

BOMBAY HIGH COURT

A.C. Patel

Vs

Vishwanath Chada

(Chagla, C.J. Dixit, J.)

0.07.1953

JUDGMENT

Chagla, C.J.

1. A rather interesting question relating to the competence of the State Legislature arises in this civil revision application. The landlord filed a suit, for evicting his tenant. The premises are situated in the cantonment area of Kirkee. The trial Court held that the tenant was protected under the Rent Restriction Act (Bombay Rents, Hotel and Lodging House Rates Control Act, 57 of 1947) and dismissed the landlord's suit. In appeal the District Judge, Foon. confirmed the decision of the trial Court and dismissed the appeal.

2. In revision the contention raised by Mr. Kotwal on behalf of the landlord is that the Rent Restriction Act, to the extent that it protects the tenants and creates a statutory tenancy, does not apply to the cantonment area of Kirkee. For this purpose reliance is placed on Entry 2 in List I of the Seventh Schedule to the Government of India Act. The case was governed by Act 57 of 1947 and therefore competence of the Legislature has got to be determined by the Government of India Act and not by our Constitution. Entry 2 in List I confers upon the Central Legislature the competence to legislate with regard to (and we are only setting out the material portion) the regulation of naval, military and air force works, local self-Government in cantonment areas, the regulation of house accommodation in such areas; and Mr. Kotwal's contention is that the Rent Restriction Act deals with regulation of house accommodation in Kirkee cantonment, and therefore it is only the Central Legislature that can legislate with regard to this subject. As against this it is pointed out that the competence of the Provincial Legislature arises under Entry 21 in List II and that entry confers upon the Provincial Legislature the competence to legislate with regard to land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents. It is clear that although Parliament used the expression "land", "land" would include "buildings". The English Interpretation Act, 52 & 53 Vic. c. 63, enacts that whenever Parliament after the passing of the Act has used the expression "land",

unless there is something to indicate a contrary intention, "land" would include "buildings". Therefore to the extent that the Provincial Legislature legislates with regard to relation of landlord and tenant, the legislation would be competent whether the legislation relates to land or to buildings. But what is urged upon us is that, even assuming that the Provincial Legislature has competence to deal with regulation of rent and protection of tenants from ejection, the competence of the Legislature is excluded to the extent that the subject-matter falls in Entry 2 of List I. In other words, what is urged is that the Provincial Legislature could legislate for the whole Province of Bombay except for the areas which are cantonment areas.

3. Now, it is perfectly true that the well established of construction with regard to various entries in the Seventh Schedule to the Government of India Act is that these entries must not be construed in a narrow and restricted sense. They must be construed liberally and it must be assumed that Parliament intended by using a comprehensive expression to give to the Legislature all subsidiary and ancillary powers. Now the question is whether it could be said that the Rent Restriction Act, Act 57 of 1947, regulates house accommodation in cantonment areas. As the preamble of the Act sets out the Act was passed with a view to the control of rents and repairs, of certain premises, of rates of hotels and lodging houses, and of evictions. Therefore, the pith and substance of Act 57 of 1947 is to regulate the relation between landlord and tenant by controlling rents which the tenant has got to pay to the landlord and by controlling the right of the landlord to evict his tenant. Can it be said that when the Provincial Legislature was dealing with these relations between landlord and tenant, it was regulating house accommodation in cantonment areas? In our opinion the regulation contemplated by Entry 2 in List I is regulation by the State or by Government. Requisitioning of property, acquiring of property, allocation of property, all that would be regulation of house accommodation, but when the Legislature merely deals with relations of landlord and tenant, it is not in any way legislating with regard to house accommodation. The house accommodation remains the same, but the tenant is protected 'qua' his landlord. It is important to note that the Act passed by the Bombay Legislature does not protect the tenant against the Central Government and it would be open to the Central Government, notwithstanding the Rent Restriction Act, to requisition or acquire any property in the cantonment area, and the tenant would have no answer against such requisition or acquisition. The legislation would only have fallen under this entry if the Provincial Legislature had attempted to protect the tenant against the State. But as we said before, the protection given to the tenant is only against his own landlord and that protection in no way interferes with any regulation that the Central Government may impose with regard to the house accommodation in the cantonment area. Therefore, in our opinion, the legislation is clearly outside the field demarcated by Entry 2 in List I.

4. Now, it has been pointed out by Mr. Kotwal that in 1941 under Rule 81 of the Defence of

India Rules the Central Government issued orders regulating rents and ejections of property in cantonment areas. We do not propose to express any opinion with regard to those orders, because that would require a consideration of the Government of India Act and the rules framed thereunder. It is then pointed out that turning to our Constitution, Entry 3 in the Union List has made a change in Entry 2 in List I "of the Government of India Act by adding in brackets the words "including the control of rents", and it is urged that this clearly shows that the control of rents was already included in the expression "regulation of house accommodation", and for the sake of caution and clarity the Constituent Assembly has included the words "control of rents" in the entry in the Constitution. Strictly, we are not called upon to construe Entry 3 in List I in the Constitution because, as already pointed out, this Act was passed in 1947 & the competence of the Legislature has got to be decided by the Government of India Act and not by the Constitution. But Mr. Kotwal is undoubtedly entitled to rely on this entry to show what was the intention of the Constitution makers, because it is well known that the Constitution, was based upon the Government of India Act and we must look at the Constitutional history in order to construe expressions used in the Government of India Act and in the Constitution.

5. Now, the question is, what is the meaning of the expression "including"? Does the expression "including" mean that the control of rents was already part of the expression "regulation of house accommodation" and that the Legislature has clarified the meaning of "regulation of house accommodation" by setting out the expression "control of rents"? Or is the expression "including" an expression of extension and the Constituent Assembly has added to the expression "regulation of house accommodation" the control of rents. Stroud's Judicial Dictionary, edn. 2, at p. 945, deals with the expression "include" and it points out that :

"'Include' is very generally used in Interpretation Clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also, those things which the Interpretation clause declares that they shall include."

Further, the learned author says (p. 945): "'Shall include' is a phrase of extension, and not of restrictive definition.." Then turning to p. 1241 the learned author draws a distinction between 'the expression "namely" and the expression "including", and he points out that "A difference, in grammatical sense, in strictness exists between the words 'namely' and including'. 'Namely' imports interpretation, i.e. Indicates what is included in the previous term. but 'Including' imports addition, i.e. indicates something not included." Now this makes it clear that the Constituent, Assembly by adding "the control of rents" with the prefix "including" were adding to the subject matter already comprised In Entry 3 of List I. The Constituent Assembly was not restricting the

definition of "the regulation of house accommodation" to the control of rents or using the control of rents as 'ejusdem generis' with the regulation of house accommodation. We should again like to make it clear that we are not called upon to-day to interpret Entry 3 in List I, but we are only referring to it as a matter of Constitutional history.

6. Therefore, in our opinion, the Rent Restriction Act does not fall in Entry 2 of List I of the Seventh Schedule to the Government of India Act, but falls in Entry 21 of List II of the Seventh Schedule to the Government of India Act. Therefore, the legislation is a competent legislation and the Rent Restriction Act applied to the canton-ment area.

7. The result is that the application fails. Rule discharged with costs.

8. Rule discharged.