

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17732 of 2022

Shyam Babu Sah son of Late Bhukhlu Sah, resident of Village and P.O.-
Sheohar, District- Sheohar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Revenue Department, Government of Bihar, Patna.
2. Shyam Babu Sah, son of Kishore Sah, resident of Village- Sheohar, P.O.- Sheohar, P.S.- Sheohar, District- Sheohar.
3. The Secretary, Dept. of Food Supplies and Commerce, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Sr. Advocate
Mr. Arvind Kumar Jha, Advocate
Ms. Swati Mishra, Advocate
For the Respondent/s : Mr. Md. Khurshid Alam, AAG12

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 24-10-2024

Heard learned counsel for the petitioner and
learned counsel for the respondent State of Bihar.

2. The petitioner has filed the instant application
for the following reliefs:



“(i) For an appropriate writ/order/direction, declaring the provisions of Section 11(1)(c) proviso of Bihar Building (Lease, Rent and Eviction) Control Act, 1982 as illegal, ultra vires and unconstitutional, be issued;

(ii) An appropriate writ/order/direction, declaring the aforesaid proviso, unworkable in the absence of any guideline either under the Act or Rules explaining the word "Think", be issued;

(iii) An appropriate writ/order or direction, declaring the proviso being violative of Article 14, 21 & 300A of the Constitution as unconstitutional;

(iv) Any other writ/order/direction which is found proper by this Hon'ble Court to which the petitioner is found entitled, be issued.”

3. Mr. Yogendra Mishra, learned Senior counsel for the petitioner challenging the validity of proviso to section 11(1) (c) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as ‘the Act’) submits that section 11 of the Act prescribes the grounds for eviction of a tenant and one of the grounds mentioned therein under section 11(1)(c) is eviction on the ground of personal necessity of the landlord. It is submitted that once the landlord proves the ground of personal necessity, then the proviso comes into play and the same is a clog on the powers of the Court in passing a



decree of eviction. Challenge to the constitutional validity of the said proviso is mainly not only on the ground of the said proviso being vague, but the powers given therein to the Court are unbridled, ambiguous and unguided; either in the Act or the Rules framed thereunder. There is no proper guidelines for the Court with respect to partial eviction and as such the proviso being unworkable, the provision is fit to be struck down. It is submitted that though the proviso prescribes for partial eviction from part of the building, however, the Courts have been passing orders for consideration of partial eviction even from a room and all this happens because of vagueness, ambiguity and absence of any guidelines.

4. Learned Senior counsel further submitted that the judgments of the Hon'ble Supreme Court in the case of **Gurudevdata VKSSS Maryadit & Ors. versus State of Maharastra & Ors. (AIR 2001 SC 1980)**, **Satheedevi versus Prasanna & Anr. (AIR 2010 SC 2777)** and **Kalyan Singh Chouhan versus C.P. Joshi (AIR 2011 SC 1127)** prescribe the cardinal principles of interpretation of statutes ie the words of statute must be understood in their natural, ordinary or popular sense and construed accordingly. Further the Court cannot rewrite, recast or reframe legislation because it has no power to



do so. Even if there is defect or omission in the statute, the Court cannot correct the defect or supply the omission. It was thus submitted that there being no yardstick nor guidelines, the power so given being unbridled, uncontrolled and unguided, the provision is unworkable and fit to be struck down.

5. Learned Senior counsel further submitted that if the Court finds personal necessity of the landlord with respect to the tenanted portion and a decree is being passed, the decree cannot be given effect to because of the proviso which is a clog on the power of the Court. The proviso prescribes partial eviction from part of building but the Courts have been passing orders for consideration of partial eviction even from a room which has been happening because of vagueness, ambiguity and absence of any guidelines. It is submitted that the Division Bench of this Court in the case of **Mrs. Veena Rani & Ors. versus Mrs. Ishrati Amanullah & Anr. (1985 PLJR 390)** considered this aspect of the matter and held that the need of requirement of the landlord should not be artificially extended, stretched or strained so as to make it impossible or extremely difficult for the landlord to get a decree of eviction. Further reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Dinesh Kumar versus Yusuf Ali (AIR 2010 SC**



2679) to submit that it is the landlord who is the best judge of his requirements. In reference to the judgment in the case of **Tukaram Kanna Joshi & Ors. versus M.I.D.C. & Ors. (AIR 2013 SC 565)** it is submitted that now the Hon'ble Supreme Court has held that right to property is not only constitutional or statutory, but also a human right. It was thus submitted that if as a result of proviso to section 11 (1)(c), no decree can be passed for eviction of the tenant from the tenanted house, the landlord will be deprived of his right to hold and possess property. This being in clear violation of Articles 300-A and Article 21 of the Constitution of India; the proviso is required to be declared invalid and ultravires.

6. The application is opposed by learned Additional Advocate General appearing for the respondent State of Bihar. It was submitted on behalf of the State of Bihar that the instant application has been filed to declare proviso to section 11 (1)(c) of the Act as ultra-vires. It is well settled that a provision of law can be declared ultra vires only on the ground of the legislation being beyond the legislative capacity or the same having been passed in breach of a constitutional provision. In the instant application, the challenge to proviso to section 11(1)(c) of the Act being only on the ground of vagueness, the same being



unambiguous, uncontrolled and unguided; these cannot be ground to declare a law ultra vires. It is not that partial eviction is allowed in all cases, it is only permitted in the cases of eviction based on personal necessity. The Act was legislated by the competent authority keeping the interest of both the landlord and the tenant in consideration and the same not being in violation of either Articles 14, 21 or 300-A of the Constitution, there is no merit in the instant application and the same is fit to be dismissed.

7. Heard Shri Yogendra Mishra learned Senior counsel assisted by Ms. Swati Mishra learned counsel for the petitioner and Md. Khurshid Alam learned Additional Advocate General for the respondents.

8. The petitioner in the instant application has prayed for declaring proviso to section 11 (1)(c) of the Act to be illegal, ultra vires and unconstitutional, to declare the same to be unworkable in absence of any guidelines under the Act or the Rules wherein the word 'think' used in the proviso has not been explained, to declare the same to be unconstitutional and for other reliefs.

9. Proviso to section 11 (1)(c) being under challenge in the instant application, section 11 of the Act which



deals with eviction of tenants is being reproduced hereinbelow in its entirety:-

“11. Eviction of tenants.-(1) Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 (Act XIV of 1947), and to those of Section 18, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the Court on one or more of the following grounds:-

(a) for breach of the conditions of the tenancy, or for sub-letting the building or any portion thereof without the consent of the landlord, or if he is an employee of the landlord occupying the building as an employee, on his ceasing to be in such employment;

(b) where the condition of the building has materially deteriorated owing to acts of waste by, or negligence or default of the tenant or of any person residing with the tenant or for whose behaviour the tenant is responsible;

(c) where the building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord:

Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest and the tenant agree to such occupation, the Court shall pass a decree according and fix proportionately fair rent for the portion in occupation of the tenant, which portion shall henceforth constitute the building within the meaning of clause (b) of Section 2 and the rent so fixed shall be deemed to be the fair rent fixed under Section 5;

Explanation I. In this clause the word "landlord" shall not include an agent referred to in clause (f) of Section 2.



Explanation II. Where there are two or more premises let out by the landlord, it will be for the landlord to choose which one would be preferable to him and the tenant or tenants shall not be allowed to question such preference.

(d) where the amount of ¹[two months] rent, lawfully payable by the tenant and due from him is in arrears by not having been paid within the time fixed by contract or in the absence of such contract, by the last day of the month next following that for which the rent is payable or by not having been validly remitted or deposited in accordance with Section 16;

(e) in case of a tenant holding on a lease for a specified period, on the expiry of the period of the tenancy; and

(f) the landlord requires the premises in ¹[order] to carry out any building work at the instance of the Government or the Municipality or Municipal Corporation or the Notified Area Committee or the Regional Development Authority or any other Authority within whose jurisdiction the building lies and such building work cannot be properly and fully carried out without the premises being-vacated.

(2)(a) Where a servant of the Government in possession of any building as a tenant intends to vacate such building he shall give fifteen day's previous notice in writing of his intention to do so to the landlord and to the District Magistrate who shall under into do so to the to the of the Govt of the notice, either allot the building to any other servant of the Government whom the District Magistrate thinks suitable subject to the payment of rent, and the observance of the conditions of the tenancy by such servant of the Government or direct that the landlord shall be put in possession of the building:

Provided that when no such order is passed by the District Magistrate, the landlord shall be deemed to have been put in possession of the building.

(b) Where a building is vacated by a servant of the Government any person occupying such building other than the person referred to in clause (a) shall be liable to be evicted by the District Magistrate in such



manner as may be prescribed:

Provided that after a landlord has been or is deemed to have been put in possession of such building, he may let it to any person.”

(emphasis supplied)

10. On perusal of section 11 of the Act it transpires that the same deals with the eviction of tenants on different grounds as mentioned in different clauses of section 11(1). Section 11 (1) (c) provides for eviction on the ground where a building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord. Proviso to section 11 (1)(c) provides that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation, the Court may pass such a decree accordingly and fix proportionately fair rent for the portion in occupation of the tenant.

11. Thus in the opinion of this Court, section 11(1)(c) of the Act deals with eviction on the ground of personal necessity of the landlord, and only when the Court is satisfied that the landlord has made out a case of eviction of the tenant on the ground of personal necessity that the proviso, which is under



challenge in this writ application, comes into play. The requirements which the Court is mandated to examine with respect to partial eviction of the tenant in the proviso are that the requirement of the landlord may be substantially satisfied by eviction of the tenant from part of building of which he is in occupation and the eviction is sought for. Further, even when the Court comes to the conclusion that the requirement of the landlord may be satisfied by partial eviction of the tenant, the tenant has to agree to such partial eviction. Thus in the opinion of this Court, for the proviso to section 11(1)(c) to be enforced, the requirements are three fold; (i) the landlord has made out a case for eviction of tenant on the ground of personal necessity; (ii) the Court is satisfied that the requirement of the landlord will be satisfied by evicting the tenant from part of the building and; (iii) the tenant agrees to such partial eviction.

12. In the opinion of the Court, the provision as contained in proviso to section 11(1)(c) and the powers given therein cannot be said to be unbridled, uncontrolled and unguided as learned Senior counsel for the petitioner has tried to make out. Further, so far as contention of learned senior counsel for the petitioner to the effect that inspite of the proviso prescribing partial eviction from part of the building, the Courts are passing



orders for consideration of partial eviction even from a room, is concerned, the same has no merit. The word 'building' has been defined under section 2(b) of the Act to mean as follows:

“(b) "Building" means any building, or hut or a part of the building or hut, 'let or to be let, separately for residential or non-residential purposes and includes-

- (i) the garden, grounds and out houses, if any, appurtenant to such building or hut or part of such building or hut, and*
- (ii) any furniture supplied by the landlord for use in such building or hut or part of building or hut.”*

13. On bare perusal of the definition of the term building which means any building or a part of building, the Court finds no merit in the submission made on behalf of the petitioner.

14. Coming to the decisions relied on by learned Senior counsel for the petitioner, it may be stated that in the case of **Gurudevdatla VKSSS Maryadit** (supra) the Hon'ble Supreme Court held that it is a cardinal principle of interpretation of statute that the word of the statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is



something in the context or in the object of the statute to suggest to the contrary. It was further held that the golden rule is that the words of a statute must prima facie be given their ordinary meaning and that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning irrespective of the consequences. There is no dispute with respect to the law laid down by the Hon'ble Supreme Court, however, the same is of no assistance to the petitioner.

15. In the next judgment in the case of **Satheedevi** (supra), relied on by learned Senior counsel for the petitioner, the Hon'ble Supreme Court held that the Court cannot rewrite, recast or reframe the legislation because it has no power to do so. Further, the Court cannot add words to the statute or read words which are not therein. Even if there is a difficulty or omission in the statute, the Court cannot correct the defect or supply the omission. It may be stated here that the learned Senior counsel has not been able to point out any defect or omission in the proviso to section 11(1)(c) under challenge here and the said provision, in the opinion of the Court is only to be applied on all the three conditions being satisfied. Thus this decision also is of no assistance to the petitioner.



16. The next decision relied on by the learned Senior counsel for the petitioner is in the case of **Kalyan Singh Chouhan** (supra). In this case which arose out of an election petition filed under the Representation of People Act, 1951 the Hon'ble Supreme Court held that party to the election petition must plead the material fact and substantiate its affirmation by adducing sufficient evidence. It proceeded to hold that the Court cannot travel beyond the pleadings and the issue cannot be framed unless there are pleadings to raise the controversy on a particular fact or law. It is not permissible for the Court to allow the party to lead evidence which is not in line of the pleadings. This Court finds no applicability whatsoever of the ratio of this decision to the facts of the instant case in which the constitutional validity of the proviso to section 11 (1)(c) of the Act has been challenged.

17. The next decision relied on by learned Senior counsel for the petitioner is the Division Bench judgment of this Court in the case of **Mrs. Veena Rani** (supra) wherein this Court held that personal necessity does not mean that the landlord must be in dire need of the house before a decree for eviction can be passed on the ground of personal necessity. Referring to the judgment in the case of **Mst. Bega Begum &**



Others versus Abdul Ahad Khan (AIR 1979 SC 272) it was held that reasonable requirement postulates that there must be an affirmation of needs as opposed to a mere desire or wish. It may be observed here that there is no dispute with respect to the law laid down but the same has no applicability nor is of any assistance to the petitioner in the instant case.

18. In the case of **Dinesh Kumar** (supra) relied on by learned Senior counsel for the petitioner the Hon'ble Supreme Court was dealing with the law with respect to a second appeal under section 100 of the Civil Procedure Code wherein it proceeded to hold that if the High Court comes to the conclusion that the evidence on record recorded by the Courts below are perverse being based on no evidence or based on irrelevant material, the appeal can be entertained and it is permissible for the Court to reappreciate the evidence. It further held that the landlord is the best judge of his need, however, the same should be real, genuine and may not be a pretext to evict the tenant only for increasing the rent. This Court sees no application of this judgment to the facts of the instant case.

19. So far as the case of **Tukaram Joshi** (supra) is concerned, the Hon'ble Supreme Court, while considering Article 300-A of the Constitution held that right to property is



not only a constitutional or statutory right, but also human right. In the opinion of this Court, the ratio of this judgment also has no applicability so far as the challenge to the vires of the proviso to section 11 (1)(c) is concerned.

20. As to what are the grounds on which a law may be declared unconstitutional, it would be relevant to refer to judgment in the case of **Namit Sharma versus Union of India (AIR 2013 SC 745)** wherein the Hon'ble Supreme Court held as follows:

"11. An enacted law may be constitutional or unconstitutional. Traditionally, this Court had provided very limited grounds on which an enacted law could be declared unconstitutional. They were legislative competence, violation of Part-III of the Constitution and reasonableness of the law. The first two were definite in their scope and application while the cases falling in the third category remained in a state of uncertainty. With the passage of time, the law developed and the grounds for unconstitutionality also widened. D.D. Basu in Shorter Constitution of India (14th Edn., 2009) has detailed, with reference to various judgments of this Court, the grounds on which the law could be invalidated or could not be invalidated. Reference to them can be made as follows:-

"Grounds of unconstitutionality.- A law may



be unconstitutional on a number of grounds:-

(i) Contravention of any fundamental right, specified in Part III of the Constitution.

(ii) Legislating on a subject which is not assigned to the relevant legislature by the distribution of powers made by the Seventh Schedule, read with the connected articles.

(iii) Contravention of any of the mandatory provisions of the Constitution which impose limitations upon the powers of a legislature e.g. Article 301.

(iv) In the case of a State law, it will be invalid insofar as it seeks to operate beyond the boundaries of the State.

(v) That the legislature concerned has abdicated its essential legislative function as assigned to it by the Constitution or has made an excessive delegation of that power to some other body.”

21. It may be mentioned here that so far as the law on partial eviction as provided in proviso to section 11(1)(c) of the Act is concerned, the scope of the proviso, the factors to be considered in determining reasonable requirement of the landlord, whether the reasonable requirement would be substantially satisfied by evicting the tenant from a part of the premises etc. have all been subject matter of a large number of decisions both in this Court as also the Hon'ble Supreme Court. Reference in this context may be made to the judgments in the case of **Nasirul Haque vs. Jitendra Nath Dey [AIR 1984 SC 1799]**, **Ms. Veena Rani (supra)**, **Smt. Kalawati Tripathi & Others vs.**



Smt. Damayanti Devi & Anr. [AIR 1993 Pat 1 (DB)] and Krishna Murari Prasad vs. Mitar Singh [1994 (1) PLJR 87 (SC)]. The facts of the respective cases and the law laid down is not being gone into in detail as the same are not of relevance herein.

22. The question which would thus arise is as to whether the petitioner has made out a case herein for declaring the proviso to section 11(1)(c) of the Act as illegal, ultra vires and unconstitutional. As seen above in the case of **Namit Sharma** (supra), a law may be declared unconstitutional on the ground of it being in contravention of the fundamental rights specified in Part III of the Constitution; legislating on a subject which is not assigned to the relevant legislature under the Seventh Schedule; contravention of any mandatory provision of the Constitution; in case of a State law, if it seeks to operate beyond the boundaries of the State or in case the legislature concerned has abdicated its essential legislative function assigned to it by Constitution or has made an excessive delegation of that power to some other body. The petitioner herein has not been able to make out any case to challenge the vires or constitutional validity of the proviso to section 11(1)(c) of the Act.

23. Neither are the decisions relied upon, on behalf



of the petitioner, are of any assistance to the petitioner’s case
nor does the Court find any merit in the application.

24. The application is dismissed.

(Partha Sarthy, J)

K. Vinod Chandran, CJ: I agree

(K. Vinod Chandran, CJ)

Bibhash/-

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