

Baburao Shantaram More

Vs

The Bombay Housing Board and Another

Petition for special leave to appeal No. 108 of 1952

(CJI M. Patanjali Sastri, S. R. Dass, Vivian Bose, Ghulam Hasan, B. Jagannath Das JJ)

18.12.1953

JUDGMENT

DAS J. -

The petitioner before us is in occupation of two rooms Nos. 387 and 388 in Barrack No. T-93 in Sion Dharavi Camp in Greater Bombay. The camp consisting of several tenements was constructed and owned by the Government of India during the last world war for the use of the military. In 1948 the Government of Bombay now represented by the State of Bombay purchased the camp and entrusted the management thereof to the Bombay Provincial Housing Board - a body constituted by a Government Resolution. In the same year the Bombay Housing Board, the respondent No. 4 (hereinafter referred to as the Board), was established by the Bombay Housing Board Act, 1948 (Act No. LXIX of 1948) as a body corporate, competent to acquire and hold property. The purposes of the Act included the management and use of lands and buildings belonging to or vested in the Board. The Board is authorised to frame and execute housing schemes. Under section 3(3) the Board is to be deemed to be a local authority for the purposes of that Act and the Land Acquisition (Bombay Amendment) Act, 1948. Section 54(3) provides that all assets entrusted to the Bombay Provincial Housing Board shall upon a declaration made by the Government of Bombay vest in the Board. On 1st June, 1949, the Government of Bombay having made the necessary declaration the Sion Dharavi Camp vested in the Board.

It appears that before the camp was made over to the Bombay Provincial Housing Board certain persons including the petitioner had, without any authority or title, occupied portions of the camp. An arrangement was made that the petitioner and the other persons who had gone into occupation of portions of the camp would pay such rent as would be fixed by the Government of Bombay. The Government of Bombay undertook to carry out certain repairs to the camp with the object of reconditioning the same and the petitioner and others also agreed to pay such rent as the Government would then fix. The petitioner and others signed a letter embodying the terms of the agreement. The petitioner's rent was originally fixed at Rs. 14 per month. The Government of Bombay then reconditioned the structures at considerable cost and the revised rent in respect of the rooms in the occupation of the petitioner worked out at Rs. 56-8 per month.

In or about February, 1950, the Board served a notice on the petitioner calling upon him to quit and vacate the rooms in his occupation at the end of March, 1950. An intimation was also given by that notice that if the petitioner agreed to pay the revised rent of Rs. 56-8 per month the Board would waive the notice to quit. The petitioner not having agreed to pay the revised rent the Board took proceedings against the petitioner in the Court of Small Causes at Bombay to recover possession of the premises in his occupation. The petitioner took the plea, inter alia, that he was protected by the

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Act LVII of 1947) popularly called the Bombay Rent Act. The Board, however, contended that its premises were exempted from the operation of the Bombay Rent Act by virtue of section 4 of that Act which runs as follows :-

"This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government; but it shall apply in respect of premises taken on lease or in respect of premises let to the Government or a local authority."

The petitioner's rejoinder was that the Board was not a local authority and could not, therefore, claim the benefit of section 4 and further that section was unconstitutional in that it offended against the equal protection clause of the Constitution. During the pendency of the proceedings in the Court of Small Causes the Bombay Housing Board Act was amended by the Bombay Housing (Amendment) Act (Act XI of 1951). Section 3-A which was added by the amending Act is in the words following :-

"3-A. For the removal of doubt, it is hereby declared that the Bombay Rents, Hotel & Lodging Housing Rates Control Act, 1947, -

(a) shall not apply nor shall be deemed to have ever applied to any land or building belonging to or vesting in the Board under or for the purposes of this Act;

(b) shall not apply nor shall be deemed to have ever applied as against the Board to any tenancies or other like relationship created by the Board in respect of such land or building;

(c) but shall apply to any land or building let to the Board."

The trial court held that the Board was a local authority within the meaning of section 4 of the Bombay Rent Act and that that section did not contravene the provisions of article 14 of the Constitution and accordingly on the 14th February, 1952, passed an order for delivery of possession of the two rooms to the Board but directed that the warrant for possession should not be issued until the 15th May, 1952. The petitioner moved the High Court in revision. The High Court found that it was difficult to hold that the Board was a local authority but held that section 3-A introduced by the amending Act had retrospectively extended the exemption contained in section 4 of the Bombay Rent Act to the Board. The High Court further held that there had been no infraction of the petitioner's fundamental right under article 14 and dismissed the application for revision. The petitioner applied to the Bombay High Court for leave to appeal to this court but that application was rejected. The petitioner has now applied before us for special leave to appeal against the order of the High Court. He has also made a substantive application under article 32 for enforcement of his fundamental rights. Both these applications have been posted together before us for hearing and disposal.

The only point urged before us by learned counsel appearing for the petitioner is that the said section 3-A which exempts lands or buildings belonging to or vested in the Board from the operation of the Bombay Rent Act offends against the equal protection clause of the Constitution. He points out that there are in Bombay numerous Co-operative Housing Societies incorporated under the Co-operative Societies act which are similarly situated and whose object is also to solve

housing problem but their lands and buildings are not exempted from the operation of the Bombay Rent Act. The result is that while the tenants of those Co-operative Housing Societies are fully protected by the Bombay Rent Act against enhancement of rent and ejection, the tenants of the Board are, by virtue of section 3-A, denied the protection of the Bombay Rent Act. The Co-operative Societies Act does not in terms bring about any relationship of landlord and tenant between a Co-operative Housing Society incorporated under that Act and its members. There is nothing in that Act to indicate that any of the members of any of the Co-operative Housing Societies is a tenant of such society. No lease or other document has been produced in support of the suggestion that the Co-operative Housing Societies have been tenants at all. Further, though these Co-operative Housing Societies are no doubt incorporated bodies, they nevertheless may earn profits which may be distributed amongst their members. The Board, on the other hand, is an incorporated body brought into existence for the purpose of framing housing schemes to solve the problem of acute shortage of accommodation in Bombay. There are no shareholders interested in the distributed profit. It is under the control of the Government and acts under the orders of the Government. In effect, it is a Government sponsored body not having any profit making motive. No material has been placed before us which may even remotely be regarded as suggesting, much less proving, that the Co-operative Housing Societies or their members stand similarly situated vis-a-vis the Board and its tenants. The petitioner, therefore, cannot sustain his complaint of discrimination on this ground.

Learned counsel for the petitioner then said that the effect of section 3-A is to extend the benefit of the exemption of section 4 of the Bombay Rent Act to the Board which, in other words, implies that the name of the Board has been added in section 4 after the local authority. The contention is that section 4 discriminates against the tenants of properties belonging to the Government, local authority or the Board in that these tenants are denied that benefits of the Bombay Rent Act which are available to all other tenants in Bombay. There can be no question that this exemption is given by section 4 to certain classes of tenants and this classification is based on an intelligible differentia which distinguishes them from other tenants and this differentia has a rational relation to the object sought to be achieved by the Act. It is the business of the Government to solve the accommodation problem and satisfy the public need of housing accommodation. It was for the purpose of achieving this object that the Board was incorporated and established. It is not to be expected that the Government or local authority or the Board would be actuated by any profit making motive so as to unduly enhance the rents or eject the tenants from their respective properties as private landlords are or are likely to be. Therefore, the tenants of the Government or local authority or the Board are not in need of such protection as the tenants of private landlords are and this circumstance is a cogent basis for differentiation. The two classes of tenants are not by force of circumstances placed on an equal footing and the tenants of the Government or local authority or the Board cannot, therefore, complain of any denial of equality before the law or of equal protection of the law. There is here no real discrimination, for the two classes are not similarly situated. Neither section 4 of the Bombay Rent Act nor section 3-A of the Bombay Housing Board Act can, therefore, be challenged as unconstitutional on the ground of contravention of article 14 of the Constitution.

No other point has been urged before us,

We dismiss both the applications. The petitioner must pay one set of costs of the application under article 32.

Petitions dismissed.

Agent for petitioner : Rajinder Narain.

Agent for the respondents : G. H. Rajadhyaksha.

</html