

M.L.Manchanda and Others

Vs

Union Territory of Chandigarh and Others

Civil Appeal No. 1744 of 1976

(V.R. Krishna Iyer, Jaswant Singh JJ)

17.03.1977

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by special leave which is directed against the judgment and order dated April 28, 1975, of the High Court of Punjab and Haryana at Chandigarh, dismissing Civil Writ Petition 1819 of 1975 filed by the appellant and respondents 3 to 37 herein, who are industrial workers employed in factories situate in the industrial area in Chandigarh.

2. The facts leading to this appeal are : In 1956, the Legislature of the then State of Punjab enacted what is called the Punjab Industrial Housing Act, 1956 (Punjab Act 16 of 1956) (hereinafter referred to as 'the Act') to provide for allotment, recovery of rent, eviction and other ancillary matters in respect of houses constructed under the subsidised Industrial Housing Scheme for industrial workers in the State of Punjab. In exercise of the powers conferred on it under Section 24 of the Act, the State Government made rules called the Punjab Industrial Housing Rules, 1956 (hereinafter referred to as 'the Rules') Rule 4 of the Rules as originally made ran as under :

4. Eligibility for allotment. - (1) Two-roomed tenements shall be allotted to industrial workers whose income exceeds Rs. 100 per mensem.

(2) One-roomed tenements shall be allotted to workers with an income not exceeding Rs. 100 per mensem.

3. This rule was amended vide Notification No. 4119-2HG-60/29333 dated October 5, 1960. The rule, after its aforesaid amendment, read as under :

4. Eligibility for allotment. - (1) Two-roomed tenements shall be allotted to industrial workers whose income does not exceed Rs. 350 per mensem.

(2) One-roomed/small two-roomed tenements shall be allotted to workers with an income not exceeding Rs. 250 per mensem; provided that where sufficient number of industrial workers with income exceeding Rs. 250 per mensem is not forthcoming for allotment, the Labour Commissioner may, with the approval of the State Government, allot two-roomed tenements to industrial workers with an income not exceeding Rs. 250 per mensem.

Notes : In towns, where only roomed/small two-roomed tenements have been built,

applications should first be invited from such workers only, whose monthly income does not exceed Rs. 250. It is only after the demand from these workers has been met that unallotted tenements should be made available for allotment to workers, whose income exceeds Rs. 250 per mensem. Where these tenements are given to higher paid workers the normal subsidised rent should be charged from them till such time as the regular two-roomed tenements do not become available for them. When the two-roomed tenements become available the higher paid workers must be removed from the smaller tenements, failing which they should be charged the full economic rent.

(ii) In cases where after allotment of one-roomed/small two-roomed tenements a worker crosses the wages limit of Rs. 250 per mensem, he be allowed to continue in occupation of the house allotted to him on payment of subsidised rent, till such time as the regular two-roomed house does not become available, in other respects the procedure as prescribed in note (i) should be followed.

(iii) Two-roomed tenements should, in the first instance, be offered for allotment to workers whose income is in between Rs. 251 and Rs. 350 per mensem.

4. Vide Notification 7480-4H(8)-72/21542 dated November 7, 1972, the Chief Commissioner, Union Territory, Chandigarh, made in exercise of the powers conferred by Section 24 of the Act what are called the Punjab Industrial Housing, Chandigarh (First Amendment) Rules, 1972 adding the following after sub-rule (2) in Rule 4 of the Rules :

(3) An industrial worker shall become ineligible to retain the industrial house allotted to him from the date his income exceeds Rupees 350 per mensem and his allotment of it shall stand cancelled with effect from that date.

Provided that in case such as industrial worker has been allotted and in occupation of an industrial house immediately before the commencement of the Punjab Industrial Housing (Chandigarh First Amendment) Rules, 1972, his allotment shall be cancelled by the Labour Commissioner after giving him one month's notice in writing of such cancellation.

5. The Chief Commissioner also ordained that the following shall be added in form 'C' of the Rules after condition (24) :

(25) The allottee shall become ineligible to retain the industrial house, allotted to him from the date his income exceeds rupees 350 per mensem and his allotment shall be deemed to have been cancelled from that date.

6. The appellants and the aforesaid respondents, who were allottees of houses in Sector 30, Chandigarh, constructed by the State Government for occupation of industrial workers under the Industrial Housing Scheme subsidised by the Central Government and declared under Section 3(2) of the Act to be houses covered by the provision of the Act, were given notice by the Labour Inspector, Union Territory, Chandigarh, in terms of the proviso to sub-rule (3) of the Rule 4 of the Rules, as amended by the aforesaid Notification 7480-4H(8)-72/21542, dated November 7, 1972, calling upon them to show cause as to why the allotments of houses made to them should not be cancelled as the income of each one of them exceeded Rs. 350 per mensem which disentitled them

to retain their respective allotments. The appellant and the aforesaid respondents thereupon filed a joint writ petition, being writ petition 1819 of 1975 under Article 226 and 227 of the Constitution in the High Court of Punjab and Haryana for issue of an appropriate writ, order or direction quashing the said notices and Notification 7480-4H(8)-72/21542 dated November 7, 1972 amending Rule 4 of the Rules and restraining respondent 1 and 2 from proceeding with the cancellation of their respective allotments and evicting them from the houses. They contended that the aforesaid Rule 4 as amended was ultra vires the Act in so far as it carved out an exception to the statutory definition of 'industrial worker' as contained in Section 2(e) of the Act within the scope of which they admittedly fell. The High Court repelled their contention and dismissed their writ petition by its judgment dated April 28, 1975. Aggrieved by this judgment and order, the appellants and the said respondents made an application to the High Court for issue of a certificate of fitness under Article 133 of the Constitution which was refused by the High Court by its order dated May 9, 1975. Thereupon they moved this Court for special leave under Article 136 of the Constitution which was granted.

7. Appearing in support of the appeal, Mr. Ramamurthi has reiterated before us that since the appellants and respondents 3 to 37 are admittedly industrial workers as defined in clause (e) of Section 2 of the Act, the impugned Rule 4 which is designed to cancel their allotment on the ground that their salary exceeded Rs. 350 per mensem is clearly repugnant to that clause and as such ultra vires and invalid as it takes out industrial workers with income exceeding Rs. 350 per mensem from the scope of the definition. He has further contended that since the authority competent to make rules under Section 24 of the Act cannot frame any rule having a retrospective effect and the impugned rule - Rule 4(3) as amended operates retrospectively, the same is invalid. He has lastly urged that the impugned notification is also invalid as it makes hostile and arbitrary discrimination against industrial workers whose income exceeds Rs. 350 per mensem and thereby violates the guarantee enshrined in Article 14 of the Constitution.

8. We shall deal seriatim with all the three contentions raised by Mr. Ramamurthi. Before embarking on that task, we consider it appropriate to scan the scheme of the Act. Section 3 of the Act clearly states that the Act shall be applicable to houses constructed by the State Government for the occupation of industrial workers under the Industrial Housing Scheme subsidised by the Central Government. The scheme, as evident from the affidavit of the Home Secretary, Chandigarh Government, is meant for the benefit of the low paid industrial workers and economically weaker section of the community. Section 9(1) of the Act provides that the occupation by any person of a house shall at all times be subject to such conditions relating to its occupation as may be prescribed, or as may be intimated from time to time by the Labour Commissioner. Section 7 of the Act sets out the circumstances in which a person shall be treated to be in unauthorised occupation of any house. Clause (b) of the section explicitly states that a person shall be deemed to be in unauthorised occupation "where being an allottee he has by reason of cancellation of an allotment under sub-section (2) of Section 9 ceased to be entitled to occupy the house". Sub-section (2) of Section 9, which is necessary to be referred to at this stage and which because of the non obstant clause contained in its opening part overrides all other laws for the time being in force, authorises the Labour Commissioner after giving notice to the allottee and considering the explanation tendered by him to cancel the allotment under which a house is held or occupied by him. Section 24 of the Act not only empowers the State Government generally to make rules to effectuate the purpose of the Act but also specifically confers on it the power to make rules to provide inter alia for the manner of allotment of accommodation and conditions relating to its occupation [see Section 24(2)(ii)] as also for the matters which are to be or may be prescribed [see Section 24(2)(x)]. A conspectus of the aforesaid provisions of the Act leaves no room for doubt that the allotment of accommodation to an industrial worker is not unconditional but is subject to condition which can be changed unilaterally

by the Government from time to time by altering the rules in exercise of the powers conferred on it under Section 24 of the Act. Section 7 of the Act which embodies a deeming provision gives a mandate to treat a person as an unauthorised occupant not only if he ceases to be an industrial worker under the Act but also if being an allottee, he ceases to be entitled to occupy the accommodation by reason of cancellation of the allotment under sub-section (2) of Section 9 of the Act. A combined reading of Section 7 and 9 of the Act goes to show that if at any time a person becomes an unauthorised occupant of the house by reason of his ceasing to be an industrial workers or by otherwise ceasing to fulfill any of the prescribed condition then in force including the one relating to the limit of his income, he becomes amenable to action under Section 9(2) of the Act. The result is that even though the allottee may continue to be an industrial worker, still the allotment under which he holds a house can be cancelled if his occupation becomes unauthorised on any one of the grounds laid down in Section 7 of the Act. We are, therefore, satisfied that the impugned amendment which squarely falls within the purview of the aforesaid provisions of Section 24 of the Act was validity made and the contention urged by Mr. Ramamurthi that it is ultra vires is misconceived and untenable. We may state here in passing that the aforesaid scheme being meant for the benefit of the low paid industrial workers and the number of the houses constructed thereunder being very limited, the Government could legitimately evolve the method which it did to disentitled industrial workers like the appellants whose monthly salaries appear to range between Rs. 974.71 and Rs. 1861.27 and the aforesaid respondents whose monthly income is also relatively large to retain the houses in question.

9. The contention of Mr. Ramamurthi that the impugned rule is retroactive in operation is also devoid of merit. A careful study of the proviso to Rule 4(3) of the Rule which appears to have been inserted to allay fears and remove misapprehensions would show that the rule is not intended to operate retrospectively on industrial workers who had been allotted and were in occupation of industrial houses immediately before the amendment of the Punjab Industrial Housing (Chandigarh First Amendment) Rules, 1972. It unequivocally states that allotment of an industrial worker who is in occupation of an industrial house in pursuance thereof immediately before the amendment of the Punjab Industrial Housing (Chandigarh First Amendment) Rules, 1972 shall not be cancelled without one month's notice in writing. The proviso therefore clearly shows that the allotment of an industrial worker whose income exceeds Rs. 350 per mensem is to stand cancelled not from the date when his income started exceeding Rs. 350 per mensem but on the expiry of one month's notice in writing of the cancellation. The second contention raised by Mr. Ramamurthi is also, therefore, repelled.

10. The third contention advanced by the learned Counsel on behalf of the appellants not having been raised before the High Court cannot be permitted to be raised at this stage. The contention can also not be allowed to be raised in view of the Presidential Order dated June 27, 1975 promulgated under clause (1) of Article 359 of the Constitution suspending inter alia Article 14 of the Constitution for the period during which the proclamation of emergency made under clause (1) of Article 352 of the Constitution on December 3, 1971 and on June 25, 1975 are both in force.

11. For the foregoing reasons, we do not find any merit in this appeal which is dismissed but in the circumstances of the case without any order as to costs. Counsel for the appellant submits that he may be given time for vacating the premises. We grant time till August 31, 1977 on the undertaking given by the counsel that vacant possession will be given on or before that date.

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