
(2016) 08 SHI CK 0083
In the High Court Of Himachal Pradesh
Case No : CWP No. 2072 of 1995

Chaman Lal Bali

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(12)
Constitution of India, 1950 — Article 14, 14, 19, 19, 21, 21, 300A, 300A
Himachal Pradesh Urban Rent Control Act, 1987 — Section 14, 2(j)

Citation : (2016) AIR(HP) 168 : (2016) 4 HimLR 2281 : (2016) LatestHLJ(HP) 1099 : (2017) 1 RentLR 234 : (2016) 3 SimLC 1593

Hon'ble Judges : Mansoor Ahmad Mir, CJ. and Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Mr. Vinay Kuthiala, Senior Advocate, with Mr. Diwan Singh Negi, Advocate, for the Petitioner in CWP Nos. 2072 of 1995 and CWP No. 3165 of 2013; Mr. K.D. Sood, Senior Advocate, with Ms. Ranjana Chauhan, Advocate, for the Petitioner in CWP No. 297 of 2001;

Final Decision : Partly Allowed

Judgement

Tarlok Singh Chauhan, J.—Back ground:

At the outset, it may be observed that CWP No.297 of 2001 has been rendered infructuous in view of the relief claimed therein being incorporated in the amendment carried out in Section 14 (3) (a) of the H.P. Urban Rent Control Act, 1987 vide Amendment Act No. 8 of 2012, whereby the rights of the landlord for seeking eviction of tenants on the ground of bona fide requirement have been made applicable to both residential and also non-residential building and is therefore dismissed as such.

2. Whereas, in CWP No. 2072 of 1995 and CWP No. 3165 of 2013, the petitioners/landlords have challenged the provisions of Sections 2(j), 4, 5, 6, 7, 8, 13, 14 and 30 of the H.P. Urban Rent Control Act, 1987 (for short Amended Act) (as amended by the Amendment Act No. 8 of 2012) as being un-

constitutional, invalid and violative of Articles 14, 19, 21 and 300A of the Constitution of India and have sought a writ of mandamus for quashing these provisions and striking them down and further directing respondents No. 1 and 2 not to give effect to or to enforce the above mentioned provisions. It is lastly prayed that the tenants may be directed to pay use and occupation charges/ mesne profit at the market rate to the petitioner(s) from the period during which they remained in illegal occupation of the premises.

3. Since common question of law arises in these writ petitions, they were taken up together for hearing and are being disposed of by a common judgment.

4. With the consent of the parties, CWP No. 3165 of 2013 is taken as a lead case.

Facts:

5. The petitioner has averred that he is a co-owner of various properties in Shimla Town and elsewhere which he has inherited from his ancestors. These prime properties are situated in the best localities of the Town, but are occupied by the tenants inducted by his predecessor-in-interest. However, with the passage of time a number of tenants have left Shimla, but have not handed over the vacant possession of the tenanted premises and have rather locked the same. The rent of these premises and buildings which have been constructed before the year 1970 are extremely low and for this reason the tenants do not vacate the premises even though they do not require the same any more. In some cases the tenants do not even pay the rent or have sublet the premises without the written permission of the petitioner and at the same time are receiving rents at the market rate from the sub-lettees. Due to this, it is not possible for the petitioner to even maintain these properties and most of them are now in dilapidated condition and require extensive repairs. However, neither it is economical to carry out its repairs nor is it possible to effect such repairs without the tenanted premises being vacated. As a result, the petitioner has virtually been deprived of his properties by the tenants and this has been made possible by the provisions of East Punjab Urban Rent Control Act, 1971 and thereafter by the provisions of the H.P. Urban Rent Control Act, 1987, as amended by Act No. 8 of 2012. The petitioner claims that his right under Articles 14, 19, 21 and 300A of the Constitution of India have been abridged by the provisions of Sections 2 (j), 4, 5, 6, 7, 8, 13, 14 and 30 of the H.P. Urban Rent Control Act, 1987 and therefore, these provisions be struck down as being unconstitutional or invalid.

Grounds on which Act can be challenged:

6. Earlier, an enacted law could be declared unconstitutional on very limited grounds, like legislative competence, violation of Part-III of the Constitution and reasonableness of the law. However, with the passage of time, the law developed and even the grounds for unconstitutionality also widened.

7. In *Namit Sharma v. Union of India* (2013) 1 SCC 745, the Hon''ble Supreme

Court has approved the grounds as mentioned by D.D. Basu in Shorter Constitution of India (14th Edn., 2009) on which the law could be invalidated or could not be invalidated and the same reads thus:

"Grounds of unconstitutionality. - A law may be unconstitutional on a number of grounds:

(i) Contravention of any fundamental right, specified in Part III of the Constitution.

(ii) Legislating on a subject which is not assigned to the relevant legislature by the distribution of powers made by the Seventh Schedule, read with the connected articles.

(iii) Contravention of any of the mandatory provisions of the Constitution which impose limitations upon the powers of a legislature e.g. Article 301.

(iv) In the case of a State law, it will be invalid insofar as it seeks to operate beyond the boundaries of the State.

(v) That the legislature concerned has abdicated its essential legislative function as assigned to it by the Constitution or has made an excessive delegation of that power to some other body."

8. On the other hand, a law cannot be invalidated on the following grounds:

"(a) That in making the law (including an Ordinance), the lawmaking body did not apply its mind (even though it may be a valid ground for challenging an executive act), (Ref. Nagaraj K. v. State of A.P. (1985) 1 SCC 523) or was prompted by some improper motive. (Ref. Rehman Shagoo v. State of J & K., AIR 1960 SC 1).

(b) That the law contravenes some constitutional limitation which did not exist at the time of enactment of the law in question. (Ref. STO v. Ajit Mills Ltd., (1977) 4 SCC 98).

(c) That the law contravened any of the directive contained in Part IV of the Constitution. (Ref. Deep Chand v. State of U.P. AIR 1959 SC 648)."

9. Once a statute or enactment is held to be offending Article 14, then it is necessary to understand as to what it really provides for.

"(i). Article 14 forbids class legislation but does not forbid reasonable classification which means:

(ii). It must be based on reasonable and intelligible differentia; and

(iii). Such differentia must be on a rational basis.

(iv). It must have nexus with the object of the Act."

10. It has to be remembered that there is always a presumption of validity to a

statute and burden of proof is upon the person questioning the constitutionality of the provision. There is a presumption as regards the State's power on the extent of its legislative competence and mere hardship of a few cannot be the basis of determining the validity of any statute.

11. The locus classicus on the subject of "reasonable classification" is the decision of the Hon'ble Supreme Court in *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538 wherein the principles for adjudicating the constitutionality of a provision were summed up as follows:

"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discrimination's are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

Object of Rent Act:

12. The relationship between the landlord and the tenant was earlier governed by the general law under the Transfer of Property Act, 1882. The rent legislation's were brought about as a socio-legal response to certain historical developments, namely, the acute shortage of housing in the aftermath of the world war-II, the great influx of refugees in a number of States of the Union following the partition of the country and the massive migration inside the country from rural areas to the urban areas as a result of rapid urbanization. The timing of all these developments was roughly the same and, therefore, the law of

supply and demand leaned totally in favour of the landlord. The need of that hour, therefore, was to protect the tenant, who would otherwise have been left completely at the mercy of the landlord. It is then that the legislature of various States intervened and brought in the Rent Acts, severely restricting the grounds for enhancement of rent and for eviction of the tenant from the rented premises, thus regulating the relationship between the landlord and the tenant beyond the general law by a special law.

13. The Courts from 1950s to early 1990s leaned in favour of an interpretation which would benefit the tenant. However, a different trend is reflected in the later judgments and this fact is duly noticed by the Hon''ble Supreme Court in *Satyawati Sharma v. Union of India* (2008) 5 SCC 287, wherein it was held as under:

"12. 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*, (1987) 4 SCC 238, *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 other cases, 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 later judgments."

14. The view expressed in *Satyawati Sharma*'s case (*supra*) was thereafter re-affirmed by a Bench of Hon''ble three Judges of the Hon''ble Supreme Court in *State of Maharashtra and another v. Super Max International Private Limited and Others* (2009) 9 SCC 772 and at the same time it was also clarified that there was a need for a more balanced and objective approach to relationship between landlord and tenant as would be evident from para-71 thereof, which reads as under:

"71. We reaffirm the views expressed in *Satyawati Sharma* and emphasise the need for a more balanced and objective approach to the relationship between the landlord and tenant. This is not to say that the Court should lean in favour of the landlord but merely that there is no longer any room for the assumption that all tenants, as a class, are in dire circumstances and in desperate need of the Court's protection under all circumstances. (The case of the present appellant who is in occupation of an area of 9000 sq.ft. in a building situate at Fort, Mumbai on a rental of Rs. 5236.58, plus water charges at the rate of Rs.515.35 per month more than amply highlights the point.)"

15. In a recent judgment rendered by a Bench of three Hon'ble Judges of the Hon'ble Supreme Court in *Sidharth Vyas and another v. Ravi Nath Misra and others* (2015) 2 SCC 701, it was once again reiterated that the object of Rent Act is to balance the competing claims of the landlord and tenant as would be evident from para 10 of the judgment which reads as under:

"10. The object of rent law is to balance the competing claims of the landlord on the one hand to recover possession of building let out to the tenant and of the tenant to be protected against arbitrary increase of rent or arbitrary eviction, when there is acute shortage of accommodation. Though, it is for the legislature to resolve such competing claims in terms of statutory provisions, while interpreting the provisions the object of the Act has to be kept in view by the Court. Unless otherwise provided, a tenant who has already acquired alternative accommodation is not intended to be protected by the Rent Act."

16. The statement of objects and reasons for introducing "The Himachal Pradesh Urban Rent Control Act, (Amendment) Bill No. 31 of 2009 which after receiving the assent of the President of India has now become Act No. 8 of 2012, reads thus:

"The Himachal Pradesh Urban Rent Control Act, 1987 provides for control of rent and eviction within the limits of Urban areas in the State. Section 14 of the Act provides for eviction of tenant by the landlord on various grounds specified under this Section. The State Government has received many representations from the individuals and through associations highlighting the danger of eviction lurking upon the tenants on the grounds of right to re-construction after eviction, in view of certain judgments by the various Hon'ble Courts including the Hon'ble Apex Court. Further with ever increasing influx towards urban area, there is much greater demand for accommodation especially commercial premises. Landlords see opportunity in present demand supply scenario and are resorting to indiscriminate eviction petitions. Further the owner of the building in Shimla has also submitted representations in which they have stressed to amend the Act in the light of Hon'ble Apex Court judgment delivered in *Satyawati Sharma (dead) by LRS. v. Union of India and another* 2008 (5) SCC 287. After taking into consideration the representations from the individuals and the Associations and in order to balance the interest and rights of both the landlords and the tenants, and also stimulate further repairs or reconstruction of old building, determination/revision of standard rent and re-entry of tenants, it has been decided to amend the Himachal Pradesh Urban Rent Control Act, 1987, so as to establish harmonious relationship between the landlord and tenants. This Bill seeks to achieve the aforesaid objectives."

Does the Amended Act really balance the rights of both the landlord and tenant as mentioned in the statement of objects and reasons is the primary question which we are called upon to determine in these writ petitions.

17. We now proceed to determine the provision-wise challenge laid by the

petitioner(s) to the Act.

Section 2 (j):

18. Section 2(j) of the un-amended Act, reads as follows:

2(j) "tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after termination of the tenancy and in the event of the death of such person such of his heirs as are mentioned in Schedule I to this Act and who were ordinarily residing with him at the time of his death, subject to the order of succession and conditions specified, respectively in Explanation-I and Explanation-II to this clause, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or a person to whom the collection of rent of fees in a public market, cart-stand or slaughter house or of tents for shops has been framed out or leased by a municipal corporation or a municipal committee or a notified area committee or a cantonment board.

Explanation-I.- The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows:-

(a) firstly, his surviving spouse;

(b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased persons as member of his family upto the date of his death;

(c) thirdly, his parent(s), if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son, daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person upto the date of his death ; and

(d) fourthly, his daughter-in-law, being the widow of his predeceased son, if there is no surviving spouse, son, daughter or parent(s) of the deceased person or if such surviving spouse, son, daughter or parent (s), of the deceased person or if such surviving spouse, son, daughter or parent(s), or any of them did not ordinarily live in the premises as a member of the family of the deceased person upto the date of his death.

Explanation-II.-The right of every successor, referred to in Explanation-I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs; and.]

Similarly, Section 2(j) of the amended Act, reads as follows :-

"(2) [(j) "tenant" means any person by whom or on whose account rent is payable for a residential or non-residential building or rented land and includes a tenant continuing in possession after termination of the tenancy, a deserted wife

or a tenant who has been or is entitled to be in occupation of the matrimonial home or tenanted premises of husband, a divorced wife of a tenant who has a decree of divorce in which the right of residence in the matrimonial home or tenanted premises has been incorporated as one of the condition of the decree of divorce and in event of the death of such person such of his heirs as are mentioned in Schedule-I to this Act and who were ordinarily residing with him or carrying on business in the premises at the time of his death, subject to the order of succession and conditions specified, respectively in Explanation-I and Explanation-II to this clause, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter house or of rents for shops has been farmed out or leased by a municipal corporation or a Municipal Committee or a Nagar Panchayat, or a Cantonment Board ;

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Provided that the successor has ordinarily been living or carrying on business in the premises with the deceased tenant as a member of his family up to the date of his death and was dependent on the deceased tenant:

Provided further that a right of tenancy shall not devolve upon a successor in case he or his spouse or any of his dependent son or daughter is owning or occupying a premises in the urban area in relation to the premises let.

Explanation-II. - The right of every successor, referred to in Explanation-I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs; and.]

Even defaulting tenant protected from eviction :

19. The petitioner(s) have assailed the aforesaid provision as being illegal as also arbitrary on the ground that it provides protection even to such tenant who has committed such acts which make him liable to be evicted or where even though the tenant may have sublet the premises or has failed to pay the rent or has acquired other suitable premises and let out the same at a much higher prevailing market rent or has changed the use of the premises without the consent of the landlord, until he is evicted from the premises in question in accordance with law. This provision according to the petitioner places a premium on dishonesty and illegality and protects even such a tenant, who has acted in violation of law.

20. We are not at all impressed by these arguments, as it is more than settled that leave alone a tenant, who has lawfully entered and taken possession, even a trespasser, who has, forcibly taken possession and is in settled possession, cannot be dispossessed except in due course of law. The law on the subject has been lucidly explained and dealt with by a bench of three Hon'ble Judges of the Hon'ble Supreme Court in *Rame Gowda (dead) by LRs v. M. Varadappa Naidu (dead) by LRs* and another (2004) 1 SCC 769, wherein it was held as under:

"6. The law in India, as it has developed, accords with the jurisprudential thought as propounded by Salmond. In *Midnapur Zamindary Co. Ltd. v. Kumar Naresh Narayan Roy and Ors.* AIR 1924 PC 144, Sir John Edge summed up the Indian law by stating that in India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.

7. The thought has prevailed incessantly, till date, the last and latest one in the chain of decisions being *Ramesh Chand Ardawatiya v. Anil Panjwani* (2003) 7 SCC 350. In-between, to quote a few out of severals, in *Lallu Yeshwant Singh (dead) by his legal representative v. Rao Jagdish Singh and others* (1968) 2 SCR 203, this Court has held that a landlord did commit trespass when he forcibly entered his own land in the possession of a tenant whose tenancy has expired. The Court turned down the submission that under the general law applicable to a lessor and a lessee there was no rule or principle which made it obligatory for the lessor to resort to Court and obtain an order for possession before he could eject the lessee. The court quoted with approval the law as stated by a Full Bench of Allahabad High Court in *Yar Mohammad v. Lakshmi Das*, AIR 1959 All. 1.(AIR at p.4):

"Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause." (AIR p.5, para 13)

In the oft-quoted case of *Nair Service Society Ltd. v. K.C. Alexander and Ors.* (1968) 3 SCR 163, this Court held that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner.

When the facts disclose no title in either party, possession alone decides. The court quoted Loft's maxim - "*Possessio contra omnes valet praeter eum cui ius sit*" possession is (he that hath possession hath right against all but him that hath the very right)" and said: (AIR p. 1175, para 20)

"A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff's and thus be able to raise a presumption prior in time".

In *M.C. Chockalingam and Ors. v. V. Manickavasagam and Ors.* (1974) 1 SCC 48, this Court held that the law forbids forcible dispossession, even with the best of title. In *Krishna Ram Mahale (dead) by his Lrs. v. Mrs. Shobha Venkat Rao* (1989) 4 SCC 131, it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In *Nagar Palika, Jind v. Jagat Singh*, (1995) 3 SCC 426, this Court held that disputed questions of title are to be decided by due process of law, but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant.

8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of these cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is the settled possession or effective possession of a person without title

which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram and Ors. v. Delhi Administration* (1968) 2 SCR 455, *Puran Singh and Ors. v. The State of Punjab* (1975) 4 SCC 518 and *Ram Rattan and Ors. v. State of Uttar Pradesh*, (1977) 1 SCC 188. The authorities need not be multiplied. In *Munshi Ram & Ors.*'s case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh and Ors.*'s case (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase "settled possession" does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of "settled possession": (SCC p. 527, para 12):

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the

trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.

10. In the cases of Munshi Ram and Ors. (supra) and Puran Singh and Ors. (supra), the Court has approved the statement of law made in *Horam v. Rex* AIR 1949 Allahabad 564, wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in; while the former can be obstructed and turned out by the true owner even by using reasonable force, the latter, may be dispossessed by the true owner only by having recourse to the due process of law for re-acquiring possession over his property."

21. From the aforesaid exposition of law, it is absolutely clear that even an "occupant" in "settled possession" cannot be dispossessed without recourse to law. In what capacity, the occupant has been occupying the premises would therefore, hardly be of any consequence.

No provision for claiming mesne profits:

22. The learned Senior Counsel for the petitioner would then contend that even if the tenant or sub-letter or any other unauthorized occupant is permitted to squat over the premises, then there should at least be a provision for claiming mesne profits which according to him is not at all available under the impugned Act.

23. In *Marshall Sons and Co.(I) Ltd. v. Sahi Oretrans (P) Ltd. and another* (1999) 2 SCC 325, the Hon"ble Supreme Court after taking into consideration the invariable delay in Court proceedings held that reasonable mesne profit which may be equivalent to the market rent should be awarded to prevent parties in wrongful possession from taking undue advantage of lengthy delays in the main proceedings and thereafter in execution proceedings. It is apt to reproduce paras 4 and 6 of the judgment which read thus:

"4. From the narration of the facts, though it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Because of the delay unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also known fact that after obtaining a decree for possession of immovable property, its execution takes long time. In such a situation for protecting the interest of judgment creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, Court may appoint Receiver and

direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour decree is passed and to protect the property including further alienation.

6. Having considered the relevant submissions of the parties including the submissions with regard to market rent and without expressing any opinion on the merits of the contentions of the parties in the pending suit, we think it appropriate to dispose of this matter with the following directions:

(1) That the suit in question be disposed of as expeditiously as possible, preferably within one year from today;

(2) The respondents are directed to pay the mesne profits/compensation at the rate of Rs.10/- per sq. ft. from 1984 till today and at the rate of Rs.20/- from today till the disposal of the suit. While making this payment, the payments already made shall be adjusted. So far as the arrears are concerned, it be paid in 12 equal monthly instalments.

24. The principle of determining mesne profits after the eviction order has been passed and the right of landlord to receive higher rent than the contractual rent was established by the Hon"ble Supreme Court in Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. (2005) 1 SCC 705 wherein it was held as under:

"19. To sum up, our conclusions are:-

(1) while passing an order of stay under Rule 5 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 (1) 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."

25. Notably, even though there is no express provision in the Act for the grant of

mesne profit, but then, as held by the Hon"ble Supreme Court in *Marshall Sons and Co.(I) Ltd. v. Sahi Oretrans (P) Ltd. and another* (1999) 2 SCC 325 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.

26. Similar reiteration of law is found in the judgment of Hon"ble Supreme Court in *Anderson Wright and Co. v. Amar Nath Roy and others* AIR 2005 SC 2457, wherein it was held as under:

"5. As held by this Court in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, once a decree for eviction has been passed, in the event of execution of decree for eviction being stayed, the appellants can be put on such reasonable terms, as would in the opinion of the appellate court reasonably compensate the decree holder for loss occasioned by delay in execution of the decree by the grant of stay in the event of the appeal being dismissed. It has also been held that with effect from the date of decree of eviction, 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 on being vacated by the tenant. While determining the quantum of the amount so receivable by the landlord, the landlord is not bound by the contractual rate of rent which was prevalent prior to the date of decree."

27. In *State of Maharashtra and another v. M/s Super Max International Pvt. Ltd. and others* AIR 2010 SC 722, the Hon"ble Supreme Court held that while admitting the appeal after ejectment order, it is perfectly open to the appellate or the revisional court to direct the tenant to pay rent higher than the contractual rent, but the Court would not fix any excessive, fanciful or punitive amount. Since the mesne profits are not assessed by the appellate authority on the basis of the evidence led as per the Act, by production of evidence, on fact on issue or relevant facts, but is merely an assessment on the basis of prima-facie market rate is existing at the time of admission of the appeal after eviction order, a benefit has been bestowed on the landlord that he would be reasonably compensated for loss occasioned by delay in execution of decree by grant of stay order. The mesne profit or compensation payable to the landlord is generally determined on the basis of the cogent material placed on record by the parties in the shape of the registered lease deeds of the locality indicating the tentative amount of the rent which as the landlord would be entitled to in a case he had rented out the premises at the present market rate existing on the date of ejectment. However, there is no straight jacket formula.

28. It would be noticed that the entire subject matter of mesne profits in the event of a decree of eviction and appeal there against being filed, is a judge-made law chiseled out by the Hon"ble Supreme Court in its various pronouncements (some of which have been cited above), the entire premise of the aforesaid judgments is that once a decree of eviction is passed, the tenant

becomes unlawful occupant (subject to his right in appeal/revision), therefore, any contract between the parties also comes to an end. It is for this reason that the Courts have carved out this new principle for ensuring that the tenant in unlawful possession does not further prejudice the landlord, who is otherwise entitled to get possession of his property and for this purpose, have laid down that the tenant must pay a reasonable amount subject to the outcome of the appeal/revision.

29. Even otherwise, the awarding of mesne profits does put a check on the diabolical plans of the tenant who has been ordered to be evicted to further delay the matter and squat on the premises by paying a nominal or meager rent.

In light of the aforesaid discussion, it is evidently clear that the plea of the petitioner that there is no provision for claiming mesne profits after the order of eviction has been passed is clearly based on the misconception of the position of law.

Provision for succession of tenancy makes it perpetual:

30. The petitioner thereafter takes exception to the order of succession as provided under Section 2 (j), which according to him virtually makes the tenancy perpetual, more particularly, in light of the decision rendered by the learned Single Judge of this Court in (Smt.) Indra Vati and another v. (Smt.) Devki Devi and others 1989 (1) Sim. L.C. 36, wherein it has been laid down that all the heirs succeed to the tenancy jointly and in this way the owner of the building is deprived of his property for all times to come. He further contends that all the persons claiming to be tenants enjoy protection of the various provisions of the Rent Act, even though they may not be entitled to the same.

31. From the pleadings set out by the petitioner(s) we find the aforesaid challenge to succession to be more in abstract with there being practically no foundation for the same. Moreover, the enactment cannot be struck down by just proclaiming that it is arbitrary, unreasonable or irrational. The petitioner was required to point out some constitutional infirmity in the provision. The mere fact that an order of succession has been provided under Section 2 (j) cannot in absence of any concrete material having been placed on record be struck down as being violative of Article 300-A of the Constitution of India.

32. Insofar as the view taken by the learned Single Judge of this Court in Indra Vati's case (supra) holding the succession to tenancy as joint is concerned, the same is otherwise in line and tune with the judgments rendered by the Hon'ble Supreme Court in H.C. Pandey v. G.C. Paul, AIR 1989 SC 1470, Rameshwar Lal and another v. Raghunath Das and others (1990) 4 SCC 729 and Kumar Jagdish Chandra Sinha and others v. Eileen K. Patricia D'Rozarie (Mrs.) (1995) 1 SCC 164. Therefore, we see no valid reason to strike down the same.

Mechanism for determination of "Standard Rent" is "unreasonable":

Section 4 :

33. Section 4 of the un-amended Act, reads as follows:

"4. Determination of fair rent.-(1) The Controller shall, on application by the tenant or the landlord of a building or rented land, and after holding such enquiry as he may think fit, fix the fair rent for such a building or rented land.

(2) The fair rent under sub-section (1) shall be, -

(a) in respect of the building, the construction whereof was completed on or before the 25th day of January, 1971 or in respect of land let out before the said date, the rent prevailing in the locality for similar building or rented land let out to a new tenant during the year 1971 ; and

(b) in respect of the building, the construction whereof is completed after the 25th day of January, 1971 or in respect of land let out after the said date, the rent agreed upon between the landlord and the tenant preceding the date of the application, or where no rent has been agreed upon, the rent shall be determined on the basis of the rent prevailing in the locality for similar building or rented land on the date of application.

(3) Notwithstanding that the fair rent for building or rented land has been fixed under the East Punjab Urban Rent Restriction Act, 1949 or under the Himachal Pradesh Urban Rent Control Act, 1971, a landlord or tenant of such a building or rented land shall be entitled to get its fair rent fixed under this section.

(4) Notwithstanding anything contained in this Act, the Controller may fix the fair rent on the basis of the compromise arrived at between the parties to the proceedings and such rent shall be binding only on the parties and their heirs.

(5) The fair rent fixed under this section shall be operative from the date on which the application is filed under this section.

Note: Section 4 empowers both the tenant and the landlord to approach the controller for determination of the fair rent for a building or rented land. It lays down the criterion for the Controller for determining the fair rent and provides for a compromise figure which may be arrived at by the parties and the Controller may fix the same as fair rent. It was, however, held in *Surjit Singh v. Pritam Singh* (1975 SLJ I) that the fair rent fixed by agreement of the parties only was not valid. The law requires the Controller to hold an enquiry. The Rent Controller was to apply his mind for determination of the fair rent which was his jurisdiction.

Record of the house-tax assessment is not relevant for purposes of determining standard rent under the Rent Act."

Similarly, Section 4 of the amended Act, reads as follows:

"4. Determination of standard rent.-(1) The Controller shall, on application by the tenant or the landlord of a building or rented land, and after holding such enquiry as he may think fit, fix the standard rent for such a building or rented land on

the basis of 10% of the aggregate cost of construction and the market price of the land comprised in the premises on the date of commencement of the construction. The standard rent so derived shall be increased by 10% from the year of construction to the present year to arrive at standard rent for the given year. However, in case of non-residential building, the standard rent shall be fixed on the basis of 15% of the aggregate cost of construction and the market price of the land comprised in the premises on the date of the construction.

Explanation.- For the purpose of fixation of standard rent, the maintenance charges, municipal taxes including water and electricity charges shall be taken into account:

Provided that -

- (i) the maintenance charges shall not exceed 5% of the standard rent ;
 - (ii) the taxes shall be as per actual tax payable on prorated basis; and
 - (iii) the other amenities like water and electricity shall be as agreed between the landlord and the tenant.
- (2) The standard rent fixed under sub-section (1) shall become payable from the date on which the application is filed under this section."

34. It is pleaded that Section 4 of the Act as amended is vague, ambiguous, arbitrary and unreasonable and it has the effect of promoting endless and perpetual litigation between the landlords and tenants. Neither have the norms been laid down for evaluating the cost of construction of old buildings and the market value of the land at the relevant time, nor any method has been laid down for calculating the standard rent nor is it discernible as to whether the standard rent will be increased every year by 10% to 15% from the year of construction to the present year or whether it will be increased only once. The same yardstick is applicable for fixing standard rent without having regard for the condition of the building or the locality/area, in which it exists or to the approach to the building. Even the provision of standard rent does not take into account the price index or the decreasing value of the rupee in real terms. The difference in rental value of commercial and residential buildings has also not been considered.

35. We have considered the aforesaid submission and find that Section 4 has now been substituted by Section 3 of the Amendment Act 8 of 2012 and the reason for this is obvious as similar provisions under various rent statute had been struck down and even otherwise the criteria for fixing the fair rent had become outdated because of rise in cost of construction and price of land which called for drastic change in the rent legislation so as to enable the landlord to get reasonable rent.

36. Now, as per amended provisions, the landlord or the tenant can get standard rent fixed by making application to the Controller, even where the fair rent had

already been fixed earlier under the Principal Act because the concept of fair rent as was envisaged under the old Act, has totally been done away with in the amended provisions.

37. It would also be noticed that as per the amended provision the inquiry by the Controller is mandatory and the scope of inquiry to be conducted for fixation of standard rent in the case of residential building is to be directed only in relation to the aggregate cost of construction plus the market price of the land on the date of commencement of construction of the building of which standard rent is to be fixed. The sum so calculated is then to be divided by 10% so as to arrive at the 10% of the aggregate costs of construction of the building and the market price of the land on the date of its construction which can be treated as the basic rent of the said building at the time of its construction. On such basic rent 10% increase is to be allowed from the year of construction of that building to the year of filing of the application which shall then be treated as standard rent of the given year i.e. the year in which the application for fixing standard rent was filed to which further additional amount as per Explanation is to be added. Explanation added to Section 4 provides that while fixing the standard rent, the Rent Controller is also required to take into consideration the maintenance charges which shall not be more than 5% of the standard rent besides the amount of actual municipal taxes payable on pro rata basis and other payments towards amenities like water and electricity as agreed to be paid to the landlord by the tenant.

38. The "standard rent" means the figure arrived at after giving 10% increase on the aggregate cost/basic rent and includes the maintenance charges upto 5% besides the actual municipal taxes calculated on pro rata basis and charges if fixed for providing electricity and water etc. over and above the said figure. Thus, the total amount arrived at would constitute the standard rent of the residential building in the given year.

39. As regards non-residential premises/building, the sum so arrived at after calculating the aggregate cost of construction plus market price of its land at the time of construction is to be divided by 15% to arrive at a figure of the said aggregate cost of construction/basic rent. Rest of the increase as mentioned in the case of fixation of standard rent in respect of residential building shall also be applicable for fixation of standard rent of non-residential premises. If there is more than one tenant in the building, the standard rent so fixed for the entire building can be apportioned area-wise between the tenants.

40. Insofar as the fixation of standard rent of the open land is concerned, there arises no question of finding out cost of construction, therefore, only the market price of the rented land is to be ascertained to which 10% increase is to be allowed.

41. The standard rent so fixed has been made payable by the tenant from the date of application for fixation of standard rent vide sub-section (2) of Section 4.

42. Indubitably, the construction of buildings and letting them out to the tenants would come within the ambit of "business" under Section 19(1) (g) of the Constitution of India and hence is a fundamental right. Therefore, no unreasonable restriction can be placed on such right or else it would be violative of fundamental rights of the landlord.

43. It would be evident from the perusal of the aforesaid Section that the Rent Controller while conducting inquiry to fix the standard rent is required to follow the set procedure envisaged in this Section and has no discretion whatsoever to take note of the inflation and resultant reduction in purchasing power of money, variations in the cost of living index in the area since commencement of the lease, demand for accommodation and availability in the local area where the building in question is situated.

44. Likewise, the Rent Controller would also not be in a position to take note of other important factors like type of construction, locational importance, situation of premises i.e. ground floor, first floor etc. and other advantages, availability of amenities like access to the place of public importance like educational institution, bus-stand, railway station, hospitals etc.

45. At the same time, the Rent Controller would also not possess any discretion to take into consideration the prevailing rent in the locality for the same and similar accommodation and also take into consideration the type of construction, the amenities, general or special provided in the building, the open land, if any, attached to the building etc.

46. In the given circumstances, the learned Senior Counsel for the petitioner is perfectly justified when he contends that no norms or guidelines have been laid down for calculating the aggregate cost of construction and market price of land on the date of commencement of construction of the building. Further-more, the rate of rent normally depends upon the location of the premises, whereas, the average price worked out by the revenue authorities, is worked out for the entire revenue estate.

47. Applying the provisions as it is to the old buildings, with reference to the criteria laid down in Section 4 would demonstrate that the same would lead to an iniquitous and incongruous result. It would be noticed that the consequences would be disastrous as the standard rent would be extremely low, though the buildings may be in "prime location". That apart, such buildings would obviously require more expenses to be borne by the landlords towards the maintenance than what would otherwise be their standard rent. In such circumstances, the provisions of 5% increase towards maintenance would also be of no solace to the landlords as it would be extremely difficult to even meet the expenses of maintenance of these old buildings.

48. We may also consider another side of the picture. The landlord under the provisions of the Act has a liability to carry out periodical maintenance and necessary repairs of the building. The standard rent can only be fixed for the

building in accordance with Section 4 of the amended Act that too in the mode and manner as strictly envisaged, contemplated and provided for in the Section. But, at the same time, the landlord has to bear the costs of repairs and maintenance carried out at the rate of such costs as are prevailing today.

49. The Court cannot be oblivious to the fact that the cost of material and labour charges have spiraled up in geometrical proportions. There virtually cannot be any comparison between the costs of labour charges now to those which prevailed when the building was raised. But, then it is impermissible for the landlord to say that he can ill-afford to carry out such maintenance on the premise that the standard rent fixed is a very meager amount.

50. Thus, the criteria for fixation of "standard rent" bears little relation to the present day maintenance cost or to the current return from alternative investments, market rents to the prevailing rates in respect of new accommodation.

51. Moreover, Section 13 of the Act casts a duty on the landlord to keep the building in good repairs and on his failure to do so, the tenant gets a right to carry out such work and the charges and costs incurred by him can be deducted from the rent or otherwise recovered from the landlord. In such circumstances, it is quite possible that let alone the landlord earning from the premises, he may be left with no balance after carrying out the repairs and this would have devastating consequences on the landlord. Even, the entire amount he would get for one full year as standard rent of the building may not be sufficient to meet the costs which he might have incurred for repairs and maintenance during the year.

52. The only beneficiary in the above circumstances is the tenant, who has no investment in the building and has no liability to bear any expenses for the maintenance and repairs.

53. The Hon'ble Supreme Court in Mohammad Ahmad and another v. Atma Ram Chauhan and others (2011) 7 SCC 755 (supra) while fixing certain guidelines and norms, so as to ensure that the landlord gets reasonable rent akin to the market rent had clearly recognised that the rent fixed should be just, proper and adequate keeping in mind the location, type of construction, accessibility to the main road, parking place, facilities available therein etc., as would be evident from the guidelines so fixed, which read thus:

"21."(i) The tenant must enhance the rent according to the terms of the agreement or at least by ten percent, after every three years and enhanced rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.

(ii) Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges then the same shall also be borne by the tenant only.

(iii) The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord.

(iv) But if any major repairs are required to be carried out then in that case only after obtaining permission from the landlord in writing, the same shall be carried out and modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties.

(v) If present and prevalent market rent assessed and fixed between the parties is paid by the tenant then landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5 years. Thus for a period of 5 years the tenant shall enjoy immunity from being evicted from the premises.

(vi) The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.

(vii) The rent so fixed should be just, proper and adequate, keeping in mind, location, type of construction, accessibility with the main road, parking space facilities available therein etc. Care ought to be taken that it does not end up being a bonanza for the landlord."

54. It would further be evident from the aforesaid guidelines that apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area were suggested to be payable by the tenant only so as to enable the landlord to get actual rent out of which nothing would be deductible and consequently, when there would be any enhancement in any of these taxes, then the same were also to be borne by the tenant only.

55. The usual maintenance of the premises except major repairs was also suggested to be carried out by the tenants only and the same would not be reimbursable by the landlord. But in case any major repairs were required to be carried out, then in that case only after obtaining the permission from the landlord in writing, the same could be carried out and modalities with regard to the adjustment of the amount spent thereon would then have to be worked out between the parties. Unfortunately, majority of these guidelines have not at all been taken into consideration while fixing the standard rent as also making provisions therein for maintenance charges and only 5% towards the same has been made admissible in gross violation to the guidelines framed by the Hon''ble Supreme Court in Mohammad Ahmad's case (supra).

56. In addition to the above, we find that no provision for determining the rent upon the locational importance of the premises. We are conscious of the fact that the value of the site of the premises is only one of the several factors that determine the rent prevalent in a particular place. It alone may not be a single determinative factor, but at the same time, we cannot also undermine the locational benefits of a building, particularly, in this State where depending on the location, the rentals also vary. It is for this precise reason that even the Municipal Corporation, Shimla for the purpose of imposing taxes has divided the municipal area of Shimla into various zones and then applied different slabs of taxes, being mindful and conscious of the locational value of a building.

57. That apart, even with respect to buildings in the same locality, the facility being provided in one premises may be absent in the other and, therefore, in absence of any such details, the standard rent of each premises would definitely have to be worked out both objectively and subjectively, that too, on the basis of some rationale norms and guidelines. However, the same at least cannot be worked out on the basis of the criteria as envisaged under Section 4 of the Amended Act.

58. Thus, on the basis of the aforesaid discussion, we have no hesitation to conclude that in absence of there being proper norms and guidelines, the procedure as currently provided for determination of standard rent under Section 4 of the Act, is not founded on any intelligible differentia and even otherwise has no rational relation to the object sought to be achieved and it further fails to pass the test of reasonableness and being violative of Articles 14 and 19 of the Constitution of India is thus liable to be struck down as being unconstitutional.

Sections 5, 6, 7, 8 and 30:

59. Sections 5, 6, 7, 8 and 30 of the un-amended Act, read as follows:

"5. Revision of fair rent in certain cases. - (1) Save as provided in subsection (2), when the fair rent of a building or rented land has been fixed under section 4, no further increase or decrease in such fair rent shall be permissible for a period of five years:

Provided that the decrease may be allowed in cases where there is a decrease or diminution in the accommodation or amenities provided.

(2) Notwithstanding anything contained in any law for the time being in force or in any contract, a landlord shall in addition to the increase in rent provided in this Act be entitled to increase the rent of a building or land at the rate of 10 % (per cent) of fair rent Or the agreed rent, as the case may be, after every five years and such increase shall be,-

(a) in a case where such a building or land has been let out for a period of five years or more immediately preceding the commencement of this Act -

(i) first with effect from the date of such commencement; and

(ii) again with effect from the expiry of the period of every five years from such commencement; and

(b) where such a building or land has been let out before such commencement for a period shorter than five years and the maximum period within which such building or land remains let out extends beyond five years from the date of the commencement of such a tenancy

(i) first with effect from the date of expiry of five years from the commencement of such tenancy ;

(ii) again with effect from the date of expiry of the period of every five years from the date on which revision made under clause (i) takes effect.

(3) Any dispute between the landlord and the tenant in regard to any increase or decrease in rent under this section shall be decided by the Controller.

6. Increase in fair rent in what cases admissible. - Save as provided under section 5, when the fair rent of a building or rented land has been fixed under section 4, no further increase in such fair rent shall be permissible except in cases where some addition, improvement or alteration has been carried out in the building or rented land at the landlord's expense and if the building or rented land is then in the occupation of a tenant, at his request:

Provided that the fair rent as increased under this section shall not exceed the fair rent payable under this Act for a similar building or rented land in the same locality with such addition, improvement or alteration and it shall not be chargeable until such addition, improvement or alteration has been completed.

7. Landlord not to claim anything in excess of fair rent. Save as provided in this Act, when the Controller has fixed the fair rent of a building or rented land under section 4 -

(a) the landlord shall not claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent, but the landlord may stipulate for and receive in advance an amount not exceeding one month's rent;

(b) any agreement for the payment of any sum in addition to rent, or of rent in excess of such fair rent, shall be null and void.

Note: Section 30 of the Act lays down the punishment of two years imprisonment and fine by way of penalty for contravention of the provisions of Section 7. The provision of prohibiting the recovery of rent in excess of the standard rent applies from the date on which the standard rent is determined by the Collector. Prior to that, the contract between the landlord and the tenant determines the liability of the tenant.

8. Fine or premium not to be charged for grant, renewal, or continuance of tenancy. - (1) Subject to the provisions of this Act, no landlord shall claim or receive any rent in excess of the fair rent, notwithstanding any agreement to the

contrary.

(2) No-landlord shall, in consideration of the grant, renewal or continuance of a tenancy or sub-tenancy of any building or rented land, claim or receive payment of any premium, pugree, fine advance or any other like sum in addition to the rent.

Note: The amount of security for the payment of rent and the adjustment of the amount of rent in arrears may perhaps be an exception. The amount of security does not become the property of the landlord, who only holds it in trust to be returned with interest to the tenant on termination of the lease.

30. Penalties. - (1) If any person contravenes any of the provisions of section 10, section 11, section 12 or section 29, he shall be punishable with fine which may extend to one thousand rupees.

(2) If any person contravenes any of the provisions of clause (a) of section 7 or section 8, he shall be punishable with imprisonment which may extend to two years and with fine.

(3) The specified landlord or widow, widower, mother, father, child, grandchild or widowed daughter-in-law of such landlord, as the case may be, who having evicted tenant from a building in pursuance of an order made under sub section (2) of section 15 does not occupy it for a continuous period of three months from the date of such eviction or lets out the whole or any part of such building, from which the tenant was evicted, to any person other than the tenant shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both.

(4) No court inferior to that of a magistrate of first class shall try any offence punishable under this Act.

(5) No court shall take cognizance of an offence punishable under this Act, unless the complaint in respect of the offence has been made within three months from the date of the commission of the offence.

After amendment these provisions now read as under:-

"5. Revision of standard rent in certain cases. - (1) Save as provided in subsection (2), when the fair rent of a building or rented land has been fixed under section 4, no further increase or decrease in such standard rent shall be permissible for a period of three years:

(2) Notwithstanding anything contained in any law for the time being in force or in any contract, a landlord shall, in addition to the increase in rent provided in this Act, be entitled to increase the rent of a building or land at the rate of ten per cent of standard rent or the agreed rent, as the case may be, after every three years:

Provided that such increases shall be in a case where such a building or land has

been let out for a period of three years or more immediately preceding the commencement of the Himachal Pradesh Urban Rent Control (Amendment) Act, 2009 and again with effect from the expiry of every three years from such commencement.

(3) The increase in standard rent shall be automatic and if there is any dispute between the landlord and tenant in regard to any increase or decrease in rent under this section, such dispute shall be decided by the Controller.

6. Increase in Standard rent in what cases admissible. - Save as provided under section 5, when the standard rent of a building or rented land has been fixed under section 4, no further increase in such standard rent shall be permissible except in cases where some addition, improvement or alteration or special repairs has been carried out in the building or rented land by the landlord at the request in writing of the tenant:

Provided that the standard rent increased under this subsection shall not exceed ten per cent of the cost of addition, improvement, alteration or special repairs.

(2) if the tenant fails to pay the revised standard rent, he shall be liable for eviction under Section 14 of the Act."

[7. Landlord not to claim anything in excess of standard rent. - Save as provided in this Act, when the Controller has fixed the standard rent of a building or rented land under section 4, the landlord shall not claim or receive any premium or other like sum in addition to standard rent or any rent in excess of such standard rent, but the landlord may stipulate for and receive in advance an amount not exceeding three month's rent in lump sum:

Provided that any agreement for the payment of any sum in addition to rent, or of rent in excess of such standard rent, shall be null and void.]

8. (1) Fine or premium not to be charged for grant, renewal, or continuance of tenancy. - (1) Subject to the provisions of this Act, no landlord shall claim or receive any rent in excess of the standard rent, notwithstanding any agreement to the contrary.

(2) No-landlord shall, in consideration of the grant, renewal or continuance of a tenancy or sub-tenancy of any building or rented land, claim or receive payment of any premium, puggree, fine, advance or any other like sum in addition to the rent.

"30. Penalties. - (1) If any person contravenes any of the provisions of section 10, section 11, section 12 or section 29, he shall be punishable with fine which may extend to one thousand rupees.

(2) If any person contravenes any of the provisions of clause (a) of section 7 or section 8, he shall be punishable with imprisonment which may extend to two years and with fine.

(3) The specified landlord or widow, widower, mother, father, child, grandchild or widowed daughter-in-law of such landlord, as the case may be, who having evicted tenant from a building in pursuance of an order made under sub section (2) of section 15 does not occupy it for a continuous period of three months from the date of such eviction or lets out the whole or any part of such building, from which the tenant was evicted, to any person other than the tenant shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both.

(4) No court inferior to that of a magistrate of first class shall try any offence punishable under this Act.

(5) No court shall take cognizance of an offence punishable under this Act, unless the complaint in respect of the offence has been made within three months from the date of the commission of the offence.

60. The aforesaid Sections have been assailed by the petitioner(s) on the ground that the same are highly arbitrary and unreasonable, especially when these provisions themselves are made dependent on standard rent that they do not take into account the inflationary trends and increasing cost of construction, as a result of which it would not be possible to maintain the building properly and effectively.

61. Section 5(1) of the Act prohibits any further increase in standard rent as fixed under Section 4 for a period of three years, with just exceptions carved out by sub-section (2) of Section 5. The increase of 10% in standard rent and in absence of standard rent having been fixed under Section 4, then on the agreed rent after every three years is permissible to the landlord from the date of commencement of the amended Act, 2009, that too, notwithstanding anything contained in any other law for the time being in force or in any contract provided such a building has been let out for three years or more before such commencement. Though, the date of commencement of the amended Act has not been given, yet the Act would be deemed to have commenced from 16.3.2012, in terms of the provisions of H.P. General Clauses Act, 1968. Thus, increase of 10% is to be given w.e.f. 16.3.2012 and thereafter on completion of every three years, in case the building or land has been let out for a period of three years or more immediately preceding such commencement. In case the building has been let out after such commencement, then the first increase is available on the expiry of first three years of letting and thereafter on completion of every three years. The dispute as to increase and decrease in the standard rent would be determined by the Controller in an application for fixation moved by either of the parties under Section 4 of the Amended Act.

62. Indisputably, there was no similar provision in the earlier Acts of 1971 and 1987 and it is after a gap of about 25 years and keeping in view the rise in price index, the provisions have been made for allowing 10% increase on standard rent fixed by the Controller under Section 4 or on the agreed rent by the parties,

has been provided for every three years. Notably, the statutory increase of 10% of the "fair rent" earlier fixed was after every five years reckoning from 18.8.1987 which period has now reduced to three years on the standard rent fixed under Section 4. This increase is automatic, as also mandatory and no notice in this regard is required to be given by the landlord to his tenant and the tenant is bound to pay the statutory increase and the dispute with regard to increase or decrease allowed under this Section between the landlord and tenant has been left to be determined by the Rent Controller under Sections 3 or 5 of the Act.

63. As per the provisions of Section 6, the landlord apart from the statutory increase in the rent as mentioned in Section 5, is also entitled to a further increase of rent when he has carried out some additions, improvements or alterations or special repairs out of his own pocket on the written request of the tenant in the building or rented land in occupation of the tenant. Sub section (2) of Section 6 makes it evidently clear that failure of the tenant to pay the revised standard rent shall make himself liable for eviction under the provisions of Section 14.

64. Insofar as Sections 7 and 8 are concerned, the same have to be read with just exceptions carved out under Sections 5, 6 and Section 10 of the Act, which reads thus:

Increase of rent on account of payment of rates etc. of local authority but rent not to be increased on account of payment of other taxes etc.

"Section 10 (1) Notwithstanding anything contained in any other provisions of this Act, the landlord shall be entitled to increase the rent of a building or rented land, if after the commencement of the tenancy any fresh rate, cess or tax is levied in respect of a building or rented land by the Government or any local authority, or if there is an increase in the amount of such a rate, cess or tax being levied at the commencement of the tenancy:

Provided that the increase in rent shall not exceed the amount of any such rate, cess or tax or the amount of the increase in such rate, cess or tax, as the case may be.

(2) Notwithstanding anything contained in any law for the time being in force or in any contract, no landlord shall recover from his tenant the amount of any tax or any portion thereof in respect of any building or rented land occupied by such tenant by any increase in the amount of the rent payable or otherwise, save as provided in sub-section (1)."

65. The aforesaid provisions are generally aimed at preventing rack-renting and resorting to eviction whereby the landlord has been statutorily enjoined from claiming or receiving from the tenant any premium or the like sum as "Pugree" in addition to standard rent or agreed rent on any amount in excess of standard rent except three months rent in advance. Likewise, sub section (2) of Section 30

provides for punishment with imprisonment, which may extend to two years and with fine in case any person contravenes any of the provisions of clause (a) of Section 7 or Section 8 of the Act.

66. It would be noticed that the legislative scheme provided through Sections 5 to 8 and Section 30 (2) of the Act is a package and would be otherwise dependent upon standard rent to be determined under Section 4 or on the agreed rent. Therefore, one provision therefrom cannot be extricated from the others to be kept alone.

67. Evidently the concept of "standard rent" as contemplated by the provision contained in Section 4 and thereafter its dependent provisions contained in Sections 5, 6, 7, 8 and 30 (2) is a far cry from the commonly held notion that the rent is fair to both the landlord and the tenant. These provisions are lopsidedly loaded against the landlord. No rational basis for the legislative formulation can be and is, decipherable from these provisions. Any provision in the Act relating to determination of "standard rent" which does not take into consideration compensatory factors necessary for the determination of "standard rent", apart from instances where the rent is to be increased by reason of the landlord providing to the tenant additional facilities, attracts the label of arbitrariness. It was necessary for the legislature to have ensured that the "standard rent" provisions have a inbuilt mechanism for not only determination but also for a proper periodical correction of the "standard rent" payable to the landlord to avoid recurrence of highly inequitable situation.

68. It would further be noticed that the aforesaid provisions are otherwise not in tune with the guidelines laid down by the Hon'ble Supreme Court in Mohammad Ahmad's case (supra). In any case, when Section 4 itself does not pass the test of reasonableness, then without subsidiary and incidental provisions for periodical revision of the standard rent on a more rationale basis, these provisions cannot stand alone and thus are liable to be struck down as violative of the provisions of Articles 14 and 19(1) (g) of the Constitution save and except where the rent is fixed after an agreement between the landlord and tenant.

Section 13:

69. Though, the petitioner(s) in relief clause has prayed for declaring Section 13 apart from the other provisions to be unconstitutional and invalid, but no grounds of challenge have been spelled out and, therefore, in absence of any such ground, this provision cannot be declared to be either invalid or unconstitutional.

Section 14 (3) (c):

70. Section 14 (3) (c) of the Amended Act, reads thus:

"(c) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has

become unsafe or unfit for human habitation or is required bona fide by him for carrying out repairs which cannot be carried out without the building or rented land being vacated or that the building or rented land is required bona-fide by him for the purpose of building or rebuilding or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the building or rented land being vacated;

Provided that the tenant evicted under this clause shall have right to reentry on new terms of tenancy, on the basis of mutual agreement between the landlord or tenant, to the premises in the re-built building equivalent in area to the original premises for which he was tenant.

Provided further that in case of non residential premises, the landlord shall not compel the tenant for a change of business under the new terms of tenancy, and."

71. The petitioner(s) have questioned the proviso to Section 14, sub-section 3 Clause (c) as being highly irrational, arbitrary, unreasonable and defeating the very purpose of the objects and reasons of the Amendment Act. It is contended that by providing a right of re-entry to the tenant on mutually agreed new terms of tenancy in premises which have been rebuilt and reconstructed after obtaining the necessary permission and spending a huge amount not only results in making the tenancy perpetual, but would also deprive the owner of his property for all times to come. Furthermore, this provision is neither in the interest of landlord or the tenant because in case the parties fail to enter into a mutual agreement regarding the new terms of tenancy, the landlord will neither be able to utilise the reconstructed premises for his personal use, despite having spent a huge amount for rebuilding the same and nor will the tenant be entitled to enter the premises. The provisions will thus promote perpetual and endless litigation between the parties and the very object of the Amendment Act of promoting harmonious relations between the landlords and the tenants will be defeated.

72. It is contended that the proviso to Section 14 (3) (c) is liable to be quashed on the ground that it stipulates for providing a right of re-entry to the tenant in the reconstructed buildings in respect of an area equivalent to the original premises in which he was a tenant. The building has to be rebuilt and reconstructed according to the sanctioned plans, according to which it may not be possible to provide this facility to the tenant since the owner is bound under Section 247 (2) of the H.P. Municipal Corporation Act, 1994 to erect the building in accordance with the sanctioned plans, provisions and bye-laws of the Municipal Corporation Act. Thus, no violations are permitted for the purpose of accommodating the tenant and it is apparent that proviso to Section 14 (3) (c) of the Act, as amended, is in direct conflict and repugnant to Section 247 (2) of the H.P. Municipal Corporation Act, 1994.

73. It is further contended that Section 14 (1) of the H.P. Urban Rent Control Act,

1987 is liable to be quashed because even though the Amendment Act No. 8 of 2012 does not provide that the amendments are retrospective in nature. Section 14 (1) may have the effect of applying the same to even pending and decided proceedings thereby making all amendments retrospective, as a result of which the landlords will be deprived of their accrued and vested rights which have accrued in their favour on account of eviction orders being passed against the tenants which have become final.

74. As regards, the applicability of the provisions of Municipal Corporation Act, 1994 (for short "Corporation Act") and its bearing on the vires of Section 14 (3) (c) of the Amended Act, we find this argument to be rather far-fetched and without any basis. The Corporation Act extends only to the territorial limits of Shimla as prescribed under the Act and it is only recently in this year itself that the provisions of Corporation Act have been extended to the Municipal Corporation limits of Dharamshala at Kangra. The difficulty, if any, being faced in complying with any of the provisions of the Corporation Act in itself cannot be a ground to declare the aforesaid provisions as ultra vires or unconstitutional.

75. Adverting to the question regarding the provision contemplating and providing for re-entry of tenant in itself being illegal or arbitrary, the petitioner(s) have failed to point out any legal infirmity in such provision. That apart, similar provisions of re-entry have been incorporated and have further been upheld in majority of rent legislation's like: Tamilnadu Buildings (Lease and Rent Control) Act, 1960, Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 etc.

76. Insofar as retrospective operation of the Amended Act is concerned, we may note that even the Hon'ble Supreme Court after taking into consideration the provisions of amended Act, 2009, has itself directed the re-entry of tenant that too in pending proceedings in Hari Dass Sharma v. Vikas Sood and others (2013) 5 SCC 243 wherein it was held as follows:

"19. We accordingly, allow the appeals, set-aside the directions contained in para 27 of the impugned judgment of the High Court, but grant time to the respondents to vacate the building within three months from today. We make it clear that it will be open for the respondents to apply for re-entry into the building in accordance with the proviso to clause (c) of Section 14 (3) of the Act introduced by the Amendment Act, 2009. Considering, however, the peculiar facts and circumstances of the cases, there shall be no order as to costs."

Therefore, we find no legal or justifiable ground for striking down the provisions contemplating and providing for re-entry of tenant as the same is perfectly valid and cannot simply be struck down on the asking of the landlords (petitioners).

77. Now, coming to the modalities as to how the tenant is actually required to be provided re-entry, that too, on mutually agreed terms in terms of the proviso (c) to Section 14 (3) of the Act, we really do not find any mechanism whatsoever in

place and if the provision is applied literally as it stands, it would only lead to absurdity and unjust results.

78. This aspect was also noticed by the learned Single Judge of this Court in *M/s R.S. Puran Mull Trust v. M/s Dyal Sons*, Latest HLJ 2013 (HP) 1277 in the following manner:

"47. In the instant case also, the proviso has visualised re-entry/re-induction of the tenant after re-construction of the building. However, the manner in which he has to be re-inducted, has not been provided for in the enactment. If the provision is applied literally as it stands, it would lead to absurdity and unjust result. The tenant shall be at the mercy of the landlord. The landlord can not defeat the right of re-induction of the tenant by delaying the construction of the building and by imposing such harsh conditions which are impossible to be complied with by the tenant in the new terms of tenancy. The intention of the proviso is to make re-entry of the tenant a reality and not mirage. Moreover, it was never intended by the law makers to cause unnecessary hardship to the tenant. The Court has taken into consideration the leading judgments on the same issue, as discussed herein above, in order to make this proviso workable by applying the maxim of *casus omissus*."

However, the learned Single Judge by placing reliance on the judgment of the Hon'ble Supreme Court in *Syed Jameel Abbas and others v. Mohd. Yamin alias Kallu Khan* (2004) 4 SCC 781, proceeded to pass the following directions:

"54. While permitting/allowing rebuilding, the learned Rent Controller/Appellate Authority shall fix a time within which the construction has to be commenced and completed by the landlord. The tenant must vacate the premises in order to enable the landlord to carryout construction, as ordered by the learned Rent Controller/Appellate Authority. The terms and conditions of tenancy more or less should be on the old terms of tenancy, except increase in rent, which is to be determined as per the law laid by their Lordships of the Hon'ble Supreme Court in 2004 (4) SCC 781. The tenancy will be deemed to have been temporarily suspended and not terminated. Since right of tenant of re-entry has been provided now under the proviso. Re-induction of the tenant should be on the same dimensions as per old tenancy and the location and the place should also be same. It is clarified that in case the premises are commercial and are on the main bazaar, the tenant cannot be shifted to first floor or second floor. In the eventuality of the premises not handed over by the landlord to the tenant, the tenant will be held entitled to reasonable compensation to be determined by the learned Rent Controller, which should neither be exorbitant nor on the lower side.

55. Their Lordships of the Hon'ble Supreme Court in *Rahabhar Productions Pvt. Ltd. v. Rajendra K. Tandon* (1998) 4 Supreme Court Cases 49 have held that provisions of Rent Control and Eviction Act should be harmoniously construed so as to balance the rights of landlord and obligations of tenant towards each other.

56. Their Lordships of the Hon'ble Supreme Court in *Malpe Vishwanath Acharya*

and others v. State of Maharashtra and another (1998) 2 Supreme Court Cases 1 have held that law should be just to all Sections of the Society. It should not be unjust to one and give disproportionate benefit to the other. Their Lordships have held as under:

"15. The aforesaid decisions clearly recognise and establish that a statute which when enacted was justified may, with the passage of time, become arbitrary and unreasonable. It is, therefore, to be seen whether the aforesaid principle is applicable in the instant case. Can it be said that even though the provisions relating to the fixation of standard rent were valid when the Bombay Rent Act was passed in 1947 the said provision, as amended, can still be regarded as valid now ?"

57. The Apex Court in Hari Dass Sharma v. Vikas Sood and others , Civil Appeal No. 4127 of 2013, has permitted the tenant to apply for re-entry into building in accordance with the proviso to Clause (c) of Section 14(3) of the Act introduced by the Amendment Act, 2009.

58. Accordingly, in view of the observations and analysis made herein above, the revision petition is allowed. The judgment, dated 17.01.2006, passed by the learned Appellate Authority, Shimla, is set aside and the order, dated 01.08.2003, passed by the learned Rent Controller (1), Shimla, is modified as under:

"The tenant is directed to hand over the vacant possession of the premises to the landlord within a period of three months. Thereafter, the landlord shall commence the construction within a period of six months and complete the same within a further period of one year after obtaining the statutory permissions. The tenant shall be re-inducted on the basis of the observations made herein above after one month of the construction of the building. The tenant should be re-inducted in the same place, location and area should be equivalent to the area which was in occupation of the tenant before the orders passed by the learned Rent Controller."

79. At this stage, it would now therefore, be necessary to refer to in detail the facts in Syed Jameel Abbas case (supra), which in fact formed the basis of the aforesaid judgment. The proceedings for eviction of the tenants/respondents therein were initiated by the landlord/appellant on the ground available under clause (h) of sub-Section (1) of Section 12 of the Madhya Pradesh Accommodation Control Act, 1961, alleging the bona fide requirement of the landlords for the purpose of rebuilding of shops. The suit was decreed and as required by Section 18 of the Act, the Court appointed the time for vacating the premises by the tenants accompanied by direction for reoccupation by the tenants after the premises had been re-built. On 13.11.2000, the tenants vacated the premises and delivered possession to the landlords. One year's time was allowed to the landlord for completing the rebuilding and offering the premises for reoccupation by the tenants. The landlords failed to honour their

obligation of offering the shops for re-occupation by the tenants, constraining the tenants to initiate proceedings for restoration of possession and compensation for breach of obligation by the landlords. They succeeded before the trial Court, the first Appellate Court as also before the High Court and resultantly, the landlords were left with no other option, but to approach the Hon''ble Supreme Court. The trial Court not only directed the handing over of possession, but also directed a compensation calculated at the rate of ` 3,000/- per month to be paid by the landlords to each of the tenants. However, the Hon''ble Supreme Court set-aside the direction of payment of compensation and disposed of all three appeals by passing the following directions:

"(1) The three tenant-respondents who have entered into possession of the three shops on 2nd April, 2004 situated in the north east corner of the building shall be deemed to be holding the shops in their respective possession as tenants with effect from 2nd April, 2004. They will execute such rent notes in favour of landlords as may be approved by the trial Court. If the terms of lease are not settled then the tenancy between the parties shall remain one for nonresidential purpose running month by month.

(2) The Trial Court shall ascertain the rent which is being paid by the tenants in the adjoining shops preferably the three shops which are of the dimension of 8''-0" x 8'', 7''-10" x 8" and 7''-8" x 8" and appoint the same rent to be paid by each of the three tenants to the landlords month by month with effect from 2nd April, 2004.

(3) The tenant-respondents are entitled to payment of compensation for the period commencing 13.11. 2001 up to 9.4.2003, the day of the order of the High Court reserving three shops for occupation by the tenants and which the tenants refused to occupy. The rate of compensation payable by the landlords to the tenants shall be calculated at the same rate at which rent is appointed by the Trial Court for payment by the tenants to the landlords. It shall be in the discretion of the trial Court to direct the compensation being paid by the landlords to the tenants lump sum or to direct the same being adjusted as against payment of rent by the tenants to the landlords after the amount of compensation has been quantified."

80. Admittedly, there is a lacuna in the Amended Act inasmuch as it does not provide for any time limit for the landlord to construct the premises after getting possession in proceedings under the Act. It does not even contemplate payment of compensation to the tenant in the event of failure to hand over the premises by the landlord. The right of re-entry has further been made subject to mutual agreed new terms of the tenancy. Therefore, in such circumstances, can this Court pass directions without there being any mutual agreement as envisaged under the Act by resorting to and taking aid of judgment in Syed Jameel Abbas case (supra) and also applying the maxim of casus omissus as has been done in M/s R.S. Puran Mull Trust's case (supra).

81. The answer to the question is surely in negative. The directions by the Hon''ble Supreme Court (supra) were passed after taking into consideration the peculiar facts and circumstances of the case coupled with the powers vested in it by Article 142 of the Constitution of India. Such powers are not vested with this Court and even otherwise this Court cannot re-write the provisions of the Act.

Now, whether the provision can be made workable by this Court by applying maxim of casus omissus?

82. The intention of the legislation is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. The Courts cannot aid legislation's defective phrasing of Act nor can it add or mend and by construction make up deficiencies which are left there in. The Court cannot reframe the legislation for the very good reason that it has no power to legislate. What the matter should have been, but has not been provided for in a statute cannot be supplied by Courts, as to do so will be legislation and not construction. There is no presumption that casus omissus exists and language permitting the Court should avoid creating casus omissus, when there is none, especially when the wording of the Section is plain and unambiguous.

83. The legislative casus omissus cannot be supplied by judicial interpretative process. There is no scope for supplying, supplanting any word, phrase or sentence or creating any exception to the existing provision. While interpreting the provisions, the Court only interprets the law and cannot legislate it. If the provision of law is misused and subject to the abuse of process of law, it is for the legislation to amend, modify or repeal it, if deemed necessary.

84. The Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation.

85. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words.

86. The other important rule of interpretation is that the Court cannot rewrite, recast or reframe the legislation because it has no power to do so. The Court cannot add words to a statute or read words which are not therein it. Even if there is a defect or an omission in the statute, the Court cannot correct the defect or supply the omission.

87. A statute is an edict of the legislature. The language employed in a statute or any statutory provision is the determinative factor of legislative intent of policy makers. The question is not what may be supposed and has been intended, but what has been said. Statutes should be construed not as theorems of Euclid.

88. The Courts must avoid the danger of an a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation. While interpreting a provision, the Court only interprets the law and cannot legislate it.

89. The legislative casus omissus cannot be supplied by judicial interpretative process. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute/statutory provision as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. But, at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available.

90. In *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.* (2012) 9 SCC 552, the Hon'ble Constitution Bench of the Hon'ble Supreme Court while dealing with doctrine of casus omissus observed as under:-

"64. It is evident from the observation made by this Court in *Konkan Railway Corporation Ltd. v. Rani Construction (P) Ltd.*, (2002) 2 SCC 388 that the Model Law was taken into account in drafting of the Arbitration Act, 1996. In Paragraph 9, this Court observed: (SCC p. 400)

"9.....That the Model Law was only taken into account in the drafting of the said Act is, therefore, patent. The Arbitration Act, 1996 and the Model Law are not identically drafted."

Thereafter, this Court has given further instances of provisions of the Arbitration Act, 1996, not being in conformity with the Model Law and concluded that "..... The Model Law and judgments and literature thereon are, therefore, not a guide to the interpretation of the Act and, especially of Section 11 thereof." The aforesaid position, according to Mr. Sorabjee has not been disagreed with by this Court in *SBP & Co.* (supra). We agree with the submission of Mr. Sorabjee that the omission of the word only in Section 2(2) is not an instance of "casus omissus". It clearly indicates that the Model Law has not been bodily adopted by the Arbitration Act, 1996. But that can not mean that the territorial principle has not been accepted. We would also agree with Mr. Sorabjee that it is not the function of the Court to supply the supposed omission, which can only be done by Parliament. In our opinion, legislative surgery is not a judicial option, nor a

compulsion, whilst interpreting an Act or a provision in the Act. The observations made by this Court in the case of *Nalinakhya Bysack v. Shyam Sunder Haldar*, AIR 1953 SC 148 would tend to support the aforesaid views, wherein it has been observed as follows:- (AIR p. 152, para 9)

"9.It must always be borne in mind, as said by Lord Halsbury in *Commissioner for Special Purpose of Income Tax v. Premsel* 1891 AC 531, at p. 549 (HL), that it is not competent to any Court to proceed upon the assumption that the legislature has made a mistake. The Court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature the Court cannot, as pointed out in *Crawford v. Spooner* (1846-49) 6 Moo PC 1, aid the legislatures defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a *casus omissus*, it is, as said by Lord Russell of Killowen in *Hansraj Gupta v. Official Liquidator of Dehra Dun-Mussoorie Electric Tramway Co., Ltd.*[30], for others than the Courts to remedy the defect.

65. Mr. Sorabjee has also rightly pointed out the observations made by Lord Diplock in the case of *Duport Steels Ltd. v. Sirs*, (1980) 1 WLR 142. In the aforesaid judgment, the House of Lords disapproved the approach adopted by the Court of Appeal in discerning the intention of the legislature, it is observed that:- (WLR p. 157 C-D)

".....the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliaments opinion on these matters that is paramount.

(emphasis supplied)

In the same judgment, it is further observed:- (WLR p. 157 F)

"....But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Act."

91. In *Singareni Collieries Company Limited v. Vemuganti Ramakrishan Rao and others*, (2013) 8 SCC 789, the legal position regarding applicability of doctrine of *casus omissus* was traced and it was held as under:-

"20. Secondly, because the legal position regarding applicability of the doctrine of *casus omissus* is settled by a long line of decisions of this Court as well as Courts in England. Lord Diplock in *Wentworth Securities v. Jones* (1980) AC 1974, revived the doctrine which was under major criticism, by formulating three

conditions for its exercise namely, (1) What is the intended purpose of the statute or provision in question; (2) Whether it was by inadvertence that the draftsman and the Parliament had failed to give effect to that purpose in the provision in question; and (3) What would be the substance of the provision that the Parliament would have made, although not necessarily the precise words that the Parliament would have used, had the error in the Bill been noticed. The House of Lords while approving the above conditions in *Inco Europe v. First Choice Distribution* (2000) 1 All ER 109, went further to say that there are certain exceptions to the rule inasmuch the power will not be exercised when the alteration is far-reaching or when the legislation in question requires strict construction as a matter of law.

21. The legal position prevalent in this country is not much different from the law as stated in England. This Court has in several decisions held that *casus omissus* cannot be supplied except in the case of clear necessity and when reason for it is found within the four corners of the statute itself. The doctrine was first discussed by Justice V.D. Tulzapurkar in the case of *Commissioner Of Income Tax, Central Calcutta v. National Taj Tradus* (1980) 1 SCC 370. Interpretative assistance was taken by this Court from *Maxwell on Interpretation of Statutes* (12th Edn.) pg. 33 and 47. The Court said:

"10. Two principles of construction-one relating to *casus omissus* and the other in regard to reading the statute as a whole-appear to be well settled. In regard to the former the following statement of law appears in *Maxwell on Interpretation of Statutes* (12th Edn.) at page 33:

Omissions not to be inferred-It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Mersey said: "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do." "We are not entitled," said Lords Loreburn L.C., "to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself." A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission in consequence to have been unintentional.

In regard to the latter principle the following statement of law appears in *Maxwell* at page 47:

A statute is to be read as a whole. - It was resolved in the case of *Lincoln College* (1595) 3 Co. Rep. 58 that the good expositor of an Act of Parliament should "make construction on all the parts together, and not of one part only by itself." Every clause of a statute is to "be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute." (Per Lord Davey in *Canada Sugar Refining Co.*,

Ltd. v. R: 1898 AC 735).

In other words, under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an, unreasonable result", said Danckwerts L.J. in *Artemiou v. Procopiou* [1966] 1 Q.B. 878 "is not to be imputed to a statute if there is some other construction available." Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction, (Per Lord Reid in *Luke v. I.R.C.*-1968 AC 557 where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges. In the light of these principles we will have to construe Subsection (2)(b) with reference to the context and other clauses of Section 33B.

22. Arijit Pasayat, J. has verbatim relied upon the above in *Padmasundara Rao v. State of Tamil Nadu* (2002) 3 SCC 533, *Union of India v. Dharmendra Textile Processors* (2008) 13 SCC 369, *Nagar Palika Nigam v. Krishi Upaj Mandi Samiti & Ors.* (2008) 12 SCC 364, *Sangeeta Singh v. Union of India* (2005) 7 SCC 484, *State of Kerala & Anr. v. P.V. Neelakandan Nair & Ors.* (2005) 5 SCC 561, *UOI v. Priyankan Sharan and Anr.* (2008) 9 SCC 15, *Maulavi Hussein Haji Abraham Umarji v. State of Gujarat* (2004) CriLJ 3860, *Unique Butyle Tube Industries Pvt. Ltd. v. U.P. Financial Corporation and Ors.* (2003) 2 SCC 455, *UOI v. Rajiv Kumar with UOI v. Bani Singh* (2003) SCC (LS) 928, *Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers and Ors.* (2003) 6 SCC 659, *Prakash Nath Khanna and Anr. v. Commissioner of Income Tax and Anr.* (2004) 9 SCC 686, *State of Jharkhand & Anr. v. Govind Singh* (2005) 10 SCC 437, *Trutuf Safety Glass Industries v. Commissioner of Sales Tax, U.P.* (2007) 7 SCC 242.

23. In *Padma Sundara Raos* (supra) this Court examined whether the doctrine of *casus omissus* could be invoked while interpreting Section 6(1) of the Land Acquisition Act so as to provide for exclusion of time taken for service of copy of the order upon the Collector. Repelling the contention this Court said: (SCC p. 542, paras 12 & 14)

"12. the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be

supposed and has been intended but what has been said.

* * *

14. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary."

92. The doctrine of casus omissus was recently considered by the Hon"ble Supreme court in Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Limited and others (2015) 9 SCC 209, wherein it was held that even if there is a casus omissus in a statute, the language of which otherwise is plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. It is apt to reproduce the following observations:-

"30. Keeping that in view, we have to scrutinise whether in such a situation this Court can implant words in the provision, as canvassed by Mr. Datar. In this regard we may, with profit, refer to certain authorities in the field. In CST v. Parson Tools and Plants, (1975) 4 SCC 22, the Court has held that: (SCC p. 28, para 16)

"16. If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so would be entrenching upon the preserves of legislature.

31. In Board of Muslim Wakfs v. Radha Kishan, (1979) 2 SCC 468, it has been observed that: (SCC p. 481, para 29)

"29. While it is true that under the guise of judicial interpretation the court cannot supply casus omissus, it is equally true that the courts in construing an Act of Parliament must always try to give effect to the intention of the legislature. In Crawford v. Spooner (1846-49) 6 Moo PC 1 the Judicial Committee said: (ER p. 585)

".....we cannot aid the legislatures defective phrasing of an Act, we cannot add and mend and by construction, make up deficiencies which are left there".

To do so would be to usurp the function of the legislation. At the same time, it is well settled that in construing the provisions of statute the courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective. Thus, an attempt must always be made to reconcile the relevant provisions so as to advance the remedy intended by the statute."

32. In this context, we may usefully refer to the authority in *CIT v. National Taj Traders* (1980) 1 SCC 370 wherein it has been clearly laid down that two principles of construction i.e. one relating to *casus omissus* and the other in regard to reading of the statute as a whole have been well settled. The Court has reproduced few passages from Maxwell on Interpretation of Statutes at pages 33 and 47, as has been stated in *Canada Sugar Refining Co. Ltd. v. R.*, by Lord Davey and proceeded to state thus:- (*National Taj Traders case* (1980) 1 SCC 370 SCC p. 376, para 10)

"10.In other words, under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. An intention to produce an unreasonable result, said Danckwerts, L.J., in *Artemiou v. Procopiou* (1966 (1) QB 878), is not to be imputed to a statute if there is some other construction available. Where to apply words literally would defeat the obvious intention of the legislation and produce a wholly unreasonable result we must do some violence to the words and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* (1966 AC 557) where at p. 577 he also observed: this is not a new problem, though our standard of drafting is such that it rarely emerges.] In the light of these principles we will have to construe sub-section (2) (b) with reference to the context and other clauses of Section 33-B."

33. In *S.P. Gupta v. Union of India* 1981 Supp SCC 87, after referring to various authorities, it has been held: (SCC p.392, para 273)

"273. Thus, on a full and complete consideration of the decisions classified under the various categories, the propositions that emerge from the decided cases of this Court and other foreign courts are as follows:

"(1) Where the language of a statute is clear and unambiguous, there is no room for the application either of the doctrine of *casus omissus* or of pressing into service external aids, for in such a case the words used by the Constitution or the statute speak for themselves and it is not the function of the court to add words or expressions merely to suit what the courts think is the supposed intention of the legislature."

35. After so stating the Court has referred to the observations made by Lord Diplock in *Duport Steels Ltd.*, wherein it has been ruled thus:

".....the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and

to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliaments opinion on these matters that is paramount.

(emphasis supplied)

36. Recently, in *Sarah Mathew v. Institute of Cardio Vascular Diseases* (2014) 2 SCC 62, while interpreting Section 468 CrPC, the Court has opined: (SCC p.99, para 45)

"45. It is argued that a legislative *casus omissus* cannot be supplied by judicial interpretation. It is submitted that to read Section 468 CrPC to mean that the period of limitation as period within which a complaint/charge-sheet is to be filed, would amount to adding words to Sections 467 and 468. It is further submitted that if the legislature has left a lacuna, it is not open to the court to fill it on some presumed intention of the legislature. Reliance is placed on *Shiv Shakti Coop. Housing Society v. Swaraj Developers* (2003) 6 SCC 659, *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (2012) 9 SCC 552 and several other judgments of this Court where doctrine of *casus omissus* is discussed. In our opinion, there is no scope for application of doctrine of *casus omissus* to this case. It is not possible to hold that the legislature has omitted to incorporate something which this Court is trying to supply. The primary purpose of construction of the statute is to ascertain the intention of the legislature and then give effect to that intention. After ascertaining the legislative intention as reflected in the Forty-second Report of the Law Commission and the Report of the JPC, this Court is only harmoniously construing the provisions of Chapter XXXVI along with other relevant provisions of the Criminal Procedure Code to give effect to the legislative intent and to ensure that its interpretation does not lead to any absurdity. It is not possible to say that the legislature has kept a lacuna which we are trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. The authorities cited on doctrine of *casus omissus* are, therefore, not relevant for the present case.

37. We have referred to the aforesaid passage as the Constitution Bench has given emphasis on primary purpose of construction of statute to ascertain the intention of the legislature, harmonious construction of the various provisions of the CrPC and for ensuring that the interpretation does not lead to any absurdity. That apart, the Court has also categorically observed that it is not a case where it can be said that legislature has kept a lacuna which the Court is trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. In the case at hand, in the schematic context of the Act and upon reading the legislative intention and applying the principle of harmonious

construction, we do not perceive inclusion of the entities which are not common carriers or contract carriers would be permissible. They have deliberately not been included under Section 11 of the Act by the legislature and the said non-inclusion does not lead to any absurdity and, therefore, there is no necessity to think of any adventure.

38. We must take note of certain situations where the Court in order to reconcile the relevant provision has supplied words and the exercise has been done to advance the remedy intended by the statute. In *Surjit Singh Kalra v. Union of India*, (1991) 2 SCC 87, a three-Judge Bench perceiving the anomaly, held:-

"19. True it is not permissible to read words in a statute which are not there, but where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words (*Craies Statute Law*, 7th edn., p. 109). Similar are the observations in *Hameedia Hardware Stores v. B. Mohan Lal Sowcar* (1988) 2 SCC 513, where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: *Sirajul Haq Khan v. Sunni Central Board of Waqf* AIR 1959 SC 198)"

93. Adverting to the provisions of the statute i.e. proviso to clause (c) of sub-section (3) of Section 14 of the Act, it would be noticed that it has been clearly provided therein that the tenant evicted under clause (c) shall have the right to re-entry on new terms of tenancy, that too, only on the basis of mutual agreement between the landlord and tenant to the premises in the re-built building equivalent in area to the original premises of which he was a tenant.

94. Keeping in mind the aforesaid exposition of law, this Court while trying to apply the doctrine of *casus omissus* has to look at the entire enactment and the scheme underlining the same. In the case in hand, we find that though an outer limit of 12 months has been prescribed by sub-section (5) of Section 14 for the landlord to put to use the premises from which the tenant has been evicted under Section 14 (3) or 14(3) (a) (ii) and Section 14 (d) of the Act from the date of obtaining the possession from the tenant and on his failure to do so, the evicted tenant has been given right to apply for the controller for an order directing the landlord that such tenant shall be restored the possession of the same premises from where he had been evicted.

95. Similar right to the evicted tenant has also been given, if the landlord who has obtained possession under Section 15 (2) of the Act, has not put to use the said premises within a period of three months from the date of obtaining of such possession.

96. However, no such outer time limit has been fixed by the legislature in Section 14(5) of the Act, in case the eviction is ordered under Section 14 (3) (c) of the Act.

97. Thus, we find that the legislature, whenever it intended specifically provided for a time schedule for placing the tenant in the premises and therefore, in absence of a provision analogous to the provisions mentioned above militates against the arguments that the omission of such time frame under Section 14(5) of the Act in case of eviction is covered under Section 14(3) (c) is unintended, which could be supplied by the Court taking resort to the doctrine of casus omissus.

98. Therefore, the judgment rendered by the learned Single Judge of this Court in M/s R.S. Puran Mull Trust (supra), giving time bound directions to the parties i.e. landlord and tenant and further holding the tenants to be entitled to reasonable compensation on failure of the landlord to hand over possession of the premises, dehorse the provisions of the statute by applying the doctrine of casus omissus cannot be regarded and considered as good law and to that extent the same is, therefore, overruled.

99. In such circumstances, therefore, the further question that arises for consideration as to whether the existing provision of Section 14(3) (c) is constitutionally valid?

100. We have no hesitation in observing that in absence of any time frame for putting the tenant back into possession, the landlord after evicting the tenant on the ground mentioned in Section 14(3)(c) may chose to keep the building as it is for some period in order to fetch a substantial amount in sale and in this manner the provision affords no safeguard to the evicted tenant.

101. That apart, the legislature by introducing the right of reentry on new terms of tenancy, that too, only on the basis of mutual agreement between the landlord and tenant, has virtually rendered the right of re-entry illusory and the provision otiose, as it is difficult to comprehend, contemplate and visualise that the tenant and landlord, who have been involved in litigation for decades and would otherwise normally not see each other in eye, would subsequently all of a sudden arrive at a mutual agreement. What if, the landlord and tenant fail to arrive at a mutual agreement? There is absolutely no answer to this question to be found in the entire Amended Act.

102. Even otherwise, there being a mutual agreement between the landlord and tenant is a nigh impossibility, after all the landlord, who has succeeded in having his tenant evicted, that too, invariably after long drawn battle in the Courts, would not at all like to arrive at a "mutual agreement" with the tenant and on the other hand why would the tenant, who has been conferred with the right of re-entry succumb to any unreasonable demands of the landlord so as to arrive at a mutual agreement ?

103. In addition to the aforesaid, we find that the provisions are neither in the interest of the landlord or tenant because in case the parties fail to enter into a mutual agreement regarding the new terms of tenancy, neither the landlord nor the tenant would be able to utilise reconstructed premises, despite the landlord having spent a huge amount for rebuilding the same. This obviously would only promote perpetual and endless litigation between the parties and the very object of the Amending Act of promoting harmonious relations between the landlords and the tenants would thus stand defeated.

104. Lastly, we also notice that the language used in explanation is absolutely vague and it is not at all discernible as to in what time would the agreement as mentioned therein be arrived at. Is it when the tenant has been evicted under clause (c) or at the time when the building is rebuilt? In case, the agreement is to be arrived at the time of eviction, then probably much exception cannot be taken, but in case the agreement is to be arrived at only after the building is rebuilt, then the very purpose of having such a provision of re-induction of the tenant would be rendered nugatory and otiose, because the landlord will make all endeavours to drive the tenant to the wall and would further ensure that the portion for which the re-entry has been reserved to the tenant is not constructed. The proviso to say the least is totally unworkable as it is absolutely vague, ambiguous apart from being arbitrary and unreasonable. Therefore, we have no difficulty in concluding that the first proviso of clause (c) of sub-section (3) of Section 14 of the Act is unconstitutional.

105. In view of the aforesaid discussion and for the reasons so stated, these petitions are partly allowed and Section 4 of the Amended Act which prescribes the procedure for determination of standard rent and Sections 5, 6, 7, 8 and 30 (2) insofar as they are dependent upon standard rent as contemplated and determined under Section 4 other than the agreed rent are struck down and declared unconstitutional. Similarly, Section 14 (3) (c) of the Act insofar as it provides for the right of re-entry to the tenant is upheld, while the remaining portion of the proviso being unreasonable, is also struck down and declared unconstitutional.

106. The petitions are partly allowed in the aforesaid terms, leaving the parties to bear their own costs. The Registry is directed to place a copy of this judgment on the files of connected matters.