(2015) 09 RAJ CK 0087

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1474/99

Kamal Kumar and Others — APPELLANT

Vs

The State of Rajasthan and Others — RESPONDENT

Date of Decision : 24-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14
Transfer of Property Act, 1882 — Section 106, 111

Citation : (2015) 09 RAJ CK 0087

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : Manish Shishodia, for the Appellant; A.K. Jain and Sanjay Nahar, for the Respondent

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.—By way of this writ petition, the petitioner has questioned the legality of the notification dated 12.11.98 issued by the State Government in exercise of the power conferred under sub-section (3) of Section 1 of Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (for short "the Act"), granting exemption to the premises owned by the respondent-Shri Godi Parshwanath Shwetambar Jain Mandir Bawan Deri Trust, Banswara (''the Trust'') from the provisions of the Act. Further, the petitioners have sought declaration that they are entitled to protection of the Act and if any proceedings for eviction are instituted pending decision of the petition, the same may be quashed.

2. The relevant facts are that a residential premises consisting of three floors i.e. ground floor, first floor and second floor was taken on rent by the petitioners'' father late Shri Sukhlal in the year 1969 from Shri Bahadur Singh Kothari. It is averred that later it was disclosed that Shri Bhagwati Lal is also an owner of the property and thus, the petitioners through their father Shri Sukhlal became tenants of the premises in question with Shri Bahadur Singh and Bhagwatilal as landlords. In the year 1980, Shri Bahadur Singh and Bhagwatilal represented to

the petitioners that they may be given temporary possession of the first floor and second floor as there is some marriage in their family and for that purpose the premises is required for a short period. Accordingly, the possession of the premises was handed over by the petitioners to the landlords. However, after solemnization of marriage, the possession of the premises was not handed over back to the petitioners and therefore, the petitioners filed a suit for recovery of possession, which was decreed by the civil court of competent jurisdiction. During the pendency of the suit, the landlords claimed that the property has been sold by them to Jain Swetambar Oswal Samaj and therefore, the suit may be dismissed against them. However, the application preferred by the landlords was not accepted by the court and it was ordered that the transferee would be bound as per the doctrine of lis pendens and ultimately, the suit was decreed vide judgment and decree dated 22.8.94. The appeal preferred by the landlords Bahadur Singh, Bhagwatilal and Shri Karan Singh as President of Jain Swetambar Oswal Samaj was dismissed by the appellate court vide judgment and decree dated 8.2.96. The second appeal was also dismissed by this court vide judgment and decree dated 22.3.96 and ultimately, in execution of the decree, the possession of the premises was handed over to the petitioners. Later, Jain Swetambar Oswal Samaj filed a suit seeking eviction of the petitioners from the premises on the ground of bona fide necessity for making arrangement for the stay of Jain monks. The suit was contested by the petitioners by filing a written statement thereto. By way of amendment, the grounds of default in payment of rent and the petitioners-tenants acquiring alternate accommodation were also added. Later, the ground regarding bona fide necessity was not pressed and the decree was sought on issue No. 3 regarding the petitioners acquiring the alternate accommodation. The suit was decreed by the trial court vide judgment and decree dated 2.5.98, however, an appeal preferred by the petitioners is alleged to be pending before the District Judge, Banswara.

3. At this stage, Shri Godi Parswanath Shewatambar Bawan Devi Trust Banswara, claiming itself to be owner of the property, terminated the tenancy of the petitioners invoking provisions of Section 106 /111 of the Transfer of Property Act, 1882 (for short "the Act of 1882"), vide a notice served on 5.3.99, disclosing therein that the said trust stands exempted from the applicability of the provisions of the Act pursuant to notification dated 12.11.98 issued by the State Government.

4. The notice issued as aforesaid was responded to by the petitioners taking a stand that they were tenants of Jain Swetambar Oswal Samaj and in various courts, the litigation had continued for all these years between them and the Jain Swetambar Oswal Samaj and it is not clear as to how the respondent-trust has acquired the ownership of the premises in question. The petitioners called upon the trust to disclose and give them documents transferring the ownership of the aforesaid property as also the documents relating to alleged registration of the trust and trust deed. The petitioners also asked for a copy of the notification issued by the State Government as aforesaid.

5. The respondent-trust in response to the reply to the notice given by the petitioners as aforesaid, claimed that there was no necessity of any notice for attornment and it is not necessary for them to give any proof either of ownership or copy of Trust deed or any other document.

6. It is submitted that the respondent-trust made an application to the Devsthan Commissioner for exemption of the trust property under sub-section (3) of Section 2 of the Act, which was opposed by the petitioners, however, the Assistant Commissioner, Devsthan recommended the exemption without proper scrutiny and without application of mind and the State Government vide notification No. P. 4(1) U.D.D. (3) 98 dated 12.11.98 has proceeded to grant exemption from provisions of the Act to all the premises which are in the ownership of the trust. Hence, this petition.

7. Learned counsel appearing for the petitioners contended that a perusal of the notification reveals that the State Government has not applied its mind while issuing the notification inasmuch as, the notification does not spell out the relevant considerations for granting exemption in terms of provisions of sub-section (3) of Section 2 of the Act. Learned counsel submitted that it is trite law that when the specific exemption is granted to a specified building owned by the institution specified, which is occupied by a tenant, it would be per se discriminatory. Learned counsel submitted that no material is brought on record showing that the impugned notification was based on objective consideration of the material on record and therefore, the exemption was not expedient in public interest and has to be held violative of Article 14 of the Constitution of India. In support of the contention, learned counsel has relied upon a decision of this court in the matter of "Shah Theatre Private Limited v. State of Rajasthan & Anr.", 2001 (1) DNJ (Raj.), 511.

8. On the other hand, the counsel appearing for the respondent No. 3 submitted that under the provisions of sub-section (3) of Section 2, it is permissible to grant exemption in respect of any premises owned by the educational, religious or charitable institution, the whole of the income derived from which is utilised for the purpose of the institution and therefore, the impugned notification issued by the State Government does not suffer from any infirmity or illegality and cannot be said to be discriminatory so as to violative of Article 14 of the Constitution of India. Learned counsel submitted that under the provisions of the Act, the Government is empowered to classify the specified landlords from others who utilised their profits for their private gain only and thus, the classification made has rational nexus with the objects sought to be achieved.

9. I have considered the rival submissions and perused the material on record.

10. The controversy raised in the petition rolls around the provisions of sub-section (3) of Section 2 of the Act, which may be beneficially quoted:

"(3) The State Government if it is satisfied that it is necessary or expedient so to do in public interest may, be notification in the Official Gazette, exempt from all or any of the provisions of this Act any premises owned by any educational, religious or charitable institution the whole of the income derived from which is utilised for the purpose of the institution."

11. The notification impugned reads as under:

12. A bare perusal of sub-section (3) of Section 2 reveals that the State Government is empowered to even exempt specific premises owned by any educational, religious or charitable institution from all or any of the provisions of the Act in the public interest and thus, exemption granted even to a specific premises owned by the institutions falling within the purview of provisions of sub-section (3) of Section 2 of the Act, is permissible. Moreover, in the instant case, the impugned notification issued by the State Government exempts all the premises owned by the respondent-trust from applicability of the provisions of the Act and thus, the contention sought to be raised by the petitioners regarding the exemption being granted to a specific premises, is absolutely devoid of any merit.

13. In Shah Theatre''s case (supra) relied upon by the learned counsel for the petitioners, despite directions being issued by the court, the State Government failed to produce the record for the perusal of the court showing that the exemption granted to the trust was based on objective consideration of material placed before it and therefore, the court held:

"In writ petitions bearing Nos. 2028/1994 and 3121/1994 the State Government, as stated before, did not even choose to file the returns. The affidavits filed against the State Government by the petitioners have not been controverted. The record also was not produced for Court''s perusal to show that the impugned Notification was based on the objective consideration of the material on record. From the returns filed by the respondent-Trust I am not satisfied that the subjective satisfaction of the State Government in granting exemption to the respondent-Trust was based on objective consideration of the material placed before the Government and I hold that the exemption was not expedient in public interest and thus violative of Art. 14 of the Constitution."

14. But then, in the matter of Mohd. Yamin Vs. State of Rajasthan and Another, , where the petitioner therein questioned the vires of provisions of sub-section (3) of Section 2 of the Act and also challenged the legality of notification issued by the State Government under sub-section (3) of Section 2 of the Act, granting exemption from all the provisions of the Act, to all the premises situated in the areas to which the said Act applies vesting in deity of Shri Srinathji and administration of which vests in Nathdwara Temple Board established and constituted under the Nathdwara Temple Act, 1949, a Bench of this court while holding that there is no invalidity in sub-section (3) of Section 2 of the Act, dealing with the contention of the petitioner therein that it is not necessary to grant exemption in respect of the properties at Jaipur when the temple itself is situated at Nathdwara near Udaipur, held:

"7. The other contention of the learned counsel for the appellant is that it was not necessary to grant exemption in respect of properties at Jaipur when the temple itself is situate at Nathdwara near Udaipur. On this basis it is urged that grant of partial exemption under S. 2(3) of the Act only in respect of premises situated at Nathdwara was sufficient for the purpose of this provision and it was necessary to grant exemption in respect of properties situate at Jaipur. It is argued that the notification shows non-application of mind for this reason and in response to the notice the respondents have also not disclosed the reasons leading to the issue of the notification. On this basis the validity of the notification is assailed. In our opinion, there is no merit even in this contention.

8. S. 2(3) itself indicates that exemption can be given in respect of premises owned by any such institution when the whole of the income derived therefrom is utilised for the purpose of the institution. It is not the appellant''s case that the whole of the income derived from the properties situate at Jaipur are not utilised for the purpose of the institution. This being so location of the premises is inconsequential in this context since the relevance is only of utilisation of whole of its income for the purpose of institution and this applies equally to all the properties owned by the institution irrespective of the location of any such property. The argument that issue of partial exemption alone would have been sufficient has, therefore, no application in this matter."

(emphasis added)

15. The notification impugned in Mohd. Yamin''s case (supra) as reproduced in para No. 3 of the judgment, reads as under:

"Notification- (No. F-3(4)(3) H/VIII/70-II, DT. JULY 19, 1976) S.O. 182. In exercise of the powers conferred by sub-sec. (3) of S. 2 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Rajasthan Act 17 of 1950) the State Govt. being satisfied that it is necessary to do in public interest exempts all the premises situated in the areas to which the said Act, applies vesting in the deity of Shri Srinathji and administration of which vests in the Nathdwara Temple Board established and constituted under the Nathdwara Temple Act, 1949, from all the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950."

16. Considering the contents of the notification reproduced hereinabove, the Bench of this court held:

"It is also a case where no further reasons except those mentioned in the notification were required to be disclosed to support the notification. It is not suggested as to what particular reason in addition was necessary to justify issue of the notification. The appellant himself has stated in the writ petition that he was initially a tenant on a monthly rent of Rs. 10/- which had been increased to Rs. 30/- since 1979. It is a matter of common knowledge and judicial notice can also be taken of the escalation of prices as well as considerable increase in rental. The fact that a shop in the city of Jaipur would fetch a much higher rent now also does not need any imagination. Since the whole income derived from the shop is utilised for the purpose of the religious institution it is undoubtedly in public interest that the shop be not continued on such a meagre rent when it can fetch a much higher amount as rent to be utilised for the purpose of the institution. This contention also, therefore, fails."

17. Adverting to the facts of the present case, it is not even the case of the petitioners that the respondent-trust which is a religious trust shall not be utilising the whole of the income derived from the premises for the purpose of the institution and thus, for the parity of the reasons assigned by a Bench of this court in Mohd. Yamin''s case (supra), while upholding the notification issued by the State Government granting exemption from the provisions of the Act to the premises owned by the Nathdwara Temple Board, the notification impugned also deserves to be upheld.

18. In the result, the petition fails, it is hereby dismissed. No order as to costs.

