(1985) 08 BOM CK 0041

Bombay High Court (Nagpur Bench)

Case No: Letters Patent Appeal No''s. 29 to 31 of 1982

Sheshrao and etc.		APPELLANT
	Vs	
Sonchand		RESPONDENT

Date of Decision: Aug. 7, 1985

Acts Referred:

- Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 - Section 2
- Constitution of India, 1950 - Article 14

Citation: AIR 1986 Bom 54 : (1985) 2 BomCR 582

Hon'ble Judges: Patel, J; Deshpande, J

Bench: Division Bench

Advocate: A.M. Bapat, for the Appellant; V.G. Palshikar, for the Respondent

Judgement

Deshpande, J.
The three sets of tenants occupying three different shop premises in a house, have appealed from the orders dismissing their Writ Petitions against the permission granted by the Rent Controller and affirmed by the appellate authority, under clause 13(3)(vi) of the C.P. & Berar Letting of House and Rent Control Order, 1949 (the Rent Control Order for short).

2. The respondent Sonchand and his grandson Kishore, aged about 20 years, formed a joint Hindu family which owned a house comprising three shop-premises, two of which were of size 6'' X 8 1/2'' and the third of the size 10'' X 10''. The respondent was in possession of a portion 6'' X 6 1/2'' out of that building which was situated in a business locality near Saroj Talkies at Yavatmal. Sonchand applied to the Rent Controller for permission to give notice determining the leases of the three sets of tenants, on the ground that he wanted the premises, for his own occupation, i.e., for the purpose of opening a stationary and General Stores in those portions. The Rent Controller rejected the contention raised by the tenants and held that the

respondent needed the house for the purpose of his bonafide occupation. The tenants'' appeals to the appellate authority were dismissed and so were the three Writ Petitions which they had filed against the orders of the Rent Control Authorities and that gave rise to these three Letters Patent Appeals.

3. The first challenge by the appellants was to the refusal by the learned single Judge to apply the proviso to clause 13(3)(vi) of the Rent Control Order which revived on account of the deletion of sub-clause (f) to Article 19(1) of the Constitution by the 44th Amendment which came into force on 30th April, 1979, on the ground that the amendment of the Constitution was a subsequent event which had not occured until the decision by the appellate authority, which was rendered on 20th July, 1978. Secondly, it was contended that the authorities had not considered the question as to whether the need of the landlord would be met by the occupation of portion of the house only and not granting permission in respect of such a portion only. On the other hand, it was urged on behalf of the respondent-landlord that the proviso could not have revived, in view of it having been struck down by this Court in Vikram Madhoba Ghodkhande v. Medical Officer, Wardha 1983 MahLJ 190, as being violative of Article 14 of the Constitution. The submission for the respondent further was that the Rent Control Authorities had applied their mind to the question which was required to be considered under clause 13(3) & (8) of the Rent Control Order, and no interference by this Court in its writ jurisdication was called for.

4. Clause 13 imposes a bar on the landlord''s right to issue a notice determining the lease, except with the previous written permission of the Controller and sub-clause (3) provides the conditions under which the Controller may grant the permission. Under item (vi), the permission may be granted, if the landlord needs the house,or a portion thereof, for the purpose of his bona fide occupation, provided he is not occupying any other house of his own in the city or town concerned. There was a divergence of views with regard to the application of the proviso, it was a set at rest by the Full Bench decision in Eknath Bhanudas Utane Vs. Shankarrao Deorao Jumde and Another, holding that a landlord in occupation of a house or a portion of a house of his own in the city or town concerned, has no right at all to apply for permission to evict his tenant on the ground that he needs the house or a portion thereof for the purpose of his bona fide occupation. Thereafter a single Bench of this Court in Ramcharan Ramdin Ahir Vs. Resident Deputy Collector with Rent Control Appellate Powers, Yeotmal and Others, held that the proviso to clause 13(3)(vi) of the Rent Control Order in so far as it denies to the landlord the right to get a house or a portion of a house in occupation of a tenant if the landlord genuinely needs it because his own house or a portion thereof in which he is living is either unsuitable, or inadequate or insufficient for his needs, is ultra vires as it violates the fundamental right guaranteed under Article 19(1)(f) of the Constitution, the restrictions put thereon being unreasonable. By the 44th Amendment to the Constitution, which came into force on 30-4-1979, sub-clause (f) of Article 19(1) of the Constitution was deleted. Article 13(1) of the Constitution, which provides that all

laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of Part-II, shall, to the extent of such inconsistency, be void , would not, therefore, apply after the deletion of sub-clause (f) of Article 19(f) of the Constitution. In view of the observations of the Supreme Court in Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, , as the C.P. & Berar Regulation of Letting of Accommodation Act, 1946 (Act No.XI of 1946) and the Rent Control Order, 1949, were pre-existing laws, the doctrine of eclipse would apply and the proviso to clause 13(3)(vi) of the Rent Control Order would revive. This position was not disputed before the learned single Judge and has not been disputed before us.

5. On behalf of the respondent, it was urged that since clause 13(3)(vi) of the Rent Control Order offended against the right to equality, Article 14 of the Constitution would operate despite the deletion of sub-clause (f) of Article 19(1) of the Constitution, and reliance was placed on the single Bench ruling of this Court in Vikram Madhoba Ghodkhande v. Medical Officer 1983 MahLJ 190. In answer, it was urged on behalf of the appellants that the decision in that case i.e., 1983 MahLJ 190, was rendered after the decision by the appellate authority in the Rent Control proceedings, and that decision, which was not in force during the pendency of the rent control proceedings, cannot be pressed in aid for the first time in the writ petition. The learned Counsel for the appellants also urged that Vikram''s case was not correctly decided and the view of the learned single Judge required reconsideration by this Bench which is a larger Bench.

6. If we find that the proviso to clause 13(3)(vi) of the Rent Control Order contravenes Article 14 of the Constitution and, by that reason, would not be enforceable as against the respondent, the consequence would be that the proviso under which the appellants seek protection, would continue to remain inoperative despite its revival by deletion of sub-clause (f) of Article 19(1) of the Constitution. If the provision, which was unenforceable at the time of the decision by the Rent Control Authorities remained unenforceable for another reason, the result would be that no protection cn be claimed under the unenforceable provision, whatever may be the reason for the unenforceability. The in availability of the proviso, in view of the challenge that if offended against Article 14 of the Constitution, was not a question raised before the learned single Judge and he was, therefore, not called upon to consider this aspect of the matter. We are clear that if the invalidity of the proviso to clause 13(3)(vi) is apparent, that would not be a subsequent event, the consideration of which would be barred in a writ petition under Articles 226 and 227 of the Constitution.

7. The preamble to the C.P. & Berar Regulation of Letting of Accommodation Act, 1946, reads as follows:-

"An act to provide for regulating the letting and subletting of accommodation in the Central Provinces and Berar.

Whereas it is expedient to make provision for regulating the letting and subletting of accommodation and other ancillary matters hereunder specified.

It is hereby enacted as follows:-"

Section 2 of the Act then provides :-

"The Provincial Government may, by general or special Order which shall extend to such areas as the provincial Government may, by notification, direct, provide for regulating the letting and subletting of any accommodation or class of accommodation, whether residential or non-residential whether furnished or unfurnished, and whether with or without board, and in particular :-

(a) for controlling the rents for such accommodation either generally or when let to specified persons or class of persons or in specified circumstances,

(b) for preventing the eviction of tenants or sub-tenants from such accommodatingg in specified circumstances,

(c) for requiring such accommodation to be let either generally, or to specified persons or classes of persons, or in specified circumstances, and

(d) for collecting any information or statistics with a view to regulating any of the aforesaid matters."

The provisions of clause 13 of the Rent Control Order, which were framed by the Provincial Government under the powers delegated to it under Sec.2, provide the conditions under which the permission may be granted to the landlord to issue a notice determining the lease. Apart from item (vi) to which we have already made a reference, the landlord can seek permission on the ground that the tenant was in arrears of rent for three months, or that he was habitually in arrears, or that he had sublet the premises or used them for purpose other than that for which they were let, or that he had secured an alternative accommodation,or that the landlord wanted to make essential repairs or alterations, or that the tenant had committed acts of waste or nuisance. It was contended on behalf of the appellants that this was a beneficient piece of legislation which was intended for the protection of tenants against unscrupulous landlords and, therefore, every provision thereof should be construed in favour of the tenants. It is difficult to accede to this argument, considering the various situations in which the landlord becomes entitled to seek the permission to determine the lease. It appears to us that while framing these provisions, the attempt was to balance the rights and obligations of the landlord and the tenant, and as clause (b) of Sec 2 of the C.P. & Berar Regulation of Letting of Accommodation Act, 1946, provides to preventing the eviction of tenants or sub-tenants from accommodation in specified circumstances. The interests of both the sections are being sought to be protected and it would, therefore, be wrong to contend that the idea underlying the Rent Control Order was to protect the tenant in each and every eventuality.

8. The Full Bench in Eknath Bhanudas Utane Vs. Shankarrao Deorao Jumde and Another, as far back as on 5-9-1969, observed in para 29 as follows:-

"So far as the question of hardship is concerned, we have already shown that the Order was initially promulgated as a temporary measure to meet a temporary emergency and, therefore, it is very probable that the Legislature, though alive to the hardship of the landlord decided that because it was for a temporary period, he would have to put up with it. Unfortunately though the temporary period has elapsed, the public emergency has continued and so has the law. But these circumstances give a clue to what was intended at the time when the law was intended at the time when the law was enacted. Secondly, on the question of hardship we may also say that no doubt as a result of such a long period having elapsed since the order was initially enacted, some hardship does appear to be inflicted now upon the landlord by the same provision continuing, but because there has developed a certain measure of hardship, we cannot come to any different interpretation when as we have shown, the language of the statute is plain and its legislative history indicates beyond any shadow of doubt one interpretation and one only."

9. The question before Full Bench, however, was only about the interpretation of clause 13(3)(vi) of the Rent Control Order and there was no challenge regarding its violation of Article 14 of the Constitution. In Ramcharan Ramdin Ahir Vs. Resident Deputy Collector with Rent Control Appellate Powers, Yeotmal and Others, , the challenge was raised initially both under Articles 14 and 19(1)(f) of the Constitution, but the learned Judge, having found that Article 19(1)(f) of the Constitution had been contravened, did not consider the proviso in the context of Article 14 of the Constitution. It is well-settled that where the Legislature enacts a law for the solution of human problem, in the construction of such law and particularly in judging of its validity, the Courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the Courts are not, in these matters, functioning as it were in vacuo,but as parts of a society which is trying, by enacted law, to solve its problems and achieve social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole.

10. We need not repeat all the weighty reasons given by the learned single Judge while upholding the challenge under Article 14 of the Constitution to the provisions of clause 13(3)(vi) in Vikram''s case 1983 Mah LJ 190, while pointing out the hardship to which the landlord, who did not have sufficient accommodation, would be put if he were completely debarred from obtaining possession of the premises which he had let to the tenant, however large the accommodation in possession of the tenant may be and even if he may not require the accommodation to that extent and even if the landlord''s own need, which did not exist initially, were to have been felt and become more and more pronounced over the years during which the Rent Control

Order remained in force. We have already indicated the object of this legislation and its provisions, generally, which permit the landlord to obtain possession of the premises let out, from the tenants. The question really is whether there was any justification for the classification of the landlords into two categories, viz., those who were in occupation of any house or a part of it, however small that accommodation may be; and those who were not in possession of any accommodation. A consideration of item (vi) of clause 13(3) and sub-clause (8) of clause 13 would show that such a discrimination was entirely unnecessary and has no relevance to achieving the object of the legislation. Under item (vi), the Collector has to be satisfied that the landlord needs the house or a portion thereof for the purpose of his bonafide occupation, and it is difficult to see what relevance his occupying a house of his own in the city or town would have, to the enquiry into the question of his bona fide occupation excepting that it would only be one of the factors for ascertaining the need and cannot be a justification for arbitrarily and completely debarring him from even initiating the proceedings before the Controller. Under sub-clause (8), when a landlord applies to the Controller under item (vi) of sub-clause (3), the Controller has to enquire into the needs of the landlord and if on enquiry the Controller is satisfied that the needs of the landlord will be met by the occupation of a portion of the house, he shall give permission in respect of such portion only. This sub-clause would, therefore, take care of the extravagant claims which the landlord may make against the tenant for possession of the premises, even though he may have had some accommodation in his possession. In the context of these provisions, the classification as made by item (vi) appears to us to be invidious and arbitrary.

11. In State of Rajasthan Vs. Mukanchand and Others, while considering the provisions of section 2(e) of the Rajasthan Jagirdars'' Debt Reduction Act, which excluded certain debts due to the Government, or Local Authorities, or other Bodies, it was observed that the portion did not satisfy the test of permissible classification and had no rational relationship wth the object sought to be achieved by the Act, namely, to reduce the debts secured on jagir lands which had been resumed under the provisions of the Act and further, no intelligible principle underlies the exempted categories of debts. On behalf of the appellants, reliance was placed on B. Banerjee Vs. Smt. Anita Pan, where the classification of landlords into two classes of owner-landlords and transferee-landlords and the imposition of an embargo on the latter minacious class against bringing eviction suits within three years of purchase was held to pass the dual tests of reasonable classification and the differentia having a rational nexus wth the statutory object. That measure came to be supported mainly because it imposed a temporary ban on the transferee-landlords. We find that the observations made there cannot apply to the provisions which we are being called upon to consider, because here we have a complete and permanent ban for the landlords even from seeking an enquiry into their needs for additional accommodation and such a ban, on the basis of the differentia which has no rational

nexus with the statutory object, would fall foul of Article 14 of the Constitution. A number of authorities were cited before us, but it is not necessary to refer to them in detail, because the proposition that legislative classification must not be arbitrary but should be based on an intelligible principle having a reasonable relation with the object which the Legislature seeks to attempt, is well-established.

12. As held by the Supreme Court in the In Re: The Special Courts Bill, 1978, the classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have reasonable relation to the object of the legislation. In Bachan Singh, Sher Singh and Another and Ujagar Singh and Another Vs. State of Punjab and Others, it was observed as follows (at p.1338).

"It can therefore now be taken to be well-settled that if a law is arbitrary or irrational, it would fall foul of Article 14 and would be liable to be struck down as invalid. Now a law may contravene Article 14 because it enacts provisions which are arbitrary, as for example: They may discriminatory classification which is not founded on intelligible differentia having rational relation to the object sought to be achieved by the law or they arbitrarily select persons or things for discriminatory treatment ..... It is plain and indisputable that under our Constitution law cannot be arbitrary or irrational and if it is, it would be clearly invalid, whether under Article 14 or Article 19 or Article 21, which ever be applicable."

Having regard to all these considerations, we are in respectful agreement with the view taken by the single Bench of this Court in Vikram''s case, 1983 MahLJ 190 that the proviso to clause 13(3)(vi) being violative of Article 14 of the Constitution, is void.

13. In the light of what we have stated above, when the proviso to clause 13(3)(vi) could not have operated, the respondent cannot be held to have been disentitled to obtain the permission of the Rent Controller under item (vi) of clause 13(3) of the Rent Control Order.

14. We then turn to the other submission viz. that the Rent Control Authorities did not enquire into the needs of the landlords and whether it was necessary to give possession of all the three tenements, or a portion only thereof. The parties had not raised this contention before the Rent Control Authorities. According to Shri Bapat, the learned Counsel for the appellants, that provision mandates the authorities to consider whether partial eviction should be ordered or they should order eviction of the entire holding. Reliance was placed for this on Rehman Jeo Wangnoo Vs. Ram Chand and Others, We have examined the relevant provisions of the Jammu and Kashmir Houses and Shops Rent Control Act (34 of 1966), upon which the directions came to be made by the Supreme Court and they are materially different from the C.P. & Barer Letting of Houses and Rent Control Order, 1949. It, however, appears to us that the Rent Controller had taken note of the fact that the respondent was in

possession of one very small room which was used for sleeping purpose and was unsuitable for opening a shop. He had also inspected the premises, before granting permission to the landlord to issue notices determining the leases of the appellants. The appellate authority had before it the dimensions of the three premises and the findings of the Rent Controller, and that was why it observed that the question of inspecting the premises did not arise. The appellate authority also considered the extent of the premises in the occupation of the respondent and its unsuitability for the purpose of business. The learned single Judge has also dealt with this aspect, while considering the contention of the appellants and has pointed out that the total length of the premises was 22-feet and its breadth at one end was 8 1/2- feet and at the other, 10 feet, and it was not possible to start a shop of Stationary and General Stores without having almirahs, and that it was necessary for the landlord to have the whole of the premises for opening his business.

15. In the result, we are satisfied that no interference is called for. The appeals are dismisssed, but there will be no order as to the costs of the appeasls. Appeals dismissed.