

(2000) 06 KL CK 0061
In the High Court Of Kerala
Case No : W.A. No. 782/99

George, C.L. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-06-2000

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 24
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 14, 19(1), 21, 227
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(4), 14, 17, 3, 30
Kerala Land Reforms Act, 1963 — Section 108(3), 125, 125(1)

Citation : (2000) 4 RCR(Civil) 113 : (2000) 2 RCR(Rent) 338

Hon'ble Judges : A.V. Savant, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : T.R.G. Warriar and R. Ramadas, for the Appellant; K. Sasikumar, Government Pleader Respondents 1 and 2, N.P. Samuel, Respondent 4 and A.P. Chandrasekharan and Pushparaj, Respondent 3, for the Respondent

Judgement

A.V. Savant, C.J.—Heard all the learned Counsel; Mr. T.R.G. Warriar for the Appellants, Mr. Sasi Kumar Senior Government Pleader for Respondents 1 and 2, Mr. Pushparaj for the 3rd Respondent and Mr. N.P. Samuel for Respondent No. 4.

2. This is an appeal against the judgment dated 3rd March, 1999 of the learned Single Judge in O.P. No. 5485 of 1999. The Original Petition was filed by the Appellants who are the co-owners of several shops in Thrissur Town. The shops have been let out to several parties on monthly rent. Respondent Nos. 3 and 4 in the present appeal are Respondent Nos. 3 and 4 in the Original Petition, who are the tenants in the shops owned by the Appellants. The relief prayed for in the Original Petition is for setting aside the judgments and Orders Ext. P-1 dated 30th November 1998 passed by the Principal Munsiff, Trichur in O.S. No. 2121 of 1997 and Ext. P-2 dated 30th January 1999 passed by the 1st Additional Munsiff, Thrissur in O.S. No. 2120 of 1997. Ext. P-1 is the judgment delivered by the trial court in a suit filed by the Appellants for enhancement of rent against

Respondent No. 3 Kavitha Foot Wear. Ext. P-2 is the judgment delivered by the trial Court in the suit filed by the Appellants for increase in the rent against Respondent No. 4 United Agencies. In both the suits an issue was framed as to whether the suit was maintainable in law. In Ext. P-1 the trial Court has upheld the objection raised by the Defendant-Respondent No. 3 that the civil court did not have jurisdiction to fix the fair rent or enhance the rent already agreed between the parties.

3. In the impugned decision of the learned Single Judge, a reference is made to the decision of a Division Bench of this Court in *Issac Ninan v. State of Kerala* 1995 (2) KLT 848 where this Court took the view that the provisions of Sections 5, 6 and 8 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short, "Rent Act") put together were ultra vires the provisions of Articles 14 and 21 of the Constitution of India. It was held that the said provisions imposed arbitrary and unreasonable restrictions on the right of the landlord to carry on his business within the meaning of Article 19(1)(g) of the Constitution. The combined operation of Sections 5, 6 and 8 of the Rent Act resulted in gross invasion on the right of a landlord to carry on business. The prohibition contained in Section 6 of the Rent Act was also held to be an unreasonable restriction on the right to livelihood envisaged in Article 21 of the Constitution. The ban against the landlord that he shall not receive anything in excess of the fair rent even from the willing tenant (who is ready to voluntarily pay in accordance with the prevailing rate of rent in the locality) is an unreasonable restriction on the right to carry on business envisaged in Article 19(1)(g) of the Constitution. Since it was held that Section 5 could not stand alone without subsidiary and incidental provisions for periodical revision of the fair rent, the legislative scheme provided through Sections 5, 6 and 8 is a package and was mutually dependant. In the result, it was held that the said provisions do not stand the test of reasonableness and were, therefore, held to be ultra vires the provisions of the Constitution and were declared as void.

4. It is common ground before us that there is no appeal against the said judgment and the State has accepted the judgment as final and binding. In fact in the companion Original Petition, O.P. No. 19605 of 1999 a statement dated 10th December, 1999 had been filed on behalf of the State Government on 16th December, 1999 duly signed by the Deputy Secretary to Government, Housing Department, stating that in view of the aforesaid judgment in *Issac Ninan's* case 1995 (2) KLT 848 the Government has taken steps to amend the existing Rent Act. The amendment is expected to contain new provisions for fixing standard and fair rent and mitigate the grievances of landlords and tenants. It is further stated that "a comprehensive proposal for the amendment as to be done with great care and attention. Before doing so, the Government have to consider and take care all the aspects of the matter and the issues involved. Moreover the process of amending act is a legislative process. As such the Government is unable to fix any time limit for this purpose. The Government will take all efforts to amend the act as early as possible". We will deal with the said Original Petition

separately.

5. The view expressed in Issac Ninan's case 1995 (2) KLT 848 was reiterated by another Division Bench in Jan Enterprises v. Aegee Enterprises ILR 2000 Ker 419 : 2000 (1) KLT where this Court held that when a law was declared as unconstitutional, its normal impact was that the statute has to be read as if the defective sections were not there in the Act at all. Since this Court in Issac Ninan's case 1995 (2) KLT 848 had struck down Sections 5, 6 and 8 of the Rent Act, it was clarified in the case of Jan Enterprises ILR 2000 Ker 419 : 2000 (1) KLT that the sections struck down were not in the said Act ever since its commencement. The Rent Control Court had therefore, no jurisdiction to fix the fair rent even prior to the date of the judgment in Issac Ninan's case 1995 (2) KLT 848 which was decided on the 2nd November 1995. In Jan Enterprises' case ILR 2000 (1) Ker 419 : 2000 (1) KLT the landlords had challenged the orders passed by the Rent Control Court on 20th December, 1989 and by the appellate Court on 18th August, 1990. Since the relevant sections were struck down as unconstitutional in Issac Ninan's case 1995 (2) KLT 848 the view expressed in Jan Enterprises' case ILR 2000 Ker 419 : 2000 (1) KLT is that the authorities under the Rent Act had no jurisdiction even prior to the date of the judgment of this Court in Issac Ninan's case 1995 (2) KLT 848. In this view of the matter, the decision of the Rent Control Court rendered on December 20, 1989 and by the Appellate Court on 18th August, 1990 were held to be invalid and set aside. The decision in Jan Enterprises' case ILR 2000 Ker 419 : 2000 (1) KLT only deals with the effect of the earlier decision in Issac Ninan's case 1995 (2) KLT 848 on orders which were passed at an earlier date under the provisions which were struck down later.

6. The view expressed in Issac Ninan's case 1995 (2) KLT 848 has further been reiterated by another Division Bench on 9th February 2000 in O.P. No. 25855 of 1999. In that case, the Division Bench took note of the decisions in Issac Ninan's case 1995 (2) KLT 848 and Jan Enterprises' case ILR 2000 Ker 419 : 2000 (1) KLT and held that once the law was declared as unconstitutional, the court had no jurisdiction to decide the case on the basis of the sections which were struck down as ultra vires the provisions of the Constitution. In this view of the matter O.P. No. 25855 of 1999 was dismissed.

7. Mr. Warriar, the learned Senior Counsel appearing for the Appellants has contended that there is some confusion in the minds of the subordinate courts in the State as a result of the decision of this Court in Issac Ninan's case 1995 (2) KLT 848 which has struck down Sections 5, 6 and 8 of the Rent Act as unconstitutional. Some trial courts have taken the view that a substantive suit u/s 9 of the Code of Civil Procedure, 1973 would be maintainable in the absence of any specific provision in the Rent Act excluding the jurisdiction of the civil court, particularly having regard to the fact that the provisions of Sections 5, 6 and 8 of the Rent Act have been struck down. Some other courts, as in the present case, have taken the view that the result of the decision in Issac Ninan's case 1995

(2) KLT 848 striking down Sections 5, 6 and 8 of the Rent Act would result in the civil court not being able to entertain the suit for any of the reliefs which could otherwise have been granted by the Rent Control Court under Sections 5, 6 and 8 of the Rent Act. For instance, in the impugned order Ext, P-1 there was a specific issue framed as to whether the suit was maintainable under law. This was issue No. 1. While answering this issue in para 6 of the judgment, the trial Court has referred to the decision of this Court in Issac Ninan's case 1995 (2) KLT 848 and has thereafter held as under:

This Court cannot take jurisdiction under Section, 9 of the CPC because there is a legislation as to fixation of fair rent by introducing a Rent Control Act namely Kerala Buildings (Lease and Rent Control) Act. Truly Sections 5, 6 and 8 which enables a Rent Control Court to fix a fair rent were struck out by the Hon'ble High Court with a direction to legislate appropriate legislation to claim reasonable rent by the landlord. Thus, the Sections above referred being struck out as ultra vires, it is the duty of the legislature to enact provisions in the Act itself to fill up the lacuna. Being struck out those provisions, a civil court does not get jurisdiction as far as the building in question comes under the purview of the Kerala Buildings (Lease and Rent Control) Act. If a suit of this nature is entertained by a civil court, it would be a dual proceedings, i. e. for fixation of fair rent, civil suit is to be entertained and for all other reliefs referred in the Kerala Building (Lease and Rent Control) Act, a landlord has to approach Rent Control Court. That is an anomaly which cannot be recognised by a civil court. This Court being a civil court, a suit of this nature cannot be entertained u/s 9 and therefore the grievance even if the Plaintiff is suffering cannot be rectified. "The recourse available to the Plaintiff is not by approaching this Court but by taking legitimate steps elsewhere under law". "Such a claim being not to be entertained by this Court, it appears to me that a suit of this nature cannot be entertained u/s 9 of the Code of Civil Procedure" and accordingly I have no hesitation to hold that this suit is, not maintainable in this Court and therefore this issue is answered against the Plaintiff.

8. It will be evident from the above that the trial court has come to the conclusion that if a special statute like the Rent Act had created a special forum like the Rent Control Court under Sections 5, 6 and 8 of the Rent Act and if the said provisions were struck down as unconstitutional, this would result in the civil court not being able to entertain a suit u/s 9 of the Code of Civil Procedure. The trial court has specifically held that the recourse available to the Plaintiff is not by approaching this Court, but by taking legitimate steps elsewhere under law. Thereafter it is concluded that "such a claim being not to be entertained by this Court, it appears to me that a suit of this nature cannot be entertained u/s 9 of the Code of Civil Procedure." It is in this view of the matter it has been held that the suit was not maintainable and hence issue No. 2 as to whether the Plaintiff was entitled to enhance the rent already fixed and if so, at what rate, did not arise for consideration. The finding on issue No. 2 in para 7 therefore, is as under:

Issue No. 2.-The suit being found not maintainable, this issue does not arise for consideration.

In the result the suit has been dismissed with no order as to costs.

9. Similarly in Ext. P-2 judgment in O.S. No. 2120 of 1997, which was a case filed by the Appellants against Respondent No. 4, the first issue was whether the suit was maintainable. The Second issue was whether the Plaintiff was entitled to get the relief as prayed for. The discussion on issue No. 1 in paragraphs 6 and 7 would show that a reference is made to the decision of this Court in Issac Ninan's case 1995 (2) KLT 848 (supra) and then it is observed in para 7 as follows:

Now there is no provision of law which will enable the present Plaintiff in the suit to claim an increase in the rate of rent to the lease hold premises which comes within the area covered by the provisions of the Kerala Buildings (Lease and Rent Control) Act. So in that context the present suit is not maintainable.

Thereafter in para 8 of the judgment Ext. P-2 the trial court has concluded that the suit was not maintainable. In this view of the matter the finding on issue Nos. 2 and 3 is that the Plaintiff was not entitled to get any reliefs. Hence the suit was dismissed.

10. It is these two judgments that were challenged before the learned Single Judge in the Original Petition. The learned Single Judge has by his order dated 3rd March, 1999 dismissed the Original Petition on the ground that the reliefs prayed for could not be granted in the petition. On the question as to whether he could decide the question of the forum to be approached for claiming enhancement/increase in the rent in the light of the decision in Issac Ninan's case 1995 (2) KLT 848, the learned Single Judge has expressed the view that such a prayer could not be granted by him. It is this judgment that is challenged before us in this appeal.

11. At the outset, we felt that both the judgments Exts. P-1 and P-2, being judgments delivered in substantive suits, were capable of being challenged by way of substantive appeals in accordance with the Code of Civil Procedure, 1973. However, all the learned Counsel appearing before us pointed out that there is a lot of confusion in the subordinate judiciary in this State as to the consequences of the decision of this Court in Issac Ninan's case 1995 (2) KLT 848 in so far as the question of availability of a forum for agitating the question of fixation/increase in the rent of the premises to which the provisions of the Rent Act apply, is concerned. It is brought to our notice that in some cases, the trial courts are taking the view that in view of the law declared in Issac Ninan's case 1995 (2) KLT 848 striking down Sections 5, 6 and 8 of the Rent Act, no remedy whatsoever is available either to the landlord or to the tenant for determination of the fair rent. Section 5 of the said Act dealt with the question of determination of fair rent. Proceedings could be initiated either by the tenant or by the landlord of the building to which the provisions of the Rent Act apply. Section 6 dealt with

the question of increase in fair rent being admissible in certain cases and Section 8 imposed restrictions on the landlord not to claim or receive anything in excess of the fair rent or agreed rent. A perusal of the two judgments Exts. P-1 and P-2 would show that as a result of the decision of this Court in Issac Ninan's case 1995 (2) KLT 848 some trial judges are taking the view that they have no jurisdiction even u/s 9 of the CPC to entertain a suit initiated either by a landlord or by a tenant for determination of fair rent.

12. On the other hand a perusal of Ext. P-3 judgment dated 8th July, 1998 in O.S. No. 517 of 1997 delivered by the Principal Munsiff, Thrissur, would show that the decision in Issac Ninan's case 1995 (2) KLT 848 cannot affect the provisions of Section 9 of the CPC under which a civil court is competent to entertain all civil suits unless they are specifically barred by the statute. Having held that the suit was maintainable u/s 9 of the CPC the trial court has decreed the suit and granted relief to the Plaintiff/landlord.

13. Ext. P-4 is another judgment dated 24th February 1998 in O.S. No. 1865 of 1996 decided by the II Additional Munsiff, Thrissur. One of the issues in the suit was whether the suit was maintainable and the other issue was whether the Plaintiff landlord was entitled to enhancement of rent. After making reference to the decision in Issac Ninan's case 1995 (2) KLT 848 in para 9 of the judgment the trial court discussed the rival contentions on the question of the civil court having jurisdiction and concluded by saying as follows:

So a Civil Court is not having jurisdiction to enhance the rent of a building for which the rent control Act is applicable.

In the result the suit was dismissed.

14. Ext. P-5 is yet another judgment dated 27th June, 1998 rendered by the III Additional Munsiff, Thrissur, in O.S. No. 976 of 1997. The suit was filed by the landlord for declaration and also for realisation of enhanced rent. One of the issues framed was whether the suit was maintainable. After referring to the fact that Section 5 of the Rent Act was struck down by this Court, the trial court held that since the Rent Control Court could not entertain the plea for determination of fair rent, the civil court will have jurisdiction to determine the issue. It was therefore, held that the civil court had jurisdiction to entertain the suit and the landlord's plea for fixing the rent at Rs. 500 per month was allowed.

15. All the learned Counsel appearing before us stated that there were several other judgments rendered by the subordinate courts in this State after the decision in Issac Ninan's case 1995 (2) KLT 848 where conflicting views have been expressed as to the maintainability of a civil suit for the relief of determination of the fair rent after the provisions of Sections 5, 6 and 8 of the Rent Act were struck down as unconstitutional. There is a lot of litigation pending on this issue in different subordinate courts and some petitions are pending in this Court also. It is because of this, in the larger public interest and with a view to avoiding multiplicity of litigation that we thought it necessary to decide this

appeal on the question of jurisdiction of a civil court u/s 9 of the CPC for entertaining a plea for determination of fair rent in respect of a building to which the provisions of the said Rent Act apply.

16. As indicated earlier, normally against the impugned judgments and decrees at Exts. P-1 and P-2 the remedy of a first appeal should have been availed of by the Appellants. However, the Appellants approached this Court by filing a writ petition under Article 227 of the Constitution of India and that petition having been dismissed by the learned Single Judge the appeal is before us for decision. In these peculiar facts and circumstances we do not think it proper to drive the Appellants back to the remedy of filing a substantive appeal since a larger issue of general public importance affecting a large number of litigants is involved in this appeal. The issue is whether having regard to the decision of this Court in Issac Ninan's case 1995 (2) KLT 848 striking down the provisions of Sections 5, 6 and 8 of the Rent Act, the civil court will have jurisdiction to entertain a plea for determination of fair rent. Section 9 of the CPC reads as under:

9. Courts to try all civil suits unless barred.-The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I.-A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II.-For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

17. It will thus be clear from the above provision that the civil courts shall have jurisdiction to try all suits of a civil nature excepting those of which cognizance is either expressly or impliedly barred. It is true that the provisions of the said Rent Act contained provisions for determination of fair rent, namely Section 5 which gave jurisdiction to a Rent Control Court to entertain an application of either a tenant or a landlord for fixing the fair rent after holding such enquiry as it thinks fit. Section 6 dealt with the increase in fair rent which will be admissible in certain cases such as additions, improvement or alterations being carried out, by the landlord. Section 7 deals with increase of rent in certain cases where the amount of tax and cess payable by the landlord in respect of any building to a local authority has been increased after fixation of fair rent subject to the proviso that the increase shall not exceed 5 per cent of the original fair rent. This section is still in the statute book. Section 8 provided for the landlord not being able to claim or receive anything in excess of fair rent or agreed rent. As indicated earlier, the provisions of Sections 5, 6 and 8 have been struck down as unconstitutional by this Court in Issac Ninan's case 1995 (2) KLT 848. That view has been subsequently followed in a number of decisions including two Division Bench decisions to which we have made a reference in para 5 and 6 above. The

question however, is whether there is any express provision in the said Rent Act which excludes the jurisdiction of the civil court to entertain a plea for determination of fair rent. In some of the special statutes there is an express provision ousting the jurisdiction of the civil court in matters for which a specific remedy is provided in the special statute. Some statutes make it expressly clear that the forum created under the special statute alone will have jurisdiction to entertain any dispute arising under the provisions of the said statute and further provide that the civil court will have no such jurisdiction. No such express provision is found in the said Rent Act. We may make a reference to Section 30 which deals with the fixation of fair rent suo motu by court, which reads as under:

30. Fixation of fair rent suo motu by Court:

(1) If during the course of a prosecution under this Act, it is disclosed that a landlord was receiving a rent in excess of the rent that may be fixed u/s 5, the court before which the complaint was filed shall, after the close of the proceedings before it, forward to the Rent Control Court the relevant extracts of the proceedings for the purpose of fixing the fair rent.

(2) The Rent Control Court, on receipt of such extracts of proceedings, shall issue notice to the concerned landlord and tenant and after giving them an opportunity of being heard, fix the fair rent of the building and the fair rent so fixed shall be deemed to be fair rent as determined u/s 5.

18. It would appear from the above that when, during the course of a prosecution under the said Rent Act, it was disclosed that the landlord was receiving rent in excess of the rent that can be fixed u/s 5, the court before which the complaint was filed was obliged, after the close of the proceedings before it, to forward to the Rent Control Court, which was the forum u/s 5, the relevant extracts of the proceedings for the purpose of fixing the fair rent. Needless to say that pursuant to the decision of this Court in Issac Ninan's case 1995 (2) KLT 848 such a course is no longer available to the court where a complaint has been filed against the landlord that he was charging excessive rent. That apart. It is difficult to find anything in the scheme of Section 30 which will suggest that there is an ouster of the jurisdiction of the civil court by an express provision or by necessary implication.

19. We may then refer to the provisions of Section 34 dealing with savings and special provision. Sub-section (3) is the only relevant provision for our purpose which reads as under:

(3) If, after the 31st day of March, 1965 and before the publication of this Act, any suit or other proceeding has been instituted in any Civil Court which could not have been instituted if the Kerala Buildings (Lease and Rent Control) Act, 1959 (Kerala Act 16 of 1959), had been in force on the date of such institution, then such suit or proceeding, if it is pending on the date of such publication, shall abate.

The effect of the above provision is that if after the 31st of March, 1965 and before the publication of the Act, a suit or any other proceeding was instituted in any civil court which could not have been instituted if the said Act had been in force on the date of such institution, then such suit or proceeding, if it is pending on the date of such publication shall abate.

20. We are now faced with a situation where the special forum created by the special statute for determination of fair rent namely the Rent Control Court constituted u/s 3 of the Act is no longer available for the purpose of determination of fair rent. The decision in Issac Ninan's case 1995 (2) KLT 848 categorically declared the provisions of Sections 5, 6 and 8 as unconstitutional. The subsequent decision in Jan Enterprises" case, ILR 2000 Ker 419 : 2000 (1) KLT 20 (supra) makes it clear that the corollary to the striking down of the provisions of Sections 5, 6 and 8 of the said Act is that the said provisions never existed in the statute book. It has therefore, been held by this Court in Jan Enterprises" case, ILR 2000 Ker 419 : 2000 (1) KLT 20 that though the judgment in Issac Ninan's case 1995 (2) KLT 848 was delivered on 2nd November 1995, it must be understood as meaning that the sections which were struck down were never in the statute book ever since its commencement. Thereafter in O.P. No. 25855 of 1999 decided on 9th February, 2000 the view expressed by this Court in Issac Ninan's case 1995 (2) KLT 848 was reiterated.

21. The question of exclusion of the jurisdiction of the Civil Court has been considered by the Constitution Bench of the Apex Court in extenso in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, After discussing the entire case law on the subject, Hidayatullah, C.J. speaking for the court, has laid down seven principles regarding exclusion of the jurisdiction of the civil court. They are as under:

(1) Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so

constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on the revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

The first principle deals with the question of finality being given to the orders passed by the special tribunal which would lead to the inference that the civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. The second principle deals with the case where there is an express bar of the jurisdiction of the court in the absence of which it is necessary to examine the scheme of the statute to find out the intent of the provision. The third principle deals with the challenge to the provisions of the statute as ultra vires. Such a challenge cannot be brought before the tribunals constituted under the Act. The fourth principle deals with a situation when a provision is already declared unconstitutional, as in the present case, where a suit is undoubtedly maintainable. The fifth principle deals with a situation where the Act contains no machinery for the relief prayed where again a suit must be held to be maintainable. The sixth principle deals with a case where the correctness of an order under the statute apart from its constitutionality is challenged where normally the remedy provided under the Act has to be adhered to. The seventh principle makes it clear that an exclusion of jurisdiction of a civil court is not readily to be inferred unless the conditions mentioned above apply. It was held in the facts of the case that the suit for declaration that the provisions of the law relating to assessment under the Madhya Bharat Sales Tax Act were ultra vires and a suit for refund of the amount of tax illegally collected, was not barred by Section 17 of the Act. The relevant observations are to be found in para 32 to 35 at pages 89 and 90 of the report.

22. A similar question regarding the jurisdiction of a court under the terms of a contract came up for consideration before the Apex Court in *A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem*, . The contract provided for vesting of jurisdiction in one of the courts within whose jurisdiction the cause of action arose. It was held that where more than one court has jurisdiction a contract vesting the jurisdiction in one of them was not against public policy. However, when the Court has to decide the question of jurisdiction pursuant to an ouster clause, it is necessary to construe the oustering expression or clause strictly. It is only when the clause is clear, unambiguous and specific, accepted notions of contract would bind the parties and unless the absence of *ad idem* can be shown, the other courts should avoid exercising jurisdiction. We are only emphasizing the fact that the ouster of the civil court's jurisdiction is not to be inferred lightly. It must be based on an express provision in the statute or the scheme of the statute must lead to the necessary implication that the jurisdiction of the civil court is ousted. It will depend on whether the tests laid down in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, have been satisfied, since in the present case we are dealing with a statutory provision like the Rent Act. Indeed we are dealing with a situation where the special forum created u/s 5 of the said Rent Act is no longer available as it is struck down as unconstitutional in *Issac Ninan's case 1995 (2) KLT 848*. It would be a different matter as to what would have been our approach had the said provision remained in the statute book. Even then we would have insisted on an express provision being pointed out which conferred exclusive jurisdiction on the Rent Control Court and ousted the jurisdiction of the civil court. However, in the present case, in the absence of any forum being available we find no hesitation in coming to the conclusion that the normal forum for entertaining a civil dispute namely a civil court u/s 9 of the CPC would be available for determination of the fair rent depending upon the terms of the contract between the parties. As to whether in a given case the landlord or the tenant has made out a case would depend on the facts of each case and we express no opinion on the merits of the case covered by the judgments Exts. P-1 and P-2. We make it clear that we are only holding that in the absence of a forum that was provided u/s 5 as a consequence of the decision of this Court in *Issac Ninan's case 1995 (2) KLT 848* the remedy of a suit u/s 9 of the CPC is undoubtedly available to the aggrieved party.

23. We may refer to a recent decision of the Apex Court in *Sankaranarayanan Potti (Dead) By L.R.S. Vs. K. Sreedevi and Others*, the case arose under the Kerala Land Reforms Act, 1963. On the question as to whether the jurisdiction of the civil court u/s 9 of the CPC was barred in view of the provisions of Section 125 of the Kerala Land Reforms Act, 1963, it was held by the Apex Court in para 10 of the judgment at page 763 as under:

It is obvious that in all types of civil disputes civil courts have inherent jurisdiction as per Section 9 of the CPC unless a part of that jurisdiction is curved out from such jurisdiction, expressly or by necessary implications by any statutory provision and conferred on any other tribunal or authority. On a

conjoint reading of proviso to Section 125(1) of the Principal Act and Section 108(3) of the Amending Act it must, therefore, be held that the question of status of Defendant 2 under the Amending Act 35 of 1969 could have been decided only by the civil court in the pending suit and not by the Land Tribunal under the Amending Act.

24. In yet another decision in *Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others*, the question of jurisdiction of the Civil Court u/s 9 of the CPC in matters arising under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 came up for consideration before the Apex Court. The view taken by the High Court was that by virtue of Rule 24 of the C.C.S. (C.C. and A) Rules, the jurisdiction of the Civil Court had been taken away. The Apex Court reversed the decision of the Gauhati High Court and held that the Service Rules neither expressly nor by necessary implication took away the jurisdiction of the civil court to deal with service matters.

25. In the view that we have taken, the impugned orders Exts. P-1 and P-2 cannot be sustained to the extent to which they hold that the civil court will have no jurisdiction to entertain a suit for determination of fair rent merely because the provisions of Sections 5, 6 and 8 of the said Rent Act have been declared as unconstitutional. Indeed, we are of the view that pursuant to the said provisions being declared as unconstitutional it is only the civil court which alone can entertain a suit for determination of fair rent.

26. We must at this stage make a reference to a decision of a learned Single Judge of this Court in *George v. Narayani* 1998 (1) KLT 239. A question arose about the jurisdiction of the executing court in dealing with an application u/s 14 of the Rent Act for getting back possession of a reconstructed building. Relying upon the provisions of Section 11(4)(iv) of the said Act it was held by the learned Single Judge that even if Section 5 was declared as unconstitutional that did not in any manner deprive the Rent Control Court of its jurisdiction to fix the fair rent in cases coming u/s 11(4)(iv) of the Act because the Court while ordering reconstruction has also to order that the landlord is bound to put the tenant in possession of the reconstructed building on a fair rent to be paid by the tenant. For the limited purpose of deciding the controversy raised before us in this appeal challenging the orders Exts. P-1 and P-2 in the original petition, it is not necessary for us to express any opinion on the view expressed by the learned Single Judge in *George v. Narayani* 1998 (1) KLT 239. We therefore, refrain from expressing any opinion on the said question which is confined to the provisions of Section 11(4)(iv) of the Rent Control Act.

27. In the result we must answer the question posed above in the affirmative, namely that the jurisdiction of the civil court u/s 9 of the CPC would still be available for determination of fair rent of a building to which the provisions of the said Rent Act apply. The impugned judgments Exts. P-1 and P-2 are accordingly quashed and set aside. The suits are restored to the respective files for being disposed of in accordance with law on the footing that the suits filed by the

landlord for determination of fair rent/increase of rent were maintainable u/s 9 of the Code of Civil Procedure. We make it clear that we have not expressed any opinion on the merits of the rival claims.

28. In the view that we have taken, the judgment in O.P. No. 5485 of 1999 is also quashed and set aside. The writ appeal is allowed as above.