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(1997) 12 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No''s. 26483, 26484, 22740, 27734 to 27741, 28843 of 1996 and 15299, 2960 and 16470 of 1997

Ishmad Pasha and Others — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 17-12-1997

Acts Referred:
Constitution of India, 1950 — Article 14, 19, 226, 227, 25
Karnataka Rent Control Act, 1961 — Section 2 (7) (bb) (iii)

Citation : (1998) ILR (Kar) 1734

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : U.L. Narayana Rao and O. Shivaram Bhat, in W.P. Nos. 26483, 26484 and 27734 to 27741/96, S.P. Shankar, in W.P. No. 22740/96, K. Santhkumar Shetty, in W.P. No. 28843/96, Chaitanaya Hedge, in Writ Petition No. 15299/97, Sampath Ananda Shetty, in Writ Petition Nos. 2960 and 16470/97 and S. Vijayashankar, General for State, for the Appellant; K.G. Raghavan, for R-2, in W.P. Nos. 26483, 26484 and 27734 to 27741/96, P. D''Souza, for R-2 in W.P. No. 22740/97, Ananda Shetty and Rajashekar for R-1 in W.P. No. 2960/98 and Vyasa Rao, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

P. Vishwanatha Shetty, J.—In this batch of petitions, since common questions of law have been raised, these petitions were heard together and are disposed of by this common order.

2. The petitioners in Writ Petitions Nos. 22740/96, 26483 to 26484/96, 27734 to 27741/96, 28843/96, 2960/97, 15299/97 and 16470/96 have called in question the Constitutional validity of Section 2(7)(bb)(iii) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as "the Act"), and the petitioner in Writ Petition No. 22740/ 96 has called in question the Constitutional validity of Section 2(7) of the Act. However, the learned Counsel for the petitioner in Writ Petition No. 22740/96 at the hearing of these petitions, limited his argument only to the

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Constitutional validity of Section 2(7)(bb)(iii) and (iv) and the Explanation given to the said provision.

3. The petitioners, in these petitions, are the tenants in respect of either residential or non-residential premises taken on lease by them from their landlords. It is their common grievance that in view of- the amendment made to Section 2(7)(bb)(iii) and (iv) of the Act by means of Act No. 32/1994 taking over the protection given under the Act to the tenants of the premises belonging to a Muzrai or a Religious or Charitable Institution or a wakf, such tenants are left to the mercy and arbitrary decision of their landlords either in the matter of eviction from the premises occupied by them or in the matter of enhancement of rent. In substance, it is their grievance that the provisions contained in Section 2(7)(iii) and (iv) and Explanation given to the said provision as amended, are liable to be declared as unconstitutional as being violative of the rights guaranteed to them under Article 14 of the constitution of India. In some of the petitions, it Is averred that the landlords have already instituted proceedings before the Civil Court seeking decree for possession and mesne profits since the protection given to them under the Act, has been taken away in view of the provisions impugned in these petitions.

4. The State has filed its Statement of Objections and resisted the challenge made by the petitioners to the Constitutional validity of Section 2(7)(bb)(iii) and (iv) and the Explanation given to the said provision under the Act.

5. Sri U.L. Narayana Rao, learned Counsel appearing along with Sri Sanath Kumar Shetty and Shivaram Bhat in Writ Petitions Nos. 26483 and 26484/96, 27734 to 27741/96 and 28843/96, Sri S.P. Shankar, learned Counsel for the petitioner in Writ Petition No. 22740/96, Sri Chaitanya Hegde, learned Counsel for the petitioner in Writ Petition No. 15299/97, and Sri Sampat Anand Shetty, learned Counsel for the petitioners in Writ Petitions No. 2960/97 and 16470/97, strenuously submitted that Section 2(7)(bb)(iii)(iv) and the Explanation given to the said provisions, of the Act are totally illegal and void in law as they seriously violate the right to equality guaranteed to the petitioners under Article 14 of the Constitution of India. Elaborating this submission, they would contend that the tenants in respect of residential and non-residential buildings in respect of which the provisions of the Act were earlier made applicable, belong to the same category; however, as per the provisions impugned in these petitions, such of those tenants, who are similarly situated like other tenants, but who are in occupation of the buildings belonging to Muzrai, Religious or Charitable Institutions or Wakfs, are exempted from the protection given under the Act. This, the learned Counsel would submit, is highly discriminatory, arbitrary and unreasonable in nature. They submitted that the Act has been made with a view to provide for the control of rents and evictions, for the leasing of buildings, to control rates of hotels and lodging houses in the State of Karnataka; that being the object of the legislation, there cannot be any justification or basis for picking out the tenants in occupation of the buildings belonging to Muzrai, Religious or

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Charitable, of Wakfs Institutions and exemption them only from the protection given to the tenants under the Act. Therefore, according to the learned Counsel appearing for the petitioners, the classification of the tenants and the buildings solely on the basis of the status of the landlords and exempting them from the purview of the Act, is perse discriminatory in nature. They further submitted that even if the classification is held to be reasonable, there is absolutely no nexus with the object sought to be achieved. They would point out that the object of the Act is to protect the tenants; and under these circumstances, the classification could be made on the basis of the status or financial resources or nature or background of the tenants, but not on the basis of the status of the landlords. They would also submit that among the Religious and Charitable Institutions, there are both private and public Institutions; and the premises belonging to both the types of Institutions and private Religious and Charitable Institutions are grouped together, who belong to a distinct category and treated alike and, therefore, the classification made by putting unequals together and on that basis, granting exemption to the premises belonging to the said Institutions, results in discrimination and is violative of the right guaranteed to the petitioners under Article 14 of the Constitution of India, it is also their contention that the impugned provision is also liable to be struck down as being highly unreasonable, unfair and arbitrary and thus, is violative of the rights guaranteed to the petitioners under Article 14 of the Constitution of India. Sri S.P. Shankar further submitted that the Explanation given to Section 2(7)(iii) and (iv) of the Act is also liable to be declared as null and void on the ground that the Explanation, confers unguided and uncontrolled power on the Divisional Commissioner to decide the question when a doubt arises as to whether any Institution, referred to in Sub-clauses (iii) or (iv), is a Muzrai, Religious, Charitable or Wakf Institution; and there is no procedure laid down as to how the Divisional Commissioner has to decide the matter; and there is no mechanism provided or methodology suggested in regard to the power of the Divisional Commissioner to clear the doubt. It is his further submission that the Explanation excludes in its scope for application of judicial discretion and deprives procedural safeguards of an informal enquiry. He further submitted that since the decision of the Divisional Commissioner has been made final, the power of the Civil Court to decide whether an Institution is a Muzrai, Religious, Charitable Institution or a Wakf is taken away; and there is no right of appeal provided against the decision of the Divisional Commissioner and this arbitrary power conferred on the Divisional Commissioner seriously impinges the rights of the petitioners. Learned Counsel, in support of the above submissions, relied upon the decision of the Supreme Court in the cases of RATTAN ARYA v. STATE OF TAMIL NADU AIR 1986 SC 1445 , Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, , State of U.P. and Another Vs. Malik Zarid Khalid, , P.J. Irani Vs. The State of Madras, , Anwar Vs. First Additional District Judge, Bulandshahr and Others, , State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., , and Mithu Vs. State of Punjab, .

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5. Sri S. Vijayashankar, learned Advocate General appearing along with Sri P.C. Chengappa, learned Government Advocate, and Sri Shimoga Subbanna, learned Government Pleader, while countering each of the submissions made by the learned Counsel appearing for the petitioners, submitted that the classification made is reasonable and is based on intelligible differentia and the classification made has a nexus with the object sought to be achieved. According to the learned Advocate General, the premises belonging to Muzrai, Religious, Charitable and Wakf Institutions stand on a different footing and belong to a distinct and different class. The Religious and Charitable Institutions in the very nature of things, are institutions intended to have been established either for the purpose of propagating religion, its teachings or for the benefit of larger sections of the society; and under these circumstances, the control imposed under the Act in the matter of fixation of rent or granting protection from eviction, would result in serious injuries to the said Institutions; and the said Institutions will not be in a position to seek immediate eviction of the tenants even if the buildings are required for the developmental activities of the Institutions, in this connection, he drew my attention to Paragraph-2 of the Additional Statement of Objections, which reads as hereunder:

"It is submitted that there were some representations from religious institutions, among others, requesting the Government to consider giving exemption to premises belonging to religious and charitable Institutions from the purview of the Karnataka Rent Control Act, 1961, on the ground that the Institutions are not in a position to enhance rents and evict tenants and that even when the buildings are in a dilapidated condition, they cannot be taken back for renovation etc., resulting in financial loss to these Institutions and hampering their developmental activities. They have also stated that Kerala and Tamil Nadu have exempted such Institutions from the purview of their respective Rent Control Acts. It is submitted that this was considered by the State and they took a decision to amend the Act suitably in respect of Religious and Charitable Institutions and also the Institutions under the Management of the Karnataka State Board of Wakfs from the purview of the Karnataka Rent Control Act. Accordingly, the Bill was moved in the State Legislature and the same was passed as Act No. 32 of 1994 which came into effect from 18.5.1994. It is submitted that the Legislature in their wisdom through it fit to amend the Act to exempt from the purview of the Rent Control Act to certain Sections of the Society which is permissible under law. It is submitted that the Amended Act in no way is discriminatory as contended by the petitioners and is not violative of Articles 14 and 19 of the Constitution of India. It is submitted that it is for the State Legislature to decide as to which Sections of the people should be protected and what should be the basis for classification and Courts will not interfere with such matters of the legislative policy....."

He further pointed out that none of the fundamental rights of the petitioners is affected on account of the impugned amendment; and no one has a fundamental right regarding protection from eviction in respect of the property belonging to

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others; and the protection given under the Act is only a statutory right; and when the Legislature, having regard to the needs of its people and having examined as to which of the premises should be kept outside the purview of the Act, and keeping in view the objects and purpose for which the Religious and Charitable Institutions came to be established and being run, as a matter of policy, has taken a decision that the premises belonging to such Institutions should be kept outside the purview of the Act, the said Policy decision, which has the sanction of the Legislature and has been made an Act of the Legislature, cannot be challenged before this Court on the ground that the said policy decision is discriminatory in nature and would affect the right guaranteed to the petitioners under Article 14 of the Constitution of India. He pointed out that the petitioners have not placed any material before this Court, except asserting, as to how the tenants of Muzrai, Religious, Charitable and Wakf Institutions are picked up for any hostile discrimination. He submitted that it is fully within the Legislative competency of the Legislature to decide as to whom the Act should be made applicable and to whom, it should not be made applicable; the object of the classification is to protect the interest of these institutions, who, in the very nature and object of their way existence, are to benefit the public. He also pointed out that there is presumption in favour of the Constitutionality of a provision and the same has to be applied in these cases as the petitioners have failed to rebut the said presumption.

7. In so far as the challenge made to the Explanation given to Section 2(7)(bb)(iii) and (iv) of the Act is concerned, he submitted that when a doubt or dispute arises as to whether a particular Institution falls within Section 2(7)(bb)(iii) or (iv) or not, a power has been conferred on a very high ranking Officer of the State by the Government, who is of the rank of Divisional Commissioner, to decide the said question and the decision of the Divisional Commissioner though made final, it is well settled that the same is subject to judicial review by this Court. According to him, the finality is only to the extent of taking away the power of the Civil Court; the Divisional Commissioner has been conferred with the power to decide the question as to whether any Institution falls within the category of Clause (iii) or (iv) of Section 2(7)(bb) of the Act keeping in view that if such a question is to be decided by the Civil Court, it is likely to cause inordinate delay in disposing of the proceedings thereby defeating the very object of the Legislation; and conferment of such a power on a very high ranking Officer of the State, on whom quasi judicial powers are conferred under several other enactments, would not in any manner effect the rights of either the tenants or the landlords as his decision is subject to the judicial review by this Court.

8. In so far as the grievance made by the Learned Counsel for the petitioners that uncontrolled and unguided power is conferred on the Divisional Commissioner without providing procedural safeguards, is concerned, he would submit that the power conferred on the Divisional Commissioner being quasi judicial in nature, the nature of the power and duty, in itself, ie., quasi judicial, itself implies that he must adopt a fair and reasonable procedure consistent with

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the principles of natural justice and give an opportunity to the parties, who are likely to be affected on account of his decision. He further pointed out that for any reason, if any of the parties, are not heard and a decision is rendered, it is open to such of those parties to approach this Court and make a grievance of the same and get the decision of the Divisional Commissioner to nullified, if he is really affected. He further submitted that if the question arises before the Civil Court as to whether any particularly Institution is a Muzrai, Religious or Charitable, or Wakf Institution or not, it is open to the Civil Court, to stay the proceedings in exercise of its inherent power u/s 151 of the Code of Civil Procedure, till a declaration is obtained before the Divisional Commissioner; therefore, merely because there is no provision made for referring the question to the Divisional Commissioner when the dispute arises with regard to the question whether a particular Institution is a Muzrai, Religious or Charitable, Wakf Institution or not, it cannot be a ground to declare the Explanation as null and void on the grounds urged by the Learned Counsel for the petitioners. The learned Advocate General, in support of his submission, strongly relied upon the decision of the Supreme Court in the case of S. Kandaswamy Chettiar Vs. State of Tamil Nadu and Another, .; D.C. Bhatia and Others Vs. Union of India (UOI) and Another, ; Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, , MUZRAI OFFICER, KOLAR v. DEKAPPA BY L.R. MUNIYAPPA AND ORS ILR 1982 Kar 1103. and Karnataka Breweries and Distilleries Pvt. Ltd. Vs. State of Karnataka,

9. In the light of the rival contentions urged by the Learned Counsel appearing for the petitioners and the learned Advocate general, the two questions that would emerge for consideration in these petitions, are:

(i) Whether Section 2(7) (bb)(iii) and (iv) of the Act as amended by means of Act 32/94 are liable to be declared as unconstitutional and void in law?

(ii) Whether, even if Section 2(7)(bb)(iii) and (iv) are held to be valid, the Explanation given thereto is declared to be unconstitutional and void in law?

10. It would be convenient, before proceeding to consider the said questions, to refer to Section 2(7)(bb)(iii) and (iv) of the Act as amended by Act 32/1994 of the Act and also as it stood prior to the amendment under Act 32/1994.

Before Amendment

2. Application of the Act:

(7) Nothing in this Act shall apply--

(a).....

(b).....

(bb) to any premises belonging to ---

(i).....

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(ii).....

(iii) a muzrai Institution or a religious or charitable institution, under the management of the State Government;

(iv) a wakf under the management of the Karnataka State Board of Wakfs.

After Amendment:

2. Application of the Act:

(7) Nothing in this Act shall apply

(a).....

(b).....

(bb) to any premises belonging to,-

(i).....

(ii).....

(iii) a muzrai Institution or a religious or charitable institution,

(iv) a wakf.

(Explanation:- If any doubt arises as to whether any institution referred to in Sub-clauses (iii) or (iv) is a Muzrai, or a religious or charitable or wakf institution, the decision of the Divisional Commissioner shall be final."

11. Now, let me examine the first question, i.e., the challenge made to the Constitutional validity of Section 2(7)(bb)(iii) and (iv) of the amending Act.

12. The Act has replaced the several Rent Restriction Act operating in various parts of the State. As can be seen from the preamble to the Act, the Act has been passed to provide for the control of rents and evictions, for leasing of buildings, to control rates of hotels and lodging houses and for certain other matters in the State of Karnataka. Sub-section (3) of Section 2 of the Act provides that Parts IV and V of the Act shall be applicable to the areas specified in Schedule-II given to the Act and Sub-section (4) thereof provides that Part-VI of the Act shall be applicable to the areas specified in Schedule-VII. Sub-section (5) of Section 2 of the Act confers power on the Government, by notification, to apply all or any of the provisions of Parts II, III, IV, V or VII to such other areas from such dates as may be specified in the notification. Sub-section (6) of Section 2 of the Act confers power on the State Government, by notification, to direct that all or any of the provisions of Parts II, III, IV, V or VII shall cease to be applicable to any area whether specified in Schedule I, II or III or not, on such date as may be specified in the notification. Part-I of the Act provides for preamble, title, application of the Act and definitions. Part-II of the Act provides for the procedure to be followed in respect of lease of the buildings, etc. While Part-III provides for provisions regarding fixation of fair rent, Part-IV provides for

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deposit of rent etc., by tenants. Part-V of the Act provides for control of eviction of tenants and obligation of landlord. Part-VI regulates hotels and lodging houses. Part-VIII provides for miscellaneous provisions, like, prohibition from cutting off or withholding of essential supply or service etc., by the landlords. From the objects and the scheme of the Act, it is clear that the Act is meant to give protection to tenants who come under the purview of the Act, from arbitrary enhancement of rent and eviction from the premises occupied by them, and protect their rights as tenants in all possible manner and consistent with the rights of a tenant to enjoy the leasehold properties without No doubt, Section 2(7)(bb)(iii) and (iv) of the Act prior to amendment of Section 2(7)(bb)(iii) and (iv) of the Act by means of Act No. 32/1994, only exempted the premises belonging to Muzrai, Religious or Charitable Institutions under the management of the State Government or a Wakf under the management of the Karnataka State Board of Wakfs. By the amended provision, which is under challenge in these petitions, all the Muzrai or Religious or Charitable Institutions, irrespective of the fact whether they are under the management of the State Government or not, and a wakf whether they are under the management of the Karnataka State Board of Wakfs or not, are exempted from the application of the provisions of the Act. In other words, the protection given to the tenants, who have been in occupation of the premises belonging to Muzrai or Religious or Charitable Institutions, which are not under the management of the Karnataka Government, or wakfs, which are not under the management of the Karnataka State Board of Wakfs, is taken away. The said provision, as noticed earlier, according to the Learned Counsel for the Petitioners, would seriously violate of the right guaranteed to the petitioners under Article 14 of the Constitution of India as the said class of tenants, amongst large sections of the tenants, to whom the protective umbrella of the Act has been extended, are denied of the same benefit.

13. Though the argument, in the first flush, appears to be attractive and convincing, but on a close scrutiny of the arguments advanced in the light of the parameters or norms laid down to test the Constitutionality of an enactment, I find myself unable to accede to the submissions of the Learned Counsel for the petitioners. The tenants are given protection by virtue of the provisions contained in the Act and they have no right higher than the one provided to them under the provisions of the Act. The provisions contained in Section 2 of the Act, referred to above, more particularly Sub-sections (3), (4), (5) and (6) of the Act, confer wide power on the State Government to make the various provisions contained in the Act applicable, or having made applicable, to notify that they will cease to be applicable to any particular area with effect from any particular date that may be notified by the State Government. However, the said power is required to be exercised by the State consistent with the object for which the said power has been conferred on the State. Under similar circumstances, the wide power conferred on the State Government u/s 13 of the Madras Building (lease and rent control) Act, 1949 (hereinafter referred to as ''the Madras Act''), was challenged on the ground that there was no guidance afforded to the State

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Government to exempt any building from the purview of the Madras Act and, therefore, the said provision is liable to be struck down as being violative of Article 14 of the Constitution of India, while repelling the said contentions, the Supreme Court, in the case of P.J. Irani Vs. The State of Madras, has taken the view that the said provision is not unconstitutional. It is useful to extract the observations made by the Supreme Court at Paragraph-13 in the said decision, which reads as hereunder:

"The meaning and scope of Article 14 of the Constitution has been the subject of several decisions of this Court, a number of which have been considered by us in some detail in Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi, in which we have pronounced judgment today. In view of this we find it unnecessary to traverse the same ground except to say that in the case before us enough guidance is afforded by the preamble and operative provisions of the Act, for the exercise of the discretionary power vested in Government so as to render the impugned section not open to attack as a denial of the equal protection of the laws in our judgment, the provision now impugned belongs to the class numbered (v) in the analysis of the decision on Article 14 by Das C.J. in Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, .

"A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying these provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection of classification does not proceed on or follow such policy or principle.....the executive action but not the statute should be condemned as unconstitutional."

Possibly even a more apt precedent is that furnished by Sardar Inder Singh Vs. The State of Rajasthan, , where, among others, the validity of Section 15 of the Rajasthan (Protection of Tenants) Ordinance, 1949, was upheld. That section authorised the Government to exempt any person or class of persons from the operation of the Act, and it was urged before this Court that this offended Article 14. The argument was repelled, observing:

"It is argued that section does not lay down the principles on which exemption could be granted, and that the decision of the matter is left to the unfettered and unanalyzed discretion of the Government, and is therefore repugnant to Article 14. It is true that section does not itself indicate the grounds on which exemption could be granted, but the preamble to the Ordinance sets out with sufficient clearness the policy of the Legislature; and as that governs Section 15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided."

The learned Judges of the High Court were therefore correct in their conclusion that Section 13 of the Act was constitutionally valid but that individual orders of

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Government passed under that section could be the subject of judicial review in the manner already indicated."

Further, in the said decision, the Supreme Court, at Paragraph-11 of the judgment, has observed that though the Tamilnadu Act conferred certain rights on tenants, it was possible that the statutory protection could either have caused great hardship to the landlord or was the subject of abuse by the tenant himself. In that view of the matter, the Supreme Court upheld Section 13 of the Madras Act. The principle laid down in Irani''s case(supra) by the Supreme Court would clearly indicate that even by legislation, the executive can be conferred with the power exempting any area or class of tenants or landlords from the purview of the Act. If that is so, I am of the view, if the Legislature, in its wisdom, has exempted the tenants in occupation of the buildings/premises of the Institutions in question from the purview of the Act, the said provision cannot be declared as unconstitutional as being violative of the rights guaranteed to the petitioners under Article 14 of the Constitution of India. Further, when Section 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Hereinafter referred to as "the Bombay Act"), which is similar to the one contained in Section (7)(a) and (b) of the Act wherein the buildings belonging to the State Government or the Central Government or Municipal Corporation or Local Bodies, were exempted from the purview of the Act was challenged, the Supreme Court, while upholding the Constitutional validity of the said provision, in the case of Baburao Shantaram More Vs. The Bombay Housing Board and Another, has observed as follows:

"Learned Counsel for the petitioner then said that the effect of Section 3-A is to extend the benefit of the exemption of Section 4 of the Bombay Rent Act to the Board which, in other words, implies that the name of the Board has been added in Section 4 after the local authority. The contention is that Section 4 discriminates against the tenants of properties belonging to the Government, local authority or the Board in that these tenants are denied the benefits of the Bombay Rent Act which are available to all other tenants in Bombay.

There can be no question that this exemption is given by Section 4 to certain classes of tenants and this classification is based on an intelligible defferentia which distinguishes them from other tenants and this differentia has a rational relation to the object sought to be achieved by the Act. It is the business of the Government to solve the accommodation problem and satisfy the public need of housing accommodation.

It was for the purpose of achieving this object that the Board was incorporated and established. It is not to be expected that the Government or local authority or the Board would be actuated by any profit making motive so as to unduly enhance the rents or eject the tenants from their respective properties as private landlords are or are likely to be. Therefore, the tenants of the Government or local authority or the Board are not in need of such protection as the tenants of private landlords are and this circumstance is a cogent basis for differentiation.

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The two classes of tenants are not by force of circumstance placed on an equal footing and the tenants of the Government or local authority or the Board cannot, therefore, complain of any denial of equality before the law or of equal protection of the law. There is here no real discrimination, for the two classes are not similarly situated. Neither Section 4 of the Bombay Rent Act nor Section 3-A of the Bombay Housing Board Act can, therefore, be challenged as unconstitutional on the ground of contravention of Article 14 of the Constitution."

Therefore, from the case of Baburao (supra), it is seen that the exemption from the application of the Bombay Act is given on the basis of the static or the background of the landlords i.e., in respect of the buildings belonging to the State or other local Authorities. The Supreme Court has upheld the Constitutional validity of the said provision primarily on the ground that the buildings belonging to the State Government or other local or Municipal Authorities stand on a different footing from the buildings belonging to an individual as the State and local Authorities are intended to serve the public cause and would not act for their own purpose. In fact, the learned Counsel appearing for the petitioners also did not dispute that the exemption granted from the purview of the Act in respect of the buildings belonging to the State Government or the Central Government or any Municipal Corporation, Municipal Council or Taluk Development Board, Town Panchayat, Village Panchayat as enumerated in Section 2(7)(a), (b), (bb) (i) and (ii) of the Act is valid. Therefore, in my view, if the buildings belonging to the State, Central Government, the Municipal Corporation, Municipal Council, and other local Bodies can be exempted from the purview of the Act, on the very principle or rationale, the buildings belonging to Muzrai, Religious or Charitable Institutions also could be exempted from the purview of the Act. In both the cases, the exemption is granted on the basis of the status of the landlord and all the tenants, who are in occupation of the buildings belonging to such Institutions, in toto, are exempted from the purview of the Act. There is no discrimination made among the tenants of such Institutions. Further, I am also of the view that the classification made in respect of the premises belonging to Muzrai, Religious or Charitable Institutions or Wakf, is a reasonable classification. The said Institutions cannot be equated to an individual or an Institution whose object and purpose is neither religious nor charitable. The object and purpose of Muzrai and wakf Institutions are akin to religious or charitable Institutions. B.K. Mukharjee on The Hindu Law of Religious and Charitable Trusts - Tagore Law Lectures - Fourth Edition, at page 3, refers to ''Religion'' and ''Charity'' as follows:

"Now, as is well-know, "religion" is absolutely a matter of faith with individuals or communities, and it is not necessarily theistic (e.g., Buddhism). Alt that we understand by religious purpose is that the purpose or object is to secure the spiritual well-being of a person or persons according to the tenets of the particular religion which he or they believe in. This may imply belief in a future state of existence where a man reaps the fruits of his pious acts done in this world; or it may be inspired by the idea of atonement for past errors or sins of a

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man and of making peace with his Maker

By "charity", on the other hand, is meant benevolence, and in its wide and popular sense it comprehends all forms of benefit, physical, intellectual, moral ethical or religious, bestowed upon persons who are in need of them."

It cannot be disputed that large sections of the people of this Country are religious in their outlook and faith, though the religion or faith they follow may be different and distinct. It also cannot be disputed that all the religions teach to make a human being a good and noble human being committed to do good for the society and work for the benefit of the society. The teaching of a religion, or the morality a religion teaches to the people, in my view, will, to a large extent, help development of human mind, outlook and personality. It is needless to state that good teachings and effect of it on a human mind to a large extent, assist for an orderly society free from conflicts, jealousy and hatred in the society. Whether a particular Institution is a Religious or Charitable Institution or not, and whether it is only a cover or a mask or a shelter, sought to be taken to deprive the protection given to the tenants under the provisions of the Act, is a matter, which is required to be considered by the Courts/Divisional Commissioner when the question arises whether a particular institution is a Charitable Institution or not. But, so long as the Institution is a Religious or Charitable Institution and the corpus of the Institution is set apart and is utilised either for religious or charitable purposes, the said Institutions have to be considered distinctly and differently from an individual. In this connection, it is necessary to point out, the State has passed the Act with the sole object of protecting the tenants, who are generally considered as a class belonging to the weaker sections of the society and, therefore, they must be protected from arbitrary increase of rent by the landlords and also arbitrary eviction from the premises occupied by them. The very object or the purpose and the working of muzrai, Religious or Charitable Institutions implies and assumes that the said Institutions are for the benefit and welfare of the public at large and corpus of the said institution would be spent for the well being of the people at large. The observations made by Chief Justice Chagla in the case of Rampratap Jaidayal Vs. Dominion of India, in my view, would also apply to these Institutions. It would be useful to quote the observations made in the said decision at page 174, which read as hereunder :

"It is not too much to assume, as the legislature did in this case assume, that the very Government whose object was to protect the tenants and prevent rent being increased and prevent people being ejected, would not itself when it was the landlord do those very things which it sought to prohibit its people from doing, and therefore the underlying assumption of this exemption is that Government would not increase rents and would not eject tenants unless it was absolutely necessary in public interest and unless a particular building was required for a public purpose."

The said principle was recognised by the Supreme Court in the case of DWARKADAS MARFATIA & SONS v. BOARD OF TRUSTEES, BOMBAY PORT,

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wherein it is observed by the Supreme Court at Paragraphs 23 and 27, as follows :

"23. The contractual privileges are made immune from the protection of the Rent Act for the respondent because of the public position occupied by the respondent authority. Hence, its actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason not whimsically for any ulterior purpose. Where any special right or privilege is granted to any public or statutory body on the presumption that it must act in certain manner, such bodies must make good such presumption while acting by virtue of such privileges. Judicial review to oversee if such bodies are so acting is permissible.

27. We are inclined to accept the submission that every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigours of the Rent Act, must be informed by reason and guided by the public interest. All exercise of discretion or power by public authorities as the respondent, in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assumption that they would not act as private landlords must be judged by that standard. If a governmental policy or action even in contractual matters fails to satisfy the test of reasonableness, it would be unconstitutional...."

Therefore, it is also implied and assumed that the actions of these Institutions would be always reasonable and fair and they would not do or take any action which runs counter to the object of the Institutions in question. If such Institutions do something which would go against the interest of the public, for whose benefit they proclaim to work, they cease to be, by action, called as either Muzrai, Religious or Charitable Institutions. Therefore, the element of safeguard is in built having regard to the status of these landlords though no protection of the Act is provided to the tenants of such Institutions. Further, Article 25 of the Constitution of India guarantees that every person in India shall have the freedom of conscience and shall have the right to profess, practice and propagate religion, subject to restrictions imposed by the State as set out in the said Article. Similarly, Article 26 of the Constitution of India guarantees certain rights to every religious denomination subject to the limitations provided therein. Under these circumstances, if the State, as a matter of policy, taking into account the request made by the Religious and Charitable Institutions with regard to the problems they are being faced with on account of the Act, removes the statutory protection given to the tenants of those Institutions, in my view, it cannot be said that the said action of the State, which has resulted in passing of the impugned provision, is either discriminatory, unreasonable, unfair or violative of the right guaranteed to the petitioners under Article 14 of the Constitution of India. The same principle has to be extended in respect of Charitable Institutions. The word "charity" indicates of one being generous to somebody else and working for the good and benefit of the others. In this connection, it is also relevant to refer to the dictionary meaning of the word charity'' given in New

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Webster''s Dictionary, College Edition, which reads as follows:

"...the private or public relief of the poor; a charitable act or work; a charitable bequest, foundation, or institution."

(a) In Longman Dictionary of Contemporary English, the word ''Charity'' reads as follows :

"Kindness; the feeling of generosity; help to the poor; a society or organization that gives help to the poor; sympathy and kindness shown when judging others."

14. Further, in so far as the contention raised by the learned Counsel that even if the classification can be held as reasonable, there is no nexus with the object sought to be achieved on account of such classification, is concerned, I am of the view that there is also no merit in the said contention. The object of the classification made or exempting these Institutions from the purview of the Act, is to exempt, the premises belonging to such Institutions from the purview of the Act and thereby giving a free hand to the said Institutions in the matter of increase of rent and eviction of tenants, so that these Institutions will soon be able to get possession of the buildings belonging to them from the tenants, so that those buildings could be utilised for their activities or they will have an opportunity to seek reasonably higher rate of rent which could be utilised to achieve their objects. The object, as stated by me earlier, is generally to work for the good of the society and the humanity. Therefore, it is not possible to accept the contention of the learned Counsel for the petitioners that there is no nexus with the object sought to be achieved in the classification made. The decision of the Supreme Court, in the case of S. KHANDA SWAMY CHETTIAR v. STATE OF TAMIL NADU AND ANR., in my view, is a direct answer to the above contentions advanced by the learned Counsel for the petitioners. At paragraphs 9, 10, 14 and 15, the Supreme Court, while considering the exemption granted to the Religious and Charitable Institutions, u/s 29 of the Madras Act, has observed thus :

"9. It cannot be disputed that public religious and charitable endowments or trusts constitute a well recognised distinct group inasmuch as they not only serve public purposes but the disbursement of their income is governed by the objects with which they are created and buildings belonging to such public religious and charitable endowments or trusts clearly fall into a distinct class different from buildings owned by Private landlords and as such their classification into one group done by the State Government while issuing the impugned notification must be regarded as having been based on an intelligible differentia. Counsel for the petitioners and the appellants also fairly conceded that such classification would be a rational one, more so in view of the observations made by this Court in that behalf in P.J. Irani''s case. The question is whether the said classification has any nexus with the object with which the power to grant exemptions has been conferred upon the State Government u/s 29 of the Act. On this aspect of the matter before we go to the material furnished by the State Government on the basis of which such nexus is sought to be established it will be useful to refer

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to certain observations made by this Court in case of State of Madhya Pradesh v. Kanhaiya Lal which afford a clear indication as to what kind of material would go to establish such nexus.... The above observations clearly indicate what kind of material the State Government is required to take into consideration which would justify the grant of an exemption in favour of a particular building or class of buildings.

10. Coming to the material furnished by the State Government on the basis of which the impugned exemption is sought to be justified it may be stated that in Paragraph 4 of its counter-affidavit dated February 10, 1981, Shri H.J. Ramachandran, Joint Secretary, Home Department has stated :

''The prime object behind the grant of exemption to the buildings belonging to religious institutions is to enable the institutions to get enhanced income by increasing their rents. The buildings were endowed to the public religious and charitable trusts for carrying out certain religious or charitable purposes. With the escalation of prices, the religious and charitable trusts are not in a position to carry out the endowment, if the income of the property is not increased suitably and this nullifies the specific purpose of the endowment.''

In para 13 the dependent has further stated :

''As stated already, numerous representations were made to the Government about the plight of the temples and the public charities like poor feedings, etc., and the ridiculous position which is prevailing, and the Government on a consideration of all the aspects of the matter was fully satisfied that the tenants are fully exploiting the situation and the fixation of a fair rent under the Rent Control Act is no criterion at all and that it would cause immense injustice and would be highly oppressive so far as temples and religious endowments and public charities are concerned. It is only in the context of such a serious predicament and critical situation that the Government intervened and issued the notification u/s 29 of the Act to relieve the hardship and injustice.''

It has also been pointed out that the procedure and machinery indicated in Section 4 of the Act and the concerned Rules for fixing fair rent only yields, on the total cost of the building together with the market value of the site, a gross return of 9 per cent for residential buildings and 12 percent for non-residential buildings which is very low as compared to the bank rate of interest and grossly inadequate when compared to the reasonable rents at the market rate obtaining in the locality or the neighbourhood (i.e., rent which a willing landlord will charge to a willing tenant) and it was a case of the tenants of all such buildings exploiting the situation arising from the beneficial provisions of the Act. In the supplementary counter-affidavit dated September 24, 1983, Shri N. Srinivasan, Deputy Secretary, Home Department, has categorically asserted that "in all these cases the Government was satisfied that the rent paid by the tenants was very low, meagre and that the provisions of fixation of fair rent under the Act would not meet the ends of justice and the situation will still continue in which the

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tenant will be exploiting the situation and the helpless of the public religious trusts and charitable institutions" and that, therefore, the Government felt that it was necessary to withdraw the protection given under the Act to the tenants of such buildings.

14. In our view, there is no substance in the contention, it cannot be disputed that the two objectives of the enactment, namely, to control rents and to prevent unreasonable eviction are interrelated and the provisions which subserve these objectives supplement each other. In P.J. Irani''s case, Sarkar, J., has also observed at page 193 of the Report that "the purpose of the Act, quite clearly, is to prevent unreasonable eviction and also to control rent. These two purposes are interwined." It is obvious that if the trustees of the public religious trusts and public charities are to be given freedom to charge the normal market rent then to make that freedom effective it will be necessary to arm the trustees with the right to evict the tenants for non-payment of such market rent. The State Government on materials before it came to be conclusion that the ''fair rent'' fixed under the Act was unjust in case of such buildings and it was necessary to permit the trustees of such buildings to recover from their tenants reasonable market rent and if that be so non-eviction when reasonable market rent is not paid would be unreasonable and if the market rent is paid by the tenants no trustee is going to evict them. It is, therefore, clear that granting total exemption cannot be regarded as excessive or unwarranted.

15. Apart from this aspect of the matter it is conceivable that trustees of buildings belonging to such public religious institutions or public charities may desire eviction of their tenants for the purpose of carrying out major or substantial repairs or for the purpose of demolition and reconstruction and the State Government may have felt that the trustees of such buildings should be able to effect evictions without being required to fulfil other onerous conditions which must be complied with by private landlords when they seek evictions for such purposes. In our view, therefore, the total exemption granted to such buildings under the impugned notification is perfectly justified." .

15. However, Sri Narayana Rao sought to distinguish the said decision on the ground that in the said case, the question, which came up for consideration, was with regard to the exemption granted to public religious and public charitable Institutions and it is not a case where private Religious or private Charitable Institutions were exempted from the purview of the Tamilnadu Act. The learned Counsel would point out that under the impugned provision, both private and public Religious or Charitable Institutions are to put together, who are unequals, and on that basis, whether they are tenants of private Religious or Charitable Institutions or public Religious or Charitable Institutions, they are deprived of the protection earlier given to them under the Act. This, he would submit, has resulted in discrimination as it is not permissible to group the unequals together and grant the benefit of exemption from the purview of the Act.

16. I am unable to accede to this submission also. Whether it is private or public,

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the substance of the matter remains that it is either religious or charitable. Whether it is a private Religious Institution or Public Religious Institution, they propagate religion. The Institution may be managed by an individual or a few families and right of entry to Institution may be permitted to a group of people if it is private Religious Institution. But, they propagate the religion, which they follow. As stated by me earlier, the object of every religion is for the good of the humanity. Similarly, even in the case of private Charitable Institutions, though the Institutions are founded and managed by a few individual or group of individuals, the object of the Institutions being charitable and the corpus of the Institutions is required to be spent for charitable purposes and not for the benefit of the founders or the trustees of the private Charitable Institutions, it will not make any difference in so far as grant of exemption from the purview of the act is concerned. Further, these are not the matters, which can be weighed by the Courts in a scale. The Legislature, which knows the problems of the people, must be given to its wisdom in a matter like this. It is well settled that there is a presumption with regard to the Constitutionality of the law made by the Legislature. Unless, on the face of it, the law is discriminatory in nature, it is for the petitioners to make out with facts and figures as to how the law made by the State has resulted in discrimination. Mere allegation of arbitrariness or unreasonableness or discrimination is not enough to strike down an enactment, or a provision in an enactment. Violation of any of the rights guaranteed under the Constitution must be established. Court cannot sit in judgment over the wisdom of the Legislature and strike down an Act saying that it is unjustified. It is also well settled that grounds for striking down an Act are only on account of (1) lack of legislative competency; or (2) violation of fundamental rights or any other Constitutional provision. A legislation cannot be struck down on the plea that it is unreasonable, unnecessary or unwarranted. In this connection, it is useful to refer to the observations of the Supreme Court in the case of Ram Krishna Dalmia v. Justice Tendolkar (supra). In paragraph-11 of the said judgment, the Supreme Court, while laying down the guidelines or the principles required to be borne in mind by the Court when it is called upon to adjudge the Constitutionality of any particular law challenged on the ground of discrimination and violative of the equal protection of laws, has observed as follows :

"...The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish--

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

(b) that there is always a presumption in favour of the constitutionality of an enactments 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

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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.

The above principles will have to be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws."

Therefore, if the contention urged on behalf of the petitioners is examined in the light of the decision of the Supreme Court in the case of Ram Krishna Dalmia, referred to above, I am unable to accede to the submission of the learned Counsel for the petitioners that the impugned provision is required to be struck down on the ground that it is unreasonable and arbitrary and there is no justification to exclude the premises belonging to Muzrai, Religious, Charitable or Wakf Institutions occupied by the tenants. In the instant case, except asserting that the petitioners, who are tenants of Religious and Charitable Institutions, are picked up for hostile discrimination and their rights under Article 14 of the Constitution of India are effected, there is no material placed by the petitioners to show that all the tenants of these Institutions belong to either a very poor or weaker section of the society and if the protection of the Act is not given to them, they will be put to greater hardship than these Institutions. Further, as stated earlier, apart from the protection earlier extended to the tenants under the provisions of the Act, which has now been taken away by the impugned amendment made to the Act, there is no other Constitutional right on the basis of which they can challenge the Constitutional validity of the impugned provision. Section 2 of the Act, as pointed out earlier, reserves right to the State to apply several provisions of the Act to any particular area or to notify that the provisions made applicable, will cease to apply. Under these circumstances, if the law makers, having regard to the need of its people and in the light of the representations received by the Institutions concerned and having been satisfied that such Institutions should be exempted from the purview of the Act, has passed the impugned provisions, as stated earlier, it is not permissible for this

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Court to sit in judgment over the wisdom of the law makers. The Supreme Court, in the case of D.C. BHATIA v. UNION OF INDIA AND ANR., while considering the challenge made to the Constitutional validity of Section 3(c) of the Delhi Rent Control Act (hereinafter referred to as "the Delhi Act"), which exempted the tenants, who are paying rent more than Rs. 3,500/- per month or Rs. 42,000/- per year, from the purview of the said Act, has observed at paragraphs 28 and 29 as follows :

"28. In order to strike a balance between the interests of the landlords and also the tenants and for giving a boost to house building activity, the legislature in its wisdom has decided to restrict the protection of the Rent Act only to those premises for which rent is payable up to the sum of Rs. 3,500 per month and has decided not to extend this statutory protection to the premises constructed on or after the date of coming into operation of the Amending Act for a period of ten years. This is a matter of legislative policy. The legislature could have repealed the Rent Act altogether. It can also repeal it step by step. It has decided to confine the statutory protection to the existing tenancies whose monthly rent did not exceed Rs. 3,500.

29. In our view, it is for the legislature to decide what should be the cut-off point for the purpose of classification and the legislature of necessity must have a lot of latitude in this regard. It is well settled that the safeguard provided by Article 14 of the Constitution can only be invoked, if the classification is made on the grounds which are totally irrelevant to the object of the statute. But, if there is some nexus between the objects sought to be achieved and the classification, the legislature is presumed to have acted in proper exercise of its constitutional power. The classification in practice may result in some hardship. But, a statutory discrimination cannot be set aside, if there are facts on the basis of which this statutory discrimination can be justified."

Again, at paragraphs 33 to 36 of the judgment, after referring to the judgment in the case of Rattan Arya (supra), the Supreme Court has observed as follows :

"33. The Tamil Nadu Buildings (lease and Rent Control) Act, 1960 came up for consideration before this Court once again in the case of Rattan Arya v. State of T.N. In that case, vires of Section 30(ii) of the Act was challenged. This provision exempted from the operation of the Act ''any residential building or part thereof occupied by any one tenant if the monthly rent paid by him in respect of that building or part exceeds four hundred rupees''. It was held :

"As a result of this provision, while the tenant of a non-residential building is protected, whether the rent is Rs. 50, Rs. 500 or Rs. 5000 per month, a tenant of a residential building is protected if the rent is Rs. 50, but not if it is Rs. 500 or Rs. 5000 per month."

xxx The counter-affidavit does not explain why any distinction should be made between residential and non-residential buildings in the matter of affording the protection of the provision of the Act''.

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34. The counter-affidavit was set out in extenso in the judgment to show that it did not state the reason for giving preferential treatment to the non-residential premises having regard to the object of the statute i.e. protection of the weaker section of the community.

35. The Court ultimately held :

"As we pointed out earlier, the argument based on protection of the weaker sections of the community is entirely inconsistent with the protection given to tenants of non-residential buildings who are in a position to pay much higher rents than the rents which those who are in occupation of residential buildings can ever pay. We are, therefore, satisfied that Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has to be struck down as violative of Article 14 of the Constitution. A writ will issue declaring Section 30(ii) as unconstitutional."

36. The main controversy in Rattan Arya case was about the discrimination between residential and non-residential buildings. Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act. 1960 was struck down on the around that the argument based on protection of the weaker section of the community was entirely inconsistent with the protection given to tenants of non-residential premises."

(Emphasis supplied)

Further, at Paragraph 40 of the judgment, white repelling the contention that the ceiling limit of Rs. 3500/- fixed is arbitrary, the Supreme Court has observed that it is for the legislature to decide which particular section of the people requires protection at any given point of time and this is a matter of legislative policy. Further, at Paragraphs 45, 48 and 49 of the said Judgment, the Supreme Court has observed thus:

"45. It was observed in that judgment that ''the legislature in its wisdom is presumed to understand and appreciate correctly the problems of the Slate and the needs of the people made manifest by experience...legislative innovation by social and economic experimentation must be permitted to continue without judicial interference". It was ultimately held:

"The legislative object is, therefore, to protect tenants who are economically weaker in comparison to those affluent tenants falling 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 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 objects mentioned above. We see nothing unreasonable or irrational or unworkable or vague or unfair or unjust in the classification adopted by the impugned provision."

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48. However, we need not go too deeply into this aspect of the controversity, as in our opinion, it is for the legislature to decide whether or not any section of the people should be protected in any way by law. For this purpose, the legislature can identify the section of the people who need protection and decide how the classification will be done or what will be the cut-off point for the purpose of making such classification. The classification may be done on income basis or rental basis or some other basis. The court can only consider whether the classification has been done on an understandable basis having regard to the object of the statute. The court will not question its validity on the ground of lack of legislative wisdom.

49. Moreover, the classification cannot be done with mathematical precision. The legislature must have considerable latitude for making the classification having regard to the surrounding circumstance and facts. The court cannot act as a super-legislature and decide whether cut-off point for the classification on the basis of monthly rent should be Rs. 3500 of Rs. 4000 or Rs. 5000. If the classification is totally irrational and has no nexus with the object sought to be achieved by the statute, then only will the court strike down such classification."

Again, at Paragraph-52, while repelling the contention that under the existing law, the tenant had acquired valuable property rights as landlord could neither evict the tenant nor enhance the rent at will and suit could not be brought against the tenant on the ground of expiry of the case, whether a lease was for a fixed term, year to year or month to month, on the ground of expiration of period of lease, the Supreme Court has, at Paragraph 52, 54 and 55, observed as follows:

"52.....By Amending Act the legislature has withdrawn the protection hitherto enjoyed by the tenants who were paying Rs. 3500 or above as monthly rent. If the tenants were sought to be evicted prior to the amendment of the Act, they could have taken advantage of the provisions of the Act to resist such eviction by the landlord. But this was nothing more than a right to take advantage of the enactment. The tenant enjoyed statutory protection as long as the statute remained in force and was applicable to him, If the statute cases to be operative, the tenant cannot claim to continue to have the old statutory protection. It was observed by Tindal, C.J., in the case of Kay v. Goodwin (1830)6 Bin 576):

"The effect of repealing a statute is to obliterate it as completely from the records of the parliament as if it had never been passed; and, it must be considered as a law that never existed, except for the purpose of those actions which were commend, prosecuted, and concluded whist it was an existing law.''

54. In the case of Kewal Singh Vs. Smt. Lajwanti, , vires of Section 25-B of the Delhi Rent Control Act was challenged. Section 25-B was inserted to provide the landlord with a speedy remedy of eviction in case of bona fide necessity of the landlord. A contention was raised on behalf of the tenants that the provisions of Section 25-B violated Article 14 of the Constitution. Fazal Ali, J., speaking on

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behalf of the Court, repelled this argument by observing:

"Thus any right that the tenant possessed after the expiry of the lease was conferred on him only by virtue of the Rent Control Act. It is, therefore, manifest that if the legislature considered in its wisdom to confer certain rights or facilities on the tenants, it could due to changed circumstances curtail, modify, alter or even take away such rights or the procedure enacted for the purpose of eviction and leave the tenants to seek their remedy under the common law.''

55. In the instant case, the legislature has decided to curtail or take away the protection of the Delhi Rent Control Act from a section of the tenants. The tenants had not acquired any vested right under the Delhi Rent Control Act, but had a right to take advantage of the provisions of the repealed Act so long as that law remained in force."

The law laid down by the supreme Court in the case of D.C. Bhatia, referred to above, in my view, is a complete reply to the various facets of the argument, referred to above, advanced by learned Counsel appearing for the petitioners.

17. In the light of the above discussion, I am of the view that the decision of the Supreme Court in the case of Rattan Arya v. State of Tamil Nadu (supra) strongly relied upon by learned Counsel for the petitioners, is of no assistance to them. In the said decision, Section 30(ii) of the Madras Act, which exempted all residential buildings occupied b tenants, whose monthly rent exceeded Rs. 400/-, were exempted from the purview of that Act, came to be struck down on the ground that it is violative of Article 14 of the Constitution of India. The Supreme Court, while considering the validity of the said provision, at paragraph-3 of the decision, has observed thus:

"3.....By one stroke, this provision denies the benefits conferred by the Act generally on all tenants to tenants of residential buildings fetching a rent in excess of four hundred rupees. As a result of this provision, while the tenant of a non-residential building is protected, whether the rent is Rs. 50/-, Rs. 500/- or Rs. 5000/- per month, a tenant of a residential building is protected if the rent is Rs. 50/-, but not if it is Rs. 500/- or Rs. 5000/- per month. 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. 5000/- 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 class 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 even to discern any basis for the classification made by Section 30(ii) of the Act..."

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Further, from the observations made in Paragraph-4 of the said judgment, it is clear that the counter-affidavit did not explain as to why any distinction could be made between residential and non-residential buildings in the matter of affording the protection of the provisions of the Act. At Paragraph-4, the Supreme Court has observed thus:

"4. The counter affidavit does not explain why any distinction should be made between residential and non-residential buildings in the matter of affording the protection of the provisions of the Act. To say that a non-residential building is different from a residential building is merely to say what is self-evident and means nothing. Tenants of both kinds of buildings equally need the protection of the beneficent provisions of the Act. No attempt has been made to show that the tenants of non-residential buildings are in a disadvantageous position as compared with tenants of residential buildings and, therefore, they need greater protection. There is and there can be no whisper to that effect, to illustrate by symology, it is not enough to say that man and woman are different and, therefore, they need not be paid equal wages even if they do equal work. The counter affidavit has repeatedly referred to the weaker sections of the people and stated that in order to protect the weaker sections of the people, a distinction has been made between them and those who are in a position to pay higher rent. It is difficult to understand how the exclusion of tenants who pay higher rent from the protection afforded by the act will help to protect tenants belonging to the weaker sections of the community. It is one thing to say that tenants belonging to the weaker sections of the community need, protection to tenants paying higher rents will protect the weaker sections of the community. Further the distinction suggested in the counter appears to be quite antipathy to the actual provision because as we pointed out earlier, there is no such ceiling in the case of tenants of non-residential buildings and therefore a tenant of a non-residential building who is in a position to pay a rent of Rs. 5000/- 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 certainly cannot be pretended that the provision is intended to benefit the weaker sections of the people only. We must also observe here that whatever justification there may have been in 1973 when Section 30(ii) was amended by imposing a ceiling of Rs. 400/-on rent payable by tenants of residential buildings to entitle them to seek the protection of the ceiling utterly unreal. We are entitled to take judicial notice of the enormous multifold increase of rents throughout the country, particularly in urban areas. It is common knowledge today that the accommodation which one could have possibly got for Rs. 400/- per month in 1973 will today cost at least five times more...."

18. That is not the situation in these cases. As stated earlier, in the instant case, the State has considered the representation given by the Institutions and to relieve the hardship of those Institutions on account of the protection given to the tenants of the buildings belonging to those Institutions, the impugned provision has been made. All the tenants in occupation of the buildings

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irrespective of the fact whether they are residential or non-residential, are exempted from the purview of the Act. it is not permissible for this Court to nullify the said policy decision on the ground that the provision is violative of Article 14 of the Constitution of India. Therefore, the first point is held against the petitioners.

19. The only other contention that remains to be considered, is with regard to the challenge made to the Explanation given to the Section under challenge. It is no doubt true that as contended by Sri Shankar, there is no provision made in the Act empowering the Civil Court to refer the issue to the Divisional Commissioner, who is conferred with the power to decide whether an Institution is a Muzrai, Religious, Charitable or Wakf Institution or not, when a doubt or a dispute with regard to the status of such an institution arises for consideration before the Civil Court on the dispute being raised by the tenants in the proceedings. Further, as pointed out by the learned Counsel, there is also no procedure prescribed in the Act providing for a mechanism to move the Divisional Commissioner for a declaration that the Institution is a Muzrai, Religious, Charitable or Wakf Institution and providing for elaborate procedure to be followed by the Divisional Commissioner and also as to who should be made as a party to the proceedings before the Divisional Commissioner, etc. It is also true that there is no right of appeal provided against the decision of the Divisional Commissioner. But, in my view, as rightly pointed out by the learned Advocate General, all these cannot be the grounds to nullify the provision. The said provisions will have to be interpreted to give harmonious construction and make it workable, instead of striking down the provision. In my view, this should be the approach of the Court in a situation like this. I am of the view, as pointed out by the learned Advocate General that whenever a claim is made by the Institution in a Suit filed seeking appropriate relief against the tenant, if the tenant contests the status of the landlord and contends that it is not a Muzrai, Religious, Charitable and Wakf Institution, such an Institution cannot succeed in the Suit and seek appropriate relief unless the Institution establishes that it is either a Muzrai, Religious, Charitable or Wakf Institution. The burden will be on the Institution to establish its status. Since the power to decide the said question is conferred on the Divisional Commissioner, till such a declaration is obtained by the Institution from the Divisional Commissioner, the Civil Court, in exercise of its inherent power u/s 151 of the Code of Civil Procedure, can stay the proceedings for a reasonable time reserving liberty to the concerned party to obtain necessary declaration from the Divisional Commissioner and proceed to dispose of the suit after the declaration is obtained. Further, it is also open to the parties concerned prior to institution of the proceedings before the Civil Court for ejectment of tenants, to obtain a declaration before the Divisional Commissioner directly approaching him after notice to the tenant, who is likely to be affected on account of such declarations to be made by the Divisional Commissioner. When a power is conferred on a very high ranking Officer of the State in the cadre of Divisional Commissioner and the power required to be exercised by the

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Divisional Commissioner, being quasi judicial in nature, merely because there are no procedural safeguards provided either for moving the Divisional Commissioner for declaration with regard to the status of the Institution or the procedure to be followed by the Divisional Commissioner, it cannot be a ground to strike down the provision. It is open to the Divisional Commissioner to adopt his own procedure in the matter of disposal of the applications or petitions filed before him seeking for declaration with regard to the status of the Institutions concerned, consistent with the principles underlying natural justice. Further, though there is no appeal provided against the decision of the Divisional Commissioner, it is well settled that merely because the decision of the Divisional Commissioner is made final, it does not take away the power of judicial review conferred on this Court either under Article 226 or under Article 227 of the Constitution of India. It is open to the party aggrieved by the decision of the Divisional Commissioner to challenge the decision or order of the Divisional Commissioner before this Court and seek appropriate relief. It is also well settled that the power of the Civil Court can be taken away and the said power can be conferred on a Tribunal or an Authority constituted by the State to adjudicate upon the rights of the parties. In the instant case, the Divisional Commissioner has been conferred with the power to decide the status of the Institution when a doubt or dispute arises. On that, merely because the Divisional Commissioner is an Executive Officer of the State, it cannot be said that the provision, which confers power on him, must be declared as unconstitution. As stated earlier, the power to decide the status of an Institution is conferred on a very high ranking Officer of the State and he is required to exercise such power evolving his own procedure consistent with the principles of natural justice and keeping in mind that he is required to exercise the power conferred on him as a quasi judicial authority and his decision is subject to judicial review by this Court. Therefore, though the power of the Civil Court to decide the said question is taken away in view of the provision contained in the Explanation and the decision of the Divisional Commissioner is made final, on that ground, the Explanation cannot be struck down as unconstitutional or on the ground that the Explanation excludes any scope for application of judicial discretion and deprives procedural safeguards of an informal enquiry as contended by Sri Shankar.

20. In the light of the view I have taken above, I am of the view that the several decisions relied upon by the learned Counsel for the petitioners are of no assistance to the petitioners as they have no direct bearing on the questions involved in these petitions and, therefore, I find it unnecessary to refer to the principles laid down in the said decision.

21. Therefore, in view of my above conclusion, I am of the view that there is no merit in the challenge made to the Constitutional validity of Section 2(7)(bb)(iii) and (iv) and the Explanation given thereto, of the Act.

22. No doubt, I have upheld the Constitutional validity of the impugned Explanation which confers power on the Divisional Commissioner to decide the

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status of the Institution in the back drop of the principle underlying to judge the Constitutional validity of the said provision. But, before parting with this order, I feel compelled to observe that the impugned Explanation which confers power on the Divisional Commissioner to decide the status of the landlord-Institution, is likely to cause serious inconvenience to the parties to the dispute, i.e., both landlords and tenants. The office of the Divisional Commissioner in the State is located far away from the seat of the Civil Courts. In that situation, when a dispute is raised with regard to the status of the landlord-Institution, the parties will have to initially agitate their rights before the Divisional Commissioner and possibly thereafter before this Court and later before the Civil Courts. This is likely to result in substantial financial injury to the parties and cause undue delay in the entire proceedings. Under these circumstances, notwithstanding the upholding of the constitutional validity of the impugned Explanation given to Section 2(7)(bb)(iii) and (iv) of the Act, it is open to the State to consider the desirability of deleting the said Explanation leaving liberty to the parties to agitate all the issues including the issue relating to the status of the landlord-Institution, arising in the proceedings initiated for eviction of the tenant by the landlord-Institution before the civil Court.

23. Accordingly, these petitions ''are dismissed. Rule issued is discharged.

24. However, in the circumstances of the case, I make no order as to costs.

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