ORDER

In view of our judgment pronounced today in *Special Land Acquisition Officer* v. *Sidappa Omanna Tumari*[1] the special leave petition is dismissed.

1995 Supp (2) Supreme Court Cases 182

(BEFORE K. RAMASWAMY, S. MOHAN AND N. VENKATACHALA, JJ.)

P.G. GUPTA .. Appellant;

Versus

STATE OF GUJARAT AND OTHERS .. Respondents.

Civil Appeals No. 1529 of 1988 with Nos. 1525-1528 of 1988†,
decided on December 14, 1994

A. **Service Law — Government accommodation — Hire purchase scheme — Houses constructed for being rented to lower income group government servants, brought under — Entitlement to allotment of — Provision in Government Resolution entitling such of the government servants as had been allotted a better alternative accommodation elsewhere on concessional basis, held, rightly quashed by the High Court as on the date of the resolution such government servants were either not in possession or were in illegal possession of the houses concerned (Para 5)**

B. **Service Law — Government accommodation — Hire purchase scheme — Houses, constructed at Ahmedabad for being rented to lower income group government servants, subsequent to shifting of the capital of the State of Gujarat from Bombay to Ahmedabad, brought under hire purchase scheme by a Government Resolution which also categorised the government servants for the purpose of priorities in the matter of allotment under the hire purchase scheme — Last date for entitlement to priorities under the said resolution — Taking of the date of the Government Resolution by the High Court as the date for the said purpose, held, neither arbitrary nor illegal — Cut-off date — Constitution of India, Art. 14 (Paras 12 and 14)**

C. **Gujarat Housing Board Act, 1961 (28 of 1961) — Ss. 74 and 82 — Scope and applicability — Houses constructed by the Board for allotment to weaker sections at Ahmedabad from Government of India funds — Subsequently the capital of the State of Gujarat shifting from Bombay to Ahmedabad — Consequently, on the State Government's request, the Government of India permitting the allotment of such houses to government servants on hire purchase basis subject to certain conditions — Such arrangement for allotment, held, not an instance of exercise of power by State under S. 82 —Regulations framed under S. 74 not applicable in such a case — Service Law — Government accommodation (Para 6)**

D. **Service Law — Government accommodation — Hire purchase scheme — Rented houses, constructed for lower income group government servants, brought under — Entitlement to allotment of such houses — Provision in Government Resolution entitling such of the government servants as had been transferred outside the city concerned on a permanent basis, held, rightly set aside by the High Court — Constitution of India, Arts. 19(1)(e), 21, 37, 38, 39(b) and 46 — International Covenant on Economic, Social and Cultural Rights, Art. 11(1) (Paras 11, 12 and 14)**

1 1995 Supp (2) SCC 168

† From the Judgment and Order dated 7-11-1987 of the Gujarat High Court in S.C.A. No. 980 of 1980

Olga Tellis v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545; *Shantistar Builders* v. *Narayan Khimalal Totame*, (1990) 1 SCC 520 : AIR 1990 SC 630, *referred to*

Appeals dismissed H-M/T/14138/SLA

Advocates who appeared in this case :

N. Dushyant Dave, Ms Meenakshi Arora and Harish J. Jhaveri, Advocates, for the Appellants;

B.K. Mehta, Senior Advocate (Krishna Mahajan, P.H. Parekh and E.R. Kumar, Advocates, with him) for the Respondents.

ORDER

1. Since common question of law has been raised, these appeals are being disposed of together. The Division Bench of the Gujarat High Court in its judgment dated 7-11-1987, decided Civil Application No. 980 of 1980 and batch. One of the questions therein raised was, whether the persons falling in categories (*iii*) and (*vi*) in the Government Resolution dated 18-2-1975 are entitled to priority in allotment of government quarters under hire purchase scheme? The High Court, after elaborate consideration, had concluded that:

> "In view of the aforesaid discussion, it must be held that the impugned resolutions dated 18-2-1975 and 10-3-1980 are legal and valid save and except priority categories (*iii*) and (*vi*) contained therein which are quashed and set aside. Rest of the resolutions shall be operated upon and implemented by the respondent authorities."

2. In these appeals, we are concerned only with regard to categories (*iii*) and (*vi*). Admittedly, in the Lower Income Group Housing Scheme, 396 houses were constructed at Pahari at Ahmedabad and were allotted to the government employees on rental basis. Subsequently, the State Government had obtained sanction from the Central Government in May 1969 to convert the scheme into hire purchase scheme and for allotment to the government employees on the criteria indicated therein, namely, continuous residence for five years and also the eligibility criteria excluding the government servants who had already retired from service. Thereafter on 17-4-1971, the Government passed a resolution converting 200 out of 396 houses for allotment on hire purchase basis. On a further resolution dated 22-6-1972 all the 396 houses were pooled for allotment on hire purchase scheme. In the offending resolution the allotment was also sought to be given to category (*iii*), such of those employees working in Sachivalay (Secretariat) and originally allotted the house at Pahari at Ahmedabad but later they shifted their residence and they voluntarily vacated the houses and shifted to the houses allotted at Gandhinagar with better accommodation on concessional basis. It was also sought to be given to such of those employees in category (*vi*) who had been transferred outside Ahmedabad on a permanent basis. The entitlement under the scheme came to be challenged by some of the employees in the High Court. As stated earlier, the High Court while upholding other criteria for other categories, quashed the entitlement to the allotment to categories (*iii*) and (*vi*). Thus, these appeals by special leave.

3. Shri Dave, learned counsel for the appellants, contends that initially when the Government of India had given permission for converting these houses for allotment from rental scheme to hire purchase basis, the requisite qualification of five years' stay therein was applicable. In view of the compulsion by the State Government, the category (*iii*) employees had shifted from Pahari to

Gandhinagar. Therefore, they cannot be deprived of their entitlement to allotment on hire purchase basis.

4. Shri Mehta, learned Senior Counsel appearing for category (*vi*), urges that the impugned Government Resolution militates against the statutory regulation of allotment made pursuant to Section 74 of the Gujarat Housing Board Act, 1961 (for short 'the Act'). The Government have, therefore, no power under Section 82 of the Act to pass any resolution contrary to the statutory regulations. It is also contended that the lower income group housing scheme was initiated to benefit the people of lower income group having an annual income of Rs 6000 to purchase the houses on hire purchase scheme. The initial scheme to give benefit to the poorer employees has been given a go-by hitting hard the weaker segments among the employees and their rights and allotment on priority basis was, therefore, defeated. The criteria adopted by the Government are, therefore, irrational and arbitrary and it has no nexus between the object of allotment on hire purchase basis and the policy. The denial thereof to category (*vi*) employees violates Articles 14, 19 and 21 of the Constitution. It is also contended that though none has challenged the entitlement to allotment of category (*vi*) employees, the High Court, after reserving the cases for consideration, had denied them the benefit in the judgment. Therefore, the High Court has committed manifest error of law.

5. Having given our anxious consideration to the contentions raised by the learned counsel for the appellants, we are of the considered view that there is no force in any of them. It is true that initially when the Government of India had given sanction for converting 396 lower income group houses from rental scheme to hire purchase scheme, category (*iii*) employees were in occupation of the respective allotted houses. It is seen that they had vacated the respective premises as they were allotted government houses having better accommodation at Gandhinagar at concessional rates. As on the date of the resolution passed by the Government, admittedly, they were not in possession of the houses at Pahari or some of them were in illegal occupation. In these circumstances, the conclusion reached by the High Court that the category (*iii*) employees are not entitled to the allotment, is just and reasonable. It is not vitiated by any error of law.

6. With regard to the exercise of power by the State under Section 82 of the Act vis-à-vis the regulations made under Section 74 of the Act, we need not go into that question. The reasons are eloquent. Though the lower income group houses were constructed for the allotment to the weaker sections from the funds allotted by the Government of India, after the bifurcation of the Bombay State, Gujarat State was formed and the capital of the State of Gujarat was shifted from Bombay to Ahmedabad in the year 1970. Thereafter at the request of the State Government, the Government of India had given permission for allotment of those houses to the government employees. The statutory exercise of power under Section 82 and operation of the regulations under Section 74, under these circumstances, have no bearing in relation to the allotment of these houses to the government employees in question. Thus, it is unnecessary for us to go into the question of legality of the exercise of the power by the Government under Section 82 vis-à-vis the statutory regulations made under Section 74 by the Board with previous consent of the State Government.

7. It is true that Gujarat Housing Board had constructed houses under low income group scheme for allotment to the poorer segments of the society within prescribed annual income. Article 19(1)(*e*) protects the right to residence and settlement in any part of the territory of India. The protection of life assured under Article 21 has been given expanded meaning of right to life. It is settled law that all the related provisions under the Constitution must be read together and given meaning of widest amplitude to cover variety of rights which go to constitute the meaningful right to life. The Preamble to the Constitution says that the people of India having resolved to secure to all its citizens social and economic justice also made it subject to equality of status and opportunity to promote the dignity of the individual in the united and integrated Bharat. Article 37 declares the rights in Part IV or fundamental law in the governance of the country. Article 39(*b*) enjoins that the ownership and control of the material resources of the community are to promote the welfare of the people by securing social and economic justice to the weaker sections so as to subserve the common good to minimise the inequalities in income and endeavour to eliminate inequalities in status. The State, thereby, evolved the scheme to provide facilities and opportunities to the individuals and also groups of people to have no houses of their own. Article 46, in particular, enjoins that the State shall promote with special care the economic interest of the weaker sections of the people and to protect them from social injustice.

8. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights laid down that the States' parties to the Covenant recognise the "right to everyone to an adequate standard of living for himself and for his family including food, clothing and housing and to the continuous improvement of living conditions". The State parties will take appropriate steps to ensure the realisation of these rights. Recognising these obligations of the State and to give effect to the essential importance of international cooperation, the directions contained in Articles 38, 39 and 46, the Housing Scheme for allotment to lower income group of the people was made. Possession of real property is the basis for and the symbol of wealth and influence in society. To the poor, settlement with a fixed abode and right to residence guaranteed by Article 19(1)(*e*) remain more a teasing illusion unless the State provides them the means to have food, clothing and shelter so as to make their life meaningful and worth living with dignity.

9. In *Olga Tellis* v. *Bombay Municipal Corpn.*[1], when the squatters and the pavement-dwellers were sought to be ejected by the respondent, without due process of law, they invoked the jurisdiction of this Court under Article 32. A Constitution Bench held that their eviction from the dwellings would result in deprivation of their livelihood. Right to life under Article 21 includes right to livelihood and so if deprivation of livelihood is effected without reasonable procedure established by law, it would be violative of Article 21. In that context, this Court held that the sweep of the right to life conferred by Article 21 is wide and far-reaching. Life means more than animal existence. It does not mean merely that life cannot be extinguished or taken away as, for example, by imposition of execution of death sentence, except according to procedure

1 (1985) 3 SCC 545, 572 (para 32)

established by law. That is but one aspect of right to life. An equally important facet of that right to livelihood is — no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. There is, thus, a close nexus between life and the means of livelihood and as such that, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life.

10. In *Shantistar Builders* v. *Narayan Khimalal Totame*[2] a Bench of three Judges, to which one of us (K. Ramaswamy, J.) was a member, held that: (SCC Headnote)

> "The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body, for a human being it has to be a suitable accommodation which would allow him to grow in every aspect — physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation."

11. As stated earlier, the right to residence and settlement is a fundamental right under Article 19(1)(*e*) and it is a facet of inseparable meaningful right to life under Article 21. Food, shelter and clothing are minimal human rights. The State has undertaken as its economic policy planned development of the country and has undertaken massive housing schemes. As its part, allotment of houses was adopted, as is enjoined by Articles 38, 39 and 46, Preamble and 19(1)(*e*), facilities and opportunities to the weaker sections of the society of the right to residence, make the life meaningful and liveable in equal status with dignity of person. It is, therefore, imperative of the State to provide permanent housing accommodation to the poor in the housing schemes undertaken by it or its instrumentalities within their economic means so that they could make the payment of the price in easy instalments and have permanent settlement and residence assured under Articles 19(1)(*e*) and 21 of the Constitution. Thus far there is no problem but the crucial question is whether that right is still available to the appellants in category (*vi*).

12. It is seen that after the capital was shifted to Ahmedabad, these houses were allotted to government employees. That came with the shifting of the capital. Initially, on 17-4-1971, 200 houses were got converted from rental basis scheme to the hire purchase scheme. Thereafter the Government reconsidered the matter and by resolution dated 22-6-1972, resolved to allot all the 396 houses to the government employees on hire purchase scheme. Thus, the

2 (1990) 1 SCC 520 : AIR 1990 SC 630

diversion became compulsive necessity. Therefore, the High Court has taken the criteria of 22-6-1972 as the last date for fixing the entitlement for the priorities mentioned in the offending resolutions and allotment of the houses to the government employees. It is true, that a date has to be fixed with reference to a particular case and fixation of any date always may appear to be arbitrary. But some connection has to be established for fixation of the date for allotment of the houses. In this case, since the Government had taken decision on 22-6-1972 to convert the rental basis scheme into hire purchase scheme that date bears rational relation to the object of allotment. Therefore, it cannot be said to be arbitrary or irrational offending Article 14 of the Constitution.

13. It is contended that appellants in category (*vi*) were taken by surprise by the adverse order like a bolt from the blue from the decision of the High Court without arguments nor challenge made to it, has no substance. From the judgment it is clear that category (*iii*) persons who had vacated the houses were treated on a par with category (*vi*) employees transferred from the capital to the districts. From the material on record it would appear that the eligibility of category (*vi*) employees was also questioned. Though some of them managed to remain in possession, they cannot claim right to allotment under hire purchase scheme. Therefore, the High Court has rightly considered that when category (*iii*) employees were excluded on the ground that they shifted their residence from Pahari to Gandhinagar, the same parity should be applied to category (*vi*) employees who have been transferred from the capital to the districts.

14. In these circumstances, we do not find any illegality in excluding employees of categories (*iii*) and (*vi*) for allotment under hire purchase scheme. The appeals are accordingly dismissed. No costs.

1995 Supp (2) Supreme Court Cases 187

(BEFORE K. RAMASWAMY AND N. VENKATACHALA, JJ.)

P.N. KRISHNA LAL AND OTHERS .. Appellants;

Versus

GOVT. OF KERALA AND ANOTHER .. Respondents.

Civil Appeals No. 565 of 1994† with Nos. 577, 564-64-A, 582-85, 615, 567-76, 602-14, 578-81, 616-21, 586-89, 590-601, 566, 4720, 1610-14, 7607, 7609 and 8149 of 1994, SLPs (C) Nos. 10248, 9079, 13769 and 20086 of 1994 (CC No. 25558 of 1994) and C.A. No. 7608 of 1994,
decided on November 17, 1994

A. Excise — [Kerala] Abkari Act (1 of 1077) — Ss. 57-A and 57-B as inserted by [Kerala] Abkari (Amendment) Act, 1984 (21 of 1984) — Legislative competence — Held, provisions covered by Entry 8 r/w Entries 64 and 65 of List II of Sch. VII to the Constitution — Provisions being in pith and substance within the legislative competence of the State legislature, their incidental trenching upon the field of Central legislations viz. CrPC, IPC and Evidence Act would be inconsequential — President having accorded assent to the Amendment Act on 1-12-1984 specific

† From the Judgment and Order dated 10-12-1993 of the Kerala High Court in O.P. No. 4637 of 1989