

(1987) 08 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 6168 of 1984

Shylaja Manoharlal

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 10-08-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 25

Citation : (1987) KLJ 1057

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Advocate : T.R. Govinda Warriyar, Sebastian Davis, P.V. Jyothiprasad and P. Bhavadasan, for the Appellant; K.P.G. Menon, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Menon, J.—In the year 1963 the Government of Kerala issued a notification, in exercise of powers under Sec.25 of the Kerala Buildings (Lease and Rent Control) Act, 1959 exempting buildings owned by the City Corporation of Calicut from all the provisions of the Act. The 1959 Act has since expired, and has been replaced by Act 2/65, but the aforesaid notification is still in force. And the main question in this writ petition is whether the notification is valid. It is the petitioner's contention that the notification is unconstitutional and void, and that the provisions of this 1965 Act should continue to apply to the, arrangement under which she was allowed to occupy the 3rd floor of the "Jayanthi Buildings " belonging to the Corporation. The petitioner was inducted into the building in 1975. There is some controversy as to whether the arrangement was a lease or a licence, but that question is being separately examined in other proceedings, and it is common ground that the sums need not be examined herein. Upto 31-3-1979 the agreed monthly rent was Rs.3750/-. For renewal of the arrangement from 1-4-1979, the Corporation wanted the rate of rent to be enhanced to Rs 4125/-per mensem, and it appears that the petitioner had no objection to such enhancement She continued to occupy the premises and carry

on the business of running a lodging house in the name and style of "ManoharRest Horse", till 31-3-81. "With effect from 1-4-81 the Corporation wanted the rent to be further enhanced to Rs.5775/-, and it is this demand which has led to the filing of the present writ petition (and other litigations between the parties).

2. The contention advanced in the present proceedings is this. The object of Rent Control legislation is to regulate letting of buildings, prevent rock-renting, impose severe restrictions on the landlord's power to evict building tenants. Sec. 25 of Act 2/65 empowers the State Government to exempt any building or class of buildings from the provisions of the Act "in the public interest and for any other sufficient cause". Sec. 25 of the 1959 Act under which the notification impugned was issued also contained identical provisions. However, "Public interest" and "sufficient cause" have to be understood as grounds or reasons germane to the policy and purpose of the Act: that is, there should be some rational connection between the exemption granted and the three objects referred to earlier. To give a blanket exemption to buildings belonging to Municipal Corporations will be to permit the Corporation authorities to defeat all the three objects of rent control legislation, at their sweet will and pleasure. With the backing of the notification, the Corporation authorities can let out their buildings to whomsoever they like, demand unconscionable rates of rent from time to time, and drive out their tenants as and when it pleases. The conferment of such an arbitrary power by means of an exemption is itself bad. A Municipal Corporation is a public statutory authority and it should not be allowed to function like every other greedy-land lord. There is also no reason why local bodies like Corporations, Municipalities and Panchayats should be placed in a more favourable position than private citizens in the matter of letting out their buildings, particularly when putting up buildings and letting them out are not their functions under the statute which govern their activities.

3. Mr. Wariyar for the petitioner relies on P.J. Irani Vs. The State of Madras, to contend that "Public interest" and "sufficient cause" in Sec. 25 should be understood in the manner suggested by him i.e. as recognising a power to grant exemptions only for objects germane to the policy of the Act.

4. I am unable to agree with such a Generalisation. Two questions had arisen in Irani's cases: (i) whether Sec. 3 of the Madras Buildings (Lease and Rent Control) Act, 1949 was bad for conferring an unguided and arbitrary power on the State Government to discriminate between one building and another, in the matter of granting exemption from the Act and (ii) whether the exemption notified in that case, which was confined to one particular building, was valid. Sec. 13 of the Act was couched in very wide terms: it empowered the State Government to exempt any building or class or buildings without even remotely indicating what considerations were to prevail in exercising power thereunder. The Supreme Court held, after surveying the provision of the Act, that Sec. 13 was valid, even though it was possible to subject individual notifications made

under the section, to judicial review. As regards the individual notification before their Lordships Government had put forward certain reasons why the particular building was exempted and after examining these reasons, the majority of the court held that they were "not germane to the purpose for which the power was conferred". The enquiry by the court was into the question as to whether there was nexus between the grant of exemption and the purpose for which the legislature had conferred such power on the Government. It was not into the question whether there was nexus between the grant and the policy of the Act. It is not uncommon for an Act of the legislature to lay down a general policy and then make a provision conferring power on the executive to grant exemption, or permit deviations there from under certain circumstances. It will be a contradiction in terms to suggest that even such a deviation should be geared to the policy of the Act itself.

5. Unlike Sec. 13 of the Madras Act considered in *Irani's case*, Sec 25 of the Kerala Act specifies the considerations relevant for grant of exemption: one is, "Public interest", and the other, "any other sufficient cause". The impugned notification recites that it is issued in public interest. Both on the terms of the statute and the notification, therefore, the court's enquiry could only be into the question whether the exemption recognised in favour of a Municipal Corporation could be regarded as one made in the public interest.

6. City Corporations, Municipalities and Panchayats are instrumentalities of local self-government, established for rendering service to the public in areas like lightning, water supply, drainage, sanitation and maintenance of roads/streets. They also regulate construction of buildings, establishment of market places, slaughter houses, factories, trading centres etc. Their funds could be spent only for enumerated purposes all of which are supposed to sub serve the common ground. They are not profit-making bodies; the extra income they get by way of higher rent, consequent on grant of exemption, will augment their resources for rendering services on a higher scale. The counter-affidavit points out that most of the buildings let out by local bodies are constructed with funds borrowed from financial institutions and that they have been finding it extremely difficult to pay even interest, let alone capital. They have no other resources "to start new ventures" or "to maintain existing facilities provided to its citizens," it is complained.

7. Nor will it be proper to assume that the moment exemption is granted, every local body will start to behave like greedy landlords bent on rack-renting. Usually these bodies are governed by elected representatives of the communities in their areas, and they will naturally be slow to embark on unpopular measures, to the detrimental of the poorer classes of tenants. That apart it is well-known that they usually put up only shopping complexes or other buildings to be used for commercial purposes, and that their tenants are mostly businessmen, themselves not averse to making a few quick bucks at the expense of others. The petitioner herein is using the premises as a lodging house. It is not as if the

Corporation authorities are seeking to recover exorbitant rates of rent from a poor tenant who has no roof over her head. The impugned notification was issued in 1963, and the petitioner must be deemed to have been aware of it when she occupied the building in 1975. Admittedly, she had agreed to some enhancement of the rent in 1975. And though she was unhappy about the proposal to enhance it in 198-1, she was also reluctant to vacate the premises notwithstanding the circumstance that others were there to offer still higher rates to the Corporation. It was Benjamin Cardozo who said:-

Many an appeal to freedom is the masquerade of privilege or inequality seeking to entrench itself behind the catchword of a principle.

8. Generally, therefore, grant of exemption in favour of local bodies, under Sec. 25 of the Act, must be held to be in the public interest; and if authority is required to support this view, that too is available. Section 437A(I) of the Bombay Provincial Municipal Corporation (Gujarat Amendment) Act, 1963 authorised the Commissioner to evict any tenant unauthorisedly occupying any premises of the Corporation after issue of notice etc. as provided for in the Act. The Gujarat High Court held that conferment of such unguided discretion on the Commissioner who would be one of the parties to the dispute arising under the Section was unreasonable but in *The Ahmedabad Municipal Corporation and Others Vs. Ramanlal Govindram and Others*, the Supreme Court disagreed with the above view. Speaking for himself and Krishna Iyer J., Ray C. J. said:-

The conclusion of the High Court that the provision in section 437A (1) is unreasonable because the Municipal Commissioner, is in substance a party to the dispute is unacceptable. The conferment of power on the Municipal Commissioner as an Administrative Officer to take proceedings for eviction cannot be struck down as unreasonable on the ground that he is a judge in his own cause. He is the highest officer of the corporation). The Corporation acts through these offices (sic. officers.) There is not personal interest of the Municipal Commissioner in evicting these persons. The Corporation represents public interest. The Municipal commissioner will apply his mind to the facts and circumstances of a given case as to whether there should be an order for eviction.

The interest of the Corporation (or its Commissioner) in a matter relating to one of its tenants, the court thought, would be equivalent to public interest. In *S.M. Mahendru and Company and Others Vs. State of Tamil Nadu and Another*, the question was whether a blanket exemption could be granted to all co-operative Societies from the provisions of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 in exercise of power under Sec. 29 of the Act. It was argued before the Supreme Court that under the Co-operative Societies Act the Societies were profit-making bodies which could pay dividend and bonus to its members and that the exemption in question would only augment the coffers of the societies, to the detriment of its tenants. The Supreme Court rejected this contention by pointing out that there were restriction on the distribution of profits and that part of the profits were to be appropriated towards co-operative development fund,

reserve fund, education fund etc. The court said:

The profit element being maintained at a reasonable level by provisions of law in all types of Co-operative Societies, there is every justification for the assumption that no co-operative society will indulge in rack-renting or unreasonable eviction. In this view of the matter if the State Government came to the conclusion that in the case of Co-operative Societies there being no apprehension that they would indulge in either of these two evils exemptions from the provisions of T. N. Act 18/60 should be granted in favour of buildings belonging to such co-operative societies, it will have to be regarded as a legitimate exercise of the power conferred on it under Sec.29 of the Act.

There can be no doubt that the above reasoning should apply with greater force to Municipal Corporations where all moneys received by them have to become part of the Municipal Fund, to be spent exclusively for the purposes specified by the Act, with no provision at all for payment of any part of the income as bonus/profit/dividend to those in charge of the Corporation's administration.

9. There is also support for the view that Governments local bodies and other public statutory corporations should, as far as possible, strive to get the maximum price when their properties or contracts are farmed or leased out, in the absence of special circumstances justifying the adoption of a different approach. In *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, the Supreme Court had said;-

It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would both be unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so.

And in *Ram and Shyam Company Vs. State of Haryana and Others*, , Desai J. had indicated that auction was one of the legitimate methods for getting the highest price for disposal of public property, because,

An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity, kingship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare state as the owner of the public property has no such freedom while disposing of the public property. A welfare state exists for the largest good of the largest number more so when it proclaims to be a socialist state dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the

tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages the setting up of a welfare State.

10. The contention that the impugned notification is outside the scope of Sec. 25, or that it amounts to arbitrary or unreasonable exercise of power has therefore to fail. The only other point pressed at the hearing relate to the implementation of Ext. P6 circular issued by the State Government on 28-12-1985. The circular was issued following observations made by this Court about the desirability of local bodies exercising restraint in fixing or revising rates of rent for their buildings, despite the exemptions granted to them from rent control legislations. Government therefore directed that there should be some uniformity in the principles to be applied, and the maximum permissible rate of enhancement was also suggested. It has not been explained under what power the circular was issued or how its directions could be made binding on the local bodies; but the Calicut Corporation is willing to give the benefit of Ext. P6 to the petitioner herein, from the date of its issue. Counsel for the petitioner would argue that consistent with the view taken by this Court in O. P. 3303/83, the Corporation should be directed to give retrospective effect to the Circular (from the date of letting?). The judgment in O P. 3303/83 appears to rest on agreement; and the direction in Ext. P6 itself is that refixation of rent in respect of buildings already let out should await "the expiry of the existing lease period". Again, if Ext.P6 direction of the Government is binding on the local bodies, it will be for the Government to examine whether a local body is acting contrary thereto, in a given case. Proceedings before this court under Art. 226 could not be converted, without anything more, into proceedings for execution of governmental decrees.

It is submitted that the other questions raised in the Original Petition are under the consideration of civil courts in other proceedings. They are therefore left open.

O.P. dismissed. No costs.