

(1980) 03 DEL CK 0048

In the Delhi High Court

Case No : Civil Writ Appeal No. 1738 of 1979

G.L. Mirchandani

APPELLANT

Vs

The Life Insurance Corporation and Another

RESPONDENT

Date of Decision : 12-03-1980

Acts Referred:

Citation : (1980) ILR Delhi 329

Hon'ble Judges : V.S. Deshpande, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : V.S. Desai, P.G. Gokhale, J. Lal and Vijay Kishan, for the Appellant;

Judgement

V.S. Deshpande, C.J.

(1) The petitioner is a tenant of respondent No. 1. The jurisdiction of the Estate Officer acting under the Public Premises (Eviction of Unauthorised Occupants), Act, 1971, in issuing the show cause notice to the petitioner, dated 1st March, 1979, is challenged in this writ petition. For the purpose of determining the said jurisdiction a proper construction of the definition of "Public premises" in section 2(e) "of the said Act is necessary. Section 2(e) is as follows :

"(E)"public premises" means and premises belonging to or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes (I) any premises belonging to, or taken on lease by or on behalf of (i) any company as defined in section 3 of the Companies Act, 1956, in which not less than fifty-one per cent, of the paid-up share capital is held by the Central Government; and (ii) any Corporation (not being a company as defined in section 3 of the Companies Act, 1956, or a local authority) , established by or under a Central Act and owned or controlled by the Central Government; and (2) in relation to the Union territory of Delhi (i) any premises belonging to the Municipal Corporation of Delhi or any municipal committee or notified area committee; and (ii) any premises belonging to Delhi Development Authority whether such premises are in the possession of, or leased out by, the said Authority."

(2) Shri V. S. Desai, learned counsel for the petitioner has urged the following contentions as to the construction of this definition of "public premises."

(1) The Act is apparently enacted in exercise of the power of Parliament given by Entry 32 List I of the Seventh Schedule to the Constitution which is as follows: "Property of the Union and the revenue there from, hut as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provide." The expression "property of the Union" cannot include the property of a statutory Corporation, like respondent No. 1, even though it may be entirely financed by the Central Government. The Act cannot thus apply to the property of a statutory Corporation and for that reason the definition of "public premises" in so far as it purports in section 2(2)(1)(ii) to include the premises belonging to a statutory Corporation established by or under a Central Act and under or controlled by the Central Government is unconstitutional. (2) The definition of "public premises" has two parts, sub-section (1) and sub-section (2). It is submitted that . . only the second part of the definition in sub-section (2) applies to the Union Territory of Delhi and since it does not include premises which belong to a statutory Corporation like respondent No. 1 the said Act does not apply to the present premises which are situated in" the Union Territory of Delhi. (3) The relationship between the petitioner and respondent No. 1 is that of tenant and landlord. The Delhi Rent Control Act, 1958 is a complete Code dealing with the eviction of a tenant by a landlord. In section 3 of the said Act an exception is made in favor of the premises belonging to the Government but not in favor of the premises belonging to a statutory Corporation. The exclusive jurisdiction of the Controller under the Delhi Rent Control Act cannot be infringed upon by the Estate Officer acting under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

(3) These contentions have been traversed in the counter-affidavit where reference is also made to the merits of the case as to whether the tenant-petitioner has or has not contravened the terms of the lease and the prohibition contained in the lease of the land held by respondent No. 1 from the Lesser. We have entertained the writ. petition only because of the constitutional and legal contentions urged by the petitioner as set out above. As for the merits of the question, whether on the proper interpretation of the lease between the parties the tenant has been guilty of such contravention of the lease as would entitle the landlord to re-enter, the proper procedure is for the tenant to show cause against the notice issued to him by the landlord and then contest the proceedings for eviction before the Estate Officer with the benefit of a right of appeal to the Additional District Judge. It would not be proper for us to deal with the merits of the question in this writ petition and we have informed the parties that we would not do so. It is in this context that only the legal contentions raised by the learned counsel for the petitioner are dealt with below. Contention (1) :

(4) As for the competence of Parliament in respect of Union Territory"s concerned it is now well settled law that there is no distinction between a Central

List or a State List at all because for the purpose of legislation in respect of Union Territories Parliament has full competence and a case of Parliament not having competence would not arise. It is not necessary for the respondent No. 1 to show that the subject of the legislation in so far as the Union Territory of Delhi is concerned must fall under Entry 32 of List I or any other particular Entry of any particular List. The reason is that any or all of these Entries can be read to give competence to Parliament to legislate on the subject of public premises in the Union Territory of Delhi. This contention is, Therefore, not sustainable. Contention (2):

(5) The definition of "public premises" in section 2(e), though in two parts, is one continuous definition, Sub-sections (1) and (2) have to be read cumulatively and not disjunctively. They are connected by the word "and" and not by the word "or". The only reason why sub-section (2) has been inserted is to add to the definition of sub-section (1) something which would apply only in the Union Territory of Delhi. The reason is obvious. The Central Government and the Delhi Development Authority in Delhi own and possess so many public premises as are not possessed by the Government or the Government Corporations or statutory authorities in any other place of comparable area. It is because of the tremendous concentration of public premises in Delhi that the Municipal Corporation and the Delhi Development Authority were included in the definition of owners of public premises. This being a special reason it is quite understandable why sub-section (2) has been added in respect of the Union Territory of Delhi alone. This does not mean, however, that sub-section (1) does not apply to the Union Territory of Delhi. Delhi is a part of India. What applies to India also applies to Delhi in respect of Central legislation. We are not, Therefore, persuaded to agree with the learned counsel that sub-section (1) of section 2(e) of the Act does not apply to Delhi. Since it applies and clause (ii) of sub-section (1) of section 2(e) includes the premises belonging to a statutory Corporation established by or under a Central Act and owned and controlled by the Central Government and since respondent No. 1 is such a Corporation the definition includes the premises of respondent No. 1, which were let out to the petitioner. Contention (3):

(6) This contention was strongly pressed by the learned counsel for the petitioner. We have two enactments before us. On the one hand, we have the Delhi Rent Control Act, 1958, which is a successor to previous enactments and orders, the object of which is to protect tenants from arbitrary evictions and also to control the amount of rent payable by the tenant. On the other hand, we have the public premises (Eviction of Unauthorised Occupants) Act, 1971. which retrospectively succeeds the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, the object of which is to distinguish public premises from other premises and to enable the owners of public premises to evict unauthorised occupants there from by an expeditious procedure and also to limit the right of appeal from the order of the Estate Officer only to the District Judge. It is well settled by a catena of cases culminating with Maganlal Chhaganlal (P) Ltd. Vs.

Municipal Corporation of Greater Bombay and Others, , that the Government and public authorities stand in a special class and a special procedure can be provided for evicting unauthorised persons from properties belonging to them. Indeed, it was not argued and could not be argued before the seven-Judge Bench in that case that the classification of public premises as different from other premises can be objected to at all on any constitutional or legal ground. What was objected to in that case was that two alternative procedures should not be made available to the owners of public premises without adequate guidelines to show which of the alternative remedies should be adopted in which circumstances. It was held in that case that such guidelines were clearly spelt out from the preamble and the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act and, Therefore, irrespective of the fact that section 15 of the said Act excludes resort to civil courts for the purpose of obtaining eviction of unauthorised occupants, the said Act was not unconstitutional as being contrary to Article 14 of the Constitution.

(7) The situation before us appears to be as follows: On the one hand, the relationship of landlord and tenant in respect of premises except Government premises can be the subject matter of litigation under the Delhi Rent Control Act. On the other hand, the eviction of unauthorised occupants from public premises can be the subject of appropriate proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. To us, the question is not as to which Act prevails over the other or takes away title jurisdiction from the other. On the other hand, we would follow the principles of harmonization laid down by the Supreme Court in *Shri Ram Narain v. The Simla Banking and Industrial Co. Ltd.* (1956) Scr 603 (2). In that case also, where the two statutes concerned were equally applicable to the facts of the case, the Supreme Court cleared its way by slating at page 615 of the report as follows :

" It's ,Therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein."

(8) By the words "overriding effect" is not to be understood an implied repeal. All that we are concerned with is this : Each of these two statutes is available for the initiating such proceedings as is most appropriate to the particular cause of action. For, for instance, the tenant has his own cause of action and he makes an application under a provision of the Delhi Rent Control Act, such as fixation of standard rent, then the Controller will have jurisdiction under the said Act, if section 3 does not exclude the premises from the purview of title Act. It would be no defense for the landlord to urge in such a proceeding before the Controller that the jurisdiction of the Controller is taken away by some other act like the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, in which the definition of "rent" is different from the definition of rent in the Delhi Rent Control Act and the provisions regarding fixation of standard rent are absent. The

reason is simple. The Controller is exercising jurisdiction under the Delhi Rent Control Act. It can never be argued that the jurisdiction given by that statute is taken away by some other statute which does not have the same object in view and which cannot furnish a defense in a proceeding which is under a different statute. Similarly, if the cause of action for eviction of a tenant arises in favor of the landlord who is the owner of a public premises within the meaning of section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act. then the appropriate proceedings can be initiated by such a landlord before an Estate Officer or rather an Estate Officer can file proceedings in respect of such public premises. By the same parity of reasoning, as given above, the tenant cannot plead before the Estate Officer that the jurisdiction of the Estate Officer in respect of his tenancy, is taken away by the reason that the Controller would also have the jurisdiction, if the landlord had chosen to institute the eviction proceedings against the tenant before the Controller. After all, it is the choice of the dominus IIT is to seek the proper forum to vindicate his cause of action. We have not been shown any principle or authority to support the argument that jurisdiction which admittedly exists under a particular enactment is to be deemed to be taken away or cut down merely because some other enactment also would have applied if the dominus IIT is has chosen to institute a proceeding in the other forum. We are of the view Therefore, that no question of conflict between such two enactments can arise, inasmuch as a particular proceeding can be instituted under one of the two acts and the jurisdiction has to be considered on the allegations made by the person who institutes the proceeding under any of the two Acts. The defense cannot allege lack of jurisdiction on the ground that the other Act is also available for the initiation of such proceeding. Such a question cannot arise unless and until the person initiating the proceedings chooses to go to the other forum.

(9) It may be also mentioned here that the question of conflict between an order issued under a Central Act and another Central statute had also been brought up before the Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, . There also the conflict was avoided by the court by observing that it is not a question of one Act repealing the other, but simply by-passing the other law. Such a by-passing, according to the Court's observation at page 392, did not amount to repeal or abrogation of the other Act. We are of the view that it is this kind of harmonious construction which is to be attempted between the two Acts before us.

(10) As pointed out above, the objects and policies of the two statutes are quite different from each other. The Delhi Rent Control Act respects the distinction between public premises and other premises which is the basis of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Section 3 excludes Government premises from the purview of the Delhi Rent Control Act. All that has happened is that the definition of public premises under the Public Premises (Eviction of Unauthorised Occupants) Act is wider than the definition of Government premises under the Delhi Rent Control Act, 1978. But the policy of

the legislature is consistent. It is to exclude public premises from the restriction imposed on eviction and on enhancement of rent by the rent control legislation and to take away public premises from such restrictions and to enable the owners of public premises not only to evict the unauthorised occupants expeditiously and to limit the right of appeal, but also to enable the owners of public premises to charge damages from persons in unauthorised occupation. This clearly distinguishes the Public Premises (Eviction of Unauthorised Occupants) Act from the Delhi Rent Control Act. This is an additional reason for the conclusion that if a proceeding is pending under the Public Premises (Eviction of Unauthorised Occupants) Act extraneous considerations based upon the Delhi Rent Control Act cannot be introduced in arguing that the jurisdiction given by the former Act is somehow taken away by the latter.

(11) For these reasons the three contentions urged before us fail. As for the merits of the question are concerned as to whether a cause of action has arisen for Respondent No. 1 to terminate the lease of the petitioner and thereby render the petitioner as unauthorised occupant within the definition of "unauthorised occupant" in section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 the proper forum is the Estate Officer and the appellate authority is the District Judge. It would not be right for us to consider that question because that would be depriving the petitioner opportunity of adducing the necessary evidence and also the benefit of an appeal under the Act. After all, Article 226 of the Constitution is available to the petitioner after final orders under the Act are passed. We are, Therefore, not making any observation as to the merits of the case. The writ petition is dismissed on the legal grounds alone without any order as to costs.

(12) Mr. Gokhale for the petitioner, orally prayed for grant of a certificate of fitness for appeal to the Supreme Court under Article 133 of the Constitution. Since the conclusion arrived at above is based on the harmonious interpretation of the two statutes, following principles laid down by the Supreme Court, and since no decision has been cited for the petitioner in support of the argument that the jurisdiction under one Act can be taken away by showing that such a proceeding can also be entertained under some other Act, we do not think that a substantial question of law of general importance which needs to be decided by the Supreme Court has arisen in this case. As for the argument regarding legislative competence of the Parliament to legislate as to the property of statutory Corporation, it is not necessary for us to rely upon Entry 32 of List I, in respect of the Union Territory of Delhi. The argument about the legislative competence of the Parliament may be open to a petitioner who can show that legislative competence is restricted to State legislature alone. Since there is no difference between the State legislature and Parliament in respect of Union Territories that contention cannot furnish a good ground for the grant of a certificate. The oral application for certificate is dismissed.