

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

**BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

ON THE 13th OF JULY, 2023

CIVIL REVISION No. 285 of 2018

BETWEEN:-

**ASHOK KUMAR AGRAWAL S/O SHRI SUNDAR LAL
AGRAWAL, AGED ABOUT 46 YEARS, OCCUPATION:
BUSINESS KATRA BAZAR MAIHAR (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI AMIT SAHNI-ADVOCATE)

AND

**SMT. SARITA SAXENA W/O LATE SHRI AJIT
SAXENA, AGED ABOUT 52 YEARS, NEAR
GHANTAGHAR MAIHAR TAHSIL MAIHAR, DISTT.
SATNA (MADHYA PRADESH)**

.....RESPONDENT

(NONE)

CIVIL REVISION No. 287 of 2018

BETWEEN:-

**VASUDEO CHAWLA S/O SHRI JIYAMAL CHAWLA,
AGED ABOUT 53 YEARS, OCCUPATION: BUSINESS
R/O. DEVRANI JITHANI SHOP NO. 8, SIDDHARTH
COMPLEX MAIHAR (MADHYA PRADESH)**

..... PETITIONER

(BY SHRI AMIT SAHNI-ADVOCATE)

AND

**SMT. SARITA SAXENA W/O LATE SHRI AJIT
SAXENA, AGED ABOUT 52 YEARS, R/O.
GHANTAGHAR MAIHR TEH MAIHAR (MADHYA
PRADESH)**

.....RESPONDENT

(NONE)

CIVIL REVISION No. 288 of 2018

BETWEEN:-

**MAHESH RAMANI S/O LATE SHRI TEERATH DAS
RAMANI, AGED ABOUT 51 YEARS, OCCUPATION:
BUSINESS MAHARAJA SHOP SHOP NO. 12 MAIHAR
(MADHYA PRADESH)**

..... PETITIONER

(BY SHRI AMIT SAHNI-ADVOCATE)

AND

SMT. SARITA SAXENA W/O LATE SHRI AJIT SAXENA, AGED ABOUT 52 YEARS, NEAR GHANTAGHAR MAIHAR TAHSIL MAIHAR (MADHYA PRADESH)

.....RESPONDENT

(NONE)

CIVIL REVISION No. 289 of 2018

BETWEEN:-

BRAJENDRA KUMAR CHOURASIYA S/O SHRI GANGA PRASAD CHOURASIYA OCCUPATION: BUSINESS SHOP NO. 11, SIDDHARTH COMPLEX GHANTAGHAR CHOURAHA, MAIHAR (MADHYA PRADESH)

..... PETITIONER

(BY SHRI AMIT SAHNI-ADVOCATE)

AND

SMT. SARITA SAXENA W/O LATE SHRI AJIT SAXENA, AGED ABOUT 52 YEARS, NEAR GHANTAGHAR MAIHAR, TEH. MAIHAR (MADHYA PRADESH)

.....RESPONDENT

(NONE)

AND

CIVIL REVISION No. 290 of 2018

BETWEEN:-

**SANJAY KUMAR PANDEY S/O SHRI BHAGWAN DAS
PANDEY, AGED ABOUT 52 YEARS, OCCUPATION:
BUSINESS VALLAGH NAGAR MAIHAR DISTT. SATNA
(MADHYA PRADESH)**

..... PETITIONER

(BY SHRI AMIT SAHNI-ADVOCATE)

AND

**SMT. SARITA SAXENA W/O LATE SHRI AJIT
SAXENA, AGED ABOUT 52 YEARS, NEAR
GHANTAGHAR MAIHAR TAH. MAIHAR DISTT.
SATNA (MADHYA PRADESH)**

.....RESPONDENT

(NONE)

*These revisions coming on for admission this day, the court passed
the following:-*

ORDER

All the five Civil Revisions are analogously heard and decided by this common order. In all the revisions the landlord (landlady) is common but the tenants are different who are in occupation of 5 shops as follows :

(i) CR 285/2018 -Ashok Kumar Agrawal -Shop no. 6.

- (ii) CR 290/2018 -Sanjay Kumar Pandey -Shop no. 7.
- (iii) CR 287/2018 -Vasudeo Chawla -Shop no. 8.
- (iv) CR 289/2018 -Brajendra Kumar Chourasiya -Shop no. 11.
- (v) CR 288/2018 -Mahesh Ramani -Shop no. 12.

2. Aforementioned civil revisions under Section 23-E of the M.P. Accommodation Control Act, 1961 (in short 'the MPAC Act') have been filed by petitioners/non-applicants/tenants challenging the order of eviction dtd. 16.04.2018 passed by SDO/RCA, Maihar, Distt. Satna, whereby respondent/applicant/landlord's application under Section 23-A(b) of the MPAC Act filed for bonafide requirement of her son-Siddharth to start business of hardware/sanitary, has been allowed.

3. Facts in short are that the application for eviction on the ground of bonafide requirement of the shop in question, along with other shops, was filed with the averments that the respondent/applicant is landlord and the petitioner/non-applicant is her tenant and she being widow is covered under the definition of landlord of special category. The shop was given on rent by mother-in-law (Saas) of the respondent/applicant namely Premwati and after her death the petitioner/non-applicant is paying rent to the respondent/applicant, treating her to be owner and landlord of the shop(s). The son of respondent/applicant, after completing his education is unemployed and requires the rented shop for starting his business. It is stated in the application that on the ground floor of the building there were several shops but the respondent/landlord being in need of the money for treatment of her husband, some shops have been sold and only 8 shops (nos. 2 & 6 to

12) are remaining, which are required for the business of son-Siddharth, who after removing partition wall in between the shop no.6 & 7, shall build a showroom and other shops shall be used as godowns for keeping the business' goods and there is no other alternative accommodation available with the respondent/applicant in the township. On inter alia allegations the application was filed.

4. The petitioner/non-applicant appeared and filed reply admitting himself to be tenant of the respondent/applicant. In paragraph 1 of the reply, it is admitted that previously Premwati was owner and landlord of the house known as Siddharth Complex and after her death the respondent/applicant is owner and he is making payment of rent to her. However, he alleged that the applicant/landlord does not require the rented shop for the need of her son because he wants to do hotel business and for that purpose construction of first floor is in progress and also contended that the applicant is having several other alternative accommodations, which are sufficient to satisfy the need of respondent/applicant's son. It is also contended that the respondent/applicant wants to sell the rented shops after getting vacated the same. On inter alia submissions the application was prayed to be dismissed.

5. After framing issues and after recording evidence of the parties, learned RCA vide its impugned order, found that the respondent/applicant is in need of the rented shop(s) for the requirement of her son and there is no other alternative accommodation available in the township and allowed the application(s).

6. Learned counsel appearing for the petitioner/non-applicant submits that the property in which the rented shops are situated belongs to the State

Government, plot of which was allotted to the landlord vide lease deed, therefore, in view of provisions contained in section 3 of the MPAC Act, the provisions of the MPAC Act are not applicable to the instant case and the application filed under Section 23-A(b) of the MPAC Act was not maintainable before the RCA. He further submits that the application was filed with the allegations that respondent/applicant's son would start his business after removing partition wall of all the shops, but during pendency of the application for eviction, the respondent/applicant has sold shop No.10 to tenant-Manoj Kuamr Agarwal and Shop no. 1-2 to tenant-Ganesh Chourasiya, therefore, in absence of any amendment in the pleadings regarding the existing need, the impugned order of eviction is not sustainable. In support of his submissions, he placed reliance on the decisions in the case of Parwati Bai vs. Radhika (2003)12 SCC 551, Lekh Raj Vs. Muni Lal and others (2001) 2 SCC 762 and Radheylal Somsingh vs. Ratansingh Kishansingh 1977 MPLJ 335. With support of decision of a coordinate Bench of this Court in Life Insurance Corporation of India vs. Santosh Kumar Sharma and another 2004 (4) MPLJ 185 (pr.13&14), he submits that although the question of jurisdiction was not raised in defence/reply, but the same being a pure question of law, can be raised in the civil revision.

7. The Supreme Court in the case of Parwati Bai vs. Radhika (2003)12 SCC 551, has held as under :

“4. It is well-settled by a decision of this Court in Bhatia Cooperative Housing Society Ltd. v. D.C. Patel, 1953(4) SCR 185 wherein pari materia provisions contained in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 came up for consideration of this Court. It was held that the exemption is not conferred on the relationship of landlord and tenant but on the premises itself making it immune from the operation of the Act. In identical facts, as the present case is, the decision of this Court was followed by the High Court of Madhya Pradesh in Radheylal Somsingh v.

Ratansingh Kishansingh, 1977 MPLJ, 335 and it was held that the immunity from operation of the Madhya Pradesh Accommodation Control Act, 1961 is in respect of the premises and not with respect to the parties. If a tenant in municipal premises lets out the premises to another, a suit by the tenant for ejection of his tenant and arrears of rent would not be governed by the Act as the premises are exempt under Section 3(1) (b) of Act though the suit is not between the municipality as landlord and against its tenant. We find ourselves in agreement with the view taken by the High Court of Madhya Pradesh in Radheylal's case. It is unfortunate that this decision binding in the State of Madhya Pradesh was not taken note of by the courts below as also by the High Court.”

8. A coordinate Bench of this Court in the case Life Insurance Corporation of India vs. Santosh Kumar Sharma and another 2004 (4) MPLJ 185 (pr.13 & 14), has held as under :

“14. Thus, in the present case, when there is inherent lack of jurisdiction, merely such an objection was not raised before the Tribunal would not disentitle petitioner/non-applicant to raise the said objection. Since there is inherent lack of jurisdiction, the Award passed by the Tribunal is without jurisdiction and, therefore, it cannot be allowed to stand.”

9. During pendency of the civil revision the petitioners/non-applicants/tenants filed different IAs, out of which following IAs. were **allowed** :

i) Application seeking amendment in Civil Revision, whereby the petitioners/non-applicants have raised additional grounds in the civil revision to the effect that the respondent/applicant is not landlord of the special category; RCA had no jurisdiction; the respondent/applicant has not filed any document of title/ownership; proposed business is not permissible in the area; if partition wall is removed, the building itself would fall down; in the application the respondent/applicant pleaded requirement for her son but in the evidence she stated that the shops are required for herself and her son; and there are major contradictions in the testimony of the PW1 and PW2;

ii) Application seeking amendment in Civil Revision, whereby the

petitioners/non-applicants have raised another additional ground to the effect that the respondent/applicant is govt. lessee of the property which was sub-leased to the petitioner/non-applicant, as such in view of section 3 of the MPAC Act, the RCA had no jurisdiction under the MPAC Act, as such entire proceedings are void being without jurisdiction;

iii) Application for taking document on record, whereby documents showing renewal of lease deed in the name of respondent/applicant-Sarita Saxena (after death of Premwati Saxena) have been filed.

AND, following IAs are **still pending** :

i) Application for taking document on record, whereby an agreement of sale executed in respect of shop no.10 in favour of Manoj Kumar Agrawal has been prayed to be taken on record;

ii) Application seeking amendment in written statement to the effect that the respondent/applicant has entered into an agreement on 2.11.2020 and is trying to sell the shops and that she has suppressed the factum of govt. lease from the Court and that the respondent/applicant is not landlord for the purpose of section 23-J of the MPAC Act;

iii) Application for taking document on record, whereby the sale deed dtd. 05/01/2022 in favour Manoj Kumar Agrawal (shop no. 10) and sale deed dtd. 17.11.2022 in favour of Ganesh Chourasiya (shop no.1-2), have been prayed to be taken on record.

10. Despite service of notice, none is appearing on behalf of the respondent/applicant/landlord.

11. Heard learned counsel for the petitioners/non-applicants/tenants and perused the record.

12. The application for eviction has been filed with the allegations that the respondent/applicant being landlord of special category and being in need of the rented shops for the requirement of her son, is entitled for order of eviction against the petitioner/non-applicant. In reply to the application, the tenant has admitted relationship of landlord and tenant in between the parties. As such there is no dispute in the present case about relationship of landlord and tenant.

13. Apparently, the respondent/applicant filed the application for eviction alleging that her son after removing the wall existing in between the shops No.6-7 shall build his office/showroom and the other shops, which are in possession of other tenants, shall be used as godown to store the goods of the required business.

14. Admittedly the shops no.6-7 are still under the ownership of the respondent/applicant and these shops have not been sold, therefore, it cannot be said that after sale of shop Nos. 1, 2 and 10, the need of the respondent/applicant has come to an end. It is undisputed fact on record that the shops which have been sold by the respondent/applicant were in possession of other tenants and none of the shops was in vacant possession of the respondent/applicant, therefore, it cannot be said that after sale of some shops, the need proposed by the respondent/applicant has vanished/come to an end.

15. So far as the question of sale of other shops is concerned, since beginning, need of these shops was alleged for the purpose of godown and even after sale of some shops, the shop Nos. 6 & 7 are under the ownership of the respondent/landlord, therefore, remaining shops can very well be used for the purpose of godowns, which appear to be sufficient also for satisfying the need of the respondent/landlord.

16. As far as the question of jurisdiction of the RCA is concerned, in the present case there is no dispute of relationship of landlord and tenant between the respondent/applicant and petitioner/non-applicant, therefore, in my considered opinion the provisions contained in section 3 of the MPAC Act cannot be pressed into service, even though the plot of the property was leased out by the State Government to the applicant/landlord.

17. The Supreme Court in the case of Harshad Chiman Lal Modi Vs. DLF Universal Ltd. and another AIR 2005 SC 4446 = (2005)7 SCC 791, has held as under :

“30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.”

18. In the case of Parwati Bai (supra), since beginning it was a case of landlord that the suit premises belongs to the Municipality, therefore, the provisions of the MPAC Act are not applicable. In such circumstances, the

Supreme Court held that the Courts below erred in not treating the suit under general Act. But here in the present case, it is nobody's case before the Court/Authority of first instance that the suit premises belongs to the State Govt. and the RCA had no jurisdiction to entertain the application for eviction. On the contrary, the petitioner/non-applicant has in clear words, not only admitted relationship of landlord and tenant but also admitted ownership of deceased Premwati and thereafter of the respondent/applicant also.

19. However, the photocopies of the documents produced by the petitioner/non-applicant along with the application for taking documents on record, show that originally the permanent lease of a plot was granted on 1.4.1977 for 30 years, over which a house was got constructed by previous owner Premwati or her husband Laxminarayan and after its renewal it is effective up to 31.03.2024. As such in the given facts and on the subject matter available before the RCA, it had jurisdiction to entertain and decide the application for eviction, hence the petitioner/non-applicant does not get any benefit of the judgment in the case of Parwati Bai (supra).

20. In the similar set of facts, the Supreme Court in the case of Swadesh Ranjan Sinha Vs. Hardeb Banerjee AIR 1992 SC 1590, has held as under :

“4. It is important to note that the defendant in his written statement did not question the plaintiff's title or claim of ownership. NO issue regarding ownership had been framed as it was never questioned by the defendant at any stage of the proceedings in the trial court. On appeal by the defendant, the I st appellate Court examined the plaintiff's title and held that, since he was only a lessee under a 99 years lease granted by the Society, which itself was a lessee holding a 99 years lease from the Metropolitan Development Authority, he was not an 'owner' within the meaning of Section 13(1)(ff) of the Act and was, therefore, not entitled to seek eviction under that provision. Accordingly, the merits of the plaintiff's claim were not examined by the I st appellate Court. This finding was affirmed by the High Court, and, like the I st appellate Court, it also did not consider the merits of the plaintiff's case for eviction.

10. The plaintiff is an allottee in terms of the West Bengal Co-operative Societies Act, 1983: (See Sections 87 and 89). He has a right to possess the premises for a period of 99 years as a heritable and transferable property. During that period he has a right to let out the premises and enjoy the rental income therefrom, subject to the statutory terms and conditions of allotment. The certificate of allotment is the conclusive evidence of his title or interest. It is true that he has to obtain the written consent of the Society before letting out the premises. But once let out in accordance with the terms of allotment specified in the statute, he is entitled to enjoy the income from the property. Although he is a lessee in relation to the society, and his rights and interests are subject to the terms and conditions of allotment, he is the owner of the property having a superior right in relation to the defendant. As far as the defendant 'ISI concerned, the plaintiff is his landlord and the owner of the premises for all purposes dealt with under the provisions of the Act.

11. In view of what we have stated above, the High Court and the Ist appellate Court were wrong in setting aside the decree of the trial Court solely on the question of the appellant's title. The appellant's title was never an issue at any stage of the trial. There was no plea to that effect and no issue was, therefore, framed on the question. This being the position, the appellant's claim has to be decided on the basis of the pleadings, i.e., on the basis that he is the owner of the premises in question.”

21. Placing reliance on para 16 of the decision of Supreme Court in the case of Sheela V. Firm Prahlad Rai Prem Prakash 2002 (2) J LJ 312 (SC), a coordinate Bench of this Court in the case of Karan Lal Kesharwani Vs. The Sardar House, Jabalpur and others 2008 (2) MPLJ 365, has held as under :

“15. There is sufficient force in the submission of Shri R.S. Tiwari, learned counsel for the applicant, that the degree of proving ownership in the matter between landlord and tenant under the proceedings of eviction as envisaged under Section 23-A(b) of the Act cannot be equated and would not be that much higher as required to be proved in a suit for establishing title. There is much substance in the submission of Shri Tiwari, learned counsel for the applicant, that continuously for last 23 years the tenants/respondents were paying rent to the applicant and during this long period of 23 years, they never challenged or disowned the ownership of the applicant. Indeed, in his cross-examination the tenant has admitted that he is paying rent to the applicant and has paid rent to him up to the year 2001. Thus, I am of the view that since for a considerable long period for more than 23 years, without any hindrance, the respondents were paying rent to the applicant and they never raised any objection in respect of his ownership during a very long period of 23 years and has raised this objection only when the present proceedings for eviction was filed by the landlord, by his conduct he is estopped from raising the dispute of title of the landlord and principle of estoppel would apply against the tenants under Section 116 of the Indian Evidence Act, 1872.”

22. An another coordinate Bench of this Court in the case of Smt. Ramdularibai and others Vs. Chhatrapal Singh Punjabi AIR 1993 MP 90, has also held as under :

“10. In this case, the tenant himself has admitted that the plot was leased to the applicant No. 1 Smt. Ramdularibai, who is a widow, by the Municipal Council, on which she has constructed two shops and one of them is in occupation of the a non-applicant. Merely because the non-applicant has filed a suit for injunction against the applicants for not to sell this plot or that applicant No. 1 itself is a lessee of the plot on which she has constructed the suit shop, will not debar the Rent Controlling Authority to decide the eviction application under S. 23A of the Act, in which the only question to be decided by the Rent Controlling Authority is whether there is preivity of contract between the parties and whether relationship of landlord and tenant between them exists. The Rent Controlling Authority has not to enter into upon the question of title. The question of title is incidental in ejectment suit or proceedings between the landlord and tenant which is based on tenancy contract only. Admittedly the premises were constructed by the applicant-landlady and let out to the non-applicant. Merely because the plot on which the landlady had constructed the suit shop is on lease in favour of landlady will not debar her from claiming eviction of her tenant.

11. In the instant cases where the plot of land is taken on lease the structure is built by I the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in this view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term 'owner' as is contemplated under this Section. (Please see : Shanti Sharma v. Vedprabha, AIR 1987 SC 2028.)”

23. Further, the aforesaid question of jurisdiction was not raised by the petitioner/non-applicant/tenant before the RCA, therefore, the same cannot be permitted to be raised in the present civil revision. However, the decision in the case of Life Insurance Corporation of India (supra) is distinguishable on facts. Resultantly, the aforesaid pending interim applications are liable to be and hereby dismissed.

24. Even otherwise, the scope of civil revision under section 23-E of the MPAC Act is limited and the RCA cannot go beyond the pleadings raised and evidence adduced by the parties.

25. As such in my considered opinion learned RCA does not appear to have committed any illegality in passing the impugned order of eviction. Resultantly, all the five civil revisions fail and are hereby dismissed.

26. However, as prayed by learned Counsel for the petitioner/tenant, looking to the period and nature of tenancy, in the interest of justice about six months' time is granted to the petitioner/non-applicant/tenant for vacating the rented shop(s) on the following conditions:-

(i) The petitioner/non-applicant/tenant shall vacate the rented shop on or before 31.12.2023.

(ii) The petitioner/non-applicant/tenant shall regularly pay rent to respondent/applicant/landlord and shall also clear all the dues, if any, including the costs of the litigation, if any, imposed by the learned RCA within a period of 30 days from today.

(iii) The petitioner/non-applicant/tenant shall not part with the rented shop to anybody and shall not change nature of the premises.

(iv) The petitioner/non-applicant shall furnish an undertaking with regard to the aforesaid conditions within a period of three weeks before the learned RCA.

(v) If the petitioner/non-applicant/tenant fails to comply with any of the aforesaid conditions, the respondent/applicant shall be free to execute the eviction order forthwith.

(vi) If after filing of the undertaking, the petitioner/non-applicant/tenant does not vacate the rented shop on or before 31.12.2023 and creates any obstruction, he shall be liable to pay mesne profits of Rs.500/- (Rs. five hundred) per day, so also contempt of order of this Court.

(vii) It is made clear that petitioner/non-applicant/tenant shall not be entitled for further extension of time after 31.12.2023.

27. It is also pertinent to mention here that if after obtaining possession of the rented shop(s), the respondent/applicant/landlord's son does not start the requisite business, the petitioner/non-applicant/tenant shall be at liberty to invoke the provisions contained in section 23-G of the MPAC Act for recovery of possession for occupation and re-entry in the rented shop(s).

28. With the aforesaid observations, the civil revisions are hereby **dismissed and disposed off.**

29. Pending interim applications, if any, shall stand disposed off.

(DWARKA DHISH BANSAL)
JUDGE

ss