LAW SANS JUSTICE : JUSTICE ACCORDING TO LAW

THE ARTICLE, Law Sans Justice: An Unjust Special Right of Eviction for a Government Allottee Landlord, written by B.B.Pande, and published in the *Journal of the Indian Law Institute*[1] betrays many incongruous pleas. In deciding the case of *Sarwan Singh* v. *Kasturi Lal*[2] the supreme Court is accused of having shown "over-obsession with the words, even at the cost of the other cardinal elements that go in to make the law"[3].

Tenancy in slum areas in the Union Territory of Delhi are governed by the two enactments, *viz.*, the Slum Areas (Improvement and Clearance) Act, 1956 hereinafter referred to as the Slum Act and the Rent Control Act, 1958 hereinafter referred to as the Rent Act. The Rent Act, even though a later and general enactment has, on general principle, to remain subservient to the prior to the extent of inconsistency. Section 54 of the Rent Act[3a] expressly says so. It lays down general provisions and procedures for eviction of a tenant. But section 19 of the Slum Act with a view to extending special protection to the tenants in slum areas required permission of the competent authority for initiating proceedings for eviction under the Rent Act. This protective umbrella was by an amendment in 1964, extended, and then the landlords of the slum areas were required to obtain permission of the authority even before initiating any proceeding for eviction of such a tenant.

For solving the accommodation problem of its servants, the government formulated a new policy by which those of its employees having government allotted accommodation and owning house of their own in Delhi were served a notice for eviction from the government quarters. With a view to forestalling defiance, liability for a penal rent at market rate was to follow the order. Such employees, however, were not meant to sleep on the footpaths and so, with a view to getting them rehabilitated in their own houses, by an amendment in 1976 (preceded by an ordinance of 1975), sections 14A, 25A, 25B and 25C were added in the Rent Act.

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1. B.B.Pande, Law Sans Justice: An Unjust Special Right of Eviction for a Government Allottee Landlord, 19 *J.I.L.I.* 188 (1977).

2. A.I.R.1977 S.C.265.

3. *Supra* note 1 at 188.

3*a*. S. 54—Nothing in this Act shall affect provisions of ... the Slum Areas (Improvement and Clearance) Act, 1956.

By section 14A[4] such landlord was vested with a right to recover immediate possession of his premises situated anywhere in the Union Territory of Delhi. This right envisaged two factors *viz*, that in the first instance there should be a speedy eviction without unnecessary delay and secondly, that the possession has to be recovered without any hurdles, the contest against eviction being barred under section 25B of the Rent Act. Section 25B laid down special procedure to cope up with the required speed whereas section 25A[5], excluded the consideration of other general grounds required for a decree for eviction mentioned in the Rent Act or any other law in force, and gave overriding effect to the provisions of the whole newly added chapter IIIA. As a result section 54 of the Rent Act existing from before and saving the application of the Slum Act itself remained totally eclipsed for this type of landlords. Apart from the interference under the Slum Act through the main door by section 54 of the Rent Act, the former's entry through back door, as a special overriding provision was also negatived by the expression 'any other law for the time being in force' in section 25A as also held by the Supreme Court. Thus, the newly amended provisions though being a general Act of rent control, gave a fatal blow to the Slum Act provisions, even though it was of a special character. If the legislature with open eyes and full consciousness had chosen to override the provisions of the Slum Act for a certain purpose, the court of law had nothing to grudge against and had to administer the law as it was handed down by the legislature.

That being the position of law, Kasturi Lal[7], the owner of a house in slum area and landlord of Sarwan Singh, was bound to get recovery of possession, in the eviction proceeding launched by him disregarding the provision of section 19 of the Slum Act which required prior permission of the competent authority as a condition precedent to launching eviction proceeding. This is because Kasturi Lal was ordered to vacate government quarter or to pay a penal rent of

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4. S. 14A, *Right to recover immediate possession of premises to accrue to certain persons.*

(*i*) Where a landlord ... is required ... to vacate such residential accommodation, or in default to incur certain obligations, on the ground that he owns, in the Union Territory of Delhi, a residential accommodation .... there shall accrue ... to such landlord, not withstanding anything contained elsewhere in this Act or in any other law ... right to recover immediately possession of any premises let out by him ....

5. S. 25A: *Provisions of this Chapter to have overriding effect:-*
The provisions of this chapter or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force.

6. *Supra* note 3.

7. *Supra* note 2.

Rs. 569.50 per month instead of the usual rent of Rs. 65.06 only hitherto paid by him.

The law and the language of the law on this point being clear, Pande has ultimately chosen to resign to it and he says:

> The court's (Supreme Court's) outright rejection of the submissions (of the learned lawyer for the tenant) is ordinarily difficult to assail, particularly in the light of their clear finding about total absence of ambiguity in the concerned statute and their claim to an unimpaired vision of the legislative intent on the matter.[8]

He finds fault with the Supreme Court for responding differently because "for those who care more for the spirit of the law there were enough possibilities for a different reading of the statute and the legislative intent which could have provided ample scope for responding to, at least some of the submissions differently".[9]

His suggestion No. (*i*) for alternative course begins with the maxim : *generalia specialibus non derogant* (general do not derogate from special). To support his stand he relies upon the *ratio* of *Garnett* v. *Bradley*[9a] which unfortunately itself lays down in the extract quoted in his note that

> it is an intelligible principle to say that the Legislature shall *not be presumed* ... to have taken away this particular privilege, *not having stated openly* that they meant to take it away .... (emphasis added).

So, if the legislature avowedly and in clear terms takes away any prior protected privilege as it undoubtedly did in the present case, there is neither any question of raising a presumption in favour of the nullification of the privilege nor does the said *dictum* of *Garnett's* case and the maxim govern the situation. Similar fate awaits the second ruling relied upon by Pande in the case of *Municipal Council, Palai* v. *T.J. Joseph*[9b]. The observation of Mudholkar, J., (which Pande partly quoted to rely upon) is as follows in complete form :

> Of course, there is no rule of law *to prevent* repeal of a special by a later general statute and, therefore, where the provisions of the special statute are wholly repugnant to the general statute, *it*

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8. *Supra* note 1 at 190.
9. *Ibid.*
9*a*. (1177-78) 3 A.C. 944.
9*b*. A.I.R. 1963 S.C. 1561.

> *would be possible to infer that the special statute was repealed by the general enactment.* A general statute applies to all persons and localities within its jurisdiction and scope as distinguished from a special one which in its operation is confirmed (*sic*, confined) to a particular locality and, therefore, *where it is doubtful* whether the special statute was intended to be repealed by the general statute the court should try to give effect to both the enactments as far as possible.[9c]

This *dictum* also clearly holds that even a provision of a special Act can be validly repealed expressly or impliedly by the general Act. But only the absence of express abrogation will necessitate inference of implied repeal and in case of 'doubt' about such implied repeal, the attempt to give effect to the provisions of both is needed. But Pande has no doubt that on a plain reading of the amended provisions of the Rent Act there is only one conclusion and that is these provisions override (and so repeal to that extent) the provisions of the special enactment of the Slum Act. So this ruling also goes against his stand, not to say that both the rulings support the competency of the legislature for repealing the special by the general enactments. The maxim *generalia specialibus non derogant*, therefore, has no universal application. The provision of the Slum Act requiring permission of the authority before the initiation of the proceeding for eviction by a landlord had a delaying tendency against the 'immediate' eviction requirement and *was virtually a useless procedural exercise in face of the blanket right of eviction vested in the landlord.* The discretion of the authority concerned in the Slum Act even to withhold permission to the landlord for applying for eviction *was again inconsistent with* the openly declared object of the provisions of section 14 A of the Rent Act. So the latter provision *i.e.* chapter III A of the Rent Act had to prevail over the provisions of the Slum Act, a special enactment notwithstanding.

Pande's feeling that the submission on behalf of the tenant, Sarwan Singh that "if the new provision was to abrogate the Slum Act why was there no express mention to that effect has not been convincingly disposed of by the court[10], misses the clear reasoning of the Supreme Court pointing to such clear expression. It has been clearly pointed out by the Supreme Court that section 25A of the Rent Act has two parts: the first part unequivocally nullifies the operation of section 54 of the very Rent Act which has been conceding overriding effect to the Slum Act whereas in the second part the expression "any other law for the time being in force" independently and expressly excludes the operation of prior Slum Act in the field of its own operation.[11] This

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9c. *Id.* at 1565 (emphasis added).

10. *Supra* note 1 at 191.

11. See *ibid.*, f. n. 17.

author may also add that section 14 A in itself also contains a *non-obstante* clause to the same effect. What more reason was needed to make the approach convincing?

In his very first suggestion Pande becomes a bit despondent in the end by saying :

> In any case had the court not been over-convinced with the express abrogation idea there could have been a better opportunity to work out a reconciliation between the two statutes. Such a line would have certainly given the court a chance for interpreting the law in the light of its spirit.[12]

This author's response to such a suggestion is simple and spontaneous. Firstly, the clear aims and objects of the provisions, as indicated above, required no such attempt for reconciliation. Secondly, the very effort to reconcile the two mutually destructive provisions would be a futile exercise, like the vain attempt to draw more than one straight line between the given two points. And thirdly, the Supreme Court was justified in not permitting the dead spirit of the Slum Act to guide or govern the search operation for any 'supposed spirit' of the amended provision of the Rent Act when the words used unequivocally pointed to the 'real spirit' itself.

Pande puts forward the 'demand of natural justice' as his second line of argument and the resultant 'unjust consequence' due to failure to heed to it as his third. According to him the tenant Sarwan Singh occupying the house since 1948 with the protective umbrella of the Slum Act since 1956 had a "sort of accrued right which could not be easily done away with by subsequent legal action. The total disregard of such an accrued right proposed by the amendments to the Rent Act amounted to a denial of natural justice, particularly where the tenant is denied even a right to press forward his claim"[13] (against eviction by section 25B(4). Neither 'political philosphy' nor 'social reality' according to him justifies such a disregard of the accrued right of the tenant.[14] This plea of Pande gets inspiration from the following observation of Lord Blackburn in the *Garnett* case :

> [W]here the particular enactment is particular in the sense that it protects the right, the property, the privileges of particular persons or a class of persons, the reason for the rule which has been acted upon is exceedingly plain and strong. *It would be very unjust*, or I would rather say *unfair* (I do not go farther than that), *to pass an enactment taking away* from a particular person or class of persons *his or their rights*.[14a]

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12. *Ibid.*
13. *Id.* at 191-92.
14. *Id.* at 192.
14a. *Supra* note 9a at 968-69 (emphasis added).

Before the establishment of the supremacy of Parliament capable of making or unmaking a law in England, the above quoted observation of Lord Blackburn inflicted only a scratch in the sequel of the fatal assault caused by Lord Coke in 1610 in the *Dr. Bonham's* case[14b] that "the common law will control Acts of Parliament, and sometimes adjudge them to be utterly void . . . when . . . against common right and reason. But this theory of supremacy of common right and reason over the wisdom of Parliament now belongs to the past and it is apposite here to quote Hamilton, L.J., (later Lord Sumner) in the case of *Baylis* v. *Bishop of London*[15] :

> Whatever may have been the case 146 years ago we are not now free in the twentieth century to administer that vague jurisprudence sometimes attractively styled 'justice between man and man'.

Thus, the so called 'accrued right' of the tenant was merely *a privilege* to occupy the house till the law chose to extend the protection. The question of change in 'political philosophy' or 'social reality relating to slum problem' is beside the point because the amended provision of the Rent Act never aims at mass evacuation of the tenants in the slum area; rather it is an adjustment of clash between the interests of two negligible categories of individuals, a tinkering solution one may say.

Pande's plan to protect long term tenant occupying the house since 1948 has given vent to his feeling :

> Secondly, the application of the amended law to all tenants, irrespective of the date of tenancy also amounted to denial of natural justice, because such a treatment would keep on par those tenants who had been occupying the premises long before the new law came into force and those tenants who occupy the premises after the amendment. This way a justiciable distinction between *those who are in no way responsible* for their plight and *those who*, at least, *share the knowledge* of the new non-protective law, and, therefore, *are partly responsible*, would be obliterated. The principle of natural justice demands that like should be treated alike and treating all tenants alike, in the above context, would be discriminating against the ones who have a strong case for favour under the law.[16]

This solicitation for discriminatory treatment between creation of tenancy before and after the amended enactment is clearly based on the wrong notion that the Slum Act made the eviction of the tenant itself inviolable. This was never a fact. The liability for eviction had always been there

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14*b*. (1610) 8 Co. Rep 113b at 76-77 E.R. 646.

15. (1913) Ch. 127 Quoted in Friedmann, *Legal Theory* (4th ed; 1960).

16. *Supra* note 1 at 192-93 (emphasis added).

with the only difference in the special and telling grounds in the Slum Act in comparison to the normal and even less necessary grounds in the general enactment of the Rent Act. Section 19 (4)[17] of the Slum Act itself mentions three grounds for being taken into consideration by the prescribed authority in granting or rejecting the permission to a landlord for initiating a proceeding or executing an order for eviction against such a tenant. If the legislature had thought continuance of the permission provision in the situation which Kasturi Lal was facing, was there any hurdle on its way to have had included in the 1967 amended provision of the Rent Act under the 'other factor' prescription of clause (c)[18] nullifiying the stand taken by Pande? Liability for eviction even prior to the amended provisions of the Rent Act was there under section 19(4) (a) of the Slum Act itself. Had the tenant like Sarwan Singh no knowledge of his such vulnerable position and liability for ejectment even prior to the amendment? Even if the landlord like Kasturi Lal had more than one house in occuption of different tenants in the slum area, the ultimate and overriding choice to select the house for his own accommodation must, it is submitted, be with the landlord. The tenants *inter se* would have no say to direct the choice to a particular house on the length or duration of their respective tenancy.

Pande shows his concern regarding the manner of interpretation by the Supreme Court having attributed blanket overriding character to the provision of chapter III-A of the Rent Act. "Such an interpretation is likely" according to him, "to cause real hardship for at least some class of tenants". This some class of tenants according to him belongs "to a rock bottom poor class who is not in a position to pay any enhancement of rent for an alternative accommodation... In case of such a poor tenant the so-called normal operation of the eviction law would mean either his being thrown on the streets or being forced to create new slums."[19]

All these grievances are rooted in the partial view and one-side vision. No doubt, the directive principle in our Constitution and welfare legislations thereunder pointedly aim at the uplift of the poor and down-trodden. But it is a mass-scale scheme and has nothing to do with individual instances of hardships. Likewise the concern of law is general and not individual, though individuals constituting a particular class may, and generally, fall within the class dealt with by law. All the tenants in the slum area are put in a class getting protection of the Slum Act irrespective

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17. S. 19(4) (*a*). Whether alternative accommodation within the means of the tenant would be available to him if he were evicted;

(*b*) whether the eviction is in the interest of improvement and clearance of the slum areas;

(*c*) such other factors, if any, as may be prescribed.

18. *Ibid.*

19. *Supra* note 1 at 193.

of their individual financial position. But thereby it cannot be concluded that every such tenant is a poor man; rather Pande in his above comment consciously excludes this possibility. Likewise, those employees occupying government quarters, though having their own house in Delhi and so liable to the order for vacating the quarters, constitute a class dealt with by a special provision of the amended law. But it is neither desirable nor warranted to presuppose such an employee to be rich or better off merely because he owns a house. The general condition of the slum area may rather force the conclusion that the owner of a house in slum area may also, in all probability, be of the same status and stratum which has been the specific concern of the welfare statutes and the government. Pande, though anxious for such a tenant likely to be thrown on the streets has unfortunately nowhere in his paper cared the least for the poor landlord actually 'being thrown on the streets' by the order of eviction (from the quarter) passed by the government. The alternative choice of payment of rent at such an exorbitant rate, while himself getting Rs. 6/ p. m. only from his tenant, is ominous of his financial ruin and nothing less. It is not a Hobson's choice compelling to the only course to leave the quarter and look for his own. A welfare state or legislation can conceivably rob Peter to pay Paul to minimise economic disparity but one can never justify a step to throw a house-owner on the streets in preference to the (unlucky homeless) tenant. Even if the building and rent control Acts in India be conceded the object of creating homes for the homeless, Owner Thou Be Beggar! cannot justify the policy of any. The dictates of natural justice, therefore tilts the balance in favour of the landlord in preference to the tenant. So is the compelling 'spirit' of the provisions of law under consideration. Clear expression of this spirit and purpose of the legal provisions through words used never warrant chasing another type of spirit which may suit the individual way of thinking about a problem.

The above discussions of the policy and justice fully meet the following query of Pande:

> It is difficult to appreciate why in the present case the legislature could be presumed to have intended to make a law likely to create substantial hardship for the weakest section of the society . . . .[20]

> Lastly, Pande has a prompting for the Supreme Court. He says: Finally even if one accepts that the straight jacket of the interpretation rules required the court to strictly apply the law, there was nothing that could have restrained the court from pointing out the lacunas of the present law and recommending suitable reforms.[21]

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20. *Id.*, at 194.
21. *Ibid.*

An advice is warranted only when the adviser finds that the subject has strayed from the right path but not when the path adopted by the latter is correct or deemed to be correct. Legislative intent and judicial activism are too familar to misunderstand each other. The reasoning of the Supreme Court decision and the above discussion close the door for such an uncalled for advice.

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