

Gauri Shanker and others

Vs

Union of India and others

Writ Petn. (Civil) Nos. 1089 of 1987 with 575 of 1988 and SPL. Leave Petn. (Civil) No. 16911 of 1991

(CJI M. N. Venkatachaliah, J. S. Verma, K. S. Paripoornan JJ)

08.09.1994

JUDGEMENT

PARIPOORNAN, J.

1. In this batch of cases a common question arises for consideration. The petitioners in the different petitions are the legal heirs of "statutory tenants" of residential premises under the Delhi Rent Control Act, 1958, Act 59 of 1958 (hereinafter called 'the Act'). They assail Section 2 sub-section (1), Cl. (iii) of the Act, as introduced by Act 18 of 1976 with retrospective effect as ultra vires and violative of Arts. 14 and 21 of the Constitution of India. The respondents are ( Union of India, The Delhi Administration and the landlords of the respective premises.

2. Writ Petition (Civil) No. 1089 of 1987 is the main case. We will state a few facts of this case in order to understand the scope of the controversy raised in this batch of petitions. There are 6 petitioners in the writ petitions. The petitioners' father obtained the rental of the residential premises bearing Municipal No. 1331, First Floor, Baidwana Maliwara, Delhi 6, on a monthly rental of Rs. 40/- some time in the year 1940. The father died on 17-11-1969. Thereafter, the third respondent herein, the owner of the premises filed a suit for possession of the premises against the petitioners and their mother, Suit No. 116/1970. It was alleged that the tenancy was terminated by notice dated 28-7-1969. which expired on 3-9-1969. He claimed that since the statutory tenancy was not heritable, he was entitled to a decree for possession. The suit was decreed by the trial Court on 11-2-1974. It held that the statutory tenancy was not heritable. The appeal filed by the petitioners before the Additional District Judge was futile. The petitioners have filed Second Appeal No. 135 of 1975 in the Delhi High Court and it is still pending. It is the plea of the petitioners that they being the heirs of the statutory tenant are entitled to the protection of the Act. According to the petitioners the provisions of the Act do not make any distinction between the 'contractual tenant' and a 'statutory tenant' and both are treated alike. The rule of heritability extends to statutory tenancy also. The decisions of this Court in Damadilal v. Parashram, (1976) 4 SCC 855: (AIR 1976 SC 2229), and Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683 : (AIR 1985 SC 796), have held that the rule of heritability extends to statutory tenancy, whether it is residential or commercial, and the same rule will apply in other States where there is no explicit provision to the contrary. This was held to be the position in law under Section 2(1) of the Act, even before its amendment of the said provision by the introduction of sub-clause(iii). The new sub-clause (iii) of Section 2(1) is not inconsistent with the earlier position and all that sub-clause (iii) to Section 2(1) has done is to restrict the rights in so far as residential premises are concerned. Since the incidents of a contractual tenancy and a statutory tenancy are the same regarding the heritability, the ( new) provisions of Section 2(1)(iii) of the Act which seeks to limit or abridge the rights of the heirs in so far as the

residential premises are concerned are discriminatory and violative of Art. 14 of the Constitution of India. It is contended that Section 2(1)(iii) of the Act, in so far as it limits or restricts the right of the heirs of residential premises in the manner and to the extent provided in the said section is violative of Art. 14 of the Constitution of India.

In Writ Petition No. 575 of 1988, the petitioner claims to be the heir of one Sri Chhunnu Lal, a statutory tenant under the Act, in respect of the premises 42-B, Connaught Place, New Delhi under respondent Nos. 1 and 2 who have filed a suit for possession. The suit is pending. The petitioner attacks Section 2(1)(iii) of the Act as ultra vires and discriminatory.

In S.L.P. (Civil) No. 16911 of 1991 the petitioner claims to be the heir of one Shri A.K. Roy, a statutory tenant in respect of Flat 3A, Sujan Singh Park, New Delhi along with garage No. 1K and servant quarter No. 25-C/IIIrd Floor. Respondent No. 1 landlord filed Suit No. 603/84 for possession with mesne profits. The trial Court dismissed the suit holding that the tenancy was not validly terminated by a proper notice. The appeal, RCA No. 3/88, filed by landlord was allowed. A further appeal filed by the petitioner before High Court (RSA 42/90), was dismissed on 27-9-1991. Earlier, the petitioner filed a writ petition in the High Court (Civil Writ No. 1406/88) assailing S.2(1) (iii) of the Act as ultra vires which was dismissed on 30-10-1991. Thereafter the present special leave petition was filed by the petitioner objecting to the order passed by the High Court aforesaid.

3. We heard Mr. Jain, Senior Counsel who appeared on behalf of the petitioners in Writ Petition (Civil) No. 1089 /87, as also counsel for the respondents therein. The counsel appearing in the other cases also practically adopted the arguments advanced in this writ petition. Mr. Jain contended that the decisions of this Court in *Damadilal v. Parashram*, (1976) 4 SCC 855: AIR 1976 SC 2229 and *Gian Devi Anand v. Jeevan Kumar*, (1985) 2 SCC 683 : (AIR 1985 SC 796), have held that there is no distinction between a statutory tenant and a contractual tenant and both are heritable. This is so even under Section 2(1) of the Act, before its amendment. It has been further held in *Gian Devi Anand's* case that the statutory tenancy of a commercial premises (non-residential) is absolutely heritable. While so, the restriction or the limitation regarding the heritability of the 'residential premises' brought in by Section 2(1)(iii) of the Delhi Rent Control Act, 1958 has no rationale and is discriminatory. The statutory tenant of a residential (commercial) premises are similarly placed and the distinction in the heritability of statutory tenancy between residential premises is not based on any reasonable classification and that it has no rationale to the object sought to be achieved by the Act and so discriminatory. On the other hand, counsel for the respondents-landlords contended that the legislature has treated commercial tenancy differently from the residential tenancy and they are not similarly placed. It is component to the legislature to lay down the manner and extent of the protection and the rights and obligations of the respective tenants and their heirs. Since the tenancy in respect of residential premises is distinct and different from tenancy in respect of the commercial premises, the limitation or restriction of the rights of the heirs in so far as the residential premises are concerned is a valid and permissible classification and is not open to attack on the ground that it violates Arts. 14 and 21 of the Constitution of India. Counsel for the respondents contended that the reasoning and conclusion of the Constitution Bench of this Court in *Gian devi Anand's* case themselves will go to show that the tenancy of the residential premises and commercial premises are distinct and different and there exists a valid reason for limiting or abridging the rights of the heirs regarding residential premises.

4. It will be useful to extract Section 2(1) of the Act.

"2(1) 'tenant' means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes;

(i) a sub-tenant;

(ii) any person continuing in possession after the termination of his tenancy and;

(iii) in the event of the death of the person continuing in possession after the termination of the tenancy, subject to the order of succession and conditions specified, respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person's:

(a) Spouse,

(b) Son or daughter, or, where there are both son and daughter, both of them,

(c) parents,

(d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such persons as a member or members of his family up to date of his death, but does not include, -.....

Explanation I:- The order of succession in the event of the death of the persons continuing in possession after the termination of his tenancy shall be as follows:

(a) firstly, his surviving spouse;

(b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased persons as a member of his family up to date of his death;

(c) thirdly, his parents, if there is no surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a number of the family of the deceased person up to the date of his death; and

(d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to date of his death.

Explanation II. ( If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and , on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.

Explanation III. - For the removal of doubts, it is hereby declared that, -

(a) where, by reason of Explanation II, the right of any successor to continue in

possession after the termination of the tenancy becomes extinguished, such extinguishment shall not affect the right of any other successor of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor, specified in any lower category or categories as the case may be;

(b) the right of every successor, referred to in Explanation I, to continue in possession after the termination of tenancy, shall be personal to him and shall not, on death of such successor, devolve on any of his heirs."

The main attack of the petitioners' counsel is against Explanation II-aforesaid. It is stated that the heirs of a statutory tenant of the residential premises obtain or get a heritable right without limitation, only if the heirs were financially dependent on the deceased. It is also argued that the rights of the heirs of a statutory tenant of the residential premises are hedged in by various limitations regarding the order of succession as stated in Explanations II and III depending upon their financial dependency. Such fetters or limitations do not exist in the case of the heirs of statutory tenants in respect of the non-residential (commercial) premises. The differential treatment meted out to the heirs of a statutory tenant in respect of the residential premises is not based on any rational distinction and so hit by Art. 14 of the Constitution of India.

5. The scope and content of Art. 14 of the Constitution of India, familiarly known as the equality clause, have been laid down in innumerable decisions of this Court. It is unnecessary to refer to all of them. Briefly stated the gravamen of the article is equality of treatment. Article 14 forbids discrimination. As stated by Shah, J. in *Western U.P. Electric Power & Supply Co. Ltd. v. State of U.P.* AIR 1970 SC 21 at pages 24:

"Article 14 of the Constitution ensures equality among equals: its aim is to protect persons similarly placed against discriminatory treatment. It does not, however, operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and differential treatment had no reasonable relation to the object sought to be achieved by the law."

It is implicit from the above, that equals should not be treated unlike and unlikes should not be treated alike. Likes should be treated alike. It is settled law that in giving effect to the said salutary principle, a mathematical precision is not envisaged and there should be no fanatical or 'doctrinaire' or wooden approach to the matter. A practical or realistic approach should be adopted. It is open to the State to classify persons or things, or objects, for legitimate purposes.

6. The scope of Art. 14 has been summarised in the oft quoted decision, *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538. At page 547, the Constitution Bench of this Court held thus:

"It is now well established that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely,

(i) that the classification must be founded on an intelligible differentia which

distinguishes persons or things that are grouped together from others left out of the group and

(ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupation or the likes. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration

The principle enacted above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish -

(a) that a law must be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the Legislature is free to recognise degree of harm and may confine its restrictions to those cases where the need is deemed to be clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as base, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.'

The above decision has been followed in innumerable subsequent cases. See *Mohd. Hanif Quareshi v. State of Bihar*, AIR 1958 SC 731, *In re Kerala education Bill*, AIR 1958 SC 956, and other cases.

7. In *Ram Krishna Dalmia's case* (AIR 1958 SC 538), the different situations in which a statute may come up for consideration on the question of validity under Art. 14 of the Constitution have been catalogued in paragraph 12 of the judgment. They are broadly dealt with as falling in five groups or clauses. For the purposes of this case, it is sufficient if we refer to paragraph 12 clause (1).

"(1) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things, may

appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the Court. In determining the validity or otherwise of such a statute the Court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of person or things. Where the Court finds that the classification satisfies the tests, the Court will uphold the validity of the law."

8. Bearing the above principles in mind, let us look into the provisions of the Act. A bare perusal of the Delhi Rent Control Act, 1958, will show that the legislature has treated commercial tenancy differently from residential tenancy. Indeed, in *Gian Devi Anand's case*, (AIR 1985 SC 796), in paragraphs 32 and 34 of the judgment the Constitution Bench of this Court has pointedly dealt with the matter thus:

"32 It may be noted that for certain purposes the Legislature in the Delhi Act in question and also in various other Rent Acts has treated commercial premises differently from residential premises. Section 14(1)(d) provides that it will be a good ground for eviction of a tenant from residential premises if the premises let out for use as residence is not so used for a period of six months immediately before the filing of the application for the recovery of possession of the premises. Similarly Section 14(1)(e) makes bona fide requirement of the landlord of the premises let out to the tenant for residential purposes a good ground for eviction of the tenant from such premises. These grounds, however are not made available in respect of commercial premises."

"34. It may be noticed that the Legislature itself treats commercial tenancy differently from residential tenancy in the matter of eviction of the tenant in the Delhi Rent Act and also in various other Rent Acts. All the grounds for eviction of a tenant of residential premises are not made grounds for eviction of a tenant in respect of commercial premises. Section 14(1)(d) of the Delhi Rent Act. provides that non-user of the residential premises by the tenant for a period of six months immediately before the filing of the application for the recovery of possession of the premises will be a good ground for eviction, though in case of commercial premises no such provision is made. Similarly, Section 14(1)(e) which makes bona fide requirement of the landlord of the premises let out to the tenant for residential purposes a ground for eviction of the tenant, is not made applicable to commercial premises."

It is also appropriate to state that a commercial tenancy is much more valuable and precious than a residential tenancy. In the above decision of the Supreme Court, this aspect was highlighted to the following effect in paragraph 34 of the Judgment thus [AIR 1985 SC 796 at pp 811-12]:

"Business carried on by a tenant of any commercial premises may be and often is, his only occupation and the source of livelihood of the tenant and his family. Out of the income earned by the tenant from his business in the commercial premises, the tenant maintains himself and his family, and the tenant, if he is residing in a tenanted house, may also be paying his rent out of the said income. Even if a tenant is evicted from

his residential premises, he may with the earnings out of the business be in a position to arrange for some other accommodation for his residence with his family. When, however tenant is thrown out of the commercial premises his business which enables him to maintain himself and his family comes to a standstill. It is common knowledge that it is much more difficult to find suitable business premises than to find suitable premises for residence. It is no secret for securing commercial accommodation, large sums of money by way of salami, even though not legally payable, may have to be paid and rents of commercial premises are usually very high. Besides, a business which has been carried on for years at a particular place has its own goodwill and other distinct advantages. The death of the person who happens to be the tenant of the commercial premises and who was running the business out of the income of which the family used to be maintained, is itself a great loss to the members of the family to whom the death, naturally, comes as a great blow. Usually, on the death of the person who runs the business and maintains his family out of the income of the business, the other members of the family who suffer the bereavement have necessarily to carry out on the business for the maintenance and support of the family. A running business is indeed a very valuable asset and often a great source of comfort to the family as the business keeps the family going ..... It could never have been the intention of the Legislature that the entire family of a tenant depending upon the business carried on by the tenant will be completely stranded and the business carried on for years in the premises which had been let out to the tenant must stop functioning at the premises which the heirs of the deceased tenant must necessarily vacate ..... It may also be borne in mind that in case of commercial premises the heirs of the deceased tenant not only succeed to the tenancy rights in the premises but they succeed to the business as a whole ..... Commercial premises are let not only to individuals but also to Companies, Corporations and other statutory bodies, having a juristic personality. Infact tenancies in respect of commercial premises are usually taken by Companies and Corporations. When the tenant is a Company or a Corporation or anybody with juristic personality, question of the death of the tenant will not arise. Despite the termination of the tenancy, the Company or the Corporation or such juristic personalities, however, will go on enjoying protection afforded to the tenant under the Act"

9. It is evident from the above decision of the Constitution Bench of this Court that a commercial tenancy is invaluable and has got distinct features and characteristics of its own different from that of a residential tenancy. None of the peculiar or unique features present in the case of residential tenancies exit in the case of commercial tenancies. In the above background, if the legislature thought it fit to afford a greater and extended right of benefit to the heirs of the statutory tenants of commercial premises and not to extend such rights to the heirs of the statutory tenants of residential premises, we should say that it only stands to reason and reckons the stark realities of the prevailing situation. The protection afforded by the Rent Act. to a tenant after the termination of the tenancy and to heirs of the tenancy is only a creation of the Act and it is open to the legislature to make appropriate provisions in that behalf. It can make suitable and appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be so enjoyed and the manner in which the same is to be enjoyed. In the above perspective, we are of the view that the provisions in Section 2(1)(iii) of the Act, which seeks to restrict or limit the right of the heirs, in so far as the statutory tenants of residential premises are concerned and to the extent provided therein, are not in any way discriminatory and do not offend the guarantee under Art. 14 of the Constitution. This is

not a case where the residential tenancy and the commercial tenancy are similarly placed. They belong to two different categories with distinct features and characteristics of their own. No question of discrimination arises. In this context, it is only proper to quote the following observations in *Sakhawat Ali v. State of Orissa*, (1955) 1SCR 1004, page 1010: (AIR 1955 SC 166 at p 170), which is apposite:

"..... legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Art. 14 of the Constitution."

Nor are we impressed by the plea that the right to shelter is a guarantee under Art. 21 of the Constitution of India and so the abridgement or limitation placed on the rights of the legal heirs in the case of a statutory tenancy of residential premises makes an inroad into the rights of the tenant under Art. 21 of the Constitution of India. We hold that the statutory tenancies regarding residential premises are distinct and different from statutory tenancies regarding commercial premises and the limitations or the restrictions placed by Section 2(1)(iii) of the Act on the rights of the heirs of the statutory tenants or residential premises are reasonable, fair and just in all the circumstances of the case. There is no violation of the guarantee enshrined in Art. 14 or Art. 21 of the Constitution of India.

10. We hold that Section 2(1)(iii) of the Delhi Rent Control Act, 1958 is not open to attack on the ground that it is violative of Arts. 14 and 21 of the Constitution of India. The said provisions is not in any manner either unfair or unjust or absurd. There is no merit in this batch of cases. The writ petitions are dismissed with costs. The Special Leave Petition is rejected. Petitions dismissed.

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