1961

April 17.

S. P. JINADATHAPPA

v.

R. P. SHARMA AND OTHERS

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. C. DAS GUPTA, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Rent Control—Allotment of accommodation—Statute authorising controller to select tenant—Constitutionality of—If violates fundamental right of landlord—Discrimination—Guidance for choosing tenant—Mysore House Rent and Accommodation Control Act, 1951 (Mys. XXX of 1951), s. 3(3)(a)—Constitution of India, Arts. 14 and 19(1)(f).

Section 30(3)(a) of the Mysore House Rent and Accommodation Control Act, 1951, authorised the Controller to select any Government, local authority, public institution, officer of a government, local authority or public institution or any other person as a tenant of a vacant house. Under the Act the owner was bound to let the house to the tenant so selected. The petitioner was the owner of a house for whom the controller selected a tenant under these provisions. He challenged the constitutionality of s. 3(3)(a) in so far as the selection of "other persons" was authorised on the grounds that: (i) it put an unreasonable restriction on his fundamental right to property and (ii) it offended Art. 14 of the Constitution as it provided no guidance for choosing the tenant and enabled the controller to make an arbitrary choice.

Held, that s. 3(3)(a) of the Act was valid and did not violate Art. 14 or 19(1)(f) of the Constitution.

An individual was a member of the public and the restriction caused by his selection was in the interest of the general public. The restriction was not unreasonable. It was enforced only when the owner did not want the house for his own use. It could make no reasonable difference to him whether an individual was selected or government, local authority, public institution or any officer of any of these was selected. The Act made provision for selection of a suitable tenant. This was further secured by providing for an appeal to the District Judge and thereafter a revision petition to the High Court.

There was ample guidance given in the Act to the Controller to choose a suitable tenant. Every one had been given a right to apply for being selected as a tenant; and the owner had been given the right to have his views also considered. The ultimate decision was a judicial decision, and if required, of the highest tribunal in the State.

ORIGINAL JURISDICTION: Writ Petition No. 71 of 1958.

Writ Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

S. K. Venkataranga Ayengar and *S. J. S. Fernandez*, for the petitioner.

B. R. L. Iyengar, for respondent No. 1.

R. Gopalakrishnan and *T. M. Sen*, for the respondent No. 2.

1961. April 17. The Judgment of the Court was delivered by

SARKAR, J.—This petition under Art. 32 of the Constitution raises a question of the constitutional validity of s. 3(3)(a) of the Mysore House Rent and Accommodation Control Act, 1951 (Mysore XXX of 1951). Shortly put, that provision enables an authority set up by the Act to select any Government, local authority, public institution, officer of a government, local authority or public institution or any other person as the tenant of a vacant house. Under the Act the owner is bound to let the premises to the tenant so selected. The petitioner, for whom a tenant had been selected under this provision, challenges its validity on the ground that it puts an unreasonable restriction on his fundamental right to property under Art. 19(1)(f) of the Constitution and is outside the protection of cl. (5) of that article.

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The petitioner had a building in respect of which he had made some sort of arrangement with one Misri Lal for the making of certain alterations in it and for letting it thereafter to him for the purpose of a boarding house. He later gave a notice as required by s. 3(2)(a) of the Act to respondent No. 2, the Controller, who had the authority under s. 3(3)(a) to select a tenant, that the house had become vacant. Thereupon respondent No. 2 considered applications for the tenancy of the house of which there were two. One was from Misri Lal mentioned above and the other was from respondent No. 1, who was a private individual carrying on business of a boarding house keeper. Respondent No. 2 selected respondent No. 1 as the

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person to whom the house should be let by the petitioner. He fixed the rent at Rs. 350 per month which was the rent demanded by the petitioner. There does not appear to have been any specification of the terms of the tenancy and no question as to such terms arises in this case.

The petitioner was dissatisfied with this decision as he wanted that the premises should be let to Misri Lal, and appealed to the District Judge under s. 15 of the Act. The District Judge affirmed the decision of respondent No. 2. The petitioner then went up in revision to the High Court under s. 17 of the Act but the High Court refused to interfere. Before the District Judge and the High Court the petitioner had contended that Misri Lal was a more suitable tenant than respondent No. 1. But such contention was rejected. Having failed in the High Court he has now challenged the Act itself by the present petition.

The only question is whether s. 3(3)(a) imposes an unreasonable restriction on the petitioner's right to property. The validity of no other part of the Act has been challenged in this petition. The provision challenged is in these words:—

> *S. 3(3)(a).* On receipt of the intimation under sub-section (2), the Controller shall, taking into consideration any representation made by the landlord and after making such inquiry as he considers necessary, select the State Government or the Central Government or the Government of any other State in India, or any local authority or any educational or other public institution or any officer of any Government, authority or institution, aforesaid, or any other person (hereinafter referred to as the allottee), to be inducted as a tenant in the house and direct the landlord by a written order (hereinafter referred to as the 'allotment order') to let the house to such allottee at such rent as shall be specified in the allotment order and to deliver possession of the house to the allottee on such date as shall be specified in the said order:
>
> Provided that before making an allotment order in favour of any authority or person, other than

the State Government, the Central Government or the Government of any State in India or a local authority, the Controller shall consider any representation of the landlord about the suitability of the proposed tenant and shall not allot the house to any person who, in the opinion of the Controller, is an unsuitable tenant:

The petitioner does not contend that the provision in so far as it allows the Controller to select as a tenant a Government, local authority, public institution or any of the officers mentioned, imposes any unreasonable restriction on the right to property. As we understood learned counsel for the petitioner, it was conceded that selection of such tenant would constitute a public purpose and the restriction thereby imposed, would be reasonable. It would therefore appear that it is not contended that the selection of a tenant by the Controller would by itself amount to imposing an unreasonable restriction on the right to property. We do not think that such a contention, if made, would have been well founded. It is clear that the Act deals with houses which are vacant. It does not deprive an owner of his right to live in his own house. It provides for vacant houses not needed for the use of the owner being made available for the use of others who are without accommodation. The Act was necessary because of the scarcity of housing. It was, therefore, passed to regulate the letting of houses and to control rent and also to prevent unreasonable eviction: see the preamble to the Act.

Does the Act then by leaving it to the Controller to select any person other than a Government, local authority, public institution or an officer of any of these as the tenant, impose an unreasonable restriction on the right to property? We do not think it does so. If the Controller could validly choose a Government, a local authority or any institution—which as we have said is not disputed—it can make no difference that instead of such a tenant the Controller chooses a private individual as a tenant. The idea of this provision is that people in need should be

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found accommodation. Persons in need of accommodation are the public and therefore serving their need, would be serving a public purpose. An individual would be a member of the public and as the accommodation available can be let out to one, a restriction caused by selection of a member of the public would be one in the interest of the general public. Such a restriction is furthermore not unreasonable. It is enforced only when the owner does not want the house for his own use. It can then make no reasonable difference to the owner if a private individual is chosen as the tenant. The Act further makes ample provision to see that the tenant chosen is suitable. By providing the appeal to the District Judge and a right to move the High Court in revision, full safeguard has been given to secure that an unsuitable person is not foisted on an owner as his tenant.

It is true that the Act does not define who would be a suitable person but we do not think that a definition was required. Any man of experience would know who is a suitable tenant. Further, the owner has been given the right to have the suitability of the tenant chosen examined by the highest court. In the explanation to s. 3(3)(a) certain persons have been declared to be unsuitable tenants. We are unable to accept the contention of the learned counsel for the petitioner that the result of this explanation is that all others are suitable. The explanation only shows that the persons coming within the description are unsuitable. As to whether others would be suitable or not would have to be decided on the merits of each. The decision as to the suitability of a tenant is not to be controlled by the explanation at all except to the extent of making certain persons unsuitable as tenants and taking it out of the discretion of the authority concerned to go into the question of their suitability

If the Act had left it to the house-owner to choose a tenant, then there was every likelihood of its purpose being defeated. It would be easy for the owner to make secret arrangements for his own gain in creating a tenancy. The tenant would obviously be

in a disadvantageous situation in view of the scarcity of housing, in the matter of bargaining for the house. He could easily be made to yield to the terms imposed by the owner who has a much superior bargaining situation. If scope was left for this kind of thing to happen, then the entire object of the Act would have been defeated. The Act intends to avoid this situation and hence the provision for a power in the Controller to select a tenant for the owner.

Neither do we think that any objection to this provision can be based on Art. 14 of the Constitution on the ground that it provided no guidance as to how a tenant is to be chosen and so enabled the authority concerned to make an arbitrary choice. This contention is not in any event open to the petitioner, an owner, for the provision does not enable any discrimination being made between one owner and another. If a tenant had challenged the validity of the provision relying on Art. 14, which is not the case here, we do not think that challenge would have been of substance. There is, in our view, ample guidance given to the authority as to how to choose a tenant. The tenant has first to be suitable. All persons are entitled to apply for being selected as tenants and so all have equal chance to get the house. The choice will have to be made from amongst the applicants and that choice will depend on an examination of the comparative merits of their claims. Further, the owner has a right to have his views in the matter being given due consideration by the authority selecting the tenant. Again, the ultimate decision would be a judicial decision, and if required, of the highest tribunal in the State.

We, therefore, think that the challenge to the Act is ill founded. In the result we dismiss this petition. The petitioner will pay the costs of the appearing respondent.

Petition dismissed.