

(2001) 09 AHC CK 0051
In the Allahabad High Court
Case No : C.M.W.P. No. 33224 of 1998

Milap Chandra Jain

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 12-09-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 22, 226
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3A, 7, 7(1), 7(2)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 10, 2, 21(8), 3, 3A

Citation : (2001) 4 AWC 2951

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Murlidhar and Ram Pratap Singh, for the Appellant; S.C., S.D. Singh and P.C. Jain, for the Respondent

Final Decision : Partly Allowed

Judgement

B.K. Rathi, J.—By means of this petition under Article 226 of the Constitution of India, the petitioner has made a request that the definition of "standard rent" as given in Section 3 (k) (wrongly mentioned in the petition as 2 (k)) and corresponding provisions of Sections 4 (2), 5, 6, 8 and 9 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act No. XIII of 1972), be declared ultra vires of the Constitution of India. It is further prayed that it may be declared that the standard rent payable for building is the prevailing market rent relating to similar buildings exempted from the operation of the Act : that it be further declared that on failure to arrive at a settlement of the standard rent, the same be determined by the District Magistrate on the basis of the criterion as may be laid down in this petition. The last prayer made is that the respondent No. 1, i.e., State of U. P. and Food and Civil Supply Department of State of U. P. be directed to take steps for the enactment of a new rent control legislation on the lines of Model Rent Control Legislation.

2. The facts giving rise to this petition are as follows :

"The petitioner alleges that his father Sri D.C. Jain, in the year 1947-48, constructed the shops on both the sides of Raja Ki Mandi at the crossing of M. G. Road, Agra and shops were let out to the various tenants. This area later on came to be known as Labh Chand Market. Reasonable annual rent was determined u/s 3A of U. P. Control of Rent and Eviction Act, 1947 (hereinafter referred to as "old Act") in accordance with the amendment made in the Act by Act No. XLIV of 1948 by which the newly constructed building also came under the purview of the old Act."

3. In March, 1956, the shop No. 4809-A/14 (hereinafter referred to as "disputed shop") fell vacant. It was allotted to T.C. Gupta, father of the respondents Nos. 2 to 6 u/s 7 (2) of the old Act. He started paying rent @ Rs. 34.34p. per month. The amount also included the rent of furniture fitted in the shop by the father of the petitioner. It is further pleaded that in the year 1972, the old Act was repealed by the new legislation U. P. Urban Building (Regulation of Letting. Rent and Eviction) Act, 1972 U. P. Act No. XIII of 1972 (hereinafter referred to as the "Act"). The provisions of Section 5 of this Act permitted for the enhancement of the rent up to 25% only but T.C. Gupta did not enhance the rent at all : that the adjoining shops of Labh Chand Market are fetching rent at much higher rate as shown in chart. Annexure-1 to the petition ranging from Rs. 333.30p. per month to Rs. 6,800 per month ; that the petitioner is also required to pay house tax, water tax, etc., and therefore, he is receiving rent of Rs. 23 per month only of the disputed shop ; that T.C. Gupta and thereafter his sons also permitted hawkers to sit in verandah in front of the disputed shop and was earning Rs. 50 per day from them.

4. That according to the Act, the standard rent is agreed rent or the reasonable annual rent + 25% thereof whichever is higher. The law has freezed this rent at this amount. There is no provision in the Act for any subsequent enhancement or revision of the standard rent in this category of the tenant except on the ground of reconstruction of the accommodation or increase in the taxes : that this is wholly unreasonable and arbitrary causing serious hardship to the landlords which is all the more greater in cases of the buildings constructed during forty"s like the present one. The petitioner has made his prayer in the light of the decision of Apex Court in the case of Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another, , (hereinafter referred to as "Malpe"s case").

5. The petition has been opposed by State of U. P. as well as by the respondents Nos. 2 to 6. It has been alleged by them that there is no ground to declare the definition of "standard rent" as ultra vires or for enhancement of rent. The respondent Nos. 2 to 6 has also pleaded that it is incorrect that they are realising Rs. 50 per day from the hawkers sitting in verandah in front of the disputed shop, that there is no question of enhancement of rent.

6. I have heard Sri Murlidhar, senior advocate for the petitioner, learned

Advocate General, assisted by Sri S.D. Singh for respondent No. 1 and Sri P.C. Jain, learned counsel for the respondent Nos. 2 to 6 and have carefully considered the matter "under controversy".

7. The shortage of the accommodation in this State was felt and for that reason, a temporary measure was taken out by United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (U. P. Act No. 3 of 1947), was enacted for a limited period. It controlled the eviction of the tenants superseding the provisions of Transfer of Property Act and also controlled the rent and the letting. Section 5 of the Act provided regarding the control of rent. Sub-section (2) of Section 5 is material for the purpose and is reproduced below :

"Section 5 (2) : Where the rent for any such accommodation has not been agreed upon or where, in the case of tenancies continuing from before October 1, 1946, the landlord wishes to enhance the rent agreed upon, he may, by notice in writing, fix the annual rent at OP enhance it to an amount not exceeding the reasonable annual rent."

8. The "reasonable annual rent" mentioned in this Sub-section has been defined in Clause (f) of Section 2 of the Act, which is as follows :

2(f) "Reasonable annual rent" in the case of accommodation constructed before July 1, 1946 means :

(1) If it is separately assessed to municipal assessment, its municipal assessment plus 25 per cent thereon ;

(2) if it is a part only of the accommodation so assessed, the proportionate amount of the municipal assessment of such accommodation plus 25 per cent thereon :

(3) if it is not assessed to municipal assessment :

(i) but was held by a tenant on rent between April 1, 1942 and June 30, 1946 fifteen times the rent for the one month nearest to and after April 1, 1942, and

(ii) if it was not so held on rent, the amount determined u/s 3A, and in the case of accommodation, constructed on or after July 1, 1946, means the rent determined in accordance with Section 3A."

9. The "municipal assessment" has also defined in Clause (e) of Section 2 of the Act, which is as follows :

"Section 2 (e).--"Municipal assessment" means the annual rental value assessed by the municipal board or notified area, as the case may be in force on April 1, 1942, in respect of accommodation which was assessed on or before such date and the first assessment made after April 1, 1942, in respect of accommodation which was assessed for the first time after such date."

10. The premises in dispute in the present case was constructed in the year 1947-48 and this premises was also brought in the purview of U. P. Act No. III of

1947 by amending Act No. 44 of 1948, Section 3A was also added regarding determination of annual reasonable rent by the District Magistrate which reads as follows :

"3A. Determination of annual reasonable rent by the District Magistrate.-- (1) The District Magistrate may on the application of a person who has been allotted any accommodation to which Sub-clause (1) of Clause (f) of Section 2 applied declare the annual reasonable rent payable therefor. The District Magistrate may likewise on the application of a person who has been allotted any accommodation or of the landlord determine the reasonable annual rent of the accommodation to which any of the remaining provisions of the said clause may be applicable.

(2) In determining the reasonable annual rent the District Magistrate shall take into account :

(a) if the accommodation was constructed on or after July 1, 1946, the cost of land and the cost of construction, maintenance and repairs thereof, its situation and any other matter, which in the opinion of the District Magistrate is material, and

(b) If it is accommodation falling under Sub-clause or para (i) of Sub-clause (3) of Clause (f) of Section 2, the principles therein set forth, and

(c) If it is accommodation falling under para (ii) of Sub-clause (3) of Clause (f) aforesaid, the principles set forth in Clause (a) of Sub-section (1) of Section 6.

(3) Subject to the result of any suit filed under Sub-section

(4) of Section 6, the rent declared or determined by the District Magistrate under this section shall be the annual reasonable rent of the accommodation."

11. By these provisions, the rent was freezed by U. P. Act No. III of 1947 which was a temporary measure. Admittedly U. P. Act No. III of 1947 was applicable to the premises in suit and, therefore, it was allotted to the father of the respondent Nos. 2 to 6 u/s 7 of the old Act and its reasonable annual rent was fixed to be Rs. 34.34p. per month by the District Magistrate.

12. The old Act was repealed by U. P. Act No. XIII of 1972, the preamble of which is as follows :

"An Act to provide, in the interest of the general public, for the regulation of letting and rent of, and the eviction of tenants from, certain classes of building situated in urban areas, and for matters connected therewith."

13. Section 3 (k) of the Act which have been challenged in this case defines the "standard rent" and reads as follows :

3 (k): "standard rent", subject to the provisions of Sections 6, 8 and 10, means :

(i) in the case of building governed by the old Act and let out at the time of the commencement of this Act :

(a) where there is both an agreed rent payable therefore at such commencement as well as a reasonable annual rent (which in this Act has the same meaning as in Section 2 (f) of the old Act, reproduced in the Schedule) the agreed rent or the reasonable annual rent plus 25 per cent thereon, whichever is greater :

(b) where there is no agreed rent, but there is a reasonable annual rent, the reasonable rent plus 25 per cent thereon ;

(c) where there is neither agreed rent nor reasonable annual rent, the rent as determined u/s 9 ;

(ii) in any other case, the assessed letting value, for the time being in force, and in the absence of assessment, the rent determined u/s 9."

14. Section 9 of the Act provides for the determination of standard rent. Sub-section (1) of Section 9 is as follows :

"Section 9. Determination of standard rent.--(1) In the case of a building to which the old Act was applicable and which is let out at the time of the commencement of this Act in respect of which there is neither any reasonable annual rent nor any agreed rent or in any other case where there is neither any agreed rent nor any assessment in force, the District Magistrate shall, on an application being made in that behalf, determine the standard rent."

15. Sub-section (2) of this Section provides for determination of the standard rent by the District Magistrate. However, it may not be relevant for the reason as at the time of commencement of the Act, the building was already in the tenancy of the father of the respondent Nos. 2 to 6 and reasonable rent was fixed by the District Magistrate under the old Act, Section 5 of the Act provides for the rent payable in case of old building and it permitted enhancement of the rent to an amount not exceeding the standard rent.

16. The argument of the learned counsel for the petitioner is that these provisions show that according to Section 3 (k) of the Act, the standard rent was the rent fixed in municipal assessment as in force on 1.4.1942 plus 25 per cent as provided under Clause (f) of Section 2 of the old Act ; that after commencement of the new Act, further enhancement, of 25 per cent of the said rent has been permitted by notice within a period of three months from the date of the enforcement of the Act, that the rent of the disputed shop was fixed at Rs. 34.34p. per month at the time of allotment and on enforcement of U. P. Act No. XIII of 1972, it was allowed to be increased by 25 per cent which amounted to Rs. 3.50 per month only. The petitioner alleged that it was a petty amount for which he had not taken steps ; that there is no other provision for further enhancement of the rent of the present building after 1972 and it has been freezed which is unreasonable for the reason that it is commercial premises from which the income has increased 100 times and similarly situated shops are on rent ranging from Rs. 333.30p. to Rs. 6,800 per month. Therefore, freezing of the rent of the disputed premises at the amount mentioned as above is arbitrary

and unreasonable and hit by Article 14 of the Constitution of India.

17. The learned counsel for the petitioner has referred to Section 4 (2) of the Act, which is as follows :

"Section 4 (2) : Except as provided in Sections 5, 6, 7, 8, 9A and 10, the rent payable for any building shall be such as may be agreed upon between the landlord and the tenant, and in the absence of any agreement, the standard rent."

18. It is contended that in the present case, the tenant came into possession of the old building in pursuance of the allotment order issued u/s 7 (1) of the old Act. Therefore, there is no question of an agreement in between the landlord and tenant regarding the rate of rent. The rent was determined by the District Magistrate.

19. The petitioner has based his petition solely on the decision of Malpe's case (supra). In that case, the appellants before the Apex Court were landlords of the premises in Bombay which were given on rent to various tenants. They filed petition in the High Court of Bombay challenging the constitutional validity of Section 5 (1) (B), Section 11 (1) and Section 12 (3) of the Bombay Rent Act, inter alia, on the ground that the provisions pertaining to the standard rent were ultra vires to Articles 14, 19 and 21 of the Constitution of India and consequently void. The main challenge was on the ground that the restriction on the right of the landlords to increase rents, which had been frozen as on 1.9.1940 or at the time of first letting, was no longer a reasonable and the said provisions had, with the passage of time become arbitrary, discriminatory, unreasonable and consequently ultra vires to Article 14 of the Constitution.

20. The Hon"ble Supreme Court, after examining various decisions on the point, held that a statute which, when enacted was justified, with the passage of time, could become arbitrary and unreasonable. The Supreme Court observed that a Committee constituted by the State of Maharashtra in the year 1977 found that as a result of the Rent Control Act, the returns landlords got were inadequate even for subsistence, because of the steep increase in the cost of living and that there was a case for general increase in the rents as nearly 20 years had elapsed after the last increase was allowed. The Supreme Court also noticed that the 12th Report of the Maharashtra State Law Commission had found that 46% of the landlords belong to low income groups and 27% belong to middle income group only 25% belonged to higher income group indicating thereby that 73% of the so called landlords were really people who depended on the rent of the property for their livelihood and to designate them as landlords was undesirable ; whereas the income of the tenants had gone up from 100 to 400 without there being a proportionate increase in the rents. The Supreme Court further noticed the recommendations of L.K. Jha Committee which inter alia recommended that the rents be reviewed to provide for adequate return on investment and profits for proper maintenance of buildings and neutralisation of effect of inflation and at

the same time bring down the advantage a tenant now enjoys over a landlord. In paras 26 to 28 of the judgment the Hon"ble Supreme Court made the following observations :

"Para 26 : It is true that whenever a special provision, like the Rent Control Act, is made for a section of the society it may be at the cost of another section, but the making of such a provision or enactment may be necessary in the larger interest of the society as a whole but the benefit which is given initially if continued results in increasing injustice to one section of the society and an unwarranted largesse or windfall to another, without appropriate corresponding relief, then the constitution of such a law which necessarily, or most likely, leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary.

Para 27 : The Legislature itself, as already noticed hereinabove, has taken notice of the fact that puggrie system has become prevalent in Mumbai because of the Rent Restriction Act. This Court was also asked to take judicial notice of the fact that in view of the unreasonably low rents which are being received by the landlords, recourse is being taken to other methods to seek redress. These methods which are adopted are outside the four corners of the law and are slowly giving rise to a state of lawlessness where, it is feared, the Courts may become irrelevant in deciding disputes between the landlords and tenants. This should be a cause of serious concern because if this extra judicial back-lash gathers momentum the main sufferers will be the tenants, for whose benefit the Rent Control Acts are framed.

Para 28 : Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, may, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants. It is not as if the Government does not take remedial measures to try and off set the effects of inflation. In order to provide fair wage to the salaried employees the Government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent the increase made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today"s context."

In para 30 of the judgment, the Supreme Court has observed thus :

"Taking all the facts and circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act, relating to the determination and fixation of the standard rent can no longer be considered to be reasonable."

It is clear from the above observations and a reading of the entire judgment that the provisions relating to fixation of fair rent is wholly arbitrary which confers on the tenants an undue advantage while denying to the landlord any benefit whatsoever.

21. Apart from this decision, the petitioner has also placed reliance on certain other decisions. The first is of Rajasthan High Court in *Firm Khetsi Dass Sheoji Ram, Sardarshahar and Others Vs. Mohani Devi and Another*, It was observed in this case that :

"It means that if the premises have been let out for the first time after 1st January, 1965, the agreed rent can not be enhanced despite great price escalation and tremendous fall in the value of the rupee in other words, rent of the premises first let out after 1965 has been freezed. If the premises have been let out prior to this date (1st January, 1965), enhancement is permissible to the extent of 50% in the case of residential building and 150% in the case of non-residential buildings. These provisions are highly unreasonable and are hit by Article 14 of the Constitution of India."

22. The other decision is also of Rajasthan High Court in the case of *Khem Chand Vs. State of Rajasthan and Another*, . In this case, the validity of Section 6 (2) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, was sought for quashing the said provisions as unconstitutional and void. It was observed that :

"By lapse of time the tenants (at least many of them) doing business in commercial buildings taken on rent are far more affluent financially than the owners of the building in which they do business. Though the rent control legislation is stated to be a beneficial one, it must be reasonable just and fair."

23. The other case referred to is the decision of Bombay High Court in *Omprakash and Others etc. Vs. Fattelal Maganala and Company and Another etc.*, . The following observation of the Division Bench of the Court is material :

The graph of rental values of real estate in general and urban areas in particular has been continuously showing upward trend and in the recent past it has reached unimaginably high level. Judicial notice of these notoriously well known facts and changed conditions can be taken. Indeed that position is fairly not disputed before us. Now legal position as it emerges today is that all houses are governed by the HRC Order as a result fair rent of a house constructed in 1986 can be determined on the basis of its today's rental value, whereas today's rental value is totally irrelevant for fixation of fair rent in respect of houses constructed on or before the cut off date under the circumstances does not allow indefinite continuation of the old rates of outer limit in the matter of fixation of fair rent with relation to houses constructed on or before the cut off date mentioned in a measure which was essentially intended to be transitory and for a fixed period found arbitrary and without any justification whatsoever."

24. The other case referred to is the Division Bench decision of Andhra Pradesh

High Court in *Suresh Gir v. K. Sahadev* 1998 (1) RCR 53. It was observed in this case that "pegging down the rate of rent to 1943 level for fixation of standard rent is no longer valid though it was so at initial stages. It was further observed that "a valid and reasonable legislation at the inception may become discriminatory by efflux of time. Criteria for fixation of fair rent though valid but became discriminatory with passage of time."

25. The other authority referred to is the decision of Division Bench of Karnataka High Court in *issac Ninan v. State of Kerala*, 1996 (3) ILR (Kerala Series) J. The following observation is material :

"We are of the view that rent control legislation cannot be used to make the rent amount to remain static always unmindful of the vicissitudes in economic conditions, plummeting money value and improvements of the locality from commercial angles. We are also inclined to accept the contention that if the effect of the provision is to keep the rent static by fixing fair rent, it would not be fair rent at all when situation changes on account of the factor mentioned above. On the contrary it would become unfair rent then."

26. The other case referred to is the decision of Karnataka High Court in *Arun Balavant Chandagadkar and etc. v. Khutubuddin, Shabnhakhan Pathan, Major and Ors.*, AIR 2000 Kar 334. After examining the decision of the Apex Court in *Malpe's* case and the other cases, it was observed in this case "that the expression "fair rent" must be that rent which compensates adequately the loss in the value of money brought about any economic phenomena and at the same time fair to the landlord as well as the tenant. Otherwise, the expression "fair rent" is meaningless."

27. The learned counsel for the petitioner has also referred to number of authorities where the Apex Court has held that there is enormous increase in the prices and where the Apex Court has increased the rent. In the case of *Jagan Nath v. Chandrabhan* 1988 (1) RCR (SC) 629, the Apex Court has observed that "it has, however, to be borne in mind that the rent in these areas have increased enormously, so while exercising the jurisdiction under Article 136 of the Constitution of India, we will enhance the rent to four times."

28. The other decision of the Apex Court which have been referred to is *Ratan Arya v. State of Tamilnadu*, 1986 (2) RCR (SC) 328. It was observed by the Apex Court that "we are entitled to take judicial notice of the enormous multifold increase of rents throughout the country particularly in urban areas."

There are certain other decision in which similar observation was made.

29. In the case of *Ganpat Ram Sharma and Others Vs. Gayatri Devi*, it was observed that "the Rent Control Act is a legislation beneficial to both the landlord and the tenant. There is no presumption in all cases that the tenants are from weaker sections. Instances are many where the tenants, many of whom unfortunately placed in business, gain an undue advantage over less fortunate

landlords."

30. In the disputes between the landlords and the tenants, the Hon"ble Supreme Court in large number of cases finally disposed of the matters by increasing the rent manifold keeping in view of the fact that there is enormous increase in the rent. In Punjab National Bank Vs. Arjun Dev Arora and Others, the rent was enhanced to Rs. 6000 per month at prevailing market rate. In R. Appavoo v. Dharna Vinayakan Dharmaraja Devasthanam 1991 (1) RCR 474 the rent was enhanced to Rs. 200 per month from Rs. 30 per month. In Wery D. Souze v. C.A. Conceicap and Ors. 1991 (2) RCR 595 the rent was enhanced to Rs. 2,400 per month from Rs. 240 per month. In Mohit Lal Das v. Reba Rani Saha 1995 (2) RCR (SC) 58, the rent was enhanced to Rs. 750 per month from Rs. 50 per month. There are many other instances of enhancement of rent. On the basis of the above decisions and the annexure showing the rent of other shops in the same market ranging from Rs. 333.30p. per month to Rs. 6,800 per month, it has been argued that it should be safely concluded that there has been enormous increase in the rent. The pegging of the rent, as mentioned above, at the time of the enforcement of the Act is, therefore, unreasonable and ultra vires to Article 14 of the Constitution of India ; that the provisions should be struck down and the State Government be directed to enact a new Rent Control Legislation on the lines of Model Rent Control Legislation as has been approved by the Central Cabinet and has been published by Government of India.

31. Opposing the petition, the Advocate General for the respondent No. 1 has argued that the petitioner has claimed a relief on the ground of the decision of Maple"s case only. No other ground has been raised in the petition, he cannot be permitted to raise other points.

32. It is contended that in Malpe"s case, the consideration before the Apex Court was regarding The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the provisions of the which are totally different from U. P. Act No. XIII of 1972 as will appear from the chart submitted with the written arguments, which is as follows :

Malpe case

Present case

Act was a temporary enactment made in 1938 to meet temporary exigencies, initially for a period of two years only. Its life was extended from time to time. It had no long term object. Para 3/Pg 604

Act XIII of 1972, replaced the temporary enactment of 1947. From declaration made in its objects, It is a permanent Act. It attempts to solve the housing problems in the long run. See objects and prefatory note.

All provisions of the Act were static. The Legislature did not make any substantive amendments despite passage of 50 years. Only cosmetic changes were made. Para 20/pg 612

The Act is a piece of living legislation. The Legislature has been constantly alive to the problems as they have emerged In respect of the subject-matter falling within the scope of tne Act. It has always acted to make necessary amendments so as to best subserve the avowed object of solving the housing needs of the people of U. P., by evolving and implementing a policy It has thought best.

Different reports (Five of experts, including Government authorities were placed on record in support of the contention that the standard rent in respect of premises at Bombay had become unreasonable. The Court held that authorities themselves admitted the fact that standard rent had become unreasonable.

There is no expert report on record to show that standard rent as determined under the Act has become unreasonable. The reports relied in Malpe case are of no relevance as they did not consider the facts applicable to U. P. The value of property and Its market rental value has not appreciated In a comparable proportion as In Bombay. Nor is the cost of living index at both places the same.

Paras 16 and 17/pg 609-612

The Bombay Act did not contain any exceptions to the Act. It did not grant any substantive exemptions.

Para 24/pg 615

The U. P. Act has created numerous exceptions and exemptions. The Legislation is alive to the changes taking place as also to the changing needs. It has gradually reduced the scope of the Act and has limited it to old buildings, under a definite and clear policy.

See above

The Bombay Act did not contain any exceptions to the Act. It did not grant any substantive exemptions.

Para 24/pg 615

Standard rent of old buildings was permitted to be revised by 25% In 1972. The petitioner waived that right.

Section 5.

On its basis it has been argued that the observations made in the Malpe"s case cannot be applied.

33. It is also contended that U. P. Act No. XIII of 1972 is under constant review and being modified from time to time according to the needs of the society ; that the amendments have been made according to the policy of the legislation and the Courts can not interfere in the matters of policy of the Government.

34. It is contended that the old Act was a temporary measure which have been replaced by a permanent Act and by Section 5 of the Act, the enhancement of

rent to the extent of 25% of the existing rent has been permitted.

35. It is further contended that the Act has been amended from time to time. It was amended by U. P. Act No. 28 of 1976 w.e.f. 5.7.1976. A new Section 9A was introduced to provide for revision of rent of the buildings owned by public charitable and public religious trusts, if let out for commercial purposes. Again the Act was amended by U. P. Act 5 of 1995 w.e.f. 29.9.1994 and following amendments were incorporated :

Section 2 (b) was amended and buildings belonging to the recognized educational institutions were exempted from the provisions of the Act.

A new Section 2 (bb) was added and buildings belonging to or vested in public charitable or public religious institution were exempted from the provisions of the Act.

A new Section 2 (bbb) was added and waqf properties were exempted from the provisions of the Act.

A new Section 2 (g) was added and properties fetching the rent more than Rs. 2,000 per month were exempted from the provisions of the Act.

36. It is further contended that by amendment in the Act, all buildings have been exempted from the operation of the Act for 10 years from the date of construction and by proviso 1, the buildings constructed against certain loans have been exempted from operation for 15 years. By the second proviso, the buildings constructed after 1985 have been exempted from operation of the Act for 40 years.

37. Attention has also been drawn to Section 21 (8) of the Act, by which the landlords have not been allowed to evict the Government, but have been permitted the enhancement of the rent to 1/12th of the 10% of the market value of the property in question. The provision has also been made for the buildings intended to be used as factory, cinema and Public Entertainment, etc.

38. It has been argued that the Legislature has the competence to treat each such class of buildings differently. It has made protection for each class of buildings for which the need was considered. Some of the buildings have been totally exempted from the provisions of the Act, The other are exempted for limited period or on satisfying of certain conditions ; that there is valid criteria for differentiation between the different class of the buildings and there is no hostile discrimination within a class, therefore, the validity of the Act has to be upheld.

39. Agreeing to some extent with the arguments, the learned counsel for the petitioner has contended that several amendments have been made in the Act to provide relief to the buildings rented to the Government, waqf buildings, public religious trust, public charitable trust or fetching high rents. However, it is contended that there is no reasonable ground as to why the landlords of the buildings in cases like present one of which the rent was freezed at the

commencement of the Act was not permitted to increase the rent and no provision for the same was made in the Act ; that highly unequal and undue benefit was given to the tenants at the cost of the landlords at least in the case of commercial buildings from which the tenants are earning huge profits ; that the cases of landlords of pre 1951 buildings cannot be so badly discriminated ; that there is enormous increase in the prices and the rent once fixed in the year 1972 has been freezed for ever and there is no provision for the increase of rent, and it has not been shown that this matter was ever considered by the legislation and policy decision has been taken ; that therefore, freezing of the rent regarding the tenants which were also tenants at the time of the commencement of the Act is totally arbitrary, unreasonable and ultra vires to the Constitution of India.

40. The learned Advocate General has further argued that there is no ground for striking down the above provisions. It has been argued that there is presumption of the constitutional validity of the Act ; that the burden to establish otherwise is on the petitioner. The petitioner must clearly show that the provisions are arbitrary and then such arbitrariness results in violation of some fundamental right of the petitioner guaranteed under the Constitution of India and there is ground to strike down the provisions. The Advocate General has referred to the decision of the Apex Court in *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.,* . In this case, the Apex Court has laid down that a law made by the Parliament or Legislature can be struck down by Courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in part HI of the Constitution or of any other constitutional provision. It was emphasised that there is no third ground. It has been further argued that ground No. 1 has not been pleaded by the petitioner ; that the facts do not show that there is any violation of the fundamental right guaranteed by the Constitution.

41. The other case referred to is *State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc.,* In this case, the Bihar Excise (Amendment and Validation) Act (9 of 1995) was challenged. It was observed by the Apex Court "The Court should try to sustain validity of the Act to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less in exactitude of language employed. Indeed, any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutional try of the enactment. After all, an Act made by the Legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment of its scope and application."

42. The other case referred to is *The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another,* In this case, the validity

of the Tibia College Act (5 of 1952) was under consideration before the Apex Court. It was observed that "the Courts should prima facie lean in favour of constitutionality and should support the legislation if it is possible to do so on any reasonable ground, and it is for the party, who attacks the validity of the legislation to place all materials before the Court which would go to show that the selection is arbitrary and unsupportable. Throwing out of vague hints that there may be other instances of similar nature is not enough for this purpose. Even one corporation (in this case, one society) or a group of persons can be taken as a class by itself for the purpose of legislation, provided it exhibits some exceptional features which are not possessed by others. The validity of the Act cannot, therefore, be challenged on the ground that it violates any of the rights under Article 14 of the Constitution."

43. It has been further argued by the learned Advocate General that the allegations of violation of Article 14 of the Constitution of India have to be specific and unambiguous and it must be shown that the statute is based on discrimination which is not referable to any classification. In support of this proposition of law, learned Advocate General has referred to the decision of the Apex Court in *State of Uttar Pradesh Vs. Kartar Singh*, . In this case, the Reichert value of ghee prescribed for several areas in the country was challenged. It was observed that "there is no proof for holding that it is not based on any rational classification."

44. The other case referred to is *Sri Venkata Seetaramanjaneya Rice and Oil Mills and Others Vs. State of Andhra Pradesh etc.*, , it was observed in this case that "when a citizen wants to challenge the validity of any statute on the ground that it contravenes Article 14, specific, clear and unambiguous allegations must be made in that behalf and it must be shown that the impugned statute is based on discrimination and that such discrimination is not referable to any classification which is rational and which has nexus with the object intended to be achieved by the said statute."

45. The other case referred to by the learned Advocate General is *Cochin Devaswom Board, Trichur Vs. Vamana Shetty and Others*, . The following observation of the Apex Court is material :

"A person relying upon the plea of unlawful discrimination which infringes a guarantee of equality before the law or equal protection of the laws must set out with sufficient particulars his plea, showing that between the persons similarly circumstanced, discrimination has been made which is founded on no intelligible differentia. If the claimant for relief establishes similarity between persons who are subjected to a differential treatment, it may lie upon the State to establish that the differentiation is based on a rational object sought to be achieved by the Legislature."

46. It has been vehemently argued by the learned Advocate General that it is a matter of legislative policy of the Government to decide which section of the

society needs protection and in what way. The classification may be done on income basis, rental basis or some other basis. The Court can only consider whether the classification has been done on a understandable basis having regard to the object of the statute. The Court will not question the validity on the ground of lack of legislative wisdom ; that control of rent is purely a policy matter with which this Court may not interfere in the fact of the present case.

47. The learned Advocate General has also referred to the decision of the Apex Court in the case of D.C. Bhatia and Others Vs. Union of India (UOI) and Another, It was observed by the Apex Court that "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. 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. The classification cannot be done with mathematical precision. 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. 3,500 or Rs. 4,000 or Rs. 5,000."

48. I have carefully considered the arguments of the learned counsel for the parties and the law laid down in the above case. The crux of the arguments of the petitioner is that the control on the eviction of tenants of certain class of buildings may be a legislative policy, for which the learned counsel concedes that the Court should not interfere. However, there can be no legislative policy in freezing the rent resulting in undue advantage to the tenants and undue loss regarding the rights of the properties to the landlords. The question is whether freezing of the rent determined in the year 1972 is valid for all time to come despite huge price escalation and tremendous fall in the money value. The Apex Court in the case of Sri Laxmi Venkateshwara Enterprises Pvt. Limited v. Syeda Vajhiunnissa Begum, 1994 (2) SCC 641, has observed that it is not correct to hold that "the rent control legislation is beneficial enactment to tenants only. It is for both".

49. The provisions of the Act have been challenged under Article 14 of the Constitution of India on the ground that it amounts to inequality before the law between the landlords and the tenants and is not on the basis of the classification of certain class of tenants. The proper direction can be given in such matters by the Court. In the case of Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others, , it was observed that "where the Act takes away the fundamental rights of a person, the absence of overt act by State is not necessary. The aggrieved person has right to apply for under Article 22 of the Constitution of India." The Apex Court in the case of Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, , observed as follows :

"Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. A wide

language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Court can issue writs in the nature of prerogative writs as understood in England ; but the scope of these writs also is widened by the use of the expression "nature", which expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart. High Courts can also issue directions, order or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country."

50. I have carefully gone through the arguments and the case law provided by the parties as discussed above. The attack on the provisions is on the ground of inequality without any reasonable classification causing violation of the fundamental right guaranteed under Article 14 of the Constitution of India. It is true that there is presumption regarding the constitutionality of the provisions of an enactment and it can only be struck down where it is not possible to sustain it. In the Act, several amendments have been made as already referred to giving benefits to certain class of landlords. However, it appears to be unreasonable that the landlords of such a building as in the present case has not been extended benefit and the rent as fixed at the time of commencement of the Act, i.e., 1972, has been freezed. It amounts to inequality. From the foregoing discussions, it is clear that there is enormous increase in the value of the property and fall in the money value, in case of commercial buildings the income of the tenant has increased manifolds than it was in the year 1972. In such circumstances, the present provision is beneficial to the tenants alone and detrimental to the rights of the landlords. There is nothing in the objects and reasons to show that there was any legislative policy on which it was considered proper not to permit one class of landlords to enhance the rent after 1972, On the other hand, it appears that such landlords have been ignored unconsciously and their hardships have never been considered by Legislature. The observations made in the Malpe's case by the Apex Court are very material which are of general nature and the argument that they do not apply as there is difference between the provisions of Bombay case and the present case cannot be accepted. Therefore, in the present case, there is discrimination between the classes of landlords and such discrimination is not referable to any rational classification.

51. The argument that sufficient particulars have not been given by the petitioner is also not correct. In the present case, there is only one line submission that freezing of the rent determined in the year 1972 for all the time to come is unreasonable and amounts to inequality in view of the fall in the money value and increase in the market value of all the properties and articles.

52. The import of Article 14 of the Constitution of India is to check the tendency of giving undue preference to some over the others. In the present case, the landlords of pre-1951 buildings have been badly discriminated showing the

preferences to the tenants over the landlords. In the Malpe's case, it was observed that the law ought not be unjust to one and give a disproportionate benefit and protection to another section of the society.

53. Considering the entire arguments in the circumstances, I am of the view that the control of ejectment and not permitting to enhance the rent with the price index is highly unreasonable. The control of eviction is the matter of policy of the Government due to the shortage of accommodation but the control of rent at the level of 1972 in some classes of tenants cannot be the policy of the State, and it being unreasonable, unfair and unequal is liable to be struck off.

54. Accordingly, the definition of the "standard rent" u/s 3 (k) of the Act and the corresponding provisions under Sections 4 (2), 5, 6, 8 and 9 of the Act are declared ultra vires of the Constitution of India. The respondent No. 1 is directed to consider the matter in the light of observations and to redefine the "standard rent" or "fair rent" in accordance with the model rent control legislation published by the Government of India in July, 1992 at least in respect of the buildings which were in the possession of the tenants at the commencement of U. P. Act No. XIII of 1972 to remove injustice done to a class of landlords. The proper legislation in this respect is expected to be enacted at the earliest.

55. Now coming to the other reliefs Nos. 2 and 3 claimed in the petition, it may be mentioned that the rent payable for the disputed building cannot be declared by this Court and will have to be decided in accordance with the legislation enacted by the Legislature in pursuance of the above order. Before the law in this regard is enacted, the District Magistrate can also not be directed to fix the rent of the disputed shop. The guidelines for fixation of rent has to be issued by the Legislature. It can be decided by the District Magistrate in accordance with the amended legislation and guidelines. Therefore, reliefs No. 2 and 3 mentioned in the petition cannot be granted at this stage and the fixation of the rent of the disputed building shall be done by the authority concerned after the new legislation is enacted by the Legislature in accordance with the directions given above.

56. The petition is accordingly allowed in part. However, no order is made as to payment of costs.