LL.B. V Term

LB- 5035- Rent Control and Slum Clearance

Cases Selected and Edited by

Shabnam Mahlawat
Anju Sinha
Irwin Lalmuanpuii Hnamte

FACULTY OF LAW
UNIVERSITY OF DELHI
July, 2020

LL. B. V Term

Paper – LB - 5035 - Rent Control and Slum Clearance

Prescribed Legislations:

1. The Delhi Rent Control Act, 1958
2. The Slum Areas (Improvement and Clearance) Act, 1956
3. The Delhi Rent Control Act, 1995
4. The Transfer of Property Act, 1882
5. The Indian Easements Act, 1882

Prescribed Books:

1. G.C. Bharuka (Rev.), **Mulla's *The Transfer of Property Act, 1882*** (10th ed., 2006)
2. Jaspal Singh, ***Delhi Rent Control Act*** (6th ed., 2007)
3. Rameshwar Dial and Adarsh, ***Law of Rent Control in Delhi*** (2nd ed., 2005)

PART - I

General

Lease, License – Meaning; Distinction between Lease and License; Relevance of the distinction to the provisions of the Delhi Rent Control Act, 1958.

Tenancy by holding over, Notice for termination of tenancy under Transfer of Property Act, 1882

PART - II

The Delhi Rent Control Act, 1958

(A) Definitions; Premises exempted from the applicability of Delhi Rent Control Act, 1958; Meaning and scope of contractual and statutory tenancies

(B) Control of Rent; Meaning, Scope and Applicability of Standard Rent

PART - III

The Delhi Rent Control Act, 1958

(A) Grounds of eviction

Non - Payment of Rent / Arrears of Rent [Section 14 (1), Proviso, Clause (a)]

Sub– letting the rented premises [Section 14 (1), Proviso, Clause (b)]

PART – IV

The Slum Areas (Improvement and Clearance) Act, 1956

Impact of the Act on D.R.C.A.; Proceedings for eviction of tenant and role of Competent Authority

IMPORTANT NOTE:

1. The cases/topics mentioned above are not exhaustive. The teachers teaching the course shall be at liberty to add new cases/topics.

2. The students are required to study the legislations as amended from time to time and consult the latest editions of books.

3. The question paper shall include one compulsory question. The question papers set for the examinations held during 2010-11 and 2011-12 are printed below for guidance of the students.

* * * * *

LL.B. V Term Examinations, December, 2010

Note: Attempt *five* questions including Question No. 1 which is compulsory. All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
   (a) Easement is "right in rem" and licence is "right in personam".
   (b) Irrevocability of a licence.
   (c) Premises which are exempted from applicability of Delhi Rent Control Act.
   (d) Limited period tenancy.
   (e) Distinguish between "sublet, assigned and parted with the possession".
2. (a) Distinguish between lease and license. Why is this distinction important?

   (b) Examine whether the following agreement creates a lease or license:

   An agreement was entered between hotel X and art of living teacher Mr. Z on January, 2010, wherein Mr. Z was described as license and Mr. Z was to pay Rs. 9,600 as

annual license fee of one year for the use of room no. 203 in the hotel for conducting art of living classes. He was allowed to put his own lock on the door of the room and can also transfer his licence to any other art of living teachers.

3. "Statutory tenancy is heritable for both residential and commercial premises." Discus the same under DRC Act, 1958 in the light of relevant case laws.

4. (a) State the effects of non-compliance of an order passed by the rent controller u/s 15(1) of DRC Act 1958 in a petition u/s 14(1)(a) of the said act.

   (b) Elaborate the circumstances under which the rent controller may give benefit u/s 14(2) of DRC Act, 1958 to the tenant.

5. (a) Distinguish between sections 14(1)(c) and 14(1)(k) of the DRC Act, 1958.
   (b) In the year 2001 Ram took a house from DDA on 33 years lease for Rs. One lakh for residential purposes only and in default of the same the lease would be forfeited and DDA would be entitled to take back the possession. However, Ram had let out the house to Shyam in the year 2005 for commercial purposes for Rs. 3000 pm. In the year 2006 the DDA called upon Ram to stop the misuse of the house and also threatened forfeiture if he failed to comply with the said demand. Ram accordingly asked Shyam to stop using the house for commercial purposes but Shyam refused to do so and thereupon Ram filed an eviction application against Shyam u/s 14(1)(k) of DRC Act, 1958.

   Discuss and decide.

6. (a) "A", the tenant, has gone to Canada for three years and his brother and sister continue to live in the tenanted house in Delhi. State whether a petition on behalf of the landlord u/s 14(1)(d) of the DRC Act, 1958 is maintainable.

   (b) Discuss the relevant provisions available (u/s 14-D) to a widow for immediate possession.

7. "C" had purchased one flat in the year 1989 and had given that flat on lease for 10 years to "Y" on rent @ Rs. 250 per month for Residential purposes only. "Y" was residing and enjoying the property without the permission of "C" even after the lapse of lease period. "C" was a governmental employee and had been living in governmental staff quarters along with his family. "C: retired in the year 2009 and after the retirement he had to leave the accommodation provided by the government and was forced to shift himself along with 4 other family members to a rented accommodation. In 2010 "C" files petition u/s 14(1)(e) read along with Section 25-B of DRC Act.

Discuss the procedure laid down u/s 25-B and also the condition to be fulfilled for obtaining the order of eviction u/s 14(1)(e) of DRC Act, 1958.

8. Write notes on any *two* of the following:
   (a) Provision relating to unlawful subletting under DRC Act;
   (b) Essential supply or service under section 45 DRC Act;

(c) Relevant considerations for exercise of discretionary power by competent authority u/s 19 of Slum Area Act, 1956.

LL.B. V Term Supplementary Examinations, June-July, 2011

Note: Attempt *five* questions including Question No. 1 which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
   (a) Distinguish the concept of tenancy by holding over statutory tenancy.
   (b) Give a list of premises that are exempted from the applicability of Delhi Rent Control Act, 1958.
   (c) Requirement of notice for terminations of tenancy under Delhi Rent Control Act, 1958.
   (d) Proviso (d) to S. 14(1) as a ground of eviction.
   (e) Definition of Landlord under Delhi Rent Control Act, 1958.
2. State the law relating to heritability of tenancy in case of the death of the statutory tenancy in respect of
   (a) Residential premises
   (b) Commercial premises

   Discuss with the help for relevant case law.
3. (a) The premises in dispute where built on lease hold land. One of the terms, of the lease between the landlord and the government was that the building to be put up on the eland would be used for the purpose of residential cottage. Landlord let out the same for running of a boarding and lodging house. The tenant continued this use not withstanding previous notice. Landlord claimed eviction under proviso (k) to S. 14(1). Will landlord succeed? Decide in the light of relevant case laws.
   (b) Write a note on 'Non Occupancy' as a ground of eviction.
4. (a) "Plausibility of the defence raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown." Comment with reference to the special procedure for trial of action brought under section 14A and 14(1)(e) of Delhi Rent Control Act, 1958.
   (b) A let out premises in suit to B for a period of three years by virtue of permission granted under Section 21 of D.R.C.A. 1958. After the expiry of the said period, A filed another application seeking permission to create limited tenancy for a period of 2 years in favour of B again, without mentioning the factum of having already created a limited tenancy in the his favour. B appeared before the Rent controller and made a statement on oath that he was willing to take the premises on lease for limited permission is illegal and void since the source was obtained by a by concealment of material facts. Decide the objections.

5. (a) State the effects of non-compliance of an order passed by the rent controller u/s 15(1) of DRC Act 1958 in a petition u/s 14(1)(a) of the said act.
   (b) Elaborate the circumstances under which the rent controller may give benefit u/s 14(2) of DRC Act, 1958 to the tenant.
5. Answer any two of the following:
   (a) Distinguish between subletting, assignment and parting with possession.
   (b) Change of uber as a ground. It must be misuse of a nature specififed in 14(5). Elaborate.
   (c) Sections 14(1)(4) & 14(1) (44) of DRCA, 1958.
6. A the owner of a double storey building, lets the same to B at a monthly rent of Rs. 1200/- for use as residence-cum-commercial (office). B uses the ground floor portion for his office and the first floor portion for residence. After three years A bonafide requires aleast one floor of the building. A makes an application before the Rent Controller for an order for recovery of possession of the whole of the house, or in alternative for the first floor u/s. 14(1)(e) B, the tenant, Contends that the petition shold be dismissed as the house was let to him for residence-cum-office.

   Decide the applications keeping in view the decisions of the Supreme Court in Satyawati Sharma vs. U.O.I.
7. Explaining the procedure to be followed in order to avail eviction on the ground of 'Non payment of rent' throw light on the following two aspects.
   — Contoller's power to condone default under section 15(7) and
   — Circumstances under which a tenant can be said to have claimed the benefit under section 14(2) DRCA, 1958
8. Section 19(4) mention certain factors which are required to be considered by the competent authority while granting or effusing to grant the permission asked for. State those factors and also state whether such permission is necessary if the eviction proceeding and under section 14(1)(a), 14A-14D of DRCA, 1958.

LL.B. V Term Examination, December, 2011

Note: Attempt any five questions. All questions carry *equal* marks.

1. Distinguish between Lease and Licence. Why is this distinction important under D.R.C. Act, 1958?
2. "Statutory tenancy is the posthumous child of the contractual tenancy." Discuss elaborating the rights of the legal heirs of both residential and commercial statutory tenant under D.R.C. Act, 1958.
3. (a) In a proceeding under Section 14(1)a of D.R.C. Act, 1958. The tenant gives the rent amount, including the arrears to his advocate to deposit in court in compliance with order of the controller under section 15(1) of the Act. The advocate misappropriates the amount and does not deposit in the court within the stipulated time. The landlord

moves for the striking out the tenant's defence and prays for decree of eviction. Decide.

(b) Discuss the circumstances under which a tenant can be permitted the benefit of Section 14(2) in a suit for his eviction under Section 14(1) a of D.R.C. Act, 1958.

4. (a) Critically discuss before and after the Supreme Court's judgement in Satyawati Sharma v. Union of India 2008 (6) SCALE 325, the ingredients required to be established by the landlord in a suit for eviction under Section 14(1) e of D.R.C. Act, 1958.

(b) Requirement of notice under Section 106 of TPA before filing an eviction application under D.R.C. Act, 1958.

5. A took a shop on rent from B for running a business of general store. Subsequently A, without the consent of B converted his business to books and stationary shop and also installed a printing press at the back portion of the shop. Further to finance his business A, inducted a partner P and executed a partnership deed with him. One of the clause of this deed clearly stipulated that the possession over the tenanted shop shall continue with A and on determination of the partnership the possession shall revert back to A along with no right or interest to P.

B, files a suit of eviction against A under 14(1)b and 14(1)c of D.R.C. Act, 1958.

Will he succeed on either or both these grounds? Decide.

6. With the help of case law discuss the guidelines for Competent Authority (under Slum Improvement and Clearance Act, 1956) to grant permission for the eviction of a tenant from a premises situation in Slum Area. Is such permission necessary if the eviction proceedings are under Sections 14A, 14B, 14C or 14D of the D.R.C. Act, 1958.

7. (a) In a residential premises a tenant is living with his wife, parents, a brother and a sister. The tenant alongwith his wife goes abroad for two years. Discus whether a suit of eviction by the landlord under Section 14(1)d of the D.R.C. Act, 1958 is maintainable.

(b) A let out his house built on lease hold plot from D.D.A. to B who is using the same for commercial purpose contrary to the terms of lease which is permitted only residential use. Having received a notice from D.D.A. threatening cancellation of lease, A files a suit of eviction against B, under 14(1)k of D.R.C. Act, 1958 as B did not stop commercial use of the house despite notice from A. B resisted the suit on the ground that A himself has let the house for commercial purchase and hence the suit is not maintainable. Decide.

8. Write notes on any two of the following:

(i) The special procedure for disposal of applications for eviction under Section 25B of D.R.c. Act, 1958.

(ii) Limited period tenancy under Section 21 of D.R.C.

(iii) Sections 14(1)h and 14(1) hh of D.R.C. Act, 1958.

(iv) Constitutional validity of Sections 4, 6, 6A and 9 of D.R.C. Act, 1958 under Articles 14, 19(1)g and 21 of the Constitution.

LL.B. V Term Examination, June-July, 2012

Note: Attempt any five questions. All questions carry *equal* marks.

1. Write short notes on any two of the following:-
   (a) How can tenancy be terminated under Transfer of Property Act?
   (b) Limited period tenancy under DRCA, 1958.
   (c) Sub-letting as ground for eviction.

2. (a) What is a lease and what can be its duration, how can it be created. Can a lease be created orally?
   (b) Distinguish between lease and licence, why is this distinction important under DRCA 1958? Support your answer with relevant case law.

3. Mere determination of contractual tenancy does not in any way bring any change in the statue of s tenant. So called 'statutory tenant' enjoys the same right as the contractual tenant. Discuss elaborating the rights of legal heirs of both residential and commercial statutory tenant under DRCA, 1958.

4. Discuss whether the provisions of Standard Rent under Section 4,5,6, of DRCA, 1958 violates the provisions of Constitution.

5.(a) Landlord filed eviction petition under Section 14(1)a. The Rent controller passed an order under Section 15(1), which was duly complied with by tenant. Thereupon landlord's application was dismissed by controller. Subsequently, on a default for consecutive period of three months, the landlord files a petition under Section 14(1)a. He pleads the bar of Sec.14(2) as the controller allows the tenant to deposit rent Under Section 15(1). Decide.

   (b) A suit of eviction is filed by a landlord against a tenant under section 14(1)a. The Rent controller passes an order under Section 15(1), requiring the tenant to pay the rent. The tenant pays the rent to the advocate appearing for her but he commits breach of trust and disappears. The landlord claiming non-compliance of the order under Section 15(1) asks for eviction of tenant. The tenant on the order hand insists for condonation of delay. Decide.

6. (a) "In our country blood relations do not evaporate merely because a member of family leaves his household and goes out for some time." Analyse the statement in view of Section 14(1)d of DRCA, 1958.

   (b) Discuss the difference in applicability of clause (c) and clause (K) of Section 14(1) of DRCA, 1958 with the help of decided cases.

7.(a) X, a landlord had given one room of his house on rent where he was staying for business purpose in 1985. In Jan 2010, X landlord called upon the tenant to vacate the premises as the same is required for bonafide need of his son who has grown up and staying with him and wanted to start business in that premises. Discuss and decide.

(b) Discuss the procedure which the rent controller shall follow in passing a decree for eviction under Section 14(1) C of DRCA, 1958.

8. With the help of decided cases discus the guidelines for competent Authority (Under Slum Improvement and Clearance Act, 1956) to grant permission for the eviction of a tenant from a premises situated in slum areas. Is such permission necessary if the eviction proceedings are under 14(1)C, 14A, 14B, 14C, 14D of DRCA, 1958? Discuss.

* * * * *

Associated Hotels of India Ltd. v. *R. N. Kapoor*

AIR 1959 SC 1262

K. SUBBA RAO, J. - I have had the advantage of perusing the Judgement of my learned brother, Sarkar, J., and I regret my inability to agree with him.

2. The facts material to the question raised are in a narrow compass. The appellants, the Associated Hotels of India Ltd., are the proprietors of Hotel Imperial, New Delhi. The respondent, R. N. Kapoor, since deceased, was in occupation of two rooms described as ladies' and gentlemen's cloak GL rooms, and carried on his business as a hairdresser. He secured possession of the said rooms under a deed dated 1-5-1949, executed by him and the appellants. He got into possession of the said rooms, agreeing to pay a sum of Rs. 9,600 a year, i.e. Rs. 800 per month, but later on, by mutual consent, the annual payment was reduced to Rs. 8,400, i.e. Rs. 700 per month. On 269-1950, the respondent made an application to the Rent Controller, Delhi, alleging that the rent demanded was excessive and therefore a fair rent might be fixed under the Delhi and Ajmer-Merwara Rent Control Act, 1947. The appellants appeared before the Rent Controller and contended that the Act had no application to the premises in question as they were premises in a hotel exempted under S. 2 of the Act from its operation, and also on the ground that under the aforesaid document the respondent was not a tenant but only a licensee. By order dated 24-10-1950, the Rent Controller held that the exemption under S. 2 of the Act related only to residential rooms in a hotel and therefore the Act applied to the premises in question. On appeal the District Judge, Delhi, came to a contrary conclusion; he was of the view that the rooms in question were rooms in a hotel within the meaning of S. 2 of the Act and therefore the Act had no application to the present case. Further on a construction of the said document, he held that the appellants only permitted the respondent to use the said two rooms in the hotel, and, therefore, the transaction between the parties was not a lease but a licence. On the basis of the aforesaid two findings, he came to the conclusion that the Rent Controller had no jurisdiction to fix a fair rent for the premises. The respondent preferred a revision against the said order of the District Judge to the High Court of Punjab at Simla, and Khosla, J., held that the said premises were not rooms in a hotel within the meaning of S. 2 of the Act and that the document executed between the parties created a lease and not a licence. On those findings, he set aside the decree of the learned District Judge and restored the order of the Rent Controller. The present appeal was filed in this Court by special leave granted to the appellants on 18-1-1954.

3. The learned Solicitor-General and Mr. Chatterjee, who followed him, contended that the Rent Controller had no jurisdiction to fix a fair rent under the Act in regard to the said premises for the following reasons: (1) The document dated May 1, 1949, created a relationship of licensor and licensee between the parties and not that of lessor and lessee as held by the High Court; and (2) the said rooms were rooms in a hotel within the meaning of S. 2 of the Act, and, therefore, they were exempted from the operation of the Act. Unfortunately, the legal representative of the respondent was ex- parte and we did not have the advantage of the opposite view being presented to us. But we have before us the considered Judgement of the High Court, which has brought out all the salient points in favour of the respondent.

4. The first question turns upon the true construction of the document dated May, 1, 1949, whereunder the respondent was put in possession of the said rooms. As the argument turns upon the terms of the said document, it will be convenient to read the relevant portions thereof. The document is described as a deed of licence and the parties are described as licensor and licensee. The preamble to the document runs thus:

> Whereas the Licensee approached the Licensor through their constituted Attorney to permit the Licensee to allow the use and occupation of space allotted in the Ladies' and Gents' Cloak Rooms, at the Hotel Imperial, New Delhi, for the consideration and on terms and conditions as follows….
>
> The following are its terms and conditions:
>
> "1. In pursuance of the said agreement, the Licensor hereby grants to the Licensee, Leave and License to use and occupy the said premises to carry on their business of Hair Dressers from 1st May, 1949 to 30th April, 1950.
>
> 2. That the charges of such use and occupation shall be Rs. 9,600 a year payable in four quarterly instalments i.e., 1st immediately on signing the contract, 2nd on the 1st of August, 1949, 3rd on the 1st November, 1949 and the 4th on the 1st February, 1959, whether the Licensee occupy the premises and carry on the business or not.
>
> 3. That in the first instance the Licensor shall allow to the Licensee leave and license to use and occupy the said premises for a period of one year only.
>
> 4. That the licensee shall have the opportunity of further extension of the period of license after the expiry of one year at the option of the licensor on the same terms and conditions but in any case the licensee shall intimate their desire for an extension at least three months prior to the expiry of one year from the date of the execution of this DEED.
>
> 5. The licensee shall use the premises as at present fitted and keep the same in good condition. The licensor shall not supply any fitting or fixture more then what exists in the premises for the present. The licensee will have their power and light meters and will pay for electric charges.
>
> 6. That the licensee shall not make any alterations in the premises without the prior consent in writing from the licensor.
>
> 7. That should the licensee fail to pay the agreed fee to the licensor from the date and in the manner as agreed, the licensor shall be at liberty to terminate this DEED without any notice and without payment of any compensation and shall be entitled to charge interest at 12% per annum on the amount remaining unpaid.
>
> 8. That in case the licensee for reasons beyond their control are forced to close their business in Delhi, the licensor agrees that during the remaining period the license shall be transferred to any person with the consent and approval of the licensor subject to charges so obtained not exceeding the monthly charge of Rs. 800."

5. The document no doubt uses phraseology appropriate to a licence. But it is the substance of the agreement that matters and not the form, for otherwise clever drafting can camouflage the real intention of the parties.

6. What is the substance of this document? Two rooms at the Hotel Imperial were put in possession of the respondent for the purpose of carrying on his business as hairdresser from May 1, 1949. The term of the document was, in the first instance, for one year, but it might be renewed. The amount payable for the use and occupation was fixed in a sum of Rs. 9,600 per annum, payable in four instalments. The respondent was to keep the premises in good condition. He should pay for power and electricity. He should not make alterations in the premises without the consent of the appellants. If he did not pay the prescribed amount in the manner agreed to, he could be evicted therefrom without notice, and he would also be liable to pay compensation with interest. He could transfer his interest in the document with the consent of the appellants. The respondent agreed to pay the amount prescribed whether he carried on the business in the premises or not. Shortly stated, under the document the respondent was given possession of the two rooms for carrying on his private business on condition that he should pay the fixed amount to the appellants irrespective of the fact whether he carried on his business in the premises or not.

7. There is a marked distinction between a lease and a licence. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under s. 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor. Whereas S. 52 of the Indian Easements Act defines a licence thus:

> Where one person grants to another, or to a definite number of other persons, a right to do or continue to do in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.

8. Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred. At one time it was thought that the test of exclusive possession was infallible and if a person was given exclusive possession of a premise, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in ***Errington*** **v.** ***Errington*** [(1952) 1 All E.R. 149] wherein Lord Denning reviewing the case law on the subject summarises the result of his discussion thus at p. 155:

> The result of all these cases is that, although a person who is let into exclusive possession is, prima facie, to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy.

9. The Court of Appeal again in ***Cobb* v. *Lane*** [(1952) 1 All E.R. 1199] considered the legal position and laid down that the intention of the parties was the real test for ascertaining the character of a document. At p. 1201, Somervell, L.J., stated:

> The solution that would seem to have been found is, as one would expect, that it must depend on the intention of the parties.

Denning, L.J., said much to the same effect at p. 1202:

> "The question in all these cases is one of intention: Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land?"

10. The following propositions may, therefore, be taken as well-established: (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties - whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease. Judged by the said tests, it is not possible to hold that the document is one of licence. Certainly it does not confer only a bare personal privilege on the respondent to make use of the rooms. It puts him in exclusive possession of them, untrammelled by the control and free from the directions of the appellants. The covenants are those that are usually found or expected to be included in a lease deed. The right of the respondent to transfer his interest under the document, although with the consent of the appellants, is destructive of any theory of licence. The solitary circumstance that the rooms let out in the present case are situated in a building wherein a hotel is run cannot make any difference in the character of the holding. The intention of the parties is clearly manifest, and the clever phraseology used or the ingenuity of the document-writer hardly conceals the real intent. I, therefore, hold that under the document there was transfer of a right to enjoy the two rooms, and, therefore, it created a tenancy in favour of the respondent.

11. The next ground turns upon the construction of the provisions of S. 2 of the Act. Section 2(b) defines the term "premises" and the material portion of it is as follows:

> "Premises" means any building or part of a building which is, or is intended to be, let separately…but does not include a room in a dharamshala, hotel or lodging house.

12. What is the construction of the words "a room in a hotel"? The object of the Act as disclosed in the preamble is "to provide for the control of rents and evictions and for the lease to Government of premises upon their becoming vacant, in certain areas in the Provinces of Delhi and Ajmer-Merwara". The Act was, therefore, passed to control exorbitant rents of

buildings prevailing in the said States. But S. 2 exempts a room in a hotel from the operation of the Act. The reason for the exemption may be to encourage running of hotels in the cities, or it may be for other reasons. Whatever may be the object of the Act, the scope of the exemption cannot be enlarged so as to limit the operation of the Act. The exemption from the Act is only in respect of a room in a hotel. The collocation of the words brings out the characteristics of the exempted room. The room is part of a hotel. It partakes its character and does not cease to be one after it is let out. It is, therefore, necessary to ascertain the meaning of the word "hotel". The word "hotel" is not defined in the Act. A hotel in common parlance means a place where a proprietor makes it his business to furnish food or lodging or both to travellers or other persons. A building cannot be run as a hotel unless services necessary for the comfortable stay of lodgers and boarders are maintained. Services so maintained vary with the standard of the hotel and the class of persons to which it caters; but the amenities must have relation to the hotel business. Provisions for heating or lighting, supply of hot water, sanitary arrangements, sleeping facilities and such others are some of the amenities a hotel offers to its constituents. But every amenity however remote and unconnected with the business of a hotel cannot be described as service in a hotel. The idea of a hotel can be better clarified by illustration than by definition and by giving examples of what is a room in a hotel and also what is not a room in a hotel: (1) A owns a building in a part whereof he runs a hotel but leases out a room to B in the part of the building not used as hotel; (2) A runs a hotel in the entire building but lets out a room to B for a purpose unconnected with the hotel business; (3) A runs a hotel in the entire building and lets out a room to B for carrying on his business different from that of a hotel, though incidentally the inmates of the hotel take advantage of it because of its proximity; (4) A lets out a room in such a building to another with an express condition that he should cater only to the needs of the inmates of the hotel; and (5) A lets out a room in a hotel to a lodger, who can command all the services and amenities of a hotel. In the first illustration, the room has never been a part of a hotel though it is part of a building where a hotel is run. In the second, though a room was once part of a hotel, it ceased to be one, for it has been let out for a non-hotel purpose. In the fifth, it is let out as part of a hotel, and, therefore, it is definitely a room in a hotel. In the fourth, the room may still continue as part of the hotel as it is let out to provide an amenity or service connected with the hotel. But to extend the scope of the words to the third illustration is to obliterate the distinction between a room in a hotel and a room in any other building. If a room in a building, which is not a hotel but situated near a hotel, is let out to a tenant to carry on his business of a hairdresser, it is not exempted from the operation of the Act. But if the argument of the appellants be accepted, if a similar room in a building, wherein a hotel is situated is let out for a similar purpose, it would be exempted. In either case, the tenant is put in exclusive possession of the room and he is entitled to carry on his business without any reference to the activities of the hotel. Can it be said that there is any reasonable nexus between the business of the tenant and that of the hotel. The only thing that can be said is that a lodger in a hotel building can step into the saloon to have a shave or haircut. So too, he can do so in the case of a saloon in the neighbouring house. The tenant is not bound by the contract to give any preferential treatment to the lodger. He may take his turn along with others, and when he is served, he is served not in his capacity as a lodger but as one of the general customers. What is more, under the document the tenant is not even bound to carry on the business of a hairdresser. His only

liability is to pay the stipulated amount to the landlord. The room, therefore, for the purpose of the Act, ceases to be a part of the hotel and becomes a place of business of the respondent. As the rooms in question were not let out as part of a hotel or for hotel purposes, I must hold that they are not rooms in a hotel within the meaning of S. 2 of the Act.

13. In this view, the appellants are not exempted from the operation of the Act. The Judgement of the High Court is correct. The appeal fails and is dismissed.

* * * * *

M. N. Clubwala v. *Fida Hussain Saheb*

(1964) 6 SCR 642, 651

MUDHOLKAR, J. - This is an appeal by special leave from the Judgment of the High Court of Madras reversing the decisions of the courts below and granting a number of reliefs to the plaintiffs-respondents.

2. The main point which arises for consideration in this appeal is whether the plaintiffs-respondents are the lessees of the appellants who were Defendants 4 and 5 in the trial court or only their licensees. In order to appreciate the point certain facts need to be stated.

3. The appellants are the owners of a private market situate in Madras known as Zam Bazar Market. There are about 500 old stalls in that market and meat, fish, vegetables etc. are sold in that market. The practice of the appellants has been to farm out to contractors the right to collect dues from the users of the stalls. Defendants 1 to 3 to the suit were the contractors appointed by the appellants for collecting rent at the time of the institution of the suit. Two of these persons died and their legal representatives have not been impleaded in appeal as they have no interest in the subject-matter of litigation. The third has been transposed as Respondent 7 to this appeal. They were, however alive when the special leave petition was filed and were shown as Appellants 1 to 3, but two of them were struck out from the record after their death and the third transposed as Respondent 7. Though the building in which the market is located is owned by the appellants it cannot be used as a market for the purpose of sale of meat or any other article of human consumption without the permission of the Municipal Council under Section 303 of the Madras City Municipal Act, 1919 ("the Act"). Before such a permission is granted the owner has to obtain a licence from the Municipal Commissioner and undertake to comply with the terms of the licence. The licence granted to him would be for one year at a time but he would be eligible for renewal at the expiry of the period. Section 306 of the Act confers power on the Commissioner to require the owner, occupier or farmer of a private market for the sale of animal or article of food to do a number of things, for example to keep it in a clean and proper state, to remove all filth and rubbish therefrom etc. Breach of any condition of the licence or of any order made by the Commissioner would result, under Section 307 in suspension of the licence and thereafter it would not be lawful for any such person to keep open any such market. Section 308 of the Act confers powers on the Commissioner to make regulations for markets for various purposes such as fixing the days and hours on and during which any market may be held or kept for use, requiring that in the market building separate areas be set apart for different classes of articles, requiring every market building to be kept in a clean and proper state by removing filth and rubbish therefrom and requiring the provision of proper ventilation in the market building and of passages of sufficient width between the stalls therein for the convenient use of the building. We are told that regulations have been made by the Commissioner in pursuance of the powers conferred upon him by Section 308 of the Act. Thus as a result of the Act as well as the regulations made thereunder a number of duties appear to have been placed upon the owners of private markets. It would also appear that failure to comply with any of the requirements of the statute or the regulations would bring on the consequence of suspension or even cancellation of the licence. We are mentioning all this

because it will have some bearing upon the interpretation of the documents on which the plaintiffs have relied in support of the contention that the relationship between themand the appellants is that of tenants and landlord.

4. The suit out of which this appeal arises came to be filed because disputes arose between the plaintiffs and the Defendants 1 to 3 who became the contractors for collection of rent as from February 9, 1956. These disputes were with regard to extra carcass fees and extra fees for Sunday Gutha which were claimed by the contractors. The respondents further alleged that the relationship between them and the appellants was, as already stated, that of lessees and lessors while according to the appellants, the respondents were only their licensees. The respondents further challenged the extra levies made by the contractors i.e. the original Defendants 1 to 3 who are no longer in the picture. The reliefs sought by the respondents were for an injunction against the appellants and the Defendants 1 to 3 restraining them from realising the extra levies and for further restraining them from interfering with their possession over their respective stalls as long as they continued to pay their dues. The First Additional City Civil Court Judge before whom the suit had been filed found in the respondents' favour that the extra fees sought to be levied by the contractor were sanctioned neither by the provisions of the Municipal Act nor by usage but upon the finding that the respondents were bare licensees, dismissed their suit.

5. The appellate bench of the City Civil Court before whom the respondents had preferred an appeal affirmed the lower court's decision. The High Court reversed the decision of the courts below and in the decree passed by it pursuant to its judgment granted a number of reliefs to the respondents. Here we are concerned only with Reliefs (*ii*) (*e*), (*f*) and (*g*) since the appellants are not interested in the other reliefs. Those reliefs are:

> "(*ii*) that the respondents defendants, in particular Defendants 1 to 3 (Respondents 1 to 3) be and hereby are restrained from in any manner interfering with the appellants-Plaintiffs 1 to 4, 6 and 7 carrying on their trade peacefully in their respective stalls at Zam Bazar Market, Royapettah; Madras and imposing and restrictions or limitations upon their absolute right to carry on business as mentioned hereunder.
>
> (*e*) Interfering with the possession and enjoyment of the respective stalls by the appellants-Plaintiffs 1 to 4, 6 and 7 so long as they pay the rents fixed for each stall;
>
> (*f*) increasing the rents fixed for the appellants-Plaintiffs 1 to 4, 6 and 7 stalls under the written agreements between the said plaintiffs and Defendants 4 and 5:
>
> (*g*) evicting of the appellants-plaintiffs 1 to 4, 6 and 7 or disturbing the plaintiffs and their articles in their stalls by Defendants 1 to 3."

6. Further we are concerned in this case only with the relationship between the meat vendors occupying and using some of the stalls in the market (as the plaintiffs-respondents belong to this category) and the appellants-landlords. What relationship subsisted or subsisted between the appellants and other stallholders vending other commodities is not a matter which can be regarded as relevant for the purpose of deciding the dispute between the appellants and the respondents.

7. It is common ground that under the licence granted by the Municipal Corporation, the market is to remain open between 4 a.m. and 11 p.m. and that at the end of the day the stallholders have all to leave the place which has then to be swept and disinfected and that the gates of the market have to be locked. None of the stallholders or their servants is allowed to stay in the market after closing time. In point of fact this market used to be opened at 5 a.m. and closed at 10 p.m. by which time all the stallholders had to go away. It is also common ground that the stalls are open stalls and one stall is separated from the other only by a low brick wall and thus there can be no question of a stallholder being able to lock up his stall before leaving the market at the end of the day. The stallholders were required to remove the carcasses brought by them for sale by the time the market is closed. Meat being an article liable to speedy decay the stallholders generally used to finish their business of vending during the afternoon itself and remove the carcasses. They, however, used to leave in their stalls wooden blocks for chopping meat, weighing scales, meat choppers and other implements used by them in connection with their business. These used to be left either in boxes or almirahs kept in the stall and locked up therein.

8. It is also an admitted fact that some of the stallholders have been carrying on business uninterruptedly in their stalls for as long as forty years while some of them have not been in occupation for more than five years. It is in evidence that these stallholders have been executing fresh agreements governing their use and occupation of stalls and payment of what is styled in the agreements as rent whenever a new contractor was engaged by the appellants for collecting rents.

9. The next thing to be mentioned is that the agreements referred to the money or charges payable by the stallholders to the landlords as "rent" and not as "fee". It has, however, to be noted that the dues payable accrue from day to day. Thus in Ex. A-1 the rent of Re 1 is said to be payable every day by 1.00 p.m. In all these agreements there is a condition that in case there is default in payment of rent for three days the stallholder was liable to be evicted by being given 24 hours' notice. A further condition in the agreements is that a stallholder may be required by the landlord to vacate the stall after giving him 30 days' notice. There is a provision also regarding repairs in these agreements. The liability for the annual repairs is placed by the agreement upon the landlord and these repairs are ordinarily to be carried out in the month of June every year. Where, however, repairs became necessary on the carelessness of a stall holder they were to be carried out at the expense of that stall holder. It may be also mentioned that these agreements are obtained by the contractors from the stallholders in favour of the landlord and bear the signatures only of the stall-holders.

10. It was contended before us by Mr R. Gopalakrishnan that in order to ascertain the relationship between the appellants and the respondents we must look at the agreements alone and that it was not open to us to look into extraneous matters such as the surrounding circumstances. It is claimed on behalf of the respondents that the lease in their favour is of a permanent nature. But if that were so, the absence of a registered instrument would stand in their way and they would not be permitted to prove the existence of that lease by parol evidence. From fact, however, that with every change in the contractor a fresh agreement was executed by the stallholders it would be legitimate to infer that whatever the nature of the right conferred by the agreement upon the stall-holders, it could not be said to be one which

entitled them to permanent occupation of the stalls. It could either be a licence as contended for by the appellant or a tenancy from month to month. In either case there would be no necessity for the execution of a written agreement signed by both the parties. Here, the agreements in question are in writing, though they have been signed by the stallholders alone. All the same, oral evidence to prove their terms would be excluded by Section 92 of the Evidence Act. To that extent Mr Gopalakrishnan is right. Though that is so, under the 6th proviso to that section the surrounding circumstances can be taken into consideration for ascertaining the meaning of the word "rent" used in the agreements. Indeed, the very circumstance that rent is to fall due every day and in default of payment of rent for three days the stallholder is liable to be evicted by being given only 24 hours' notice it would not be easy to say that this "rent" is payable in respect of a lease. On the other hand, what is called rent may well be only a fee payable under a licence. At any rate this circumstance shows that there is ambiguity in the document and on this ground also surrounding circumstances could be looked into for ascertaining the real relationship between the parties. Indeed, the City Civil Court has gone into the surrounding circumstances and it is largely on the view it took of them that it found in favour of the appellants.

11. The High Court, however, has based itself upon the agreements themselves. To start with, it pointed out and in our opinion rightly - that the use of the word "rent" in Ex. A-1 did not carry the respondents' case far. The reasons given by it for coming to the conclusion that the transaction was a leave, are briefly as follows:

(*1*) Notice was required to be given to the stallholder before he could be asked to vacate even on the ground of non-payment of rent;

(*2*) the annual repairs were to be carried out by the landlord only in the month of June;

(*3*) the stallholder was liable to carry out the repairs at his own expense when they are occasioned by his carelessness;

(*4*) even if the landlord wanted the stalls for his own purpose he could obtain possession not immediately but only after giving 30 days' notice to the stall-holder;

(*5*) the possession of the stalls by the respondents had been continuous and unbroken by virtue of the terms of the agreement and that the terms of the original agreement were not shown to have been substituted by fresh agreements executed by the respondents.

The High Court, therefore, held that from the general tenor of the documents it is fairly clear that as between the appellants and the respondents the terms created only a tenancy in respect of the stalls and not a mere licence or permissive occupation. After saying that if the occupation of the stallholders was only permissive the condition as to payment of rent, eviction for default in payment of rent for more than 3 days, the provision for annual repairs being carried out by the landlord, the further provision that repairs that might be occasioned by the carelessness of the respondents should be carried out at their expense and the adequate provision for 30 days notice for vacating the stalls if they were required by the landlord would all seem to be inconsistent and irrelevant, it observed:

"As a matter of fact, there is no evidence whatsoever to show that any of these plaintiffs were at any time turned of their possession of their stalls at the will of the landlords or for default of any of the terms and conditions stipulated in the

> agreements. The specific provision for 30 days notice for vacating and delivering possession seems to be conclusive of the fact that the plaintiffs were to occupy the stalls as permanent tenants and not as mere licensees. The terms of the agreements further disclose that the plaintiffs were to be in exclusive possession of these stalls for the purpose of their trade as long as they comply with the terms and until there was a notice of termination of their tenancy in respect of the shops held by them. The very tenor of the agreements, the intention behind the terms contained in the agreements and the measure of control established by the terms of the agreements, all point only to the fact that the plaintiffs were to be in undisturbed and exclusive possession of the stalls as long as they paid the rent and until there was a valid termination of their right to hold the stalls as such tenants."

12. While it is true that the essence of a licence is that it is revocable at the will of the grantor the provision in the licence that the licensee would be entitled to a notice before being required to vacate is not inconsistent with a licence. In England it has been held that a contractual licence may be revocable or irrevocable according to the express or implied terms of the contract between the parties. It has further been held that if the licensee under a revocable licence has brought property on to the land, he is entitled to notice of revocation and to a reasonable time for removing his property, and in which to make arrangements to carry on his business elsewhere. (see *Halsbury's Laws of England*, 3rd Edn., Vol. 23, p. 431). Thus the mere necessity of giving a notice to a licensee requiring him to vacate the licenced premises would not indicate that the transaction was a lease. Indeed, Section 62(*c*) of the Indian Easements Act, 1882 itself provides that a licence is deemed to be revoked where it has been either granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled. In the agreements in question the requirement of a notice is a condition and if that condition is fulfilled the licence will be deemed to be revoked under Section 62. It would seem that it is this particular requirement in the agreements which have gone a long way to influence the High Court's finding that the transaction was a lease. Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement. In the absence, however, of a formal document the intention of the parties must be inferred from the circumstances and conduct of the parties. (Ibid p. 427). Here the terms of the document evidencing the agreement between the parties are not clear and so the surrounding circumstances and the conduct of the parties have also to be borne in mind for ascertaining the real relationship between the parties. Again, as already stated, the documents relied upon being merely agreements executed unilaterally by the stallholders in favour of the landlords they cannot be said to be formal agreements between the parties. We must, therefore, look at the surrounding circumstances. One of those circumstances is whether actual possession of the stalls can be said to have continued with the landlords or whether it had passed on to the stall-holders. Even if it had passed to a person, his right to exclusive possession would not be conclusive evidence of the existence of a tenancy though that would be a consideration of first importance. That is what was held in ***Errington* v. *Errington and Woods*** [(1952) 1 KB 290] and ***Cobb* v. *Lane*** [(1952)] 1 All ER].Mr S.T. Desai appearing for the appellants also relied

on the decision of the High Court of Andhra Pradesh in ***Vurum Subba Rao*** **v.** ***Eluru Municipal Council*** [ILR (1956) AP 515] as laying down the same proposition. That was a case in which the High Court held that stallholders in the municipal market were liable to pay what was called rent to the municipality, were not lessees but merely licensees. The fact, therefore, that a stallholder has exclusive possession of the stall is not conclusive evidence of his being a lessee. If, however, exclusive possession to which a person is entitled under an agreement with a landlord is coupled with an interest in the property, the agreement would be construed not as a mere licence but as a lease (see ***Associated Hotels of India Ltd.*** **v.** ***R.N. Kapoor*** [(1960) 1 SCR 368]). In the case before us, however, while it is true that each stallholder is entitled to the exclusive use of his stall from day to day it is clear that he has no right to use it as and when he chooses to do so or to sleep in the stall during the night after closure of the market or enter the stall during the night after 11.00 p.m. at his pleasure. He can use it only during a stated period every day and subject to several conditions. These circumstances, coupled with the fact that the responsibility for cleaning the stalls, disinfecting them and of closing the market in which the stalls are situate is placed by the Act, the regulations made there under and the licence issued to the landlords is on the landlords would indicate that the legal possession of the stalls must also be deemed to have been with the landlords and not with the stall-holders. The right which the stallholders had was to the exclusive use of the stalls during stated hours and nothing more. Looking at the matter in a slightly different way it would seem that it could never have been the intention of the parties to grant anything more than a licence to the stall-holders. The duties cast on the landlord by the Act are onerous and for performing those duties they were entitled to free and easy access to the stalls. They are also required to see to it that the market functioned only within the stated hours and not beyond them and also that the premises were used for no purpose other than of vending comestibles. A further duty which lay upon the landlords was to guard the entrance to the market. These duties could not be effectively carried out by the landlord by parting with possession in favour of the stallholders by reason of which the performance by the landlords of their duties and obligations could easily be rendered impossible if the stallholders adopted an unreasonable attitude. If the landlords failed to perform their obligations they would be exposed to penalties under the Act and also stood in danger of having their licences revoked. Could in such circumstances the landlords have ever intended to part with possession in favour of the stallholders and thus place themselves at the mercy of these people? We are, therefore, of the opinion that the intention of the parties was to bring into existence merely a licence and not a lease and the word “rent” was used loosely for “fee”.

13. Upon this view we must allow the appeal, set aside the decree of the High Court and dismiss the suit of the respondents insofar as it relates to reliefs (*ii*) (*e*), (*f*) and (*g*) granted by the High Court against the appellants are concerned. So far as the remaining reliefs granted by the High Court are concerned, its decree will stand. In the result we allow the appeal to the extent indicated above but in the particular circumstances of the case we order costs throughout will be borne by the parties as incurred.

* * * * *

C.M. Beena v. *P.N. Ramchandra Rao*

AIR 2004 SC 2103

R.C. LAHOTI, J. - 1. The suit property is a shop situated on the ground floor of a building known as 'Woodlands Building' on the M.G. Road, Ernakulam. The respondent filed a civil suit seeking issuance of mandatory injunction directing the appellants to hand over vacant possession over the shop to the respondent on the ground that the license to occupy the suit premises was terminated. The trial Court directed the suit to be dismissed by recording a finding that one of the two appellants (who are father and son) was a tenant and not a mere licensee. The son was held to be a tenant and hereinafter he is being referred to as the appellant. The decree was maintained in first appeal. In the second appeal preferred by the landlord the High Court has set aside the judgments and decrees of the two Courts below and directed a decree as prayed for being passed. The defendant has preferred this appeal by special leave.

2. The building is a double-storey building. On the upper floor the respondent is conducting hotel business. On the ground floor there are several shops. A photo of the building, produced for the perusal of the Court at the time of hearing, shows a number of shops in continuity located on the ground floor.

3. According to the respondent the premises in occupation of the appellant is a car parking place. As between the parties there exists a document dated April 1, 1981 executed by the appellant in favour of the respondent which is styled as a deed of licence. The document begins with a recital – "Whereas licensee is desirous of having the use of the premises for conducting stationery shop in room ...in Woodlands building, intended as car parking space for lodgers at the time of construction". The next Para states – "And whereas the licensor is willing to grant licence to the licensee in respect of the aforesaid room for the purpose of carrying on business in stationery goods as licensee of the premises".

4. A brief resume of the relevant out of the nine clauses of terms and conditions agreed upon between the parties and as contained in the deed would suffice. Vide Clause (1), the licence fee is appointed at Rs. 500/- per mensem. The licensee is authorized "to use the room as licensee for a period of one year from 1.4.1981". Clause (2) enjoins the licensee not to make any structural alterations in the room. Clause (3) permits the licensee and his servants to use the bathroom and toilet facility in the building and also the telephone facilities subject to payment of the telephone charges. If the licensee requires any decorative electrification it may be provided by the licensor at the cost of the licensee. Clause (4) obligates the licensee to pay the current charges of electricity consumed. Vide Clause (5), the licensee must, at the end of one year, hand over possession to the licensor by removing all his goods and other immovable from the premises unless by mutual agreement a fresh contract is entered into between the parties. Clause (6) entails automatic termination of licence on non-payment of licence fee. Clauses (7) and (8) were much relied on by the learned counsel for the Licensor-respondent and hence are reproduced verbatim as under:-

> "(7) It is also understood and agreed that if the Licensor desires to have the premises used as a car park or used for any purpose of his Hotel & Lodging Business

it is open to the Licensor to terminate this Licence at any time after giving one month's Notice.

(8) It is definitely understood that the Licence creates no estate or interest in the Licensee over the premises and the Licensee shall have only a permission to use the premises for his business."

5. It is the respondent's own case, as pleaded in the plaint, that the appellant is running a stationery shop and allied business activities in the premises. Though the period of licence expired w.e.f. 13.3.1982, the appellant has continued to remain in occupation of the premises. The suit was filed on 22.9.1989. The written statement obviously denied all the material plaint averments and pleaded a case of tenancy and the deed of licence being a camouflage for evading the applicability of Rent Control Legislation.

6. In its judgment dated 17.1.1992, the trial Court arrived at certain findings which are of relevance and significance. The trial Court found that initially the appellant was inducted as tenant in the premises in the month of April 1972 on a monthly rent of Rs. 300/- and has continued to remain in occupation of the premises ever since then. The rent was increased from Rs. 300/- to Rs. 360/- and then to Rs. 500/-. The business carried on by the appellant in the suit premises is not in any manner connected with the hotel business of the respondent. The nature of the premises is not such as can be said to be necessarily an adjunct of the premises in possession of the respondent for his own use. Though a part of the same building, the shop in possession of the appellant is a separate entity or a separate unit of premises. The appellant is in exclusive possession of the premises. The business conducted by the appellant in the premises is not only different from the one carried on by the respondent; the respondent has no supervisory power or any other connection with the business run by the appellant. The compensation paid by the appellant to the respondent for user of the premises is paid month by month. The appellant entered in the witness box but the respondent did not adduce any evidence relevant for the purpose of determining the nature of the appellant's occupation of the suit premises or the appellant's status - whether a tenant or a licensee. The trial Court also concluded that the appellant has been in possession of the suit premises for a long time and the respondent being in a dominating position he had prevailed over the appellant for executing the deed of licence. On these findings, the trial Court concluded that the appellant was a tenant and the tenancy was not terminated. All these findings have been upheld by the first appellate Court.

7. A perusal of the judgment of the High Court shows a failure on the part of the High Court in giving any serious thought to the findings concurrently arrived at by the two Courts below. The High Court has been much impressed by the apparent tenor of the document dated April 1, 1981 and held the relationship between the respondent and the appellant to be that of the licensor and licensee.

8. The crucial issue for determination is as to whether there is a lease or licence existing between the parties. Though a deed of licence may have been executed it is open for the parties to the document to show that the relationship which was agreed upon by the parties and was really intended to be brought into existence was that of a landlord and tenant though it was outwardly styled as a deed of licence to act as a camouflage on the Rent Control Legislation. 'Lease' is defined in Section 105 of the Transfer of Property Act 1882 while

'licence' is defined in Section 52 of the Indian Easements Act 1882. Generally speaking the difference between a 'lease' and 'licence' is to be determined by finding out the real intention of the parties as decipherable from a complete reading of the document, if any, executed between the parties and the surrounding circumstances. Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created; for the owner retains legal possession while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful [See ***Associated Hotels of India Ltd.*** **v.** ***R.N. Kapoor***, AIR 1959 SC 1262]. The decided cases on the point are legion.

9. A few principles are well settled. User of the terms like 'lease' or licence', 'lessor' or 'licensor', 'rent' or 'licence fee' are not by themselves decisive of the nature of the right created by the document. An effort should be made to find out whether the deed confers a right to possess exclusively coupled with transfer of a right to enjoy the property what has been parted with is merely a right to use the property while the possession is retained by the owner. The conduct of the parties before and after the creation of relationship is of relevance for finding out their intention.

10. Given the facts and circumstances of a case, particularly when there is a written document executed between the parties, question arises as to what are the tests which would enable pronouncing upon the nature of relationship between the parties. Evans & Smith state in The Law of Landlord and Tenant (Fourth Edition) – "A lease, because it confers an estate in land, is much more than a mere personal or contractual agreement for the occupation of a freeholder's land by a tenant, A lease, whether fixed-term or periodic, confers a right in property, enabling the tenant to exclude all third parties, including the landlord, from possession, for the duration of the lease, in return for which a rent or periodical payment is reserved out of the land. A contractual licence confers no more than a permission on the occupier to do some act on the owner's land which would otherwise constitute a trespass. If exclusive possession is not conferred by an agreement, it is a licence." "(T)he fundamental difference between a tenant and a licensee is that a tenant, who has exclusive possession, has an estate in land, as opposed to a personal permission to occupy. If, however, the owner of land proves that he never intended to accept the occupier as tenant, then the fact that the occupier pays regular sums for his occupation does not make the occupier a tenant."

11. In Hill & Redman's ***Law of Landlord and Tenant*** (Seventeenth Edition, Vol.1) a more detailed discussion also laying down the determinative tests, is to be found stated as follows:

> It is essential to the creation of a tenancy of a corporeal mereditament that the tenant should be granted the right to the exclusive possession of the premises. A grant under which the grantee takes only the right to use the premises without being entitled to exclusive possession must operate as a licence and not as a lease. It was probably correct law at one time to say that the right of exclusive possession necessarily characterized the grant as that of a lease; but it is now possible for a licensee to have the right to exclusive possession. However, the fact that exclusive possession is granted, though by no means decisive against the view that there is a

> mere licence, as distinct from a tenancy, is at all events a consideration of the first importance. Further, a grant of exclusive possession may be only a licence and not a lease where the grantor has no power to grant a lease. In deciding whether a grant amounts to a lease, or is only a licence, regard must be had to the substance rather than the form of the agreement, for the relationship between the parties is determined by the law and not by the label which they choose to put on it. It has been said that the law will not impute an intention to enter into the legal relation of landlord and tenant where circumstances and conduct negative that intention; but the fact that the agreement contains a clause that no tenancy is to be created will not, of itself, preclude the instrument from being a lease. If the effect of the instrument is to give the holder the exclusive right of occupation of the land, though subject to certain reservations, or to a restriction of the purposes for which it may be used, it is prima facie a lease; if the contract is merely for the use of the property in a certain way and on certain terms, while it remains in the possession and under the control of the owner, it is a licence. To give exclusive possession there need not be express words to that effect; it is sufficient if the nature of the acts to be done by the grantee require that he should have exclusive possession. On the other hand, the employment of words appropriate to a lease such as 'rent' or 'rental' will not prevent the grant from being a mere licence if from the whole document it appears that the possession of the property is to be retained by the grantor.

12. On the facts found by the two Courts below which findings have not been reversed by the High Court it is clear that the nature of the premises is of a shop and not a garage meant and designed exclusively for parking a car. The premises are located in a busy commercial market. The appellant has exclusive possession over the premises and the owner neither can nor does interfere therein. A full fledged stationery shop and allied business activities have been carried on by the appellant in the premises ever since 1972. The appellant was in possession of the premises for about 20 years before the date of the deed of licence and in spite of the 'deed of license' of 1981 having been executed continued to possess, use and enjoy the occupation of premises as before. Though the so-called licence expired in 1982 the respondent did not insist on the appellant putting back the respondent in possession of the premises but allowed him to remain in occupation and to continue to do so for a period of about seven years till the date of the institution of the suit. It is thus clear that the present one is not a case where the possession or control of the premises was retained by the respondent while the appellant was only permitted to make such use of the premises as would have been unlawful but for the permission given. Agreeing with the Courts below and disagreeing with the High Court we hold the relationship between the parties to be of landlord and tenant and the possession of the appellant over the premises as that of a tenant.

13. The suit for mandatory Injunction filed by the respondent must suffer the inevitable dismissal. However, during the course of hearing we indicated to the learned counsel for the appellant that the compensation which he was paying to the respondent was very meagre looking at the size of the premises and its admitted location in a busy commercial locality of a city bustling with business and commercial activity. Though, the suit must suffer a dismissal and as a result the appellant shall continue in possession but considering all the facts and

circumstances of the case the appellant should pay Rs. 2000/- per month by way of rent of the suit premises from 1st April, 2004 till he continues to remain in lawful possession of the premises.

14. The appeal is allowed. The judgment and decree of the High Court is set aside. Instead, the decree of the trial Court as upheld by the first appellate Court is restored. The appellant shall remain liable to clear the previous arrears, if any, at the rate agreed upon between the parties and pay rent calculated at the rate of Rs. 2000/- per month for future w.e.f. 1st April 2004.

* * * * *

Bhawanji Lakhamshi v. *Himatlal Jamnadas Dani*

AIR 1972 SC 819

K.K. MATHEW, J. - This is an appeal, by special leave, from the judgement of the High Court of Bombay dismissing a petition filed under Article 227 of the Constitution praying for issue of an appropriate writ or order quashing the order, dated February 28, 1968, passed by the Full Bench, Small Causes Court, Bombay, in appeal No. 95 of 1963 from the order, dated February 21, 1963, passed by the Judge, Small Causes Court, Bombay, in R.A.E. Suit No. 9293 of 1959.

2. In this appeal we are concerned with a plot of land admeasuring 2108 square yards in Survey No. 171, Hissa No. 7, at Ghatkopar. This plot belonged to one Jamnadas Chhotalal Dani. On November 15, 1948, Jamnadas executed two leases in favour of one Bhawanji Lakhamsi and Maojibhai Jethabhai, Defendants 1 and 2. The subject-matter of the first lease was two plots, the one referred to above and another in the same area measuring 805 square yards. The subject-matter of the second lease was a third plot in the same area.

3. The leases were for a period of ten years and in respect of the first plot, the rent payable was Rs. 75/- a month. In both the leases there was an option clause which entitled the lessees to surrender the leased property by September 30, 1953. The lessees surrendered the two plots, other than the plot with which we are concerned, in pursuance of the option clause, on January 15, 1951, with the result that the lease in respect of the first plot continued. Jamnadas died on August 14, 1951, but before his death he had made a gift of the leased property in favour of the three respondents. The lease in respect of the plot in question here was determined by efflux of time on September 30, 1958. But the lessees continued to remain in possession paying rent at the rate of Rs. 75/- per month.

4. On August 7, 1959, the lessors gave notice purporting to terminate the tenancy by the end of the September 1959. They stated in the notice that the lessees had sub-let the premises and that the lessors required the plot for purpose of putting up construction on it. Since the lessees did not vacate the premises, the lessors filed the suit on October 22, 1959, in the Small Causes Court of Bombay.

5. The trial court held that there was no clear evidence of the submitting of the premises, but that the plaintiffs required the plot bona fide for constructing a new building within the meaning of clause (i) of sub-section (1) of Section 13 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, hereinafter called the Act. The court also held that the tenancy terminated by efflux of time, but that the lessees continued in possession by virtue of the immunity from eviction conferred by the Act and so, they were not holding over within the meaning of Section 116 of the Transfer of Property Act, notwithstanding the fact that rent was accepted by the lessors from month to month after September 30, 1958, and that it was not necessary to give the lessees six month's notice expiring with the end of the year of the tenancy, for terminating that tenancy. In appeal, the Full Bench of the Small Causes Court confirmed the decree of the trial court. It was to quash this decree that petition under Article 227 was filed before the High Court.

6. before the High Court, the main contention of the appellants was that, since a fresh tenancy by holding over was created by the acceptance of rent by the lessors after the determination of the lease by efflux of time, the appellants were entitled to six months' notice expiring with the end of the year of the tenancy, as the lease originally granted was for a manufacturing purpose, and therefore, the lease created by the holding over was also for same purpose. The High Court was of the opinion that in view of the decision of this Court in ***Ganga Dutt Murarka* v. *Kartik Chandra Das*** [(1961) 3 SCR 813] no case was made out for new tenancy by holding over under Section 116 of the Transfer of Property Act as the appellants had obtained the status of irremovability under the Act, and as there was no contractual tenancy, the tenants were not entitled to any notice. The Court also held that the lease which was granted for erecting a saw mill was not a lease for manufacturing purpose.

7. Counsel for the appellants argued that the appellants were holding over as the lessors were receiving the rent from the appellants after the termination of the tenancy by efflux of time on September 30, 1958, and the fact that appellants gained immunity from eviction by virtue of the Act was quite immaterial in deciding the question whether the appellants were holding over under Section 116 of the Transfer of Property Act. He submitted that as there was a new contractual tenancy created by the holding over, the appellants were entitled to six months' notice as the purpose of the original lease was for a manufacturing purpose and that purpose became incorporated in the new lease by implication of law. Counsel said that certain vital points were omitted to be considered in the decision of this Court in ***Ganga Dutt Murarka* v. *Kartik Chandra Das*** and therefore, the decision requires re-consideration. In ***Ganga Dutt Murarka* v. *Kartik Chandra Das*** this Court held that where a contractual tenancy, to which rent control legislation applied, had expired by efflux of time or by determination by notice to quit and the tenant continued in possession of the premises, acceptance of rent from the tenant by the landlord after the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord had assented to a new contractual tenancy. It was further held that acceptance by the land lord from the tenant, after the contractual tenancy had expired, of amounts equivalent to rent, or amounts which were fixed as standard rent, did not amount to acceptance of rent from a lessee within the meaning of Section 116 of the Transfer of Property Act.

8. The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant at sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant holding over or a tenant at will and the latter is a tenant at sufferance in English Law. In view of the concluding words of Section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise. In ***Kai Khushroo Bezonjee Capadia* v. *Bai Jerbai Hirjibhoy***

Warden [1949-50 FCR 262] the Federal Court had occasion to consider the question of the nature of the tenancy created under Section 116 of the Transfer of Property Act and Mukharjea, J., speaking for the majority said, that the tenancy which is created by the "holding over" of a lessee or under-lessee is a new tenancy in law even though many of the terms of the old lease might be continued in it, by implication; and that to bring a new tenancy into existence, there must be a bilateral act. It was further held that the assent of the landlord which is founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it. Patanjali Sastri, J., in his dissenting judgement, has substantially agreed with the majority as regards the nature of the tenancy created by Section 116 of the Transfer of Property Act, and that is evident from the following observations:

> Turning now to the main point, it will be seen that the section postulates the lessee remaining in possession after the determination of the lease which is conduct indicative, in ordinary circumstances, of his desire to continue as a tenant under the lessor and implies a tacit offer to take a new tenancy from the expiration of the old on the same terms so far as they are applicable to the new situation, and when the lessor assents to the lessee so continuing in possession, he tacitly accepts the latter's offer and a fresh tenancy results by the implied agreement of the parties. When, further, the lessee in that situation tenders rent and the lessor accepts it, their conduct raises more readily and clearly the implication of an agreement between the parties to create a fresh tenancy.

9. Mere acceptance of amounts equivalent to rent by a landlord from a tenant in possession after a lease had been determined, either by efflux of time or by notice to quite, and who enjoys statutory immunity from eviction except on well defined grounds as in the Act, cannot be regarded as evidence of a new agreement of tenancy. In ***Ganga Dutt Murarka* v. *Kartik Chandra Das***, this Court observed as follows:

> By the Rent Restriction Statutes at the material time, statutory immunity was granted to the appellant against eviction, and acceptance of the amounts from him which were equivalent to rent after the contractual tenancy had expired or which were fixed as standard rent did not amount to acceptance of rent from a lessee within the meaning of Section 116, Transfer of Property Act. Failure to take action which was consequent upon a statutory prohibition imposed upon the courts and not the result of any voluntary conduct on the part of the appellant did not also amount to "otherwise assenting to the lessee continuing in possession". Of course, there is no prohibition against a landlord entering into a fresh contract of tenancy with a tenant whose right of occupation is determined and who remains in occupation by virtue of the statutory immunity. Apart from an express contract, conduct of the parties may undoubtedly justify an inference that after determination of the contractual tenancy, the landlord had entered into a fresh contract with the tenant, but whether the conduct justifies such an inference must always depend upon the facts of each case. Occupation of premises by a tenant whose tenancy is determined is by virtue of the protection granted by the statute and not because of any right arising from the contract which is determined. The statute protects his possession so long as the

> conditions which justify a lessor in obtaining an order of eviction against him do not exist. Once the prohibition against the exercise of jurisdiction by the Court is removed, the right to obtain possession by the lessor under the ordinary law springs into action and the exercise of the lessor's right to evict the tenant will not unless the statute provides otherwise, be conditioned.

10. In ***Davies* v. *Bristow*** [(1920) 3 KB 428] the Court held that where a tenant of a house to which the Increase of Rent, etc. (War Restrictions) Acts apply, holds over after the expiry of a notice to quit, and pays rent, the landlord is not to be taken by accepting it to assent to a renewal of the tenancy on the old terms, for he has no choice but to accept the rent; he could not sue in trespass for mesne profits, for those Acts provide that the tenant, notwithstanding the notice to quit, shall not be regarded as a trespasser so long as he pays the rent and performs the other conditions of the lease. In ***Morrison* v. *Jacobs*** [(1945) 1 KB 577] Scott, L.J., said:

> The sole question before the court is whether after the expiration of the contractual tenancy the mere fact of the landlord receiving rent for the dwelling house from the tenant affords any evidence that the landlord had entered on a new contractual tenancy to take the place of the tenancy which had expired. In my opinion, it does not. The true view is that the landlord takes the rent, knowing that the tenant is granted a statutory tenancy by the Rent Restrictions Acts and that his right to gain possession of his dwelling house depends entirely on his establishing that he brings himself within the conditions laid down by the Acts.

In the same case, Mackinnon, J., said:

> At common law, if at the expiration of a tenancy a landlord has acquired a right to claim possession against his tenant and instead of exercising that right he allows him to remain in the house and accepts rent from him as before, the parties by their conduct may, with reason, be held to have entered into a new contract of demise. But the essential factor in those circumstances is that the landlord voluntarily abstains from turning the tenant out. When the tenant remains in possession, not by reason of any such abstention by the landlord, but because the Rent and Mortgage Interest Restrictions Acts deprive the landlord of his former power of eviction, no such inference can properly be drawn. That is the very obvious and cogent basis of the decision in ***Davies* v. *Bristow***.

11. It was argued on behalf of the appellants on the basis of the decision of this Court in ***Manujendra Dutt* v. *Purendu Prosad Roy Chowdhury*** [(1967) 1 SCR 475] that if in the case of a tenancy to which Rent Restriction Acts applied, the provision of Section 106 of the Transfer of Property Act was applicable, there is nothing incongruous in making Section 116 also applicable in the case of a statutory tenancy. In the said decision, the appellant before this Court was a tenant of a piece of land. The lease was for a period of ten years but the lessee was given the option of renewal on his fulfilling certain conditions. The lease deed also provided that if the lessor required the lessee to vacate the premises, whether at the time of the expiry of the lease or thereafter (in case the lessee exercised his option to renew the lease) six months' notice to the lessee was necessary. The lessee exercised his option to renew the lease

and offered to fulfil the condition therefore. In the meanwhile the Calcutta Thika Tenancy Act, 1949, was passed. One of the questions which arose for consideration was whether the Thika tenant was entitled to the notice provided under the lease. This court held that the Act did not give a right to the landlord to evict a contractual tenant without first determining the contractual tenancy. After referring to the decision of his Court in ***Mangilal* v. *Sugan Chand*** [AIR 1965 SC 101], it was held that Section 3 of the Act in questions was similar to Section 4 of the Madhya Pradesh Accommodation Control Act (XXIII of 1965). It was further held that on the construction placed upon the section, namely, that the provisions of the section are in addition to those of the Transfer of Property Act, it follows that, before a tenant can be evicted, a landlord must comply with both the provisions of Section 106 of the Transfer of Property Act and those of Section 3. In the case before us, admittedly, the tenancy has been determined by efflux of time and what is contended for is that by the acceptance of rent, a new tenancy has been created by virtue of the provisions of Section 116 of the Transfer of Property Act. In other words, the question here is whether the conditions for the application of Section 116 of the Transfer of Property Act are fulfilled.

12. Learned counsel for the appellants argued that whenever rent is accepted by a landlord from a tenant whose tenancy has been determined, but who continues in possession, a tenancy by holding over is created. The argument was that the assent of the lessor alone and not that of the lessee was material for the purposes of Section 116. We are not inclined to accept this contention. We have already shown that the basis of the section is a bilateral contract between the erstwhile landlord and the erstwhile tenant. If the tenant has the statutory right to remain in possession, and if he pays the rent, that will not normally be referable to an offer for his continuing in possession which can be converted into a contract by acceptance thereof by the landlord. We do not say that the operation of Section 116 is always excluded whatever might be the circumstances under which the tenant pays the rent and the landlord accepts it. We have earlier referred to the observations of this Court in ***Ganga Dutt Murarka* v. *Kartik Chandra Das*** regarding some of the circumstances in which a fresh contract of tenancy may be inferred. We have already held the whole basis of Section 116 of the Transfer of Property Act is that, in case of normal tenancy, a landlord is entitled, where he does not accept the rent after the notice to quit, to file a suit in ejectment and obtain a decree for possession, and so his acceptance of rent is an unequivocal act referable only to his desire to assent to the tenant continuing in possession. That is not so where Rent Act exists; and if the tenant says that landlord accepted the rent not as statutory tenant but only as legal rent indicating his assent to the tenant's continuing in possession, it is for the tenant to establish it. No attempt has been made to establish it in this case and there is no evidence, apart from the acceptance of the rent by the landlord, to indicate even remotely that he desired the appellants to continue in possession after the termination of the tenancy. Besides, as we have already indicated, the animus of the tenant in tendering the rent is also material. If he tenders the rent as the rent payable under the statutory tenancy, the landlord cannot, by accepting it as rent, create a tenancy by holding over. In such a case the parties would not be ad idem and there will be no consensus. The decision in ***Ganga Dutt Murarka* v. *Kartik Chandra Das*** which followed the principles laid down by the Federal Court in ***Kai Khushroo Bezonjee Capadia* v. *Bai Ferbai Hirjibhoy Warden*** is correct and does not require re-consideration.

13. We, therefore, come to the conclusion that there was no holding over by the appellants and if that be so, the question whether the tenancy created by holding over was for manufacturing purpose and therefore the landlord was bound to give six months' notice for the determination of the tenancy by holding over does not arise for consideration.

14. We dismiss the appeal with costs.

* * * * *

V. Dhanapal Chettiar v. *Yesodai Ammal*

AIR 1979 SC 1745

UNTWALIA, J. - This appeal by special leave at the instance of the tenant of certain premises in the town of Vellore was heard by a larger Bench of this Court consisting of seven Judges to resolve the cleavage of opinion between several decisions of this Court, on the question as to whether in order to get a decree or order for eviction against a tenant under any State Rent Control Act it is necessary to give a notice under Section 106 of the Transfer of Property Act. We proceed to do so in this judgement.

2. The respondent filed an application against the appellant under Section 10(3)(a)(iii) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, hereinafter referred to as the Tamil Nadu Rent Act, on the ground of personal necessity. The Rent Controller held that the requirement of the respondent was not genuine and he accordingly dismissed her petition. On appeal by the landlady the appellate Court held in her favour on the point of her requiring the premises bona fide for her personal necessity but maintained the dismissal of her application on the ground that a notice to quit was necessary and the one given by her was not in accordance with law. The landlady took up the matter in revision to the Madras High Court. A learned single Judge of that Court following his earlier decision in ***K. Sukumaran Nair*** **v.** ***S. Neelakantan Nair*** [(1976) 2 MLJ 84] held that notice to quit under Section 106 of the Transfer of Property Act was not necessary for seeking an eviction of a tenant under the Tamil Nadu Rent Act. Hence this appeal by the tenant.

3. We do not think it necessary to decide in this appeal whether the notice to quit given to the appellant was a valid notice in accordance with Section 106 of the Transfer of Property Act. The controversy before us centred round the question whether such a notice was at all necessary to be given.

4. We shall presently refer to the various decisions of the High Courts and this Court taking contrary views. But before we do so we may make some general observations. It is well-known that after the Second World War, to give protection to a tenant against unnecessary, undue or unreasonable eviction and in the matter of being exploited for payment of exorbitant rent, all States in India at one time or the other passed Building Rent and Control Acts. Amendments in them were brought about from time to time. The language and the scheme of the Acts varied and differed from State to State. Even though there was no basic or fundamental difference in regard to the law of eviction of a tenant in any of the State statutes, different constructions were put in regard to them and principles were culled out in varying manners to arrive at the conclusions in some cases that a notice to quit in accordance with Section 106 of the Transfer of Property Act was necessary and in some it was held that it was not necessary. The gravamen of the underlying principles seems to have been overlooked in many cases.

5. Under the Transfer of Property Act the subject of "Leases of Immovable Property" is dealt with in Chapter V. Section 105 defines the lease, the lessor, the lessee and the rent. Purely as a matter of contract, a lease comes into existence under the Transfer of Property Act. But in all social legislations meant for the protection of the needy, not necessarily the so-

called weaker section of the society as is commonly and popularly called, there is appreciable inroad on the freedom of contract and a person becomes a tenant of a landlord even against his wishes on the allotment of a particular premises to him by the authority concerned. Under Section 107 of the Transfer of Property Act a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. None of the State Rent Acts has abrogated or affected this provision. Section 108 deals with the rights and liabilities of lessors and lessees. Many State Rent Acts have brought about considerable changes in the rights and liabilities of a lessor and a lessee, largely in favour of the latter, although not wholly. The topic of Transfer of Property other than agricultural land is covered by Entry 6 of List III to the Seventh Schedule to the Constitution. The subject being in the concurrent list, many State Rent Acts have by necessary implication and many of them by starting certain provisions with a non-obstante clause have done away with the law engrafted in Section 108 of the Transfer of Property Act except in regard to any matter which is not provided for in the State Act either expressly or by necessary implication.

6. Section 111 deals with the question of determination of lease, and in various clauses (a) to (h) methods of determination of a lease of immovable property are provided. Clause (g) deals with the forfeiture of lease under certain circumstances and at the end are added the words "and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease". The notice spoken of in clause (g) is a different kind of notice and even without the State Rent Acts different views have been expressed as to whether such a notice in all cases is necessary or not. We only observe here that when the State Rent Acts provide under what circumstances and on what grounds a tenant can be evicted, it does provide that a tenant forfeits his right to continue in occupation of the property and makes him liable to be evicted on fulfilment of those conditions. Only in those State Acts where a specific provision has been made for the giving of any notice requiring the tenant either to pay the arrears of rent within the specified period or to do any other thing, such as the Bombay Rent Act or the West Bengal Rent Act, no notice in accordance with clause (g) is necessary. A lease of immovable property determines under clause (h):

> "On the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other."

It is this clause which brings into operation the requirement of Section 106 of the Transfer of Property Act. Without adverting to the effect and the details of waiver of forfeiture, waiver of notice to quit, relief against forfeiture for non-payment of rent, etc. as provided for in Sections 112 to 114-A of the Transfer of Property Act, suffice is to say that under the said Act no ground of eviction of a tenant has to be made out once a contractual tenancy is put to an end by service of a valid notice under Section 106 of the Transfer of Property Act. Until and unless the lease is determined, the lessee is entitled to continue in possession. Once it is determined it becomes open to the lessor to enforce his right of recovery of possession of the property against him. In such a situation it was plain and clear that if the lease of the immovable property did not stand determined under any of the clauses (a) to (g) of Section 111, a notice to determine it under Section 106 was necessary. But when under the various State Rent Acts, either in one language or the other, it has been provided that a tenant can be

evicted on the grounds mentioned in certain sections of the said Acts, then how does the question of determination of a tenancy by notice arise? If the State Rent Act requires the giving of a particular type of notice in order to get a particular kind of relief, such a notice will have to be given. Or, it may be, that a landlord will be well advised by way of abundant precaution and in order to lend additional support to his case, to give a notice to his tenant intimating that he intended to file a suit against him for his eviction on the ground mentioned in the notice. But that is not to say that such a notice is compulsory or obligatory or that it must fulfil all the technical requirements of Section 106 of the Transfer of Property Act. Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction. Until then, under the extended definition of the word 'tenant' under the various State Rent Acts, the tenant continues to be a tenant even though the contractual tenancy has been determined by giving of a valid notice under Section 106 of the Transfer of Property Act. In many cases the distinction between a contractual tenant and a statutory tenant was alluded to for the purpose of elucidating some particular aspects which cropped up in a particular case. That led to the criticism of that expression in some of the decisions. Without detaining ourselves on this aspect of the matter by any elaborate discussion, in our opinion it will suffice to say that the various State Rent Control Acts make a serious encroachment in the field of freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. In spite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent, etc. in accordance with the law.

7. In ***Sukumaran Nair*** case [(1976) 2 MLJ 84] the learned Judge has pointed out the difference of opinion expressed in the various decisions of the Madras High Court from time to time in regard to notice to quit under Section 106 of the Transfer of Property Act. In ***Parthasarthy*** **v.** ***Krishnamoorthy*** [AIR 1949 Mad. 387] a learned single Judge of that Court held that a notice to quit was necessary. A contrary view was expressed by a Division Bench of the High Court in ***R. Krishnamurthy*** **v.** ***S. Parthasarthy*** [AIR 1949 Mad. 780 (DB)] (reversing AIR 1949 Mad. 387). Difference of opinion in Madras High Court continued in many other cases and then came the Full Bench decision in the case of ***M/s. Raval and Co.*** **v.** ***K. G. Ramachandran*** [AIR 1967 Mad. 57]. This decision was approved in the majority decision of this Court in ***Raval & Co.*** **v.** ***K. G. Ramachandran*** [AIR 1974 SC 818]**.** ***Raval*** case was not directly a case in relation to Section 106 of the Transfer of Property Act but some observations made therein did tend to show that notice would not be necessary. Such a cleavage of opinion cropped up in the various High Courts because of some observations of this Court in some decisions which will be presently alluded to. It was on an erroneous assumption, if we may say so with great respect, that the difference in the phraseology of the different State Rent Acts justified this difference of views. In our considered judgement on the question of a requirement of a notice under Section 106 of the Transfer of Property Act there is no scope for taking different views on the basis of the difference in the phraseology of

the various Rent Acts. In this regard the difference in the phraseology of the various rents Acts does not bring about any distinction. In all the States the law should be uniform, viz. that either a notice is necessary or it is not. It was high time, therefore, that this larger Bench was constituted to lay down a uniform law for the governance of the whole country and not permit the unjustified different trend of decisions to continue.

8. Before we embark upon a review of some of the decisions of this Court we think it necessary and advisable to briefly refer to the provisions of some of the State Rent Acts in support of the observations made by us above that on the question of notice no different result is possible on the language of any State Act. Section 10 of the Tamil Nadu Rent Act says:

> "A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or Sections 14 to 16".

In other words if a case is made out for his eviction in accordance with the provisions aforesaid, he can be evicted. Even after the termination of the contractual tenancy under the definition of the landlord in clause (6) and of the tenant under clause (8) of Section 2 the landlord remains a landlord and the tenant remains a tenant as clause (8) expressly says that tenant means "a person continuing in possession after the termination of the tenancy in his favour". Section 3 indicated that no landlord can treat the building to have become vacant by merely terminating the contractual tenancy as the tenant still lawfully continues in possession of the premises. The tenancy actually terminates on the passing of the order or decree for eviction and the building falls vacant by his actual eviction. The giving of the notice, therefore, is a mere surplusage and unlike the law under the Transfer of Property Act it does not entitle the landlord to evict the tenant.

9. Adverting to the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 it would be found from the definition in Section 5 that any person remaining in the building after the determination of the lease is a tenant within the meaning of clause (11). Section 12 of the Bombay Act says that the landlord shall not be entitled to the recovery of possession of any premises so long as the conditions mentioned in sub-section (1) are fulfilled nor any suit for recovery of possession shall be instituted by a landlord against a tenant on the happening of the events mentioned in sub-section (2) until the expiration of one month next after the notice is served on the tenant in the manner provided in Section 106 of the Transfer of Property Act, as required by the said sub-section. Section 13 provides that a landlord may recover possession on certain grounds. Is it not plain then that on the happenings of the events or on the fulfilment of the conditions mentioned in Sections 12 and 13, etc. the landlord becomes entitled to recover possession from the tenant, otherwise not. It will bear repetition to say that under the Transfer of Property Act in order to entitle the landlord to recover possession, determination of the lease is necessary as during its continuance he could not recover possession, while under the State Rent Act the landlord becomes entitled to recover possession only on the fulfilment of the rigour of law provided therein. Otherwise not. He cannot recover possession merely by determination of tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy. Under the State Rent Control Acts the concept of the contractual tenancy has lost much of it significance and force. Identical is the position under the Bihar Act. The definition section permits the tenant to continue as a tenant even after the determination of the

contractual tenancy. Section 11 gives him protection against eviction by starting with a non-obstante clause and providing further that he shall not be liable to eviction from any building except in execution of a decree passed by the Court for one or more grounds mentioned in Section 11. Does it not stand to reason to say that a decree can be passed if one or more of the grounds exist and such a decree can be passed against an existing tenant within the meaning of the State Rent Act. Similar is the position under the Kerala Lease and Rent Control Act, 1965 and the East Punjab Urban Rent Restriction Act, 1949. We shall refer to the provisions of the Madhya Pradesh and Andhra Pradesh State Rent Acts when we come to review the decisions of this Court in relation to those Acts.

10. A Constitution Bench of this Court in ***Rai Brij Raj*** **Krishna v.** ***S. K. Shaw and Bros***. [AIR 1951 SC 115] in a different context dealing with Section 11 of the Bihar Rent Act observed at page 150:

> "Section 11 is a self-contained section, and it is wholly unnecessary to go outside the Act of determining whether a tenant is liable to be evicted or not, and under what conditions he can be evicted. It clearly provides that a tenant is not liable to be evicted except on certain conditions, and one of the conditions laid down for the eviction of a month to month tenant is non-payment of rent ... The Act thus sets up a complete machinery for the investigation of those matters upon which the jurisdiction of the Controller to order eviction of a tenant depends, and it expressly makes his order final and subject only to the decision of the Commissioner."

It was on that account held that the decision of the controlling authority was final and it was not open to the Civil Court to take a different view of the matter on the question of non-payment of rent. It was not a case where a question of notice arose for determination.

11. The first decision of this Court which is necessary to be noticed on the point of notice is the case of ***Bhaiya Punjalal Bhagwanddin*** **v.** ***Dave Bhagwatprasad Prabhuprasad*** [AIR 1963 SC 120]. The case related to Bombay Rent Act. Raghubar Dayal, J., speaking on behalf of the Division Bench of this Court expressed the view at page 318 thus:

> "We are therefore of opinion that where a tenant is in possession under a lease from the landlord, he is not to be evicted for a cause which would give rise to a suit for recovery of possession under Section 12 if his tenancy has not been determined already. It follows that whenever a tenant acts in a way which would remove the bar on the landlord's right to evict him it is necessary for the landlord to serve him with a notice under sub-section (2) of Section 12 of the Act."

It is true that the Rent Act is intended to restrict the rights which the landlord possessed either for charging excessive rents or for evicting tenants. But if within the ambit of those restricted rights he makes out his case then it is a mere empty formality to ask him to determine the contractual tenancy before institution of a suit for eviction. As we have pointed out above, this was necessary under the Transfer of Property Act as mere termination of the lease entitled the landlord to recover possession. But under the Rent Control Acts it becomes an unnecessary technicality to insist that the landlord must determine the contractual tenancy. It is of no practical use after so many restrictions on his right to evict the tenant have been put. The restricted area under the various State Rent Acts has done away to a large extent with the

requirement of the law of contract and the Transfer of Property Act. If this be so, why unnecessarily, illogically and unjustifiably a formality of terminating the contractual lease should be insisted upon? In ***Bhaiya Punjalal*** case, if we may say so with very great respect, the principle of law laid down by this Court in ***Rai Brij Raj Krishna*** case and by the Punjab High Court in ***Hem Chand*** case was wrongly distinguished. After quoting the passage from the former it was said at page 322:

> "In the present case, Section 12 of the Act is differently worded and cannot therefore be said to be a complete Code in itself. There is nothing in it which overrides the provisions of the Transfer of Property Act."

The difference in the wordings of Section 11 of the Bihar Act and Section 12 of the Bombay Act does not justify the conclusion that the provisions of the Transfer of Property Act have not been overridden by Section 12 of the Bombay Act reading it with Section 13, etc. This was the ground given for distinguishing ***Hem Chand*** case also by erroneously pointing out the distinction between Section 13(1) of the Delhi and Ajmer Merwara Rent Control Act, 1952 and the Bombay Act. In our considered judgement ***Bhaiya Punjalal*** case was not correctly decided.

12. In another decision of this Court in ***Vora Abbasbhai Alimahomed*** **v.** ***Haji Gulamnabi Haji Safibhai*** [AIR 1964 SC 1341] in relation to the Bombay Rent Act again there are some lines at page 162 wherein it has been observed thus:

> "The clause applies to a tenant who continues to remain in occupation after the contractual tenancy is determined: it does not grant a right to evict a contractual tenant without determination of the contractual tenancy."

But this above observation is followed by the words:

> "Protection from eviction is claimable by the tenant even after determination of the contractual tenancy so long as he pays or is ready and willing to pay the amount of the standard rent and permitted increases and observes and performs the other conditions of the tenancy consistent with the provisions of the Act."

In our view if "protection from eviction is claimable by the tenant even after determination of the contractual tenancy" then why import the contractual law engrafted in the Transfer of Property Act for seeking eviction of the tenant?

13. The decision of this Court in the case of ***Mangilal*** **v.** ***Suganchand Rathi*** [AIR 1965 SC 101] being a decision of a Constitution Bench consisting of five learned and eminent Judges of this Court requires careful consideration. Therein it was held at page 244 with reference to Section 4 of the Madhya Pradesh Accommodation Control Act, 1955, thus:

> "The Accommodation Act does not in any way abrogate Chapter V of the Transfer of Property Act which deals with leases of immovable property. The requirement of Section 106 of the Transfer of Property Act is that a lease from month to month can be terminated only after giving fifteen days' notice expiring with the end of a month of the tenancy either by the landlord to the tenant or by the tenant to the landlord. Such a notice is essential for bringing to an end the relationship of landlord and tenant. Unless the relationship is validly terminated the landlord does

> not get the right to obtain possession of the premises by evicting the tenant. Section 106 of the Transfer of Property Act does not provide for the satisfaction of any additional requirements. But then, Section 4 of the Accommodation Act steps in and provides that unless one of the several grounds set out therein is established or exists, the landlord cannot evict the tenant."

Section 4 of the Madhya Pradesh Rent Act, 1955 provided that no suit could be filed in any Civil Court against a tenant for his eviction for any accommodation except on one or more grounds set out in that Section. The corresponding provision in Madhya Pradesh Accommodation Act of 1961 is contained in Section 12 which starts with a non-obstante clause also but the definition of the tenant as in other State Acts includes "any person continuing in possession after the termination of his tenancy". How then is it correct to say that a notice is essential for bringing to an end the relationship between the landlord and the tenant? The notice does not bring to an end such a relationship because of the protection given to the tenant under the Rent Act. If that be so then it is not necessary for the landlord to terminate the contractual relationship to obtain possession of the premises for evicting the tenant. If the termination of the contractual tenancy by notice does not, because of the Rent Act provisions, entitle the landlord to recover possession and he becomes entitled only if he makes out a case under the special provision of the State Rent Act, then, in our opinion, termination of the contractual relationship by a notice is not necessary. The termination comes into effect when a case is successfully made out for eviction of the tenant under the State Rent Act. We say with utmost respect that on the point of requirement of a notice under Section 106 of the Transfer of Property Act ***Mangilal*** case was not correctly decided.

14. In ***Manujendra Dutt* v. *Purendu Prasad Boy Chowdhury*** [AIR 1967 SC 1419] the question of notice came to be considered with reference to the Calcutta Thika Tenancy Act, 1949 and in that connection it was said at page 480:

> "The Thika Tenancy Act like similar Rent Acts passed in different States is intended to prevent indiscriminate eviction of tenants and is intended to be a protective statue to safeguard security of possession of tenants and therefore should be construed in the light of its being a social legislation. What Section 3 therefore does is to provide that even where a landlord has terminated the contractual tenancy by a proper notice such landlord can succeed in evicting his tenant provided that he falls under one or more of the clauses of that section."

For the reasons already stated we do not agree, and we say so with respect, with the above enunciation of law. This apart there is scope for distinguishing ***Manujendra*** case because Clause 7 of the lease deed therein ran as follows:

> "Provided always and it is hereby agreed and declared that if it be required that the lessee should vacate the said premises at the end of the said term of 10 years the lessee will be served with a 6 month notice ending with the expiry of the said term and it is further agreed that if the lessee is permitted to hold over the land after the expiry of the said term of 10 years the lessee will be allowed a six months' notice to quit and vacate the said premises."

Over and above the protection under the Thika Tenancy Act, Clause 7 of the lease deed gave an extra protection of getting six months' notice to quit and vacate the premises. In that event one can say that such a clause being not unlawful and giving an extra protection to the tenant against eviction must also be adhered to. But it is not correct to say that Section 106 of the Transfer of Property Act merely providing for termination of a lease either by the lessor or the lessee by giving the requisite notice is an extra protection against eviction. The purpose of this provision is merely to terminate the contract which the overriding Rent Acts do not permit to be terminated.

15. In ***Raval*** case the question for consideration was whether Section 4 of the Tamil Nadu Rent Act providing for an application for fixation of fair rent was available both to the tenant and the landlord. The majority speaking through Alagiriswami, J., took the view that it was so. A contrary view was expressed by Bhagwati, J., speaking for the minority. While discussing the question the relevant passage from the decision of this Court in ***Rai Brij Raj Krishna*** case was quoted at page 634 [(1974) 1 SCC] p. 430, para 15 and reference was made to the decision of the Punjab High Court in ***Hem Chand*** case. Thereafter the observation of this Court in ***Bhaiya Punjalal*** case to the effect that "Rent Acts are not ordinarily intended to interfere with contractual leases and are Acts for the protection of tenants and are consequently restrictive and not enabling, conferring no new rights of action but restricting the existing rights either under the contract or under the general law", were held not to apply to all Rent Acts irrespective of the scheme of those Acts and their provisions. This observation given with reference to the dictum of this Court in ***Bhaiya Punjalal*** case concerned with the question of notice under Section 106. It enabled certain High Courts to make a firm departure and take the view with reference to the scheme of their respective State Acts to say that a notice was not necessary. This happened in Madras, Andhra Pradesh, Kerala, Karnataka and Punjab and Haryana. Alagiriswami, J., at page 635 after having made that observation with reference to ***Bhaiya Punjalal*** case has said: "Be that as it may, we are now concerned with the question of fixation of a fair rent". In our opinion the majority decision with regard to Section 4 was undoubtedly correct and the minority stretched the law, if we may say so with respect, too far to hold that Section 4 was not available to the landlord. It should be remembered, as we have said above, that the field of freedom of contract was encroached upon to a very large extent by the State Rent Acts. The encroachment was not entirely and wholly one-sided. Some encroachment was envisaged in the interest of the landlord also and equity and justice demanded a fair play on the part of the legislature not to completely ignore the helpless situation of many landlords who are also, compared to some big tenants, sometimes weaker section of the society. As for example a widow or a minor lets out a family house in a helpless situation to tide over the financial difficulty and later wants a fair rent to be determined. Again suppose for instance in a city there is an apprehension of external aggression, severe internal disturbances or spread of epidemics. A man in possession of his house may go to another town letting out his premises to a tenant financially strong and of strong nerves at a rate comparatively much lower than the prevailing market rates. Later on, on the normalisation of the situation as against the agreed rate of rent he approaches the Building Controller for fixing a fair rent in accordance with a particular State Rent Act. Why should she or he be debarred from doing so? The statute gives him the protection and enables the Controller to intervene to fix a fair rent as against the term who gets this protection. But in

some as in the case of ***Raval*** the landlord needs and gets the protection. But this is not a direct authority on the point of notice.

16. In ***Isha Valimohamad* v. *Haji Gulam Mohamad and Haji Dada Trust*** [(1974) 2 SCC 484] Mathew, J., speaking for a Division Bench of this Court had to consider the question with reference to the Saurashtra Rent Control Act, 1951. In that connection it was observed at page 726 (SCC p. 490, para 15) that the High Court was (sic) not right in the assumption that a notice under the Transfer of Property Act was necessary to terminate the tenancy on the ground that the appellants has sublet the premises. Says the learned Judge further that the landlord could have issued a notice under any of the provisions of the Transfer of Property Act to determine the tenancy on the ground of subletting by the tenant. It is not correct to assume that a notice under Section 106 of the Transfer of property Act as required by clause (h) of Section 111 needs a ground to be made out for the termination of the tenancy. Such a view could be taken only under clause (g). Beg, J., as he then was in ***P. J. Gupta & Co.* v. *K. Venkatesan Merchant*** [(1975) 1 SCC 46] speaking for himself and Krishna Iyer, J., following ***Raval*** case observed at page 403

> "In other words, the special procedure provided by the Act displaces the requirements of the procedure for eviction under the Transfer of Property Act and by an ordinary civil suit. Therefore, we need not concern ourselves with the provisions of Transfer of Property Act…. A tenancy is essentially based on and governed by an agreement or contract even when a statute intervenes to limit the area within which an agreement of contract operates, or, subject contractual rights to statutory rights and obligations."

In ***Dattonpant Gopalvarao Devakate* v. *Vithabrao Maruthirao Janagaval*** [(1975) 2 SCC 246] one of us (Untwalia, J.) speaking on behalf of himself and Krishna Iyer, J, said (at page 250, para 11):

> "We do not think that the alternative argument put forward by Mr. Chitale that no notice was necessary in this case is correct. The appellant was a contractual tenant who would have become a statutory tenant within the meaning of clause (r) of Section 2 of the Act if he would have continued in possession after termination of the tenancy in his favour. Otherwise not. Without termination of the contractual tenancy by a valid notice or other mode set out in Section 111 TP Act it was not open to the landlord to treat the appellant as a statutory tenant and seek his eviction without service of a notice to quit."

On a careful consideration and approach of the matter in the instant case we think that we cannot approve of the view expressed in the passage extracted above. In ***Ratan Lal* v. *Vardesh Chander*** [(1976) 2 SCC 103] Krishna Iyer, J. delivered the judgement on behalf of a Bench of this Court consisting of himself, Chandrachud, J., as he then was and Gupta, J. The case related to a building in Delhi. The Court was concerned with clause (g) of Section 111 of the Transfer of Property Act. Tracing the history of the legislation it was pointed out by the Court at page 918 (SCC p. 115, para 23" relying on ***Namdeo*** case [AIR 1953 SC 228] that the requirement as to written notice provided in Section 111(g) cannot be said to be based on any general rule of equity and therefore forfeiture of lease brought about in terms of Section

111(g) of the Transfer of Property Act not by notice but on the application of justice, equity and good conscience was held to be good determination of the lease. Quoting from ***Manujendra*** case [AIR 1967 SC 1419] it was said at page 911: (SCC p. 109, para 8)

> "We are inclined to hold that the landlord in the present case cannot secure an order for eviction without first establishing that he has validly determined the lease under the TP Act."

Why this dual requirement? Even if the lease is determined by forfeiture under the Transfer of Property Act the tenant continues to be a tenant, that is to say, there is no forfeiture in the eye of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurring the liability to be evicted under the State Rent Act, not otherwise. In many State statutes different provisions have been made as to the grounds on which a tenant can be evicted and in relation to his incurring the liability to be so evicted. Some provisions overlap those of the Transfer of Property Act. Some are which are mostly in favour of the tenants but some are in favour of the landlord also. That being so the dictum of this Court in ***Raj Brij*** case comes into play and one has to look to the provisions of law contained in the four corners of any State Rent Act to find out whether a tenant can be evicted or not. The theory of double protection or additional protection, it seems to us, has been stretched too far and without a proper and due consideration of all its ramifications.

17. Beg, J., as he then was, speaking for the Court in the case of ***Puwada Venkateswara Rao* v. *Chidamana Venkata Ramana*** [(1976) 2 SCC 409] had to deal with the question as to whether a notice to quit was necessary for seeking an order for eviction under the Andhra Pradesh (Lease, Rent and Eviction) Control Act, 1960. The Andhra Pradesh High Court had relied upon the decision of that Court in ***Ulligamma* v. *S. Mohan Rao*** [(1969) 1 APLJ 351] for taking the view that a notice under Section 106 of the Transfer of Property Act was not necessary. Gopal Rao Ekbote, J., delivering the judgement on behalf of a Bench of the Andhra Pradesh High Court in Ulligappa case reviewed several decisions of the High Courts and this Court and considered the special provision of the Andhra Pradesh Rent Act. The view expressed by him that no notice was necessary under Section 106 of the Transfer of Property Act was approved by this Court. We find no justification for saying that because of some special provisions contained in the Andhra Act a different view was possible to be taken. This is exactly the reason why we have though it fit to review all the decisions and lay down a uniform law for all the States.

Section 10(1) of the Andhra Pradesh Act provided that "a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or Section 12 and 13". A special provision in the Andhra Act was contained in Section 10(7) which says:

> "Where an application under sub-section (2) or sub-section (3) for evicting a tenant has been rejected by the Controller, the tenancy shall, subject to the provisions of this Act, be deemed to continue on the same terms and conditions as before and shall not be terminable by the landlord except on one or more of the grounds mentioned in sub-section (2) or sub-section (3)."

This special provision is provided by way of abundant precaution only. Even without this, a tenant continuing in possession after the termination of the contractual tenancy and until an eviction order is passed against him, continues on the same terms and conditions as before and he cannot be evicted unless a ground is made out for his eviction according to the State Rent Act. The said provision by itself did not justify a departure from the view expressed by this Court in ***Mangilal*** case, followed by the decision of this Court in ***Raval*** case and of the Punjab High Court in ***Hem Chand*** case. For the reasons stated by us, we approve of his view not on the grounds that the Andhra Pradesh State Act is a different one but because in respect of any State Act that is the correct view to take.

18. Lastly our attention was drawn to the decision of this Court in ***Firm Sardarilal Vishwanath*** **v.** ***Pritam Singh*** [AIR 1978 SC 1518]. The lease in that case had come to an end by efflux of time. A tenant continued in possession and became a so-called statutory tenant. The argument put forward before this Court that a fresh notice under Section 106 of the Transfer of Property Act was necessary was rejected on the ground: (SCC p. 10, para 18)

> "Having examined the matter on authority and precedent it must be frankly confessed that no other conclusion is possible on the first principle. Lease of urban immovable property represents a contract between the lessor and the lessee. If the contract is to be put to an end it has to be terminated by a notice to quit as envisaged under Section 106 of the Transfer of Property Act. But it is equally clear as provided by Section 111 of the Transfer of Property Act that the lease of immovable property determines by various modes therein prescribed. Now, if the lease of immovable property determines in any one of the modes prescribed under Section 111, the contract of lease comes to an end, and the landlord can exercise his right of re-entry. The right of re-entry is further restricted and fettered by the provisions of the Rent Restriction Act. Nonetheless the contract of lease had expired and the tenant lessee continues in possession under the protective wing of the Rent Restriction Act until the lessee loses protection. But there is no question of terminating the contract because the contract comes to an end once the lease determines in any one of the modes prescribed under Section 111. There is, therefore, no question of giving a notice to quit to such a lessee who continued in possession after the determination of the lease; i.e. after the contract came to an end under the protection of the Rent Restriction Act. If the contract once came to an end there was no question of terminating the contract over again by a fresh notice."

If we were to agree with the view that determination of lease in accordance with the Transfer of Property Act is condition precedent to the starting of a proceeding under the State Rent Act for eviction of the tenant, we could have said so with respect that the view expressed in the above passage is quite correct because there was no question of determination of the lease again once it was determined by efflux of time. But on the first assumption we have taken a different view of the matter and have come to the conclusion that determination of a lease in accordance with the Transfer of Property Act is unnecessary and mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding

on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the Transfer of Property Act.

19. For the reasons stated above we hold that the High Court was right in its view that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the landlady-respondent to get an order of eviction against the tenant-appellant. We accordingly dismiss the appeal but in the circumstances direct the parties to bear their own costs throughout.

* * * * *

Anand Nivas (Private) Ltd. v. *Anandji Kalyanji Pedhi*

1964 (4) SCR 892

SHAH, J. - A lease of the ground and the first floors of a building named 'Anand Bhavan' in the town of Ahmedabad was granted by the trustees of the trust named "Anandji Kalyanji Pedhi" to one Maneklal, for five years commencing from March 5, 1950 at a monthly rental of Rs. 2,000/. A suit instituted by the trustees in the Court of Small Causes (which is the Court competent under s.28 of the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947-hereinafter called 'the Act'-to entertain the suit) against Maneklal after the expiration of the period of the lease for a decree in ejectment and for arrears of rent was decreed on June 22, 1960. In execution of the decree the trustees obtained possession of the first floor but were obstructed as to the rest by a private limited company called--"Anand Nivas Private Ltd." - and two others,who claimed to be sub-lessees from Maneklal and thereby to have acquired rights of tenancy of the ground floor upon the determination of the tenancy of Maneklal.

2. Anand Nivas Private Ltd-which will hereinafter be called 'the Company'-filed Suit No. 2814 in the Court of Small Causes at Ahmedabad for a declaration that it was not bound to deliver possession of the premises in its occupation in execution of the decree in the suit filed by the trustees against Maneklal and for an injunction restraining the trustees from enforcing the decree. The Company's application for an injuction restraining the trustees from obtaining possession in enforcement of the decree obtained by them against the tenant was dismissed by the Court of First Instance. In appeal against that order the District Judge, Ahmedabad refused an interim injuction restraining the trustees from executing the decree pending the hearing and disposal of the appeal. The High Court of Gujarat was then moved against that order by a petition invoking its revisional jurisdiction. At the hearing, the petition was, by order of the Court, converted into an appeal from order refusing to grant an injuction. The High Court dismissed the appeal holding that a "statutory tenant" remaining in possession after determination of his contractual tenancy was in law not competent to sublet the premises in whole or in part and a person claiming to be a sub-tenant from a statutory tenant could not effectively plead the protection of s. 14 of the Act as amended by Ordinance III of 1959 or Bombay Act 49 of 1959. With special leave, the Company has appealed to this Court.

The Company sets up its claim to protect its possession on the plea that it had acquired the rights of a tenant by virtue of s. 14 of the Act. This plea is supported on two grounds:

> that the contract of tenancy in favour of the tenant expressly authorised him to sublet, and the tenant having lawfully sublet the premises the Company acquired on the determination of the interest of the tenant the rights of a tenant under the landlord; and
>
> in any event, on the determination of the statutory tenancy of the tenant by virtue of Ordinance III of 1959 issued by the Governor of Bombay, retrospectively amending s. 15 of the Act, the Company acquired the rights of a tenant under the landlord.

3. In the view of the High Court clause (i) of the lease restricted "the ordinary rights of the tenant to sublet under s. 108(j) of the Transfer of Property Act", and cannot be interpreted as conferring any right on the tenant to sub- let, because it "postulates the existence of a right to sublet, and provides for restrictions on the exercise of such right". Whether the covenant in the lease authorised or recognised the power of subletting in the tenant before the period of the lease expired, need not be decided in this appeal. It is common ground that after the expiration of the period of the lease, no extension of or fresh lease was granted to the tenant, and he could set up only such rights as the Act granted or recognised.

Sub-section (1) of s. 12 of the Act provides:

> "A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act."

Tenant means:

> "any person by whom or on whose account rent is payable for any premises and includes- (a) such sub-tenants and other persons as have derived title under a tenant before the commencement of the Bombay Rents Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959;
>
> (aa) any person to whom interest in premises has been transferred under the proviso to sub- section (1) of section 15;
>
> (b) any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before the commencement of the Bombay Rents, Hotel Lodging House Rates Control (Amendment) Ordinance, 1959;
>
> (c) any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the Court."

6. The expression "tenant" in the different clauses is defined to mean a contractual tenant or a statutory tenant or both. In the principal definition the expression "tenant" means only a person who is a contractual tenant because rent is payable by a contractual tenant and not by a statutory tenant. By cl. (a) sub-tenants and other persons who have derived title under a tenant before the commencement of the Ordinance III of 1959 would be regarded as tenants. These would be sub-lessees, transferees or assignees of contractual tenants. Similarly by cl. (aa) persons to whom interest in premises has been transferred in virtue of a notification issued by the State Government permitting in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification, would be transferees of contractual tenants. Clause (b) contemplates a tenant holding over and a statutory tenant alike; it takes in a person remaining in occupation with or without the assent of the landlord, when the premises were let to him or to his predecessor before the commencement of the Ordinance. Clause (c) includes in the definition the members of the family of a tenant-statutory or contractual residing with him at the time of his death, as may be decided in default by agreement by the Court. Having regard to the plurality of its meaning, the sense in which the expression is used in different sections, and even clauses,

must be ascertained from the context of the scheme of the Act; the language of the provision and the object intended to be served thereby.

In sub-s.(1) of s.12 which imposes a prohibition against a landlord recovering possession of premises, the expression "tenant" must of necessity mean a statutory tenant and not a contractual tenant, for unless the contractual tenancy is determined, the landlord has no right to recover possession.

Section 13(1) (e), in so far as it is material, provides that:

> "Notwithstanding anything contained in this Act, but subject to the provisions of section 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-
>
> (e) that the tenant has, since the coming into operation of this Act, unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein;"

In this clause the expression "tenant" apparently-means a contractual tenant, for it authorises a landlord to recover possession of premises if the tenant has unlawfully assigned, transferred his interest in the premises or has unlawfully sublet the premises. A statutory tenant has no interest in the premises occupied by him, and he has no estate to assign or transfer. To read the clause as meaning that an assignment or transfer of any premises which attracts liability to eviction would be only in respect of a contractual tenancy whereas subletting which invites that penalty may be in respect of tenancies-contractual and statutory alike, would be to attribute to the Legislature an intention to impute two different meanings to the expression " tenant" in cl. (e) of s. 13(1). By cl. (e) the Legislature has recognised the right of a landlord to recover possession if the tenant has without being so authorised by contract, sublet, in whole or in part, the premises, or assigned or transferred in any other manner his interest therein. The adverb "unlawfully" qualifies all the three verbs-sublet, assigned and transferred. That is clear from the terms of s. 15(1) which prohibits "subject to any contract to the contrary" subletting of premises or assignment or transfer of interest therein.

Section 15(1) provides:

> "Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein" :
>
> Provided, that the State Government may, by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification."

By cl. (1) of s. 15 all transfers and assignments of interest in the premises, and subletting of premises, by tenants are, subject to any contract to the contrary, made unlawful. The clause however saves contracts to the contrary and to be effective can operate only in favour of contractual tenants. A statutory tenant having no interest in the property, it was plainly unnecessary to prohibit transfer of what was ineffective. Nor can there be letting of the premises by a statutory tenant, for letting postulates a transfer of the right to enjoy property made for a certain time, express or implied, in consideration of price paid or promised and a

statutory tenant has merely a personal right to resist eviction. Section 15(1) therefore applies only to contractual tenants. The proviso to the clause also furnishes an indication to that effect for the exemption which the Provincial Government may can only be in respect of leases or a class of lease.

Sub- section (2) is in terms an exception to sub-s.(1). It provides that:

> "Notwithstanding anything contained in any judgment, decree or order of a Court or any contract. the bar against subletting, assignment or transfer of premises contained in sub-section (1) or in any contract shall, in respect of such sub-lessees, assignees or transferees as have entered into possession despite the bar before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 and as continue in possession at such commencement, have no effect and be deemed never to have had any effect."

7. The exception clause could manifestly not apply to statutory tenancies when the principal clause applied only to contractual tenancies. The effect of the clause is to validate assignments, transfers and sub-tenancies granted by contractual tenants, despite the prohibition contained in sub-s. (1) or even in the contract of tenancy, and this validation is effective, notwithstanding any judgment, decree or order of a Court. The sub-section is plainly retrospective, and protects sub-tenants of contractual tenants and removes the bar against sub-letting by sub-s. (1) as well as by contract, provided that the transferee is in possession at the commencement of the Ordinance.

8. The argument that by restricting the operation of s. 13(1)(e) to contractual tenants subletting by statutory tenants would be protected, is without force, Sections 12 and 13(1) have to be read together. Clause (e) of s. 13(1) entitles a landlord to obtain possession, where a contractual tenant has during the subsistence of the tenancy sublet the premises or assigned or transferred his interest therein. Where a statutory tenant has purported to sublet the premises, or has purported to assign or transfer his interest therein, and in pursuance of such a transaction parted with possession, he would forthwith forfeit the protection which the statute accords to him by s. 12(1).

In the light of this legal position the claim of the Company founded on s. 14 may be considered. The section enacts:

> "Where the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959, shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued."

9. There is abundant indication in the section that it applies to contractual tenancies alone. In the first instance it speaks of the interest of the tenant and determination of that interest. It then invests a sub-tenant to whom the premises have been lawfully sublet before the date of the Ordinance with the rights of a tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued. The subletting to be lawful must be permitted by contract, or validated by sub-s. (2) of s. 15. The object of s. 14 is to

protect sub- tenants. By that section forfeiture of the rights of the tenant in any of the contingencies set out in s. 13 does not in all cases destroy the protection to the sub-tenants. The protection which a sub-tenant is entitled to claim against his own landlord (that is the head tenant) becomes on determination of the head tenancy available to him against the head landlord, but the condition on which such a claim may be sustained is that there is a lawful subletting. A statutory tenant is, as we have already observed, a person who on determination of his contractual right, is permitted to remain in occupation so long as he observes and performs the conditions of the tenancy and pays the standard rent and permitted increases. His personal right of occupation is incapable of being transferred or assigned, and he having no interest in the property there is no estate on which subletting may operate. If it be assumed that a statutory tenant has the right of subletting, some very surprising consequences may ensue. A statutory tenant by parting with possession of the premises would forfeit all rights in the premises occupied by him, but he would still, if s. 14 is construed as suggested by the Company, be able to create an interest in the person inducted in the premises not derivatively but independently, for the statutory tenant had no interest in the premises and the protection granted by the statute is by the very act of transfer of possession extinguished. Again even though the sub-tenant of a statutory tenant may not be protected because the bar against such subletting is not effectively removed by s. 15(2), he would still be entitled to claim the rights of a tenant under s. 14 on determination of the tenancy of the head tenant. Having regard to these considerations there can be little doubt that a sub-lessee from a statutory tenant under the Act acquires no right of a tenant in the premises occupied by him.

In ***Solomon* v. *Orwell*** [(1954) All ER 874] a statutory tenant of a dwelling-house had sublet a part of the house, vacated the premises in her occupation by removing herself there from. The landlord then filed a suit against the sub- tenant who had remained in possession of a part sublet to her. The subtenant submitted that after the surrender of the statutory tenancy, she was entitled to the same rights against the landlord as the statutory tenant had and therefore her tenancy could not be terminated by merely giving a notice to quit. This contention was rejected by the Court holding that "a statutory tenant had no interest capable of existing in law as an estate, but merely a statutory right of occupation which could not be the subject of surrender at common law, and, therefore, when the tenant vacated the premises the sub-tenant's right of occupation automatically came to an end." We therefore hold that before the date of the institution of the suit, Manekal as a statutory tenant had no right to sublet the premises and the Company acquired no right of a tenant on the determination of the tenant's right by virtue of s. 14 of the Act.

The appeal is dismissed with costs. On the Appellant's undertaking to vacate and deliver possession of the property within one month from today, execution of the decree obtained by the Respondent in Suit No. 707 of 1956 against Maneklal Mafatlal, is stayed for one month.

* * * * *

Gian Devi Anand v. *Jeevan Kumar*

AIR 1985 SC 796

AMARENDRA NATH SEN, J. - The question for consideration in this appeal by special leave is whether under the Delhi Rent Control Act, 1958 (for the sake of brevity hereinafter referred to as the Act), the statutory tenancy, to use the popular phraseology, in respect of commercial premises is heritable or not. To state it more precisely the question is whether the heirs of a deceased tenant whose contractual tenancy in respect of commercial premises has been determined, are entitled to the same protection against eviction afforded by the Act to the tenant.

2. The question is essentially a question of law. This very question has been raised in a number of appeals, arising out of different sets of facts giving rise, however, to this common question of law in all the appeals. As the decision on this common question of law which arises in the other appeals pending in this Court may affect the parties in the other appeals, we considered it proper to hear the counsel appearing in all the appeals on this common question of law. We, however, feel that it will be convenient to deal with the other appeals separately and dispose of the same, applying the decision on this common question of law in the light of the facts and circumstances of the other cases and pass appropriate orders and decrees in the other appeals when they are taken up for disposal.

3. Though the question is mainly one of law, it is necessary for a proper appreciation of the question involved to set out in brief the facts of the present appeal which is being disposed of by this judgment.

4. One Wasti Ram was the tenant in respect of Shop No. 20, New Market, West Patel Nagar, New Delhi under the respondent at the monthly rent of Rs. 110. He came into possession as tenant on and from 1.9.1959. In April, 1970 the respondent landlord determined the tenancy by serving a notice to quit on the tenant Wasti Ram, since deceased. In September, 1970, the respondent landlord filed a petition under section 14 of the Act for the eviction of the tenant Wasti Ram from the said shop on the following grounds:

(1) non-payment of rent;
(2) *bona fide* requirement;
(3) change of user from residential to commercial;
(4) substantial damage to property; and
(5) sub-letting.

In the petition filed by the landlord against the tenant Wasti Ram, the landlord had also impleaded one Ashok Kumar Sethi, as defendant no. 2 alleging him to be the unlawful sub-tenant of the tenant Wasti Ram. By judgment and order dated 19.5.1975, the Rent Controller held that:

(1) the ground of the *bona fide* requirement was not available to the landlord under the Act in respect of any commercial premises;

(2) the premises had been let out for commercial purposes and there had been no change of user;

(3) no substantial damage to the property had been done by the tenant; and

(4) sub-letting had not been established.

On the question of non-payment of rent, the Rent Controller held that the tenant was liable to pay a sum of Rs. 24 by way of arrears for the period 1.3.1969 to 28.2.1970 after taking into consideration all payments made and a further sum of Rs. 90 on account of such arrears for the month of September 1970 and the rent subsequent to the month of March, 1975, if not already deposited. In view of the aforesaid finding on the question of default in payment of rent, the Rent Controller held that the tenant was liable to eviction under section 14(1)(a) of the Act and further held that in view of the provisions contained in section 15(1) of the Act there would however be no order or decree for eviction, if the tenant deposited all the aforesaid arrears within a period of one month from the date of the order and in that case the ground of non-payment of rent would be wiped out. The Rent Controller ordered accordingly.

5. Against the order of the Rent Controller, the landlord preferred an appeal on 13.7.1975 and the tenant Wasti Ram filed his cross-objection. The cross-objection of the tenant was against the order of the Rent Controller regarding his finding on default in payment of rent. The landlord in his appeal had challenged the finding of the Rent Controller on the question of substantial damage to the property by the tenant and also the finding of the Rent Controller on the question of sub-letting. It appears that during the pendency of the appeal, the tenant Wasti Ram died and on 5.9.1977 the present appellant Smt. Gian Devi Anand, the widow of deceased Wasti Ram, was substituted in place of Wasti Ram on the application of the landlord. The Rent Control Tribunal allowed the cross-objection of the tenant and held that there was no default on the part of the tenant in the matter of payment of rent. The Rent Control Tribunal rejected the first contention of the landlord in the Landlord's appeal regarding substantial damage done to the property by the tenant. On the other question, namely, the question of sub-letting, the Rent Control Tribunal allowed the appeal of the landlord and remanded the case to the Rent Controller to decide the question of sub-letting after affording an opportunity to the parties to lead evidence in this regard.

6. Against the order of the Rent Control Tribunal, Smt. Gian Devi Anand, the widow of the deceased tenant, filed an appeal in the High Court impleading in the said appeal the other heirs of Wasti Ram as pro-forma respondents. The landlord also filed a cross-objection in the High Court after the widow had presented the appeal against the order of the Rent Control Tribunal directing remand on the question of sub-letting. In the cross-objection filed by the landlord, the landlord had challenged the finding of the Tribunal on the question of non-payment of rent and had further raised a contention that in view of the death of the original tenant Wasti Ram, who continued to remain in possession of the shop as a statutory tenant, the widow and the heirs of the deceased tenant were not entitled to continue to remain in occupation thereof. The High Court held that on the death of the statutory tenant, the heirs of the statutory tenant had no right to remain in possession of the premises, as statutory tenancy was not heritable and the protection afforded to a statutory tenant by the Act is not available to the heirs and legal representatives of the statutory tenant. In this view of the matter the High Court did not consider it necessary to go into other questions and the High Court allowed the cross-objection filed by the landlord and passed a decree for eviction against the appellant and the other heirs of Wasti Ram, the deceased tenant.

7. The correctness of this view that on the death of a tenant whose tenancy in respect of any commercial premises has been terminated during his life time, whether before the commencement of any eviction proceeding against him or during the pendency of any eviction proceeding against him, the heirs of the deceased tenant do not enjoy the protection afforded by the Act to the tenant and they do not have any right to continue to remain in possession because they do not inherit the tenancy rights of the deceased tenant, is challenged in this appeal.

8. The learned counsel for the appellant tenant argues that there could be no doubt that a contractual tenancy is heritable and he contends that notwithstanding the determination of the contractual tenancy of the tenant in respect of any commercial premises, the position in law remains unchanged in so far the tenancy in respect of commercial premises is concerned, by virtue of the provisions of the Act. In support of this contention reference is made to the provisions of the Act and strong reliance is placed on the decision of this Court in the case of ***Damadi Lal* v. *Parashram*** [(1976) Suppl. SCR 645] and also to the decision of this Court in the case of ***V. Dhanapal Chettiar* v. *Yesodai Ammal*** [AIR 1979 SC 1745].

9. The learned counsel appearing on behalf of the landlord-respondents have submitted that on the determination of the contractual tenancy, the tenancy comes to an end and the tenant ceases to have any estate or interest in the premises. It is contended that on determination of the tenancy, the tenant becomes liable to be evicted in due process of law under the general law of the land, but, the Act affords a protection to the tenant against such eviction in as much as the Act provides that inspite of the termination of the tenancy, no order or decree for possession shall be passed against the tenant, unless any of the grounds mentioned in the Act which entitles a landlord to recover possession of the premises from the tenant is established. It is contended that the protection to the tenant under the Act is against eviction except on grounds recognised by the Act and the protection is only in the nature of personal protection to the tenant who continues to remain in possession after the termination of the tenancy. The contention is that the tenant loses the estate or interest in the tenanted premises after termination of the contractual tenancy and the tenant by virtue of the Act is afforded only a personal protection against eviction; and, therefore, the heirs of such tenant on his death acquire no interest or estate in the premises, because the deceased tenant had none, and they can also claim no protection against eviction, as the protection under the Act is personal to the tenant as long as the tenant continues to remain in possession of the premises after the termination of the termination of the tenancy. The argument, in short, is that the protection against eviction after termination of tenancy afforded to a tenant by the Act creates a personal right in favour of the tenant who continues to remain in possession after termination of his tenancy without any estate or interest in the premises; and, therefore, on the death of such a tenant, his heirs who have neither any estate nor interest in the tenanted premises and who do not have any protection under the Act against eviction, are liable to be evicted as a matter of course under the ordinary law of the land. In support of this argument various authorities including decisions of this Court, of various High Courts, of English Courts and also passages from *Halsburry's Laws of England* and other eminent English authors have been cited.

10. It has been further argued that in view of the clear provision in law that heirs of a deceased tenant whose tenancy had been terminated during his life time and who was continuing in possession by virtue of the provisions of the Act did not enjoy any protection and was liable to be evicted as a matter of course, the Legislature considered it fit to intervene to give some relief to the heirs of the deceased tenant in respect of the residential premises and amended the Act of 1958 by Delhi Rent Control (Amendment) Act, 1976 (Act 18 of 1976) by changing the definition of 'tenant' with retrospective effect. The argument is that by virtue of the amendment introduced in 1976 with retrospective effect, the heirs of the deceased tenant specified in section 2(l)(iii) enjoy the protection against eviction during their life time in the manner mentioned therein provided the conditions mentioned therein are satisfied, only with regard to residential premises. It is contended that with regard to the residential premises such limited protection essentially personal to the heirs specified and to be enjoyed by them for their lives in the manner laid down in the said sub-section 2(l)(iii) has been provided by the amendment; but in respect of commercial premises no such protection has been given.

11. We do not consider it necessary to refer to the various English cases and the other English authorities cited from the Bar. The English cases and the other authorities turn on the provisions of the English Rent Acts. The provisions of the English Rent Acts are not in *pari materia* with the provisions of the Act in question or the other Rent Acts prevailing in other States in India. The English Rent Acts which have come into existence from time to time were no doubt introduced for the benefit of the the tenants. It may be noted that the term "statutory tenant" which is not to be found in the Act in question or in the other analogous Rent Acts in force in other States in India, is indeed a creature of the English Rent Act. English Rent Act, 1977 which was enacted to consolidate the Rent Act 1968, Parts III, IV and VIII of the Housing Finance Act, 1972, the Rent Act, 1974, sections 7 to 10 of the Housing Rents and Subsidies Act, 1975 and certain related enactments, with amendments to give effect to recommendation of the Law Commission, speaks of protected tenants and tenancies in Section 1 and defines statutory tenant in section 2. English Rent Act, 1977 is in the nature of a complete Code governing the rights and obligations of the landlord and the tenant and their relationship in respect of tenancies covered by the Act. As the provisions of the English Act are materially different from the provisions of the Act in question and other Rent Control Acts in force in other States in India, the decisions of the English Courts and the passages from the various authoritative books including the passages from Halsbury which are all concerned with English Rent Acts are not of any particular assistance in deciding the question involved in the appeal. As we have already noticed, the term 'statutory tenant' is used in English Rent Act and though this term is not to be found in the Indian Acts, in the judgments of this Court and also of the various High Courts in India, this term has often been used to denote a tenant whose contractual tenancy has been terminated but who has become entitled to continue to remain in possession by virtue of the protection afforded to him by the statutes in question, namely, the various Rent Control Acts, prevailing in different states of India. It is also important to note that notwithstanding the termination of the contractual tenancy by the Landlord, the tenant is afforded protection against eviction and is permitted to continue to remain in possession even after the termination of the contractual tenancy by the Act in question and invariably by all the Rent Acts in force in various States so long as an order or

decree for eviction against the tenant on any of the grounds specified in such Acts on the basis of which an order or decree for eviction against the tenant can be passed, is not passed.

12. As various decisions of this Court on which reliance has been placed by the learned counsel for the landlord have been cited, it does not become very necessary to consider at any length the various decisions of the High Courts on the very same question, relied on by the Learned Counsel for the landlords. It may, however, be noted that the decisions of this Court to which we shall refer in due course and the decisions of the High Courts which were cited by the learned counsel for the Landlords do lend support to their contention.

13. We first propose to deal with the decision of this Court in ***Damadi Lal*** case in which this Court considered some of the English Authorities and also some of the decisions of this Court. In this case the first question raised on behalf of the plaintiff-appellant in this Court was whether the heirs of the statutory tenants had any heritable interest in the demised premises and had the right to prosecute the appeal in the High Court on the death of the statutory tenant.

14. Dealing with this contention the Court held at pages 650 to 654:

> "In support of his first contention Mr. Gupta relied on two decisions of this Court ***Anand Nivas (Private) Ltd.*** **v.** ***Anandji Kalyanji Pedhi*** [(1964) 4 SCR 892] and ***Jagdish Chander Chatterjee*** **v.** ***Kishan*** [(1973) 1 SCR 850]. The statute considered in ***Anand Nivas*** case was Bombay Rents, Hotel and Lodging Rates Control Act, 1947 as amended in 1959. The question there was, whether a tenant whose tenancy had been terminated had any right to sublet the premises. Of the three learned judges, composing the Bench that heard the appeal, Hidayatullah and Shah, JJ. held that a statutory tenant, meaning a tenant whose tenancy has determined but who continues in possession, has no power of subletting. Sarkar J. delivered a dissenting opinion. Shah J. who spoke for himself and Hidayatullah J. observed in the in the course of their judgement:
>
> > 'A statutory tenant has no interest in the premises occupied by him, and he has no estate to assign or transfer. A statutory tenant is, as we have already observed, a person who on determination of his contractual right, is permitted to remain in occupation so long as he observes and performs the conditions of the tenancy and pays the standard rent and permitted increases. His personal right of occupation is incapable of being transferred or assigned, and he having no interest in the property there is no estate on which subletting may operate.'

It appears from the judgment of Shah, J. that 'the Bombay Act merely grants conditional protection to a statutory tenant and does not invest him with the right to enforce the benefit of any of the terms and conditions of the original tenancy.' Sarkar J. dissenting held that word 'tenant' as defined in the Act included both a contractual tenant - a tenant whose lease is subsisting as also a statutory tenant and the latter has the same power to sublet as the former. According to Sarkar J. even if a statutory tenant had no estate or property in the demised premises, the Act had undoubtedly created a right in such a tenant in respect of the property which he could transfer**.** ***Jagdish Chander Chatterjee*** case dealt with the Rajasthan Premises

(Control of Rent and Eviction) Act, 1950, and the question for decision was whether on the death of a statutory tenant his heirs succeed to the tenancy so as to claim protection of the Act. In this case it was held by Grover and Palekar JJ., relying on ***Anand Nivas*** case, that after the termination of contractual tenancy, a statutory tenant enjoys only a personal right to continue in possession and on his death his heirs do not inherit any estate or interest in the original tenancy.

Both these cases, ***Anand Nivas*** and ***Jagdish Chander Chatterjee,*** proceed on the basis that a tenant whose tenancy has been terminated, described as statutory tenant, has no estate or interest in the premises but only a personal right to remain in occupation. It would seem as if there is a distinct category of tenants called statutory tenants having separate and fixed incidents of tenancy. The term 'statutory tenancy' is borrowed from the English Rent Acts. This may be a convenient expression for referring to a tenant whose tenancy has been terminated and who would be liable to be evicted but for the protecting statute, but Courts in this country have sometimes borrowed along with the expression certain notions regarding such tenancy from the decisions of the English Courts. In our opinion it has to be ascertained how far these notions are reconcilable with the provisions of the statute under consideration in any particular case. The expression 'statutory tenancy' was used in England in several judgments under the Increase of Rent and Mortgage interest (War Restrictions) Act, 1915, to refer to a tenant protected under that Act, but the term got currency from the marginal note to section 15 of the Rent and Mortgage Interest (Restriction) Act, 1920. That section which provided *inter alia* that a tenant who by virtue of that Act retained possession of any dwelling house to which the Act applied, so long as he retained possession, must observe and would be entitled to the benefit of all the terms and conditions of the original contract of tenancy which were consistent with the provisions of the Act, carried the description in the margin 'conditions of statutory tenancy.' Since then the term has been used in England to describe a tenant protected under the subsequent statutes until section 49(1) of the Housing Repairs and Rent Act, 1954 for the first time defined 'statutory tenant' and 'statutory tenancy.' 'Statutory tenant' was defined as a tenant 'who retains possession by virtue of the Rent Acts and not as being entitled to a tenancy, and it was added, 'statutory tenancy' shall be construed accordingly.' This definition of 'statutory tenancy' has been incorporated in the Rent Acts of 1957 and 1965. In England 'statutory tenancy' does not appear to have had any clear and fixed incidents; the concept was developed over the years from the provisions of the successive Rent Restrictions Act which did not contain a clear indication as to the character of such tenancy. That a statutory tenant is entitled to the benefit of the terms and conditions of the original contract of tenancy so far as they were consistent with the provisions of the statute did not as Scrutton LJ. observed in ***Roe*** **v.** ***Russell*** [(1928)2 KB 117] "help very much when one came to the practical facts of life,' according to him, 'citizens are entitled to complain that their legislators did not address their minds to the probable events that might happen in cases of statutory tenancy, and consider how the legal interest they were granting was affected by those probable events.' He added, '..it is pretty evident that the Legislature never considered as a whole the effect on the statutory tenancy of such ordinary incidents as death, bankruptcy, voluntary assignment, either inter vivos or by will, a total or partial subletting; but from time to time put into one of the series of Acts a provision as to one of the incidents without considering how it fitted in with the general nature of the tenancy which

those incidents might affect.' On the provisions which gave no clear and comprehensive idea of the nature of statutory tenancy, the Courts in England had been slowly 'trying to frame a consistent theory' Scrutton L.J. in ***Haskins* v. *Lewis*** [(1931) 2 KB 1(9)] 'making bricks with very insufficient statutory straw' Scrutton LJ in ***Keeves*** v. ***Dean*** [(1923) 93 LJ KB 203(207)]. Evershed MR in ***Boyer* v. *Warbey*** [(1953) 2 KB 234]said: The character of the statutory tenancy, I have already said, is a very special one. It has earned many epithets, including 'monstrum horrendum' and perhaps it has never been fully thought out by Parliament. Courts in England have held that a statutory tenant has no estate or property in the premises he occupies because he retains possession by virtue of the Rent Acts and not as being entitled to a tenancy; it has been said that he has only a personal right to remain in occupation, the statutory right of 'irrevocability' and nothing more.

We find it difficult to appreciate how in this country we can proceed on the basis that a tenant whose contractual tenancy has determined but who is protected against eviction by the statute has no right of property but only a personal right to remain in occupation, without ascertaining what his rights are under the statute. The concept of a statutory tenant having no estate or property in the premises which he occupies is derived from the provisions of the English Rent Acts. But it is not clear how it can be assumed that the position is the same in this country without any reference to the provisions of the relevant statute. Tenancy has its origin in contract. There is no dispute that a contractual tenant has an estate or property in the subject matter of the tenancy, and heritability is an incident of the tenancy. It cannot be assumed, however, that with the determination of the tenancy the estate must necessarily dis-appear and the statute can only preserves his status of irremovablity and not the estate he had in the premises in his occupation. It is not possible to claim that the 'sanctity' of contract cannot be touched by legislation. It is therefore necessary to examine the provisions or the provisions of the Madhya Pradesh Accommodation Control Act, 1961 to find out whether the respondents' predecessors-in-interest retained a heritable interest in the disputed premises even after the termination of their tenancy.

Section 2 (i) of the Madhya Pradesh Accommodation Control Act, 1961 defines 'tenant' to mean, unless the context otherwise requires:

> 'a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied would be payable for any accommodation and includes any person occupying the accommodation as a subtenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made,'

The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been made against him, thus putting him on par with a person whose contractual tenancy still subsists. The incidents of such tenancy and a contractual tenancy must therefore be the same unless any provision of the Act conveyed a contrary intention. That under this Act such a tenant retains an interest in the premises, and not merely a personal right of occupation, will also appear from section 14 which contains provisions restricting the tenant's power of subletting. Section 14 is in these terms:

'***Section 14. Restriction on sub-letting***:

(1) No tenant shall without the previous consent in writing of the landlord:

(a) sublet the whole or any part of the accommodation held by him as a tenant; or

(b) transfer or assign his rights in the tenancy or in any part thereof.

(2) No landlord shall claim or receive the payment of any sum as premium or pugree or claim or receive any consideration whatsoever in cash or in kind for giving his consent to the sub-letting of the whole any part of the accommodation held by the tenant.'

There is nothing to suggest that this section does not apply to all tenants as defined in section 2 (i). A contractual tenant has an estate or interest in premises from which he carves out what he gives to the sub-tenant. Section 14 read with section 2(l) makes it clear that the so-called statutory tenant has the right to sub-let in common with a contractual tenant and this is because he also has an interest in the premises occupied by him."

15. It may be noted that in deciding ***Damadilal*** case, this Court considered the two decisions of this Court, namely, the decisions in ***Anand Nivas*** and ***Jagdish Chander Chatteljee*** cases which have been relied on by the learned counsel for the landlords.

16. The decision of this Court in the case of ***Ganpat Ladha* v. *Sashikant Vishnu Shinde*** [AIR 1978 SC 955] is another decision on which very strong reliance has been placed on behalf of the landlords. In this case under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Court was concerned with the question whether the heirs of deceased tenant whose tenancy has been determined and against whom eviction proceeding was pending, were entitled to the benefit of protection afforded to the tenant after the determination of the tenancy in respect of the business premises. This Court noticed at page 202 that the tenancy right was being claimed under section 5(11)(c) of the said Act which, as recorded in the judgment, is in the following terms:

"5(11)(c): 'tenant' means any person by whom or on whose account rent is payable for any premises and includes: * * * * *

(c) any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the Court."

While dealing with this question, this Court held at pages 202-204:

"In these circumstances, the question arose for decision whether the present respondent, whose residence is given in the special leave petition as 'Agakhan Building, Haines Road, Bombay', could possibly claim to be a tenant in respect of the shop which admittedly constitutes business premises by reason of section 5(11)(c) of the Act. The High Court took the view that section 5(11)(c) applies not only to residential premises but also to business premises and therefore, on the death of a tenant of business premises, any member of tenant's family residing with him at the time of his death would become a tenant. We do not think this view taken by the High Court is correct. It is difficult to see how in case of business premises, the need

for showing residence with the original tenant at the time of his death would be relevant. It is obvious from the language of section 5(11)(c) that the intention of the legislature in giving protection to a member of the family of the tenant residing with him at the time of his death was to secure that on the death of the tenant, the member of his family residing with him at the time of his death is not thrown out and this protection would be necessarily in only case of residential premises. When a tenant is in occupation of business premises, there would be no question of protecting against dispossession a member of the tenant's family residing with him at the time of death. The tenant may be carrying on a business in which the member of his family residing with him may not have any interest at all and yet on the construction adopted by the High Court, such member of the family would become a tenant in respect of the business premises. Such a result could not have been intended to be brought about by the legislature. It is difficult to discern any public policy which might seem to require it. The principle behind section 5(11)(c) seems to be that when a tenant is in occupation of premises, the tenancy is taken by him not only for his own benefit, but also for the benefit of the members of the family residing with him and, therefore, when the tenant dies, protection should be extended to the members of the family who were participants in the benefit of the tenancy and for whose needs *inter alia* the tenancy was originally taken by the tenant. This principle underlying the enactment of section 5(11) (c) also goes to indicate that it is in respect of residential premises that the protection of that section is intended to be given. We can appreciate a provision being made in respect of business premises that on the death of a tenant in respect of such premises, any member of the tenant's family carrying on business with the tenant in such premises at the time of his death shall be a tenant and the protection of the Rent Act shall be available to him. But we fail to see the purpose the legislature could have had in view in according protection in respect of business premises to a member of the tenant's family residing with him at the time of his death. The basic postulate of the protection under the Rent Act is that the person who is sought to be protected must be in possession of the premises and his possession is protected by the legislation. But in case of business premises, a member of the family of the tenant residing with him at the time of his death may not be in possession of the business premises; he may be in service or he may be earning on any other business. And yet on the view taken by the High Court, he would become tenant in respect of the business premises with which he has no connection. We are, therefore, in agreement with the view taken by one of us (Bhagwati J.) in the Gujarat High Court about the correct meaning of section 5(11)(c) in ***Perupai Manilal Brahmin and Others*** v. ***Baldevdas Zaverbhai Tapodhan*** [(1964) 5 Gujarat LR 563]in preference to the view adopted in the subsequent decision of the Gujarat High Court in ***Heirs of deceased Darji Mohanlal Lavji*** v. ***Muktabai Shamji*** [(1971) 12 Gujarat LR 272] which decision was followed by the Bombay High Court in the judgment impugned in the present appeals before us."

17. This decision proceeds entirely on the construction of section 5(11)(c)(i) and it does not appear that the case of ***Damadilal's*** which also was in respect of commercial premises

was cited before this Court or was considered by the Court while deciding this case. Section 5(11)(b) and section 5(11)(c)(ii) were also not discussed.

18. The aforesaid decisions indicate that there is a divergence of opinion in this Court on the question whether the heirs of a deceased tenant whose contractual tenancy in respect of commercial premises has been determined can inherit the tenancy rights of the deceased tenant and can claim the benefit and protection to which the deceased tenant was entitled under the Act.

19. For an appreciation of the question it is necessary to understand the kind of protection that is sought to be afforded to a tenant under the Rent Acts and his status after the termination of the contractual tenancy under the Rent Acts. It is not in dispute that so long as the contractual tenancy remains subsisting, the contractual tenancy creates heritable rights; and, on the death of a contractual tenant, the heirs and legal representatives step into the position of the contractual tenant and in the same way on the death of a landlord the heirs and legal representative of a landlord become entitled to all the rights and privileges of the contractual tenancy and also come under all the obligations under the contractual tenancy. A valid termination of the contractual tenancy puts an end to the contractual relationship. On the determination of the contractual tenancy the landlord becomes entitled under the law of the land to recover possession of the premises from the tenant in due process of law and the tenant under the general law of the land is hardly in a position to resist eviction once the contractual tenancy has been duly determined. Because of scarcity of accommodation and gradual high rise in the rents due to various factors the landlords were in a position to exploit the situation for unjustified personal gains to the serious detriment of the helpless tenants. Under the circumstances it became imperative for the legislature to intervene to protect the tenants against harassment and exploitation by avaracious landlords and appropriate legislation came to be passed in all the States and Union Territories where the situation required interference by the legislature in this regard. It is no doubt true that the Rent Acts are essentially meant for the benefit of the tenants. It is, however, to be noticed that the Rent Acts at the same time also seek to safeguard legitimate interests of the landlords. The Rent Acts which are indeed in the nature of special welfare legislation are intended to protect tenant against harassment and exploitation by landlords, safeguarding at the same time the legitimate interests of the landlords. The Rent Acts seek to preserve social harmony and promote social justice by safeguarding the interests of the tenants mainly and at the same time protecting the legitimate interests of the landlords. Though the purpose of the various Rent Acts appear to be the same, namely, to promote social justice by affording protection to tenant, against undue harassment and exploitation by landlords, providing at the same time for adequate safeguards of the legitimate interests of the landlords the Rent Acts undoubtedly lean more in favour of the tenants for whose benefit the Rent Acts are essentially passed. It may also be noted that various amendments have been introduced to the various Rent Acts from time to time as and when situation so required for the purpose of mitigating the hardship of tenants.

20. Keeping in view the main object of Rent Control Legislation the position of a tenant whose contractual tenancy has been determined has to be understood in the light of the provisions of the Rent Acts. Though provisions of all the Rent Control Acts are not uniform, the common feature of all the Rent Control Legislation is that a contractual tenant on the

termination of the contractual tenancy is by virtue of the provisions of the Rent Acts not liable to be evicted as a matter of course under the ordinary law of the land and he is entitled to remain in possession even after determination of the contractual tenancy and no order or decree for eviction will be passed against a tenant unless any ground which entitles the landlord to get an order or decree for possession specified in the Act is established. In other words, the common feature of every Rent Control Act is that it affords protection to every tenant against eviction despite termination of tenancy except on grounds recognised by the Act and no order or decree for eviction shall be passed against the tenant unless any such ground is established to the satisfaction of the Court.

21. This Court has very aptly observed in ***Damadilal*** case that it cannot be assumed that with the determination of the tenancy, the estate must necessarily disappear and the statute can only preserve the status of irremovability and not the estate he has in the premises in his occupation; and it is not possible to claim that the sanctity of contract cannot be touched by legislation. As already noticed, this Court in ***Damadilal*** case after referring mainly to the definition of tenant in section 2(1) of the Madhya Pradesh Accommodation Control Act, 1961 came to the conclusion that the so-called statutory tenant had an interest in the premises occupied by him and the heirs of the statutory tenant "had a heritable interest in the premises." A tenant has been defined in section 2(l) of the Delhi Rent Control Act, 1958.

22. The definition of tenant as it stands at present in the Act, is after the amendment of the definition it section 2(l) of the earlier Act, by the Amendment Act (Act 18 of 1976) which was introduced with retrospective effect. Prior to the amendment, the definition of tenant as it stood in the original Act, 1958 was in the following terms:

> " 'tenant' means any person by whom or on whose account or behalf rent of any premises is, or, but for a special contract would be, payable and includes a sub-tenant and also any person continuing in possession after the termination of his tenancy but shall not include any person against whom any order or decree for eviction have been made."

It, is, therefore, clear from the definition of tenant, whether in the original Act or in the amended Act, that the tenant within the meaning of the definition of the term in the Act includes any person continuing in possession after the termination of his tenancy. It may well be seen that the definition of tenant in Madhya Pradesh Accommodation Control Act, 1961 on which the decision in ***Damadilal*** case mainly turns, is similar to the definition of tenant as given in the Delhi Act in the sense that the tenant under both the Acts includes for the purpose of the Rent Act any person continuing in possession after the termination of the tenancy.

23. The other section of the M.P. Accommodation Control Act, 1961 considered by this Court in deciding ***Damadilal*** case was section 14 which deals with sub-letting and this Court held that there was nothing in that section to suggest that the section would not apply to all tenants as defined in section 2(l) of the said Act. Section 14 was considered in ***Damadilal*** case to ascertain where the 'so called statutory tenant' enjoyed the same right as the contractual tenant in the matter of sub-letting and this Court held that the 'so called statutory tenant' enjoyed the same right as the contractual tenant.

24. Let us now analyse the provisions of the Delhi Act to find out whether there is anything in the other provisions to indicate that the tenant as defined in Section 2(l)(ii) will stand on any different footing from a contractual tenant in the matter of enjoyment of the protection and benefits sought to be conferred on a tenant by the Act.

25. Section 2(e) defines landlord and clearly indicates that the landlord continues to be the landlord for the purpose of the Act even after termination of the contractual tenancy. Section 2(l) which defines 'tenant' has been set out earlier in its entirety. We shall consider the true effect of Section 2(l)(iii) on which as earlier noted, reliance has been placed by the learned counsel of the laddlords, when we deal with the argument which has been advanced on the basis of this sub-section. Section 3 mentions premises which are outside the purview of this Act and has no bearing on the question involved. Chapter II of Act consists of Sections 4 to 13 and makes provision regarding rent. These sections indicate that they are applicable to tenants as defined in Section 2(l) including 2(l)(iii). Chapter III consists of Sections 14 to 25 of the Act and deals with eviction and control of eviction of tenants. Section 14 starts as follows:

> "Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or Controller in favour of the landlord against a tenant"

Thereafter various provisions are made as to grounds and under what circumstances a decree for eviction may be passed. This section, therefore, clearly postulates that despite the termination of the tenancy and notwithstanding the provisions of any other law which might have been applicable on the termination of the contractual tenancy, protection against eviction is applicable to every tenant as defined in Section 2(l) of the Act. This section clearly establishes that determination of a contractual tenancy does not disqualify him from continuing to be a tenant within the meaning of this Act and the tenant whose contractual tenancy has been determined enjoys the same position and is entitled to protection against eviction. The other sections in this chapter also go to indicate that the tenant whose tenancy has been terminated enjoys the same status and benefit as a tenant whose tenancy has not been terminated, and a tenant after termination of his tenancy stands on the same footing as the tenant before such termination. Chapter III A which provides for summary trial for certain applications also does not make any distinction between a tenant whose tenancy has been determined and a tenant whose tenancy has not been terminated. Chapter IV which deals with deposit of rent consists of Sections 26 to 29 and these sections make it clear that the tenant after determination of a tenancy is treated under the Act on the some footing as a tenant whose tenancy has not been determined. Chapter V which consists of Sections 30 to 34 deals with hotels and lodging houses and does not have any relevance to the question involved. Chapter VI which consists of Sections 35 to 43 provides for appointment of Controllers and their powers and functions and also makes provisions with regard to appeals. This chapter though not very material for the purpose of adjudication of the point involved indicates that no discrimination is made in the matter of proceedings for eviction between the 'so called statutory tenant' and a contractual tenant. Chapter VII which consist of Sections 44 to 49 makes provisions regarding obligations of landlords and also provides for penalties in appropriate cases. The sections make it clear that the duties and obligations cast upon the

landlord apply equally whether the tenant is a so called 'statutory tenant' or the tenant is a contractual tenant. Chapter VIII which makes various miscelleneous provisions does not have any bearing on the question involved. It may, however, be noted that section 50 which bars the jurisdiction of Civil Courts in respect of certain matters does not in any way discriminate between a 'so called statutory tenant' and a contractual tenant. The provisions of the Act, therefore, make it abundantly clear that the Act does not make any distinction between a 'so called statutory tenant' and a contractual tenant and the Act proceeds to treat both alike and to preserve and protect the status and rights of a tenant after determination of the contractual tenancy in the same way as the status and rights of a contractual tenant are protected and preserved.

26. While on this question it will be appropriate to quote the following observations of this Court in the case of ***V. Dhanapal Chettiar* v.** ***Yesodai Ammal*** at 340:

> "Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction. Until then, under the extended definition of the word 'tenant' under the various State Rent Acts, the tenant continues to be a tenant even though the contractual tenancy has been determined by giving a valid notice under section 106 of the Transfer of Property Act. In many cases the distinction between a contractual tenant and a statutory tenant was alluded to for the purpose of elucidating some particular aspects which cropped up in a particular case. That led to the criticism of that expression in some of the decisions. Without detaining ourselves on this aspect of the matter by the elaborate discussion, in our opinion, it will suffice to say that the various State Rent Control Acts make a serious encroachment in the field of freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. Inspite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent etc. in accordance with the law".

These observations were made by a seven-Judge Bench of this Court. It is no doubt true that these observations were made while considering the question of requirement of a notice under section 106 of the Transfer of Property Act before the institution of suit for recovery of possession of premises to which the Rent Act applies. These observations, however, clearly go to establish that mere determination of the contractual tenancy does not in any way bring about any change in the status of a tenant. As aptly observed in this decision,

> (I)t will suffice to say that various State Rent Control Acts make a serious encroachment in the field of freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. Inspite of the notice, the law says that he continues to be a temant and he does so, enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent etc. in accordance with the law.

27. We now proceed to deal with the further argument advanced on behalf of the landlords that the amendment to the definition of 'tenant' with retrospective effect introduced by the Delhi Rent Control Act (Act 18 of 1976) to give personal protection and personal right of continuing in possession to the heirs of the deceased statutory tenant in respect of residential premises only and not with regard to the heirs of the 'so called statutory tenant' in respect of commercial premises, indicates that the heirs of so' called statutory tenants, therefore, do not enjoy any protection under the Act. This argument proceeds on the basis that in the absence of any specific right created in favour of the 'so called statutory tenant' in respect of his tenancy, the heirs of the statutory tenant who do not acquire any interest or estate in the tenanted premises, become liable to be evicted as a matter of course. The very premise on the basis of which the argument is advanced is, in our opinion, unsound. The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal position of the tenant, unless there are contrary provisions in the Act; and, the tenant notwithstanding the termination of tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate which the tenant under the Act despite termination of the contractual tenancy continues to enjoy creates a heritable interest in the absence of any provision to the contrary. We have earlier noticed the decision of this Court in ***Damadilal*** case. This view has been taken by this Court in ***Damadilal*** case and in our opinion this decision represents the correct position in law. The observations of this Court in the decision of the Seven Judge Bench in the case of ***V. Dhanapal Chettiar*** **v.** ***Yesodai Ammal*** which we have quoted earlier appear to conclude the question. The amendment of the definition of tenant by the Act 18 of 1976 introducing particularly 2(l)(iii) does not in any way mitigate against the view. The said sub-section (iii) with all the three Explanations thereto is not in any way inconsistent with or contrary to sub-section (ii) of Section 2(l) which unequivocally states that tenant includes any person continuing in possession after the termination of tenancy. In the absence of the provision contained in sub-section 2(l)(iii), the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the 'so called statutory tenant' on his death and the heirs of such tenant would in low step into his position. This sub-section (iii) of Section 2(l) seeks to restrict this right in so far as the residential premises are concernened. The heritability of the statutory tenancy which otherwise flows from the Act is restricted in case of residential premises only to the heirs mentioned in Section 2(l)(iii) and the heirs therein are entitled to remain in possession and to enjoy the protection under the Act in the manner and to the extent indicated in sub-section 2(l)(iii). The Legislature, which under the Rent Act affords protection against eviction to tenants whose tenancies have been terminated and who continue to remain in possession and who are generally termed as statutory tenants, is perfectly competent to lay down the manner and extent of the protection and the rights and obligations of such tenants and their heirs. Section 2(l)(iii) of the Act does not create any additional or special right in favour of the heirs of the 'so called statutory tenant' on his death, but seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and rights of a contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory tenant, are fully protected by the Act and the heirs of such tenants become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the Legislature which has created this right has thought it fit in the case of residential

premises to limit the rights of the heirs in the manner and to the extent provided in Section 2(l)(iii). It appears that the Legislature has not thought it fit to put any such restrictions with regard to tenants in respect of commercial premises in this Act.

28. It may be noted that for certain purposes the Legislature in the Delhi Act in question and also in various other Rent Acts has treated commercial premises differently from residential premises. Section 14(1)(d) provides that it will be good ground for eviction of a tenant from residential premises, if the premises let out for use as residence is not so used for a period of six months immediately before the filing of the application for the recovery of possession of the premises. Similarly Section 14(1)(e) makes *bona fide* requirement of the landlord of the premises let out to the tenant for residential purposes a good ground for eviction of the tenant from such premises. These grounds, however, are not made available in respect of commercial premises.

29. We find it difficult to agree with the observations which we have quoted earlier made by this Court in the case of ***Ganapat Ladha* v. *Sashi Kant Vishnu Shinde***.

30. It may be noticed that the Legislature itself treats commercial tenancy differently from residential tenancy in the matter of eviction of the tenant in the Delhi Rent Act and also in various other Rent Acts. All the grounds for eviction of a tenant of residential premises are not made grounds for eviction of a tenant in respect of commercial premises. Section 14(1)(d) of the Delhi Rent Act provides that non-user of the residential premises by the tenant for a period of six months immediately before the filing of the application for the recovery of possession of the premises will be a good ground for eviction, though in case of a commercial premises no such provision is made. Similarly, Section 14(1)(e) which makes bone fide requirement of the landlord of the premises let out to the tenant for residential purposes a ground for eviction of the tenant, is not made applicable to commercial premises. A tenant of any commercial premises has necessarily to use the premises for business purposes. Business carried on by a tenant of any commercial premises may be and often is, his only occupation and the source of livelihood of the tenant and his family. Out of the income earned by the tenant from his business in the commercial premises, the tenant maintains himself and his family; and the tenant, if he is residing in a tenanted house, may also be paying his rent out of the said income. Even if a tenant is evicted from his residential premises, he may with the earnings out of the business be in a position to arrange for some other accommodation for his residence with his family. When, however, a tenant is thrown out of the commercial premises, his business which enables to maintain himself and his family comes to a standstill. It is common knowledge that it is much more difficult to find suitable business premises than to find suitable premises for residence. It is no secret that for securing commercial accommodation, large sums of money by way of salami, even though not legally payable, may have to be paid and rents of commercial premises are usually very high. Besides, a business which has been carried on for years at a particular place has its own goodwill and other distinct advantages. The death of the person who happens to be the tenant of the commercial premises and who was running the business out of the income of which the family used to be maintained, is itself a great loss to the members of the family to whom the death, naturally, cames as a great blow. Usually, on the death of the person who runs the business and maintains his family out of the income of the business, the other members of the

family who suffer the bereavement have necessarily to carry on the business for the maintenance and support of the family. A running business is indeed a very valuable asset and often a great source of comfort to the family as the business keeps the family going. So long as the contractual tenancy of a tenant who carries on the business continues, there can be no question of the heirs of the deceased tenant not only inheriting the tenancy but also inheriting the business and they are entitled to run and enjoy the same. We have earlier held that mere termination of the contractual tenancy does not bring about any change in the status of the tenant and the tenant by virtue of the definition of the 'tenant' in the Act and the other Rent Acts continues to enjoy the same status and position, unless there be any provisions in the Rent Acts which indicate to the contrary. The mere fact that in the Act no provision has been made with regard to the heirs of tenants in respect of commercial tenancies on the death of the tenant after termination of the tenancy, as has been done in the case of heirs of the tenants of residential premises, does not indicate that the Legislature intended that the heirs of the tenants of commercial premises will cease to enjoy the protection afforded to the tenant under the Act. The Legislature could never have possibly intended that with the death of a tenant of the commercial premises, the business carried on by the tenant, however flourishing it may be and even if the same constituted the source of livelihood of the members of the family, must necessarily come to an end on the death of the tenant, only because the tenant died after the contractual tenancy had been terminated. It could never have been the intention of the Legislature that the entire family of a tenant depending upon the business carried on by the tenant will be completely stranded and the business carried on for years in the premises which had been let out to the tenant must stop functioning at the premises, which the heirs of the deceased tenant must necessarily vacate, as they are afforded no protection under the Act. We are of the opinion that in case of commercial premises governed by the Delhi Act, the Legislature has not thought it fit in the light of situation at Delhi to place any kind of restriction on the ordinary law of inheritance with regard to succession. It may also be borne in mind that in case of commercial premises the heirs of the deceased tenant not only succeed to the tenancy rights in the premises but they succeed to the business as a whole. It might have been open to the Legislature to limit or restrict the right of inheritance with regard to the tenancy as the Legislature had done in the case of the tenancies with regard to the residential houses, but it would not have been open to the Legislature to alter under the Rent Act, the Law of Succession regarding the business which is a valuable heritable right and which must necessarily devolve on all the heirs in accordance with law. The absence of any provision restricting the heritability of the tenancy in respect of the commercial premises only establishes that commercial tenancies notwithstanding the determination of the contractual tenancies will devolve on the heirs in accordance with law and the heirs who step into the position of the deceased tenant will continue to enjoy the protection afforded by the Act and they can only be evicted in accordance with the provisions of the Act. There is another significant consideration which, in our opinion, lends support to the view that we are taking. Commercial premises are let out not only to individuals but also to Companies, Corporations and other statutory bodies having a juristic personality. In fact, tenancies in respect of commercial premises are usually taken by Companies and Corporations. When the tenant is a Company or a Corporation or anybody with juristic personality, question of the death of the tenant will not arise. Despite the termination of the tenancy, the Company or the Corporation

or such juristic personalities, however, will go on enjoying the protection afforded to the tenant under the Act. It can hardly be conceived that the Legislature would intend to deny to one class of tenants, namely, individuals, the protection which will be enjoyed by the other class, namely, the Corporations and Companies and other bodies with juristic personality under the Act. If it be held that commercial tenancies after the termination of the contractual tenancy of the tenant are not heritable on the death of the tenant and the heirs of the tenant are not entitled to enjoy the protection under the Act, an irreparable mischief which the Legislature could never have intended is likely to be caused. Any time after the creation of the contractual tenancy, the landlord may determine the contractual tenancy, allowing the tenant to continue to remain in possession of the premises; hoping for an early death of the tenant, so that on the death of a tenant he can immediately proceed to institute the proceeding for recovery and recover possession of the premises as a matter of course, because the heirs would not have any right to remain in occupation and would not enjoy the protection of the Act. This could never have been intended by the Legislature while framing the Rent Acts for affording protection to the tenant against eviction that the landlord would be entitled to recover possession even when no grounds for eviction as prescribed in the Rent Acts are made out.

31. In our opinion, the view expressed by this Court in ***Ganapat Ladha*** case and the observations made therein which we have earlier quoted, do not lay down the correct law. The said decision does not properly construe the definition of the 'tenant' as given in Section 5(11) (b) of the Act and does not consider the status of the tenant, as defined in the Act, even after termination of the commercial tenancy. In our judgment in ***Damadilal*** case this Court has correctly appreciated the status and the legal position of a tenant who continues to remain in possession after termination of the contractual tenancy. We have quoted at length the view of this Court and the reasons in support thereof. The view expressed by a seven-Judge Bench of this Court in ***Dhanapal Chettiar*** case and the observations made therein which we have earlier quoted, leaned support to the decision of this Court in ***Damadlal*** case These decisions correctly lay down that the termination of the contractual tenancy by the landlord does not bring about a change in the status of the tenant who continues to remain in possession after the termination of the tenancy by virtue of the provisions of the Rent Act. A proper interpretation of the definition of tenant in the light of the provisions made in the Rent Acts makes it clear that the tenant continues to enjoy an estate or interest in the tenanted premises despite the termination of the contractual tenancy.

32. Accordingly, we hold that if the Rent Act in question defines a tenant in substance to mean a tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed', the tenant even after the determination of the tenancy continues to have an estate or interest in the tenanted premises and the tenancy rights both in respect of residential premises and commercial premises are heritable. The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a

creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed. If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfillment of the condition in the manner and to the extent stipulated in the Act. The Legislature which by the Rent Act seeks to confer the benefit on the tenants and to afford protection against eviction, is perfectly competent to make appropriate provision regulating the nature of protection and the manner and extent of enjoyment of such tenancy rights after the termination of contractual tenancy of the tenant including the rights and the nature of protection of the heirs on the death of the tenant. Such appropriate provision may be made by the Legislature both with regard to the residential tenancy and commercial tenancy. It is, however, entirely for the Legislature to decide whether the Legislature will make such provision or not. In the absence of any provision regulating the right of inheritance, and the manner and extent thereof and in the absence of any condition being stipulated with regard to the devolution of tenancy rights on the heirs on the death of the tenant, the devolution of tenancy rights must necessarily be in accordance with the ordinary law of succession.

33. In the Delhi Act, the Legislature has thought it fit to make provisions regulating the right to inherit the tenancy rights in respect of residential premises. The relevant provisions are contained in Section 2(l) (iii) of the Act. With regard to the commercial premises, the Legislature in the Act under consideration has thought it fit not to make any such provision. It may be noticed that in some Rent Acts provisions regulating heritability of commercial premises, have also been made whereas in some Rent Acts no such provision either in respect of residential tenancies or commercial tenancies has been made. As in the present Act, there is no provision regulating the rights of the heirs to inherit the tenancy rights of the tenant in respect of the tenanted premises which is commercial premises, the tenancy right which is heritable devolves on the heirs under the ordinary Law of succession. The tenancy right of Wasti Ram, therefore, devolves on all the heirs of Wasti Ram on his death.

34. We must, therefore, hold that Wasti Ram enjoyed the status of a tenant of the premises in dispute even after determination of the contractual tenancy and notwithstanding the termination of the contractual tenancy, Wasti Ram had an estate or interest in the demised premises; and tenancy rights of Wasti Ram did not come to an end with his death but they devolved on the heirs and legal representatives of Wasti Ram. The heirs and legal representatives of Wasti Ram step into his position and they are entitled to the benefit and protection of the Act. We must, accordingly, hold that the High Court was not right in coming to the conclusion that the heirs of Wasti Ram, the so called statutory tenant, did not have any right to remain in possession of the tenanted premises and did not enjoy any protection under the Act. It appears that the High Court passed an order for eviction against the heirs of Wasti Ram only on this ground without going into the merits of the appeal filed by the appellant in the High Court against the order of remand and also without considering the cross objections filed in the High Court by the landlord. We, accordingly, set aside the judgment and order of

the High Court and we remand the case to the High Court for decision of the appeal and the cross objection on merits. The appeal is accordingly allowed to the extent indicated above with no order as to costs.

35. Before concluding, there is one aspect on which we consider it desirable to make certain observations. The owner of any premises whether residential or commercial, let out to any tenant, is permitted by the Rent Control Acts to seek eviction of the tenant only on the grounds specified in the Act entitling the landlord to evict the tenant from the premises. The restrictions on the power of the landlords in the matter of recovery of possession of the premises let out by him to a tenant have been imposed for the benefit of the tenants. Inspite of various restrictions put on the landlords's right to recover possession of the premises from a tenant, the right of the landlord to recover possession of the premises from the tenant for the *bona fide* need of premises by the landlord is recognised by the Act, in case of residential premises. A landlord may let out the premises under various circumstances. Usually a landlord lets out the premises when he does not need it for own use. Circumstances may change and a situation may arise when the landlord may require the premises let out by him for his own use. It is just and proper that when the landlord requires the premises *bona fide* for his own use and occupation the landlord should be entitled to recover the possession of the premises which continues to be his property inspite of his letting out the same to a tenant. The legislature in its wisdom did recognise this fact and the Legislature has provided that *bona fide* requirement of the landlord for his own use will be a legitimate ground under the Act for the eviction of his tenant from any residential premises. This ground is, however, confined to residential premises and is not made available in case of commercial premises. A landlord who lets out commercial premises to a tenant under certain circumstances may need *bona fide* the premises for his own use under changed conditions in some future date should not in fairness be deprived of his right to recover the commercial premises. *Bona fide* need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial. We, therefore, suggest that Legislature may consider the advisability of making the *bona fide* requirement of the landlord a ground of eviction in respect of commercial premises as well.

BHAGWATI, J. - I entirely agree with the Judgment just delivered by my learned brother A.N. Sen. J. I am adding a few words of my own since I was a party to the decision in ***Ganpat Ladha* v. *Shashikant Vishnu Shinde*** [AIR 1978 SC 955] where certain observations were made which seem to take a different view from the one we are taking in the present case.

6. The question which arises here for consideration is as to whether statutory tenancy is heritable on the death of the statutory tenant. 'Statutory tenant' is not an expression to be found in any provision of the Delhi Rent Control Act 1958 or the rent control legislation of any other State. It is an expression coined by the judges in England and. like many other concepts in English law, it has been imparted into the jurisprudence of this country and has become an expression of common use to denote a tenant whose contractual tenancy has been determined but who is continuing in possession of the premises by virtue of the protection against eviction afforded to him by the rent control legislation. Though the expression 'statutory tenant' has not been used in any rent control legislation, the concept of statutory

tenant finds recognition in almost every Rent control legislation. The definition of "tenant' in Section 2(l) of the Delhi Rent Control Act, 1958 and I am referring here to the provisions of the Delhi Rent Control Act, 1958 because that is the statute with which we are concerned in the present case, includes a statutory tenant. It says in clause (ii) that 'tenant' includes any person continuing in possession after the termination of his tenancy'. Such a person would not be a tenant under the ordinary law but he is recognised as a 'tenant' by the rent control legislation and is therefore described as a statutory tenant as contra-distinguished from contractual tenant. The statutory tenant is, by virtue of inclusion in the definition of 'tenant', placed on the same footing as contractual tenant so far as rent control legislation is concerned. The rent control legislation in fact, as pointed out by this Court in a seven judge Bench decision in ***V. Dhanapal Chettiar* v.** ***Yesodai Ammal*** [(1979) 1 SCR 334] does not make any distinction between contractual tenant and statutory tenant. "It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. Inspite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent etc. in accordance with the law." The distinction between contractual tenancy and statutory tenancy is thus completely obliterated by the rent control legislation. Though genetically the parentage of these two legal concepts is different, one owing its origin to contract and the other to rent control legislation, they are equated with each other and their incidents are the same. If a contractual tenant has an estate or interest in the premises which is heritable, it is difficult to understand why a statutory tenant should be held not to have such heritable estate or interest. In one case, the estate or interest is the result of contract while in the other, it is the result of statute. But the quality of the estate or interest is the same in both cases. The difficulty in recognising that a statutory tenant can have estate or interest in the premises arises from the fact that throughout the last century and the first half of the present, almost until recent times, our thinking has been dominated by two major legal principles, namely, freedom of contract and sanctity of private property and therefore we are unable to readily accept that legal relationships can be created by statute despite want of contractual consensus and in derogation of property rights of the landlord. We are unfortunately not yet reconciled to the idea that the law is moving forward from contract to status. Why can estate or interest in property not be created by statute? When the rent control legislation places a statutory tenant on the same footing as a contractual tenant, wipes out the distinction between the two and invests a statutory tenant with the same right, obligations and incidents as a contractual tenant, why should it be difficult to hold that, just like a contractual tenant, a statutory tenant also has estate or interest in the premises which can be inherited. Of course, strong reliance was placed on behalf of the landlord on Section 2(l)(iii) of the Delhi Rent Control Act, 1958 to combat this conclusion but that provision merely limits or circumscribes the nature and extent of the protection that should be available on the death of a statutory tenant in respect of residential premises. It does not confer a new right of heritability which did not exist aliunde. My learned brother A.N. Sen, J. has discussed this aspect of the case in great detail and I find myself wholly in agreement with what he has said in regard to the true meaning and import of Section

37. Now a word about ***Ganpat Ladha*** case. It is true that there are certain observations in that case which go counter to what we are holding in the present case and to that extent these

observations must be held not to enunciate the correct law on the subject. This Court was not really concerned in that case with the question of heritability of statutory tenancy. The only question was in regard to the true interpretation of Section 5(ii)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which is almost in same terms as Section 2(l)(iii) of the Delhi Rent Control Act, 1958 and while dealing with this question, the Court made certain observations regarding the nature of statutory tenancy and its heritability. The attention of the Court was not focussed on the question whether a statutory tenant has an estate or interest in the premises which is heritable and no argument was advanced that a statutory tenancy is heritable. It was assumed that a statutory tenancy is not heritable and on that footing the case was argued in regard to the true meaning and construction of Section 5(ii)(c). The observations made in that case to the extent to which the conflict with the judgment in the present case must therefore be regarded as overruled.

38. I accordingly concur with the order made by my learned brother A.N. Sen, allowing the appeal and remanding the case to the High Court for disposal according to law. There will be no order as to costs.

* * * * *

Atma Ram Properties (P) Ltd v. *Federal Motors (P) Ltd.*

(2005) 1 SCC 705

R.C. LAHOTI, C.J. - 2. The suit premises are non-residential commercial premises admeasuring approximately 1000 sq. ft. and situated in Connaught Circus, New Delhi. The premises are owned by the appellant and held on tenancy by the respondent on a monthly rent of Rs. 371.90p. per month. The tenancy had commenced sometime in the year 1944 and it appears that ever since then the rent has remained static. Admittedly, the provisions of the Delhi Rent Control Act 1958, (hereinafter 'the Act', for short) are applicable to the premises.

3. Sometime in the year 1992, the appellant initiated proceedings for the eviction of the respondent on the ground available under Clause (b) of Sub-section (1) of Section 14 of the Act alleging that the respondent had illegally sublet the premises to M/s. Jay Vee Trading Co. Pvt. Ltd. and the sub-tenant was running its showroom in the premises. Vide order dated 19.3.2002, the Additional Rent Controller, Delhi held the ground for eviction made out and ordered the respondent to be evicted. The respondent preferred an appeal under Section 38 of the Act. By order dated 12.4.2001, the Rent Control Tribunal directed the eviction of the respondent to remain stayed but subject to the condition that the respondent shall deposit in the Court Rs. 15,000/- per month, in addition to the contractual rent which may be paid directly to the appellant. The deposits was permitted to be made either in cash or by way of fixed deposits in the name of the appellant and directed to be retained with the Court and not permitted to be withdrawn by either party until the appeal were finally decided. Raising a plea that the respondent could not have been directed during the pendency of the proceedings at any stage to pay or tender to the landlord or deposit in the Court any amount in excess of the contractual rate of rent, the respondent filed a petition under Article 227 of the Constitution putting in issue the condition as to deposit Rs. 15,000/- per month imposed by the Tribunal. By order dated 12.2.2002, which is impugned herein, the learned single Judge of the High Court has allowed the petition and set aside the said condition imposed by the Tribunal. The effect of the order of the High Court is that during the pendency of appeal before the Tribunal the respondent shall continue to remain in occupation of the premises subject to payment of an amount equivalent to the contractual rate of rent. Feeling aggrieved, the landlord (appellant) has filed this appeal by special leave.

4. Ordinarily this Court does not interfere with discretionary orders, more so when they are of interim nature, passed by the High Court or subordinate Courts/Tribunals. However, this appeal raises an issue of frequent recurrence and, therefore, we have heard the learned counsel for the parties at length. Landlord-tenant litigation constitutes a large chunk of litigation pending in the Courts and Tribunals. The litigation goes on for unreasonable length of time and the tenants in possession of the premises do not miss any opportunity of filing appeals or revisions so long as they can thereby afford to perpetuate the life of litigation and continue in occupation of the premises. If the plea raised by the learned senior counsel for the respondent was to be accepted, the tenant, in spite of having lost at the end, does not loose anything and rather stands to gain as he has enjoyed the use and occupation of the premises, earned as well a lot from the premises if they are non-residential in nature and all that he is held liable to pay is damages for use and occupation at the same rate at which he would have

paid even otherwise by way of rent and a little amount of costs which is generally insignificant.

5. Shri K. Ramamurthy, the learned senior counsel for the appellant submitted that once a decree or order for eviction has been passed, the tenant is liable to be evicted and if he files an appeal or revision and opts for retaining use and occupation of the premises, he should be prepared to compensate the landlord by paying such amount as the landlord would have been able to earn in the event of the premises being vacated and, therefore, the superior court, passing an order of stay, acts well within its discretionary jurisdiction by putting on terms the appellant who seeks an order of stay. On the other hand, Shri Ranjit Kumar, the learned senior counsel appearing for the respondent, defended the order of the High Court by raising several pleas noticed shortly hereinafter.

6. The order of eviction passed by Rent Controller is appealable to the Rent Control Tribunal under Section 38 of the Act. There is no specific provision in the Act conferring power on the Tribunal to grant stay on the execution of the order of eviction passed by the Controller, but Sub-section (3) of Section 38 confers the Tribunal with all the powers vested in a Court under the Code of Civil Procedure, 1908 while hearing an appeal. The provision empowers the Tribunal to pass an order of stay by reference to Rule 5 of Order 41 of the Code of Civil Procedure 1908 (hereinafter 'the Code', for short). This position was not disputed by the learned senior counsel appearing for either of the parties.

7. Sub-rule (1) and (3) of Rule 5 of Order 41 of the Code read as under:-

> *"**Rule 5 Stay by Appellate Court -*** (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause, order stay of execution of such decree. x x x x x
>
> (3) No order for stay of execution shall be made under Sub-rule (1) or Sub-rule (2) unless the court making it is satisfied:-
>
> (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
>
> (b) that the application has been made without unreasonable delay; and
>
> (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him. x x x x x "

8. It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below. A prayer for the grant of stay of proceedings or on the execution of decree or order appealed against has to be specifically made to the appellate Court and the appellate Court has discretion to grant an order of stay or to refuse the same. The only guiding factor, indicated in the Rule 5 aforesaid, is the existence of sufficient cause in favour of the appellant on the availability of which the appellate Court would be inclined to pass an order of stay. Experience shows that the principal consideration which prevails with the appellate Court is that in spite of the appeal having been entertained for hearing by the appellate Court, the appellant may not be deprived of the fruits of his success in the event of the appeal being allowed. This consideration is

pitted and weighed against the other paramount consideration: why should a party having succeeded from the Court below be deprived of the fruits of the decree or order in his hands merely because the defeated party has chosen to invoke the jurisdiction of a superior forum. Still the question which the Court dealing with a prayer for the grant of stay asks to itself is: Why the status quo prevailing on the date of the decree and/or the date of making of the application for stay be not allowed to continue by granting stay, and not the question why the stay should be granted.

9. Dispossession, during the pendency of an appeal of a party in possession, is generally considered to be 'substantial loss' to the party applying for stay of execution within the meaning of Clause (a) of Sub-rule (3) of Rule 5 of Order 41 of the Code. Clause (c) of the same provision mandates security for the due performance of the decree or order as may ultimately be passed being furnished by the applicant for stay as a condition precedent to the grant of order of stay. However, this is not the only condition which the appellate Court can impose. The power to grant stay is discretionary and flows from the jurisdiction conferred on an appellate Court which is equitable in nature. To secure an order of stay merely by preferring an appeal is not the statutory right conferred on the appellant. So also, an appellate Court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made. Therefore, an applicant for order of stay must do equity for seeking equity: Depending on the facts and circumstances of a given case an appellate Court, while passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal. In ***South Eastern Coalfields Ltd.*****v.** ***State of M.P.*** [(2003) 8 S CC 648] this Court while dealing with interim orders granted in favour of any party to litigation for the purpose of extending protection to it, effective during the pendency of the proceedings, has held that such interim orders, passed at an interim stage, stand reversed in the event of the final decision going against the party successful in securing interim orders in its favour; and the successful party at the end would be justified in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery to it of benefit earned by the opposite party under the interim order of the High Court, or (b) compensation for what it has lost, and to grant such relief is the inherent jurisdiction of the Court. In our opinion, while granting an order of stay under Order 41 Rule 5 of the CPC, the appellate court does have jurisdiction to put the party seeking stay order on such terms as would reasonably compensate the party successful at the end of the appeal in so far as those proceedings are concerned. Thus, for example, though a decree for payment of money is not ordinarily stayed by the appellate Court, yet, if it exercises its jurisdiction to grant stay in an exceptional case it may direct the appellant to make payment of the decretal amount with interest as a condition precedent to the grant of stay, though the decree under appeal does not make provision for payment of interest by the judgment-debtor to the decree-holder. Robust commonsense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record - all these provide

useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on. After all, in the words of Chief Justice Chandrachud, speaking for the Constitution Bench in ***Olga Tellis*** **v.** ***Bombay Municipal Corporation*** [(1985) 3 SCC 545] -

"commonsense which is a cluster of life's experiences, is often more dependable than the rival facts presented by warring litigants".

10. Shri Ranjit Kumar, the learned senior counsel for the respondent, submitted that during the pendency of the appeal the tenant-appellant cannot be directed to pay any amount over and above the amount of contractual rent unless and until the decree or order of eviction has achieved a finality because, in view of the protection of rent control legislation enjoyed by the tenant, he shall continue to remain a tenant and would not become a person in unlawful possession of the property until the decree has achieved a finality from the highest forum upto which the litigation is pursued. Reliance was placed on the decision of this Court in ***Smt. Chander Kali Bai*** **v.** ***Shri Jagdish Singh Thakur*** [(1977) 4 SCC 402] followed in ***Vashu Deo*** **v.** ***Balkishan*** [(2002) 2 SCC 50]. This submission raises the following two issues: - (i) in respect of premises enjoying the protection of rent control legislation, when does the tenancy terminate; and (ii) upto what point of time the tenant is liable to pay rent at the contractual rate and when does he become liable to pay to the landlord compensation for use and occupation of the tenancy premises unbound by the contractual rate of rent?

11. Under the general law, and in cases where the tenancy is governed only by the provisions of Transfer of Property Act, 1882, once the tenancy comes to an end by determination of lease under Section 111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant. In the case of ***Chander Kali Bai*** the tenancy premises were situated in the State of Madhya Pradesh and the provisions of the M.P. Accommodation Control Act, 1961 applied. The suit for eviction was filed on 8th March 1973 after serving a notice on the tenant terminating the contractual tenancy w.e.f. 31st December 1972. The suit came to be dismissed by the trial Court but decreed in first appeal decided on 11th August, 1975. One of the submissions made in this Court on behalf of the tenant-appellant was that no damages from the date of termination of the contractual tenancy could be awarded; the damages could be awarded only from the date when an eviction decree was passed. This Court took into consideration the definition of tenant as contained in Section 2(i) of the M.P. Act which included "any person continuing in possession after the termination of his tenancy" but did not include "any person against whom any order or decree for eviction has been made". The court, persuaded by the said definition, held that a person continuing in possession of the accommodation even after the termination of his contractual tenancy is a tenant within the meaning of the M.P. Act and on such termination his possession does not become wrongful until and unless a decree for eviction is passed. However, the Court specifically ruled that the tenant continuing in possession even after the passing of the decree became a wrongful occupant of the accommodation. In conclusion the Court held that the tenant was not liable to pay any damages or mesne profits for the period commencing from 1st January 1973 and

ending on 10th August 1975 but he remained liable to pay damages or mesne profits from 11th August 1975 until the delivery of the vacant possession of the accommodation. During the course of its decision this Court referred to a decision of Madhya Pradesh High Court in ***Kikabhai Abdul Hussain*** **v.** ***Kamlakar*** [1974 MPLJ 485] wherein the High Court had held that if a person continues to be in occupation after the termination of the contractual tenancy then on the passing of the decree for eviction he becomes a wrongful occupant of the accommodation since the date of termination. This Court opined that what was held by the Madhya Pradesh High Court seemed to be a theory akin to the theory of "relation back" on the reasoning that on the passing of a decree for possession, the tenant's possession would become unlawful not from the date of the decree but from the date of the termination of the contractual tenancy itself. It is noteworthy that this Court has not disapproved the decision of the Madhya Pradesh High Court in ***Kikabhai Abdul Hussain*** case but distinguished it by observing that the law laid down in ***Kikabhai Abdul Hussain*** case was not applicable to the case before it in view of the definition of 'tenant' as contained in the M.P. Act and the provisions which came up for consideration of the High Court in ***Kikabhai Abdul Hussain*** case were different.

12. Reliance, by the learned counsel for the respondent, on the case of ***Vashu Deo*** is misconceived, inasmuch as, in that case the Court was dealing with the rule of estoppel of tenant for holding that the tenant was estopped from disputing the title of his landlord so long as he continued in possession of the tenancy premises and until he had restored the landlord into possession.

13. In ***Shyam Sharan*** **v.** ***Sheoji Bhai*** [(1977) 4 SCC 393] this Court has upheld the principle that the tenant continuing in occupation of the tenancy premises after the termination of tenancy is an unauthorized and wrongful occupant and a decree for damages or mesne profits can be passed for the period of such occupation, till the date he delivers the vacant possession to the landlord. With advantage and approval, we may refer to a decision of the Nagpur High Court. In ***Bhagwandas*** **v.** ***Mst. Kokabai*** [AIR 1953 Nag 186] the learned Chief Justice of Nagpur High Court held that the rent control order, governing the relationship of landlord and tenant, has no relevance for determining the question of what should be the measure of damages which a successful landlord should get from the tenant for being kept out of the possession and enjoyment of the property. After determination of the tenancy, the position of the tenant is akin to that of a trespasser and he cannot claim that the, measure of damages awardable to the landlord should be kept tagged to the rate of rent payable under the provisions of the rent control order. If the real value of the property is higher than the rent earned then the amount of compensation for continued use and occupation of the property by the tenant can be assessed at the higher value. We find ourselves in agreement with the view taken by the Nagpur High Court.

14. Placing reliance on the decision of this Court in ***Kunhayammed*** **v.** ***State of Kerala*** [(2000) 6 SCC 359] Shri Ranjit Kumar, the learned senior counsel submitted that the decree of trial Court merges in the decree of the appellate Court and, therefore, the tenant shall continue to remain a tenant (and shall not become an unlawful occupant), until the passing of decree by the highest Court because the decree would achieve a finality only when the proceedings have finally terminated and then the decree of trial Court shall stand merged in

the decree of the appellate Court, the date whereof only would be relevant for determining the nature of occupation of the tenant. We are not impressed.

15. In ***Kunhayammed***, this Court, on an elaborate discussion of the available authorities, held that once the superior Court has disposed of the lis before it either way, i.e. whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior Court, Tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, this Court has also observed that the doctrine of merger is not of universal or unlimited application. In spite of merger the actual fact would remain that it was the decree or order appealed against which had directed the termination of tenancy with effect from which date the tenant had ceased to be the tenant, and the obligation of the tenant to deliver possession over the tenancy premises came into operation though the same remained suspended because of the order of stay.

16. We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case of premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy.

17. In the Delhi Rent Control Act 1958, the definition of 'a tenant' is contained in Clause (I) of Section 2. Tenant includes 'any person continuing in possession after the termination of his tenancy' and does not include 'any person against whom an order or decree for eviction has been made'. This definition is identical with the definition of tenant dealt with by this Court in ***Chander Kali Bai*** case. The tenant-respondent herein having suffered an order for eviction on 19.3.2001, his tenancy would be deemed to have come to an end with effect from that date and he shall become an unauthorized occupant. It would not make any difference if the order of eviction has been put in issue in appeal or revision and is confirmed by the superior forum at a latter date. The date of termination of tenancy would not be postponed by reference to the doctrine of merger.

18. That apart, it is to be noted that the appellate Court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the tenant-appellant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate Court. While ordering stay the appellate Court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate Court to put the tenant-appellant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In ***Marshall Sons & Co. (I) Ltd.*** **v.** ***Sahi Oretrans (P) Ltd.*** [(1999) 2 SCC 325] this Court has held that once a decree for possession has been passed and execution

is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the Court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.

19. To sum up, our conclusions are:-

(1) while passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate Court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and in so far as those proceedings are concerned. Such terms, needless to say, shall be reasonable;

(2) in case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in Clause (I) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree;

(3) The doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date.

20. In the case at hand, it has to be borne in mind that the tenant has been paying Rs. 371.90p.m. rent of the premises since 1944. The value of real estate and rent rates has skyrocketed since that day. The premises are situated in the prime commercial locality in the heart of Delhi, the capital city. It was pointed out to the High Court that adjoining premises belonging to the same landlord admeasuring 2000 sq. ft. have been recently let out on rent at the rate of Rs. 3, 50,000/- per month. The Rent Control Tribunal was right in putting the tenant on term of payment of Rs. 15,000/- per month as charges for use and occupation during the pendency of appeal. The Tribunal took extra care to see that the amount was retained in deposit with it until the appeal was decided so that the amount in deposit could be disbursed by the appellate Court consistently with the opinion formed by it at the end of the appeal. No fault can be found with the approach adopted by the Tribunal. The High Court has interfered with the impugned order of the Tribunal on an erroneous assumption that any direction for payment by the tenant to the landlord of any amount at any rate above the contractual rate of rent could not have been made. We cannot countenance the view taken by the High Court. We may not place on record that it has not been the case of the tenant-respondent before us, nor was it in the High Court, that the amount of Rs. 15,000 /- assessed by the Rent Control Tribunal was unreasonable or grossly on the higher side.

21. For the foregoing reasons, the appeal is allowed. The order of the High Court is set aside and that of the Tribunal restored with costs incurred in the High Court and in this Court. However, the tenant-respondent is allowed six weeks' time, calculated from today, for making deposits and clearing the arrears upto the date consistent with the order of the Rent Control Tribunal.

Atma Ram Properties (P) Ltd v. *P.S. Jain Company Ltd.*

57 (1995) DLT 131

[*Editorial Note*: The above decision of the Single Judge was appealed against and a Division Bench of Delhi High Court, presided over by the Chief Justice, dismissed the Appeal (65 (1997) DLT 308 (DB). The SLP filed against the Order of the Division Bench was also dismissed by the Supreme Court at the admission stage itself].

R.C. LAHOTI, J - This order proposes to dispose off the following preliminary issue No.2:

"Whether this Court has jurisdiction to try this suit in view of Section 50 of the Delhi Rent Control Act?"

2. the plaintiff has filed the suit for eviction of the defendant/ tenant impleading the sub-tenants also invoking the jurisdiction of Civil Court on the ground that the premises are fetching monthly rent exceeding Rs.3,500/- p.m. and so the provisions of Delhi Rent Control Act, 1958 (hereinafter 'the Act', for short) are excluded. The contention of the tenant, on the other hand is that in so far as he and the landlord-plaintiff are concerned, the agreed rent of the premises does not exceed Rs.3,500/- and so Section 3 (c) of the Act would not apply, the rent paid or payable by the sub-tenant to the tenant being irrelevant for the purpose of determining the applicability of the Act to a suit between a landlord and a tenant.

3. Vide registered deed of lease dated 5th January, 1978 the suit premises were let out by the predecessor-in-title of the landlord-plaintiff to the tenant defendant No.1 on a monthly rent of Rs.900/- with the effect from 1st June, 1977. The deed authorises the tenant to sub-let the premises. The tenant has inducted defendants Nos.2 to 5 as sub-tenants. The rent realised by the tenant from the sub-tenants in respect of the tenancy premises exceeds Rs.44,500/- per months.

4. Section 3 of the Act in so far as relevant for the purpose of this suit is as under:

"3. Act not to apply to certain premises – Nothing in this Act shall apply.

(c) to any premises, whether residential or not whose monthly rent exceeds Rs.3,500/-."

5. It is clear that if it is held that the premises in the suit are one whose monthly rent exceeds Rs.3,500/- the suit for ejectment would lie before a Civil Court without attracting protection against eviction under Section 14 of the Act. If not, then the suit shall have to be throughout as not maintainable; the suit being entertainable only by a Controller and that too on the availability of one or more of the grounds for recovery of possession contemplated by Section 14 of the Act. Section 50 excludes the jurisdiction of Civil Court to try any suit which under the Act the Controller is empowered to decide.

6. A strange but interesting situation has propped-up for consideration. Premises have been let out by the landlord to a tenant at a monthly rent not exceeding Rs.3,500/-. The tenant has sub-let the premises exercising the right to sub-let conferred by the terms of tenancy. The monthly rent realised by the tenant from the sub-tenants in respect of the very same premises exceeds Rs.3,500/-.

7. Clause (c) in Section 3 has been inserted by Amending Act No.57 of 1988, which came into force w.e.f. 1.12.1988. Constitutional validity of the amendment was challenged, but the same has been upheld by the Supreme Court in ***D.C. Bhatia* v. *Union of India*** [JT 1994 (7) SC 114]. Their Lordships have held that the term rent is used in the provision in its dictionary meaning and not as standard rent. Their Lordships have further held that though the Act was enacted to provide for the control of rent and eviction and of rates of hotels and lodging house etc. and in that sense was intended to protect the tenants, the amending act has a different purpose altogether. The various objects of the amendment include bringing about a balance between the interests of landlords and tenants and also giving a boost to house building activity. Whether a particular section of people requires protection or not has to be determined at any given point of time. The challenge laid to the validity of the classification on the basis of rent payable about the premises has been repelled by their Lordships holding that a person who can afford to pay more than Rs.42,000/- a year by way of rent will be by any standards an affluent person in Society. He cannot be said to belong to the weaker Section of the community. Their Lordships have further held that classification may be done on income basis or rental basis or some other basis and all such classifications are valid as they provide an understandable basis having regard to the object of the statute.

8. Section 3 (c) of the Act does not speak of classification on the basis of rent received or paid by any person or individual; it speaks of premises whose monthly rent exceeds Rs.3,500/-. Thus the same premises so long as their monthly rent does not exceed Rs.3,500/- shall enjoy the protection by applicability of the Act. No sooner the monthly rent exceeds Rs.3,500/-, the act would cease to apply as the exclusion clause would be attracted.

9. In ***Bhatia Co-operative Housing* Society v. *D.C. Patel*** [AIR 1953 SC 16] interpreting an exclusionary clause in a Bombay Act their Lordships have said, - "the Legislature did not intend to exempt the relationship of landlord and tenant but intended to confer on the premises belonging to Government an immunity from the operation of the Act." So also in ***Nagji Vallabhji & Co.* v. *Meghji Vejpar & Co.*** [AIR 1988 SC 1313], their Lordship have held, - "the exemption granted is in respect of the premises and not in respect of the relationship."

10. In spite of the main Act having been enacted to protect the tenants assuming them to be weaker Section of the Society, wisdom dawned upon the Legislature to enact a provision taking out the premises carrying a monthly rent exceeding Rs.3,500/- from the ken of the Act because in its opinion such premises would not be enjoyed/occupied by persons belonging to weaker Section of the Society. In the case at hand the tenant having obtained the premises at a monthly rent not exceeding Rs.3,500/- did enjoy the protection of the Act. The protection is capable of being foregone in both the ways: the tenant may himself agree to enhance the rent so as to exceed Rs.3,500/- per month or he may sub-let the premises at monthly rent exceeding Rs.3,500/-. In either case the rent of the premises would exceed Rs.3,500/- per month and that would attract the applicability of Section 3 (c). A view to the contrary would create anomalous situation. Though the premises are in fact earning monthly rent exceeding Rs.3,500/- yet Section 3 (c) would not apply. So also in respect of the same premises in a suit filed by the landlord against the tenant Section 3 (c) would not apply but if a suit was to be filed by the tenant against sub-tenant in respect of the same very premises, Section 3 (c)

would apply. The applicability of the Act would then have to be determined on the basis of persons and not the premises – a basis not intended by the Legislation. Even otherwise just as observed by their Lordships in ***D C Bhatia*** case a person paying Rs. 42,000/- a year cannot be weaker Section of the Society, so also a person earning Rs.42,000/- a year cannot be weaker section of the Society.

11. Though rent is not defined in the Act, Clause (1) of Section 2 defines a 'tenant' to include a sub-tenant and Clause (e) defines a landlord to mean a person who for the time being is receiving or is entitled to receive the rent of any premises. In so far as the meaning of the term rent is concerned, there is no distinction between the rent paid by a tenant to a landlord and the rent paid by a sub-tenant to a tenant.

12. Premises whose rent exceeds Rs.3,500/- whether paid by a tenant to landlord or by a sub-tenant are covered by Section 3 (c) of Delhi Rent Control Act. To begin with, the premises may be leased out for Rs.3,500/- or less a month and may not be covered by Section 3 (c), the day rent paid or payable in respect of those premises would exceed Rs.3,500/- whether by a tenant to a landlord or by a sub-tenant to a tenant, the premises would be caught in the net of Section 3 (c) of the Act.

As the suit premises are earning rent more than Rs.3,500/- a month, the applicability of Section 3 (c) of the Act is attracted. The suit is held to be maintainable before Civil Court.

* * * * *

Raghunandan Saran Ashok Saran v. *Union of India*

95 (2002) DLT 508

ANIL DEV SINGH, J. – This is a writ petition whereby the petitioner primarily challenges the provisions of Sections 4,6,9 of Delhi Rent Control Act, 1958 being violative of Article 14, 19 (1) (g) and 21 of the Constitution of India. The petitioner also seeks a direction to the first respondent to rationalise the provisions of Delhi Rent Control Act so that the petitioner is assured of receiving reasonable rent for his properties let out to the tenants.

The petitioner is the owner of a building bearing No. 40-42, Janpath, New Delhi. It is claimed that the said building was completed in the year 1938 at a cost of Rs. 2,50,362.50 and the same was let out to various tenants about 40-50 year back. The grievance of the petitioner is that under the provisions of the Delhi Rent Control Act, 1958, the rent is pegged at a very low level which is highly unjust, unfair and unreasonable. The petitioner claims that his rights under Articles 14, 19(1)(g) and 21 of the Constitution have been abridged by Sections 4, 6 and 9 of the Delhi Rent Control Act, 1958.

2. In order to resolve the controversy it will be necessary to notice the impugned provisions and the provisions having a bearing thereon. These provisions read as under:

"**Section 2 -** ***Definitions***.- In this Act, unless the context otherwise requires,-

(a) 'basic rent', in relation to premises let out before the 2nd day of June, 1944, means the basic rent of such premises as determined in accordance with the provisions of the Second Schedule;

(k) 'standard rent', in relation to any premises means the standard rent referred to in Section 6 or where the standard rent has been increased under Section 7, such increased rent.

Section 3 - ***Act not to apply to certain premises***.- Nothing in this Act shall apply-

(c) to any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees; or

(d) to any premises constructed on or after he commencement of the Delhi Rent Control (Amendment) Act, 1988, for a period of ten years from the date of completion of such construction."

Section 4 - ***Rent in excess of standard rent not recoverable***.- (1) Except where rent is liable to periodical increase by virtue of an agreement entered into before the 1st day of January, 1939, no tenant shall, notwithstanding any agreement to the contrary, be liable to pay to his landlord for the occupation of any premises any amount in excess of the standard rent of the premises, unless such amount is a lawful increase of the standard rent in accordance with the provisions of this Act.

(2) Subject to the provisions of Sub-section (1) any agreement for the payment of rent in excess of the standard rent shall be construed as if it were an agreement for the payment of the standard rent only.

Section 5 - ***Unlawful charges not to be claimed or received***.- (1) Subject to the provisions of this Act, no person shall claim or receive any rent in excess of the standard rent, notwithstanding any agreement to the contrary.

(2) No person shall, in consideration of the grant, renewal or continuance of a tenancy or sub-tenancy of any of premises,

(a) claim or receive the payment of any sum as premium or pugree or claim or receive any consideration whatsoever, in cash or in kind, in addition to the rent; or

(b) except with the previous permission of the Controller, claim or receive the payment of any sum exceeding one month's rent of such premises as rent in advance.

(3) it shall not be lawful for the tenant or any other person acting or purporting to act on behalf of the tenant or a sub-tenant to claim or receive any payment in consideration of the relinquishment, transfer or assignment of his tenancy of sub-tenancy, as the case may be, of any premises.

(4) Nothing in this section shall apply-

(a) to any payment made pursuance of an agreement entered into before the 1st day of January, 1939; or

(b) to any payment made under an agreement by any person to a landlord for the purpose of financing the construction of the whole or part of any premises on the land belonging to, or taken on lease by, the landlord, if one of the conditions of the agreement is that the landlord is to let to that person the whole or part of the premises when completed for the use of that person or any member of his family.

Provided that such payment does not exceed the amount of agreed rent for a period of five years of the whole or part of the premises to be let to such person.

Explanation: For the purposes of Clause (b) of this sub-section, a 'member of the family' of the person means, in the case of any undivided Hindu family, any member of the family of that person and in the case of any other family, the husband, wife, son, daughter, father, mother, brother, sister or any other relative dependent on that person. ***Standard rent***

Section 6.- (1) Subject to the provisions of Sub-section (2), 'standard rent', in relation to any premises means-

(A) in the case of residential premises-

(1) where such premises have been let out at any time before the 2nd day of June, 1944,

(a) if the basic rent of such premises per annum does not exceed six hundred rupees, the basic rent; or

(b) if the basic rent of such premises per annum exceeds six hundred rupees, the basic rent together with ten per cent, or such basic rent;

(2) where such premises have been let out at any time on or after the 2nd day of June, 1944,-

(a) in any case where the rent of such premises has been fixed under the Delhi and Ajmer Rent Control Act, 1947 (19 of 1947), or the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952), if such rent per annum does not exceed twelve hundred rupees, the rent so fixed together with ten per cent of such rent;

(b) in any other case, the rent calculated on the basis of (ten per cent) per annum of the aggregate amount of the (actual) cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction.

(B) in the case of premises other than residential premises-

(1) where the premises have been let out at any time before the 2nd day of June, 1944, the basic rent of such premises together with ten per cent of such basic rent:

Provided that where the rent so calculated exceeds twelve hundred rupees per annum, this clause shall have effect as if for the words "ten per cent", the words "fifteen per cent" had been substituted;

(2) where the premises have been let out at any time on or after the 2nd day of June, 1944,-

(a) in any case where the rent of such premises has been fixed under the Delhi and Ajmer-Merwara Rent Control Act, 1947 (19 of 1947) or the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952),--

(i) if such rent per annum does not exceed twelve hundred rupees, the rent so fixed; or

(ii) if such rent per annum exceeds twelve hundred rupees, the rent so fixed together with fifteen per cent of such rent;

(b) in any other case, the rent calculated on the basis of ten per cent per annum of the aggregate amount of the actual cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction:

(2) Notwithstanding anything contained in Sub-section (1)-

(a) in the case of any premises, whether residential or not, constructed on or after the 2nd day of June, 1951, but before the 9th day of Jun, 1955, the annual rent calculated with reference to the rent at which the premises were let for the month of March, 1958, or if they were not so let, with reference to the rent at which they were last let out shall be deemed to be the standard rent for a period of seven years from the date of the completion of the construction of such premises;

(b) in the case of any premises, whether residential or not, constructed or after the 9th day of June, 1955, including premises constructed after the commencement of this Act but before the commencement of the Delhi Rent Control (Amendment) Act, 1988, the annual rent calculated with reference to the rent agreed upon between the landlord and the tenant when such premises

were first let out shall be deemed to be the standard rent for a period of five years from the date of such letting out.

(c) in the case of any premises, whether residential or not, constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988 and to which the provisions of this Act are made applicable by virtue of Clause (d) of Section 3, the rent calculated on the basis of ten per cent per annum of the aggregate amount of the actual cost of construction of the premises and the market price of the land comprised in the premises on the date of commencement of the construction of the premises shall be deemed to be the standard rent.

(3) For the purposes of this section, residential premises include premises let out for the purposes of a public hospital, an educational institution, a public library, reading room or an orphanage.

Section 6A.- ***Revision of rent***.- Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent every three years.

Section.7 - ***Lawful increase of standard rent in certain cases and recovery of other charges*** - (1) Where a landlords has at any time, before the commencement of this Act with or without the approval of the tenant or after the commencement of this Act with the written approval of the tenant or of the Controller, incurred expenditure for any improvement, addition or structural alteration in the premises, not being expenditure on decoration or tenantable repairs necessary or usual for such premises, and the cost of that improvement, addition or alteration has not been taken into account in determining the rent of the premises, the landlord may lawfully increase the standard rent per yearly by an amount not exceeding ten per cent of such cost.

(2) Where a landlord pays in respect of the premises any charge for electricity or water consumed in the premises or any other charge levied by a local authority having jurisdiction in the area which is ordinarily payable by the tenant, he may recover from the tenant the amount so paid by him; but the landlord shall not recover from the tenant whether by means of an increase in rent or otherwise the amount of any tax on building or land imposed in respect of the premises occupied by the tenant.

Provided that nothing in this sub-section shall affect the liability of any tenant under an agreement entered into before the 1st day of January, 1952, whether express or implied, to pay from time to time the amount of any such tax as aforesaid.

3. The situation which emerges from the aforesaid provisions is that prior to coming into force of the Rent Control (Amendment) Act 57 of 1988, once the standard rent was fixed as per the principles laid down in Section 6 of the Act it could not be increased save and except on account of expenditure incurred for improvement, addition or structural alterations in the premises as contemplated under Section 7 of the Act. Even increase in the standard rent on that score was hardly of any significance being negligible. For all practical purposes standard rent was more or less static. This situation was sought to be remedied by insertion of Section

6A vide the Delhi Rent Control (Amendment) Act, 57 of 1988 6A starting with the non-obstante clause provides that the standard rent, or where no standard rent is fixed under the provisions of this Act in respect of any premises, rent agreed upon between the landlord and the tenant, may be increased by ten per cent every three years. Even this provision has not been able to provide real succor to a landlord whose premises are fetching standard rent. The increase in the rent of premises as a result of invocation of Section 6A is not commensurate with the fast dwindling money value. In real terms it has not been able to mitigate the rigour of Sections 4, 6 and 9 of the Act relating to standard rent, which have kept the rent at a low level. This has been exemplified by the petitioner by placing on record a chart marked C- 3, by means of an affidavit dated January 7, 2000. The chart, assuming rent of a hypothetical premises as Rs. 100/- in the year 1939-40, details the impact of Sections 6(1)(B)(1) read with second schedule and Section 6A thereon during a period 51 years as per below:

Rent in 1939-40	Rs. 100
Rent in 1947 unchanged	Rs. 100
Rent in 1958 as per section 6 (1)(B)(1)	Rs. 172.50
Rent in 1964	Rs. 172.50
Rent in 1980	Rs. 172.50
Rent w.e. f. 1.12.1988 when sec. 6(A) was inserted by the D.R.C(Amendment) Act 57 of 1988	Rs. 189.75
Rent in 1994 as per Sec. 6(A) (revisable after every 3 years)	Rs. 208.72
Rent in 1997 under Sec. 6(A)	Rs. 229.59
Rent in 1998	Rs. 229.59

4. Thus, it is evident from the aforesaid example, that rent in a period of more than five decades recorded an increase of Rs. 129.59, out of which Rs. 57.09 accounted for addition under Section 6A of the Act. This appreciation is inconsequential. This will be reflected from the following date derived from Statistical Outline of India 1996- 1997 compiled by Tata Services Ltd., Department of Economics & Statistics, and relied upon in the aforesaid affidavit of the petitioner, which shows how over the years the value of rupee has fallen in relation to the wholesale price index, which has risen by leaps and bounds from 1939 onwards:

Rs. 100 in 1939	
Rs. 100 of 1947	Rs. 38.26 of 1939
Rs. 172.50 of 1958	Rs. 46.47 of 1939
Rs. 172.50 of 1964	Rs. 34.60 of 1939
Rs. 172.50 of 1975	Rs. 12.95 of 1939
Rs. 172.50 of 1980	Rs. 9.17 of 1939
Rs. 172.50 of 1988	Rs. 5.31 of 1939
Rs. 189.75 of 1991	Rs. 4.42 of 1939
Rs. 208.72 of 1994	Rs. 3.66 of 1939
Rs. 229.59 of 1997	Rs. 3.29 of 1939
Rs. 229.59 of 1998	Rs. 2.97 of 1939

5. It is evident from above that buying capacity of Rs. 2.97 of 1939 is equivalent to buying capacity of Rs. 229.59 of 1998. In other words, Rs. 229.59 of 1998 has a value equivalent to Rs. 2.97 of 1939. Therefore, the landlord in terms of actual money value is getting Rs. 2.97. This is a pittance and all because of Sections 4, 6 and 9 of the Act.

6. It may be noted that the respondents have not filed any reply to the affidavit of the petitioner dated November, 7, 2000. It appears that the respondents are not in a position to contradict the steep erosion in the value of rupee and the progressive increase in the wholesale price index during the years mentioned above. The position as of now has not improved. Rather the value of rupee has depreciated further. It is, therefore, apparent that the increase in rent under Section 6A is not commensurate with the fast dwindling value of rupee. There is a huge difference between the value of rupee of 1939, 1944, 1947 and 1958, etc. on one hand and as of today on the other hand. Yet the standard rent determined under Section 6 of the Act is tied to the past without there being any mechanism for raising the same to a reasonable extent to offset the erosion in the value of rupee. The so-called increase under Section 6A of the Act is an eye-wash. It does not dilute or neutralise the shackling effect of Sections 4, 6 and 9 of the Act on rents. It appears to us that Section 4, which bars recovery of rent of any premises in excess of standard rent except in certain circumstances, Section 6 of the Act, which lays down the principles for determining the standard rent, and Section 9, which empowers the Rent Controller to fix the standard rent to any premises on the basis of the principles set out in Section 6 of the Act, unduly and unreasonably fetter the rights of the landlords under Articles 14, 19(1)(g) and 21 of the Constitution.

The control of rents and evictions, which were initiated in the wake of partition and population explosion in Delhi, served a salutary purpose in the then prevailing situation. Over the years the restrictions and limitations imposed and continued by various rent control legislations, namely, the New Delhi House Rent Control Order, 1939; the Punjab Urban Rent Restriction Act, 1941; the Delhi Rent Control Ordinance, 1944; the Ajmer-Mewar Control of Rent and Eviction Order, 1946; the Delhi and Ajmer-Merwara Rent Control Act 19 of 1947; and Delhi and Ajmer-Merwara Rent Control Act 38 of 1952, the Delhi Rent Control Act, 1958, have curtailed the growth of housing in general and rental housing in particular. Even amendment of the Delhi Rent Control Act, 1958 by Act No. 57 of 1988 did not provide any incentive for construction of buildings for rental housing and failed to provide solutions to the problems. It was in this background that the Delhi Rent Control Bill, 1994 was tabled in the Parliament. The Bill was passed by both the Houses of Parliament and it was enacted on August 23, 1995 on receipt of the assent of the President of India, but did not come into force as the Central Government did not issue a notification as required by Sub-section (3) of Section 1 thereof. The statement of objects and reasons appended to the Bill read as follows:

> The relations between landlords and tenants in the national Capital Territory of Delhi are presently governed by the Delhi Rent Control Act, 1958. This Act came into force on the 9th February, 1959. It was amended thereafter in 1960, 1963, 1976, 1984 and 1988. The amendments made in 1988 were based on the recommendations of the Economic Administration Reforms Commission and the National Commission on Urbanisation. Although they were quite extensive in nature, it was felt that they did not go far enough in the matter of removal of disincentives to the growth of rental

housing and left many questions unanswered and problems unaddressed. Numerous representations for further amendments to the Act were received from groups of tenants and landlords and others.

The demand for further amendments to the Delhi Rent Control Act, 1958 received fresh impetus with the tabling of the National Housing Policy in both Houses of Parliament in 1992. The Policy has since been considered and adopted by Parliament. One of its major concerns is to remove legal impediments to the growth of housing in general and rental housing in particular. Paragraph 4.6.2 of the National Housing Policy specifically provides for the stimulation of investment in rental housing especially for the lower and middle income group by suitable amendments to rent control laws by State Government.

7. When Sections 4, 6 and 9 of the Delhi Rent Control Act, 1958 were enacted there may have been a justification, but with the passage of time the provisions have fallen foul of Articles 14, 19(1)(g) and 21 of the Constitution due to changed circumstances. Even Section 6A has not been able to cure the defects.

8. In ***Malpe Vishwanath Acharya*** **v.** ***State of Maharashtra.*** [1997 (7) SCALE 786], the Supreme Court has dealt with the question and found the statute being justified when enacted but becoming arbitrary and unreasonable by passage of time. Since the situation prevailing in the year 1958 has undergone a sea change, Sections 4, 6 and 9 relating to standard rent have been rendered unjust, unreasonable and unfair as they have kept the standard rent yoked to the levels of the past, including the levels prior to the year 1944 [see Section 6 of the Act]. Even if Section 6A is applied to a situation where a landlord was getting Rs. 50/- per month as standard rent in respect of his premises, the increase would be only Rs. 5/- every three years. With such a meagre increase how would the landlord maintain himself, his family and the property? Obviously fair, just and reasonable increase in rents will act as an incentive for people to build and maintain their premises.

9. The National Housing Policy of 1992 which was considered and debated in the Parliament provides for giving stimulus to investment in rental housing. One of its major aims is to remove legal impediments in the growth of housing in general and rental housing in particular. Just, fair and reasonable increase in the rents will certainly give impetus to rental housing. It is a misconception that only wealthy people construct houses. On the contrary, persons of modest means and those serving in the Government and public and private sectors also build houses by taking loans in the hope that they will be able to pay off the loans by letting out their premises. It is a well known fact that majority of flats and apartment buildings in Delhi have been allotted to persons belonging to low and middle income groups. They hardly fit in the mould of landlords. Their financial position is worse than some of the tenants.

10. The situation of landlords in respect of old commercial tenancies is no different than the position of landlords in respect of old residential tenancies. It is not uncommon that commercial properties rented long back are fetching very meagre rents, while the tenants running their trades in those properties are earning huge profits. This is an unjust and unreasonable situation. It must be pointed out that it is not always correct that all tenants are poor or all landlords are rich. Poor and rich are evenly divided amongst landlords and tenants. Therefore, the need to rationalise the rents and treat both sides fairly. No one should gain at

the cost of the other. As already noticed, the prices of goods and commodities have been continuously on the rise, but rents of premises to which Delhi Rent Control Act, 1958 applies, have remained more or less static. The Government and the employers in the public and private sectors in order to offset the effect of inflation compensate their employees by giving them dearness and other allowances which are increased from time-to-time, but the landlords who have let their properties since long and who are not in a position to get them back due to legal impediments are not lucky enough to be considered for grant of reasonable rents to minimise the effect of inflation. Since frozen rents are contributing to lack of interest in the people to build houses, it is contributing to growth of slums. This situation must be remedied. In case the present situation is allowed to continue it will also amount to wasting the much needed capital of the country. Reasonable increase in rents will not only generate income for the landlords, it will also generate increased taxes as higher rental income will give rise to higher collection of property tax and income tax from the landlords.

11. The Supreme Court, while dealing with the vires of the Bombay, Rents, Hotel and Lodging House Rates Control Act, 1947 as amended by Act 18 of 1987, in ***Malpe Vishwanath Acharya* v. *State of Maharashtra*** (supra), highlighted the baneful effect of frozen rentals in the context of dwindling money value and inflation. In this regard it kept in view the recommendation of various conferences, and reports and resolutions of Commissions and Committees including the report of the Economic Administrative Reforms Commission on Rent Control, commonly known as L.K. Jha Committee, which reads as follows:

> "We now turn to the problem of existing tenancies. Many of these are very old and the rents were fixed a few decades ago. These old and frozen rents bear little relation to the present day maintenance costs or to the current returns from alternative investments, or to the prevailing market rents in respect of new accommodation. In the case of new construction we have suggested that the periodical revision of rents should be based on a partial neutralisation of the effects of inflation. Applying the same principle to existing tenancies where rents have remained frozen for at least 5 years, what needs to be done is to update those rents by neutralising 50 percent of the inflation which has taken place from the time of initial determination of those rents up to the present time."

The provisions dealing with standard rent do not take into account the ever rising consumer price index and the huge costs required for maintaining the tenanted premises. There is also no justification for not updating the near frozen rents in view of the returns from alternative investments. Frozen rents and difficulty of securing eviction of tenants have resulted in illegal transactions like key money and pugree. One of the ramifications of static rents is that people belonging to lower income groups are unable to pay large sums on account of key money and pugree thereby reducing their accessibility to rented premises. Despite the fact that the Delhi Rent Control Act was amended by Act No. 18 of 1987, pegging of rents to low levels, where the rent of a premise is less than Rs. 3,500/- per month, still persists. While the salaries of the employees and house rent allowance of the Government employees have gone up, no real relief has been given to the landlords for offsetting inflation.

The Supreme Court in ***Prabhakaran Nair* v. *State of Tamil Nadu*** [1987 (4) SCC 238] stressed the need for rationalising the rent legislation. In this regard the Supreme Court observed as follows:

> "It is common knowledge that there is acute shortage of housing; various factors have led to this problem. The laws relating to letting and of landlord and tenant in different States have from different States' angles tried to grapple the problem. Yet in view of the magnitude of the problem, the problem has become insoluble and the litigations abound and the people suffer. More houses must, therefore, be built, more accommodation and more spaces made available for he people to live in, the law of landlord and tenant must be made rational, human, certain and capable of being quickly implemented. Those landlords who are having premises in their control should be induced and encouraged to part with available accommodation for limited periods on certain safeguards which will strictly ensure their recovery when wanted. Men with money should be given proper and meaningful incentives as in some European countries to build house, tax holidays for new houses can be encouraged. The tenants should also be given protection and security and certain amount of reasonableness in the rent. Escalation of prices in the urban properties, land materials and houses must be rationally checked. This country very vitally and very urgently requires a National Hosing Policy if we want to prevent a major breakdown of law and order and gradual disillusionment of people. After all shelter is one of our fundamental rights. New rational housing policy must attract new buildings, encourage new buildings, make available new spaces, rationalise the rent structure and rationalise the rent provisions and bring certain amount of uniformity though leaving scope for sufficient flexibility among the States to adjust such legislation according to its needs. This Court and the High Court should also be relieved of the heavy burdens of these rent litigations. Tier of appeals should be curtailed. Laws must be simple, rational and clear. Tenants are in all cases not the weaker sections. There are those who are weak both among the landlords as well as the tenants. Litigations must come to end quickly. Such new Housing Policy must comprehend the present and anticipate the future. The idea of a National Rent Tribunal on an All India basis with quicker procedure should be examined. This has become an urgent imperative of today's revolution. A fast changing society cannot operate with unchanging law and preconceived judicial attitude".

12. Thus, it is apparent that there is an acute need to balance the rights of the tenants on the one hand and the landlords on the other. Besides, it cannot be disputed that the need of the hours is to give fillip to construction for rental housing. In case the rents remain shackled to low levels or they are hiked beyond proportion, the desired results will not be achieved. The provisions of Section 4, 6 and 9 cannot be upheld as they are keeping the rents chained to low level which render them arbitrary. This unreasonable and unfair restriction needs to be eliminated from the provisions dealing with standard rent.

13. Ms. Geeta Mittal, learned Counsel for the Union of India submitted that the Supreme Court in ***D.C. Bhatia* v. *Union of India*** [1995 (1) SCC 104] has upheld the provisions of the Delhi Rent Control Act, 1958, and, therefore, the challenge to Sections 4, 6 and 9 thereof

must be rejected. She also submitted that the provisions are reasonable and the grievance of the petitioner is not well founded.

In so far as the judgment of the Supreme Court in D.C. Bhatia (supra) is concerned, the same dealt with vires of Section 3(c) of the Delhi Rent Control Act which has exempted premises fetching monthly rents exceeding Rs. 3,500/- from the operation of the Act. In that case the Supreme Court was not dealing with the vires of Sections 4, 6 and 9 of the Act.

The Supreme Court in ***Malpe Vishwanath Acharya*** **v.** ***State of Maharashtra*** highlighted the deleterious effect of the non provision in the rent legislation for reasonable increase in the rentals. In this regard, it was observed as follows:

> "Even so with the rapid increase in the expenses for repair and other outgoing expensis and the decreasing net amount of rent which remains with the landlord, clearly shows that the non provision in the Act for reasonable increase in the rent, with the passage of the time, is leading to arbitrary results..." That the tenants are, by and large, now getting an unwarranted benefit or windfall can also be illustrated by taking an example of a hypothetical tenant, i.e. an Assistant in the Government of India posted at Bombay in the year 1948. At that time the pay scale of the Assistant was Rs. 160-10-300-15-450+20% H.R.A. = Rs. 15.50 C.A.A. On the basis that he was drawing the maximum of scale, his total monthly emoluments would be Rs. 485.50 and if he had in 1948 taken premises on rent at Rs. 100/- per month, he would be paying approximately 20% of his total emoluments by way of rent, without taking into consideration any deduction for repairs. That Assistant in 1997, after the report of 5th Pay Commission, would get a maximum basic salary of Rs. 9000 + 30% H.R.A. + Rs. 200 p.m. as CCA making the total emoluments of Rs. 11900/- p.m. After taking into consideration the 1987 increase in rent, he would be paying about Rs. 170/- p.m. in respect of the same premises instead of Rs. 100/- which he was paying in 1948. This enhanced rent, would, however, represent only 0.9% of his salary. With the passage of time, the percentage of rent which would be paid by that hypothetical tenant would have gone down from 20% of his total salary to only 0.9% and this would be the case of most of the tenants as we can take judicial notice of the fact that from 1948 till now, incomes have increased considerably, whereas the rent has increased only from Rs. 100/- p.m. to Rs. 170/- p.m."

> "On the other hand, in the aforesaid example, the hardship to the landlord is that it was only in 1940 that he had agreed to accept rent of Rs. 100/- p.m. That was the real income from rent which he had agreed to receive. Now with the increase in taxes, etc., he gets only Rs. 54/- p.m. whereas in 1940, he got Rs. 100/- minus Rs. 21.54 (municipal tax) i.e. Rs. 78.46. So not only is he getting lesser amount in hand but in terms of real value, after taking inflation into account, he is getting only a pittance. For Rs. 100/- p.m. of gross rent which he was getting in 1940, he now in 1997 gets a gross rent of about Rs. 170/- which in real money terms, after taking the inflation into account, will be only about Rs. 2/- p.m. of the 1940 value. Had the Rent Control Act not been in force the landlord today may have been able to get today's equivalent of Rs. 100/- of 1940s rent i.e. about Rs. 6,600/- p.m."

14. It is true that whenever a special provision, like the Rent Control Act, is made for a section of the society it may be at the cost of another section, but the making of such a provision or enactment may be necessary in the larger interest of the society as a whole. However, the benefit which is given initially if continued results in increasing injustice to one section of the society and an unwarranted largesse or windfall to another, without appropriate corresponding relief, then the continuation of such a law which necessarily, or most likely leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary.

15. The Legislation itself, as already noticed hereinabove, has taken notice of the fact that puggree system has become prevalent in Mumbai because of the Rent Restriction Act. This Court was also asked to take judicial notice of the fact that in view of the unreasonably low rents which are being received by the landlords, recourse is being taken to other methods to seek redress. These methods which are adopted are outside the four corners of the law and are slowly giving rise to a state of lawlessness where, it is feared, the Courts may become irrelevant in deciding disputes between the landlords and tenants. This should be a cause of serious concern because if this extra judicial backlash gathers momentum the main sufferers will be tenants, for whose benefit the Rent Control Acts are framed.

In so far as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interest and it should try to be just to all. The law ought to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants. It is not as if the Government does not take remedial measures to try and offset the effects of inflation. In order to provide fair wage to the salaried employees the Government provides for payment of dearness and other allowances from time-to-time. Surprisingly this principle is lost sight of while providing for increase in the standard rent--the increase made even in 1987 is not adequate, fair or just and the provisions continue to be arbitrary in today's context.

When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not have a narrow or short sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abdication of responsibility of the Legislative Authority. Social legislation is treated with deference by the Courts not merely because the Legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The Legislature is not shackled by the same constraints as the Courts of Law. But its power is coupled with a responsibility. It is also the responsibility of the Courts to look at legislation from the altar of Article 14 of the Constitution. This Article is intended, as is obvious from its words, to check this tendency, giving undue preference to some over others.

> "Disparity between the cost of living or the rupee value in 1965 and 1995 is so massively vast it is absolutely unrealistic to act on the former for any final reckoning as for the latter. If a building was leased out in 1950, the property tax would have

been, from the angle of today's money value, a piffling. The requirement in Section 5(2) that the Court shall take into consideration the property tax fixed at the time of lease, if to be followed in 1995 in respect of a building leased in 1950, the result would be ostensibly unjust and unreasonable. We bear in mind that no provision is included in the Act for updating according to the rupee value while fixing the fair rent."

"Nor can we shut our eyes to the other side of the picture. A tenant who took the building for commercial purposes in 1950 could increase turnover of his business many times and as a corollary his margin of profit would have enhanced by leaps and bounds. But the person who built the building (in which the tenant conducts the business) is entitled to get a rent based on 1950 money value. Similar position arises in the case of a residential building. The tenant who occupies the building would have augmented the resources or at least his income today is on par with the present money value. But the man who invested money to build a house in which the tenant is residing is entitled to get rent only at the rate based on the money value which prevailed at the time of letting."

"Apart from the fact that the impugned provisions are unjust and unreasonable as they offend Article 14 of the Constitution, we may say that those provisions would offend Article 19(1)(g) also."

"We are, therefore, of the opinion that the impugned provisions do not stand the test of reasonableness. Accordingly, we declare that provisions relating to fair rent, i.e., Sections 5, 6 and 8 of the Act, put together are ultra vires the Constitution of India and are void."

Huge difference between the cost of living in the past and the present time, do not pass the test of reasonableness. The provisions are archaic. They contain no mechanism to compensate the landlords to offset inflation. There ought to be a mechanism to increase the agreed rents keeping in view the price index. The landlords are being treated arbitrarily, unreasonably and unfairly affecting their livelihood and in turn right to life and avocation. These provisions relating to standard rent, therefore, offend Articles 14, 19(1)(g) and 21 of the Constitution.

16. Accordingly, the writ petition succeeds. The rule is made absolute and Sections 4, 6 and 9 of the Delhi Rent Control Act, 1958, are held ultra vires the Constitution.

NOTE- The present petition is pending for disposal before the Hon'ble Supreme Court.

* * * * *

Ram Murti v. *Bhola Nath*

AIR 1984 SC 71

A. P. SEN, J. – 1. This appeal by special leave by the appellant Ram Murti is directed against the judgement of the Delhi High Court dated August 10, 1982 dismissing his second appeal under Section 39 and upholding the judgement and order of the Rent Control Tribunal dated August 23, 1977 affirming an appeal against the order of the Second Additional Rent Controller, Delhi dated March 8, 1976 and directing his eviction from the suit accommodation under Section 14(1)(a) of the Delhi Rent Control Act 1958.

2. It is common ground that the parties stand in the relation of landlord and tenant. Respondent 1, Bhola Nath who is the landlord made an application dated December 18, 1968 claiming eviction of the appellant and respondent 2 Basant Lal who is his brother-in-law on the ground mentioned in Section 14(1)(a) and (b) of the Act. It was alleged that although the appellant had taken the premises on rent from the Custodian of Evacuee Properties at Rs 18 per month he vacated the premises after respondent 1 acquired the same and there was a new tenancy created in his favour on March 1, 1961 on a monthly rent of Rs. 80. On an application made by respondent 1, the Additional Rent Controller by his order dated February 14, 1969 passed under Section 15 (1) of the Act directed the appellant to deposit rent Rs. 18 per month w. e. f. December 1, 1965 and to deposit the future rent at the same date on the fifteenth day of each succeeding month. The second Additional Rent Controller by his order dated March 8, 1976 directed the future rent at the same rate on the 15th day of each succeeding month.

3. Aggrieved by the order of the Rent Control Tribunal affirming that of the learned Additional Rent Controller the appellant preferred a second appeal before the High Court under Section 39 of the Act but the High Court declined to interfere with the order of eviction passed under Section 14(1)(a). The High Court relying upon the decision of this Court in ***Hem Chand* v. *Delhi Cloth & General Mills Co Ltd***. [AIR 1977 SC 1986] held that the Rent Controller had no power to extend the time prescribed by an order under Section 15(1) which requires the tenant to deposit the arrears of rent within one month from the date of the order and future rents by the fifteenth day of the each succeeding month.

4. It is contended by learned counsel for the appellant placing reliance on later decision of this Court in ***Shyamcharan Sharma* v. *Dharamdas*** [AIR 1980 SC 587] that inasmuch as the Rent Controller has a discretion under Section 15(7) of the Act not to strike out the defence of a tenant for committing default in making payment or deposit of the rent as required by Section 15(1) he has by necessary implication the power to condone the default in making payment or deposit of future rent falling due after the institution of the proceedings as required under Section 15(1) and also to extend the time for such payment or deposit.

5. In his reply learned counsel for respondent 1 has made a two-fold submission (1) In ***Hem Chand*** case, the Court held that when the tenant fails to make a deposit of the future rent in compliance with the order passed under Section 15(1) against him, a right to obtain an order of recovery of possession under Section 14(1)(a) accrues to the landlord and the Rent Controller has no power to condone the default of the tenant by extending the time for the payment. It was urged that the Court in ***Hem Chand*** case interpreted the provision of Section

15(1) in the context of Section 14(1)(a) read with Section 14(2) with which we are concerned and that the later decision in ***Shyamcharan*** case which relates to the Madhya Pradesh Accommodation Control Act 1967 having a different scheme altogether has no application to the present case. And (2) the tenant had committed the default.

6. In order to deal with the rival contentions, it is necessary to set out the relevant statutory provisions. Sub-section (1) of Section 14 of the Act read with the proviso thereto, provides that, notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant, except on one or more of the grounds mentioned in clauses (a) to (l), set out in the proviso, subject to the conditions and qualifications mentioned in sub-sections (2) to (11). Sub-section (2) qualifies the right given to the landlord to recover possession under Section 14(1)(a).

When the tenant gets benefit of this protection provided for by Section 15. Sub-section (2) of Section 15 deals with the situation where if, in any proceeding for the recovery of possession of any premises on any ground other than that referred to in sub-section (1), the tenant contests the claim for eviction, the landlord may, at any stage of the proceeding, make an application to the Controller for an order on the tenant to pay to the landlord the amount of rent legally recoverable from the tenant and the Controller may, after giving the parties an opportunity of being heard, make an order in accordance with the provisions of the said sub-section. Sub-section (3) lays down that if, in any proceeding referred to in sub-section (1) or sub-section (2), there is any dispute as to the amount of rent payable by the tenant, the Controller shall, within fifteen days of the date of the first hearing of the proceeding, fix an interim rent in relation to the premises to be paid or deposited in accordance with the provisions of sub-sec. (1) or sub-sec (2) as the case may be until the standard rent is fixed. Sub-sec. 15 is relevant for our purposes, and it reads:

> "15. (6) If a tenant makes payment or deposit as required by sub- section (1) or sub-section (3), no order shall be made for the recovery of possession on the ground of default in the payment of rent by the tenant, but the Controller may allow such costs as he may deem fit to the landlord."

Sub-section (7) provides for striking out the defence of the tenant when he fails to make payment or deposit as required by sub-section (7) of Section 15. It runs as follows:

> "15. (7) If a tenant fails to make payment or deposit as required by this section, the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application."

7. From a conspectus of these provisions, it would be seen that the various sub-sections of Sections 14 and 15 form an integrated process seeking to strike a balance between the conflicting rights of the landlord to secure eviction of the tenant on any one or more of the grounds specified in the proviso to sub-section (1) of Section 14 and that of the tenant for protection against such eviction except under certain circumstances. The predominant object and purpose of the legislation, as a matter of social control, is to prevent eviction of tenants and to provide for control of rents etc. One must therefore give a meaningful interpretation to

the various sub-sections of Sections 14 and 15 in furtherance of the purpose and object of the legislation.

8. The right of the landlord to claim eviction of the tenant on the ground that he has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him under Section 14(1)(a) is made subject to the provisions of Section 14(2). The opening words of Section 14(2) "No order for the recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1)", clearly subordinate the landlord's claim for eviction on the ground of default in payment of rent to the statutory protection given to the tenant under Section 14(2) against eviction on that ground on condition that he makes payment or deposit as required under Section 15. When a tenant can get the benefit of the protection under Section 14(2) is provided for in Section 15(1). Section 15 (1) of the Act is in two parts. The first part requires the tenant to pay or deposit within one month of the order of the Rent Controller passed under S. 15(1) directing him to pay the arrears of rent legally recoverable from him including the period subsequent thereto up to the end of the month previous to that in which such payment or deposit is to be made. The second part is meant to secure payment of the future rent by a defaulting tenant and casts a duty on such tenant to continue to pay or deposit, month by month, a sum equivalent to the rent at that rate. It is obvious that a tenant who seeks protection against eviction on the ground mentioned in S. 14(1)(a) must comply with the requirements of Sec. 15(1). It must also be observed that s. 15(1) of the Act does not contain the words "or such further time as the Controller may allow in that behalf" as they appear in Sec. 15(3) and this necessarily gives rise to the vexed question whether the Rent Controller has any power to condone the default by the tenant in making payment or deposit as required by S. 15(1) or to extend the time for such payment or deposit.

9. The narrow construction placed by the Full Bench of the Delhi High Court in ***Delhi Cloth & General Mills Co. Ltd.* v. *Hem Chand*** [AIR 1972 Del. 275] on the powers of the Controller contained in Section 15(7) in the context of Section 14 (2) does not appeal to reason. It is not inconceivable that the tenant might fail to comply with the requirements of Section 15(1) by the date line (sic) due to circumstances beyond his control. For instance, it might not be possible for the tenant to attend the court to make the deposit on the last day if it is suddenly declared a holiday or on account of a serious accident to himself or his employee, or while going to the treasury he is way-laid, or is stricken with sudden illness, or held up on account of riots or civil commotion, or for that matter a clerk of his lawyer entrusted with the money, instead of punctually making the deposit commits breach of trust and disappears, or some other circumstances intervene which make it impossible for him for reasons beyond his control to physically make the deposit by due date. There is no reason why the refusal of the Rent Controller to strike out the defence of the tenant under Sec. 15(7) in such circumstances should not ensure to the benefit of the tenant for purposes of S. 14(2).

10. In ***Santosh Mehta* v. *Om Prakash*** [AIR 1980 SC 1644] it was pointed out that the provision contained in Section 15(7) was a penal provision and in terms by the use of the word 'may' gave to the Controller a discretionary power in the matter of striking out of the defence and that, in appropriate cases, the Controller may refuse to visit upon the tenant the

penalty of eviction for failure to pay or deposit the future rent. In that case, the tenant paid the amount to the advocate appearing for her but he betrayed her trust. In those circumstances, it was held that the Rent Controller could not have visited upon her the penal consequences of Section 15(7) and should not have struck out the defence as this drastic power was meant for use only where a recalcitrant tenant was guilty of wilful or deliberate default in payment of future rent. It logically follows that if the Rent Controller has the power not to strike out the defence of the tenant under Section 15(7) of the Act, he necessarily has by legal implication the power to condone the default on the part of the tenant in making payment or deposit of the future rent,

11. In ***Hem Chand*** case, this Court partly reversed the Full Bench decision of the Delhi High Court in ***Delhi Cloth & General mills Co. Ltd.* v. *Hem Chand*** holding that the default on the part of the tenant to comply with the requirements of Section 15(1) vests an indefeasible right' in the landlord and is not merely procedural right and therefore the Rent Controller was bound to pass order for eviction under Section 14(1)(a) of the Act and Rent Controller had no power to condone the default by the tenant in making payment or deposit of arrears of rent within one month of the date of the order of the Rent Controller or of future rent month by month, by the fifteenth of each succeeding month. The underlying fallacy lay in the wrongful assumption by the Full Bench that Section 14 (2) was meant for the protection of the landlord. This Court while reversing the judgement of the Full Bench observed:

> "While we agree with the view of the Full Bench that the Controller has no power to condone the failure of the tenant to pay arrears of rent as required under Section 15(1), we are satisfied that the Full Bench fell into an error in holding the right to obtain an order for recovery of possession accrued to the landlord. As we have set out earlier in the event of the tenant failing to comply with the order under Section 15(1) the application will have to be heard giving an opportunity to the tenant if his defence is not struck out under Section 15(7) and without hearing the tenant if his defence is struck out. The Full Bench is therefore in error in allowing the application of the landlord on the basis of the failure of the tenant to comply with an order under Section 15(1)."

In the concluding part of the judgement, there is an observation to the effect: (para 9)

> "The Rent Control Act protects the tenant from such eviction and gives him an opportunity to pay the arrears of rent within two months from the date of notice of demand as provided in Section 14(1)(a). Even if he fails to pay, a further opportunity is given to the tenant to pay or deposit the arrears within one month under Section 15(1). Such payment or deposit in compliance with the order under Section 15(1) takes away the right of the landlord to claim recovery of possession on the ground of default in payment of rent. The Legislature has given statutory protection to the tenant by affording him an opportunity to pay the arrears of rent within one month from the date of the order. This statutory provision cannot be modified as rights of parties depend on the compliance with an order under Section 15(1). In the circumstances, we agree with the Full Bench that the Rent Controller has no discretion to extend the time prescribed under Section 15(1)."

With respect, the observations in ***Hem Chand*** case expressing the view that the Rent Controller has no power to extend the time prescribed in Section 15(1) cannot be construed to mean that he is under a statutory obligation to pass an order for eviction of the tenant under Section 14(1)(a) without anything more due to the failure on his part to comply with the requirements of Section 15(1). The question would still remain as to the course to be adopted by the Rent Controller in such a situation in the context of Section 15(7) which confers on the Rent Controller a discretion not to strike out the defence of the tenant in the event of the contingency occurring, namely, failure on the part of the tenant to meet with the requirements of Section 15(1).

12. We must mention that the scheme of the Madhya Pradesh Accommodation Control Act, 1961 is almost similar with regard to the claim of the landlord for eviction of the tenant on the ground that he has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for arrears of rent has been served on him under Section 12(1)(a) of that Act, except for the difference that under that Act the landlord has to bring a suit for eviction before a Civil Court under Section 12(1)(a) instead of an application before the Rent Controller under Section 14(1)(a) as in the Delhi Act. Further, the difference is that the Civil Court is expressly given the power under Section 13(1) in the event of a failure on the part of the tenant to pay the arrears of rent within two months from the date of the notice of demand under Section 12(1)(a), to extend the time for deposit or payment of the arrears due on the date of the institution of the suit. Except for this difference, the scheme of the two enactments is almost the same.

13. Under the terms of Section 13(1) of the Madhya Pradesh Accommodation Control Act, a tenant in default of a suit or proceeding being instituted by the landlord on any ground referred to in Section 12 is required to deposit the arrears of rent within one month of the writ of summons on him or within such further time as the Court may allow and shall thereafter continue to deposit or pay, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate. In a series of decisions, the Madhya Pradesh High Court uniformly took the view that though the Court had power to extend the time for deposit or payment of the arrears due till the institution of the suit, it had no power to extend the time for deposit or payment of future rent. The High Court was of the view that even if a tenant in default had complied with the first requirement i.e. made deposit or payment of the arrears within one month of the service of the writ of summons on him or within such further time as the Court might on an application have allowed in that behalf, it was still obligatory upon such tenant to comply with the second requirement i.e. to continue to make such deposit or payment, month by month 15th of each succeeding month, if he wanted to claim the protection under sec. 12(3). In event of any default on his part to comply with the second requirement, the Court had no power to grant further time for making such deposit or payment in respect of which he was in default.

14. In ***Shyamcharan*** case, this Court reversed the view of the Madhya Pradesh High Court on the question as to whether the Court had the power to grant further time under Section 13(1) of the Madhya Pradesh Act for payment or deposit of future rent. It was held that if the Court has discretion under Section 13(7) not to strike out the defence of a tenant committing default in payment or deposit as required under Section 13(1), the Court surely

has the further discretion to condone the default and extend the time for payment. It was observed that another construction may lead, in some cases, to a perversion of the object of the Act namely, "the adequate protection of the tenant". Section 12(3) entitles a tenant to claim protection against eviction on the ground specified in Section 12(1)(a) if the tenant makes payment or deposit as required by Section 13. On the construction of Section 13 that the Court has the power to extend the time for payment or deposit, it must follow that payment or deposit within the extended time will entitle the tenant to claim the protection of Sec. 12(3). In other words, it would imply that failure to comply with the second requirement of Sec. 13(1) would (not) entitle the landlord straightway to a decree for eviction under Sec. 12(1)(a).

15. As to the absence of an express provision for extension of time for deposit or payment of future rent, it was said: (para 40)

> "Obviously, express provision for extension of time for deposit or payment of rent falling due after the filing of the suit was not made in Section 13(1) as the consequence of non-payment was proposed to be dealt with by a separate sub-section, namely Section 13(6). Express provision had to be made for extension of time for deposit or payment of rent that had accrued prior to the filing of the suit, since that would ordinarily be at a very early stage of the suit when a written statement might not be filed and there would, therefore, be no question of striking out the defence and, so, there would be no question of Section 13(6) covering the situation."

In ***Shyamcharan*** case, the Court did not find any justification for adopting a narrow construction of Section 12(3) and Section 13(7) read in the context of Section 13(1) and relied upon a decision of this Court in ***B. C. Kame* v. *Nemi Chand Jain*** [AIR 1970 SC 981] where on an application made by the tenant, time for deposit or payment was extended. It was pointed out that in that case there was default both in payment of the arrears of rent that had accrued before the filing of the suit and in payment or deposit of the monthly rent that fell due after the filing of the suit.

We must confess that the decisions in ***Hem Chand*** and ***Shyamcharan*** are reconcilable.

16. It would be incongruous to hold that even if the defence of the tenant is not to be struck out under Section 15(7), the tenant would get protection under Section 14 (2). In ***Hem Chand*** case the Court went to the extent of laying down that even if the defence of the tenant is struck out under Section 15(7), the Rent Controller could not straightaway make an order for eviction in favour of the landlord under Section 14(1)(a). The Court held that the High Court was wrong in its assumption that failure to comply with the requirements of Section 15 (1) vests in the landlord an indefeasible right to secure an order for the eviction of the tenant under Section 14(1)(a). The Court set aside the judgement of the High Court taking that view and remanded the matters to the Rent Controller observing that there was still an issue to be tried. If that be so, the question at once arises "What is the issue to be tried? ". If the landlord has still to make out a case before the Rent Controller that he was entitled to an order for eviction of the tenant under Sec. 14(1)(a), surely the tenant has the right to participate in the proceedings and cross-examine the landlord. It must logically follow as a necessary corollary

that if the defence is not to be stuck out under S. 15(7) it means that the tenant has still the defence open to him under the Act. In the premises, the conclusion is irresistible that he has the right to claim protection under S. 14(2). What the essence of S. 14(2) and of Sec. 15(6) is whether there has been a substantial compliance with the order passed under S. 15(1). The words "as required by S. 15(1)" in these provisions must be construed in a reasonable manner. If the Rent Controller has the discretion under S. 15(7) not to strike out the defence of the tenant he necessarily has the power to extend the time for payment of future rent under Sec. 15(1) where the failure of the tenant to make such payment or deposit was due to circumstance beyond his control. The previous decision in ***Hem Chand*** case interpreting S. 15(7) and Sec. 14(2) in the context of s. 15(1) of the Delhi Rent Control Act, 1958, although not expressly overruled, cannot stand with the subsequent decision in ***Shyamcharan*** case interpreting the analogous provisions of the Madhya Pradesh Accommodation Control Act, 1961 as it is a larger Bench.

17. The further contention advanced by learned counsel for the respondents that in a case of consecutive defaults the proviso to Section 14 (2) is attracted, cannot be accepted for obvious reasons. On a plain construction, it provides that no tenant shall be entitled to the benefit under Section 14(2) if, having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent for that premises for three consecutive months. On a plain construction, the proviso is attracted only in a case where the tenant has been saved from eviction in an earlier proceeding for eviction before the Rent Controller under Section 14(1)(a) of the Act. i.e. the tenant must have enjoyed the benefit of Section 14 (2) in a previously instituted proceeding.

18. In the premises, we cannot but reverse the view expressed by the High Court that the Rent Controller has no power to condone the default on the part of the tenant in making payment or deposit of future rent or to extend time for such payment or deposit. We are constrained to set aside its judgement and order as well as the order of the Rent Control Tribunal and that of the Rent Controller which proceed to order the eviction of the appellant under Section 14(1)(a) of the Delhi Rent Control Act, 1958 upon that basis and the matter must be remitted back to the Rent Controller for a decision afresh. The Rent Controller shall now consider the question of exercising his discretion to condone the delay in making the payment or deposit for the rents which fell due for the months of May, June, July and August, 1975 in accordance with law. He shall further consider whether the appellant has to be evicted in terms of Section 14(1)(a) keeping in view the provisions contained in Section 14 (2) and Section 15(6) of the Act. He shall also determine as to whether the rent of the demised premises was Rs. 18 per month, or Rs. 80, as alleged.

19. The result therefore is that the appeal succeeds and is allowed. The judgement and order of the High Court and the order of the Rent Control Tribunal and that of the Rent Controller are set aside and the matter is remanded back to the Rent Controller for a decision afresh, with advertence to the observations made above.

* * * * *

Jagan Nath v. *Ram Kishan Dass*

AIR 1985 SC 265

Y.V. CHANDRACHUD, C.J. - The appellant is a tenant of the respondents in respect of one room in a house at Kamla Nagar, New Delhi. The rent of the room is Rs. 10 per month. On March 19, 1967, the respondents filed an application for possession of the room on two grounds: one, that the appellant was in arrears of rent and, two, that they required the room bona fide for their own use and occupation. An order was passed by the Rent Controller in that proceeding under Section 14(2) read with Section 15(1) of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act'), calling upon the appellant to pay or deposit the arrears of rent within one month. The appellant complied with that order, whereupon, on April 1, 1968 respondents withdrew the ejectment application, with liberty to file a fresh application. The reason stated by the respondents for withdrawing the application was that they had not given to the appellant a notice to quit under Section 106 of the Transfer of Property Act and that, therefore, the application was liable to fail for a formal defect.

2. Immediately thereafter, on April 7, 1968 respondents gave a notice to quit to the appellant, terminating his tenancy with effect from May 9, 1968. On May 13, 1968, respondents filed a fresh application for possession against the appellant on the ground that they required the room bona fide for their personal use. That application was dismissed on February 14, 1969.

3. On March 9, 1971 respondents filed the instant application against the appellant for possession of the room on the ground that the appellant was in arrears of rent from April 1968 until March 1971. In this proceeding the learned Additional Rent Controller, Delhi refused to pass an order under Section 15(1) of the Act on the ground that such a benefit was given to the appellant in the first eviction petition and that, by reason of the proviso to sub-section (2) of Section 14 of the Act, the appellant could not claim that benefit once again. In that view of the matter, the Rent Controller passed an order of eviction against the appellant.

4. The appeal filed by the appellant against the order of eviction was allowed by the Rent Control Tribunal, which took the view that the appellant was entitled to the benefit of the provision contained in Section 14(2) of the Act and that, the proviso to that sub-section had no application because, the benefit of the provision contained in Section 14(2) was being availed of by the appellant for the first time in the present proceedings. According to the Tribunal, the first ejectment application filed by the respondents against the appellant was dismissed because, respondents asked for leave to withdraw that application with liberty to file a fresh application on the ground that they had not served a notice to quit on the appellant, and not on the ground that the appellant had complied with the order passed under Section 15(1) of the Act.

5. The judgement of the Rent Control Tribunal was set aside in second appeal by the High Court of Delhi. The High Court took the view that though the first ejectment application was withdrawn by the respondents on the ground that they had not given a notice to quit to the appellant that cannot alter the position that the appellant had availed of the benefit of the proviso contained in Section 14(2) of the Act. Therefore, according to the High Court, by reason of the proviso to Section 14(2), the appellant was not entitled to invoke the provisions

of Section 15(1) of the Act. By this appeal, the tenant challenges the correctness of the judgement of the High Court.

6. Section 14 of the Act contains provisions which are more or less similar to the provisions contained in various other Rent Acts. Sub-section (1) of that Section contains the prohibitory provision that, notwithstanding anything to the contrary in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant. The proviso to that sub-section enables or entitles a landlord to obtain possession of the premises let out to a tenant on one or more of the grounds only, which are mentioned in clauses (a) to (l) of the sub-section. Clause (a) of the proviso enables a landlord to obtain possession if the tenant has neither paid nor tendered the arrears of rent within two months from the date on which the notice of demand for the arrears of rent has been served on him by the landlord in the manner prescribed by Section 106 of the Transfer of Property Act. Under clause (e) of the proviso, the landlord can obtain possession of the residential premises let out to the tenant, on the ground, broadly, that the premises are required by him for a personal need.

Sub-section (6) of Section 15 provides that if a tenant makes payment or deposit as required by sub-section (1), no order shall be made for the recovery of possession against him on the ground of default in the payment of rent by him. On the other hand, if a tenant fails to make payment or deposit as required by Section 15(1), the Controller may order the defence of the tenant to be struck off under sub-section (7) and proceed with the hearing of the ejectment application.

8. The rent of the suit premises is small, only Rs. 10 per month. The tenant, of course, is much too small as would appear from the fact that he committed default in the payment of rent at that rate for a long time. But, quite often, small tenants have small landlords who are entitled to expect that the tenants will pay at least the small rent regularly and not drive them to a court proceeding which is bound to cost more than the amount of arrears of rent which is at stake. This seemingly insignificant case raises a question of some public importance, which is partly evidenced by the fact that the learned Judges of the Delhi High Court have taken conflicting views upon that question. Those views were explained carefully and those judgements were read out to us by Shri A. K. Goel who appears on behalf of the respondents. We do not propose to embark upon an analysis of those judgements since, that exercise is not likely to prove fruitful. The reason is that the facts of the various cases which were before the High Court differed from case to case, which partly accounts for the divergent views expressed by different learned Judges of the High Court. With respect, some of the judgements cited before us overlook that previous decisions turned on their own peculiar facts.

9. It is contended by Shri Lalit, who appears on behalf of the appellant, that the proviso to sub-section (2) of Section 14 can have no application to the instant case because, in the first ejectment proceeding which was filed by the respondents against the appellant, the latter had not obtained any benefit under that sub-section. On the other hand, it is contended by Shri Goel that if a tenant avails of the benefit of an order passed under Section 15(1), he must be regarded as having obtained the benefit of the proviso contained in section 14(2). According to the learned counsel, the object of the proviso to Section 14(2) is to ensure that an order

under Section 15(1) is not passed in favour of a tenant more than once. Therefore, it is contended, the final result of the eviction petition in which an order was passed under Section 15(1) for the first time, or the form of the final order passed in that proceeding, has no relevance on the question whether the tenant had obtained benefit of the provision contained in Section 14(2).

10. We are of the opinion that the appellant's contention is preferable to that of the respondents, having regard to the language of Section 14(2) of the Act and of the proviso to that section. Putting it briefly, that section provides that no order for the recovery of possession of any premises can be made on the ground that the tenant has committed default in the payment of rent, if he pays or deposits the rent in accordance with the provisions of Section 15. The benefit which the tenant obtains under Section 14(2) is the avoidance of the decree for possession. Though he had committed default in the payment of rent, no decree for possession can be passed against him. This benefit accrues to the tenant by reason of the fact that he had complied with the order passed by the Controller under Section 15 of the Act. The passing of an order under Section 15 is not a benefit which accrues to the tenant under Section 14(2). It is obligatory upon the Controller to pass an order under Section 15(1) in every proceeding for the recover of possession on the ground specified in Section 14(1)(a), that is, on the ground that the tenant has committed default in the payment of rent. That is a facility which the law obliges the Controller to give to the tenant under Section 15. It is through the medium of that facility that the tenant obtains the benefit under Section 14(2). And, that benefit consists in the acquisition of immunity against the passing of an order of possession on the ground of default in the payment of rent. It must follow that, it is only if an order for possession is not passed against the tenant by reason of the provision contained in Section 14(2), that it can be said that he has obtained a benefit under that section. The key words of the provision to sub-section (2) of Section 14 are:

"Provided that no tenant shall be entitled to the benefit under this sub-section".

11. That brings out the relevance of the nature of the order which was passed in the earlier proceeding in which the tenant had complied with the order passed by the Controller under Section 5. If the earlier proceeding was withdrawn by the landlord, it cannot be said that the tenant obtained the benefit of not having had an order of possession passed against him. It is self-evident that if a proceeding ends in an order granting permission for its withdrawal, it cannot possibly be said that "no order for the recovery of possession was passed therein for the reason that the tenant had made payment or deposit as required by Section 15". That is the gist of Section 14(2). The stage or occasion for passing an order to the effect that "no order for possession can be passed because of the fact that the tenant has complied with the order passed under Section 15" does not arise in the very nature of things, in a case wherein the landlord is permitted to withdraw the application for ejectment of the tenant.

12. There are two circumstances which must be borne in mind in this case though, we must add, they will not make any difference to the legal position which is stated above. The first circumstance is that the respondents asked for leave to withdraw the earlier ejectment application, in which the appellant had duly complied with the order passed by the Controller under Section 15, on the ground that the application was liable to fail for a formal defect since they had not given a notice to quit to the appellant under Section 106 of the Transfer of

Property Act. Thus, the reason leading to the termination of the earlier ejectment application was that the respondents wanted to cure the formal defect from which the application suffered and not that no order for possession could be passed against the appellant for the reason that he had complied with the order passed under Section 15. In other words, there was no nexus between the final order which was passed in the earlier ejectment application and the fact that the appellant had complied with the order passed under Section 15. The second circumstance which must be mentioned is that the order ejectment application was founded on two grounds, namely, that the appellant had committed default in the payment of rent and that respondents wanted the premises for their personal need. The fact that the first of these grounds was no longer available to the respondents since the appellant had complied with the order passed under Section 15 could not have resulted in the dismissal of the ejectment application because the ground on which eviction of the appellant was sought by the respondents had yet to be considered by the Rent Controller. This is an additional reason why it cannot be said on the facts of this case that the appellant obtained a benefit under Section 14(2). At the cost of repetition, we must clarify that the two circumstances which we have just mentioned will not make any different to the fundamental legal position which we have explained above that the proviso to Section 14(2) can be attracted only if it is shown that the tenant had obtained the benefit of the provision contained in that section and not otherwise.

13. As we have stated earlier, several conflicting decision of the High Court of Delhi were read out to us. It is both needless and difficult to consider them individually. We will only indicate that, on facts similar to those before us, the view taken by D. K. Kapur, J. in Smt. ***Rama Gupta*** **v.** ***Raj Singh Kain*** [1972 Ren CJ 712] is the correct view to take. The learned Judge held in that case that since the landlord had withdrawn the earlier eviction petition, it could not be said that the tenant had derived a benefit under Section 14(2) of the Act. In ***Kahan Chard Makan*** **v.** ***B. S. Bhambri*** [AIR 1977 Del. 247] a Division Bench of the Delhi High Court noticed the conflicting judgement rendered by the different Benches of the High Court including the judgement of D.K. Kapur, J. in ***Smt. Rama Gupta*** **v.** ***Rai Singh Kain*** [1972 RCJ 712]. It is not possible to say with certainty whether the view taken by D. K. Kapur, J., was approved because the judgement of the Division Bench refers to various decisions of the High Court without stating which of those is correct and which not. In any case, the conclusion recorded by the Division Bench in paragraph 13 of its judgement seems too broad to apply to varying situations. Besides, the learned Judges, with respect, have apparently confused the availing of the facility under Section 13 by the tenant with the benefit which accrues to him under Section 14(2). They say :

> "We, therefore, hold that where a deposit of arrears of rent has been made by the tenant in compliance with an order specifically passed under Section 15(1) of the Act in the course of proceedings initiated for his ejectment under Section 14(1)(a), the benefit cannot be availed of in a subsequent proceedings for his ejectment on the same ground. The existence and proof of such an order in an earlier proceeding covered by Section 14(1)(a) is essential in order to deprive the tenant of the protection which Section 14(2) gives him."

The benefit which the proviso to sub-section (2) of Section 14 speaks of is : "the benefit under this sub-section" and not the benefit under Section 15.

14. A recent decision of a learned Single Judge of the Delhi High Court is reported in ***Ashok Kumar* v. *Ram Gopal*** [(1982) 2 RCJ 29]. That was a typical case which attracted the proviso to Section 14 (2). The landlord therein had filed an application under Section 14(1)(a) in 1973 for the eviction of the tenant on the ground of non-payment of rent. The Rent Controller passed an order under Section 15(1) which was duly complied with the tenant. Thereupon the landlord's application was dismissed by the Controller. In May 1979, the landlord filed another petition for possession against the tenant on the ground that he had committed default in the payment of rent. It was held by Kirpal J., and rightly, that since the tenant had obtained the benefit of Section 14(2) in the previous ejectment application he was not entitled to the benefit of that section once again.

15. For these reasons, we allow the appeal, set aside the judgement of the High Court and restore that of the Rent Control Tribunal with the modification that the period of one month for depositing the arrears of rent shall be computed from the date of this judgement. If the appellant deposits the arrears of rent due unit December 31, 1984 on or before January 12, 1985, the respondents' application for possession will stand dismissed. On the other hand, if the appellant fails to deposit the arrears of rent as directed above, there shall be an order for possession in favour of the respondents which they will be entitled to execute. The amount of arrears will be deposited in the Court of the Additional Rent Controller, Delhi, in which the ejectment application was filed against the appellant.

* * * * *

Kamla Devi v. *Vasdev*

AIR 1995 SC 985

SEN, J. - 2. This appeal is against an order passed by the Delhi High Court on 5-9-1989, declining to interfere with an order passed by the Rent Control Tribunal dated 30-5-1989.

3. The appellant, Smt. Kamla Devi, is the owner of Shop No. 408, Pandit Lila Ram Market, Masjid Moth, New Delhi. The shop was let out to the respondent. The respondent defaulted in payment of rent. The appellant sent a demand notice on 18-5-1981 upon the respondent for recovery of arrears of rent. The respondent neither paid nor tendered the arrears of rent within the period of two months after the service of the demand notice. On or about 2-8-1982, the appellant filed an eviction petition under clause (a) of sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958. It was admitted in the written statement that rent was due from 1-1-1980. On 27-1-1984 the Additional Rent Controller, Delhi, passed an order to the following effect:

> "I direct the respondent to pay or deposit the entire arrears of rent @ Rs. 50 w. e. f. 1-1-1980 within one month of the passing of this order and continue to pay or deposit the subsequent rent month by month the 15th of each succeeding month. Case to come up for parties' evidence on 18-3-1984."

4. Thereafter the respondent paid a sum of Rs. 500 to the appellant promising to pay the arrears before expiry of the period stipulated in the order. The respondent, however, did not pay the arrears as promised. On 11-4-1984 the appellant filed an application under sub-section (7) of Section 15 of the Delhi Rent Control Act, 1958 for striking out the defence and to proceed with the hearing of the application on the ground that the tenant had failed to make payment or any deposit of the arrears of rent.

5. The Additional Rent Controller passed the following order:

> "Since the respondent failed to comply with the order dated 27-1-1984 under Section 15(1), he was not entitled to benefit under Section 14(2) of the Act and as such he was liable to suffer straight eviction order. Accordingly, an eviction order is passed in favour of the petitioner and against the respondent in respect of shop bearing No. 408, situated at Lila Ram Market, Masjid Moth, New Delhi, as shown red in the site plan, Ex. RW 1/2."

6. On appeal, the Tribunal remanded the case back to the Rent Controller to consider whether the delay in deposit of arrears of rent amounting to Rs. 2150 is liable to be condoned or not before deciding whether the appellant deserves to get the benefit of Section 14(2) or has rendered himself liable to be evicted.

7. On remand, the Additional Rent Controller held, inter alia, that there was some compromise between the parties. In any case, the delay in depositing Rs. 2150 could not be termed as wilful, deliberate and contumacious non-compliance of order under Section 15(1) passed on 27-1-1984. The landlord was entitled at the most to some compensation. In the premises, the Additional Rent Controller condoned the delay in depositing Rs. 2150 by the

tenant. It was held that the respondent was entitled to get the benefit of the provisions of Section 14(2) of the Act.

8. Kamla Devi appealed to the Tribunal. The only ground urged before the Tribunal was that there was no reason for condonation of the delay and the Additional Rent Controller should have struck out the defence of the respondent. The Tribunal held after review of the facts that the order of striking out the defence was uncalled for. The tenant was rightly given the benefit of Section 14(2) of the Act, it being a case of first default.

9. Kamla Devi made a further appeal to the High Court which was dismissed.

10. Kamla Devi has now come up to this Court. It has been contended on her behalf that in view of the fact that the respondent neither took any step to deposit arrears of rent nor for the extension of time within one month of the order of the Rent Controller under Section 15(1) of the Act, the Rent Controller did not have any discretionary power to condone the delay under Section 15(7) of the Delhi Rent Control Act. It was obligatory for the tenant to deposit the arrears of rent within one month from the date of passing of the order of the Rent Controller. It was contended that the provisions of Section 14(1) (a), Section 15(1) and Section 15(7) of the Delhi Rent Control Act have been misconstrued and misunderstood.

12. The scheme of the Act appears to be that a tenant cannot be evicted except on any one of the grounds set out in clauses (a) to (l) of Section 14(1). If a tenant is a defaulter in payment of rent, even then an order for recovery of possession of the tenanted premises shall not be made straightaway. The requirement of Section 15(1) is that the Controller will make the order directing the defaulting tenant to pay to the landlord or deposit with the Controller within one month of the date of the order, the amount of rent in arrear and continue to pay or deposit, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate. If the tenant, even after this order under Section 15(1), fails to carry out the direction of the Controller, the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application.

13. It has been contended on behalf of the appellant that once there is a failure on the part of the tenant to carry out the direction given by the Controller under Section 15(1) of the Act, the tenant is not entitled to any further opportunity to pay in terms of the order passed under Section 15(1) and the landlord is entitled straightway to an order for striking out the defence of the tenant and consequently an order for eviction of the tenant.

14. In support of this contention our attention was drawn to a number of cases which have dealt with this aspect of the matter. In the case of ***Hem Chand* v. *Delhi Cloth & General Mills Co. Ltd***. the landlord filed an application for eviction of the tenant under Section 14 of the Delhi Rent Control Act on the ground of non-payment of rent and also unauthorised sub-letting. The Additional Rent Controller on receipt of the application of the landlord passed an order under Section 15(1) of the Delhi Rent Control Act, directing the tenant to deposit the arrears of rent within a month and thereafter deposit an amount equivalent to the rent month by month. There was an assurance on the part of the tenant to comply with the direction fully. The landlord made an application under Section 15(7) of the Act and prayed that the defence of the appellant against eviction be struck out. The tenant, thereafter, deposited the entire amount of rent due up to date. On 15-10-1965 the Additional Rent Controller struck out the

defence of the tenant stating that on the date of the order there were arrears of rent. The Additional Rent Controller also passed an order of eviction on the ground of sub-letting. He, however, declined to pass any order for eviction on the ground of non-payment of rent, because the tenant had already deposited the arrears of rent on the date when the defence was struck out. On appeal, the Rent Control Tribunal decided that the defence should not have been struck in the facts of that case and remanded that case for reconsideration on the point of sub-letting. The landlord appealed to Delhi High Court. The case was referred to Full Bench. The Full Bench held that when a tenant defaulted in making deposit or payment under Section 15 of the Act, the Rent Controller was bound to pass an order for recovery of the possession and could not refuse the landlord's prayer for eviction. It was further held that the Rent Controller had no right to condone the delay, if any, in making payment according to the requirements of Section 15(1) of the Act.

15. On further appeal, it was held by a Bench of two Judges of this Court:

> "While we agree with the view of the Full Bench that the Controller has no power to condone the failure of the tenant to pay arrears of rent as required under Section 15(1), we are satisfied that the Full Bench fell into an error in holding that the right to obtain an order for recovery of possession accrued to the landlord. As we have set out earlier in the event of the tenant failing to comply with the order under Section 15(1) the application will have to be heard giving an opportunity to the tenant if his defence is not struck out under Section 15(7) and without hearing the tenant if his defence is struck out. The Full Bench is therefore in error in allowing the application of the landlord on the basis of the failure of the tenant to comply with an order under Section 15(1). "

17. In our view, it is not obligatory for the Rent Controller to strike out the defence of the tenant under Section 15(7) of the Delhi Act, if the tenant fails to make payment or deposit as directed by an order passed under Section 15(1). The language of sub-section (7) of Section 15 is that "the Controller may order the defence against eviction to be struck out". That clearly means, the Controller, in a given case, may not pass such an order. It must depend upon the facts of the case and the discretion of the Controller whether such a drastic order should or should not be passed.

18. The position in law, in the event of a tenant's failure to comply with an order under Section 15(1) of the Delhi Rent Control Act or similar provisions of other Rent Acts, has been examined in several other decisions of this Court. It is true that the case of ***Shyamcharan Sharma* v. *Dharamdas*** was decided under the provisions of Madhya Pradesh Accommodation Control Act, 1961 but the provisions of that Act relating to eviction of tenants were similar to the corresponding provisions of Delhi Rent Control Act. The Relevant provisions of Madhya Pradesh Act are:

> "12. *Restriction on eviction of tenants*.- (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner.

(3) No order for the eviction of a tenant shall be made on the ground specified in clause (a) of Sub-section (1), if the tenant makes payment or deposit as required by Section 13:

13. When tenant can get benefit of protection against eviction. - (1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 12, the tenant shall, within one month of the service of writ of summons on him or within such further time as the Court may, on an application made to it, allow in this behalf, deposit in the Court or pay to the landlord an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate.

(5) If a tenant makes deposit or payment as required by sub-section (1), or sub-section (2) no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord.

(6) If a tenant fails to deposit or pay any amount is required by this section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit. "

19. In ***Shyamcharan Sharma*** case a Bench of three Judges of this Court held:

"We think that Section 13 quite clearly confers discretion, on the court, to strike out or not to strike out the defence, if default is made in deposit or payment of rent as required by Section 13(1). If the court has the discretion not to strike out the defence of the tenant committing default in payment or deposit as required by Section 13(1), the court surely has the further discretion to condone the default and extend the time for payment or deposit. Such discretion is a necessary implication of the discretion not to strike out the defence. "

20. On behalf of the appellant it has been contended that the principles laid down in this case should not be extended to a case governed by the provisions of Delhi Rent Control Act. We do not find any material distinction between the provisions of Section 12(1), (3) and Section 13(1), (5) and (6) of the Madhya Pradesh Act and the corresponding provisions of Section 14(1), (2) and Section 15(1), (7) of the Delhi Act. In fact this argument was rejected in the case of ***Ram Murti* v. *Bhola Nath***. In that case, construing the provisions of the Delhi Act, it was held that Section 15(7) conferred a discretionary power on the Rent Controller to strike out the defence of the tenant. That being the position, the Rent Controller had, by legal implication, power to condone the default on the part of the tenant in making payment or deposit of future rent or to extend time for such period or deposit. It was held:

"With respect, the observations in ***Hem Chand*** case expressing the view that the Rent Controller has no power to extend the time prescribed in Section 15(1) cannot be construed to mean that he is under a statutory obligation to pass an order for eviction of the tenant under Section 14(1) (a) without anything more due to the failure on his part to comply with the requirements of Section 15(1). The question would still remain as to the course to be adopted by the Rent Controller in such a situation in the context of Section 15(7) which confers on the Rent Controller a discretion not to strike out the defence of the tenant in the event of the contingency occurring, namely, failure on the part of the tenant to meet with the requirements of Section 15(1). "

21. In coming to this conclusion reliance was placed on the decision in the case of ***Shyamcharan Sharma*** case. It was argued on behalf of the respondent that ***Shyamcharan Sharma*** case was decided under the Madhya Pradesh Accommodation Control Act, 1961 which had a different scheme altogether and had no application to a case to be decided under the provisions of the Delhi Rent Control Act. This argument was repelled by pointing out in that judgement that the scheme of the Madhya Pradesh Accommodation Control Act, 1961 was almost similar to that of the Delhi Act with regard to the claim of the landlord for eviction of the tenant on failure to pay rent. The only difference was that under the Madhya Pradesh Act the landlord had to bring a suit for eviction before a Civil Court under Section 12(1) (a), whereas under the Delhi Act an application had to be made before the Rent Controller under Section 14(1) (a).

22. The unreasonableness of the construction suggested by the appellant is well illustrated by the case of ***Santosh Mehta* v. *Om Prakash***. In that case, the tenant was a working woman, who had engaged an advocate to represent her in a dispute with the landlord. She duly paid all the arrears of rent by cheque or in cash to her advocate, who failed to deposit the amount or to pay to the landlord, as directed by the Rent Controller. On an application made by the landlord, the Rent Controller struck out the defence of the tenant under Section 15(7) of the Delhi Rent Control Act. A Bench of two Judges of this Court held that the exercise of power of striking out the defence under Section 15(7) was not imperative whenever the tenant failed to deposit or pay any amount as required by Section 15. The provisions contained in Section 15(7) of the Act were directory and not mandatory. Section 15(7) was a penal provision and gave the Rent Controller discretionary power in the matter of striking out of the defence. It was ultimately held that the order of the Rent Controller striking out the defence of the tenant in the facts of that case was improper. The consequential order of eviction was set aside.

23. We are unable to uphold the contention of the appellant that the case of ***Ram Murti* v. *Bhola Nath*** was wrongly decided and reliance was wrongly placed in that case on the decision of a Bench of three Judges of this Court in the case of ***Shyamcharan Sharma* v. *Dharamdas.*** In our view, sub-section (7) of Section 15 of the Delhi Rent Control Act, 1958 gives discretion to the Rent Controller and does not contain a mandatory provision for striking out the defence of the tenant against eviction. The Rent Controller may or may not pass an order striking out the defence. The exercise of this discretion will depend upon the facts and circumstances of each case. If the Rent Controller is of the view that in the facts of a

particular case the time to make payment or deposit pursuant to an order passed under sub-section (1) of Section 15 should be extended, he may do so by passing a suitable order. Similarly, if he is not satisfied about the case made out by the tenant, he may order the defence against eviction to be struck out. But, the power to strike out the defence against eviction is discretionary and must not be mechanically exercised without any application of mind to the facts of the case.

24. In that view of the matter, this appeal fails and is dismissed.

* * * * *

G.K. Bhatnagar v. *Abdul Alim*

(2002) 9 SCC 516

R.C. LAHOTI AND RUMA PAL, JJ. - 1. Late G.K. Bhatnagar, who has expired during the pendency of these proceedings and whose legal representatives have been brought on record in his place as the appellants, owned a suit shop let out to the tenant-respondent on 1/5/1966 on payment of Rs. 50/- by way of rent and Rs. 6/- by way of electricity charges. For the purpose of convenience we would refer to Late G.K. Bhatnagar as 'landlord' and the respondent as 'tenant'. On 28/5/1979 proceedings for eviction were initiated by the landlord by filing a petition before the Rent Controller on the ground under clause (b) of sub-section (1) of section 14 of the Delhi Rent Control Act, 1958 (hereinafter 'the Act', for short) alleging that the tenant had, without the permission of the landlord, sub-let the premises and parted with possession of the whole of the premises in favour of one Jagdish Chander. According to the tenant-respondent, there was no sub-letting: Jagdish Chander was taken into partnership by him in his pre-existing business run in the suit shop under 'deed of partnership' dated 13/10/1978.

2. The Rent Controller found that there has been no sub-letting of the premises and, therefore, directed the petition to be dismissed. The landlord preferred an appeal which was allowed by the appellate authority, which reversed the finding of the Rent Controller and directed the petition for eviction to be allowed. The tenant preferred a second appeal before the High Court under section 39(2) of the Act. The appeal has been allowed. The High Court has set aside the judgment of the appellate authority and restored the one by the Rent Controller.

3. In the evidence adduced by the parties on behalf of the landlord, the landlord alone (late G.K. Bhatnagar) appeared in the witness box and produced no other witness. The respondent-tenant examined himself and also produced Jagdish Chander, the alleged sub-tenant, in the witness box deed of partnership dated 13/10/1978 was ex hibited in evidence by the respondent-tenant. This Deed of partnership when tendered in evidence before the Rent Controller was accompanied by a general power of attorney of the same date executed by the respondent-tenant in favour of Jagdish Chander. This power of attorney, though not formally tendered in evidence and neither formally proved nor exhibited, has nevertheless been taken into consideration and read in evidence inasmuch as the same was produced in court by the respondent-tenant and could have been, in the opinion of the appellate authority, relied on by the landlord for the purpose of substantiating his case.

4. Clause (b) of sub-section (1) and subsection (4), of section 14 of the Act are relevant for our purpose.

5. A conjoint reading of these provisions shows that on and after 9th June, 1952, sub-letting, assigning or otherwise parting with the possession of the whole or any part of the tenancy premises, without obtaining the consent in writing of the landlord, is not permitted and if done, the same provides a ground for eviction of the tenant by the landlord. However, inducting a partner in his business or profession by the tenant is permitted so long as such partnership may ostensibly be to carry on the business or profession in partnership, but the

real purpose be sub-letting of the premises to such other person who is inducted ostensibly as a partner, then the same shall be deemed to be an act of sub-letting attracting the applicability of clause (b) of sub section (1) of section 14 of the Act.

6. In the present case, the partnership is evidenced by written deed. According to the contents of the partnership deed it was the tenant who was carrying on business under the name and style of M/s DP. Zenith Sanitary & Engg. Works in the suit premises. He was short of finance and other resources and on his request Jagdish Chander, has agreed to join the tenant as a partner. The share in the profit and loss of the partnership is 50% for each of the two partners. The partners shall maintain a bank account which can be operated by either of the two partners. The possession over the tenancy premises shall continue with the tenant and on the determination of the partnership, the possession shall revert back to the tenant alone with no right or interest left in Jadgish Chander. Both the partners agreed to look after the business diligently. The general power of attorney, accompanying the deed of partnership, recites the tenant having authorised the other partner to do several acts relating to tenancy premises and the business run therein in partnership with the tenant. It appears that prior to the filing of the present eviction proceedings, the two partners had filed a suit for injunction against the landlord seeking a permanent injunction restraining the landlord from constructing a wall and therein both the partners had stated themselves to be the tenants. It appears that at least at two stages of the proceedings, one before the Rent Controller and the other before the High Court, the landlord had sought for the assistance of the court for the production of the passport of the tenant-respondent so as to find out for how many times and for what duration the tenant-respondent had remained away from the country and gone to Iraq. However, this passport was not produced on the plea that it was lost. An adverse inference against the tenant-respondent from non-production of passport cannot be drawn unless it is held that the same was held back, that is, not produced though available. None of the authorities below nor the High Court has held so. It cannot be held, on the material available, that the tenant had left the country and parted with possession in favour of Jagdish Chander outwardly projecting him as partner.

7. The learned Rent Controller and the High Court have believed the testimony of the tenant-respondent and Jagdish Chander, the alleged sub-tenant. So far as the landlord himself is concerned, his testimony is practically of no assistance. He admitted during the course of his deposition that he had not made any inquiries of himself to find out who the partners in the business were and how and in what manner the business was being carried on in the suit premises. He stated that it was from the wife of the respondent that he had learnt about the respondent-tenant having left India for going abroad and then having returned. No inference relevant to the issue arising in the suit could have been drawn from the statement of the landlord.

8. The learned Rent Controller discussed all the evidence and recorded the finding of fact. With the assistance of the learned counsel for the appellant we have gone through the judgment of the learned Rent Controller, of the appellate authority, as also of the High Court and we find that the approach adopted by the appellate authority was very superficial in nature and mostly the appellate authority went by surmises and conjectures for the purpose of reversing the judgment of the Rent Controller. At least at one place the appellate authority has

belaboured under a factual misapprehension when it stated that on the very date of entering into partnership the respondent-tenant had left India for Iraq. In fact the respondent-tenant did not leave India on the date of partnership; he left much later thereafter and actually on the date on which his statement was recorded by the Rent Controller. In such facts and circumstances, the High Court has not erred in reversing the judgment of the appellate court and restoring that of the trial court.

9. It is true that an appeal under section 39(2) of the Act before the High Court lies only on the substantial question of law. However, the appellate authority in this case reversed the well considered and well reasoned judgment of the Rent Controller by resorting to conjectures and surmises. There is no material available to hold the partnership a sham or nominal one and to hold that the partnership was brought into existence for disguising a sub-letting in reality. A substantial question of law, therefore, arose before the High Court justifying interference in second appeal with the judgment of reversal recorded by the appellate authority. In addition, the case involved interpretation of the partnership deed and general power of attorney so as to see whether on a totality of the interpretations of recitals contained therein, read in the light of the other facts and circumstances, a case of sub-letting disguised as partnership was made out and needless to say, such interpretation of deeds is a question of law - substantial one in the facts and circumstances of the case.

10. For the foregoing reasons, we do not find any infirmity in the judgment of the High Court. The appeal is, therefore, held liable to be dismissed and is dismissed accordingly but without any order as to costs.

* * * * *

Mrs. Kapil Bhargava v. Subhash Chand Aggarwal

AIR 2001 SC 3334, 93 (2001) DLT 65 SC, JT 2001 (6) SC 650

JUDGMENT: MISRA,J.

2. This appeal by the sub-tenant seeking quashing of the judgment and order dated 28th February, 2000 by the High Court in second appeal from order by which the landlord's appeal was allowed for a decree of eviction.

3. The question is issue is:

Whether an eviction order passed under clause (d) to proviso to sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958, on the face of the finding recorded that the appellant is a lawful sub-tenant in respect of the premises since before 9th June, 1952 would be valid.

4. This entails interpretation of Sections 16, 17 and 18 of the Act.

5. In 1974 Rama Rani and her son Sher Bahadur the original landlord field an eviction petition in respect of the premises in question under Section 14(1)(b),(d) and (e) of the said Act against Murli Manohar Lal the tenant and M.L. Bhargava, the sub-tenant, the appellants are the legal representatives of the said sub-tenant. The said M.L.Bhargava was the brother-in-law of the said tenant. The appellant case is, the sub-tenant was residing in the premises in question with his family since june, 1945 and with the consent of the landlord continued to reside therein even after the transfer of the said tenant Murli Manohar Lal form Delhi. On the other hand landlord case is that the tenant had sub let and parted with the possession in favour of the said M.L.Bhargava without written permission of the landlord. No notice as contemplated under Section 17 of the said Act was served by the sub-tenant on the landlord. Neither tenant nor any member of his family is residing therein for a period of more than six months before filing this eviction petition and the premises is required bona fide for personal need.

6. The court of Rent Controller dismissed his eviction petition holding, since the landlady Smt. Rama Rani died during the pendency of eviction petition hence question of bona fide need under Section 14(1)(e) does not survive. Further the said sub-tenant was in possession of the premises in question since before 9th June, 1952, he would be deemed sub-tenant under Section 16(1) of the Act, hence the case would not fall under Section 14(1)(b). For this reason, even ground under Section 14(1)(d), does not survive as the said sub-tenant was a lawful sub-tenant under Section 16(1) of the said Act.

7. The landlord aggrieved by this field an appeal before the Rent Control Tribunal which was dismissed by upholding the findings recorded by the Rent Controller. Thereafter an appeal was preferred under Section 39 of the said Act before the High Court. The High Court by mans of the impugned judgment allowed the appeal but confined the eviction decreed decree against the tenant under Section 14(1)(d), on the ground that the tenant was not residing in the premises for a period of six months immediately before the date of filing of the eviction petition.

8. This finding is challenged before us by the legal representatives of the original sub-tenant.

9. Learned senior counsel Mr. M.L. Verma for the appellant submits, High Court erred in decreeing the eviction suit under Section 14(1)(d) in view of concurrent finding recorded by both the courts below that the appellant was a legally constituted sub-tenant by virtue of Section 16(1) of the said. The first submission is, how can a lawful sub-tenant be evicted under Section 14(1)(d) in view of the definition of 'tenant' under Section 2(1) and provision of Section 16(1) of the said Act. Next if is submitted, once a tenant inducts a sub-tenant over the whole of the premises legally then consequently the tenant vacates the premises in question, thus eviction of sub-tenant under section 14(1)(d) on the ground that tenant is not residing for a period more than six months preceding the application for eviction would not arise. A sub-tenant on these facts is not required to prove this as admittedly a lawful sub-tenant is already in possession of the whole of the premises in question. If an interpretation contrary to this is done it will lead to absurdity which is impermissible under the principle of interpretation of statute. So far the first submission, reliance is placed on the definition of 'tenant' as defined under Section 2(1), Relevant portion is quoted hereunder:

"Section 2(1): "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes -

(1) a sub-tenant.....

10. Submission is, tenant includes a sub-tenant, hence even if sub-tenant is in possession it would mean a tenant to be in possession, hence it cannot be said under Section 14(1)(d) that tenant has vacated the premises. Thus question of tenant not residing in the premises in question for the last six months preceding making of an eviction petition would not arise. We have no hesitation to reject this submission. It is true a sub-tenant is included within the definition of tenant but it is for a purpose, for the conferment of rights and obligations on such sub-tenant where ever statute requires under various provisions of an Act, of that which is conferred on a tenant. But this would have no application where statute itself treats both as two separate entities as is incorporated both in Section 14(1)(b) and Sections 16, 17 and 18 of the Act. When a tenant inducts a sub-tenant without written consent of a landlord, he makes himself liable for eviction under Section 14(1)(b). Can it be said, since such sub-tenant under the Act could be a tenant, no question of sub-tenancy arises? If he is equated as one with the tenant then they would never be evicted under the Act. Similarly if this is true the question of deemed tenancy under Section 16(1) would never arise. Similar consequence would follow both under Sections 17 and 18 of the Act, unless both are treated as separate entity. No protection to a sub-tenant would arise for his eviction in case of a decree against a tenant. In other words, these provisions would be rendered meaningless. This submission is misconceived. These sections refer specifically inter se relationship between a tenant and a sub-tenant, which cannot be termed as one and the same.

11. Next it is submitted, since the sub-tenancy was created before 9th June, 1952 the appellant became a deemed tenant, i.e., a lawful sub-tenant which has been held both by the Rent Controller and the Rent Control Tribunal, thus question of his eviction under Section 14(1)(d) would not arise.

12. For appreciating this submission, reference to sections 16, 17 and 18 are necessary which are quoted hereunder:

"16. Restriction on sub-letting -(1) Where at any time before the 9th day of june, 1952, a tenant has sub-let the whole or any part of the premises and the sub-tenant is, at the commencement of this Act, in occupation of such premises, then notwithstanding that the consent of the landlord was not obtained for such sub-letting, the premises shall be deemed to have been lawfully sub-let.

(2) No premises which have been sub-let either in whole or in part on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord, shall be deemed to have bene lawfully sub-let.

(3) After the commencement of this Act, no tenant shall, without the previous consent in writing of the landlord-

(a) sub-let the whole or any part of the premises held by him as a tenant; or

(b) transfer or assign his rights in the tenancy or in any part thereof.

(4) No landlord shall claim or receive the payment of any sum as premium or puree or claim or receive any consideration whatsoever in cash or in kind for giving his consent to the sub-letting of the whole or any part of the premises held by the tenant.

17. Notice of creation and termination of sub-tenancy - (1) Whoever, after the commencement of this Act, any premises are sub-let either in whole or in part by the tenant with the previous consent in writing of the landlord, the tenant or the sub-tenant to whom the premises are sub-let may in the prescribed manner,give notice to the landlord of the creation of the sub-tenancy within one month of the date of such sub-letting and notify the termination of such sub-tenancy within one month of such termination.

(2) Where, before the commencement of this Act, any premises have been lawfully sub-let either in whole or in part by the tenant, the tenant or the sub-tenant to whom the premises have been sub-let may, in the prescribed manner, give notice to the landlord of the creation of the sub-tenancy within six months of the commencement of this Act, and notify the termination of such sub-tenancy within one month of such termination.

(3) Where in any case mentioned in sub-section (2), the landlord contests that the premises were not lawfully, sub-let, and an application is made to the Controller, in this behalf, either by the landlord or by the sub-tenant, within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of the notice by the tenant or the sub-tenant, as the case may be, the Controller shall decide the dispute.

18. Sub-tenant to be tenant in certain cases -(1) Where an order for eviction in respect of any premises is made under section 14 against a tenant but not against a sub-tenant referred to in section 17 and a notice of the sub-tenancy, has been given to the landlord, the sub-tenant shall, with effect from the date of the order, be deemed to become a tenant holding directly under the landlord in respect of the premises in his occupation on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy had continued.

(2) Where, before the commencement of this Act, the interest of a tenant is respect of any premises has been determined without determining the interest of any sub-tenant to whom the premises either in whole or in part had been lawfully sub-let, the sub-tenant shall, with effect from the date of the commencement of this Act, be deemed to have become a tenant holding directly under the landlord on the same terms and conditions on which the tenant would have held form the landlord, if the tenancy had continued.

13. The submission is, once the appellant are lawful sub-tenants being deemed sub-tenants by virtue of Section 16(1), question of has giving any notice under Section 17 would not arise, so also Section 18 would have no application.

14. On the other hand learned senior counsel for the respondent Mr. G.L. Sanghi submits, if no notice is served by such a sub-tenant as contemplated under Section 17(2), which has not been served, as finally recorded in this case, the appellant could not resist a decree of eviction even if passed against a tenant. Unless such a notice is served, a decree against a tenant would bind even a sub-tenant.

15. We have given our due consideration of these submissions on behalf of both the parties. We find Section 16 refers to the restrictions of sub-letting .It classifies the case s of sub-letting into three categories. Sub-section (1) of Section 16 refers to cases where a sub-tenant in inducted by a tenant before 9th June, 19521, without the consent of the landlord but is deemed to be a lawful sub-tenant, if he is in occupation of such premises at the commencement of the Act. Sub-section (2) deals with cases where a sub-tenant is inducted on or after the aforesaid date, and it is without a written consent of the landlord he is not treated to be a lawful sub-tenant and sub-section (3) mandates a tenant, after the commencement of the Act, not to sub-let any premises without written consent of the landlord. The present case admittedly falls under sub-clause (1) of Section 16, under which the appellant could claim to be a deemed sub-tenant. On one hand it confers on a sub-tenant statutory right, on the other hand Section 17(2) cast an obligation on such sub-tenant to serve a notice on a landlord.

16. Thus the question which arises for our consideration is, whether by mere declaration of a sub-tenant as deemed sub-tenant, could he resist his eviction, if it is against a tenant under Section 14 without performing the obligation cast on him under Section 17(2), Sub-section (2) of Section 17 spells out, before the commencement of this Act if any premises half been lawfully sub-let by the tenant in the prescribed manner, a sub-tenant is obliged to give notice to the landlord of the creation of sub-tenancy within six months of the commencement of this Act. Though an attempt was made on behalf of the appellant before the Courts below that such a notice was served on landlord but this has been disbelieved on facts by the Courts below. So, it cannot be disputed that no notice was served by the appellant on the landlord in terms of sub-section (2) of Section 17.

17. Submission for the appellant is once a sub-tenant is a lawful sub-tenant by virtue of Section 16(1), the notice under sub-section (2) of Section 17 would be a mere formality which is procedural. Thus its non-compliance cannot take away his substantive right created under Section 16(1). This submission misses the purpose for which this sub-section (2) of Section 17 is enacted. On performance of this obligation a right is conferred on a sub-tenant to become a tenant under Section 18. This service of notice saves a sub-tenant from eviction

even if a decree of eviction is passed against a tenant under Section 14 and further confers on such sub-tenant an independent right as that of a tenant. Thus notice under Section 17(2) cannot be construed as a mere procedural, in fact it confers substantive right on such a sub-tenant. So, a conjoint reading of Sections 16, 17 and 18, makes it clear that a sub-tenant falling under Section 16(1) is deemed to be a lawful sub-tenant even without written consent of the landlord. But Section 17(2) casts an obligation on such sub-tenant to give notice to the landlord under sub-clause (2), within six months of the commencement of the Act. The legislature has used in sub-section (2) the words "lawful sub-let". So even if the appellant is a lawful sub-tenant by virtue of Section 16(1), still an obligation is cast on such lawful sub-tenant to serve a notice on the landlord for gaining a right under Section 18. This as we have said is as a protective measure in favour of a sub-tenant. So, the submission that by mere declaration as lawful tenant under Section 16(1), no decree for eviction is enforceable against the sub-tenant has no merit and is hereby rejected. Hence we hold, unless notice under sub-section (2) of Section 17 is served by the sub-tenant, he cannot take the benefit of Section 18 and any decree passed under Section 14 against a tenant is executable against a sub-tenant.

18. The next and the last submission is that the landlord was not only aware of the fact that it is not the tenant but the sub-tenant is residing exclusively in whole of the premises, since before 9th June 1952 and landlord was accepting the rent from this sub-tenant, hence compliance of Section 17(2) could at best be said to be a mere formality. This submission has also no merit. Neither there is any such finding by any courts nor any evidence pointed out that after the tenant left, the rent was paid by the sub-tenant on his own behalf and not on behalf of the tenant. A person in possession may continue to live and continue to pay rent which would be payment on behalf of the tenant, unless specific evidence led that the incumbent in possession started paying rent as sub-tenant, receipt issued as sub-tenant or there exist any document of this nature. We have not been shown any such plea, evidence or any finding by any of the courts below in this regard.

19. For the aforesaid reasons and for the findings recorded by us we find the present appeal has no merit and is accordingly dismissed. Costs on the parties.

* * * * *

Santram v. *Rajinder Lal*

1979 SC (1) RCJ 13

V.R. KRISHNA IYER, J. - The appellant, a Harijan by birth and a cobbler by vocation, was a petty tenant of the eastern half of a shop in Ram Bazar, Simla. The original landlord passed away and his sons, the respondents, stepped into his shoes as legal representatives. He filed a petition for eviction of the appellant-tenant under S.13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act, 1949, as applied to Himachal Pradesh on the ground that the premises were being used for a purpose other than the one for which they were let out. The Rent Controller having held in favour of the land-lord, an eviction order ensued.The appellate authority reversed this finding and dismissed the petition for eviction. The High Court, in revision, reversed the appellate decision and restored the Rent Controller's order. The cobbler-appellant, in the last lap of litigation, has landed in this Court. The poverty of the appellant is reflected in the chequered career of the case in this Court where it was dismissed more than once for default in payment but ultimately, thanks to the persistence of the appellant, he got this Court's order to pay the balance amount extended. He complied with that direction and thus could not be priced out of the justice market, if we may use that expression.

2. The short point for adjudication is as to whether the respondent landlord made out the statutory ground for eviction, of having diverted the building for a use radically different from the one for which it was let, without his consent. There is no case of written consent put forward by the tenant. But he contested the landlord's claim by asserting that there was no specific commercial purpose inscribed in the demise and, therefore, it was not possible to postulate a diversion of purpose. Secondly, he urged that, even assuming that the letting was for a commercial purpose, the fact that he had cooked his food or stayed at night in the rear portion of the small shop did not offend against S. 13(2)(ii)(b) of the Act.

S.13 (2) (ii) (b) reads:

"Used the building for a purpose other than that for which it was leased."

The factual matrix may be shortly projected; for as Mr. Justice Cardozo luminously stated-

> "More and more we lawyers are awaking to a perception of the truth that what divides and distracts us in the solution of a legal problem is not so much uncertainty about the law as uncertainty about the facts-the facts which generate the law. Let the facts be known as they are, and the law will sprout from the seed and turn its branches toward the light."

A cobbler-the appellant-was the lessee of a portion of a shop in Ram Bazar, Simla, since 1963, on an annual rent of Rs. 300/- (i.e. Rs.25/- per month). Ex.P.1, the lease deed, disclosed no purpose; but inferentially it has been held by the High Court that the lease being of a shop the purpose must have been commercial. Possible; not necessarily sure. The actual life situations and urban conditions of India, especially where poor tradesmen like cobblers, candle-stick makers, cycle repairers and Tanduri bakers, take out small spaces on rent, do not warrant an irresistible inference that if the lease is of a shop the purpose of the lease must be commercial. It is common knowledge that in the small towns, why, even in the big cities,

little men, plying little crafts and possessing little resources taken on lease little work places to trade and to live, the two being interlaced for the lower, larger bracket of Indian humanity. You struggle to make a small income and work late into the right from early in the morning and, during intervals, rest your bones in the same place, drawing down the shutters of the shop for a while. The primary purpose is to ply a petty trade, the secondary, but necessary incident, is to sleep in the same place since you can hardly afford anything but a pavement for the creature needs of cooking food, washing yourself, sleeping for a time and the like.

3. The life style of the people shapes the profile of the law and not vice-versa. Law, not being an abstraction but a pragmatic exercise, the legal inference to be drawn from a lease deed is conditional by the prevailing circumstances. The intention of parties from which we spell out the purpose of the lease is to be garnered from the social milieu. Thus viewed, it is difficult to hold, especially when the lease has not spelt it out precisely, that the purpose was exclusively commercial and incompatible with any residential use, even of a portion.

4. Two rules must be remembered while interpreting deeds and statutes. The first one is:

> "In drafting it is not enough to gain a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible a degree of precision which a person reading in bad faith cannot misunderstand."

5. The second one is more important for the third world countries. Statutory construction, so long as law is at the service of life, cannot be divorced from the social setting. That is why, welfare legislation like the one with which we are now concerned, must be interpreted in a third world perspective. We are not on the Fifth Avenue or Westend of London. We are in a hilly region of an Indian town with indigents struggling to live and huddling for want of accommodation. The law itself is intended to protect tenants from unreasonable eviction and is, therefore, worded a little in favour of that class of beneficiaries. When interpreting the text of such provisions - and this holds good in reading the meaning of documents regulating the relations between the weaker and the stronger contracting parties - we must remember what is an earlier decision of this Court, has been observed:

> "Where doubts arise the Gandhian talisman becomes a tool of interpretation; Whenever you are in doubt apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him."

If we remember these two rules, the conclusion is easy that there is no exclusiveness of purpose that can be spelt out of the lease deed. That knocks at the bottom of the case of the land-lord.

6. The circumstances are clearer as we proceed further. For well over a decade the tenant have been in occupation, cobbling and sleeping, in the same place on working days, but going home on days when the shop is closed. Indeed, the pathetic genesis of the residential user cannot be lost sight of. The cobbler's wife became mentally deranged and he could not leave her at home lest she should prove a danger to herself and to others around. Being a Harijan cobbler he could not hire servants and so, in despair, he took his insane wife to the place where he was tailing on leather. He worked in the shop, cooked food for his wife, slept

there at night and thus managed to survive although she died a little later. "A bed by night and a chest of drawers by day" is not unusual even in England, as those who have read Goldsmith.

The dual uses of accommodation are common enough and, in this case, the landlord himself appears to have understood it that way. The evidence shows that the sympathetic father of the respondents had not objected to the petitioner living in the premises and had even provided a sink in the shop to facilitate such user. Not that oral permission to divert the user to a different purpose is sufficient in the face of the statutory requirement of written consent but that circumstance of the landlord's acquiescence over a long stretch of time reinforces the case of the tenant that the purpose was two-fold. The common experience of life lends credence to this case and none but those who live in ivory towers can refuse to look at the raw realities of life while administering justice. We are in the field of Poverty Jurisprudence.

7. It is impossible to hold that if a tenant who takes out petty premises for carrying on a small trade also stays in the rear portion, cooks and eats; he so disastrously perverts the purpose of the lease. A different 'purpose' in the context is not minor variations but majuscule in mode of enjoyment. This is not a case of a man switching over to a canteen business or closing down the cobbler shop and converting the place into a residential accommodation. On the other hand, the common case is that the cobbler continued to be cobbler and stayed in the shop at night on days when he was running his shop but left for his home on shop holidays. A sense of proportion in social assessment is of the judicial essence.

8. The irresistible inference, despite the ingenious argument to the contrary, is that the provision of S.13(2)(ii) has not been attracted. We are comforted in the thought that our conclusion is a realistic one, as is apparent from a subsequent amendment to the definition of nonresidential building which reads thus:

(d) “non-residential building” means a building being used,-

(i) mainly for the purpose of business or trade; or

(ii) partly for the purpose of business or trade and partly for the purpose of residence, subject to the condition that the person who carries on business or trade in the building resides there;

Provided that if a building is let out for residential and non-residential purpose separately to more than one person, the portion thereof let out for the purpose of residence shall not be treated as a non residential building.

Explanation.- Where a building is used mainly for the purpose of business or trade, it shall be deemed to be a non-residential building even though a small portion thereof is used for the purpose of residence.”

9. Shri Bhatt raised an argument that this provision was applicable to pending proceedings. We do not have to investigate into that question in the view we have already taken and note the amendment only to indicate that the legislature, in its realism, has veered round expressly to approve dejure what is the defacto situation prevailing in the urban areas of Himachal Pradesh.

10. In this view, the appeal is allowed with costs.

* * * * *

Baldev Sahai Bagla v. *R.C. Bhasin*

AIR 1982 SC 1091

FAZAL ALI, J. - This appeal by special leave is directed against a judgment dated February 20, 1980 of the Delhi High Court decreeing the landlord's suit for ejectment of the tenant.

2. The facts giving rise to the present litigation are summarised briefly as:

3. The appellant Baldev Singh took the premises on rent on May 12, 1961 at a monthly rental of Rs 95. At the time when the tenancy started, the tenant was living in the tenanted house with his father, mother, two sisters and a brother. The tenant himself was at that time a bachelor but seems to have married subsequently. One of his sisters was married in this very house.

4. As it happened, in 1971 the tenant went to Canada followed by his wife and children. It is alleged that after having gone to Canada, the husband along with his wife took up some employment there. Admittedly, the tenant did not return to India after 1971. While leaving for Canada the tenant had left his mother and brother in the house who were regularly paying rent to the landlord. There is some controversy as to whether or not the mother and brother, who were left behind, were being supported by the tenant or were living on their own earnings or by the income of the property left by the tenant in India. Such a controversy however, is of no consequence in deciding the question of law which arises for consideration in this case.

5. On September 27, 1972 the landlord filed an application for ejectment of the tenant on the ground of bona fide requirement and non-residence of the tenant under clauses (*d*) and (*e*) of the proviso to sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act"). The fundamental plea taken by the landlord was that with the exit of the tenant from the house it became vacant and his mother and brother who were left behind could not be treated as members of the family. Hence, in the eye of law the tenanted premises must be deemed to have fallen vacant.

6. The suit was resisted by the mother, brother and sister of the tenant who averred that even if the tenant along with his wife and children had shifted to Canada, the non-applicants were continuing to live in the tenanted premises and as they had been paying rent to the landlord regularly, who had been accepting the same, no question of the tenancy becoming vacant arose.

7. Thus, the entire case hinges on the interpretation of the word "family" as also clauses (*d*) and (*e*) of the proviso to Section 14(1) of the Act. So far as clause (*e*) is concerned, both the courts below found as a fact that the landlord was not able to prove his bona fide necessity. Therefore, as far as ground (*e*) is concerned, the same no longer survives in view of the findings of fact recorded by the courts below. The only question that remains to be considered is whether the landlord can bring his case for eviction within the ambit of clause (*d*) of the proviso to Section 14(1).

8. A close analysis of this provision would reveal that before the landlord can succeed, he must prove three essential ingredients -

(*1*) that the premises were let out for use as a residence,

(*2*) that the tenant after having taken the premises has ceased to reside, and

(*3*) that apart from the tenant no member of his family also has been residing for a period of six months immediately before the date of the filing of the application for ejectment.

9. It is manifest that unless the aforesaid conditions are satisfied the landlord cannot succeed in getting a decree for ejectment. In the instant case, while it is the admitted case of the parties that the tenant had shifted to Canada along with his wife and children, yet he had left his mother, brother and sister in the house, hence the second essential condition of clause (*d*) continues to apply with full force.

10. The learned counsel for the appellant, however, submitted that the mother, brother and sister were undoubtedly living with the tenant and so long as they continued to reside in the tenanted premises, there could be no question of the premises falling vacant. To this, the counsel for the landlord countered that neither the mother, nor the brother nor the sister could in law be treated as members of the family of the tenant after he had himself shifted to a country outside India. Even though while he was living in Delhi, he was in government service. Thus, it was argued that in the eye of law, the so-called family members would lose their status as members of the family of the tenant and would be pure trespassers or licensees or squatters.

11. While the suit of the landlord was dismissed by the Rent Controller, the Rent Control Tribunal allowed the appeal and directed eviction of the family members of the tenant under clause (*d*) of the proviso to Section 14(1) of the Act. The family members of the tenant then went up in appeal to the High Court which also affirmed the findings of the Tribunal and upheld the order of eviction passed by it. The High Court was also of the view that after the exit of the main tenant from India to Canada, neither the mother, nor the brother, nor the sister could be legally termed as a member of the family of the tenant.

12. We have heard counsel for the parties and given our anxious consideration to all aspects of the matter and we feel that the High Court has taken a palpably wrong view of the law in regard to the interpretation of the term "member of the family" as used in clause (*d*) of the proviso to Section 14(1) of the Act. In coming to its decision, the High Court seems to have completely overlooked the dominant purpose and the main object of the Act which affords several intrinsic and extrinsic evidence to show that the non-applicants were undoubtedly members of the family residing in the house and the migration of the main tenant to Canada would make no difference. The word "family" has been defined in various legal dictionaries and several authorities of various courts and no court has ever held that mother or a brother or a sister who is living with the older member of the family would not constitute a family of the said member. Surely, it cannot be said by any stretch of imagination that when the tenant was living with his own mother in the house and after he migrated to Canada, he had severed all his connections with his mother so that she became an absolute stranger to the family. Such an interpretation is against our national heritage and, as we shall show, could never have been contemplated by the Act which has manifested its intention by virtue of a later amendment.

13. Coming now to the definitions, we find that in ***Words and Phrases*** (Permanent Ed., Vol. 16) pp. 303-11 the word "family" has been defined thus:

> "The father, the mother, and the children ordinarily constitute a 'family'.
>
> The word 'family' embraces more than a husband and wife and includes children.
>
> A 'family' constitutes all who live in one house under one head.
>
> Father and mother of two illegitimate children, and children themselves, all living together under one roof, constituted a 'family'.
>
> The word 'family' in statute authorizing use of income for support of ward and 'family' is not restricted to those individuals to whom ward owes a legal duty of support, but is an expression of great flexibility and is liberally construed, and includes brothers and sisters in poor financial circumstances for whom the insane ward, if competent, would make provision, The general or ordinarily accepted meaning of the word 'family', as used in Compensation Act, means a group, comprising immediate kindred, consisting of the parents and their children, *whether actually living together or not*." (p. 343) (emphasis supplied).

14. Similarly, in ***Webster's Third New International Dictionary***, the word "family" is defined thus:

> Household including not only the servants but also the head of the household and all *persons* in it *related to him by blood or marriage* ... a group of persons of common ancestry. (p. 821) (emphasis supplied)

15. In ***Chambers Twentieth Century Dictionary*** (New Ed. 1972), the word "family" has been defined thus:

> The household, or all those who live in one house (as parents, children, servants): parents and their children.

16. In ***Concise Oxford Dictionary*** (Sixth Edn.), the same definition appears to have been given of the word "*family*" which may be extracted thus:

> Members of household, parents, children, servants, etc.; set of parents and children, or of relations, living together or not; person's children. All descendants of common ancestor.

17. A conspectus of the connotation of the term "family" which emerges from a reference to the aforesaid dictionaries clearly shows that the word "family" has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members or descendants from the common ancestors who are actually living with the same head. More particularly, in our country, blood relations do not evaporate merely because a member of the family - the father, the brother or the son, leaves his household and goes out for some time. Furthermore, in our opinion, the legislature has wisely used the term that any member of the family residing therein for a period of six months immediately before the actual presence of the tenant as on the fact that the members of the family actually live and reside in the tenanted premises. In fact, it seems to us that clause (*d*) of the proviso to Section

14(1) of the Act is a special concession given to the landlord to obtain possession only where the tenanted premises have been completely vacated by the tenant if he ceased to exercise any control over the property either through himself or through his blood-relations.

18. In fact, a controversy arose as to what would happen to the members of the family of the tenant if while residing in the premises he dies and in order to resolve this anomaly the legislature immediately stepped in to amend certain provisions of the Act and defined the actual connotation of the term "members of the family". By virtue of Act 18 of 1976 the definition of "tenant" was inserted so as to include various categories of persons. Sub-clause (*iii*) of clause (*l*) of Section 2 of the Act actually mentions the persons who could be regarded as tenant even if main tenant dies. Clause (*l*) may be extracted thus:

> "(*l*) 'tenant' means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes -
>
> (*i*) a sub-tenant;
>
> (*ii*) any person continuing in possession after the termination of his tenancy; and
>
> (*iii*) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified, respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person's -
>
> (*a*) spouse,
>
> (*b*) son or daughter, or, where there are both son and daughter, both of them,
>
> (*c*) parents,
>
> (*d*) daughter-in-law, being the widow of his pre-deceased son,
>
> as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include, ….

19. It would appear that parents were expressly included in sub-clause (*iii*). It has also been provided that apart from the heirs specified in clauses (*a*) to (*d*) (extracted above), even those persons who had been ordinarily living in the premises with the tenant would be treated as members of the family. The Statement of Objects and Reasons for this amendment may be extracted thus:

> There has been a persistent demand for amendments to the Delhi Rent Control Act, 1958 with a view to conferring a right of tenancy on certain heirs/successors of a deceased statutory tenant so that they may be protected from eviction by landlords and also for simplifying the procedure for eviction of tenants in case the landlord requires the premises bona fide for his personal occupation. Further, Government decided on September 9, 1975 that a person who owns his own house in his place of work should vacate the Government accommodation allotted to him before December 31, 1975. Government considered that in the circumstances, the Act required to be amended urgently.

20. If this was the intention of the legislature then clause (*d*) of the proviso to Section 14(1) of the Act could not be interpreted in a manner so as to defeat the very object of the Act. It is well settled that a beneficial provision must be meaningfully construed so as to advance the object of the Act, and cure any lacuna or defect appearing in the same. There are

abundant authorities to show that the term "family" must always be liberally and broadly construed so as to include near relations of the head of the family.

21. In ***Hira Lal* v. *Banarsi Das*** [(1979) 1 Rent LR 466 (Del.)], even the learned Judge who decided that case had observed at p. 472 that the term "members of the family" on the facts and circumstances of the case should not be given a narrow construction.

22. *In* ***Govind Dass* v. *Kuldip Singh*** [AIR 1971 Del. 151], a Division Bench of Delhi High Court consisting of H.R. Khanna, C.J. (as he then was) and Prakash Narain, J. while recognising the necessity of giving a wide interpretation to the word "family" observed as follows:

> "I hold that in the section now under consideration the word 'family' includes brothers and sisters of the deceased living with her at the time of her death. I think that that meaning is required by the ordinary acceptation of the word in this connection and that the legislature has used the word 'family' to introduce a flexible and wide term".

23. In ***G.V. Shukla* v. *Parbhu Ram Sukhram Dass Ojha*** [(1963) 65 Pun LR 256], Mahajan, J. (as he then was) observed as follows:

> Therefore, it must be held that the word 'family' is capable of wider interpretation, but that interpretation must have relation to the existing facts and circumstances proved on the record in each case.

24. Even as far back as 1930, Wright, J. in ***Price v. Gould*** [(1930) 143 LT 333](a King's Bench decision) had clearly held that the word "family" included brothers and sisters and in this connection observed as follows:

> "I find as a fact that the brothers and sisters were residing with the deceased at the time of her death.... It has been laid down that the primary meaning of the word 'family' is children, but that primary meaning is clearly susceptible of wider interpretation, because the cases decide that the exact scope of the word must depend on the context and the other provisions of the will or deed in view of the surrounding circumstances".

Thus, in ***Snow* v. *Teed*** [(1870) 23 LT 303] it was held that "the word 'family' could be extended beyond not merely children but even beyond the statutory next of kin".

25. In view, however, of the very clear and plain language of clause (*d*) of the proviso to Section 14(1) of the Act itself, we do not want to burden this judgment by multiplying authorities.

26. On a point of fact, we might mention that the Rent Controller had given a clear finding that the mother, younger brother (Davinder Kumar Bangia) and sister (Vijay Lakshmi) were undoubtedly residing in the disputed premises along with the main tenant and continued to reside there even on the date when the action for ejectment was brought.

27. In these circumstances, we are satisfied that the view taken by the High Court is legally erroneous and cannot be supported. The landlord has miserably failed to prove the

essential ingredients of clause (*d*) of the proviso to Section 14(1) of the Act so as to entitle him to evict the members of the family of the main tenant.

28. We, therefore, allow this appeal, set aside the judgment and order of the High Court and dismiss the plaintiff's action for ejectment and restore the judgment of the Rent Controller. In the peculiar circumstances of the case, there will be no order as to costs.

* * * * *

Miss S. Sanyal v. *Gian Chand*

AIR 1968 SC 438

J. C. SHAH, J. - The appellant Miss Sanyal has since 1942 been a tenant of a house in Western Extension Area, Karol Bagh, New Delhi, a part of which is used for a Girls' School and the rest for residential purposes. The respondent Gian Chand purchased the house from the owners by a sale deed dated September 19, 1956, and commenced an action in the Court of the Subordinate Judge Ist Class, Delhi against the appellant for a decree in ejectment in respect of the house. Numerous grounds were set up in the plaint in support of the claim for a decree in ejectment, but the ground that the respondent required the house bona fide for his own residence alone need be considered in this appeal. The Trial Court dismissed the suit and the Senior Subordinate Judge, Delhi dismissed an appeal from that order holding that the house being let for purposes nonresidential as well as residential, a degree in ejectment could not be granted under Section 13 (1) (e) of the Delhi and Ajmer Rent Control Act, 1952. The High Court of Punjab (Delhi Bench) in a revision petition filed by the respondent held that on the finding recorded by the First Appellate Court a decree in ejectment limited to that portion of the house which was used for residential purposes by the tenant could be granted, and remanded the case to the Rent Controller "for demarcating those portions which were being used for residence" and to pass a decree in ejectment from those specific portions of the house. Against that order the tenant has appealed to this Court.

2**.** It is necessary in the first instance to read the material provisions of the Delhi and Ajmer Rent Control Act, 1952. The expression "premises" is defined in Section 2 (g) of the Act as "any building or part of a building which is, or is intended to be let separately for use as a residence or for commercial use or for any other purpose", and includes Section 13 of the Act which grants protection to tenants against eviction provided insofar as it is material.

Section 13 (1)

"(1) Notwithstanding anything to the contrary contained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated):

Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court is satisfied-

(e) that the premises let for residential purposes are required bona fide by the land-lord who is the owner of such premises for occupation as a residence for himself or his family and that he has no other suitable accommodation;

Explanation- For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for used as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes."

It is clear that Section 13 (1) imposes a ban upon the exercise of the power of the Court to decree ejectment from premises occupied by a tenant. The ban is removed in certain specific cases, and one such case is where the premises having been let for residential purposes the landlord requires the premises bona fide for occupation as a residence for himself or the

members of his family and he has other suitable accommodation. It is plain that if the premises are not let for residential purposes, Clause (e) has no application nor on the express terms of the statute does the clause apply where the letting is for purposes residential and nonresidential.

3. In the present case the First Appellate Court held that the house was "let out for running a school and for residence." The High Court held that where there is a composite letting, it is open to the Court to disintegrate the contract of tenancy, and if the landlord proves his case of bona fide requirement for his own occupation to pass a decree in ejectment limited to that part which "is being used" by the tenant for residential purposes. In so holding, in our judgment, the High Court erred. The jurisdiction of the Court may be exercised under Section 13 (1) (e) of the Act only when the premises are let for residential purposes and not when the premises being let for composite purposes, are used in specific portions for purposes residential and non-residential. The contract of tenancy is a single and indivisible contract, and in the absence of any statutory provision to that effect it is not open to the Court to divide it into two contracts-one of letting for residential purposes, and the other for non-residential purposes, and to grant relief under Sec. 13(1)(e) of the Act limited to the portion of the demised property which "is being used" for residential purposes.

4**.** The learned Judge purported to follow the decision of his Court in ***Motilal* v.** ***Nanak Chand*** [(1964)66 Punj LR 179]**.** It was held in that case that in cases governed by the Delhi and Ajmer Rent Control Act, 1952 if the premises are in well-defined parts and have been let out for residential and commercial purposes together, the rule as to eviction regarding the portion that has been used for residence will govern the residential portion of the same and similarly the rules of eviction regarding the commercial premises will govern the commercial portion of the same as laid down in the Act. In the view of the Court even if there be a single letting purpose, residential and nonresidential, if defined portions of the premises let are used for residential and commercial purposes "it must he held that the letting out was of the commercial part of the building separately for commercial purposes and of the residential part of the building for residential purposes." We find no warrant for that view either in the Delhi and Ajmer Rent Control Act or in the general law of landlord and tenant. Attention of the learned Judge in that case was invited to a judgment of this Court in ***Dr. Gopal Das Verma* v. *S. K. Bhardwaj*** [(1962) 2 SCR 678 : AIR l963 SC 337] but the Court distinguished that judgment on the ground that "the facts of that case disclosed that they had no applicability to the facts of the case" in hand. Now in ***Dr. Gopal Das Verma*** case, the premises in dispute were originally let for residential purposes, but later with the consent of the landlord a portion of the premises was used for non-residential purposes. It was held by this Court that "where premises are let for residential purposes and it is shown that they are used by the tenant incidentally for commercial, professional or other purposes with the consent of the landlord, the landlord is not entitled to eject the tenant even if he proves that he needs the premises bona fide for his personal use, because the premises have by their user ceased to be premises let for residential purposes alone:" It was, therefore, clearly ruled that if the premises originally let for residential purposes ceased, because of the consent of the landlord to be premises let for residential purposes alone, the Court had no jurisdiction to decree ejectment on the grounds specified in Section 13(1)(e) of the Act. The rule evolved by the Punjab High

Court in ***Motilal*** case, is inconsistent with the judgment of this Court in ***Dr. Gopal Das Verma*** case.

5. If in respect of premises originally let for residential purposes a decree in ejectment cannot be passed on the grounds mentioned in Section 13(1)(e), if subsequent to the letting, with the consent of the landlord the premises are used both for residential and non-residential purposes, the bar against the jurisdiction of the Court would be more effective when the original letting was for purposes- non-residential as well as residential. It may be recalled that the condition of the applicability of Section 13(1)(e) of the Act is letting of the premises for residential purposes.

6**.** In this case the letting not being solely for residential purposes, in our judgment, the Court had no jurisdiction to pass the order appealed from. We may note that a Division Bench of the Punjab High Court in ***Kanwar Behari*** **v.** ***Smt. Vindhya Devi*** [AIR l966 Punj 481] has held in construing Section 14(1)(e) of the Delhi Rent Control Act 59 of 1958, material part whereof is substantially in the same terms as S. 13(l)(e) of the Delhi and Ajmer Rent Control Act, that "where the building let for residence is the entire premises, it is not open to the Court to further sub-divide the premises and order eviction with respect to part thereof'. In our view that judgment of the Punjab High Court was right on the fundamental ground that in the absence of a specific provision incorporated in the statute, the Court has no power to break up the unity of the contract of letting and attribute incidents and obligations to a part of the subject matter of the contract which are not applicable to the rest.

7. In our view the order passed by the High Court of Punjab remanding the case for determination of the residential portion of the house occupied by the appellant and for passing a decree in ejectment in respect of that part is without jurisdiction and must be set aside.

8. The appeal is allowed and the decree passed by the Senior Subordinate Judge is restored. The appellant in this appeal did not appear before the High Court to assist the Court. In the circumstances there will be no order as to costs to this appeal.

* * * * *

Precision Steel & Engineering Works v. *Prem Deva Niranjan Deva Tayal*

AIR 1982 SC 1518

D.A. DESAI, J. (*Majority*). - A provision conferring power enacted to mollify slogans chanting public opinion of speedy justice, if not wisely interpreted may not only prove counter-productive but disastrous. And that is the only raison d'etre for this judgement because in the course of hearing at the stage of granting special leave Mr D.V. Patel, learned counsel for the respondent straightaway conceded that this is such a case in which leave to defend could never have been refused. Unfortunately, however, not a day passes without the routine refusal of leave, tackled as a run of mill case by the High Court in revision with one-word-judgement 'rejected', has much to our discomfiture impelled us to write this short judgement.

2. First the brief narration of facts. Respondent M/s Prem Deva Niranjan Deva Tayal (Hindu undivided family) through Prem Deva Tayal, constituted Attorney of Niranjan Deva Tayal (landlord) moved the Controller having jurisdiction by a petition under Section 14(1) proviso (e) (for short 'Section 14(1)(e)') read with Section 25-B of the Delhi Rent Control Act, 1958 ('Act' for short), for an order for recovery of possession of the premises being, front portion of premises bearing No. B-44, Greater Kailash Part I, New Delhi, on the ground that the premises were let out for residential purpose and are now required bona fide by the landlord for occupation as residence for himself and the members of his family dependent on him and that the landlord has no other reasonably suitable accommodation. Landlord further alleged that he now requires the premises for himself and the members of his family consisting of himself, his wife and two school-going children. He admitted that he has been employed in India since 1965 but was posted at Bombay in 1970 and returned to Delhi in 1972. He went to Saudi Arabia and has now returned to India. It was alleged that on May 1, 1974, he called upon the tenant to vacate the premises but the request has fallen on deaf ears. It was specifically alleged that as the landlord has now taken up a job and has settled down in Delhi and that he has no other suitable accommodation, and accordingly he bona fide requires possession of the demised premises for his personal occupation. It was alleged that M/s Prem Deva Niranjan Deva Tayal (HUF) is the owner of the suit premises and Shri Niranjan Deva Tayal is the Karta of the HUF and second notice dated June 22, 1979 was given under instruction by the constituted Attorney Prem Deva Tayal. Even though the landlord who sought possession of the premises for his personal requirement was in Delhi at the relevant time, i.e. in 1979, the petition was also filed through the constituted Attorney and Niranjan Deva Tayal who seeks possession for his use being in Delhi and available is conspicuous by his absence throughout the proceedings.

3. On the petition being lodged the Controller directed summons to be served in the prescribed form. On service of the summons, the tenant being a firm M/s Precision Steel & Engineering Works and its constituted Attorney Shri B.K. Beriwala appeared and filed an affidavit seeking leave to contest eviction petition. In the affidavit tenant contended that respondent 1, i.e. M/s Precision Steel & Engineering Works is the tenant and respondent 2 does not claim any interest in the premises in question in his personal capacity and ought not

to have been impleaded as a respondent. While denying that there is any undivided family styled as Prem Deva Niranjan Deva Tayal it was contended that the petitioner is not entitled to file a petition under Section 14(1)(e) because the purpose of letting was not residential alone but combined purpose of residence-cum-business. It was denied that the tenant entered the premises as a licensee and subsequently the contract of lease was entered into and it was submitted that the tenant entered the premises as tenant effective from September 13, 1971, and the lease was for residential-cum-commercial purpose. A specific agreement was pleaded that the tenant which is a partnership was entitled to use the premises for the residence of the director and/or partner as also for the office purpose. Reliance was placed on Clause 6 of the License Agreement, which was really and substantially according to the tenant a contract of lease. It was also alleged that since the inception of the tenancy the premises have been used both for residence and business purposes to the knowledge of landlord and local authorities and no objection has been raised in this behalf. It was emphatically denied that the premises were required by the landlord for his personal use as well as for the use of the members of his family and it was also denied that the landlord has not in his possession reasonably suitable accommodation in Delhi. It was positively averred that Niranjan Deva Tayal who claims to be the owner of the premises and for whose personal requirement the eviction petition has been filed has been residing at 32, Anand Lok, New Delhi and that is the address of the landlord set out in cause title of the petition filed by the Attorney. Dimension of the premises in possession of the landlord was given out as 2 1/2-storey building built on a plot of 1000 sq. yards. It was averred that the building now in possession of the landlord is divided into four blocks or units, each block consisting of four bed rooms, three bath rooms, one kitchen, one living room and one drawing-cum-dining room. It was in terms stated that the whole of the house is in occupation and possession of petitioner landlord and he has been residing all along in the house much prior to the beginning of tenancy and he is in possession of the same. It was further averred that the petitioner has concealed the fact that petitioner is the owner of another building at 52, Anand Lok, New Delhi, which building is equally big. One other averment of which notice may be taken is that the petitioner has been managing both the buildings and whenever blocks fall vacant he lets them out at higher rent. It was specifically stated that front portion of the building at B-44, Greater Kailash Part I has the same accommodation as the building which the landlord has in his possession at present. In order to point out that the petitioner landlord when he comes into possession of premises vacated by tenants lets out the same at higher rent thereby contravening law and obtains unlawful enrichment, it was averred that the premises of identical size and nature situated at the back of the demised premises were taken on rent by M/s Kirloskar Company during the period 1970-73 and when vacated by the tenant the same was let out to Food Corporation of India from 1974-1975 and after getting the same vacated the same was let out in 1976 to Yash Mahajan and on each such opportunity rent was enhanced. It was accordingly alleged that the petition is mala fide and the claim of bona fide requirement is utterly untenable.

4. A counter-affidavit was filed on behalf of the landlord to the affidavit seeking leave to defend reiterating what was averred in the main petition, namely, that Prem Deva Niranjan Deva Tayal (HUF) is the owner of the property and that Niranjan Deva Tayal is the Karta of the same. It was stated that the landlord bona fide required the premises for his own use. With reference to the building situated at 32, Anand Lok, New Delhi, it was stated that Niranjan

Deva Tayal has no interest in the property and that the petitioner Niranjan Deva Tayal has no other suitable residential accommodation in Delhi. It was claimed that the property at 32, Anand Lok, New Delhi, belongs to one K.D. Tayal. The dimension of the house was also disputed. With reference to the premises at 32, Anand Lok, New Delhi, it was stated that the building is not being used as residential premises but it is only a garage block. It was further averred that Niranjan Deva Tayal was serving in Saudi Arabia and, therefore, the premises were given on leave and licence but now that the petitioner has returned to India and has permanently settled down he requires the premises for his own use. A further averment was made to the effect that the block at the back of the demised premises is at present in occupation of M/s Coronation Spinning Co. Dadra, and the occupant is entitled to occupy the premises till 1981.

5. Frankly, in appeal by special leave under Article 136 it was not necessary to set out the pleading in detail. However, the question before this Court is whether leave to contest the petition ought or ought not to be granted and that is clearly relatable and wholly dependent upon the averments in the pleadings and the disputed questions of facts arising therefrom and that is the apology for detailed narration of rival contentions.

6. And now to law. Section 14(1)(e) of the Act reads ….

Section 25-B which forms part of Chapter III-A was introduced in the Act by Amending Act 18 of 1976 with effect from December 1, 1975. The sections is headed 'Summary Trial of Certain Applications'. Section 25-B(1), (4) and (5) are material for the present purpose.

7. The increased tempo of industrialisation since the independence resulted in mass migration of population from rural to urban areas. This urbanisation process resulted in phenomenal demand for housing accommodation. Harsh economic law of demand and supply operated with full vigour to the disadvantage of the under privileged. To checkmate the profiteering by the owners of property and to protect the weaker sections, most of the States in our country enacted legislation for the protection of tenants of premises situated in urban and semi-urban areas. These legislation have been enacted with the avowed object of putting a fetter on the unrestricted right of re-entry enjoyed by the landlords with a view to protecting the tenants assuring security of tenure. This avowed object and purpose for enacting legislation must always inform and guide the interpretative process of such socially oriented beneficial legislation. But the language of the statute has to be kept in view to determine the width and ambit of protection. Normally in all such statutes a provision is inserted prescribing enabling provision under which landlord can recover possession and thereby restricted the unfettered right of re-entry. One such provision normally to be found in all such statutes is the one which enables a landlord to recover possession if he bona fide requires the same for occupation by himself or for the use of the members of the family dependent on him. If the landlord seeks possession bona fide for his personal requirement, he must commence the action by filing a petition and the tenant would be entitled to appear and defend the action. While defending the action in an adversary system the tenant would file his written statement raising contentions which in terms would focus the attention of the court on questions of facts in dispute on the basis of which issues on which parties are at variance would be framed. Both the parties would lead evidence and ultimately on evaluation of evidence the court/Controller

would determine the issues on the principle of pre-ponderance of probability and answer the issues one way or the other determining the fate of the petition.

8. That was the position under the Act. On the introduction of Chapter III-A a notable departure has been made in the Act with regard to the procedure for trial of action brought under Section 14-A and 14(1)(e). When a petition is brought before the Controller under Section 14(1)(e) a summon has to be issued to the tenant and when the summons is served the tenant cannot straightaway proceed to contest the petition for eviction from the premises but either he must surrender possession or seek leave to contest the petition. While seeking leave he must file an affidavit setting out the ground on which he seeks to contest the application for eviction. This is the scheme of Section 25-B (1) and (4). Then comes Section 25-B(5) which provides that the Controller is under a statutory duty - note the expression "shall give leave to the tenant if he discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession" of the premises on the ground mentioned in Section 14(1)(e), i.e. bona fide requirement for his personal use or the use of the members of his family.

9. Let us recall the procedure for obtaining a decree or order for eviction against a tenant entitled to protection of Rent Act other than Delhi Rent Act. What would the court expect the landlord to prove before be seeks to recover possession from the tenant on the ground that he bona fide requires possession for his own use or the use of the members of his family? In a catena of decisions it has been decided that in order to succeed the landlord should show that the premises have been let out as a residence or for residential purposes; that the landlord needs to occupy the premises which may imply that either he has got no other accommodation in the city or town in which the premises in question are situated or the one in his possession does not provide him a suitable residence and he is required to shift to the premises in question; that his need is genuine and that it is not merely a fanciful desire of an affluent landlord who for the fancy of changing the premises would like to shift to the one from which the tenant is sought to be evicted; that he is acting bona fide in approaching the court for recovery of possession; and that his demand is reasonable. These facts have to be proved to the satisfaction of the court and once the trend of judicial opinion as expressed by the court went so far as to say that the court cannot pass a decree on compromise because the statute has cast duty on the court to be satisfied about the requirement of the landlord and a compromise decree was held to be nullity (***Bahadur Singh* v. *Muni Subrat Dass*** [(1969) 2 SCR 432] and ***Kaushalya Devi* v. *K.L. Bansal*** [AIR 1970 SC 838)]). Certain States have in their respective legislations also imposed an additional condition before the landlord can obtain possession for personal requirement viz. before making a decree or order of eviction the court must weigh the relative hardship of the landlord and the tenant and if greater hardship is likely to be caused to tenant, the court is under an obligation to refuse to pass the decree notwithstanding the fact that landlord has proved his requirement. Rent restriction legislation enacted by States may differ from State to State. Restrictions on the landlord's unfettered right to re-entry may be stringent or not so stringent depending upon the local situation. But the underlying thrust of all rent restriction legislations universally recognised must not be lost sight of that the enabling provisions of the Rent Restriction Act are not to be so construed or interpreted as would make the protection conferred on the tenant illusory by a

liberal approach to the desire of the landlord to evict tenant under the camouflage of personal requirement. It is not for a moment suggested that a landlord should not get possession if he genuinely requires the premises for his own use and occupation. That much incidental element of ownership in a country governed by mixed economy is still being recognised though in the wake of agrarian reforms the tenants of agricultural land have been made the owners thereof in almost the whole country. But that is a subject with which we are not concerned. We must proceed on the accepted principle that the one element of ownership, viz., right to personally occupy and enjoy, stands legislatively recognised when an enabling provision was made while restricting the unfettered tight of the landlord to re-enter demised premises at his sweet will giving him an opportunity to seek possession on the ground of personal requirement. But care has to be taken to visualise that the lust for increasing rent by getting the premises vacated masquerading under the garb of personal requirement does not overreach the courts. This is the gist of observations of this Court in ***Bega Begum*** **v.** ***Abdul Ahad Khan*** [AIR 1979 SC 272] where it was held that the expression 'reasonable requirement' in Section 11(h) of the Jammu & Kashmir Houses and Shops Rent Control Act, 1966, undoubtedly postulates that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need nothing but a desire as the High Court appeared to have done in that case. This observation was quoted with approval in ***Kewal Singh*** **v.** ***Lajwanti*** [AIR 1980 SC 161. In ***Kewal Singh*** case [AIR 1980 SC 161] this Court repelled challenge to the constitutional validity of Section 25-B of the Act.

10. Undoubtedly the procedure prescribed in Chapter III-A of the Act is materially different in that it is more harsh and weighted against the tenant. But should this procedural conundrum change the entire landscape of law? When a landlord approaches Controller under Section 14(1) proviso (e), is the court to presume every averment in the petition as unchallengeable and truthful? The consequence of refusal to grant leave must stare in the face of the Controller that the landlord gets an order of eviction without batting the eyelid. This consequence itself is sufficient to liberally approach the prayer for leave to contest the petition. While examining the question whether leave to defend ought or ought not to be granted the limited jurisdiction which the Controller enjoys is prescribed within the well-defined limits and he cannot get into a sort of a trial by affidavits preferring one set to the other and thus concluding the trial without holding the trial itself. Short-circuiting the proceedings need not masquerade as a strict compliance with sub-section (5) of Section 25-B. The provision is cast in a mandatory form. Statutory duty is cast on the Controller to give leave as the legislature uses the expression "the Controller shall give" to the tenant leave to contest if the affidavit filed by the tenant discloses such fact as would disentitle the landlord for an order for recovery of possession. The Controller has to look at the affidavit of the tenant seeking leave to contest. Browsing through the affidavit if there emerges averment of facts which on a trial, if believed, would non-suit the landlord, leave ought to be granted. Let it be made clear that the statute is not cast in a negative form by enacting that the Controller shall refuse to give to the tenant leave to contest the application unless the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order, etc. That is not the mould in which the section is cast. The provision indicates a positive approach and not a negative inhibition. When the language of a statute is plain, the principle that

legislature speaks its mind in the plainest language has to be given full effect. No canon of construction permits in the name of illusory intendment defeating the plain, unambiguous language expressed to convey the legislative mind. And the legislature had before it Order 37, an analogous phraseology of the Code of Civil Procedure, namely, 'substantial defence' and 'vexatious and frivolous defence', the legislature used the plainest language, 'facts disclosed in the affidavit of the tenant'.

11. The language of sub-section (5) of Section 25-B casts a statutory duty on the Controller to give to the tenant leave to contest the application, the only pre-condition for exercise of jurisdiction being that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground mentioned in Section 14(1)(e). Section 14(1) starts with a non obstante clause which would necessarily imply that the Controller is precluded from passing an order or decree for recovery of possession of any premises in favour of the landlord against the tenant unless the case is covered by any of the clauses of the proviso. The proviso sets out various enabling provisions, on proof of one or the other, the landlords would be entitled to recover possession from the tenant. One such enabling provision is the one enacted in Section 14(1) proviso (e). Upon a true construction of proviso (e) to Section 14(1) it would unmistakably appear that the burden is on the landlord to satisfy the Controller that the premises of which possession is sought is (i) let for residential purposes; and (ii) possession of the premises is required bona fide by the landlord for occupation as residence for himself or for any member of his family, etc.; and (iii) that the landlord or the person for whose benefit possession is sought has not other reasonably suitable residential accommodation. This burden, landlord is required to discharge before the Controller gets jurisdiction to make an order for eviction. This necessarily transpires from the language of Section 14(1) which precludes the Controller from making any order or decree for recovery of possession unless the landlord proves to his satisfaction the conditions in the enabling provision enacted as proviso under which possession is sought. Initial burden is thus on the landlord.

12. The question is whether this burden is in any way diluted or stands discharged or wholly shifted to the tenant because of a different procedure prescribed in Chapter III-A of the Act. Section 25(4) provides that in default of the appearance of the tenant in pursuance of the summons or his obtaining such leave, the statement made by the landlord by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground set out in Section 14(1)(e). On a combined reading of Section 14(1) proviso (e) with Section 25-B (1) and (4) the legal position that emerges is that on a proper application being made in the prescribed manner which is required to be supported by an affidavit, unless the tenant obtains leave to defend as contemplated by sub-sections (4) and (5) of Section 25-B, the tenant is deemed to have admitted all the averments made in the petition filed by the landlord. The effect of these provisions is that the Controller would act on the admission of the tenant and there is not better proof of fact as admission, ordinarily because facts which are admitted need not be proved. But what happens if the tenant appears pursuant to the summons issued under sub-section (2) of Section 25-B, files an affidavit stating the grounds on which he seeks to contest the application. As a corollary it would transpire that the facts pleaded by the landlord are

disputed and controverted. How is the Controller thereafter to proceed in the matter. It would be open to the landlord to contest the application of the tenant seeking leave to contest and for that purpose he can file an affidavit in reply but production and admission and evaluation of documents at that stage has no place. The Controller has to confine himself to the affidavit filed by the tenant under sub-section (4) and the reply, if any. On perusing the affidavit filed by the tenant and the reply if any filed by landlord the Controller has to pose to himself the only question: Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in clause (e) of the proviso to Section 14(1). The Controller is not to record a finding on disputed questions of facts or his preference of one set of affidavit against other set of affidavits. That is not jurisdiction conferred on the Controller by sub-section (5) because the Controller while examining the question whether there is a proper case for granting leave to contest the application has to confine himself to the affidavit filed by the tenant disclosing such facts as would prima facie and not on contest disentitle the landlord from obtaining an order for recovery of possession. At the stage when affidavit is filed under sub-section (4) by the tenant and the same is being examined for the purposes of sub-section (5) the Controller has to confine himself only to the averments in the affidavit and the reply if any and that becomes manifestly clear from the language of sub-section (5) that the Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from recovering possession etc. The jurisdiction to grant leave to contest or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. That alone at that stage is the relevant document and one must confine to the averments in the affidavit. If the averments in the affidavit disclose such facts which, if ultimately proved to the satisfaction of the court, would disentitle the landlord from recovering possession, that by itself makes it obligatory upon the Controller to grant leave. It is immaterial that facts alleged and disclosed are controverted by the landlord because that stage of proof is yet to come. It is distinctly possible that a tenant may fail to make good the defence raised by him. Plausibility of the defence raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown. This view was taken in ***B. Kanjibhai* v. *Mohanraj Rajendrakumarm*** [AIR 1970 Guj. 32] and ***Kishan Singh* v. *Mohd. Shafi*** [AIR 1964 J & K 39]appears to have been approved in ***Santosh Kumar* v. *Bhai Mool Singh*** [1958 SCR 1211], where at SCR page 1217 this Court while commenting upon an order granting conditional leave under Order XXXVII, Rule 3, passed by the Trial Judge which was to this effect: "In the absence of these documents, the defence of the defendants seems to be vague consisting of indefinite assertions...", observed as under:

> This is a surprising conclusion. The facts given in the affidavit are clear and precise, the defence could hardly have been clearer. We find it difficult to see how a defence that, on the face of it, is clear, becomes vague simply because the evidence by which it is to be proved is not brought on file at the time the defence is put in.

The learned judge has failed to see that the stage of proof can only come after the defendant has been allowed to enter an appearance and defend the suit, and that the nature of the defence has to be determined at the time when the affidavit is put in. At that stage all that the Court has to determine is whether "if the facts alleged by the defendant are duly proved"

they will afford a good, or even a plausible, answer to the plaintiff's claim. Once the Court is satisfied about that, leave cannot be withheld and no question about imposing conditions can arise; and once leave is granted, the normal procedure of a suit, so far as evidence and proof go, obtains.

The manifest error committed in the procedure followed at present by the Controller under Section 25-B may be pointed out. The tenant has to file an affidavit stating the grounds on which he seeks to contest the application. The Controller may accept an affidavit in reply if landlord chooses to file one. So far there is no difficulty. There then follows affidavit in rejoinder and sub-rejoinder and the documents are produced and when this process ends the Controller proceeds to examine the rival contentions as if evidence produced in the form of the affidavits untested by cross-examination and unproved documents are before him on the appreciation and evaluation of which he records an affirmative finding that the facts disclosed in the affidavit of tenant are not proved and therefore leave to contest should be refused. In our opinion, this is wholly impermissible. The regular trial required to be held by a Court of Small Causes as contemplated by sub-section (6) read with sub-section (7) of Section 25-B is not to be substituted by affidavits and counter-affidavits at the stage of considering tenant's affidavit filed for obtaining leave to contest the petition under sub-section (4). Sub-section (6) enjoins a duty on the Controller where leave is granted to the tenant to contest the application to commence the hearing of the petition as early as practicable and sub-section (6) prescribes procedure to be followed as if the controller is a Court of Small Causes. The Court of Small Causes follows the summary procedure in the adversary system where witness are examined and cross-examined and truth of averment is decided on the touchstone of cross-examination. A speedy trial not conforming to the well-recognised principle of arriving at truth by testing evidence on the touchstone of cross-examination, should not be easily read into provision at a stage not contemplated by the provision unless statute positively by a specific provision introduces the same. The scheme of Section 25-B does not introduce a trial for arriving at the truth at the stage of proceeding contemplated by sub-section (4) of Section 25-B.

13. It is at this stage advantageous to refer to the analogous provisions in Order 37 of the Code of Civil Procedure to find out whether that provision is bodily incorporated in sub-section (5) of Section 25-B or there is material departure so that stare decisis may or may not shed light on the vexed question. Order XXXVII, Rule 1 sets out courts and classes of suits to which the order would apply. Rule 2 provides for institution of summary suits and sub-rule (3) of Rule 2 provides that the defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for a sum, etc. Sub-rule (3) provides the procedure where the defendant enters an appearance. On such appearance being entered the plaintiff has to serve on the defendant summons for judgement in the prescribed form which is to be supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

14. It may be recalled that the language of Rule 3 of Order XXXVII, Code of Civil Procedure,1909 prior to the amendment of the Code in 1976 was materially different and substantially the whole of Rule 3 has been replaced making detailed provision therein about the manner, method and circumstances in which leave to defend may be granted or refused.

Leave to defend under sub-rule (5) of Rule 3 may be granted if the defendant by affidavit or otherwise discloses such facts to the court as may be deemed sufficient to entitle him to defend. The first proviso makes it clear that the leave shall not be refused unless the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious. Recall the language of sub-section (5) of Section 25-B which makes it obligatory upon the Controller to give leave by use of the mandatory language that the Controller shall give leave to defend to the tenant to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession, etc. For proper and better appreciation it may be made clear that when the mandate of the section is that leave shall be granted as it enjoins a positive duty while the proviso to sub-rule (5) of Rule 3 of Order 37 provides that leave to defend shall not be refused unless the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise, etc. Undoubtedly, the test of triable issue has been largely followed by the court while considering application for leave to defend under Order 37, Rule 3(5) but what constitutes a triable issue always depends upon the facts and circumstances of each case and its connotation would change after the recasting of whole Rule 3 of Order XXXVII. It was, however, urged that the scope and ambit of sub-section (5) of Section 25-B in its comparison with sub-rule (5) of Rule 3 of Order 37 is no more res integra in view of the decision of this Court in ***Busching Schmitz (Pvt.) Ltd.*** **v.** ***P.T. Menghani*** [(1977) 2 SCC 835]. This Court observed as under:

> But we make it plain even at this stage that it is fallacious to approximate (as was sought to be done) Section 25-B (5) with Order 37, Rule 3 of the Code of Civil Procedure. The special setting demanding summary proceeding, the nature of the subject-matter and, above all, the legislative diction which has been deliberately designed, differ in the two provisions. The legal ambit and judicial discretion are wider in the latter while, in the former with which we are concerned, the scope for opening the door to defence is narrowed down by the strict words used. The Controller's power to give leave to contest is cribbed by the condition that the 'affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14-A. Disclosure of facts which disentitle recovery of possession is a sine qua non for grant of leave. Are there facts disentitling the invocation of Section 14-A?

It is not clear from the decision whether this Court took note of whole of the re-structured Rule 3 of Order 37 or it was keeping in view the unamended Rule 3 of Order 37. Neither is quoted, none is referred to and it is not clear whether a note of amendment of 1976 was taken. That apart, compare the language of both the provisions as hereinabove indicated. The two provisos to sub-rule (5) of Rule 3 make it clear that the leave cannot be refused if the defendant has a substantial defence to make or that the defence intended to be put is neither frivolous nor vexatious. Defence has to be substantial before leave can be obtained. Compare it with expression "affidavit discloses such facts as would disentitle that landlord, etc." It is

not difficult to ascertain where obligatory duty is cast. Mere disclosure of facts, not a substantial defence is the sine qua non. Further, the court can grant conditional leave or leave limited to the issue under Order 37, Rule 3(5). There is no such power conferred on the Controller under sub-section (5) of Section 25-B. Coming to the social setting referred to by this Court, one must not overlook the fact that a summary procedure can as well be prescribed for all suits to satisfy the felt needs of time referable to highly congested court dockets. There is no evangelical sanctity in speeding up the actions against tenant alone. The landlord at one stage lets out the premises with the knowledge that it is difficult to evict tenant and obtain possession and, therefore, would reasonably be expected to foresee that even if he has some future need he will not get back possession and yet after letting out premises in a short time approaches the court on the ground of personal requirement and the tenant may not get even a chance to defend himself. Social setting is, therefore, in favour of tenant. However, referring to this decision a Full Bench of the Delhi High Court in ***Mohan Lal* v. *Tirath Ram Chopra*** [(1982) 22 DLT 1], observed that the scope for granting leave under sub-section (5) of Section 25-B is narrower than the one under Order 37, Rule 3, Code of Civil Procedure. We do not accept the interpretation of the observation of this Court in ***Busching Schmitz*** case as understood by the Delhi High Court.

15. At this stage we may also refer with advantage to the decision of this Court in ***B.N. Mutto* v. *T.K. Nandi*** [(1979) 1 SCC 361]. In this case a petition under Section 14-A(1) of the Delhi Rent Control Act was filed for eviction of the tenant on the ground that the landlord has retired from government service and he has been called upon to vacate the government premises which he was occupying by virtue of his office. The only relevant observation to which our attention was drawn reads as under : (SCC p. 371, para 18)

> Leave to contest an application under Section 14-A(1) cannot be said to be analogous to the provisions of grant of leave to defend as envisaged in the Civil Procedure Code. Order 37, Rule 2, sub-rule (3) of the Code of Civil Procedure provides that the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend. Sub-rule (1) of Rule 3 of Order XXXVII lays down the procedure to obtain leave. Under the provisions leave to appear and defend the suit is to be given if the affidavit discloses such facts as would make incumbent on the holder to prove consideration or such other facts as the court may deem sufficient to support the application. The scope of Section 25-B(5) is very restricted for leave to contest can only be given if the facts are such as would disentitle the landlord from obtaining an order for recovery of possession on the ground specified in Section 14-A.

With respect, the fact that an obligatory duty is cast on the Controller to grant leave on disclosure of facts in the affidavit as would disentitle the landlord to obtain possession itself specifies and defines the scope and ambit of jurisdiction and power of the Controller. Assuming that Order 37, sub-rule (5) of Rule 3 confers wider discretion on the court that by mere comparison cannot cut down or narrow or limit the power coupled with the duty conferred on the Controller under sub-section (5) of Section 25-B. Mere disclosure of facts which when proved in a regular trial which would disentitle the landlord to obtain relief, such disclosure only impels the Controller to grant leave. It is not necessary to record as required

by Order 37, Rule 5 whether the defence is substantial or frivolous or vexatious. We find it difficult to subscribe to the view that the jurisdiction under Section 25-B(5) is very limited.

16. We may as well now refer to ***Sarwan*** **Singh v.** ***Kasturi Lal*** [(1977) 1 SCC 750]. Of course, the question substantially raised in that case was about the apparent conflict between Slum Areas (Improvement and Clearance) Act, 1956 and Sections 14-A, 25 and 25-B of Delhi Rent Control Act, 1958. What is the scope and ambit of jurisdiction of the Controller under sub-section (5) of Section 25-B did not come up for consideration. What was, however, pointed out was that Section 25-B provides for a procedure to effectuate the purpose underlying Section 14-A and Section 14(1)(e) which enables the landlords to recover 'immediate possession of the premises'. Expostulating the philosophy underlying this provision this Court observed as under:

> "Whatever be the merits of that philosophy, the theory is that an allottee from the Central Government or a local authority should not be at the mercy of laws delays while being faced with instant eviction by his landlord save on payment of what in practice is penal rent. Faced with a Hobson's choice, to quit the official residence or pay the market rent for it, the allottee had in turn to be afforded a quick and expeditious remedy against his own tenant. With that end in view it was provided that nothing, not even the Slum Clearance Act, shall stand in way of the allottee from evicting his tenant by resorting to the summary procedure prescribed by Chapter III-A. The tenant is even deprived of the elementary right of a defendant to defend a proceeding brought against him, save on obtaining leave of the Rent Controller. If the leave is refused, by Section 25-B(4) the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the landlord is entitled to an order for eviction. No appeal or second appeal lies against that order. Section 25-B(8) denies that right and provides instead for a revision to the High Court whose jurisdiction is limited to finding out whether the order complained of is according to law".

This observation is in the context of a proceeding under Section 14-A where a landlord on ceasing to be in government service is likely to be on the road. It ill-compares with Section 14(1)(e). But apart from that, this decision is not helpful because the question did not arise in that case about the scope and ambit of Section 25-B(5). Undoubtedly, as has been stated in the decision, the object and purpose of the legislation assumes greater relevance while interpreting the language of the statute. The provision under construction finds its place in the Delhi Rent Control Act, 1958. Its long title shows the object underlying the legislation. The long title is: "An Act to provide for control of rent and eviction and rates of hotels, lodging houses and for the lease of vacant premises to Government in certain areas in the Union Territory of Delhi". The underlying object is to provide for control of eviction. This must inform every interpretative process including the provision contained in Section 25-B(5). By construction of Section 25-B(5) let us not return to the days when under the Transfer of Property Act except in the case of fixed period of tenancy the tenant at will had no defence to offer and could be thrown out at the mere whim and fancy of the landlord. When leave to contest the petition is refused the uninvestigated averments in the petition are deemed to be of such great evidentiary value as to result in eviction without the examination of those

averments. The outcome of refusal to grant leave must stare into the face while deciding the scope of the power and jurisdiction under Section 25-B(5).

17. In passing we may refer to two decisions of this Court in ***Charan Dass Duggal*** **v.** ***Brahma Nand*** [1983 (1) SCC 301] and ***Om Prakash Saluja*** **v.** ***Saraswati Devi*** [AIR 1982 1599][Civil Appeal No. 527 of 1982, decided on February 8, 1982]. We would have avoided any reference to these two decisions because the decision in each case was rendered on the facts of the case but the Full Bench of the Delhi High Court referred to these two decisions and observed that the ratio in each of it runs counter to the large Bench decisions of this Court in ***Busching Schmitz*** [AIR 1977 SC 1569] and ***B.N. Mutto*** [AIR 1979 SC 460] cases and that the two earlier decisions provided the law of the land under Article 141 of the Constitution. We fail to see any inherent conflict between the aforementioned two earlier decisions and the two later decisions. The earlier two decisions have been fully discussed by us and we find nothing in the later two decisions which may even remotely be said to run counter to the ratio of the earlier decisions.

18. It is indisputable that while examining the affidavit of the tenant filed under Section 25-B(4) for the purpose of granting or refusing to grant leave to contest the petition the landlord who has initiated the action has to be heard. It would follow as a necessary corollary that the landlord may controvert the averments made in the affidavit of the tenant but the decision to grant or refuse leave must be based on the facts disclosed in the affidavit. If they are controverted by the landlord that fact may be borne in mind but if the facts disclosed in the affidavit of the tenant are contested by way of proof or disproof or producing evidence in the form of other affidavits or documents that would not be permissible. It is not the stage of proof of facts; it is only a stage of disclosure of facts. Undoubtedly, the rules of natural justice apart from the adversary system we follow must permit the landlord to contest affidavit filed by the tenant and he can do so by controverting the same by an affidavit. That would be an affidavit in reply because tenant's affidavit is the main affidavit being treated as an application seeking leave to contest the petition. But, the matter should end there. Any attempt at investigating the facts whether they appear to be proved or disproved is beyond the scope of sub-section (5) of Section 25-B. Viewed from this angle the decision in ***Mohan Lal*** case [(1982) 22 DLT 1] rendered by the Full Bench of the Delhi High Court is far in excess of the requirement of Section 25-B (5) and the view taken therein does not commend to us.

19. It was, however, urged that Section 37(1) makes it obligatory for the Controller to not only hear the landlord but examine evidence at the stage of granting or refusing to grant leave to contest. Section 37(1) provides that no order which prejudicially affects any person shall be made by the Controller under the Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objections, if any, and evidence he may produce in support of the same have been considered by the Controller. Sub-section (2) of Section 37 provides that subject to any rules that may be made under the Act, the Controller shall, while holding an enquiry in any proceeding before him, follow as far as may be the practice and procedure of a Court of Small Causes, including the recording of evidence. Section 37(1) prescribes procedure to be followed by the Controller in a proceeding under the Act and sub-section (2) makes it clear that subject to the rules that may be made under the Act, the Court has to follow the practice and procedure of the Court of Small

Causes inclusive of the provision for recording of evidence. However, in this context it is advantageous to refer to sub-section (7) of Section 25-B. It reads as under:

> 25-B. (7) Notwithstanding anything contained in sub-section (2) of Section 37, the Controller shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.

Sub-section (7) of Section 25-B opens with a non obstante clause and provides that while holding an enquiry in a proceeding to which the Chapter III-A applies, the Controller has to follow the practice and procedure of a Court of Small Causes including the recording of evidence. Section 25-B(1) leaves no room for doubt that it is a self-contained code and that is why sub-section (7) had to open with a non obstante clause. It is crystal clear that while holding the enquiry under Chapter III-A which incorporates Section 25-B, the court has to follow the practice and procedure of a Court of Small Causes. It was, however, submitted that the non obstante clause excludes the application of sub-section (2) of Section 37 and not sub-section (1) of Section 37 and, therefore, when leave to contest is sought by the tenant not only the landlord can contest the same which is indisputable but the Controller will have to follow the procedure prescribed in Section 37(1), namely, inviting the objections, taking into consideration the evidence that may be produced, etc. If Section 37(1) is attracted and the evidence has to be produced and the Controller is bound to take that evidence into consideration, the evidence can as well be oral evidence which necessitates the examinations and cross-examination of witnesses. If that is contemplated by Section 37(1), incorporating it in Section 25-B would be self-defeating. On the contrary even the exclusion of Section 37(1) will necessarily follow from the provision contained in sub-section (10) of Section 25-B which reads as under:

> 25-B. (10) Save as otherwise provided in this Chapter, the procedure for the disposal of an application for eviction on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14-A, shall be the same as the procedure for the disposal of applications by Controllers.

It would appear at a glance that sub-section (10) operates to bring in Section 37(1) after leave to contest is granted. However, if there is any provision in Section 25-B for dealing with an application under that section that would prevail over other provisions of the Act while considering an application amongst others are under Section 14(1) proviso (e). If at the time of considering the application for granting leave the procedure under Section 37(1) is to be followed it would render sub-section (10) superfluous and redundant. If Section 37(1) were to govern all proceedings including the application for leave to contest the proceedings, sub-section (7) and sub-section (10) would both be rendered redundant. On the contrary the very fact that sub-section (7) provides that while considering the affidavit of the tenant seeking permission to contest the proceedings the practice and procedure of the Small Causes Court will have to be followed itself indicates the legislative intention of treating Chapter III-A and especially Section 25-B as self-contained code and this conclusion is buttressed by the provision of sub-section (1) which provides that every application by landlord for recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14 shall be dealt with in accordance with the procedure specified in Section 25-

B. Any other section prescribing procedure for disposal of application covered by sub-section (1) of Section 25-B will be excluded. And that will also exclude Section 37(1). The stage for considering the application for leave to contest the petition is anterior to the stage of hearing the substantive petition for eviction and the procedure for the disposal is prescribed in sub-section (7). After grant of leave to contest, sub-section (10) of Section 25-B comes into operation and it makes it abundantly clear that the procedure prescribed while holding an enquiry consequent upon the granting of leave to contest shall be the same as required to be followed by the Controller. This directly points in the direction of Section 37(1). Therefore, it is crystal clear that Section 37(1) is not attracted at the stage of considering an application for leave to contest filed under sub-section (4) and examined under sub-section 25-B.

20. Before concluding on this point conceding that a summary procedure has been devised so that the bane of law courts and legal procedure as at present in vogue manifestly showing regard for the truth being the last item on the list of priorities and, therefore, the tenant should not necessarily be permitted to prolong the litigation and cause hardship to the landlord who is seeking possession on the ground of personal requirement by raising untenable and frivolous defence where speedy decision is desirable in the interest of society, does not imply that ignoring the mandate of law, the Controller should hold trial at a stage not prescribed by the statute. Inability to make good a defence does not render every defence either frivolous or vexatious. In a civil proceeding the courts decide on the preponderance of probabilities and it may be that while evaluating the evidence that court may lean one way or the other but the one rejected does not necessarily become vexatious or frivolous. The last two are positive concepts and have to be specifically found and it is not an end product of failure to offer convincing proof because sometimes a party may fail to prove the fact because the other side can so doctor or articulate the facts that the proof may not be easily available. Coupled with this is the fact that the justice delivery system in this country worshipped and ardently eulogised is an adversary system the basic postulate of which was noticed by this Court in ***Sangram Singh* v. *Election Tribunal, Kotah*** [AIR 1955 SC 425] as under:

> Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done on both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that effect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.

Add to this the harshness of the procedure prescribed under Section 25-B. The Controller is the final arbiter of facts. Once leave is refused, no appeal is provided against the order

refusing leave (see sub-section (8) of Section 25-B). A revision petition may be filed to the High Court but realistically no one should be in doubt about the narrow constricted jurisdiction of the High Court while interfering with findings of facts in exercise of revisional jurisdiction. Compared to the normal procedure certainly the procedure is a harsh one and that considerably adds to the responsibility of the Controller at the time of deciding the application for leave to contest the petition. Wisdom, sagacity and the consequence of refusal to grant leave coupled with limited scope of enquiry being confined to facts disclosed in affidavit of the tenant should guide the approach of the Controller.

21. Since ***Sangram Singh*** [AIR 1955 SC 425] the ever widening horizon of fair procedure while rendering administrative decision as set out in ***Maneka Gandhi*** [AIR 1978 SC 597] should guide the approach of the court while examining the encroachment, fetters and restriction in the procedure normally followed in courts. Speedy trial is the demand of the day but in the name of speedy trial a landlord whose right of re-entry was sought to be fettered by a welfare legislation with its social orientation in favour of a class of people unable to have its own roof over the head - the tenant should not be exposed to the vagaries of augmenting that right which even when Rent Restriction Act was not in force had to be enforced through the machinery of law with normal trial and appeal.

22. What follows then? The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in sub-section (5) of Section 25-B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts - no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant leave because the statute says "on disclosure of such facts the Controller shall grant leave". It is different to be exhaustive as to what such facts could be but ordinarily when an action is brought under Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.

A.P. SEN, J. (*Minority*) - I agree that this pre-eminently is a fit case where leave to contest the application under s. 14 (1) (e) must be granted to the tenant under sub-s. (5) of s. 25B of the Delhi Rent Control (Amendment) Act, 1958 ('Act' for short), but I have the misfortune to

differ from the construction placed upon the provisions contained in sub-s. (5) of s. 25B of the Act.

There is a definite public purpose behind the enactment of Chapter IIIA introduced by the Delhi Rent Control (Amendment) Act, 1976. The words "if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in cl.(e) of the proviso to sub-s. (1) of s. 14 or under s. 14A" used in sub-s. (5) of s. 25B are to be interpreted in a manner which is in consonance with the intention of the Legislature and must be construed in a sense which would carry out the object and purpose of the Act. The construction to be adopted must be meaningful and innovative. A mechanical and literal construction of these words detached from the context of the other provisions as also the object and purpose of the enactment will reduce this beneficial legislation to futility.

S. 14A of the Act was enacted to confer the right to recover immediate possession, upon persons who being in occupation of any residential premises allotted to them by the Central Government or any local authority, were required, in pursuance of any general or special order made by that Government or authority to vacate such residential accommodation, or in default, to incur the liability to pay penal rent. The whole object in s. 14A was to ensure that all Government servants to whom residential accommodation had been allotted by the Government or any local authority, should vacate their Government accommodation, if they have any house of their own in the Union Territory of Delhi.

Further, experience in the past showed that landlords who were in bona fide requirement of their accommodation for residential purposes under cl. (e) of the proviso to sub-s. (1) of s. 14 were being put to great hardship due to the dilatory procedure of the suit. It was felt in the public interest that such landlords, who were in bona fide requirement of their residential premises for their own occupation or for the occupation of any member of their family dependent on them, should not be subjected to protracted trial of a civil suit with concomitant rights of appeals.

The underlying object behind the enactment of Chapter IIIA was that these classes of landlords i.e. a landlord who was in bona fide requirement of his residential premises for his own occupation or for the occupation of any member of his family dependent on him under cl. (e) of the proviso to sub-s. (1) of s. 14, or a landlord seeking to enforce the right to recover immediate possession under s. 14A of the Act, should not be at the mercy of law's delays but there should be quick and expeditious remedy against his own tenant.

Apart from conferring rights under s. 14A to recover immediate possession, a summary procedure for trial of applications made under s. 14 (1) (e), or under s. 14A, was provided for by Chapter IIIA. S. 25A provides that the provisions of Chapter IIIA which contains ss. 25A, 25B and 25C and any rule made there under shall have effect "notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any law for the time being in force." By sub-s. (1) of s. 25B, every application by a landlord for recovery of possession of any premises on the ground specified in cl. (e) of the proviso to sub-s. (1) of s. 14, or under s. 14A, has to be dealt with in accordance with the procedure specified in Chapter IIIA. The conferral of the right to recover immediate possession under s. 14A on a person in occupation

of any residential premises allotted by the Central Government or any local authority necessitated a consequential change in the law. Such a person, before the enactment of s. 14A, could not evict his own tenant because so long as he was in occupation of the residential accommodation allotted to him, he could not satisfy the requirement of cl. (e) of the proviso to sub-s. (1) of s. 14 that he should not have any other reasonably suitable accommodation. In order that the object of s. 14A may not be frustrated, s. 25C provides that nothing contained in sub-s (6) of s. 14 shall apply to a landlord who is in occupation of any premises allotted to him by the Central Government or any local authority is required to vacate that residential accommodation. There was also a similar change brought about with respect to a claim by a landlord under cl. (e) of the proviso to sub-s. (1) of s. 14. Sub-s. (7) of s. 14 provides that where an order for recovery of possession is made on the ground specified in cl. (e) of the proviso to sub-s. (1) of s. 14, the landlord shall not be entitled to obtain immediate possession thereof before the expiration of a period of six months from the date of the order. Sub-s. (2) of s. 25C reduces the period of six months to two months.

One of the dominant objects with which the legislation was introduced was to mitigate the hardship of landlords who were in bona fide requirement of their residential premises and had made an application for eviction under s. 14 (1) (e), or under s. 14A, and to obtain immediate possession of such premises without well-known travails of our procedural laws. The whole object was to confine the trial only to such cases where the tenant had such a defence as would disentitle the landlord from obtaining an order for eviction under s. 14 (1) (e), or under s. 14A, and to provide for a summary procedure of trial of such applications. The words "if the affidavit filed by the tenant discloses such facts" used in sub-s. (5) of s. 25B of the Act must therefore take their colour from the context in which they appear.

It is to mitigate the rigour of the law that Parliament in its wisdom introduced Chapter IIIA and made the summary procedure applicable to the trial of applications under s. 14 (1) (e), or under s. 14A. It seeks to strike a balance between the competing needs of a landlord and tenant and has therefore provided that the tenant shall have a right to apply for leave to contest. Sub-s. (4) of s. 25B provides that the tenant shall not contest the prayer of eviction from the premises unless he has filed an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. Under sub-s. (5) of s. 25B, the Controller is enjoined to give the tenant leave to contest the application only if the affidavit filed by the tenant discloses such facts as would disentitle a landlord from obtaining an order for the recovery of possession of the premises on the ground specified in cl. (e) of the proviso to sub-s. (1) of s. 14, or under s. 13, or under s. 14A.

In ***Sarwan Singh*** **v.** ***Kasturi Lal*** [AIR 1977 SC 265], Chandrachud, J. (as he then was) after stating that the object of s. 14A was to confer on a class of landlords the right to recover "immediate possession of the premises" observes:

> "Whatever be the merits of that philosophy, the theory is that an allottee from the Central Government or a local authority should not be at the mercy of law's delays while being faced with instant eviction by his landlord save on payment of what in practice is penal rent. Faced with a Hobson's choice, to quit the official residence or pay the market rent for it, the allottee had in turn to be afforded a quick and expeditious remedy against his own tenant. With that end in view it was provided that

> nothing, not even the Slum Clearance Act, shall stand in the way of the allottee from evicting his tenant by resorting to the summary procedure prescribed by Chapter IIIA. The tenant is even deprived of the elementary right of a defendant to defend a proceeding brought against him, save on obtaining leave of the Rent Controller. If the leave is refused, by s. 25B (4) the statement made by the landlord in the application for eviction, shall be deemed to be admitted by the tenant and the landlord is entitled to an order for eviction. No appeal or second appeal lies against that order. Section 25B (8) denies that right and provides instead for a revision to the High Court whose jurisdiction is limited to finding out whether the order complained of is according to law."

The provisions of Chapter IIIA have been enacted with the object, in the words of Chandrachud, J., "to confer a real, effective and immediate right on a class of landlords to obtain possession of premises let out by them to their tenants." The same considerations are applicable to the disposal of applications under Cl. (e) of the proviso to sub-s.(1) of s. 14. The right to recover immediate possession which accrues under s. 14A of the Act is equated by Parliament with the landlord's bona fide requirement of residential premises for his own occupation or for the occupation of the members of his family under s. 14(1)(e). Sub-s. (5) of s. 25B governs the disposal of both and therefore must be interpreted in a manner which will carry out the legislative mandate.

Under the scheme of the Act, the grant or refusal of leave under sub-s. (5) of s. 25B of the Act, is the most crucial stage of the proceedings initiated on an application for eviction by the landlord under s. 14(1)(e), or under s. 14A, at which stage, the Controller has to decide whether the application should proceed to trial. The Controller obviously cannot come to a decision as to whether or not leave to contest should be granted under sub-s. (5) of s. 25B without affording the parties an opportunity of a hearing. The Controller is not a Court but he has the trappings of a Court, and he must conform to the rules of natural justice. It must therefore follow as a necessary corollary that the Controller has the duty to hear the parties on the question whether leave to contest should or should not be granted under sub-s. (5) of s. 25B of the Act.

Once it is conceded that the landlord has a right to be heard on the question of grant of leave to contest under sub-s. (5) of s.25B, it must follow as a necessary implication that he has a right to refute the facts alleged by the tenant in his affidavit filed under sub-s. (4) of s. 25B and to show that the affidavit filed under sub-s. (4) of s. 25B by the tenant does not represent true facts. The Controller is therefore bound to give the landlord an opportunity to meet the allegations made by the tenant. The Controller must apply his mind not only to the averments made by the landlord in his application for eviction, but also to the facts alleged by the tenant in his affidavit for leave to contest as well as the facts disclosed by the landlord in his affidavit in rejoinder, besides the other material on record i.e. the documents filed by the parties in support of their respective claims in order to come to a conclusion whether the requirements of sub-s. (1) of s. 25B are fulfilled. It is difficult to lay down any rule of universal application for each case must depend on its own facts. To ask the Controller to confine only to the affidavit filed by the tenant is to ask him not to apply his mind in a judicial manner even if he feels that the justice of the case so demands. The Controller must

endeavour to resolve the competing claims of landlord and tenant to the grant or refusal of leave under sub-s. (5) of s. 25B of the Act, by finding a solution which is just and fair to both the parties.

It is not suggested for a moment that the proceedings initiated on an application by the landlord under s. 14(1)(e), or under s. 14A, must undergo trial at two stages. Under sub-s. (5) of s. 25B, the Controller must prima facie be satisfied on a perusal of the affidavits of the parties to the proceedings and the other material on record that the facts alleged by the tenant are such as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in Cl. (e) of the proviso to sub-s. (1) of s. 14, or under s. 14A. The word 'disentitle' is a strong word, and the Controller must be satisfied that the tenant has such a defence as would defeat the claim of the landlord under Cl. (e) of the proviso of sub-s. (1) of s. 14, or under s. 14A. It cannot be that the Controller would set down the application for trial merely on perusal of the affidavit filed by the tenant without applying his mind to the pleadings of the parties and the material on record. If he finds that the pleadings are such as would entail a trial, then the Controller must grant the tenant leave to contest as the words "shall grant to the tenant leave to contest" in sub-s. (5) of s. 25B make the grant of leave obligatory.

It is also necessary to emphasize that the scope of sub-s. (5) of s. 25B is restricted and the test of "triable issues" under Order XXXVIII, Rule 3(5) of the Code of Civil Procedure, 1908 is not applicable, as the language of the two provisions is different. The use of the word 'such' in sub-s. (5) of s. 25B implies that the Controller has the power to limit the grant of leave to a particular ground. A tenant may take all kinds of pleas in defence. The whole object of sub-s. (5) of s.25B was to prevent the taking of frivolous pleas by tenants to protract the trial. Where the tenant seeks leave to contest the application for eviction under s. 14(1)(e), or under s. 14A, he must file an affidavit under sub-s. (4) of s. 25B raising his defence which must be clear, specific and positive. The defence must also be bona fide and if true, must result in the dismissal of landlord's application. Defences of negative character which are intended to put the landlord to proof, or are vague, or are raised malafide, only to gain time and protract the proceedings, are not of the kind which will entitle the tenant to the grant of the leave. The Controller cannot set down the application for hearing without making an order in terms of sub-s. (5) of s. 25B. The trial must be confined only to such grounds as would disentitle the landlord to any relief. Such an order for the grant or refusal of leave to contest under sub-s. (5) of s. 25 of the Act, cannot be made without affording to the parties an opportunity of a hearing which, as we all know, does not only mean the right to address the Controller but also consideration of the material placed before him by both the parties.

I would therefore, for my part, refrain from placing a literal and mechanical construction of sub-s. (5) of s. 25B of the Act as it conflicts with the essential requirements of fair play and natural justice which the Legislature never intended to throw overboard. In my view, the landlord has a right to be afforded an opportunity to meet the allegations made by the tenant in the affidavit for leave to contest and filed under sub-s. (4) of s. 25B and there is a corresponding duty imposed on the Controller to hear the parties on the question whether such leave should or should not be granted under sub-s. (5) thereof, and apply his mind to the pleadings of the parties and the material on record. Appeal allowed.

V.S. Talwar v. *Prem Chandra Sharma*

AIR 1984 SC 664

RANGANATH MISRA, J. - 1. The landlord whose application for eviction of the tenant, respondent before us, was rejected by the High Court by reversing the order of the eviction passed by the Additional Rent Controller has come before this Court on obtaining special leave and the short point arising for consideration is as to the true meaning of a clause in the rent deed.

2. The respondent was admitted into tenancy of the premises in question under a lease deed dated January 5, 1968. Clause 12 thereof provided:

> That the lessee shall use the premises for the purpose of Residential/Personal office only and not for commercial purposes. (emphasis supplied)

The landlord, appellant before us, applied to the Controller on March 14, 1972, for eviction of the respondent under Section 14(1)(*e*) of the Delhi Rent Control Act, 1958 ("the Act" for short). The tenant obtained leave to contest and pleaded, inter alia, that the premises were let out both for residential as also office and the composite purpose of the tenancy took the premises out of the purview of residential accommodation. The Controller did not accept the defence and passed an order for eviction. Thereupon, the tenant carried a revision to the Delhi High Court and reiterated his defence that the tenancy was not for residential purpose. The High Court found that there was no infirmity in the finding about the bona fide requirement but adverting to the conclusion on the letting purpose held:

> It is well-known that premises may be let out for residence only, for use as an office, for use as a shop and for other commercial purpose. Once any of the latter purposes is combined with the purpose of use as residence, the premises is let out for a composite purpose and not for residence only.
>
> The meaning of the word '*office'*, not defined in the Act, in the *Chamber's Dictionary* is a place where business is carried on. Office is certainly not residence and a letting purpose which includes office must be understood to include a purpose other than residence only.

And ultimately, concluded by saying:

> Clause (*e*) of Section 14(1) is available as a ground to seek eviction of tenants only, among other requirements, if the premises were let out for residence only and once the letting purpose is shown to be composite, an eviction petition under Section 14(l)(*e*), without more, must fail.

The High Court rejected the landlord's submission that the use of the word "personal" before "office" was intended to convey the idea that the tenancy was not for the purpose of accommodating a place of business.

3. Counsel for the appellant took us to the terms of clause 12 of the lease agreement and emphasised on the feature that commercial purposes were clearly kept out and the lease was for residence and authorised the location of a personal office. He also relied upon the

description of the premises as residential in the application made by the tenant to the Controller for fixation of fair rent in respect of the very premises.

4. The word "office" is used in different senses and in each case that meaning must be assigned to it which conforms with the language used. In Volume 67, *Corpus Juris Secundum* at p. 96, the following statement appears: "The term 'office' is one which is employed to convey various meanings, and no one definition thereof can be relied on for all purposes and occasions". This Court has approved the observation of Lord Wright in ***Macmillan* v. *Guest,*** [1942 AC 561], where it was stated:

> The word 'office' is of indefinite content. Its various meanings cover four columns of the ***New English Dictionary***.... See ***Smt Kanta Kathuria* v. *Manak Chand Surana,*** [AIR 1970 SC 694]

In this view of the position the High Court was not right in picking one of the meanings given to the word in the *Chamber's Dictionary* and proceeding to the conclusion that "office" is certainly not residence and a letting purpose which includes office must be understood to include a purpose other than residence only.

5. Section 2(*i*) of the Act defines "premises" to mean "any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose...". Respondent's counsel has argued that tenancy under the Act can be for three purposes: (*1*) residential, (*2*) commercial and (*3*) for any other purpose depending upon the use for which the premises are let out. Conceding that the definition is capable of such an argument being built up, a reference to the pleadings in this case shows that the permission in the rent deed of locating a personal office had been stated to be a commercial purpose. Great care seems to have been taken by the landlord while inducting the tenant under the rent deed to put a total prohibition to commercial user of the premises. That is why in clause 12 it has been specifically stated that it is "not for commercial purposes". In the backdrop of such a provision in the lease agreement, the true meaning of the words "personal office" has to be found out. Law is fairly settled that in construing a document the ordinary rule is to give effect to the normal and natural meaning of the words employed in the document itself. See ***Krishna Biharilal* v. *Gulabchand*** [AIR 1971 SC 1041].This Court in ***D.D.A.* v. *D.C. Kaushish*** [AIR 1973 SC 2609] observed:

> There (at pages 28-29) [***Construction of Deeds and Statutes*** by Odgers (5th ed. 1967)], the First General Rule of Interpretation formulated is: 'the meaning of the document or of a particular part of it is therefore to be sought for in the document itself'. That is, undoubtedly, the primary rule of construction to which Sections 90 to 94 of the Indian Evidence Act give statutory recognition and effect.... Of course, 'the document' means 'the document' read as a whole and not piecemeal.

The rule stated above follows logically from the Literal Rule of Construction which, unless its application produces absurd results, must be resorted to first. This is clear from the following passages cited in Odgers' short book under the First Rule of Interpretation set out above:

6. Lord Wensleydale in ***Monypenny* v. *Monypenny*** [(1861) 9 HLC 114] said:

> The question is not what the parties to a deed may have intended to do by entering into that deed, but what is the meaning of the words used in that deed: a most important distinction in all cases of construction and the disregard of which often leads to erroneous conclusions.'

7. Brett, L.J., in ***Re Meredith*, *ex p. Chick*** [(1879) 11 Ch D 731] observed:

> "I am disposed to follow the rule of construction which was laid down by Lord Denman and Baron Parke.... They said that in construing instruments you must have regard, not to the presumed intention of the parties, but to the meaning of the words which they have used".

Since we agree with this exposition of the law reference to the oral evidence or even to the tenant's documents would be wholly out of place. The terms of the document if they make any good meaning must be given effect to.

8. All the provisions of the lease deed have to be read and in fact with the assistance of counsel we have read the same more than once during the hearing. The parties to the document were anxious enough and took proper care in order to keep the user of the premises confined to residential purpose; that is why it was expressly stipulated in the lease to prohibit commercial user. Even while permitting an office to be located, equal care was taken to put the word "personal" before "office" to convey the idea that the tenant would not be entitled to transact official business connected with his avocation. Although ordinarily an office would mean the place where official business is transacted, a personal office in contradistinction to an office simpliciter or a commercial office would be a place where an outsider would not normally be admitted; commercial transactions would not take place; there would be no fixity of the location and the tenant would be entitled to use any portion of the premises as his personal office and the like. Such a place if referred to as personal office would essentially be residential and obviously while entering into the present lease deed, the parties were not trying to create a lease of premises for any other purposes as now contended by Mr Thakur for the respondent. The High Court, therefore, went wrong in reversing the decision of the Rent Controller by merely relying upon clause 12 of the lease deed.

9. It is relevant to note the description of the premises as given in the lease deed itself. Para 2 of the document described the premises thus:

> "The lessor hereby leases to the lessee the following described premises of the entire house built on plot No. 125, Greater Kailash-I, New Delhi comprising of three bedrooms with two bathrooms, drawing-cum-dining room, one kitchen, one front and central veranda, front and back lawn, garage, servant quarter, above garage, a servant W.C. and terrace".

There was no description of any existing office room and available for such use to the tenant, nor was space earmarked for any personal office out of this accommodation. As indicated above it was in the discretion of the lessee to use any part as a personal office. Every lessee, or for the matter of that every person maintaining an acceptable standard of living does set apart a portion of the accommodation available to him which can answer the description of a personal office.

10. Mr Thakur placed reliance on another clause of the lease deed which reads as follows:

> That the lessor shall pay all the taxes of any kind whatsoever including house tax, ground rent as are or may hereinafter be assessed on the demised premises by the municipality or any other authority whatsoever provided the premises are used for residence only.

We do not think the terms of this clause support the stand of the lessee. As contemplated under the Transfer of Property Act a document of lease normally provides the rights and obligations of both the lessor and the lessee. In stipulating the rent payable for the use and occupation of the premises the lessor had undertaken the liability of payment of taxes as described therein as long as the premises were used for residence only. This clause necessarily means that what had been stipulated was only residential user. It is appropriate to take note of the admission of Mr Thakur that the lessor had been paying the taxes and the lessee has not been called upon to share the burden. This clause is an added provision to clinch the point in dispute against the tenant.

11. We are, therefore, of the view that the High Court clearly erred in law in reversing the decision of the Controller allowing the eviction. The appeal is allowed and the order of the High Court is set aside and the order of the Additional Rent Controller is restored. Parties are directed to bear their respective costs throughout.

12. This is a litigation which began in 1970. The tenant has been in occupation and continuing for about 14 years now after the application for eviction had been filed. Ordinarily we would not have allowed any time to the tenant keeping this aspect in view. But Mr Thakur has urged upon us to take judicial notice of the fact that these days an alternative premises would be very difficult to find. We allow time to the tenant until December 30, 1984 to vacate the premises subject to furnishing usual undertaking within four weeks from today. In the absence of the undertaking the tenant becomes liable to eviction after four weeks.

* * * * *

Ravi Dutt Sharma v. *Ratan Lal Bhargava*

AIR 1984 SC 967

FAZAL ALI, J. - This appeal by special leave is directed against an order passed by the Delhi High Court on August 26, 1980 affirming an order of eviction of the appellant made by the Rent Controller. The facts of the case lie within a very narrow compass and the appeal involves a pure point of law which is already covered by decisions of this Court to which we shall presently refer.

2. The tenant, Ravi Dutt Sharma, was inducted into the suit premises as far back as 1945. The landlord Ratan Lal Bhargava applied under Section 19(1)(a) of the Slum Clearance Act ('Slum Act' for short) before the Competent Authority for permitting him to institute a suit for eviction of the appellant but the application was dismissed on July 28, 1973. An appeal against this order was dismissed by the Financial Commissioner on October 4, 1974. Thereafter the respondent filed a suit for eviction of the tenant under Section 14(1)(e) read with Section 25-B of the Delhi Rent Control Act ('Rent Act' for short) on April 13, 1979. Under the provisions of the Rent Act as amended in 1976 it is incumbent upon the defendant-tenant to apply for leave to defend a suit for eviction before entering contest. The tenant applied for such leave but the same was rejected and an order of his eviction was passed on September 14, 1979. A revision by the tenant to the High Court was dismissed and that had led to the appeal to this Court.

3. In the special leave petition Smt. Pushpa Rani filed a suit for eviction against her tenant, Swaran Kaur and others, which also was allowed by the Rent Controller and a revision therefrom has been dismissed by the High Court. Hence the petition for special leave against the judgement of the High Court has been filed and that was directed to be heard along with the civil appeal. It is unnecessary to give the facts involved in the case in which special leave has been asked for because the point of law for consideration is one and the same.

4. Admittedly the houses for which eviction has been asked for in these two cases are located within the slum areas as defined under the Slum Act. It was contended on behalf of the tenants that the suits for eviction by the landlords were not competent in view of want of permission from the Competent Authority under the Slum Act. Under Section 19(1)(a) of the Slum Act it is incumbent on the landlord to obtain permission from the Competent Authority before instituting a suit for evicting a tenant and without such permission the suit is not maintainable.

5. This argument was countered by the respondent on the ground that by virtue of the Amending Act of 1976 (referred to as the 'Amending Act' for short), new procedure has been substituted for two types of eviction of tenants - one of which was covered by Section 14(1)(e) and the other by Section 14-A. In the instant case we are mainly concerned with eviction applications covered by Section 14(1) (e) and the special procedure provided in Chapter III-A introduced by the Amending Act. It was contended by the respondent that by virtue of the Rent Act a special protection was given to a particular class of landlords who fell within the provisions of Section 14(1)(e) of the Rent Act (personal necessity) and in such cases a procedure different from the procedure followed in other cases had been prescribed.

Section 25-A and 25-B sought to simplify the procedure by insisting on the tenant to obtain permission to enter defence. In other words, so far as suits for eviction on the ground of personal necessity were concerned, the case for eviction was put at par with suits under Order 37, Code of Civil Procedure, where the court was satisfied that the tenant had an arguable case, leave to defend would be granted; otherwise the order of eviction would be passed straightway.

6. Learned counsel for the tenants then argued that Sections 25-A and 25-B were ultra vires Article 14 of the Constitution and were inconsistent with the Slum Act which was an existing statute and, therefore, the procedure substituted under Chapter III-A, particularly in Section 25-A and 25-B should be invalidated. On the other hand, counsel for the landlords contended that by virtue of the Amending Act a new procedure has been added in respect of evictions under Section 14(1)(e) as also the newly added Section 14-A, and Sections 25-A and 25-B have been brought into the statute to give effect to the intention of the Legislature by providing a special procedure and also making provision that the new procedure would override the existing law to the contrary.

7. In order to appreciate this contention it may be necessary to give an extract of Statement of Objects and Reasons of the Amending Act:

> "There has been persistent demand for amendments to the Delhi Rent Control Act, 1958 with a view to conferring a right of tenancy on certain heirs/successors of a deceased statutory tenant so that they may be protected from eviction by landlords and also for simplifying the procedure for eviction of tenants in case the landlord requires the premises bona fide for his personal occupation. Further, Government decided on September 19, 1975 that a person who owns his own house in his place of work should vacate the Government accommodation allotted to him before December 31, 1975. Government considered that in the circumstances, the Act requires to be amended urgently".

The dominant object of the Amending Act was, therefore, to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Sections 14(1)(e) and 14-A and for avoiding unusual dilatory process provided otherwise by the Rent Act. It is common experience that suits for eviction under the Act take a long time commencing with the Rent Controller and ending up with the Supreme Court. In may cases experience has indicated that by the time the eviction decree became final several years elapsed and either the landlord died or the necessity which provided the cause of action disappeared and if there was further delay in securing eviction and the family of the landlord had by then expanded, in the absence of accommodation the members of the family were virtually thrown on the road. It was this mischief which the Legislature intended to avoid by incorporating the new procedure in Chapter III-A. The Legislature in its wisdom thought that in cases where the landlords required their own premises for bona fide and personal necessity they should be treated as a separate class along with the landlords covered by Section 14-A and should be allowed to reap the fruits of decrees for eviction within the quickest possible time. It cannot, therefore, be said that the classification of such landlords would be an unreasonable one because such a classification has got a clear nexus with the objects of the Amending Act and the purposes which it seeks to subserve. Tenants cannot complain of any discrimination because the Rent

Act merely gave certain protection to them in public interest and if the protection or a part of it afforded by the Rent Act was withdrawn and the common law right of the tenant under the Transfer of Property Act was still preserved, no genuine grievance could be made. This was clearly held in the case of ***Kewal Singh* v. *Lajwanti*** [AIR 1980 SC 161].

8. The matter is no longer res integra and is covered by two decisions of this Court which are directly in point. The first one is the case of ***Sarwan Singh* v. *Kasturi Lal*** [AIR 1977 SC 265] in which an identical point came up for consideration. It was held by this Court that Sections 25-A, 25-B and 25-C of the Rent Act (introduced by the Amending Act) were special provisions with reference to Section 14-A thereof which superseded all existing Acts to the contrary. It was also pointed out that these newly added sections in the Rent Act were to apply only to a class of landlords and, therefore, the question of violation of Article 14 of the Constitution did not arise. While considering various aspects of the aforesaid provision, Chandrachud, J. (as he then was), spoke for the Court thus:

> "When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration..... "

For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which come to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Section 14-A and Chapter III-A having been enacted with effect from December 1, 1975 are later enactments in reference to Section 19 of the Slum Clearance Act which, in its present form, was placed on the statute book with effect from February 28, 1965 and in reference to Section 39 of the same Act, which came into force in 1956 when the Act itself was passed. The legislature gave overriding effect to Section 14-A and Chapter III-A with the knowledge that Sections 19 and 39 of the Slum Clearance Act contained non obstante clauses of equal efficacy. Therefore, the later enactment must prevail over the former.... (Para 21)

Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non obstante clauses in the earlier law, we have come to the conclusion that the provisions of Section 14-A and Chapter III-A of the Rent Control Act must prevail over those contained in Sections 19 and 39 of the Slum Clearance Act. (para 23)"

An analysis of the aforesaid decision clearly shows that the new Sections 14-A, 25-A, 25-B and 25-C had been introduced for the purpose of meeting a particular contingency as spelt out in the Objects and Reasons behind the new provisions. Once it is recognised that the newly added sections are in the nature of a special law intended to apply to special classes of landlords, the inevitable conclusion would be that the application of the Slum Act stands withdrawn to that extent and any suit falling within the scope of the aforesaid sections - 14(1)(e) and 14-A - would not be governed or controlled by Section 19(1)(a) of the Slum Act.

9. It was, however, submitted that Section 14-A of the Rent Act dealt with a special contingency for which a different procedure had been provided in the matter of evicting

tenants by the landlords in occupation of premises allotted by the Central Government or may local authority. This was to enable them to get their own residential accommodation so that they would be in a position to vacate the premises allotted to them by the Central Government. It was contended that as the Central Government and persons in occupation as tenants of premises provided by Central Government were a class by themselves, Section 14-A could be taken as a special provision but Section 14(1) (e) of the Act could not be elevated to that pedestal. We are not able to accept this argument. It was open to the Legislature to pick out one class of landlords out of the several covered by Section 14(1) (e) of the Rent Act so long as they formed a class by themselves and the Legislature was free to provide the benefit of a special procedure to them in the matter of eviction of their tenants as long as the legislation had an object to achieve and the special procedure had a reasonable nexus with such object to be secured.

10. Despite the ingenious and attractive arguments of Mr. Tarkunde, it seems to us that the distinction made by the learned counsel between Sections 14(1)(e) and 14-A is really a distinction without any difference. Moreover, the newly added sections, viz., Sections 14-A, 25-A, 25-B and 25-C do constitute parts of a special scheme and have the effect of making the Slum Act inapplicable. In view of the pronouncement of this Court as referred to above, it is impossible to accede to the contention advanced on behalf of the tenants. In ***Kewal Singh*** case [AIR 1980 SC 161], a decision to which one of us was a party (Fazal Ali, J.), this Court observed as follows:

> This Act actually replaced the Ordinance which was promulgated on December 1, 1975. The objects and reasons clearly reveal that the amendment has been made for simplifying the procedure for eviction of tenants in case the landlord requires the premises bona fide for his personal occupation. It is a matter of common knowledge that even though the landlord may have an immediate and imperative necessity for vacating the house given to a tenant he is compelled to resort to the time consuming and dilatory procedure of a suit which takes years before the landlord is able to obtain the decree and in most cases by the time the decree is passed either the landlord dies or the need disappears and the landlord is completely deprived of getting any relief. It appears to us that it was for these reasons that the legislature in its wisdom thought that a short and simple procedure should be provided for those landlords who generally want the premises for their bona fide necessity so that they may be able to get quick and expeditious relief.... The landlords having personal necessity have been brought together as a separate class because of their special needs and such a classification cannot be said to be unreasonable particularly when the legislature in its wisdom feels that the landlords should get this relief as quickly as possible.....

Thus, taking an overall picture of the situation, the circumstances under which the landlord's needs have been classified and the safeguards given by the statute it cannot be said by any stretch of imagination that Section 25-B and its subsections are violative of Article 14 of the Constitution of India, or that Section 25-B suffers from the vice of excessive delegation of powers. In fact Section 25-B contains valuable and sufficient guidelines which completely exclude the exercise of uncanalised or arbitrary powers by the Rent Controller..... (Para 20)

The ratio of this case reinforces the rule laid down in ***Sarwan Singh*** case and in ***Vinod Kumar Chowdhary*** **v.** ***Narain Devi Taneja*** [AIR 1980 SC 2012], it was clearly pointed out that whenever there was any conflict between Section 25-A and any other provision of law, Section 25-A was to override and prevail. Here again, once of us (Fazal Ali, J.) observed:

> "The non obstante clause occurring in Section 25-A makes it quite clear that whenever there is a conflict between the provisions of Chapter III-A on the one hand those of the rest of the Act or of any other law for the time being in force on the other, the former shall prevail".

11. It is, therefore, clear from the new provision in the Amending Act that the procedure indicated therein was intended to have overriding effect and all procedural laws were to give way to the new procedure. Applications under Section 14(1)(e), therefore, clearly fell within the protective umbrella of the new procedure in Chapter III-A.

12. An identical view has been taken by the Delhi High Court in the case of ***Smt. Krishna Devi Nigam*** **v.** ***Shyam Babu Gupta*** [AIR 1980 Del 165]. In this decision it has been clearly held that the provisions of Section 25-A cannot be controlled by the provisions of the Slum Act. We fully approve and endorse the ratio laid down in that decision as it is in conformity with the consistent opinion of this court.

13. On a consideration, therefore, of the facts and circumstances of the case and the law referred to above, we reach the following conclusions:

(1) That Sections 14-A, 25-A, 25-B and 25-C of the Rent Act are special provisions so far as the landlord and tenant are concerned and in view of the non obstante clause these provisions would override the existing law so far as the new procedure is concerned;

(2) That there is no difference either on principle or in law between Sections 14(1)(e) and 14-A of the Rent Act even though these two provisions relate to eviction of tenant under different situations;

(3) That the procedure incorporated in Chapter III-A of the Amending Act into the Rent Act is in public interest and is not violative of Article 14 of the Constitution;

(4) That in view of the procedure in Chapter III-A of the Rent Act, the Slum Act is rendered inapplicable to the extent of inconsistency and it is not, therefore, necessary for the landlord to obtain permission of the Competent Authority under Section 19(1) (a) of the Slum Act before instituting a suit for eviction and coming within Section 14(1) (e) or 14-A of the Rent Act.

We are, therefore, of the opinion that the High Court was correct in rejecting applications of the tenants for setting aside the order of eviction. The appeal is accordingly dismissed but without any order as to costs.

14. As a result of our decision, the special leave petition has to be dismissed. In both these cases time to vacate the premises is extended till June 30, 1984, subject to filing of the usual undertakings within four weeks from today failing which the landlords shall be free to ask for possession forthwith through the executing court.

Satyawati Sharma v. *Union of India*

2008 (6) SCALE 325

Is section 14(1)(e) of the Delhi Rent Control Act, 1958 ultra vires the doctrine of equality enshrined in Article 14 of the Constitution of India?

G.S. SINGHVI, JJ.- 2. On August 18, 1953, Delhi Improvement Trust leased out a plot of land measuring 184 sq. yards situated at Basti Reghar, Block 'R', Khasra Nos.2942/1820 to 2943/1820 to Shri Jagat Singh son of Pt. Ram Kishan. In terms of Clause 4(c) of the lease deed, the lessee was prohibited from using the land and building (to be constructed over it) for any purpose other than residence, with a stipulation that in case of breach of this condition, the lease shall become void. After constructing the building, the lessee inducted Shri Jai Narain Sharma and Dr. Ms. Tara Motihar, as tenants in two portions of the building, who started using the rented premises for running watch shop and clinic respectively. Smt. Satyawati Sharma (appellant herein), who is now represented by her LRs, purchased property i.e. house bearing No.3395-3397, Ward No.XVI, Block R, Gali No.1, Reghar Pura, New Delhi from legal heirs of the lessee. After purchasing the property, the appellant filed Petition Nos.184 of 1980 and 187 of 1980 for eviction of the tenants by claiming that she needed the house for her own bona fide need and also for the use and occupation of the family members' dependant upon her. The appellant further pleaded that she wanted to demolish the building and reconstruct the same. She also alleged that tenants have been using the premises in violation of the conditions of lease and, therefore, they are liable to be evicted.

The tenants contested the eviction petitions by asserting that the so called need of the landlord was not bona fide; that there were no valid grounds for permitting the landlord to demolish the building and reconstruct the same and that they had not violated the conditions of lease. They further pleaded that the previous owner let out the premises for non-residential purposes; that the appellant was also issuing rent receipts by describing the rented portions as shop/clinic and that in view of order dated 11.12.1978 issued by the Government of India, Ministry of Housing and Urban Development, Delhi Development Authority was condoning violations of the lease conditions.

By an order dated 17.5.1991, Additional Rent Controller, Delhi dismissed the eviction petitions. He held that the appellant is owner and landlady of the suit premises, but she has not been able to prove that portions thereof were let for residential purposes; that the appellant and her dependent family members do not have suitable alternative accommodation except the one occupied by her elder son, who was under the threat of eviction and that the need of the appellant is bona fide. The Additional Rent Controller further held that the tenants are guilty of violating clause 4(c) of deed dated August 18, 1953. He, however, declined to pass order for recovery of possession by observing that under Section 14(1)(e) of the Act, such an order can be passed only in respect of premises let for residential purposes. The Additional Rent Controller also rejected other grounds of eviction put forward by the appellant.

3. The appeal preferred by the appellant was dismissed by Rent Control Tribunal, Delhi vide its judgment dated 10.11.1998. The Tribunal agreed with the Additional Rent Controller that an order of eviction of the tenant can be passed under Section 14(1)(e) only if the

premises were let for residential purposes. The Tribunal then held that the portions given to the tenants were being used for non-residential purposes and, therefore, they cannot be evicted on the ground of bona fide need of the landlord.

4. The appellant challenged the orders of the Additional Rent Controller and Rent Control Tribunal in Civil Writ Petition No.1093 of 1999. She filed another petition, which was registered as Civil Writ Petition No.1092 of 1999, with the prayer that Section 14(1)(e) of the Act be declared ultra vires of Article 14 of the Constitution insofar as it does not provide for eviction of the tenant from the premises let for non-residential purposes. Both the writ petitions were heard by the Full Bench of Delhi High Court along with other writ petitions involving challenge to the vires of Section 14(1) (e) and were dismissed by the order under challenge. The Full Bench referred to an earlier judgment of the Division Bench in ***H.C. Sharma* v.** ***Life Insurance Corporation of India*** [ILR 1973 (1) Delhi 90] and large number of judgments of this Court including ***Amarjit Singh* v.** ***Smt. Khatoon Quamarin*** [1986 (4) SCC 736] and held:-

> i) Tenants of non-residential premises are a class by themselves. The Parliament in its legislative wisdom did not think it fit to make any provision for eviction of a tenant from such premises on the ground of bona fide requirement of the landlord for residential purpose. Reference to Section 29(2) (r) of the 1995 Act, in our opinion, cannot be said to have any relevance whatsoever for the purpose of determining. Admittedly, the 1995 Act is yet to come into force. If the said Act is yet to come into force, the question of taking recourse to the provisions of the said Act would not arise more so because this court in exercise of its jurisdiction under Article 226 of the Constitution of India would not be in a position to direct the Government to do so which is a legislative function. On the other hand, the very fact that said Act is yet to come into force points to the fact that the Central Government does not in its wisdom consider that the said benefit should be extended to non-residential premises also.
>
> ii) Judicial review of legislation is permissible only on limited grounds, namely when a statute is enacted by a legislature which had no authority therefore, or when it inter alia violates any of the provisions contained in Part III of the Constitution. Once it is held, as we are bound to, that the non-residential premises having regard to the interpretation clause, forms a separate class, such classification, having a reasonable nexus with the ground of eviction, cannot be said to be discriminatory in nature. Article 14 of the Constitution would apply only to persons similarly situated. Owners of residential and non-residential premises stand on different footings. In the event, the legislature in its wisdom thinks it fit to extend its protective wing to a class of tenants from being evicted on a particular ground, the same by itself cannot be said to be discriminatory so as to attract the wrath of Article 14 of the Constitution of India. The court in a situation of this nature is only entitled to see as to whether such classification is valid and rational. Once the rationality in such legislation is found, the court will put its hands off.
>
> iii) Furthermore, the provisions of the said Act had been declared intra vires by the Apex Court in ***Amarjit Singh* v.** ***Khatoon Quamarain***. In that case, an argument was advanced that unless the second limb of Section 14(1)(e) of the Act is read in such a way that it was in consonance with Articles 14 and 21 of the Constitution of

India, the same would be void as being unconstitutional. The question raised therein has been dealt with the Apex Court.

(iv) In the instant case, the Statute itself has indicated the persons or things to whom its provisions are recommended to apply. The said Act is a beneficial legislation. It seeks to protect the tenants. Tenants are broadly classified into three categories - residential, non-residential and/or other tenant. Such a classification as regards premises or tenancy cannot per se be said to be unreasonable.

(v) In the instant case, so far as Sections 14(1) (e) and 14(1) (k) are concerned, the statute itself has indicated the persons to whom the provisions would apply. The provision is absolutely clear and unambiguous. In such a case the Court is only required to examine whether the classification is based upon reasonable differentia, distinguishing the person, group from those left out and whether such differential has reasonable nexus with the objects to be achieved. The impugned provision indisputably was intended to beneficially apply to landlords and of one class of tenancy viz. tenancy in respect of the residential premises and not non-residential premises.

5. The Full Bench also noticed the judgment in ***Harbilas Rai Bansal*** **v.** ***State of Punjab*** [1996 (1) SCC 1] whereby Section 13(3)(a) of the East Punjab Urban Rent Restriction Act, 1949, as amended by Punjab Act No.29 of 1956, was struck down but distinguished the same by making the following observations :-

"The objects and reasons of the said Act, thus, were considered having regard to the provisions made at the time of commencement of the said Act. Such a contingency does not arise in the instant case. Reasonable nexus to the objects to be achieved of the said Act having regard to the performance for which the building is being used must be found out from the legislative intent. Legislative intent may change from State to State."

6. Learned counsel for the appellants relied on the judgment of this Court in ***Harbilas Rai Bansal*** **v.** ***State of Punjab*** and argued that the classification made between the premises let for residential purposes and non-residential purposes in the matter of eviction of tenant on the ground of bona fide need of the landlord is irrational, arbitrary and violative of Article 14 of the Constitution. Shri A.C. Gambhir submitted that even though the constitutional validity of Section 14(1) (e) of the Act was upheld by the Division Bench of the High Court in ***H.C. Sharma*** **v.** ***Life Insurance Corporation of India***, that decision cannot, in the changed circumstances and in view of the later judgments of this Court in ***Rattan Arya*** **v.** ***State of Tamil Nadu*** [(1986) 3 SCC 385]**,** ***Harbilas Rai Bansal*** **v.** ***State of Punjab (supra), Rakesh Vij*** **v.** ***Dr. Raminder Pal Singh Sethi*** [(2005) 8 SCC 504] be treated as good law. He argued that the reason which prompted the legislature to exclude the premises let for non residential purposes from the purview of Section 14(1) (e) of the 1958 Act and which found approval of the Division Bench of the High Court has, with the passage of time, become non-existent and the classification of the premises into residential and non-residential with reference to the purpose of lease has become totally arbitrary and irrational warranting a declaration of invalidity qua the impugned section. In support of this argument, the learned counsel relied on the judgment of this Court in ***Malpe Vishwanath Achary*** **v.** ***State of Maharashtra*** [1998 (2)

SCC 1]. Shri Gambhir pointed out that in the Delhi Rent Control Act, 1995 ('the 1995 Act'), which was enacted by the Parliament in the light of the National Housing Policy, 1992 and observations made by this Court in ***Prabhakaran Nair* v. *State of Tamil Nadu*** [1987 (4) SCC 238] no distinction has been made between the premises let for residential and non-residential purposes in the matter of eviction of the tenant on the grounds of landlord's bona fide need and argued that even though that Act has not been enforced, the Court can take cognizance of the legislative changes and declare the implicit restriction contained in Section 14(1) (e) on the eviction of tenant from the premises let for non-residential purposes as unconstitutional.

7. Shri C.S. Rajan, learned senior counsel appearing for the Union of India emphasized that the purpose of the Act is to protect the tenants against arbitrary eviction by the landlord and argued that the classification of the premises with reference to the purpose of lease should be treated as based on rational grounds because the same is meant to further the object of the enactment. Shri Rajan referred to the judgment of ***Amarjit Singh* v. *Smt. Khatoon Quamarin*** (supra) to show that challenge to the constitutionality of the Section 14(1) (e) on the ground of violation of Article 14 has already been negatived and argued that the vires of that provision cannot be re- examined merely because a similar provision contained in the 'Punjab Act' has been declared unconstitutional in ***Harbilas Rai Bansal* v. *State of Punjab*** (supra). Learned senior counsel relied on the judgments of this Court ***In Re The Special Courts Bill 1978*** [1979 (1) SCC 380] and ***Padma Sundra Rao* v. *State of Tamil Nadu*** [2002 (3) SCC 533] and argued that the Court should not attempt to rewrite Section 14(1) (e) so as to facilitate eviction of the tenants from the premises let for non-residential purposes. Shri S.P. Laler, learned counsel appearing for the respondents in Civil Appeal Nos.1897 of 2003 and 1898 of 2003 supported the judgment of the Full Bench of the High Court and argued that the distinction made by the legislature between the premises let for residential and non-residential purposes is based on rational ground i.e. acute shortage of non-residential premises/buildings and, therefore, the same cannot be treated as unconstitutional.

[After considering the salient features of the rent control Act, the court proceeded]

8. The 1958Act was amended five times between 1960 to 1988, but demands continued to be made by the landlords and the tenants for its further amendment to suit their respective causes. In 1992 National Housing Policy was notified. One of the important features of that Policy was to remove legal impediments to the growth of housing in general and rental housing in particular. Both the Houses of Parliament adopted the Policy. Thereafter, the 1995 Act was enacted. Though the new Act has not been enforced so far and in ***Common Cause* v. *Union of India*** [2003 (8) SCC 250] this Court declined to issue a writ of mandamus to Central Government to notify the same, it will be useful to take cognizance of the statement of objects and reasons and Section 22(r) of the 1995 Act to which reference was made by the learned counsel during the course of hearing. The same reads as under:-

"Statement of objects and reasons:

> The relations between landlords and tenants in the National Capital Territory of Delhi are presently governed by the Delhi Rent Control Act, 1958. This Act came into force on the 9th February, 1959. It was amended thereafter in 1960, 1963, 1976, 1984 and 1988. The amendments made in 1988 were based on the recommendations

of the Economic Administration Reforms Commission and the National Commission on Urbanisation. Although they were quite extensive in nature, it was felt that they did not go far enough in the matter of removal of disincentives to the growth of rental housing and left many questions unanswered and problems unaddressed. Numerous representations for further amendments to the Act were received from groups of tenants and landlords and others.

2. The demand for further amendments to the Delhi Rent Control Act, 1958 received fresh impetus with the tabling of the National Housing Policy in both Houses of Parliament in 1992. The Policy has since been considered and adopted by Parliament. One of its major concerns is to remove legal impediments to the growth of housing in general and rental housing in particular. Paragraph 4.6.2 of the National Housing Policy specifically provides for the stimulation of investment in rental housing especially for the lower and middle income groups by suitable amendments to rent control laws by State Governments. The Supreme Court of India has also suggested changes in rent control laws. In its judgment in the case of ***Prabhakaran Nair* v.** ***State of Tamil Nadu*** the Court observed that the laws of landlords and tenants must be made rational, humane, certain and capable of being quickly implemented. In this context, a Model Rent Control Legislation was formulated by the Central Government and sent to the states to enable them to carry out necessary amendments to the prevailing rent control laws. Moreover, the Constitution (Seventy-Fifth Amendment) Act, 1994 was passed to enable the State Governments to set up State-level rent tribunals for speedy disposal of rent cases by excluding the jurisdiction of all courts except the Supreme Court.

3. In the light of the representations and developments referred to above, it has been decided to amend the rent control law prevailing in Delhi. As the amendments are extensive and substantial in nature, instead of making changes in the Delhi Rent Control Act, 1958, it is proposed to repeal and replace the said Act by enacting a fresh legislation.

4. To achieve the above purposes, the present Bill, inter alia, seeks to provide for the following, namely:-

(a) exemption of certain categories of premises and tenancies from the purview of the proposed legislation;

(b) creation of tenancy compulsorily to be written agreement;

(c) compulsory registration of all written agreements of tenancies except in certain circumstances;

(d) limit the inheritability of tenancies;

(e) redefine the concept of rent payable and provide for its determination, enhancement and revision;

(f) ensure adequate maintenance and repairs of tenanted premises and facilitate further improvement and additions and alterations of such premises;

(g) balance the interests of landlords and tenants in the matter of eviction in specified circumstances;

(h) provide for limited period tenancy and automatic eviction of tenants upon expiry of such tenancy;

(i) provide for the fixing and revision of fair rate and recovery of possession in respect of hotels and lodging houses;

(j) provide for a simpler and speedier system of disposal of rent cases through Rent Authorities and Rent Tribunal and by barring the jurisdiction of all courts except the Supreme Court; and

(k) enhance the penalties for infringement of the provisions of the legislation by landlords and tenants.

5. On enactment, the Bill will minimize distortion in the rental housing market and encourage the supply of rental housing both from the existing housing stock and from new housing stock.

6. The Notes on clauses appended to the Bill explain the various provisions of the Bill.

22. Protection of tenant against eviction

(r) that the premises let for residential or non-residential purposes are required, whether in the same form or after re-construction or re-building, by the landlord for occupation for residential or non-residential purpose for himself or for any member of his family if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation.

9. An analysis of the above noted provisions would show that till 1947 no tangible distinction was made between the premises let for residential and non-residential purposes. The implicit restriction on the landlord's right to recover possession of the non-residential premises was introduced in the Delhi and Ajmer-Marwara Rent Control Act, 1947 and was continued under the 1958 Act. However, the 1995 Act does not make any distinction between the premises let for residential and non-residential purposes in the matter of eviction of tenant on the ground that the same are required by the landlord for his/her bona fide use or occupation. Even though, the 1995 Act is yet to be enforced and in ***Common Cause* v. *Union of India*** this Court declined to issue a writ of mandamus to the Central Government, for that purpose, we can take judicial notice of the fact that the legislature has, after taking note of the developments which have taken place in the last 37 years i.e. substantial increase in the availability of the commercial and non-residential premises or the premises which can be let for commercial or non-residential purposes and meteoric rise in the prices of land and rentals of residential as well as non-residential premises, removed the implicit embargo on the landlord's right to recover possession of the premises if the same are bona fide required by him/her.

11. Before proceeding further we consider it necessary to observe that there has been a definite shift in the Court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s' to early 1990s' would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant ***Mohinder Kumar* v. *State of Haryana*** [1985 (4) SCC 221], ***Prabhakaran Nair* v. *State of Tamil Nadu***

(supra), ***D.C. Bhatia* v. *Union of India*** [1995 (1) SCC 104] and ***C.N. Rudramurthy* v. *K. Barkathulla Khan*** [1998 (8) SCC 275]**.** In these and others case, the Court consistently held that the paramount object of every Rent Control Legislation is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the latter judgments. In ***Malpe Vishwanath Acharya* v. *State of Maharashtra***, this Court considered the question whether determination and fixation of rent under the Bombay Rents, Hotel and Lodging Houses, Rates Control Act, 1947, by freezing or pegging down of rent as on 1.9.1940 or as on the date of first letting was arbitrary, unreasonable and violative of Article 14 of the Constitution. The three-Judge Bench answered the question in affirmative but declined to strike down the concerned provisions on the ground that the same were to lapse on 31.3.1998. Some of the observations made in that judgment are worth noticing. These are:

> "Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants. It is not as if the government does not take remedial measures to try and off set the effects of inflation. In order to provide fair wage to the salaried employees the government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent. The increases made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today's context".
>
> "When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have narrow or short sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social Legislation is treated with deference by the Courts not merely because the Legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The Legislature is not shackled by the same constraints as the courts of law. But its power is coupled with a responsibility. It is also the responsibility of the courts to look at legislation from the altar of Article 14 of the Constitution. This Article is intended, as is obvious from its words, to check this tendency; giving undue preference to some over others."

12. In ***Joginder Pal* v. *Naval Kishore Behal*** [2002 (5) SCC 397]**,** the Court after noticing several judicial precedents on the subject observed as under:

> "The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against

exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords - both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord, the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble."

13. We shall now deal with the core question whether Section 14(1)(e) of the 1958 Act can be treated as violative of equality clause embodied in Article 14 of the Constitution insofar as it differentiates between the premises let for residential and non-residential purposes in the matter of eviction on the ground of bona fide requirement of the landlord and restricts the landlord's right only to the residential premises.

18. In ***Gian Devi Anand* v. *Jeevan Kumar*** [1985 (2) SCC 683] the Supreme Court considered the question whether the statutory tenancy in respect of commercial premises is heritable. The facts of that case were that one Wasti Ram was tenant in respect of Shop No. 20, New Market, West Patel Nagar of the respondents at a monthly rental of Rs.110/-. The tenancy commenced from September 1, 1959. In April, 1970, the respondent landlord determined the tenancy by serving a notice to quit. In September, 1970 he filed a petition under Section 14 of the Act for eviction of Wasti Ram on the grounds of non-payment of rent, bona fide requirement, change of user from residential to commercial, substantial damage to the property and sub-letting. He also impleaded one Ashok Kumar Sethi, as defendant No. 2 by alleging that he had been unlawfully inducting a sub-tenant. The Rent Controller negatived all the grounds of challenge except the non- payment of rent. He held that the premises had been let out for commercial purpose and as such the ground of bona fide requirement was not available to the landlord for seeking eviction of the tenant. On the issue of non- payment of rent, the Rent Controller held that the tenant was liable to pay a sum of Rs.24/- by way of arrears for the period from March 1, 1969 to February 28, 1970 after taking into consideration all payments made and a further sum of Rs.90/- on account of such arrears for the month of September, 1970. He accordingly, directed eviction of the tenant. The landlord challenged the order of the Rent Controller by filing an appeal. The tenant, namely Wasti Ram, filed cross objection on the findings recorded by the Rent Controller on the issue of default. The Rent Control Tribunal allowed the cross objection of the tenant and held that there was no default in the matter of payment of rent. The Tribunal rejected the landlord's plea regarding damage to the property but remanded the matter to the Rent Controller for deciding the question of sub-letting afresh after affording opportunity to the parties to lead evidence. Smt. Gian Devi Anand, the widow of the deceased tenant appealed against the order of the Tribunal. The landlord filed cross objections to question the finding recorded by the Tribunal on the issue of default by the tenant in payment of rent. The High Court held that after the demise of the

statutory tenant, his heirs do not have the right to remain in possession because the statutory tenancy was not heritable and the protection afforded to the statutory tenant was not available to the heirs. This Court reversed the order of the High Court and held:

> "We find it difficult to appreciate how in this country we can proceed on the basis that a tenant whose contractual tenancy has been determined but who is protected against eviction by the statute, has no right of property but only a personal right to remain in occupation, without ascertaining what his rights are under the statute. The concept of a statutory tenant having no estate or property in the premises, which he occupies is derived from the provisions of the English Rent Act. But it is not clear how it can be assumed that the position is the same in this country without any reference to the provisions of the relevant statute. Tenancy has its origin in contract. There is no dispute that a contractual tenant has an estate or property in the subject matter of tenancy, and heritability is an incident of the tenancy. It cannot be assumed, however, that with the determination of the tenancy the estate must necessarily disappear and the statute can only preserve his status of irremovability and not the estate he had in the premises in his occupation. It is not possible to claim that the "sanctity" of contract cannot be touched by legislation. It is therefore necessary to examine the provisions of the Madhya Pradesh Accommodation Control Act, 1961 to find out whether the respondent's predecessors-in-interest retained a heritable interest in the disputed premises even after the termination of their tenancy."

In paragraph 34 of the judgment, the Court highlighted difference between the residential and commercial tenancies and concluded that the legislature could never have intended that the landlord would be entitled to recover possession of the premises or the building let for commercial purposes on the death of the tenant of the commercial tenancies, even if no ground for eviction as prescribed in the rent Act is made out. In the concluding part of the judgment, the Court took cognizance of the absence of provision for eviction of the tenant of non-residential premises even when the same are bona fide required by the landlord for his use or occupation and observed:

> "Before concluding, there is one aspect on which we consider it desirable to make certain observations. The owner of any premises, whether residential or commercial, let out to any tenant, is permitted by the Rent Control Acts to seek eviction of the tenant only on the grounds specified in the Act, entitling the landlord to evict the tenant from the premises. The restrictions on the power of the landlords in the matter of recovery of possession of the premises let out by him to a tenant have been imposed for the benefit of the tenants. In spite of various restrictions put on the landlord's right to recover possession of the premises from a tenant, the right of the landlord to recover possession of the premises from the tenant for the bona fide need of the premises by the landlord is recognised by the Act, in case of residential premises. *A landlord may let out the premises under various circumstances. Usually a landlord lets out the premises when he does not need it for own use. Circumstances may change and a situation may arise when the landlord may require the premises let out by him for his own use. It is just and proper that when the landlord requires*

the premises bona fide for his own use and occupation, the landlord should be entitled to recover the possession of the premises which continues to be his property in spite of his letting out the same to a tenant. The Legislature in its wisdom did recognise this fact and the Legislature has provided that bona fide requirement of the landlord for his own use will be a legitimate ground under the Act for the eviction of his tenant from any residential premises. This ground is, however, confined to residential premises and is not made available in case of commercial premises. A landlord who lets out commercial premises to a tenant under certain circumstances may need bona fide the premises for his own use under changed conditions on some future date should not in fairness be deprived of his right to recover the commercial premises. Bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial. We, therefore, suggest that Legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well."

19. What is significant to be noted is that in para 34 of the aforementioned judgment, the distinction between residential and non-residential tenancies was made in the context of the rights of the heirs of the tenant to continue to enjoy the protection envisaged under Section 14(1). The Court was of the view that the heirs of the tenants of the commercial premises cannot be deprived of the protection else the family of the tenant may be brought on road or deprived of the only source of livelihood. The Court also opinioned that if the heirs of the individual tenants of commercial tenancies are deprived of the protection, extremely anomalous consequences will ensue because the companies, corporations and juridical entities carrying on business or commercial activities in rented premises will continue to enjoy the protection even after the change of management, but the heirs of individual tenants will be denuded of similar protection. At the same time, the Court noted that the landlord of a premises let for residential purpose may bona fide require the same for his own use or the use of his dependent family members and observed that the legislature should remove apparent discrimination between residential and non-residential tenancies when the landlord bona fide requires the same. If the observations contained in para 34 are read in any other manner, the same would become totally incompatible with the observation contained in the penultimate paragraph of the judgment and we do not see any reason for adopting such course., more so, because the later part of the judgment has been relied in ***Harbilas Rai Bansal* v. *State of Punjab*** and ***Rakesh Vij* v. *Dr. Raminder Pal Singh Sethi.***

21. The provisions of the Act, prior to the amendment, were uniformly applicable to the residential and non-residential buildings. The amendment, in the year 1956, created the impugned classification. The objects and reasons of the Act indicate that it was enacted with a view to restrict the increase of rents and to safeguard against the mala fide eviction of tenants. The Act, therefore, initially provided conforming to its objects and reasons, bona fide requirement of the premises by the landlord, whether residential or non-residential, as a ground of eviction of the tenant. The classification created by the amendment has no nexus with the object sought to be achieved by the Act. To vacate a premises for the bona fide requirement of the landlord would not cause any hardships to the tenant. Statutory protection to a tenant cannot be extended to such an extent that the landlord is precluded from evicting

the tenant for the rest of his life even when he bona fide requires the premises for his personal use and occupation. It is not the tenants but the landlords who are suffering great hardships because of the amendment. A landlord may genuinely like to let out a shop till the time he bona fide needs the same. Visualise a case of a shopkeeper (owner) dying young. There may not be a member in the family to continue the business and the widow may not need the shop for quite some time. She may like to let out the shop till the time her children grow up and need the premises for their personal use. It would be wholly arbitrary in a situation like this to deny her the right to evict the tenant. The amendment has created a situation where a tenant can continue in possession of a non- residential premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and the scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly unjust for the landlord of a non-residential premises.

22. For taking the aforesaid view, the Court drew support from the observations contained in the concluding portion of the judgment in ***Gian Devi Anand* v. *Jeevan Kumar***. This is evident from paragraph 17 of the judgment, which is extracted below:-

> In ***Gian Devi*** case the question for consideration before the Constitution Bench was whether under the Delhi Rent Control Act, 1958, the statutory tenancy in respect of commercial premises was heritable or not. The Bench answered the question in the affirmative. The above-quoted observations were made by the Bench keeping in view that hardship being caused to the landlords of commercial premises who cannot evict their tenants even on the ground of bona fide requirement for personal use. The observations of the Constitution Bench that "bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial" fully support the view we have taken that the classification created by the amendment has no reasonable nexus with the object sought to be achieved by the Act. We, therefore, hold that the provisions of the amendment, quoted in earlier part of the judgment, are violative of Article 14 of the Constitution of India and are liable to be struck down."

25. We may now advert to the judgment of Delhi High Court in ***H.C. Sharma* v. *Life Insurance Corporation of India*** and the one under challenge. The facts of H.C. Sharma's case were that the petitioner had leased out Flat No.28-E, Connaught Place, New Delhi to National Insurance Company Limited for non-residential use. Subsequently, the National Insurance Company Limited became Life Insurance Corporation of India. The petitioner made efforts to convince the Corporation that the premises are required for his bona fide use and occupation but could not convince the concerned authorities. He, therefore, filed an application for recovery of possession. The same was dismissed by the High Court. He then filed Writ Petition questioning the constitutionality of Section 14(1)(e) on the ground that the classification of the premises into residential and non-residential is arbitrary and violative of Article 14 of the Constitution. The Division Bench of Delhi High Court traced the history of rent control legislation applicable to Delhi, the background in which protection was extended to the tenants generally and the limited right given to the landlord to seek eviction of the tenants only from the premises let for residential purposes and observed:

"In judging whether the restriction imposed by the impugned provisions is reasonable, the court can look into the circumstances under which the restriction came to be imposed. Judicial notice can be taken of the fact that in 1947 there was a large influx of refugees into Delhi. A large number of people who were uprooted from their hearths and homes in West Pakistan settled in Delhi. This resulted in acute shortage of house accommodation and business premises with the result that rents soared to a high level which necessitated the regulation of relations between landlords and tenants...

The object in not providing for the eviction of a tenant from a non- residential premises on the ground specified in sub-clause (e) was to give security of tenure to a tenant of such premises. If a tenant of a non-residential premises was allowed to be evicted on the ground of personal requirement by the landlord, it would have had the effect of completely dislocating the business of the tenant and this in turn could have grave consequences on the social and economic fabric of the country, besides causing untold misery to the tenant." (emphasis added).

The Division Bench rejected the plea of discrimination and observed:-

"The grievance of the petitioner is that the discrimination between the two classes of landlords is without any rational basis. World War II broke out in 1939 and an acute shortage of housing accommodation developed. To control the rents and eviction of tenants, the *Rent Control Order of 1939* was issued. A study of the relevant provisions of the rent control legislation discussed in the earlier part of the judgment would show that the restrictions imposed on the landlords to recover possession of residential premises were very stringent upto 1952. Under the *Rent Control Order of 1939 and the Delhi Rent Control Ordinance, 1944* a landlord could recover possession of residential premises only when he had not resided within the limits of Delhi or New Delhi during the twelve months immediately preceding the date of the application and further satisfied the conditions that it was essential in the public interest that he should take up residence in that area and that he was unable to secure other suitable accommodation. Under the Rent Control Act of 1947, a landlord could recover possession of residential premises only if he did not possess other suitable accommodation and further, that he had acquired his interest in the premises at a date prior to the beginning of the tenancy or the 2nd day of June, 1944, whichever was later. The rigour of the restrictions qua residential premises was relaxed in the Act of 1952 and a landlord could recover possession of residential premises if he required it bonafide for occupation as a residence for himself or his family and he had no other suitable accommodation.

In comparison to this the Rent Control Order, 1939 was not applied to non-residential premises. The Delhi Rent Control Ordinance did not place any bar on the right of the landlord to recover possession of non-residential premises. The only restriction placed was that the landlord could recover possession of the premises for his residential use. The bar against the eviction of tenants from non-residential premises was introduced in the Rent Control Act, 1947 and it has continued since then. A landlord cannot recover possession of non- residential premises on the

ground of his personal need. *There is a clear object behind classification of the premises into "residential" and "non-residential". We have earlier observed that in 1947, on partition of the country, there was a large influx of refugees into Delhi. The Government was faced with the problem of resettling the refugees. This necessitated the imposition of restrictions on the right to evict tenants from residential and non-residential premises. The legislature keeping in view the needs of the people and other circumstances allowed the landlord to evict tenants from residential premises for his personal use in case he did not have any other suitable accommodation, but restricted the right of the landlord to recover possession of non-residential premises on the ground of personal need. The necessity behind this discrimination is to assure the security of tenure to the tenants of non-residential premises so that they can settle in their business without the fear of being ejected.*

Owners of residential buildings and non-residential buildings each stand out as a class by themselves. The impugned provisions make no distinction inter se between the two classes of properties or their landlords. The impugned provisions take within their fold all the persons similarly situate. So long as there is equality under similar conditions and among persons similarly situated, there is no infringement of Article 14."

26. A critical analysis of the above noted judgment makes it clear that the main reason which weighed with the High Court for approving the classification of premises into residential and non-residential was that by imposing restriction on the eviction of tenants of premises let for non- residential purposes, the government wanted to solve the acute problem of housing created due to partition of the country in 1947. The Court took cognizance of the fact that as an aftermath of partition many hundred- thousands of people had been uprooted from the area which now forms part of Pakistan; that they were forced to leave their homes and abandon their business establishments, industries, occupation and trade and the Government was very much anxious to ensure resettlement of such persons. It was felt that if the landlords are readily allowed to evict the tenants, those who came from West Pakistan will never be able to settle in their life. Therefore, in the 1947 and 1958 Acts, the legislature did not provide for eviction of tenants from the premises let for non-residential purposes on the ground that the same are required by the landlord's for their bona fide use and occupation.

27. Insofar as the judgment under challenge is concerned, we find that the Full Bench upheld the validity of Section 14(1) (e) mainly by relying upon Corporation of India, and of this Court in ***Amarjit Singh* v. *Smt. Khatoon Quamarin*** (supra). and by observing that legislature has the right to classify persons, things, and goods into different groups and that the Court will not sit over the judgment of the legislature. It is significant to note that the Full Bench did not, at all, advert to the question whether the reason/cause which supplied rational to the classification continued to subsist even after lapse of 44 years and whether the tenants of premises let for non-residential purposes should continue to avail the benefit of implicit exemption from eviction in the case of bona fide requirement of the landlord despite sea saw change in the housing scenario in Delhi and substantial increase in the availability of buildings and premises which could be let for non-residential or commercial purposes.

28. In our opinion, the reasons which weighed with the High Court in ***H.C. Sharma* v. *Life Insurance Corporation of India*** and the impugned judgment cannot in the changed scenario and in the light of the ratio of ***Harbilas Rai Bansal* v. *State of Punjab***, which was approved by three-Judge Bench in ***Rakesh Vij* v. *Dr. Raminder Pal Singh Sethi*** and of ***Rattan Arya* v. *State of Tamil Nadu***, as also the observations contained in the concluding portion of the judgment in ***Gian Devi Anand* v. *Jeevan Kumar*** now be made basis for justifying the classification of premises into residential and non- residential in the context of landlord's right to recover possession thereof for his bona fide requirement. At the cost of repetition, we deem it proper to mention that in the rent control legislations made applicable to Delhi from time to time residential and non-residential premises were treated at par for all purposes. The scheme of the 1958 Act also does not make any substantial distinction between residential and non-residential premises. Even in the grounds of eviction set out in proviso to Section 14(1), no such distinction has been made except in Clauses (d) and (e). In ***H.C. Sharma* v. *Life Insurance Corporation of India***, the Division Bench of the High Court, after taking cognizance of the acute problem of housing created due to partition of the country, upheld the classification by observing that the Government could legitimately restrict the right of the landlord to recover possession of only those premises which were let for residential purposes. The Court felt that if such restriction was not imposed, those up-rooted from Pakistan may not get settled in their life. As of now a period of almost 50 years has elapsed from the enactment of the 1958 Act. During this long span of time much water has flown down the Ganges. Those who came from West Pakistan as refugees and even their next generations have settled down in different parts of the country, more particularly in Punjab, Haryana, Delhi and surrounding areas. They are occupying prime positions in political and bureaucratic set up of the Government and have earned huge wealth in different trades, occupation, business and similar ventures. Not only this, the availability of buildings and premises which can be let for non- residential or commercial purposes has substantially increased. Therefore, the reason/cause which prompted the Division Bench of the High Court to sustain the differentiation/classification of the premises with reference to the purpose of their user, is no longer available for negating the challenge to Section 14(1)(e) on the ground of violation of Article 14 of the Constitution, and we cannot uphold such arbitrary classification ignoring the ratio of ***Harbilas Rai Bansal* v. *State of Punjab***, which was reiterated in ***Joginder Pal* v. *Naval Kishore Behal*** and approved by three- Judges Bench in ***Rakesh Vij* v. *Dr. Raminder Pal Singh Sethi***. In our considered view, the discrimination which was latent in Section 14(1)(e) at the time of enactment of 1958 Act has, with the passage of time (almost 50 years), become so pronounced that the impugned provision cannot be treated intra vires Article 14 of the Constitution by applying any rational criteria.

35. Before parting with this aspect of the case, we may refer to the judgment of ***Amarjit Singh* v. *Smt. Khatoon Quamarin***, on which reliance has been placed by the Full Bench of the High Court for negating the appellant's challenge to Section 14(1)(e). In that case, the respondent sought eviction of the tenant from the first floor of the premises situated at Maharani Bagh, New Delhi on the ground of personal and bona fide necessity. The suit filed by the landlady was decreed by the learned Single Judge of the Delhi High Court and a direction was issued for eviction of the tenant (appellant). This Court referred to the earlier judgments in ***Pasupuleti Venkateswarlu* v. *Motor & General Traders*** [1975 (1) SCC 770],

Hasmat Rai* v. *Raghunath Prasad [1981 (3) SCC 103] and held that in view of the availability of alternative accommodation to the landlady, the High Court was not justified in ordering eviction of the tenant.

36. A careful reading of the aforementioned judgment shows that the plea of unconstitutionality of Section 14(1) (e) of the 1958 Act was neither raised nor debated with any seriousness and the observation made by the Court in that regard cannot be treated as the true ratio of the judgment, which as mentioned above, mainly rested on the interpretation of the expression "reasonably suitable residential accommodation". The bedrock of the respondent's claim was that she had a right to comfortable living and availability of alternative accommodation, by itself not sufficient for declining eviction of the tenant. While rejecting this argument, the Court observed:

> "The logic of the argument of Shri Kacker is attractive, but the legality of the said submission is unsustainable. Rent restriction laws are both beneficial and restrictive, beneficial for those who want protection from eviction and rack renting but restrictive so far as the landlord's right or claim for eviction is concerned. Rent restriction laws would provide a habitat for the landlord or landlady if need be, but not to seek comforts other than habitat that right the landlord must seek elsewhere."

37. Another contention raised on behalf of the landlady was that Section 14(1)(e) of the 1958 Act should be read in a manner which will make it in conformity with Articles 14 and 16 of the Constitution. This is evinced from para 18 of the judgment which is extracted below:-

> "18. Our attention was drawn to the decision in the case of ***Bishambhar Dayal Chandra Mohan* v. *State of U.P.*** [1982 (1) SCC 39] and our attention was drawn to the observations at p. 66 and 67 of the said case in aid of the submission that right to property is still a constitutional right and therefore in exercise of that right if a landlord or an owner of a house lets out a premises in question there was nothing wrong. Shri Kacker submitted that the second limb of Section 14(1)(e) of the Act should be read in such a way that it was in consonance with Article 14 and Article 21 of the Constitution. Otherwise it would be void as being unconstitutional. As a general proposition of law this is acceptable.
>
> The Court rejected the argument and observed:
>
> "The Act in question has the authority of law. There is no denial of equality nor any arbitrariness in the second limb of Section 14(1)(e) of the Act, read in the manner contended for by the appellant. Article 21 is not violated so far as the landlord is concerned. The rent restricting Acts are beneficial legislations for the protection of the weaker party in the bargains of letting very often. These must be so read that these balance harmoniously the rights of the landlords and the obligations of the tenants. The Rent Restriction Acts deal with the problem of rack renting and shortage of accommodation. It is in consonance with the recognition of the right of both the landlord and the tenant that a harmony is sought to be struck whereby the bona fide requirements of the landlords and the tenants in the expanding explosion of need and population and shortage of accommodation are sought to be harmonised and the

conditions imposed to evict a tenant are that the landlord must have bona fide need. That is satisfied in this case. That position is not disputed. The second condition is that landlord should not have in his or her possession any other reasonably suitable accommodation. This does not violate either Article 14 or Article 21 of the Constitution."

38. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.

39. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under :- "that the premises are required bona fide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation."

While adopting this course, we have kept in view well recognized rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible ***R.M.D. Chamarbaugwalla* v. *Union of India*** [AIR 1957 SC 628] and ***Bhawani Singh* v. *State of Rajasthan*** [1996 (3) SCC 105].

As a sequel to the above, the explanation appearing below Section 14(1)(e) of the 1958 Act will have to be treated as redundant.

40. In the result, the appeals are allowed. The impugned judgment is set aside and Section 14(1)(e) of the 1958 Act is partly struck down. Section 14(1)(e) shall now read as indicated in para 39 above. Consequently, the writ petitions filed by the appellants shall stand allowed and the orders impugned therein shall stand quashed. The parties are left to bear their own costs.

* * * * *

V.K. Bhandari v. *Sheikh Mohd. Yahya*

158 (2009) DLT 124

MANMOHAN,J - 3. Present petition has been filed under Section 25-B(8) of Delhi Rent Control Act, 1958 (hereinafter referred to as 'DRC Act'), seeking to set aside judgment dated 12th September, 2008 whereby Additional Rent Controller after having granted leave to defend to petitioner-tenant has allowed respondents-landlords' eviction petition.

4. Learned counsel for petitioner-tenant contends that respondents-landlords have not disclosed the alternative accommodation available to them in Delhi. He states that there is no averment in the eviction petition that other family members of respondents did not possess or own any other reasonable suitable residential accommodation. He further contends that though respondents-landlords have been in possession of first and second floors of tenanted premises comprising of four rooms, respondents had not occupied the said floors for the last fifty years. Therefore, according to him, respondents-landlords' requirement was not bona fide and respondents-landlords' intent was only to sell the property at a high price.

5. Mr. Bagga, learned Counsel for petitioner, submitted that as in present petition eviction decree had been passed in contravention of statutory conditions, it was not binding. In this context, he referred and relied upon following judgments:

A. Precision Steel & Engineering Works **v.** ***Prem Deva*** [AIR 1982 SC 1518] wherein it has been held:

> "11. The language of sub.sec. (5) of S.25B casts a statutory duty on the Controller to give to the tenant leave to contest the application, the only pre-condition for exercise of jurisdiction being that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground mentioned in S.14(1)(e). S.14(1) starts with a non obstante clause which would necessarily imply that the Controller is precluded from passing an order or decree for recovery of possession of any premises in favour of the landlord against the tenant unless the case is covered by any of the clauses of the proviso. The proviso sets out various enabling provisions on proof of one or the other, the landlord would be entitled to recover possession from the tenant. One such enabling provision is the one enacted in Section 14 (1) provision (e). Upon a true construction of provision (e) to Sec. 14(1), it would unmistakably appear that the burden is on the landlord to satisfy the Controller that the premises of which possession is sought is: (i) let for residential purposes; and (ii) possession of the premises is required bona fide by the landlord for occupation as residence for himself or for any members of his family etc; and (iii) that the landlord or the person for whose benefit possession is sought has no other reasonably suitable residential accommodation. This burden, the landlord is required to discharge before the Controller gets jurisdiction to make an order for eviction. This necessarily

transpires from the language of S.14 (1) which precludes the Controller from making any order or decree for recovery of possession unless the landlord proves to his satisfaction the conditions in the enabling provision enacted as proviso under which possession is sought. Initial burden is thus on the landlord."

B. Deena Nath* v. *Pooran Lal reported in [(2001) 5 Supreme Court Cases 705] wherein it has been held:

"12.… The "bona fide requirement" must be in praesenti and must be manifested in actual need which would evidence the court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in clause (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available. The judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bona fide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the Court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bona fide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment. In such case the High Court cannot be faulted for interfering with the finding in exercise of its second appellate jurisdiction under Section 100 of the Code of Civil Procedure."

C. Ram Narain Arora* v. *Asha Rani [(1999) 1 Supreme Court Cases 141] wherein it has been held:

"10. In making a claim that the suit premises is required bona fide for his own occupation as a residence for himself and other members of his family dependent on him and that he has no other reasonably suitable accommodation is a requirement of law before the court can state whether the landlord requires the premises bona fide for his use and occupation. In doing so, the court must also find out whether the landlord or such other person for whose benefit the premises is required has no other reasonably suitable residential accommodation. It cannot be said that the requirement of the landlord is not intermixed with the question of finding out whether he has any other reasonably suitable

accommodation. If he has other reasonably suitable accommodation, then necessarily it would mean that he does not require the suit premises and his requirement may not be bona fide. In such circumstances, further inquiry would be whether that premises is more suitable than the suit premises. Therefore, the questions raised before the court would not necessarily depend upon only the pleadings. It could be a good defence that the landlord has other reasonably suitable residential accommodation and thereby defend (sic defeat) the claim of the landlord."

6. On a perusal of impugned order, I find that Additional Rent controller by way of impugned order has given cogent reasons for allowing respondents-landlords' eviction petition. Some of the relevant observations in the impugned order are reproduced herein below for ready reference:

"8. As far as the requirement of the petitioner No.2 & 3 is concerned, the family of Petitioner No.2 consists of his wife, three grown up unmarried daughters and a son and as such, the petitioner No.2 requires at least four bed rooms for their family and a guest room, a drawing-cum-dining room, a study room apart from kitchen, latrine and bathroom, which makes his total requirement to be seven rooms, whereas the family of petitioner No.3 consisting of his wife, two grown up unmarried sons and a daughter. He at least requires three bed rooms, a guest room, a drawing-cum-dining room and a study room, which makes his total requirement to be six rooms and as such, both the petitioner No.2 & 3 requires at least a minimum of 13 rooms between their families and they only have six rooms available at property No.3331, Bara Hindu Rao and another four rooms on the first floor above the suit property, which makes only 10 rooms available to them.

9. Otherwise also another important fact, which requires consideration, is that both petitioner No.2 & 3 are doctors by profession and have status in the society and wants to shift from a slum area to a posh locality where the suit property is situated and the same coupled with the fact that the property at Bara Hindu Rao is highly insufficient for their requirement, I am of the opinion that a case of bonafide requirement has been made in this case and an eviction order is passed in favour of the petitioners and against the respondents in respect of the suit property, i.e. ground floor of the property No.XVI/9448, Block No.65/4, Sardar Manzil, New Rohtak Road, New Delhi, except of one garage, more specifically shown red in the site plan Ex.PW1/11. However, eviction order shall not be executable for a period of 6 months from today. File be consigned to Record Room."

7. In the eviction petition, I find that respondents-landlords have categorically stated, "that the first floor of the Suit property consist of 4 small rooms. The barsati floor (on the 2nd floor) has 2 small rooms and does not have bathroom or kitchen. This accommodation is insufficient for the petitioners (respondents-landlords herein) and their family members who are dependent on them for residence and the petitioners (respondents-landlords herein) have no other suitable residential accommodation in Delhi except the suit property." Further, in the present case, unlike in ***Precision Steel*** case, I find that petitioner-tenant had been granted leave to defend and he had

an opportunity not only to file written statement but also to lead evidence and cross-examine the respondents-landlords. In my view, if the petitioner-tenant had some information that respondents-landlords or any of their dependant family members possessed or owned some other alternative residential property which was available to them, he should have either cross-examined respondents-landlords with regard to specific alternative accommodation available or he should have filed substantial evidence. But he failed to do so. Consequently, the case law cited by petitioner-tenant is inapplicable to facts of the present case.

8. As far as petitioner's contention that respondents-landlords had not occupied the first and second floor of tenanted premises for the last fifty years is concerned, I am of the opinion that in view of Additional Rent Controller's finding that respondents-landlords require minimum thirteen rooms for accommodating their two families, it cannot be said the said accommodation is sufficient alternative accommodation as respondents cannot be forced to stay in four bedrooms alleged to be available on the first and second floors of tenanted premises.

9. As far as petitioner's apprehension that respondents-landlords have only filed an eviction petition with a view to get the tenanted premises evicted so that they can sell the same, I am of the view that this apprehension is baseless as firstly no evidence to this effect has either been filed or led by petitioner-tenant. Moreover, Section 19 of DRC Act specifically takes care of this apprehension inasmuch as it provides that landlords after getting the premises evicted under Section 14 of said Act cannot sell the same for a period of three years without obtaining permission of Controller.

10. Consequently, present petition along with application being devoid of merits are dismissed with costs of Rs.11,000/-.

* * * * *

Shri Ramesh Ahuja v. *Shri Ram Nath Jain*

158 (2009) DLT 347

MANMOHAN, J - 1. Present civil revision petition has been filed by petitioners/tenants under Section 25B(8) of Delhi Rent Control Act, 1958 seeking to set aside order dated 25th September, 2008 passed by Additional Rent Controller (in short 'ARC') in E No. 879/2007 whereby petitioners' leave to defend application has been dismissed and an eviction order in favour of respondent/landlord has been passed.

2. Learned Counsel for petitioners contended that respondent/landlord is not the owner of premises in question and sale deed relied upon by respondent is a forged and fabricated document. He further stated that ARC had wrongly concluded that respondent was owner of property in question on the basis of a judgment rendered by a Judge of Small Causes Court in Suit No. 810/1991. He submitted that said judgment cannot be relied upon to conclude the ownership issue as a Court of Small Causes has limited jurisdiction. In this context learned Counsel for petitioners relied upon a judgment of Hon'ble Supreme Court in ***Sunder Dass* v. *Ram Prakash*** [AIR 1977 SC 1201] wherein it has been held as under:-

> "3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any Court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing Court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing Court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all……"

3. He further submitted that ARC could not have relied upon the principle of *res judicata* as decision on question of jurisdiction was purely a question of law, unrelated to rights of parties to previous suit. In this context, he relied upon a judgment of Hon'ble Supreme Court in ***Mathura Prasad Sarjoo Jaiswal* v. *Dossibai N.B. Jeejeebhoy*** [AIR 1971 SC 2355] wherein it has been held as under :-

> "10. It is true that in determining the application of the rule of *res judicata* the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question law, i.e. the interpretation of a statute, it will be

res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in S.11 Code of Civil Procedure, means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.

4. In my opinion, judgment of ***Sunder Dass*** relied upon by counsel for petitioners, is clearly inapplicable to facts of the present case, as it is not petitioners' case that judgment passed by a Court of Small Causes was a nullity for lack of inherent jurisdiction.

5. Undoubtedly, a Court of Small Causes has limited jurisdiction, but in my opinion, on the principles of res judicata, finding of Court of Small Causes that respondent was owner of tenanted premises, would disentitle petitioners from raising this plea in their leave to defend application. The finding rendered by Small Causes Court with regard to respondent's ownership of suit premises is reproduced hereinbelow for ready reference :"

6. From the pleadings of the parties it is admitted case of the parties that Heera Lal was the previous owner and Ram Lal deceased husband of the defendant was the tenant. The defendant herself has not come forward to enter in the witness box. Her son appearing as DW has not stated a word about having become owner by way of adverse possession. It is settled law that once a tenant always a tenant. Succession of tenancy rights is governed by the provisions of Delhi Rent Control Act, 1958 and on the demise of a tenant tenancy rights are inherited by his spouse, son or daughter provided they were living with the deceased on the date of his death, as laid down in sub Sec. (L) of Sec. 2 of the Act. This provision is further subject to explanation (I) and in the order of succession provided therein the tenancy rights devolved firstly upon the surviving spouse and if there is no surviving spouse then upon son or daughter of that deceased. Since the deceased Ram Lal is survived by his wife presently living in the tenanted premises tenancy rights cannot be said to have devolved upon the son or daughter of the deceased. Therefore, other LRs of the deceased are not necessary to be impleaded. It has not been explained as to how DDA is a necessary party. Even if rent of the premises was once attached by the DDA for nonpayment of lease money unless possession is taken the ownership does not comes to end.

7. Regarding ownership of the plaintiff he has proved on record sale deed Ex. PX and PW-1/A and copies of mutations Ex. PW1/B&C. A bare perusal of these sale deeds shows that Heera Lal the previous owner, sold the property to Sh. Ram Kumar and others who in turn later on sold the same to the plaintiff. It was contended by the learned Counsel for the defendant that the Sale Deed has to be properly proved. In this connection PW3 Shri G.R. Chopra, Advocate has identified his signature as well that of executants before the Sub-Registrar and has thus proved the sale deed, from the record brought by clerk of Sub-Registrar Office, certified copy of which is Ex. PX. Other sale deed Ex. PW-1/A was proved by the plaintiff himself. Copies of mutation placed on record and proved as Ex. PW-1/B & C further

show that first property was mutated in the name of Ram Kumar and therein the name of the plaintiff. In my opinion this is sufficient proof of ownership.

8. In his deposition the defendant's son himself stated that if rightful owner claims the rent the defendant is willing to pay the same. Since there is no dispute regarding rate of rent and the period and it stands proved on record that the plaintiff is the rightful owner to recover the rent, I find the plaintiff entitled to claim the same. Suit is thus, liable to be decreed against the defendant……."

6. Admittedly, aforesaid finding has attained finality as the same was never challenged by petitioners' predecessor in interest -through whom petitioners claim tenancy. Moreover, on a perusal of judgment of Court of Small Causes, it is apparent that the same dispute with regard to ownership of tenanted premises was raised in the said proceedings, as is being sought to be done in the present case, and further that finding of Court of Small Causes was in fact a finding of fact and not of law. Even the judgment of ***Mathura Prasad Sarjoo Jaiswal*** relied upon by petitioners' Counsel is inapplicable to the present case.

7. It is pertinent to mention that petitioner no. 1 had deposed as a witness in support of his mother -who was the defendant before Court of Small Causes. It is rather unfortunate that judgment of Court of Small Causes was not disclosed by petitioners in their leave to defend application. The tendency of not making full disclosure in pleadings is unfortunate and largely responsible for delay in the judicial system. Unless this practice of making incomplete disclosure is curbed with a heavy hand, courts will not able to dispense speedy justice. Consequently, petitioners' conduct of making incomplete disclosure is deprecated and present petition along with application are dismissed with costs of Rs. 15,000/-to be paid to Prime Minister Relief Fund within a period of six weeks from today.

* * * * *

Ganpat Ram Sharma v. *Gayatri Devi*

AIR 1987 SC 2016

SABYASACHI MUKHARJI, J. - These appeals by special leave are from the judgement and order dated August 28, 1980 of the High Court of Delhi. Three Appellants, Jai Bhagwan, Pearey Lal and Ganpat Ram, were inducted into premises No. 3240, Kucha Tara Chand, Daryaganj, Delhi by the then landlord, Shri Dina Nath. The families of the appellants consisted of about 7 or 8 members per family living in one room each on the ground floor of the said premises. Shri Pearey Lal, one of the appellants, had one side storeroom alongwith the room and Shri Jai Bhagwan had one small tin shed on the first floor. The appellants were also sharing the terrace.

2. In 1952 the land and building situated at No. A-6/25, at Krishan Nagar, Delhi was purchased by one Nathu Ram, father of the appellant Ganpat Ram and Pearey Lal together with the appellant Jai Bhagwan, his son-in-law. The building consisted of two rooms, two kitchens and a barsati.

3. Three applications were made by the appellants under Order 41 Rule 2 of CPC on or about August 4, 1980. The High Court pronounced its judgement without disposing of these applications on or about August 27, 1980 and proceeded to hold against the appellants on the basis of an adverse inference that the three appellants had built the house in Krishna Nagar, whereas a copy of the sale deed would show that the said house was bought and not built by Nathu Ram and Jai Bhagwan, and were not by the two of three appellants.

4. In 1958 Ganpat Ram was allotted a DDA Quarter No. 3/7 at Village Seelampur, Shahdara. By a notification dated May 28, 1966, Village Seelampur, Shahdara was declared to be an urban area. By Notification dated March 27, 1979 issued under Section 1(2) of the Delhi Rent Act (hereinafter called 'the Act') this village was subjected to the provisions of the said Act. During 1967-68 one Mrs. Sushila Devi was inducted into the quarter at Seelampur, consisting of a room, a kitchen and a bathroom. This lady had applied for the allotment of the said quarter in her name sometime in 1974. On July 20, 1980, the authorities, in fact, allotted the said quarter to her. In 1965-70 M/s. Dev Karan and Kul Bhushan being the sons of Pearey Lal had been occupying the portion of the house at Krishna Nagar together with their family members and grandfather, Nathu Ram. Nathu Ram died in 1969. The other portion was occupied by one Kalu Ram and his family members being brother of Jai Bhagwan. There were 18 people residing at the relevant time in the said house. The present landlord, the respondent herein, purchased the suit premises from the erstwhile landlord. Dina Nath on or about April 9, 1973. On or about September 28, 1973, the present landlord applied to the competent authority under the Slum Act for permission to evict the appellants from the said premises. On December 12, 1974 the competent authority under the Slum Act granted permission to the landlord to proceed in eviction against the three appellants. On or about April 16, 1975, the respondent herein filed three eviction suits against the appellants on the grounds contained in Section 14(1)(a), (h) and (j) of the Act. On January 31, 1977, it was held by the Additional Rent Controller, Delhi that the ground under Section 14(1)(h) was made out against all the three appellants. The ground under Section 14(1)(a) was also upheld but the appellants were asked to deposit arrears of rent within a month from the date of the order so

as to avail the benefit of Section 15(1) of the Rent Act which the appellants availed of. On or about April 24, 1979, the Rent Control Tribunal confirmed the decree in ejectment on appeal under Section 14(1)(h) of the Act against the three appellants. On further appeal the High Court construed Section 14(1)(h) of the Act to mean that a building constructed by the tenant which is outside the purview of the Delhi Rent Act on the date of the application for ejectment, was yet within Section 14(1)(h) and the tenant was liable to be ejected.

5. In appeal before us, it was submitted on behalf of the appellants that in none of the three judgements, there was any finding as to the suitability of the residence that is built, allotted or of which the tenant has acquired vacant possession of. None of the courts has re-examined the size of the space, the distance and inconvenience that might be caused, the number of persons in the tenants' families or the state of residence built or allotted by or to the tenants. Aggrieved by the aforesaid judgement of the High Court dated August 28, 1980, the tenants have come up in appeal.

6. In this case the learned Additional Rent Controller had passed an order of eviction under clause (h) of Section 14(1) of the said Act against all the three appellants as mentioned before. The said decision was upheld by the Tribunal. It has been held by the courts below that the three tenants have built and acquired vacant possession of the residential house at A-6/25 Krishna Nagar, Lal Quarter, Delhi. It was held that Ganpat Ram, one of the tenants-appellants has been allotted residential quarter at 317, Seelampur III, Shahdara, Delhi. Before the High Court the judgements of the Rent Controller as well as the Tribunal were challenged on the grounds, inter alia, that none of the three tenants had built or acquired vacant possession of the residential house No. A-6/25, Krishan Nagar, near Lal Quarter, Delhi. It was further submitted that in any case the respondent-landlady was not entitled to claim eviction under clause (h) on the grounds of waiver and laches. Counsel submitted before the High Court that Ganpat Ram had not been allotted the quarter at Seelampur and that in any case he was not in possession of the same. He further submitted that the Act was not applicable to the quarter alleged to have been allotted to Ganpat Ram, tenant and as such grounds covered by clause (h) were not available to the landlady. Lastly it was submitted that all the three ingredients mentioned in clause (h) of Section 14 of the Act were applicable to the landlord. Section 14 of the Act is in Chapter III and controls eviction of the tenants. The said section stipulates that notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against the tenant. Clause (h) deals with the situation where the tenant has, whether before or after the commencement of the Act, built or acquired vacant possession of or has been allotted a residence.

7. The High Court noted the apparent purpose of providing clause (h) of sub-section (1) of Section 14. The High Court was of the opinion that on account of rapid growth of population of Delhi, landlords were tempted to terminate the tenancies of the existing tenants and ask for their eviction in order to let out the premises to the new tenants at high rents. Rent Control legislation for Delhi and New Delhi was passed for the first time during the Second World War and since then there has been Rent Control legislation applicable to various urban areas in the Union Territory of Delhi. The Rent Control Act was enacted to provide for the control of rents and evictions. The object of clause (h), as is apparent, is not to allow the

tenant more than one residence in Delhi. Therefore, it provided that in case that tenant builds a residence, the landlord could get his house vacated. It also provided that if the tenant acquired vacant possession of any other residence, he is not protected. Lastly, it also stipulated that if residential premises have been allotted to a tenant, he is not entitled to retain the premises taken on rent by him. In the instant case, on (sic of) the three causes on which the landlord can claim eviction were present against the tenant; the High Court held that these causes are not joint. These need not be conjointly proved or established. These were in the alternative. Therefore, if the landlord is successful in proving any one of the causes, he is entitled to an order of eviction against the tenant. Counsel for the appellants sought to urge before the High Court that if a tenant built a house, he must acquire its vacant possession, before he can be evicted under clause (h). Similarly, it was submitted that if residential accommodation was allotted to a tenant then he must obtain vacant possession of the same. The word 'or' showed according to the High Court, that these were different circumstances in which a tenant was liable to be evicted. These were (i) if the tenant had built a new residence, or (ii) if he had acquired vacant possession of it or (iii) if he had been allotted a residence.

8. The words 'built' and 'allotted' do not mean that after building residence or after allotment of a residence, the tenant must also acquire its possession. If a tenant builds a house and does not occupy it, he is liable to eviction, according to the High Court. Similarly, if a residence is allotted to a tenant, but he does not occupy it and allows others to occupy the same, he is not protected, according to the High Court. The Act provides that building of a house by tenant or allotment of residence to him is a ground of eviction available to the landlord against his tenant. The learned Judge of the High Court was of the view that it is not necessary for a landlord to prove either that the tenant has built and acquired vacant possession of the building or that he has been allotted and taken possession of the allotted premises.

9. The landlady in the eviction application alleged that the tenants had built and acquired vacant possession of a residential house at A-6/25, Krishna Nagar, near Lal Quarter, Delhi. It was denied by all the tenants but the Controller and the Tribunal on the basis of the evidence on record concluded that the three tenants have built and have also acquired vacant possession of the said residential premises. It was further held that the relatives of the three tenants were in actual physical possession of the said house at Krishna Nagar. It transpired from the record that Dev Karan, Kul Bhushan and Kalu Ram were admittedly related to the three tenants and were in occupation of house at Krishna Nagar as licensee of the three appellant-tenants. This is a finding of fact and could not have been challenged in second appeal before the High Court. Learned counsel for the tenants then submitted before the High Court that the landlady was a purchaser of the property from one Dina Nath and she and her vendor had also been aware that the tenants were owners of the house in Krishna Nagar. On account of this knowledge it was argued that the landlady-respondent had waived her rights under clause (h) of Section 14(1) of the Act. The High Court found that there was no substance in the argument. There was no plea that the landlady ever waived or was guilty of laches. No evidence was led by the parties. The facts were that the respondent-landlady purchased this property from Dina Nath on April 9, 1973. There was nothing on record to show that Dina Nath was ever aware of the fact about building or acquiring a house at Krishan Nagar by the

three tenants. The landlady on September 28, 1973 filed applications against the three tenants under Section 19 of the Slum Area (Improvement and Clearance) Act, 1956 seeking permission to institute eviction proceedings. The required permission was granted by the competent authority on December 12, 1974 and the present eviction application out of which this appeal arises was filed on April 16, 1975. Therefore, there was no question of laches on the part of the landlady. She filed an application for permission after about six months from the date of purchase and she filed an eviction application after about four months from the date of the grant of permission by the Slum authority.

10. The landlady claimed eviction of Ganpat Ram, appellant tenant, on another ground also, namely, that he has been allotted residential quarter at 317, Seelampur III, Shahdara, Delhi. This fact was denied by the tenant. AW 1 Naresh Chand, an official of the DDA brought the official record relating to the allotment of this quarter. It was proved that the said quarter was allotted to him in 1958 and that possession was delivered to him. It was deposed that it was residential in nature. On behalf of the tenants, it was submitted before the High Court that the same was in possession of Sushila Devi. Sushila Devi had appeared as a witness. She admitted that the said quarter was allotted to the tenant, Ganpat Ram, the appellant. After allotment Ganpat Ram was entitled to occupy the allotted accommodation and possession was delivered to him. According to the said witness, he was not now in possession and somebody else was in possession. Evidence was adduced on behalf of the tenant that he was not in possession and somebody else was in possession. According to the High Court, if once the condition stipulated in clause (h) was fulfilled, by the tenant, he was disentitled to protection under the Act. He cannot thereafter claim that he should be protected. We are of the opinion that the High Court was right.

11. It was further alleged that Seelampur area known as Seelampur where the allotted quarter was situated, was not governed by the Act and therefore ground covered by clause (h) was not available to the landlady. There is no plea and the High Court found taking into consideration all the relevant materials that there was no evidence to show that it was situated within the area which was not governed by the Act. We are in agreement with the learned Judge of the High Court.

12. Before us in appeal, however, several points were sought to be urged. It was urged that on a proper construction, there must be a suitable residence, that is to say, a good substitute for the petitioners or the landlord and a reasonable substitute.

13. Reliance was placed on the decision of this Court in ***Goppulal* v. *Thakurji Shriji Shriji Dwarkadheeshji*** [(1969) 1 SCC 792]. There the court was concerned with the sub-letting before the coming into force of the Act and was concerned with Section 13(1) (e) of the relevant Act which used the expression "has sublet". The present perfect tense contemplated a completed event connected in some way with the present time. The words took within their sweep any sub-letting which was made in the past and had continued up to the present time. Therefore, this Court held that it did not matter that the subletting was either before or after the Act came into force.

14. The Delhi High Court in the case of ***Ved Prakash* v. *Chunilal*** [(1971) 7 DLT 5] where the expression 'has' in the Delhi Rent Control Act, 1958 in Section 14(1)(h) came up

for consideration held that the word 'has' in clause (h) carries in itself the force of the present tense. It has therefore to be interpreted in terms of the words employed in the opening part of the proviso which are to the effect that the Controller may on an application made to him in the prescribed manner make an order for the recovery of the premises and those words meant that on the date of the application the tenant must be having a residence either because he might have built the same or might have acquired vacant possession thereof or it might have been allotted to him. Any of the three situations must be there on the date of the application. If that is not so, then clause (h) of the proviso to sub-section (1) of Section 14 of the Act would have no application.

15. According to the learned Single Judge of the Delhi High Court, the word 'has' applied with the same force and velocity to the words 'built' 'acquired vacant possession of' and 'been allotted'. The last words 'a residence' again relate to all the three contingencies. The word 'has' contains in itself the meaning of presently possessing something. The ordinary English dictionaries while giving the meaning of word 'has' refer to the word 'have', which in turn means 'to hold', 'to possess'.

16. The words 'has built' or 'has acquired' or 'has been allotted' clearly mean that the tenant has already built, acquired or been allotted the residence to which he can move and that on the date of the application for his eviction his right to reside therein exists. It was therefore held that the words as they stood associated with each other in clause (h) lead to the only conclusion that as on the date of the application the tenant must be possessing a clear right to reside in some other premises than the tenancy premises as a matter of his own rightful choice either because he may have built such premises or acquired vacant possession thereof or the same may have been allotted to him.

17. In ***Revti Devi* v. *Kishan Lal*** [(1970) 2 Ren CR 71 (Del)] Deshpande, J. of Delhi High Court had occasion to construe Section 14(1)(h) of the Act. The landlord there applied for eviction of his tenant on the ground that the tenant had acquired vacant possession of another residence within the meaning of Section 14(1)(h) of the Act. The tenant defended that he had not acquired any residence and that the alleged residence had in fact been acquired by his wife and his sister-in-law jointly. The Rent Control Tribunal held that (sic) the view that under Section 14(1)(h) the tenant was liable to be evicted only if he himself had acquired the vacant possession of another residence and not by any other member of his family including the wife. The question which came up before the court for decision was whether the acquisition of a separate residence by the wife of the tenant was sufficient ground for the eviction of the tenant by the landlord under proviso (h) of sub-section (1) of Section 14. That, however, is not the question here.

18. In ***Niader Mal* v. *Ugar Sain Jain*** [AIR 1966 Punj 509] the court had to construe, inter alia, Section 13(1)(h) of the Delhi and Ajmer Rent Control Act, 1952. There under Section 13(1)(h) of the said Act in order to be liable for eviction, the tenant must have built a suitable residence. The court was of the opinion that merely because the tenant had built a house, would not be a ground for ejectment within the meaning of Section 13(1)(h). The words 'suitable residence' must be read with all the terms namely 'built', 'acquired vacant possession of' or 'been allotted'. Although the onus to prove fact within the special knowledge of a party must be on him, a landlord bringing a suit for eviction under Section 13(1)(h) of the

said Act must first allege the existence of grounds entitling him to a judgement. The residence of the tenant must be suitable one.

19. In ***Siri Chand*** **v.** ***Jot Ram*** [(1961) 63 Punj LR 915] the Punjab High Court had to construe the Delhi and Ajmer Rent Control Act, 1952 and it was held that on the date of the suit for ejectment of the tenant, in order to succeed, all that the landlord had to show was that he was the landlord and secondly, that defendant was his tenant and thirdly the tenant has, whether before or after the commencement of the Delhi and Ajmer Rent Control Act, either built a suitable residence, or been allotted a suitable residence.

20. The decision of the Delhi High Court in ***Govindji Khera*** **v.** ***Padma Bhatia Attorney*** [(1972) 4 Ren CR 195 (Del)] to which our attention was drawn, does not advance the case any further.

21. Before we discuss the other aspect the result of the several decisions to which reference has been made above, indicate that the position in law is that the landlord in order to be entitled to evict the tenant must establish one of the alternative facts positively, either that the .tenant has built, or acquired vacant possession of or has been allotted a residence. It is essential that the ingredients must be pleaded by the landlord who seeks eviction but after the landlord has proved or stated that the tenant has built, acquired vacant possession of or has been allotted a residence, whether it is suitable or not, and whether the same can be really an alternative accommodation for the tenant or not, are within the special knowledge of the tenant and he must prove and establish those facts. In the premises, we are of the view that the High Court was right and the appeals must fail and are accordingly dismissed with costs.

* * * * *

S.P. Arora v. *Ajit Singh*

1970 RCR 628

T.V.R. TATACHARI, J. - That On 6/05/1943, the father of the appellant herein obtained a perpetual lease (Exhibit A-9) in respect of certain land from the Delhi Improvement Trust. One of the terms of the lease was that the lessee should erect upon the said land within one year from the date of the lease and thereafter at all times during the terms of the lease maintain on the land a good and substantial residential house. Another term was that the lessee should not use the said land and the building thereon during the term of the lease for any other purpose than for the purpose of residential use without the consent in writing of the Lesser, and it was stipulated that the lease shall become void if the land is used for any purpose other than the purpose for which the lease was granted for being a purpose subsequently approved by the Lesser. The lease contained certain additional covenants, one of which was that no forfeiture or re-entry shall be effected for non-observance or non-performance of the covenants in the lease until the Lesser has served on the lessee a notice in writing:

> "(A) specifying the particular breach complained of: and
>
> (B) if the breach is capable of remedy, requiring the lessee to remedy the breath, and the lessee fails within a reasonable time from the date of service of the notice to remedy the breach, if it is capable of remedy; and in the event of forfeiture or re-entry the Lesser may in its discretion relieve against forfeiture on such term sand conditions as it thinks proper."

(2) It was decided in the lease deed that the grant of the lease was made under the authority of the Crown, and that the provisions of the Crown Grants Act (XV of 1895) shall apply to the grant.

(3) Thereafter, the appellant built a house on the land. In April, 1951, the respondent herein took on rent the first floor of the house from the appellant herein for residential purposes, the rent being Rs. 110.00 per month. The rent was subsequently increased to Rs. 121.00 per month. In September, 1953, the respondent took on rent the ground floor also from the appellant for a rent of Rs. 115.00 per month. According to the appellant, the ground floor was let out for residential purposes, while according to the respondent, the ground floor was let out for commercial purposes. In April, 1954, the respondent obtained connection for electrical power, and in June, 1955, he obtained a license for running a factory on the ground floor (vide Rw 2).If appears that the respondent began to run a factory known as Bangson Electronic Industries on the ground floor.

(4) The Delhi Improvement Trust was succeeded by the Delhi Development authority. The said Authority issued a notice(Exhibit A-1) on 11/09/1959, to the appellant in which it was stated that the appellant herein, as' a lessee of the plot of land, was entitled to use the land and the building thereon for the purpose of residential use only, that he. however, permitted the same to be used for purposes of a factory which was contrary to the terms of the lease, and that as the lease was liable to be determined for the breach of the terms of the lease, the appellant was required to discontinue the said use of the land and the building thereon, The

appellant was also required to show cause why the lease be not determined and the land together with the building be not re-entered upon without any compensation. The appellant sent a reply (ExhibitA-8) on 15/09/1959, stating that he let out the building in question to the respondent herein expressly and solely for residential purposes only, that the building was being used as factory without the appellant's authority, that he was sending a notice to the respondent-herein to remove the factory from the premises at once and that the authority may rest assured that the appellant would do everything possible to have the factory removed from the house. On the same date, the appellant sent a letter (Exhibit A-7) to the respondent stating that the ground floor was let out to him solely for residential purposes, that the respondent however was using the building for the purpose of a factory known as Bangson Electronic Industries that the factory should be vacated within two weeks failing which legal action For ejectment would be taken against the respondent, and that a copy of the notice issued by the Delhi Development Authority was enclosed wherefrom the respondent could notice that in case of failure on his part very severe action was threatened by the Authority. The respondent, however does not admit the receipt of this letter. On 9/11/1959, the Authority again sent a letter (Exhibit A-5) to the appellant enquiring what legal action was taken for the removal of the factory. The appellant thereupon sent through his lawyer a notice (Exhibit A-10)to the respondent on 20/11/1959, referring to the earliest letter (Exhibit A-7) dated 15/09/1959. In this letter the appellant pointed out that both the ground floor and the first floor were let out to the respondent for purposes of residence only, that the respondent was however using the premises for a factory, a purpose other than that for which it was let out, that the respondent was fully aware of the fact that the lease of the land under the said premises was given to the appellant on the express condition that the premises built on the land would be used for the purposes of residence only that the said fact was brought to the notice of respondent by letter .dated 15/09/1959, sent along with a copy of the notice received from the Delhi Development Authority under a registered/D cover, that the respondent, however, did not care to acknowledge the said letter and did not remove the factory, that the Delhi Development Authority had again sent a letter dated 1 9/11/1959, and a copy of the same was enclosed, and that the respondent should remove the factory and cease using the premises for a purpose other than that of residence failing which action would be taken for the ejectment of the respondent from the premises in a court of law. The receipt of this letter is admitted by the respondent. He, however, did not remove the factory, but is slated to have sent a reply on 7/12/1959,stating that the ground floor was let out-for commercial purpose and not for residential purpose ,As the respondent did not remove the factory, the appellant herein filed an application on 15/11/1960, in the Court of the Rent Controller, Delhi, under clauses (c) and (k)of the proviso to section 14(1) of the Delhi Rent Control Act,1958, praying for the eviction of the respondent from the ground floor on two grounds, viz.-

> "(1)Because the tenant is using the premises .notwithstanding previous notice in a manner contrary to the conditions imposed on the landlord by the Lesser while granting him the lease of the land under the premises let; and
>
> (2) Because the premises were let after 9/06/1952 and the tenant is using them for a purpose other than for which they were let without obtaining the consent of the landlord in writing."

(5) The respondent contested the application and pleaded that the premises in dispute, i.e. the ground floor, was not rented for residential purpose, that he had not used the premises in a manner contrary to the purpose for which it was let out, that the did not know the terms of the lease of the land on which the premises were situate, that he had been using the premises in dispute as a factory from the start of the tenancy, and that the appellant herein had been receiving rent and had, thus waived the objection, if any, to the user of the ground floor for the purpose of a factory.

(6) The Rent Controller, by his judgment, dated 27/10/1961, held that the ground floor was let out for the purpose of using the same as factory premises and not for the purpose of residence, and that, therefore, there was no mis-user by the respondent within the meaning of clause (c) of the proviso to sub-section (1) of section 14 of the Delhi Rent Control Act, 1958. As regards the second ground relied upon by the landlord, the learned Rent Controller relying upon a decision of the High Court of Punjab in ***Uma Kumari* v. *Jaswant Rai Chopra*** [1960 P.L.R. 460] 0) held that as the ground floor was let out by the appellant herein to the respondent for the purpose of a factory and he himself committed the breach of the condition of the lease between himself and the Delhi Development Authority, he could not now ask his tenant to quit or to change the user, and that the respondent could not, therefore, be ejected on the ground specified in clause (k) of the proviso to sub-section(1) of section 14 of the Delhi Rent Control Act. In the result, the Rent Controller dismissed the application.

(7) Against that order, the appellant herein preferred an appeal, Rent Control Appeal No. 486 of 1961, to the Court of Sri Pritam Singh Pattar, Rent Control Tribunal. Delhi. By an order, dated 22/05/1962 the Tribunal agreed with the decision of the Rent Controller and dismissed the appeal. It is against that appellate order that the present second appeal has been filed by the landlord, S. P. Arora.

> "14. Protection of tenant against eviction**.-** (1) Notwithstanding anything to the contrary contained in any other law or contract no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against the tenant :Provided that the Controller may, on an application made to him in the prescribed manner, make an order for -the recovery of the permission on one or more of the following grounds only. namely(c) that the tenant has used the premises for a purpose other than that for which they were lei-(i) if the premises have been let on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord; or(ii) if the premises have been let before the said date without obtaining his consent;(k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate."

(8) The provision in clause (k) of the proviso to section 14(1) of the Delhi Rent Control Act, 1958, is similar to the provision in clause (k) of the proviso to section 13(1) of the Delhi

& Ajmer Rent Control Act. 1952. and the reasoning in the decision of Chopra, J. applies to the present case also, as will be seen presently.

(9) Section 14 occurs in Chapter III of the Act which is given the heading "Control of Eviction of Tenants". Section 14 as given the heading "protection of tenant against eviction". The said control and protection against eviction is provided by the general prohibition in sub-section 1 against the making of an order or decree by any court or Controller for the eviction of a tenant, notwithstanding any law or contract to the contrary. But, by the proviso to the sub-section, an exception to the said prohibition was provided by permitting the eviction of a tenant on any of the grounds mentioned in the clauses to the proviso. In other words, the right of the landlord to evict the tenant that he may have under any law or contract has been preserved to him in the circumstances and situations mentioned in the clauses of the proviso to sub-section (1). The situation mentioned in clause (k) is the user of the premises by the tenant in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate. Such a user would, entail the forfeiture of the leasehold right of the landlord in the land, and, therefore, provision is made in clause (k) enabling the landlord to evict the tenant incase of such an user with a view to protect the lease-hold right of the landlord. The provision in clause (k) is thus meant for his (landlord's) benefit. It does not impose any duty or obligation on the landlord or the tenant. The landlord may or may not utilise the provision in the clause. As observed by Chopra, J., it merely imposes a penalty on the tenant, and gives the landlord a right to evict the tenant, which he may or may not exercise. The clause does not by itself prohibit the landlord from agreeing to a user by the tenant, in a manner which is contrary to any condition in the lease deed for the land. The right to evict given by clause (k) being personal to and for the benefit of the landlord, it is open to him to waive the same and agree to an user by the tenant in a manner contrary to the condition in the lease for the land, taking a risk as regards the forfeiture of the lease by the Lesser. As pointed out by Rajamannar, C.J. in ***S. Raja Chetty* v. *Jagannatha Das*** [AIR 1950 Mad. 2840] it is a well established principle of law that-

> "Everyone has a right to waive and to agree to waive the advantage of a law or a rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy."

(10) As already stated, by leasing out the premises for a purpose which is contrary to the condition in the lease deed for the land, the landlord is only committing a breach of a contractual term. So far as clause (k) of the proviso to section 14(1) of the Delhi Rent Control Act is concerned, it does not expressly prohibit the landlord from entering into such a transaction. It only enables the landlord to seek for the eviction of his tenant in a case in which the tenant uses the premises in a manner contrary to the condition in the lease deed for the land on which the premises are situate. There is no express prohibition in clause (k) against the landlord contracting out of it and waiving the advantage conferred upon him by the clause. In so waiving the advantage, the landlord cannot be said to be infringing any public right or public policy. Once he so agrees and waives the right given to him under clause (k), he would be stopped from enforcing that right.

(11) It was argued by Shri Misra that to constitute, an estoppel, there has to be a representation on the part of the landlord and a change of position by the tenant to his detriment relying upon the representation. There is no force in the argument. The agreement to an user by the tenant contrary to the conditions the lease deed for the land amounts to a representation that he would not exercise his right to evict on the ground of such user, and when the tenant acts in pursuance thereof and changes his position by using the property in that manner incurring expenses in connection therewith, the principle of estoppel would be attracted and the landlord would be stopped from seeking to enforce the right to evict given to him under clause (k). Even if the principle of estoppel as such is not attracted, the principle that the landlord cannot be allowed to approbate and reprobate would apply, and the landlord would not be permitted to enforce the aforesaid right to evict.

(12) The above view gains support from the fact that a view to the contrary would lead to the anomalous position pointed out by Chopra, J. In the present case, the ground floor was let out to the respondent for commercial purposes. If the tenant uses the ground floor for residential purposes, it would be user by him for purpose other than that for which it was let within the meaning of clause (c) of the proviso to sub-section (1) of section 14, and the respondent would be liable to be evicted by virtue of the said clause. On the other hand, if he uses the ground floor for commercial purposes, he would be liable to be evicted under clause (k)of the proviso to sub-section (1) of section 14, if the contention of Shri Misra is to be accepted. In other words, the respondent would be liable to be evicted for both the kinds of user. As observed by Chopra, J. such an anomaly could never have been intended by the legislature.

(13) Shri Misra also contended that the principle of estoppel cannot be applied in view of the non-obstante clause, "Notwithstanding anything to the contrary contained in any other law or contract" in sub-section (1) of section 14. This argument also cannot be accepted. The non-obstante clause applies only to the provision in sub-section (1) that no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant. It does not apply to the proviso which is an exception to the main provision in the subsection (1). A reading of the sub-section and the proviso shows that it is laid down in the main provision in the sub-section generally that even if the landlord is entitled to the passing of an order or decree for the recovery of possession of a premises from the tenant by virtue of any law or contract, no court or Controller shall pass such an order or decree in favor of the landlord. Then, an exception to the said general provision is made by the proviso enabling the Controller to pass an order or decree for eviction infavor of the landlord in the various circumstances and situations set out in the clauses of the proviso. In considering the applicability of the provisions of any of the clauses of the proviso, the question of applying the non-obstante clause does not arise, as the non-obstante clause does not qualify or apply to the clauses of the proviso.

(14) Another argument of Shri Misra was that if the contention of the respondent is to be accepted and the principle of estoppel is applied to a case under clause (k) of the proviso to sub-section (1) of section 14, the said clause would become redundant as the landlord can as well seek eviction under clause (c) of the said proviso. I am unable to see how clause (k) would become redundant because of the provision in clause (c) of the proviso. The two

clauses (c) and (k) provide for two different situations. Clause (c) applies to all cases of user by the tenant other than the one for which the premises are let out to him by the landlord, while clause (k) applies to the specific case where the land on which the premises are situate has been granted to the landlord subject to certain condition regarding the user thereof, and the tenant use the premises in a manner contrary to the said condition. Clause (c)is thus a general provision, while clause (k) is a special provision applicable to the specific kind of premises and user thereof mentioned in the clause. The provisions in the two clauses are not identical. There is a clear distinction between the provisions in the two clauses. While in cases covered by clause (c) the landlord can seek for eviction when the tenant uses the premises for a purpose different from the one for which the premises is let out to him and there is no question of the landlord giving him an opportunity by notice to change his user, in cases covered by clause (k) the landlord is bound to give an opportunity by notice to the tenant to change his user and conform to the conditions prescribed in the original lease of the land to the landlord. The two provisions thus operate in different situations, and no question of either of them being redundant can arise. Even if the facts of a case are such that they are covered by both the clauses, the provision in clause (k) alone would apply, because it .being a specific provision, would exclude the general provision in clause (c). For instance, there may be a case where the land is let out by the concerned authority on condition that it should be used only for residential purposes and the lessee also lets out the premises built thereon to a tenant for residential purposes, but the tenant uses it for non-residential purposes. In that case, it may be said that the landlord, i.e. the lessee from the Authority, may seek eviction of the tenant from the premises, either under clause (c) as the tenant used the premises for a purpose other than that for which they were let within the meaning of the said clause, or under clause (k)as the tenant used the premises in a manner contrary to the condition imposed on the landlord by the Authority within the meaning of clause (k) being in such a case the provision in clause (k),being a specific provision with its own requirements and procedure, prevails over and excludes the general provision in clause (c).Thus. There can be no conceivable occasion when either of them would become redundant.

(15) For the above reasons, it has to be held that the Rent Control Tribunal and the Rent Controller rightly decided that the respondent was not liable to be evicted on the ground mentioned in clause (k) of the proviso to sub-section (1) of section 14 of the Delhi Rent Control Act. The second appeal, therefore, fails and is dismissed. But, in the circumstances, the parties are directed to bear their own costs in this second appeal.

* * * * *

Faqir Chand v. *Shri Ram Rattan Bhanot*

AIR 1973 SC 921

ALAGIRISWAMI, J. - These two appeals by special leave are against the judgement of the High Court of Delhi allowing the appeals filed by the two respondents.

2. The respondents are landlords of two houses in the Karol Bagh area of Delhi. The houses are built on lands given on long lease by the Delhi Improvement Trust to the rights, liabilities and assets of which the Delhi Development Authority has since succeeded.

3. Under the terms of the lease, subject to revision of rent, the lessees were to put up residential buildings on the leased lands and the lessees undertook:

> (vi) not to use the said land and buildings that may be erected thereon during the said term for any other purpose than for the purpose of residential house without the consent in writing of the said lessor; provided that the lease shall become void if the land is used for any purpose other than that for which the lease is granted not being a purpose subsequently approved by the lessor ….

4. The present landlords are not the original lessees but their successors in interest. Portions of buildings have been leased for commercial purposes, a barber shop in C.A. No. 846 and scooter repair shop in C.A. No. 1343. The Delhi Development Authority appears to have given notice to them, drawing their attention to the provision of the lease extracted above, and that as they had permitted the buildings to be used for commercial purposes contrary to the terms of the lease deed, the lease was liable to be determined and called upon them to discontinue the use of the land for commercial purposes, failing which they were asked to show cause why their lease should not be determined and the land, together with the buildings thereon, re-entered upon without any compensation to them. Thereupon the landlords issued notice to the tenants asking them to stop the commercial use of the buildings and later instituted the proceedings out of which these appeals arise. In both these cases the buildings had been put to commercial use even before 1957 when the Delhi Development Authority Act of 1957 came into force.

5. The Controller dismissed the petitions filed by the landlords and the appeals filed by them were dismissed. They thereupon filed appeals to the High Court. A learned single Judge of the High Court taking a view contrary to two earlier decisions in ***Smt. Uma Kumari*** **v.** ***Jaswant Rai Chopra*** [(1960) PLR 460 (Punjab HC)] and ***S. P. Arora*** **v.** ***Ajit Singh*** [ILR (1970) 2 Del. 130 (HC)] referred the question that arise in these appeals to a Division Bench which took a view contrary to that taken in the two earlier decisions above referred to, and decided in favour of the landlords.

6. The question that arises for decision in these cases is this:

Are the landlords estopped or otherwise prohibited from getting possession of the property from the tenants because they themselves had let it out for commercial purposes.

8. Section 14 of the Delhi Development Act, 1957 is as follow:

" Before coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan.

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force."

9. Before this Act was passed the United Provinces Town Improvement Act, 1919 was in force in Delhi and the Delhi Improvement Trust was constituted thereunder. It was this Trust which had leased the lands to the predecessors of the two landlords in the present appeals. The Delhi Development Authority established under the Delhi Development Act, 1957 succeeded to the assets, rights and liabilities of the Delhi Improvement Trust. We shall deal first with the question that arises under the Delhi Rent Control Act.

10. Clause (k) of the proviso to sub-section (1) of Section 14 provides that the Controller may on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on the ground that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate. In this case the lease granted by the Delhi Improvement Trust, the predecessors in interest of the Delhi Development Authority, to the predecessors in interest of the landlords contains a condition that any building to be erected on the land shall not be used for any purpose other than residential purpose. There is no dispute that part of each of the buildings is being used in a manner contrary to that condition. The landlord has also given notice asking the tenant to cease using the building for that purpose. The two earlier decisions referred to held that notwithstanding this provision the landlord was not entitled to get possession of the land because he himself had leased the building for a commercial purpose and was, therefore, estopped from claiming possession. The result will be this: The Delhi Development Authority can enforce the conditions of the lease and forfeit the leased land with the building thereon. In that case both the landlords as well as the tenant stand to lose. The landlords point out this situation and say that they are not interested in evicting the tenants but are interested only in seeing that the tenants do not use the buildings for commercial purpose with the consequences that they may have to lose the land and the buildings and the tenants also cannot any longer use it for a commercial purpose.

11. It has been argued on behalf of the tenants that this clause will apply only where the tenant has used the land after previous notice from the landlord, i.e. if the landlord had told him at the beginning of the tenancy that the building was not to be used for commercial purpose and notwithstanding that the tenant used it for a commercial purpose. They, therefore, contend that as in this case both the landlord and the tenant were aware of the use to which the building was to be put there is no question of any notice from the landlord asking the tenant not to use the building for commercial purpose and by merely issuing such notice the landlord cannot take advantage of clause (k). This is really another way of putting the argument that the landlord having granted the lease for a commercial purpose is estopped

from contending that the tenant should not use it for commercial purpose. While the argument appears to be plausible we are of opinion that there is no substance in this argument. If it is a case where the tenant has contrary to the terms of his tenancy used the building for a commercial purpose the landlord could take action under clause (c). He need not depend upon clause (k) at all. These two clauses are intended to meet different situations. There was no need for an additional provision in clause (k) to enable a landlord to get possession where the tenant has used the building for a commercial purpose contrary to the terms of the tenancy. An intention to put in a useless provision in a statute cannot be imputed to the Legislature. Some meaning would have to be given to that provision. The only situation in which it can take effect is where the lease is for a commercial purpose agreed upon by both the landlord and the tenant but that is contrary to the terms of the lease of the land in favour of the landlord. This clause does not come into operation where there is no provision in the lease of the land in favour of the landlord, prohibiting its use for a commercial purpose.

12. The Legislature has clearly taken note of the fact that enormous extents of land have been leased by the three authorities mentioned in that clause, and has expressed by means of this clause its anxiety to see that these lands are used for the purpose for which they were leased. The policy of the Legislature seems to be to put an end to unauthorised use of the leased lands rather than merely to enable the authorities to get back possession of the leased lands. This conclusion is further fortified by a reference to sub-section (11) of Section 14. The lease is not forfeited merely because the building put upon the leased land is put to an unauthorised use. The tenant is given an opportunity to comply with the conditions imposed on the landlord by any of the authorities referred to in clause (k) of the proviso to sub-section (1). As long as the condition imposed is complied with there is no forfeiture. It even enables the Controller to direct compensation to be paid to the authority except in the presence of the authority. The authority may not be prepared to accept compensation but might insist upon cessation of the unauthorised use. The sub-section does not also say who is to pay the compensation, whether it is the landlord or the tenant. Apparently in awarding compensation the Controller will have to apportion the responsibility for the breach between the lessor and the tenant.

13. The provision of clause (k) of the proviso to sub-section (1) of Section 14 is something which has to be given effect to whatever the original contract between the landlord and the tenant. The leases were granted in 1940, and the buildings might have been put up even before the Delhi and Ajmer Rent Control Act, 1952, came into force. It was that Act that for the first time provided the kind of remedy which is found in clause (k). The relevant provision in that Act enabled the landlord to get possession where the tenant whether before or after the commencement of the Act used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Improvement Trust while giving him a lease of the land on which the premises are situate notwithstanding previous notice. The anxiety of the Legislature is to prevent unauthorised user rather than protection of the tenant or strengthening the hands of Development Authority in effecting forfeiture. The Development Authority can always resort to the terms of the lease. There is no estoppel here because both the landlord and the tenant knew that the tenancy was not one permitted under the terms of the lease of the land. In any case there can be no estoppel against

the statute. It would not benefit the tenant even if it is held that the landlord cannot, under the circumstances, evict him. The landlord will lose his property and the tenant also will lose. He cannot, after the Development Authority takes over the building use it for a commercial purpose. We thus reach the conclusion that the lease in its inception was not void nor is the landlord estopped from claiming possession because he himself was a party to the breach of the conditions under which the land was leased to him. Neither the clear words of the section, as in ***Waman Shriniwas Kini*** **v.** ***Rati Lal Bhagwandas*** [AIR 1959 SC 689] nor a consideration of the policy of the Act lead us to the conclusion that the lease was void in its inception if it was for an unauthorised user.

14. We are also of the opinion that the High Court was not justified in leaving to the Controller no option but to pass an order for eviction. That would make the alternative provided in sub-section (11) of Section 14 useless. The High Court is not correct in saying that since the Authority has no power to legalise the misuser of land contrary to the plans by acceptance of compensation under the Development Act, the Controller cannot order the payment of compensation by the tenant to the Delhi Development Authority. This is in effect nullifying part of the provisions contained in sub-section (11) of Section 14. The High Court has arrived at its conclusion on the basis that Section 14 of the Delhi Development Act applies to this case. We shall presently show that section has no relevance to the decision of this case.

15. What has been done in Delhi is only a preparation of the master plan for Delhi under Section 7 of the Delhi Development Act, 1957. The High Court seems to have misread the provisions of the master plan because Karol Bagh is one of the areas mentioned in page 56 of the book containing the master plan for Delhi. The same list contains the built up residential areas of Daryaganj, Jama Masjid, Chandni Chowk and Fatehpuri. Nobody can say that there are no buildings in these areas used for commercial purposes. This list is at page 56 found in Chapter II which has the main heading "Zoning and sub-division Regulations" and sub-heading "Provisions regarding uses in 'use zones'", "Provision regarding requirements in use zone: Density, coverage, floor area ratio, set back and other requirements of use zones". A careful reading of that section which deals with individual plots; minimum plot size, plot coverage, floors, frontage of plots, set back lines, front set back, rear set back line, side set back line, service lanes, show that these are concerned with construction of buildings. The provision regarding requirement in use zones can come in only if the zonal development plans are prepared under Section 8 of the Delhi Development Act, 1957. It is that section which provides for a zonal development plan containing a site plan and use plan for the development of the zone. No such zonal development plan has been prepared. The High Court was, therefore, in error in proceeding on the basis that there was a plan in relation to this area which prohibits the use of this building under Section 14. It is under the terms of the lease granted by the Delhi Improvement Trust that the use of this building for commercial purpose is prohibited and not under the Delhi Development Act.

16. Moreover, Section 14 deals with prevention of the use of any land or building in the zone otherwise than in conformity with the zonal plan. Furthermore it applies to lands leased by authorities like the Delhi Development Authority containing conditions against unauthorised user as well as to lands which do not belong to that category. Its provisions are

not intended to enforce the conditions in those leases. The proviso to that section deals with the use to which a land or building may continue to be put even after the coming into force of the zonal plan subject to such terms and conditions as may be prescribed by regulations, provided that building or land had been used for that purpose prior to the coming into force of the zonal plan. The section, therefore, does not contemplate complete prohibition of the use of a land or building for purpose other than that permitted in the zonal plan. Such uses can be continued subject to terms and conditions prescribed by the regulations provided it had been there even before the zonal plan. It is admitted that no such regulations have even been framed. Therefore, even if a zonal plan had come into operation in this area (we have already shown such a zonal plan has not come into force in this area) the previous use can be continued till the regulations are framed and after the regulations are framed they will be subject to the terms and conditions of those regulations. That zonal plans have not been prepared has been recognised by this Court in its decision in ***Municipal Corporation* v. *Kishan*** [AIR 1969 SC 386]. We are of opinion, therefore, that Section 14 of the Delhi Development Act has no relevance in deciding the question at issue in these two appeals.

17. The appeal is allowed and the judgement of the High Court is set aside. The matter will have to go back to the Controller for deciding the question under sub-section (11) of Section 14 whether he should exercise the one or the other of the two alternatives mentioned therein. As already mentioned, no order awarding compensation under the second alternative given in that sub-section can be made except in the presence of the Delhi Development Authority. In the circumstances of this case we direct the parties to bear their own costs.

* * * * *

DR K. Madan v. *Krishnawati (SMT)*

AIR 1997 SC 579

B.N. KIRPAL, J. - 2. This is an appeal by the appellant-tenant in which the challenge is to an order which had been passed under Section 14(1)(k) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act').

3. The appellant is a lady doctor and in the year 1963, she took the ground floor of House No. 1-II/91, Lajpat Nagar, New Delhi from one Gyan Chand Shingari at a monthly rent of Rs. 175 p.m. According to the appellant, this rent was first raised to Rs. 265 p.m. in the year 1968 and then to Rs. 300 p.m. in the year 1970.

4. In August 1974 the aforesaid Gyan Chand Shingari died and his widow, the respondent herein, became the owner of the property and the appellant attorned to her. According to the appellant, the premises were taken on rent by her for residential-cum-commercial purposes. She was residing in the said premises and was also running a clinic. According to the respondent, however, the premises were given on rent only for residence.

5. In the year 1974, the appellant constructed her own residential house in East of Kailash, New Delhi and, soon thereafter she shifted her residence to the new house but continued to retain the premises in dispute where she maintained her clinic. It appears that possession of some of the portion of the ground floor, which had been in the occupation of the appellant, was taken back by the respondent but the appellant continued to be the tenant of two rooms with a common use of latrine and front verandah on the ground floor of the aforesaid house.

6. On 17-5-1978 the respondent filed an eviction petition against the appellant before the Rent Controller being Suit No. 134 of 1978 under Section 14(1)(k) and (h) of the Act. By judgement dated 13-9-1985, the Additional Rent Controller, Delhi came to the conclusion that the eviction of ground floor under Section 14(1)(c) of the Act had not been made out. Eviction orders were, however, passed on the ground under Section 14(1)(h) namely that the appellant had acquired vacant possession of a residence inasmuch as she had constructed her own house in East of Kailash. The Additional Rent Controller further held that the ground under Section 14(1)(k) of the Act had been made out inasmuch as the appellant was using the premises as a clinic which was contrary to the terms and conditions imposed by the Land and Development Office on the respondent landlady. The case of the respondent was that the premises in question were residential and according to the terms of the lease given by the Government the said premises could not be used for any other purposes. A doctor was allowed to use the premises up to 500 square feet as his clinic provided the doctor resided in the said premises. Inasmuch as the appellant had shifted from the Lajpat Nagar house to her own house in East of Kailash, therefore, the submission was that her continued user of the premises in question only as a clinic was against the terms of the lease. The Additional Rent Controller vide his judgement dated 13-9-1985, while disposing of the petition on the above two grounds under Sections 14(1)(h) and 14(1)(k) of the Act, issued notice under Section 14(11) of the Act to the Land and Development Office.

7. At this stage, it is appropriate to refer to the relevant portion of the Act, namely, Sections 14(1)(k) and 14(11) of the Act which read as under:

> 14 (1) (k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or he Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate;
>
> 14 (1) (11) No order for recovery of possession of any premises shall be made on the ground specified in clause (k) of the proviso to sub-section (1), if the tenant, within such time as may be specified in this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct.

Clause (k) of the proviso to sub-section (1) provides that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on the ground that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi giving him a lease of the land on which the premises are constructed. The requirements of clause (k) may be analysed as follows:

(1) The user of the premises by the tenant should be contrary to a condition imposed on the landlord by the Government, etc.

(2) Such user must continue even after a notice to discontinue the same is given by the landlord.

(3) The condition which is contravened by the user of the tenant should be one which is imposed on the landlord by the Government 'while giving him a lease of the land on which premises are situate'.

Sub-section (11) provides that no order for the recovery of possession of any premises shall be made on the ground specified in clause (k) of Section 14(1), if the tenant, within such time as may be specified in this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct.

8. Pursuant to the issuance of the aforesaid notice by the Additional Rent Controller under Section 14(11) of the Act, the Deputy Land and Development Officer filed a written statement before the Additional Rent Controller, Delhi. After stating that the property was originally leased to Gyan Chand and, after his death, the name of the respondent had been substituted, with regard to alleged misuse and regularisation, it was stated as follows:

> "That the question of regularisation/condoning the breaches permanently does not arise. However, the lessor may consider, if proper application is made by the lessee with an undertaking to remove the breaches, within the specified period, and with readiness to pay the misuse/additional charges leviable for such misuser, that may be fixed for the period of the breach to postpone the right of re-entry till such time the breaches are finally removed".

"That the misuse in the nature of running a doctor clinic cannot be allowed, but the area extending to 500 sq. feet is permitted in case the doctor is residing in the premises. Terms for the temporary regularisation of misuse charges up to 14-1-1981 were communicated to the lessee vide this office letter No. L & DO/PS. II/1830 dated 3-12-1980 but the terms have not so far been complied with. In the present case benefit of 500 sq. feet was not given because lady Doctor Madan who is a tenant of the lessee, was not residing in the premises as noticed during inspections from time to time".

9. After filing the aforesaid written statement, the statement of misuser charges was also filed before the Additional Rent Controller, Delhi.

10. The parties then led evidence and, by judgement dated 19-4-1994, the Additional Rent Controller, Delhi came to the conclusion that the appellant had been misusing the premises by running her clinic and the misuser/breach of the conditions of the lease could not be condoned permanently by the office of Land and Development Officer and as such, by the impugned order, she was directed to stop the misuser within two months from the date of the order in order to avoid eviction against her. The Additional Rent Controller, Delhi also estimated the damages for misuser which was levied by the Land and Development Office and the appellant was directed to pay the same within two months from the date of the order including damages for misuser for the period subsequent to 1-4-1989 till its stoppage.

11. The appellant, thereupon filed an appeal before the Rent Control Tribunal, inter alia contending that there had been no misuser of the premises on her part inasmuch as since the inception of the tenancy, she had been using the same as her residence as well as clinic. This contention was not accepted and it was held by the Tribunal that there was misuse of suit premises.

12. The appellant then filed an appeal to the High Court of Delhi raising the contentions that order under Section 14(1)(k) of the Act should not have been passed and secondly, the Government had permitted the conversion of the property from leasehold to freehold. By order dated 28-10-1995, the High Court held that with regard to the plea pertaining to applicability of Section 14(1)(k) of the Act, the finding of the Additional Rent Controller, Delhi and of the Tribunal was a question of fact and no question of law arose. With regard to the policy of the Government permitting conversion of the property, it was held that the property in dispute was admittedly a leasehold property and the owner/landlord was not bound to seek conversion under the alleged policy. Hence this appeal.

13. In this appeal the only contention raised was that an order under Section 14(1) (k) read with Section 14(11) of the Act ought not to have been passed. It was further submitted while relying upon the decision in the case of ***Punjab National Bank*** **v.** ***Arjun Dev Arora*** [(1986) 4 SCC 660] that no order could be passed requiring the closure of the clinic as long as penalty for wrongful user is continued to be paid by the tenant.

14. After taking into consideration the evidence on record and, in particular, the written statement of the Land and Development Officer as well as the statement of the witnesses before the Additional Rent Controller, the Tribunal has found as fact that the appellant was using the premises in question in a manner which was contrary to the terms of lease between

the landlady and the Land and Development Office. It cannot be said that this conclusion was not warranted. It is contended by Mr Jain, learned counsel for the appellant, that as long as the order for payment of compensation to the Land and Development Office remained, the order for eviction or for closure of the clinic need not be passed.

15. It is no doubt true that the observations in Punjab ***National Bank*** case [(1986) 4 SCC 660] are to the effect that as long as the penalty was paid "the deviation of user could be permitted", but the attention of the two-Judge Bench was not drawn to the earlier decision of a three-Judge Bench in the case of ***Faqir Chand* v. *Ram Rattan Bhanot*** [(1973) 1 SCC 572]. In that case, property had been given on lease by the Delhi Development Authority but the landlords had permitted tenants to use portion of the building for commercial purposes. The Development Authority issued notice to the landlords calling upon them to discontinue the use of land for commercial purposes, failing which cause should be shown as to why the lease should not be determined and the property re-entered. Thereupon the landlords sought eviction of the tenants under Section 14(1) (k) of the Act. One of the contentions which were raised on behalf of the tenants was that the landlords were estopped or otherwise prohibited from getting possession of the property because the landlords themselves had let out the property for commercial purposes. While analysing the provisions of clause (k) and sub-section (11) of Section 14 of the Act, it was observed in ***Faqir Chand*** case as under:

> "The legislature has clearly taken note of the fact that erroneous extents of land have been leased by the three authorities mentioned in that clause, and has expressed by means of this clause its anxiety to see that these lands are used for the purpose for which they were leased. The policy of the legislature seems to be to put to an end to unauthorised use of the leased lands rather than merely to enable the authorities to get back possession of the leased lands. This conclusion is further fortified by a reference to sub-section (11) of Section 14. The lease is not forfeited merely because the building put upon the leased land is put to an unauthorised use. The tenant is given an opportunity to comply with the conditions imposed on the landlord by any of the authorities referred to in clause (k) of the proviso to sub-section (1). As long as the condition imposed is complied with there is no forfeiture. It even enables the Controller to direct compensation to be paid to the authority except in the presence of the authority. The authority may not be prepared to accept compensation but might insist upon cessation of the unauthorised use. The sub-section does not also say who is to pay the compensation, whether it is the landlord or the tenant. Apparently in awarding compensation the Controller will have to apportion the responsibility for the breach between the lessor and the tenant".

16. Dealing with the contention that the landlords were estopped from filing or getting any relief under clause (k), it was held that:

> "The anxiety of the legislature is to prevent unauthorised user rather than protection of the tenant or strengthening the hands of Development Authority in effecting forfeiture. The Development Authority can always resort to the terms of the lease. There is no estoppel here because both the landlord and the tenant knew that the tenancy was not one permitted under the terms of the lease of the land. In any case there can be no estoppel against the statute. It would not benefit the tenant even

if it is held that the landlord cannot, under the circumstances, evict him. The landlord will lose his property and the tenant also will lose. He cannot, after the Development Authority takes over the building, use it for a commercial purpose".

17. Section 14(1)(k) of the Act again came up for consideration before this Court in ***Curewell (India) Ltd.* v. *Sahib Singh*** [1993 Supp (1) SCC 507]. While construing sub-section (11) of Section 14 of the Act, it was observed as follows:

> This sub-section prevents eviction if the tenant has complied with the condition imposed on the landlord by the government. The sub-section also requires the person in possession, namely, the sub-lessee to pay to the authority such amount by way of compensation as the Controller may direct. It is not in dispute that the original lessee, upon receipt of notice from the government, had in turn issued notice to the sub-lessee, namely, the appellant calling upon him to stop misuser or vacate the premises. If the appellant has, as contended by him, stopped misuser, he is of course not liable to be evicted by reason of the protection given to him under sub-section (11). Nevertheless, for the past misuser, the appellant is liable to pay such charges as are payable in terms of the sub-section. The charges under the sub-section are such charges as are determined by the Controller. The Controller must, therefore, after hearing the parties determine the amount payable by the person responsible for the misuser, namely, the appellant who is the tenant of the original lessee and determine the correct amount.
>
> We are of the view that the appellant is liable to be evicted unless he has already stopped or stops immediately the misuser of the premises and pays the misuse charges for the period of misuse. Whether the misuser has stopped, and if so when, are questions of facts which do not appear to be clear from the pleadings or the impugned judgement and the orders of the statutory authorities.

18. In the light of the observations of this Court in the cases of ***Faqir Chand*** and ***Curewell*** the relevant provisions may be examined.

19. Section 14(1) of the Act gives protection to the tenants from being evicted from the premises let out to them. Clauses (a) to (l) of the proviso to Section 14(1) of the Act contain the grounds on which recovery of possession of the premises can be ordered by the Controller. Where the premises are used in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or Municipal Corporation of Delhi, then the landlord would be entitled to recovery of possession under Section 14(1)(k) of the Act. Sub-section (11) of Section 14, however, gives an option to the Controller to pass an order whereby recovery of possession may not be directed. The alternative to an order for recovery of possession under Section 14(1)(k) is to pass an order under sub-section (11) of Section 14 of the Act whereby the tenant is directed to comply with the conditions imposed on the landlord by the authorities referred to in clause (k) namely to stop the misuser of the premises in question. Sub-section (11) of Section 14 also uses the words "pays to that authority such amount by way of compensation as the Controller may direct". Keeping in view the fact that clause (k) of the proviso to sub-section (1) has been inserted in order that the unauthorised use of the leased premises should come to an end, and also bearing in mind that the continued unauthorised use would give the principal lessor the right of re-entry after

cancellation of the deed, the aforesaid words occurring in sub-section (11) of Section 14 cannot be regarded as giving an option to the Controller to direct payment of compensation and to permit the tenant to continue to use the premises in an unauthorised manner. The principal lessor may, in a given case, be satisfied, in cases of breach of lease to get compensation only and may waive its right of re-entry or cancellation of lease. In such a case the Controller may, instead of ordering eviction under Section 14(1)(k) of the Act, direct payment of compensation as demanded by the authorities mentioned in clause (k). Where, however, as in the present case compensation is demanded in respect of condoning/removal of the earlier breach, but the authority insists that the misuser must cease then the Controller has no authority to pass an order under Section 14(11) or Section 14(1)(k) of the Act giving a licence or liberty of continued misuser. In other words, sub-section (11) of Section 14 enables the Controller to give another opportunity to the tenant to avoid an order of eviction. Where the authority concerned requires stoppage of misuser then an order to that effect has to be passed, but where the authority merely demands compensation for misuser and does not require the stoppage of misuser then only in such a case would the Controller be justified in passing an order for payment of compensation alone.

20. The observations of this Court in ***Punjab National Bank*** case [(1986) 4 SCC 660] to the effect that as long as the penalty continued to be paid, deviation to user could be permitted, do not appear to be in consonance with the decision of the larger Bench in ***Faqir Chand*** case. Continued wrongful user cannot be permitted by levying penalty but if the authorities do not require the stoppage of misuser, but merely ask for payment of penalty or compensation, then in such a case, an order of eviction or for stoppage of premises need not be passed and it will be sufficient if compensation is required to be paid.

21. Coming to the facts of the present case, the Additional Rent Controller in order dated 13-9-1985, while issuing notice under Section 14(11) has observed that the landlord has placed on record a notice sent by the Land and Development Office regarding misuser. In the written statement filed on behalf of the Land and Development Office in response to the notice issued under Section 14(11), it was stated that the question of regularisation/condoning the breach permanently did not arise. The said reply contemplates an undertaking being given by the landlord for removal of breach otherwise there is a threat of re-entry. The payment of misuse charges would only amount to temporary regularisation of the earlier misuser and the Land and Development Office clearly insisted on the stoppage of the misuser. This being so, the question of the Controller requiring payment of penalty or compensation and permitting continued misuser would not be in accordance with law.

22. For the aforesaid reasons, while upholding the orders of the court below, we grant the appellant two months' time to comply with the order dated 19-4-1994 of the Additional Rent Controller, Delhi. There will be no order as to costs.

* * * * *

Shri Munshi Ram v. *Union of India*

AIR 2000 SC 2623

Y.K. SABHARWAL, J. - 1. The appellants are tenants. The tenanted premises is situated in Karol Bagh Area, Delhi. The landlord is respondent No. 3 whereas Union of India and the Delhi Development Authority (for short 'DDA') are respondents 1 and 2 respectively.

2. The tenanted premises are part of building constructed on the land leased to the original lessee by Delhi Improvement Trust. The DDA succeeded the said Trust. The perpetual lease, inter alia, provides that the lessee will not use the land and building that may be erected thereon during the terms of the lease for any other purpose than for the purpose of residential house without the consent in writing of the lessor. Admittedly the premises are being used by the appellants for commercial purposes.

3. By notice dated 4th January, 1982 issued by DDA, respondent No. 3 was informed that the premises were being used for the purpose of commercial-cum-residential which is contrary to the terms of the lease and the lease has become void and the lessor has right to re-enter after cancellation of lease. It was further stated in the said notice that the lease has been cancelled by DDA on 23rd December, 1981 for breach of Clause I(VI) and the possession of the plot together with the building and the fixtures standing thereon will be taken over by DDA. In a suit filed by respondent No. 3 against DDA for grant of permanent injunction, interim injunction was granted by civil court inter alia noticing in the order that the owner had instituted eviction proceedings as far back as in 1974 against the tenants who were running their shops even at the time of the purchase of premises in question by the owner from its erstwhile owner.

4. In 1974, respondent No. 3 instituted eviction petitions against the appellants seeking their eviction under Clause (k) of proviso to Sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958 ('the Act'). The said clause stipulates an order of eviction being passed against the tenant who has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate. The tenant cannot resist his eviction when sought under Section 14(1)(k) of the Act merely on the ground that the landlord had himself let out the premises for commercial use [***Faqir Chand* v. *Shri Ram Rattan Bhanot,***.AIR 1973 SC 921]. Under Sub-section (11) of Section 14 of the Act, before an order for recovery of possession of any premises on the grounds specified in Clause (k) of the proviso to Sub-section (1) of the said section is made, the Controller is required to give to the tenant time to comply with the conditions imposed on the landlord by any of the authorities referred to in Clause (k) or pay to that authority such amount by way of compensation as the Controller may direct.

5. The Additional Rent Controller by order dated 6th September, 1988 after coming to the conclusion that the DDA is not interested in permitting the misuse permanently or even temporarily and has threatened to re-enter the premises, directed the appellants to pay within two months the past mis-user charges to respondent no. 3 for being deposited with the DDA.

The appellants were also directed to pay further compensation/charges as may be demanded by DDA in this regard. The appellants were directed to stop mis-user of the premises within two months from the date of the order and in the event of non-compliance of any of these conditions, it was directed that the order of eviction under Section 14(1)(k) of the Act shall be deemed to have been passed against the appellants for their eviction from the premises in question. This conditional order of eviction has been upheld by the Rent Control Tribunal in appeal as also by the High Court.

6. Challenging the aforesaid orders, Mr. D.D. Thakur submits that since the appellants are prepared to pay such amount of penalty as compensation as may be determined by the Controller to be payable to DDA till the matter of regularisation of user is finally decided by the said authority, the case be remanded to the Rent Controller for such a determination. Learned counsel places strong reliance on the decision in the case of ***Narain Das* v. *Manohar Lal*** [(1988) Supp. SCC 432]. In the said case, an order of eviction passed under Section 14(1)(k) was set aside by this Court and the case was remitted to the Controller to determine the quantum of penalty payable to the DDA for the purpose of wrong user of property by changing it from residential to commercial purpose and directing that the tenant will bear the burden of penalty as may be determined. The said decision has no applicability to the facts of the present case since in that case the DDA did not press the notice for cancellation of the lease and for this reason the case was remitted to the Controller for determining the penalty. In view of resolution of the DDA, a statement was made on its behalf in that case that the lease would not be cancelled pursuant to the notice which had been sent to the owner. Under these circumstances, in the relied upon decision there was no threat of cancellation of the lease which is a pre-condition for an order of eviction under Clause (k) of proviso to Sub-section (1) of Section 14 of the Act. The Court made it clear that in the event of fresh notice being issued by DDA to the landlord for cancellation of the lease in his favour, the landlord would be free to take action against the tenant in accordance with law and the decision of this Court shall not operate as a bar to such proceedings. Unlike the facts of the relied upon case, in the present case the DDA has been insisting to act upon the notice dated 4th January, 1982 sent to respondent No. 3. That has been the clear stand of DDA in proceedings before the Additional Rent Controller. The Secretary of the DDA to the same effect has filed an affidavit in this Court as well. The stand of the DDA is that after due payment for past misuser, the lessee is bound to discontinue the misuse in future. A statement showing action taken by DDA against misuser of premises in the vicinity of the premises in question has also been filed. Mr. Kirti Rawal learned Addl.Solicitor General appearing for DDA submits that the DDA is not contemplating to regularise the misuser and in case the misuser is not stopped, the DDA will act upon the notice and re-enter the premises. In this state of affairs, the decision in ***Narain Das*** case can be of no assistance to the appellants.

7. Next, Mr.Thakur relies upon (i) the order dated 3rd January, 1983 passed by Lt.Governor of Delhi inter alia stating that the issue of notices and further action under misuser clause in the various areas of Delhi may be suspended till the matter has been reviewed at a high level or in the next meeting of DDA; (ii) the affidavit of the Secretary of Delhi Development Authority of February 1983 filed in the High Court of Delhi in another case in a second appeal inter alia stating that the further show cause notice has been

suspended for the time being and even the prosecution for the misuse has been suspended for the time being as per the order of the Lt.Governor as there is a likelihood of permission being granted for commercialisation of the area in accordance with the provisions of the master plan/zonal plan after charging certain dues, and (iii) to a somewhat similar statement as in (ii) given in another case by the Commissioner (Land), DDA. Reliance on these documents is wholly misplaced for more than one reason. Firstly, these documents pertain to 1980s whereas in the present case the Commissioner (Land Disposal), DDA has filed an affidavit even in September, 1998 inter alia stating that though a scheme dated 12/17 September, 1996 has been forwarded by DDA to the Ministry of Urban Affairs and Employment for approval of the Government of India for promotion of Karol Bagh area as special area and for promotion of commercial use on ground floor on the basis of location but the examination of the plan of the premises in question shows that the disputed area falls outside the area of the scheme which is under consideration with DDA and the Union of India. In nutshell, the affidavit is that in respect of the area in question there is no proposal under consideration to allow commercial user. Secondly, we do not have the facts of cases in which the abovenoted affidavit was filed by the Secretary of DDA or statement was given by Commissioner (Land Disposal), DDA. Thirdly, we are considering not a violation of master or zonal plan but breach of a term of lease, which paramount lessor is unwilling to condone. In the present case, it is not necessary to decide as to the effect of the proposal sent by DDA to Central Government to allow commercial user since the ground of eviction is Clause (k) as aforesaid where the question is about breach of a term of lease and the lessor has declined to regularise the misuser for future. Learned Additional Solicitor General submits that the DDA is not only serious in pursuing the action taken by it on account of misuser but it is duty bound to do so.

8. Mr. Thakur also referred to the provisions of the Delhi Development Act, 1957 (for short 'the DD Act') to contend that plans thereunder have not specified any particular use of the area where the building is situate. Chapter III of the DD Act deals with Master Plan and Zonal Development Plans. Section 7 provides for the DDA to carry out a civic survey and prepare a master plan for Delhi. Section 8 provides for preparation of a Zonal Development Plan for each of the zones into which Delhi may be divided and also refers as to what aspects may be contained in the said Plan. The land use is one such aspect. Mr. Thakur contends that neither the master plan for the year 1990-2001 shows that the permissible user of the area in question is only residential nor zonal development plan under Section 8 of the DD Act has been framed providing for only residential use. Reference has also been made to Section 14 which inter alia provides that after the coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan. The proviso to the said section stipulates that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations, any land or building for the purpose and to the extent for and to which it is being used on the date on which such plan comes into force. Section 57(1) (f) stipulates making of regulations to provide for terms and conditions subject to which user of lands and buildings in contravention of plans may be continued. Learned counsel contends that the impugned eviction orders deserve to be set aside as even regulations under Section 57(1) (f) have not been framed by DDA providing for terms and conditions on which continued user in contravention of plans may be permitted. None of the aforesaid provisions have any applicability to the present case.

We are not concerned with the contravention as postulated by Section 14 of the DD Act. The question whether master plan and/or zonal plans provide or not for any use is not relevant for this matter. As already noted, we are concerned with the breach of the terms of the lease. It is not in dispute that the commercial use is contrary to the use permissible under the lease. The paramount lessor has taken action to terminate the lease for contravention of the terms thereof. It cannot be held that despite contravention of the lease, the paramount lessor is debarred for exercising its rights under the terms of the lease for absence of providing a user under Section 7 in the master plan or under Section 8 in the Zonal Development Plan.

9. In ***Dr. K. Madan* v. *Krishnawati (Smt.)*** [AIR 1997SC 579] any condition imposed on the landlord by the Government or the Delhi Development Authority or Municipal Corporation of Delhi, then the landlord will be entitled to recovery of possession under Section 14(1)(k) of the Act and that Sub-section (11) of Section 14 of the Act enables the Controller to give another opportunity to the tenant to avoid an order of eviction. The first opportunity to the tenant is given when the notice is served on him by the landlord and the second opportunity is given when a conditional order under Section 14(11) of the Act is passed directing the tenant to pay the amount by way of compensation for regularisation of user up to the date of stopping the misuser and further directing stoppage of unauthorised user. The continued unauthorised user would give the paramount lessor the right to re- enter after the cancellation of the lease deed. As already noticed, the DDA is insisting on stoppage of misuser. The misuser is contrary to the terms of lease. The DDA cannot be directed to permit continued misuser contrary to the terms of the lease on the ground that zonal development plan of the area has not been framed.

10. For the aforesaid reasons, we find no merit in the appeal and it is accordingly dismissed. We, however, grant to the appellants two months time to comply with the order of the Additional Rent Controller dated 6th September, 1988.

* * * * *

Inder Mohan Lal v. *Ramesh Khanna*

AIR 1987 SC 1986

SABYASACHI MUKHARJI, J. - 1. This appeal by special leave is from the judgment and order of the High Court of Delhi dated July 19, 1985. The appellant had made an application on or about July 15, 1976 before the Rent Controller to let out the premises for a period of two years under Section 21 of the Delhi Rent Control Act, 1958 (hereinafter called "the Rent Act"). The Rent Controller after recording the statements of the appellant and the respondent made an order permitting creation of limited tenancy only for a period of two years to residential purposes to which the respondent had agreed upon. It may be material to refer to the fact that the appellant in his application under Section 21 of the Rent Act had stated as follows:

> "I do not require the premises for a period of two years from July 15, 1976. The purpose of letting shall be residential only and the premises are shown in the site plan Ex. A-1. The proposed agreement is Ex. A-2. Limited tenancy under Section 21 of the Act may be allowed to be created for the said period."

2. The respondent agreed to the aforesaid statement and stated as follows:

I have heard the statement of the petitioner and I accept it as correct. I have no objection. I shall vacate the premises after the expiry of two years from July 15, 1976. The purpose of letting shall be residential only.

3. Upon this the Rent Controller passed the following order:

This is an application filed under Section 21 of the Act for permission to create limited tenancy for a period of two years from July 15, 1976. The purpose of letting shall be residential only and the premises are shown in the site plan Ex. A-1. The proposed agreement is Ex. A-2. From the perusal of the statements of the parties I am satisfied that as at present the petitioner does not require the premises. Therefore, limited tenancy is allowed to be created for a period of two years from July 15, 1976.

4. The appellant filed an application on November 6, 1978 for eviction of the respondent as the respondent had refused to vacate the premises in spite of his statement made before the Rent Controller. The appellant filed an application on the said date under Section 21 of the Rent Act on behalf of himself and his family members claiming possession of the premises for their bona fide need and use. The appellant contended that he (the appellant) was a retired official and was living in a rented house while the respondent was a rich man doing business in jewellery and also owned a house in Delhi. In the application made under Section 21 of the Rent Act the appellant had stated that the appellant owned a newly built house in the New Friends Colony comprising of dining, drawing, three bedrooms with attached bathrooms, a study room, family lounge and a garage. The appellant had further stated that he did not require the premises for personal residence for a period of two years. The appellant had also stated in that application, that the appellant had agreed to let it out to the respondent for the first time on the terms and conditions set out in the proposed lease deed for a period of two years. It was stated that the respondent had heard the statement and recorded that he had no objection and would vacate the premises after expiry of two years. Subsequently, when the

second appeal was pending in the Delhi High Court, the appellant had filed an application for early hearing in which he had stated that when the construction of the house in question was completed the appellant's father R.B. Nanak Chand, advocate, was old and alone (the appellant's mother had died earlier and other brother and sister being away from Delhi) and in view of his father's ailing health the appellant was living with him in the rented premises at 4 Flag Staff Road, Delhi to look after his old and ailing father. It was in those circumstances that the appellant had decided to let out the suit premises for a limited period of two years only. It may be mentioned that the appellant's father died two months after the Rent Controller had granted permission.

5. The Rent Controller after hearing both the parties on January 4, 1980 held, rejecting the contention of the respondent, that Section 21 of the Rent Act was not ultra vires. Furthermore, he was satisfied that a limited tenancy had been created and as such he granted permission for eviction. Aggrieved by the aforesaid order the respondent preferred an appeal to the Rent Control Appellate Tribunal. The Rent Control Appellate Tribunal upheld the eviction order.

6. On or about July 19, 1985, being further aggrieved, the respondent preferred a second appeal before the High Court of Delhi. The High Court of Delhi by the impugned judgment allowed the appeal on the ground that there was no ground stated in the application under Section 21 of the Rent Act as to why a limited tenancy was intended to be made. The High Court held that the order under Section 21 of the Rent Act was a mindless order inasmuch as the respondent before it had not disclosed as to how the demised premises were being dealt with before creating the said alleged tenancy and why the respondent before it did not require the demised premises for the alleged period of two years and as to why the same would be required by him after the period of two years.

7. The High Court relying on the decision in the case of ***S.B. Noronah* v. *Prem Kumari Khanna*** [AIR 1980 SC 193] held that the order in question in this case was a mindless order and in that view of the matter the order passed under Section 21 of the Rent Act was not valid. The High Court was of the view that there was no inquiry for the Controller to come to the conclusion on the basis of the material that the premises for which the permission was sought for creating a limited tenancy was in fact available for being let for a limited period only and in the absence of that, this was a mindless order.

8. The appellant has come up in appeal before this Court from the said decision.

9. The question, therefore, that arises for consideration of this Court is whether in view of the requirements of Section 21 of the Rent Act, was the permission invalid? The main points upon which the High Court has relied are: firstly, on the materials put forward before the Rent Controller for sanction under Section 21 of the Rent Act, no reason had been stated as to why the premises in question was not required for a limited period; secondly, it was not stated as to how the premises in question was dealt with; thirdly, the High Court was of the view that there was no writing and no lease registered after the permission was granted. So far as the second ground, namely, as to how the premises in question were dealt with prior to the letting out in the instant case, the High Court was obviously and factually incorrect. It was stated in the application for permission that it was agreed to be let out "for the first time" and secondly, it was stated that the appellant owned a "newly built house". Therefore two facts were clearly

stated namely, this was a "newly built" premises and further that there was no prior letting. In the aforesaid facts and circumstances of the case therefore, it cannot be denied that how the premises in question was dealt with before the letting out had been clearly stated.

10. It is true, however, that why the premises in question was stated by the appellant not to be required for a limited period had not been "specifically" stated at the time of seeking permission under Section 21 by the appellant. The appellant had stated that he did not require the premises in question for a period of two years. He had not stated as to why he did not require the said premises for the said limited period of two years. The question therefore is was it necessary to seek a valid order under Section 21 to state that reason and if permission was granted on satisfaction of the Rent Controller on other conditions without being satisfied as to why the landlord did not require the premises in dispute for a limited period, the order would suffer from the vice of being a mindless order. Such an order if otherwise the conditions are satisfied would not be an invalid order. In order to determine that question it is necessary to bear in mind the parameters and the purposes of Section 21 of the Rent Act. The Delhi Rent Control Act like other rent control legislations had been passed to provide for the control of rent and eviction. The Rent Acts all over the country came in the wake of partition and explosion of population in metropolitan and new urban cities. There were acute shortages of accommodation. Very often these shortages and the demand for accommodation led to rack-renting as well as unreasonable eviction of the tenants. To meet that situation and to facilitate proper letting the Rent Acts were passed all over the country ensuring fair return to the landlords and giving the landlords the right of eviction for limited purposes and at the same time protecting the tenant from unreasonable eviction by the landlords. This led to a series of litigations leading to long delays resulting specially in metropolitan cities like Delhi, Calcutta and Bombay in reluctance of many landowners who had vacant premises for letting out only for limited period either because of the family conditions or official commitments as they did not require the premises immediately and at the same time who were reluctant to part with the said premises on rent because of the long delay and the procedure that had to be followed to recover possession of those premises.

11. Section 21 of the Rent Act was an attempt to meet that reluctance. Section 14 of the Rent Act controls the eviction of tenants and gives protection to the tenants against eviction. It stipulates that notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant unless certain specified conditions were fulfilled. Those conditions were laid down in different sections and provisos thereof. It is not necessary to set these out in detail. As mentioned hereinbefore that led to good deal of reluctance on the part of the landlords to part with the possession of the premises in their occupation because of the time and expenses consuming process involved for recovery of possession. In order, therefore, to induce reluctant/potential landlords to create tenancies, Section 21 was enacted for the benefit of the capital city of Delhi. This is a new provision - the unique provision made for the metropolitan city of Delhi. Section 21 of the Rent Act reads as follows:

> " Where a landlord does not require the whole or any part of any premises for a particular period, and the landlord, after obtaining the permission of the Controller in

> the prescribed manner, lets the whole of the premises or part thereof as a residence for such period as may be agreed to in writing between the landlord and the tenant and the tenant does not, on the expiry of the said period, vacate such premises, then, notwithstanding anything contained in Section 14 or in any other law, the Controller may, on an application made to him in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in occupation of such premises.

12. An analysis of this section makes it clear that in order to attract Section 21; the first condition is that the landlord does not require the whole or part of any premises for a particular period. If that condition is fulfilled then the said landlord after obtaining the permission of the Controller in the prescribed manner lets the whole of the premises or part thereof as a residence for such period as may be agreed to in writing between the landlord and the tenant does not on the expiry of the said period, vacate such premises, then notwithstanding anything contained in Section 14 or in any other law, the Controller may, on an application made to him in this behalf by the landlord within such time as may be prescribed, order the eviction of the tenant. Therefore the first condition must be that the landlord must not require the premises either in whole or part of any premises for a particular period. Secondly, the landlord must obtain the permission of the Controller in the prescribed manner. Thirdly, letting of the whole or part of the premises must be for residence. Fourthly, such letting out must be for such period as may be agreed in writing. Therefore, there must be an agreement in writing, there must be a permission of the Controller for letting out for a limited period, the landlord must not require the premises for a particular period and letting of the premises must be as a residence. These and these alone are the conditions which are required to be fulfilled.

13. In ***Nagindas Ramdas* v. *Dalpatram Ichharam*** [AIR 1974 SC 471] the question was whether a compromise decree for eviction could be passed because the Rent Act enjoined the eviction only on the satisfaction of the court. The respondent landlord in that case instituted a suit under the Bombay Rent Act, 1947 for possession against the tenant on two grounds, namely, arrears in payment of rent and bona fide requirement of the premises for personal use and occupation. A compromise decree was passed. When the appellant applied for execution of the decree the tenant contended that the compromise decree had been passed by the Rent Court without satisfying itself as to the existence of grounds of eviction under the Act and hence being a nullity was not executable. It was held by this Court that the public policy permeating this Act was the protection of tenants against unreasonable eviction. Construing the provisions of Sections 12, 13 and 28 of the Act in the light of the said policy, it should be held that the Rent Court under the Act was not competent to pass a decree for possession either in invitum or with the consent of the parties on a ground which was de hors the Act or ultra vires the Act. The existence of one of the statutory grounds mentioned in Sections 12 and 13 was a sine qua non to the exercise of jurisdiction by the Rent Court. Parties by their consent could not confer jurisdiction on the Rent Court to do something which, according to the legislative mandate, it could not do. But if at the time or the passing of the decree there was some material before the court on the basis of which the court could prima facie be

satisfied about the existence of a statutory ground for eviction, it would be presumed that the court was so satisfied and the decree for eviction, though passed on the basis of the compromise would be valid. Such material may be in the form of evidence recorded or produced or it may partly or wholly be in the shape of express or implied admissions made in the compromise agreement. Sarkaria,J. speaking for the court held that admissions if true and clear were by far the best proof of the facts admitted especially when these were judicial admissions admissible under Section 58 of the Evidence Act. In that case the court found because of the admission to pay the arrears of rent and mesne profits at the contractual rate and the withdrawing of his application for fixation of standard rent, that there was no dispute with regard to the amount of standard rent and there was an admission that the rent was in arrears. The court observed at pages 552 to 553 of the report as follows:

> "From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the court, on the basis of which, the court *could* be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights, of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence are by themselves, not conclusive. They can be shown to be wrong".

14. The aforesaid principle must be borne in mind in order to judge the invalidity of the order passed under Section 21 of the Act which was based on the statements made by the appellant and the respondent. The facts of the case upon which great deal of reliance was placed by the High Court in the judgment under appeal and upon which the appellant relied very heavily are mentioned in the case of ***S.B. Noronah* v. *Prem Kumari Khanna.*** There this Court reiterated that Section 21 of the Rent Act carved out a category for special treatment. While no landlord could evict without compliance with Sections 14, 19 and 20 of the Act, a liberal eviction policy could not be said to underlie in Section 21. The court observed that Parliament was presumably keen on maximising accommodation available for letting, realising the scarcity crisis. One source of such spare accommodation which is usually shy is potentially vacant building or part thereof which the landlord is able to let out for a strictly limited period provided he had some credible assurance that when he needed it he would get it back. The law sought to persuade the owner of the premises available for letting for a particular period by giving him a special assurance that at the expiry of that period the appointed agency would place the landlord in vacant possession. Section 21 confined the special remedy to letting for residential uses only. Parliament had the wholesome fear that if

the section were not controlled by many conditions it might open the floodgates for wholesale circumvention of the rent control legislations by ingenious landlords exploiting the agonising need of houseless denizens.

15. Section 21 of the Act overrides Section 14 precisely because it was otherwise hedged in with drastic limitations and safeguarded itself against landlords' abuses. The first condition was that the landlord did not require the demised premises "for a particular period" only. That meant that he must indicate to the authority before which sanction was sought for letting what was the particular period for which he could spare the accommodation. The Controller exercised an important regulatory function on behalf of the community. The fact that a landlord and a potential tenant together apply, setting out the formal ingredients of Section 21, did not relieve the Controller from being vigilant to inquire and satisfy himself about the requisites of the landlord's non-requirement "for a particular period" and the letting itself being "as a resident". A fraud on the statute could not be permitted especially because of the grave mischief that might be perpetrated in such event.

16. The court highlighted that it would be a terrible blow to the rent control law if Section 21 were freely permitted to subvert the scheme of Section 14. Every landlord would insist on a tenant going through the formal exercise of Section 21, making ideal averments in terms of that section. The consequence would be that both the Civil Procedure Code which prescribed suits for recovery of possession and the Delhi Rent Control Act which prescribed grounds for eviction would be eclipsed by the pervasive operation of Section 21. Neither grounds for eviction nor suits for eviction would thereafter be needed, nor if the landlord moved the court for a mere warrant to place the landlord, through the court process, in vacant possession of the premises, would he get it. No court fee, no decree, no execution petition, no termination of tenancy - wish for possession and the court was at your command. The court observed that such a horrendous situation would be the negation of the rule of law in this area.

17. When the application under Section 21 is filed by the landlord and/or tenant the Controller must satisfy himself by such inquiry as he may make, about the compulsive requirements of that provision. If he makes a mindless order, the court, when challenged at the time of execution will go into the question as to whether the twin conditions for sanction have really been fulfilled. Of course, there will be a presumption in favour of the sanction being regular, but it will still be open to a party to make out his case that in fact and in truth the conditions which make for a valid sanction were not present.

18. The sanction granted under Section 21, if it has been procured by fraud and collusion cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion. The doctrine of estoppel cannot be invoked to render valid a proceeding which the legislature has on grounds of public policy subjected to mandatory conditions which are shown to be absent. As between unequals the law steps in and as against statutes there is no estoppel, especially where collusion and fraud are made out and high purpose is involved.

19. Law that non-performs stultifies the rule of law and hence the need for strict compliance. Or else, the sanction is non est. Collusion between the strong and the weak cannot confer validity where the mandatory prescriptions of the law are breached or betrayed.

20. An analysis of this judgment which has been applied in the various cases would indicate that Section 21 only gives sanction if the landlord makes a statement to the satisfaction of the court and the tenant accepts that the landlord does not require the premises for a limited period; this statement of the landlord must be bona fide. The purpose must be residence. There must not be any fraud or collusion. There is a presumption of regularity. But it is open in particular facts and circumstances of the case to prove to the satisfaction of the executing court that there was no (*sic*) collusion or conspiracy between the landlord and the tenant and the landlord did not mean what he said or that it was a fraud or that the tenant agreed because the tenant was wholly unequal to the landlord. In the instant case none of these conditions were fulfilled. There is no evidence in this case that when the landlord stated that he did not require the premises in question for a particular period, he did not mean what he stated or that he made a false statement. There was no evidence in this case at any stage that the tenant did not understand what the landlord was stating or that he did not accept what the landlord stated. There was no evidence that either the tenant was in collusion or perpetrating any fraud with the landlord or the tenant was unequal to the landlord in bargaining powers. It is manifest that there is no evidence to show that the Controller did not apply his mind. If that is so then on the principle enunciated by this Court in *Noronah* case this sanction cannot be challenged. It is not necessary to state under Section 21 the reasons why the landlord did not require the premises in question for any particular period. Nor is there any presumption that in all cases the tenants are the weaker sections. The presumption is, on the contrary, in favour of sanction, it is he who challenges the statement and the admission of the landlord or the tenant who has to establish facts as indicated in *Nagindas* case.

21. In ***V.S. Rahi* v. *Smt Ram Chambeli*** [AIR 1984 SC 395] this Court on the facts found that the permission under Section 21 of the Act had been obtained by her on the basis of wrong statement, but for which the permission would not have been accorded. These statements which were in the nature of half-truths were apparently made in order to make good the plea that there was only a temporary necessity to lease out the building for a short period and that there was a bona fide anticipation that there would be a pressing necessity to reoccupy the premises at the end of the period, which were the two crucial factors governing an order under Section 21 of the Act. It was stated that the appellants, in that case, who were the weaker of the two parties did not question the truth of the statements made by the respondent when the permission was granted. But such collusion, if any, between the two unequal parties did not confer any sanctity on the transaction in question. The observations of this Court in that case must be understood in the light of the facts mentioned by this Court. It was found in ***Rahi*** case that there were wrong statements made by the appellant when he approached the Rent Controller. It was admitted before this Court that it was a wrong statement. These were mentioned in pages 295-296 of the report. What was urged was that the appellants being the tenants had colluded with the respondent. It was reiterated by this Court, it is always open to the weaker of the two parties to establish that the transaction was only a camouflage used to cover its true nature. When one party could dominate over the will of the other, it would not be a case of collusion but one of compulsion. The court relied on the observations of Lord Ellenborough in ***Smith v. Cuff*** [(1817) 6 M & S 160, 165] that it can never be predicated as pari delicto where one holds the rod and the other bows to it. See the

observations of this Court at pages 297 and 298 of the report. There is no evidence in this case that there was any wrong or incorrect statement made by the landlord nor is there any evidence that the tenant respondent herein was the weaker side of the bargain. In that view of the matter the respondent cannot get much assistance from this decision of this Court.

22. This question was again considered by this Court in ***J.R. Vohra* v. *India Export House Pvt. Ltd*** [AIR 1985 SC 475] where Tulzapurkar, J. referring to ***Noronah*** case observed that Section 21 carved out tenancies of particular category for special treatment and provided a special procedure that would ensure to the landlord vacant possession of the leased premises forthwith at the expiry of the fixed period of tenancy, evicting whoever be in actual possession. Such being the avowed object of prescribing the special procedure, service of a prior notice on the tenant upon receipt of the landlord's application for recovery of possession and inviting his objections followed by an elaborate inquiry in which evidence might have to be recorded would really frustrate that object. It will be vitiated because it is procured by fraud practised by landlord for creating a limited tenancy. If it is found that the initial order granting permission to create limited tenancy was vitiated by fraud practised by the appellant inasmuch as he had suppressed the fact that an earlier application for such permission had been declined on the ground that premises had been let out for commercial-cum-residential purposes, then there would be no executable order pursuant to which any warrant for possession could be issued under Section 21 of the Act. In the instant case, there is no such collusion and, therefore, the principle of ***Noronah*** case would not be applicable. The ratio of that decision must be understood in its proper light.

23. Section 21 of the Rent Act was examined by this Court in ***Dhanwanti Smt* v. *D.D. Gupta*** [AIR 1986 SC 1184]. It was observed by Pathak, J. as the learned Chief Justice then was, that it was possible for the owner of a premises, on looking to the immediate future, to find that for certain reasons he was unable to occupy the premises forthwith himself but that he may do so later in the not very distant future. The mere fact that the owner has let out the premises after obtaining permission under Section 21 of the Act for a limited period, and thereafter on the expiry of that period has found it necessary to obtain permission to let out the premises again for another limited period cannot necessarily lead to the inference that from the very beginning the premises were available for letting out indefinitely. The Rent Controller and the Rent Control Tribunal should have examined the circumstances prevailing on each occasion when an application was made under Section 21. It was observed that assumption would not be justified where there is no positive material to indicate that from the very beginning there was never any intention on the part of the landlord to occupy the premises himself. There was no such material in that case. On the contrary there was material showing that the landlady had expectation that her son and his family would be in Delhi after two years period of tenancy. This is significant for the present issue. There is nothing to show that the permission of the Rent Controller was obtained by practising fraud or that it could be regarded as a nullity or that material facts were concealed. The principle of that decision will apply much more in this case. It is observed in that decision that it seems to have been ignored altogether that it is perfectly possible for the owner of a premises, on looking to the immediate future, to find that for certain reasons, he is unable to occupy the premises forthwith himself but that he may do so later in the not very distant future. It is not always

that a man can plan his life ahead with any degree of definiteness. Prevailing uncertainty in the circumstances surrounding him may not permit clear-sighted vision into the future. The circumstances might justify his envisioning his need for the premises two or three years later, and therefore applying for permission under Section 21 of the Act to let out the premises accordingly.

24. The facts are more strong and clearer in support of the instant case. Here there was no permission previously. This was first letting out. There was nothing which indicated that any statement was made which was incorrect. We are of the opinion that sanction under Section 21 in the instant case was not a nullity. The onus was on the tenant to show that it was so. He did not make any attempt to dislodge the presumption in favour of the permission.

25. Learned counsel for the appellant also stressed before us that Section 21 of the Rent Act was a complete code by itself. The order was under Section 21 of the Rent Act. No further question of lease or registered lease arose thereafter.

26. This question has been settled by series of decisions of the Delhi High Court upon which people have acted for long. See the decision in ***Kasturi Lal*** **v.** ***Shiv Charan Das Mathur*** [1976 RCR 703] where at pages 708-709, Misra, J. of the Delhi High Court had clearly indicated numerous cases where it was held that Section 21 was a code by itself. The order of the permission is itself an authority; no lease was necessary and if that is the state of law in Delhi, it is too late in the day to hold otherwise. See the observations of this Court in ***Raj Narain Pandey*** **v.** ***Sant Prasad Tewari*** [1973 SC 291] where this Court observed that in the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not be disturbed. A different view would not only introduce an element of uncertainty and confusion but it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. In Delhi transactions have been completed on the basis of permission and it was never doubted that there was any requirement of any lease or any agreement subsequent to the order and the same required registration. It must be observed that in ***Noronah*** case there was no admission on oath nor was there any question of registered lease.

27. Numerous other decisions were cited before us but in the view we have taken on the two basic points that the permission was valid and the order permitting limited tenancy was not a mindless order but one passed after application of the mind taking the two relevant facts under Section 21 of the Act into consideration, it is not necessary to discuss these decisions any further. In view of the fact that Section 21 is a code by itself, no question of any further agreement in writing which has to be registered arises. There is no merit in the contention of the respondent.

28. There is another aspect of the matter which has to be borne in mind. The tenant not only failed to establish any fact impeaching the order, he waited for the full term to take this point and did not contest when the permission was obtained on a misrepresentation.

29. It was submitted by Shri Bhatia that in Delhi most of the transactions have been done under Section 21 on the assumption that after order of the court no further or separate document or lease was required to be executed or that such document or lease had to be registered. It was submitted that numerous transactions have taken place on that basis. It was

urged that if it is now found that that is not the correct position and the correct position in law is that there should be a lease containing the terms of the lease being for 11 months, such enunciation of law should only be made applicable prospectively. Counsel for the appellant contended that otherwise it would have disastrous consequences of unsettling numerous decisions and unsettling many settled transactions between the parties. He drew our attention to the decision of this Court in ***I.C. Golak Nath*** **v.** ***State of Punjab*** [AIR 1967 SC 1643]. If we had any doubt on the scope and ambit of Section 21, we might have considered this submission urged on behalf of the appellant provided we were sure, factually, that large number of transactions had been completed on the assumption that no further lease was required after the permission under Section 21. Our attention was also drawn to the decision of the Privy Council and the observation of Lord Blanesburgh in the case of ***Dhanna Mal*** **v.** ***Rai Bahadur Lala Moti Sagar*** [AIR 1927 PC 102]. If we were inclined to the view that Section 21 was not a code by itself but required separate lease to follow it up then perhaps we might have considered the effect of the aforesaid decision and observations.

30. In aid of the submission that in order to be entitled to eviction under Section 14 of the Rent Act, the court had to be satisfied itself that the statutory ground for eviction existed and that application of satisfaction of the court could not be by-passed and circumvented by a compromise decree, reliance was placed on certain observations on a decision in ***Ferozi Lal Jain*** **v.** ***Man Mal*** [AIR 1970 SC 794]. In view of the facts of the particular case, we are of the opinion that it is not necessary to discuss the said decision in detail. Numerous decisions of the Delhi High Court were placed before us in support of or in respect of contentions of the parties especially in support of the contention that the Delhi Rent Act required a separate lease. The scope and ambit of the Delhi Rent Act after the decision of ***Noronah*** case came up for consideration before a Division Bench of the Delhi High Court in ***Vijay Kumar Bajaj*** **v.** ***Inder Sain Minocha*** [AIR 1982 Del. 260]. In that decision, in the light of Section 21, the following questions were posed:

> (*1*) Whether the permission under Section 21 of the Act is invalid in view of Supreme Court judgment in ***S.B. Noronah*** case if reasons for not requiring the premises by the landlord for a particular period are not disclosed in his application or his statement before the Controller?
>
> (*2*) Whether before or after permission execution of any agreement in writing to let the premises for the fixed period is necessary, if so, whether such a document requires registration?
>
> (*3*) Whether the proposed agreement of tenancy in writing submitted along with the application under Section 21 of the Act, in this appeal required registration?"

The questions were answered by the High Court as follows:

> (*1*) Not necessarily. The landlord or the tenant may be able to show that cogent reasons did exist or were within the knowledge of the parties as to why the landlord did not require the whole or a part of his premises for a specified period.
>
> (*2*) No registration is necessary. The agreement in writing may be entered into either before or after grant of permission.

(*3*) An agreement in writing submitted along with the application under Section 21 of the Act is really a proposed agreement. It comes into effect only after the grant of permission under Section 21 of the Act. It does not require registration.

31. We are in agreement with the views of the Delhi High Court.

32. Large number of decisions of this Court were cited in support of the contention that eviction decree passed in contravention of the statutory conditions or passed without consideration whether the statutory conditions are fulfilled or not are not binding and cannot be enforced.

33. We are, however, of the opinion that in view of the facts found in the instant appeal before us, these decisions are not of any relevance.

35. On the unregistered lease question, our attention was drawn to a decision of the Delhi High Court in ***Jagat Taran Berry*** **v.** ***Sardar Sant Singh*** [AIR 1980 DELHI 7]. As we have held that Section 21 was a code by itself and no further document was required, it is not necessary to pursue the matter any further.

36. Similarly, our attention was drawn to a Division Bench judgment of the Calcutta High Court in the case of ***Ram Abatar Mahato*** **v.** ***Smt Shanta Bala Dasi*** [AIR 1954 Cal 207] on the question of the terms and extent of Section 107 of the Transfer of Property Act and whether a document in performance of an agreement had to be registered or not. As mentioned hereinbefore in the view we have taken, it is not necessary for us to pursue this aspect any further as to the question whether oral evidence should be introduced to explain the terms of a document embodied in writing.

37. Our attention was drawn to certain observations of this Court in ***State of U.P.*** **v.** ***Singhara Singh*** [(1964) 4 SCR 485] but the same are not relevant for our consideration in the present controversy in the light in which we have understood it. Equally same is the decision in respect of the observations of Fazi Ali, J. of the Jammu and Kashmir High Court in ***Ishwar Dutt*** **v.** ***Sunder Singh*** [AIR 1961 J & K 45] and the observations of this Court in ***Sri Sita Maharani*** **v.** ***Chhedi Mahto*** [AIR 1955 SC 328].

38. In the aforesaid light we are of the opinion that the High Court was in error in the view it took in setting aside the decision in the second appeal. The appeal is, therefore, allowed and the order and judgment of the High Court of Delhi dated July 19, 1985 are set aside and the order and judgment of Rent Control Tribunal dated August 28, 1980 are restored.

* * * * *

Pukhraj Jain v. *Padma Kashyap*

AIR 1990 SC 77

R. M. SAHAI, J. - Tenant inducted in 1979, for three years, by the landlord under a written agreement, in C-4/33, Safdarjang Development Area, New Delhi, with permission of Controller under Section 21 of Delhi Rent Control Act (the 'Act') seeks leave of this Court on limited question of law if proceedings for recovery of possession under Section 21 of the Act could be initiated and continued by legal representatives of the landlord who had obtained permission but who died before expiry of period of tenancy.

2. Answer of it shall depend, primarily, on construction of word 'landlord' used in Section 21, a provision held to be self-contained code in ***Shiv Chander Kapoor* v. *Amar Bose*** [(1990) 1 SCC 234] and also the purpose and objective of its enactment as provision of short duration tenancy or periodical tenancy in Rent Control Act of Delhi right from 1952, is unique amongst such legislations and is probably non-existent in any other State.

3. What it, undoubtedly, projects is the legislative awareness of acute crisis of houses in the State. To resolve the paucity of accommodation, on one hand, due to enormous influx of office personnel and business class as a result of rapid growth of social, economic and political activity and apprehension of house owners, on other, bulk of whom hail from middle class or service class, of losing their houses if not for good then for substantial period due to development of strange phenomenon in big cities that allotted or rented houses are more economical than even own, the legislature which is the best judge of need of its people carved out an exception to usual rent control provisions of protecting tenants from eviction. What was unique of it was not short duration tenancy but a fresh look on eviction. Vacant possession was ensured, statutorily, without any notice, or termination of tenancy or the hazard of establishing bona fide need and comparative hardship etc. Since Section 21 is an exception to Section 14 and it mandates restoration of possession, "notwithstanding any other law" it has to be construed strictly and against any attempt to frustrate it. Intensity of it can be appreciated better, if its language is compared with other provisions of recovery of possession even though those provisions, namely, Sections 14-A, 14-B, 14-C and 14-D, were introduced later. They also provide speedy remedy to recover possession. But the landlord cannot succeed unless he is able to prove circumstances mentioned in it. More than this the tenant has been given right to contest under Section 25-B. Import of Section 21 on the other hand is altogether different. It enjoins Controller to place landlord in vacant possession after expiry of time without any right to tenant to contest it except to the limited extent that permission was vitiated by fraud as held in ***S. B. Noronah* v. *Prem Kumari Khanna*** [(1980) 1 SCC 52] or misuse of the provision by landlord taking advantage of helpless situation of the tenant as held in ***V. S. Rahi* v. *Ram Chambeli*** [(1984) 1 SCC 612] or the permission really did not create genuine tenancy as held in ***Shiv Chand Kapoor v. Amar Bose*** [(1990) 1 SCC 234]. Recovery of possession under Section 21 is not hedged, by any inquiry or opportunity, if permission is not challenged on any of those exceptions which have been carved out by courts, obviously, to uphold fairness and honesty the core of our jurisprudence. Right to get vacant possession is, thus absolute.

4. Purpose and objective of the section having been ascertained, it may now be examined if the word "landlord" used in the second part of the section which empowers landlord to make an application for recovery of possession is to be understood as the same landlord who made the application or his legal representatives as well. In other words, is there any justification for construing the word "landlord" in a narrow sense so as to restrict it, only, to the person who made the application and obtained permission. "Landlord" has been defined in Section 2(e).

Expression, "for the time being" makes it clear, that landlord has to be understood in praesenti. That is anyone entitled to receive rent is the landlord. It does not visualise past or future landlord. Therefore, the word "landlord", on plain reading of Section 21 does not warrant construction of the word in any other manner. Basis for submission, however, that landlord in second part of Section 21 entitling him to claim vacant possession should be confined to the person who obtained permission was founded on use of expression, "who does not require the whole or any part of the premises for a particular period". Attempt was made to personalise eviction proceedings by linking it with the person, due to whose non-requirement the permission was granted resulting in automatic exclusion of legal representatives. To put it interpretationally the word "landlord", in second part was urged to be understood in a manner different than it is defined in Section 2(e). Can it be said that context or setting of Section 21 is such that the word "landlord" in second part of it should be understood in a different sense than that in definition clause? Not on prima facie reading of it which has already been adverted to. Nor on close analysis. What is visualised is occasion for short duration tenancy due to non-requirement of whole or part of premises by landlord for time being; method of its creation by written agreement entered with tenant, statutory status to it by permission obtained from Controller and execution by restoration of vacant possession if the tenant does not vacate after expiry of period. All condensed in one. Constructionally it is in two parts one creation of short term tenancy and other its execution after expiry of time. Both stand on their own and operate independently. Non-requirement of premises for time being furnishes basis for entering into agreement for periodical tenancy. Truth of it or its genuineness is relevant considerations for granting permission. But it exhausts thereafter except to the limited extent pointed out in decisions referred earlier. And the permission granted continues unabated, unaffected irrespective of variation in requirement. Necessity of landlord, again, does not entitle him to seek its revocation. Even his death cannot shorten the period. Similarly once period expires the agreement, the permission all ceases to operate by operation of law. Nothing further is required. Vacation is not linked with landlord but with time. Expiry of it obliges tenant to vacate. If he does not then the landlord may approach Controller for putting him in vacant possession. Which landlord? Obviously whosoever is the landlord at the time of efflux of tenancy. Death of landlord does not either shorten or enlarge period nor are the consequences envisaged altered or affected.

5. Use of expression "notwithstanding any other law" renders it obligatory on tenant to vacate without questioning authority of landlord. Any other construction, may, as rightly observed by the High Court lead to disastrous consequences. Even on principle of civil law the provision for recovery of possession being in nature of execution it could not be successfully resisted on the death of landlord due to whose non-requirement the permission

was granted. Such narrow and unrealistic construction of the word 'landlord' shall frustrate entire purpose of Section 21.

6. Maxim of *actio personalis moritur cum persona* cannot apply, either, on principle or on facts. In ***Official Liquidator, Supreme Bank Ltd.* v. *P. A. Tendolkar*** [(1973) 1 SCC 602] this Court while discussing applicability of the maxim held "whatever view one may take of the justice of the principle it was clear that it would not be applicable to actions based on contract or where tortfeasors' estate had benefited from a wrong done. Its applicability was generally confined to actions for damages for defamation, seduction inducing a spouse to remain apart from the other and adultery". In ***Phool Rani* v. *Naubat Rai Ahluwalia*** [(1973) 1 SCC 688] a decision which was relied by petitioner in support of submission that an application filed for eviction of a tenant on bona fide need lapses on the death of landlord and it could not be continued by his legal representatives was overruled in ***Shantilal Thakordas* v. *Chamanlal Maganlal Telwala*** [(1976) 4 SCC 417] where it was observed that doctrine of actio personalis moritur cum persona did not apply to Rent Control Acts.

7. Even otherwise an action for eviction abates only if the cause of action does not survive. What is the cause of action for an application for vacant possession in Section 21 : death of landlord or expiry of time for which tenancy was created. Obviously the latter, the failure of tenant to honour his commitment to vacate the premises after expiry of time for which he was inducted with permission of Controller. The death of the person who obtained the permission has nothing to do with it. Permission was obtained because the landlord did not require the premises on the date when it was let out to tenant. That does not continue on the date when the tenant does not vacate the premises. The necessity of not requiring the premises, for some time, or for the duration the tenant was inducted was confined to the date when the permission was granted. It could not be taken further to the time when the question of vacation arose. The cause of action for granting permission was the non-requirement by the landlord of the premises for the time mentioned in the agreement whereas cause of action for eviction is non-vacation by the tenant after the expiry of period. Therefore, it is immaterial who the landlord is at the time when the action for vacation arose.

8. Even on facts permission was applied for by the landlord as premises was surplus to his need for a limited period of three years due to the reason that his son had gone abroad and he was expected to return after three years. Permission was granted for this reason on statement of parties. Such necessity to let out or non-requirement by the landlord could not be brought into those exceptions which invalidate permission. Therefore death of the landlord was immaterial, as even the reason for letting out did not die with death of landlord.

9. In the result this petition for special leave fails and is dismissed. In the circumstances of the case the tenant is directed to suffer costs which we quantify at Rs. 5000.

* * * * *

Smt. Shrisht Dhawan v. *M/S. Shaw Brothers*

AIR 1992 SC 1555, JT 1991 (5) SC 378, 1991 (2) SCALE 1386

ORDER: THOMMEN, J.

2. The scope of Section 21 of the Delhi Rent Control Act, 1958 has been considered by this Court in a number of decisions Shiv Chander Kapoor v. Amar Bose ; Inder Mohan Lal v. Ramesh Khanna; Subhash Kumar Lata v. R.C. Chhiba and Anr. ; V.S. Rahi and Anr. v. Smt. Ram Chambeli ; J.R. Vohra v. India Export House Pvt. Ltd. and Anr. ; Yamuna Maloo v. Anand Swarup ;

Pankaj Bhargava and Anr. v. Mohinder Nath and Anr. ; Smt. Dhanwanti v. D.D.Gupta ; S.B.Noronah v. Prem Kumari Khanna and Pukhraj Jain v. Padma Kashyap and Anr. . The section embodies the legislative policy to devise a special mechanism to increase the supply of accommodation to meet the rising demands of a growing metropolis. It operates in limited circumstances; and, strictly within those bounds, and subject to the vigilant enquiry of the Controller before according his permission, the parties are, once permitted to regulate their relationship in accordance with the section, totally governed by the terms of their contract.

3. The section operates in terms thereof, notwithstanding any other law, unless the contract itself, or the permission of the Controller is vitiated by fraud. Absent such vitiating circumstance, and once the Controller has accorded sanction, the parties to the contract are presumed to have entered into their relationship at arm's length and the law binds them to the terms of their agreement.

4. While the Act is meant for the protection of the tenant, the legislative policy reflected in Section 21 is to carve out an area free of that protection. Where the conditions stipulated in Section 21 are satisfied, the prohibition contained in Section 14 against eviction of tenants except on the specified grounds or the requirements of the Transfer of Property Act or the Civil Procedure Code or any other law are removed or dispensed with.

5. The section is attracted in the specific circumstances postulated by it. The absence of requirement by the landlord of the whole or any part of the premises for a particular period, the permission of the Controller in the prescribed manner for the lease of the premises in question, the agreement in writing between the landlord and the tenant for the lease of such premises as a residence for the agreed period, the refusal of the tenant to vacate the premises on the expiry of that period, and an application made within the prescribed time by the landlord invoking the power of the Controller under this section: these are the conditions precedent to the exercise of power by the Controller to place the landlord in vacant possession of the premises by evicting the tenant or any other person in occupation of such premises. The person in occupation of the premises has no right in law to resist eviction once the section is attracted. This is an extraordinary power vested in the Controller to restore possession of the premises to the landlord by a quick and summary action. The non obstante clause contained in the section protects the action of the Controller from challenge on any ground postulated in Section 14 of the Act or any other law. This is a wide protection of any action duly taken in terms of the section, but the requirements of the section must be strictly complied with before action is taken under it.

6. The order of the Controller in the circumstances warranted by the section is a self-executing order requiring no further proceeding. It is at once a sanction for the lease and for eviction on expiry of the period of the lease. Neither can the landlord evict the tenant during the period of the lease nor can the tenant remain in possession beyond that period. Parties are bound by their contract, as sanctioned by the Controller, and the provisions of Section 14 are of no avail to either party to circumvent Section 21. Once the period has expired, there is no question of any further notice to the tenant or any other person in occupation of the premises and there is no scope for any further proceeding. None has any right outside the section which operates strictly in terms thereof provided the conditions stipulated therein are unquestionably satisfied. See J.R.Vohra v. India Export House Pvt. Ltd. and Anr. .

7. The only protection that the tenant has is what Section 21 itself postulates. He is protected against the conduct of a fraudulent landlord. The law does not protect either party whose actions are tainted by fraud. A landlord seeking recovery in terms of that section must satisfy that he has strictly complied with the provisions of that section. The landlord must obtain the permission of the Controller in the manner prescribed. He is not entitled to the permission unless the condition specified for the purpose in Section 21 is satisfied, namely, the absence of his requirement of the building for a particular period. The period must be clear and definite. The lack of requirement must be honestly felt by the landlord. That the landlord does not require the building is a question of honest belief held by him at the relevant time, that is, at the time of his seeking the Controller's permission. The landlord must have honestly and reasonably believed that he would not require the building for the period specified in his application to the Controller for permission to let out the premises. If that belief was truthfully held by him at the time of his application to the Controller, the fact that subsequent events proved him wrong, and that he did not require the building not only for the period stated in the application, but also for a longer period, or that he required it earlier than anticipated, would not make the belief any less honest or valid. All that the landlord is required to state in his application for permission of the Controller is the absence of his requirement of the premises for the particular period, but he is not bound to state its reasons: Inder Mohan Lal v. Ramesh Khanna .

8. What the section postulates is the bona fide belief of an honest and reasonable landlord, and not the reckless and casual opinion of an irresponsible and careless person. The question is, did the landlord make a fraudulent representation to the Controller about the absence of his requirement of the premises, i.e., knowingly that his statement was false or without belief in its truth or recklessly careless whether it was true or false. Did the landlord honestly believe that what he stated in his application to be a true and fair representation of the facts? There is no fraud if what he honestly believed to be true turned out to be false. The section does not place any higher degree of responsibility on the landlord.

9. The section requires that the premises have to be let out solely for the purpose of residence for the period agreed to in writing. If the agreement does not so stipulate, the section is not attracted, and the Controller cannot sanction the lease in terms of the section. No non-residential premises can come within the protection of the section. On the other hand, if the premises let out as a residence in terms of the section is deliberately used by the tenant for nonresidential purposes, he loses the protection of the statute for the period of the lease

and the Controller can, on an application by the landlord, evict the tenant, or any other person in occupation, and restore possession of the premises to the landlord forthwith. The section protects the landlord and the tenant strictly in terms thereof, and on the fraud or deliberate breach by either party of the terms of the lease as contemplated by the section, the protection is withdrawn from the guilty party. This means, if the permission of the Controller has been fraudulently obtained by the landlord, and the tenant has been let into the premises, the landlord loses the right to seek eviction of the tenant by the summary procedure contemplated by the section. Likewise, if the tenant has deliberately-but not accidentally violated the terms of the lease by using the premises otherwise than as permitted by the section, he is liable to be evicted on an application by the landlord, although the stipulated period of the lease has not expired. All this is because the very basis of the Controller's order has been violated by the fundamental breach of the guilty party. The section thus postulates that both the landlord and the tenant act honestly. Neither of them can take advantage of his own deceit or breach. No sanction of the statutory authority procured by fraud can protect the guilty or harm the innocent.

10. Fraud is essentially a question of fact, the burden to prove which is upon him who alleges it. He who alleges fraud must do so promptly. There is a presumption of legality in favour of a statutory order. The Controller's order under Section 21 is presumed to be valid until proved to be vitiated by fraud or mala fide. If his order was obtained by the fraud of the party seeking it or if he made a 'mindless order' in the sense of acting mala fide by illegitimate exercise of power owing to non-application of his mind to the strict requirements of the section, then the special mechanism of the section would not operate. [See S.B.Noronah v. Prem Kumari Khanna).

11. My learned brother, R.M.Sahai, J. has exhaustively dealt with various aspects of the questions raised in this appeal. He has come to the conclusion that there was no evidence of fraud or non-application of the mind of the Controller to the essential requirements of the section, and the burden to prove the same has not been discharged by the tenant. He has further found that the evidence on record amply proved that the landlady honestly believed that she required the premises at the end of stipulated period; that her request to the Controller for permission in terms of Section 21 was not in any manner tainted by lack of good faith; and that the order obtained by her under Section 21 was not liable to be upset by conducting a roving enquiry and by placing the burden wrongly on her to prove that she did not act dishonestly.

12. I agree that the statutory authorities in the present proceedings addressed themselves to the wrong questions, misunderstood the guiding principle of burden of proof, misconstrued the requirements of the section, and reached a totally irrational, unreasonable and unsustainable conclusion that the original order of the Controller was obtained by fraud. There was no justification on the part of the authorities for coming to that conclusion on the basis of a belated plea and far from satisfactory or reliable evidence. The High Court was wrong in affirming the totally unsustainable conclusion reached by the authorities.

13. In the circumstances, I respectfully agree with the findings reached by my learned brother Sahai, J.

R.M. SAHAI, J.

14. Economically equally matched tenant, resisted execution, successfully, under Section 21 of Delhi Rent Control Act, (in short the Act) by accusing landlady of fraud, misrepresentation and lies thus giving rise to a very important issue in this landlady's appeal as to the nature and extent of fraud which could vitiate the sanction granted under Section 21 of the Act by the Rent Control Officer.

15. Short durational tenancy, a provision unique of its kind in a rent control legislation, with a fresh look on eviction ensuring vacant possession statutorily, after expiry of lease period 'without notice even' J.R. Vohra v. India Export House Pvt. Ltd. and Anr. [1985] 1 SCC172. Shiv Chand Kapoor or hazard of establishingbonafide need, Pukhraj Jain v. PadmaKashyap due tosocial necessity, peculiar to Delhi, favourably inclined towards landlord, was subjected to inherent and implied limitations by this Court in Noronah, S.B. Noronah v. Prem Kumari Khanna in larger social interest of fairness and justice, which permeates our jurisprudence, to avoid any abuse of provision or arbitrary exercise of power, by directing such sanction or permission to pass the test of being clear of fraud or collusion. Even a mindless order was held to vitiate the proceedings. And the tenant was permitted to raise the objection in execution. Another was added to it in V.S. Rahe v. Ram Chambeli when an order on incorrect facts was alsoheld to be invalid. But the decision not only created misapprehension amongst tenants who seized upon it to raise all possible objections frivolous and otherwise but was misunderstood by the authorities, too, who applied erroneously and tested validity of the permission on requirement on the date of execution, or it was bad because She reason due to which sanction was obtained did not materialise even at time of execution. At times the yardstick applied was of bonafide necessity as understood in Section 14 of the Act. Consequently short term tenancy became an illusion and in a span of ten years from Noronah (supra) there came to be rendered at least a dozen reported decisions by this Court only. Although Noronah (supra) has, since, been substantially watered down, in subsequent decisions, yet it still furnishes the basis for assailing the sanction therefore it is necessary to examine, in brief, how much of it survives today and to what extent the law may be taken as settled.

16. For this it is worthwhile extracting the Section 21 which reads as under:-

21. Recovery of possession in case of tenancies for limited period.-(1) Where a landlord does not require the whole or any part of any premises for a particular period, and the landlord, after obtaining the permission of the controller in the prescribed manner, lets the whole of the premises or part thereof as a residence for such period as may be agreed to in writing between the landlord and the tenant and the tenant does not, on the expiry of the said period, vacate such premises, then, notwithstanding anything contained in Section 14 or in any other law, the Controller may, on an application made to him in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in occupation of such premises.

What strikes one is, the simplicity of the language and oneness of purpose. As observed in Noronah (supra) the Parliament was keen on maximising accommodation available for

letting, due to scarcity crisis. The objective was sought to be achieved by simplifying the provision for letting and assuring possession after expiry of lease. The only condition for applicability of the Section is no requirement of it by the landlord for short period. It is not subjected to any restriction by requiring the landlord to disclose any reason nor whether it shall be required thereafter for self or any family member. Other conditions, namely, passing of order, letting it for residential purpose, and entering of agreement with tenant, are incidental only. Use of non-obstante clause further leaves no room for doubt that the legislature intended it to operate on its own. That is why it has been held to be a self-contained code Shiv Chand kapoor v. Amar Bose [1991] 1 SCC 234, Neither creation of tenancy nor recovery of possession after expiry of period has been hedged in with any statutory restriction or condition. However, Noronah (supra) culled out, dual protection for tenants one substantive and other procedural by providing that validity of sanction could be assailed on fraud etc. and the objection could be taken in execution. But the latter, that is, procedural safeguard has been diluted in four subsequent decisions of three Judge Bench. In Vohra (supra) warrant of possession issued under Section 21, without service of notice, to the tenant was upheld as after expiry of short term tenancy the tenant had no right to continue. However, to avoid a tenant from being completely shut out even where the permission was obtained by 'a mere ritualistic observance of procedure' or, 'where such permission was procured by fraud' or, 'was a result of collusion' the court held that competing claims could be harmonised by insisting upon his approaching (tenant) the Rent Controller during the currency of the limited tenancy for adjudication of his sooner he discovers facts and circumstances that tend to vitiate ab initio the initial grant of permission.

It was reiterated in Shiv Chand Kapoor (supra). Yamuna Maloo Yamuna Maloo v. Anand Saroop narrowed it down further when it held that;

if the tenant has objection to raise to the validity of the limited vacancy it has to be done prior to the lapse of lease and not as a defence to the tenants application for being put in possession. We would like to reiterate that even if such an exercise is available that must be taken to be very limited and made applicable in exceptional cases.

In Pankaj Bhargava Panaj Bhargava v. Mohinder Nath , it was observed;

It is true that in Noronah's case a challenge to the validity of the limited tenancy was permitted even after the period of limited lease. But later cases have substantially denuded this position. In Vohra's case AIR 1985 SC 475, this Court laid down that a tenant who assails the permission was procured by fraud a ground not dissimilar to the one urged in the present case must approach the Rent Controller during the currency of the limited tenancy for an adjudication of his pleas as soon as he discovers facts and circumstances which, according to him, vitiate the permission.

Thus a tenant cannot wait for the entire period of lease and then raise objection to execution on fraud or collusion unless he is able to establish that it was not known to him and he came to know of it, for the first time only at the time of execution. In other words the Controller shall not be justified in entertaining an objection in execution unless the tenant establishes, affirmatively, that he was not aware of fraud before expiry of the period of lease. To the following extent, therefore, the law on procedural aspect should be taken as settled.

(1) Any objection to the validity of sanction should be raised prior to expiry of the lease.

(2) The objection should be made immediately on becoming aware of fraud, collusion etc.

(3) A tenant may be permitted to raise objection after expiry of lease in exceptional circumstances only.

(4) Burden to prove fraud or collusion is on the person alleging it.

17. Tested in the light of what has been stated above the tenant was not entitled to claim the protection as the objection filed by him to execution application was in defence to landlord's application for delivery of possession. The application is conspicuously silent on knowledge of fraud. It did not whisper that the tenant was unaware of facts stated therein during subsistence of lease. In fact, from a letter sent, twenty days, before expiry of lease to the landlord it is clear that the tenant was not only aware that he was required to vacate the premises after expiry of the time but he requested the landlady to grant him some more reasonable time for vacating the premises. In any case in absence of any averment in the application that he was not aware of various allegations made against the landlady in the application seeking invalidity of the permission granted by Controller the application was liable to be dismissed. No exceptional circumstance so as to bring it within the principle laid down in Yamuna Maloo's (supra) case could be deciphered either from the application or from the statement of the tenant. Neither the Controller nor the Appellate Authority found any exceptional circumstance which could justify the tenant to resist the execution after expiry of the period. Therefore, the Controller was not justified in entertaining his objection and entering upon an enquiry which was roving in nature and wholly uncalled for. But since law was not so clear when the objection was decided by the Controller it is appropriate to examine if the finding on merits is sustainable.

18. With this the more difficult and important aspect, namely, the objections or grounds on which a tenant can challenge validity of sanction granted under Section 21 of the Act by the Controller either during subsistence of lease or after its expiry in execution may now be examined. In Noronah (supra) even though law was declared and a tenant was permitted to raise objections that sanction was obtained by fraud or collusion or the Controller passed the order mindlessly the Court did not decide what constitutes fraud or collusion in relation to Section 21 of the Act or when an order passed by the Controller could be held to be mindless. An action is mindless when it is thoughtless or without any care or caution. In law it is passing of an order without any regard to the provision of law. If the section requires the authority to pass an order on inquiry or on being satisfied of existence or non-existence of a fact then the duty cast is higher and an order which is passed without due regard to duty to investigate then the order may be mindless. But in absence of any statutory requirement it may utmost be regulatory oversight. In the context of Section 21 it is clear that there is no statutory requirement for the Controller to enter into enquiry on application made by a landlord supported by a statement and agreed to by the tenant. Even though in Noronah's case it was said that an application to be beyond suspicion must contain special reasons but in subsequent decisions this has been explained and it has been held that in absence of any requirement in the Section to disclose any reason an application filed without reason could not be said to be bad in law nor a permission granted on it could be said to be mechanical or

mindless. An order may be mindless if at the time of granting permission there is material to indicate that the premises were being let out for a short period even though it was available for indefinite letting. But in absence of any material to indicate to the contrary if the Controller grants permission on the mere statement in the application that the premises was available for being let out for a short time as it was not required by the landlord and it is supported by a statement recorded before Controller which is not objected to by the tenant rather agreed then it would be too much to say that the exercise of power was made thoughtlessly. In Shiv Chand Kapoor this Court did not approve of the decision of the High Court that a permission granted under Section 21 was mindless only because on the date of expiry of the period of limited tenancy the age of the landlord's son was about 19 or 20 years whereas the minimum age prescribed by law for marriage was 21 years when the reason for requirement of the premises after expiry of lease period was marriage of the son. The Bench further deprecated the practice of the Authorities of entering into roving inquiry at the instance of tenant as that would frustrate the very purpose of limited period of tenancy contemplated by Section 21. In Smt. Dhanwanti Devi Smt. Dhanwanti v. D.D. Gupta it was held that even successive letting under Section 21 prior to grant of sanction could not adversely reflect on the permission as it was reasonable for landlord to let out looking to immediate future. Nor could the permission be said to be vitiated because after expiry of the period the landlord may in changed circumstances, decide to let out again. In Inder Mohan Lal Inder Mohan Lal v. Kamesh Khanna it was held that the landlordwas under no obligation to disclose reasons for letting out for a short period. It was held that omission to do so did not render the order invalid nor it could justify the inference that the sanction was granted mindlessly. In Joginder Kumar Butan Joginder Kumar Butan v. R.P. Oberoi even letting of ground floor or firstfloor to the tenants on earlier occasions which was not disclosed in the application, for grant of permission, under Section 21 was not considered fatal as the landlord might have done so on basis of bona fide grounds and genuine calculations which may have gone wrong.

19. All these decisions were examined in Shiv Chand Kapoor (supra). The Bench explicitly ruled out sufficiency of accommodation or bona fide need, provided for in Section 14, as beyond scope of the enquiry under Section 21 of the Act. It was held that the invalidity which could vitiate sanction was error in jurisdictional fact at the time of grant of permission, as valid sanction was sine qua non for Controller's jurisdiction. What, then, is an error in respect of jurisdictional fact? A jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a Court, tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and Wade Administrative Law; bad. In Raza Textiles Raza Textile v. Income Tax Officer, Rampur it was held that a court or tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly. What are those facts which can be said to be jurisdictional fact under Section 21? Although the Section visualises four conditions, namely, that the landlord

does not require the whole or part of premises for a particular period, the landlord must obtain the permission of the Controller in the prescribed manner, letting of the whole or part of the premises must be for residence and such letting must be for such period as may be agreed between the landlord and the tenant in writing. But the jurisdictional fact can be said to be two, availability of vacant premises which are not required by the landlord for the particular period and its letting out for residential purpose. For instance a permission obtained under Section 21 may be vitiated if the premises were not vacant on the date of application. Similarly if the permission is obtained in respect of nonresidential premises. What is significant is that the declaration by the landlord that the premises were available for letting out for short period is not required to be backed by any reason. And an application filed under Section 21 with or without reasons is neither bad nor contrary to law. It may be accompanied by statement of reasons or the application may merely state that the landlord does not require the premises for the period mentioned therein. In either case the application shall be in accordance with law. And if the Controller is satisfied that what was stated was correct he is obliged to grant permission. This satisfaction may be arrived at by believing the statement or requiring a landlord to give reasons or furnish such information as the Controller may consider necessary to satisfy himself that the statement made by landlord was correct. But once satisfaction is arrived at and the order is passed it becomes operative and final. It cannot be re-opened because of mere mistake or error or in the circumstances a more reasonable approach should have been to reject the application or allow it after obtaining better details. Error in assumption of jurisdiction should not be confused with mistake, legal or factual in exercise of jurisdiction. In the former the order is void whereas in the latter it is final unless set aside by higher or competent court or authority. An order which is void can be challenged at any time in any proceeding. A permission granted under Section 21 once permitted to attain finality becomes unassailable on error in exercise of jurisdiction. It could be challenged later or in execution only if it could be brought in the category of a void or ultra vires permission. Such invalidity can arise if jurisdiction is exercised by misrepresentation of facts either about existence of vacancy or nature of premises. In other words what attains finality in accordance with law cannot be permitted to be reagitated or reopened except in the larger social interest of preventing a person from practising deceit. Therefore an error of jurisdictional fact which could entitle a Controller to re-examine the matter in the context of Section 21 is the same, namely, fraud or collusion. Ratio in Noronah (supra) to this extent was reiterated and accepted as correct exposition of law in Shiv Chand Kapoor (supra). It has to be understood as such.

22. On the substantive safeguard therefore the law that is settled and should be followed by the authorities may be stated thus:

(1) Permission granted under Section 21 of the Act can be assailed by the tenant only if it can be established that it was vitiated by fraud or collusion or jurisdictional error which in context of Section 21 is nothing else except fraud and collusion.

(2) Fraud or collusion must relate to the date when permission was granted.

(3) Permission carries a presumption of correctness which can be permitted to be challenged not only be raising objection but proving it prima facie to the satisfaction of Controller before landlord is called upon to file reply or enter into evidence.

(4) No fishing or roving inquiry should be permitted at the stage of execution.

(5) A permission does not suffer from any of these errors merely because no reason was disclosed in the application at the time of creation of short term tenancy.

(6) Availability of sufficient accommodation either at the time of grant of permission or at the stage of execution is not a relevant factor for deciding validity of permission.

23. Turning to the facts now, is the sanction granted under Section 21 vitiated because the landlady in obtaining the permission committed fraud? On 3rd November 1978 the landlady filed an application before the Controller under Section 21 the material allegations of which were that the ground floor of the house was lying vacant and she desired to give it on rent for a short period of three years whereafter she needed the house for herself. It was mentioned that the premises were being given for residential purpose only and a proposed lease agreement between her and the tenant along with the plan was attached with the application. Her statement was recorded in which she stated that she would require the premises for her own use after three years. It was also mentioned that the premises had not been let out earlier. Statement of tenant was also recorded in which he expressed his agreement to take the premises for a period of three years after expiry of which he agreed to vacate the same. In absence of any material on the record to establish that the statement was not correct the Controller assumed jurisdiction and granted the permission as required under Section 21 for a period of three years. Twenty days before tenancy was to come to an end, the tenant, which is a firm, wrote a letter, through one of its partners to the landlady for sympathetic consideration for renewal of lease as theft had occurred in the premises in which the tenant had lost valuable goods. There was a veiled, irrelevant, suggestion in the letter that no reason was disclosed by her for requiring the premises as her family was having sufficient accommodation for living. Since the landlady did not agree to extend the lease and filed an application under Section 21 of the Act for a direction to the Controller to place her in vacant possession of the premises an objection was filed by the tenant on all possible grounds which could be imagined from inaccuracy, lack of knowledge, fraud, collusion etc. One of the objections was that since the premises was taken by one of the partners of the firm, only, without any authority the agreement entered into by him for grant of permission under Section 21 was not binding. It was also alleged that this was done without knowledge of other partners. Therefore the permission was neither binding nor enforceable. But the partner who made the statement was neither examined nor it was stated that the firm was not aware that the tenancy was for short duration only. The tenant went to the length of averring that in fact they were already in occupation of the premises from a date before the tenancy was created, a plea which was rejected by the Rent Control Authorities. Even the plea that the premises were let out for residential-commercial purposes did not find favour with any of the authorities. Nor did the Controller find any merit in the claim that the order of permission was mindless or it was bad for non-disclosure of reason. But the challenge succeeded because the permission was obtained by playing fraud as the landlady knew from the very beginning that premises were available for letting out indefinitely. The Controller found that in absence of any averment in the objection that she had let out the premises in 1978 for three years as she would require it after expiry of this period for her younger son her statement in support of it could not be looked into. The authority further found that variance between pleading and

proof, apart, the landlady failed to establish that premises were let out with intention to get it back after three years for her second son. Inference was drawn against her due to non-production of the son who could have been the best person to throw light on it as later on he not only joined another service but purchased a flat in Bombay. It was held that even if it was assumed that the premises were not needed by her for son that could not validate the sanction. The Appellate Authority agreed with the finding of the Controller as there was no statement in the application, made at the time for grant of permission, that the premises shall be required after three years by her son. In other words since she stated that she required the premises for herself after three years and she was having an accommodation which was sufficient for her and family the permission obtained by her was vitiated by fraud. The High Court did not consider it proper to examine the matter as it was concluded by findings of fact.

24. Sri Rajeev Dhavan rightly urged that both the Controller and the Tribunal misdirected themselves in placing the burden on the landlady to prove that the permission obtained by her was genuine. According to him the primary burden was on the tenant to establish that the permission was obtained by playing fraud. Unfortunately, it appears, the authorities assumed fraud and misrepresentation on mere averment in the objection of the tenant and proceeded to record the finding on premise that the landlady was required to prove it. Apart from the procedural error even the finding that the premises were not needed by her after three years is not well founded. The law does not require to give any reason on the date when the application is made. May be that one of her sons was in Army and the other was at Bombay and therefore she did not need the premises for them on the date of application. Yet the landlady could, well, visualize that she would need the premises after three years either because her son who was in Military was to be posted at Delhi, who in fact was posted in the meantime, or because her other son who had been rendered jobless in 1978 and was not doing well in life may need the house for establishing a factory in NOIDA. In fact some land was allotted and licence too appears to have been issued in his favour. But that is not relevant What is relevant is a prima facie evidence led by her to prove that her statement that she shall be requiring the premises after three years was not a mere make belief or a pretence but a genuine statement on the state of affairs as it stood then. The averment in the application that the premises shall be needed by her after three years could not be construed as misrepresentation. The requirement of a landlord includes the requirement of a son or daughter or any member of the family. If she gave the premises for three years believing that in the meantime her son in Military might be posted at Delhi or the son at Bombay may start a business at NOIDA, which may not have come out to be exactly as she desired it to be it could not invalidate the permission. Further the landlady in her statement before Controller, stated that she informed the partner who had taken the premises that she shall need it after three years for her second son. And yet the tenant instead of producing that partner, without any excuse, chose to examine another partner and the authorities did not attach any weight to it

25. Letting under Section 21 is not hedged with any restriction. Throwing the whole or part of the premises by landlord for letting out is not linked with his existing accommodation, its number or sufficiency. The one is not dependent on the other. Even letting for paying instalment of loan, for constructing the premises or its re-letting has not been held to be

contrary to Section 21. Validity of permission has to be judged on the date of grant of application. Availability of premises for indefinite letting cannot be judged by subsequent events or the failure of the landlord to occupy immediately for personal, financial, economic or other reasons. Therefore, the authorities committed manifest of error of law, both in entertaining the application of the tenant resisting the objection of the landlady by placing the burden on her erroneously and deciding against her by misapplication of law and misconstructions of the provisions of Section

21.

ORDER

26. For the reasons stated by us in our concurring judgments dated December 3, 1991 we set aside the impugned judgment of the High Court and the Order of the Additional Rent Controller dated 21.11.87 in Misc. Application No. M650 of 1978 and that of the Rent Control Tribunal dated 26.9.1988 in R.C.A. No. 1085 of 1987. The appeal shall accordingly stand allowed

* * * * *

Jyoti Pershad v. The Administrator for the Union Territory of Delhi

1961 AIR 1602 1962 SCR (2) 125

The petitioner after a prolonged litigation and having fulfilled all the conditions of the Delhi Rent Control Act, obtained decrees of ejectment against the tenants. In the meantime the Slum Areas (Improvement and Clearance) Act,1956, came into force and the petitioner in accordance with s. s.9 of the said Slum Areas Act applied to the competent authority for permission to execute the decree, which was refused inter alia on the grounds of hardship to the tenants and the human aspect of the case. The appeals therefrom were also rejected. The petitioner moved the Supreme Court for issue of a writ of certiorary to quash the orders on the ground that (1) s. 19 of the Act was invalid and unconstitutional as violative of the petitioner's rights guaranteed by Arts. 14 and 19(1)(f) of the Constitution, in as much as s. 19 of the Slum Areas Act was a super-imposition on the rights of the petitioner who had satisfied the requirements of the Rent Control Act before obtaining his decree, which amounted to unreasonable restrictions on the right to hold property guaranteed by the Constitution, and (2) that S. 19(3) of the Slum Areas Act vested an unguided, unfettered, and uncontrolled power in an executive officer to withhold permission to execute a decree which the petitioner had obtained after satisfying the reasonable requirements of the law as enacted in the Rent Control Act, (3) The power conferred on the competent authority by s. 19(3) of the Slum Areas Act was an excessive delegation of legislative power and therefore unconstitu tional.

Before setting out the points urged by Mr. Narula learned Counsel for the petitioners-in support of his submission that s. 19 of the Act" was, in so far as it enabled the competent authority to withhold permission to those who had obtained decrees for eviction from executing their decrees, unconstitutional, it would be necessary to read the material provisions of the Rent Control Act, 1952, which imposes a restriction on the right of landlords, inter alia to evict tenants from the premises occupied by them. Chapter III of that Act imposes a control over the eviction of tenants. A tenant is defined (Vide s. 2(j)) as meaning "any person by whom or on whose account rent is payable for any premises including such sub-tenants or others who have derived title under the tenantunder the provisions of any law before the commencement of the Act." Section 13(1) enacts:

"Notwithstanding anything to the contrary con- tained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated):".

This blanket protection is, however, subject to the conditions enumerated in the proviso which reads: "Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court is satisfied-"

Then follow ten grounds the existence of one or other of which enables a landlord to obtain a decree from a Civil Court for the recovery of possession from tenants. Among the grounds thus enumerated it is sufficient to refer to grounds (f), (g) and (1), ground (g) being the ground upon which the petitioner in the present case obtained the decrees for eviction and these run:

" (f) that the premises have become unsafe or unfit for human habitation and are bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated; or

(g) that the premises are bona fide required by the landlord for the purpose of re-building the premises or for the replacement of the promises by any building or for the erection of other buildings, and that such building or rebuilding cannot be carried out without the premises being vacated; or

(1) that the landlord requires the premises in order to carry out any building work at the instance of the Government or the Delhi Improvement Trust in pursuance of any improvement scheme or development scheme." The right of the landlord, however, who obtains an order for eviction under either cl. (f) or (g) above set out is subject to the provisions of s. 15 whose terms have already been set out, The result, therefore,would be that in the cases covered by these two clauses the tenants would be entitled, if they conform to the terms of these provisions, to be reinstated in the newly constructed premises after the reconstruction. It might be pointed out that under s. 38 of the Rent Control Act the provisions of the Act and the Rules made thereunder are to have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The argument of the learned Counsel was that the restriction upon the rights of landlords to the enjoyment of the property imposed by s. 13 of the Rent Control Act could not be open to any objection, legal or constitutional because the Legislature has set out with precision the grounds upon which possession could be recovered, the defenses that might be set up by the tenants and the conditions subject to which the rights either of the landlord or of the tenant could be exercised. It is the super-imposition of the provisions of s. 19 of the Act on the rights of a landlord-decreeholder who had satisfied the requirements of the Rent Control Act before obtaining his decree that was stated as amounting to an unreasonable restriction on the right to hold property guaranteed by Art. 19(1)(f).

This will be a convenient stage at which we might set out in brief outline the argument urged by learned Counsel for the petitioner. They were mainly three: (1) Section 19(3) of the Act vests an unguided, unfettered and uncontrolled power in an executive officer to withhold permission to execute a decree which a landlord has obtained after satisfying the reasonable requirements of the law as enacted in the Rent Control Act. Neither s. 19 of the Act nor any other provision of the Act indicates the grounds on which the competent authority might grant or withhold permission to execute decrees and the power conferred is, therefore, arbitrary and offends Art. 14 of the Constitution. (2) The same point was urged in a slightly different form by saying that the Power conferred on the "competent authority" by s. 19(3) of the Act was an excessive delegation of legislative power and was, therefore, unconstitutional.

Apart from the objection regarding the vesting of an unguided power in an executive authority which is, the common ground of objection urged in regard to points (1) and (2), learned Counsel submitted that the right vested in an executive authority to prevent for an indefinite and indeterminate period of time the right to enjoy his property was for this further reason excessive and an unreasonable restraint which could not be justified under Art. 19(5) of the Constitution.

We shall proceed to consider these points in that order. The first ground alleged is that s. 19 of the Act is constitutionally invalid as violative of the equal protection of the laws conferred under Art. 14 of the Constitution, in that an unguided and arbitrary discretion is vested in the "competent authority".. In other words, that the Act lays no fetters and has vested in him an arbitrary and unguided power to pick and choose the decree- holders to whom he would permit execution and those to whom he would refuse such relief. On the other hand, the learned Attorney-General submitted that the discretion vested in the competent authority was not unguided and that though s. 19 of the Act did not in terms lay down any rules for his guidance, the same could be gathered from the policy and purpose of the Act as set out in the preamble and in the operative provisions of the Act itself.

We consider that there is considerable force in this submission of the learned Attorney-General. The preamble describes the Act as one enacted for two purposes: (1) the improvement and clearance of slum areas in certain Union Territories, and (2) for the protection of tenants in such areas from eviction. These twin objects are sought to be carried out by Chapters II to VI of the enactment. Chapter 11 which consists of one sections. 3- provides a definition of what are "slum areas" and their declaration as such. The tests for determining whether the area could be declared a "slum area" or not briefly are whether the buildings in the area are (a) unfit for human habitation, or (b) are by reason of dilapidation, overcrowding etc. detrimental to safety, health or morals. It is in areas so declared as "slum areas" that the rest of the enactment is to operate. The provisions, however, make it clear that in order that an area may be declared a " slum area" every building in that area need not be unfit for human habitation or that human habitation in every building in such area should be detrimental to the safety, health or morals of the dwellers. We are making this observation because of a suggestion made, that the declared purpose of protecting the tenants from eviction was inconsistent with the policy underlying the declaration of an area as a "slum area" and that thus the Act manifested two contrary or con flicting ideas or principles which would negative each other and thus leave no fixed policy to guide " the competent authority" when exercising his powers to grant or refuse eviction when an application was made to him in that behalf under s. 19 of the Act.

Chapter III is headed 'Slum Improvement' and makes provision for two types of orders: (1) to require the improvement of buildings where repairs-major or minor-would make them reasonably habitable for the slum dwellers (vide ss. 4-6), and (2) cases where mere repairs or adjustments would not suffice but what is required is the demolition of the entire building. In the latter case certainly the occupants of the building would have to be evicted and the building vacated and power is conferred for effectuating this purpose vide s. 7 (1) and 7 (3). It might be that the whole area might consist of dwellings of the type which require demolition and it is Chapter IV that makes provision for this category of cases which is headed "Slum Clearance and Re- development". In such cases the buildings in the entire area are to be ordered to be demolished, and in that event the dwellers would, of course, have to vacate, but it is presumed that alternative accommodation would necessarily have to be provided before any such order is made. The process would have to be carried out in an orderly fashion if the purpose of the Act is to be fulfilled and the policy behind it, viz., the establishment of slum dwellers in healthier and more comfortable tenements so as to improve the health and morals

of the community, is to be achieved. Chapter V makes provision for the acquisition of land in order to compass the re-development of slum areas into healthy parts of the city, by providing amenities and more substantial and better accommodation for the previous inhabitants. It is after this that we have Chapter VI whose term terms we have already set out. This Chapter is headed "Protection of tenants in Slum Areas from Eviction". Obviously, if the protection that is afforded is read in the context of the rest of the Act, it is clear that it is to enable the poor who have no other place to go to, and who if they were compelled, to go out, would necessarily create other slums in the a process and live perhaps in less commodious and more unhealthy surroundings than those from which they were evicted, to remain in their dwellings until provision is made for a better life for them elsewhere. Though therefore the Act fixes no time limit during which alone the restraint on eviction is to operate, it is clear from the policy and purpose of the enactment and the object which it seeks to achieve that this restriction would only be for a period which would be determined by the speed with which the authorities are able to make other provisions for affording the slum dweller-tenants better living conditions. The Act, no doubt, looks at the problem not from the point of view of the landlord, his needs, the money he has sunk in the house and the possible profit that he might make if the house were either let to other tenants or was reconstructed and let out, but rather from the point of view of the tenants who have no alternative accommodation and who would be stranded in the open if an order for eviction were passed. The Act itself contemplates eviction in cases where on the ground of the house being unfit for human habitation it has to be demolished either singly under s. 7 or as one of a block of buildings under Ch. IV. So long therefore as a building can, without great detriment to health or safety, permit accommodation, the policy of the enactment would seem to suggest that the slum dweller should not be evicted unless alternative accommodation could be obtained for him. In this connection the learned Attorney-General brought to our attention the provisions of the Delhi Development Act, 1957 (LXI of 1957) which makes provision for the design of a Master Plan for the city which, if executed, is likely to greatly reduce, if not to eliminate, slums altogether. It was suggested that taken in conjunction with this enactment it would be seen that the power to restrain eviction under s. 19 of theAct is one which would not last for ever but to a limited period, though this could not naturally be defined by reference to fixed dates. We see force in this submission as well. In view of the foregoing we consider that there is enough guidance to the competent authority in the use of his discretion under s. 19(1) of the Act and we, therefore, reject the contention that s. 19 is obnoxious to the equal protection of laws guaranteed by Art. 14 of the Constitution. We need only add that it was not, and could not be, disputed that the guidance which we have hold could be derived from the enactment, and that it bears a reasonable and rational relationship to the object to be attained by the Act and, in fact, would fulfil the purpose which the law seeks to achieve, viz., the orderly elimination of slums, with interim protection for the slum dwellers until they were moved into better dwellings. We are further of the opinion that the order of the competent authority in the present case is not open to challenge either, because it would be seen that the grounds upon which he has rejected the petitioner's application for execution is in line with what we have stated to be the policy and purpose of the Act.

Before leaving this topic it is necessary to consider a submission of learned Counsel for the petitioner which is of immediate relevance to point under examination. He said that, no

doubt, the decisions of this Court had pointed out that it was not reasonable to expect the legislature to lay down expressly precise criteria for the guidance of the authorities who have to administer the law because of the difficulty, if not impossibility, of contemplating every single circumstance and prescribing rules so as to apply to such varying situations, and that was the raison d'etre of vesting a large discretion in the hands of the administering authorities after indicating the general principles that ought to guide them. He however urged that in the present case there was no such insuperable difficulty, because the restriction provided for by s. 19 of the Act was superimposed on those which were enacted by s. 13 of the Rent Control Act, and Parliament when enacting the Act, could easily have indicated with reference to the several grounds on which eviction could be had under the Rent Control Act, the additional restrictions, or further conditions which would be taken into account by "the competent authority". If learned Counsel meant by this submission that it was a possible mode of legislation, there is nothing to be said against it, but if he desired us to infer therefrom that because of the failure to adopt that mode, the power conferred by s. 19 of the Slum Act contravened the guarantee under Art. 14, we cannot agree. In regard to this matter we desire to make two observations. In the context of modern conditions and the variety and complexity of the situations which present themselves for solution, it is not possible for the Legislature to envisage in detail every possibility and make provision for them. The Legislature therefore is forced to leave the authorities created by it an ample discretion limited, however, by the guidance afforded by the Act. This is the ratio of delegated legislation, and is a process which has come to stay, and which one may be permitted to observe is not without its advantages. So long therefore as the Legislature indicates, in the operative provisions of the statute with certainty, the policy and purpose of the enactment, the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount to a carte blanche to discriminate. The second is that if the power or discretion has been conferred in a manner which is legal and constitutional, the fact that Parliament could possibly have made more detailed provisions, could obviously not be a ground for invalidating the law.

The next point argued by learned Counsel for the petitioner was that the power conferred on the competent authority by s. 19(3) of the Act was an excessive delegation of legislative power. As we have pointed out earlier, this submission is really another form, or rather another aspect of the objection based on the grant of an unfettered discretion or power which we have just now dealt with. It is needless to repeat, that so long as the legislature indicates its purpose and lays down the policy it is not necessary that every detail of the application of the law to particular cases should be laid down in the enactment itself. The reasons assigned for repelling the attack based on Art. 14 would suffice to reject this ground of objection as well.

The last major objection urged by learned Counsel was that the power vested in the competent authority "at its sweet- will and pleasure" to refuse permission to execute a decree for eviction violated the right to hold property under Art. 19(1)(f) of the Constitution and that the same was not saved by Art. 19(5) of the Constitution for the reason that the restriction imposed on the exercise of the right was not reasonable. If Counsel were right in his

submission that the petitioner's right to obtain possession of his building rested on the "sweet-will and pleasure of the competent authority" there could be some substance in the argument. But as we had already had occasion to point out, it is not at the "sweet-will and pleasure" of the competent authority that permission to evict could be granted or refused, but on principles gatherable from the enactment, as explained earlier.

Before concluding it is necessary to advert to a few points which were also urged by learned Counsel for the petitioner. First it was said that the impugned s. 19 of the Act imposed a double restriction, a restriction super-imposed on a restriction already existing by virtue of the provisions of the Rent Control Act, and that this rendered it unreasonable. If by this submission learned Counsel meant that different results as to constitutional validity flowed from whether the impugned section was part of the provisions of the Rent Control Act, or was a section in an independent enactment, the argument is clearly untenable. If, however, that was not meant, but that in the context of the restrictions already imposed by the Rent Control Act s. 19 of the Act was really unnecessary and therefore. an unreasonable restraint on the freedom of the landlord, what we have said earlier ought to suffice to repel the argument. Learned Counsel next drew our attention to s. 38 of the Rent Control Act which reads:

"The provisions of this Act and of the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law." If this section stood alone, the argument of learned Counsel that by reason of the width and sweep of its language, even a special legislation, such as the Act was comprehended within the non obstante provision would have required serious consideration, but that has been rendered unnecessary, because even apart from s. 19 of the Act which opens with the words: "Notwithstanding anything contained in any other law for the time being in force", s. 39 of the Act also contains a non obstante clause on the same lines as s. 38 of the Rent Control Act. The result therefore would be that the provisions of the special enactment, as the Act is, will in respect of the buildings in areas declared slum areas operate in addition to the Rent Control Act. The argument therefore that the Act is inapplicable to buildings covered by the Rent Control Act is without substance, particularly when it is seen that it is only when a decree for eviction is obtained that s. 19 of the Act comes into play. We therefore consider that none of the points urged in support of the petition has any substance. The petitions fail and are dismissed

* * * * *

C.R. Abrol v. *Administrator Under The Slum Areas*

(1970) R.C.J 899

V.S. DESHPANDE, J. – We have to construe sub-sections (1) and (4) of Section 19 of the Slum Areas (Improvement & Clearance) Act, 1956 (hereinafter called the Act) after taking into account the legislative context of such construction. The premises occupied by the petitioners in this and the connected writ petitions as tenants were formerly evacuee property and therefore, rents payable by these tenants were very low, namely, Rs. 2.50, Rs. 5/- and Rs. 3.50/- per month in Writ Petition 911, 912 and 913 of 1969 respectively. The evacuee property was later acquired by the Government under section 12 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 and sold to one Smt. Sarla Gupta by public auction. The sale certificate was issued to Smt. Sarla Gupta. The petitioners admit Smt. Sarla Gupta to be their landlord.

2. The Arya Pratinidhi Sabha, Punjab, a Society registered under the Societies Registration Act and the Arya Samaj, Kishan Ganj, Delhi, a Society not so registered both made an application under Section 19(1) of the Slum Areas (Improvement & Clearance) Act, 1956 (hereinafter called the Act) to the Competent Authority for permission to evict the tenants alleging themselves to be the landlords vis-à-vis those tenants on the ground that the premises had been purchased in auction from the Government in reality by the Arya Samaj benami in the name of Smt. Sarla Gupta. Later, the Arya Samaj, Kishan Ganj, Delhi and Smt. Sarla Gupta had executed a deed of trust in favour of the Arya Pritinidhi Sabha, Punjab whereby the legal ownership of the property in premises vested in the trustees, namely, the Arya Pritinidhi Sabha, Punjab, the beneficial owner being the Arya Samaj, Kishan Ganj, Delhi. Still later Smt. Sarla Gupta also executed a deed of disclaimer by which she disclaimed any title to the premises and admitted the legal title to be in the name of Arya Pritinidhi Sabha, Punjab. Smt. Sarla Gupta did not join as an applicant in the above mentioned petitions under Section 19 of the Act.

3. The tenants resisted the petitions on the ground that they were the tenants of Smt. Sarla Gupta but not of the Arya Pritinidhi Sabha, Punjab and the Arya Samaj, Kishan Ganj, Delhi. They denied that the title to the premises had vested in the Arya Pritinidhi Sabha, Punjab and pointed out that the Arya Samaj, Kishan Ganj, Delhi was not a registered body and could not, therefore, maintain the petition against the tenants.

4. The Competent Authority held (vide Annexure 'C' to the writ petition) that the Arya Pritinidhi Sabha, Punjab was not proved to be a registered body and the relationship of landlords and tenants between the parties was also not proved. The Competent Authority, therefore, declined to grant permission to them for the eviction of the tenants. It did not, therefore, inquire into the question whether the tenants could find alternative accommodation within their means if they were eventually evicted from the premises.

5. In the appeal filed by the alleged landlords under Section 20 of the Act to the Administrator, the Judicial Secretary, Delhi Administration acting for the Administrator reversed the order of the Competent Authority on 27.5.1969 [(Annexure 'D') to the writ petition] and granted the permission for instituting proceedings for eviction of the tenants on

the view that where a tenant denies his relationship with the alleged landlord filing the petition under Section 19, the permission must invariably be granted. The reason is that in granting permission in such cases neither party is put to any loss. The alleged landlords can approach the Tribunal vis-à-vis the jurisdiction to decide the question of tenancy and obtain the eviction of the tenants. On the other hand, if the alleged landlords failed to prove their status as landlords then they would be unsuccessful in evicting the tenants and the permission granted under Section 19 of the Act would not in any way prejudice the tenants.

6. The tenants, therefore, filed these writ petitions challenging the orders dated 27.5.1969 whereby permission for institution of proceedings for the eviction of the tenants was granted under Section 19 of the Act by the Administrator sitting in appeal under Section 20 of the Act. Shri Bhargava, learned counsel for the petitioners argued that the order granting permission for the eviction of the tenants was without jurisdiction firstly, because the relationship of landlord and tenant between the parties was not proved and secondly, because the Administrator did not consider, though he was required to do so under Section 19(4) of the Act, whether the tenants would be able to find alternative accommodation within their means on eviction.

7. In opposing the writ petition Smt. Sarla Gupta herself filed the counter-affidavit on behalf of the two Arya Samaj bodies. She referred to the execution of the deed of trust dated 1.8.1966 and the deed of disclaimer dated 9.12.1969 by her to show that she herself had never any title to the premises which were vested in the Arya Pritinidhi Sabha, Punjab as the legal owner and in the Arya Samaj, Kishan Ganj, Delhi as the beneficial owner. She further pointed out that the tenants had not paid arrears of rent for the last four years. One of the petitioners, namely, Satish Chander in C.W. No. 912 of 1969 was not residing in the premises at all. He was Assistant Director in the Government of India and was drawing a basic salary of Rs. 825/- per month in addition to usual allowances. The petitioner Doctor C.R. Abrol in C.W. No. 911 of 1969 had two clinics and also a telephone in his home. He was also earning well. The last petitioner, Shri Mela Ram in C.W. 913 of 1969 was a shopkeeper who was also earning well. All the three tenants are, therefore, able to secure alternative accommodation within their means if they are evicted. Shri S.N. Marwaha appearing for the respondents urged that it was not necessary for the Administrator to decide if the relationship of landlord and tenant existed before granting permission to the alleged landlord for the eviction of the tenant. We have, therefore, to consider whether the Competent Authority under Section 19 (and, therefore, the Administrator in appeal under Section 20) were incompetent to grant permission to the landlords for the eviction of the tenants except after finding firstly that the relationship of landlords and tenants existed between the parties and secondly that the tenants would be able to obtain alternative accommodation within their means after eviction.

8. The first question relates to the jurisdiction of the Competent Authority under Section 19. Shri Bhargava on behalf of the petitioners urged that the Competent Authority was bound to inquire and come to a decision as to whether the relationship of landlords and tenants existed between the parties and that it has no jurisdiction to grant the permission to the landlords for the eviction of the tenants unless and until it finds that such a relationship existed between the parties. The twin objects of the Act as spelt out in its long title is “the

improvement and clearance of slum areas, and the protection of tenants in such areas from eviction." While the rest of the Act is concerned with the improvement and clearance of the slum areas, Chapter VI thereof is concerned with the protection of tenants in slum areas from eviction. Under the general law, i.e. the Transfer of Property Act, 1882 or the principles of justice, equity and good conscience underlying it the landlord is entitled to terminate the tenancy of his monthly tenant by notice given either under Section 106 of the Transfer of Property Act or under the principles underlying it. Restrictions on this right of landlord have been placed by the Rent Control Legislation in Delhi first by the Delhi and Ajmer Rent Control Act, 1952, which was later succeeded by the Delhi Rent Control Act, 1958. When, therefore, the Slum Areas (Improvement and Clearance) Act, 1956 was enacted, Section 13 of the Delhi and Ajmer Rent Control Act, 1952 had already restricted the right of the landlord to evict the tenant. A landlord may terminate the contractual tenancy by notice. Nevertheless the statutory tenancy continued and the eviction of the tenant could not be obtained unless the landlord satisfied the Court of the existence of any of the specified grounds on which alone the eviction would be ordered. As recognised by the Supreme Court, therefore, in ***Jyoti Parsad* v. *Administration for Union Territory of Delhi***, an additional restriction on the right of the landlord to evict the tenant is imposed by Section 19 of the Act. The protection given by Section 19 is available only to tenants. The Act does not define either "landlord" or "tenant". It is clear, therefore, that the relationship of landlord and tenant has to be determined according to the general law. Section 2(f) of the Act defines "occupier." An occupier may be of five kinds as specified therein. Out of them only two kinds are tenants. The benefit of Section 19 is not, therefore, available to the other kinds of occupier. It would appear necessary, therefore, for the Competent Authority to determine if the person claiming benefit of Section 19 is a tenant vis-à-vis the applicant landlord before it can decide to grant the permission or to refuse the permission to the landlord for the eviction of the tenant.

9. Shri S.N. Marwaha, learned counsel for the respondent tried to argue that the existence of a relationship of landlord and tenant was not a necessary pre-condition for the exercise of the jurisdiction of the Competent Authority under Section 19. He invited our attention to the following words in Section 19(1):

> 19(1). No person shall, except with the previous permission in writing of the Competent Authority, institute a proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or execute such a decree or order.

His argument was that the word "person" used in Section 19(1) was wider than the word "landlord." Therefore even a person who is not a landlord may apply under Section 19(1) to the Competent Authority for permission to evict a tenant. We are unable to agree. In our view, the word "person" in this context signifies only a landlord and no one else. For, Section 19(1) prohibits two kinds of proceedings for obtaining any decree or order, namely, (a) for the eviction of a tenant, and (b) for the execution of a decree or order of eviction of a tenant. A proceeding which can be brought only against a tenant as such must necessarily be by a landlord. These proceedings constitute a well known class of proceedings between landlords and tenants. They are distinguished from proceedings based on title in which relationship of landlord and tenant is immaterial. The proceeding between the landlord and the tenant is

based on the relationship arising either out of a contract or operation of law. The essence of the relationship is that the tenant is estopped from disputing the title of the landlord at the inception of the tenancy. The very object of Chapter VI of the Act is to protect only the tenants and not other kinds of occupiers. The proceedings to which Section 19 relates are those against tenants. It follows, therefore, that such proceedings can be initiated only by the landlords. In our view, therefore, Section 19 applies only to proceedings between the landlord and tenant.

10. Since the relationship of landlord and tenant has to exist from before the application under Section 19 is made by the landlord, it is a condition precedent which must be satisfied before the landlord can make an application under Section 19.The Competent Authority proceeds on the basis that such relationship exists before it can decide the specific question whether the permission should be granted or not. The jurisdiction of the Competent Authority under Section 19 is, therefore, to grant or not to grant the permission for eviction. But the exercise of this jurisdiction depends on the fulfilment of the jurisdictional condition that the application is made by a landlord for permission to evict a tenant. When the relationship is admitted by the parties, the Competent Authority straightway proceeds to decide, whether the permission sought by the landlord should be granted or not. If the relationship is denied by the landlord then the Competent Authority must dismiss the application of the landlord on the ground that no permission is needed under Section 19 for the filing of a suit for possession based on title. If the relationship is denied by the tenant then the Competent Authority has theoretically got two courses open to itself. It may either refer the landlord to the Civil Court for a finding that the relationship exists between the parties. Such a finding becomes res judicata between the parties. The landlord can file a petition under Section 19 on the basis of such a finding and the tenant could not thereafter dispute the relationship. The Competent Authority can proceed to decide whether the permission to the landlord should be granted or not. But such a course of action would encourage frivolous denials of relationship of landlord and tenant. Section 19 has given jurisdiction to the Competent Authority to decide a certain question. Jurisdiction would be made largely infructuous if a mere denial of the relationship by the alleged tenants could put the Competent Authority out of action and unable to proceed further. Therefore the second course which is the only possible one in the circumstances, and which must be adopted by the Competent Authority, is to determine whether the relationship of landlord and tenant exists between the parties. The Competent Authority does not have the final jurisdiction to determine the existence of the relationship. Its authority extends only to make a preliminary inquiry into the relationship solely for the purposes of knowing, whether it can proceed further under Section 19 to decide the main question whether permission should be granted or not. The finding given as a result of the preliminary inquiry will not be res judicata between the parties and would be liable to be questioned collaterally either by a civil suit or by a writ petition. The mere fact that the question of relationship cannot be finally determined by the Competent Authority is, however, no reason why it should not be inquired into at all by it.

11. In ***Rex* v. *London, etc., Rent Tribunal*** [1951 (1) K.B. 641] Honig, tenant had made an application to the Rent Tribunal under the provisions of the Furnished House (Rent Control) Act, 1946. The landlord took the stand that the tenancy had already been terminated

and, therefore, there was no existing relationship of landlord and tenant. The Court held that the Tribunal was bound to determine whether the relationship of landlord and tenant existed at the time of the application made by the tenant to it (vide Goddard, C.J. at pp. 644-45).

12. In ***Om Parkash Gupta* v. *Dr. Rattan Singh*** [1963 P.L.R. 543], the tenant denied that the applicant before the Rent Controller was his landlord. The Supreme Court, however, held that the Controller must determine whether the relationship of landlord and tenant existed between the parties.

13. We find on the first question, therefore, that the Competent Authority was bound to make a preliminary inquiry into the existence of the relationship of landlord and tenant between the parties under Section 19(1) with a view to be able to decide on the basis of such a preliminary inquiry whether permission should be given to the landlord to institute proceedings for the eviction of the tenant. If the Competent Authority arrived at a preliminary finding that the relationship of landlord and tenant did not exist between the parties, then the Competent Authority was precluded from granting permission sought by the landlord for the institution of a proceeding for the eviction of the tenant. It would be a contradiction in terms for the Competent Authority to hold that there was no relationship of landlord and tenant between the parties and yet to grant permission to the alleged landlord to institute proceedings for the eviction of the alleged tenant. It is true that the alleged landlord who has failed to obtain such a preliminary finding in his favour from the Competent Authority would be unable to make an application to the Controller for the eviction of the tenant under Section 14(1) of the Delhi Rent Control Act, 1958. 14. It is also true that the preliminary finding given by the Competent Authority under Section 19 is not res judicata between the parties and the question of the relationship of landlord and tenant between the parties would have to be decided afresh by the Controller under Section 14 of the Delhi Rent Control Act, 1958, if necessary. The Supreme Court in ***Om Prakash Gupta*** case, referred to above, has however observed in relation to the proceedings before the Controller under the Delhi Rent Control Act, 1958 that a mere denial of relationship by the tenant does not oust the jurisdiction of the Controller to inquire into the relationship with a view to determine whether the landlord was entitled to evict the tenant. The same observation, in our view, would hold good regarding the jurisdiction of the Competent Authority under Section 19(1) of the Slum Areas (Improvement & Clearance) Act, 1956. The Competent Authority is also a tribunal of limited jurisdiction. Nevertheless, it has also to make the preliminary inquiry and make preliminary finding as to the existence of relationship of landlord and tenant as it is the very basis on which it can exercise its jurisdiction under Section 19.

15. We do not apprehend that the preliminary inquiry into the existence of the relationship of landlord and tenant can be magnified into a full scale trial by a litigous tenant to defeat delay or the grant of permission by the Competent Authority under Section 19. For, under Section 19(3) inquiry into the main question whether the permission should be granted or not is itself to be "such summary inquiry into the circumstances of the case as it (Competent Authority) thinks fit." A foritori the preliminary inquiry into the existence of the relationship of landlord and tenant by the Competent Authority would be even more summary.

16. In our view, the preliminary inquiry by the Competent Authority is to be summary both in respect of the procedure of the inquiry and in respect of the matter to be considered by

the Competent Authority, namely the existence of the relationship of landlord and tenant. The second question is concerned entirely with the construction of sub-section (4) of Section 19 which reads as follows:

> (4) In granting or refusing to grant the permission under sub-section (3), the Competent Authority shall take into account the following factors, namely,
>
> Whether alternative accommodation within the means of the tenant would be available to him if he were evicted;
>
> whether the eviction is in the interest of improvement and clearance of the slum areas;
>
> Such other factors, if any, as may be prescribed.

Section 19(4) has two aspects. The first is, whether it is mandatory. The second is, whether it is exhaustive. In the absence of any rules made under Section 19(4)(c) only two considerations have been specified to be taken into account by the Competent Authority, namely, (a) whether alternative accommodation within the means of the tenant would be available to him if he were evicted; and (b) whether the eviction is in the interest of improvement and clearance of the slum areas. These two considerations appear to us to be alternative and not cumulative. If the eviction is in the interest of improvement and clearance of the slum areas then the premises may have to be either demolished or improved by repairs. This would involve the vacation of the premises by the tenant even if the tenant is too poor to find accommodation within his means. For, as observed by the Supreme Court in ***Jyoti Parsad*** case referred to above at p. 143, "the Act itself contemplates eviction in cases where on the grounds of the house being unfit for human habitation it is to be demolished either singly under Section 7 or as one of a block of buildings under Ch. IV. So long therefore as a building can, without great detriment to health or safety, permit accommodation, the policy of the enactment would seem to suggest that the slum dweller should not be evicted unless alternative accommodation could be obtained for him." But if on the other hand, the eviction of the tenant is not necessitated by the demolition or repairs of the premises then the Competent Authority must consider if alternative accommodation within his means would be available to the tenant if he were evicted. If it comes to the conclusion that he would not find such alternative accommodation within his means then the Competent Authority is precluded from granting the permission for his eviction. The following reasons seem to us to show that Section 19(4) is mandatory as well as exhaustive.

17. Knowing fully well that in addition to the protection given to the tenant against eviction by landlord under Section 106 of the Transfer of Property Act, the Delhi and Ajmer Rent Control Act, 1952 had imposed further restriction on the right of the landlord to evict the tenant, the Legislature enacted this Act in 1956. Section 19 which was a part of the Act as originally enacted prohibited the execution of a decree or order for eviction obtained by a landlord against a tenant living in a slum area except with the previous permission in writing of the Competent Authority. In ***Jyoti Prasad*** case therefore, the validity of Section 19 was challenged on the ground that it imposed an unreasonable restriction on the fundamental right of the landlord guaranteed by Article 19(1)(f) of the Constitution to hold and dispose of his property which included the right of evicting his tenants. This right of eviction which has already restricted would be totally denied to the landlord if the Competent Authority were to

refuse permission to him to evict his tenant in a slum area. The discretion given to the Competent Authority was also challenged as being arbitrary and unfettered. The Supreme Court repelled both the contentions. As to the first contention their lordships at p. 143 observed as follows:

> Obviously, if the protection that is afforded is read in the context of the rest of the Act, it is clear that it is to enable the poor who have no other place to go, and who if they were compelled to go out, would necessarily create other slums in the process and live perhaps in less commodious and more unhealthy surroundings than those from which they were evicted, to remain in their dwellings until provision is made for a better life for them elsewhere. Though therefore, the Act fixes no time limit during which alone the restrain on eviction is to operate, it is clear from the policy and purpose of the enactment and the object which it seeks to achieve that this restriction would only be for a period which would be determined by the speed with which the authorities are able to make other provisions for affording the slum dweller-tenants better living conditions. The Act, no doubt, looks at the problem not from the point of view of the landlord, his needs, the money he has sunk in the house and the possible profit that he might make if the house were either let to other tenants or was reconstructed and let out, but rather from the point of view of the tenants who have no alternative accommodation and who would be stranded in the open if an order for eviction were passed.

18. The second contention urged at pp. 144-145 was that Parliament should have enacted with reference to the several grounds on which eviction could be had under the Rent Control Act, the additional restrictions or further conditions which would be taken into account by the Competent Authority. This contention was repelled by the Supreme Court at p. 146 by observing as follows:

> It is not at the "sweet-will and pressure" of the Competent Authority that permission to evict could be granted or refused, but on principles gatherable from the enactment, as explained earlier (in the words at p. 143 quoted above).

In ***Smt. Parvati Devi* v. *Tibbia College Board, Delhi*** [AIR 1967 Punj. 425 (D.B.)], a Division Bench of this Court found it difficult to reconcile itself to the question that the landlord should be denied the right to evict his tenant solely on the ground that the tenant would not be able to find alternative accommodation within his means if he is evicted. It was thought highly unjust that a tenant who for instance fails to pay rent or damages, should be allowed to stay in the premises merely because he is unable to find alternative accommodation within his means. A similar view was expressed by a learned Single Jude of this Court in ***Chander Bhan* v. *Chatter Singh*** [1968 D.L.T. 501 subsequently. A Division Bench of the Court referred the correctness of the view expressed in these two decisions to a full Bench in ***Digambar Parsad* v. *S.L. Dhani*** [1970 R.C.J.165]. But the Full Bench dismissed the writ petition of the tenant on the preliminary ground that his conduct in refusing to pay rent for a long period was such as to disentitle him to the discretionary remedy by way of certiorari. With great respect, it seems to us that the decision of the Supreme Court in ***Jyoti Parsad*** case should be sufficient to enable us to construe Section 19(4) as being mandatory and exhaustive even though such construction may prevent the landlord from evicting his

tenant except on one of the grounds expressly mentioned therein. The discretion given to the Competent Authority to give or refuse permission under the unamended Section 19 was to be exercised, according to the Supreme Court, on principles gatherable from the enactment. It is well known that such discretion if exercised on irrelevant or extraneous considerations would have been struck down as illegal and ultra vires the Act. The Legislature, therefore, inserted a new sub-section (4) in Section 19 to give effect to the observations of the Supreme Court by expressly laying down the considerations which must guide the Competent Authority in exercising the discretion. The new Section 19(4) says "in granting or refusing to grant permission under sub-section (3) the Competent Authority shall take into account the following factors." The Legislature has, therefore, enacted what it considers to be the relevant considerations which will guide the Competent Authority. It is difficult to resist the inference that any other considerations would be irrelevant and cannot be taken into account by the Competent Authority.

19. The rule expressio unius est exclsio alterius would seem to apply. It is stated in Craies on Statute Law (Sixth Edition) at p. 260 in the following words:

> Another general rule with regard to the effect of an enabling Act is expressed in the maxim, Expressio unius est exclusio alterius. "Express enactment shuts the door to further implication.
>
> If there be any one rule of law clearer than another, it is this, that, where the legislature has expressly prescribed one or more particular modes of dealing with property, such expression always excludes any other mode, except as specifically authorised.

20. The Competent Authority is creature of the statute. The power given to it by Section 19(1) has to be exercised only after taking into account the factors stated in Section 19(4) and not otherwise. The principle stated by Lord Rochie in ***Najir Ahmed*** **v.** ***King Emperor*** [AIR 1936 P.C. 253 at p. 257], was as follows:

> Where a power is given to do a certain thing in certain way the thing must be done in that way or not at all. Other methods of performances are necessarily forbidden.

The principle was reaffirmed by the Supreme Court in ***State of Uttar Pradesh*** **v.** ***Singara Singh*** [1964 (4) S.C.R. 485]. Their Lordships at p. 491 observed as follows:

"If this were not so, the statutory provision might as well not have been enacted."

It seems to us, therefore, that the Competent Authority while exercising the discretion given to it must take into account the factors stated in Section 19(4) and nothing else. It has constantly come to our notice that landlords applying for permission to the Competent Authority under Section 19 needlessly state the reasons why they want to evict their tenants. These reasons have usually reference to the various provisions of Section 14(1) of the Delhi Rent Control Act, 1958 which have to be satisfied before the Controller under that Act would pass an order of eviction. In our view, it is entirely unnecessary for the landlords to plead any of these grounds in as much as they are relevant under the Delhi Rent Control Act, 1958 but are completely irrelevant under the Slum Areas (Improvement & Clearance) Act, 1956. The

Competent Authority is precluded from considering those grounds for the reasons stated above. At the same time the Competent Authority cannot shirk the consideration of such of the factors stated in Section 19(4) as would be relevant on the facts of the particular case before it. If the Competent Authority were either to ignore the factors stated in Section 19(4) or to take into account other factors such as those stated in the various provisos to Section 14(1) of the Delhi Rent Control Act, 1958 then it would be guilty of construing Section 19(4) in such a way as to evade its application altogether. The Competent Authority would then be doing the same work as is to be done later by the Controller under the Delhi Rent Control Act, 1958. There is absolutely no warrant for doing so. Taking into account such irrelevant considerations by the Competent Authority is not only a violation of Section 19(4) but is also a usurpation of the powers to the Controllers under the Delhi Rent Control Act, 1958. Such a practice can lead to serious anomalies.

21. For the above reasons we disagree with the view expressed by the learned Judicial Secretary in the impugned order dated 27.5.1969 that the Competent Authority must grant permission for eviction under Section 19 whenever the relationship of landlord and tenant is denied by the tenant. For the same reasons, the grant of the permission to the landlord for eviction of the tenant without taking into account the provisions of Section 19(4) by the learned Judicial Secretary was also unjustified. The reasoning in the impugned orders not being supportable, the question is whether they should be quashed.

22. The petitioners have come to this Court to claim the relief by way of certiorari under Article 226 of the Constitution. As pointed out by the Full Bench of this Court in Digambar Parsad's case referred to above, however, this relief is discretionary and may be refused to a petitioner whose conduct is such as to disentitle him to it. Learned counsel for the respondents has pointed out with great force that the conduct of the petitioners in these writ petitions is reprehensible and the discretionary relief should, therefore, be refused to them.

23. Doctor C.R. Abrol is a medical practitioner having two clinics. His son Satish Chander is a Government officer getting a basic pay of Rs. 825/- plus allowances per month. Mela Ram is a shopkeeper with a certain stock in trade and also a certain income from his shop. And yet all these three petitioners have stated that they do not own any immovable properties. Such a statement shows a shocking disregard for veracity on their part. In paragraph 17(x) of the written statement filed by the respondent it has been stated that the tenants have been in arrears of rent for the last four years. In the rejoinders, the tenants did not deny this fact. They merely stated that they were ready and willing to pay the rent to Smt. Sarla Gupta and that they had sent it to her by money order. The tenants were duty bound to pay rent. A valid tender of rent was not made by them in as much as they did not deposit the rent in Court and alternatively did not send the rent to the landlord by money order each month. The tenants have thus failed to pay rent to the landlords for over five years without justification.

24. The tenants denied the title of the landlords on flimsy, technical and untenable grounds. The Arya Pritinidhi Sahba, Punjab is a well known institution running numerous colleges, schools etc. and it was perverse on the part of the tenants to question the fact of its registration under the Societies Registration Act. Similarly, the tenants have no justification to fight this litigation when Smt. Sarla Gupta whom they admit as their landlord has herself filed

the affidavit showing that the title of the premises is in the respondents. Even before the Competent Authority the affidavit filed by the office bearer of the Arya Samaj clearly shows that Sarla Gupta has executed a trust deed in favour of the Arya Pritinidhi Sabha, Punjab should have been sufficient to convince any reasonable person that the title is in the Arya Pritinidhi Sabha, Punjab and not in Sarla Gupta. The conduct of the tenants, therefore, deserves to be strongly condemned. This kind of conduct disentitles them to the relief by way of certiorari.

25. Secondly the Competent Authority has itself gone wrong in doubting the registration of the Arya Pritinidhi Sabha, Punjab and the execution of the trust deed by Smt. Sarla Gupta in their favour. Both these factors were duly proved by the affidavit filed by an office bearer of the Arya Samaj. The Competent Authority should have accepted the averment made in the affidavit as true particularly because the tenants were in no position to controvert the said averment. In view of the affidavit it was unnecessary for the landlords to produce either the Registration Certificate or a certified copy of the trust deed. The reasons for which the Competent Authority refused permission to the landlords were, therefore, totally untenable. The decision of the Competent Authority was, therefore, based on no evidence and was without jurisdiction.

26. But neither the Competent Authority nor the Judicial Secretary purported to decide, whether the tenants were able to obtain alternative accommodation within their means if they were evicted. Satish Chander does not reside in the premises at all and is also getting Rs. 825/- as pay plus the usual allowances. He is, therefore, in a position to get alternative accommodation within his means and further he does not require any alternative accommodation at all. Doctor R.C. Abrol and Mela Ram have not come up honestly with a declaration of their means. Their own means were facts within their special knowledge. They suppressed them altogether by stating that they had no moveable or immovable property. In view of this the affidavit filed by the landlords regarding the means of Doctor C.R. Abrol and Mela Ram had to be believed. According to those affidavits both Doctor Abrol and Mela Ram are men of means, able to find alternative accommodation within their means. It is only because neither the Competent Authority nor the Judicial Secretary considered this question that we had to do so to avoid the sending back of these cases again for consideration of this point by the Competent Authority. After all the delay that has already occurred, we thought it imperative not to delay these cases further.In view of the above finding by us it is unnecessary for us to send the cases back to the Competent Authority.

27. The permission granted by the Judicial Secretary to the landlords for the eviction of the tenants was, therefore, justified though not for the reasons given by the learned Judicial Secretary. The writ petitions are, therefore dismissed but without any order as to costs.

* * * * *

Lal Chand v. *Radha Krishan*

AIR 1977 SC 789

Y.V. CHANDRACHUD, J. - The respondent Radha Krishan who owns house No. 142, Katra Mashru, Delhi let out a portion thereof consisting of five rooms on the ground floor and two rooms on the second floor to one Lal Chand. He filed suit No. 42 of 1958 in the Court of the sub-Judge, Delhi for evicting Lal Chand and four others: Kesho Ram, Jhangi Ram, Nand Lal and Smt. Kakibai, alleging that Lal Chand had sublet the premises to him. The eviction of these persons was sought by the respondent on the grounds that (1) he required the premises for his own use and occupation; (2) he wanted to provide certain essential amenities for himself necessitating re-construction; and (3) that the tenant was in arrears of rent. By his judgement dated June 6, 1959 the learned Sub-Judge, First Class, Delhi decreed the suit on the first ground only and rejected the other two contentions. In an appeal filed by the defendants, the learned Senior Sub-Judge, Delhi confirmed the finding of the trial Court that the accommodation at the disposal of the respondent was insufficient, but he thought that the needs of the respondent would be met adequately if he were given possession of the two rooms on the second floor only. Feeling however that there was no provision in the Delhi and Ajmer Rent Control Act, 1952, under which the suit was filed, for giving possession of a part of the demised premises to the landlord, the learned Judge confirmed the decree of the trial Court. The Circuit Bench of the Punjab High Court at Delhi upheld that judgement on February 6, 1962 in Civil Revision No. 609-D of 1960 on the ground that the landlord required the entire premises for his personal use and occupation.

2. Since the suit property is situated in a slum area, the respondent filed an application under Section 19(2) of the Slum Areas (Improvement and Clearance) Act, 96 of 1956, for permission of the competent authority to execute the decree for possession obtained by him against Lal Chand and others. The competent authority after taking into account the factors mentioned in Section 19(4) of that Act, passed an order permitting the respondent to execute the decree in respect of the two rooms situated on the second floor only. Respondent was expressly refused permission to execute the decree in regard to the premises situated on the ground floor.

3. Aggrieved by that order, the respondent filed an appeal to the Administrator under Section 20 of the Slum Clearance Act, 1956. The appeal was heard by the Chief Commissioner of Delhi who confirmed the order of the competent authority. Pursuant to his order, the defendants handed over possession of the two rooms on the second floor to the respondent.

4. This, however, was not the end of the matter. Having obtained possession of a part of the premises, the respondent embarked upon a fresh round of litigation giving rise to this appeal. He filed a regular Civil Suit No. 435 of 1966 against Lal Chand, Kesho Ram and Jhangi Ram for possession of the remaining rooms on the ground floor. That suit was decreed by the trial Court on May 4, 1967. Nand Lal and Kakibai were not impleaded to the suit presumably because they had surrendered possession of the two rooms on the second floor in pursuance of the order passed in appeal under the Slum Clearance Act.

5. Aggrieved by the judgement of the trial Court, Lal Chand, Kesho Ram and Jhangi Ram filed Civil Appeal No. 35 of 1967 in the Court of the Additional Senior Sub-Judge, Delhi. During the pendency of that appeal Lal Chand died on June 13, 1967 whereupon, his widow Bhiranwan Bai and his son Khem Chand applied for being brought on the record of the appeal as his legal representatives. That application was contested by the respondent on the ground that by reason of the ejectment decree Lal Chand had ceased to be a tenant and upon his death during the pendency of the appeal, the right to sue did not survive to his heirs. This contention was upheld by the learned appellate Judge who by his judgement dated November 18, 1967 dismissed the appeal as also the application filed by Lal Chand's widow and son for being brought on the record as his legal representatives.

6. These legal representatives and the two other defendants, Kesho Ram and Jhangi Ram, filed second appeal No. 316 of 1967 in the High Court of Delhi against the judgement of the learned Additional Senior Sub-Judge. A learned Single Judge of the High Court held by his judgement dated September 30, 1974 that on the death of Lal Chand during the pendency of the first appeal, the cause of action did not survive to his legal representatives to continue the appeal and that therefore there was no one who could legitimately prosecute that appeal. The learned Judge, accordingly, confirmed the judgement of the first appellate Court and dismissed the second appeal. This appeal by special leave is filed by the legal representatives of Lal Chand as also by Kesho Ram and Jhangi Ram.

7. Not only was it erroneous to treat the appeal as having abated on the death of Lal Chand but the first appellate Court as well as the High Court ought to have applied the provisions of Order XLI, Rule 4, Code of Civil Procedure, under which where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or defendants may appeal from the whole decree, and thereupon the appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be. In the earlier suit for eviction filed by the respondent under the Delhi and Ajmer Rent Control Act, Lal Chand and his alleged sub-tenants were all impleaded to the suit as defendants. The decree for eviction was eventually passed in that suit in favour of the respondent and against the defendants jointly. All of these defendants contested the proceeding before the competent authority under the Slum Clearance Act and they succeeded in obtaining an order therein that it was not open to the respondent to execute the decree in respect of the premises on the ground floor. In order to overcome the effect of that order respondent brought the present suit and in the very nature of things he had to implead Kesho Ram and Jhangi Ram to that suit as party-defendants alongwith Lal Chand. On the death of Lal Chand during the pendency of the first appeal the other appellants, who were as much interested in the success of the appeal as Lal Chand, were before the Court and the appeal could not have been dismissed for the mere reason that Lal Chand had no longer any interest or estate in the property. The eviction decree being joint and indivisible, the dismissal of the appeal in so far as Lal Chand was concerned could conceivably result in inconsistent decrees being passed in the event of the appeal of Kesho Ram and Jhangi Ram being allowed. Therefore, the first appellate Court ought to have heard the appeal on merits and decided the question whether the provisions of the Slum Clearance Act operated as a bar to the maintainability of the suit brought by the respondent.

8. The High Court observes in its judgment that Kesho Ram and Jhangi Ram were sub-tenants and they had therefore no independent right to continue the appeal. We see no justification for this observation because in the earlier suit, though the respondent had alleged that Lal Chand had sublet the premises to the other defendants including Kesho Ram and Jhangi Ram, the ejectment decree was passed on the sole ground that the respondent required the premises for his personal use and occupation. In fact, in that suit the allegation of sub-tenancy though made in the plaint was at no stage pursued and the judgement of the trial Court did not deal with that allegation at all. No issue was framed and no finding recorded on the question of subletting.

9. The High Court seems to have been impressed by the contention that the suit was not maintainable by reason of the provisions of Section 37A of the Slum Clearance Act, but it thought that Lal Chand having died there was no one before the Court who could legitimately contend that the suit was not maintainable. As stated before this was an erroneous approach to the problem, which makes it necessary for us to examine the merits of the contention as regards the maintainability of the suit.

10. The main contentions raised by Lal Chand, Kesho Ram and Jhangi Ram by their written statements in the present suit are that they are tenants within the meaning of the Slum Clearance Act despite the passing of the ejectment decree against them, that the suit brought by the respondent was not maintainable in view of the provisions of the Slum Clearance Act and that the respondent was estopped from bringing the suit since he had already obtained possession of the two rooms on the second floor in pursuance of the permission granted by the competent authority. The first two of these contentions have to be answered in the light of the relevant provisions of the Slum Clearance Act to which we must now turn.

11. Section 19(1) of the Slum Clearance Act reads thus:

> 19. *Proceedings for eviction of tenants not to be taken without permission of the competent authority*. - (1) notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority, -
>
> (a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, any suit or proceeding for obtaining any decree or order for the evidence of a tenant from any building or land in a slum area; or
>
> (b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.

Arising out of this provision the question for decision is whether the present suit is barred for the reason that before instituting it, respondent has not obtained permission of the competent authority. It being common ground that such a permission was not obtained and that the building in question is situated in a slum area, the decision of this question turns on the consideration whether inspite of the fact that an ejectment decree was passed against Lal Chand in the earlier suit, he continued to be a 'tenant' for the purposes of the Slum Clearance Act, especially within the meaning of Section 19(1) (a) thereof. The trial Court held that Lal Chand ceased to be a tenant after the passing of the ejectment decree and therefore the jurisdiction of the Civil Court to entertain the suit for possession against him was not barred

under any of the provisions of the Slum Clearance Act. This question, as stated earlier, had not been dealt with either by the first appellate Court or by the High Court in second appeal since they took the view that on Lal Chand's death during the pendency of the first appeal, the proceedings had abated.

12. The word 'tenant' has not been defined in the Slum Clearance Act but Section 2(1) of the Delhi Rent Control Act, 59 of 1958, defines it thus:

> 2. (1) "*tenant*" means any person by whom or on whose account or behalf the rent of any premises is, or but for a special contract would be payable and includes a sub-tenant and also any person continuing in possession after the termination of his tenancy but shall not include any person against whom any order or decree for eviction has been made.

This definition has been amended by Act 18 of 1976 but the amended definition also provides by Section 2(1) (A) that the word 'tenant' shall not include any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to Section 3 of the Amending Act of 1976. It is thus clear that in so far as the Delhi Rent Control Act is concerned, a person against whom an order or a decree for eviction has been passed cannot, generally, be regarded as a tenant. The question which requires consideration is whether the definition of 'tenant' contained in the Delhi Rent Control Act can be extended to proceedings under the Slum Clearance Act, or, in other words, whether the word 'tenant' which occurs in clause (a) of Section 19(1) of the Slum Clearance Act bears the same meaning which it has under the Delhi Rent Control Act.

13. Section 19 of the Slum Clearance Act furnishes intrinsic evidence to show that the definition of the word 'tenant' as contained in the Delhi Rent Control Act cannot be extended for construing its provisions. By clause (b) of Section 19(1) no person can, except with the previous permission in writing of the competent authority, execute any decree or order obtained in any suit or proceeding instituted before the amending Act of 1964 for the eviction of a "tenant" from any building or land in a slum area. Sub-section (2) of Section 19 provides that a person desiring to obtain permission of the competent authority shall make an application in the prescribed form. By sub-section (4), the competent authority is required to take into account certain factors while granting or refusing to grant the permission asked for. The first of such factors which is mentioned in clause (a) of sub-section (4) is "whether alternative accommodation within the means of the tenant would be available to him if he were evicted". It is evident that the word 'tenant' is used in Section 19(4) (a) to include a person against whom a decree or order for eviction has already been passed because, that provision applies as much to the permission sought for executing a decree or order of eviction referred to in Section 19(1) (b) as to the institution of a suit or proceeding for obtaining a decree or order for eviction referred to in Section 19(1) (a). If a person against whom a decree or order of eviction has been passed is not to be included within the meaning of the word 'tenant', Section 19(4)(a) could not have used the language which it uses, namely, whether alternative accommodation within the means of the 'tenant' would be available to him if he were evicted. In the absence of compelling circumstances and in order to better effectuate the object of the Slum Clearance Act, we see no reason why the word 'tenant' should not bear the same meaning in Section 19(1)(a) as in Section 19(4)(a). The rule is well settled that where the same expression is used in the same statute at different places the same meaning ought to

be given to that expression, as far as possible. In the instant case the word 'tenant' has been used at more than one place in Section 19 itself and it is only reasonable to construe it in the same sense throughout.

14. The Slum Clearance Act was passed, inter alia, for the protection of tenants in slum areas from eviction. As observed by this Court in ***Jyoti Pershad* v. *The Administrator for the Union Territory of Delhi*** [AIR 1961 SC 1602] the Slum Clearance Act looks at the problem of eviction of tenants from slum areas not from the point of view of the landlord and his needs but from the point of view of tenants who have no alternative accommodation and who would be stranded in the open if they were evicted. The policy of the Slum Clearance Act being that the Slum dweller should not be evicted unless alternative accommodation is available to him, we are of the view that the word 'tenant' which occurs in Section 19(1) (a) must for the purpose of advancing the remedy provided by the statute be construed to include a person against whom a decree or order for eviction has been passed. We might mention that a Full Bench of the Delhi High Court in ***Bardu Ram Dhanna Ram* v. *Ram Chander Khibru*** [AIR 1972 Del. 34] has taken the same view, namely, that the word 'tenant' in Section 19 of the Slum Clearance Act includes a person against whom a decree or order of eviction has been passed.

15. Learned counsel for the respondent relied very strongly on a decision of this Court in ***Lakhmi Chand Khemani* v. *Kauran Devi*** [AIR 1966 SC 1003] in support of his submission that the word 'tenant' must bear the same meaning in the Slum Clearance Act as in the Delhi Rent Control Act. We are unable to appreciate how the judgement in that case supports the contention of the respondent. All that was decided therein was that a person against whom an order for eviction is passed cannot be a tenant within the meaning of the Delhi Rent Control Act and that the definition of the word 'tenant' as contained in that Act would not be affected by anything contained in Section 19 of the Slum Clearance Act. The question which arose in that case was whether Section 50 of the Delhi Rent Control Act barred the jurisdiction of the civil court to entertain a suit in relation to any premises to which that Act applied, for eviction or a 'tenant' therefrom. Not only that no question arose in that case as to whether the definition of tenant as contained in the Delhi Rent Control Act should be extended to the Slum Clearance Act, but the Court observed expressly that:

> No question as to what the rights of a tenant against whom a decree in ejectment has been passed in view of Section 19 of the Slum Areas Act are, arises in this appeal and that the Court was not concerned in the appeal before it with any question as to the protection given by the Slum Areas Act to tenants . . . .

The question before us is not whether a person against whom a decree for eviction is passed is a tenant for the purposes of the Delhi Rent Control Act but whether he is a tenant for the purposes of Section 19 of the Slum Clearance Act. ***Lakhmi Chand's*** case does not deal with this problem at all.

16. Since the respondent had not obtained permission of the competent authority for instituting the present suit for obtaining a decree for eviction of Lal Chand from a building situated in the slum area and since Lal Chand must be held to be a tenant for the purpose of Section 19(1) (a) it must follow that the suit is incompetent and cannot be entertained.

17. The suit is also barred under Section 37A of the Slum Clearance Act which reads thus:

> *37A. Bar of jurisdiction.* - Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the competent authority or any other person is empowered by or under this Act, to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

The competent authority is empowered under Section 19(3) to determine the question whether permission should be granted or refused for instituting a suit for obtaining a decree or order for the eviction of a tenant from any building in a slum area. Consequently, no civil court can have jurisdiction in respect of that matter, namely, in respect of the question whether a tenant of a building in a slum area should or should not be permitted to be evicted therefrom. As a result of the combined operation of Section 19(3) and Section 37A of the Slum Clearance Act, that jurisdiction is exclusively vested in the competent authority and the jurisdiction in that behalf of civil courts is expressly taken away.

18. Only one more aspect of the matter needs to be adverted to. The respondent after obtaining a decree for eviction against Lal Chand and his alleged sub-tenants applied for permission of the competent authority to execute that decree. Permission was granted to him to execute the decree in respect only of the two rooms on the second floor and in pursuance of that permission he obtained possession of those two rooms. We are unable to understand how after working out his remedy under the Delhi Rent Control Act as modified by the Slum Clearance Act, it is competent to the respondent to bring a fresh suit for evicting the appellants from the premises on the ground floor. The authorities under the Slum Clearance Act who are exclusively invested with the power to determine whether a decree for eviction should be permitted to be executed and, if, so, to what extent, had finally decided that question, refusing to allow the respondent to execute the decree in respect of the ground floor premises. By the present suit, the respondent is once again asking for the relief which was included in the larger relief sought by him in the application filed under the Slum Clearance Act and which was expressly denied to him. In the circumstances, the present suit is also barred by the principle of res judicata. The fact that Section 11 of the Code of Civil Procedure cannot apply on its terms, the earlier proceedings before the competent authority not being a suit, is no answer to the extension of the principle underlying that section to the instant case. Section 11, it is long since settled, is not exhaustive and the principle which motivates that section can be extended to cases which do not fall strictly within the letter of the law. The issues involved in the two proceedings are identical, those issues arise as between the same parties and thirdly, the issue now sought to be raised was decided finally by a competent quasi-judicial tribunal. The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue. Were it permissible to bring suits of the present nature, the beneficial jurisdiction conferred on the competent authority by the Slum Clearance Act would become illusory and meaningless for, whether the competent authority grants or refuses permission to execute a decree for eviction, it would always be open to the landlord to

enforce the ejectment decree by filing a substantive suit for possession. Verily, the respondent is executing the eviction decree by instalments, now under the garb of a suit. Apart from the fact that the suit is barred on account of principles analogous to res judicata, it is plainly in violation of the injunction contained in Section 19(1)(b) of the Slum Clearance Act, if regard is to be had to the substance and not to the form of the proceedings.

19. Lal Chand's widow died after the decision of the second appeal by the High Court and before the filing of this appeal. Learned counsel for the respondent wants to utilise that event to highlight his argument that the cause of action cannot survive at least after her death, in view of the limited protection granted to the heirs of the original tenant by the amendment made to Section 2(1) of the Delhi Rent Control Act by Amending Act 18 of 1976. We cannot accept this argument either. The suit filed by the respondent being incompetent and the Civil Court not having jurisdiction to entertain it, the decree passed by it is non-est. The nullity of that decree can be set up at least by Kesho Ram and Jhangi Ram who are entitled to defend and protect their possession by invoking the provisions of the Slum Clearance Act.

20. In the result we allow the appeal, set aside the judgement of the High Court and direct that the respondent's suit for possession shall stand dismissed.

* * * * *

Punnu Ram v. *Chiranji Lal Gupta (Dead) By Lrs.*

AIR 1999 SC 1094

M.B. SHAH, J. - In these appeals, the only question involved is whether the factors laid down in Section 19(4) of the Slum Areas (Improvement and Clearance) Act, 1956 ("the Act') are to be read as cumulatively or alternatively. The Full Bench of the Delhi High Court has interpreted the aforesaid sub-section (4) and has arrived at the conclusion that the conditions mentioned in clauses (a) and (b) of Section 19(4) of the Act were conditions in the alternative and did not have to be read cumulatively. The Court also, inter alia, held as under:

> That the principal objective of the Act being clearance of slums and prevention and creation of slums, if in a given case the demolition or re-erection or reconstruction of a building or a set of buildings was necessary in the interest of slum clearance or improvement, the poverty of the tenant even if established would not debar the competent authority from granting permission.
>
> The competent authority in considering the application for grant of permission moved by a landlord has to look at the matter from the point of view of the tenant and not from the point of view of the landlord, ever keeping in mind the objectives sought to be achieved by the Act.

The aforesaid order is under challenge before this Court.

2. For appreciating the contentions raised by the appellant, it would be necessary to refer to Section 19 of the Act.

> 5. The validity of Section 19 of the Act was challenged and this Court in the case of ***Jyoti Pershad* v. *Administrator for the Union Territory of Delhi*** [AIR 1961 SC 1602] has upheld its constitutional validity. In that case, it was contended that the Act has vested in the competent authority the power to withhold eviction in pursuance of the orders or decrees of courts without affording any guidance or laying down any principles for his guidance on the basis of which he could exercise his discretion and thereby vested in him an arbitrary and unguided power to pick and choose the decree-holders to whom he would permit execution and those to whom he would refuse such relief. The Court negatived the said contention by observing that the Act was enacted for two purposes:
>
> (i) the improvement and clearance of slum areas in certain Union Territories, and
> (ii) for the protection of tenants in such areas from eviction.

While considering Chapter III which is headed "Slum Improvement" and Chapter IV which is headed "Slum Clearance and Redevelopment", the Court observed that in cases where the buildings and the entire area are to be ordered to be demolished, the dwellers would, of course, have to vacate but it is presumed that alternative accommodations would necessarily have to be provided before any such order is made. And the process would have to be carried out in an orderly fashion if the purpose of the Act is to be fulfilled and the policy behind it, namely, the establishment of slum-dwellers in healthier and more comfortable tenements so as to improve the health and morals of the community, is to be achieved. The Court observed "the policy of the enactment would seem to suggest that the slum-dweller

should not be evicted unless alternative accommodation could be obtained for him". The Court further observed:

> We need only add that it was not, and could not be, disputed that the guidance which we have held could he derived from the enactment, and that it bears a reasonable and rational relationship to the object to be attained by the Act and, in fact, would fulfil the purpose which the law seeks to achieve, viz., the orderly elimination of slums, with interim protection for the slum-dwellers until they were moved into better dwellings.

6. Keeping in mind the scheme of the Act and the interpretation of Section 19 as aforesaid, the contention of the learned counsel for the appellant is required to be appreciated. The learned counsel for the appellant submitted that the High Court erroneously had interpreted that the factors mentioned in sub-section (4) (a), (b) and (c) are to be considered as alternative and not consecutive. It is his contention that both these factors, namely, whether alternative accommodation within the means of the tenant would be available to him if he is required to vacate and whether the eviction is in the interest of improvement and clearance of the slum area are to be decided by the competent authority before granting or refusing the permission under sub-section (3) to institute the suit or the proceedings for obtaining any decree or order for eviction of a tenant from any building or any land in slum area or the permission to execute a decree or order obtained in any suit or proceedings before the commencement of the Act. It is contended that the legislature has taken caution in using the words that the competent authority shall take into account the following factors as mentioned in clauses (a), (b) and (c) of sub-section (4) before granting or refusing to grant such permission, hence, all the factors are required to be taken into consideration jointly.

7. At the time of hearing, it is admitted that no rules are framed or guidelines are laid down prescribing other factors as contemplated by clause (c) of Section 19(4). Therefore, at present, only two factors are required to be taken into consideration before granting or refusing to grant permission as contemplated by sub-section (3). Considering the provisions of Section 19, it is apparent that the permission to file a suit for evicting a tenant from any building or land in a slum area or to permit execution of such decree or order obtained prior to the coming into force of the Amendment Act, the competent authority is required to take into account the factors mentioned in clauses (a) and (b) of sub-section (4). If the factor mentioned in clause (a) is satisfied, that is to say, if the alternative accommodation within the means of the tenant is available, then there is no reason to hold that the second factor is also required to be satisfied before granting permission under sub-section (3). In such a case, there could not be any justifiable reason for the competent authority to refuse to grant permission for filing the suit or proceedings for obtaining any decree or order for eviction of a tenant or for granting permission to execute a decree or order, if obtained. Further, clause (b) provides that before granting such permission, the competent authority should be satisfied whether the eviction is in the interest of improvement and clearance of the slum areas and if it is in the interest of improvement and clearance of the slum areas, then permission for eviction can be granted. In such cases also, a tenant would not be put to any hardship if he is evicted. The reason is, if there is a scheme of clearance of the slum area framed by the competent authority, then as observed by this Court in the case of ***Jyoti Pershad*** the policy of the

enactment suggests that the slum-dwellers should not be evicted unless alternative accommodation to be made could be obtained for him; that if the buildings or the entire area is to be ordered to be demolished, in that event, the dwellers would, of course, have to vacate, but it was presumed that alternative accommodation would necessary have to be provided before any such order is made. It is true that for some time alternative accommodation may not be provided to the tenant but it is required to be provided within a reasonable time. Eviction process and improvement or reconstruction process is required to be carried out in an orderly fashion if the purpose of the Act is to be fulfilled. Further, if the building is required by the owner for demolition or reconstruction or improvement, then Section 20-A takes care of the tenants. It provides that if the tenant desires to be replaced in the occupation of the building after completion of the work of improvement or re-erection of the building, then he is required to file an application before the competent authority. On the basis of this section, if the tenant is evicted on the ground of improvement or demolition of the building in the slum area, then the tenant is required to be provided accommodation in the improved or reconstructed building. The relevant part of Section 20-A is as under:

> 20-A. (1) Where a tenant in occupation of any building in a slum area vacates any building or is evicted there from on the ground that it was required for the purpose of executing any work of improvement or for the purpose of re-erection of the building, the tenant may, within such time as may be prescribed, file a declaration with the competent authority that he desires to be replaced in occupation of the building after the completion of the work of improvement or re-erection of the building, as the case may be.
>
> (2) On receipt of such declaration, the competent authority shall by order require the owner of the building to furnish to it, within such time as may be prescribed, the plans of the work of improvement or re-erection of the building and estimates of the cost thereof and such other particulars as may be necessary and shall, on the basis of such plans and estimates and particulars, if any, furnished and having regard to the provisions of sub-section (3) of Section 20-B and after holding such enquiry as it may think fit, provisionally determine the rent that would be payable by the tenant if he were to be replaced in occupation of the building in pursuance of the declaration made by him under sub-section (1).

8. Hence, even if these two factors mentioned in clauses (a) and (b) of sub-section (4) are to be taken into account as alternative factors by the competent authority before granting permission to file a suit for eviction or to grant permission for execution of a decree against a tenant residing in a slum area, the tenant's rights are not in any manner prejudicially affected. He is fully protected by the scheme of the Act. Hence, the finding given by the High Court that in a given case, the tenant may not be provided with alternative accommodation is not only against the decision rendered by this Court in the case of ***Jyoti Pershad*** but also against the scheme of the Act. However, the High Court was right in holding that the factors which are mentioned in clauses (a) and (b) of sub-section (4) of Section 19 are to be taken into account as alternative factors. In the result, the appeals are allowed to the aforesaid extent and stand disposed of accordingly.

T H E E N D