

Sant Lal Bharti

Vs

State of Punjab

Civil Appeal No. 1637 of 1987

(S. Ranganath Misra, Sabyasachi Mukharji JJ)

01.12.1987

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This appeal by special leave is directed against the judgment and order of the High Court of Punjab and Haryana dated March 3, 1986 dismissing the writ petition in limine under Articles 226 and 227 of the Constitution of India filed by the appellant before the High Court. The appellant states that he is the owner of certain premises in Punjab. It must, however, be mentioned that the petition is lacking in particulars as to what premises the appellant owned and in respect of which premises the appellant is making the grievances. On this ground it is not possible to decide the question of vires canvassed before the High Court and repeated before us. A petition challenging the constitutional validity of certain provisions must be in the context of certain facts and not in abstract or vacuum. The essential facts necessary to examine the validity of the Act are lacking in this appeal. On this ground the petition was rightly rejected and we are not inclined to interfere with the order of the High Court on this ground alone. Be that as it may as the question of vires of Section 4 of the East Punjab Urban Rent Restriction Act, 1949, hereinafter called 'the Act', was challenged before the High Court and canvassed before us. It is just as well that we deal with that contention.

2. Shri S. K. Bagga, learned counsel for the appellant submitted that Section 4 of the said Act is ultra vires the Constitution and unreasonable inasmuch as the section provides that rent prevalent in 1938 the basis for the determination of fair rent if (sic is) unreasonable and unjust. He urged that pegging the rent prevalent in 1938 the basic rent was inequitable and unjust in the background of the tremendous rise in prices. But it has to be borne in mind that certain increases have been provided for in Section 4 from the rent prevalent in 1938. It must, however, be remembered that the Act was passed as the preamble of the said Act states, inter alia, "to restrict the increase of rent". One of the objects of the Act was to restrict the increase in rent. With that object the Act has provided certain provisions as to fixation of the fair rent. Section 4 of the Act which is under challenge may be conveniently set out as under :

4. Determination of fair rent. - (1) The Controller shall on application by the tenant or landlord of a building or rented land fix the fair rent for such building or rented land after holding such inquiry as the Controller thinks fit.

(2) In determining the fair rent under this section, the Controller shall first fix a basic rent taking into consideration -

(a) The prevailing rates of rent in the locality for the same or similar accommodation

in similar circumstances during the twelve months prior to January 1, 1939; and

(b) the rental value of such building or rented land if entered in property tax assessment register of the municipal, town or notified area committee, cantonment board, as the case may be, relating to the period mentioned in clause (a) :

Provided that, notwithstanding anything contained in sub-sections (3), (4) and (5), the fair rent for any building in the urban area of Simla shall not exceed the basic rent.

(3) In fixing the fair rent of a residential building the Controller may allow, if the basic rent -

(i) in the case of a building in existence before January 1, 1939 -

(a) does not exceed Rs. 25 per mensem, an increase not exceeding $8\frac{1}{3}$ per cent on basic rent;

(b) exceeds Rs. 25 per mensem but does not exceed Rs. 50 per mensem, an increase not exceeding $12\frac{1}{2}$ per cent on such basic rent;

(c) exceeds Rs. 50 per mensem, an increase not exceeding 25 per cent on such basic rent;

(ii) in the case of a building constructed on or after January 1, 1939 -

(a) does not exceed Rs. 25 per mensem, an increase not exceeding 25 per cent on such basic rent;

(b) exceeds Rs. 25 but does not exceed Rs. 50 per mensem, an increase not exceeding $37\frac{1}{2}$ per cent on such basis rent;

(c) exceeds Rs. 50 per mensem, an increase not exceeding 50 per cent on such basic rent.

(4) In fixing the fair rent of a scheduled building the Controller may allow, if the basic rent -

(i) in the case of a building in existence before January 1, 1939 -

(a) does not exceed Rs. 25 per mensem, an increase not exceeding $13\frac{1}{3}$ per cent on such basic rent;

(b) exceeds Rs. 25 but does not exceed Rs. 50 per mensem, an increase not exceeding $17\frac{1}{2}$ per cent on such basic rent;

(c) exceeds Rs. 50 per mensem, an increase not exceeding 30 percent on such basic rent;

(ii) in the case of a building constructed on or after January 1, 1939 -

- (a) does not exceed Rs. 25 per mensem, an increase not exceeding 30 per cent on such basic rent;
 - (b) exceeds Rs. 25 but does not exceed Rs. 50 per mensem, an increase not exceeding 42 1/2 per cent on such basic rent;
 - (c) exceeds Rs. 50 per mensem, an increase not exceeding 55 per cent on such basic rent.
- (5) In fixing the fair rent of a non-residential building or rented land the Controller may allow, if the basic rent -
- (i) in the case of a building in existence before January 1, 1939, or in the case of rented land -
 - (a) does not exceed Rs. 50 per mensem, an increase not exceeding 37 1/2 per cent on such basic rent;
 - (b) exceeds Rs. 50 per mensem, an increase not exceeding 50 per cent on such basic rent;
 - (ii) in case of a building constructed after January 1, 1939 -
 - (a) does not exceed Rs. 50 per mensem, an increase not exceeding 50 per cent on such basic rent;
 - (b) exceeds Rs. 50 per mensem, an increase not exceeding 100 per cent on such basic rent.
- (6) Nothing in this section shall be deemed to entitle the Controller to fix the fair rent of a building or rented land at an amount less than the rent payable for such building or rented land under a subsisting lease entered into before the first day of January 1939.

3. It was contended that Section 4 of the Act provides the manner for determining the fair rent. But while laying down the procedure for determining the fair rent it has laid down that the Rent Controller, while determining the fair rent under this section shall take into consideration the prevalent rates of rent in the locality for the same or similar accommodation in similar circumstances during 12 months prior to January 1, 1939. In other words, he has first to determine the rent prevalent in the locality in the year 1938 and then fix the rent accordingly. This it is submitted was unreasonable and as such arbitrary and violative of Article 14 and would be an interference with the fundamental right guaranteed under Article 19(1)(g) of the Constitution. There has been according to the appellant, a tremendous] rise in prices and as such in pegging the rent at the rate of 1938 in an Act of 1949 was unreasonable. He drew our attention to the relevant provisions of the Rent Acts in Assam, Tripura and Haryana where the provisions of fixation of rent according to him were different and were more fair and just and reasonable in comparison and submitted that this provision of the Act in question was unfair and unjust.

4. We are unable to accept this contention because each legislature in the several States has provided the method of determination of fair rent on the basis of legal conditions, as judged to be, by each

such legislature. It is well settled that the legislative wisdom of such legislation is not a ground for which the validity of the Act can be challenged.

5. Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory or different. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of two enactments. The source of authority for the two statutes being different, Article 14 can have no application.

6. See in this connection the decision of this Court in *Prabhakaran Nair v. State of T. N.* ((1987) 4 SCC 238).

7. Shri S. K. Bagga, learned counsel drew our attention, we must have hasten to add to the different statutes in different States on this aspect. We cannot say that there was any better provision in those statutes; there were undoubtedly different provisions and those different provisions were judged by the legislatures of those States to be suited to the needs of those States. It is not necessary for us to examine in detail those very provisions.

8. Shri S. K. Bagga, learned counsel also drew our attention to the observations of this Court in the case of *M/s. Raval & Co. v. K. G. Ramachandran* (AIR 1974 SC 818 : (1974) 2 SCR 629 : (1974) 1 SCC 424). He drew our attention how fair rent should be fixed by relying on certain observations of Bhagwati, J., as the Chief Justice then was at page 825 of the AIR (SCC pp. 435-36, para 24). In the facts and in the context of this case it is not necessary to refer to these observations. These were made entirely in a different context. It must be the function of the legislature of each State to follow the methods considered to be suited for that State, that would be no ground for judging the arbitrariness or unreasonableness of a particular legislation in question by comparison. What may be the problem in Madras may not be the problem in Punjab. It must however, be borne in mind that the Act in question was passed in 1949 and it pegged the rent prevalent in the similar houses in 1938 and as such is not unreasonable per se. The rises started tremendously after the end of the Second World War and after the partition of the country. In that view of the matter, we cannot say that per se there is unreasonableness in fixing the prices in 1938 level. Having regard to the specific preamble of the Act we find nothing unreasonable in the scheme contemplated under Section 4 of the present Act.

9. In the aforesaid view of the matter, the challenge to Section 4 on the grounds advanced before us must fail and it is accordingly rejected. The appeal, therefore, fails and is dismissed. There will be no order as to costs.

</html