
(1996) 02 DEL CK 0081

In the Delhi High Court

Case No : Second Appeal No's. 202 and 212 of 1981 and 13 of 1990

Kishori Lal and Mukat Behari Lal Mathur

APPELLANT

Vs

Siri Krishan, S.N. Nigam and Another

RESPONDENT

Date of Decision : 26-02-1996

Acts Referred:

Delhi Rent Control Act, 1958 — Section 2(1)

Citation : (1996) 63 DLT 577

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Ravinder Sethi, Nandini Sahni, V.K. Makhija, Vandana Kumar, S.S. Gautam and G.N. Aggarwal, for the Appellant;

Judgement

C.M. Nayafr, J.

(1) This judgment will dispose of three appeals S.A.O- Nos. 202181, 212181 and 13190 as they raise common questions of law The first two appeals arise out of judgment dated September 17, 1979 of Additional Rent Controller, Delhi, and judgment dated May 7, 1981 passed by Rent Control Tribunal.

(2) The respondent filed eviction petition u/s 14(1)(a) of Delhi Rent Control Act (hereinafter referred to as "the Act") on August 21, 1978 for eviction of the appellants from one big room, two small rooms, verandah, part of open terrace in front etc. forming part of the tenancy premises on second floor, plot No. 27, House No. 4779, Deputy Ganj, Sadar Bazar, Delhi. The allegations were made that Kishori Lal, since deceased, was tenant under the respondent in respect of the above said premises since July 18, 1953 at rental of Rs. 771- per month, but has neither paid nor tendered arrears of rent within two months from service of notice dated December 18, 1977. The petition for eviction was contested by the appellant on the grounds that the same was not maintainable without permission under the Slum Areas (Improvement and Clearance) Act. The respondent did not accept rent and refused to issue receipt. Therefore, rent had been deposited in the court of Additional Rent Controller in eviction Suit No. 730 of 1970. The

learned Additional Rent Controller held that notice dated December 18, 1977 had been served on the appellant by which contractual tenancy was terminated, it was further held that the deposit made by the appellant was not valid and that it was not a case of second default. The Controller, accordingly, passed the order directing the appellant to deposit the entire arrears of rent from December 18, 1976 up to date at the rate of "Rs. 771- per month holding that if the order was complied with. the eviction petition shall be deemed to have been dismissed in view of Section 14(2) of the Act. In case the appellant failed to comply with the order, an eviction in favor of the respondent shall be deemed to have been passed in respect of the premises, as shown in red in the site plan Ex. A-12. The appellant as well as the respondent felt aggrieved by the Order passed by the Additional Rent Controller and filed their respective appeals (RCA No. 1055 of 1979-Kishori Lal v. Siri Kishan and Rca No. 1277/79 Siri Kishan v. Chando Devi). These two appeals were heard by the Rent Control Tribunal who disposed of the same by a common judgment.

(3) During the pendency of the appeal before the Tribunal, Kishori Lal, appellant died and an application dated July 31 1989 was filed alleging that Kishori Lal died on December 20, 1979 leaving behind his widow, three sons and three daughters. It was claimed that except daughter Smt. Upma Misra all others were being with the deceased tenant at the time of his death and were financially dependent upon him. It was further alleged that the surviving spouse Smt. Chando Devi was living with the deceased and was financially dependent upon him and, Therefore, she would be a tenant in the suit premises in the first instance.

(4) In reply to the said application the respondent landlord alleged that the same was time barred and the application was not signed and verified properly. The earlier application for bringing legal representatives on record had been dismissed and, Therefore, the present application was not maintainable. It was denied that the heirs of the appellant were financially dependent upon him and that the appellant was a heart patient for 3-4 years from his death and was not doing any work. The sons of Kishori Lal, Rakesh Kumar and Mukesh Kumar were earning and Smt. Chando Devi was dependent upon her "sons financially and thus it was claimed that no right, interest or title vested .with the heirs of the deceased. The Tribunal by order dated October 31, 1980 held that Limitation Act does not apply to the proceedings under order 22C.P.C. and the objection in this regard of the respondent/landlord was over-ruled. The parties Were permitted to lead their respective evidence. The heirs of the appellant Kishori Lal examined Rakesh Kumar, who testified that his father only was earning and mother Smt. Chando Dev was financially dependent upon the father and she was suffering from paralysis. When cross-examined, he stated that he has two other brothers viz. Mukesh Kumar and Raj Kumar and Mukesh Kumar now looks up the shop and earlier to that he was not doing any business. He admitted that before the death of appellant Kishori Lal, Mukesh Kumar was working at the shop of one Ghamandi Lal and he was not paid anything. He himself admitted that he was

doing business of cloth brokerage and that his father was not maintaining any account. He further admitted that the appellant, since deceased, was Sick before his death but added that he was attending the shop. The respondent also led evidence to support the sons of Kishori Lal were earning before his death and the entire family was financially dependent on the earning sons and not on Kishori Lal. The Tribunal on the basis of evidence on record, took up for determination the question as to whether the rights of Kishori Lal of the tenancy were heritable or not. "The reference to the provisions as contained in Section 2 of the Act was made wherein it was indicated that where a tenant was in possession after termination of his tenancy then his legal heirs in the order of precedent from the surviving spouse and others would Inherit the tenancy rights, if they were financially dependent" upon the tenant otherwise It shall only be for a period of one year. The Tribunal examined the evidence on record and came to the conclusion that the rights of tenancy could not be said to be heritable. Paragraph 15 of the judgment reads as follows :

"IN the facts of the present case the evidence of Rakesh Kumar itself shows that sons of Kishori Lal were earning He had admitted that he himself is doing the brokerage of cloth and that his other brother Mukesh Kumar was sitting oil the shop of Ghamandi Lal. Shri Ghamandi Lal has not been examined to show to the effect that he was not paying anything to Mukesh Kumar. In that light I am not prepared to believe that Mukesh Kumar was simply working at the shop of Ghamandi Lal without any payment and respondent must be believed that Mukesh Kumar and Rakesh Kumar were earning members. When it is not shown that Kishori Lal was earning anything the necessary consequence would be that at the time of his death his wife. and his family were not financially dependent upon him because it is not shown that Kishori Lal was having enough money so that others could be financially dependent upon him. In that light the rights of the tenancy cannot be said to be heritable."

The learned judge held that since the protection afforded by the Act was only personal and the heirs did not inherit the tenancy rights and more than one year had passed when Kishori Lal died, such heirs were, Therefore, not entitled to any protection of the Act. The eviction was granted on the above ground and the appeal of the appellants was dismissed, whereas, the appeal filed by the respondent was" allowed in the above terms.

(5) At this stage, the facts in Sao No. 131,90 (Sh. Mukat Behari Lal Mathur v. Shri S. N. Nigam) may also be noticed. Shri S. N Nigam filed an eviction petition u/s 14(1)(a) of the Act wherein it was alleged that R. S. Mohan Behari Lal Mathur, since deceased, was tenant under the respondent in respect of one flat on the upper floor of Jagat Niwas, New Delhi. The rate of rent was Rs. 170.00 per month. He did not pay or tender the arrears of rent from May 1. 1980 despite service of notice of demand. The petition was contested by the said Mohan Behari Lal wherein it was alleged that there was no relationship of landlord and tenant between the parties and that the real tenant was Mukat

Behari Lal, appellant herein. He was admitted as a tenant in 1961 with the contest of respondent/landlord and his brother. Similar plea was taken by respondent No. 2 Mahesh Behari Lal Mathur in the Court of Rent Controller. Although non payment of rent was the only ground, the learned Additional Rent Controller vide order dated January 17, 1983 deferred the passing of Order u/s 15(1) of the Act because the relationship of landlord and tenant was disputed. The parties then led their respective evidence in support of their version. The original tenant R. S. Mohan Behari Lal died in June, 1985 and an application under Order 22 Rule 4 of the Code of Civil Procedure was filed for bringing on record two sons of the deceased tenant, namely, Mukat Behari Lal, appellant and Mahesh Behari Lal as legal representative. In this application it was contended by the respondent/landlord that both these sons, namely, Mukat Behari Lal and Mahesh Behari Lal of the deceased tenant were not dependent on their father and, as such, they had not inherited any tenancy rights because the original tenant R. S. Mohan Behari Lal died as a statutory tenant, his tenancy having been terminated vide notice dated November 4, 1981 which had been duly served on the original tenant. The appellant as well as by Mahesh Behari Lal. The said sons of the deceased tenant did not specifically deny the averments that they were not dependent on their father and, as such, they did not inherit any tenancy rights. Mahesh Behari Lal did not even appear to contest the said application. The learned Additional Rent Controller allowed the application under the above said provisions vide order dated February 17, 1986 with the observation that the appellant Mukat Behari Lal and his brother Mahesh Behari Lal alone were living with the deceased at the time of his death. The learned judge passed an Order u/s 15(1) of the Act directing the legal representatives of the deceased tenant to deposit arrears of rent with effect from May 1, 1980 at the rate of Rs. 1701- per month within one month from the date of the order failing which an eviction order shall be deemed to have been passed against them. In case of compliance of the order, the legal representatives would be deemed to have availed of the benefit of Section 14(2) of the Act. Appellant Mukat Behari Lal filed the appeal before the Rent Control Tribunal challenging the finding of the Additional Rent Controller to the effect that it was the original tenant- R. S. Mohan Behari Lal only who continued to be a tenant throughout and there was no change of tenancy in the year 1961. The respondent-landlord filed cross-objections against the finding of the Additional Rent Controller repelling his contentions that the L.Rs of the deceased tenant had become liable to eviction straight away as they had not inherited any tenancy rights of the deceased, who died as a statutory tenant.

(6) The Rent Controller Tribunal examined the matter as well as considered the contentions of the parties and evidence on record. It was noticed that the respondent/landlord filed an application under Order 22 Rule 4 of the CPC wherein it was clearly pleaded that only two sons including the appellant were residing with the deceased at the time of his death and both of them were not financially dependent and, Therefore, they acquired a limited right of occupancy

for one year. One of the sons, namely, Mahesh Behari Mathur, who was respondent No. 2 in the appeal before the Tribunal never contested the application and the other son Mukat Behari Lal, appellant herein, also did not dispute the fact" that they were living with the deceased at the time of his death and they were not financially dependent upon their father. In this background, the Tribunal held that the Additional Rent Controller could not have rejected the plea of the respondent/ landlord just because in the eviction petition lie did not claim any relief in view of the changed situation. The question then was considered, as to whether, the respondent landlord was entitled to an order of eviction straightway against the L.Rs of the deceased statutory tenant. The various rulings of this Court were referred to by the Tribunal and it may be useful to refer to paragraph 9 of the judgment, which reads as follows :

"IT is next to be seen whether an eviction order can straightway be passed against the LR's. of the deceased statutory tenants. Learned counsel for the respondent cited various ruling of our own Hon"ble High Court, namely, Gian Devi v. Jiwan Kumar- 1980 RLR. 28, Girdhari Lal v. Abdul Jalil 1980 Rlr 91, Ram Saran v. Mishri Lal 1984 Rlr 149, Kulwant Rai v. Banwari Lal 1984 Rlr 161, and B. B. Twakley v. Kishori Lal Mehra 1981 (2) All RCJ 311. In all these authorities, Hon"ble High Court of Delhi has consistently taken the view that once it is found that the LR's of the deceased statutory tenant had not inherited any right within the meaning of Section 2(I) of Delhi Rent Control Act as amended by Act No. 18 of 1976, it is unnecessary to go into the question whether any ground of eviction is available to the landlord or not and an order of eviction can be passed straightway against them, no matter whether any ground of eviction is made out or not. In the case of Gian Devi (Supra) his Lordship Hon"ble Mr. Justice M. L. Jain considered various authorities of the Hon"ble Supreme Court on the point as well as a Full Bench decision of the Hon"ble High Court of Delhi in the case of Kedar Nath v. Mohini Devi Air 1971 Delhi 171 wherein it was held that even if the LR's of the deceased tenant had not inherited any tenancy rights, the landlord will have to prove some grounds of eviction against the deceased tenant, and if he fails to do so, the Controller has no power to pass an order for the recovery of possession because the conditions on which his power to order for the recovery of possession rests do not exist and in that case the landlord may have to file a regular suit for possession in a Civil Court. Dealing: with these observations in Kedar Nath case (supra), Hon"ble Justice M. L. Jain, observed in the case of Gian Devi case (supra) as under : "What. I understand from these remarks is that where some of the legal representatives of a deceased statutory tenant are tenants under the definition of a tenant since then amended, they can continue to challenge the grounds of eviction! and other legal representatives can agitate only such grounds or matters which were not personal to the deceased. But, in my humble view, these remarks are no authority for saying that if the legal representatives have no defense to raise in law, the landlord must be driven to file a suit against them for their eviction. The Bombay High Court in Govindram Salamatrai and Another Vs. Dharampal Amarnath and Another, , observed that

the jurisdiction is normally and ordinarily to be determined at the time of inception of the suit. Jurisdiction is an authority to decide a matter and grant relief. Now, the Controller has jurisdiction to grant appropriate relief between a landlord and the legal representative of the deceased tenant. The proviso to Section 14(1) does not lay down conditions precedent to the assumption of jurisdiction. On what ground an order for eviction could be made or refused, are not jurisdictional facts but these are conditions imposed upon the rights of the landlord. To refuse relief where the plaintiff discloses no cause of action or- the defendant has a valid defense to make. is not the same thing as to say that the court does not possess or ceased to possess the power to allow or refuse such relief. I am, Therefore, inclined to hold that the remarks in para 30 in Kedar Nath (supra) cannot support the argument that the Controller cannot direct recovery of possession against the legal representatives of the deceased statutory tenant to whom the tenancy has not descended. In South Asia Industries Private Ltd. Vs. S. Sarup Singh and Others, , where the tenancy had become extinct it was held that recovery of possession can be directed against all persons in occupation so that the landlord might without further trouble recover possession. Such an argument, if upheld, it will lead to multiplicity of proceedings and harassment of the landlord. The Controller like any other court has to take into consideration the subsequent events. I, Therefore, decide this question against the appellant. That makes the question of subletting "of no relevance any more and no finding is, Therefore, called for."

In the case of Girdhari Lal (Supra), Kulwant Rai (Supra and Ram Saran (Supra), the Hon"ble High Court proceeded to pass eviction order against the LRs. of deceased statutory tenant who had not inherited the tenancy rights even in the absence of proof of any ground of eviction. While dealing with the same question in the case of Girdhari Lal (Supra), the Hon"ble High Court observed that the legal representatives of the deceased tenant who have not inherited the tenancy rights simply save proceedings from abatement but they cannot be heard to say that though the defenses which were available to their predecessor were personal to him, and were , .available to them and. consequently, they have no doubt no right to remain in possession, yet they cannot be dispossessed otherwise than by a suit for possession because the Rent Controller had no jurisdiction. Hon"ble High Court observed as under :

"THE legal representatives simply save the appeal from abatement and they can certainly proceed with the appeal but that does not debar the respondent to say and this court to decide whether any or no one of the pleas can be allowed to be raised by the appellant or not. No one is dislodging them from their substitution but they cannot be heard to say that though the defenses which were available to their predecessor were personal, to him and were not available to them and they have no right to remain in possession, yet they cannot be dispossessed otherwise than by suit for possession because the Rent Controller has no jurisdiction. Such a stand is not permissible because they are not setting up any right independent of the rights which the deceased did have. That apart, Kadar

Nath", (supra) has also made it clear that in a situation like this. the jurisdiction of the Controller remains unaffected. To refuse relief where I he plaintiff ..discloses no cause of action or the defendant has a valid defense to make, is not the same thing as to say that the court does not possess or ceases to posses") the power to allow or refuse such relief. The same view was taken by his Lordship Hon''ble Mr. Justice Sultan Singh in the case of B.B. Twakley (Supra). I, Therefore, accept the contention of the learned counsel for the respondent that since the appellant "or his brother Mahesh Behari Lal have no right to remain in possession of the demised premises, eviction order can be passed against them straightaway."

The necessary orders for eviction, as stated above wore, accordingly passed by the Rent Control Tribunal against the appellant and his brother, the two sons of the deceased tenant.

(7) The present appeal has been filed by Sh. Mukat Behari Lal impugning the above said judgment. It is, however, not in dispute that the appellant has since handed over the possession of the demised premises to the respondent-landlord.

(8) The learned counsel for the appellants have vehemently contended that the Rent Control Tribunal has gravely erred in passing an order of eviction, as no grounds existed for the Tribunal to pass decree for eviction. The loss of protection to the tenant, as contemplated in the provisions of Section 2(1) could not be adverted to on the face of the provisions, as contained in Section 14(1) of the Act. It is argued that no order for eviction of any premises could be made except as in accordance with the provision of Section 14(1) of the Act and loss of protection u/s 2(1) of the Act does not find place in the above said provision as there is a complete bar in granting eviction on any other ground. The operative portion of Section 14 on which reliance is placed may be reproduced as follows:

"PROTECTION of tenant against eviction.-(i) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant: Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely--....."

(9) The plea is raised that the non obstinate clause in Section 14(1), namely, "notwithstanding anything to the contrary contained in any other law or contract" must mean notwithstanding anything to the contrary contained in that Act and, as such, it must refer to the exempting provisions which would be contrary to the general applicability of the Act, Therefore, this clause is to avoid the operation and effect of all contrary provisions such as contained in Section 2(1) of the Act. Reliance is placed on the judgments as reported in Union of India (UOI) and Another Vs. G.M. Kokil and Others, ; Chandavarkar Sita Ratna Rao v. Ashalata S. Gurum Air 1987 Supreme Court 11(2) and M/s. Orient Paper and Industries Ltd.

and another Vs. State of Orissa and others, .

(10) Reference is made to the following paragraphs 11 and 12 in M/s. Orient Paper and Industries Ltd. and another (supra):

"11. During the pendency of the proceedings in this Court, Act 22 of 1981 was amended by Act 4 of 1989 with retrospective effect. Subsequent to this amendment writ petition No. 1132 of 1988 was amended. Section 2 of the Amending Act provides : "2. In Section 5 of the principal Act, for sub-section (1) excluding clause (b) and the Explanations thereunder, the following shall be substituted, namely :- "5. (1) Notwithstanding any provision to the contrary in any other law, on the issue of a Notification under Subsection (3) of Section I in respect of any area,- (a) all contracts for the purchase, sale, gathering or collection of specified forest produce grown or found in the said area and all grants of profits a prendre including the right to enter upon the land, fell, cut and remove the specified forest produce from the said area, shall stand rescinded, whether such forest produce is grown or found on land owned by private persons or on land owned by the State Government or in Government forests: Provided that rescission of such contracts and grants shall not affect the customary rights, if any, of the local Tribals to gather and collect the specified forest produce; This amendment, beginning with the non obstinate clause, provides that, on the coming into force of Act 22 of 1981 by notification issued u/s 1(3), all contracts relating to any specified forest produce for the purchase. sale, collection etc., including grants of profits a prendre whether such produce is grown or found on private land or on Government land or in Government forest, would stand rescinded, but such rescission would not affect us customary right, if any, enjoyed by the local tribals to gather and collect specified forest produce. 12. This sub-section overrides "any provision to the contrary in any other law". These words are an expression of the widest amplitude engulfing all rules having the force of law, whichever be the source from which they emanate statutory, judicial or customary the only exception, in the context, being the Constitution of India. "This means, once brought into force the sub-section will, subject to the Constitution, operate with full vigour, notwithstanding any statute or judicial decision or any other rule recognising any right or interest or grant inconsistent with or contrary to the provisions of the sub-section."

(11) The next contention is that the earlier judgments of this Court as reported in Gian Devi v. Jiwan Kumar 1980 Rajdhani Law Reporter 28(4); Girdhari Lal v. Abdul Jalil 1980 Rajdhani Law Reporter 91(5); Bipin Behari Tawakley v. Kishori Lal Mehra Advocate (Died) represented by Smt. Sewa Devi and another 1981 (2) RCJ 311 Ram Saran v. Misrilal 1084 Rajdhani Law Reporter 149(7) and Kulwant Rai v. Banwarilal 1984 Rajdhani Law Reporter 161(8) require re-consideration and these judgments did not find favor in another matter, which is still pending consideration in this Court (SAO No. 189 of 1983) (Smt. Daljit Kaur and others vs. Harbans Singh Makkar) as N.N . Goswami J. passed an order on November 16. 1983 for direction to place the matter before. Hon"ble the Chief Justice for

constitution of a Larger Bench Reference however, was declined as it was stated that the law is now settled by the judgment of the Supreme Court in Gian Devi Anand Vs. Jeevan Kumar and Others, .

(12) The learned counsel for the appellant have conceded that. in case the judgments as delivered in the cases of Bipin Behari Tawakley (supra). Ram Saran (supra), Kulwant Rai (supra), Girdhari Lal (supra), and Smt. Gian Devi Anand (supra) are followed then the present appeals are also, table to be dismissed. They, however, sought reliance from the reference Order of N. N. Goswami J. in Daljit Kaur and others (supra) and contended that the present matter be also related to a Larger Bench

(13) In the case of Smt. Gian Devi Anand (supra) M. L. Jain, J. has clearly held that if statutory tenant dies during pendency of eviction proceedings, the Controller can order recovery of possession against all the L.Rs in occupation of the premises. The said L.Rs. can agitate such matters or grounds which are not personal to deceased/ tenant and the landlord cannot be driven to file a suit against them as the Controller does not loose jurisdiction on the death of the tenant. The Controller has jurisdiction to grant appropriate relief between a landlord and the legal representatives of the deceased tenant. The proviso to Section 14(1) does not lay down condition precedent to the assumption of jurisdiction.

(14) The learned counsel for both the parties next placed reliance on the Full Bench judgment of this Court as reported in Kedar Nath and Another Vs. Mohani Devi and Others, . This is a judgment of five Judges Bench which overruled the earlier Full Bench judgment as reported in Krishan Gopal Malhotra Vs. Vijay Kumar, . The Bench stated the facts of the case and proceeded to dispose of the matter which will be indicated from reading of paragraphs 6, 7, 8 and 10, which are as follows :

"6.Mr. T.C.B.M. Lal, the learned counsel for the appellant landlord has raised two main contentions before us : (1) that the duty of the tenant on the determination of the lease to put the Lesser into possession of the property devolves, on the tenant's death, on his legal representatives and the landlord's right to get back possession is not affected in any way by the death of the tenant. The right to sue on the basis of the tenancy which has been determined, survives in favor of the landlord against the tenant's legal representatives, and (2) that the jurisdiction of the Controller to entertain, proceed with and finally dispose of the proceedings, which were initiated before him by the landlord is not affected by the death of the tenant during its tendency. 7. According to him, the conclusions drawn in Krishan Gopal Malhotra Vs. Vijay Kumar, which were relied upon by the legal representatives of the deceased tenants, against the landlord's claim, both before the Division Bench and the Full Bench and now before us, require reconsideration as they came in conflict with the majority view expressed by the Supreme Court in the case of South Asia Industries Private Ltd. Vs. S. Sarup Singh and Others, . In the latter case, the Supreme Court was of the view that it

was not the tenant alone against whom an order could be passed by the Controller for recovery of possession of the premises. Orders could be passed against "all persons in occupation". The judgment of the Supreme Court, Therefore, indicated that there was nothing to prevent an order for recovery of possession being passed against the legal representatives. We will examine this judgment in greater detail a little later we would first deal with the judgment of the Full Bench in K. G. Malhotra's case (supra), which according to Mr. H. K. L. Sabarwal, the learned counsel appearing as amicus curiae, on behalf of the respondents, in no way comes in conflict with the views expressed by the Supreme Court and lays down the correct law. 8. "V. S. Deshpande, J., who spoke for the Full Bench in that case was of the view that if eviction was claimed in a suit in any ordinary court under the Delhi and Ajmer Rent Control Act, 1952, then on the death of the tenant, "the suit, though triable by the same court, would change from a suit based on tenancy to a Suit based on title". But on the death of a statutory tenant, an "application for eviction u/s 14 of the 1958 Act would not proceed further", the landlord would have to file a separate suit based on title in a court having general jurisdiction, as the legal representatives do not inherit the tenancy or the statutory protection. The learned judge then considered the question as to how an application u/s 14(1) of the 1958 Act, was to proceed on the death of the tenant and concluded; "The landlord may not apply within the prescribed time to bring the legal representatives on record. In such a case, the application abates as provided by Order 22. But, if the landlord makes an application to bring the legal representatives on the record, they will have to be brought on. the record as the right to" sue survives. if the legal representatives plead an independent title, then also the Controller would have to dismiss the petition for lack of jurisdiction to inquire into the independent title. On the other hand if the legal representatives admit that the deceased tenant was a statutory tenant and have no defense to make except such defense as was personal to the deceased tenant, then though the general right to sue survives to the landlord to pursue his remedy on the basis of title in a civil court, the right to pursue the application under the 1958 Act does not-survive and the Controller has to terminate the proceedings. . . . This does not mean that a subsequent suit on the same cause of action could not be filed, as would happen after the abatement of a suit under the Civil Procedure Code. On the contrary, the landlord would have a right to file a suit on the basis of title precisely because of the death of the statutory tenant during the pendency of the proceeding before the Controller. We would not, Therefore, call the termination of the proceeding before the Controller as in abatement. The Controller may, Therefore, dismiss the application for eviction on the ground that he has ceased to possess the jurisdiction to entertain it on the death of the Statutory tenant Such an order would have to be passed in the presence of the proposed legal representatives" lives. But, it would have to be passed after bringing them on record. When a lease is granted by the landlord to the tenant, which in terms of Section 105 of the Transfer of Property Act, 1882 is a transfer of a right to enjoy immovable property, possession of the property is delivered to the latter, the tenant by virtue of

Section 108(c) of the "Transfer of Property Act, In the absence of a contract or local usage to the contrary, is deemed to have contracted with the tenant that if the latter pays the rent reserved by the lease and performs the contracts binding on him, he can hold the property during the term of the lease, without Interruption. The benefit of such contract according to the said section, is annexed to and goes with the tenant's interest as such and can be enforced by every person in whom that interest in whole or in part from time to time vests. On the determination of the lease, whether on the expiry of a notice to quit or on the happening of any one of the other events mentioned in Section 111 of the Transfer of Property Act, the tenant loses the right to enjoy the property. the tenant, then, if he continues in possession- is just holding" over and is bound under clause (q) of Section 108 of the Transfer of Property Act to put the Lesser into possession of the property . The landlord becomes entitled to recover possession and if such a tenant resists. to seek the assistance of the court for that purpose."

The Bench then considered the import of the provisions of Section 14 of the Act as well as the rights accruing to the legal representatives of the deceased tenant. Paragraphs 18, 19 and 20 may be read in this

18.The question next arises whether the right to sue on the basis of the application u/s 14 of the 1958 Act, which was pending before the Controller at the time of the tenant's death, survives in favor of the landlord, against the legal representatives of the deceased. The answer is clearly in the affirmative. The right to sue, after all, is nothing but the right to seek relief (see Ibrahimbhai Karimbhai and Others Vs. State of Gujarat, . A petitioner may claim by way of relief recovery of money or property from the respondent. On the latter's death, the petitioner has a right to follow the subject-matter of the litigation in the hands of the legal representatives. The general rule is that all rights of actions and demands whatever existing in favor or against a person at the time of his death which are not personal to the deceased, would survive to or against his legal representatives. Section 306 of the Indian Succession Act is more or less to this effect and specifying certain exceptions provides that causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party and in cases where after the death of the party the relief sought could not be enjoyed or ranting; it would be nugatory, do not survive. Section 37 of the Contract Act has also the same effect and lays down that "promises bind the representatives of the promisers in case of the death of such" promises before performance, unless a contrary intention appears from the contract". According to Rule 23 of the Delhi Rent Control Rules 1959, the Controller and the Rent Control Tribunal are. as far a, possible, to be guided by the provisions of Code of Civil Procedures, on all questions relating to procedure not specifically provided by the Act and the Rules. Section 146 of the CPC lays down that "where any proceeding may be taken or application made by or against any person then the proceeding may be taken or application may be made by or against any person claiming under him". The Supreme Court in Girja

Nandini Devi and Others Vs. Bijendra Narain Choudhury, , observed : the maximum" action personally a moritur cum personal a personal action dies with a person has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions. where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages ex delicto and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory. Death of the person liable to render an account for property received by him does not, Therefore, affect the liability on his estate." The application for recovery of possession of the premises in dispute, out of which the present appeals have arisen. were not actions for damages ex delicto. They did not fall within the enumerated classes, nor were they such that relief claimed was personal to the deceased tenants and could not be enjoyed after their death or granting it would be nugatory. Such would have been the case, if the relief claimed had been in respect of an obligation of the deceased which was personal to him as would be the obligation of a painter, to paint a picture, for example. The right of the deceased tenants to statutory protection from eviction from the premises was personal to them; but their obligation to deliver it back to the landlord on the termination of the statutory protection, was not personal. The claim of the landlord for possession of the premises was not extinguished with the death of the tenants. The premises are still in existence and their possession is in the hands of the legal representatives, who can be directed to hand it over to the landlord. The death of the tenants, who were liable to put the landlord into possession of the premises which they had earlier acquired, would not, Therefore, affect the liability of their estate. The landlord still can follow his claim for recovery of the premises, in the hands of the legal representatives of the deceased tenants. Accordingly, his right to sue survives against them. 20. Mr. Sabharwal contended that even if the right to sue had survived in favor of the landlord and against the legal representatives, it could not be enforced by the Controller, who had no power to pass an order against any person other than a tenant. The legal representatives, according to him, were not the tenants, and, Therefore, not amenable to the Controller's jurisdiction. This contention is not well founded. Although in Section 14(1), the language employed speaks of a ban against an order or decree for recovery of possession in favor of the landlord against a tenant, yet the power of the Controller to make an order for recovery of the premises is contained in the proviso which is wide in scope. It provides, in unequivocal terms that "the Controller may, on an application, made to him, in the prescribed manner, make an order for the recovery of the premises on one or more of the specified grounds". It does not say against whom this order can or cannot, be made. There are no such limits to the Controller's power. The interpretation put by Mr. Sabharwal, suggesting that this power is limited to making an order against a tenant only has no justification. A similar argument was advanced in South Asia Industries Private Ltd. Vs. S. Sarup Singh and

Others, , which case had arisen also out of an application for eviction u/s 14(1) of the 1958 Act. Repelling this argument, Mr. Justice A. K. Sarkar, who delivered the leading judgment of the majority, with whom Mr. Justice Bachawat agreed in a separate concurring judgment, observed: I am unable to accept this argument. The proviso expressly states that an order for ejectment can be made on one or more of the following grounds and then sets the grounds out in the different clauses that follow, one of which is clause (b) with which we are concerned. The clauses, Therefore, set out the circumstances in which the operative part of the proviso is set in motion, that is, the circumstances in which an order for recovery of possession may be made. If this is so, as I think it is, the clauses could not have been intended to indicate the person against whom an order for recovery of possession could be made. Their purpose was entirely different. I am not suggesting that an order for recovery of possession against the assigning tenant cannot be made. All that I say is that the clauses do not intend to indicate the persons against whom an order for recovery of possession can be made and so it cannot be argued that the order cannot be made against any other."

The counsel for the appellants have placed great reliance in paragraph 30 of the judgment and contends that the only way the landlord can get possession of the premises after the death of the tenant in the facts of the present case, is to file a regular suit for possession in the civil court, which will be of a different cause of action. This paragraph reads as follows:

"TO sum up, the relief the landlord claimed in his applications u/s 14 against the tenants, whose tenancies had already been determined and who were alleged to have lost the protection of Section 14 of the 1958 Act, could thus, be claimed on their death against their legal representatives. The right to sue on the back of the applications u/s 14 of the 1958 Act, which were pending before the Controller, Therefore, survived in favor of the landlord end against the respondents in S.A.O. 6 of 1968 and the respondents number 1 to 4 in Sao 54 of 1963 who were rightly held to be the legal representatives of the deceased tenants and were correctly brought on record as such. The jurisdiction of the Controller to deal with the said applications after the death of the tenants remained unartected. The proceedings u/s 14(1) of the 19⁴⁸ Act, Therefore have to be continued against the said legal representatives. Since the power of the Controller to pass an order for recovery of possession depends on the existence of one or more of the conditions specified in clauses (a) to (1) of the proviso to sub-section (1) of Section 14, the landlord has to establish that they do exist. In answer thereto, the legal representatives who have been brought on record, may put forward such contentions as are appropriate to their representative character, but not the contentions which were personal to the deceased tenants. They would, of course, be entitled to support their aforesaid contention by such evidence, as they may be able to adduce. If the Controller finds that one or more of the aforesaid conditions exist, nothing would prevent him; from passing an order for recovery of the premises in favor of the landlord and against the legal representatives. In case the Controller comes to the finding that the landlord has

not been able to establish any of the grounds which are mentioned in clauses (a) to (1) of the proviso to Section 14(1) then he would have no power to pass an order for recovery of possession for the reason that the conditions on which his power to order recovery of possession rests, do not exist. The landlord may then file, if so advised, a regular suit for possession in the Civil Court, which would be on a different cause of action.

(15) The observations made in the above said paragraph do not, in any manner, advance the cause of the appellants as the legal representatives who have been brought on record have no defense whatsoever to claim their rights except as legal representatives to represent the estate and put forward such contentions as are appropriate to their representative character but not the contentions which were personal to the deceased tenants. In that case, it will not be necessary for the landlords to file a regular suit to recover possession after the litigation had dragged in the court of Rent Controller and Rent Control Tribunal for such a long period. This is how the law is interpreted in paragraphs 19 and 20 of the judgment which have already been cited above. Indeed, that is the import of the rent legislation when the legal representatives of the deceased tenant have no defense, whatsoever. The answer is further given to the contentions of counsel for the appellants by M. L. Jain, J. in the case of Smt. Gian Devi (supra) wherein it is held that the remarks in paragraph 30 are no authority for saying that if the legal representatives have no defense to raise in law, the landlord must be driven to file a suit against them or their eviction. The relief can, therefore, be granted against the legal representatives of the deceased Statutory tenant to whom the tenancy has not descended for recovery of possession.

(16) The position of law is also well settled with regard to the heritability of heirs of statutory tenant by the judgment of the Supreme Court as reported in Smt. Gian Devi Anand (supra). The amendment of the definition of "tenant" introduced by Delhi Rent Control Amendment Act (Act 18 of 1976) has clearly defined the protection and personal right of continuing in possession to the heirs of the deceased statutory tenant in respect of residential premises which is the subject matter of present dispute between the parties. The Court has clearly stated that the heritability of the statutory tenancy is restricted in case of residential premises only to the heirs mentioned in Section 2(I)(iii) of the Act. The said provision may be reproduced as follows :

"2(1)"tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes: (i) a sub-tenant; (ii) any person continuing in possession after the termination of his tenancy; and (iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and condition specified, respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person's. (a) spouse, (b) son or daughter, or, where there are both son and daughter, both of them, (c) parents, (d) daughter-in-law, being the widow of his pre-deceased son, as had

been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, . but does not include-, (A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to Section 3 of the Delhi Rent Control (Amendment) Act, 1976; (B) any person to whom a licence, as defined by Section 52 of the Indian Easements Act, 1882 has been granted." Explanation I-The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows : (a) firstly, his surviving spouse; (b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death; (c) thirdly, his parents, if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and (d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death.

Explanation II-If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death such successor shall acquire such right for a limited period of one year and, on the expiry of that period, or on his death, whichever is earlier the right of such successor to continue in possession after the termination of the tenancy shall become extinguished. Explanation III-For the removal of doubts, it is hereby declared that-

(A)where, by reason of Explanation II, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguishment shall not affect the right of any other successor of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other Successor, specified in any lower category or categories", as the case" may be ; (b) the right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs."

The conclusions by the Court are contained in paragraph 31 which read as follows:

"WE now proceed to deal with the further argument advanced on behalf of the landlords that the amendment to the definition of "tenant" with retrospective effect introduced by The Delhi Rent Control Amendment (Act 18 of 1976 to give personal protection and personal right of continuing in possession to the heirs of

the deceased statutory tenant in respect of residential premises only and not with regard to the heirs of the so called statutory "tenant" in respect of commercial premises, indicates that the heirs of so called statutory tenants, Therefore, do not enjoy any protection under the Act. This argument proceeds on the basis that in the absence or any specific right created in favor of the so called statutory tenant in respect of the tenancy, the heirs of the statutory tenant who do not acquire any interest or estate in the tenanted premise. become liable to be evicted as a matter of course. The very premises on the basis of which the argument is advanced is, in our opinion, unsound. The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in tenant, unless there are contrary provisions in the Act. and. the tenant not with standing the termination of tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate w'hich the tenant under the Act despite termination of the contractual tenancy continues to enjoy creates a heritable interest in the absence of any provision to the contrary. We have earlier noticed .the decision of this Court in Damadilal and Others Vs. Parashram and Others, . This view has been taken by this Court in Damadilai"s case. and in, our opinion this decision represents the correct position in law. The observations of this Court in the decision of the Seven Judge Bench in the case of V. Dhanapal Chettiar Vs. Yesodai Ammal, which we have earlier quoted appear to conclude the question. The amendment of the definition of tenant by the Act 18 of 1976 introducing particularly Section 2(l)(i"i) does not in any way mitigate against this view. The said subsection (iii) with all the three Explanations thereto is not in any way inconsistent with or contrary to sub-section (ii) of Section 2(1) which unequivocally states that tenant includes any person continuing in possession after the termination of his tenancy. In the absence of the provision contained in sub-section 2(1)(iii), the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the so called statutory tenant on his death and the heirs of such tenant would in law step into his position. This sub-section (iii) of Section 2(1) seeks to restrict this right in so far as the residential premises are concerned. The heritability of the statutory tenancy which otherwise flows from the Act is restricted in case of residential premises only to the heirs mentioned in S. 2 (1) (iii) and the heirs therein are entitled to remain in possession and to enjoy the protection under the Act in the manner and to the extent indicated in sub-section 2(1)(iii). The Legislature which under the Rent Act affords protection against eviction to tenants whose tenancies have been terminated and who continue to remain in possession and who are generally termed as statutory tenants, is perfectly competent to lay down the manner and extent of the protection and the rights and obligations of such tenants and their heirs. Section 2(1)(iii) of the Act does rot create any additional or special right in favor of the heirs of the so called statutory tenant" on his death, but seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and rights of a contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory tenant, are fully protected by the Act and the heirs of such

The above judgment, Therefore, reiterates the limits imposed on the rights of the legal representatives of deceased statutory tenants in case of residential premises in the manner as provided in Section 2(1)(iii) of the Act.

(17) The recent judgment of this Court reiterates the proposition which has been canvassed by learned counsel for the respondents/ landlord. Arun Kumar J. in Civil Revision No. 556 of 1991 decided on March 15 1995 discussed the; statutory provisions, as contained in Section 2(1)(iii) of the Act and held that if a tenant leaves behind a widow who was ordinarily residing with him at the time of his death, she alone will get a right to inherit the statutory tenancy to the exclusion of all other heirs and that too for her own life time only. This right does not pass on to any other heir or legal representative of the deceased tenant . "The right does not go any further. The sons or daughters or :ny other category of heirs of the deceased tenant do not get any right of inheritance so far as the statutory tenancy of deceased tenant is concerned. On the death of the widow the right does not pass on the other heirs of the deceased tenant.... " The learned Judge then referred to the judgment of this Court in Bipin Behari v. Kishori Lal 1981 (1) Rlr 241(12) and of the Supreme Court in Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another, . The following paragraphs of the judgment read as follows :

"IN this connection the learned counsel for the petitioner landlord has relied on Bipin Behari v. Kishori Lal 1981 (1) Rlr 241. It was held that the right of a widow in such cases to inherit the tenancy is personal to her and on her death it does not devolve on any other heir of the deceased tenant. In the presence of the widow the daughter does not inherit any right. In the present case instead of daughter it is the son who is claiming the right to contest the petition. The controversy in this connection was set at rest by the Supreme Court in Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another, . The original tenant of the premises was B. N. Chatterjee. The landlord had alleged in the suit that by a notice dated 26th June 1982 served upon the tenant the tenancy had been duly terminated. This was denied in the written statement. The Court was considering an analogous provision in the Rajasthan Premises (Control of Rent & Eviction) Act, It was observed: "It is now settled that after the termination of the contractual tenancy the statutory tenant has only a personal right to continue in possession till evicted in accordance with the provisions of the Act. It is pointed out by this Court in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, "A person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly though in law not accurately, called a "statutory tenant". Such .a person is not a tenant at all; he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal : it is not capable of being transferred or assigned, and devolves on his death only in the manner provided

by the statute." These observations have been made with reference to the provisions of the Bombay Rents Hotel & Lodging House Rates (Control) Act, 1947. But they equally apply to the provisions of the Act with which we are concerned. The protection given to B. N. Chatterji was personal to him and if that protection is withdrawn either because there is a change in the statute or because the person who is to be personally protected is no longer living, the question arises as to what is the position of the legal representatives of the deceased statutory tenant and the landlord in a proceeding; of the nature with which we are concerned."

It was farther held that "simply being brought on record on the basis of right to sue does not: mean that all the defenses which were personal to the tenant by virtue of his status as tenant become available and open to such a person who has been brought on record. The legal effect is that a person who is brought on record under Order Xii Rule 4 CPC in such circumstances is that he is only entitled to make defenses which are appropriate to his character as a legal representatives of the deceased tenant. He merely represents the estate of the deceased."

(18) The next question which now requires consideration is the effect of non obstinate clause as contained in Section 14(1) of the Act. A non obstinate clause is a legislative device which is" usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in some enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. The import of this provision is also to the effect that "when two or more laws operate in the same field and each contains a non obstinate clause staling that its provisions will override those of any other law, cases of such conflict have to be decided by reference to the object and purpose of the laws under consideration. This was so stated in the judgment of the Supreme Court as reported in Shri Sarwan Singh and Another Vs. Shri Kasturi Lal, while interpreting the provisions of Delhi Rent Control Act, Sections 14A, 25A, 25B, 25C and 54 to determine whether these provisions will prevail over the provisions of Section 19 and 39 of Slum Areas (Improvement and Clearance) Act. Paragraph 20 of this judgment is of some interest and may be reproduced as follows:

" SPEAKING generally ,the object and purpose of a legislation assume greater relevance if the language of the Jaw is obscure and ambiguous. But, it must be stated that we have referred to the object of the provisions newly introduced into the Delhi Rent Act, in 1975 not for seeking light from it for resolving in ambiguity, for there is none, but for a different purpose altogether. When two or more laws operate in the same field and each contains a non obstinate clause stating that its provisions" will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and" purpose of the laws under consideration. A piquant situation ,like

the one before us, arose in *Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited*, the competing statutes being the Banking Companies Act, 1949 as amended by Act of 1953, and the Displaced Persons (Debts Adjustment) Act, 1951. Section 45A of the Banking Companies Act, which was introduced by the amending Act of 1953, and Section 3 of the Displaced Persons Act 1951 contained such a non obstante clause, providing that certain provisions would have effect "not with standing anything inconsistent there with contained in any other law for one by considering the object and purpose of the two laws and giving precedence to the banking Companies Acts by observing : "it is Therefore, desirable to determine the overlying effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intent conveyed by the language of the relevant provisions therein." (p. 615) As indicated by us, the special and specific purpose which motivated the enactment of Section 14A and Chapter III of the Delhi Rent Act would be wholly frustrated if the provisions of the Slum Clearance Act, requiring permission of the competent authority were to prevail over them- Therefore, the newly introduced provisions of the Delhi Rent Act must hold the field and be given full effect despite anything to the contrary contained in the Slum Clearance Act."

The Supreme Court in *Chandavaikar Sita Ratna Rao (supra)* has; similarly held that "a clause beginning with expression notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force or in any contract is more than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict and overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provisions of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in *The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, .*"

(19) The plea may now be examined with reference to the facts of the present cases. The landlords brought their petition for eviction against the tenants. There was valid termination of statutory tenancy and the legal heirs of the deceased statutory tenants had not inherited any right or rights within the meaning of Section 2(1) of Delhi Rent Control Act as amended by Act No. 18 of 1976. In this background it was held to be unnecessary to go into the question, whether any ground of eviction was available to the landlord or not and whether an order of eviction could be passed straightaway against the legal representatives. The position of law is not in dispute as the definition of "tenant", as contained in Section 2(1) of the Act will indicate that in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified etc. the spouse alone was entitled to

inherit the tenancy rights of the deceased tenant and that too for her own life time. It has been established on record by appreciation of evidence that the legal heirs of the deceased tenants were not dependent on them and, Therefore, had no right to defend or contest the eviction petition. Whatever defenses were open to the tenants could be taken by the widow who stepped into the shoes in view of her statutory right but the sons of the tenant do not fall in that category. This is the accepted position of law and there is no dispute about the same. The legal representatives, on the other hand, also cannot be held to be tenants and will not have the protection of law, as contained in Section 14(1) of the Act. In the above background, it cannot be said that the provisions of two Sections i.e. Section 2(1) and 14(1) override each other and there is conflict in such provisions which will make the application of non obstinate clause in favor of the appellants. The special and specific purpose which motivated the enactment of Section .14(1) does not, in any manner, come in conflict with the limits of the rights of the tenants as defined in Section 2(1) of the Act. Therefore, it will be wrong to interpret the non obstinate clause, as contained in Section 14(1) to exclude the rights of the landlords as contained in any other provision of the Act and drive them to seek remedy in the civil court.

(20) The protection afforded to tenant on the basis of inheritance by Section 2(1) was challenged in the Supreme Court on the ground that the said Section put restrictions on heirs of statutory tenant to inherit residential premises whereas there is no such restriction on the heirs of statutory tenants of non residential premises. The different treatment meted out to heirs of statutory tenant of residential premises was, Therefore, hit by Articles 14 and 21 of the Constitution of India. The Supreme Court in Gauri Shanker v. Union of India 1994 (2) R.C.R. 474(16) repelled the challenge and held that Section 2(I)(iii) of the Delhi Rent Control Act was not open to attack. as the said provision was not, in any manner, either unfair or unjust or absurd. Paragraph 12 of the judgment reads as follows :

"IT is evident from the above decision of the Constitution Bench of this Court that a commercial tenancy is in valuable and has got distinct features and characteristic of its own different from that of a residential tenancy. None of the peculiar or unique feature present in the case of commercial tenancies exist in the case of residential tenancies. In the above background, if the legislature thought it fit to afford a greater and extended right or benefit to the heirs of the statutory tenants of commercial premises and not to extend such rights to the heirs" of the statutory tenants of residential premises, we should say that it only stands to reason and reckons the stark realities of the prevailing situation. The protection afforded by the Rent Act to tenant after the termination of the tenancy and to the heirs of the tenant is only a creation of the Act and it is open to the legislature to make appropriate provisions in that behalf. It can make suitable and appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be so enjoyed and the manner in which the same is to be enjoyed. In the above perspective, we are of the view that the provisions in Section 2(I)(iii) of the Act, which seeks to restrict or limit the right of the heirs, in

so far as the statutory tenants of residential premises are concerned and to the extent provided therein, are not in any way discriminatory and do not offend the guarantee under Article 14 of the Constitution. This is not a case where the residential tenancy and the commercial tenancy are similarly placed. They belong to two different categories with distinct features and characteristics of their own. No question of discrimination arises. In the context, it is only proper to quote the following observations in *Sakhawat Ali Vs. The State of Orissa*, , which is" apposite : . . . legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution."

NOR are we impressed by the plea that the right to shelter is a "guarantee under Article 21 of the Constitution of India and so the abridgement or limitation placed on the right of the legal heirs in the case of a statutory tenancy of residential premises makes an inroad into the right of the tenant under Article 21 of the Constitution of India. We hold that the statutory tenancies regarding; residential premises are distinct and different from statutory tenancies regarding commercial premises and the limitations or the restrictions placed by Section 2(I) (iii) of the Act on the rights of the heirs of the statutory tenants of residential premises are reasonable, fair and just in all the circumstances of the case. There is no violation of the guarantee enshrined in Article 14 or Article 21 of the Constitution of India."

(21) The provisions of Section 2(I)(iii) of the Act cannot, in any manner, accordingly be held in conflict with the provisions of Section 14(1) of the Act and an eviction order can always be passed in a case where there is no inheritance of tenancy in respect of residential premises except to the extent as provided in law. The plea based on the non obstinate clause does not hold any ground and the same is, accordingly rejected.

(22) For the aforesaid reasons, the appeals are dismissed. The appellants in *Sao Nos. 202 and 21211981* are, however, granted time to vacate the tenanted premises till August 31, 1996, subject to their filing usual affidavits of Undertaking within four weeks from today. There will be no order as to costs.