

Harbilas Rai Bansal vs The State Of Punjab & Anr on 5 December, 1995

Equivalent citations: 1996 AIR 857, 1996 SCC (1) 1, AIR 1996 SUPREME COURT 857, 1996 AIR SCW 238, 1996 UJ(SC) 1 464, (1995) 2 RENCER 672, (1996) 1 RENTLR 1, (1996) 1 SCJ 160, (1996) 1 ICC 243, (1996) 1 LJR 199, 1997 BOMRC 290, (1996) 1 PUN LR 227, 1996 SCFBRC 52, (1996) 1 RRR 69, 1996 (1) SCC 1, 1996 HRR 1, 1995 REVLR 2 290, (1995) 2 RENCJ 641, (1996) 1 CIVILCOURTC 110, (1996) 1 CURLJ(CCR) 179, (1996) 1 MAD LW 362, (1995) 8 JT 458 (SC)

Author: Kuldip Singh

Bench: Kuldip Singh

PETITIONER:

HARBILAS RAI BANSAL

Vs.

RESPONDENT:

THE STATE OF PUNJAB & ANR.

DATE OF JUDGMENT 05/12/1995

BENCH:

KULDIP SINGH (J)

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KULDIP SINGH (J)

AHMAD SAGHIR S. (J)

CITATION:

1996 AIR 857

1996 SCC (1) 1

JT 1995 (8) 458

1995 SCALE (6) 717

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Kuldip Singh, J.

The East Punjab Urban Rent Restriction Act, 1949 (the Act) - prior to 1956 - permitted a landlord to evict his tenant from a non-residential building on the ground of bona fide requirement for his own use, however, the said right of the landlord was taken away by the East Punjab Urban Rent Restriction (Amendment) Act, 1956 (Punjab Act 29 of 1956) (the Amendment) which came into force on September 24, 1956. Before us the constitutional validity of the Amendment has been challenged. A writ petition under Article 226 of the Constitution of India challenging the Amendment was dismissed by the Punjab and Haryana High Court in limine. This appeal, by way of special leave, is against the order of the High Court.

The non-residential premises in dispute was given on rent by the appellant's father to the predecessor-in-interest of respondent 2. After the death of appellant's father in the year 1953 the appellant, who was in Government service, became owner of the shop. The appellant retired from service in 1986. According to the appellant he is a Registered Medicines. While he was in service his employer granted him permission in 1976 to practice as Homeopath Physician after office hours. It is the case of the appellant that he intends to start practice as Homeopath Physician and for that purpose he bona fide requires the shop in dispute for his personal use and occupation. The relevant provisions of the Act prior to the amendment were as under :

"Section 13 - Eviction of Tenants. (3)

(a). A landlord may apply to Controller for an order directing the tenant to put the landlord in possession :

(ii) in case of a non-residential building or rented land, if

(a) he requires it for his own use:

(b) he is not occupying in the Urban Area concerned for the purpose of his business any other such building or rented land as the case may be ; and

(c) has not vacated such a building or rented land without sufficient cause after the commencement of this Act, in the Urban Area concerned."

The amendment was enforced by the notification dated September 24, 1956. The impugned provisions of the amendment are as under :

"1. Short title -This Act may be called the East Punjab Urban Rent Restriction (Amendment) Act, 1956.

2. Amendment of section 13 of East Punjab Act III of 1949. - In clause (a) of sub section (3) of section 13 of the East Punjab Urban Rent Restriction Act, 1949, hereinafter referred to as the principal Act -

(i) (a)

(b)

(ii) (a) In sub-clause (iii) the words "a non-residential building or" shall be omitted.

(b) In sub-paragraph (b), the words "building or" and the words "as the case may be" shall be omitted.

(c) In sub-paragraph (c), the words "a building or" shall be omitted.

(iii)

(iv) In sub clause (iv), for the words "any building", where they first occur, the words ("any residential building") shall be substituted.

In the second proviso, for the words "a residential, a scheduled or non-residential building or rented land", the words ("a residential building or rented land") shall be substituted.

After the enforcement of the amendment the provisions of the Act are as under :

"(3) (a) A landlord may apply to Controller for an order directing the tenant to put the landlord in possessions.

(ii) in case of (X X X) rented land, if.

(a) he requires it for his own use;

(b) he is not occupying in the urban area concerned for the purpose of his business any other such 2(X X X) rented land 3 (X X X), and

(c) has not vacated such 4 (X X X) rented land without sufficient cause after the commencement of this Act, in the urban area concerned."

It is thus obvious that prior to the coming into force of the amendment a landlord could seek eviction of his tenant from a non-residential premises for his bona fide requirement but the amendment has taken away the said right of the landlord.

Learned counsel for the appellant has vehemently contended that the above quoted provisions of the amendment are violative of Article 14 of the Constitution of India. The precise argument is that the classification of the buildings into residential and non-residential - created by the amendment - has no reasonable nexus with the object sought to be achieved by the Act. It is further contended by the learned counsel that the taking away of the landlord's right to seek eviction of his tenant, from a non-residential premises, on the ground of his bona fide requirement, is wholly arbitrary and as

such is hit by Article 14 of the Constitution.

The scope of Article 14 has been authoritatively laid down by this Court in innumerable decisions including, *Budhan Choudhary Vs State of Bihar* (1956) 1 SCR 1045, *Ram Krishan Dalmia Vs Justice S.R.Tendolkar* (1959 SCR 279), *U.P. Electric Power and Supply Company Limited Vs State of U.P.* (1969) 1 SCC 817, *Mohd. Hanif Quareshi Vs State of Bihar* (1959 SCR 629). To be permissible under Article 14 of the Constitution a classification must satisfy two conditions namely (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out 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 basis, but what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

The statement of objects and reasons of the Act is as under:-

"Statement of Objects and Reasons of the East Punjab Urban Rent Restriction Act, 1949 (Act 3 of 1949).- Under Article 6 of the India (Provisional Constitution) Order 1947, any law made by the Governor of the Punjab by virtue of section 93 of the Government of India Act, 1995, which was in force immediately before the 15th August, 1947, is to remain in force for two years from the date on which the Proclamation ceased to have effect, viz., the 14th August, 1947. A Governor's Act will, therefore, cease to have effect on the 14th August, 1947. It is desired that the Punjab Urban Rent Restriction Act, 1947 (Punjab Act No. VI of 1947), being a Governor's Act, be re- enacted as a permanent measure, as the need for restricting the increase of rents of certain premises situated within the limits of urban areas and the protection of tenants against mala fide attempts by their landlords to procure their eviction would be there even after the 14th August, 1949.

In order to achieve the above object, a new Act incorporating the provisions of the Punjab Urban Rent Restriction Act, 1947 with necessary modification is being enacted."

It is obvious from the objects and reasons quoted above that the primary purpose for legislating the Act was to protect the tenants against the mala fide attempts by their landlords to procure their eviction. Bona fide requirement of a landlord was, therefore, provided in the Act - as originally enacted - a ground to evict the tenant from the premises whether residential or non-residential.

The statement of objects and reasons of the amendment was in the following words:

"Statement of Objects and Reasons of the East Punjab Urban Rent Restriction (Amendment) Act (Act 29 of 1956).- Under the Ajmer Marwar Rent Control Act, 1947, tenants of urban property cannot be ejected except from residential buildings and that too for bona fide personal use. This Act applies to Delhi city also where tenants of commercial or industrial premises cannot be ejected on the ground of

personal use. In the Punjab, however, such tenants can be ejected on various grounds including that of personal use. This entails a great hardship on such tenants. The provision allowing eviction on the ground of personal use has been misused by certain landlords and there have been many complaints and representations on behalf of the tenants to amend the East Punjab Urban Rent Restriction Act, 1947. It is, therefore, considered necessary that the tenants of non-residential property in the Punjab should at least be placed at par with tenants of such property in Delhi and other urban areas covered by the Delhi Ajmer Act."

Two reasons have been given for bringing the amendment. It is stated that eviction from non-residential building on the ground of bona fide requirement of the landlord entails a great hardship on such tenants. The second reason giving is that the provision regarding eviction on the ground of personal use has been misused by certain landlords. Support is sought from the fact that in the State of Delhi and other urban areas covered by the Delhi Ajmer Act, there were similar provisions.

It would be useful to have a look at the provisions of the Act. Section 2(a) defines "building" as any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding house. Section 2(d) defines "non-residential building" as a building being used solely for the purpose of business or trade. "Residential building" under Section 2(g) means any building which is not a non-residential building. Section 3 permits the State Government to exempt any particular building or rented land or any class of buildings or rented lands from the provisions of the Act. Sections 4, 5 and 6 provide for fixation, increase etc, of fair rent. Section 11 provides that no person shall convert the residential building into a non-residential building except with the permission in writing of the Controller. Then comes the crucial Section 13 regarding the eviction of tenants. Section 13(2)(i) enables the landlord to evict the tenant for non-payment of rent. Section 13(2)(ii)(a) and (ii)(b) provide for the eviction of a tenant on the grounds of sub-letting and misuse of the premises. Clause (iii) of Section 13 (2) makes the tenant liable to eviction when he continues such acts as are likely to impair materially the value and utility of the building or rented land. Clauses (iv) and (v) of Section 13(2) permit the eviction of the tenant on the grounds of nuisance and when he ceases to occupy the building for a period of four months without reasonable cause. Sub-Section 3 of Section 13 provides for eviction of the tenant from the residential premises on the ground of bona fide requirement of the landlord. It is not necessary to refer to other provisions of the Act.

The Scheme of the Act, unmistakably aims at regulating the conditions of tenancy, controlling the rents and preventing unreasonable and mala fide eviction of tenants of the residential and non-residential buildings. For the advancement of these objects, tenants are invested with certain right and landlords are subjected to certain obligations. These rights and obligations are attached to the tenants and the landlords of all buildings, residential or non-residential. None of the main provisions of the Act, to which we have referred, make any serious distinction between residential and non-residential buildings.

The provisions of the Act, prior to the amendment, were uniformly applicable to the residential and non-residential buildings. The amendment, in the year 1956, created the impugned classification. The objects and reasons of the Act indicate that it was enacted with a view to restrict the increase of rents and to safeguard against the mala fide eviction of tenants. The Act, therefore, initially provided

- conforming to its objects and reasons - bona fide requirement of the premises by the landlord, whether residential or non-residential, as a ground of eviction of the tenant. The classification created by the amendment has no nexus with the object sought to be achieved by the Act. To vacate a premises for the bona fide requirement of the landlord would not cause any hardships to the tenant. Statutory protection to a tenant cannot be extended to such an extent that the landlord is precluded from evicting the tenant for the rest of his life even when he bona fide requires the premises for his personal use and occupation. It is not the tenants but the landlords who are suffering great hardships because of the amendment. A landlord may genuinely like to let out a shop till the time he bona fide needs the same. Visualise a case of a shopkeeper (owner) dying young. There may not be a member in the family to continue the business and the widow may not need the shop for quite some time. She may like to let out the shop till the time her children grow-up and need the premises for their personal use. It would be wholly arbitrary - in a situation like this - to deny her the right to evict the tenant. The amendment has created a situation where a tenant can continue in possession of a non-residential premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and the scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly unjust for the landlord of a non-residential premises.

Learned counsel for the respondents contended that a tenant occupying non-residential premises and the one occupying residential premises belong to two different classes under the Act and as such no fault can be found with the amendment. Assuming that the classification exists, it has no nexus with the object sought to be achieved by the Act. Tenants of both kinds of buildings need equal and same protection of the beneficial provisions of the Act. Neither from the objects and reasons of the Act nor from the provisions of the Act it is possible to discern any basis for the classification created by the amendment.

This Court in *Rattan Arya etc. vs. State of Tamil Nadu* and another 1986(2) SCR 596 struck down Section 13(ii) of the Tamil Nadu buildings (Lease and Rent Control) Act, 1960 as violative of Article 14 of the Constitution of India on the ground that the distinction made by it between the tenant of a residential building and the tenant of a non-residential building based on the rent paid by the respective tenants had no reasonable nexus to the object sought to be achieved by the Act.

A Constitution Bench of this Court in *Gian Devi Anand vs. Jeevan Kumar & Ors.* [1985(2) SCC 683] observed as under:-

"39. Before concluding, there is one aspect on which we consider it desirable to make certain observations. The owner of any premises, whether residential or commercial, let out to any tenant, is permitted by the Rent Control Acts to seek eviction of the tenant only on the grounds specified in the Act, entitling the landlord to evict the

tenant from the premises. The restrictions on the power of the landlords in the matter of recovery of possession of the premises let out by him to a tenant have been imposed for the benefit of the tenants. In spite of various restrictions put on the landlord's right to recover possession of the premises from the tenant for the bona fide need of the premises by the landlord is recognised by the Act, in case of residential premises. A landlord may let out the premises under various circumstances. Usually a landlord lets out the premises when he does not need it for own use. Circumstances may change and a situation may arise when the landlord may require the premises let out by him for his own use. It is just and proper that when the landlord requires the premises bona fide for his own use and occupation, the landlord should be entitled to recover the possession of the premises which continues to be his property in spite of his letting out the same to a tenant. The Legislature in its wisdom did recognise this fact and the Legislature has provided that bona fide requirement of the landlord for his own use will be a legitimate ground under the Act for the eviction of his tenant from any residential premises. This ground is, however, confined to residential premises of commercial premises. A landlord who lets out commercial premises to a tenant under certain circumstances may need bona fide the premises for his own use under changed condition's on some future date should not in fairness be deprived of his right to recover the commercial premises. Bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial. We, therefore, suggest that Legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well."

In Gian Devi's case the question for consideration before the Constitution Bench was whether under the Delhi Rent Control Act, 1958, the statutory tenancy in respect of commercial premises was heritable or not. The Bench answered the question in the affirmative. The above quoted observations were made by the Bench keeping in view that hardship being caused to the landlords of commercial premises who connote evict their tenants even on the ground of bona fide requirement for personal use. The observations of the Constitution Bench that "bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial"

fully support the view, we have taken, that the classification created by the amendment has no reasonable nexus with the object sought to be achieved by the Act. We, therefore, hold that the provisions of the amendment, quoted in earlier part of the judgment, are violative of Article 14 of the Constitution of India and are liable to be struck- down.

We allow the appeal, set aside the impugned judgment of the High Court, declare the above said provisions of the amendment as constitutionally invalid and as a consequence restore the original provisions of the Act which were operating before coming into force of the amendment. The net result is that a landlord - under the Act - can seek eviction of a tenant from a non-residential building on the ground that he

requires it for his own use. The parties to bear their own costs.