Basudev Vs. Damodar Lal

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Court : Rajasthan

Decided On : Aug-29-1970

Reported in : AIR1971Raj115

Judge : C.M. Lodha, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 2(2); Constitution of India - Articles 14 and 226

Appeal No. : Second Appeal No. 460 of 1969

Appellant : Basudev

Respondent : Damodar Lal

Advocate for Def. : P.N. Dutta and K.N. Tikku, Advs.

Advocate for Pet/Ap. : N.M. Kasliwal, Adv.; M.L. Shrimal, Addl. Govt. Adv.

Disposition : Appeal dismissed

Judgement :

C.M. Lodha, J.

1. In this second appeal by the defendant-tenant two points have been argued on behalf of the appellant. It is contended in the first instance that Section 2 (2) Proviso (e) of the Raiasthan Premises (Control of Rent and Eviction) Act, 1950

(which, hereinafter, will be referred to as the 'Act') is ultra vires of Article 14 of the Constitution of India and is, therefore, liable to be struck down. It is submitted that it is on account of the aforesaid provision that the defendant-appellant has not been given protection of the said Act. In the second place it is contended that the finding of the learned District Judge No. 1, Jaipur City, Jaipur, that the plaintiff requires the room in question bona fide for his personal necessity is not sustainable on account of omission on the part of the learned Judge to consider that only a little before the service of notice of termination of tenancy, the plaintiff had let out other rooms in the building.

2. I would first consider the question of constitutionality of Section 2 (2) Proviso (e) of the Act. But before I do so, I may observe that according to the plaintiff the room in question, which is the subject-matter of this litigation was constructed in November 1964 and the suit was brought on 25th of May, 1967, that is, after about three years and one month of the completion of the construction of the room; whereas according to the defendant more than ten years had elapsed on the date of the institution of the suit since the construction of the leased out premises was completed. This question of fact has been discussed by the learned Additional District Judge on the basis of the evidence produced by the parties and he has come to the conclusion that the construction of the premises in question was completed in February 1964 as alleged by the plaintiff. This is a pure finding of fact based on legal evidence and consequently it is not liable to be assailed in second appeal and the learned counsel for the appellant has rightly not challenged it and has placed his case after accepting this finding as correct and binding in second appeal. In view of this finding there is also no gainsaying the fact, that the plaintiff's case squarely falls within the exemption provided in clause (e) of Sub-section (2) of section 2 of the Act, which runs as under :--

'Section 2. Extent, commencement and application -- (1) This Act extends to the whole of the State of Raiasthan.

(2) Sections 1 to 4 and 27 to 31 of this Act shall come into force at once, and the remaining provisions thereof shall extend to such areas in the State of Rajasthan and shall come into force therein with effect from such date as may from time to

time be notified by the StateGovernment in the Official Gazette :

Provided that nothing in the Act shall apply --

xxxxx

(e) to any premises, the construction of which was completed on or after the 1st June, 1951, for a period of seven years from the date of such completion.'

3. The contention of the learned counsel for the appellant is that there is no basis for classifying tenants of buildings constructed before 1st June, 1951, and tenants of buildings constructed thereafter; and that there is no nexus between the basis of this classification and the object of the Act as is mentioned in the Preamble. It has also been contended that the date 1st June, 1951, has been fixed arbitrarily and the classification fixed on the basis of this date affords no, rational basis for such a classication on the ground of time. Another argument in this connection advanced by the learned counsel is that there is no basis for providing the period of seven years during which the exemption from applicability of the Act has been extended to the premises constructed on or after the 1st June, 1951. In support of his argument learned counsel for the appellant has relied on--

(1) State of Punjab v. S. Kehar Singh, AIR 1959 Punj 8 (FB);

(2) Balabhau Manaji v. B. S: Nandan-war. AIR 1957 Bom 233 (FB); and

(3) Shree Meenakshi Mills Ltd., Madurai v. A. V. Visvanatha Sastri, AIR 1955 SC 13.

4. On the other hand Shri Tikku, learned counsel for the respondent has submitted that the classification is not at all arbitrary, but is quite reasonable and that it does not at all violate the principle of equality before law enshrined in Article 14 of the Constitution. In support of his submission he has relied upon,--

(4) Chintapalli Achaiah v. P. Gopala-krishna Reddy, AIR 1966 Andh Pra 51;

(5) Rughbir Singh v. Girdhari Lal Manhas, AIR 1967 J & K 20;

(6) Mohd. Shafi v. 1st Addl. Munsif, AIR 1965 All 23; and

(7) Millap Chand v. Dwarka Das, AIR 1954 Raj 252.

It may be noticed that a provision similar to the one under consideration is contained in U. P. Temporary Control of Rent and Eviction Act (Act III of 1947); Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, No. 15 of 1960; and Houses and Shops Rent Control Act (J & K) (14 of 1952).

5. There are two decided cases of Allahabad High Court pertaining to the U. P. Act. In Raman Das v. State of Uttar Pradesh, AIR 1952 All 703 (FB), an argument was advanced that the proviso to Section 7 of the Act makes discrimination between owners of housesbuilt prior to and after 1st of July, 1946. The Act was passed early in 1947 at a time when there was shortage of accommodation and the legislature thought that an Act of this kind might discourage persons from building houses. The Act, therefore, did not apply to the houses built after July 1, 1946. In 1948, however, it was found that this privilege was being abused and consequently by an amendment, a proviso was added giving the owners a right of occupation of premises built by them after 1st July, 1946, but otherwise allowing the District Magistrate to have a control over the allotment of these premises. It was held that the proviso did not in any way affect the validity of the Act and there was reasonable basis for the discrimination between the houses built before the 1st July, 1946 and those built after 1st July, 1946.

6. In AIR 1965 All 23, it was held that since the construction of new houses should not be discouraged there is justification for not controlling their letting-It was observed that in respect of houses already constructed there is no question of effect of controls upon consideration, and this question can arise in its very nature only in respect of new houses i.e. houses to be constructed in future. In this view of the matter a similar provision contained in Section 1-A of the U. P. Act was held not to be hit by Article 14 of the Constitution.

7. In AIR 1966 Andh Pra 51, validity of Section 32 (b) of the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act (15 of 1960) was called into question on the ground that it is obnoxious to Article 14 of the Constitution

inasmuch as by Section 32 (b) the provisions of that Act were not to apply to any building constructed on or after 25th of August, 1957. The contention was repelled by the learned Judges on the ground that the classification could be justified on the policy of giving incentive to the house-building activity and also on account of increasing pressure on the existing accommodation. In agreement with the view taken by the learned Judges of the Andhra Pradesh High Court, the High Court of Jammu and Kashmir also in AIR 1967 J & K 20, upheld the constitutionality of a similar provision contained in Houses and Shops Rent Control Act (J & K) of 1952.

8. Learned counsel lor the appellant, however, urged that the law regarding control of rent and eviction was promulgated with a view to check the profiteering tendency on the part of the house-owners on account of dearth of accommodation. His submission is that the classification introduced by the impugned provision does not in any wav carry out or advance the object of the Act contained in the Preamble. The Preamble to the Act runs as under :--

'Whereas it is expedient to provide for the control of eviction from, letting of, and rents for, certain premises in the State of Rajasthan and for other ancillary matters;

It is hereby enacted as follows :--'

9. It is no doubt correct that due to shortage of accommodation and also in order to put a check on the profiteering tendency on the part of the house owners the Act was introduced for the purpose of controlling rents as well as eviction. But at the same time it must not be forgotten that the problem of accommodation could be solved only by providing an incentive to the house-building activity. It is also further clear that the Government by itself could not have solved the problem of accommodation and, therefore, it was necessary to encourage private capital in house building activity. It is apparent that it is on account of consideration like these that the impugned provision was made in the Act so that the prospective builders of residential houses as well as business premises may feel that they may be in a position to reap full advantage of their investment in buildings for a specified period unhampered by the provisions of the Act, which are obviously for the benefit of the tenant only. Such a provision, in the ultimate analysis, is bound to ease the accommodation problem on account of incentive afforded by this

provision and people would come forward to build new houses. It is common knowledge that of late investments in all spheres have started yielding higher profits, and just to quote an instance the rate of interest on money investments has definitely gone higher. It cannot be denied that if the forces of demand and supply were given a free play, the rate of rent would have also soared up, but for the control provided by the Act. In this view of the matter it cannot be said that the classification or the discrimination introduced by the impugned provision has no nexus with the object of the Act contained in the Preamble.

10. There is yet another aspect of the matter and it is this, that in finding out the purpose of the Act, the Court should look not only to the language of the Preamble, but to the provisions of the Act as a whole and if it finds in the Preamble an expression not so large and extensive in its import as used in any provision of the Act, it is the duty of the Court to give effect to the large expression notwithstanding phrases of less extensive import of the Preamble. The true intention thus can be gathered from the Preamble as well as other provisions of the Act. Looked at from this point of view the exception contained in Section 2of the Act must also be considered in an attempt to determine the intention of the legislature. The exception, therefore, both because of its caption and form clearly indicates the legislative intention that the buildings constructed after the 1st June, 1951, in pursuance of a definite policy of affording an incentive to the house building activity, are excluded from the operation of the Act for a period of seven years.

11. As regards the complaint of discrimination between tenants of premises built before 1st June, 1946, and those in respect of premises completed on or after 1st June, 1946, suffice it to say, that the discrimination is not directed against the tenants similarly situated. After giving my careful consideration to the contention advanced on behalf of the appellant I fail to see how it can be said that the classification is manifestly arbitrary and not founded on a substantial distinction. It is well established that unless a classification is found to be manifestly arbitrary and unjust, it would not be proper for a Court to interfere with the exercise of the legislative discretion and set aside a provision of law merely because in its view it would be unwise or unncessary to enact such a provision.

12. It may not be out of place to mention here that the learned counsel for the appellant himself submitted that he has not been able to lay his hands on any authority directly in point supporting his contention and taking a view contrary to the one taken by the High Courts of Andhra Pradcsh, Allahabad and Jammu and Kashmir.

13. As regards the fixing of the date as 1st June, 1951, in the impugned provision, it is true that no data has been placed before the Court, either by the learned Deputy Government Advocate or by the plaintiff-respondent as to why this particular date was fixed for the purpose of granting exemption in respect of new houses. However, learned counsel for the plaintiff-respondent submitted that the Act was made on 28th November,1950. and was published in Rajasthan Rajpatra dated 23rd December, 1950, from which date Sections 1 to 4 and 27 to 30 were applied immediately and it was provided that the remaining provisions shall extend to such areas in the State and shall come into force therein with effect from such date as may be notified from time to time by the State Government in the official gazette. The remaining provisions were extended to different areas in the State thereafter from time to time. It is not suggested on behalf of the appellant that the 1st June,1951. was fixed with a view to benefit any particular class of persons or with any ulterior motive. It appears that somedate had to be fixed for the purpose and in most of the towns in the State the remaining provisions were made applicable from 23rd December, 1950. It appears that the Legislature probably thought that the construction undertaken after the promulgation of the Act may be completed in six months or so and consequently very likely with a view to encourage people to take up construction of new houses immediately after the promulgation of the Act, 1st June, 1951, appears to have been fixed for the purpose. In these circumstances it cannot be said that the classification on the basis of time, that is, the date selected, affords no rational basis. The authorities relied upon by the learned counsel for the appellant in this connection AIR 1957 Bom 233 (FB) & AIR 1959 Punj 8 (FB), are altogether distinguishable. Consequently I am of opinion that the impugned provision cannot be struck down on account of fixing the date as 1st June, 1951. I am also unable to see how the fixing of period of seven years in the impugned provision would invalidate it or make it unconstitutional? On the other hand, it is only for the benefit of the tenant

that after the expiry of this period the provisions of the Act would be applicable also to the new houses built after 1st June, 1951.

14. The net result of the foregoing discussion is that Section 2 (2) proviso (e) is not hit by Article 14 of the Constitution and the same is 'valid. On the decision of this point alone the plaintiff is entitled to a decree for eviction and there is no necessity to examine the second contention of the appellant regarding the bona fide personal necessity of the plaintiff for the premises in question because even assuming that he has failed to establish his bona fide personal necessity, he is entitled to get a decree for eviction as the case would not be governed by the provisions of the Act.

15. No other point was argued on behalf of any of the parties.

16. In the result I do not see any force in this appeal and hereby dismiss it. In the circumstances of the case I leave the parties to bear their own costs.

17. Learned counsel for the appellant submits that some reasonable time may be granted to the appellant to vacate the premises. In the circumstances of the case I hereby direct that the decree for eviction shall not be executed against the appellant for a period of six months from today, provided the appellant de'po-sits in the executing Court or pays to the respondent the arrears of rent up to the end of August 1970 by the end of September 1970 and pays the monthly rent forSeptember 1970 and of the subsequent months within 15 days of its falling due.