
(1992) 04 MAD CK 0007
In the Madras High Court
Case No : Writ Petition No. 8366 of 1983

B.N. Sudhakaran

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 01-04-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 4, 5

Citation : (1992) 04 MAD CK 0007

Hon'ble Judges : Venkataswami, J; Abdul Hadi, J

Bench : Division Bench

Advocate : M. Vaidyanathan, for the Appellant; P. Sathasivam, for the Respondent

Judgement

Venkataswami, J.—This writ petition under Art. 226 of the Constitution of India has been filed praying the Court to issue a writ of

declaration declaring Ss. 2(g) 4, 5 and 18 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (Act 1 of 1976)

(hereinafter referred to as "the Act") ultra vires Art. S.14 and 19 (1) (g) of the Constitution of India. Even at the outset, we may mention that no

argument was advanced by the Learned Counsel for the petitioner on merits. Only arguments concerning vires of the sections mentioned above

alone were addressed.

2. Brief facts are the following:-Mannadi Police Line Quarters is a multi-storeyed complex having number of quarters for police personnel like

Inspectors, Sub-Inspectors, Head Constables and Constables. On the building facing the Broadway road, 44 shops have been constructed in

ground floor with a view to lease out to private business people for rent. The

revenue from these shops was to be utilised for construction of additional quarters for police personnel. Those shops have been let out to various persons by advertisement and public auction during 1976 and 1977. The shops were leased out by Public Works Department. The petitioner was a successful bidder at one such auction for a period of three years. On the expiry of the lease, the petitioner and other persons were asked to vacate the premises. It appears, the Government decided to evict all the lessees for converting the shops into quarters after the expiry of the lease. In cases where lessees resisted the eviction, the concerned Department invoked the provisions of the Act for speedy eviction of the occupants in the Government building. It is under these circumstances, the petitioner has filed the above writ petition challenging the vires of the provisions of the Act as mentioned above.

3. Mr. M. Vaidyanathan, Learned Counsel appearing for the petitioner, submitted that no guidelines to determine the leases are provided in the Act which may lead to arbitrary determination for any reason whatsoever. According to the Learned Counsel, the power vested with the concerned Department for speedy eviction was arbitrary. Ss. 4 and 5 of the Act provide for summary eviction, and no safeguards have been provided for the occupants against speedy eviction as in the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. A distinction made between corporate authority and private individuals when they are in occupation of the same public premises is unsustainable. The classification made, as mentioned above, has to nexus with the object to be achieved. For these reasons, according to the Learned Counsel, the provisions of the impugned Sections of the Act must be held ultra vires. In support of his contention, he placed reliance on the following decisions:- Kathi Raning Rawat Vs. The State of Saurashtra, Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, , and Kangshari Haldar and Another Vs.

The State of West Bengal,

4. Mr. P. Sathasivam, the learned Special Government Pleader (Writs), submitted that all the contentions are without force and the Supreme Court in State of Gujarat Vs. Patel Bava Karsan and Others, has rejected similar contentions and, therefore, there is no case for the petitioner.

According to the learned Government Pleader, the writ petition has been filed to

prolong the litigation and to stick on in the property as long as possible. He also submitted that classification made between corporate authority and private individuals is reasonable one and, in any event, that contention cannot be raised in the present case as the building belongs to the Government and not to any corporate authority. He also placed reliance on the number of other judgments of the Supreme Court to substantiate and support his contention that the sections impugned are *intra vires*, and the contentions to the contrary are wholly unsustainable.

5. Now let us consider the rival submissions.

6. The facts are not in dispute. We shall refer to the decisions cited by the Learned Counsel on both sides and find out the ratios laid down by the Supreme Court in those cases.

7. In *Kathi Raning Rawat Vs. The State of Saurashtra*, the following passage was relied on by the Learned Counsel for the petitioner:-

While Art. 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled namely (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are (sic) together from other left out of the group and (2) that the differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act.

8. In *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, the passage relied on reads as follows: -

It is well-settled that in its application to legal proceedings Article 14 assures to everyone the same rules of evidence and modes of procedure; in other words, the same rule must exist for all in similar circumstances. It is also well settled that this principle does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances, in the same position. The State can by classification determine who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject, but the classification permissible must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be

attained and cannot be made arbitrarily and without any substantial basis.

9. In *Kangshari Haldar and Another Vs. The State of West Bengal*, the passage relied on reads as follows:-

In considering the validity of the impugned statute on the ground that it violates Art. 14 it would first be necessary to ascertain the policy underlying

the statute and the object intended to be achieved by it. In this process the preamble to the Act and its material provisions can and must be

considered. Having thus ascertained the policy and the object of the Act the court should apply the dual test in examining its validity. Is the

classification rational and based on intelligible differentia:- and has the basis of differentiation any rational nexus with its avowed policy and object?

If both these, tests are satisfied the statute must be held to be valid, and in such a case the consideration as to whether the same result could not

have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry. If either of the two tests is not

satisfied the statute must be struck down as violative of Art. 14.

10. In *Pandia Nadar and Others Vs. The State of Tamil Nadu*, the Supreme Court, while upholding the validity of the Tamil Nadu Land

Encroachment Act, 1905, repelled a contention that two procedures available to the Corporation and the State Government, one by way of a suit

under the ordinary law and the other under either of the two Acts, which was harsher and more onerous than the procedure under the ordinary

law, they are hit by Article 14 of the Constitution, in the absence of any guidelines as to which procedure must be adopted. The Supreme Court

while repelling the above contention, extensively quoted the passages from *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater*

Bombay and Others, In *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, the Supreme Court considered

the constitutionality of Ss. 105(A) & 105 (B) of the Bombay Government Premises (Eviction) Act, 1965. In that case, the Supreme Court

considered all the cases upto that case and expressly overruled an earlier judgment in *Northern India Caterers Private Ltd. and Another Vs. State*

of Punjab and Another, and held that the Legislature has the power of making special laws to attain particular ends, and for that purpose, it may

select or classify persons and things upon which such laws are to operate. In

paragraph 16 of that judgment, the Supreme Court has observed as follows:-

The statute itself in the two classes of cases before us clearly lays down the purpose behind them. That is that premises belonging to the corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorised persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the statute one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the ordinary civil court. Even normally one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be prolonged one to resort to the latter. Administrative officers, no less than the courts do not function in a vacuum. It would be extremely unreal to hold that the administrative officer would in taking proceedings for eviction of unauthorised occupants of Government property or Municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary civil court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. This is not one of those cases where discrimination is writ large on the face of the statute. Discrimination may be possible but is very improbable. And if there is discrimination in actual practice this Court is not powerless. Furthermore, the fact that the legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants of Government and Corporation property and provided a special speedy procedure therefor is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We, therefore, find ourselves unable to agree with the majority in the Northern India Caterers case Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another,

11. In State of Gujarat Vs. Patel Bava Karsan and Others, the Supreme Court while considering the constitutional validity of S. 233 of the Gujarat

Municipalities Act, 1964, held as follows:-

In a later decision in Ahmedabad Municipal Corporation v. Ramanlal Govindaram this Court while following the case of Chhaganlal Maganlal

upheld a provision of the Bombay Provincial Municipal Corporation (Gujarat Amendment) Act, 1963, which was in pari materia with S. 233 of

the Gujarat Act. Mr. M.K. Ramamurthi appearing for the respondent submitted the Ahmedabad Municipality Corporation's case, was not

correctly decided because though in Chhaganlal Maganlal's case there was a right to appeal to a civil court and the right to take evidence was

given by the statute concerned, in the former, the relevant statute contained no such provision. This contention does not appear to be well-founded

is because once property belonging to the Government or semi government bodies is held to fall within a particular class and therefore a reasonable

classification. whether a civil remedy is given or not would not be violative of Article 14 of the Constitution on the broad principle laid down in

Chaganlal Maganlal's case.

It was also argued that the provisions of the Gujarat Act were violative of Article 19 of the Constitution of India. This contention was expressly

considered and negated by this Court Ahmedabad Municipal Corporation v. Ramanlal Govindaram with which we find ourselves in complete

agreement. We, therefore, allow these appeals, set aside the judgment of the High Court and affirm the order of the Chief Officer dated 9th

March, 1966.

12. All the other decisions cited by the learned Government Pleader are not directly on point, but relate to priority in the matter of recovery of

debts due to the Government. As the decisions extracted above are directly on point, it is not necessary to refer to the other cases.

13. From the ratios laid down by the Supreme Court in Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others,

, Pandia Nadar and Others Vs. The State of Tamil Nadu, and State of Gujarat Vs. Patel Bava Karsan and Others, , it is clear that none of the

contentions raised by the Learned Counsel for the petitioner can be accepted.

14. All the passages relied on by the Learned Counsel for the petitioner in the

Supreme Court judgments relate to laying down of general principles on the scope and extent of Article 14 of the Constitution of India. On the other hand, the decisions cited by the learned Special Government Pleader are directly on point.

15. Bearing in mind the principles laid down by the Supreme Court in the various decisions cited above, we hold that the contention that the impugned provisions suffer from want of guidelines cannot be accepted as the Objects and Reasons provide sufficient guidance. As held by the Supreme Court, the purpose behind the Act is that the premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorised persons occupying them. The Objects and Reasons inter alia state that the machinery provided under the Tamil Nadu Act 21 of 1960 does not enable the Government to evict unauthorised occupants from public premises effectively. Speedy and effective machinery for eviction of unauthorised occupation of public premises belonging to the Central Government or under the Control of the State was the object to be achieved by the Act.

16. The next contention that the power vested with the concerned Department for speedy eviction was arbitrary, cannot also be accepted as similar contention was rejected by the Supreme Court stating that the provisions of the Act cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. The Supreme Court further observed in considering whether the officers would be discriminating between one set of persons and another, one has got to take into account normal human behaviour and not behaviour which is abnormal. Further, the Supreme Court also observed that if there is discrimination in actual practice, the Court is not powerless. It may be noted that if a person is aggrieved by the order of eviction under the Act, an appeal is provided to the District Judge under S. 9 of the Act against such order. Therefore, that contention also fails. As regards the distinction made between the corporate authority and private individual, similar contention also has been rejected by the Supreme Court, holding that the classification was reasonable. Therefore, none of the contentions raised by the Learned Counsel for the petitioner is sustainable. Consequently, the writ petition fails and the same is dismissed with costs. Counsel fee

Rs.500/-.