

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.305 of 2005

Bashiruddin S/o Shri Jalalluddin aged about 62 years, resident of near Qureshi Building, B.P. Pujari School Road, Raja Talab, Raipur (CG)

(Defendant)
---- Appellant

Versus

Madarsa Islahul Musalemin, Baijanthpara Raipur, through Shri Shakuriddin Qureshi S/o Mehaboooddin Qureshi, Tehsil and District Raipur (CG)

(Plaintiff)
---- Respondent

For Appellant/Defendant : Mr. Awadh Tripathi and Mr. Vivek Tripathi,
Advocates

For Respondent/Plaintiff : Mr. Manoj Paranjape, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

13/03/2019

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by the defendant is as under:-

“Whether the need claimed by the landlord for residence of his teachers comes within the ambit of Section 12 (1) (e) of the Accommodation Control Act ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The plaintiff/respondent is public trust registered under the provisions of the Chhattisgarh Public Trusts Act, 1951 (hereinafter

called as “the Act of 1951). The plaintiff/landlord filed a suit against the defendant/tenant for evicting him from the suit premises after service of notice (Ex.P/6) to him for bona fide need of residence of teachers serving in its institution, which was opposed by the defendant by filing written statement. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 5.10.2004, dismissed the suit. On appeal being preferred by the plaintiff, the first appellate Court allowed the appeal, against which, this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant, in which substantial question of law has been formulated and set-out in the opening paragraph of the judgment.

3. Mr.Vivek Tripathi, learned counsel for the appellant/defendant, would submit that need of the plaintiff for residence of his teachers would not come within the purview of Section 12 (1) (e) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as “the Act of 1961”), as such, the judgment and decree passed by the first appellate Court deserves to be set aside.
4. On the other hand, Mr.Manoj Maranjape, learned counsel for the respondent/plaintiff, would submit that in fact, by notification dated 7.9.1989 under Section 3(2) of the Act of 1961, the plaintiff institution registered under the Act of 1951 was exempted from the provisions of the Act of 1961 for educational, religious or charitable purpose and therefore, termination of tenancy by service of clear notice of 15 days' under Section 106 of the Transfer of Property Act, 1882 (hereinafter called as “the TP Act”) would sufficient to get an

order of eviction.

5. I have heard learned counsel for the parties herein and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. The suit property is admittedly owned by the plaintiff, who is registered public trust as exhibited vide Exs.P/1 and P/2 and engaged in imparting of education to poor and needy students and running a school. For residence of teachers, the suit premises is required under Section 12 (1) (e) of the Act of 1961. The suit accommodation was let out to the defendant/appellant/tenant on monthly tenancy of ₹ 35/-. Notice (Ex.P/6) terminating tenancy w.e.f. 31.10.2000 was issued to the defendant on 15.9.2000 and after service of notice the suit was filed on 9.7.2002 though the trial Court framed the issue that the Act of 1961 is not applicable to the plaintiff registered trust, but decided the issue in negative holding that notification issued under Section 3(2) of the Act of 1961 is not filed and dismissed the suit holding that relationship of landlord and tenant is established, but bona fide need under Section 12 (1) (e) of the Act of 1961 is not established, which the first appellate Court has found favour and decreed the suit. It appears that both the Courts below have ignored the fact that the plaintiff is registered public trust as held by the trial Court while deciding Issue No.5, therefore, notification dated 7.9.1989 issued under Section 3(2) of the Act of 1961 is exempted from the provisions of the Act of 1961.
7. At this stage, it would be appropriate to notice Section 3(2) of the Act of 1961, which states as under:-

“3. Act not apply to certain accommodation.-

xxx

xxx

xxx

(2) The Government may, by notification, exempt from all or any of the provisions of this Act any accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home, the whole of the income derived from which is utilized for that institution or nursing home or maternity home.”

8. The State Government, in exercise of powers under Section 3(2) of the Act of 1961, issued the notification dated 7.9.1989 and thereby exempted the properties of the trusts registered under the provisions of the Act of 1951 for educational, religious or charitable purpose from the provisions of the Act of 1961. The notification dated 7.9.1989 states as under:-

“Notification No.F-24-(4)-83-XXXII-I dated 7-9-1989, published in M.P. Rajpatra of the same on p.2144.

In exercise of the powers conferred by sub-section (2) of Section 3 of the Madhya Pradesh Accommodation Control Act, 1961 (41 of 1961), the State Government hereby exempts all the accommodation owned by.

(i) The wakf, registered under the Wakf Act, 1954 (29 of 1954), or

The public trust registered under the Madhya Pradesh Public Trusts Act, 1951 (30 of 1951) for an educational, religious or charitable purpose,

From all the provisions of the Madhya Pradesh Accommodation Control Act, 1961 (41 of 1961).”

9. Notification dated 7.9.1989 issued under Section 3(2) of the Act of 1961 clearly exempts the public trust registered under the Act of 1961 from the operation of the Act of 1951.
10. The constitutional validity of the notification dated 7.9.1989 was challenged before the High Court of Madhya Pradesh. The

High Court of Madhya Pradesh in Chintamani Chandra Mohan Agrawal v. State of Madhya Pradesh¹, held that the notification, dated 7.9.1989 is ultra vires to the provisions of the Constitution and, therefore, it was declared as inoperative. The State of Madhya Pradesh filed an Special Leave Petition before the Supreme Court against the order passed by the High Court of Madhya Pradesh in Chintamani case (supra). The Supreme Court in its order dated 19.10.1995 set aside the order passed by the High Court of Madhya Pradesh and affirmed the notification dated 7.9.1989 exempting the properties of the trusts from the operation of the Act of 1961. Thereafter, the Supreme Court in Betibai and others vs. Nathooram and others² held that the religious and charitable trusts exempted by the notification under Section 3(2) of the Act of 1961 from the operation of the Act of 1961 need not file a suit for eviction of tenants on the ground set out under Section 12 of the Act of 1961 and they can file a suit directly under Section 106 of the TP Act after terminating the tenancy. The Supreme Court held thus:--

"7. The decision of this Court in Mangilal vs. Shri Chuturbhuj Mandir, (1998) 5 SCC 597, upon which reliance has been placed is distinguishable as the only question pleaded in that case was that since the notification dated 7-9-1989 has been held to be bad by the High Court in respect of wakf properties only, the trust properties would continue to be exempted from the operation of the Act. This plea was not accepted and it was held that the notification dated 7-9-1989 was a composite notification, which applied not only to the wakf properties but also to other charitable trust properties, and since this notification has been held to be bad in respect of the wakf properties, it would be bad for all

1 1994 MPLJ 597

2 (1999) 6 SCC 368

other properties, including trust properties, which were sought to be exempted from the operation of the Act. The validity of the notification was not questioned in that decision. Moreover, it was not brought to the notice of Their Lordships, who decided that case, that against the decision of the Madhya Pradesh High Court in *Chintamani Chandra Mohan Agarwal vs. State of M.P.*, 1994 MPLJ 597 (MP), Civil Appeal No. 9909 of 1995 [arising from SLP (Civil) No. 4360 of 1994] was filed in this Court, which was decided on 19-10-1995 and the decision of the Madhya Pradesh High Court was reserved with a categorical finding that the notification issued by the Madhya Pradesh Government exempting the wakf and trust properties from the operation of the Act was valid."

11. Thereafter, the Supreme Court, again in **Ramgopal and another v. Balaji Mandir Trust and others**³, noticed the decisions in **Betibai case** (supra) and **Chintamani case** (supra), and relying on the decision in **Betibai case** (supra), held that a religious institution registered under the provisions of the Act of 1951 is entitled for eviction without taking recourse to Section 12(1) of the Act of 1961.

The Supreme Court held as under:--

"9. In the case of *State of M.P. vs. Kanhaiyalal*, 1970 MPLJ 973, the exemption notification issued under Section 3(2) of the Act was of 22-5-1963, with which we are not concerned. The notification governing the present case is dated 7-9-1989. Even otherwise, that case was rightly distinguished on facts. We respectfully agree with the decision in *Betibai vs. Nathooram*, (1999) 6 SCC 368, since we do not have any good reason to differ. Having regard to all aspects in the present case, we are unable to accept the submissions of the learned Counsel for the appellants to refer the matter to a Larger Bench for consideration. The learned Counsel tried to make a distinction on the basis of language used in the exemption notification, which came up for consideration in *S. Kandaswamy Chettiar vs. State of T.N.*, (1985) 1 SCC 290, to which reference is made in Para 8 of the judgment in *Betibai's case* (supra), which reads:-- (SCC p., 371)

3 (2003) 5 SCC 17

"8. It may be mentioned that similar notifications issued in other States, by which wakf and trust properties were exempted, have already been upheld by this Court. As for example, the notification issued by the State Government of Tamil Nadu exempting wakf and trust properties, was upheld by this Court in *S. Kandaswamy Chettiar vs. State of T.N.*, (1985) 1 SCC 290. Even this decision was not brought to the notice of the learned Judges who disposed of *Mangilal vs. Shri Chuturbhuj Mandir*, (1998) 5 SCC 597.'

10. The learned Senior Counsel for the appellants tried to draw a distinction on the ground that the provision for issuing exemption notification in the case of Tamil Nadu is different inasmuch as the whole of the income derived from which is utilised for that institution is not to be found unlike the provision contained in Section 3(2) of the Act. This Court in *Betibai's case*, as already noticed above, has rejected the contention. That apart, when the appellants have not challenged the validity of the notification and when they have failed to plead that whole of the rental income derived is not utilised for the purpose of the Trust, we do not find any merit in this submission of the learned Counsel also."

12. Thus, there is no iota of doubt that the notification dated 7.9.1989 is constitutionally valid and fully applicable to the facts of the present case, though not produced before the Courts below, as it is issued under the Act of 1961 having the force of law.

13. Thus, the plaintiff trust was not required to establish the ground for eviction under Section 12 (1) (e) of the Act of 1961 though the plaintiff erroneously pleaded the ground for eviction under Section 12 (1) (e) of the Act of 1951 and found favour with by the first appellate Court, but it was not required to plead and establish the ground under Section 12 (1) (e) of the Act of 1961 as notification issued under Section 3(2) of the Act of 1961 dated 7.9.1989 has the force of law. Both the Courts below ought to have noticed the said notification to hold that the plaintiff Institution is not

required to establish the ground under Section 12 (1) (e) of the Act of 1961. The plaintiff is only required to establish termination of tenancy by serving clear 15 days' notice to the tenant to vacate the suit premises under Section 106 of the TP Act as tenancy was monthly.

14. Notice (Ex.P/6) shows that notice was issued to the defendant on 15.9.2000 terminating tendency w.e.f. 31.10.2000 and thereafter to vacate the suit premises, which was not vacated and suit was filed on 9.7.2002, as such, tenancy is validly terminated in accordance with Section 106 of the TP Act. Even otherwise, service of notice has been admitted by the defendant in para-4 of his written statement, as such, the judgment and decree of the first appellate Court is affirmed for the reasons assigned hereinabove. The substantial question of law is answered in favour of the plaintiff and against the defendant.

15. Accordingly, the second appeal is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

16. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge