

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL  
ON THE 16<sup>th</sup> OF FEBRUARY, 2023**

**CIVIL REVISION No.28 of 2006**

**Between:-**

**IBRAHIM KHAN,  
S/O SHRI AKTHAR KHAN, MUSALMAN, AGED  
ABOUT 26 YEARS, R/O BUDHWARI BAZAR, SEONI,  
DISTRICT SEONI (M.P.)**

**.....PETITIONER**

***(BY SHRI J.L. MISHRA, SHRI K.N. FAKHRUDDIN, ADVOCATES)***

**AND**

**DR. DEVENDRA NAATH BHARGAVA,  
S/O LATE SHRI PRANNATH BHARGAVA,  
R/O SUBHASH WARD, MAHAVIR MADHIYA, SEONI,  
DISTRICT SEONI (M.P.)**

**.....RESPONDENT**

***(BY SHRI VARUN SINGH, ADVOCATE)***

---

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

**ORDER**

This civil revision has been preferred by the petitioner/tenant challenging the order of eviction dated 30/07/2005 passed by SDO and Rent Controlling Authority, Seoni in Revenue Case No.02/A-90/2004-05, whereby on the application filed by respondent/landlord under Section 23-A(b) of the Madhya Pradesh Accommodation Control Act, 1961 (in short 'the Act'), an order of

eviction has been passed on the ground of personal requirement of respondent himself.

2. The present civil revision has been filed by the petitioner/tenant on the ground that the learned RCA has erred in passing the ex-parte order of eviction because after dismissal of the main application, learned RCA even in absence of petitioner and his counsel, restored the same on 29/09/2003 even without proceeding ex-parte against the petitioner/tenant and thereafter, permitted the respondent/landlord to amend the main application for eviction and passed the order of eviction without giving due opportunity of hearing to the petitioner/tenant, whereas, fresh notice to the petitioner/tenant ought to have been issued. As such, he submits that learned RCA did not decide the application filed by the petitioner/tenant under Section 23-C of the Act for leave to defend. He further submits that during pendency of the present civil revision, the respondent/landlord has along with other co-owners, transferred the entire property including the tenanted shop/premises to Shri Vasdev Khatri and in support of his submission he has filed an application under order 41 rule 27 CPC annexing the order of mutation dtd. 04.02.2011 passed by Nazul Officer, Seoni. As such, he submits that now the respondent/landlord is not entitled for possession of tenanted shop, especially in the circumstances where the subsequent purchaser has not been substituted in place of the respondent/landlord.

3. Learned counsel for the respondent/landlord submits that learned RCA has rightly passed the order of eviction and there is no illegality in the impugned order of eviction and without disputing the transfer of the tenanted shop, he placed reliance on the decisions of supreme court in the case of *Gaya Prasad Vs. Pradeep Srivastava (2001) 2 SCC 604* and *Shakuntala Bai & others Vs. Narayan Das & others (2004) 5 SCC 772*, with the submissions that even after

death of original landlord, his legal representatives are entitled to execute the order of eviction and similar is the position in the present case where after transfer of the tenanted property, the subsequent purchaser may get the fruits of decree/order of eviction and he prays for dismissal of the civil revision.

4. Heard learned counsel for the parties and perused the record.

5. Without taking into consideration the merits and demerits of the order of eviction, this Court in the light of undisputed fact of transfer available on record brought on record by the petitioner/tenant, hereby allows application u/o 41 rule 27 CPC and consequently, is of the considered opinion that after sale of the tenanted property by the respondent/landlord, the bonafide and personal requirement of starting private clinic/dispensary by the respondent himself, for which purpose the petition for eviction was filed, has come to an end and the need of landlord cannot be said to be in existence.

6. At the same time it is pertinent to mention here that, the argument advanced by learned counsel for the respondent on the basis of decisions of supreme court in the case Gaya Prasad (**supra**) and Shakuntala Bai and others (**supra**), is not acceptable for the simple reason that in these cases, tenanted premises was not transferred.

7. In the case of Gulab Chand Jain vs. Manish Jain **1998(I) MPWN 31**, a coordinate Bench of this Court has held as under:

“The eviction decree in the present case was based on the personal need of the landlord and that need is not assignable. It was personal to the original landlord and it is not transferable by assignment. The transferees cannot step into the need of the original landlord. They cannot claim under the original decree-holder. A contrary view would run counter to the object of the Act which affords protection to the tenant from eviction. The transferees must bring fresh action on the basis of their own need if they want eviction of the tenant on that ground as envisaged under Section 12(4) of the

Act. The need of the erstwhile landlord cannot be pressed into service by the transferees for eviction of the tenant. There can be no transmigration of the need of one into another. The transferees cannot be permitted to execute such a decree.

Section 17 of the Act provides for reentry of the tenant in the accommodation if the landlord after recovery of the possession in pursuance of the eviction decree on the basis of his requirement does not actually occupy it. The present case has not reached that stage. It is still on the penultimate stage as the tenant has not yet been dispossessed of this accommodation. The transferees of the landlord cannot evict him by using the decree which he obtained on the representation of his need.”

**8.** As such, in view of the aforesaid decision in the case of Gulab Chand Jain (**supra**), nothing remains to be decided in the present revision and in view of the sale of property by the respondent/landlord, the need to start private clinic/dispensary by the respondent Dr. Devendra Nath Bhargava, cannot be said to be in existence.

**9.** Resultantly, the civil revision succeeds and is hereby **allowed** and the order passed by RCA is set aside being not executable at the instance of subsequent purchaser. However, the subsequent purchaser shall be at liberty to file suit/application for eviction on the grounds available to him in accordance with the law.

**10.** Interim application(s), if any, shall stand disposed off.

**(DWARKA DHISH BANSAL)**  
**JUDGE**

RS