**(2001) 04 RAJ CK 0054**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No''s. 129 of 1984 and 2028 and 3121 of 1994

Shah Theatres Pvt. Ltd. and Another APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

**Date of Decision :** 19-04-2001

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226
Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 2(3)
Rajasthan Public Trusts Act, 1959 — Section 17

**Citation :** (2002) 2 RLW 1100 : (2002) 5 WLC 809 : (2001) 4 WLN 271

**Hon'ble Judges :** Shiv Kumar Sharma, J

**Bench :** Single Bench

**Advocate :** Ajeet Kumar Sharma and Manju Agarwal, for the Appellant; S.M. Mehta, General and J.K. Singhi, for the Respondent

**Final Decision :** Allowed

# Judgement

Sharma, J.

(1). The petitioners in all these writ petitions have impugned the Notifications issued u/s 2(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short the Rent Act) therefore I propose to decide these petitions by a composite order.

(2). Common grievance projected by the petitioners is that the State Government issued the impugned Notification on grounds which were neither germane nor relevant to the policy and purpose of the Rent Act and the power was used by the State Government for an extraneous purpose. Respondents, who are Public Charitable Trusts u/s 17 of the Rajasthan Public Trust Act, in order to escape from the regulatory provisions of the Rent Act applied to the Respondent State for issuance of an order u/s 2(3) of the Rent Act exempting the premises owned by the Trusts from all the provisions of the Rent Act. Section 2(3) of the Rent Act provides that the State Government under its specific order if satisfied that it is necessary or expedient or to do so in public interest may, by

Notification in the official Gazette, exempt from all or any of the provisions of the Act any premises owned by any educational, religious or charitable institution, the actual of the income derived from which is utilised for the purpose of the institution.

(3). Contextual facts of writ petition No. 129/1984 depict that the petitioner M/s. Shah Theatres took on lease for a period of 20 years the building known as ''Shri Talkies'' situated at Mundri Mohalla Ajmer as back as in 1963. In September 1981; negotiations were started by the Settlor and working Trustee of the Trust with the Managing Director of the petitioner Company for the extension of the lease as well as for the sale for the premises leased out to the petitioner company who only agreed to increase the rent and renewal of lease. The respondent Trust with a view to obtain unreasonable high rate of rent approached the Government seeking exemption from the'' regulatory provisions of the Rent Act but the State Government rejected the application and refused to grant exemption. Respondent Trust again approached the State Government and this time exemption was granted vide Notification dated September 13,1983 published in the Rajasthan Gazette on Sept. 29, 1983.

(4). The petitioners, 28 in number in writ petition Nos. 2028/1994 and 3121/1994 are the tenants of Smt. Tani Sethani Karnani Trust Suratgarh. The Trust instituted suits for eviction against the petitioners Bhagirath, Deoki Nandon, Ratan Lal, Hardev Krishna and Hari Chand with a view to deprive the tenants of the various benefits provided by the Rent Act, the Trust sought exemption u/s 2(3) of the Rent Act and the State Government issued Notification on July 28, 1993 which was published in Rajasthan Gazette on July 30, 1993, directing that all the premises of Smt. Tani Sethani Karnani Trust Suratgarh stood exempted from the provisions of the Rent Act.

(5). Returns to the writ petition No. 129 of 1984 were filed on behalf of the Trust as also by the State Government justifying the Notification. On behalf of the State Government it was averred that the property was registered as Public Trust therefore in view of its charitable object and for public benefit, exemption was granted. It was also pleaded that initially the application of the Trust seeking exemption was not accepted because of certain representations but after enquiries being made by the Home Department, the exemption was granted in accordance with law. Respondent Trust also made written objections to the maintainability of the writ petition. This court directed the State Government on November 20, 1999 to produce the record for perusal but the State Government failed to do so.

(6). In writ petition No. 2028 of 1994 and 3121 of 1994 the State Government did not choose to file returns and only Trust submitted the written statements justifying the exemption granted by the State Government.

(7). It is contended on behalf of the petitioners that impugned Notifications are absolutely arbitrary, illegal and violative of principles of natural justice as protection of the Rent Act has been withdrawn without providing opportunity of hearing to the petitioners. The respondent trusts have obtained exemptions not for any charitable, educational or religious purposes but with the sole object of throwing the petitioners out of the premises. The State Government without application of mind granted the exemption.

(8). On behalf of the petitioner M/s. Shah Theatres Pvt. Ltd. it is urged that the State Government having previously rejected the application of the respondent Trust for exemption, it did not have any power to review the same.

(9). Per contra, It is submitted on behalf of the State Government and the Trusts that exemption''was granted in the public interest on the State Government''s satisfaction. When such a satisfaction vests in the body like State Government, it can not be taken that the satisfaction was not based on any material. Reliance is placed on S.M. Mahendru and Company v. State of Tamilnadu(1) and Mohd. Yamln v. State of Rajasthan (2).

(10). Before considering the rival submissions it is to be noticed that the power of the High Court under Article 226 of the Constitution of India is to be exercised with restraint and is not intended to be used as an inquisitorial power to interfere with the actions and orders of the Government. Judicial review of executive action is permissible but there are well accepted exceptions to this. If an executive action is not governed by a statute or rule and if it does not affect a legal or constitutional right of the citizen or a person it will not be amenable to judicial review. It is will settled that if there is some material with the Government to form opinion, same cannot be interfered with by the High Court even if formation of another opinion on the same material is possible. Where the material on which a notification has been issued is relevant the notification cannot be held to be illegal. High Court under Article 226 does not sit in appeal over the judgment of the authority issuing the Notification, while judging the question of relevancy of the material. But where the matter is left to the subjective satisfaction of the Government, that ''subjective satisfaction'' must be based on an objective consideration of the material placed before the Government. Therefore the subjective satisfaction of the Government is certainly subject to scrutiny by the High Court.

(11). Bearing in mind the aforesaid principles I proceed to scan the impugned Notification.

(12). Following requirements are lo be fulfilled in view of Sub-section (3) of Section 2 of the Rent Act, before a satisfaction of Government is reached for granting exemption-

(i) The premises must be owned by any educational, religious or charitable institution.

(ii) The whole of the income derived from the premises must be utilised for the purpose of that institution.

 

(iii) The exemption is necessary or expedient in public interest when the State Government is satisfied as to the above mentioned conditions, it may issue Notification and may exempt that premises from all or any of the provisions of the Rent Act.

(13). In the case of petitioner M/s. Shah Theatres, as already stated, the Slate Government had rejected the application of the Trust seeking exemption from the regulatory provisions of the Rent Act on December 5, 1982 but the Trust again approached and this time exemption was granted vide Notification dated September, 13, 1983. The petitioner pleaded that there was no material on record to enable the Slate Government to arrive at a decision that it would be necessary or expedient to exempt the respondent Trust in public interest. There was no fresh material, circumstances, grounds or justification for reviewing the earlier rejection order dated December 5, 1982 but the power of exemption has been exercised by the State Government on account of political reference. The power having been exercised for extraneous consideration and in a malafide manner, the impugned Notification deserves to be quashed". The State Government in para 9 of the reply averred thus-

"The State Government gave the exemption in accordance with law. It is denied that any political pressure was ever exerted on the State or was taken into consideration. The record pertaining to exemption will be produced as and when demanded by the Hon''ble Court."

In order to adjudge as to whether the subjective satisfaction of the State Government in granting exemption to the Trust was based on objective consideration of the material placed before it, this court vide order dated November 30, 1999 directed the State Government to produce the record for perusal but the State Government failed to produce the record. Under these circumstances I have no option but to draw adverse inference against the State Government and I hold that the satisfaction of the Slate Government granting exemption to the respondent Trust vide Notification dated September 13, 1983 was not based on objective consideration of the material on record. As the powers appear to have been exercised in an arbitrary manner by the State Government I have no other alternative but to quash the said Notification.

(14). In writ petitions bearing Nos. 2028/1994 and 3121/1994 the State Government, as slated 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 1 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 Article 14 of the Constitution.

 

(15). Authorities cited on behalf of the State Government are distinguishable and not applicable in the facts and circumstances of instant cases. In S.M. Mahendru v. State of Tamilnadu (supra) it was specifically averred by the State Government that it duly took note of the fact that all types of cooperative societies functioning in Madras City and at several centres throughout the Slate as a class were engaged in various kind of activities promoting social welfare, rural development and economic good by providing employment to lacs of people and were doing excellent work by way of implementing one of the directive principles of State Policy embodies in the Constitution of India. Their Lordships of the Supreme Court after considering the counter affidavit of the State Government, observed that exemptions granted to the buildings of cooperative societies was necessary and based on the satisfaction of the State Government.

(16). In Mohd. Yamin v. State of Rajasthan (supra) the constitutional validity of Sub-section (3) of Section 2 of the Rent Act as well as Notification issued thereunder were challenged. Division Bench of this Court indicated that in Sub-section (3) of Section 2 the exemption is to be granted only on the State Government''s''satisfaction. This expression has a legal connotation which sufficiently provides guidelines to regulate the exercise of this power and there is no invalidity in Sub-section (2) of Section 2 of the Rent Act.

(17). For the reasons aforementioned I allow the instant writ petitions and quash the impugned Notifications dated September 13, 1983 (published in the Rajasthan Gazette on September 29, 1983) and dated July 28, 1993 (published in Rajaslhan Gazelle on July 30, 1993 respeclively exempting Mehtas Private Ltd. Secular Trust 1962 Diwan House Jodhpur and Smt. Tani Sethani Karnani Trust Suratgarh Ganganagar, under Sub-section (3) of Section 2 of the Rent Act. Costs easy

 