
(1976) 07 AP CK 0019

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 257 and 258 of 1975

The Union of India and others

APPELLANT

Vs

D. Balakrishna Murthy and others

RESPONDENT

Date of Decision : 23-07-1976

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 12, 13, 26
Constitution of India, 1950 — Article 14, 19, 226

Citation : AIR 1977 AP 10

Hon'ble Judges : Sambasiva Rao, J;S.H. Sheth, J

Bench : Division Bench

Advocate : K. Subrahmanya Reddi, for the Appellant; N.S. Murdikar for Respondent Nos. 1 and 3 in C.R.P. No. 257 of 1975 and for Respondent Nos. 4 to 6 in C.R.P. No. 258 of 1975, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Sheth, J.—The facts giving rise to these two Civil Revision Petitions are briefly stated, as follows:

The suit premises are situated at Secunderabad and the Posts and Telegraphs Department of the Union of India have been occupying them as lessees at the monthly rent of Rs. 350/-. The R.M.S. Sorting Office of the Posts and Telegraphs Department is located therein. The landlords filed the petition before the Rent Controller for evicting the Posts and Telegraphs Department on the ground that there was default in payment of rent for 19 months commencing from 1st Jan., 1966, and ending with 31st July, 1967. The petition was filed on 19th August, 1967. The department pleaded in defence that the 3rd respondent had written a letter to the Department in May, 1967, stating that the disputes had arisen between the respondents and that the rent should not be paid to any one of them. Therefore it was contended on behalf of the Department that the rent was not paid.

2. The Rent Controller, who heard the petition relied upon G.O. Ms. No. 487 dated 19th April 1961 and G.O. Ms. No. 701 dated 9th August, 1967 and dismissed the petition by his order dated 31st August, 1968. The landlords appealed to the Court of Small Causes. By its order dated 16th January, 1970, the appellate Court allowed the appeal on the ground that G.O. Ms. No. 701 dated 9th August, 1967, was published on 31st August, 1967 and that it came into effect from that date. The Appellate Court also held that it did not affect a pending proceeding. The Appellate Court set aside the order of the Rent Controller and remanded the case to him. C.R.P. No. 258 of 1975 has been directed against that appellate order.

3. After the case was remanded by the Appellate Court to the Rent Controller, the Rent Controller found that there was default in payment of rent from 1st January, 1966 to 31st July, 1967 and ordered, eviction of the Posts and Telegraphs Department from the suit premises. The Department appealed against that order to the Court of Small Causes. By its order dated 19th November, 1974, the Appellate Court dismissed the appeal and confirmed the order of the Rent Controller. C.R.P. No. 257 of 1975 is directed against that appellate order.

4. Mr. Subrahmanya Reddy who appears on behalf of the Posts and Telegraphs Department, has raised two contentions before us. The first contention is that by virtue of the two G.Os. one issued on 19th April, 1961 and another issued on 9th August, 1967, the order of eviction could not have been made against the Posts and Telegraphs Department. The second contention which he has raised is G.O. Ms. No. 701 dated 9th August, 1967, applies to pending proceedings. He has also called in question the decision of Muktadar, J., in C.R.P. No. 704 of 1973 (Andh Pra) in which the learned Judge has struck down the said G.O. as unreasonable.

5. We shall first refer to the contents of the two G. Os. G.O. Ms. No. 487 issued on 19th April, 1961, u/s 26 of the A.P. Buildings (Lease, Rent and Eviction) Control Act. 1960, "exempts all buildings of which the State and Central Governments are tenants from the provisions of sub-section (2) of Section 10 of the said Act." The second G.O. is G.O. Ms. No. 701 issued on 9th August, 1967. It "exempts all non-residential buildings of which the State Government or the Central Government are the tenants from the provision of clause (1) of sub-section (2) of Section 10 of the said Act."

6. We are told by Mr. Subrahmanya Reddi that both the G.Os. are in force. It appears to us that G.O. Ms. No. 701 issued on 9th August, 1967, overlaps to a certain extent the G.O. issued on 19th April, 1961. However, it is not necessary for us to express any opinion on the effect of this overlapping because nothing has been argued in that behalf. Whether the G.O. issued on 19th April, 1961, was in consonance with Section 26 of the said Act or not came up for consideration before Muktadar, J., in C.R.P. No. 704 of 1973 (Andh Pra). The contention which appealed to the learned Judge was that whereas sub-section (1) of Section 10 of the said Act prohibited eviction of any tenant from the premises occupied by him except in accordance with the provisions of the said

Act exemption from sub-section (2) of Section 10 prevented the landlord from proceeding against his tenant under the said Act. Whereas continuation of operation of sub-section (1) of Section 10 prevented the landlord from proceeding in a Civil Court against his tenant exemption from operation of sub-section (2) of Section 10 prevented him from proceeding under the A.P. Buildings Control Act. Therefore, the learned Judge held that the said G.O. denied to a class of landlords the remedy both under the special law as well as the general law and that, therefore, it was unreasonable. It is the correctness of this decision which Mr. Subrahmanya Reddy has challenged before us. Sub-section (1) of Section 10, inter alia, provides as follows:

A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 12 and 13.

7. This sub-section, it appears from the decisions cited before us and to which we are referring, denies to the landlord the right to recover possession from his tenant except in accordance with the provisions of Section 10 or Sections 12 and 13 irrespective of whether the building which he occupies as a tenant is governed by the A.P. Buildings Control Act or whether the tenant who occupies it is protected by the said Act. Sub-section (2) of Section 10 provides that "a landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf." Thereafter, subsection (2) catalogues the grounds on the satisfaction of any one of which a tenant may be evicted. Exemption from the operation of sub-section (2) of Section 10 denies to a landlord the right to apply to the Controller for a direction to evict his tenant on any of the grounds specified in that sub-section. The continuing operation of sub-section (1) of Section 10 in such a case prevents a landlord from approaching the civil court and seeking his remedy against his tenant who is in default of payment of rent.

8. Section 26 deals with exemption and provides as under:

Notwithstanding anything in this Act the Government may, by notification in the Andhra Pradesh Gazette, exempt subject to such conditions and terms, if any, as they may specify in the notification, any building or class of buildings from all or any of the provisions of this Act.

9. Mr. Subrahmanya Reddi has argued that if the view taken by Muktadar, J., is upheld, Section 26 would be ineffective because exemption from sub-section (2) of Section 10 alone cannot be granted. So far as the validity of Section 26 is concerned, it is not in challenge before us. In P.J. Irani Vs. The State of Madras, Section 13 of the Madras Buildings (Lease and Rent Control) Act 1949 came up for consideration of the Supreme Court. Section 13 of the Madras Act is in pari materia with Section 26 of the Andhra Pradesh Act. Section 13 of the Madras Act provided as follows:

Notwithstanding anything contained in this Act the State Government may by notification, in the Fort. St. George Gazette exempt any building or class of buildings from all or any of the provisions of this Act.

10. A comparison of the language used in Section 13 of the Madras Act with the one used in Section 26 of the Andhra Pradesh Act clearly shows that there is no material difference between the two so far as the question before us is concerned. The only difference is that whereas Section 26 of the Andhra Pradesh Act uses the expression, "subject to such terms and conditions, if any, as they may specify in the notification" it has not been used, in Section 13 of the Madras Act. Upholding the constitutional validity of Section 13, the Supreme Court observed that enough guidance is afforded by the preamble and operative provisions of the Madras Buildings (Lease and Rent Control) Act, 1949, for the exercise of discretionary power vested in Government u/s 13 to exempt any building or class of buildings from all or any of the provisions of the Act so as to render the impugned section not open to attack as a denial of the equal protection of the laws. It however, held that any individual order of exemption passed by the Government can be the subject of judicial review by the Courts for finding out whether it was discriminatory so as to offend Article 14 of the Constitution, whether the order was made on grounds which were germane or relevant to the policy and purpose of the Act and whether it was not otherwise mala fide. It has been further observed in that decision that where an individual order of Government exempting certain premises was passed for reasons which did not fall within the purpose for which the power was conferred by Section 13 of the Act the order itself would be discriminatory against the tenant occupying the premises and would violate his fundamental right to equal protection of the laws. In such an event Article 226 would be available to set aside such an order. Even if the order did not violate Article 14 the High Court does not lack power under Article 226 to set aside an ultra vires order vitally affecting a person's right to statutory protection against eviction. Next it has been observed in that decision that immunity from interference by the courts cannot be sought for orders which are plainly ultra vires merely because they have been passed bona fide in the sense of being without motive. It is particularly so when the power of the High Court under Article 226 of the Constitution is not limited to the issue of writs falling under particular groupings such as the certiorari, mandamus etc., as these writs have been understood in England but the power is general to issue any direction to the authorities for the enforcement of fundamental rights as well as for other purposes. The Andhra Pradesh Act has been enacted, inter alia to regulate the leasing of buildings, the control of rent thereof and the prevention of unreasonable eviction of tenants from the buildings in the State of Andhra Pradesh. Following the reasoning which the Supreme Court has given while upholding the constitutional validity of Section 13 of the Madras Act the constitutional validity of Section 26 of the Andhra Pradesh Act cannot be challenged.

11. However, Mr. Subrahmanya Reddi has argued that once Section 26 is held to be valid any order made thereunder must be held to be valid. We are unable to accede to that argument of his. In P.J. Irani Vs. The State of Madras, the Supreme Court has in terms, held that though the section under which the

notification is issued may be a valid one the notification itself may be invalid and its validity is open to examination. To uphold the argument of Mr. Subrahmanya Reddi is to protect an unlawful notification behind the shield of a section which has been held to be valid and to which it does not conform. The notifications, the relevant parts of which we have quoted above, clearly show that it is not open to the landlord to proceed under the A.P. Buildings Act against his tenant under sub-section (2) of Section 10 even though the tenant may be persistently defaulting in payment of rent and may be obdurate in not paying it at all. Secondly, it is not open to the landlord to proceed against such a tenant in the Civil Court because sub-section (1) of Section 10 denies to him the remedy available to him under the ordinary law of the land. We have no doubt in our mind that the notification, which denies to an aggrieved person remedy both under the special law as well as under the general law, cannot be said to be reasonable firstly because it violates Article 14 of the Constitution and secondly because it violates the right to property guaranteed under Article 19.

12. In support of the contention raised by Mr. Subrahmanya Reddi, he has invited our attention to a few decisions. The first of those decisions is *Dasari Venkatadri and others Vs. Tenali Municipality and another*, . In that case, *Umamaheswaram, J.*, was dealing with the Government notification in G.O. Ms. No. 37/41 dated 30th September, 1946, exempting all buildings belonging to Municipal Councils and Local Boards from the operation of all the provisions of the Madras Buildings (Lease and Rent Control) Act, 1946. He held that such a notification was valid, because there was a reasonable basis for the exclusion of that class of buildings, viz., the buildings belonging to Municipal Councils and Local Boards. This decision does not help Mr. Subrahmanya Reddi to make good his argument, because there is a vital distinction between that notification and the notifications impugned in these revision petitions. The distinction lies in the fact that under the Madras notification buildings belonging to Municipal Councils and Local Boards were exempted from all the provisions of the Madras Act with the result that it was open to the landlord to proceed against Ms defaulting tenant in a Civil Court under the ordinary law of the land. That notification did not deny to the landlord the remedy both under the special law as well as under the ordinary law of the land as has been done by the impugned notifications before us. That decision, therefore, has no application to the facts of this case.

13. The second decision is *Noor Ali v. Badrinath*, (1969) 1 Andh WR 452. In that case, a notification issued u/s 26 of the A.P. Buildings (Lease Rent and Eviction) Control Act was challenged. *Gopal Rao Ekbote, J.*, upheld the validity of that notification. By that notification also, the buildings, godowns etc., belonging to the Religious and Charitable Institutions in the State were exempted from all the provisions of the Act. That decision also cannot help Mr. Subrahmanya Reddi to make good his argument before us for the reasons for which he could not seek support from the decision in *Dasari Venkatadri and others Vs. Tenali Municipality and another*, . Under the notifications referred to in both the above cited decisions, exemption was granted from all the provisions of the Act in favour of

the landlords, with the result that the rigour of the Act was reduced or mitigated for the landlords and that they were permitted to sue the defaulting tenants in Civil Courts.

14. A situation akin to the one which has arisen before us, arose in *Govindaraju Mudaliar v. State of Madras*, (1955) 1 Mad LJ 492. In that case, a notification was issued by the Government of Madras u/s 13 of the Madras Buildings (Lease and Rent Control) Act, 1949, exempting certain buildings from the operation of sub-section (2) of Section 7 the provisions of which are identical with the provisions of sub-section (2) of Section 10 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. By virtue of the notification which was impugned in that decision, the landlord was denied the remedy both under the special law as well as under the general law as is the case before us. *Rajagopala Ayyangar, J.*, who decided the case, observed that while the landlord is prevented by reason of Section 7(2) not being applicable to the building from enforcing his rights under the Act, he is prevented from exercising any rights outside the Act, under the general law, as contained in the Transfer of Property Act, by the provisions of Section 7(1) still being applicable". In other words, in his view, the landlord was prevented from having recourse either to the special law or to the general law as contained in the Transfer of Property Act. It was contended before him that the power of exemption from the provisions of the Act did not include a power to bring into operation such an anomalous state of affairs by making applicable truncated provisions of the Act to a given case. He considered that objection well-founded. After having considered a few decisions cited before him and referred to by him in his judgment, he recorded the conclusion that.

The power of the Government to exempt from the operation of all or any of the provisions of the Act must be held to designate a power to so exempt as not to give a truncated effect to the provisions which still continue to apply to the subject.

15. In that view of the matter he did not uphold the validity of the notification impugned before him and held it to be invalid.

16. In *Chief C.R. Authority v. Swami Gounder*, (1969) 82 Mad LW 232, the question which arose before *Natesan, J.*, was similar in nature (the notification was similar to the one impugned before us). Having regard to the decision in the *Union of India v. V.M.P. Swami* reported in, 1960 1 Mad LJ 62, the learned counsel appearing on behalf of the State of Madras did not press the argument that the notification impugned therein protected the Government by virtue of the exemption granted by it.

17. Mr. *Murdikar* has raised the argument that in the cases cited before us by Mr. *Subrahmanya Reddi*, exemption was given in respect of buildings owned by a class of owners and not buildings occupied by a single tenant. According to him, that is a factor which distinguishes those decisions from the present case. u/s

26, it does not matter whether exemption is given to buildings owned by a class of owners or buildings occupied by a class of tenants or even by a single tenant as long as such a tenant forms a class by himself, and there are facts and circumstances to distinguish him from other tenants. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, the Supreme Court has observed that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual can be treated as a class by himself. The reasoning which appealed to Muktadar, J., in the case referred to above, is, in our opinion, a sound reasoning which appeals to us as well. A notification issued under a section held to be valid must be struck down if it denies to a landlord or an aggrieved person remedy under special law as well as under the ordinary law, because such a notification violates the equality before law guaranteed under Article 14 of the Constitution and it is an unreasonable restriction on the right to hold property guaranteed by Article 19 of the Constitution. We see no difficulty in relying upon these two Articles, because the impugned Notifications were issued long before Articles 14 and 19 were suspended. If the impugned notifications were void when those articles were in force, they cannot be held to be valid now. What was void ab initio must always continue to be void.

18. Secondly, the impugned notifications, in our opinion, are not in consonance with the intention of the Legislature expressed in Section 26 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. We, therefore, see no difficulty in approving the view taken by Muktadar, J., and holding that the impugned notifications are unreasonable and must be struck down. In this view of the matter, it is not necessary for us to deal with the Second contention of Mr. Subrahmanyam Reddi that the notification issued in 1967 applies to or governs the pending proceedings.

19. In the view which we have taken, it was open to the landlords to file an eviction petition against the Posts and Telegraphs Department of the Union of India before the Rent Controller and to evict the Department from the suit premises on account of continuing default in payment of rent. The Rent Controller had jurisdiction to entertain it. So far as the merits of the case are concerned, the order of eviction made by the Rent Controller and confirmed by the Appellate Court has not been challenged before us. We, therefore, confirm the order of eviction passed by the Courts below and since we see no substance in the contentions raised by Mr. Subrahmanya Reddi, these two Civil Revision Petitions are dismissed with costs. Advocate's fee in each of the case is fixed at Rs. 100/-. We direct that the order of eviction in each case made herein, shall not be executed for a period of three months from today.