

Durgaprasad Verma and ors. Vs. K.P. Dixit

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Court : Madhya Pradesh

Decided On : Sep-19-1983

Reported in : AIR1984MP20

Judge : G.P. Singh, C.J., ;B.C. Varma and ;Faizan Uddin, JJ.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 39

Appeal No. : Misc. Petn. No. 652 of 1982

Appellant : Durgaprasad Verma and ors.

Respondent : K.P. Dixit

Advocate for Def. : R.K. Verma, Dy. Adv. General

Advocate for Pet/Ap. : R.L. Swarnakar, Adv.

Disposition : Petition allowed

Judgement :

B.C. Varma, J.

1. Gopallalji Maharaj Trust, Hanumantal, Jabalpur owned series of houses including the house No. 92/6, Gopalbag, Jabalpur, which was let out to M/s. Gopal Hemraj, Jabalpur, through its proprietor Kanhaiyalal Panda, petitioner No. 2. For the last about 12 years, Kanhaiyalal Panda had sublet the accommodation to the petitioner No. 1, Durga Prasad Verma, who is now in actual occupation of this accommodation. The landlord has not so far filed any suit for ejection of the tenant, namely, M/s. Gopal Hemraj for this unlawful subletting of the accommodation to Durga Prasad.

2. The authorised officer exercising powers under the M. P. Accommodation Control Act, 1961 (hereinafter referred to as the 'Act'), asked the landlord vide notice dated 15-11-79 (Annexure P-4) to supply certain information as to the block No. 92/6. The landlord was also required to inform the authorised Officer, the names of the tenants and the actual occupants of block No. 92/6 and whether the tenants had built their own houses. Annexure P-6 is the reply submitted by the landlord to the notice Annexure P-4. On receipt of this reply, the authorised officer issued a notice (Annexure P-6) to the petitioner Durga Prasad Verma requiring him to show cause why he should not be asked to vacate the accommodation as his occupation was unauthorised. The reply by Durga Prasad is Annexure P-7. Some inquiry was made and by order 1-3-1982 (Annexure P-8), the petitioner Durga Prasad was asked to vacate the accommodation by 8-3-1982. On failure, some further action was

contemplated. Thereupon, the petitioners filed this petition under Article 226 of the Constitution of India challenging the entire action taken and the direction to quit the accommodation in question made by the authorised officer. The authorised officer filed his return justifying the action taken by him. The matter came up before a Division Bench of this Court and was heard on 3-9-1982. The question raised was that when a tenant during the subsistence of his tenancy unauthorisedly sublet the accommodation to which the M. P. Accommodation Control Act, 1961, is applicable, can it be said that the accommodation 'has fallen vacant' within the meaning of Section 39 of the Act. The Division Bench hearing that petition noticed some conflict in the earlier decisions of this Court, and, therefore, the matter has been referred for decision by a larger Bench. This is how the matter has come up for hearing before this Bench.

3. The contention raised by Shri Swarnakar, learned counsel for the petitioner, is that the tenant, i. e., petitioner No. 2, sublet the accommodation to the petitioner No. 1, and, therefore, the accommodation never fell vacant. Consequently, it was said the provisions contained in Section 39 of the Act were not attracted and the authorised officer never got jurisdiction to allot the accommodation under Section 39 of the Act and to ask the petitioner No. 1 to vacate the same. Section 39 of the Act is 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, Madhya 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 inquiry 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. (4) The collector or the authorised officer may take or cause to be taken such steps and use or cause to be used such minimum force, including police force, as may, in his opinion be reasonable for securing the compliance with, or for preventing or rectifying contravention of, the Act or Rules thereunder or for the effective exercise of such power.

(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.'

4. One of the objects of enacting the rent restriction Acts is to control the letting of accommodations in areas to which these Acts are made applicable. The title of the M. p. Act (the M. P. Accommodation Control Act, 1961) is quite suggestive of its main object. It is, therefore, usual in such Acts to give jurisdiction to certain authority to regulate letting of accommodations by allotting them to the needy persons. The control of letting is regulated by giving preferences in the matter of allotment to such needy persons. Before such authority gets jurisdiction to allot any accommodation it has to ascertain some facts. It gets jurisdiction to allot the accommodation only when such facts exist. Such a provision is found in Section 39 of the Act which we have quoted above. The basic fact which must exist to enable the authorised officer to allot an accommodation in exercise of powers under Section 39 of the Act is that the accommodation must have either 'fallen vacant' or 'is likely to fall vacant.' So long as the accommodation has not fallen vacant or is not likely to fall vacant, the authorised officer gets no jurisdiction to allot a particular accommodation. The question is when can an accommodation be said to have fallen vacant? Plainly this expression will mean withdrawing of the occupation by a person in its physical occupation. In case that accommodation is in occupation of the landlord himself, no sooner he quits the accommodation and thus withdraws his occupation, the accommodation falls vacant. This would be so even if a landlord while withdrawing his occupation simultaneously inducts another person in that accommodation. In case, where an accommodation is in occupation of the tenant, the accommodation would fall vacant when the tenant vacates that accommodation, no matter he sublets it at the same time to another person. In case of subletting by the tenant also the effect is that the tenant quits the accommodation, withdraws his possession and allows his sub-tenant to occupy it. To hold to the contrary would mean that two persons shall be deemed to be simultaneously in occupation of the accommodation. It will not be just and reasonable to hold that when a landlord quits and inducts some other person in occupation or a tenant sublets; both the landlord and his tenant and the tenant and his subtenant as

the case may be continue in occupation. When another person gets in, the former one in occupation must as of necessity be held to have vacated that accommodation. It is true that jural possession may still remain with the landlord or the tenant who vacates and allows the third person to get in. We are, however, of opinion that Section 39 of the Act contemplates vacation of the accommodation in fact. It has relation to physical occupation and when the person in occupation withdraws his possession, the accommodation does fall vacant within the meaning of the term used in Section 39 of the Act. It may be noticed that Section 39 of the Act permits the authorised officer to allot the accommodation to certain persons if it has fallen vacant or is likely to fall vacant. The action contemplated by Section 39 of the Act is the allotment of the accommodation. The necessary condition for directing allotment is the vacancy of the accommodation. If it were to be held that the accommodation still continues in possession of the landlord when he inducts another person into the accommodation after withdrawing his occupation or that the tenant does not vacate even when he sublets it to another person, the landlord or the tenant as the case may be, can always defeat the provisions of Section 39 of the Act and frustrate the object which is sought to be achieved by the provision. It will, therefore, be not just to attribute any such meaning to this provision. We are, therefore, of the opinion that on a plain reading and giving to the words their ordinary meaning, the expression 'has fallen vacant or is likely to fall vacant' as used in Section 39 of the Act means, in relation to an accommodation, that the person in occupation quits the accommodation and withdraws his physical possession even if at the same time he inducts some one else into that accommodation. Thus, in a case where the tenant sublets an accommodation, although unauthorisedly, for the purposes of Section 39 of the act the accommodation must be held to have fallen vacant. Such a view was taken by a Division Bench of this Court in Jagmohan Swaroop Gupta v. Rent Controlling Authority, M. P. No. 665 of 1371 (JBL), decided on 21st September 1978.

In paragraph 4, the Division Bench expressed itself in these terms:--

'The accommodation fell vacant at the point of time, when the petitioner vacated it, so that the sub-tenant may occupy it. The petitioner's act of subletting the accommodation and putting sub-tenant in possession created a situation when the accommodation can be said to have fallen vacant within the meaning of Section 39 (2). The authorised officer, therefore, had the power to make a fresh order of allotment.'

We are of the opinion that the Division Bench in Jagmohan Swaroop Gupta's case (surpa) brought out the true import of Section 39 of the Act. The decision in Dinesh Awasthi v. State of M. P., M. P. No. 100 of 1977 (IND), decided on 20th April 1978 and other decisions of this court taking a contrary view in our opinion, do not lay down the correct law. We overrule the decision in Dinesh Awasthi v. State of M. P. (supra) and approve the view taken in Jagmohan Swaroop Gupta's case (supra), decided on 21-9-1978.

5. We, however, wish to make it clear that the provisions of Section 39 of the Act should not be permitted to be used as cloak to eject the tenants. The landlord should not be permitted to use this machinery under Section 39 of the Act to seek ejectment of tenants who may have unlawfully sublet the premises. In case a landlord finds that his tenant has unlawfully sublet the accommodation to a subtenant, the landlord's remedy is always to file a regular suit for ejectment of the accommodation based upon Section 12 (1) (b) of the Act. If the landlord is permitted to avail the provisions

of Section 39 of the Act to eject his tenant, it shall apparently mean an abuse of this provision of law which must in all case be prevented.

6. Under Section 39 of the Act, the authorised officer is entitled to make allotment of the accommodation in case it has fallen vacant or is likely to fall vacant. This is the action which is envisaged under Section 39 of the Act. Section 39 of the Act, however, does not permit the authorised officer to direct a tenant or an unlawful sub-tenant to quit the accommodation. That right is with the landlord who may, if he so chooses, seek the ejectment of his tenant and also to obtain possession from such unlawful sub-tenant by instituting a regular suit. The jurisdiction of the authorised officer is to make the allotment and direct the landlord to put the allottee in possession; and in case the allottee is obstructed in securing possession, to assist him, in obtaining possession. In the instant case, however, no allotment has been made. The impugned order, Annexure P-8, and a similar order, Annexure P-10, only direct the petitioner No. 1 to quit and vacate the accommodation. These orders certainly, are unauthorised and without jurisdiction and must be quashed.

7. The petition is allowed. The impugned orders (Annexures P-8 and P-10) directing the petitioner No. 1 to vacate the block No. 92/6, Gopal Bag, Jabalpur, are quashed. There shall be no order as to costs. The security amount, if any, shall be refunded to the petitioner.

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