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Court : Mumbai

Decided On : Jun-19-1985

Reported in : AIR1986Bom64

Judge : V.A. Mohta and;V.V. Vaze, JJ.

Acts : Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 - Sections 2; Central Provinces and Berar Letting of Houses and Rent Control Order, 1949; Constitution of India - Article 14

Appeal No. : Writ Petn. Nos. 993 and 2100 of 1983 and 361 of 1985

Appellant : Prabhakar and anr. Etc.

Respondent : State of Maharashtra and ors.

Advocate for Def. : B.P. Jaiswal and;A.A. Desai, Govt. Pleaders and B.P. Jaiswal,;A.P. Moharir,;S.C. Mehadia,;Manohar Parchureand;and Vivek Palshikar, Advs.

Advocate for Pet/Ap. : M.I. Shareef,;A.B. Oka and;V.C. Daga, Advs.

Judgement :

V.A. Mohta, J.

1. By these three writ petitions under Art. 226 of the Constitution by tenants of houses used for residential purpose and constructed on sites lying vacant on 1st January 1951 within Corporation/ Municipal limits, Contitutional validity of notification No. 659-66-II dated 6th February 1952 issued by the then Provincial Government of C.P. and Berar in pursuance of an authority conferred on it by clause 30 of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 ('The HRC Order') issued under section 2 of the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 ('The Act') is challenged. The notification reads thus :

'In pursuance of clause 30 of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949, the State Government are pleased to exempt from the operation of all the provisions of the said Order any house used for residential purposes if the house is constructed on a site lying vacant on 1st January, 1951 or on a site made vacant on or after that date by demolition of any structure standing on such site.'

The sum and substance of the only point that is raised before us is that continuing exemption to a class of houses since 1952 for such a long and indefinite period violates Art. 14 of the Constitution.

2. To appreciate this point, it would be necessary first to trace in short the background of this legislation. The following Statement of Objects and Reasons of the Central Provinces and Berar Regulation of Letting of Accommodation Bill, 1946 (Bill No. 7 of 1946) prepared on 15th August 1946 and which emerged as the Act speaks for itself:

'The influx of a large population to towns as a result of war conditions necessitated the promulgation of the Central Provinces and Berar House Rent Control Order, 1942, under the Defence of India Rules. The Defence of India Rules, will lapse at the end of September 1946. The abnormal conditions created by the war still persist and are not likely to subside for some time. Rent Control measures will therefore continue to be necessary and Government proposes to take powers for regulating house rents in urban areas by new legislation. It is proposed to keep the law in operation for a limited period of three years. If normal conditions return

earlier, steps will be taken to repeal it.'

Essentially and clearly the Act is a war time measure intended to operate for a limited period. Conditions favourable to its repeal were never restored with the result the Act became a permanent feature. Section 2 of the Act empowers the Provincial Government to provide by general or special Order for regulating the letting and subletting of any accommodation or class of accommodation in areas to be specified 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 accommodation 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 Act has barely nine sections. In exercise of the authority conferred by the above provisions, the Central Provinces and Berar Collection of Information and Letting of Houses Order, 1946 and Central Provinces and Berar House Rent Control Order, 1947, were issued. These two Orders were repealed and in 1949 the HRC Order came to be issued under the General Administration Department No. 3730-3140-II, dated 26th July 1949.

3. After Vidarbha Region separated from the Central Provinces and Berar and merged into new bilingual Bombay State in 1956, the Act and the HRC Order continued to operate in that region in terms of section 119 of the States Reorganisation Act. In different regions of the State different rent legislations operated. The bilingual State of Bombay was bifurcated in 1960, but that bifurcation did not affect either this region or the laws operating therein. Clause I of the HRC Order empowers the Provincial Government to apply the whole or any part of the Order to such areas as it may direct from time to time. The HRC Order

is divided into four Chapters. Chapter I is preliminary. Chapter II deals with fixation of rent and other terms. Chapter III deals with Collection of Information and Letting of Accommodation and Chapter IV is the supplement. Clause 30 which finds place in the last Chapter IV empowers the Government to grant exemptions. Chapter I of HRC Order was made applicable in the erstwhile province of C.P. and Berar on 26th July 1949 and different Chapters were made applicable under Clause I to different Municipalities from time to time. First exercise of the power of exemption under clause 30 was made on 26th July 1949 itself when houses belonging to a Municipality, Notified Area Committee, Janapada Sabha and place of entertainment were exempted. Impugned notification was issued 2 1/2 years later and is holding the field for nearly 33 years. Basic structure of the HRC Order has also remained unaltered for nearly 36 years.

4. M/s. Shareef, Oka and Daga, the learned counsel for the petitioners, have fairly not disputed that the HRC Order can make reasonable classification and that old and new construction can certainly form two valid different classes having nexus with the object of the law. The contention of the State that the object of granting this exemption was to encourage new constructions, - an object which has certainly been achieved - is also not disputed before us. Their submission is that though the initial object might be good and valid, the continuation of the exemption for a long period of over 33 years and that too ad infinitum has rendered it constitutionally bad. The argument proceeds to add that it cannot continue to act as an incentive after a lapse of such a long gap and thus has no nexus with the object sought to be achieved as a result presently classification has no foundation to stand. State and other respondents - landlords submit that if this exemption was initially unobjectionable, it cannot be rendered void only by virtue of the fact that it has continued to operate for long time and is likely to do even in future for indefinite period. Now, the point raised is no more res integra in view of the decision of the Supreme Court in the case of Motor General Traders v. State of Andhra Pradesh, AIR 1984 SC 121 in which a similar provision viz. S. 32(b) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 ('The AP Act'), has been declared unconstitutional. The said provision reads thus :

'32. Act not to apply to certain buildings:-

The provisions of this Act shall not apply:

(a) to any building owned by the Government;

(b) to any building constructed on and after the 26th August, 1957.'

In that matter which was decided some time in 1983 it is observed:

'We are confronted in these cases with the position, say, in Hyderabad city, that there are a large number of buildings which are more than 26 years old which are governed by the Act and quite a large number of buildings which are constructed subsequent to August 26, 1957 which are exempted from it. Many of the exempted buildings are more than 10 years old. While it may be that there is some justification for exempting new buildings say which are five, seven or ten years old from the Act, in order to provide an incentive to builders of new buildings, there is hardly any justification to allow buildings which were constructed more than ten years ago to remain outside the scope of the Act. The landlords of such buildings must have realised a large part of investment made on such buildings by way of rents during all these years. The Court cannot fail to take into account that owing to continuous influx of population into urban areas in recent years the rates of rents have gone up every where and that the landlords of such buildings have been able to take advantage of the situation created by the shortage of urban housing accommodation which is now a universal phenomenon. In the case of these buildings there is no longer any need to continue the exemption. There cannot be any valid justification to apply the Act to a building which is 27 years old and not to apply it in the case of a building which is 26 years old. The anomaly that is brought about by S.32(b) of the Act would be more pronounced when the State Government by a notification brings the Act into force now in any part of the State for the first time. On such extention of the Act, only buildings constructed prior to August 26, 1957 in that part of the State would become subject to the Act and later buildings would still be exempt from its operation. This is a wholly insupportable classification. The classification of buildings into two classes for purposes of section 32(b) of the Act, therefore, does not any longer bear any relationship to the object, since the buildings which are exempted have already come into existence and their owners have realised a major part of their investment.'

Dealing with the submission that a legislation once valid, cannot be held to be invalid only because of passage of time. It is observed:

'What may be unobjectionable as a transitional or temporary measure at an initial stage can still become discriminatory and hence violative of Art. 14 of the Constitution if it is persisted in over a long period without any justification..... The long period that has elapsed after the passing of the Act itself serves as a crucial factor in deciding the question whether the impugned law has become discriminatory or not because the ground on which the classification of buildings into two categories is made is not a historical or geographical one but is an economic one. Exemption was granted by way of an incentive to encourage building activity and in the circumstances such exemption cannot be allowed to last for ever.'

5. The submission of the respondents that this notification is holding the field without any challenge for nearly 33 years by any tenant and hence no attack on its validity should be entertained at such a belated stage, has merely to be stated to be rejected. Firstly, long continuation itself is a ground for attack. Secondly, mere delay cannot defeat such a sacrosanct and vital right of equality. Thirdly, inaction on the part of others cannot affect the rights of the petitioners who had no reason to challenge it before -

6. Are there any distinguishing features between the relevant provisions of A.P. Act and HRC Order which make the ratio decidendi inapplicable? We discover none Indeed, distinguishing features are of such nature that ratio applies with greater rigour. In A.P. Act, time lag was comparatively smaller and the exemption was granted in the substantive provisions of the Act itself. For all these reasons, there is no escape from the conclusion that the impugned notification is unconstitutional and has to be struck down as such.

7. One of the points that was canvassed before us is that the impugned notification is so integrally connected with the HRC Order that it is not severable, as a result if that notification is unconstitutional, whole of the HRC Order must also be held so. For variety of reasons, this submission cannot be accepted. In the first place, this notification is issued by the executive under a clause which permits its withdrawal

or variation at the sweet choice of the government. Thus, the question of its non-severalty from the substantive provisions of the HRC Order does not arise at all. Moreover, it does not appear to be integrally connected with the other provisions of the HRC Order at all and can stand or fall independently. M/s. Mehadia, Parchureand and Palshikar, the learned counsel appearing for the respective landlords, have brought to our notice the whole scheme of the HRC Order and have attempted to demonstrate how the provisions are outdated and how after the quashing of the said notification the provisions are likely to adversely affect eh interest of the tenants in certain matters. In short, the submission is that not only the privileges granted under the HRC Order but even the limitations imposed therein, which hitherto were not applicable to the tenants, would also be applicable. That is always so. Every enactment has rights as well as obligations will be imposed on them, the benefits accrued cannot be denied.

8. Speaking for ourselves, we entertain no doubt whatsoever that the HRC Order has become completely outdated and continues to fail to take into account the changed conditions between 1949 and 1985, and the felt necessities of time. Some of its provisions are unique and do not find place either in the Bombay Rent Act prevailing in the Western Maharashtra region or the Hyderabad Houses (Rent, Eviction and Lease) Control Act 1954 prevailing in Maharashtra region. There is no doubt that States Reorganisation Act in general and section 119 in particular, provides for the continuance of different enactments in different areas, even after merger of that area in the new State. The provisions have a duel purpose - (I) facilitating early formation of homogeneous units and (ii) maintaining political identity and distinctive character of the region till uniformity is achieved. By passage of time, these considerations of necessity and expediency would be obliterated and continuation of difference may be either mechanical or meaningless. At what point of time uniformity should be brought is certainly either a legislative or an executive function and not a judicial fucntion. We are quite conscious that Courts have very little say in the matter, but having regard to the matters of common knowledge and having perused the material placed before us, we do feel that uniform Rent Control legislation in the whole State is over due. In any case, the HRC Order does need not merely repairs but complete reconstruction. Even five years before, in the case of Vasant Balwant v. Shakun B.

Dhote 1980 Mah LJ 347, this Court had made the same observations and had expressed the same hope:

' The Order is very old and no substantial changes have been effected in the same, though they are over due specially in certain matters. There cannot be any manner of doubt that in the long period of over 30 years, vast changes have been taken place specially with relation to housing problems in urban areas necessitating rethinking and reconstruction of the 'Order' and so also to tune it up in accordance with the felt necessities of the modern times. I am informed that the State is alive to this aspect of the question and that a uniform legislation for whole State on the basis of recommendation of various committees constituted for the purpose is in the offing.'

9. The material to which reference has been made by us is the two expert reports of the bodies constituted by the State itself. The Rent Acts Enquiry Committee popularly known as 'Tambe Committee' was appointed by the Government of Maharashtra in the year 1975 (Urban Development, Public Health and Housing Department by Resolution No. BRA 2174/9011/75-E, dated 20th February 1975 as amended by Resolution No. BRA 2174/9011-D-37 dated 6th August 1975) and the Committee after deliberations and review of various legislations prevailing in the State has made a report in 1977 recommending certain measures and having a uniform legislation in the whole State. Maharashtra State Law Commission also gave its Twelth Report on the unification and consolidation of the Rent restriction laws in the State as far back in July 1979 observing:

'The Commission does not see any difficulty in the way of unification and consolidation of the rent restriction laws in the State.'

Indeed, even an exhaustive draft Bill forms part of the said report. From both these expert studies, it is apparent that in every quarter there is a strong feeling that (i) the HRC Order as it stands has become completely outdated and needs immediate change or modification and (ii) a clear case and urgency for unification of rent legislation in the whole State exists. Therefore, all that remains to be done is to take further steps in the matter. It is not for us to suggest either acceptance of the report in full or in part or its rejection. All that we strongly feel about is that the

matter does not brook any delay.

10. The necessity of making these observations arises because it is easy to imagine the serious consequences of striking down the impugned notification as null and void. This is bound to adversely affect the construction activity - which because of the exemption was going in speed in this part of the State and which had stopped in the other parts where there were no exemptions and consequently no incentives for private construction of houses. The necessity of having some incentive for new constructions cannot, therefore be over emphasised. Even the Committee as well as the Commission have realized the importance of having incentives for new constructions. All that is, therefore, necessary is to strike a reasonable balance between necessity of giving protection against exploitation of the tenants on one hand and the incentives to start new construction on the other. It cannot be lost sight of that even a tenant can be an exploiter of a landlord. It is, therefore, necessary to keep in mind all the realities of life and also be examine as to what categories of tenants only need protection. We are informed that as a result of declaration of section 32(b) of the A.P.Act as ultra vires, Andhra Pradesh Government has exempted the newly constructed houses up to a period of 10 years. We do hope that in giving final shape all the relevant matters would receive due attention and consideration and a new uniform legislation will see the light soon. If for some good reason it is not possible to have a new uniform legislation in near future, suitable changes at least in the HRC Order should be made and so also new appropriate notification dealing with exemptions should be issued without any delay.

11. We have no doubt that Shri Jaiswal, the learned Assistant Government Pleader appearing for the State who has stoutly defended the impugned notification will take no time in conveying to the appropriate quarters this judgment copy of which should be separately sent to the Ministry of Housing and Special Assistance Department, Mantralaya, Bombay.

12. In the result, the petitions succeed and rules made absolute with no order as to costs. The impugned notification is declared null and void being unconstitutional. We, however, make it clear that this declaration and decision would not affect the

validity of any proceedings in which the decree for eviction has become final and the landlord has already taken possession of the buildings in question pursuant thereto.

13. As a necessary consequence of our decision, the following result will ensue vis-a-vis respective petitions:

(i) Writ Petition No. 361 of 1985:

Civil Suit Nos. 1201 of 1979 and 845 of 1983 so far as they relate to the relief of possession are dismissed. (ii) Writ Petition No. 993 of 1983:

Decrees in Civil Suits Nos. 1763 of 1981, 1760 of 1981 and 1764 of 1981 for possession are quashed and set aside and the respondent No.3 - landlord - is restrained from executing the decrees for possession.. (iii) Writ Petition No. 2100 of 1983: Decree in Civil Suit No. 16 of 1981 for possession is quashed and set aside and respondent No.2 - landlord - is restrained from executing the decree for possession. Order accordingly.

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