

Supreme Court of India

Anar Devi (Smt) vs Nathu Ram on 13 May, 1994

Equivalent citations: JT 1994 (4) SC 164, 1994 (2) SCALE 1034, (1994) 4 SCC 250, 1994 Supp 1 SCR 70, 1994 (2) UJ 167 SC

Bench: K Ramaswamy, N Venkatachala

JUDGMENT

1. Learned counsel for parties were heard by us.

2. Whether Clause (b) of Section 23A of the Madhya Pradesh Accommodation Control Act, 1961 (for short 'the Act'), which confers a right on the landlord to seek recovery of possession of non-residential accommodation from his tenant on the ground specified thereunder, requires him to plead in his application to be made there for, that he is also the owner of such accommodation and establish such ownership to succeed in that application, being a question of importance arising for our consideration in the Special Leave Petition, the Special leave to appeal sought for therein is granted.

3. Facts needed to decide the appeal are just a few. The respondent was a tenant of a shop, to be referred to as 'the accommodation' under one Banarsidas who was his landlord being the owner of that accommodation. The respondent sent a notice on 23rd September, 1985 to Banarsidas calling upon him to effect certain repairs in respect of the accommodation. But, Banarsidas gave a reply to that notice telling the respondent that the appellant, his widowed daughter-in-law has since became the owner of that accommodation, she was his landlord, and as her tenant thereof, it was for him to seek the relief he wanted as regards accommodation from her.

4. However, as a notice has been issued by the appellant to the respondent in the meantime, calling upon him to put her in possession of the accommodation on the ground that it was required bona fide, for starting of a business by her sons, that that notice of the appellant was replied to by the respondent by issuance of a counter notice, Ex, P-4, which read thus:

Your notice has been received and your notice is wrong and mala fide. I had given notice on 23.9.1985 to your father-in-law for repair of your shop and he gave the reply on 3.10.85 that you are the owner of the shop. I had to give notice to you but you already gave notice to me and the same is given for peshbandi and the shop needs repair and same cannot be used fully without being repaired. Therefore, the notice is given that you should do necessary repair in the shop within 15 days of receipt of the notice, so that the shop may be utilised fully, otherwise necessary legal action shall be taken in the competent court and you shall be liable for all cost.

5. Since the Respondent's demand made to the appellant in the said counter notice failed to evoke the required response, he filed a suit, Case No. 2/86-A/Civil in the Civil Court at Bhind seeking a decree against the appellant for payment of compensation on account of non-repair of the accommodation. The plaint filed in that suit on 23rd December, 1985 is Ex. P-5. The claim in that plaint, proceeded on premise that the appellant, who was arrayed as defendant therein, was the owner of the accommodation by stating thus:

At present defendant has become its owner.

6. Another statement in the plaint was to the effect that the respondent had sent rents to the appellant by money-orders.

7. However, during the pendency of the said suit, the appellant submitted an application under Section 23A(b) of the Act in the Court of Bhind Sub-Divisional Officer and Rent Controller, for short 'the Rent Controller', which was registered as Misc. No. 65/86-87/A-90. By that application the appellant sought recovery of possession of the accommodation from the respondent on the ground that the accommodation was required bona fide for starting of a business by her sons. But the grant of that application was resisted by the respondent, denying both the appellant's bona fide requirement of the accommodation for starting of business by her sons and her ownership of the accommodation. The Rent Controller who recorded the evidence adduced by parties, on consideration of such evidence allowed the appellant's application by his order dated 1st June, 1990. As becomes clear from that order, the findings of fact recorded by the Rent Controller were that the appellant required the accommodation bona fide as claimed and she was also the owner of the accommodation, as claimed. For recording the finding that the appellant was the owner of the accommodation, the Rent Controller relied not only on the respondent's previous conduct in having acknowledged her as the landlord of the accommodation in his counter notice, Ex. P-4 issued to her and, in the plaint in his suit, Ex. P-5, on the entry in Municipal Register, Ex. P-2, where her name had been mentioned as the owner pertaining to the accommodation and on unregistered family settlement made by Banarsidas, Ex. P-1, which showed that the accommodation had been settled absolutely in favour of the appellant.

8. But the said order of the Rent Controller was impugned by the respondent in a revision petition filed by him in the High Court under Section 30E of the Act. A learned Judge of the High Court who considered that revision petition found that the counter notice, Ex. P-4, issued by the respondent to the appellant and the suit plaint, Ex. P-5, filed by him against the appellant disclosed that the respondent had admitted therein that the appellant was his landlord of the accommodation. However, he took the view, that the admissions of the ownership of the appellant made by respondent in Ex. P-4, and Ex. P-5 regarding the accommodation did not establish the fact of her ownership of the accommodation. He further held that the appellant, who was required under Clause (b) of Section 23A of the Act had failed to establish the ownership of the accommodation and hence she was not entitled to get possession of the accommodation under that provision. Consequently, the learned Judge by his order dated May 10, 1991, allowed the revision petition of the respondent, set aside the order of the Rent Controller and rejected the application of the appellant made under Section 23A(b) for recovery of possession of the accommodation from the respondent.

9. It is the said order of the learned Judge of the High Court impugned in the present appeal which has given rise to the consideration of the question adverted to by us at the outset. As our answer to the said question would be sufficient to decide the present appeal, consideration of that question becomes necessary.

10. Since the doctrine of "tenant's estoppel" could throw light on the question as to what can make a landlord to succeed in enforcing his right to recover possession of accommodation from a tenant under Clause (b) of Section 23A of the Act, it would be advantageous to refer to its scope and applicability, before taking it up for our consideration.

11. "Doctrine of tenant's estoppel" which governs the relationship of landlord and tenant is founded on a contract of tenancy entered into by them, is well settled. Jessel, M.R., who adverted to that doctrine in *Stringer's Estate Shaw v. Jones-Ford* LR 6 Ch. D.1. explains it thus:

...here a man having no title obtains possession of land under a demise by a man in possession who assumes to give him a title as tenant, he cannot deny his landlord's title, as, for instance, if he takes for twenty-one years and he finds that the landlord has only five years' title, he cannot after five years set up against the landlord the *jus tertii*, though, of course, the real owner can always recover against him. That is a perfectly intelligible doctrine. He took possession under a contract to pay rent so long as he held possession under the landlord, and to give it up at the end of the term to the landlord, and having taken it in that way he is not allowed to say that the man whose title he admits and under whose title he took possession has not a title. That is a well-established doctrine. That is estoppel by contract.

12. Indeed, the said doctrine of tenant's estoppel, finds statutory recognition in Section 116 of the Indian Evidence Act, 1872, for short 'the Evidence Act', in that, it states that 'no tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property.

13. This Court in *Sri Ram Pasricha v. Jagannath and Ors.* AIR (1976) SC 2355, has also ruled that in a suit for eviction by landlord, the tenant is estopped from questioning the title of the landlord because of Section 116 of the Act. The Judicial Committee in *Krishna v. Barabani Coal concern Ltd.*, when had occasion to examine the contention based on the words 'at the beginning of the tenancy' in Section 116 of the Evidence Act, pronounced that they do not give a ground for a person already in possession of land becoming tenant of another, to contend that there is no estoppel against his denying his subsequent lessor's title. Ever-since, the accepted position is that Section 116 of the Evidence Act applies and estops even a person already in possession as tenant under one landlord from denying the title of his subsequent landlord when once he acknowledges him as his landlord by attainment or conduct. Therefore, a tenant of immovable property under landlord who becomes a tenant under another landlord by accepting him to be the owner who had derived title from the former landlord, cannot be permitted to deny the latter's title, even when he is sought to be evicted by the latter on a permitted ground.

14. The scope and applicability of the doctrine of "tenant's estoppel" being what we have said of it, we shall now proceed to consider the aforesaid question which has arisen with reference to the right of landlord under Section 23A(b) of the Act in the matter of recovery of possession of the accommodation from the tenant.

15. Whether the words in Clause (b) "if he is the owner thereof require the landlord who submits an application under that Clause to plead in such application that he is the owner of the accommodation, the recovery of which he seeks from his tenant and also establish by evidence aliunde that he is such owner, being the question that need our consideration, it becomes necessary to understand them not merely in the context in which those words appear in Clause (b), but also in the context of the scheme of the provision in which that clause is found and the associate provisions in Chapter III-A, all of which were introduced newly into the Act. Hence, we shall advert to all the provisions in the Chapter insofar as they could help us in a proper appreciation of the question.

CHAPTER III-A Eviction of tenants on grounds of 'bonafide' requirement.

Section 23A. Special provisions for eviction of tenant on ground of bona fide requirement.-Notwithstanding anything contained in any other law for the time being in force or contract to the contrary, a landlord may submit an application, signed and verified in a manner provided in Rules 14 and 15 of Order VI of the First Schedule to the CPC, 1908 (V of 1908) as if it were a plaint to the Rent Controlling Authority on one or more of the following grounds for an order directing the tenant to put the landlord in possession of the accommodation, namely:

(a) that the accommodation let for residential purposes is required 'bona fide' the landlord for occupation as residence for himself or for any member of his family, or for any person for whose benefit, the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned.

Explanation....

(b) that the accommodation let for non-residential 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 non-residential accommodation of his own in his occupation in the city or town concerned:

Provided....

Section 23B. Rent Controlling Authority to issue summons in relation to every application under Section 23A.-(1) The Rent Controlling Authority shall issue to the tenant a summons, in relation to every application referred to in Section 23A, in the form specified in the Second Schedule.

That form in Second Schedule reads thus:

"SECOND SCHEDULE"

(See Section 25-B) Form of summons in a case whereby recovery of possession of accommodation is prayed for on ground of 'bona fide' requirement.

OFFICE OF THE RENT CONTROLLING AUTHORITY, (Place)....

To, ...

...

Eviction Case No. Whereas Shri...has Filed an application (a copy of which is annexed) for your eviction from (here insert the particulars of the accommodation) on the grounds specified in Clause (a)/Clause (b) of Section 25A of the Madhya Pradesh Accommodation Control Act, 1961 (No.41 of 1961);

You are hereby announced to appear before the Rent Controlling Authority within fifteen days of the service for hearing and to obtain the leave of the Rent Controlling Authority to contest the application for eviction on the grounds aforesaid, in default where of the applicant will be entitled to any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said accommodation. Subject as aforesaid the date for further proceedings shall be....;

Leave to appear and contest the application may be obtained on an application to the Rent Controlling Authority supported by an affidavit as is referred to in Section 25C. Given under my hand and seal.

Rent Controlling Authority Section 23C. Tenant not entitled to contest except under certain circumstances-(i) The tenant on whom the summons is served in the form specified in the Second Schedule shall not contest the prayer for eviction from accommodation unless he files within fifteen days from the date of the service of the summons, an application supported by an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Controlling Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or in default of his obtaining such leave, or if such leave is refused, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant. The Rent Controlling Authority shall in such a case pass an order of eviction of the tenant from the accommodation:

Provided....

(2) That the Rent Controlling Authority shall within one month of the date of receipt of application give to the tenant, if necessary, leave to contest the application, if the application supported by an affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in Section 23A.

Section 23D. Procedure to be followed by Rent Controlling Authority or grant of leave to contest.-(1)....

(2)...

(3) In respect of an application by a landlord it shall be presumed, unless the contrary is prayed, the requirement by the landlord with reference to Clause (a) or Clause (b), as the case may be of Section 23A is bona fide.

Section 23E Revision by High Court.-(i) Notwithstanding anything contained in Section 31 or Section 32, no appeal shall lie from any order passed by the Rent Controlling Authority under this Chapter.

(2)...

Section 23F. Duration of stay.-The stay of the operation of the order of eviction passed by a Rent Controlling Authority or by the High Court shall not ensure for a total period of more than six months.

Section 23G....

Section 23H....

Section 23I. False and frivolous application etc.-A landlord making a false or frivolous application under Section 23A or a tenant seeking either permission to defend the application or adjournment on false or frivolous or vexatious grounds, may be saddled with heavy compensatory costs not exceeding six months rent of the accommodation at a time as the Rent Controlling Authority may fix.

Section 23J. Definition of landlord for the purposes of Chapter IIIA.-For the purposes of this Chapter 'landlord' means a landlord who is-

- (i) a retired servant of any Government including a retired member of Defence Services; or
- (ii) a retired servant of a company owned or controlled either by the Central or State Government; or
- (iii) a widow or a divorced wife or (iv) physically handicapped person; or
- (v) a servant of any Government including a member of defence services who, according to his service conditions, is not entitled to Government accommodation on his posting to a place where he owns a house or is entitled to such accommodation only on payment of a penal rent on his posting to such place.

(underlining is done by us)

16. The legislature, by use of the words 'if he is the owner thereof in Clause (b) of Section 23A could not have intended to require the landlord for whose benefit that provision was made, to plea in his application and to' establish by evidence aliunde, that he was the owner of the accommodation,

becomes obvious from the various provisions in Chapter IIIA to which we have adverted to. When we look at Section 23A along with the form of notice in the Second Schedule to be issued on the application made under Clause (b) of Section 23A of the Act by the landlord, an obligation is imposed on the tenant to obtain leave from the Rent Controller to contest that application. For seeking such leave, the tenant is required to make an application supported by an affidavit specifying the ground on which he wants to contest the application. Again, if he does not file such application supported by an affidavit or if the Court refuses to grant leave to contest it, the statement as regards the ground on which recovery of possession of the accommodation is sought by the landlord in his application shall be deemed to be admitted by the tenant and the Rent Controller in that event, is bound to pass an order of eviction of the tenant from the accommodation. When it comes to Sub-section (3) of Section 23D, it says that 'in respect of an application by a landlord it shall be presumed, unless the contrary is proved, the requirement by the landlord with reference to Clause (a) or Clause (b), as the case may be, of Section 23A is bona fide'. Such presumption requires the Rent Controller to regard the fact of bona fide requirement of the accommodation by the landlord to be taken as proved until the same is disproved by the tenant. When the said provisions in the Chapter along with other provisions therein, reflect a legislative scheme or policy of enabling landlords of specified classes to recover possession of accommodation from their tenants with utmost expedition before the Rent Controller, a forum specially constituted for the purpose and when under Section 116 of the Evidence Act a tenant is estopped from denying his landlord's title to accommodation, whether he was there either from the beginning of the tenancy or had become a tenant subsequently by 'acknowledging the landlord's title, it is difficult to think that the words 'If he is the owner thereof used in Clause (b) of Section 23A are intended to require the landlord to plead in his application for recovery of possession made under the clause, his ownership of accommodation, and establish the same by evidence aliunde, to succeed in recovery of possession of such accommodation from the tenant. It would be so, particularly, when he was not so required to plead or establish on an application if had been made by him for recovery of possession of the accommodation on the self same ground under Section 12(1)(f) of the Act. It is also difficult to think that the said words 'if he is the owner thereof in the clause, require that the landlord should plead and establish his title to the accommodation for recovery of its possession from the tenant, for that would be as good as asking him to go to Civil Court for establishing his title to the property and recover its possession from the tenant, which if is the correct position, would, instead of advancing the aforesaid object of the provisions in the Chapter, squarely result in its defeat. Therefore, the words 'if he is the owner thereof used in Clause (b) of Section 23A, meant to enable the landlord who is the owner of the accommodation, to submit an application under that Clause for recovery of possession of the accommodation from his tenant, they are not intended to require such landlord to plead in his application that he is the owner of such accommodation and adduce evidence aliunde in that behalf for succeeding in that application.

17. Our answer to the question, therefore, is that the use of the words 'if he is the owner thereof used in Clause (b) of Section 23A of the Act does not require of the landlord who makes an application thereunder for recovery of possession of accommodation from the tenant to plead therein that he is the owner of such accommodation and establish by evidence aliunde that he is such owner, for succeeding in such application even though these words may enable a tenant to contest such application on the ground that the landlord is not the owner of the accommodation if he is not

inhibited from doing so under Section 116 of the Evidence Act.

18. Coming to the facts of the present appeal, as has been already pointed out by us, the learned Judge of the High Court reversed the order of the Rent Controller, on his view that the landlord-appellant, who had sought to recover possession of the accommodation from his tenant-respondent under Clause (b) of Section 23A of the Act, had failed to establish or prove that she was the owner of the accommodation by adducing sufficient evidence in that behalf and, therefore, her application for eviction of the tenant-respondent from the accommodation was liable to be rejected. The question as to whether a landlord, who file an application under Clause (b) of Section 23A of the Act should plead in such application that he was the owner of the accommodation and establish by evidence aliunde that he was such owner, has since considered by us earlier and answered to the effect that the landlord making such application need not plead in his application that he was an owner of the accommodation and he need not establish or prove by adducing evidence aliunde, for succeeding in such application, the view taken by the High Court that the landlord's application under Clause (b) of Section 23A of the Act should be rejected on the ground that the appellant has failed to prove that she was the owner of the accommodation which she sought to recover from the tenant, cannot be sustained. Besides, the respondent, who had acknowledged the ownership of the accommodation as that of the appellant and had regarded her as the landlord in his counter notice, Ex. P-4, and plaint in the suit, Ex. P-5, was not even entitled to deny the title of the appellant to the accommodation. Hence, the judgment and order of the High Court called to be interfered with and set aside.

19. In the result, we allow this appeal, set aside the judgment and order of the High Court appealed against, and restore the order of the Court of the Rent Controller by which the respondent is directed to put the appellant in vacant possession of the accommodation, that is, application schedule shop. However, we grant four month's time to the respondent to vacate the accommodation and put the appellant in possession of the same, if the respondent files in this Court within four weeks, an affidavit with the usual undertaking. Parties shall bear their own costs throughout.