

Supreme Court of India

Rattan Arya Etc. Etc vs State Of Tamil Nadu & Anr on 16 April, 1986

Equivalent citations: 1986 AIR 1444, 1986 SCR (2) 596

Author: O C Reddy

Bench: Reddy, O. Chinnappa (J)

PETITIONER:

RATTAN ARYA ETC. ETC.

Vs.

RESPONDENT:

STATE OF TAMIL NADU & ANR.

DATE OF JUDGMENT 16/04/1986

BENCH:

REDDY, O. CHINNAPPA (J)

BENCH:

REDDY, O. CHINNAPPA (J)

RAY, B.C. (J)

SINGH, K.N. (J)

CITATION:

1986 AIR 1444 1986 SCR (2) 596

1986 SCC (3) 385 1986 SCALE (1) 993

CITATOR INFO :

RF 1987 SC2117 (8)

RF 1991 SC1094 (3,10)

ACT:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, s. 30(ii) - Provisions excepting from the application of the Act residential buildings fetching rent exceeding four hundred rupees - Whether violative of Article 14 of the Constitution.

HEADNOTE:

Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 excepted from the application of the Act residential buildings which fetched a rent of more than rupees two hundred and fifty per month and non-residential buildings which fetched a rent of more than rupees four hundred per month. This provision was amended in 1961 to make the exception applicable to either a building or part thereof. In 1964, the provision relating to the exception made in the case of non-residential buildings was deleted with the result that tenants of these buildings were entitled to the protection afforded by the Act irrespective of the rent paid by them. The section was further amended by

Tamil Nadu Act 23 of 1973 by substituting the figure rupees four hundred for the figure of rupees two hundred and fifty in respect of residential buildings or part thereof.

The petitioners in their writ petitions challenged the vires of this provisions, contending that though the Act was designed to apply generally to all residential and non-residential buildings, residential buildings or parts thereof fetching a rent of more than rupees four hundred were singled out and taken out of the purview of the Act by s. 30(ii) arbitrarily and without any reason. The petitions were contested by the State Government contending in their counter-affidavit to the writ petitions that the classification of the protected buildings and exempted buildings on the basis of the rent was a reasonable one, consistent with the object of the Act and was not discriminatory.

Allowing the writ petitions, the Court,

597

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HELD : 1. Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has to be struck down as violative of Art. 14 of the Constitution since the distinction made by it between the tenant of a residential building and the tenant of a non-residential building and that based on rent paid by the respective tenants has no reasonable nexus to the object of the Act which is aimed at regulating the conditions of tenancy, controlling the rents and preventing unreasonable eviction of tenants of all residential and nonresidential buildings. [606 D; 602 G-H; 603 A]

To say that a non-residential building is different from a residential building is merely to say what is self-evident and means nothing. It has not been shown in the instant case that the tenants of non-residential buildings are in a disadvantageous position as compared with tenants of residential buildings and, therefore, they need greater protection. Tenants of both kinds of buildings equally need the protection of the beneficial provision of the Act. [604 C-D]

2. By one stroke s. 30(ii) denies the benefits conferred by the Act on all tenants to tenants of residential buildings fetching a rent in excess of four hundred rupees. While the tenant of a non-residential building is protected, whether the rent is rupees fifty, five hundred or five thousand per month, a tenant of a residential building is protected if the rent is rupees fifty, but not if it is five hundred or five thousand per month. It cannot be said that the tenant of a residential building paying a rent of rupees five hundred is able to protect himself better than the tenant of a non-residential building paying a rent of rupees five thousand per month, or that the tenant of a residential building who pays a rent of rupees five hundred per month is not in need of any

statutory protection. [602 E-G]

3. It cannot be pretended that the exclusion of tenants, who pay higher rent, from the purview of the Act will help to protect tenants belonging to the weaker sections of the community. It is one thing to say that tenants belonging to the weaker sections of the people need protection, and an altogether different thing to say that denial of protection to tenants paying higher rents will protect the weaker sections of the society. Inconsistently enough the tenants of

598

non-residential buildings, who are in a position to pay much higher rents than those in occupation of residential buildings can ever pay, are afforded protection by the impugned provision while the latter paying rent in excess of rupees four hundred are left high and dry. [604 F-H; 605 A]

Raval & Co. v. Ramachandran, [1974] 2 S.C.R. 629, distinguished.

4. A provision which was perfectly valid at the commencement of the Act could in course of time become discriminatory and liable to challenge on the ground of unconstitutionality and struck down on that basis. Whatever jurisdiction there might have been in 1973 when s. 30(ii) was amended by imposing a ceiling of rupees four hundred on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. There has been enormous multifold increase of rents throughout the country, particularly in urban areas. It is common knowledge that the accommodation which one could have possibly for rupees four hundred per month in 1973 will today cost at least five times more. In these days of universal day-to-day escalation of rentals any ceiling such as that imposed by s. 30(ii) can only be considered to be totally artificial and irrelevant. [605 A-D]

Motor General Traders v. State of Andhra Pradesh, [1984] 1 S.C.C. 222, referred to.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition (Civil) Nos. 13732/83, 5226/82, 754/83, 1117, 13999, 14101, 17189, 11226, and 12783/85.

(Under Article 32 of the Constitution of India.) M.C. Bhandare, K.K. Mani, Mohan Katarki, Prem Malhotra, S.G. Sambandam, A. Subba Rao, S. Srinivasan, Mahabir Singh, M.C. Verma, M.A. Krishnamurthy and K.L. Taneja for the Petitioners.

B. Padmanabhan, A.T.M. Sampath, R.N. Keshwani, K.P. Gopala Krishnan, N. Doraikannan, A.V. Rangam, C.S. Vaidyanathan, Ms. Lily Thomas, Ms. Baby Krishnan, P.

Jayaraman, V. Balachandran, K. Swami and Mohan Parasaran for the Respondents.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J. The question raised in all these writ petitions is whether sec. 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is constitutionally valid. This provision excepts from the application of the Act "any residential building or part thereof occupied by any one tenant if the monthly rent paid by him in respect of that building or part exceeds four hundred rupees." The argument is that though the Act is designed to apply generally to all residential and non-residential buildings, residential buildings or parts thereof fetching a rent of more than rupees four hundred are singled out and taken out of the purview of the act, arbitrarily and without any reason. It is said that the classification of tenants of residential buildings fetching a rent of over rupees four hundred per month into a distinct class for the purpose of depriving them of the benefit of the Act by excepting such buildings from the operation of the Act has no reasonable nexus to the three-fold object of the Act, namely, the regulation of the letting of residential as well as non-residential buildings, the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom.

In the State of Tamil Nadu, it all started with two wartime measures, the Madras House Rent Control Order, 1941 and the Madras Godown Rent Control Order, 1942, both issued under the Defence of India Rules. These orders were re-issued with slight modifications in 1945 as the Madras Rent Control Order 1945 and the Madras Non-Residential Buildings Rent Control Order 1945. They were repealed and replaced by the Madras Buildings (Lease and Rent Control) Act, 1946. This Act also was later repealed and replaced by the Madras Buildings (Lease and Rent Control) Act, 1949. The present Act, the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was enacted in 1960 repealing and replacing the 1949 Act. Upto the time of enactment of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, no exception was made from the purview of the Act in respect of any class of residential and non-residential buildings based on the rent fetched by the buildings. By sec. 30(ii) for the first time, the 1960 Act excepted from the application of the Act residential buildings which fetched a rent of more than rupees two hundred and fifty per month and non-residential buildings which fetched a rent of more than rupees four hundred per month as entered in the property register or assessment book of the municipality. In 1961, this provision was amended by Act 20 of 1961 so as to make the exception applicable to either a building or part thereof and on the basis of the actual rent paid by the tenant and not on the basis of the rental value as entered in the property register or assessment book of the municipality. In 1964, the provision relating to the exception made in the case of non-residential buildings fetching a rent of more than rupees four hundred per month was deleted, with the result that tenants of non-residential buildings were entitled to the protection afforded by the Act irrespective of the rent paid by them. Thereafter pursuant to the recommendation made by a Committee appointed by the Government of Tamil Nadu in 1969, sec. 30(ii) was further amended by Act 23 of 1973 by substituting the figure rupees four hundred for the figure of rupees two hundred and fifty in that provision. It is the vires of this provision as it now stands, that is in question before us.

The long title of the Act is "An Act to amend and consolidate the law relating to the regulation of the letting of residential and non-residential buildings and the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the State of Tamil Nadu." The Preamble

to the Act similarly recites "Whereas it is expedient to amend and consolidate the law relating to the regulation of the letting of residential and non-residential buildings and the control of rents of such buildings and the preventions of unreasonable eviction of tenants therefrom in the State of Tamil Nadu". "Building" is defined by sec. 2(2) as meaning "any building or hut or part of building or hut, let or to be let separately for residential or non-residential purposes and includes - (a) the garden grounds and out-houses, if any, appurtenant to such buildings, hut or part of such building or hut and let or to be let along with such building or hut, but does not include a room in a hotel or boarding house; section 3 casts a duty on the landlord to give notice of vacancy of a building. Sections 3 and 3(A) prescribe the procedure to be followed after intimation of vacancy is given, either by way of allotment to some other person or release in favour of the landlord. Section 4 provides for the fixation of fair rent both for residential and non- residential buildings. Section 7 prohibits a landlord from receiving rent in excess of the fair rent. Section 8 requires every landlord to issue a receipt duly signed by him for the actual amount of rent or advance received by him. Section 9 enables the tenant to deposit the rent lawfully payable to the landlord in respect of the building before the Controller in certain situations. Section 10 provides for and enumerates the grounds upon which a landlord may seek eviction of his tenant before the Controller. Section 14 provides for recovery of possession of a building bona-fide required by a landlord for carrying out repairs which cannot be otherwise carried out or for the demolition of the building and construction of a new building. Section 15 enables the tenant to re-occupy the building vacated by him to enable the landlord to carry out repairs after such repairs are carried out or after the stipulated time if repairs are not carried out within the time. Section 16 is a provision corresponding to sec. 15 in respect of a building vacated for the purpose of demolition and construction. Section 17 prohibits a landlord from interfering with the amenities enjoyed by a tenant and empowers the Controller to give appropriate relief where such amenities are interfered with. Section 21 prohibits the conversion of a residential building into a non- residential building except with the permission in writing of the Controller. Section 22 makes provisions for effecting repairs to a building where the landlord fails to make the necessary repairs. Thus we see so far, that the scheme and structure, the policy and the plan of the Act, as perceivable from these provisions, are unmistakably aimed at regulating the conditions of tenancy, Controlling the rents and preventing unreasonable eviction of tenants of all residential and non-residential buildings. For the advancement of these objects, tenants are invested with certain rights and landlords are subjected to certain obligations. These rights and obligations, for example, the right of a tenant not to be evicted and the prohibition against a landlord from seeking eviction except upon specified grounds, the right of a tenant not to pay rent in excess of the fair rent and the obligation of a landlord not to demand such excess rent, the right of a tenant to obtain a receipt for the actual amount of rent and advance paid by him and the right of a tenant to enjoy and the obligation of a landlord not to interfere with the enjoyment of the amenities previously enjoyed by the tenant, are rights and obligations which, in any modern civilised society, attach themselves to tenants and landlords of all buildings, residential or non-residential, low-rent or high-rent. They are not rights which are peculiarly capable of enjoyment by occupants of non- residential buildings only as against occupants of residential buildings or by occupants of low-rent buildings only as against occupants of high-rent buildings. None of the main provisions of the Act, to which we have referred, make any serious distinction between residential and non- residential buildings. We may now turn to s. 30(ii) which reads as follows :

"Nothing contained in this Act shall apply to any residential building or part thereof occupied by anyone tenant if the monthly rent paid by him in respect of that building or part exceeds four hundred rupees."

[By one stroke, this provision denies the benefits conferred by the Act generally on all tenants to tenants of residential buildings fetching a rent in excess of four hundred rupees. As a result of this provision, while the tenant of a non-residential building is protected, whether the rent is Rs. 50, Rs. 500 or Rs. 5000 per month, a tenant of a residential building is protected if the rent is Rs. 50, but not if it is Rs. 500 or Rs. 5000 per month. Does it mean that the tenant of a residential building paying a rent of Rs. 500 is better able to protect himself than the tenant of a non-residential building paying a rent of Rs. 5000 per month? Does it mean that the tenant of a residential building who pays a rent of Rs. 500 per month is not in need of any statutory protection? Is there any basis for the distinction between the tenant of a residential building and the tenant of a non-residential building and that based on the rent paid by the respective tenants? Is there any justification at all for picking out the class of tenants of residential buildings paying a rent of more than four hundred rupees per month to deny them the rights conferred generally on all tenants of buildings residential or non-residential by the Act? Neither from the Preamble of the Act nor from the provisions of the Act has it been possible for us even to discern any basis for the classification made by s. 30(ii) of the Act. In the counter affidavit filed by Selvi A. Raju on behalf of the State of Tamil Nadu, the classification is sought to be justified in the following manner :

"I submit that the plea of hostile discrimination and inequality of treatment is not involved in s.

30. I submit the provision for upper limit of rent has been fixed to afford protection to weaker sections of tenants who pay rent below Rs. 400These successive enactments have embodied a perfectly rational principle of classification, and the criteria and their application have been evolved from time to time, in accordance with the needs of this class of citizens. There is also a clear and discernible nexus between the object of the measure and the differentia themselves.....I submit that the classification based on the purpose "residential" and "non-residential" is based on well-recognised and rational principle of differentiaIt is incorrect to say that s. 30(ii) of the Act defeats the purpose of the Act. As submitted already, the classification of the protected buildings and exempted buildings on the basis of the rent is a reasonable one consistent with the object of the Act and it is not discriminatory. As submitted already, a distinction based on rent is an intelligent one and has also got rational relation to the objects sought to be achieved.....It is equally incorrect to say that the provisions of s. 30(ii) are a total departure from the rent Act and takes away the protection afforded to the tenant under the Act, thus rendering the Act nugatory. As submitted already, the provisions of s. 30(ii) do not at all contain any hostile discrimination, simply because it is based on quantum of rent.....I submit that taking into account the general increase in rent and the cost of living index, the upper limit had to be increased keeping in mind the welfare of the weaker sections of society. Hence I submit that the change of upper limit cannot be

said to be discriminatory.....The grant and withdrawal of exemption have been done only keeping in mind the welfare of the weaker sections of the society and it is only with that object, exemption had been withdrawn with regard to residential buildings."

The counter affidavit does not explain why any distinction should be made between residential and non- residential buildings in the matter of affording the protection of the provisions of the Act. To say that a non- residential building is different from a residential building is merely to say what is self-evident and means nothing. Tenants of both kinds of buildings equally need the protection of the beneficent provisions of the Act. No attempt has been made to show that the tenants of non-residential buildings are in a disadvantageous position as compared with tenants of residential buildings and therefore, they need greater protection. There is and there can be no whisper to that effect. To illustrate by analogy, it is not enough to say that man and woman are different and therefore, they need not be paid equal wages even if they do equal work. The counter affidavit has repeatedly referred to the weaker sections of the people and stated that in order to protect the weaker sections of the people, a distinction has been made between them and those who are in a position to pay higher rent. It is difficult to understand how the exclusion of tenants who pay higher rent from the protection afforded by the Act will help to protect tenants belonging to the weaker sections of the community. It is one thing to say that tenants belonging to the weaker sections of the community need protection and an altogether different thing to say that denial of protection to tenants paying higher rents will protect the weaker sections of the community. Further the distinction suggested in the counter appears to be quite antipathic to the actual provision because as we pointed out earlier, there is no such ceiling in the case of tenants of non-residential buildings and therefore a tenant of a non-residential building who is in a position to pay a rent of Rs. 5000 per month is afforded full protection by the Act, whereas, inconsistently enough, the tenant of a residential building who pays a rent of Rs. 500 is left high and dry. It certainly cannot be pretended that the provision is intended to benefit the weaker sections of the people only. We must also observe here that whatever justification there may have been in 1973 when s. 30(ii) was amended by imposing a ceiling of Rs. 400 on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. We are entitled to take judicial notice of the enormous multifold increase of rents through out the country, particularly in urban areas. It is common knowledge today that the accommodation which one could have possibly got for Rs. 400 per month in 1973 will today cost at least five times more. In these days of universal, day today escalation of rentals any ceiling such as that imposed by s. 30(ii) in 1973 can only be considered to be totally artificial and irrelevant today. As held by this Court in *Motor General Traders v. State of Andhra Pradesh*, [1984] 1 S.C.C. 222 = A.I.R. 1984 S.C. 87 a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time, become discriminatory and liable to challenge on the ground of its being violative of Art. 14. After referring to some of the earlier cases Venkataramiah, J. observed :

".....The garb of constitutionality which it may have possessed earlier has become worn out and its unconstitutionality is now brought out to a successful challenge."

[Shri A.V. Rangam, learned counsel for the State of Tamil Nadu, invited our attention to some sentences from the judgment of this Court in Raval & Co. v. Ramachandran, [1974] 2 S.C.R. 629 where, referring to s. 30(ii) before it was amended in 1973, it was observed :

"Clause (ii) exempts any residential building or part thereof occupied by any tenant, if the monthly rent paid by him exceeds Rs. 250. Here the object of the legislature clearly was that the protection of the beneficent provisions of the Act should be available only to small tenants paying rent not exceeding Rs. 250 per month as they belong to the weaker section of the community and really need protection against exploitation by rapacious landlords. Those who can afford to pay higher rent would ordinarily be well to do people and they would not be so much in need of protection and can without much difficulty look after themselves."

[These observations were made in 1974 soon after the amendment of the Act in 1973. They were made in a different context and not in the context of a challenge to the vires of the provisions as violative of Art. 14. As we pointed out earlier, the argument based on protection of the weaker sections of the community is entirely inconsistent with the protection given to tenants of non-residential buildings who are in a position to pay much higher rents than the rents which those who are in occupation of residential buildings can ever pay. We are, therefore, satisfied that section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has to be struck down as violative of Art. 14 of the Constitution. A writ will issue declaring sec. 30(ii) as unconstitutional.

P.S.S.

Petitions allowed.