
(1984) 11 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3438 of 1980

Bali Karan Lal and Others

APPELLANT

Vs

The District Judge and Others

RESPONDENT

Date of Decision : 27-11-1984

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 226, 300A, 30A
Defence of India Rules, 1939 — Rule 16
Electricity Act, 1910 — Section 22B
Land Acquisition Act, 1894 — Section 16, 16(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2), 21, 21(1), 21(8), 21(9)

Citation : (1985) AWC 435

Hon'ble Judges : M.N. Shukla, Acting C.J.;B.D. Agarwal, J

Bench : Division Bench

Advocate : Swaraj Prakash, for the Appellant;

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—Dispute being raised as to the vires of Sub-section (8) of Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act XIII of 1972)(hereinafter referred as the "Act 1972") a learned single Judge has on September 8, 1983 made this reference to Division Bench.

2. The Petitioners are the landlords of the building in dispute situate within the municipal limits. The building is held on lease by the State Government (Fisheries Department) on payment of rent. An application was made by the Petitioner-landlords u/s 21(1)(a) of the Act, 1972 against the Respondents 2 to 4 to the Prescribed Authority seeking their eviction on ground of need for occupation by themselves and members of their family for residential purposes. The Respondent tenant put in contest but the application was allowed by the Prescribed Authority under order dated May 6, 1979. The tenant preferred appeal u/s 22 which was allowed by the District Judge on December 7, 1979 on ground

that in view of Sub-section (8) of Section 21, the Petitioners could not avail of clause (a) of Sub-section (1) of Section 21 to seek release of the said building on their favour. The application for release was in consequence dismissed. Aggrieved the Petitioners landlords have preferred writ petition before this Court under Article 226 of the Constitution seeking that the decision arrived at by the appellate authority be quashed.

3. The Act 1972 came into force on July 15, 1972. From the long Title it would appear that the Act is to provide, in the interest of general public, for the regulation of letting, rent of and the eviction of tenants from, certain classes of buildings situated in urban areas, and for matters connected therewith. The Settlement of Objects and Reasons appended to the Act in so far as material reads:

The United Provinces (Temporary) Control of Rent and Eviction Act, 1947, was passed as a temporary Act, with a view mainly to continuing in force provisions relating to control of letting and rent of accommodation similar to those contained in orders which had been issued under Defence of India Rules, 1939. It was expected that the situation of shortage of accommodation would be tided over after a short period, and accordingly an Ordinance was promulgated in 1946, and it was replaced by a temporary Act in 1947. In view, however, on the continuing increase in the urban population and the relatively slow pace of house building activity due mainly, to shortage of materials the problem of shortage of accommodation has become chronic, and the life of the Act has had to be extended from time to time. Various amendments were also made in its provisions as and when problems arose. Some of the provisions attracted criticism on various grounds in courts of law and also criticism by informed public opinion. Government gave an assurance to the legislature that they would soon replace the Act by a new comprehensive legislation, and accordingly, this Bill has been prepared.

4. Under the scheme of the Act no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of the time or on the expiration of a notice to quit or in any other manner. A suit for the eviction " of a tenant from a building after the termination of his tenancy may, however, be instituted on one or more of the grounds specified in sub Section (2) of Section 20. Those grounds include the tenant being in arrears of rent, substantial damage caused to the building by or at the instance of the tenant, use of the building for a purpose other than a purpose which the tenant was admitted to the tenancy; the tenant making an unauthorised sub lease or the tenant renouncing his character as such and or denied the title of the landlord. Section 21(1)(a) enables a landlord to apply to the Prescribed Authority for eviction of a tenant from the building under tenancy or any specified part thereof on ground that the building is bonafide required either in its existing form or after the demolition and new construction by the landlord for occupation by himself or any member of his family either for residential purposes or commercial

purposes. Clause (b) permits a landlord to apply for eviction of a tenant on ground that the building is in dilapidated condition and is required for purposes of demolition and new construction. Under the proviso to sub Section (1) if the eviction from the building is sought on ground of bonafide need as contemplated under Clause (a), the Prescribed Authority shall also take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose the Prescribed Authority shall have regard to the factors prescribed in Rule 16 framed under this Act. Sub-section (8) was inserted by the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction)(Amendment) Act, 1976 (U.P. Act XXVIII of 1976) with effect from July 5, 1976. It reads as under-

(8) Nothing in Clause (a) Sub- section (i) shall apply to a building let out to the State Government or to a local authority or to a public sector corporation or to a recognised educational institution unless the Prescribed Authority is satisfied that the landlord is a person to whom Clause (ii) or Clause (iv) of the Explanation to Sub-section (1) is applicable.

Provided that in the case of such a building the District Magistrate may, on the application of the landlord, enhance the monthly rent payable therefore to a sum equivalent to one-twelfth of ten per cent of the market value of the building under tenancy, and the rent so enhanced shall be payable from the commencement of the month of tenancy following the date of the application.

Provided further that a similar application for further enhancement may be made after the expiration of a period of five years from the date of the last order of enhancement.

5. Prior to the enforcement of the U.P. Act XXVIII of 1976 there were Clauses (ii) and (iv) appended to the Explanation to Sub-section (1) of Section 21, They read as follows-

(ii) Where the landlord was engaged in any profession, trade, calling or employment away from the city, municipality, notified area or town area within which the building is situate and by reason of the cessation of such engagement, he needs the building for occupation by himself for residential purposes, such need shall be deemed sufficient for purposes of Clause (a).

(iv) the fact that the building under tenancy is a part of a building the remaining part thereof is in the occupation of the landlord for residential purposes, shall be conclusive to prove that the building is bona fide required by the landlord.

6. These clauses were omitted by the U.P. Act XXVIII of 1976 though a reference to them finds place in Sub-section (8).

7. In Sheo Narain Chaudhary v. Distt Judge Allahabad 1982 AWC 489 the question raised was whether after the deletion of Clauses (ii) and (iv) of the Explanation, Section 21(8) was rendered meaningless. The Full Bench expressed the view that the result of the deletion of clauses (ii) and (iv) of the Explanation

to Section 21 is that an application u/s 21(1)(a) cannot be moved in respect of the buildings let out to the authorities specified in the first part of Section 21(1). The view taken in *Om Kumar v. District Judge* 1980 (2) RCC 9 by a Division Bench was, it was held, not correct in this behalf. The vires of Section 21(8) was, however, not under challenge before the Full Bench.

8. Sri Swaraj Prakash, learned Counsel for the Petitioners has raised the following contentions to assail the validity of Section 21(8):

(i) it is hit by Article 300-A.

(ii) it contravenes the second proviso to Article 31-A(1).

(iii) It suffers from arbitrariness and is consequently hit by Article 14 of the constitution,

9. We find no merit in any of these contentions.

10. In regard to the contention No. (i) learned Counsel argued that since the Petitioners-landlord cannot, on ground of need of occupation for residential purpose, seek eviction from the building let out to the State Government or other authorities mentioned in Section 21(8), it amounts virtually to acquisition of their property and this contravenes Article 30-A of the Constitution. The Constitution (44th Amendment) Act, 1978 with effect from June 20, 1979 deleted Article 31. Article 300-A inserted with effect from the same date provides that no person shall be deprived of his property, save by authority of law. This was also the provision contained in Article 31(1). It came up for Interpretation in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, ; *The State of West Bengal Vs. Subodh Gopal Bose and Others*, and *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, . The consensus was in favour of the opinion that Clauses (1) and (2) of Article 31 were not mutually exclusive income and content, but were to be read together and understood as dealing with the same subject, namely, the prosecution of the right to property by means of the limitations on the State power, the deprivation contemplated in clause (1) being no other than the acquisition or taking possession of property referred to in Clause (2). A substantial deprivation of property, it was held, amounted to acquisition or taking possession (Seervai: Constitution of India, Vol. 1, second Edition page 65). The substantial deprivation was understood to mean that "sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property," (vide; *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, , The Constitution (Fourth Amendment) Act, 1954 inserted Clause 2-A to Article 31 which clarified that where a law did not provide for the transfer of the ownership or right to possession of any property to the State or to a Corporation owned or controlled by the State, it was not to be deemed to provide for the compulsory acquisition or requisitioning of property not with standing that it deprives any person of his property.

11. The acquisition of property is a well recognised concept under the law. Section 16 of the Land Acquisition Act provides that upon acquisition the property vests absolutely in the Government free from all encumbrances. The title of the erstwhile owner in the property extinguished in entirety, the right to remain in possession is also taken away. In respect of property acquired by the State Government the owner becomes incapable to exercise any of the rights as landlord. He cannot recover rent of the premises nor can he seek eviction of the tenant on any ground.

12. In the words of Bhagwati, J.

Acquisition means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be, The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing to the former. Vide Observations of Mukherjee, J. in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, . The concept of acquisition has an air of permanence and finality in that there is transference of the title of the original holder to the acquiring authority.

(Vide : H.D. Vora v. State of Maharashtra (1984) 2 SCO 337 at p. 341. Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others, .

13. Under the scheme of the U.P. Act, 1972 even though Section 21(1)(a) is not available to the Petitioners-landlords where the tenancy is of the State Government they remain competent nonetheless to seek eviction on one or more of the grounds specified in Section 20. In case the building is shown to be in a dilapidated condition, the landlord may u/s 21(1)(b) seek eviction even where the tenant is the State Government. The landlord remains entitled to rent throughout. The proviso to Section 21(8) enables the landlord also to seek enhancement of rent. On the mere basis, therefore, that for so long as the tenancy of the State Government local authority or a public sector Corporation or a recognised Educational Institution, as the case may be, subsists the ordinary right of the landlord u/s 21(1)(a) is eclipsed, cannot be construed as substantive deprivation of his property so as to amount to acquisition. The regulation of the right of the landlord to seek eviction in such a case is not deprivation of his right to property and moreover, this is covered by authority of law, namely, the U.P. Act, 1972.

14. So far as the contention No. (ii) is concerned it has only to be stated to be rejected. The Act, 1972 is not even remotely concerned with agricultural reform there is no acquisition of property as explained above nor is this a case of taking over of land within the ceiling limit. The case in Ajit Singh Vs. State of Punjab and Another, cited for the Petitioners, arose from proceedings under the East Punjab Holdings (Consolidation and Prevention of Fragmentation Act, 1948. The Scheme framed under the Act provided for acquiring small bits of and from various land holders for use thereof as common land of the village. The question arose whether the land holder holding land within ceiling limit and cultivating it

personally, must be paid compensation while acquiring land from him under consolidation scheme. It was held that if the State had in substance acquired all the rights in the land for its own purposes even if the title remained with the owner, it could not be said that it was not acquisition within the second proviso to Article 31-A. That can have little relevance for purpose of the instant case which does not involve acquisition nor is there the ceiling limit. The argument of the learned Counsel in this behalf, is in our view, entirely misdirected.

15. Learned Counsel laid stress upon contending that Section 21(8) amounts to imposing prohibition against the Petitioners-landlords and is on this account arbitrary. The Act has for its object to regulate in the interest of the general public the letting and rent of, and the eviction of tenants from certain classes of buildings situate in urban areas. Article 14 forbids class legislation. It does not forbid classification for purposes of implementing the right of equality guaranteed by it. The landlords in respect of buildings held under tenancy by the State Government, the local authority, the public sector Corporation or a recognised educational Institution, as the case may be, constitute a distinct class. The restraint imposed against the eviction in the manner provided in Section 21(1)(a) is founded on the legislative policy that there is public need sub-served with the occupation of these buildings by this class of tenants and if evicted, an alternative suitable accommodation for the purposes of occupation by this class as tenants may not be easily available. There is. It would appear, the consideration of the larger interest of the General public The landlord might have the bonafide need for occupation by himself or other members of the family for residential or commercial purpose but in the legislative opinion such need must be subordinated to the requirement of the specified class of tenant which rests on public interest. Indeed, the proviso to Section 21(1) requires the balance of comparative hardship in a case u/s 21(9)(a) as between the landlord and a tenant. In case the tenancy is in the hands of the State Government or other authorities enumerated in Sub-section (8) the legislature dispenses with this comparison on case to case basis, it proceeds instead on general assumption which the legislature in its wisdom is entitled to make, namely, that in such cases the balance of hardship would lie in favour of the State Government or the other specified authorities in their capacity as tenants. The restraint imposed, however, as discussed above, is not absolute. In case there is abuse of the tenancy right, it remains open to the landlord to seek eviction by invoking Section 20. The enhancement of rent is also provided for. If the building is or has fallen vacant or is about to fall vacant, the landlord may apply u/s 16(1)(b) for release thereof in his favour including on ground of bonafide requirement for occupation by himself or any member of his family.

16. Learned Counsel submits that the impugned provision contained in Section 21(8) is not mere regulation but that instead it amounts to prohibition and hence it goes beyond the preamble and is rendered liable to be struck down. Apart from the fact that the Preamble does not control or govern the contents of the enactment, it is difficult, to agree that the provision, is in the context not merely

regulation of the eviction of tenant from certain classes of buildings. The distinction between regulation and prohibition is explained by the Supreme Court in *State of U.P. and Others Vs. Hindustan Aluminium Corpn. and Others*, , pointing out that regulation permits the freedom or the facility, which is required to be regulated in the interest of all concerned, whereas the prohibition obstructs or shuts off or denies it to those to whom it is applied. In that case the order issued by the State Government u/s 22-B of the Electricity Act, 1910 imposed a cut of fifty per cent in the monthly consumption of electricity. It was held that this was not a total prohibition of consumption of energy but only a step in the direction of regulating consumption of energy as far as it did. Applying this test and keeping in view the other rights which the Petitioners-landlord continue to enjoy in respect of such property, it may not be said that there is prohibition and not a mere regulation brought about in the interest of all concerned.

17. It may be recalled in this connection that the Acts providing for special procedure applicable to the States and the local authority have been held to be valid. The decision in *Baburao Shantaram More Vs. The Bombay Housing Board and Another*, upheld the exemption of premises belonging to the Government or local authority from the provisions of the Bombay Rent Hotel and Lodging House Rates Control Act, 1947. In *The Collector of Malabar, Kozhikode and Another Vs. Erimmal Ebrahim Hajee*, the provision for special mode of recovery for income tax was upheld. *Manna Lal and Another Vs. Collector of Jhalawar and Others*, upheld the provision of Rajasthan Public Demands Recovery Act, 1952 for recovery of dues to a Nav Rattanmal and Others Vs. The State of Rajasthan, a special period of limitation for the Government was sustained. In *Lachhman Das on Behalf of Firm Tilak Ram Ram Bux Vs. State of Punjab and Others*, it was held that the dues of the Government of a State are the dues of the entire people of State. This being the position the law giving special facility of the recovery of such dues could not be said to offend Article 14 of the Constitution. Government even as a banker could legitimately be put in a separate class. In *Builders Corporation v. Union of India* AIR 1963 SC 1061 it was held that the basic justification for the claim of priority of the State debts rests on the well recognised principle that the State is entitled to raise money by taxation, because unless adequate revenue is received by the State, it would not be able to function as a Sovereign, the State should be able to discharge its primary governmental functions and in order to be able to discharge such functions efficiently, it must be in possession of necessary funds, and this consideration emphasises the necessity and the wisdom of conceding to the State the right to claim priority in respect of its tax dues.

18. Reference may also be made to *Magan Lal Chhaganlal (P.) Ltd. v. Municipal Corporation of Greater Bombay etc.* (1974) 2 SCC 402 , in which the Constitution Bench of seven Judges of the Supreme Court upheld the validity of various provisions of the Bombay Municipal Corporation Act, 1888 which provided a different and a summary procedure for eviction from municipal premises. The majority over-ruled the earlier decision in *Northern India Caterers Private Ltd.*

and Another Vs. State of Punjab and Another, . The Bombay Municipal Corporation Act provided a different procedure and forum for recovering possession of the premises governed by it and the reasons which weighed with the Constitution Bench for upholding the validity of identical provisions of the Bombay Municipal Corporation Act were applied mutatis mutandis to the U.P. Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 by the Supreme Court in State of Uttar Pradesh Vs. Bhupat and Others, --See also Jai Datt Vs. State of Uttar Pradesh and Others, .

19. Sri Swaraj Prakash the learned Counsel drew our attention to Motor General Traders and Another Vs. State of Andhra Pradesh and Others, . In that case, the view taken was that though there may be some justification to exempt new buildings which are 5, 7 or 10 years old from the purview of the Rent Control Act, in order to provide an incentive to builders of new buildings, there cannot be any justification to allow buildings which were constructed more than ten years ago to remain outside the scope of the Act. The classification of buildings into two classes on that basis, did not bear any relationship to the object, since the buildings which are exempted have already come into existence and their owners have realised a major part of their investment. The continuance of that provision enabling exemption for indefinite period implies the creation of a privileged class of landlords without any rational basis as the incentive to build. From this decision, it may not be inferred that placing of a restraint against the landlords in the matter of seeking eviction as in the present in a limited and qualified form involves hostile discrimination or arbitrariness for that matter. Their Lordships cited with approval the decision in Tin Supply Co. Chandigarh v. Central Government (1984) 1 SCC 306 in which the provision in the Rent Control Act, authorising the Central Government to issue notification exempting from the Act newly constructed buildings for a limited period was held to be valid and as not suffering from excessive delegation of legislative power.

20. Reliance was placed then on the following observations of the Supreme Court in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., :

It is difficult to accept the submission that executive action which results in denial of equal protection of law or equality before law cannot be judicially reviewed nor can it be struck down on the ground of arbitrariness as being violative of Article 14. Conceding for the present purpose that legislative action follows a legislative policy and the legislative policy is not judicial reviewable, but while giving concrete shape to the legislative policy in the form of a Statute, if the law violates any of the fundamental rights including Article 14, the same is void to the extent as provided in Article 13. If the law is void being in violation of any of the fundamental rights set out in part III of the Constitution, it cannot be shielded on the ground that it enacts a legislative policy. Wisdom of the legislative policy may not be open to judicial review but when the wisdom takes the concrete form of law, the same must stand the test of being in the with the fundamental rights and if it trenches upon any of the fundamental rights, it is

void as ordained by Article 13.

21. It is now taken to be well settled that clarification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others, who are left out, but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled namely, (a) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped from others and, (b) that differentia must have a rational relation to the object sought to be achieved by the Act. *D.S. Nakara and Others Vs. Union of India (UOI)*, , *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, .

22. In capacity as tenants the State Government, a local authority, a public sector corporation, or a recognised educational institution form a distinct class-the characteristic in common being that those are designed to sub-serve larger public need. The primary role assigned to them in a welfare State is to promote general public good. This intelligible differentia that places the landlord in relation to this class of tenants in a different category has a close nexus to the object behind the legislation namely, to regulate: in the interest of the general public, the letting and eviction of tenants. The decisive factor before us is not the bare legislative policy but the consideration that the impugned provision contained in Section 21(8) enacted to implement the legislative intent bears scrutiny and on judicial review it meets the well recognised twin test. This may not, therefore, be classed as arbitrary or such as in contravention of Article 14 of the Constitution.

23. Having regard to the discussion made in the above, we are clearly of opinion that the provision contained in Section 21(8) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is not ultra vires the Constitution.

24. The papers may now be laid together with this opinion before the learned Single Judge.

K.C. Agarwal, J.

25. This writ petition has been preferred by Bali Karan Lal and others against the judgment of the Additional Distti Judge, Basti, allowing the appeal of the State of U.P. preferred against the judgment of the Prescribed Authority.

26. It appears that the Petitioners who are the landlords of the building in dispute situated within the municipal limits. The building was taken on lease by the State of U.P. (Fisheries Department) on rent. The Petitioners filed an application u/s 21(1)(a) of U.P. Act No. XIII of 1972 against Respondents 2 to 4 seeking their eviction on the ground of personal requirement for themselves and by the members of their family. The application was contested by the Respondents. The Prescribed Authority allowed the application on May 5, 1979. Respondents 2 to 4 went up in appeal u/s 22 to the District Judge, which was

allowed on 7th December, 1979 on the "ground that in view of Sub-section (8) of Section 21, no order of eviction u/s 21(1)(a) can be made. Against this order, the present writ petition has been preferred.

27. Since in the writ petition, the question raised, was of general importance, the matter was referred by me to a larger bench.

28. Answering the question referred, the Division Bench held on November 27, 1984 that the provision contained in Section 21(1)(a) of the Act is not ultra vires the Constitution. After the above opinion, this case was listed before me for hearing.

29. Consequent upon the aforesaid opinion of the Division Bench, the irresistible result which this writ petition must meet is the dismissal. The District Judge was right in holding that the application filed by the Petitioners u/s 21(1)(a) was barred by Section 21(8).

30. The writ petition is, accordingly, dismissed. No order as to costs.