

THE HIGH COURT OF SIKKIM: GANGTOK

WRIT PETITION (C) NO. 25 OF 2003

In the matter of a petition under Articles 226 and 227 of the Constitution of India.

and

in the matter of

Kantilal Jain, C/o Mafatlal Showroom, Ground Floor, L.I.C. Building, M. G. Marg, Gangtok, East Sikkim. ... Petitioner

VERSUS

- G. T. Bhutia, 1. The Learned Prescribed Authority, Under the Gangtok Rent Control & Eviction Act, 1956, Superintending Engineer (N/E), Buildings and Housing Department, Government of Sikkim, Nirman Bhavan, Gangtok, East Sikkim.
- 2. State of Sikkim, Through the Chief Secretary, Government of Sikkim, Tashiling Secretariat, Gangtok, East Sikkim.
- 3. Pem Topden, W/o Sonam Topden, Martam House, Gangtok, East Sikkim.

... Respondents

For the petitioner

: Messrs N. K. P. Sarraf and D. K.

Singh, Advocates.

For the respondents 1 & 2: Messrs S. P. Wangdi, Advocate General, J. B. Pradhan. Government Advocate and Karma Thinlay, Assistant

Government Advocate.

For the respondent 3

: T. B. Thapa, Advocate.



PRESENT: THE HON'BLE SHRI JUSTICE R.K. PATRA, CHIEF JUSTICE.
THE HON'B'LE SHRI JUSTICE N. SURJAMANI SINGH, JUDGE.

Date of judgment: 16th June, 2004.

JUDGMENT

R.K. PATRA, C.J.

In this petition under Articles 226 and 227 of the Constitution of India, the tenant impugns the validity of the order dated 14.8.2003 (annexure P8) made under section 7 of the Gangtok Rent Control and Eviction Act, 1956 (in brief the Eviction Act) by which the state government has been directed to take over the disputed business premises and give the respondent no.3 the opportunity to let out the same again. The petitioner also challenges the constitutional validity of section 7 of the Eviction Act.

2. The respondent no. 3 filed an application dated 4.6.2002 (annexure P1) before the Superintendent Engineer, Buildings & Housing Department (East Division), Gangtok (hereinafter referred to as the Prescribed Authority) requesting to take action under section 7 of the Eviction Act on the allegation that she as the absolute owner let out to the petitioner the shop premises on the ground floor of a six-storied r.c.c. building named 'Thondupling' otherwise known as L.I.C. building located at M.G. Marg, Gangtok but he had kept it closed for about 8 months. The Prescribed Authority issued notice no. 4/31/B/02-03/217/Bldgs. dated 3.7.2002 (annexure P2) to the petitioner to appear and submit his





written statement on 17.7.2002. On the date fixed the petitioner appeared before the Prescribed Authority but did not file any objection. He however submitted before it that as back as in 1979 he took the shop premises on rent and named it as "M/s. Gautam-Mafatlal Showroom". Prescribed Authority explained to him the grounds of complaint and asked him to produce evidence on the next date in support of his defence. In notice no.1071/4(31)B/ 02-03/1430/Bldgs/56(N/E) dated 2.8.2002 (annexure P3) the petitioner was further informed by the Prescribed Authority that local inspection was conducted which revealed that the showroom remained closed for more than 6 months for which he incurred the liability of being evicted under section 7 of the Eviction Act. The petitioner was accordingly directed to appear on 12.8.2002 to produce evidence in support of his case. On the date fixed (12.8.2002) the petitioner and his counsel appeared and sought for time for filing written objection. The matter was accordingly adjourned to 26.8.2002 for filing of objection. The petitioner filed a lengthy written objection (annexure P5) on 26.8.2002 before the Prescribed Authority. Thereafter the opposite party no. 3 examined 8 witnesses including herself to prove her case. The petitioner besides examining himself as RW1 examined 4 more witnesses in support of his





defence. The Prescribed Authority after hearing counsel for both parties has passed the impugned order.

- 3. At this juncture we may note that the counsel for the petitioner has submitted a long note of arguments of 37 pages centring around the vires of section 7 of the Eviction Act. The note appears to be the outcome of undigested readings of case-laws otherwise it would not have been burdened with irrelevant, indifferent, out of context and unnecessary materials.
- **4.** Be that as it may, we would first deal with submission on the vires of section 7 of the Eviction Act which reads as follows:

"No landlord or tenant shall keep either the whole or any part of the <u>business</u> premises facing the Bazar street closed down for a period exceeding six months. If he does so, the Sikkim Darbar shall have the right to take possession of the premises and let it out to any one else whom it thinks proper:

Provided the landlord will first be given the opportunity to let out such premises himself on being so directed by the

For the purpose of considering the question of validity of section 7, it is relevant to note that by the Constitution (36th Amendment) Act, 1975, Sikkim was admitted into the Union of India as a State. Article 371F is a special constitutional provision with respect to the State of Sikkim. It begins with a non-obstante clause. Its relevant portion is extracted hereunder:

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"371F. Special provisions with respect to the State of Sikkim.Notwithstanding anything in this Constitution,-

a)	
b)	***************************************
c)	
d)	
e)	***************************************
f)	
g)	
h)	
i)	

- (k) all laws in force immediately
 before the appointed day in the
 territories comprised in the
 State of Sikkim or any part
 thereof shall continue to be in
 force therein until amended or
 repealed by a competent
 Legislature or other competent
 authority;
- (1) for the purpose of facilitating the application of any such law as is referred to in clause (k) in relation to the administration of the State of Sikkim and for the purpose of bringing provisions of any such law into accord with the provisions of this Constitution, the President may, within two years from the appointed day, by order, make such adaptations and modifications of the whether by way of repeal or amendment, may as necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications made, and any adaptations or modification shall not be questioned in any court of law;"



The Eviction Act is a pre-merger statute being of the year 1956. It is one of the 'existing laws' which is continued by the aforesaid clause (k). A question came up for consideration before the Supreme Court in State of Sikkim vs. Surendra Prasad Sharma AIR 1994 SCC 2342 as to whether the 'existing laws' should be limited by the other provisions of the Constitution, like Fundamental Rights. Their Lordships answered the question in the negative and opined as follows:-

"21. Article 371F, is as stated earlier, a special constitutional provision with respect to the State of Sikkim. The reason why it begins with a non obstante clause obviously is that the matters referred to in the various clauses immediately following required a protective cover so that such down matters are not struck unconstitutional because they do not satisfy the constitutional requirement. Unless such immunity was granted 'the laws in force' would have had to meet the test of Art. 13 of the Constitution. being the objective, existing laws or laws in force came to be protected by clause (k) added to Art. 371F. The said laws in force in the State of Sikkim were, therefore, protected, until amended or repealed, to ensure smooth transition from the Chogyal's rule to the democratic rule under the Constitution. Inherent in clause (1) is the assumption that many of such existing may be inconsistent with Constitution and, therefore, the President came to be conferred with a special power to make adaptations and modifications with a view to making the said rule consistent with the Constitution. Of course this power had to be exercised within two years from the appointed day. If any adaptation or modification is made in the law in force prevailing prior to the appointed day, the

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law would apply subject to such adaptation and modification. It is thus obvious that the adaptation and modification made by the President in exercise of this special power does not have the effect of the law ceasing to be a law in force within the meaning of clause (k) of Art. 371F. Therefore, on the plain language of the said provision it is difficult to hold that the effect of adaptation or modification is to take the law out of the purview of 'laws in force'."

In view of the aforesaid, we have no doubt to hold that the Eviction Act being one of the 'laws in force' is under the protective umbrella of Article 371F and continues to be a constitutionally valid statute. It is therefore futile on the part of the petitioner to contend that section 7 thereof offends Articles 14, 19 and 21 of the Constitution of India.

5. Counsel for the petitioner relying on the majority judgment of the Supreme Court in R. C. Poudyal vs. Union of India AIR 1993 SC 1804 submitted that Article 371F cannot give immunity to section 7 of the Eviction Act because it is not in accord with basic features of the Constitution. We have not been able to appreciate as to how section 7 seeks to destroy the basic structures of our Constitution. We therefore outright reject the said contention without any hesitation. We may state that in the case of Poudyal (supra) their Lordships were considering the validity of one of the clauses of Article 371F itself i.e. clause (f). It's validity was challenged on the ground that it was violative of 'one person one vote' rule and therefore

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contravened the essence of democracy, a basic feature of the Constitution. Their Lordships by majority upheld its validity and opined that the *non-obstante* clause therein cannot be construed as taking clause (f) of Article 371F outside the limitations of the amending power itself. As noted above, in Poudyal's (supra) case, the validity of clause (f) of Article 371F was impugned. The ratio of that case therefore has no application to the case at hand in which a pre-merger law gets 'protective cover' under clause (k) of Article 371F.

In any case there is no substance in the contention of the petitioner that section 7 of the Eviction Act is violative of Articles 14, 19 and 21 of the Constitution. The preamble of the Act which is considered as a key to open the minds of the law makers indicates that the Act was made as it was felt necessary to control rent and eviction of accommodation in Gangtok bazar premises. The Act is confined to all buildings and constructions situated within Gangtok bazar area [vide section 1(iii)]. There can be no dispute that accommodation in Gangtok bazar premises is limited and the need for additional accommodation cannot be over-emphasised. As per section 7, if the landlord or tenant keeps the whole or any part of the business premises facing the bazar street closed down for a period exceeding 6 months he has to face the consequences provided therein, i.e. the state government shall have the right to take



possession of the premises and let it out to any one else whom it thinks proper after giving the landlord the first opportunity to let out such premises himself. The rationale behind this provision is obvious. There being acute dearth of business premises in the bazar street, neither the tenant nor the landlord is permitted to keep shut it for more than 6 months. If it is found to have been closed down for more than 6 months it shall be allowed to be let out so that the problem of shortage of business premises can be properly met.

Counsel for the petitioner submitted that the Eviction Act is confined to Gangtok bazar premises only and not applicable to other parts of Gagntok and therefore it is hit by equality clause enshrined in Article 14. It is now fairly settled that what Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. A classification may properly be made on territorial basis but it must bear nexus with the object of the impugned provision. Availability (non-availability) of accommodation may vary from locality to locality. In a bazar area, business accommodation may not be adequately available whereas in a non-bazar area there might not be any such problem. The purpose of the Eviction Act is to meet the situation of scarcity of business premises. Therefore classification made



on the basis of bazar area and non-bazar area cannot be held to be violative of Article 14 of the Constitution.

Counsel for the petitioner did not indicate as to how section 7 of the Eviction Act violates his rights guaranteed by Article 19. His right to livelihood might have been affected because of displacement as a result of the impugned order but it was passed under the procedure established by law. Therefore it cannot be held that the petitioner is deprived of his life or personal liberty guaranteed by Article 21 of the Constitution.

Counsel for the petitioner made a two-pronged attack on the impugned order (annexure P8). Firstly it was contended that local inspection report of the Assistant Engineer was based on statements of some witnesses which were taken behind the back of the petitioner and as such the Prescribed Authority could not have utilised it against him. Secondly it was submitted that the evidence adduced before the Prescribed Authority does not prove that the shop premises remained closed for a period exceeding 6 months. In support of this submission, the local inspection report (annexure P4) was referred to wherein the Assistant Engineer noted that nobody around was sure about the exact date of the closure of the shop premises.

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8. Under section 7, closure of business premises facing the bazar street beyond a period of 6 months either by the landlord or tenant is not permissible. On perusal of the impugned order (annexure P8) it would appear that the Prescribed Authority has recorded the following finding:

"The shop premises facing the main bazaar street situated at New Market, Gangtok continuously remained closed from September, 2001 to July, 2002."

9. So far as the first contention is concerned, the Prescribed Authority has noted (vide conclusion no. 4) that independent inquiry also proves that the shop premises were closed for about 9 months. During the spot inspection the Assistant Engineer examined some witnesses behind the back of the petitioner. His report is based on the evidence obtained from those witnesses. The question that arises for consideration is whether the said report can be utilised against the petitioner. There is no dispute that in course of the proceedings before the Prescribed Authority a copy of the said report was made available to the petitioner. Thus he was made aware of the contents of the reports. It is not that the report was withheld from him. The petitioner also examined witnesses before the Prescribed Authority to disprove the contents of the report. In the circumstances, we are inclined to hold that the petitioner was not prejudiced





in defending himself merely because of the adverse report submitted by the Assistant Engineer.

It may be stated that the Prescribed Authority has considered the aforesaid report of the Assistant Engineer along with other evidence available on record. The ultimate finding reached by the Prescribed Authority is not vitiated merely because the report of the Assistant Engineer was taken into account while considering other evidence. final conclusion drawn by the Prescribed Authority is based on objective assessment of evidence and is not based on subjective satisfaction. As has been held by the Supreme Court in Zora Singh vs. J. M. Tandon AIR 1971 SC 1537 that the principle, that the decision of a Tribunal would be vitiated if some of the reasons relied on by it for its conclusions turn out to be extraneous or otherwise unsustainable, applies to cases in which the conclusion is arrived at on subjective satisfaction. For, in such cases it would be difficult for superior Court to find out which of the reasons brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, if it found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a Superior Court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in writ petition for certiorari the Superior Court does not sit in appeal, but



exercises only supervisory jurisdiction and therefore does not enter into equation of sufficiency of evidence.

Even if the report of the Assistant Engineer is excluded from consideration the impugned decision can be upheld if there is other evidence on record justifying the conclusion reached by the Prescribed Authority.

10. As regards the second contention, it may be stated that the onus of proving that the premises remained closed for more than 6 months was with the respondent no. In support of her case, she got herself examined as PW1. She deposed that the petitioner's business premises remained closed for more than 6 months before September, 2001 till filing of the application for eviction. She was crossexamined but nothing substantial was brought out to discredit her testimony. One Ms. Pemba Lhamu Bhutia was examined as PW4. She deposed that she was the resident in the second floor of the "Thondupling' building. Her categorical evidence is that the petitioner's shop premises in the ground floor of the said building remained closed before Dushera 2001 to July, 2002. PW5 is one Umesh Agarwal. He has his residence which faces the shop premises. His evidence is that the shop premises was closed from Puja 2001 to July, 2002. Pushpa Agarwal (PW6) deposed that her husband runs a provisions store in the same building where the shop premises of the petitioner



She stated that the shop remained closed continuously from Puja 2001 till July, 2002. Bahadur Diyali (PW7) who runs a tape-recording-repair shop just opposite to the petitioner's business premises stated that the business premises remained closed from Dushera 2001 for about 6 to 7 months. PW8 is one Navin Pradhan who is a stamp vendor. He runs his business just about 20 yards from the disputed business premises. All the aforesaid witnesses are competent persons to speak about the closure of the petitioner's business premises because they all happened to be the residents of the vicinity. rebut this evidence the petitioner besides examining himself as RW1 examined 4 more witnesses in support of his case. Strangely no document like cash memos or audited accounts were produced to prove that during the relevant period he had business transaction. On consideration of the evidence of both sides the Prescribed Authority has recorded a finding that the shop premises remained closed between September, 2001 to July, 2002.

In order to reach the above finding, the Prescribed Authority relied upon the evidence of those witnesses examined on behalf of the respondent no.3 who had been residing in the vicinity of the shop premises. It found that telephone bills and number of calls did not indicate that the shop premises remained opened during the above period. It





also noticed that the petitioner failed to produce any independent witness as well as documents like cash memos, audited accounts showing the business transaction during the relevant period.

The above finding of facts is based on appreciation of evidence and this Court cannot disturb the said finding of fact based on appreciation of evidence. The impugned order does not suffer from any error of law apparent on the face of the record.

- 11. It was next contended on behalf of the petitioner that without taking recourse to section 7, the Prescribed Authority could have imposed fine on the petitioner as laid down in section 13. The above contention is mis-conceived in law. Section 13 provides that if any person contravenes, attempts or abets the contravention of any provisions of the Eviction Act he shall be liable to fine which may extend to Rs.1,000/-, in default of one month's simple imprisonment. The above is a penal provision and has got no relevancy to an order passed under section 7. A landlord or a tenant besides facing an order passed under section 7 may also be criminally prosecuted under section 13. The provisions of sections 7 and 13 are mutually exclusive and can simultaneously operate.
- 12. Counsel for the petitioner also argued that he was ready and willing to pay rent to the landlord but this





aspect was not taken into account by the Prescribed

Authority. We need not consider this submission because
the impugned order has not been passed for default or nonpayment of rent.

13. In view of what has been stated above, we do not find any merit in this petition which is accordingly dismissed with costs assessed at Rs.3,000/-.

> (R. K. Patra) Chief Justice

I agree.

(N. Surjamani Singh)

Judge
16.06.2004

Dictation taken & typed by me Dipak Saha