

Ombalika Das & Anr vs Hulisa Shaw on 3 April, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1685, 2002 (4) SCC 539, 2002 AIR SCW 1618, 2002 (5) SRJ 117, 2003 SCFBRC 40, 2002 (3) SERVLJ 17 SC, 2002 (3) SCALE 265, 2002 (3) LRI 104, 2002 (3) SLT 34, (2003) 1 PUN LR 799, (2002) 1 RENCJ 239, (2003) 1 RENC R 1, (2003) 1 RENTLR 356, (2002) 3 SUPREME 76, (2002) 3 SCALE 265, (2002) 2 CURCC 92, (2002) 2 CURLJ(CCR) 609, (2002) 3 SERVLJ 17, (2002) 3 JT 476 (SC)

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Bench: R.C. Lahoti, P. Venkatarama Reddi

CASE NO.:
Appeal (civil) 913 of 2001

PETITIONER:
OMBALIKA DAS & ANR.

Vs.

RESPONDENT:
HULISA SHAW

DATE OF JUDGMENT: 03/04/2002

BENCH:
R.C. Lahoti & P. Venkatarama Reddi

JUDGMENT:

R.C. Lahoti, J.

Colonel P.G. Sarcar, the father of the two appellants before us, was serving as Superintending Engineer(Civil), Selection Grade, equivalent to Colonel in the General Reserve Engineering Force, which is said to be an integral part of the Armed Forces. He retired from his post on 31st March, 1995. On 14th September, 1995, his two major daughters, who are the appellants, claiming themselves to be residing with their father and as dependent on him, initiated proceedings for eviction of the tenant, the respondent before us, under Section 13(1)(ff) of the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as 'the Act', for short) by having recourse to summary procedure under Chapter VIA of the Act. The tenant sought for leave to defend which was denied on

the ground that the application seeking leave to defend was filed beyond the time prescribed therefor. The tenant, laying challenge to the order of the Rent Controller, preferred a petition under Article 227 of the Constitution before the High Court, but the same was dismissed. The Rent Controller then, treating the statement by the landlords made in the application for eviction deemed to have been admitted by the tenant, passed an order for recovery of possession of the premises. The tenant preferred a Civil Revision before the High Court, which has been allowed and in supersession of the order of the trial court, the eviction petition filed by the landlords has been directed to be dismissed. In the opinion of the High Court, the father of the two appellants, in view of his having retired, was not a member of Military Services on the date of institution of proceedings for eviction and therefore, his major daughters were not entitled to have recourse to special procedure for disposal of application for eviction on the ground of bona fide requirement prescribed by Section 29B (Chapter VIA of the Act); they could have had recourse to the forum of Civil Court. Feeling aggrieved by the order of the High Court, the landlords have filed this appeal by special leave.

The short question arising for decision is, whether major relations of the military personnel, who has stood retired from the service and thereby has ceased to be a member of service, are entitled to the benefit of special procedure prescribed by Section 29B, for the recovery of possession under Section 13(1)(ff) of the Act.

Section 13(1)(ff) and Section 29B read as under :

"S.13. Protection of tenant against eviction.__(1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds, namely:-

xxx xxx xxx xxx (ff) subject to the provisions of sub-section (3-A), where the premises are reasonably required by the landlord for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held and the landlord or such persons is not in possession of any reasonably suitable accommodation."

"S.29B. Special Procedure for disposal of applications for eviction on the ground of bona fide requirement. - No Civil Court shall entertain any application by a landlord being a Government employee, and who being in occupation of any residential premises allotted to him by his employer, is required by, or in pursuance of, an order made by such employer, to vacate such residential accommodation, or in default to incur certain obligations on the ground that he owns a residential accommodation either in his own name or in the name of his wife or dependent child at or near the place where he is posted for the time being, [or by a landlord who has retired, or will retire within a period of less than one year, as a member of the naval, military or air force of the Union of India, or by a landlord who is the parent or the wife of such member of the naval, military or air force of the Union of India, or by a landlord who is a relation (other than a minor child or the widow) and a dependant of a member of

the naval, military or air force of the Union of India and ordinarily resides with him or a minor child or the widow of such member who dies while in service or within five years of retirement] for the recovery of possession of any premises on the ground specified in clause (ff) of sub-section (1) of section 13 but such application shall be dealt with by the Controller in accordance with the procedure specified in this section.

(2) Whenever any application is filed before the Controller by a landlord referred to in sub-section(1) for the recovery of possession of any premises on the ground specified in clause (ff) of sub-section (1) of section 13, the Controller shall issue summons, in the form specified in the Second Schedule.

"Provided that__

(a) where the landlord has retired, or will retire within a period of less than one year, as a member of the naval, military or air force of the Union of India, a certificate by the Area or Sub-

Area Commander within whose jurisdiction the premises are situated or by the Head of his Service or by his Commanding Officer that he has retired, or will retire, as such member and that he requires the premises for his own occupation and for the occupation of his family after retirement, or

(b) where the landlord is the parent or the wife of such member of the naval, military or air force of the Union of India as aforesaid, a certificate by the Area or Sub-Area Commander within whose jurisdiction the premises are situated that he or she is the parent or the wife, as the case may be, of such member of the naval, military or air force of the Union of India and that he or she requires the premises for his or her own occupation and for the occupation of his or her family after the retirement of such member, or

(c) where the landlord is a relation (other than a minor child or the widow) and a dependant of a member of the naval, military or air force of the Union of India and ordinarily resides with him or a minor child or the widow of such member who dies while in service or within five years of retirement, a certificate by the Area or Sub-Area Commander within whose jurisdiction the premises are situated that he or she is the relation and dependant as aforesaid or the minor child or the widow, as the case may be, of the deceased member of the naval, military or air force of the Union of India and that he or she requires the premises for his or her own occupation and for the occupation of his or her family, shall be produced before the Controller while filing the application, and such certificate shall be conclusive evidence of the fact stated therein."

The portion, which is placed between brackets '[]' in the text of the provision reproduced hereinabove, has been substituted by West Bengal Premises Tenancy (Amendment) Act, 1979 (Act XLI of 1979) with effect from 17th March, 1980 in place of the words which earlier read as :

"or by a landlord who is a retired member of the naval, military or air force of the Union of India or will retire within a period of less than one year as such member,"

The provisos (a), (b) and (c) to Sub-Section (2), in the present form, were also added by the 1979 Amendment.

The Statement of Objects and Reasons for the above amendment is set out in the Bill as under :

"Section 29B of the West Bengal Premises Tenancy Act, 1956, as amended by the West Bengal Premises Tenancy (Amendment) Act, 1978, provides some relief, inter alia, to the retiring or retired members of the naval, military or air force of the Union of India in the matter of getting back possession of their own premises let out to tenants, by a special procedure laid down therein. It is considered necessary that the same relief should also be extended to the parent or the wife of such member of the naval, military or air force of the Union of India or the relation and dependant (other than a minor child or the widow) or the minor child or the widow of a member of the naval, military or air force of the Union of India who dies while in service or within five years of retirement."

(See the Calcutta Gazette Extraordinary dated August 29, 1979 page 1630) Sub-Section (1) of Section 29B, as it now stands, contemplates the following four categories of landlords, the fourth one again sub-divided into two sub-categories, who can take advantages of the special procedure for disposal of application for eviction on the ground of bona fide requirement. These are:-

(i) a landlord being a Government employee, and who being in occupation of any residential premises allotted to him by his employer, is required by, or in pursuance of, an order made by such employer, to vacate such residential accommodation, or in default to incur certain obligations on the ground that he owns a residential accommodation either in his own name or in the name of his wife or dependent child at or near the place where he is posted for the time being;

(ii) a landlord who has retired, or will retire within a period of less than one year, as a member of the naval, military or air force of the Union of India;

(iii) a landlord who is the parent or the wife of such member of the naval, military or air force of the Union of India;

(iv) a landlord who is:

(a) a relation (other than a minor child or the widow) and a dependent of a member of the naval, military or air force of the Union of India and ordinarily resides with him, or

(b) a minor child or the widow of such member who dies while in service or within five years of retirement.

Sub-Section (1), as it now stands, having been given its present shape, consequent upon additions made by atleast two amendments, is a long sentence incorporating within its ken several categories of landlords, which, though confusing to comprehend at the first blush, can nevertheless be separated and defined by a careful reading of the provision so as to find out the intention of the Legislature. We will concentrate on the 1979 Amendment because the category, to which the appellants belong, was included in Section 29B by this amendment. A comparative reading of the text of the provision, pre and post amendment, reveals a few prominent features. The expression 'a retired member' was not a very appropriate expression and therefore, the Legislature availed the opportunity for substituting a better and more perfect expression in substitution thereof though retaining in the newly introduced text, the class of landlord referred to in the omitted text, and making the text, along with newly included classes of landlord, more clear and meaningful. The category of landlord 'being a government employee' was retained as before and left untouched. However, the landlord, who is either himself a member of the naval, military or air force or who is connected with such member by relationship coupled with dependence and joint residence, upon whom the Legislature intended to confer the benefit of Section 29B, were all included in the text of the amendment. For category (ii) landlord, the eligibility requirement is that he should be a member of the naval, military or air force of the Union of India on the date of retirement, though the action for recovery of possession may be commenced within a period of less than one year of retirement or post retirement. In category (iii), by using the word 'such' as qualifying the word 'member' in the context of his parent or the wife, the intention of the Legislature is to confer the benefit of Section 29B on a landlord who is a parent or the wife of a member of the naval, military or air force of the Union of India, who has retired or will retire within a period of less than one year. Thus, a member___landlord and a parent or the wife of such member, who is himself or herself a landlord, are placed on the same footing. While dealing with landlord falling in category (iv), the Legislature has consciously not used the words 'such member' in the context of a relation. If the words would have been a relation of 'such member' then the word 'member' would have taken the same colour as has been given to the word 'member' in category (ii). By using the word 'a member' in this part of the running sentence, the intention of the Legislature is that here the word 'member' should take a colour different from the one assigned to 'a member' and 'such member' in category (ii) and (iii) respectively. While dealing with category (iv) and touching sub- category (a), the Legislature once again uses the expression ___ 'a member of the naval, military or air force of the Union of India' and while passing on to sub-category (b) prefixes adjective 'such' to noun 'member'; meaning thereby, that in sub-category(b), 'member' has to be read in the same sense as is attributable to it in the preceding part of the sentence dealing with sub- category (a) of category (iv). In addition, the word 'such member' is qualified by 'who dies while in service or within five years of retirement'. In the context of that part of the sentence which has been added by 1979 Amendment, a relation (dependent and co-resident) is treated on par with a minor child or the widow (of a member of the naval, military or air force of the Union of India'). The reason is not far to seek. The Legislature feels that a relation, dependent and ordinarily resident with a member, and minor child or widow of such member ___ all the three categories of landlord are such whose requirement for self occupation of tenanted premises would arise on account of death of a member while in service or even after

retirement; else such relation, a minor child or the wife would continue to reside with such member. However, death of such member, as an event though unfortunate but conferring eligibility for invoking Section 29B on a relation (dependent and jointly residing), or a minor child or the widow, should have taken place while such member is in service or within five years of retirement.

Recently in *Central Bank of India Vs. Ravindra & Ors.*, (2002) 1 SCC 367, a Constitution Bench of this Court has observed that the use of the word 'such' as an adjective prefixed to a noun is indicative of the draftsman's intention that he is assigning the same meaning or characteristics to the noun as has been previously indicated or that he is referring to something which has been said before. *New Webster's Dictionary and Thesaurus* was cited with approval wherein the meaning of 'such' is given as "of a kind previously or about to be mentioned or implied; of the same quality as something just mentioned (used to avoid the repetition of one word twice in a sentence); of a degree or quantity stated or implicit; the same as something just mentioned (used to avoid repetition of one word twice in a sentence); that part of something just stated or about to be stated".

We do not agree with the construction placed by the High Court on the relevant part of Section 29B which is under consideration. A relation, who is a dependent and also jointly residing with member of naval, military or air force of the Union of India would hardly have an occasion or need to initiate proceedings for eviction so long as such member is alive and in service. We are clearly of the opinion that a relation (dependent and jointly residing), a minor child and the widow ___ are such three classes as the Legislature intended to treat on a par. Our this inference and such classification into the several categories, as we have made hereinabove, finds support from proviso (a), (b) and (c). Category (ii) is dealt with by proviso (a). Category (iii) is dealt with by proviso (b). Category (iv) is dealt with by proviso (c). According to proviso (c), the certificate by the Area or Sub-Area Commander of the jurisdiction is to be issued by reference to the two sub-categories, viz.: (i) the relation and dependent as aforesaid, or (ii) the minor child or the widow, as the case may be ___ all referable to the deceased member and the requirement of premises being for his or her own occupation and for the occupation of his or her family.

It is well settled that classification for the purpose of legislation cannot be done with mathematical precision. The Legislature enjoys considerable latitude while exercising its wisdom taking into consideration myriad circumstances, enriched by its experience and strengthened by people's will. So long as the classification can withstand the test of Article 14 of Constitution, it cannot be questioned why one subject was included and the other left out and why one was given more benefit than the other.

Learned counsel for the appellants submitted that real need of such landlord (as like the appellants) arises when the person, whose relation he or she is, has ceased to be in service and therefore, the provision should be so interpreted as to advance the purpose sought to be achieved by enacting the provision. We find it difficult to agree. Resort can be had to legislative intent for the purpose of interpreting a provision of law, when the language employed by the Legislature is doubtful or susceptible of meanings more than one. However, when the language is plain and explicit and does not admit of any doubtful interpretation, in that case, we cannot, by reference to an assumed legislative intent, expand the meaning of an expression employed by the Legislature and therein

include such category of persons as the legislature has not chosen to do. We cannot also hold that the special procedure of Section 29B can be taken advantage of by a landlord who is a relation of a member of such service, after his retirement, within five years of the date of retirement because in our opinion, the words "while in service or within five years of retirement" qualify the preceding words "of such member who dies", and are, therefore, referable to the event of death of such member. If only the Legislature would have intended that the benefit of Section 29B should be available to a landlord who is a relation of a member of such service even after his retirement and living, in that case, in the part of the provision which is under consideration the Legislature would have used some such words as "a member or retired member" or simply "such member" instead of "a member", in which case there could have been some merit in the submission made by the learned counsel for the appellants. But, the Legislature has not chosen to do so.

As we agree with the High Court that the petition under Section 13(1)(ff) read with Section 29B was not maintainable, though for reason different from the one assigned by the High Court, it is not necessary to examine the alternative submission made by the learned counsel for the respondent that Colonel P.G. Sarcar, the father of the appellants was a member of Border Roads Organisation set up by and under the control of Ministry of Transport of the Government of India and hence, was not a member of military services.

The dismissal of this petition, needless to say, would not debar the appellants from seeking the remedy of recovery of possession from the tenant-respondent by having recourse to such other provision of law and such other Forum, as may be available to them.

The appeal is dismissed, though, without any order as to costs.

..J (R.C. LAHOTI)J. (P.VENKATARAMA REDDI) April 3, 2002.