

URBANIZATION AND RENT CONTROL LEGISLATION

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I. INTRODUCTION

Urbanization is a dynamic phenomena which must necessarily have its impact on every aspect of social life, creating a number of problems. Out of the many outstanding problems, the one of shelter is, perhaps, most acute. The highly visible implications of inadequate housing are apparent in every urban centre. Today in every city there exists a housing deficit of astonishing proportions as a result of increased immigration of population and, overuse of existing housing supply. The deterioration in the existing housing and lack of requisite incentive in private sector for new housing due to abnormal increase in the cost of land and building materials and the cost of maintenance have made the problem of shelter more acute. The result is that there is struggle for shelter in every urban center. Acquisition of private urban housing for public purposes or Government projects or requisitioning of the private housing for Governmental or public use by the state further accentuates the housing deficit for common man living in the city. The admitted fact remains that the number of owners of property is far less than the number of those who seek shelter without having property of their own.

II. HOUSING PROBLEM IN INDIA AFTER THE WORLD WAR

In England after the first world war there was a grave housing shortage and the problem became still more acute after the second world war. The cause which led to housing shortage in England caused a similar shortage in India and the position of this country and particularly in West Bengal and the Punjab was greatly aggravated due to the partition. Refugees poured into almost every urban center and the housing shortage became worst than ever. The number of shelter-seekers swelled to enormous size, and consequently rents increased enormously, particularly in bigger urban centres. The English Parliament, soon after the first war, passed a series of Rent Control Acts controlling rent and the right of possession of premises in order to check the tendency for rent to rise and to become exorbitant. After the first world war the Rent Control Legislation were continued and they are still in operation. In India, Rent Control Legislations were the posthumous children of war. The impact of urbanization and the resultant acute problem of the world war I made state intervention through legislation

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in the field of contract of letting necessary. The individual freedom of contract and action was regulated, restricted and curtailed on the ground that individual freedom should give way to social liberty. As a result, in India Rent Control legislation came to existence at state level and today in every state of the country they are operative, regulating the control of rent, letting and eviction.

III. BASIC PRINCIPLES OF RENT CONTROL LEGISLATION

The law relating to landlord and tenant was codified for the first time in India by incorporating Chapter V relating to leases of immovable property in the Transfer of Property Act (Act V of 1882). Prior to the passing of this Act, the Hindu Law was held to be strictly applicable to a tendency created by express contract between Hindu¹ and the English Rules regarding the relationship of landlord and tenant were applied whenever no precise rule regarding the subject was to be found in Hindu law or other laws.² Before the Transfer of Property Act when the owner of land consented by deed that another person should occupy the land for a certain time, there was lease.³ This meaning attributed to the term 'lease' was based on the medieval concept of ownership. Holdsworth suggested that the development of ejectionment was based upon the concept of absolute right of ownership.⁴ In Section 105 of the Transfer of Property Act, the terms 'landlord' and 'tenant' have not been used. Instead it has used the words 'lessor' and 'lessee'. The lease of immovable property itself has been defined as a transfer of a right to enjoy the property for consideration.⁵ Provisions regulating the conditions under which 'lease' may be determined are further incorporated under Sections 106 and 111 of the Act. Simultaneously the Act enumerates the rights and liabilities of lessor and lessee.⁶ It may be noted that under the Act a lease is contemplated as the outcome of the rightful separation of ownership and possession. By now, the concept of ownership in matter of lease had undergone a definite change. While remaining in legal form, an institution of private law implying the absolute power of control and disposition, ownership had been conceived under Chapter V of the Transfer of Property Act as an institution of public law. Before the lease the owner has the right to enjoy possession of the property leased but by the lease he excluded himself during the currency of the right. Thus against the medieval thought, a lease no more remained a mere contract but is a transfer of interest in the property leased. It creates a right *in rem*.⁷ Thus

1. Cf. *Russick Lell v. Lokenath*, 5 Cal. 688.

2. *Tara Chand v. Ram Govind*, 4 Cal. 778.

3. *Nagindra v. Purna*, 3a C.W.N. 98.

4. *Holdsworth, History of English Law*, VII, 79.

5. See now, Transfer of Property Act, 1882, Sec. 105.

6. Sec. 108 of the Transfer of Property Act, 1882.

7. *Anwar Ali v. Jamini Lal*, A.I.R. 1940, Cal. 89.

it will be observed that freedom of contract in the matter of letting was restricted and regulated by one Central Act.

IV. STATE INTERFERENCE IN THE FIELD OF LETTING

As a result of urbanisation and impact of the world wars there began to be felt that unless legislation was passed controlling the rent which could be demanded from tenants, numberless tenants would have been ejected and persons would have to pay far more, than they could afford, to maintain a roof over their heads. The background for and the object underlying the Rent Control legislation in India would best appear from the statement of Objects and Reasons⁸ annexed to the Bill of the U.P. (Temporary) Control of Rent and Eviction Act, which reads :—

Early in 1942 there began to be felt an acute demand for accommodation in the towns of India owing firstly, to the influx of evacuees from Burma and from threatened areas in India and secondly to the expansion of industries to meet wartime requirements and the demands for offices which were erected to deal with rationing and other new government activities. These facts combined with the cessation of normal building and the growth of population made it necessary for the Government of India Rules for the regulation of letting of accommodation and in particular for controlling rents, restricting eviction and prescribing the persons or class of persons to whom the accommodation was to be let.

With the lapse of Defence of India Rules on September 30, 1946, it began to be felt that the continuance of control to prevent eviction and excessive enhancement and to regulate future letting was essential almost in every state. Consequently, Rent Control legislation providing for control of rent and of letting, including sub-letting, and imposing restrictions against eviction of tenants were enacted and continued, almost in every state of the country.⁹

Now it will be seen that state has stepped in as a third agency and no valid tenancy can be created unless the state gives its prior sanction to it.¹⁰ Similarly eviction of tenants, except on the grounds specified in the

8. Published in the U.P. Gazette Extraordinary dated August 7, 1946.

9. See now Rule 81 (2) (bb) of the Defence of India Rules, 1939.

10. For example see section 7(2) of the U.P. (Temporary) Control of Rent and Eviction Act 1947 which empowers the District Magistrate to require by general or special order, a landlord to let or not to let to any person any accommodation which is or has fallen vacant or is about to fall vacant. Again, section 7(3) of the same Act prohibits subletting by a tenant any portion of the same by a tenant any portion of the accommodation in his tenancy except with the permission in writing of the landlord and of the District Magistrate, previously obtained.

Also see :

Section 3 of the Andhra Pradesh Act.

Section 11(2a) of the Bihar Act.

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Acts, is restricted and the Courts are prohibited from taking cognizance of any such suit for eviction of a tenant unless prior sanction of the state has been obtained by the landlord.¹¹ State has been empowered to determine reasonable rent.¹² Landlords have been expressly prohibited from taking

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Sections 46 and 47 of the Delhi Act.

Section 4 of the Kerala Act.

Sections 39, 40, 40-A, 41 and 42 of the Madhya Pradesh Act.

Section 3 of the Madras Act.

Section 17 of the Rajasthan Act.

Sections 7, 7-A and 7-B of the U.P. Act.

Sections 4 to 13 of the Mysore Act.

It may be noted that section 7 of the U.P. (Temporary) Control of Rent and Eviction Act omits to take notice of all the provisions contained in section 108(1) of the Transfer of Property Act, 1882 which enables a tenant to transfer absolutely or by way of mortgage the whole of any part of his interest in the property and any transferee of such interest a part may again transfer it. It is not difficult to defeat the purpose of section 7 of the Act.

11. See for example section 3 of the U.P. Act III of 1947.

Also see :

Section 5(1) of the Assam Urban Areas Rent Control Act, 1961.

Section 10(1) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960.

Section 11(1) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947.

Sections 12 and 13(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Section 14(1) of the Delhi Rent Control Act, 1958.

Section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965.

Section 12 of the Madhya Pradesh Accommodation Control Act, 1961.

Section 10 of the Madras Buildings (Lease and Rent Control) Act, 1960.

Section 7 of the Orissa House Rent Control Act, 1958.

Section 13 of the Rajasthan Premises (Control) or Rent and Eviction) Act, 1950.

Section 13 of the East Punjab Urban Rent Restrictions Act, 1949.

Section 3 of the U.P. Control of Rent and Eviction Act, 1947.

Section 13 of the West Bengal Premises Tenancy Act, 1956.

12. *Id.* Section 3-A.

Also see :

Sections 3 and 4 of the Assam Act.

Sections 4 to 6 of the Andhra Pradesh Act.

Sections 5 to 8-A of the Bihar Act.

Sections 7 and 11 of the Bombay Act.

Sections 4 to 10 of the Delhi Act.

Sections 5 to 8 of the Kerala Act.

Sections 4 to 11 of the Madhya Pradesh Act.

Sections 4 to 7 of the Madras Act.

Sections 4 and 5 of the Orissa Act.

Sections 14, 16, 17 and 18 of the Mysore Act.

Sections 4 to 6 of the East Punjab Act.

Sections 6 to 8 of the Rajasthan Act.

Sections 3-A, 5 and 5-A of the U.P. Act.

Sections 4, 7, 8, 9, 10, 11 and 12 of the West Bengal Act.

premium from a tenant.¹³ Provisions have been made for the deposit in the Court of rent by a tenant which he has validly tendered but the landlord has refused to accept the same.¹⁴ Again, landlords have been prohibited from cutting off or withholding any of the amenities enjoyed by the tenant without just or sufficient cause and in the event of doing so the state extends protection to the tenant.¹⁵ Statutory duty is cast upon the landlord to keep the accommodation in occupation of a tenant wind-proof and water-proof and to carry out other repairs which he is bound to make by law, contract or custom.¹⁶ Summary remedies are provided if the landlord neglects to carry out repairs which he is bound by law or contract to make. Rent Control legislation have in effect nullified the provisions of law contained in Section 111(a) and (b) of the Transfer of Property Act which provides that a lease of immovable property determines by efflux of the time limited thereby, and where such time is limited conditionally on the happening of some event, by the happening of such event. Now, while the contractual tenancy created by the Transfer of Property Act comes to an end, the statutory tenancy recognised by the special statute comes into being.¹⁷

V. SOCIOLOGICAL ASPECTS OF RENT CONTROL LEGISLATIONS

It is evident that state interference in the field of letting through various rent control legislations has put fetters on freedom of contract and restricted the rights of owners in the matters of rent and eviction. But the problem still remains unsolved. Despite the rent control legislation remaining in

13. *Id.*, Sec. 4.

14. *Id.*, Sec. 7-C.

15. *Id.*, Section 7-B.

Also See :

- Section 24 of the Bombay Act, 1947.
- Section 45 of the Delhi Act, 1958.
- Section 38 of the Madhya Pradesh Act, 1961.
- Section 17 of the Madras Act, 1960
- Section 43 of the Mysore Act, 1961.
- Section 10 of the East Punjab Act, 1949.
- Section 12 of the Rajasthan Act, 1950
- Section 7-D of the U.P. Act, 1947.
- Section 34 of the West Bengal Act, 1956.

16. *Id.*, Section 7-E.

Also see :

- Section 23 of the Bombay Act.
- Section 44 of the Delhi Act.
- Section 22 of the Madras Act.
- Section 37 of the Madhya Pradesh Act.
- Section 12 of the East Punjab Act.
- Section 20 of the Rajasthan Act.
- Section 34 of the West Bengal Act.

17. *Punjatal v. Bhagwat Prasad*, A.I.R., 1963, S.C. 123.

force in various states, the conditions have greatly worsened and in many urban centres the situation has become almost desperate due to phenomenal growth in the population of such centres without corresponding additions of new housing accommodation. In almost every city on the one hand the population is growing at a fast rate while the new accommodation is being created at a negligibly increasing rate. Due to stringent provisions in the rent control enactments of every state relating to fixation of rent under the terms 'reasonable rent', 'fair rent' or 'standard rent' private investors have grown reluctant to invest in buildings for rent. Till recently the major housing accommodation was being provided by private investors. But now the private investors are not sufficiently interested in developing lands and constructing buildings because of high prices of lands and materials of construction, shortage of building materials and rising wage spiral and over and above the comparatively much low return of their investments in the form of rents on account of the control of rents. The states and local authorities have been making various efforts to tackle this problem by sharing the housing responsibility under various schemes providing for public housing or subsidised housing. The rents payable in respect of the accommodations provided by the states or local authorities are generally regulated by contract. All calculations are made before the rents are fixed and prospective tenants have to accept the rate of rents, already fixed, by entering into a contract with the state or local authority. In the private housing, a person can become a tenant first, he can be put into possession of the accommodation allotted to him by police force and after that he can claim for fixation of rent. It is submitted that the law relating to control of rents has to be relative and conditioned by the needs and the time and as such while providing norms for control of rent and fixation of rents it must keep in view the economic aspect of relative matters. Simultaneously private and public housing have to be kept at par without discriminating between the two. If the legislation makes a distinction and treats public and private housing at different level such legislation cannot be straightaway struck down as violating Art. 14 of the Constitution for it might well be argued that public housing is a class by itself, but such a legislation is bound to keep down the development of housing in urban centres.

The private investors constructing buildings for rent have shown of late a tendency to make the maximum money out of the minimum accommodation meant to be let out. As a result, non-standard small accommodations are built and let out at fancy rents. To them urban housing means merely a shelter for tired bodies and minds and not healthy centres of human living. In such tenements, live people with uneasy minds, with comparatively faster dwindling energies. The need, therefore, is that a legislation providing for control of rent should also make provision for maintenance of accommodation-standards. Law must be there to regulate rents according to the accommodations. The need of the time is imperative and

their must be legislation to enjoin upon every person who intends to construct buildings for rent to obtain prior approval and sanction of the state before making such construction and while according its sanction the state must fix standards of accommodation to which such construction must conform and, then, according to such standards rents must be fixed. Only then a legislation for control of rents can be made effective.

VI. CONTROL OF EVICTION

Rent control legislation in every state has provided grounds on which a landlord can seek eviction of tenant. Such grounds have, obviously, been provided keeping in view the social trends and legal basis. A general ground is that in case the landlords require the accommodation in occupation of his tenant for his personal need he may obtain the permission of the District Magistrate and thereafter file a suit for eviction of his tenant. The procedure in seeking permission and in obtaining a decree for ejection is so lengthy in some enactments that it takes from three to seven years in obtaining, finally, ejection of a tenant. It may take even more time. Under U. P. Act a landlord has to make application to the Rent Control and eviction officer for seeking permission to evict the tenant on the ground of personal need under S. 3 of the Act. Revision from the order lies to the Commissioner and thereafter a petition under S. 7-F of the Act lies to state Government. No limitation is prescribed for filing petition to the state government and the state government has unfettered powers to pass any order it thinks fit in disposing of a petition under S. 7 of the Act. Normally this procedure takes from one to two years in obtaining a final order from the state government. Again, it takes a period of about two years in obtaining a decree from trial court and if the decree of ejection is challenged in appeals it can take further nearly three years to get a final decision in the matter. I submit that this is a colossal waste of public time and in effect this procedure nullifies the object of the legislation. Once the need of the landlord is taken to be genuine he must be put into possession of his property in the same manner as a tenant is put into possession of a property under S. 7-A of the U.P. Act, 1947. A landlord claiming eviction of his tenant on his *bonafide* personal need should be permitted to file a suit for ejection straightaway so that in the court of law he may be able to obtain decree in his favour if he successfully established that he *bonafide* needs accommodation for his personal use and occupation.

In essence the above submissions are based on the assumption that legislation must keep pace with time and needs of society. The present day rent control legislation must perform the adjustment of two functions – the protective and ordering function on the one hand and the creative on the other. It must strike a balance between the conflicting interest of the landlords and the tenants, without hampering the growth of housing whether public or private.