

Rattan Arya and Others

Vs

State of Tamil Nadu and Another

Writ Petitions (Civil) Nos. 13732 and 754 of 1983, 5226 of 1982 and 1117, 13999, 14101, Etc. of 1985

(O. Chinnappa Reddy, B. C. Ray, K. N. Singh JJ)

16.04.1986

JUDGMENT

CHINNAPPA REDDY, J. –

1. The question raised in all these write petitions is whether Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is constitutionally valid. This provision excepts from the application of the Act "any residential building or part thereof occupied by any one tenant if the monthly rent paid by him in respect of that building or part exceeds four hundred rupees". The argument is that though the Act is designed to apply generally to all residential and non-residential buildings, residential buildings or parts thereof fetching a rent of more than Rs 400 are singled out and taken out of the purview of the Act, arbitrarily and without any reason. It is said that the classification of tenants of residential buildings fetching a rent of over Rs 400 per month into a distinct class for the purpose of depriving them of the benefits of the Act by excepting such buildings from the operation of the Act has no reasonable nexus to the threefold object of the Act, namely, the regulation of the letting of residential as well as non-residential buildings, the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom.

2. In the State of Tamil Nadu, it all started with two wartime measures, the Madras House Rent Control Order, 1941 and the Madras Godown Rent Control Order, 1942, both issued under the Defence of India Rules. These orders were re-issued with slight modifications in 1945 as the Madras Rent Control Order, 1945 and the Madras Non-Residential Buildings Rent Control Order, 1945. They were repealed and replaced by the Madras Buildings (Lease and Rent Control) Act, 1946. This Act also was later repealed and replaced by the Madras Buildings (Lease and Rent Control) Act, 1949. The present Act, the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was enacted in 1960 repealing and replacing the 1949 Act. Up to the time of enactment of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, no exception was made from the purview of the Act in respect of any class of residential and non-residential buildings based on the rent fetched by the buildings. By Section 30(ii), for the first time, the 1960 Act excepted from the application of the Act residential buildings which fetched a rent of more than Rs. 250 per month and non-residential buildings which fetched a rent of more than Rs. 400 per month as entered in the property register or assessment book of the municipality. In 1961, this provision was amended by Act 20 of 1961 so as to make the exception applicable to either a building or part thereof and on the basis of the actual rent paid by the tenant and not on the basis of the rental value as entered in the property register or assessment book of the municipality. In 1964, the provision relating to the exception made in the case of non-residential buildings fetching a rent of more than Rs. 400 per month was deleted, with the result that tenants of non-residential buildings were entitled to the protection afforded by the Act

irrespective of the rent paid by them. Thereafter pursuant to the recommendation made by a Committee appointed by the Government of Tamil Nadu in 1969, Section 30(ii) was further amended by Act 23 of 1973 by substituting the figure Rs 400 for the figure of Rs 250 in that provision. It is the vires of this provision as it now stands, that is in question before us.

3. The long title of the Act is :

An Act to amend and consolidate the law relating to the regulation of the letting of residential and non-residential buildings and the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefore in the State of Tamil Nadu.

The Preamble to the Act similarly recites :

Whereas it is expedient to amend and consolidate the law relating to the regulation of the letting of residential and non-residential buildings and the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the State of Tamil Nadu.

"Building" is defined by Section 2(2) as meaning any building or hut or part of building or hut, let or to be let separately for residential or non-residential purposes and includes -

(a) the garden, grounds and outhouses, if any, appurtenant to such buildings, hut or part of such building or hut and let or to be let along with such building or hut, but does not include a room in a hotel or boarding house.

Section 3 casts a duty on the landlord to give notice of vacancy of a building. Sections 3 and 3(A) prescribe the procedure to be followed after intimation of vacancy is given, either by way of allotment to some other person or release in favour of the landlord. Section 4 provides for the fixation of fair rent both for residential and non-residential buildings. Section 7 prohibits a landlord from receiving rent in excess of the fair rent. Section 8 requires every landlord to issue a receipt duly signed by him for the actual amount of rent or advance received by him. Section 9 enables the tenant to deposit the rent lawfully payable to the landlord in respect of the building before the Controller in certain situations. Section 10 provides for and enumerates the grounds upon which a landlord may seek eviction of his tenant before the Controller. Section 14 provides for recovery of possession of a building bona fide required by a landlord for carrying out repairs which cannot be otherwise carried out or for the demolition of the building and construction of a new building. Section 15 enables the tenant to re-occupy the building vacated by him to enable the landlord to carry out repairs after such repairs are carried out or after the stipulated time if repairs are not carried out within the time. Section 16 is a provision corresponding to Section 15 in respect of a building vacated for the purpose of demolition and construction. Section 17 prohibits a landlord from interfering with the amenities enjoyed by a tenant and empowers the Controller to give appropriate relief where such amenities are interfered with. Section 21 prohibits the conversion of a residential building into a non-residential building except with the permission in writing of the Controller. Section 22 makes provision for effecting repairs to a building where the landlord fails to make the necessary repairs. Thus we see so far, that the scheme and structure, the policy and the plan of the Act, as perceivable from these provisions, are unmistakably aimed at regulating the conditions of tenancy, controlling the rents and preventing unreasonable eviction of tenants of all residential and non-residential buildings. For the advancement of these objects, tenants are invested

with certain rights and landlords are subjected to certain obligations. These rights and obligations, for example, the right of a tenant not to be evicted and the prohibition against a landlord from seeking eviction except upon specified grounds, the right of a tenant not to pay rent in excess of the fair rent and the obligation of a landlord not to demand such excess rent, the right of a tenant to obtain a receipt for the actual amount of rent and advance paid by him and the right of a tenant to enjoy and the obligation of a landlord not to interfere with the enjoyment of the amenities previously enjoyed by the tenant, are rights and obligations which, in any modern civilised society, attach themselves to tenants and landlords of all buildings, residential or non-residential, low-rent or high-rent. They are not rights which are peculiarly capable of enjoyment by occupants of non-residential buildings only as against occupants of residential buildings or by occupants of low-rent buildings only as against occupants of high-rent buildings. None of the main provisions of the Act, to which we have referred, make any serious distinction between residential and non-residential buildings. We may now turn to Section 30(ii) which reads as follows :

Nothing contained in this Act shall apply to any residential building or part thereof occupied by any one tenant if the monthly rent paid by him in respect of that building or part exceeds four hundred rupees.

By one stroke, this provision denies the benefits conferred by the Act generally on all tenants to tenants of residential buildings fetching a rent in excess of four hundred rupees. As a result of this provision, while the tenant of a non-residential building is protected, whether the rent is Rs 50, Rs 500 or Rs 5000 per month, a tenant of a residential building is protected if the rent is Rs 50, but not if it is Rs 500 or Rs 5000 per month. Does it mean that the tenant of a residential building paying a rent of Rs 500 is better able to protect himself than the tenant of a non-residential building paying a rent of Rs 5000 per month ? Does it mean that the tenant of a residential building who pays a rent of Rs 500 per month is not in need of any statutory protection ? Is there any basis for the distinction between the tenant of a residential building and the tenant of a non-residential building and that based on the rent paid by the respective tenants ? Is there any justification at all for picking out the class of tenants of residential buildings paying rent of more than four hundred rupees per month to deny them the rights conferred generally on all tenants of buildings residential or non-residential by the Act ? Neither from the Preamble of the Act nor from the provisions of the Act has it been possible for us even to discern any basis for the classification made by Section 30(ii) of the Act. In the counter-affidavit filed by Selvi A. Raju on behalf of the State of Tamil Nadu, the classification is sought to be justified in the following manner :

I submit that the plea of hostile discrimination and inequality of treatment is not involved in Section 30. I submit the provision for upper limit of rent has been fixed to afford protection to weaker sections of tenants who pay rent below Rs 400.... These successive enactments have embodied a perfectly rational principle of classification, and the criteria and their application have been evolved from time to time, in accordance with the needs of this class of citizens. There is also a clear and discernible nexus between the object of the measure and the differential themselves.... I submit that the classification based on the purpose "residential" and "non-residential" is based on well-recognised and rational principle of differentia.... It is incorrect to say that Section 30(ii) of the Act defeats the purpose of the Act. As submitted already, the classification of the protected buildings and exempted buildings on the basis of the rent is a reasonable one consistent with the object of the Act and it is not discriminatory. As submitted already, a distinction based on rent is an intelligent one and has also got rational relation to the objects sought to be

achieved.... It is equally incorrect to say that the provisions of Section 30(ii) are a total departure from the Rent Act and takes away the protection afforded to the tenant under the Act, thus rendering the Act nugatory. As submitted already, the provisions of Section 30(ii) do not at all contain any hostile discrimination, simply because it is based on quantum of rent.... I submit that taking into account the general increase in rent and the cost of living index, the upper limit had to be increased keeping in mind the welfare of the weaker sections of society. Hence I submit that the change of upper limit cannot be said to be discriminatory.... The grant and withdrawn of exemption have been done only keeping in mind the welfare of the weaker sections of the society and it is only with that object, exemption had been withdrawn with regard to residential buildings.

4. The counter-affidavit does not explain why any distinction should be made between residential and non-residential buildings in the matter of affording the protection of the provisions of the Act. To say that a non-residential building is different from a residential building is merely to say what is self-evident and means nothing. Tenants of both kinds of buildings equally need the protection of the beneficent provisions of the Act. No attempt has been made to show that the tenants of non-residential buildings are in a disadvantageous position as compared with tenants of residential buildings and therefore, they need greater protection. There is and there can be no whisper to that effect. To illustrate by analogy, it is not enough to say that man and woman are different and therefore, they need not be paid equal wages even if they do equal work. The counter-affidavit has repeatedly referred to the weaker sections of the people and stated that in order to protect the weaker sections of the people, a distinction has been made between them and those who are in a position to pay higher rent. It is difficult to understand how the exclusion of tenants who pay higher rent from the protection afforded by the Act will help to protect tenants belonging to the weaker sections of the community. It is one thing to say that tenants belonging to the weaker sections of the community need protection and an altogether different thing to say that denial of protection to tenants paying higher rents will protect the weaker sections of the community. Further the distinction suggested in the counter appears to be quite antipathic to the actual provision because as we pointed out earlier, there is no such ceiling in the case of tenants of non-residential buildings and therefore a tenant of a non-residential building who is in a position to pay a rent of Rs 5000 per month is afforded full protection by the Act, whereas, inconsistently enough, the tenant of a residential building who pays a rent of Rs 500 is left high and dry. It certainly cannot be pretended that the provision is intended to benefit the weaker sections of the people only. We must also observe here that whatever justification there may have been in 1973 when Sections 30(ii) was amended by imposing a ceiling of Rs 400 on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. We are entitled to take judicial notice of the enormous multifold increase of rents throughout the country, particularly in urban areas. It is common knowledge today that the accommodation which one could have possibly got for Rs 400 per month in 1973 will today cost at least five times more. In these days of universal, day to day escalation of rentals any ceiling such as that imposed by Section 30(ii) in 1973 can only be considered to be totally artificial and irrelevant today. As held by this court in *Motor General Traders v. State of A.P.* ((1984) 1 SCC 222 : AIR 1984 SC 121) a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time, become discriminatory and liable to challenge on the ground of its being violative of Article 14. After referring to some of the earlier cases Venkataramiah, J. observed : (SCC p. 239, para 24)

The garb of constitutionality which it may have possessed earlier has become worn out and its

unconstitutionality is now brought to a successful challenge.

Shri A. V. Rangam, learned counsel for the State of Tamil Nadu, invited our attention to some sentences from the judgment of this court in *Raval & Co. v. K. G. Ramachandran* ((1974) 2 SCR 629 : (1974) 1 SCC 424 : AIR 1974 SC 818) where, referring to Section 30(ii) before it was amended in 1973, it was observed : (SCC pp. 437-38, para 24)

Clause (ii) exempts any residential building or part thereof occupied by any tenant, if the monthly rent paid by him exceeds Rs. 250. Here the object of the legislature clearly was that the protection of the beneficent provisions of the Act should be available only to small tenants paying rent not exceeding Rs 250 per month, as they belong to the weaker sections of the community and really need protection against exploitation by rapacious landlords. Those who can afford to pay higher rent would ordinarily be well-to-do people and they would not be so much in need of protection and can, without much difficulty, look after themselves.

These observations were made in 1974 soon after the amendment of the Act in 1973. They were made in a different context and not in the context of the challenge to the vires of the provisions as violative of Article 14. As we pointed out earlier, the argument based on protection of the weaker sections of the community is entirely inconsistent with the protection given to tenants of non-residential buildings who are in a position to pay much higher rents than the rents which those who are in occupation of residential buildings can ever pay. We are, therefore, satisfied that Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has to be struck down as violative of Article 14 of the Constitution. A writ will issue declaring Section 30(ii) as unconstitutional.

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