NAGPUR HIGH COURT

Kewalchand Keshrimal

Vs

Dashrathlal Pyarelal

Misc. Civil Case No. 40 of 1953, in Civil Appeal No. 21-A of 1952

(Hidayatullah, C.J. and R. Kaushalendra Rao, J.)

21.11.1955

JUDGMENT

R. Kaushalendra Rao, J.

1. The order in this miscellaneous civil case shall also govern Misc. Civil Cases Nos. 43 to 45 of 1953 and 13 and 14 of 1954.

2. These cases arises out of civil suits in which landlords are seeking to evict tenants without obtaining the permission of the Rent Controller as required by the provisions of the C.P. and Berar Letting of Houses and Rents Control Order, 1949 (hereinafter called the Order). The defendants in these suits contend that such permission is necessary, while the landlords contend that the order cannot apply to the Cantonment of Jabalpur, and that, if extended thereto, the notification is 'ultra vires' the State Government. The Courts before whom these suits were pending have referred them under the proviso to Section 113, Civil Procedure Code.

3. The order was promulgated under the authority of the C.P. and Berar Regulation of Letting of Accommodation Act, 1946 (hereinafter called the Act). The Act extended to the whole of Madhya Pradesh, but it needed a notification to bring the order into force in a local area. The Act merely conferred on the Provincial Government the power to regulate the letting and subletting of accommodation and other ancillary matters. Section 2 of the Act reads as follows :

> "The State Government may, by general or special order which shall extend to such areas as the State Government may, by notification, direct, provide for regulating the letting and subletting of any accommodation or class of accommodation whether residential or non-residential, whether furnished or unfurnished and whether with or without board and in particular,-
> (a) for controlling the rents for such accommodation either generally or when let to specified persons or classes of persons or in specified circumstances;
> (b) for preventing the eviction of tenants or sub-tenants from such accommodation in specified circumstances;

(c) for requiring such accommodation to be let either generally, or to specified persons or classes of persons ,or in specified circumstances; and

(d) for collecting any information or statistics with a view to regulating any of the aforesaid matters.'

4. The Provincial Government promulgated the order and issued notification. No. 3731-3140-11, dated 26-7-1949, which read as follows :

"In exercise of the powers conferred by Section 2, C.P. and Berar Regulation of Letting of Accommodation Act, 1946 (11 of 1946), the Provincial Government are pleased to direct that the Chapters of the C.P. and Berar Letting of Houses and Rent Control Order, 1949, specified in Col. (2) of the table below shall extend to the areas specified in the corresponding entry in Col. (3) of the said table :-

Serial No.	Chapters	Area
(1)	(2)	(3)
1. I	The whole of the Central Provinces and Berar and the States integrated with the Central Provinces and Berar.	
2. II and IV	(a) All the municipalities in the Central Provinces and Berar and the States integrated with the Central Provinces and Berar. (b) Gram Panchayat, Mahasamund, Gaurella Sanitation, Panchayat Area, Bemetara, Sarkanda, Tarbahar, Sirgitti, Torwa and Baloda Bazar.	
3. III	Municipalities of - Nagpur, Wardha, Akola, Hoshangabad, Narsinghpur, Jubbulpore, Saugor, Chanda, Betul, Seoni, Bilaspur, Amraoti, Amraoti Camp, Ellichpur, Raipur, Burhanpur, Khandwa, Chhindwara, Drug, Yeotmal, Mandla, Hinganghat, Gondia, Morsi, Daryapur, Buldana, Khamgaon and Malkapur.	

It also issued two notifications on 23-8-1949, which read as follows :

"No 4210-4169-II.- In pursuance of sub-Clause (2) of Clause 1, C.P. and Berar Letting of Houses and Rent Control Order, 1949, the Provincial Government are pleased to direct that Chapters I, II and IV of the said order shall extend to the area within the limits of the cantonments at Jubulpore, Saugor, Kamptee and Pachmarhi.

"No. 4212-4169-II. In pursuance of Clause 30, C.P. and Berar Letting of Houses and Rent Control Order, 1949, the Provincial Government are pleased to exempt from the operation of all the provisions of the said order all houses within the limits of the Cantonments at Jubbulpore, Saugor, Kamptee and Pachmarhi, which are the property of the Central Government, or are occupied in pursuance of a notice issued under section 7, Cantonment (House Accommodation) Act, 1923 (6 of 1923), or in pursuance of an order of requisition issued by or on behalf of the Central Government, so long as the houses continue under such occupation.

By order of the Governor,

C.P. and Berar.
M.K. Kher, Addl. Secretary."

5. It is contended by the plaintiffs in these cases that the extension of the Act and the order to the cantonment area is 'ultra vires' the Legislature and the State Government respectively, because the regulation of house accommodation in cantonments was governed by Entry No. 2 of List I of Schedule 7, Government of India, Act, 1955. That entry read as follows :

> "Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas."

The defendants base their case upon entry No. 21 in List 2 and contend that the Act and the order apply to the cantonment area. That Entry read as follows :

> "Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; . . . ."

6. These entries find place in the present Constitution, but Entry No. 2 of List 1 (now Item 3 of the Union List) speaks of "the regulation of house accommodation, including control of rents in cantonments." Entry No. 18 of the State List is practically the same as Entry No. 21 of List 2, quoted above.

7. It is contended by the plaintiffs in these cases that both under the Government of India Act, 1935, as well as the present Constitution, the control of rents and the regulation of house accommodation in cantonment areas are topics of legislation exclusively in the power of the Central Legislature and the Central Government, and that the Act and the Order cannot be applied to cantonments. In this connexion certain rulings in which this matter has been discussed, particularly in '*M. Ahmadi Begum v. District Magistrate, Agra*[1]', '*A.C. Patel v. Vishwanath Chanda*[2]', '*Darukhanawala v. Khemchand Lalchand*[3]', '*Milap Chand v. Dwarka Das*'[4], and '*Motilal v. Ganeshilal*[5], were referred to.

8. It will be noticed from the notifications quoted that except in so far as provided in Notification No. 4212-4169-II, the rest of the House Rent Control Order, viz., Chapters I, II, and IV thereof, is applied to the cantonment of Jabalpur. We are asked to determine whether this is legal in view of the distribution of powers between the Centre and the States, both under the Government of India Act, 1935, and under the present Constitution.

9. In a Federal Constitution with a distribution of legislative power between the Centre and the federating unite, such questions arise frequently. The topic may in one view of the matter fall within the powers of the Centre and on another within the powers of the units. When this happens, it is usual to examine the pith and substance of the impugned legislation and to see whether the pith and substance appropriately falls within this entry or that in the legislative lists. The entries are not mutually exclusive, and the dictum of Gwyer, C.J., in '*Subrahmanyan Chettiar v. Muttuswami Goundan*[6]' approved by the Privy Council in '*Prafulla Kumar v. Bank of Commerce, Khulna*[7]', and applied by this Court in '*Om Prakash Mehta v. King Emperor*[8]', CH)

must be borne in mind. This is what their Lordships observed in the Privy Council case cited above-

> "As Sir Maurice Gwyer, C.J. said in 1940 FCR 188 : (AIR 1941 PC 47) (supra) at p. 201 (of FCR) (at p. 51 of AIR) (F) :
> "It must inevitably happen from time to time that legislation though purporting to deal with a subject in one list, touches also upon a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a larger number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its pith and substance or its true nature and character for the purpose of determining whether it is legislation with respect to matters in this list or in that.'
> "Their Lordships agree that this passage correctly describes the grounds upon which the rule is founded, and that it applies to Indian as well as to Dominion legislation. No doubt experience of past difficulties has made the provisions of the Indian. Act more exact in some particulars and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provisions should be attributed and those which are merely incidental. But the overlapping of subject-matter is not avoided by substituting three lists for two or even by arranging for a hierarchy of jurisdictions.
> "Subjects must still overlap and where they do the question must be asked what in pith and substance is the effect of the enactment of which, complaint is made and in what list is its true is nature and character to be found.
> "If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to Provincial Legislation could never effectively be dealt with.
> "Thirdly, the extent of the invasion by the Provinces into subjects enumerated in the Federal List has to be considered. No doubt it is an important matter, not, as their Lordships think, because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the pith and substance of the impugned Act. Its provisions may advance so far into Federal territory as to show that its true nature is not concerned with Provincial matters, but the question is not has it passed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not money-lending but promissory notes or banking? Once that question is determined the Act falls on one or the other side of the line and can be seen as valid or invalid according to its true content."

10. The principles on which the Privy Council acted in cases in which a conflict between the legislative power of the Centre and that of the States came for decision are summarised in the judgment of Jayakar, J. (as he then was) in 'In re The Central Provinces and Berar Act No. XIV

of 1938', 1939 FCR 13 at pp. 96-97 : (AIR 1939 FC 1 at pp. 31-32) (I). They are as follows :

> "(1) That the provisions of an Act like the Government of India Act, 1935, should not be cut down by a narrow and technical construction, but, considering the magnitude of the subjects with which it purports to deal in very few words, should be given a large and liberal interpretation, so that the Central Government, to a great extent, but within certain fixed limits, may be mistress in her own house as the Provinces to a great extent, but again within certain fixed limits, are mistresses in theirs : see '*Henrietta Muir Edwards v. Attorney-General for Canada*[9]',
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> "(2) In an enquiry like the one before us in this Reference, the Court must ascertain the true nature and character of the challenged enactment, its pith and substance; and not the form alone which it may have assumed under the hand of the draftsman: see *Attorney-General for Ontario v. Reciprocal Insurers*[10]',
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> "(3) Where there is an absolute jurisdiction vested in a Legislature, the laws promulgated by it must take effect according to the proper construction of the language in which they are expressed. But where the law-making authority is of a limited or qualified character, obviously it may be necessary to examine, with some strictness, the substance of the legislation, for the purpose of determining what it is that the Legislature is really doing see '*Attorney-General for Ontario v. Reciprocal Insurers', (supra).*
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> "(4) Even where there has been an endeavour to give pre-eminence to the Central Legislature in cases or a conflict of powers, it is obvious that in some cases, where this apparent conflict exists, the Legislature could not have intended that powers exclusively assigned to the Provincial Legislature should be absorbed in those given to the Central Legislature. 'It is the duty of the Courts, however difficult it may be, to ascertain in what, degree, and to what extent, authority to deal with, matters falling within these classes of subjects exists in each legislature, and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist; and, in order to prevent such a result, the two sections must be read together, and the language of one interpreted, and, where necessary, modified by that of the other. In this way it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the sections,, so as to reconcile the respective powers they contain, and give effect to all of them. In performing this difficult duty, it will be a wise course for those on whom it is thrown to decide each case which arises as best they can, without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand'. See -*Citizens Insurance Co. of Canada v. Parsons*[11]',
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> "(5) In the interpretation of a completely self-governing Constitution founded
> upon a written organic instrument if the text is explicit, the text, is conclusive, alike in what it directs and what it forbids. When the text is ambiguous, as, for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the Act'

See *Attorney-General for Ontario v. Attorney-General for Canada*[12]',

The Supreme Court has also applied the same principles.

11. The Act and the Order are prior to the Constitution and their validity must be determined, under the Government of India Act, 1935. Applying the aforesaid tests, it is necessary to find out what was covered by the expression "regulation of house accommodation in cantonment areas" in List 1 and by "relation of landlord and tenant" in List 2 of Sch 7, Government of India Act, 1935. We have also to find out what is the pith and substance of the Act and the Order to discover whether they substantially fall within the Entry in List 1 or List 2. If the subject fell either-entirely or substantially within the opposite entry, the legislation by the Provinces would be ultra vires by reason of Section 100, Government of India Act 1935.

12. We begin first by examining the pith, and substance of the Act. The Act consists of ten sections, but the only relevant sections are the first two. Under the first section it is extended to the whole of Madhya Pradesh, while the second section does not lay down any provision of law but confers on the State Government the power to make an order to be extended to such areas; as the State Government may by notification direct. The preamble of the Act states that the Act was to make provision "for regulating the letting and sub-letting of accommodation and 'other ancillary matters'." The Act did not lay down the provisions necessary therefor. It left the matter to the State Government by Section 2, which reads as follows : (Here section 2 of the Act is reproduced; it is omitted as it is already given in para. 3 above.)

13. The Act is made applicable to the whole of the State and 'regulates letting and sub-letting of accommodation' and other ancillary matters in the whole of the State. In so far as cantonment areas are concerned, it is clear that the regulating of accommodation in those areas was a topic of legislation by the Centre. Since, however, the Act did not make any rules but left it to the State Government to make them and to apply them to such areas as the State Government might by notification direct, it is to be assumed that the State Government was expected to act within the four corners of the powers granted by the Constitution Act of 1935. The State Government was neither expected nor capable of regulating house accommodation in cantonment areas, and the short question is not about the validity of the Act but about the validity of the application of the Order as a whole to cantonment areas. It is, no doubt, true that by making the Act applicable to the whole of Madhya Pradesh the cantonment areas would be included, but by virtue of Sections 100 and 107, Government of India Act, 1935, such areas stand automatically excluded from the application of the Act. The attempt to make Rules regarding the regulating of house accommodation in cantonment areas would be ultra vires the State Legislature or the State Government.

14. The Legislature and the State Government could still, under the powers granted by Entry No. 21 of List 2, provide for the relation of landlord and tenant. That expression may include the regulating of house accommodation but is not equal to it. It goes much further than mere regulating of house accommodation; and unless it can be said that the expression "regulating of house accommodation" includes all aspects of the relation of landlord and tenant, the power of the State Legislature as also the State Government cannot be said to be affected.

15. In ILR 1954 Bombay 434 : (AIR 1954 Bombay 204) it was held by Chagla, C.J. and Dixit, J. that the Entry No. 2 in List 1, of Schedule 7, Government of India Act, 1935, did not preclude the Provincial Legislature from regulating relations between landlord and tenant in premises within the cantonment areas. It only prevented the Provincial Legislature or the Government from regulating house accommodation, which included requisitioning, acquisition and allocation of houses. Where only the relationship of landlord and tenant was controlled, there was no regulation of house accommodation. It was also laid down in. some cases that the word "land" in the Government of India Act, 1935, must be deemed to include 'buildings, because the definition of "land" in the Interpretation Act would apply : see '*Raman Das v. The State of Uttar Pradesh*[13]' and '*A.C. Patel v. Vishwanath-Chanda' (cit. sup.).*

16. We are not required in these cases to determine anything more than whether the State Government could make an order under the authority of the Act requiring that the landlord should obtain the permission of the Rent Controller before giving a notice to vacate a house situated in a cantonment area. We do not wish to pronounce upon the other terms of the Order, because, in our opinion, we should only consider the validity of the law applicable to the cases and should not pronounce too largely upon the validity of other laws. In our opinion, whether or hot the rest of the Order of the State Government can be sustained in the cantonment areas, it is clear that some portions of it which do not fall within Entry No. 2 of List 1, viz., regulating of house accommodation in cantonment areas, can be declared to be validly enacted.

17. The provisions of the Order (cl. 13) which require that a landlord should obtain the permission of the Rent Controller before serving a notice to quit upon the tenant definitely fall within the expression 'relation of landlord and tenant'. They do not, in our opinion, fall within the expression 'regulating of house accommodation'. The authority to enact such an Order flows from cl (b) of the second section of the Act and that clause is not hit by Entry No. 2 in List 1, Government of India Act, 1935. The clause being validly enacted, clause 13 of the Order is also valid and Entry No. 2 does not prevent its application to cantonments. We need not consider whether the expression "regulating, of house accommodation" includes something besides what Chagla, C.J. said was its ambit, but we are quite clear that the expression cannot be stretched to include the aspect of the relation of landlord and tenant involved in this case. The requirement of permission to serve a notice is regulating the relation of landlord and tenant and not regulating of house accommodation. It substantially falls in the Entry No. 21 in List 2 and not in Entry No. 2 in List 1.

18. It is true that under the present Constitution regulating of house accommodation is to include the control of rents, but the provisions of the Constitution do not apply to the present Act and the Order, inasmuch as they are still to continue in force by virtue of Article 372 of the Constitution. The Cantonments (House Accommodation Act) 1902 (Act 2 of 1902), and the Cantonments (House Accommodation) Act, 1923 (Act 6 of 1923), do not touch the matter of permission to serve a notice to quit, and there is thus no conflict to resolve nor any question of occupied field to determine. In our opinion, the provisions of the Order requiring that permission to serve a notice should be obtained are not rendered void either by reason of any Central legislation or by falling directly within Entry No. 2 of List 1 of Schedule 7, Government of India Act, 1935. We are also of the opinion that this provision is severable from the rest of the Order and can be sustained without pronouncing upon the validity of the other parts of the Order in cantonment areas.

19. We accordingly uphold the objection raised by the defendants in these cases that a notice to quit could not be served upon the tenants without first obtaining the permission of the Rent Controller.

20. The cases will now go back to the Courts which have made the references and the costs of these references shall be costs in the suits. Counsel's fee Rs. 50A if certified.
Reference answered.

Cases Referred.

[1] AIR 1951 All 830
[2] ILR 1954 Bom 434 : (AIR 1954 Bom 204)
[3] ILR 1954 Bom 544 : (AIR 1954 Bom 254
[4]AIR 1954 Raj 252
[5] AIR 1955 Mad Bha 761
[6]1940 FCR 188 at p. 201 : (AIR 1941 PC 47 at p. 51)
[7] AIR 1947 PC 60
[8] ILR (1947) Nag 579 : (AIR 1948 Nag 199)
[9]1930 AC 124 at pp. 136-137: (AIR 1930 PC 120)
[10]1924 AC 328 at p. 337
[11](1881) 7 AC 96 at pp. 108-109
[12]1912 AC 571 at p. 583
[13] ILR (1953) 1 All 970 : (AIR 1952 All 7037 (FB))