

H. S. YADAV

A

v.

SHAKUNTALA DEVI PARAKH

(Civil Appeal No. 5153 of 2019)

B

OCTOBER 15, 2019

[DEEPAK GUPTA AND SURYA KANT, JJ.]

Constitution of India— Arts.323B, 246, 227 and Seventh Schedule, List I (Entry 77), List II (Entry 65) & List III (Entry 46) – State of Chhattisgarh enacted the 2011 Rent Control Act – Under the Act, in the hierarchy of adjudicating authorities there is a Rent Controller and above that, Rent Control Tribunal – Under s.13, from any order of the Rent Controller, an appeal lies to the Rent Control Tribunal and in terms of s.13(2), an appeal lies as a matter of right to the Supreme Court – Issue as to whether the State Legislature can enact law providing an appeal directly to the Supreme Court of India – Held: Tribunal has been constituted in exercise of the powers vested in the State Legislature u/Art.323B which deals with tribunal for other matters – Sub-cl.(h) of Clause (2) thereof empowers the appropriate legislature to constitute tribunal to deal with the issues relating to rent and its regulations – Thus, it is not disputed that the State has the power to constitute the Tribunal – Art.246 specifically provides that Parliament has exclusive powers to make laws in respect of matters enumerated in List I (Union List) – State has exclusive powers to make laws in respect of matters falling in List II (State List)– In respect of matters in the List III (Concurrent List), both the Union and the State have the power to enact laws but, if the field is occupied by any law enacted by the Parliament then the State cannot legislate on the same issue – Entry 77 of List I gives power to the Union in respect of jurisdiction and the powers of the Supreme Court – This power cannot be exercised by the State Legislature – Further, Entry 65 of List II indicates that the State Legislature has no power to enact any legislation relating to jurisdiction and power of the Supreme Court – This power is specifically excluded – Even, Entry 46 of List III makes it clear that as far as the jurisdictional powers of the Supreme Court are concerned, they cannot be exercised under

C

D

E

F

G

H

A *the Concurrent List – Therefore, the powers with regard to jurisdiction and power of the Supreme Court vest with the Union and Parliament alone can enact legislation in this regard – s.13(2) of the 2011 Act, in so far as it provides an appeal directly to the Supreme Court, is ultra vires the Constitution and beyond the scope of the powers of the State Legislature and is accordingly, struck down – No reason why the supervisory jurisdiction of the High Court should be excluded – Open to the appellant to approach the High Court for redressal of his grievance u/Art.227, on which the High Court shall decide the matter strictly in accordance with law – Chhattisgarh Rent Control Act, 2011 – ss. 6, 7, 13.*

C *Chhattisgarh Rent Control Act, 2011 – s.13(2) – Held: s.13(2), in so far as it provides an appeal directly to the Supreme Court, is ultra vires the Constitution and beyond the scope of the powers of the State Legislature and is accordingly, struck down.*

Dismissing the appeal, the Court

D **HELD: 1.1** The Tribunal has been constituted in exercise of the powers vested in the State Legislature under Article 323B of the Constitution of India which deals with tribunal for other matters. Sub-clause (h) of Clause (2) of the said Article empowers the appropriate legislature to constitute a tribunal to deal with the issues relating to rent and its regulations. It is not disputed that the State has the power to constitute the Tribunal. Article 246 of the Constitution specifically provides that Parliament has exclusive powers to make laws in respect of matters enumerated in List I (Union List) of the Seventh Schedule. Likewise, the State has exclusive powers to make laws in respect of matters falling in List II (State List) of the Seventh Schedule. In the Concurrent List, i.e. List III, both the Union and the State have the power to enact laws but if the field is occupied by any law enacted by Parliament then the State cannot legislate on the same issue. Entry 77 gives power to the Union in respect of jurisdiction and the powers of the Supreme Court. This power cannot be exercised by the State Legislature. [Paras 7-10] [738-E-F; 739-A-D]

H **1.2** Entry 65 of List II of the Seventh Schedule clearly indicates that the State Legislature has no power to enact any legislation relating to jurisdiction and power of the Supreme

Court. This power is specifically excluded. Even Entry 46 of List A
 III of the Seventh Schedule makes it clear that as far as the
 jurisdictional powers of the Supreme Court are concerned, they
 cannot be exercised under the Concurrent List. Therefore,
 the powers with regard to jurisdiction and power of the Supreme
 Court vest with the Union and Parliament alone can enact a B
 legislation in this regard. The power of the Supreme Court
 under Article 136 is always there. However, the State cannot
 enact a legislation providing an appeal directly to the Supreme
 Court. That would amount to entrenching upon the jurisdiction
 of the Union, which the State Legislature does not have. The
 men who drafted the Act did not even consider the hierarchy of C
 Courts. The Rent Control Tribunal is headed by a retired Judge
 of the High Court or District Judge in the Super Time Scale or
 above. What was the rationale of making such an order
 appealable directly to the Supreme Court? No reason why the
 supervisory jurisdiction of the High Court should be excluded. D
 Section 13(2) of the Act, in so far as it provides an appeal directly
 to the Supreme Court, is totally illegal, *ultra vires* the
 Constitution and beyond the scope of the powers of the State
 Legislature. Section 13(2) of the Act is accordingly struck down.
 In *L. Chandrakumar vs. Union of India*, Supreme Court clearly held E
 that tribunals constituted under Articles 323A and 323B of the
 Constitution are subject to the writ jurisdiction of the High
 Courts. In view of the law laid down in *L. Chandrakumar's* case,
 the High Court can exercise its supervisory jurisdiction under
 Article 227 of the Constitution against the orders of the Rent
 Control Tribunal. An appeal under Section 13 (2) of the Act F
 directly to the Supreme Court is not maintainable. However, it
 is left open to the appellant to approach the High Court for
 redressal of his grievance under Article 227 of the Constitution.
 If the appellant does so, the High Court shall decide the matter
 strictly in accordance with law. [Paras 11-14, 15-17] [739-F-H;
 740-A-G] G

L. Chandrakumar vs. Union of India (1993) 4 SCC
 119 – followed.

Case Law Reference

| | | | |
|------------------|----------|---------|---|
| (1993) 4 SCC 119 | followed | Para 16 | H |
|------------------|----------|---------|---|

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5153 of 2019.

From the Judgment and Order dated 18.02.2019 of the Rent Control Tribunal, Raipur, Chhattisgarh in Appeal No. Nil of 2018.

B Ravi Bharuka, Devashish Bharuka, Ms. Sarvshree Singh, Justine George, Advs. for the Appellant.

Bharat Bhushan, Sumeer Sodhi, Varun Tankha, Ashish Tiwari, Advs. for the Respondent.

The Judgment of the Court was delivered by

C **DEEPAK GUPTA, J.**

1. “Whether the State Legislature can enact a law providing an appeal directly to the Supreme Court of India?” is the question arising in this appeal.

D 2. The State of Chhattisgarh enacted the Chhattisgarh Rent Control Act, 2011 (hereinafter referred to as ‘the Act’). Under this Act, in the hierarchy of adjudicating authorities there is a Rent Controller and above that, a Rent Control Tribunal. In terms of Section 7 of the Act the State can appoint one or more officers not below the rank of Deputy Collector, as Rent Controller with territorial jurisdiction to be specified by the Collector. The Rent Control Tribunal (hereinafter referred to as ‘the Tribunal’) is constituted under Section 6 of the Act. This Tribunal has appellate and supervisory jurisdiction. Section 6 of the Act reads as under:-

“6. Constitution of the Rent Control Tribunal.–

F (1) The State Government shall by notification constitute, within thirty days of this Act, a Tribunal in terms of Article 323-B of the Constitution, to be called as Chhattisgarh Rent Control Tribunal, to give effect to the provisions of this Act, and for the adjudication or trial of

G any disputes, complaints, or offences with respect to rent, its regulation and control and tenancy issues including the rights, title and obligations of landlords and tenants.

Explanation.- Matters relating to transfer of property and/or disputes regarding title over any property shall continue to be

H considered under relevant laws by the courts of law.

(2) The State Government in consultation with the High Court shall appoint the Chairman of the Rent Control Tribunal, a retired Judge of the High Court or serving or retired District Judge not below the rank of Super Time Scale. A

(3) The Tribunal shall have such members with such qualification, as the State Government may prescribe. B

(4) The State Government shall appoint an officer as the Registrar of the Tribunal, who shall not be below the cadre of Civil Judge Class-I or the rank of Deputy Secretary to the State Government. C

(5) From the date, the Tribunal becomes functional, which date shall be published in the State Gazette, the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136 and High Court under Articles 226 and 227 of the Constitution, shall stand excluded in respect of all matters falling within the jurisdiction of the Tribunal: D

Provided, however, that all cases pending before any court or authority immediately before the establishment of the Tribunal, shall continue to be processed under the old Act, as amended from time to time. E

(6) The Tribunal shall have its headquarters at Raipur and the State Government may, by notification, fix such other places for hearing of matters by the Tribunal, as it deems fit. F

(7) The terms and conditions of the service of the Chairman and members of the Tribunal shall be such as may be prescribed by the State Government.”

3. Section 13 of the Act provides for an appeal against orders of the Rent Controller and the Tribunal. It reads thus:- G

“13. Appeal.-(1) Notwithstanding anything to the contrary contained in this Act, a landlord and/or tenant aggrieved by any order of the Rent Controller shall have the right to appeal in the prescribed manner within the prescribed time to the Rent Control Tribunal. H

A (2) Appeal against an order of the Rent Control Tribunal shall lie with the Supreme Court.”

4. A bare perusal of Section 13 shows that from any order of the Rent Controller an appeal lies to the Rent Control Tribunal and in terms of Section 13(2), an appeal lies as a matter of right to the Supreme Court.

5. When the present appeal, filed under Section 13(2) of the Act, came up for admission, while issuing notice we had also ordered as follows:-

C “xxx xxx xxx

Notice be given to the learned Advocate General of the State of Chhattisgarh and the learned Attorney General for India as to whether the provisions contained in Section 13(2) of the Chhattisgarh Rent Control Act, 2011 providing for an appeal to the Supreme Court of India against the order of the Rent Control Tribunal, Chhattisgarh would be within the legislative competence of the State Legislature.

D xxx xxx xxx”

6. Pursuant to the notice, learned Attorney General has appeared and assisted the Court.

7. At the outset, we would like to point out that the Tribunal has been constituted in exercise of the powers vested in the State Legislature under Article 323B of the Constitution of India which deals with tribunal for other matters. Sub-clause (h) of Clause (2) of the said Article which empowers the appropriate legislature to constitute a tribunal to deal with the issues relating to rent and its regulations read as follows:-

“323B. Tribunals for other matters.-

G (1) xxx xxx xxx

(2) The matters referred to in clause (1) are the following, namely:-

xxx xxx xxx

H (h) rent, its regulation and control and tenancy issues including the rights, title and interest of landlords and tenants;”

8. It is not disputed before us that the State has the power to constitute the Tribunal. The only issue is whether in terms of Section 13(2) of the Act, the State Legislature could provide an appeal as a matter of right from the order of the Tribunal to the Supreme Court. A

9. Article 246 of the Constitution specifically provides that Parliament has exclusive powers to make laws in respect of matters enumerated in List I (Union List) of the Seventh Schedule. Likewise, the State has exclusive powers to make laws in respect of matters falling in List II (State List) of the Seventh Schedule. As far as the Concurrent List, i.e. List III is concerned, both the Union and the State have the power to enact laws but if the field is occupied by any law enacted by Parliament then the State cannot legislate on the same issue. B C

10. Entry 77 of List I of the Seventh Schedule reads as under:-

“77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.” D

Entry 77 gives power to the Union in respect of jurisdiction and the powers of the Supreme Court. This power cannot be exercised by the State Legislature.

11. It would also be apposite to refer to Entry 65 of List II of the Seventh Schedule, which reads as follows:- E

“65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.”

A bare reading of Entry 65 clearly indicates that the State Legislature has no power to enact any legislation relating to jurisdiction and power of the Supreme Court. This power is specifically excluded. F

12. Entry 46 of List III of the Seventh Schedule is also relevant. This reads as follows:-

“46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list.” G

Even Entry 46 makes it clear that as far as the jurisdictional powers of the Supreme Court are concerned, they cannot be exercised under the Concurrent List. Therefore, the powers with regard to jurisdiction and power of the Supreme Court vest with the Union and H

A Parliament alone can enact a legislation in this regard. The power of the Supreme Court under Article 136 is always there. However, the State cannot enact a legislation providing an appeal directly to the Supreme Court. That would amount to entrenching upon the jurisdiction of the Union, which the State Legislature does not have.

B 13. We are constrained to observe that the men who drafted the Act did not even consider the hierarchy of Courts. As pointed above, the Rent Control Tribunal is headed by a retired Judge of the High Court or District Judge in the Super Time Scale or above. What was the rationale of making such an order appealable directly to the Supreme Court? We see no reason why the supervisory jurisdiction of the High Court should be excluded.

C 14. We, therefore, have no doubt in our mind that Section 13(2) of the Act, in so far as it provides an appeal directly to the Supreme Court, is totally illegal, *ultra vires* the Constitution and beyond the scope of the powers of the State Legislature. Section 13(2) of the Act is accordingly struck down.

D 15. While dealing with the issue, we may make reference to the fact that the Rent Control Tribunal is a tribunal constituted under Article 323B of the Constitution.

E 16. In **L. Chandrakumar vs. Union of India**¹, this Court clearly held that tribunals constituted under Articles 323A and 323B of the Constitution are subject to the writ jurisdiction of the High Courts. In view of the law laid down in **L. Chandrakumar's case** (supra), the High Court can exercise its supervisory jurisdiction under Article 227 of the Constitution against the orders of the Rent Control Tribunal.

F 17. In view of the above, we hold that an appeal under Section 13 (2) of the Act directly to the Supreme Court is not maintainable. We, therefore, dismiss this appeal. However, we leave it open to the appellant to approach the High Court for redressal of his grievance under Article 227 of the Constitution. If the appellant does so, the High Court shall decide the matter strictly in accordance with law. Pending application(s) if any, stand(s) disposed of.

Divya Pandey

Appeal dismissed.

H ¹(1993) 4 SCC 119