

Radhey Shyam Etc. Etc vs Kalyan Mal on 10 October, 1984

Equivalent citations: 1985 AIR 139, 1985 SCR (1) 945, AIR 1985 SUPREME COURT 139, 1985 UJ (SC) 42, 1985 HRR 130, 1985 RECENT LAWS 2, 1985 MPRCJ 44, (1985) 1 SCR 945 (SC), (1985) JAB LJ 302, (1985) MPLJ 112, (1985) 1 RENCER 365, (1985) 1 RENCER 173, 1984 (4) SCC 447, (1985) 1 ALL RENTCAS 135

Author: A. Varadarajan

Bench: A. Varadarajan, Sabyasachi Mukharji

PETITIONER:
RADHEY SHYAM ETC. ETC.

Vs.

RESPONDENT:
KALYAN MAL

DATE OF JUDGMENT 10/10/1984

BENCH:
VARADARAJAN, A. (J)
BENCH:
VARADARAJAN, A. (J)
MUKHARJI, SABYASACHI (J)

CITATION:
1985 AIR 139 1985 SCR (1) 945
1984 SCC (4) 447 1984 SCALE (2) 641

ACT:
Madhya Pradesh Accommodation Control Act, 1961-Section 12 (1) (f) and (h)- An order made in eviction proceeding in which landlord established that he bonafide required premises for his occupation is one under section 12 (1) (f) and not under section 12 (1) (h).

HEADNOTE:
The respondent-landlord sought eviction of the appellants-tenants under section 12 (1) of the Madhya Pradesh Accommodation Control Act, 1961 on the main ground that the landlord bonafide required the premises for locating his gold and silver ornaments factory after demolishing and reconstructing the building. The courts

below found that the requirement of the landlord was bonafide and ordered eviction of the tenants under section 12 (l) (f) and (h) of the Act. In these appeals the tenants contended that since the eviction ordered was under section 12 (l) (h), section 18 of the Act was attracted and it was obligatory on the part of the landlord to provide accommodation of equal extent to the tenants in the new building to be constructed by him.

Dismissing the appeals,

^

HELD: In Ramnilal P. Mehta v. Indradaman Amritlal this Court observed that once the landlord establishes that he bonafide requires the premises for his occupation, he is entitled to recover possession of it from the tenant under the provisions of sub-clause (g) of section 13 (1) of the Bombay Rents, Hotel and Lodging House. Rates Control Act, 1947 irrespective of the fact whether he would occupy the premises without making any alterations or after making the necessary alterations. [948B-C]

Ramnilal P. Mehta v. Indradaman Amritlal Sheth, AIR 1964 SC 1676, referred to.

Section 13 (1) (g) of the Bombay Rents, Hotel and Lodging House, Rates Control Act, 1947 corresponds to section 12 (1) (f) of the Madhya Pradesh Accommodation Control Act. [948A]

Applying the above principle to the facts of the instant case, though the Courts below have passed the order of eviction under section 12 (1) (f) and (h) the Court is of the opinion that the order of eviction is based really and substan-

946

tially only under section 12 (1) (f) of the Act. The fact that section 12 (1) (h) is also mentioned in the order of the Court below does not make the order of eviction purely one under that section, for the main ground of requirement of the landlord is bonafide personal requirement for locating his proposed factory for the manufacture of gold or silver ornaments. Therefore there is no case for the application of section 18 to the facts of the present case. [947F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 750-53 of 1982.

Appeal by special leave from the Judgment and order dated the 3rd September, 1981 of the Madhya Pradesh High Court in S.A. Nos. 249, 251-253 of 1980.

WITH Civil Appeal No. 3357 of 1982.

Appeal by special leave from the Judgment and order dated the 24th August, 1982 of the Madhya Pradesh High Court in Second Appeal No. 311 of 1982.

A.K. Sen, R.P. Singh Suman Kapoor. D.S. Mehra and R.K. Jain, for the Appellants in C.A s. 750-53 of 1982.

P.K. Jain, for the Appellants in CA. 3357/82. U.R. Lalit. Mrs. Suneeta Kriplani, Ashok Mahajan and S.K. Gambhir for the Respondent.

The Judgment of the court was delivered by VARDARAJAN, J. These appeals by special leave are by the tenants whose eviction has been ordered by all the courts below under section 12 (1) (f) and (h) of the Madhya Pradesh Accommodation Control Act, 1961 on the ground that the respondent landlord requires the premises bonafide for the purpose of having his gold and silver ornaments factory after demolishing the present building and putting up a new building at the place. The tenants were carrying on various kinds of business in the premises. Their defence was that the landlord has other alternative accommodation where he could locate his proposed factory and that his requirement is not bonafide. The courts below have found that the alternative accommodation alleged by the appellants to be available to the landlord is really a farm house which is used for the residential purpose, namely as accommodation for the farm servants of the landlord and it is situated about these miles away from the town and near a burial ground in a lonely place and that it is also not a suitable place where a factory for the manufacture of gold and silver ornaments could be carried on without risk to life and property. As regards the ground of bonafide requirement, the courts below have found that the requirement of the landlord is bonafide and they have ordered eviction of the appellants under section 12 (1) (f)

(h) of the Act.

Mr. A.K. Sen, learned counsel for the appellants contended before us that alternative accommodation is available and that it is not possible to accept the finding of the courts below that it is not suitable. After going through the judgment of the first Appellate Court which has dealt with this question in depth we agree with the courts below that the alternative accommodation alleged to be available to the landlord is really a farm house where the farm servants of the landlord are accommodated and that it is not suitable for the purpose for which the landlord requires accommodation.

Mr. Sen submitted that the eviction ordered is under section 12 (1) (h) of the Act and that section is of the Act is attracted and it is obligatory on the part of the landlord to provide accommodation of equal extent to the tenants in the new building to be constructed by him. The first Appellate Court has observed in its judgment that the order of eviction is sought on the main ground of the bonafide requirement of the landlord. Therefore there is no case for the application of section 18 to the facts of the present case. Though the courts below have passed the order of eviction under section 12 (1) (f) and (h) we are of the opinion that the order of eviction is based really and substantially only under section 12 (1) (f) of the Act. The fact that section 12(1) (h) is also mentioned in the orders of the courts below does not make the order of eviction purely one under that section, for the main

ground of requirement of the landlord is bonafide personal requirement for locating his proposed factory for the manufacture of gold and silver ornaments. A case more or less similar on facts had come up before this Court in Ramnilal P. Mehta v. Indradaman Amritlal Sheth which arose from proceedings taken under the Bombay Rents, Hotel and Lodging House, Rates Control Act (57 of 1947). There the eviction was sought under section 13(1) (g) and 13 (1) (hh) of that Act.

Section 13(1) (g) of that Act corresponds to section 12 (1)

(f) of the Madhya Pradesh Accommodation Control Act and Section 13(1) (hh) of that Act corresponds to section 12 (1)

(g) namely that the building is required for effecting either repairs or alterations. This Court has observed in that case that once the landlord establishes that he bonafide requires the premises for his occupation, he is entitled to recover possession of it from the tenant under the provisions of sub-clause (g) of section (13) (1) irrespective of the fact whether he would occupy the premises without making any alterations or after making the necessary alterations.

Though the facts of that case are slightly different in that the requirement was for occupation after making some alterations where as in the present case the requirement is for locating the landlord's factory after demolishing and re-constructing the building, the principle deducible from that decision would apply to the facts of even these case. We agree with Mr. U.R. Lalit, learned counsel for the respondent landlord that the order of eviction is based mainly under section 12(1) (f) of the Act and that from the mere fact that section 12(1)(h) also is added would not make the order of eviction only one under section 12(1)(h) of the Act and section 18 of the Act will not be attracted. This fact was not raised in the courts. below, perhaps due to proper undertaking of this position. For these reasons the appeals fail and are dismissed but under the circumstances of the case without costs.

H.S.K. Appeal dismissed.