
(2011) 08 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15378 of 2011

Asha Chawla and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 254
East Punjab Urban Rent Restriction Act, 1949 — Section 13B
Punjab Reorganisation Act, 1966 — Section 87

Citation : (2011) 164 PLR 376 : (2012) 1 RCR(Civil) 277

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, A.C.J.—This petition seeks declaration that East Punjab Urban Rent Restriction (Amendment) Act, 2001 and notification dated 9.10.2009 issued by the Central Government u/s 87 of the Punjab Reorganisation Act, 1966 (for short, "the Reorganisation Act") extending the aforesaid Amendment Act to the Union Territory, Chandigarh are unconstitutional.

2. Case of the petitioners is that they are tenants in various residential and non-residential buildings in the Union Territory, Chandigarh and are facing eviction proceedings at the instance of different Non-resident Indian landlords of the respective buildings u/s 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, "the Rent Act") as extended to Chandigarh vide East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974, as amended vide the East Punjab Urban Rent Restriction (Amendment) Act, 2001 and extended to the Union Territory, Chandigarh vide notification dated 9.10.2009.

3. The impugned statutory provision is as under:-

13B. Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to Non-resident Indian.- (1)

Where an owner is a Non-Resident Indian and returns to India land the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be-Provided that a right to apply in respect of such a building under this section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner. (2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building under this section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly.

The term "Non-Resident Indian" has been defined u/s 2(dd) as under:-

2(dd) "Non-resident Indian" means a person of Indian origin who is either permanently or temporarily settled outside India in either case -

(d) for or on taking up employment outside India; or

(e) for carrying on a business or vocation outside India; or

(f) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for an uncertain period;

4. We have heard learned counsel for the petitioners.

5. Following submissions have been made:-

(i) The Act in pith and substance deals with the subject matter of "citizenship, naturalization and aliens" falling under Entry 17 of List-I, "extradition" falling under Entry 18 of List-I and "admission into, and emigration and expulsion from, India; passports and visas" falling under Entry 19 of List-I of 7th Schedule and thus, the amendment is beyond the competence of the State Legislature;

(ii) The subject matter of the legislation is covered by existing law namely the Citizenship Act, 1955 and Foreign Exchange Management Act, 1999 and the impugned amendment being repugnant to the statutory provisions of central law, the field being occupied, the State legislation is void under Article 254 of the Constitution;

(iii) The Act to the extent of conferring preferential right of eviction on

Nonresidents, including foreigners was arbitrary and discriminatory qua the residents and thus, violative of Article 14 of the Constitution;

(iv) The impugned notification, extending the amending Act to Chandigarh, is exercise of essential legislative functions by the executive which was not permissible u/s 87 of the Reorganisation Act

6. We are unable to accept the above submissions.

7. As regards first submission, case of the petitioners is that subject matter of rent control legislation falls within the ambit of Entries 6, 7 and 13 of List-III i.e. transfer of property, contracts and civil procedure and not in State list as held in *Accountant and Secretarial Services Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, and *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, . Once it is so, contrary submission that the subject matter falls under Entries 17, 18 and 19 of List-I, cannot be accepted. Section 13-B providing for special right in favour of landlords under the category of Non-resident Indians, does not mean that the subject matter is outside the subject matter of landlord and tenants or would fall under Entries 17 to 19 of List-I, as contended. In pith and substance, the subject matter does not deal with the issue of citizenship, extradition or admission into and emigration and expulsion from India, passports and visas which are subjects in List-I. The amendment deals with rights of Non-resident Indians in tenanted premises in relation to right of eviction.

8. Alternative submission that subject matter being in Concurrent List, the State legislation was repugnant to the Central legislation namely Citizenship Act and FEMA, is also without any merit. The subject matter of the Central law and the subject matter of State law are not the same. Both the set of laws can co-exist without any conflict.

9. The classification of Non-resident Indians, as a separate class of landlords, cannot be held to be violative of Article 14 of the Constitution. Right to seek eviction on the ground of bonafide need is available to all landlords. Only difference in the case of NRIs and certain other specified landlords is that right to contest eviction proceedings is governed by special procedure of requirement of obtaining leave to defend by making out a case u/s 18A of the Act. The classification is not shown to be irrational. The same is intelligible and has rational relationship with the object sought to be achieved i.e. providing speedy remedy to non-residents in bonafide need of premises let out to tenants.

10. As regards the validity of impugned notification, extending the Punjab Act to Union Territory, Chandigarh, the contention has to be negated in view of judgment of the Hon'ble Supreme Court in *Ramesh Birch and Others Vs. Union of India (UOI) and Others*, , upholding notification extending the 1985 amendment of the State of Punjab to the Union Territory, Chandigarh. Reliance by learned counsel on observations in para 31 of the said judgment is untenable. The extended provision will not be in conflict with any existing provision. Reliance

on judgment in Lokesh Singh Vs. State of U.P. and Another, is also misplaced, as therein the issue was not of extension of any State legislation but of exercise of legislative power by the Executive, which is not the position in the present case.

11. We, thus, do not find any merit in the petition.

Dismissed.