

(1991) 02 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Petition No. 410 of 1989

D.C. Bhatia and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-02-1991

Acts Referred:

Constitution of India, 1950 — Article 14
Delhi Rent Control Act, 1958 — Section 3

Citation : (1991) 43 DLT 425 : (1991) RLR 201

Hon'ble Judges : Milap Chand Jain, J; Arun Kumar, J

Bench : Division Bench

Advocate : H.N. Chaudhary, Sat Pal, Meena Chaudhary, H.N. Salve and Rajeev Shurma, for the Appellant;

Judgement

M.C. Jain, J.

(1) This bunch of writ petitions mentioned in the schedule annexed to this judgment (Not printed--Ed.) raises a common question regarding the constitutional validity of Section 3(c) of the Delhi Rent Control Act, 1958

(2) For appreciating the controversy raised in these writ petitions, it would be appropriate that the history of rent control legislation is taken into account. Before enacting the rent control laws, the relations of the landlords and the tenants were governed by the provisions of the Transfer of Property Act. That was the general law applicable to landlords and tenants but on account of scarcity of accommodation i.e. shortage of housing accommodation. Rent control legislation came into being. So far as Delhi is concerned, under rule 21 of the defense of India Rules, New Delhi House Rent Control Order, 1939 was issued. Its application was extended to Municipality of New Delhi and to the notified area of Civil Station, Delhi, Rule 81(2) (bb) empowered the Central Government to provide by order.

"FOR regulating the letting and sub-letting in any area of residential

accommodation, whether furnished or unfurnished and whether with or without board, and in particular:--

(1)for controlling the rents for such accommodation either generally or when let to specified persons or classes of persons or in specified circumstances,

(II)for preventing the unreasonable eviction of tenants and sub-tenants from such accommodation, and

(III)for requiring such accommodation to be let either generally, or to specified persons or classes of persons or in specified circumstances. "

(3) Clause 11-A made a provision for grounds for eviction and further provided that a tenant shall not be evicted whether in execution of a decree or otherwise and whether before or after the, termination of the tenancy, except in accordance with the provisions of the said clause. There after Punjab Urban Rent Restriction Act, 1941 was extended to the province of Delhi and that law was not to apply to any areas in which the New Delhi House Rent Control Order. 1939 was for the time being in force. That Act was also enacted to restrain the increase of rents on certain premises situated in the limits of urban areas in the province of Delhi. Then came the Delhi Rent Control Ordinance, 1944. This ordinance was promulgated in order to make better provisions for the control of rents in the province of Delhi. It also contained clause-9 relating to eviction of tenants. It is only on certain grounds that a tenant could be evicted from his tenanted premises. Then came the Delhi and Ajmer Marwari Rent Control Act, 1947. The preamble of this Act. was to the effect that the Act was to provide for the control of rents and evictions, and for the lease to Government of premises upon their becoming vacant, in certain areas in the Provinces of Delhi and Ajmer-Merwara. There was a provision contained in Section 9 relating to eviction of tenants which placed restrictions on eviction of tenants. Subsequently, in the year 1952. Delhi and Ajmer Rent Control Act, 1952 was promulgated. Its preamble was also to the same effect. This law dealt with the control of rents and evictions. The earlier laws also made provisions for fixing standard rents and provisions relating to other charges by the landlord. Then came Delhi Tenants (Temporary Protection) Act, 1956. It provide for temporary protection to certain classes of tenants in the Union Territory of Delhi from eviction. After this Act. the present law i.e. Delhi Rent Control Act, 1958 (Act no. 59 of 1958) was promulgated. This law was enacted with a view to provide for control of rents and evictions and of rates of hotels and lodging houses and for the lease of vacant premises to government in certain areas in the Union Territory of .Delhi. It came into force w.e.f. 9th day of February, 1959. Subsequently, it was felt that the provisions of the said Act need amendment. This Act was amended by Delhi Rent Control Amending Act, 1988 (Act 57 of 1988). The objects of the amendment were: "

(A)To rationalise the present rent control law by bringing about a balance between the interests of landlords and tenants.

(B) To give a boost to house building activity and maintain the existing housing stock in a reasonable state of repairs.

(C) To reduce litigation between landlords and tenants and to ensure expeditious disposal of disputes between them

(4) The amendments were made in pursuance of the demands from the Associations of house-owners as well as the tenants and recommendations were also included by the Committee on petitions of Rajya Sabha, The Economic Administration Reforms Commission, National Commission on Urbanisation and Secretaries Committee. The Economic Administration Reforms Commission made certain recommendations and reached some conclusions. The relevant conclusions and recommendations are as under:

(I) The freezing of rentals at old historic levels, the excessive protection of tenancy rights and the extreme difficulty of recovering possession of the accommodation even for the owner's use have tended to

- HIT hard the house-owner of modest means;
 - DEPRESS property values and affect adversely the revenues of municipal bodies and the State and Central Governments;
 - IMPOSE onerous burdens on the administration and the judiciary and lead to large numbers of pending cases;
 - RENDER investment in housing for rental unattractive. inhibit the letting out of available accommodation, bring about a deterioration of the existing stock of housing through the neglect of maintenance, and thus aggravate the acute scarcity of accommodation for hire;
 - ENCOURAGE various malpractices and abuses such as 85 on money (pugres), partial receipts for rent, capital consideration (in black money) for tenancy transfers, etc.
 - AND in general, protect the haves against the have-nots, i.e., the tenant (even if affluent) as against the landlord (even if not so affluent) and the sitting tenant as against the prospective tenant who is looking for accommodation on rent.
- (Paras 11-21)

(II) (A) Against the above background, it is necessary to restrict the area of operation of rent control so as to make it more purposeful and administratively manageable. From this point of view the following should be excluded from the purview of rent control: a-1 accommodation hired for non-residential use (as rent control is essentially concerned with the rentals of residential accommodation); but perhaps small shopkeepers could continue to have the benefit of rent control, accommodation hired for residential purposes by diplomats and other foreigners and commercial establishments as such tenancies do not need or deserve the protection of rent control; tenancies in premises owned by Governments or municipal bodies (who can be expected to be fair and

equitable in their dealings); and cases where the landlord is the employer and the tenant his employee (as the accommodation, usually on concessional rental, goes with the employment and the employer should be able to allot it without any difficulty to another employee when the occasion arises, with or without any change in the rent). In respect of existing tenancies falling under the above categories, adequate notice, say one year or so, should be given for the removal of rent control, to avoid disruption." (Paras 24, 29, 31-32) There is a case for confining rent control to the relatively modest premises occupied by the less affluent though it is difficult to draw a suitable dividing line for the purpose. We would urge the State Governments to consider this possibility Paras 33-34) Considering the urgent, need for new housing, and as an .incentive for the construction of houses, there should be an exemption from rent control on all the new construction .for a period of five years from the date of completion. (Paras. 36)

(E)In respect of existing accommodation the rented of which have remained frozen for at least five years, it is necessary to update the rents so as to neutralise 50% of the in9ation from the initial determination of the rent to the present; but to avoid the serious difficulties which might arise from a sudden, sharp increase in rentals, the updated rent should be given effect to in a staggered manner over a five-year period. At the end of that five-year period there should be a further revision to off-set of the inflation occurring during that five-year period. Thereafter, the adjusted rent should be subject to periodical revisions like all other rents. (Paras 51-53)

(F)These recommendations regarding the periodical revisions of rent and the updating of the old frozen rents should be given statutory backing. "

(5) The National Commission of Urbanisation considered the problem of housing in its report of August, 1988, Vol. 1. It was stated in the report. Housing has been recognised as the basic need, ranked next only to food and clothing. But resources allocated and policies pursued have not yielded the expected results. Forty million people (about 25 per cent of India's total urban population live in slums and under conditions of multiple deprivation-illegal land tenure, deficient environment and kutcha shelter. In addition, a significant number live in inner-city neighborhood with decaying buildings and deficient services. The supply of new shelter units is not adequate to meet incremental need-leave aside the backlog. This may lead to a doubling of slum population-75 million by 2001. Nearly sixty per cent of households cannot afford a conventional puce house and the lowest 10-15 per cent cannot even afford a serviced site. Furthermore given the resource constraints, it is not possible to provide new pusee housing for all in the near future. The emphasis of housing policy Therefore has to be on increasing shelter supply, improving; and upgrading slums and conserving the existing housing stock."

THERE are always some households which are either not interested m owning a house or just cannot afford to own one. For such households rental housing is

the only option. In 1981, 56.80 per cent of urban households were living in rented premises. The main factors inhibiting investment in rental housing and in the; maintenance of rental stock are the various rent. control laws. The Commission had made extensive recommendations concerning reforming rent laws in its Interim Report, which have been reiterated here.

"IN the case of commercial premises, as well as luxury apartments, it is clear that both landlord and tenant are often equally privileged. Therefore bearing in mind the importance of protecting the economically weaker sections from the unleashing of market forces, the Commission has the following recommendations to make:

(A)All existing tenancies should continue to enjoy tenure protections but rents should be adjusted upward such that there is a 100 per cent neutralisation of increases in the consumer price index from 1974 onwards for non-residential premises; 50 per cent neutralisation upto say, January, 1989, and 100 percent thereafter for residential premises of 80 sq. m. and more and 100 per cent neutralisation only after January 1. 1989, for residential premises under 80 sq. m.

(B)In the case of premises rented after January I, 1989. none of the provisions of the rent acts should apply, not even tenancy protection. for non-residential premises and residential premises of 80 sa. m and more. However, in the case of residential premises below 80 sq. m tenancy protection would be available but rent should be linked to a 100 per cent neutralisation of the consumer price index.

(C)Litigation should be brought out of the purview of civil courts and instead placed within the jurisdiction of quasi-judicial tribunals which should adopt summary procedures, though the writ jurisdictions of the High Courts and the Supreme Court would continue. "

(6) In the Secretaries meeting, held on 12th March, 1983, the matter was considered and in paras 3 and 7, it was stated : 3.

THE Committee endorsed the view that there was need basically to confine the protection of rent control law to the weak tenant and by and large exclude accommodationas. which were either nonresidential in nature or were being used by; better off tenants, it was agreed that large residential premises with a rental value higher than a prescribed limit should be taken outside the purview of the Rent Control Act, since these are used by relatively affluent tenants. In such cases higher rental income"s derived from the property would be subject to various taxes, and there was no need to artificially depress these incomes by application of Rent Control Act."

"7."The Committee considered the recommendations of the Each regarding the exclusion of all accommodation hired for non-residential use except for the commercial premises for small shopkeepers. From the operation of the Act, however, it was felt that the concept of small shopkeepers was difficult to define

and rent of the shop would not be a correct indicator of income and paying capacity of the shopkeeper. While agreeing with the principle of general exclusion of commercial premises from the purview of the Act, the Committee was of the view that the classification of premises to be covered under the. rent control law may be based on. floor area zone-wise, taking into account locational advantages As regards residential accommodation., there was not adequate justification for extending the protection of rent control law to premises with high rentals. It was also felt that excluding only the foreigners from the purview of the law could give rise to complaints of discrimination. The Committee was of the view that both the objectives would, be, served by excluding from the operation of the Act. residential accommodation, the standard cent of which is more than Rs. 1500 per month. Similarly, accommodation owned or managed by Government. or the local bodies may be excluded."

(7) It would appear from the contents of para 7 that the Committee was of the view that the residential accommodation may be excluded from the operation of the Act the standard lent of which is more than Rs. 1500 per month. And a distinction was also made between the residential and non-residential accomodation and the Secretaries Committee also recommended that the copies of the Economic Administration Reforms Commission on Rent Control Act may be; sent to Delhi Administration and also to all State, Governments Along with guidelines or actions to be issued by the Ministry of Works and Housing, after the approval of their Minister. The guidelines may forward following conclusions as recommendations :

"(A)The area of operation of Rent Control Act may be restricted by specifically excluding, the following from the operation of the Act -

- ALL accommodation hired for non-residential use.
- ALL residential accommodation, the standard rent of which is more than Rs. 1500.
- ACCOMMODATION owned and/or managed by Government /Municipal Boards."

(8) It would appear that the question continued to be taken into consideration as to whether certain premises are to be excluded from the operation of the Act, rental basis was also taken into consideration for excluding of buildings fetching rent up to a particular limit. And it has also been considered that the nonresidential accommodation may also be excluded from the operation of the Act and residential accommodation fetching the standard rent up to Rs. 1500 may be excluded from the operation of the Rent Control Act. It is in this background that Act 57 of 1988, whereby Delhi Rent Control Act 1958 was amended, was enacted.

(9) Section 3(c) which had been inserted by the Amending Act reads as under :

"3.Act not to apply to certain premises. Nothing in this Act shall apply :
(a) (b) (c) to any premises, whether residential or not,

whose monthly rent exceeds three thousand and five hundred rupees; or
(d)

According to the above provision, the Act shall not apply to any premises whether residential or not, whose monthly rent exceeds Rs. 3,500. It does not make any distinction between residential premises and non-residential premises but it makes a distinction between premises fetching rent up to Rs 3500 and premises fetching rent exceeding Rs. 3,500. The law would be applicable to premises fetching rent up to Rs. 3,500 but it will not apply to premises which an fetching rent exceeding Rs. 3,500 It is this classification made on the basis of the amount of rent which has been challenged in there writ petitions.

(10) Counsel for the petitioners vehemently submitted that the classification based on rent is not reasonable classification and such a classification has no nexus with the object of the Amending Act. It does not in any way rationalise the Saw by bringing about a balance between the interests of landlords and tenants nor it will give a boost to any house building activity nor it will reduce litigation between the landlords and tenants in the city of Delhi. There has been continuous increase in population. There was large scale influx of population as a result of partition of the country. There is great influx of population from rural areas to urban areas, more particularly to Delhi, and there is also explosion of population. The population of Delhi is nearin nearing .e. one crore. Land is frozen. It is not available for house building activity. On account of scarcity of accommodation, and increase of population, rent rates have escalated. If the tenants are protected by law and if they are left to be governed by the Transfer of Property Act, the tenants would be rendered home-less and shelter less and would be on the roads. it cannot be said that the tenants paying a Sum (Exceeding Rs. 3.500 as rent per month are all Affluent) are in promotion to braw in after need no protection of law. It was also pointed out by the learned counsel for the petitioners that tills court can take medical notice of the? fact that: the areas of old Delhi- and some other areas of Delhi would come under the protection "d the law " generally the rents in those areas are less than Rs. 3500 per 55 month, for residential and non-residential premises, although the tenants in those, areas are millionaires and multimillionaires, whereas areas of New Delhi would not be protected by the Rent Control legislation in view of the provisions contained in Section 3(c) and every middle-class family in New Delhi has to pay rent more than Rs. 3,500. Such tenants need protection of the law whereas such, tenants have been excluded from the benefit of the Rent Control legislation. So, rent basis is not a satisfactory method of classification, income could have been the legislation. basis of classification as was done by the jammu and Kashmir Houses and Shops Rent Control Act There the rent control law was not made applicable to a tenancy where the Income of the tenant exceeded Rs. 40,000 per annum. It was also contended by the learned counsel for the petitioners that even if it is found that a reasonable classification can be made on the baas of the amount of rent, in respect of tenancies whether residential or non-residential, still such a classification has no reasonable nexus with the object

of the Act. The object is to protect weaker sections of the community, and the middle-class families who are compelled to pay rent exceeding Rs 3,500 would not be protected. That class is not an affluent class. It was also urged that no material or data has been furnished by the Government as to on what basis the figure Rs. 3,500 was taken to be the dividing line. There is nothing sacrosanct in the figure Rs. 3,500. It was urged that the burden is on the government to establish that the classification is a reasonable one having nexus with the object sought to be achieved. Except the reports, no other material has been placed on the record to make out a case that the dividing line of Rs. 3,500 is reasonable, based on a particular data.

(11) Counsel for the petitioners referred to some case law in support of their contentions. First in the series is *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . In para 11, the principles governing a valid classification have been laid down which are as under :

(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 favor 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 discriminations 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.

" In the aforesaid case, the test to be applied is also stated as under:

IN order ,however, to pass the test of permissible classification two conditions must be fulfilled ,namely, (i) that the classification must be founded on an

intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group and, (ii) that that difference, must have a rational relation to the object sought to be achieved by the statute in question.

(12) Reference was made to a decision of the Supreme Court in *Motor General Traders and another vs. State of Andhra Pradesh and others* Air 1994 S.C.21. (2) In that Case, the validity of Section 32(b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act (15 of 1960) was challenged. That provision exempted buildings constructed on or after 26-8-1957 from operation of the Act. it was held that the provision is violative of Article. 14. It was observed in that case that the classification of buildings for the purpose of Section 32(b) does not satisfy the true tests of valid classification and the continuance of that provision on the statute books will imply the creation of the privileged class of landlords without any rational basis as the incentive to build which provided a nexus for reasonable classification of such class of landlords no longer exists by lapse of time in the case of majority of such landlords. It was stated that there cannot be any valid justification to apply the Act to a building which is 26 years old and not to apply it in the case of a building which is 26 years old. It was also considered that the anomaly that is brought about by Section 32(b) would be more pronounced when the State Government extends the Act to any part of the State for the first time. It was observed that this is a wholly insupportable classification. It was observed that what was once a non-discriminatory piece of legislation may in course of time become discriminatory and be exposed to a successful challenge on the ground that it violated Art. 14 of the Constitution. After stating the principles governing a valid classification based on *Ram Krishna Dalmia's* case (supra), it was laid down that the burden of proof regarding the Question that a piece of legislation is violative of Article 14 of the Constitution, is no doubt on the petitioners. However, Mr. Malik, learned counsel for one of the petitioners emphatically contended that the question of burden of proof may be viewed in the light of principle (f) extracted above. The court should take judicial notice of the escalation of rent rates of the residential as well as non-residential accommodations in New Delhi and the prevailing rent rates in old Delhi. It is for the Government to establish that the classification is valid and is not violative of Article 14 of the Constitution.

(13) Mr. S. C. Malik also referred to a decision of the Supreme Court in *D.S. Nakara and Others Vs. Union of India (UOI)*, , their Lordships considered the question of burden. It was observed that the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved. It was observed that,

LEGISLATIVE and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, Therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if

the State establishes not only the rational principle on which classification is founded but correlate it to the objects sought to be achieved. This approach is noticed in *Ramana Dayaram Shetty v. International Airport Authority of India* when at Scr page 1034 SCC 506, the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle, which in itself was not irrational, unreasonable or discriminatory.

Reference was made to *B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others*, It was observed,

VIEWED from whatever angle, to our minds, the action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory. The principle of *Nakara* clearly applies. The division of Government employees into two classes, those who had already attained the age of 55 on February 28, 1983 and those who attained the age of 55 between February 28, 1983 and August 23, 1984 on the one hand, and the fact. on the other and denying the benefit of the higher age of superannuation to the former class is as arbitrary as the division of Government employees entitled to pension in the past and in the future into two classes, that is, those that had retired prior to a specified date and those that retired or would retire after the specified date and confining the benefits of the new pension rules to the latter class only. Legislations to remedy wrongs ought not to exclude from their purview a few of the wronged persons unless the situation and the circumstances make the redressal of the wrong, in their case, either impossible or so detrimental to the public interest that the mischief of the remedy outweighs the mischief sought to be remedied. We do not find that there is any such impossibility or detriment to the public interest involved, in re-inducting into service those who had retired as a consequence of the legislation which was since thought to be inequitable and sought to be remedied. As observed in *Nakara*, the burden of establishing the reasonableness of a classification and its nexus with the object of the legislation is on the State

(14) The sheet-anchor of the learned counsel for the petitioners is the decision of the Supreme Court, in the case of *Rattan Arya and Others Vs. State of Tamil Nadu and Another*, In that case, the challenge was to Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. That provision excepted from the application of the Act, "any residential building of part thereof occupied by any one tenant if the monthly rent paid by him in respect of that building or part exceeds Rs. 400 The Act was applicable to all residential and non-residential buildings but the application of the Act was taken away in case of residential building fetching rent exceeding Rs. 400. After tracing the history of legislation in the State of Tamil Nadu and after considering the long title of the Act and preamble to the Act, and after considering the scheme and provisions of the Act, their Lordships observed as under :

THUS we see so far, that the scheme and structure, the policy and the plan of the

Act, as perceivable from these provisions, are unmistakably aimed at regulating the conditions of tenancy controlling the rents and preventing unreasonable eviction of tenants of all residential and non-residential buildings. For the advancement of these objects, tenants are invested with certain rights and landlords are subjected to certain obligations. These rights and obligations, for example, the right of a tenant not to be evicted and the prohibition against a landlord from seeking eviction except upon specified grounds, the right, (if a tenant) not to pay rent in excess of the fair rent and the obligation of a landlord not to demand such excess rent, the right of a tenant to obtain a receipt for the actual amount of rent and advance paid by him and the right of a tenant to enjoy and the obligation of a landlord not to interfere with the enjoyment of the amenities previously enjoyed by the tenant, are rights and obligations which, in any modern civilised society, attach themselves to tenants and landlords of all buildings, residential or non-residential, low rent or high rent. They are not rights which are peculiarly capable of enjoyment by occupants of non-residential buildings only as against occupants of residential buildings or by occupants of low rent buildings only as against occupants of high rent buildings. None of the main provisions of the Act, to which we have referred, make any serious distinction between residential and non-residential buildings.

Section 30(ii) denied the benefits which were conferred generally to all tenants of residential buildings fetching a rent in excess of 400 rupees. The tenant of a non-residential building irrespective of the rate of rent whether Rs. 50, Rs. 500 or Rs. 5,000 was protected, but the tenant of a residential building was only protected if the rent does not exceed 400 rupees. Tenants paying more than 400 rupees were deprived of the benefits of the Act. The controversy was considered in the following manner :

DOES it mean that the tenant of a residential building paying a rent of Rs. 500 is better able to protect himself than the tenant of a non-residential building paying a rent of Rs. 5,000 per month? Does it mean that the tenant of a residential building who pays a rent of Rs. 500 per month is not in need of any statutory protection? Is there any basis for the distinction between the tenant of a residential building and the tenant of a non-residential building and that based on the rent paid by the respective tenants? Is there any justification at all for picking out the case of tenants of residential buildings paying a rent of more than four hundred rupees per month to deny them the rights conferred generally on all tenants of buildings residential or non-residential by the Act? Neither from the Preamble of the Act nor from the provisions of the Act has it been possible for us ever to discern any basis for the classification made by S. 30(ii) of the Act.

(15) On behalf of the petitioners, emphasis was placed on the observations made by their Lordships of the Supreme Court in the first part extracted above that rights and obligations which arise under the provisions of the Act have relation to all buildings residential or non-residential low rent or high rent and further

emphasis has been placed on the questions "Does it mean that a tenant of residential building who pays rent of Rs. 500 per month is not in need of a statutory protection". Similarly in the present case, a question has been nosed whether a tenant of a residential or non-residential building who pays more than Rs. 3,500 as rent, does not need any statutory protection.

(16) Their Lordships in that case observed that tenant of both the kinds equally need benefits and protection of the Act. In para 4 of the report, it was also observed that it is difficult to understand how the exclusion of the tenants who pay higher rent from the protection of court by the Act will have to protect tenants belonging to the weaker sections of the community. It is one thing to say that the tenants belonging to the weaker section of the community need protection and an altogether different thing to say that denial of protection to tenants paying higher rent will protect the weaker sections of the community. It was also observed that a tenant of a non-residential building who is in a position to pay a rent of Rs. 500 per month is afforded full protection by the Act, whereas inconsistently enough, the tenant of a residential building who pays a rent of Rs. 500 is left high and dry. It was also stated that it certainly cannot be pretended that the provision is to protect the weaker sections only. The matter was also considered in view of the passage of time. It was observed that by the passage of time, the protection of the Act has made the ceiling utterly unreal. Their Lordships said that we are entitled to take judicial notice of the enormous multifold increase of rent through out the country, particularly in urban areas. It is common knowledge today that accommodation which one could have possibly got for Rs. 400 per month in 1973 will today cost five times more. In these days of day-to-day escalation of rentals, any ceiling such as that imposed by Section 30(ii) in 1973 can only be considered to be totally artificial and irrelevant today. Their Lordships then considered the decision in *Motor General Traders and another v. State of Andhra Pradesh and others* Air 1984 S C. 21 (supra), and also the decision in *Raval & Co. vs. Ramachandran* AIR 1974 S. C. 819. (6) After extracting a passage from *Raval & Co.*'s case, their Lordships said that the observations made in that case were made in 1974 soon after the amendment of the Act of 1973 and they were made in a different context not in the context of the challenge to the validity of the provisions as violative of Article.

(17) So far as this authority is concerned, this authority proceeded to consider the classification based on nature of the building, residential or non-residential and only residential building fetching rent exceeding Rs. 4.00 were excluded from the operation of the Act. It appears that the Legislature was aware of this decision of their Lordships of the Supreme Court and did not accept the recommendations of the Committee made on the basis of the classification of nature of premises whether residential or non-residential. *Rattan Arya*'s case also proceeded on the basis that the law was enacted in 1973 and thereafter escalation of rentals was taken judicial notice of and in that light also the dividing line was considered to be irrelevant and artificial, and the observation made in *Raval & Co.*'s case (supra) although not made in the context of Article 14, but

were considered to have been made soon after the amendment of the Act of 1973, i.e., in 1974. This authority in Rattan Arya's case was considered by their Lordships of the Supreme Court in Delhi Cloth and General Mills Ltd. Vs. S. Paramjit Singh and Another, . In para 6. their Lordships distinguished Rattan Arya's case (supra) on the ground that there was no reason why nonresidential building leased on rent not exceeding Rs. 400 per month or less should be treated differently from residential buildings of like rent or why in the case of residential buildings, the limit should have been limited to Rs. 400 per month. To so restrict the protection of the Act was an unreasonable classification. Motor General Traders v. State of Andhra Pradesh (supra) was also distinguished. It was stated that to arbitrarily prescribe a cutoff date, i.e., August 26, 1957, for denying the protection of the Act, without regard to the age of the building or to the extent of realisation of the investment by the owner was an unreasonable classification. case has been cited by the learned counsel for the petitioners as well in order to show that classification can be made on the basis of income. That would be a realistic approach. As already stated above, in the State of Jammu and Kashmir, there was a provision contained in Section 1(3) to the effect that notwithstanding anything contained in sub-section (2), nothing in the Act shall apply to any tenancy in respect of any house or shop where the income of the tenant, whether accruing within or outside," to the State, exceeds rupees 40,000 per annum. Income was to mean net income.

(18) In Delhi Cloth and General Mills, Ltd. (supra), their Lordships observed in paras 9 and 11, as under :

THE object of the enactment in question is undoubtedly to protect the weaker section of tenants from, unreasonable eviction and unfair rent. The legislature, at the same time, did not desire to discourage persons from constructing buildings. The twin legislative object is the protection of economically weaker tenants and encouragement of construction of buildings. While protection. is thus afforded to deserving tenants, construction of new buildings is encouraged by exempting buildings occupied by richer classes of tenants from, the provisions of the Act. While a building is covered by the Act when occupied by a tenant whose annual net income is less than the specified amount., the protection is withheld when the same building is occupied by a richer tenant whose annual net income is higher than the specified amount. Where a building is occupied by more than one tenant, the applicability of the Act to each of them would depend upon his net income. It is the tenant that the legislature intends to protect and not the landlord or his building. The test adopted by the legislature for this purpose in with reference to the tenant's net income, whether accruing inside or outside the State as on the date of the landlord's application for eviction as well as on the date of the decree for eviction. The legislative object is, Therefore, to protect tenants who are economically weaker in comparison to these affluent tenants outside the specified limit of income, and at the same time to encourage construction of new buildings which will result in better availability of accommodation employment opportunity and economic prosperity. This is a

reasonable classification which does not suffer from the vice of being too vague or broad Classification based on income is well known to law. Such classification has a reasonable relation to the twin legislative a object mentioned above. We see nothing unreasonable or irrational or unworkable or vague or unfair or unjust in the classification adopted by the impugned provision.

11.The legislature in its wisdom; is presumed to understand and appreciate correctly the problems of the State and the need of the people made manifest by experience. Absent blatant disregard of constitutional provisions, legislative innovation by social and economic experimentation must be permitted to continue with judicial interference.

(19) Learned counsel for the respondents, on the other hand. submitted that the classification based on rentals is a reasonable classification. Firstly, the constituted of the law should be presumed and further with regard to the dividing line, the matter lies within the legislative policy and wisdom of the Legislature. Even if it is taken that in some areas, the tenants are affluent, still they are being protected by law and a different classification should have been adopted so that the affluent tenants could be denied protection in those areas as well. In this connection, learned counsel, for the respondents submitted that, perfection may not be possible and the dividing line cannot be followed with a mathematical accuracy and classification based on residential and non-residential buildings has not been adopted in Delhi Rent Control Amending Act and the provision of Section 3 (c) has been uniformly made not applicable to all premises which fetch rent exceeding Rs. 3.500. Tn support of their contention, learned counsel placed reliance on Prabhakaran Nair and Others Vs. State of Tamil Nadu and Others, In that case. challenge was to Section 14(1)(b) There was a provision for eviction on the ground of repairs and also on the ground of reconstruction. There was provision for re-induction of tenants made in case of repairs, but there was absence of such provision in the case of reconstruction of premises. It was also held that Section 14(l)(b) is not rendered discriminatory on that account. Their Lordship"s considered the decision in Raval & Co."s case (supra). The following passage from that decision was extracted :

ALL these show that the Madras Legislature had applied its mind to the problem of housing and control of rents and provided a scheme of its own It did not proceed on the basis that the legislation regarding rent control was only for the benefit of the tenants. It wanted it to be fair both to the landlord as well as the tenant. Apparently it realized that pegging of the rents at the 1940 rates had discouraged building construction activity which ultimately is likely to affect everybody and Therefore in order to encourage new constructions exempted them altogether from the provisions of the Act. It did not proceed on the basis that all tenants belonged to the weaker section of the community and needed protection and that all landlords belonged to the better off classes. It confined the protection of the Act to the weaker section paying rents below Rs. 250. It is clear, Therefore, that the Madras Legislature deliberately proceeded on the basis

that fair rent was to be fixed which was to be fair both to the landlords as well as to the tenants and that only the poorer classes of tenants needed protection. The facile assumption on the basis of which an argument was advanced before the Court that all Rent Acts are intended for the protection of tenants, and, Therefore, this Act also should be held to be intended only for the protection of tenants breaks down when the provisions of the Act are examined in detail. The provision that both the tenants as well as the landlord can apply for fixation of a fair rent would become meaningless if fixation of fair rent can only be downwards from the contracted rent and the contract rent was not to be increased. Of course, it has happened over the last few years that rents have increased enormously and that is why it is argued on behalf of the tenants that the contract rents should not be changed. If we could contemplate a situation here rents and prices are coming down this argument will break down. It is a realisation of the fact that prices and rents have enormously increased and Therefore if the rents are pegged at 1940 rates there would be no new construction and the community as a whole would suffer that led the Madras Legislature to exempt new buildings from the scope of the Act. It realised apparently how dangerous was the feeling that only "fools build houses for wise men to live in." At the time the 1960 Act was passed the Madras Legislature had before it the precedent of the Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956. That Act provides for fixation of fair rent. It also provides that the contract rent, if lower, will be payable during the contract period. Even if the contract rent is higher only the fair rent will be payable. After the contract period is over only the fair rent is payable. The Madras Legislature having this Act in mind still made only the fair rent payable and not the contract rent if it happens to be lower. It is clear, Therefore, that the fair rent under the present Act is payable during the contract period as well as after the expiry of the contract period.

(20) An argument was advanced in that case that the aforesaid provision is violative of Article 14 if compared with Rent Acts of other States. It was stated that the provisions of the Act imposed restrictions on the landlord's right under the common law or the Transfer of Property Act to evict the tenant after termination of his tenancy. The rationale of these restrictions on the landlord's rights is the acute shortage of accommodation and the consequent need to give protection to the tenants against unrestricted eviction. The nature, the form and the extent of the restrictions to be imposed on the landlord's right and the consequent extent of protection to be given to the tenant is a matter of legislative policy and judgment. It is inevitably bound to vary from one State to another depending on local and peculiar conditions prevailing in the State and the individual State's appreciation of the needs and problems of its people. Their Lordships said that when we are confronted with the problem of a legislation being violative of Art. 14, we are not concerned of the wisdom or lack of legislative enactment but we are concerned with the illegality of the legislation. There may be more than one view about the appropriateness or effectiveness or extent of the restrictions. There may be also more than one view about the

relaxation of the restrictions on the landlord's right of eviction.

(21) The court also referred to the observations made in *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, . It was observed that the courts are not concerned with the unwisdom of legislation. In short, unconstitutionality and not unwisdom of a legislation is the narrow area of judicial review. The court further observed.

THIS court approved the above passage from the American Jurisprudence and emphasised that in a classification or governmental purposes there cannot be an exact exclusion or inclusion of persons and things. It is important to bear in mind the constitutional command for a State to afford equal protection of the law sets a goal not attainable by the invention and application of a precise formally. Therefore, a large latitude is allowed to the States for classification upon any; reasonable basis.

Their Lordships also referred to a case in re. *In Re: The Special Courts Bill, 1978*, , and considered the statement made by Chandrachud, C. J. that,

THE classification need not be constituted exact or scientific exclusion nor insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification, Therefore, is justified if it is not palpably arbitrary.

Reference was also made to *Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others*, Their lordships emphasised that, "It is entirely for the Legislators to decide whether any measures, and if so, what measures are to be adopted for remedying the situation and for ameliorating the hardship of tenants. The legislature may very well come to a conclusion that it is the shortage of buildings which has resulted in scarcity of accommodation and has created a situation where the demand for accommodation is far in excess of the requisite supply, and, it is because of such acute scarcity of accommodation the landlords are in a position to exploit the situation to the serious detriment of the tenants. The Court observed at pages 226 to 227 (of SCC) : (at pp. 246-247 of AIR) of the report as under -

THE Legislature in its wisdom may properly consider that in effecting an improvement of the situation and for mitigating the hardship of the tenanted class caused mainly due to of buildings, it will be proper to encourages construction of new buildings as construction of new buildings will provide more accommodation, causing the situation to a large extent, and will ultimately result in benefiting the tenants. As in view of the rigours of Rent Control Legislation, persons with means may not be inclined to invest in construction of new houses, the Legislature to attract investment in construction of new houses, may consider it reasonable to provide for adequate incentive so that new construction may come up. It is an elementary law of economics that anybody who wants to invest, his money in any venture will expect a fair return on the investment made. As acute scarcity of accommodation is to an extent responsible for the

landlord and tenant problem, a measure adopted by the Legislature for seeking to meet the situation by encouraging the construction of new buildings for the purpose of mitigating the hardship of tenants must be considered to be a step in the right direction. The provision for exemption from the operation of the Rent Control Legislation by way of incentive to persons with means to construct new houses has been made in S. 1(3) of the Act by the Legislature in the legitimate hope that construction of new buildings will ultimately result, in mitigation of the hardship of the tenants. Such incentive has a clear nexus with the object to be achieved and cannot be considered to be unreasonable or arbitrary. Any such incentive offered for the purpose of construction of new buildings with the object of easing the situation of scarcity of accommodation for accurate the conditions of the tenants cannot be said to be unreasonable, provided the nature and character of the incentive and the measure of exemption allowed are not otherwise unreasonable and arbitrary. The exemption to be allowed must be for a reasonable and definite period. An exemption for an indefinite period or a period which in the facts and circumstances of any particular case may be considered to be unduly long, may be held to be arbitrary. The exemption must necessarily be effective from a particular date and must be with the object of promoting new constructions. With the commencement of the Act, the provisions of the Rent Act with all the restrictions and rigours become effective. Buildings which have been constructed before the commencement of the Act were already there and the question of any kind of impetus or incentive to such buildings does not arise. The Legislature, therefore, very appropriately allowed the benefit of the exemption to tower of distinguishing and classifying persons or

(22) In *Kewal Singh Vs. Smt. Lajwanti*, Section 25-B of the Delhi Rent Control Act was held to be not violative of Article 14 as this provision provided for summary procedure. It was observed that the classification made by Section 25-B is a reasonable classification and cannot be said in any way to be discriminatory and arbitrary.

(23) In *H.C. Sharma v. Life Insurance Corporation of India* ILR (1973) Delhi 90(13) the question was whether restriction placed on the right of the landlord to evict a tenant of a non-residential premises is discriminatory. It was held that the owners of residential and non-residential buildings each stand out as a class by themselves. The impugned provisions make no distinction inter se between the two classes of properties or their landlords. The impugned provisions take within their fold all persons similarly situated. It can be said that nonresidential premises is a source of livelihood so tenants of such premises need protection.

(24) Reference has also been made to *Lloyd Morey v. George W. Dond*, 1, Led 2d 1485 at p. 4190.(14) The American Supreme Court summarised the principle thus :

" 1.The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done

only when it is without any reasonable basis and Therefore is purely arbitrary.

2.A classification having some reasonable basis docs not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

3.When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time of the law was enacted must be assumed.

4.One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

(25) In Federation of Hotel & Restaurant Association of India etc. v. Union of India and others, to application of the Expenditure Tax Act, 1987 was confined to hotels where the room charges" for any unit of residential accommodation are Rs. 400 or more per day per individual, while expenditure of greater magnitude and quantum incurred in other hotels and restaurants is not exigible to the tax, either because such room charges are less than Rs. 400 or because the establishment which though providing food and drink and other services envisaged by Sec. 5, may not provide residential accommodation. The classification was held to be not violative of Art. 14. In paras 51, 54 and 55 some passages have been extracted from some decisions and treatise which in our opinion are most relevant and apt which we profitably reproduce:

IN State of Gujarat v. Sri Ambika Mills Ltd., Mathew J. sa. : [SCC pp. 677-78, para 65, (16) quoting Justice Frankfurter in Morey v. Found 254 Us 457]. Statutes are directed to less than universal situations. Law reflects distinctions that exist in fact or at least appear to exist in the judgment of legislatures those who have the responsibility for making law fit fact. Legislation is essentially empiric. It addresses itself to the more or less crude outside world and not to the neat, logical models of the mind. Classification is inherent in legislation. To recognize marked differences that exist in fact is living law to disregard practical differences and concentrate on some abstract identities is lifeless logic.

and concluded (SOC p. 678, para 67 : Scr p.784)

IN the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity for economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events-self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.

It is equally well recognised that judicial veto is to be exercised only in cases that leave no room for reasonable doubt. Constitutionality is presumed. These words

of James Bradley Thayer may be recalled:

THIS rule recognises that, having regard to the great. complex ever-unfolding exigencies of government, much which will seem unconstitutional one mail or body of men, may reasonably not seem so to another, that the Constitution often admits of different interpretations; that there is often a range of choice and judgment; that in such cases the Constitution does not. impose upon the legislature any one specific opinion, but leaves open this range of choice; and that whatever choice is rationale is constitutional.

Thayer also referred to the words of a Chief Justice of Pennsylvania way back in 1811 which are worth recalling:

FOR weighty reasons, it has been assumed as a principle in constitutional construction by the Supreme Court of the United States, by this Court and every other court of reputation in the United States, that an Act of the legislature is not to be declared void unless the violation of the Constitution is so manifest as to leave no room for reasonable doubt.

(26) A few cases have been cited where classification made on rental basis has been held to be valid. In *Sha Manumal Misrimal v. Natha Rukmani Ammal*. 1964 MLJR 312,(17) the validity of Sec. 30 of the Madras Buildings (Lease and Control) Act was challenged. The classification of protected buildings and exempted buildings on the basis of the rent was held to be a reasonable classification consistent with the object of the Act, and was held not violative of Article 14. Section 30 did not apply to any residential building, the rental value of which exceeds Rs. 350 per mensem and to any non-residential building the rental value of which exceeds Rs. 400 per mensem. The provisions were held to be valid. The view taken in the aforesaid Single Bench decision of the Madras High Court was confirmed by the Full Bench in *Raval and Co. Vs. K.G. Ramachandran and Others*, Their Lordships considered the question in paras 36 and 37 as under :--

" IN the present matter, it is difficult even to appreciate the plea of hostile discrimination urged on behalf of Messrs. Raval and Co., who seek to impugn the Amending Act (Act 1.1 of 1964) on this ground. Firstly, the party advancing this plea is a tenant and it is urged that landlords were subject to this hostile discrimination; it is not a landlord who is coming forward with the plea that he has been treated differently from those similarly situated. Next. the classification of "residential" and "non-residential" tenancies has been adopted in many Tenancy enactment, and is a well recognised and rational principle of differentiation. Actually, this has been conceded by learned counsel. But, if this be conceded, and as the learned Advocate General rightly stressed, hostile discrimination can be conceivably urged only if persons of this class, (landlords of non-residential tenements) has been differentially treated. Certainly the argument is sustainable, that, on the contrary, it was the 1960. Act which prescribed some differential treatment with regard to landlords of non-residential

premises; this was in the sense that only landlords of premises with rentals of Rs. 400 and below were brought within the scope of the legislation.

In our view, there is no basis for the plea of hostile discrimination or the denial of equal protection of the law, either with regard to the Amending Act (Act 11 of 1964) or with regard to the earlier Rent Control enactments, including the Act of 1960. These successive enactments have embodied a perfectly rational principle of classification, and the criteria and their application have been evolved.. from time to time, in accordance with the needs of this class of citizens. There is also a clear and discernible nexus between the object of the measure, and the differential themselves. As the measure stands today if any group of tenants has a right to complain, it is the group of tenants occupying residential buildings with rental of over Rs. 250.00 per mensem who do not have the protection of these beneficial laws at all. The entire argument has to be repelled in the context of an evolving Democratic State with far-flung needs for legislation based upon intelligible differentia, in relation to the objects of such legislation. In *Sha Manumal Misrimal v. Natha Rukmani Ammal* 1964 1 Mad. Lj 312 Venkatadri, J. has held that S. 30 of Act 18 of 1960 does not violate the equality guaranteed under Art. 14 of the Constitution and is not void or ultra virus and that the classification of protected buildings and exempted buildings on the basis of the rent is a reasonable one, consistent with the object of the Act, and is not discriminatory,

(27) In *S. Shankara Rao v. The Govt. of Andhra Pradesh and others.* 1985 (1) A. P. L. J. 352. (19) the validity of Government Notification Ms No. 636. General Administration dated 29-12-83 was challenged. There the dividing line on the basis of rental of Rs. 1000.00 was held to be rational. Reference was also made to *Shankar Rao v. Govt. of A.P.* 1985. (3.) (HC) A. P. L. J. 609, (20) which is an appeal against the aforesaid S. B. decision. It was held in that case as under:

WHILE the Ap Buildings (Lease, Rent and Eviction) Control Act is intended to protect the interests of tenants Sec. 26 of the Act in particular recognises the need to exempt certain categories of buildings from the operation of the provisions of the Act. In granting such exemption, the State Government is bound to take into account the social requirements and determine the categories of persons who can be excluded from the purview of the Act. The State Government is satisfied that the protection is needed to persons belonging to small income groups who cannot afford to pay rent exceeding Rs. 1000/- per month. It is this category of tenants who should be saved from exploitation by the landlords and from unauthorised eviction from the houses, in their occupation. It cannot be said that the State Government was in error in taking this social problem as a relevant circumstance for the purpose of conferring exemption to buildings fetching rent of Rs. 1,000 and less per month.

(28) There were similar provisions in Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. A notification was issued u/s 26 exempting buildings fetching rent of more than Rs. 1000.00. It was held that the notification 19 valid.

Rattan Arya's case, Motor Trader's case, Shankar Rao's case and M/s. Punjab Tin Supply Co.s case were considered. This question was again considered in G. A. Joseph v. The State of A.P. & others, C.J. C. J. 1988 (VOL. 1), p. 16.(21)

(29) If the provision of Sec. 3(c) is considered in the light of the principle enunciated in the decisions referred to above, it would appear that the Legislature intended to exclude the operation of the Act where the premises fetch rent exceeding Rs. 3,500.00. The limit placed by the Secretaries Committee Report was raised to Rs. 3,500/- from Rs. 1,500/- and distinction between residential and non-residential premises was done away with. Consideration on the basis of rent has been an accepted practice in connection with valuation of house accommodation for income tax purposes. Thus, the tenants paying rent exceeding Rs. 3,500.00 can be taken to be tenants who need no protection. Rent Control legislation is a special legislation and the general legislation is the Transfer of Property Act. Prior to the enactment of Rent Control Act, the landlord and tenant were governed by Transfer of Property Act. In order to meet the situation which has arisen on account of the scarcity of accommodation and escalation of rents, special laws in the nature of rent Acts were enacted. The Legislature in its wisdom thought it proper that the affluent tenants or tenant whose paying capacity is more than Rs. 3,500.00, then they can be left to be governed by the general law and not by the special law. If the tenants can pay more than Rs. 3,500/- per month for any premises, then it would mean that their income is in no case less than Rs. 10,000.00 per month. It may go up to Rs. 30,000.00 or even more. This matter can be examined in the light of Rule-3 of the Income- tax Rules, 1962 where the mode of valuation of perquisites in the form of rent of residential accommodation is provided. If one pays 20 per cent of his income to the tune of Rs. 3,500.00 or more, the monthly income would come to Rs. 17,500.00. In Mohd. Ismail Vs. Shri M.K. Rai and Others, per cent of the income payable on account of rent was considered as reasonable. There the Competent Authority came to the conclusion that the total income of the petitioner and members of his family was Rs. 650.00 per month. From that amount, if the petitioner was to pay 12 per cent by way of rent which would come to Rs. 78.00 per month he could well afford to take another premises of more. or less the same dimension. The approach was considered to be reasonable.

(30) In any case. the yearly income of a tenant paying rent more than Rs. 3,500.00 per month would be in six figures. When such is the paying capacity of a tenant, in respect of such tenants, the landlords would come forward to let out the vacant premises in their possession. They would feel secure that their premises can be taken possession of back by having recourse to ordinary remedy in law after determination of tenancy. They may even be prepared to invest their money in house building activity. If premises can be got vacated, it may boost building activity. With regard to the classification based on income, it is urged that in a city like Delhi, where the sources of income of an individual are many and varied, classification would not be satisfactory. Income may vary every year

and besides that the question would arise, whether income may be taken to be assessed income and whether income that has escaped assessment is to be included and the matter may not be decided by the tax authorities for long. According to the learned counsel, applicability of law should be certain and definite. In case of rent, it would be definite and certain so the question of applicability or otherwise of the Rent Act would be certain. It is not necessary for us to examine it in this. writ petition.

(31) The question of burden to establish that the provision of Section 3(c) is not violative of Article 14, is not of much importance. Initial burden in such cases, would be on the petitioners unless on the face of it. the classification appears to be obnoxious, unreasonable or arbitrary. In that situation, it can be said that the burden would be on the State to produce necessary materials and data to show that the classification is based on positive material. In the present case, it cannot be said that the classification is ex facie abhorrent or repugnant. What we have to see is whether classification is reasonable or not. It is not to be seen that there could be better classification or a different criteria could be adopted for classification or some exceptions should have been provided while making the classification. Mr. Choudhary appearing for one of the petitioners, submitted that tenants in the nature of institutions like orphanages.. hospitals, schools, other charitable institutions or institutions with whom. the poor labouring and toiling class is employed should have been excepted from the provisions of Sec. 3(c). Suffice it to say that it is the matter within the exclusive domain of the legislature and as exceptions have not been made, the validity in our opinion is not affected. Same is our answer to the point raised on behalf of petitioners that certain class of affluent tenants .have been left untouched. There may be affluent tenants paying rent of less than Rs. 3,500.00 per month who do not deserve protection under the Rent Act and who will continue to enjoy the protection. It is for the legislature to consider this for future. The existing legislation cannot be faulted on this ground alone. We may also note that the object of the amendment is not protection of weaker sections of the society. One of the objects, as already noticed, is striking a balance between the interests of landlords and tenants. In this connection, some benefit is given to landlords whose rents are less than Rs. 3,500[- in the shape of provision of revision of rent. Certain class of landlords have been allowed the benefit of speedy recovery of possession under Sec. 14-A, B, C, D, etc. Right; of second appeal to High Court has been curtailed with the deletion of Section 39 of the Delhi Rent Control Act, 1958. Thus, we are of the opinion that Section 3(c) of the Delhi Rent Control Act, 1958, as amended by Act 57 of 1988 is neither discriminatory nor arbitrary or violative of Article 14 of the Constitution. The classification is reasonable having nexus with the objects sought to be achieved

(32) In some of the writ petitions, a question has been raised as to whether Section 3(c) has prospective operation or retrospective. This question has already been decided by this Bench in Civil Revision No. 470 of 1987, Mrs. Nirmaljit Arora vs. M/s. Bharat Steel Tubes Ltd., on 25th of January, 1991. This

question is thus covered by that decision. It has been held that the provision of Section 3(c) has only prospective operation .In the result, these writ petitions have no force, so they are hereby dismissed. Parties are left to, bear their respective costs.