Mohinder Kumar Etc. Etc vs State Of Haryana And Anr on 18 September, 1985

Equivalent citations: 1986 AIR 244, 1985 SCR SUPL. (2) 859, AIR 1986 SUPREME COURT 244, 1985 SCFBRC 337, 1985 UJ (SC) 978, 1985 HRR 599, 1986 (1) RENT CR 74, (1985) 2 LANDLR 536, (1985) 2 RENTLR 644, 1985 (4) SCC 221, (1986) 1 SUPREME 436, (1986) 1 CURCC 389

Author: Amarendra Nath Sen

Bench: Amarendra Nath Sen, P.N. Bhagwati, R.S. Pathak

PETITIONER:
MOHINDER KUMAR ETC. ETC.

Vs.

RESPONDENT:
STATE OF HARYANA AND ANR.

DATE OF JUDGMENT18/09/1985

BENCH:
SEN, AMARENDRA NATH (J)
BENCH:
SEN, AMARENDRA NATH (J)
BHAGWATI, P.N. (CJ)
PATHAK, R.S.

CITATION:
1986 AIR 244 1985 SCR Supl. (2) 859
1985 SCC (4) 221 1985 SCALE (2)795
CITATOR INFO :
R 1987 SC2117 (28)

ACT:
Haryana Urban (Control of Rent and Eviction) Act 1973, section 1(3) - Validity of.

HEADNOTE:
The Haryana Urban (Control of Rent and Eviction) Act 1973 by Section 1(3) as amended by the Amending Act 1978 (Act 16 of 1978) provides: "Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion".

The petitioners challenged the constitutional validity of Section 1(3) of the Act on the grounds: (i) that the provision seeks to make an invidious distinction between buildings constructed before the commencement of this Act and buildings the construction of which was completed on or after the commencement of this Act and on the basis of this invidious distinction this provision discriminates between the landlords and tenants of buildings constructed before the Act and after the Act inasmuch as a landlord enjoys in case of buildings construction of which is completed on or after the commencement of the Act an exemption from the operation of the Act and the tenant in respect of such building is denied the protection and the benefits of the Act for a period of 10 years from the date of completion of the construction of the building, whereas the landlord of any building constructed before the commencement of the Act does not enjoy any such exemption and the tenant of such building enjoys the protection and all the benefits of the Act. Thus, the discrimination between one class of landlords and their tenants and the other class of landlords and their tenants on the basis of the time of completion of the buildings is clearly arbitrary and is violative of Art. 14 of the Construction; and (ii) that the retrospective operation of the Act has the effect of taking away the vested right of the tenant and must, therefore, be held to be illegal and bad.

Dismissing the writ petitions,

860

^

HELD: 1(1) Section 1(3) of the Act as amended by the Amending Act of 1978 (Act 16 of 1978) is constitutionally valid. Any incentive offered for the purpose of construction of new buildings with the object of easing the situation of scarcity of accommodation for ameliorating the conditions of the tenants, cannot be said to be unreasonable, provided the nature and character of the incentive and the measure of exemption allowed are not otherwise unreasonable and arbitrary. The exemption to be allowed must be for a reasonable and a definite period. An exemption for an indefinite period or a period which in the facts and circumstances of any particular case may be considered to be unduly long, may be held to be arbitrary. The exemption must necessarily be effective from a particular date and must be with the object of promoting new constructions. In the instant case, the provision for exemption from the operation of the Rent Control Legislation by way of incentive to persons with means to construct new houses has been made in Section 1(3) of the Act by the Legislature in the legitimate hope that construction of new buildings will ultimately result in mitigation of the hardship of the tenants. Such incentive has a clear nexus with the object to be achieved and cannot be considered to be unreasonable or arbitrary. With the commencement of the Act, the provisions of the Rent

Act with all the restrictions and rigours become effective. Buildings which have been constructed before the commencement of the Act were already there and the question of any kind of impetus or incentive to such buildings does not arise. The Legislature, therefore, very appropriately allowed the benefit of the exemption to the buildings, the construction of which commenced or was completed on or after the commencement of the Act. This exemption in respect of buildings coming up or to come up on or after the date of commencement of the Act is likely to serve the purpose of encouraging new buildings to be contracted. There is therefore, nothing arbitrary or unreasonable in fixing the date of commencement of the Act from which the exemption is to be operative. [866 D-H]

(ii) The exemption for a period of 10 years from the operation of the Act allowed to buildings, the construction of which commenced or was completed on or after the date of commencement of the Act, is fair and reasonable. It is for a definite period and that period of exemption cannot be considered to be too long; and this exemption, the Legislature may be of the view, will serve the purpose of encouraging the construction of new buildings. It is for the Legislature to decide the period of exemption that may be allowed and to fix the date from which the period of
861
exemption should run. This will ordinarily be a matter of Legislative policy and this Court will not normally interfere unless the Court is of the opinion that the period of exemption or the date from which the exemption is to operate is unreasonable and arbitrary. [867 A-C]

2. The classification of buildings with reference to the date of commencement of the Act, namely, buildings constructed before the commencement of the Act and buildings the construction of which was completed on or after the date of the commencement of the Act, has a rational basis and has a clear nexus with the object to be achieved. The classification of the landlord and the tenant of a house constructed before the commencement of the Act and the landlord and tenant of a house, constructed before the commencement of the Act, is clearly founded on an intelligible differentia which has a rational relation to the object and this classification does not result in any invidious discrimination between the classes of landlords and tenants so classified. This classification is not arbitrary and is not violative of Art. 14 of the Constitution. [867 C-E]

3. The Section on its proper construction clearly indicates that the section is not retrospective in operation. Merely because the buildings the construction of which commenced or was completed after the date of commencement of the Act in 1973, come within the purview of the this particular provision which was introduced by amendment in 1978, the provision does not become

retrospective. This provision operates prospectively and becomes effective after its incorporation in the Act by the Amendment, though the buildings completed on or after the commencement of this Act in 1973 are brought within the scope of this Section. The argument that the tenants have acquired a vested right under the Act prior to its amendment is without any substance. Prior to the amendment of Section 1(3) by the Amending Act of 1978, the provision as it originally stood cannot be said to have conferred any vested right on the tenants. [871 A-C]

Motor General Traders and Others v. State of Andhra Pradesh and ors., [1984] 1 S.C.C. 222, inapplicable.

M/s. Punjab Tin Supply Co. Chandigarh v. Central Government and Ors., [1984] 1 S.C.C. 206, relied upon.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 8367 and 3939 etc. of 1985.

(Under Article 32 of the Constitution of India.) S.M. Ashri, Rakesh K. Khanna and Dr. Meera Aggarwal for the Petitioners.

G.K. Bansal and Prem Malhotra for the Respondents. The Judgment of the Court was delivered by AMARENDRA NATH SEN, J. The constitutional validity of S. 1(3) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 has been challenged in these writ petitions. This question which is common to all the writ petitions is the only question which arises for consideration and these writ petitions are accordingly being disposed of by this common judgment.

The question has been urged as a pure question of law. In that view of the matter it does not become necessary to refer the facts of any of the writ petitions.

S. 1(3) as originally enacted in the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to for the sake of brevity as the Act) was in the following terms:

> "Nothing in this Act shall apply to
>
> (i) any residential building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion;
>
> (ii) any non-residential building construction of which is completed after the 31st March, 1962.
>
> (iii) any rented land let out on or after 31st March 1962.

This provision was amended by the Amending Act of 1978 (Act 16 of 1978) to read as follows:

> "(3) Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion."

It is the validity of this amended provision which has been questioned in these writ petitions.

The validity is challenged mainly on the following grounds:

> (1) The provision is arbitrary and is violative of Art. 14 of the Constitution.
>
> (2) In any event in so far as this provision operates retrospectively and seeks to take away the vested rights of the petitioner under the Act, prior to this amendment, the same must be held to be illegal and invalid.

The argument is that this provision seeks to make an invidious distinction between buildings constructed before the commencement of this Act and building the construction of which was completed on or after the commencement of this Act and on the basis of this invidious distinction this provision discriminates between the landlords and tenants of buildings constructed before the Act and after the Act. It is urged that on the basis of this distinction between building constructed before and after the commencement of the Act, a landlord enjoys in case of the buildings construction of which is completed on or after the commencement of the Act an exemption from the operation of the Act and the tenant in respect of such building is denied the protection and the benefits of the Act for a period of 10 years from the date of completion of the construction of the building, whereas the landlord of any building constructed before the commencement of the Act does not enjoy any such exemption and the tenant of such building enjoys the protection and all the benefits of the Act. It is submitted that this discrimination between one class of landlords and their tenants and the other class of landlords and their tenants on the basis of the time of completion of the buildings is clearly arbitrary and is violative of Art. 14 of the Constitution. The submission is that Rent Control Legislation is enacted for the purpose of affording protection to the tenants and the Act in question has also been passed for achieving the same object. Reference in this connection is made to the Statement of Objects and Reasons for the passing of the Act and to the Preamble of the Act. It is contended that this classification of buildings on the basis of the time of completion of construction has no reasonable nexus with the object to be achieved and may on the contrary frustrate the purpose for which the Act has been passed inasmuch as in respect of the buildings the construction of which was completed on or after the commencement of the Act, the tenants are denied the entire benefit and protection of the Act. It is further contended that there can be no rational basis in fixing the period of the completion of the building with reference to the date of commencement of the Act which received the assent of the Governor on the 25th of April, 1973 and was published in the Haryana Gazette on the 27th of April, 1973 and also in prescribing a period of 10 years for exemption from the operation of the Act for the buildings, the construction of which was completed on or after the commencement of the Act. This discrimination, it is submitted, is arbitrary and violative of Art. 14 of the Constitution and in this connection reference has been made to the decision of this Court in the case of Motor General Traders and Others v. State of Andhra Pradesh and Ors. [1984] 1 S.C.C. 222, and also to the decision of this Court in the case of M/s.

Punjab Tin Supply Co. Chandigarh v. Central Government and Ors. [1984] 1 S.C.C. 206.

The next contention is that the amended provision has been given retrospective effect inasmuch as the amendment which was introduced in 1978 has been made applicable to any building construction of which was completed on or after the date of commencement of the Act in 1973 and the retrospective operation of the Act has been effect of taking away the vested right of the tenant and must, therefore, be held to be illegal and bad. It is argued that S. 3(1) of the Act, as originally enacted was void and unconstitutional inasmuch as no period of exemption of any building which may qualify for exemption had been fixed and it is well settled that an indefinite or unlimited immunity to any building from the purview of the Act is arbitrary and unconstitutional. The argument is that as the original provision contained in S. 1(3) of the Act, prior to its amendment, was void and unconstitutional, no building enjoyed any exemption from the operation of the Act and the tenants of the buildings were entitled to the protection and the benefit of the Act and had acquired a vested right to be governed by the provision of the Act. It is submitted that this vested right of the tenants is sought to be interferred with by the amended S. 1 (3) which has been made applicable to all the buildings construction of which was completed on or after the date of commencement of the Act.

We do not see any force in any of the contentions. It is true that Rent Control Legislation is usually enacted, and the present Act was also passed, taking into account the conditions prevailing in the State, to regulate the relationship between the landlord and the tenant in the larger interest of the society and or affording protection to tenants against exploita-

tion by landlords on account of shortage of accommodation. The statement of Objects and Reasons for passing the Act recites -

> "Certain provisions of the existing law are not conclusive to harmonious landlord tenant relationship and also hamper rapid urban development. In order to remedy these defects and to entitle the tenants to the amenities of Water supply, electricity and sewerage, necessity of fresh legislation has been felt. Opportunity has also been taken to rationalise the basis for determination of fair rent and to provide for eviction of these tenants, who construct their own houses in the urban area concerned sufficient for their requirement."

The Preamble to the Act reads:

> "An Act to control the increase of rent of certain buildings and rented land situated within the limits of urban areas, and the eviction of tenants therefrom."

There cannot be any doubt that the paramount object of every Rent Control Legislation including the present Act, is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity of accommodation is at the very root of the problem and if houses were freely available at reasonable rent, there would

hardly be any need for Rent Control Legislation. It is entirely for the Legislature to decide whether any measures, are to be adopted for remedying the situation and for ameliorating the hardship of tenants. The Legislature may very well come to a conclusion that it is the shortage of buildings which has resulted in scarcity of accommodation and has created a situation where the demand for accommodation is far in excess of the requisite supply, and it is because of such acute scarcity of accommodation the landlords are in a position to exploit the situation to the serious detriment of the tenants. The Legislature in its wisdom may properly consider that in effecting an improvement of the situation and for mitigating the hardship of the tenanted class caused mainly due to shortage of buildings, it will be proper to encourage construction of new buildings, as construction of new buildings will provide more accommodation, easing the situation to a large extent, and will ultimately result in benefitting the tenants. As in view of the rigours of Rent Control Legislation, persons with means may not be inclined to invest in construction of new houses, the Legislature to attract investment in construction of new houses may consider it reasonable to provide for adequate incentives so that new constructions may come up. It is an elementary law of economics that anybody who wants to invest his money in any venture will expect a fair return on the investment made. As acute scarcity of accommodation is to an extent responsible for the landlord and tenant problem, a measure adopted by the Legislature for seeking to meet the situation by encouraging the construction of new buildings for the purpose of mitigating the hardship of tenants must be considered to be a step in the right direction. The provision for exemption from the operation of the Rent Control Legislation by way of incentive to persons with means to construct new houses has been made in Sec. 1(3) of the Act by the Legislature in the legitimate hope that construction of new buildings will ultimately result in mitigation of the hardship of the tenants. Such incentive has a clear nexus with the object to be achieved and cannot be considered to be unreasonable or arbitrary. Any such incentive offered for the purpose of construction of new buildings with the object of easing the situation of scarcity of accommodation for ameliorating the conditions of the tenants, cannot be said to be unreasonable, provided the nature and character of the incentive and the measure of exemption allowed are not otherwise unreasonable and arbitrary. The exemption to be allowed must be for a reasonable and a definite period. An exemption for an indefinite period or a period which in the facts and circumstances of any particular case may be considered to be unduly long, may be held to be arbitrary. The exemption must necessarily be effective from a particular date and must be with the object of promoting new constructions. With the commencement of the Act, the provisions of the Rent Act with all the restrictions and rigours become effective. Buildings which have been constructed before the commencement of the Act were already there and the question of any kind of impetus or incentive to such buildings does not arise. The Legislature, therefore, very appropriately allowed the benefit of the exemption to the buildings, the construction of which commenced or was completed on or after the commencement of the Act. This exemption in respect of buildings coming up or to come up on or after the date of commencement of the Act is likely to serve the purpose of encouraging new buildings to be constructed. There is therefore nothing arbitrary or unreasonable in fixing the date of commencement of the Act from which the exemption is to be operative.

The exemption for a period of 10 years from the operation of the Act allowed to buildings, the construction of which commenced or was completed on or after the date of commencement of the Act, is fair and reasonable. It is for a definite period and that period of exemption cannot be considered to be too long; and this exemption, the Legislature may be of the view, will serve the

purpose of encouraging the construction of new buildings. It is for the Legislature to decide the period of exemption that may be allowed and to fix the date from which the period of exemption should run. This will ordinarily be a matter of Legislative police and this Court will not normally interfere unless the Court is of the opinion that the period of exemption or the date from which the exemption is to operate is unreasonable and arbitrary. The classification of buildings with reference to the date of commencement of the Act namely, buildings constructed before the commencement of the Act and buildings the construction of which was completed on or after the date of the commencement of he Act, has a rational basis and has a clear nexus with the object to be achieved. For the purpose of achieving the object and encouraging the construction of new houses with a view to ameliorate the hardship of the tenants by removing the scarcity of accommodation, the classification of the landlord and the tenant of a house constructed before the commencement of the Act and the landlord and tenant of a house, the construction of which commences or is completed on or after the commencement of the Act, is clearly founded on an intelligible differentia which has a rational relation to the object and this classification does not result in any invidious discrimination between the classes of landlords and tenants so classified. This classification is not arbitrary and is not violative of Art. 14 of the Constitution.

The decisions on which reliance has been placed on behalf of the petitioners is indeed of no assistance. In the case of Motor General Traders (supra), this Court had to consider the constitutional validity of S. 32 (b) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. This provision exempted all buildings constructed on or after August 26, 1957 from the operation of the Act. No period had been fixed for which this exemption will be enjoyed by owners of buildings constructed on or after 26th August, 1957 and the exemption appeared to be in the nature of a permanent one. This Court after referring to various authorities naturally declared the said provision to be invalid, holding:

> "After giving our anxious consideration to the learned arguments addressed before us, we are of the view that clause (b) of Section 32 of the Act should be declared as violative of Article 14 of the Constitution because the continuance of that provision on the statute book will imply the creation of a privileged class of land lords without any rational basis as the incentive of build which provided a nexus for a reasonable classification of such class of landlords no longer exists by lapse of time in the case of the majority of such landlords. There is no reason why after all these years they should not be brought at par with other landlords who are subject to the restrictions imposed by the Act in the matter of eviction of tenants and control of rents."

It is, however, to be noted that this Court in this very case observed at pp. 243 & 244 as follows:-

> "We do relize the adverse effect of this decision on many who may have recently built houses by spending their life savings or by borrowing large funds during these inflationary days at high rates of interest, on the expectation and belief that they would not be subjected to the restrictions imposed by the Act. The incentive to build provides a rational basis for classification and it is necessary, to the national interest, that there should be freedom from restrictions for a limited period of time. It is

> always open to the State Legislature or the State Government to take action by amending the Act itself or under Section 26 of the Act, as the case may be, not only to provide incentive to persons who are desirous of building new houses, as it serves a definite social purpose but also to mitigate the rigour to such class of landlords who may have recently built their houses for a limited period as it has been done in the Union Territory of Chandigarh as brought out in our recent judgment in Punjab Tin Supply Co. Chandigarh v. Central Government. The question whether new legislation should be initiated to exempt newly constructed buildings for a limited period of time on the pattern of similar legislation undertaken by different States or to exempt such class of buildings for a given number of years from the provisions of the Act by the issue of a notification under Section 26 of the Act is one for the State Government to decide."

In the other decision, namely Punjab Tin Supply Co. Chandigarh (supra), the validity of S. 3 of the East Punjab Rent Restrictions Act, 1949 and all three notifications issued under the said section provided for exemption of every building constructed in the urban area of Chandigarh for a period of 5 years from the respective date applicable to it from the operation of the Act came to be challenged. This Court upheld the validity of S. 3 of the Act and the notifications impugned observing:-

> In the result we declare that Section 3 of the Act and the notification dated January 31, 1973 and the other notifications impugned in these cases are valid and effective. We further declare that the exemption granted by the notification dated January 31, 1973 applies only to those buildings which are given sewerage connection or electric connection or which are occupied, as the case may be on or after January 31, 1973 and not to those buildings which satisfied any of the said conditions before January 31, 1973." The following observations of the Court at pp. 216-17 may be usefully noted:-
>
> "The Preamble and the provisions of a statute no doubt assist the Court in finding out its object and policy but its object and policy need not always be strictly confined to its preamble and the provisions contained therein. The object and policy of the Act which is now before us appears to be slightly wider than some of the key provisions of the Act namely fixation of fair rent and prevention of unreasonable eviction of tenants. The acute problem of shortage of urban housing as we all know has become a permanent feature throughout India. It is on account of the shortage of the number of houses in urban area, as landlords get an opportunity to exploit tenants who are in need of housing accommodation by compelling them to enter into unconscionable bargains. The Act is passed as one of the measures taken to mitigate the hardship caused to the tenants. The policy and object of the Act generally is mitigation of the hardship of tenants. Such mitigation can be attained by several measures, one of them being creation of incentive to persons with capital who are otherwise reluctant to invest in the construction of new buildings in view of the chilling effect of the rent control laws. As part of the said scheme in order to persuade them to invest in the

> construction of new buildings exemption is granted to them from the operation of the Act for a short period of five years so that whatever may be the hardship for the time being to the tenants of the new buildings, the new buildings so constructed may after the expiry of the period of exemption be available for the pool of housing accommodation controlled by the Act. The impugned notification is not, therefore, ultra vires Section 3 of the Act as in its true effect, it advances the scheme, object and purposes of the Act which are articulated in the preamble and the substantive provisions of the Act. Moreover the classification of buildings into exempted buildings and unexempted buildings brought about by the notification bears a just and reasonable nexus to the object to be achieved namely the creation of additional housing accommodation to meet the growing needs of persons who have no accommodation to reside or to carry on business and it cannot be considered as discriminatory or arbitrary or unreasonable in view of the shortness of the period of exemption available in the case of each exempted building. The exemption granted for a period of five years only serves as an incentive as stated above and does not create a class of landlords who are for ever kept outside the scope of the Act. The notification tries to balance the interests of the landlords on the one hand and of the tenants on the other in a reasonable way. We do not, therefore, agree with the submission that the notification either falls outside the object and policy of the statute or is discriminatory."

The aforesaid observations, in our view, clearly negative the contentions raised by the petitioners and conclude the question against them in so far as the validity of S. 1(3) of the Act on the grounds of arbitrariness and illegal discrimination is concerned.

The other contention that this provision must be held to be bad inasmuch as this provision operates retrospectively and seeks to take away the vested rights of the petitioners under the Act is equally without any merit. The section on its proper construction clearly indicates that the section is not retrospective in operation. Merely because the buildings the construction of which commenced or was completed after the date of commencement of the Act in 1973, come within the purview of this particular provision which was introduced by amendment in 1978, the provision does not become retrospective. Thus provision operates prospectively and becomes effective after its incorporation in the Act by the amendment, though the buildings completed on or after the commencement of this Act in 1973 are brought within the scope of this Section. The argument that the tenants have acquired a vested right under the Act prior to its amendment is without any substance. Prior to the amendment of Section 1(3) by the Amending Act of 1978, the provision as it originally stood cannot be said to have conferred any vested right on the tenants. The provision, as it originally stood prior to its amendment, might not have been constitutionally valid as the exemption sought to be granted was for an indefinite period. That does not necessarily imply that any vested right in any tenant was thereby created. The right claimed is the right to be governed by the Act prior to its amendment. If the Legislature had thought it fit to repeal the entire Act could the tenant have claimed any such right? Obviously, they could not have the question of acquiring any vested rights really does not arise. Even if it could be said that the tenants had acquired any right because of any invalidity of the earlier provision before amendment, it is always open to the Legislature to remove any defect to

make it valid. It is well settled that if any provision made by the legislature is found constitutionally invalid for some lacunae or otherwise such provision can always be validated by removing the defect or lacuna by passing a validating Act. Validating Acts may be passed and, in fact, are usually passed with retrospective effect to remedy any situation which might have brought about as a result of the original provision being declared invalid, provided however the Validating Act sought to be passed is within the competence of the Legislature.

In the result, these writ petitions are all dismissed. There shall, however, be no order as to costs.

M.L.A. Petitions dismissed.