

CASE NO.:
Appeal (civil) 5991 of 2004

PETITIONER:
Indrasen Jain

RESPONDENT:
Rameshwardas

DATE OF JUDGMENT: 17/12/2004

BENCH:
B. P. Singh & Arun Kumar

JUDGMENT:
JUDGMENT

ARUN KUMAR, J.

This appeal is directed against the judgment dated 28th November, 2003 of the Madhya Pradesh High Court whereby a Civil Revision filed by the respondent-landlord against the judgment of the Rent Control Authority, Indore was allowed. The Rent Control Authority, Indore had dismissed the landlord's petition for eviction filed under Section 23A of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as 'the Act'). The tenant has filed the present appeal against the judgment of the High Court.

Briefly the facts are: the respondent claiming to be owner of the suit premises sought eviction of the appellant/tenant therefrom, on the ground of his personal bonafide need. The suit premises comprises of a shop of the size of 20.8 feet X 10.5 feet besides a small ante-room. The rent of the premises is Rs.500/- per month. The appellant is a medical practitioner and is carrying on his practice in the suit premises. The respondent sought eviction of the appellant on the ground that he required the premises to start his own business of selling books and stationery. It was pleaded that the landlord did not own any other premises suitable for business purposes. The eviction petition was filed under the summary procedure contained in Chapter IIIA of the Act. The respondent-landlord claims to be a retired Government servant in order to bring himself within the definition of 'landlord' contained in Section 23J of the Act. The landlords falling within the meaning of landlord in Section 23J are entitled to avail of the summary procedure for eviction of tenants. The summary procedure is contained in Chapter IIIA of the Act which was introduced by way of amendment in 1983 to enable certain categories of landlords to have eviction proceedings disposed of expeditiously. The relevant provisions of Chapter IIIA are reproduced as under :

"Section 23-A. Special Provision for eviction of tenant on the ground of bonafide 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 Code of Civil Procedure, 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)\005\005\005\005\005\005\005\005\005\005.

(b) that the accommodation let for non-residential purposes is required "bona fide" by the landlord for the purposes 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 persons for whose benefit the accommodation is held and that the landlord or such persons has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

Provided that\005\005\005\005\005\005\005\005..".

Section 23-C. Tenant not entitled to contest except under certain circumstances.- (1) The tenant on whom the summons is served in the form specified in the Second Schedule shall not contest the prayer for eviction from the accommodation unless he files within fifteen days from the date of 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 that the Rent Controlling Authority may, for sufficient cause shown by the tenant, excuse the delay of the tenant in entering appearance or in applying for leave to defend the application for eviction and where ex-parte order has been passed, may set it aside.

(2) 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 23-A.

Section 23-D. Procedure to be followed by Rent Controlling Authority for grant of leave to tenant to contest.- (1) Where leave is granted to the tenant to contest the application, the Rent Controlling Authority shall commence the hearing of the application as early as practicable and decide the same, as far as may be, within six months of the order of granting of leave to the tenant to contest application.

(2) The Rent Controlling Authority shall, while holding an enquiry in a proceeding to which this Chapter applies, follow as far as practicable, the practice and procedure of a Court of Small Causes including the recording of evidence under the Provincial Small Causes Courts Act, 1887 (IX of 1887). The Rent Controlling Authority shall as far as possible, proceed with the hearing of the application from day to day.

(3) 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 23-A is bonafide.

"Section 23-J. Definition of landlord for the purposes of Chapter III-A \026 For the purpose of this Chapter 'landlord' means a landlord who is \026

- (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 persons; 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 a place."

It is the case of the respondent that he retired as Principal of a private Government aided school on 30th November, 1994. According to him, he was earlier a Government servant and a few years before his retirement he was sent on deputation to the private Government aided school as Principal. As such he continued to be a Government servant till the date of his retirement. The suit property is said to have been purchased by the respondent from one Babulal Baheti vide a Sale Deed dated 7th December, 1999. The eviction petition was instituted on 24th May, 2001. Before instituting the eviction petition the respondent had issued a notice dated 1st February, 2001 calling upon the tenant to vacate the premises.

The eviction petition was contested by the appellant on various grounds. Relationship of landlord and tenant between the parties was denied. It was also denied that the respondent was owner of the suit premises. According to the appellant, the transaction of sale was a sham and fictitious transaction. There was no proof of payment of sale consideration. The person from whom the property was allegedly purchased by respondent was his relation and the purpose of the transaction was to save the property from the creditors of the previous owner. The tenant also denied the alleged bonafide need of the respondent with respect to the suit premises. It was denied that the respondent was a retired Government servant. Further a plea was raised that the tenanted premises comprised a shop of the size of 20.8 feet X 10.5 feet and a small ante-room of the size of 6 feet X 8 feet. The sale deed relied upon by the respondent to establish ownership of the suit property showed that the respondent had purchased only the shop of the size 20.8 feet X 10.5 feet and not the ante-room. Therefore, the respondent could not seek eviction of the tenant from a part of the demised premises. This amounted to splitting up the tenanted premises which was not permissible under the law.

We have heard the learned counsel for the parties and gone through the record. The following points arise for consideration :

- (1) Whether the respondent is a retired Government servant so as to fall within the definition of landlord given in Section 23J of the Act.
- (2) Whether the tenanted premises was required bonafide by the

respondent-landlord for the purpose of doing business.

(3) Whether the transaction of purchase of the suit property by the respondent was sham and fictitious.

(4) Whether it is a case of splitting up of tenanted premises and if so is splitting permissible ?

WHETHER THE RESPONDENT IS A RETIRED GOVERNMENT SERVANT :

According to Section 23J, a retired servant of any Government including a retired member of Defence Services or a retired servant of a Company owned or controlled either by the Central or State Government is to be treated as a landlord for purposes of Chapter IIIA of the Act. The respondent claims that he was in Government service and he retired on 30th November, 1994. In support of his plea that he is a retired Government servant the respondent has placed on record a statement regarding pension admissible to him which is Exhibit P.1. In his cross-examination, the landlord admitted that retired teachers of other private Government aided schools were receiving pension. In this connection, the following portion of the statement of the respondent in cross-examination is worth noting :

"It is true that Maheshwari Higher Secondary School is a non-Government aided institution. It is also true from the grant-in-aid received from the Government the salaries are paid to its employees and teachers. It is true that I remained Principal of Maheshwari Higher Secondary School . I was receiving salary from the grants-in-aid given to the school. It is true that the Government has also made the entitlement of pension to the employees and teachers of the grants-in-aid non-governmental institutions".

If retired teachers of private aided schools receive pension they do not become Government servants merely for that reason. Therefore, production of the pension slip - Exhibit P.1 alone, does not establish that the respondent is a retired Government servant. According to respondent he was earlier working in the Education Department of the State Government and he was sent on deputation to the Maheshwari Higher Secondary school which was a private Government aided institution, from where he ultimately retired as a Principal. The best evidence to establish that the respondent was a Government servant would have been his letter of appointment as Government servant or the letter by which he was sent on deputation to the Maheshwari Higher Secondary School. The respondent failed to produce either of them. The pension slip Ex.P1 is not sufficient to hold that respondent is a retired Government servant, particularly in view of respondent's admission in his cross examination that teachers of private government aided schools receive pension after retirement. Mere receipt of pension does not make all retired teachers of private schools Government servants. Therefore, in our view the respondent has failed to establish that he is a retired Government servant falling within the definition of landlord contained in Section 23J of the Act.

The High Court failed to notice the statement of the respondent referred to above. Further the High Court proceeded on the assumption that the tenant had not contested the point and that no such plea was taken by him in his written statement. Both the assumptions were incorrect. The approach of the High Court appears to be totally contrary to record. The Rent Control Authority held that the respondent does not fall within the definition of landlord contained in section 23J of the Act. The Authority noted the admission of the respondent-landlord that teachers working in non-governmental institutions were also getting pension. It was on this account that the Authority felt that Ex.P.1, the pension-slip was not sufficient to prove that the respondent was a Government servant. The teachers working in non-governmental educational institutions are not Government servants. The Authority further noted that the best proof of the fact that he is a retired Government servant would have been his appointment order or the

deputation order. The judgment of the High Court erroneously records that the tenant had not seriously contested that the landlord was a retired Government servant. The High Court judgment is based on a wrong hypothesis that no such plea was taken in the written statement by the tenant. At two places i.e., in paras 16 and 25 of the written statement, the tenant has denied that the landlord was a retired Government servant. This renders the finding of the High Court in this behalf as perverse. According to the High Court asking for the appointment order or the deputation order or the retirement order by the Rent Control Authority was "arbitrary and extravagant." The High Court called the approach of the Authority in this behalf perverse. In our view, record shows that there is perversity in the approach of the High Court. The High Court observations are wholly uncalled for. The Rent Control Authority rightly observed about the need for production of appointment order or deputation order to prove the point. The High Court's finding is contrary to the record as well as contrary to law and as such cannot be sustained. We hold that the respondent landlord has failed to establish that he is a retired Government servant. Consequently, he does not fall within the meaning of landlord given in Section 23J of the Act. Therefore, he could not maintain a petition under Section 23A (b) of the Act. The eviction petition filed by respondent is liable to be dismissed on this ground alone.

Even on the question of bonafide requirement of the suit premises, the respondent in our view has no case. In this connection, first aspect worth noting is that the respondent retired from service on 30th November, 1994. He purchased the suit property on 7th December, 1999. More than one year after the alleged purchase of the suit property, he issued a notice of eviction on 1st February, 2001 and ultimately filed an eviction petition on the ground of personal requirement for doing business in the shop on 24th May, 2001. If at all the respondent for purposes of keeping himself occupied or by way of supplementing his income after his retirement, needed to do a business, he would have felt such a need soon after his retirement in the year 1994. The suit property was purchased on 7th December, 1999, i.e. about five years after retirement. Even after 1999, if the respondent thought of starting some business of his own and purchased a shop for that purpose, he would have purchased a vacant shop rather than going in for a tenanted premises. This shows that even in 1999 he had no intention or desire to start a business. Then even after purchase of the property he waited for more than a year and issued a notice in February, 2001 and instituted eviction petition in the end of May, 2001, that is nearly 1 = years after the purchase of the property. This entire sequence of events does not show any bonafides on the part of the respondent in setting up a case of bonafide requirement of suit premises. There is nothing to show how suddenly a need for doing business arose for the respondent in the year 2001. The Rent Control Authority in view of these facts doubted the bonafides of the respondent-landlord regarding requirement of the suit property for doing the business therein. The entire discussion in the judgment of the Authority on the question of bonafide need seems to suggest that the Authority was not satisfied with the case of landlord regarding bonafide need. However, in the concluding line on this issue the Authority observed that "the applicant bonafide needs the suit shop for starting the business of books and stationery". This conclusion of the Authority does not fit in with the discussion or reasoning on the point contained in the judgment of the Authority. The Authority noted several reasons which showed that there was no bonafide requirement of respondent. The High Court simply endorsed the conclusion of the Authority on the point without going into the question on its own. In our view, the respondent has not been able to make out a case for bonafide need of the suit premises. His claim for the suit premises is malafide.

We have expressed our view on the issue of bonafide requirement since the learned counsel for the parties had spent considerable time over it. In view of our decision on the first issue about the respondent not being a retired Government servant and therefore not entitled to file a petition for eviction under Chapter IIIA of the Act, the eviction petition is not maintainable and is liable to be dismissed on this ground alone. There is no

need to discuss the other issues. The petition of the Respondent for eviction of the Appellant is ordered to be dismissed. This appeal is allowed, the impugned judgment and order of the High Court is set aside, and that of the Rent Control Authority is restored. No costs.

JUDIS