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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 12th OF JULY, 2022

CIVIL REVISION No. 220 of 2022

Between:-

SHRI GULAM HUSSAIN S/O SHRI NAJAR ALI
PANDHANAWALA, AGED ABOUT 75 YEARS,
OCCUPATION: BUSINESS SHOP NO. 135,
RANIPURA MAIN ROAD R/O 43/1 BAJAJKHANA
CHOWK, INDORE (MADHYA PRADESH)

.....APPLICANT

(BY SHRI VISHWAJIT JOSHI, ADVOCATE)

AND

AKBAR ALI S/O TAHER ALI MATKAWALA,
AGED ABOUT 90 YEARS, OCCUPATION:
NOTHING R/O 135, RANIPURA, INDORE
(MADHYA PRADESH)

.....RESPONDENT

*This revision coming on for order this day, the court passed the
following:*

ORDER

This revision under Section 115 of Code of Civil Procedure has been preferred by the applicant being aggrieved by the order dated 16.12.2021 passed in Case No.04-A/90(7)/2021 by Rent Controlling Authority, Malharganj Area, District Indore whereby application under Section 23-G of M.P. Accommodation Control Act, 1961 (hereinafter referred to as 'the Act, 1961') filed by him has been dismissed as not maintainable.

02. As per the applicant, he is a tenant in the suit accommodation owned by the non-applicant for past 60 years. He was served a notice by

Municipal Corporation, Indore stating that the suit accommodation has become dilapidated hence he should remove the same and if he does not do so the same shall be done by the Corporation. However the non-applicant in collusion with the Corporation authorities got the damaged portion of the suit accommodation removed and the debris fell upon the tin shed and open space of the suit accommodation which resulted in the same falling down entirely. The non-applicant is not ready to remove the debris which is effecting his business. The applicant requested the non-applicant to permit him to get the tin shed reconstructed but he refused to give him the said permission. Prayer was hence made by him in his application for directing the non-applicant to remove the debris from the suit accommodation and to redeliver vacant possession of the same to him.

03. Learned counsel for the applicant submits that the application filed by the applicant, in view of the averments made and the reliefs claimed therein was very much maintainable but has illegally been rejected by the Rent Controlling Authority. The provisions of Section 23-G of the Act, 1961 were squarely applicable to the facts of the case but have been totally misinterpreted by it.

04. I have heard the learned counsel for the applicant.

05. Sub Section (3) and (4) of the Section 23-G of the Act, 1961 read as under:-

23G. Recovery of possession for occupation and re-entry.

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(3) Where a landlord recovers possession of any accommodation from the tenant in pursuance of an order made under clause (a) or clause (b) of Section 23-A, the landlord shall not, except with the permission of the Rent Controlling Authority obtained in the prescribed manner, re-let the whole or any part of the accommodation within two years from the date of obtaining such

possession, and in granting such permission, the Rent Controlling Authority may direct the landlord to put such evicted tenant in possession of the accommodation.

(4) Where a landlord recovers possession of any accommodation as aforesaid and the accommodation is not occupied by the landlord if he is the owner thereof, or by the person for whose benefit the accommodation is held, within two months of obtaining such possession, or the accommodation having been so occupied is, at any time within two years from the date of obtaining possession re-let to any person other than the evicted tenant without obtaining the permission of the Rent Controlling Authority under sub-Section (3) or the possession of such accommodation is transferred to another person for reasons which do not appear to the Rent Controlling Authority may, to be bonafide, the Rent Controlling Authority may, on an application made to it in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the accommodation or to pay him such compensation as the Rent Controlling Authority thinks fit.

06. A bare perusal of the aforesaid provision reveals that the same gets attracted when an order for eviction of tenant is made on grounds specified under Section 23-A of the Act, 1961 and when the landlord recovers possession of the accommodation in pursuance of such an order and either is desirous of re-letting the accommodation within a period of two years from the date of obtaining possession or does not occupy the same within two months of obtaining such possession or having occupied the accommodation, at any time within two years from the date of obtaining possession, re-lets the accommodation to any person other than the tenant without obtaining permission of the Rent Controlling Authority or transfers possession of the accommodation to another person without bona fide reason. In either of such cases the Rent Controlling Authority, on an application by the tenant, may direct the landlord to put the tenant in possession of the accommodation.

07. However, in the present case, no order has been passed by the Rent Controlling Authority under Section 23-A of the Act, 1961 directing eviction of the applicant from the suit accommodation pursuant to which possession of the accommodation has been handed over to the non-applicant.

Thus, the basic ingredients for attracting the applicability of Section 23-G (3) and (4) of the Act, 1961 are wholly absent in the matter. As per the applicant the suit accommodation has been illegally got vacated by the non-applicant in connivance with the authorities of Municipal Corporation and not that it has been got vacated pursuant to an order passed by the Rent Controlling Authority in exercise of power under Section 23-A of the Act, 1961.

08. Thus in my opinion, the Rent Controlling Authority has not committed any error of law in rejecting the application filed by the applicant as not maintainable. The revision is devoid of merits and is hereby dismissed.

jjyoti



(PRANAY VERMA)
JUDGE