A BETIBAI AND ORS.

v.

NATHOORAM AND ORS.

MARCH 12, 1999

B [S. SAGHIR AHMAD AND V.N. KHARE, JJ.]

Rent Control and Eviction :

M.P.—Accommodation Control Act, 1961 : Sections 3(2) and 12.

C *Rent Act—Religious and Charitable Trusts—Exempted from operation of—Filing of eviction suit under S. 12—Necessity of—Held : It is not incumbent upon such trusts to file eviction suit under S. 12—Eviction suit can be filed straightaway after terminating the tenancy under S. 106 of T.P. Act—Hence, suit rightly decreed—Transfer of Property Act, 1882, S. 106.*

D **The appellant was a tenant of a shop belonging to a temple managed by the respondent-landlord. The appellant's tenancy was terminated by a notice under Section 106 of the Transfer of Property Act, 1882 but the appellant tenant did not vacate the suit premises. The respondent, therefore, filed a civil suit against the appellant for his eviction. It was pleaded**
E **that since the property in question belonged to a religious and charitable trust it was exempted from the operation of the M.P. Accommodation Act, 1961 vide notification issued under Section 3(2) of the Act. The trial court decreed the suit and the appeals were dismissed. Hence this appeal.**

F **On behalf of the appellant it was contended that the suit was liable to be dismissed as it was not based on any of the grounds specified in Section 12 of the Act.**

Dismissing the appeal, this Court

G **HELD : 1. The properties belonging to religious and charitable trusts were exempted from the operation of the M.P. Accommodation Control Act, 1961 and consequently it was not incumbent upon the respondent-landlord to have filed the suit for eviction of tenant on the grounds set out under Section 12 of the Act and that they could file a suit for evidence straightaway after terminating the tenancy under Section 106 of**
H **the Transfer of Property Act, 1882. [1030-B]**

S. Kandaswamy Chettiar **v.** *State of Tamil Nadu,* **[1985] 1 SCC 290, relied on.** A

Chintamani Mahender Agrawal **v.** *State of M.P.,* **(1994) MPLJ 597, held reversed in** *State of M.P.* **v.** *Chintamani,* **CA No. 4360 of (1995) SC decided on 19.10.1995.** *Mangilal* **v.** *Shri Chuturbhuja Mandir,* **[1998] 5 SCC 597, held inapplicable.** B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2425 of 1999.

From the Judgment and Order dated 17.12.98 of the Madhya Pradesh High Court in S.A. No. 901 of 1998. C

S.M. Rai, B.M. Sharma and T.N. Singh for the Appellants.

The Judgment of the Court was delivered by

D

S. SAGHIR AHMAD, J. Leave granted.

Babulal was the tenant of a shop belonging to a temple managed by Phool Maliyan Samaj Mandir Trust, Bhopal (the 'Trust', for short), whose tenancy was determined by notice dated 14.9.1991 under Section 106 of the Transfer of Property Act. In spite of the tenancy having been determined, E Babulal did not vacate the premises. Consequently, the respondents, who were the Trustees of the Trust, instituted a civil suit in the court of Civil Judge, Bhopal, against Babulal for his eviction. It was pleaded that since the property in question belonged to the religious and charitable Trust, it was exempted from the operation of the M.P. Accommodation Control F Act, 1961, (the 'Act', for short) as provided by Section 3(2) thereof.

The suit was contested by Babulal, who filed a written statement denying the plaint allegations and pleaded that the suit was liable to be dismissed as it was not based on any of the grounds specified in Section 12 of the Act. G

The suit was decreed on 8.12.1997, against which an appeal was filed, but before it could be disposed of by the Addl. District Judge, Bhopal, the original tenant died and was substituted by the present appellants as his heirs and legal representatives. The appeal was ultimately dismissed on H

28th September, 1998. The second appeal filed in the High Court was dismissed on 17.12.1998. The trial court as also the lower appellate court and the High Court held that on account of Notification issued on 7.9.1989, the properties belonging to religious and charitable trusts were exempted from the operation of the Act and consequently it was not incumbent upon the respondent-landlords to have filed the suit for eviction of tenant on the grounds set out under Section 12 of the Act and that they could file the suit for eviction straightaway after terminating the tenancy under Section 106 of the Transfer of Property Act.

Learned counsel for the appellants has contended that the Notification dated 7th September, 1989 has already been held to be bad by the Madhya Pradesh High Court in *Chintamani Mahender Agarwal* v. *State of Madhya Pradesh*, (1994) MPLJ 597. He also contended that this Court in *Mangilal* v. *Shri Chuturbhuja Mandirk*, [1998] 5 SCC 597 has also held the Notification to be bad. It is, in these circumstances, contended that the suit of the respondents was liable to be dismissed and the appellants cannot be evicted from the premises in question, except by invoking any of the grounds set out in Section 12 of the Act. The pleas raised by the counsel for the appellants, in our opinion, have no substance.

The decision rendered by the Madhya Pradesh High Court in *Chintamani's* case (supra) was challenged in an appeal filed in this Court by the State of Madhya Prdesh which was disposed of by a Bench of which one of us (Saghir Ahmad, J.) was a member and the Notification dated 9th September, 1989, by which the properties belonging to public charitable trusts and Wakf were exempted, was upheld. It was, in that Judgment held, *inter alia*, as under:-

> "The State of Madhya Pradesh in exercise of the powers under sub-section 2 of Section 3 of the M.P. Accommodation Control Act, 1961 (the Act), exempted all buildings owned by the Madhya Pradesh Wakf Board (Board) from the operation of the Act. The Notification dated September 7, 1989 granting exemption to the Board under the above-mentioned provision of the Act was challenged before the High Court. The High Court quashed the Notification on the short ground that there was no material before the State Government to reach the satisfaction that it was necessary to issue the impugned Notification.

Learned counsel for the State of M.P. has invited our attention to the letter dated March 26, 1976, by the then Prime Minister of India addressed to the Chief Minister of the State of M.P., suggesting, for the reasons given in the said letter, to grant exemption of the provisions of the Act to the properties owned by the Wakf. Thereafter, the State of M.P. made enquiries from various other States in this respect. On receipt of the replies, the matter was considered and thereafter, the exemption Notification was issued. We are satisfied that there was sufficient material before the State Government for issuing the impugned Notification. We, therefore, set aside the impugned judgment of the High Court. We seek support from the judgment of this Court in *S. Kandaswamy Chettiar* v. *State of Tamil Nadu and Anr.*, [1985] 1 SCC 290."

The decision of this Court in *Mangilal's* case (supra), upon which reliance has been placed is distinguishable as the only question pleaded in that case was that since the Notification dated 7th September, 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 9th September, 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 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's* case (supra), Civil Appeal No. 9909 of 1995 (arising from S.L.P. (Civil) NO. 4360 of (1994) was filed in this Court, which was decided on October 19, 1995 and the decision of the Madhya Pradesh High Court was reversed with a categorical finding that the Notification issued by the Madhya Pradesh Govt. exempting the Wakf and Trusts properties from the operation of the Act was valid.

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

A Govt. of Tamil Nadu exempting Wakf and Trust properties, was upheld by this Court in *S. Kandaswamy Chettiar* v. *State of Tamil Nadu & Anr.*, [1985] 1 SCC 290. Even this decision was not brought to the notice of the learned Judges who disposed of *Mangilal's* case.

In view of the above, the appeal has no merit and is dismissed but
B without any order as to costs.

V.S.S. Appeal dismissed.