

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.17590 of 2001
Date of Decision.12.02.2015

Rai Bahadur Makhan Lal Dharamshala TrustPetitioner

Versus

State of Haryana and anotherRespondents

Present: Mr. Manoj Bajaj, Advocate
for the petitioner.

Mr. Keshav Gupta, AAG, Haryana.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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K. KANNAN J. (ORAL)

1. The petitioner's case is that being a charitable trust, the Government ought to provide for an exemption from the applicability of the Haryana Urban (Control of Rent and Eviction) Act, 1973. The power vests with the Government to grant such an exemption under Section 3. For a similar relief sought before this Court earlier, the matter went up to the Supreme Court when the Supreme Court directed in SLP No.12103 of 1999 that the petitioner must move the Government for seeking for exemption in favour of all public charitable institutions and it would be for the Government to consider any such exemption to be extended. The petitioner's grievance is that he had given such an application setting out the circumstances which impelled the petitioner to approach the Government and secure an exemption particularly as regards the fact that the rent which was being paid by the tenants was grossly

insufficient and the interests of the charitable Trust were seriously

prejudiced. The State has responded through an order passed on 14.07.2000 which is challenged in the writ petition that the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 are applicable to public charitable Trust as well and the Sections which apply them cannot be taken as violative of Articles 14, 19(1)(g) and 21 of the Constitution. Since they did not infringe of legal/fundamental right of the Trust, the representation of the Trust could not be accepted.

2. Learned counsel appearing on behalf of the petitioner would state that the disposal of the representation through the impugned order is without any reasoning and it had not considered the factors which the Supreme Court outlined in its decision in S. Kandaswamy Chettiar Vs. State of Tamil Nadu 1985(1) SCC 290. The counsel would refer to the passages in judgment of the Supreme Court which justify the grant of such exemption and which would make possible for the charitable Trust not to be fettered by the provisions relating to fixation of rent and for securing eviction even without reference to the limited grounds available under the Rent Control Act enactments.

3. I must point out to the fundamental flaw in the argument of the counsel for the petitioner in assuming that S. Kandaswamy's case referred to above would answer the situation of what is canvassed by the petitioner. The case before the Supreme Court was at the instance of a tenant who was faced with an action for eviction without resort to the Rent Control Act. The exemption from the applicability of the Act was claimed by the charitable Trust under Section 29 of the Tamil Nadu Building Lease and Rent Control Act. The Supreme Court was holding

that there was a justification for providing exemption and the object which was sought to be secured was to relieve the charitable Trust from the limitations which the rent control enactments impose on an ordinary landlord for pegging down the rents to what was contracted and allowing for the tenants to continue even after the expiry of the lease period. It was, therefore, finding that if there is an enactment which provides for exemption for charitable Trust and if the Government had chosen to extend the benefit of such exemptions to charitable Trust, there was nothing arbitrary in such an exercise and the challenge under Article 14 cannot, therefore, be sustained. It must be remembered that the decision does not make available a corollary that if such exemption is not granted, there is violation of Article 14. The exemption is in the nature of a privilege. If a privilege is extended, it can be supported by the particular factors that allow for such grant of exemption and Article 14 itself should be, therefore, understood to make available exceptions to secure particular objects. Equality principle is always understood as supporting even certain discriminatory practices and the justification exists to bring a nexus between the stipulation of certain criteria which are peculiar to persons to whom such discrimination is favourably considered if it is to secure objects which are reasonable. If the Government, therefore, had decided to grant an exemption, the support would come through what is permissible under Section 3 and what the Supreme Court held as also permissible. If the Government, on the other hand, chose not to grant an exemption, there can be no mandate against the State, for, it becomes essentially an issue of policy. The policy itself could still be a subject of consideration for judicial

intervention if the policy is vague or illusory or arbitrary. I have not been shown any such arbitrary character about the order which is passed, however, cryptic it can be that there was no violation of fundamental or any of the rights guaranteed under the Constitution.

4. There is no argument before me by the counsel appearing for the petitioner as to how any fundamental right is infringed or how any freedom infringed of what is guaranteed. The only argument is that the tenants are not paying appropriate rents and the purpose of the Trust is not getting sufficiently fulfilled. The decision on whether he wants to carry on such a charity or not shall rest wholly with the petitioner with the existing infrastructure and the facilities and there can be no plea before a Court that because he has started a Trust or a charity, he should have a support of the Court that such charity is done by mandating the State to bring an exemption provision on his behalf. I find nothing arbitrary about a decision of the State not to grant exemption to any of the charitable Trust of Hindus or Christians. If there were ever to be an argument that the exemption has been granted to Wakfs and same privilege is not granted to them, that is a different matter which has to be argued in that fashion but I find no such attempt is made before me. I cannot, therefore, examine a situation of what is not canvassed and I restrict the reasoning only to an inference sought to be drawn by the petitioner from the judgment of the Supreme Court in K. Kandaswamy Chettiar's case (supra) which I have held to be not permissible. This judgment does not rule out the scope for the State to grant exemption in future, if such a policy is laid down; it has not examined any discrimination of law only on the ground

of religion, a plea that was possible but not canvassed.

5. The writ petition is dismissed.

(K. KANNAN)
JUDGE

February 12, 2015
Pankaj*