

(1951) 06 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 5 of 1951

Syamlal Mandal

APPELLANT

Vs

The Municipal Board of Dhubri

RESPONDENT

Date of Decision : 20-06-1951

Acts Referred:

Assam Urban Areas Rent Control Act, 1972 — Section 2, 3
Constitution of India, 1950 — Article 14, 226

Citation : (1951) 06 GAU CK 0005

Hon'ble Judges : Thadani, C.J.;Deka, J

Bench : Division Bench

Advocate : S.K. Ghose, P. Chaudhuri and R.K. Bose, for the Appellant; S.M. Lahiri and P.K. Gupta, for the Respondent

Judgement

Thadani, C.J.—This is a petition, under Article 226 of the Constitution of India by one Syamlal Mandal, for himself & as Secretary to the Bazar Committee, Dhubri, for a writ against the Municipal Board of Dhubri prohibiting it from realising enhanced rent as demanded by the Board, directing it to withdraw the notice of demand for the enhanced rent & attachment of the movable property of the petitioner & other stall-holders, & to drop the proceedings for enhancement of rent in violation of Section 3, Assam Urban Areas Rent Control Act of 1949.

2. The petitioner along with some 74 other persons who have not been made parties to this petition are stall-holders in the Laine Market at Dhubri, the market & the stalls being the property of the Dhubri Municipal Board. According to the petitioner, the rents realisable by the Municipal Board from the stall-holders were originally governed by the provisions of the Assam Urban Areas Rent Control Act of 1946 (Act III (3) of 1946), which ceased to be in force in 1949. In 1949, the Assam Urban Areas Rent Control Act (Act XIII (13) 1949) came into force on 1-10-1949, in which discrimination has been made between houses & houses & between landlords & landlords, in that houses belonging to the Provincial or Central Govt. or Local Authorities, have been excluded from the operation of the

Act XIII (13) of 1949.

3. It is alleged that the Municipal Board of Dhubri, without any just or sufficient cause, arbitrarily increased the rent payable by the petitioner 5 & other stall-holders in the aforesaid Laine Market, by 40 per cent, to 100 per cent, of the existing rents payable by them; the rent of the petitioner has been enhanced from Rs. 6/12/- to Rs. 16/- per month; against the enhancement, the petitioner made a representation to the Chairman of the Municipal Board, Dhubri, but without success; the Deputy Commissioner of Goalpara also rejected the petitioner's request for reconsideration of the case. Likewise the Hon'ble Minister in charge of, Local Self Govt. rejected the petitioner's representation.

4. Mr. Ghose for the petitioner contends that the provision contained in Clauses (2) & (3) of Section 2, Assam Urban Areas Rent Control Act XIII (13) of 1949 tends to infringe the fundamental right of a citizen of India guaranteed by Article 14 of the Constitution of India, & must be pronounced void.

5. We think there is no substance in the contention. Mr. Ghose conceded that his case was not that equality before the law was denied to the Petitioner. He rests his case on the alleged denial of the equal protection of the laws within the territory of India. The question of the violation of the fundamental right contained in Article 14 of the Constitution of India has been considered by the Supreme Court of India in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, In the course of his judgment, (Kania, C.J. & Fazl Ali, J. concurring) Mukherjea, J. with reference to the principles which should guide the Court in interpreting Article 14 of the Constitution of India, observed:

It must be conceded that the Legislature has a wide discretion in determining the subject-matter of its laws. It is an accepted doctrine of the American Courts & which seems to me to be well founded on principle that the presumption is in favour of the constitutionality of an enactment & the burden is upon him who attacks it to show that there has been a transgression of constitutional principles.

Mukherjea, J., then referred to the judgment of the Supreme Court of America in *Middleton v. Texas Power & Light Co.* (1919) 249 U.S. 152 at P. 157, wherein it is stated:

It must be presumed that a Legislature understands & correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, & that its discriminations are based upon adequate grounds.

5a. Mr. Ghose for the petitioner has been unable to refer us to any facts which show or tend to show that exemption of houses belonging to the State or a Local authority is unreasonable & based upon arbitrary grounds. The classification made by the State of Assam is into houses belonging to Govt. & local authorities & these not so belonging. If this classification is permissible, & we think it is, it was plainly necessary to exclude the Govt. & local authorities from the definition

of the word "landlord". Assuming that for the purposes of the Assam Urban Areas Rent Control Act (XIII) (13) of 1949, there is a dual classification, namely (1) classification of houses into these belonging to Govt. & local authorities, & these not so belonging, (2) classification of landlords into two categories (a) Govt. & local authorities, (b) & the rest; no facts have been placed before us which could justify the pronouncement that this dual classification is arbitrary or unreasonable.

6. In *Radice v. New York* Frank's Cases on Constitutional Law P. 391, where the validity of the statute was challenged upon the ground, as in this case, that it contravened the provisions of the Fourteenth Amendment, in that it violated (1) the due process clause, by depriving the employer & employee of their liberty of contract, & (2) the equal protection clause, by an unreasonable & arbitrary classification, Sutherland, J., delivering the opinion of the Court observed:

Nor is the statute vulnerable to the objection that it constitutes a denial of the equal protection of the laws. The points urged under this head are (a) that the act discriminates between cities of the first & second class & other cities & communities; & (b) excludes from its operation women employed in restaurants as singers & performers, attendants in ladies' cloak rooms & parlors, as well as these employed in dining rooms & kitchens of hotels & in lunch rooms or restaurants conducted by employers solely for the benefit of their employees. The limitation of the legislative prohibition to cities of the first & second class does not bring about an unreasonable & arbitrary classification. Nor is there substance in the contention that the exclusion of restaurant employees of a special kind, & of hotels & employees (lunch rooms), renders the statute obnoxious to the Constitution. The statute does not present a case where some persons of a class are selected for special restraint from which Ors. of the same class of work are included in the restraint. Of course, the mere fact of classification is not enough to put a statute beyond the reach of the equality provision of the Fourteenth Amendment. Such classification must not be purely arbitrary, oppressive or capricious. But the mere production of inequality is not enough. Every selection of persons for regulation so results, in some degree. The (inequality produced, in order to encounter the challenge of the Constitution, must be actually & palpably unreasonable & arbitrary.

We think these observations are an adequate answer to the constitutional challenge directed in the case before us against the classification for houses into these belonging to Govt. & local authorities & those not so belonging. If the classification of houses does not offend the provisions of Article 14 of the Constitution of India, the classification of landlords into (1) Govt. & local authorities & (2) the rest, equally does not suffer from the taint of discrimination.

7. The observations of Frankfurter, J. in *Tigenr v. Texas* reported at page 675 of Frank's Cases on Constitutional Law, are instructive on the subject of classification & furnish a complete answer to the contention of the petitioner that the provisions contained in Clause (2) & (3) of Section 2, Assnm Urban Areas

Rent Control Act (XIII) (13) of 1949 offend the provisions of Article 14 of the Constitution of India. In "Perley v. North Carolina" (1919) 249 U.S. 509, the following passage occurs:

No unconstitutional discrimination in favour of a municipal owner of timber lands or timber" as against individual owners results from a state statute which provides that any person who owns land or standing timber on land within 400 feet of any watershed held or owned by any city or town for the purpose of furnishing the city or town water supply, upon cutting or removing the timber or permitting either, within 400 feet of the watershed, shall, within three months after cutting, or earlier, upon written notice by the city or town, remove or cause to be burned under proper supervision all tree tops, boughs, laps, & other portions not desired to be taken for commercial or other purposes, within 400 feet of the boundary line of the watershed, so as to leave such space of 400 feet free & clear of the designated parts required to be removed or burned & other inflammable material caused by or left from cutting the standing timber, so as to prevent the spread of fire from such cutover area, & the consequent damage to the watershed.

The case of "Puget Sound Power & Light Company v. City of Seattle" 291 U.S. 619 is also instructive. It was held:

A public utility company is not deprived of the equal protection of the laws nor its property taken without due process by a city ordinance which subjects it to a license or excise tax based on gross income, while leaving untaxed a competing business carried on by the city.

8. Our conclusion then is that on the true interpretation of Article 14 of the Constitution, the provision contained in Clause (2) & (3) of Section 2, Assam Urban Areas Rent Control Act (XIII) (13) of 1949, cannot be challenged on the ground that it violates the fundamental right of a citizen guaranteed to him by Article 14 of the Constitution of India.

9. The result is that the petition is dismissed with costs. Hearing fee is fixed at Rs. 51/-. The Rule is discharged.

Deka, J.

10. I agree