafide need should be meaningfully construed so as to make the relief granted to the landlord real and practical. In the matter of Prabhakaran Nair and Others Vs. State of Tamil Nadu and Others, the Supreme Court took the view that benefit of society at large needs an equalistic balance between apparently conflicting interests of the owners of the property and the tenant by inducing the encouraging landlords to part with available accommodation for

reasonable length of time to accommodate tenants without unreasonably restricting their right to have the property being restored to them, especially when they genuinely required it. The Supreme Court noted that it will ensure a boost to construction activity which in turn will result into availability of more houses and also that tenants are not in all cases weaker sections and there are those who are weak both amongst the landlords as well as the tenants. In the matter of Arjun Khiamal Makhijani Vs. Jamnadas C. Tuliani and Others, the Supreme Court observed that the rent Legislations are capable of being categorized into two : those beneficial to the tenants and those beneficial to the landlord, and interpreting the provision beneficial to the landlord in favour of the tenant, would negate the very principle of interpretation of a beneficial Legislation. In the matter of Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another, the Supreme Court emphasized the need of striking a balance between the rival interests by holding that need to protect the tenants is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed and that socially progressive Legislation must have a holistic perception and not a short sighted parochial approach. In the matter of Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, the Supreme Court has reminded that the concept of bonafide need or genuine requirement needs a practical approach keeping in view the realities of life and an approach too liberal or too conservative or pedantic is to be guarded against. The Supreme Court in the matter of Joginder Pal (supra), referring to the earlier judgments on the point, has observed that:

8. The Rent Control Legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring Legislative protection against exploitation and unscrupulous devices of greedy landlords. The Legislative intent has to be respected by the Courts while interpreting the laws. But it is being uncharitable to Legislature if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants go to the extent of being unfair to the landlords. The Legislature is fair to the tenants and to the landlords : both. The Courts have to adopt a reasonable and balanced approach while interpreting Rent Control Legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in Rent Control Legislation to take care of those situations where the landlord too are weak and feeble and fee humble.

15. In the matter of Dwarkaprasad (supra), Supreme Court has expressed that the ground of eviction has to be liberally construed and a beneficial provision must be meaningfully construed so as to advance the object of the Act. Similarly, in the matter of Kailash Chand (supra), it has been expressed that the scope is always there for the Court to interpret the law with pragmatism and consistent with the demands of varying situations and that the life is not static and so the

law cannot afford to be static.

16. Before interpreting the provisions of Section 12(1)(f) of the M.P. Act it would be beneficial to look into the judgments of the Supreme Court in which similar or slightly differently worded provisions of the rent Acts of other States have been interpreted. In the matter of Joginder Pal (supra), the Supreme Court, while considering the business need of landlord's son and interpreting the expression "for his own use" in Section 13(3)(a)(ii) of East Punjab Urban Rent Restriction Act, has held that the requirement is not that of the landlord alone in the sense that the landlord must for himself require the accommodation but the requirement of a member of the family or a person on whom landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. The said interpretation has been done keeping in view the socio religious milieu and the fact that the landlord may require tenanted premises to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. The Supreme Court observed that we have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words which the Legislature has not itself chosen to define and the Indian Society, its customs and requirement and the context where the provision is set in the Legislation are the guides leading to the acceptance of such an interpretation.

17. In the matter of Dwarkaprasad (supra), while considering the business need of younger brother of the landlord and interpreting the phrase "for occupation by himself of Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), the Supreme Court observed that even when the Plaintiff is sole owner of the property, it is open to him to use the property for the benefit of his larger family which includes his brothers and sisters and the grounds for eviction u/s 13(1)(g) has to be liberally construed and confining the said ground to the landlord alone will defeat the very object of the provision.

18. In the matter of Kailash Chandel (supra), while considering the residential need of large family of landlord and construing the expression "his own occupation" in Section 14(3)(a)(1) of the H.P. Urban Rent Control Act (25 of 1987), the Supreme Court held it does not mean occupation by the landlord alone and as an individual, it includes the requirement of the family members of the landlord. While interpreting the provision in such a manner, the Supreme Court observed that such provisions should be so interpreted as to advance the cause of justice instructed by the realities of life and practical wisdom and further, that while protecting the tenants the relief could not be denied to the landlord who genuinely and bonafidely requires premises for occupation by himself or for the members of his family. The Nagpur High Court also in the matter of V.M. Deshmukh (supra), mentioned in reference order, while interpreting expression "business of his own" in Section 13(vi) (c) of C.P. Berar Letting of Houses and Rent Control Act, 1949, had taken the view that need of the landlord's wife to run maternity home would be covered.

19. Thus, the Supreme Court has interpreted the similar provision in the Rent Acts of the other States by giving wider meaning to the need of the landlord and adopted a balanced approach by protecting the eviction of the tenant and at the same time safeguarding the interest of the landlord.

20. Coming to Section 12(1)(f) of the M.P. Act, under this Section a landlord can seek eviction for the purpose of continuing or starting "his business or that of his major sons or unmarried daughters". The phrase "his business" in this Section cannot be held to include the independent business need of any member of the family of landlord since such an interpretation would make the words "that of his major sons and unmarried daughters" otiose. These words cannot be held to be surplusage in view of Select Committee Report referred in later part of this judgment.

21. At the same time restricting the phrase "his business" to the individual need of the landlord alone would be too narrow an interpretation which would defeat the object of the Act itself and would run counter to the Supreme Court judgments mentioned above. Such a narrow interpretation would also lead to undesirable and absurd result, in as much as in a given case a landlord who is physically handicapped having no source of income, solely dependent upon his spouse or brother, would not be able to seek eviction for their business need though such a need may be practically his own need for survival. Same may also be the position when the landlord would want eviction for the business need of his divorced daughter or widowed daughter-in-law solely dependent on him. It would not be possible to enumerate all such circumstances when the business need of the family member of the landlord would be inextricably connected with that of the landlord, yet due to narrow interpretation of the provision, he would not be able to seek eviction for such a need.

22. Keeping in view the law laid down by the Supreme Court in the judgments mentioned above and also the object of the enactment and adopting a balanced approach, we find that phrase "his business" in Section 12(1)(f) of the M.P. Act not only means the need for continuing or starting the individual business of the landlord but it also includes the need for continuing or starting the business of any member of the family covered by Section 2(e) of the M.P. Act, on whom the landlord is so closely dependent or who is so closely dependent on the landlord that his need for all practical purposes is the need of the landlord. Since major sons and unmarried daughters have been separately included in Section 12(1)(f), therefore, they stand on different footing and the landlord can seek eviction for their independent individual business need even if they are not dependent on landlord or landlord is not dependent on them.

23. Thus, Section 12(1)(f) of the M.P. Act is more widely worded than the ground for eviction for business need contained in rent Act of some other States, where landlord can seek eviction for his own business, occupation or need because u/s 12(1)(f) of the M.P. Act the landlord can seek eviction for his own business need, business need of any member of his family on satisfaction of certain conditions,

and additionally he can also seek eviction for the individual, independent business need of his major sons and unmarried daughters.

24. The scope of Section 12(1)(f) is narrow as compared to Section 12(1)(e) of the M.P. Act because u/s 12(1)(f) a landlord cannot seek eviction for the individual business need of a member of his family who is not dependent on him or on whom he is not dependent, other than his major son and unmarried daughter, whereas u/s 12(1)(e) landlord can seek eviction for independent residential need of any member of his family and dependency is not a relevant criteria.

25. While examining the the business need of any family member of the landlord u/s 12(1)(f) of the M.P. Act, other than major son and married daughter, the test which has been laid down by the Supreme Court in the matter of Joginder Pal (supra), is to be applied with slight modification and the concerned Court is required to decide:

Whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement in view of the close dependency of landlord and member of his family for whose business need eviction is sought?

While answering above question, the concerned Court would bear in mind:

(i) the nature and degree of dependence between the landlord pleading the requirement as "his own" and the member of his family who would actually use the premises.

(ii) the circumstances in which the claim arises and is put forward, and

(iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

(iv) While casting its judicial verdict, the Court will adopt a practical and meaning full approach guided by the realities of life.

26. The aforesaid interpretation of Section 12(1)(f) of the M.P. Act given by us is not contrary to the Legislation intent, which can be gathered from the report of the Select Committee to which the Bill of the M.P. Act was referred to by the State Legislature in 1961. The Select Committee had opined that the provision of requiring accommodation for starting business of any member of his family was likely to be misused by the landlord and it was, therefore, thought fit to restrict it to major sons and unmarried daughters. The interpretation given above coupled with the test which the landlord is required to satisfy, rules out the possibility of misuse of the provision by the landlord.

27. The submission of the learned Counsel for the Appellant based upon the judgment of the Supreme Court in the matter of Boddu Narayanamma Vs. Venkatarama Aluminium Co. and Others, and in the matter of Ajit Singh and Another Vs. Jit Ram and Another, that the decisions interpreting provisions of

different Rent Control Acts cannot be applied to interpret a provision of the M.P. Act unless the language of two provisions is *haec verba*, is also of no help to him since we have interpreted Section 12(1)(f) keeping in view the expressed language of Section 12(1)(f) of the M.P. Act and applying the principles laid down by the Supreme Court, but we have not applied the interpretation given by the Supreme Court in other enactments as it is by ignoring the expressed language of the provision of the M.P. Act.

28. The submission of the Counsel for the Appellant referring to the judgment of the Supreme Court in the matter of Pallawi Resources Ltd. Vs. Protos Engineering Company Pvt. Ltd., and in the matter of State through Central Bureau of Investigation Vs. Parmeshwaran Subramani and Another, that golden rule of construction is the grammatical construction without addition or omission of any words and the Legislative intent is to be gathered primarily from the language of the statute, is also of no help to him since while interpreting Section 12(1)(f) of the M.P. Act we have neither added nor omitted any words and have kept in mind the Legislative intent.

29. The learned Counsel appearing for the Appellant has placed reliance on the judgment of the Supreme Court in the matter of D.N. Sanghavi (*supra*), in support of his submission that question referred to this Full Bench is concluded by that judgment but such a submission cannot be accepted because in that judgment the Supreme Court was dealing with the issue of need of the accommodation for partnership business, where the landlord had not even brought on record that in terms of partnership he was entitled to manage the partnership business and the possibility of other partners, being his brothers, setting up their separate business in suit accommodation was not ruled out. The Supreme Court in that judgment had specifically observed that if the deed of partnership had excluded him expressly or impliedly from the management of firm's business and had made him a sleeping partner, it could not be held that the accommodation was needed directly and substantially for his occupation by way of business. The Supreme Court in that judgment did not held that the need of a family member covered u/s 2(e) of the M.P. Act on whom the landlord is closely dependent or who is closely dependent on the landlord, will not be covered u/s 12(1)(f) of the M.P. Act. The said aspect was not in issue before the Supreme Court and was not examined. Interpretation of the phrase "his business" given by us does not run counter the judgment of the Supreme Court in the matter of D.N. Sanghavi (*supra*). It is also worth noting that even after taking into account the provisions contained u/s 39(2) of the M.P. Act, the interpretation of Section 12(1)(f) of the M.P. Act given above remains unaffected.

30. Thus, in view of above interpretation of Section 12(1)(f) of the M.P. Act, we hold that the earlier Division Bench judgment of this Court in the matter of Nandkishore (*supra*), laying down that right of eviction in respect of nonresidential accommodation u/s 12(1)(f) of the M.P. Act is restricted to the landlord for his own business and there is no scope for a liberal interpretation of

the phrase "his business" so as to include the business of spouse, is no longer a good law.

31. Before parting we express our gratitude to learned amicus curiae for his valuable assistance.

32. The reference is answered accordingly.