

PETITIONER:
S. KANDASWAMY CHETTIAR

Vs.

RESPONDENT:
STATE OF TAMIL NADU AND ANR.

DATE OF JUDGMENT 12/12/1984

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
PATHAK, R.S.
MUKHARJI, SABYASACHI (J)

CITATION:
1985 AIR 257 1985 SCR (2) 398
1985 SCC (1) 291 1984 SCALE (2) 933
CITATOR INFO :
F 1987 SC2117 (20)

ACT:
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act 18 of 1960). Section 29-Notification issued thereunder granting total exemption to all buildings owned by the Hindu, Christian and Muslim religious Public Trusts and Public Charitable Trusts from all the provisions of the Act- Whether suffers from the vice of excessive delegation of legislature powers, and therefore, violative of, Article 14 of the Constitution-Whether the total exemption is excessive unwarranted and unsupportable in as much as a partial exemption would have sufficed.

HEADNOTE:

In exercise of the powers conferred by section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 the Government of Tamil Nadu issued a Notification G.O. Ms. 2000 (Homo Department) dated 16th August, 1976 exempting all the buildings owned by the Hindu, Christian and Muslim religious public trusts and public-charitable trusts from all the provisions of the Act. The tenants challenged the Notification granting total exemption through the said Notification on three grounds namely; (a) that section 29 of the Act suffers from the vice of excessive delegation of legislative powers in as much as it vests in the State Government unguided and uncontrolled discretion in the matter of granting exemptions and is, therefore, violative of Article 14 of the Constitution; (b) that the Notification dated 16th August, 1976 deprives the tenants of all such buildings (belonging to Hindu, Christian and Muslim religious public trusts and public charitable trusts) of the equal protection of the beneficial provisions of the Act which is available to the tenants of other buildings and as such the same is discriminatory offending against the equal protection clause of Article 14; and (c) that in any event the total exemption from all the provisions of the Act granted to such buildings, where partial exemption would have sufficed is excessive, unwarranted and unsupportable.

The State Government and the respondent landlords have refuted all the grounds on which the exemption has been

challenged and further sought to justify the grant of total exemption mainly on the basis that the freedom (right) to recover the reasonable market rent would be ineffective without the freedom to evict the tenant.

Dismissing the writ petitions and the civil appeals the Court,
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HELD: 1.1 In view of the decision of the Supreme Court in P.J. Irani v. The State of Madras, [1962] 2 SCR 169 dealing with an identical provision contained in the earlier Madras enactment the challenge to the Constitutional validity of section 29 cannot be sustained. [405A-B]

P. J. Irani v. State of Madras, [1962] 2 SCR 169; State of Madhya Pradesh v. Kanhaiyalal, 1970 (15) M.P.L.U SC 973 relied on.

1. 2. The rationale behind the conferral of such power to grant exemptions or to make exceptions is that an inflexible application of the provisions of the Act may under some circumstances result in unnecessary hardship entirely disproportionate to the good which will result from a literal enforcement of the Act and also the practical impossibility of anticipating in advance such hardship to such exceptional cases. In the matter of beneficial legislations also there are bound to be cases in which an inflexible application of the provisions of the enactment may result in unnecessary and undue hardship not contemplated by the legislature. The power to grant exemption under section 29 of the Act, therefore, has been conferred not for making any discrimination between tenants and tenants but to avoid undue hardship or abuse of the beneficial provisions that may result from uniform application of such provisions to cases which deserve different treatment. Of course, the power to grant exemption has to be exercised in accordance with the policy and object of the enactment gatherable from the preamble as well as its operative provisions without subverting the general purpose of the enactment. [406G-H, 407A-B]

P. J. Irani v. State of Madras, [1962] 2 SCR 169 relied on.

Gorieb v. Fox, [1926] 71 Lawyers Edition at page 1230 quoted with approval .

2. That Tamil Nadu Act is a piece of beneficial legislation intended to remedy the two evils of rackrenting (exaction of exorbitant rents) and unreasonable eviction generated by a large scale of influx of population to big cities and urban areas in the post Second World War period creating acute shortage of accommodation in such areas and the enactment avowedly protects the rights of tenants in occupation of buildings in such areas from being charged unreasonable rents and from being unreasonably evicted therefrom. The Legislature itself has made a rational classification of buildings belonging to government and buildings belonging to religious, charitable, educational and other public institutions and the different treatment accorded to such buildings under section 10(3) (b) of the Act, which obviously proceeds on the well-founded assumption that the government as well as the landlords of such buildings are not expected to and would not indulge in rack-renting or unreasonable eviction. This and similar other provisions crystalize the policy and the purposes of the Act and furnish the requisite guidance which can legitimately govern the exercise of power conferred on the State Government under section 29 of the Act The power to grant exemptions or make exceptions could be legitimately

exercised by the State Government in areas or cases where the mischief sought to be remedied by

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the Act is neither prevalent nor apprehended as also in cases (individual or class of cases) where a uniform or inflexible application of the law is likely to result in unnecessary or undue hardship (here the landlords) or in cases where the beneficial provision is likely to be or is being abused by persons for whom it is intended there the tenants) [407D-E, 408F-H, 409A]

3.1. Public religious and charitable endowments or trusts constitute a well recognised distinct group in as much as they not only serve public purposes but the disbursement of their income is governed by the objects with which they are created and buildings belonging to such public religious and charitable endowments or trusts clearly fall into a distinct class different from buildings owned by private landlords. Therefore, their classification into one group done by the State Government while issuing the impugned notification must be regarded as having been based on an intelligible differentia. [409F-G]

3.2. In view of the counter affidavit filed by the State Government dated 10-2-1981 and the supplementary counter affidavit dated 24th September, 1983 to the effect that the government was satisfied that "in all these cases, the rent paid by the tenants was very low, meagre and that the provisions of fixation of fair rent under the Act would not meet the ends of justice and the situation will still continue in which the tenant will be exploiting the situation and the helplessness of the public religious trusts and charitable institutions and hence they decided to withdraw the protection given under the Act to the tenants of such buildings", not having been challenged by way of rejoinder affidavits by the petitioners/appellants, it is clear that buildings belonging to such public religious and charitable endowments or trusts clearly fell into a class where undue hardship and injustice relating to them from the uniform application of the beneficial provisions of the Act needed to be relieved and the exemption granted will have to be regarded as being germane to the policy and purposes of the Act. In other words, the classification made has a clear nexus with the object with which the power to grant exemption has been conferred upon the State Government under section 29 of the Act. [411C, 412B-G]

State of Rajasthan v. Mukanchand and Others, [1964] 6 SCR 903; held inapplicable.

3.3. Granting total exemption cannot be regarded as excessive or unwarranted. The two objectives of the enactment, namely, to control rents and to prevent unreasonable eviction are interrelated and the provisions which subserve these objectives supplement each other. It is obvious that if the trustees of the public religious trusts and public charities are to be given freedom to charge the normal market rent then to make that freedom effective it will be necessary to arm the trustees with the right to evict the tenants for non-payment of such market rent. The State Government on materials before it came to the conclusion that the 'fair rent' fixed under the Act was unjust in case of such buildings and it was necessary to permit the trustees of such buildings to recover from their tenants reasonable market rent and if that be so non-eviction when reasonable market rent is not paid would be unreasonable and if the market rent is paid by the

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tenants no trustee is going to evict them. Further, it

is conceivable that trustees of buildings belonging to such public religious institutions or public charities may desire eviction of their tenants for the purpose of carrying out major or substantial repairs or for the purpose of demolition and reconstruction and the State Government may have felt that the trustees of such buildings should be able to effect evictions without being required to fulfil other onerous conditions which must be complied with by private landlord when they seek evictions for such purpose. [413D-E, 414C-G]

3.4. The manner in which exemption from rent control provisions should be granted, whether it could be partial or total and if so on what terms and conditions would be matters for each State Government to decide in the light of the scheme and provisions of the concerned enactment and the facts and circumstances touching the classification made. And if the State of Madras has thought fit to grant the exemption in a particular manner by the impugned notification is cannot be faulted. if to exemption so granted is not illegal or unconstitutional. [415A-B]

JUDGMENT:

ORIGINAL JURISDICTION: W.P. Nos 4433, 4642-57/78, 337-339, 757-58, 943, 291 and 1351 of 79, 4103 and 6271/80, 731 and 1943/81, 8274 and 9879/83 and C.A. NOS. 3108-3109/81 with W.P. NOS. 7941 and 7883/81.

N. Natesan, A. T. M Sampath and P. N. Ramalingam for the petitioners in W.P. NOS. 4642-57 and 4433 of 1978

Dr. Y S. Chitale, A.T.M. Sampath, S.A. Rajan and P.N. Ramalingam for the petitioners in W.P. NOS. 337-339 of 1979.

M. Natesan, and Raghuraman for the petitioner in W.P. No. 1943 of 1981.

A.T.M. Sampath and P.N. Ramalingam for the petitioner in W.P. NOS. 757-58 of 1979.

S. Srinivasan for the petitioner in W.P. NO. 943 of 1979.

P.R. Ramasesh for the petitioner in W.P. NO. 731 of 1982.

A.T.M. Sampath and P.N. Ramalingam for the petitioner in W.P. NO. 7941 and 7883 of 82.

A.T.M. Sampath and P.N. Ramalingam for the petitioner in W.P. NOS. 1357-58 of 79.

P. Sinha for the petitioner in W.P. NO. 8274 of 83.

P.N. Ramalingam for appellants in C. NOS. 3108-09 Of 81, 402

R.S. Ramamurthy, P. Govindan Nair, M.K.D. Namboodry, S. Balakrishnan and E.C. Agarwala for the respondents in W.P. Nos. 6271/80 and 4642-57 and 4433 of 78.

T.S. Krishnamoorthy, Mrs. S. Gopalakrishnan and Gopal Subramanian for the respondents is W.P. No. 4103/80.

Shanker Ghosh, and D.N. Gupta for the respondents in W.P. No. 943/79.

S.T. Desai, T.S. Krishnamurthy, A.V. Rangam, K. Ramamurthy and S.Balakrishnan for the respondents in W.P. No. 731/82.

Mohan Pandey and Ali Ahmed for the interveners in W.P. Nos. 4642-57 of 78. K. Ram Kumar for the respondent in C.A. Nos. 3108-3109/81 and W.P. Nos. 7941 and 7883/82.

The Judgment of the Court was delivered by

TULZAPURKAR, J. In these writ petitions and civil appeals by special leave the petitioners and appellants, who are tenants of several buildings belonging to the Hindu,

Christian and Muslim religious public trusts as also to public charitable trusts in the State

of Tamil Nadu, have challenged the legality and or validity of the total exemption granted to all such buildings from all the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Act 18 of 1960) (for short 'the Act') in exercise of the powers conferred upon the State Govt. under s. 29 of the Act.

Section 29 of the Act runs thus:

"22. Exemptions-Notwithstanding anything contained in this Act, the Government may, subject to such condition as they deem fit, by notification, exempt any buildings or class of buildings from all or any of the provisions of this Act"

It appears that initially by G. O. Ms. No. 1998 (Home) dated 12th August, 1974, the State Government had, in exercise of its powers under s. 29 exempted all the buildings owned by the Hindu Christian and Muslim religious trusts and charitable institutions from all the provisions of the Act; in other words the exemption was available to buildings of private religious trusts as also private charitable trusts. But later on by a fresh G. O. Ms. No. 2000

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(Home) dated 16th August, 1976, the State Government, in super- A session of the earlier Notification dated 12th August, 1974, confined the exemption to all buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts. 'the relevant Notification which is being impugned herein runs thus:

"G. O. Ms. No. 2000, Home, 16th August, 1976) No. II (2)/HO/4520/76.-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), and in supersession of the Home Department Notification No. II (2)/HO/3811/74, dated the 12th August, 1974, published at page 444 of Part II-section 2 of the Tamil Nadu Government Gazette, dated the 12th August, 1974, the Governor of Tamil Nadu hereby exempts all the buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the said Act."

The tenants have challenged the aforesaid Notification granting total exemption to all buildings belonging to the Hindu, Christian and Muslim religious public trusts and public charitable trusts from all the provisions of the Act on three grounds-(a) that s. 29 of the Act suffers from the vice of excessive delegation of legislative powers in as much as it vests in the State Government unguided and uncontrolled discretion in the matter of granting exemptions and is, therefore, violative of Art. 14 of the Constitution, (b) that the Notification dated 16th August, 1976 deprives the tenants of all such buildings (buildings belonging to Hindu, Christian and Muslim religious public trusts and public charitable trusts) of the equal protection of the beneficial provisions of the Act which is available to the tenants of other buildings and as such the same is discriminatory offending against the equal protection clause of Art. 14 and (c) that in any event the total exemption from all the provisions of the Act granted to such buildings, where partial exemption would have sufficed, is excessive, unwarranted and unsupportable.

On the other hand, the State Govt. and the respondent landlords have refuted all the grounds on which the exemption has been challenged. It is denied that unguided and uncontrolled discretion has been conferred upon the

State Govt. by s. 29 of the Act and it is contended that enough guidance is afforded by the Preamble and the operative provisions of the Act for the exercise of the

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discretionary power vested in the State Govt. It is pointed out that in P. J. Irani v. The State of Madras(') an identical provision contained in the earlier enactment, namely, the Madras Buildings (Lease and Rent Control) Act, 1949 was upheld in the context of Art. 14 of the Constitution by this Court on the basis that the Preamble and the operative provisions of that Act gave sufficient guidance for the exercise of the discretionary power vested in the State Govt., namely, that the said power was to be exercised in cases where the protection given by the Act caused great hardship to the landlord or was the subject of abuse by the tenant; and it is urged that similar guidance is afforded by the Preamble and the operative provisions of the instant Act and s. 29 cannot be said to be violative of Art. 14. The respondents have further contended that even the point regarding the constitutional validity of granting exemption to buildings belonging to charities, religious or secular in the context of the equal protection clause of Art. 14 could be said to have been concluded against the tenants of such buildings by the observations of this Court in P.J. Irani's case (supra), it is pointed out that though in that case this Court was dealing with a Notification granting exemption in favour of a particular individual building, the Court has made observations which clearly indicate that where it is a case of granting exemption in favour of a class of buildings all that is required is that the classification must be based on rational grounds i.e. grounds germane to carry out the policy or the purpose of the Act and by way of illustration the Court has in terms stated that if such exemption were to be granted in favour of all buildings belonging to charities, religious or secular, such classification would be reasonable and proper, being based on intelligible differential having nexus to the object sought to be achieved by the exercise of power of exemption. Even otherwise, the State Govt. in their counter-affidavit dated 10th February, 1981 and supplementary counter-affidavit dated 24th September, 1983 have furnished material on the basis of which it has sought to justify the said exemption and it has been urged that the same conforms to and falls within the guidelines indicated in that decision governing the exercise of the power. The respondents have further sought to justify the grant of total exemption mainly on the basis that the freedom (right) to recover the reasonable market rent would be ineffective without the freedom to evict the tenant.

As regards the attack directed against s.29 of the Act itself we would like to observe at the outset that though the challenge to the

(1) [1962] 2 SCR 269.

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section under Art. 14 has been made in the petitions and the appeals A Counsel appearing for the petitioners and the appellants fairly stated before us, and in our view rightly, that in view of the decision of the Constitution Bench of this Court in P. J. Irani's case (supra) dealing with an identical provision contained in the earlier Madras enactment (Madras Act XXV of 1949) the challenge cannot be sustained. Section 13 of the Madras Act XXV of 1949 with which this Court was concerned in that case ran thus:

"Notwithstanding anything contained in this Act the State Government may by a notification in the Fort

St. George Gazette exempt any building or class of buildings from all or any of the provisions of this Act."

This Court upheld the constitutional validity of that provision in the context of the challenge thereto under Art. 14 on the basis that sufficient guidance was afforded by the Preamble and the operative provisions of the Act for the exercise of the discretionary power vested in the Government in the matter of granting exemptions to a building or class of buildings from all or any of the provisions of the Act. It may be stated that following the said decision this Court in the case of State of Madhya Pradesh v. Kanhaiyalal⁽¹⁾ did not find any infirmity in s. 3(2) of the Madhya Pradesh Accommodation Control Act, 1961 (Act 41 of 1961) which ran thus:

"The Government may, by notification exempt from all or any of the provisions of this Act any accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home, the whole of the income derived from which is utilised for that institution or nursing home or maternity home."

'the challenge to s. 29 of the instant Act, which was not pressed, has therefore to be rejected.

Even so, since the Notification dated 16th August 1976 issued under s. 29 has been challenged the guidance afforded by the Preamble and the operative provisions of the Act will have a bearing on the question whether this particular exercise of the power conforms to such guidance or not and, therefore, it will be useful to advert briefly to the guidance so afforded. At the outset we would like to point out that the rationale behind the conferral of such power to

(1) [1970] IS M.P.L.J. 973

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grant exemptions or to make exceptions has been very succinctly elucidated by the American Supreme Court in the leading case of *Gorrie v. Fox*. (1) In that case the Court was concerned with an Ordinance which related to the establishment of a building line on public streets but it contained a reservation of power in the City Council to make exceptions and permit the erection of buildings closer to the street. It was contended that this reservation rendered the Ordinance invalid as denying the equal protection of the laws, Negating the contention Sutherland J. speaking for the court, observed thus:

"The proviso under which the Council acted also is attacked as violating the equal protection clause on the ground that such proviso enables the Council unfairly to discriminate between lot-owners by fixing unequal distances from the street for the erection of buildings of the same character under like circumstances.. The proviso evidently proceeds upon the consideration that an inflexible application of the Ordinance may under some circumstances result in unnecessary hardship In laying down a general rule, such as the one with which we are here concerned, the practical impossibility of anticipating in advance and provi-

ding in specific terms for every exceptional case which may arise, is apparent. And yet the inclusion of such cases may well result in great and needless hardship, entirely disproportionate to the good which will result from a literal enforcement of the general rule. Hence the wisdom and necessity here of reserving the authority to determine whether, in specific cases of need, exceptions may be made

without subverting the general purposes of the ordinance. We think it entirely plain that the reservation of authority in the present ordinance to deal in a special manner with such exceptional cases is unassailable on constitutional grounds."

In our view the same rationale must apply to the conferral of such power on the State Government to grant exemptions or to make exceptions even in cases of beneficial legislations like the present enactment. In the matter of beneficial legislations also there are bound to be cases in which an inflexible application of the provisions of the enactment may result in unnecessary and undue hard-

(1) [1926] 71 Las Ed. 1228 at 1230.

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ship not contemplated by the legislature. Obviously the power to grant exemptions under s. 29 of the Act has been conferred not for making any discrimination between tenants and tenants but to avoid undue hardship or abuse of the beneficial provisions that may real it from uniform application of such provisions to cases which deserve different treatment. Of course, as observed by this Court in P. J. Irani's case (supra) the power has to be exercised in accordance with the policy and object Or the enactment gatherable from the preamble as well as its operative provisions or as said in the American decision without subverting the general purposes of the enactment.

As the preamble of the instant Act shows the three purposes, to achieve which it has been enacted are the same as those under the earlier enactment, the Madras Act XXV of 1949, namely, (1) the regulation of letting of residential and non-residential buildings, (2) the control of rents of such buildings, and (3) the prevention of unreasonable eviction of tenants from such buildings, except that the enactment is of a comprehensive nature by way of amending and consolidating the rent-control law obtaining in the State till then Unquestionably it is a piece of beneficial legislation intended to remedy the two evils of rack-renting (exaction of exorbitant rents) and unreasonable eviction generated by large scale of influx of population to big cities and urban areas in the post Second World War period creating acute shortage of accommodation in such areas and the enactment avowedly protects the rights of tenants in occupation of buildings in such areas from being charged unreasonable rents and from being unreasonably evicted therefore; it further protects their possession even after the determination of their contractual tenancies by enlarging the definition of a 'tenant' so as to include persons who have held over after such determination. Sections 3 and 3-A deal with the regulation of letting while ss.4 to 8 effectuate the objective of controlling the rents and ss.10 and 14 to 16 confine eviction of a tenant to stated grounds subject to certain terms, qualifications and/or reservations thereby preventing unreasonable eviction In other words a landlord's freedom of contract to charge even the market rent (if it is in excess of 'fair rent' as defined) and his freedom to evict a tenant on several grounds available to him either nuder his lease-deed or the Transfer of Property Act have been curtailed to a large and substantial extent. At the same time the enactment contains other significant provisions which indicate that the legislature itself felt that there might be areas and cases where the two evils were neither prevalent nor apprehended and as such the landlord's

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freedom need not be curtailed at all, as also cases where

attenuated freedom could be allowed to the landlord and limited protection be extended to the tenant. not instance, under s.1 (2) (a) (i) of the Act itself does not apply to the entire State but only to the city of Madras, the city of Madurai and to all Municipalities (i.e Municipal areas) which shows that non-urban areas or rural areas are excluded from the operation of the Act, presumably because in such areas the evils of rack-renting and unreasonable eviction do not obtain; and under the proviso there to power has been reserved to the Government to withdraw the application of the Act to any municipal areas or to the city of Madras or to the city of Madurai from such date as may be mentioned in the notification as also to reintroduce the Act in such areas where it has ceased to apply by reason of the notification issued under the proviso; similarly, s.1 (2) (c) confers powers on the Government to apply all or any of the provisions of the Act by notification to any other area in the state to which it has not already been made applicable by the Act itself and to cancel or modify any such notification. Again by the proviso to s.10 (1) the restrictions imposed by ss.10 and 14 to 16 (which enumerate the grounds and the circumstances under which alone eviction can be sought under the Act) have been made inapplicable to tenants in buildings of which the landlord is the Government. Similarly, under s.10 (3) (b) a much wider latitude to evict a tenant is afforded to landlords of religious, charitable, educational or other public institutions if possession is required for the purposes of such institutions, inasmuch as, unlike in the cases falling under s. 10 (3)(a) (i) (ii) and (iii), there is no insistence that such landlords should not be occupying any other building of his own in the city, town or village concerned. In other words the legislature itself has made a rational classification of buildings belonging to Government and buildings belonging to religious, charitable, educational and other public institutions and the different treatment accorded to such buildings obviously proceeds on the well-founded assumption that the Government as well as the landlords of such buildings are not expected to and would not indulge in rack-renting or unreasonable eviction. These and similar other provisions crystalize the policy and purposes of the Act and furnish the requisite guidance which can legitimately govern the exercise of power conferred on the State Government under s 29 of the Act. The guidance thus afforded may illustratively be indicated by stating that the power to grant exemptions or make exceptions could be legitimately exercised by the State Government in areas or cases where the mischief sought to be remedied by the Act is neither

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prevalent nor apprehended as also in cases (individual or class of A cases) where a uniform or inflexible application of law is likely to result in unnecessary or undue hardship (here to landlords) or in cases where the beneficial provision is likely to be or is being abused by persons for whom it is intended (here the tenants). The question is whether in issuing the Notification dated 16th August 1976 the State Government has exercised the power in conformity with such guidance and the same is valid as not offending Art. 14 of the Constitution.

We have already stated that the respondents have contended that the question of constitutional validity of granting exemption to buildings belonging to charities, religious or secular from rent control legislation as offending the equal protection clause of Art. 14 has been

concluded by the observations made by this Court in P. J. Irani's case (supra) while Counsel for the petitioners and the appellants on the other hand have urged that it is not; according to Counsel for the petitioners and the appellants all that the observations made by this Court in that case decide is that the classification of buildings belonging to Hindu, Christian and Muslim religious public trusts as also to public charitable trusts could be regarded as a reasonable classification based on intelligible differentia but that test of nexus which is also required to be satisfied for purposes of Art. 14 has not been pronounced upon by this Court and this aspect is still open to argument- We shall proceed on the basis that the question is res integra and consider whether the respondents, particularly the State Government have furnished proper material on the basis of which the exemption granted can be justified.

It cannot be disputed that public religious and charitable endowments or trusts constitute a well recognised distinct group inasmuch as they not only serve public purposes but the disbursement of their income is governed by the object with which they are created and buildings belonging to such public religious and charitable endowments or trusts clearly fall into a distinct class different from buildings owned by private landlords and as such their classification into one group done by the State Government while issuing the impugned notification must be regarded as having been based on an intelligible differentia. Counsel for the petitioners and the appellants also fairly conceded that such classification would be a rational one, more so in view of the observations made by this Court in that behalf in P.J. Irani's case (supra). The question is whether the said classification has any nexus with the object with which the powers to H

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grant exemptions has been conferred upon the State Government under s. 29 of the Act. On this aspect of the matter before we go to the material furnished by the State Government on the basis of which such nexus is sought to be established it will be useful to refer to certain observations made by this Court in the case of State of Madhya Pradesh v. Kanhaiya Lal (supra) which afford a clear indication as to what kind of material would go to establish such nexus. The facts of that case were these. Respondent No. 4 in that case was a public trust registered under the Madhya Pradesh Public Trusts Act and it owned a house property, one portion whereof was occupied by girls school, the rest being let out to tenants. Since the rents issuing from the property were wholly utilised for the pure poses of the schools respondent No. 4 became entitled to get exemption from the provisions of the M. P. Accommodation Control Act under s. 3(2) thereof for that house-property. On an application made in that behalf by respondent No. 4 the State Government granted the exemption by issuing a notification under that provision. The notification was challenged on two grounds, (i) that s. 3 (2) was void on the ground of the excessive delegation of Legislative powers to the State Government; (ii) that the notification itself was discriminatory as the grant of exemption was not germane to the policy of the Act. The High Court upheld the validity of s. 3 (2) but struck down the notification as being discriminatory. This Court confirmed the High Court's view on both the points. While holding the notification bad on the ground that the exemption granted was not germane to the policy of the Act this Court observed thus:

"In this case there is no affidavit by any officer who had anything to do with the order granting exemption. The returns filed on behalf of the State Government do not throw any light on this question. It would appear that in granting the exemption the State applied merely a rule of thumb and issued the notification on the basis of the assertion by the trust that the entire rental income from the property was being applied to meet the expenses of the trust. Such a statement allows an institution to apply for exemption. It was not the case of the trust that they wanted to evict the tenants because they wanted the whole of the accommodation itself nor was it their plea that the income according to them was very low compared to prevailing rates of rent and that it was wholly inadequate for meeting the expenses of the trust. If grounds like these or other relevant grounds had

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been alleged it would have been open to the State Government to consider the same and pass an order thereon. In our view the State Government did not apply its mind which it was required to do under the Act before issuing a notification and the return does not disclose any ground which was germane to the purposes of the Act to support the claim for exemption ." (Emphasis supplied)

The above observations clearly indicate what kind of material the State Government is required to take into consideration which would justify the grant of an exemption in favour of a particular ill building or class of buildings. C

Coming to the material furnished by the State Government on the basis of which the impugned exemption is sought to be justified it may be stated that in paragraph 4 of its Counter Affidavit dated 10.2.1981 Shri J. Ramachandran, Joint Secretary, Home Department, has stated: D

"The prime object behind the grant of exemption to the buildings belonging to religious institutions is to enable J the institutions to get enhanced income by increasing their rents. The buildings were endowed to the public religious and charitable trusts for carrying out certain religious or charitable purposes. With the escalation of prices, the religious and charitable trusts are not in a position to carry out the endowment, if the income of the property is not - increased suitably and this nullifies the specific purpose of endowment."

In para 13 the deponent has further stated:

"As stated already, numerous representations were made to the Government about the plight of the temples and the public charities like poor feeding, etc. and the ridiculous position which is prevailing, and the Government on a consideration of all the aspects of the matter was fully satisfied that the tenants are fully exploiting the situation and the fixation of a fair rent under the Rent Control Act is no criterion at all and that it would cause immense injustice and would be highly oppressive so far as temples and religious endowments and public charities are concerned. It is only in the context of such a serious predicament and

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critical situation that the Government intervened and issued the notification under s. 29 of the Act to relieve the hard ship and injustice."

It has also been pointed out that the procedure and machinery indicated in s. 4 of the Act and the concerned Rules for fixing fair rent only yields on the total cost of the building together with the market value of the site, a gross return of 9 per cent for residential buildings and 12 per cent for non-residential buildings which is very low as compared to the bank rate of interest and grossly inadequate when compared to the reasonable rents at the market rate obtaining in the locality or the neighbourhood (i.e., rent which a willing land lord will charge to a willing tenant) and it was a case of the tenants of all such buildings exploiting the situation arising from the beneficial provisions of the Act. In the supplementary counter affidavit dated the 24th September 1983, Shri N. Srinivasan, Deputy Secretary, Home Department, has categorically asserted that "in all these cases the Government was satisfied that the rent paid by the tenants was very low, meager and that the provisions of fixation of fair rent under the Act would not meet the ends of justice and the situation will still continue in which the tenant will be exploiting the situation and the helplessness of the public religious trusts and charitable institutions" and that, therefore, the Government felt that it was

necessary to withdraw the protection given under the Act to the tenants of such buildings.

It may be stated that no rejoinder affidavit has been filed on behalf of the writ petitioners or the appellants and as such the before said material furnished by the two counter affidavits and the averments made therein have gone unchallenged. In our view, the aforesaid material clearly shows that buildings belonging to such public religious and charitable endowments or trusts clearly fell into a class where undue hardship and injustice resulting to them from the uniform application of the beneficial provisions of the Act needed to be relieved and the exemption granted will have to be regarded as being germane to the policy and purpose of the Act. In other words the classification made has a clear nexus with the object with which the power to grant exemption has been conferred upon the State Government under s. 29 of the Act.

It may be stated that counsel for the petitioners and the apple lands during the course of the hearing placed reliance upon a decision of this Court in *State of Rajasthan v. Mukanchand and Others*(1)

(1) [1964] 6 S.C.R. 903.

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where the impugned part of s. 2(c) of the Jagirdar's Debt Reduction A Act (Rajasthan Act 9 of 1937) was held to be violative of Article 14 on the ground that the test of nexus between the classification made and the object sought to be achieved by the statute in question had not been satisfied. The ratio of the decision was that Jagirs having been deprived of their lands were entitled to the benefits of the Act providing for reduction of debts and it made no difference whether the debts were owed to the Government or local authority or other bodies mentioned in the impugned part of s. 2(e) of the Act and such debts due to the Government, local authority and other bodies could not be excluded while granting the benefit of reduction of debts. The ratio, in our view, is clearly inapplicable to the facts of the instant case inasmuch as we have come to the conclusion that the classification of buildings made in the impugned notification has a clear nexus with the object with which the power to grant exemption has been conferred upon the State Government.

It was next contended that If the main object of granting exemption to buildings belonging to public religious institutions or public charities was to enable these institutions to augment their income by increasing rentals of their buildings such object could have been achieved by granting exemption from these provisions of the Act which deal with the controlling of rents (ss 4 to 8 and the Rules made in that behalf) but a total exemption granted to them from all the provisions of the Act particularly those which prevent unreasonable eviction of tenants must be regarded as excessive and unwarranted. And in this behalf counsel for the petitioners and the appellants referred to a Saurashtra Notification No. AB/15(17)/54-55 dated the 27th December, 1954 issued by the State Government under s.4(3) of the Saurashtra Rent Control Act, 1954 where under partial exemptions p from changing only the standard rent subject to certain conditions was granted to buildings belonging to public trusts for religious and charitable purpose. It was pointed out that the Notification provided that the provisions of the Act except provisions in ss 23, 24 and 25 shall not, subject to conditions and terms specified in the schedule thereto apply to such buildings and term No. 1 in schedule A stated that no tenant of such premises to whom the same has been leased on or before 30th December, 1948 shall be evicted provided such tenant agrees to increase the monthly rent paid by him immediately before the said date by 50 per cent and does not allow, except for valid reasons, the rent amount due at any time to run in arrears for more than two consecutive months." In other words the Saurashtra Notification was relied upon as an illustration where

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partial exemption from the provisions of the Rent Control enactment subject to terms and conditions could be granted. Thus counsel urged that similarly in the instant case the State Government of Tamil Nadu could have given partial exemption to buildings belonging to public religious institutions and public charities only in the matter of 'fair rent' and need not have taken away the protection available to the tenants under the provisions which prevented unreasonable eviction.

In our view there is no substance in the contention. It cannot be disputed that the two objectives of the enactment, namely, to control rents and to prevent unreasonable eviction are interrelated and the provisions which subserve these objectives supplement each other. In P. J. Irani's case (supra), Sarkar, J, has also observed at page 193 of the Report that "the purpose of the Act, quite clearly, is to prevent unreasonable eviction and also to control rent. These two purpose are intertwined." it is obvious that if the trustees of the public religious trusts and public charities are to be given freedom to charge the normal market rent then to make that freedom effective it will be necessary to arm the trustees with the right to evict the tenants for non-payment of such market rent. The State Government on material before it came to the conclusion that the 'fair 'rent' fixed under the Act was unjust in case of such buildings and it was

necessary to permit the trustees of such buildings to recover from their tenants reasonable market rent and if that be so non-eviction when reasonable market rent is not paid would be unreasonable and if the market rent is paid by the tenants no trustee is going to evict them. It is, therefore, clear that granting total exemption cannot be regarded as excessive or unwarranted.

Apart from this aspect of the matter it is conceivable

that trustees of buildings belonging to such public religious institutions or public charities may desire eviction of their tenants for the purpose of carrying out major or substantial repairs or for the purpose of demolition and reconstruction and the State Government may have felt that the trustees of such buildings should be able to effect evictions without being required to fulfil other onerous conditions which must be complied with by private landlords when they seek evictions for such purpose. In our view, therefore, the total exemption granted to such buildings under the impugned notification is perfectly justified.

The reliance on Saurashtra Notification, in our view, would be of no avail to the petitioners or the appellants. The manner in

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which exemption from rent control provisions should be granted, whether it could be partial or total and if so on what terms and conditions would be matters for each State Government to decide in the light of the scheme and provisions of the concerned enactment and the facts and circumstances touching the classification made. And if the State of Madras has thought fit to grant the exemption in a particular manner by the impugned notification it will be difficult to find fault with it if the exemption so granted is not illegal or unconstitutional. It will be interesting to note that even under the Saurashtra Notification the term or condition contained in Schedule 'A' thereto also makes the position clear that eviction may follow if the permitted enhanced rent is not paid or allowed to fall in arrears for two consecutive months by the tenant of such buildings belonging to public religious or charitable trusts. In the result the challenge to impugned notification fails and the writ petitions and the civil appeals are dismissed. All interim orders, if any, are vacated. where will be no order as to costs.

S. R.

Petition and Appeals dismissed

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