

(2001) 07 P&H CK 0197

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 10791 of 2001

Tarsem Lal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 31, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 19, 21
- East Punjab Urban Rent Restriction Act, 1949 - Section 13B

Citation: (2002) 1 ILR (P&H) 113

Hon'ble Judges: Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench: Division Bench

Advocate: Mr. S.C. Kapoor and Mr. Ashish Kapoor, for the Appellant;

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, J.

Are the provisions of Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 as amended ultra vires Article 14 of the Constitution? This is the short question that arises for consideration in this case,

2. The petitioner is a tenant in a shop in Ludhiana owned by respondent No. 2 - a non-resident Indian. A petition u/s 13-B of the Act was filed by her against the petitioner for his eviction. This petition is pending in the court of the Rent Controller, Ludhiana. In this petition, it has been claimed that the shop was originally owned by her husband. He having passed away on February 8, 1978, she had inherited the property. It has been duly transferred in her name. The shop was let out on February 9, 1991. In September, 1994, by a mutual agreement, the tenancy was shifted from Shop No. 3 to Shop No. 1. A rent note was duly executed. The respondent-land lady being a Non-resident Indian has invoked the provisions of Section 13-B and claimed eviction on the ground that she wants to start her own business. On the ground of personal necessity, she has claimed eviction of the

petitioner- tenant.

3. The tenant has filed the present writ petition to thwart the effort of the landlady to evict him. He alleges that the provisions in Section 13-B is violative of Articles 14, 19 and 21 of the Constitution. On this basis, he prays that Section 13-B be declared unconstitutional.

3. Mr. S.C. Kapoor, Senior Advocate contended that the provisions discriminates between an Indian and a "foreign landlord". Thus, it violate Article 14 of the Constitution.

4. The short question that arises for consideration is - Does the provision as contained in Section 13-B offend Article 14 of the Constitution ?

It would be apt to notice the provision. It provides as under :-

13-B. Right to recover immediate possession of residential building or scheduled building and non-residential building to accrue to Non-resident Indian. - (1) Where an owner is a Non-resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her is required for his or her own use, or for the use of any one ordinarily living with and dependent upon him or her, he or she may apply to the Controller for immediate possession of such building or buildings, as the case may be :

Provided that a right to apply in respect of such a building under this section shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.

(2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building under this section, he or she shall not transfer it through sale or any other means or let it out for a period of five years from the date of taking possession of the said building failing which the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly."

5. A perusal of the above provision would show that a right has been conferred on a Nonresident Indian to recover immediate possession of the rented building. If more than one non-residential building has been let out, the Legislation perm its the recovery of possession in respect of one building only. It also provides that on recovery of possession, the owner shall not be entitled to transfer the building by

sale or any other means or to let it out for a period of five years. The failure to comply with this condition carries adverse consequences for the owner.

6. Mr. Kapoor contended that there is no rational basis for differentiating between an Indian and a Non-resident Indian owner of the building.

7. The contention is untenable. It is indisputable that a large number of Indian are residing abroad. They are doing well. Some of them have even acquired foreign citizenship. There is a clear and well understood difference between the two. They are not similarly placed. They are treated differently under different laws. Even under the Constitution. For example, protection under Article 16 is not available to foreign nationals. In such a situation, it is clear that the Indian citizens and the Non-resident Indians are not similarly placed. Thus, they can be treated differently. There is no violation of Article 14.

8. Still further, it is also a fact of life that there is need to earn foreign exchange. There is an acute shortage of accommodation. The legislation as originally promulgated granted substantial protection to the tenant. Eviction involved lengthy procedure at different levels in courts. This legislation discouraged people from raising buildings or letting them out.

9. The amendment appears to have been brought about with the twin object of motivating people to invest in property in India. As a result, the nation would get the much-needed foreign exchange. The homeless would get a cover over the head. Simultaneously, the owner who is a non-resident Indian has been assured that in case of need, it would be possible for him/her to recover the possession without having to face a long and unending litigation. The impugned provision merely seeks to help the Non-resident Indians.

10. Mr. Kapoor contended that the classification between Indians and Non-resident Indians has no nexus with the object of the legislation.

11. Even this contention is wholly lacking in merit. It is undoubtedly true that the Rent Restriction Act was initially promulgated to protect the tenant against "mala fide attempts" by the landlord to "procure eviction". However, with the passage of time, the situation has undergone a substantial change. There are apparent economic compulsions. These compel the Legislature to adopt new measures to meet the changing needs. It is in view of the changed situation that the Legislature has made the impugned provision. Still further, the basic object was to protect the tenant from "mala fide attempt" at eviction. In the present case, the provision seeks to help the landlord only when he/she has a bonafide need. The essential object of the Act is fully promoted. In any case, there is always a presumption in favour of the constitutional validity of a provision. The Legislature is aware of the needs of the people which have been made manifest by experience. It is in view of the changing needs that the new measure has been adopted. We find no taint of unconstitutionality in the provision.

12. Mr. Kapoor referred to the decision of their Lordships of the Supreme Court in [Harbilas Rai Bansal Vs. State of Punjab and another](#), . This was a case where the validity of the provisions by which the landlord was debarred from seeking eviction of the tenant from a non-residential premises for his bona fide requirement was questioned. The High Court had negated the challenge. However, the decision of the High Court was reversed. It was held that the Act conferred certain rights on the tenants and subjected the landlords to certain obligations. Prior to the amendment, the provisions "were uniformly applicable to the residential and non-residential buildings". The amendment in the year 1956 created a classification which "has no nexus with the object sought to be achieved by the Act. To vacate a premises for the bona fide requirement of the landlord would not cause any hardship to the tenant. Statutory protection to a tenant cannot be extended to such an extent that the landlord is precluded from evicting the tenant for the rest of his life even when he bona fide requires the premises for his personal use and occupation."

It was further observed as under :-

"A landlord may genuinely like to let out a shop till the time he bona fide needs the same. Visualise a case of shop-keeper (owner) dying young. There may not be a member in the family to continue the business and the widow may not need the shop for quite some time. She may like to let out the shop till the time her children grow-up and need the premises for their personal use. It would be wholly arbitrary - in a situation like this - to deny her the right to evict the tenant. The amendment has created a situation where a tenant can continue in possession of a non-residential premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in mind that the objects, reasons and the scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly unjust for the landlord of a non-residential premises."

13. Thus, the amendment was annulled. This decision does not help the petitioner in any manner. In fact, it clearly supports the validity of the impugned provision.

14. Learned Counsel also referred to the decision of the Supreme Court in [Rattan Arya and Others Vs. State of Tamil Nadu and Another](#), . Herein, the provision classified the tenants of residential buildings on the basis of the rent. This was held to be violative of Article 14. Such is not the situation in the present case. Learned counsel had also referred to the decision of the Bombay High Court in *Vidarbha (Rent Control) Bhaidekara Sangh, Akola and another etc. v. State of Maharashtra and another*, AIR 1987 Bombay 10. The issue before the court was the validity of the provision according preference in the matter of securing housing accommodation to Union or State Government employees vis-a-vis the non-Government employees. This decision has no relevance to the facts of the present case.

15. Article 14 of the Constitution permits classification. The requirements are that the classification must be reasonable. It must have a rational relationship with the

object sought to be achieved. These tests are fully satisfied in the present case. The classification between resident and Non- resident Indians is reasonable. It has a nexus with the object of regulating the inter se rights of the landlord and the tenant. It protects the right of a Non-resident Indian to come back and recover possession of the building. It does not militate against the right of the tenant to be protected against "malafide attempts" of the landlord to evict him. Thus, it does not violate Article 14 of the Constitution.

16. Mr. Kapoor contended that the amendment is unreasonable as it provides only a meagre punishment for violation of the provision.

17. We are unable to accept this contention. Corresponding amendments have been made in various provisions. It has been inter alia provided that in case, the owner does not occupy the premises or violates the provision, he can be punished with imprisonment or fine. The provision debars the owner from transferring the property in any manner for a period of five years. It is, thus, apparent that reasonable safeguards have been provided. Still further, quantum of punishment is primarily a question of policy. It lies within the province of the legislature. In the present case, the provision is not so arbitrary as to call for any interference by the court.

It was lastly contended that the word "owner" has not been defined.

Every word in a statute is not required to be defined. In any case, in the absence of a specific definition, a word has to be given its ordinary dictionary meaning. As for the present case, it may only be mentioned that "owner" is a general term. Its meaning can vary according to circumstances. Generally, it means a person "having dominion over a thing..... corporeal or incorporeal, and a right of enjoyment and disposition - one who has full dominion over property with a right to sell or otherwise dispose of it without accountability to any one". This meaning is well understood. It has the same meaning in the present case.

No other point was raised.

In view of the above, we find no merit in this writ petition. It is, consequently dismissed in limine.

18. Petition dismissed.