APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Bhagwati.

1952
Aug. 6

A. S. RUBEN (ORIGINAL DEFENDANT), PETITIONER *v.* NARAYAN MORESHWAR MULYE (ORIGINAL PLAINTIFF), OPPONENT.*

Bombay Rents, Hotels and Lodging House Rates Control Act (LVII of 1947), Explanation (a) to s. 13 (1) (g)—Whether ultra vires*—Constitution of India, Arts. 14 and 19 (1) (f)—Construction.*

A landlord who had purchased property after January 1, 1947, filed a suit for ejectment against his tenant in the property on the ground that he required the premises reasonably and *bona fide* for his own use and occupation. It was found that the requirements of the landlord were *bona fide* and reasonable. On the question whether Explanation (*a*) to s. 13 (*1*) (*g*) of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 contravened Arts. 14 and 19 (*1*) (*f*) of the Constitution and was *ultra vires*:—

Held, (1) that although art. 14 of the Constitution is intended to protect the subjects from arbitrary and capricious classification at the hands of the Legislature, it does not prohibit the classification on a reasonable basis; and as the intention of the Legislature in enacting Explanation (*a*) to s. 13 (*1*) (*g*) of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947, was to protect the tenants who would otherwise find no living space at all from a class of people who had sufficient means to purchase properties, it could not be said that the classification between landlords made by the said explanation was unreasonable, arbitrary or capricious;

(*ii*) that when the Legislature has the right to distinguish between one class of landlords and another and to draw a line between landlords who purchased properties after a particular date and those who purchased properties prior to that date, it was for the Legislature to select the date which would bring about the distinction and the classification and it was not for the Court to decide whether the Legislature was right in selecting the particular date; and

(*iii*) that the Explanation did not offend against art. 19 (*1*) (*f*) of the Constitution as it imposed a reasonable restriction in the interests of the general public.

It is open to the Court to look at the parliamentary proceedings or proceedings of the Legislature in order to determine the circumstances under which a particular law was passed and the reasons that necessitated the passing of the law.

Charanjit Lal v. *Union of India*,[1] relied upon.

Ejectment Suit.

* Civil Revision Application No. 1067 of 1951 with Civil Revision Applications Nos. 1088, 1155 to 1158 of 1951.

[1] (1950) 53 Bom. L. R. 499.

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CIVIL REVISION Application from the decision of Y. K. Ghaskadbi, District Judge, Satara North, reversing the decision of N. R. Ginwalla, Joint Civil Judge at Satara.

The facts are set out in the Judgment.

V. B. Rege, for the applicant.

B. N. Gokhale with *K. J. Abhyankar,* for opponent No. 1.

G. N. Joshi with *V. T. Gambhirwala,* for the Government Pleader, for the State.

CHAGLA C. J. This is an application in revision against the decision of the District Judge, North Satara, holding that Explanation (*a*) to s. 13 (*1*) (*g*) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, was *ultra vires* and void; and the learned District Judge came to hold that under the following circumstances.

The petitioner is a tenant, and he went to live in the premises as a tenant in 1941. The opponent, who is a landlord, purchased the property on June 23, 1947, and he filed a suit for ejectment against the applicant. One of the grounds urged by him was that he required the premises reasonably and *bona fide* for his own use and occupation. The learned Judge held the requirements of the landlord established, but came to the conclusion that as the landlord had purchased the property after January 1, 1947, by reason of Explanation (*a*) to s. 13 (*1*) (*g*), he was not entitled to eject the tenant. Thereupon he dismissed the suit. An appeal was preferred to the learned District Judge. The learned District Judge confirmed the finding of the trial Court that the landlord required the premises reasonably and *bona fide,* but came to the conclusion that Explanation (*a*) to s. 13 (*1*) (*g*) of the Act contravened art. 14 and art. 19 (*1*) (*f*) of the Constitution and therefore was void, and because of that, the landlord was entitled to possession under s. 13 (*1*) (*g*), and passed a decree in his favour.

The Act with which we are dealing was passed in order to control the law relating to rents and evictions, and the main purpose of the Act obviously is to extend to the tenant the utmost protection. The Legislature realised the shortage of houses in the State of Bombay and therefore put this legislation on the statute book. Now, s. 13 (*1*) (*g*) entitles the landlord to recover possession from his tenant if he requires the premises reasonably and *bona fide* for occupation by himself or

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for any person for whose benefit the premises are held, and it will be noticed that the Act of 1947 gave a further protection to the tenant inasmuch as by sub-cl. (*2*), even though a landlord may establish his requirements, the tenant would still be protected if the Court came to the conclusion, on a consideration of a balance of convenience, that the ejectment would result in greater hardship to the tenant than to the landlord. The Act of 1947 gave a further protection to the tenant, and that was contained in the Explanation, and the Explanation is in the following terms:

> "(*a*) a person shall not be deemed to be a landlord unless he has acquired his interest in the premises at a date prior to the beginning of the tenancy, or the first day of January 1947, whichever is later or, if the interest had devolved on him by inheritance or succession, his predecessor-in-title had acquired the interest at a date prior to the beginning of the tenancy or the first day of January 1947, whichever is later;"

Now, as in this case, the landlord had acquired the premises after January 1, 1947, he could not claim possession from his tenant under sub-cl. (*g*) of s. 13 (*1*), and what is contended on behalf of the landlord is that this Explanation creates an arbitrary, unreasonable and capricious discrimination against a particular class of landlords. It is pointed out that landlords, who purchased property prior to January 1, 1947, could obtain an order of ejectment from the Court if they required premises reasonably and *bona fide* for their own use and occupation, but landlords who acquired property after January 1, 1947, however great their requirements may be, they were not entitled to eject their tenants. It is, therefore, argued that there is in this particular case an unreasonable discrimination, and that such a discrimination offends against art. 14 of the Constitution.

Article 14 has often come up before the Courts for construction and interpretation. It is unnecessary to repeat what has been so often said both by this Court and the Supreme Court with regard to the true effect of that article. In brief, art. 14 is intended to protect the subject from arbitrary and capricious classification at the hands of the Legislature. Article 14 does not prohibit the Legislature from classifying in certain cases. But if it does classify, and if it does lay down that a particular class is exempt from a particular law, that classification must be on a reasonable basis. As it has been said, there must be some nexus, some connection, between the object of the legislation and the classification made by the Legislature. It has also

been pointed out that the burden is always upon the citizen who challenges the validity of the Act, but Mr. Gokhale is right when he says that, when prima facie it appears that the classification is not justified, it is for the State to satisfy the Court that there was some reasonable consideration which led the Legislature in exempting a particular class from the operation of the law.

Now, can it be said that, looking to the object of the legislation, looking to the circumstances prevailing when the law was passed, there was no justification for the Legislature in depriving the landlords who purchased properties after January 1, 1947, of the right which the landlords had who had purchased properties prior to that date? Now, we can take almost a judicial notice of the fact that conditions in the State of Bombay in 1947, as far as real property was concerned, were very peculiar. There was a post-war boom. People who had made money illegitimately, people who had made money by black-marketing and by evading the payment of taxes, had a large surplus of cash which they wanted to invest. There was also another circumstance, a very unhappy circumstance, which was also prevalent in the State of Bombay at that time. A large number of persons from the Punjab and Sind had started coming into Bombay with a view to settling down here. These people were themselves uprooted from their State, and they wanted to take new roots in this State, and therefore they were looking out for properties which they could buy and in which they could live, and therefore, the result of their being allowed to buy properties with a view to living there would have been to throw out a large number of people who were living in these premises, in these properties, for many years as tenants and being uprooted. It was under these circumstances that the Legislature enacted the Explanation which has been challenged before us.

It has been pointed out by Mr. Justice Fazl Ali in *Charanjit Lal* v. *Union of India*[1] that it is open to the Court to look at the Parliamentary proceedings or proceedings of Legislature in order to determine the circumstances under which a particular law was passed and the reasons that necessitated the passing of the law; and when we turn to the discussion on the bill which ultimately resulted in the Act under consideration, the Minister in charge of that Bill has pointed out in terms that

[1] [1950] S. C. R. 869.

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the Government had found in recent years that there had been many purchases of houses—properties—and as the owners might apply for ejectment of their tenants, it was necessary to enact the Explanation. Therefore, apart from what we might ourselves take judicial notice of, we have a statement, an authoritative statement, from the most responsible member of the Legislature who was piloting the bill. Now, the question is whether if this was the reason which led the Legislature to make this distinction and bring about this classification, can it be said that the classification is unreasonable, arbitrary or capricious, if the intention of the Legislature was to protect the tenants who would otherwise find no living space at all from a class of people who had sufficient means to purchase properties in order to live in those properties themselves? In our opinion, the Legislature was fully justified in extending protection to the tenants by framing this particular Explanation.

It is pointed out by Mr. Gokhale that even assuming there was some justification for discriminating between one class of landlords and another, the particular date selected by the Legislature, viz. January 1, 1947, was an arbitrary date for which there could possibly be no justification. Mr. Gokhale points out that the Act was passed on January 19, 1948, and it came into force on February 13, 1948, and it is therefore contended that the Legislature has given a retrospective effect to the Explanation, and landlords who had no notice of the passing of such legislation and who might have purchased properties with a view to going and living there, would also be affected by the Explanation. Now, in our opinion, once we come to the conclusion that the Legislature had the right to distinguish between one class of landlords and another, and draw a line between landlords who purchased properties after a particular date and landlords who had purchased properties prior to that date, then it would be for the Legislature to select a date which would bring about the distinction and the classification. Under all circumstances, any date selected must, in its very nature, be an arbitrary date, and it would not be for the Court which has not got the necessary materials to decide whether the Legislature was right in selecting the particular date rather than any other date. If the discrimination itself is not justified, nothing more can be said. But once the discrimination is justified and it is held that there is a reasonable basis for the discrimination,

then the selection of the date itself must be left to the good sense and intelligence of the Legislature, and in this particular case there seems to be prima facie good sense and intelligence in selecting January 1, 1947. That was the time when a revolution was in the air, when people were beginning to think of the possibility of circumstances and conditions changing and although a wholesale migration started much later, a gradual trek was visible from one part of India to the other. Also, the post-war boom was beginning to feel itself more and more at this time and therefore obviously the Legislature selected this particular date. If, therefore, the Explanation does not offend against art. 14, in our opinion, no question arises with regard to art. 19 (*1*) (*f*). That article, if it applies, protects the fundamental rights of a citizen to acquire, hold and dispose of property. That fundamental right is subject to reasonable restrictions in the interest of the general public. Now, if the particular restriction is not in the interest of the general public, then undoubtedly it would offend against art. 19 (*1*) (*f*), but it would equally offend against art. 14. We are upholding this Explanation as not contravening art. 14 because, in our opinion, the Explanation is in the interest of the general public. Therefore, whichever way one looks at it, whether it falls under art. 14 or under art. 19 (*1*) (*f*), the result must be the same, viz. that this particular discrimination, this particular classification, was introduced by the Legislature in the interest of the general public, and therefore it does not contravene any of the articles in Part III of the Constitution. In our opinion, the learned District Judge was in error in coming to the conclusion that Explanation (*a*) to s. 13 (*1*) (*g*) was *ultra vires*.

There are two other matters to which we would like to refer. The learned Judge, in deciding that this particular Explanation was unconstitutional, obviously, with respect to him, overlooked the recent amendment to the Civil Procedure Code which is to be found in Act XXIV of 1951. That amendment precludes any Court subordinate to the High Court from deciding upon the unconstitutionality of any Act passed by the State or by the Parliament, and it requires the Subordinate Court, if it is of the opinion that the particular measure or legislation is unconstitutional, to state the case to the High Court, setting out its opinion and the reasons for the same and refer the same to the High Court. What the learned Judge should have done was, if in his opinion this particular Explanation was *ultra vires* or

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void, to have referred the matter to us and not to have decided the matter himself. Further, the learned Judge also overlooked the provisions of O. XXVII-A of the Civil Procedure Code. If the question of the constitutionality of an Act of the Bombay State was in question, it was his duty to have given notice to the Advocate General of Bombay. In this particular case no notice was given, and the constitutionality of the Act was decided in the absence of the State of Bombay. Therefore, strictly, we should have set aside the decree of the learned District Judge and would have called upon him to state the case as required by the provisions of the law. But inasmuch as there is another application on the same question pending before us, it is unnecessary to do so. What we will do therefore is to set aside the decree of the learned District Judge and restore the decree of the trial Court with costs throughout.

The same is the result in Civil Revision Application No. 1088 of 1951 which is also from the decision of the same learned District Judge who has come to the same conclusion as to the constitutionality of the Explanation to s. 13 (*1*) (*g*).

No order as to costs of the State of Bombay in Civil Revisio Application No. 1067.

In Civil Revision Application No. 1155 of 1951, the rule wil be discharged. No order as to costs.

Civil Revision Applications Nos. 1156 to 1158 of 1951 are rejected.

Rule absolute.

K. B. S.