

## State Of M.P. vs Kanhaiyalal on 21 April, 1969

**Equivalent citations: 1969(2)UJ428(SC)**

### JUDGMENT

Mitter, J.

1. In this appeal by special leave from a judgment and order of the Madhya Pradesh High Court dated September 22, 1964 the only question canvassed at the Bar was, whether the notification under Section 3(2) of the Madhya Pradesh Accommodation Control Act, 1961 was discriminatory and as such rightly quashed by the High Court.

2. The facts in brief are as follows: Respondent No.4 is a public trust registered under the Madhya Pradesh Public Trusts Act. It holds a house property in the town of Bhopal. One portion there of was occupied by a girls school, the rest being let out to tenants.

The rents issuing from the property were being utilised for the purpose of the school. Respondents 1 to 3 are tenants of the said Property. By application dated March 5, 1962 respondent No. 4 applied to the Home Secretary. Government of Madhya Pradesh, for exempting the property from the provisions of the Act which was passed for the protection of tenants from demands of excessive rent and for prevention of decrees for ejectment except in accordance with the conditions laid down in the Act. Sections (2) of the Act however provided that :

" The Government may, by notification exempt from all or any of the provisions of this Act any accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home, the whole of the income derived from which is utilised for that institution or nursing home or maternity home."

Respondent No. 4 applied for exemption in terms of the said provision stating the origin of the endowment, the way in which the school was being maintained and relying on the assertion that the school had no other income except that from rent and the entire rental from the property was being devoted to meet the expenses of the trust. The Government of Madhya Pradesh issued a notification dated May 22, 1963 reading as follows :-

7th June, 1963.

Home Department, Bhopal, the 22nd May, 1963-- Jyaistha 1, 1885.

No. 2163-883-II-AR (3) in exercise of the powers conferred by Sub-section (2) of Section 3 of the Madhya Pradesh Accommodation Control Act, 1961 (41 of 1960) the State Government hereby exempt House No. 43 of Ward No. 16 in Bhopal Municipal area (Ibrahimpura Bhopal) owned by Gulab Bai Digambar Jain kanya Vidyalaya Bhopal, an educational institution from all the provisions of the said Act. By order and in the name of the Governor of Madhya Pradesh.

P.C. Rayazada, Dy. Secy. "

On coming to learn of the notification the tenants made a representation for review of the aforesaid exemption stating inter alia that the object of the trustees in seeking exemption was not bonafide and that they wanted to enhance the rent to exorbitant figures. By order dated April 8, 1964 the Government rejected the representation. Respondents 1, 2 and 3 moved a writ petition under Article 226 of the Constitution for quashing the notification. Returns to the writ were filed on behalf of the trust as also by the Government. There was no affidavit either from the Collector or from any officer of the Home Department of the Government of Madhya Pradesh to the effect that Government had considered the propriety of the notification and satisfied itself that the notification was not discriminatory but issued to further the policy and purpose of the Act. The first return of Government contains a bare statement that:

"The State Government after obtaining fresh report from the Collector, sehore and Commissioner as also after giving a hearing to the parties concerned on 28-1-1964 came to the conclusion that the order of the exemption dated 22-5-1963 was legal and within Section 3 (2) of the Act. "

The additional return does not carry the matter any further inasmuch as this too was filed by the Government Advocate without any supporting affidavit from any officer of the Home Ministry of the state and seems to suggest that because the institution was one within the categories mentioned in Section 3 (2) of the Act and the income from the property was spent for the purpose of the trust the notification was justified.

3. It was urged before the High Court that Section 3(2) of the Act was void on the ground of the excessive delegation of legislative powers to the State Government : secondly, the said provision conferred unguided and arbitrary powers on the executive, and lastly, the notification was bad because it was discriminatory. The High Court relied on the decision of this Court in P. J. Irani, v. The State of Madras (1). The statutory provision which came up for consideration there was Section 13 of the Madras. Building; (Lease and Rent Control) Act, 1949 which bears a close resemblance to the Madhya Pradesh Act. In that case one Chetty had obtained a lease of a cinema house which was to expire in May 1942. The property was in charge of receivers appointed by the High Court in a litigation between the owners of the cinema house. Irani had offered to take a lease of the cinema house for 21 years in the year 1940. The High Court offered Chetty the option of taking a lease for the said period but Chetty was not willing to take it for a period longer than seven years ending in May 1947. The High Court ordered that a lease be given to Chetty for a period up to May 1947 and

that another lease be given to Irani from 1947 to 1961. The receivers executed two leases one in favour of Chetty and the other in favour of Irani. Before the lease in favour of Chetty expired, the Madras (Lease and Rent Control ) Act, 1946 came into force protecting tenants in possession from eviction even after the expiry of their leases. Section 13 of the Act empowered the State Government to exempt any building or class of buildings from all or any of the provisions of the Act. On the application of Irani. Government passed an order on June 4, 1952 exempting the cinema house from the provisions of the Act. The reasons given by the Government for making the order were (1) that Chetty had deliberately offered to take the lease for seven years only when the High Court was willing to give it to him for 21 years (2) Chetty had several other businesses besides the lease of the cinema; and (3) he had been in possession for five years more than he was legitimately entitled to be there. Chetty filed a writ petition before the High Court for quashing the order on the ground of unconstitutionality of Section 13. The High Court did not accept his contention but held that the order of the Government was ultra vires Irani appealed to this Court challenging the validity of Section 13 also. A Bench of five Judges of this Court were unanimous in their opinion that Section 13 did not violate Article 14 and was not unconstitutional. The majority of Judges however held that the order passed under Section 13 was ultra vires as the grounds given by the Government in support of the grant of exemption were not germane or relevant to the policy and purpose of the Act. It was further held that the fact that Chetty had taken the lease for seven years and continue in possession thereafter was not a ground for eviction inasmuch as the policy of the Madras Act was to protect such possession; nor was the fact that Chetty had other business material on this question. It was held that the Government had failed to consider the question whether on Chetty being evicted he could secure alternative accommodation where he could carry on business of the type he was carrying on in the premises which was the subject of the lease. This decision was followed in *Sadhu Singh v. Th District Board, Gurdaspur and Anr.* (2).

4. Before we can hold in favour of the State Govt., we must be satisfied that the ground of exemption was germane to the policy of the Act. In this case there is no affidavit by any officer who had anything to do with the order granting exemption. The returns filed on behalf of the State Government do not throw any light on this question. It would appear that in granting the exemption the state applied merely a rule of thumb and issued the notification of the basis of the assertion by the trust that the entire rental income from the property was being applied to meet the expenses of the trust. Such a statement only allows an institution to apply for exemption under Section 3(2). By itself it is not enough. Any institution covered by Section 3 (2) had to allege why it had become necessary for it to apply for exemption. It was not the case of the trust that they wanted to evict the tenants because they wanted the whole of the accommodation itself nor was it their plea that the income according to them was very low compared to prevailing rates of rent and that it was wholly inadequate for meeting the expenses of the trust. If grounds like these or other relevant grounds had been alleged it would have been open to the State Government to Consider the same and pass an order thereon. In our view the State Government did not apply its mind which it was required to do under the Act before issuing a notification and the return does not disclose any ground which was germane to the purposes of the Act to support the claim for exemption.

5. In the result the appeal is dismissed but we make no order as to costs.