
(1993) 09 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1453 of 1991

Chintamani Chandra Mohan Agarwal and Others

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 17-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 245

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 3(2)

Citation : (1993) ILR (MP) 466 : (1994) 1 MPJR 293 : (1994) 39 MPLJ 597 :
(1994) MPLJ 597

Hon'ble Judges : R.P. Awasthy, J; Gulab C. Gupta, J

Bench : Division Bench

Advocate : Petitioner Nos. 2, 8, 11, 28 and 88 in person, for the Appellant;
None, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.

The petitioners are tenants of respondent No. 2, a Wakf registered under the Wakf Act, 1954 and feel aggrieved by the Notification dated 7-9-1989 published in Madhya Pradesh Rajpatra of the said date, issued by the respondent No. 1 u/s 3(2) of the M. P. Accommodation Control Act, 1961 (hereinafter referred to as the Act) ; and challenge the constitutional validity thereof by filing this petition under Article 226 of the Constitution.

We must at the very outset regret the non-availability of any help in deciding this writ petition by the respondents. The petition was admitted as long back as on 1-8-1991 and thereafter the respondents were served notices. They were represented by Addl. Advocate General. The respondents have neither filed any return nor have appeared on the last date of hearing when the matter was fixed for final hearing. This Court was informed that since the Advocates of the High Court are boycotting this Court, the office of the Advocate General is also not able to attend the hearing. This court knows no reason why the office of the

Advocate General should boycott the Court. The Office of the Advocate General has a status of its own and is under an obligation to discharge its own responsibilities also and since this court finds no valid reason for the absence and since the petitioners were present in this Court, not only on 6-9-1993 but also on 13-9-1993, the Court has proceeded to hear them and decide the matter in accordance with law.

The petitioners are in occupation of shops forming a part of Jama Masjid building situate at Chowk, Bhopal and owned by the respondent No. 2, a Wakf. They claimed to be old tenants and submit that earlier they were governed by the provisions of the Act and had the protection of the said law. They specifically submit that the protection of the Act extended to unjustified eviction from the tenanted shops and also exorbitant increase in the rent. The petitioners further submit that they have always been ready to pay the rent at the increased rate but the increased rent demanded from them is generally from 100% to 300%. In some case, the increase has been 20-30 times of the present rent. The details of the increase are contained in Annexure A, filed with the petition. The petitioners further submit that they have been served notices like Annexure A-I demanding increased rent and failing which are threatened with eviction. They submit that the Notification dated 7-9-1989 (Annexure B) not only illegally deprives them of the protection of the act but also subjects them to discriminatory and arbitrary treatment in the hands of respondent No. 2. The notification is, therefore, claimed to be illegal and violative of Article 14 of the Constitution.

Though no return has been filed by the respondents, the respondent No. 2 has filed reply to the application for ad interim writ and has submitted that the notification having been issued in exercise of powers u/s 3(2) of the Act which is constitutionally valid, the petitioners are not entitled to any relief from this Court. Under the circumstances, the constitutional question requiring decision of this Court is whether Section 3(2) of the Act is a constitutionally valid provision and whether the notification Annexure B has been issued in accordance with law.

As regards the constitutional validity of Section 3(2) of the Act, the decision is of the Supreme Court in *State of Madhya Pradesh v. Kanhaiyalal* 1970 M.P.L.J. 973 . In the said case, relying on its earlier decision in *P.J. Irani Vs. The State of Madras*, the Supreme Court held that the provision was constitutionally valid. To the same effect is the decision in *S. Kandaswamy Chettiar Vs. State of Tamil Nadu and Another*, where the constitutional validity of a similar provision in *Tamil Nadu Buildings (Lease and Rent Control) Act, 1960* was challenged and the challenge was repelled relying on the decision in *Kanhaiyalal's* case. Under the circumstances, there should be no difficulty in upholding the constitutional validity of Section 3(2) of the Act.

The aforesaid however, does not mean that uncontrolled or unguided discretion has been vested in the State Government to grant exemption. The State Government while exercising this power has to act according to the provisions of Article 14 of the Constitution. Indeed the obligation to act reasonably is always

implicit in such cases. Though it is not necessary to quote any law in this regard, some of the latest decisions of this Court pointing out to the obligation of the statutory authority to be just and fair and not arbitrary and fanciful, may be helpful. Reference may, therefore, be made to *Kailash Chandra v. National Textile Corporation*, Indore 1991 M.P.L.J. 290; *Parenteral Drugs (India) Pvt. Ltd. v. State of Madhya Pradesh* 1991 MPLJ 386 and *Devendrapal Singh v. State of Madhya Pradesh* 1992 MPLJ 638. These decisions which are based on several Supreme Court decisions establish without doubt that the executive authority exercising statutory power is required to comply with the provisions of Article 14 which must be deemed to be implicit in the exercise of that power. Under the circumstances, the question requiring consideration is whether the notification Annexure-B is void being violative of Article 14 of the Constitution.

The submission of the petitioners in this behalf is that the notification deprives them benefit of protection of the M. P. Accommodation Control Act, 1961 without specifying any reason or necessity for the same and is, therefore, arbitrary. It is also claimed to be arbitrary because it violates the principles of natural justice. The specific claim is that since the petitioners were enjoying the benefit of the protection of the Act, the said protection could not be withdrawn without giving them the opportunity of hearing. It is unfortunate that no return has been filed by the respondents and therefore, nothing whatsoever has been placed for consideration of this Court to ascertain reasons for issuing the notification. The reply to the ad interim application filed by the respondent No. 2 indicates that the respondent No. 2 Wakf was registered as such much before 1961. Apparently, therefore, there should be some reason for the respondent State to exempt such a Wakf from the operation of all provisions of the Act. In this connection, it must be observed that issuance of notification under this provision is not an empty formality. Such a power is to be exercised in rare cases and for very good reasons. Section 3(1) of the Act exempts the property of the Government and local bodies from the operation of the Act and takes care of public interest. Sub-section (2) is applied only in cases of educational, religious and charitable institutions or to nursing homes or maternity homes. This provision has been interpreted by the Supreme Court in *Kanhaiyalal's* case wherein it was clarified that the rule of thumb cannot be the basis for granting the exemption by the State. It was also clarified that any institution covered by Section 3(2) has to allege why it has become necessary to apply for exemption and thereafter the State Government was required to apply its mind to those facts and circumstances to ascertain whether the claim for exemption was germane to the policy of the Act. The following passage from the judgment being of importance is reproduced for ready reference :-

"4. Before we can hold in favour of the State Government, we must be satisfied that the ground of exemption was germane to the policy of the Act. In this case there is no affidavit by any officer who had anything to do with the order granting exemption. The returns filed on behalf of the State Government do not throw any light on this question. It would appear that in granting the exemption

the State applied merely a rule of thumb and issued the notification on the basis of the assertion by the Trust that the entire rental income from the property was being applied to meet the expenses of the Trust. Such a statement only allows an institution to apply for exemption u/s 3(2). By itself it is not enough. Any institution covered by Section 3(2) had to allege why it had become necessary for it to apply for exemption. It was not the case of the Trust that they wanted to evict the tenants because they wanted the whole of the accommodation itself nor was it their plea that the income according to them was very low compared to prevailing rates of rent and that it was wholly inadequate for meeting the expenses of the Trust. If grounds like these or other relevant grounds had been alleged it would have been open to the State Government to consider the same and pass an order thereon. In our view, the State Government did not apply its mind which it was required to do under the Act before issuing a notification and the return does not disclose any ground which was germane to the purposes of the Act to support the claim for exemption."

This Court has, subsequently in *Ishwarlal and Anr. v. The Madarsa Taiyabia Committee* 1981 M. P. R C J 138, applied the aforesaid test and observed as under :-

"the mere fact that the building is owned by an institution, religious or charitable, or by any nursing or maternity home and that the whole of the income derived from the building is utilised for that institution or nursing home or maternity home would not enable the State Government to issue a notification granting an exemption in respect of a building. As pointed out by the Supreme Court, there are mere conditions of eligibility which enable the institution concerned to apply for exemption but something more has to be proved or shown before the State Government for grant of exemption and any institution covered by Section 3(2) had to allege why it has become necessary for it to apply for exemption. The Supreme Court further points out the circumstances which will enable the institution to the grant of an exemption. These circumstances are that the institution wanted to evict the tenant because it wanted the accommodation itself or that the income from the accommodation was very low compared to prevailing rates of rent and it was wholly inadequate for meeting the expenses of the institution. Grounds like these can enable an institution for grant of exemption u/s 3(2)."

Judging the petitioners' submissions on the basis of aforesaid principles, it must be held that the notification dated 7-9-1989 (Annexure B) is constitutionally invalid. There is nothing whatsoever on record to ascertain why and how the State Government decided to grant the exemption. There is also nothing on record to consider whether the basic conditions necessary for granting exemption are satisfied. Since the effect of the notification is to withdraw the protection from the petitioners and leave them to the mercy of the respondent No. 2, some strong reasons were required to justify exemption. It was also obligatory on the part of the respondent-State to place material on record for consideration of this

Court. Under the circumstances, the impugned notification (Annexure B) in so far as it affects the petitioners and denies the benefit of protection of the Act, must be held to be violative of Article 14 of the Constitution.

In view of the discussion aforesaid, it is not necessary to examine the further submission that the petitioners were entitled to be heard by the respondent - State Government before granting exemption u/s 3(2) of the Act in favour of the respondent No. 2.

The petition succeeds and is allowed by declaring that the notification dated 7-9-1989 (Annexure B) in so far as it exempts the respondent No. 2 from the operation of the Madhya Pradesh Accommodation Control Act, 1961 is constitutionally illegal and void being violative of Article 14 thereof. As a necessary consequence, the petitioners would continue to be governed by the provisions of the Madhya Pradesh Accommodation Control Act, 1961. Considering all facts and circumstances of the case, the parties will bear their own costs of this petition. Security amount, if any, will be refunded.