

Sube Singh and others v. State of Haryana and others
(S. S. Kang, J.)

(13) Consequently, the writ petition is allowed and the impugned orders Annexures P1, dated 21st May, 1985, and P2, dated 23rd May, 1985, are quashed. The College-authorities however, shall be at liberty to proceed against the petitioners in accordance with law. It is needless to say that they will afford the opportunity of hearing to the petitioners and that the principles of natural justice shall be observed in letter and spirit. If the respondents decide to take any action against the petitioners, they shall observe the principles of natural justice and shall afford full opportunity to the petitioners, There shall, however, be no order as to costs.

S.C.K.

Before J. V. Gupta, J.

FATEH CHAND,—*Petitioner.*

versus

BALBIR SINGH,—*Respondent.*

Civil Revision No. 3486 of 1986

February 2, 1987.

Constitution of India, 1950—Schedule VII List II Entry 5—East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(hh) and 13-A—Landlord retiring from service of the New Delhi Municipal Committee as an Assistant Secretary—Service under the Municipal Committee—Whether can be said to be ‘in connection with the affairs of the State’—Such landlord—Whether covered within the meaning of a ‘specified landlord’ in terms of Section 2(hh) of the Act and as such entitled to claim eviction of the tenant under Section 13-A thereof.

Held, that municipalities have been created all over the State to enable them to discharge their functions and provide civil amenities to its citizens and for that purpose the States have been given powers under Entry 5, List II of Schedule VII of the Constitution of India, 1950, to make laws. Though a person employed in a municipality may not be deemed to be in public service or in the State service as such but he would certainly fall in the category of those who are serving in connection with the affairs of the State. Therefore, it has to be held that an employee of a Municipal Committee

who is working in connection with the affairs of the State is covered under the definition of 'Specified Landlord' within the meaning of Section 2(hh) of the East Punjab Urban Rent Restriction Act, 1949 and would be entitled to claim eviction of a tenant from his residential building under Section 13-A thereof. (Para 5)

Petition under Section 15(5) (8) of the East Urban Rent Restrictions Act against the order dated 25th October, 1986 passed by the Court of Shri P. C. Sumar, P.C.S., Rent Controller, Malerkotla granting the application.

Claim : Application Under Section 13(2) (i), 13(3) (a) (i) of the East Punjab Urban Rent Restriction Act, 1949. (As amended upto-date). For the eviction of the respondent from the premises in question occupied by him at Mohalla Modian, Delhi Gate, Opposite Imambara, Malerkotla.

Claim in Revision :

For reversal of the order of the lower court.

Amarjit Markan and Yash Paul Khullar, Advocates, for the Petitioner.

H. L. Sarin with Miss Ritu Bahri, Miss Jaishree Thakur and Arihant Jain, Advocates, for the Respondents.

JUDGMENT.

(1) This petition is directed against the order of the Rent Controller, dated 25th October, 1986, whereby in a petition filed under Section 13-A of the East Punjab Urban Rent Restriction Act, (for short the Act) leave to contest was granted and it was further held that the landlord was not "specified landlord" as defined therein.

(2) Admittedly, the landlord-petitioner was in the employment of the New Delhi Municipal Committee from where he retired with effect from 31st August, 1984, as Assistant Secretary (Inquiry). Claiming himself to be a specified landlord as defined under section 2(hh) of the Act, he moved ejection application on 7th November, 1986, against his tenant Balbir Singh from the house in dispute alleging that he has retired from the service and needs the demised premises for his *bona fide* personal necessity. When the notice was served on the tenant, he filed an application under section 18-A(5) of the Act for the grant of permission to contest the application. He

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took up the plea that the landlord had no necessity and is not in need of the house in dispute. He is permanently residing at Delhi where he owns a residential house. Further, the landlord also owns another suitable residential accommodation at Malerkotla. Besides he is not a 'specified landlord' within the meaning of the Act and the tenant was, therefore, not entitled to ejectment.

(3) According to the learned Rent Controller, New Delhi Municipal Committee is neither a State Government nor Central Government, and, therefore, the landlord could not be said to be a 'specified landlord' as defined under the Act. It was further found that the tenant has brought on the record through his affidavit that the landlord is a permanent resident of New Delhi and he has a residential accommodation there as well and another suitable accommodation at Malerkotla and the landlord has failed to rebut that affidavit. In these circumstances, leave to contest was granted.

(4) The main controversy between the parties in this petition is as to whether the landlord falls within the definition of specified landlord or not. The definition of specified landlord under section 2(hh) of the Act is as under:—

2(hh) " 'Specified landlord' means a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State."

With this petition, a certificate annexure P-4 has been filed which has been issued by the Secretary, New Delhi Municipal Committee, dated 21st October, 1986. It has been stated therein that Shri Fateh Chand Verma has retired from municipal service with effect from 31st October, 1984 as Assistant Secretary (Inquiry). His post is pensionable and he is getting the pension. The Central Civil Service (Conduct) Rules and F. R. and S. R. Government of India are adopted in this office as amended from time to time. N.D.M.C. is being governed and controlled by Delhi Administration, Delhi, headed by Lt. Governor, Delhi. Thus, it could not be disputed that the petitioner had held a post being in the employment of N.D.M.C. With this background the relevant provision of the Act may now be noticed.

(5) As is evident from the definition of "Specified landlord" inserted by section 2 (hh) of the Act, the landlord has to be either

in public service or had held an appointment therein, or he must be holding or had held a post in connection with the affairs or the Union or of a State. In the present case, even if the petitioner is not deemed to be in public service or in the State Service as such, but he certainly falls in the category of those who are serving in connection with the affairs of the State. It is the duty of the State to provide civil amenities to its citizens and for that purpose the States have been given powers under Entry 5, List II of Schedule VII of the Constitution to make laws. The municipalities have thus been created all over the State to enable them to discharge the functions of providing civic amenities to the citizens. Their employees thus cannot be said to be not working in connection with the affairs of the State. Otherwise, also, the municipalities are always held to be State within the meaning of Article 12 of the Constitution. In *Sirsa Municipality by its President, Sirsi v. Ceceilia Kom Francis Tellis*, (1), a case relating to a dismissed employee of the municipality, a declaration of continuity of service holding the order to be null and void was granted which is otherwise only the preserve of public servants. Section 21 of the Indian Penal Code defines "public servant". Under clause twelfth (b) thereof "every person—in the service or pay of a local authority etc., "has been declared as a "Public servant". Thus, looking from any angle, it has to be held that the employees of the municipal committees are working in connection with the affairs of the State and are thus entitled to the benefits of a "Specified Landlord" within the meaning of the Act.

(6) Moreover somewhat analogous matter has been discussed in detail by this Court in *Dr. Dina Nath Gulati v. Smt. Santokh Kaur and another* (2). In view of that, no meaningful argument could be raised on behalf of the respondent in this behalf. The only argument raised was that according to the statement of Objects and Reasons for bringing this amendment in the original Act by virtue of Punjab Act No. 2 of 1985, only the State Government employees or the Defence personnel or other Central Government employees are entitled to the benefit of the said amendment and, therefore, no other employees could claim themselves to be specified landlords. I am afraid this submission is devoid of force since the "Objects and Reasons" are never all pervading and exhaustive.

(1) A.I.R. 1973 S.C. 855.

(2) Civil Revision No. 1806 of 1986, decided on 8th December, 1986.

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(7) Since in the present case the landlord had held an appointment in the New Delhi Municipal Committee, he was certainly holding an appointment on a post in connection with the affairs of the State. It is not disputed that the Municipal Committee is governed and controlled by the Delhi Administration, Delhi, headed by a Lt. Governor. Thus, for all intents and purposes, the petitioner is fully covered by the definition of specified landlord. The finding of the Rent Controller in this behalf is wholly wrong and misconceived and is set aside.

(8) Since the permission to contest the application has been granted on the basis of the affidavit filed by the tenant that the landlord owns another suitable residential accommodation at Malerkotla and the same has more accommodation than the house in dispute, which fact has been denied by the landlord in his affidavit dated 6th September, 1986, therefore, before the tenant is allowed to contest the petition, he must file an additional affidavit giving complete details of the other suitable residential accommodation at Malerkotla with the landlrd. Such an affidavit be filed within a week of the appearance of the parties, who are directed to appear before the Rent Controller on 15th February, 1987. In case no such affidavit is filed, the tenant will not be entitled to contest the petition. If such an affidavit is filed, the ejectment application will be tried from day to day till the hearing is concluded and application decided as contemplated under sub-section (6) of Section 18-A of the Act.

(1) The petition is disposed of accordingly with no order as to costs.

H.S.B.

Before I. S. Tiwana, J.

CHARANJIT,—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondent.

Criminal Misc. No. 6111-M of 1986

February 23 1987.

Code of Criminal Procedure (II of 1974)—Section 321—Decision for withdrawal of a prosecution taken only by the State Government—Decision aforesaid—Whether vests solely in the Public Prosecutor—Public Prosecutor—Whether can be guided solely by the