Sant Lal Bharti vs State Of Punjab on 1 December, 1987

Equivalent citations: 1988 AIR 485, 1988 SCR (2) 107, AIR 1988 SUPREME COURT 485, 1988 (1) SCC 145, (1987) 4 JT 578 (SC), (1987) 2 RENCR 665, (1988) 1 ALL WC 244, 1988 HRR 368, 1988 UJ(SC) 1 32, (1988) 1 ALL RENTCAS 1

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:
SANT LAL BHARTI

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT01/12/1987

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 485 1988 SCR (2) 107
1988 SCC (1) 366 JT 1987 (4) 589
1987 SCALE (2)1249

ACT:
Constitution of India, 1950: Articles 14, 32 and 226-petition challenging Constitutional validity of certain provisions of a Statute-Must be in the context of certain facts and not in abstract or vacuum-Legislative wisdom of a legislation-Whether a ground for challenging validity of the Act passed by one State in comparison with similar Acts passed by other States.

East Punjab Urban Rent Restriction Act, 1949: Section Whether constitutionally valid-Rent prevalent in 1938 Basis for determination o f fair rent-Whether unreasonable.

HEADNOTE:
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The appellant filed a writ petition in the High Court questioning the vires of s. 4 of the East Punjab Urban Rent Restriction Act, 1949. He did not, however, mention the particulars of the premises of which he claimed to be the owner, and in respect of which he was making a grievance. The High Court dismissed the writ petition in limine. Hence the appeal.

It was submitted on behalf of the appellant that s. 4 of the Act was ultra vires the Constitution and violative of Art. 14, and would be an interference with the fundamental right guaranteed under Art. 19(1)(g) and was unreasonable, and unjust inasmuch as it provided that rent prevalent in 1938 should be taken as the basis for the determination of higher rent and that pegging the rent prevalent in 1938 as the basic rent, was inequitable and unjust in the background of the tremendous rise in prices, and that the provisions of fixation of rent in other States were different and were more fair and just and reasonable in comparison.

Dismissing the appeal, this Court,

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HELD: 1.1 A petition challenging the constitutional validity of certain provisions must be in the context of certain facts and not in abstract or vacuum. [109E]i
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In the instant case, the essential facts necessary to examine the validity of the Act are lacking. On this ground the petition was rightly rejected and this Court is not inclined to interfere with the order of the High Court on this ground alone. [109E-F]

2.1 Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory or different. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of two enactments. The source of authority for the two statutes being different, Art. 14 can have no application. [113C-D]

2.2 Each legislature in the several States has provided the method of determination of fair rent on the basis of legal conditions, as judged to be, by each such legislature. The legislative wisdom of such legislation is not a ground on which the validity of the Act can be challenged. [113B]

2.3 It must be the function of the legislature of each State to follow the methods considered to be suited for that State, that would be no ground for judging the arbitrariness or unreasonableness of a particular legislation in question by comparison. What may be The problem in Madras may not be the problem in Punjab. [113H; 114A]

The Act in question was passed in 1949 and it pegged the rent prevalent in the similar houses in 1938 and as such is not unreasonable per se. The rises started tremendously after the end of the Second World War after the partition of

the country. It cannot, therefore, be said that per se there is unreasonableness in fixing the prices in 1938 level. [114A-B]

One of the objects of the Act was to restrict the increase in rent. With that object, the Act as provided certain provisions as to fixation of the fair rent. Therefore, having regard to the specific preamble of the Act there is nothing unreasonable in the Scheme contemplated under s. 4 of the Act. [114B-C]

Prabhakara Nair and others v. State of Tamil Nadu and others, [1987] 4 S.C.C. 238 and M/s. Raval & Co. v. K.C. Ramachandran and others, A.I.R. 1974 S.C. 818-[1974] 2 S.C.R. 629, referred to.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1637 of 1987.

From the Judgement and order dated 3.3.1986 of the High Court of Punjab and Haryana in Civil Writ Petition No. 1055 of 1986.

S.K. Bagga and Mrs. S.K. Bagga for the Appellant. R.S. Suri for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This appeal by special leave is directed against the judgment and order of the High Court of Punjab & Haryana dated the 3rd March, 1986 dismissing the Writ Petition in limine under Articles 226 and 227 of the Constitution of India filed by the appellant before the High Court. The appellant states that he is the owner of certain premises in Punjab. It must, however, be mentioned that the petition is lacking in particulars as to what premises the appellant owned and in respect of which premises the appellant is making the grievances. On this ground it is not possible to decide the question of vires canvassed before the High Court and repeated before us. A petition challenging the constitutional validity of certain provisions must be in the context of certain facts and not in abstract or vacuum. The essential facts necessary to examine the validity of the Act are lacking in this appeal. On this ground the petition was rightly rejected and we are not inclined to interfere with the order of the High Court on this ground alone. Be that as it may as the question of vires of Section 4 of the East Punjab Urban Rent Restriction Act, 1949, hereinafter called 'the Act', was challenged before the High Court and canvassed before us. It is just as well that we did with that connection.

Shri S.K. Bagga, learned counsel for the appellant submitted that Section 4 of the said Act is ultra vires the Constitution and unreasonable inasmuch as the section provides that rent prevalent in 1938 the basis for the determination of fair rent if unreasonable and unjust. He urged that pegging the rent prevalent in 1938 the basic rent was inequitable and unjust in the background of the tremendous rise in prices. But it has to be borne in mind that certain increases have been provided for in section 4 from the rent prevalent in 1938. In must, however, be remembered that the Act was

passed as the preamble of the said Act which states, inter alia, "to restrict the increase of rent". One of the objects of the Act was to restrict the increase in rent. With that object the Act has provided certain provisions as to fixation of the fair rent. Section 4 of the Act which is under challenge may be conveniently set out as under:

> "Section 4 "Determination of fair rent: (1) The Controller shall on application by the tenant or landlord of a building or rented land fix the fair rent for such building or rented land after holding such enquiry as the Controller thinks fit. (2) In determining the fair rent under this section, the Controller shall first fix a basic rent taking into consideration:-
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> (a) The prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months prior to 1st January, 1939; and
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> (b) the rental value of such building or rented land if entered in property tax assessment register of the municipal, town or notified area committee, cantonment board, as the case may be relating to the period mentioned in clause (a);

Provided that, not with standing anything contained in sub sections (3), (4) and (5) the fair rent for any building in the Urban area of Simla shall not exceed the basic rent.

(3) In fixing the fair rent of a residential building the Controller may allow, if the basic rent:-

> i) in the case of a building in existence before the Ist January, 1939-
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> (a) does not exceed Rs.25 per mensem an increase not exceeding 81« per cent on basic rent;
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> (b) exceed Rs.25 per mensem, an increase but does not exceed RS.50 per mensem, an increase not exceeding 12-1/2 per cent on such basic rent;
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> (c) exceeds RS.50 per mensem an increase not exceeding 25 per cent on such basic rent;
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> (ii) in the case of building, constructed on or after the Ist January, 1939-
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> (a) does not exceed Rs.25 per mensem, an increase not exceeding 25 per cent on such basic rent;
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> (b) exceeds Rs.25 but does not exceed Rs.50 per mensem, an increase not exceeding 37-1/2 per cent on such basic rent;
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> (c) exceed Rs.50 per mensem, an increase not exceeding 50 per cent on such basic rent; (4) in fixing the fair rent of a scheduled building the controller may allow, if the

basic rent-

(i) in the case of a building in existence before the Ist January, 1939-

(ii) does not exceed Rs.25 per mensem, an increase not exceeding 13-1/2 per cent on such basic rent;

(b) exceeds Rs.25 but does not exceed Rs.50 per mensem, an increase not exceeding 17« per cent on such basic rent;

(c) exceed Rs.50 per mensem, an increase not exceeding 303 percent on such basic rent;

(ii) in the case of a building constructing on or after the Ist January, 1939

(a) does not exceed Rs.25 per mensem an increase not exceeding 30 percent on such basic rent;

(b) exceeds Rs.25 but does not exceed Rs.50 per mensem, an increase not exceeding 42« per cent on such basic rent;

(c)exceeds Rs.50 per mensem, an increase not exceeding 55 per cent on such basic rent;

(5) In fixing fair rent of a non-residential building or rented land the controller may allow, if the basic rent,

(i) in the case of building in existence before the Ist January, 1939 or in the case of rented land;

(a) does not exceed Rs.50 per mensem, an increase not exceeding 371/2 per cent on such basic rent;

(b) exceeds Rs.50 per mensem, an increase not exceeding SO per cent on such basic rent;

(ii) in case of building constructed after the Ist January 1939:-

(a) does not exceed Rs.50 per mensem, an increase not exceeding 50 per cent on such basic rent;

(b) exceeds Rs. 50 per mensem, an increase not exceeding 100 per cent on such basic rent; (6) Nothing in this section shall be deemed to entitle the Controller to fix the rent of a building or rented land at an amount less than the rent payable for such

building or rented land under a subsisting lease entered into before the first day of the January 1939."

It was contended that Section 4 of the Act provides the manner for determining the fair rent. But while laying down the procedure for determining the fair rent it has laid down that the Rent Controller, while determining the fair rent under this section shall take into consideration the prevalent rates of rent in the locality for the same or similar accommodation in similar circumstances during 12 months prior to Ist January, 1939. In other words, he has first to determine the rent prevalent in the locality in the year 1938 and then fix the rent accordingly. This it is submitted, was unreasonable and as such arbitrary and violative of Article 14 and would be an interference with the fundamental right guaranteed under Article 19(1)(g) of the Constitution. There has been according to the appellant, a tremendous rise in prices and as such in pegging the rent at the rate of Act of 1938 in an Act of 1949 was unreasonable. He drew our attention to the relevant provisions of the Rent Act in Assam, Tripura and Haryana where the provisions of fixation of rent according to him were different and were more fair and just and reasonable in comparison and submitted that this provision of the Act in question was unfair and unjust.

We are unable to accept this contention because each legislature in the several States has provided the method of determination of fair rent on the basis of legal conditions, as judged to be, by each such legislature. It is well- settled that the legislative wisdom of such legislation is not a ground for which the validity of the Act can be challenged .

Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory or different. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of two enactments. The source of authority for the two statutes being different, Article 14 can have no application.

See in this connection the decision of this Court in Prabhakaran Nair and others v. State of Tamil Nadu and others, [1987] 4 S.C.C. 238.

Shri S.K. Bagga, learned counsel drew our attention, we must have hasten to add to the different statutes in different States on this aspect. We cannot say that there was any better provision in those statutes, there were undoubtedly different provisions and those different provisions were judged by the legislatures of those State to be suited to the needs of those States. It is not necessary for us to examine in details those very provisions.

Shri S.K. Bagga, learned counsel also drew out attention to the observations of this Court in the case of M/s Raval & Co. v. K.G. Ramachandran and others, A.I.R. 1974 S.C. 818-1197412 S.C.R. 629. He drew out attention how fair rent should be fixed by relying on the certain observations of Bhagwati, J. as the Chief Justice then was at Page No. 825 of the A.I.R. In the facts and in the context of this case it is not necessary to refer to these observations. These were made entirely in a different context. It must be the function of the legislature of each State to follow the methods considered to be suited for that State, that would be no ground for judging the arbitrariness or unreasonableness

of a particular legislation in question by compari-

son. What may be the problem in Madras may not be the problem inPunjab. It must however, be borne in mind that the Act in question was passed in 1949 and it pegged the rent prevalent in the similar houses in 1938 and as such is not unreasonable per se. The rises stated tremendously after the end of the Second World War after the partition of the country. In that view of the matter, we can not say that per se there is unreasonableness in fixing the prices in 1938 level. Having regard to the specific preamble of the Act we find nothing unreasonable in the Scheme contemplated under Section 4 of the present Act.

In the aforesaid view of the matter, the challenge to Section 4 on the grounds advanced before us must fail and it is accordingly rejected. The appeal, therefore, fails and is dismissed. There will be no order as to costs.

N.P.V. Appeal dismissed.