A

S. M. MAHENDRU AND COMPANY ETC.

v.

B

STATE OF TAMIL NADU AND ANR.

December 12, 1984.

[V. D. TULZAPURKAR, R. S. PATHAK AND SABYASACHI MUKHARJI JJ.]

C

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act 18 of 1960)—S. 29—Scope of—Government of Tamil Nadu issued Notification No. II (2) H. O. 6060/76 dated 21st November, 1976 exempting buildings owned inter alia by co-operative societies from all the provisions of the Act 18 of 1960—Validity of notification—Notification held valid and not violative of Art. 14 of the Constitution.

D

In exercise of the powers conferred by section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act 18 of 1960), the Government of Tamil Nadu by a Notification No. II (2) H. O. 6060/76 dated 21st November, 1976 exempted the Buildings owned, *inter alia* by all the co-operative societies from all the provisions of the said Act. Since the protection available to the petitioners, who were tenants in a building belonging to respondent No. 2, an Apex Society registered under the Tamil Nadu Co-operative Societies Act, 1961 and covered by the said notification, had been withdrawn and since the petitioners were facing the imminent prospect of suffering eviction decrees against them, they filed the present writ petitions challenging the constitutional validity of the impugned notification on the ground that the same was violative of Art. 14 of the Constitution. The petitioners contended that treating the buildings owned by all the co-operative societies in the State of Tamil Nadu as falling into one group while exercising the power under sec. 29 of the Act will have to be regarded as a rational classification based on an intelligible differentia but the differentia on which this classification was based had no nexus with the object of curbing the two evils of rack-renting and unreasonable eviction for which the power to grant exemption had been conferred upon the State Government under sec. 29 of the Act and since the impugned notification did not satisfy the test of nexus the exemption granted to all such buildings could not be sustained and will have to be regarded as discriminatory and violative of Art. 14. In other words Counsel urged that there was and is no warrant of any presumption that co-operative societies qua landlords will not indulge in rack-renting or will not unreasonably evict tenants; in fact they would not be different from other private landlords so far as the two evils sought to be curbed by the Act are concerned and therefore Counsel urged that the exemption granted could not be said to be in conformity with the guidance afforded by the scheme and the provisions of the Act.

E

F

G

H

Dismissing the petitions, A

HELD: It is true that under sec. 4 of the Tamil Nadu Co-operative Societies Act the very object of every co-operative society registered thereunder is the promotion of economic interests of its members and sec. 62 of the Act provides for payment of dividends on shares to its members as also for payment of bonus to its members and paid employees. But these aspects of a co-operative society do not mean that it could be likened to any other body undertaking similar activities on commercial lines and to do so would be to miss the very basis on which the co-operative movement was launched and propagated and has been making progress in the country during the last several decades. Indisputably, co-operative societies which carry on their activities in various fields do so for the purpose of attaining the social and economic welfare of a large section of the people belonging to the middle-class and the rural class by encouraging thrift, self-help and mutual aid amongst them, especially by eliminating the middle-man. But the object of promoting the economic interests of the members has to be achieved by following co-operative principles where the profit motive will be restricted to a reasonable level unlike other commercial bodies where sky is the limit so far as their desire to earn profits is concerned. Sections 4 and 62 of the Act and Rule 46 of the Rules make it clear that in the matter of distribution of profits by way of payment of dividend to members and payment of bonus to members as well as paid employees restrictions have been placed by law and the same is maintained at a reasonable level and considerable portion of the net profits is apportioned and required to be carried to various kinds of funds, like co-operative development fund, co-operative education fund, reserve fund etc. In fact it is such statutory appropriations and restrictions on payment of dividends and bonus which differentiates co-operative societies from other bodies undertaking similar activities on commercial lines and therefore, the buildings belonging to such co-operative societies are substantially different from the buildings owned by private landlords. Further it has to be appreciated that these statutory provisions are applicable to all types of co-operative societies specified in Rule 14 whatever be their nature or functions. The profit element being maintained at a reasonable level by provisions of law in all types of co-operative societies there is every justification for the assumption that no co-operative society will indulge in rack-renting or unreasonable eviction. In this view of the matter if the State Government came to the conclusion that in the case of co-operative societies there being no apprehension that they would indulge in either of these two evils exemption from the provisions of the Tamil Nadu Act No. 18 of 1960 should be granted in favour of buildings belonging to such co-operative societies it will have to be regarded as a legitimate exercise of the power conferred on it under sec. 29 of the Act, the same being in conformity with the guidance afforded by the preamble and provisions of the Act in that behalf. [422D-G; 424C-G] B C D E F G

Besides, on the factual side of the issue the facts and circumstances put forward by the State Government in its counter affidavit which have gone unchallenged clearly show that the differentia on the basis of which the classification was made had a clear nexus with the object with which the power to grant exemption has been conferred upon the State and therefore the impugned notification will have to be regarded as valid. [425E-F] H

A ORIGINAL JURISDICTION : W. P. No. 893 and 967 of 1979 and W. P. No. 295 of 1980.

Under Article 32 of the Constitution of India

Dr. Y. S. Chitale, and *Vineet Kumar* for the petitioners in B W. P. Nos. 823 & 967 of 1979.

A. T. M. Sampat and *P. N. Ramalingam* for the Petitioners in W. P. No. 295/80.

C *Anil Devan, K. S. Ramamurthy, V. M. Tarkunde, M. K. D. Namboodry* and *S. BalaKrishnan* for the respondents in W. P. Nos. 893 & 967 of 1979 and W. P. No. 295 of 1980.

The Judgment of the Court was delivered by

D TULZAPURKAR, J. By these three writ petitions filed under Art. 32 of the Constitution the petitioners, who are tenants in a building belonging to respondent No. 2 Society, have challenged the validity of the exemption granted to all buildings owned by all Co-operative Societies in the State of Tamil Nadu from all the provisions of the T. N. Act 18 of 1960 under sec. 29 thereof.

E

The facts giving rise to the aforesaid challenge lie in a narrow compass. The petitioners are tenants in different portions on the ground floor of the building bearing Door No. 188, Mount Road, Madras belonging to second respondent which is an Apex Society registered under the Tamil Nadu Co-operative Societies Act, 1961. F It appears that the property was purchased in 1961 by the second respondent from its previous owners M/s. Mohammed Ibrahim and Company, and soon thereafter the second respondent applied to the State Government under sec. 29 of the Act and sought exemption for it from all the provisions of the Act. But on hearing the objections raised by the petitioners and other tenants the application was rejected. Respondent No. 2 thereupon made two attempts to evict G the petitioners from their respective premises. The first was on the ground that the premises are required by it for its own occupation but at the end of a long drawn out litigation respondent No. 2 failed to obtain possession ; the second was on the ground that it required the premises for demolition and new construction and it was during the pendency of this litigation that the State Government issued its H Notification No. II (2) H.O. 6060/76 dated 21.11.1976 under sec. 29

of the Act whereby the State Government exempted the buildings belonging to all Co-operative Societies in the State of Tamil Nadu from all the provisions of the Act. On the issuance of this Notification respondent No. 2 withdrew its eviction petitions preferred on the ground of demolition and new construction and served notices upon the petitioners under sec. 106 of the Transfer of Property Act terminating their tenancies and filed civil suits against them in the City Civil Court, Madras for recovery of vacant possession of the premises in their respective occupation. The petitioners have filed their written statements and suits are awaiting trial. But since the protection available to them has been withdrawn the petitioners are facing the imminent prospect of suffering eviction decrees against them and therefore, have approached this Court by means of these writ petitions challenging the constitutional validity of the Notification in question of the ground that the same is violative of Art. 14 of the Constitution and have obtained stay of further proceedings in the suits.

The impugned Notification dated 21st November, 1976 runs thus :

> "No. II (2)H.O. 6060/76—In exercise of the powers conferred by Sec. 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 (Tamil Nadu Act 18 of 1960), the Government of Tamil Nadu hereby exempts the buildings owned by all Government Undertakings including Government Companies registered under the Indian Companies Act 1956 Central Act I of 1956) and by all the Co-operative Societies from all the provisions of the said Act."

As was done in the earlier case dealing with the total exemption granted in favour of all buildings belonging to public religious trusts and public charities, here also Counsel for the petitioners fairly stated that treating the buildings owned by all the Co-operative Societies in the State of Tamil Nadu as falling into one group while exercising the power under sec. 29 of the Act will have to be regarded as a rational classification based on an intelligible differentia inasmuch as Co-operative Societies while carrying on their activities in various fields do serve a great public purpose of attaining the social and economic welfare of a large section of the people belonging to the middle class and the rural class by encouraging thrift, self-help and mutual aid amongst them and by eliminating the middle-

man and as such do form a distinct group different from other bodies undertaking similar activities on commercial lines and as such buildings belonging to Co-operative Societies may need special or preferential treatment in some matters like registration of documents, payment of stamp duty, recovery of their dues etc. at the hands of the State Government but according to Counsel the differentia on which this classification is based has no nexus with the object with which the powers to grant exemption has been conferred upon the State Government under sec. 29 of the Act and since the impugned Notification does not satisfy the test of nexus the exemption granted to all such buildings cannot be sustained and will have to be regarded as discriminatory and violative of Art. 14.

By way of elaborating the aforesaid contention Counsel for the petitioners urged that the Act was put on the statute book for the purpose of curbing the two evils of rack-renting and unreasonable eviction and that the power to grant exemption could as per the guidance afforded by the scheme and the provisions of the Act be exercised by the State Government in cases where the mischief sought to be remedied by the Act is neither prevalent nor apprehended or in cases where an inflexible application of the law is likely to result in undue hardship or in cases where the beneficial provision of the Act is likely to be or is being abused by persons for whom it is intended and according to Counsel the exemption in favour of the buildings belonging to all Co-operative Societies in the State of Tamil Nadu does not conform to such guidance. Counsel pointed out that Rule 11 of the Rules made under the T.N. Co-operative Societies Act 1961 specifies as many as 13 different classes of Co-operative Societies, such as farming society, credit society, housing society, marketing society etc. and the impugned Notification indiscriminately and unconditionally exempts all buildings belonging to all types of Co-operative Societies with no regard to their nature or functions. Further, according to sec. 4 of the T.N. Co-operative Societies Act the very object of every Co-operative Society is the promotion of the economic interest of its Members and sec. 62 of that Act provides not only for payment of dividends on shares to members but also for payment of bonus to members and paid-employees of the Society. Hence it is unrealistic to assume that Co-operative Societies are not or will not indulge in rack-renting or unreasonable eviction or will be ideal landlords whose tenants will not be in need of any statutory protection. In other words Counsel urged that there was and is no warrant of any

presumption that Co-operative Societies *qua* landlords will not indulge in rack-renting or will not unreasonably evict tenants ; in fact they would not be different from other private landlords so far as the two evils sought to be curbed by the Act are concerned and therefore Counsel urged that the exemption granted could not be said to be in conformity with the guidance afforded by the scheme and the provisions of the Act.

In support of the above contention Counsel relied upon a decision of this Court in *Baburao Shantaram More* v. *The Bombay Housing Board and Anr.*(1) where the validity of sec. 3-A of the Bombay Housing Board Act, 1951 was challenged as infringing Art. 14. It was urged in that case that sec. 3-A exempted lands and buildings belonging to the Bombay Housing Board from the operation of the Bombay Rent Act, 1947 while lands and buildings belonging to numerous Co-operative Housing Societies, which were similarly situated and whose object was also to solve housing problems, were not given any exemption from the operation of the Rent Act and the result was that while tenants of the Co-operative Housing Societies were fully protected against unreasonable eviction and enhancement of rent, the tenants of the Housing Board were denied such protection and therefore sec. 3-A was violative of Art. 14. The contention was negatived on the ground that the Housing Board and the Co-operative Housing Societies incorporated under the Co-operative Societies Act were not similarly situated and in that behalf this Court observed thus :

> "Further, though these Co-operative Housing Societies are no doubt incorporated bodies, they nevertheless may earn profits which may be distributed amongst their members. The Board, on the other hand, is incorporated body brought into existence for the purpose of framing housing schemes to solve the problem of acute shortage of housing in Bombay. There are no share-holders interested in the distribution of any profits. It is under the control of the Government and acts under the orders of the Government. In effect, it is a Government sponsored body not having any profits making motive. No material has been placed before us which may remotely be regarded as suggesting, much less proving, that Co-operative Housing

(1) [1954] S.C.R. 572

A Societies or their members stand similarly situated vis-a-vis the Board and its tenants."

Relying upon the above observations Counsel for the petitioners submitted that this Court had recognised the position that various activities are undertaken by Co-operative Societies with the motive B of earning profits and as such there was and is no warrant for treating them differently from other private landlords in the context of two evils sought to be remedied by the Act and in this sense the exemption granted does not satisfy the test or nexus and therefore the same infringes Art. 14.

C The above contention so presented, though seemingly plausible, will, on deeper scrutiny, be found to be without substance and we shall presently indicate our reasons for saying so. It is true that under sec. 4 of the Tamil Nadu Co-operative Societies Act the very object of every Co-operative Society registered thereunder is the promotion of economic interests of its members and s. 62 of the Act D provides for payment of dividends on shares to its members as also for payment of bonus to its members and paid employees. But these aspects of a Co-operative Society do not mean that it could be linkened to any other body undertaking similar activities on commercial lines and to do so would be to miss the very basis on which the E cooperative movement was launched and propagated and has been making progress in the country during the last several decades. Indisputably, Co-operative Societies which carry on their activities in various fields do so for the purpose of attaining the social and economic welfare of a large section of the people belonging to the midle-class and the rural class by encouraging thrift, self-help and F mutual aid amongst them, especially by eliminating the middle-man. But the object of promoting the economic interests of the members has to be achieved by following cooperative principles where the profit motive will be restricted to a reasonable level unlike other commercial bodies where sky is the limit so far as their desire to earn profits is concerned. Sections 4 and 62 of the T.N. Co-operative Societies Act and Rule 46 of the Rules made under that Act G bring out this aspect of the matter very eloquently. Section 4 itself states that a society, which has as its object *the promotion of economic interest of its members in accordance with cooperatives principle*, may, subject to the provisions of the Act be registered thereunder. In other words the promotion of economic interests of the members has to be achieved in accordance with co-operative principles and the H realisation thereof has been made subject to the provisions of the

Act. Section 62 which deals with disposal of net profits puts restrictions on the disbursement of such profits and it runs as follows : A

"62. *Disposal of net profits*—(1) (a) A registered society shall out of its net profits as declared by the Registrar for the purposes of this Act in respect of any co-operative year contribute such amount not exceeding,— B

(i) five percent of the net profits to the co-operative development fund ; and

(ii) two per cent of the net profits to the co-operative education fund, C

as may be specified in the Rules.

(b) Such contribution shall be made within such time and in such manner as may be prescribed. D

(2) The balance of the net profits so declared shall be appropriated—

firstly, for being credited to a reserve fund, the amount so credited being not less than twenty per cent, but not exceeding thirty per cent, of the net profits ; E

secondly, towards contribution to such other funds and at such rates as may be specified in the Rules ;

F

thirdly, towards payment of dividends on shares to members at such rate as may be specified in the Rules ;

fourthly, towards payment of bonus to members and paid employees of the registered society at such rate and subject to such conditions as may be specified in the Rules ; G

fifthly, towards contribution to such other funds and such rates as may be specified in the by-laws ;

sixthly, towards contribution to the common good fund at such rate not exceeding ten per cent of the net profits as may be specified in the Rules ; and H

A seventhly, the remainder, if any, of the net profits being credited to the reserve fund."

Rule 46 prescribes the limits on payment of dividends on shares to its members as also on payment of bonus to its members and paid employees. Sub-Rule (3) of Rule 46 says that the payment of B dividends on shares to members by a Society shall not exceed 6 per cent per annum on the paid up value of each share ; provided that the Government may by special or general order permit any Society or class of Societies to pay dividend at the rate exceeding 6 per cent. Similarly under Sub-Rules (4) and (5) restrictions have C been placed on payment of bonus to members and to paid employees. In view of these provisions it will appear clear that in the matter of distribution of profits by way of payment of dividend to members and payment of bonus to members as well as paid employees restrictions have been placed by law and the same is maintained at a reasonable level and considerable portion of the net D profits is apportioned and required to be carried to various kinds of funds, like co-operative development fund, co-operative education fund, reserve fund etc. In fact it is such statutory appropriations and restrictions on payment of dividends and bonus which differentiates Co-operative Societies from other bodies undertaking similar activities on commercial lines and therefore, the buildings belonging E to such Co-operative Societies are substantially different from the buildings owned by private landlords. Further, it has to be appreciated that these statutory provisions are applicable to all types of Co-operative Societies specified in Rule 14 whatever be their nature or functions. The profit element being maintained at a reasonable level by provisions of law in all types of Co-operative F Societies there is every justification for the assumption that no cooperative society will indulge in rack-renting or unreasonable eviction. In this view of the matter if the State Government came to the conclusion that in the case of Co-operative Societies there being no apprehension that they would indulge in either of these two evils exemption from the provisions of the T.N. Act No. 18 of 1960 G should be granted in favour of buildings belonging to such Co-operative Societies it will have to be regarded as a legitimate exercise of the power conferred on it under s. 29 of the Act, the same being in conformity with the guidance afforded by the preamble and provisions of the Act in that behalf.

Besides, on the factual sides of the issue it has been specifically H averred in the counter affidavit filed on behalf of the State Govern-

ment that it duly took note of the fact that all types of Co-operative Societies functioning in Madras City and at several centres throughout the State as a class were engaged in various kinds of activities promoting social welfare, rural-development and economic good by providing employment to lacs of people and were doing excellent work by way of implementing one of the Directive Principles of State Policy embodied in Art. 43 of the Constitution, that several complaints were received from these Co operative Societies that they were facing problems arising out of a literal application of the T.N. Act 18 of 1960, particularly in the matter of securing accommodation in their own buildings for carrying on their activities and that they got involved in long drawn out litigations in that behalf and requesting for an exemption from the provisions of the Act so that they could be relieved of the hardships from which they were suffering; it has been further averred that the Government also took note of the fact that it was not the business activity of any Co-operative Society including even a Co-operative Housing Society to purchase buildings for the purpose of letting them out and earning income therefrom and as such there was no apprehension of indulging in rack renting on their behalf and that on a consideration of all the relevant factors the Government was satisfied that the protection given to the tenants of such buildings, if withdrawn, would not result in rack renting or unreasonable eviction and that the granting of exemption to them was necessary to relieve them of great hardship. It may be stated that all these averments have gone unchallenged and in our view the facts and circumstances put forward by the State Government clearly show that the differentia on the basis of which the classification was made had a clear nexus with the object with which the power to grant exemption has been conferred upon the State and therefore the impugned Notification will have to be regarded as valid.

In regard to respondent No. 2 being the Apex Society herein, the additional factors taken into consideration were that out of its total share capital of 13.78 crores the State Government's contribution was to the tune of 12.81 crores, that the Government had guaranteed the loans borrowed by it for its working capital, that as the apex body it had membership of about 1488 primary societies (Handloom Weavers Co-operative Societies) and that it had 34 branches and two godowns in Madras and was required to pay for its rented premises rent at the rate of Rs. 2.50 per square foot while the tenants of their own building were paying rent at the rate of 20 paisa per square feet; respondent No. 2 society was also involved in a long

drawn out litigation under the provisions of the T.N. Act 18 of 1960. In other words, respondent No. 2 society was a glaring instance of undue hardship being suffered by a Co-operative Society as a result of the literal application of the Act. We are sure that a large number of similar instances must have prompted the State Government to issue the impugned Notification which as we have said above will have to be regarded a legitimate exercise of power conferred on the State Government under sec. 29 of the Act.

Counsel has of course placed strong reliance upon the observations made by this Court in *Baburao Shantaram's* case (supra) which have been quoted above in support of his contention but in our view neither the ratio nor the observations are of any avail to the petitioners. It will be clear at once that the decision in question is no authority for the proposition that exemption from the provisions of any rent-control enactment cannot be granted in favour of the buildings owned by Co-operative Societies. The case was concerned with the constitutional validity of sec. 3-A of the Bombay Housing Board Act, 1951 where-under exemption had been granted to lands and buildings belonging to the Bombay Housing Board from the operation of the Bombay Rent Act, 1947 and its validity was upheld by this Court. One of the contentions urged before the Court was that buildings belonging to Co-operative Housing Societies in Bombay were similarly situated as the buildings belonging to the Housing Board inasmuch as the object served by Co-operative Housing Societies and the Housing Board was the same namely, solving the housing problems of the city of Bombay and even so, though the tenants of Co-operative Housing Societies were fully protected against unreasonable eviction and enhancement of rent, the tenants of Housing Board were denied such protection and therefore sec. 3-A was discriminatory and this contention was negatived by the Court by observing that the Co-operative Housing Societies and their members were not similarly situated vis-a-vis the Board and its tenants and while pointing out the difference the Court stated that while Co-operative Housing Societies may earn profits distributable among its members there was no question of the Housing Board making any profits. The Court was not concerned with the question as to whether a simiar exemption if granted to buildings belonging to Co-operative Societies would be valid or not. The difference pointed by this Court was sufficient to refute the charge of discrimination levelled against the particular piece of legislation (sec. 3-A of the B'bay Housing Boards Act 1951) but it will be fallacious to rely upon this difference for the purpose of

striking down the exemption granted in favour of buildings of Co-operative Societies under another enactment if such exemption is otherwise justified on the facts and circumstances obtaining in regard to such buildings. In fact as explained earlier the Co-operative principles which govern the functioning of these Co-operative Societies put a curb on their profit motive and as pointed there are statutory provisions which maintain their profit element at reasonable level which warrant the assumption that Co-operative Societies would not indulge in rack-renting or unreasonable eviction and it was in the light of this position as also after careful study of all relevant factors obtaining in their case the State Government was satisfied that the grant of total exemption in favour of the buildings of all Co-operative Societies functioning in the entire State was necessary. The observations relied upon cannot therefore support the petitioners' contention.

A B C

In the result the writ petitions are dismissed. Interim orders, if any are vacted. There will be no order as to costs.

H.S.K. *Petitions dismissed*