

(1977) 10 AP CK 0010

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 552 and 2234 of 1974

Pallapothu Narshimha Rao and Another

APPELLANT

Vs

Kidanbi Radhakrishnamacharyalu

RESPONDENT

Date of Decision : 07-10-1977

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 2(6)
Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, 11
Transfer of Property Act, 1882 — Section 111, 112

Citation : AIR 1978 AP 319

Hon'ble Judges : S. Obul Reddi, C.J; Ramachandra Raju, J; Jeevan reddy, J; Amareswari, J; Alladi Kuppuswami, J

Bench : Full Bench

Advocate : M. Chandrasekhara Rao, Jagannadha Rao and Krishna Mohan Rao, for the Appellant; A. Hanumantha Rao and N.V. Suryanarayana Murthy, for the Respondent

Judgement

Alladi Kuppuswami, J.—These two revisions petitions arise out of proceedings for eviction under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (referred to in this judgement as the "ACT").

2. The petitioners in C. R. P. No. 552 of 1974 are the tenants of the respondent in respect of his building at Guntur which they were occupying on a monthly rent of Rs. 125/- and in which they were carrying on a business under the name and style " Tirumala Dresses". The respondent filed a petition for eviction before the Rent Controller (District Munsiff) Guntur contending that the petitioners who were in arrears of rent to the extent of Rs. 1775/- had committed wilful default in payment of rent. He gave a notice demanding payment of rent and also asked the tenants to vacate the premises. The tenants sent a reply with a D/D for Rs. 1043.45 saying that they had paid Rs. 500/- on 8-11-1967, Rs. 200/- on 14-1-1968 and that the petitioners (sic) son had taken on credit clothes worth Rs. 129.55 (on credit) which was adjusted towards the rent. The respondent sent

a reply stating that he never received Rs. 700/- and his son did not purchase clothes worth Rs. 129.55 on credit. The petitioners thereupon sent a D/D for Rs. 700/- in two instalments stating that the respondent's son had returned the sum which was taken earlier. The petitioners also sent Rs. 125/- towards the rent of August 1968. Later, on they sent another draft on 16-9-1968 for Rs. 129.55 which they had earlier sought to have deduct by way of adjustments of the cost of clothes purchased by the respondent's son. The petitioners contented that a sum of Rs. 500/- was paid on 8-11-1967 and Rs. 200/- on 14-1-1968 and Rs. 129.55 being the value of the clothes purchased by the respondent's son was adjusted towards the rent. Hence they were right in sending the demand draft for Rs. 1045.45 after deducting these amounts. There was therefore no default at all. The Rent Controller held on consideration of the evidence that it could not be said that the evidence of the tenants that they paid Rs. 500/- and Rs. 200/- was false. He also held that the deduction of Rs. 129.55 from the rent was done honestly and bona fide. The landlord was accepting rents at very irregular intervals in lump sums at times even postponing for 7 or 8 months. In those circumstances the tenants honestly believed that the respondent would receive the rents as and when required by him. He therefore held that the petitioners did not commit any wilful default in payment of rent. The landlord preferred an appeal to the Subordinate Judge, Guntur. The learned Subordinate Judge, held that there was no satisfactory evidence to show that the tenants paid Rs. 700/- in two instalments prior to the notice. He also held that there was wilful default in payment of rent as he did not pay the rent regularly every month. It was argued before the Subordinate Judge that after the respondent gave notice to the petitioners they sent the entire rent due and subsequently the rent was being paid regularly which was received by the respondent and this amounted to acquiescence and it was not permissible for the respondent to pray for the eviction in those circumstances. In support of this contention reliance was place upon Adapa Abbayi Vs. Reddipantulu Choudhry and Others, . This decision was however held to be inapplicable as the decision was given under the Andhr Tenancy Act. The Subordinate Judge held that the acceptance of rent subsequently and prior to the filing of the petition did not bar the landlord from contending that the tenant committed wilful default.

3. The Petitioners herein have preferred C. R. P. No.552/74 as against that decision.

C. R. P. No. 2234/ 1974;

4. This is a revision petition filed by the purchaser of a building during the pendency of appeal against the order of eviction obtained by the original owner. The owner of the building who is the second respondent in this revision petition filed the petition for eviction against the first respondent contending that the respondent had taken the building on a rent of Rs. 85/- p.m. The first respondent did not pay the rent for December 1968. Hence the petitioner got a registered notice issued demanding him to vacate the building by the end of May 1969, and

also to pay the entire arrears of rent due. The first respondent sent a sum of Rs. 425/- being the rent for December 1968 and January to April 1969 and the petitioner received the same without prejudice to his rights. As the first respondent did not vacate the building before May 1969, the second respondent herein filed a petition for eviction contending that the first respondent had committed wilful default. The Rent Controller held that the first respondent had committed wilful default and allowed the petition with costs. On appeal by the first respondent the learned Subordinate Judge reversed the decision of the Rent Controller. He held the question whether the tenant had committed default or not has to be considered as on the date of the eviction petition which was filed on 9-6-1969. By that date he had paid the rent due upto end of April and as the rent for May 1969 was only payable before 30th June 1969 and the petition was filed even on 9th June 1969 there was no default in payment of rent. He therefore allowed the appeal and ordered the petition for eviction. During the pendency of the appeal the landlord sold the premises to the petitioner herein. He was therefore brought on record as the second respondent in the appeal before the Subordinate Judge in I. A. 1713/72 on 9-7-74. The purchase from the landlord has preferred the petition against the said order adding the original owner as the second respondent. The revision petition was dismissed as against the second respondent on the ground that batta was not paid.

5. When C. R. P. No. 552/74 was heard by one of us , Ramachandra Raju, J. it was urged inter alia that as the entire rent had been paid before the eviction petition was filed there was no default and the petition for eviction on that ground was not maintainable and in support of the contention reliance was placed upon a decision of this court in Paru Bai V. Sitaramji Bajaj (1974 (i) A. P. L. J. 148). As Ramachandra Raju , J. doubted the correctness of that decision he directed the revision petition to be posted together for hearing before a Bench. This revision petition and C. R. P. 2234/74 which the same point arises for consideration were posted together for hearing before a Bench consisting of Ramachandra Raju and Jeevan Reddy, JJ. Before the learned Judges reliance was also placed upon Adapa Abbayi Vs. Reddipantulu Choudhry and Others, , rendered in a case arising out of the Andhra Pradesh Tenancy Act. In an elaborate order the learned Judges observed that they were of the opinion that the decision of the Full Bench in A. Abbayi v. R. Choultry (supra) requires reconsideration by a Fuller Bench and that they were not in agreement with the decision of in Paru Bai v. Sitaramji Bajaj (supra). They therefore directed the papers to be placed before the chief Justice in orders regarding the constitution of a fuller Bench. Other contentions were also raised in these revision petitions, but the learned Judges stated as they were referring the revision petitions to a larger bench it was unnecessary to deal with the said contentions. It is in these circumstances that these two revision petitions have been heard by this fuller bench.

6. The first question that falls for consideration in these revision petitions is whether a petition for eviction on the ground of wilful default in payment of rent

under Sec. 10 (2) (i) of the Act is maintainable if the entire rent due is received by the landlord before the filing of the petition . Sec. (10) (2) (i) is in the following terms:

A landlord who seeks to evict his tenants shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant reasonable opportunity of showing cause against the applicant is satisfied.

(i) that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreements of tenancy with his landlord or in the absence of any such agreement or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied he shall make an order rejecting the application.....

Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may, notwithstanding anything in Sec . 11 give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due to him to the landlord up to that date so such payment or tender and on such payment or tender, the application shall be rejected.

7. It is argued on behalf of the tenant that if the entire rent due had been received before the eviction petition. It cannot be said that the tenant, "has not paid or tendered the rent due". In other words, the contention is that the Controller must consider the position as it stood the date of the petition. As, on that date, no rent was due, the eviction could not be ordered. A similar argument found favour of with the learned Judge in *Paru Bai v. Sitramji Bajaj* (1974 (1) APLJ 148)) which was a case under the Act and a Full Bench in *Adapa Abbayi Vs. Reddipantulu Choudhry and Others*, a case dealing with Sec. 13 of the Andhra Pradesh (Andhra Area) Tenancy Act which is also similar terms. In *Paru Bai v. Sitramji Bajaj* (supra) the learned Judge observed that under the Rent Control Act the question whether the tenant was wilful defaulter or not has to be considered from the position which stood on the date of the eviction petition. Since on the date of the eviction petition the tenant had paid the entire arrears as per the demand of the landlord and no amount was due on that date he cannot suffer a disadvantage because he was irregular in payment of rent during the past and he cannot be visited with any penalty for his past acts. In *A. Abbayai v. R. Choultry* (supra) the Full Bench had to deal with Sec. 13 (a) of the Andhra Pradesh Tenancy Act which provided that no landlord shall be entitled to terminate the tenancy and evict his cultivating tenant during the currency of a lease except by an application in that behalf to the Tashildar and unless such cultivating tenant

(a) has failed to pay the rent due to him within a period of one month from the date stipulated in the lease deed, or in absence of such stipulation, within a

period of one month from the date on which the rent is due according to the usage of locality.

8. One of the contentions that was urged before the Full Bench was that as the entire rent was paid before the date of eviction petition though subsequent to the date on which it became due, the petition was not maintainable as no rent was due on the date of the petition. Dealing with this contention it was observed in Paragraph 61 of the report as follows:

"The words "has failed to pay" clearly denote that the tenant must have continued to have failed to pay rent. In other words, there must be subsisting liability to pay the rent on the date of the petition, The words are not " had failed to pay" which may have indicated that even if he had failed to pay the rent due but has paid it subsequently, the cause of action once arisen can be taken advantage of by the landlord. It will make a mockery of S.13 if the land lords are permitted to receive the rent even after the breach and still protect their right of action against the tenant. The absurdity of such a conclusion become more patent when, as we have held, the principle of waiver applies to such a case. The landlord cannot waive his right of action and at the same time institute the action on the ground that there was once a default which had given him a right to sue".

We will deal with the question of waiver later on. But of the present we may at once state that we are not inclined to agree with the view that in order to succeed in petition for eviction there must be a subsisting liability on the date of the eviction petition and we are of the view that the two decisions referred to above were not correctly decided on this aspect.

9. Under S. 10 (2) (i) the Controller shall make an order directing the tenant to put the landlord in possession of the building if the Controller is satisfied that the tenant had not paid or tendered the rent due by him in respect of the building within 15 days after the expiry of the time fixed in the agreement of tenancy or in the absence any such agreement by the last day of the month next following that for which the rent is payable. On the plain reading of this section is clear that all that the Controller has to see is whether the rent due was not paid or tendered within 15 days after the expiry of the time fixed in the agreement. If there is no such agreement he has to see whether the rent was not paid before the last day of the month next following that for which the rent is payable. If that condition is satisfied the Controller has no option but to direct the tenant to put the landlord in possession of the building unless the matter is one which falls within the proviso. Under the proviso, if the tenant's default was not wilful, the controller may give the tenant a reasonable time not exceeding 15 days to pay or tender and on such payment or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected. The moment the tenant fails to pay the rent within 15 days after the expiry of the time fixed in the agreement or if there is no such agreement before the last day of the month next following that for which rent is payable there is a default and a right is payable there is a default and a right on

the part of the landlord to have the tenant evicted arises subject only to the proviso. There is nothing in this section which enables the tenant to contend that the right is lost merely because he pays or tenders the rent due to him subsequently. In *Adapa Abbayi Vs. Reddipantulu Choudhry and Others*, it was stated that it would make a mockery of S. 13 of Andhra Tenancy Act (which is similar terms) if the landlords are permitted to receive the rent after the breach and still protect their right of action against the tenant. We fail to see any justification for this observation. The Act such as the Buildings (Lease, Rent and Eviction) Control Act or the Andhra Tenancy Act are no doubt designed to give security to the tenants against unauthorised eviction. But at the same time it cannot be ignored that the right to continue as tenants is available only so long as they pay the rent regularly. On the other hand, if the interpretation sought to be placed on S. 10 (2) of the Act by the tenant is to be accepted it would mean that the tenant would be free to go on committing default and just at or about the time when the landlord decides to file a petition for eviction tender the rent due and on such tender the landlord loses his right to evict the tenant. In this connection it is to be noticed that under S.10 (2) (i) it is only payment by the tenant but even tender of the rent due is referred to. If therefore, the connection for the tenants is to be accepted it would follow that not only in a case where the landlord has received the rent prior to eviction but also in a case where the tenant merely tenders the rent before the petition for eviction the landlord is precluded from filing a petition for eviction under S. 10 (2) (i). This view of ours receives support from more than one decision of the Supreme Court. In *Mangilal Vs. Suganchand Rathi*, the Supreme Court had to consider Section 4 (a) of the Madhya Pradesh Accommodation Control Act which was in the following terms:

"No suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds:

(a) that the tenant has failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a written notice of demand from the landlord".

It was held that what was necessary for the landlord was to establish that the tenant was in fact in arrears, that he was given one month's notice to pay up the arrears and that in spite of this he failed to pay those arrears within one month of service of notice on him. The ground set out in cl. (a) to s. 4 need not be shown to exist on the date of institution of the suit. Their Lordships observed as follows (at p. 105):

" It is sufficient to say that the language of cl. (a) must be given its natural meaning and that there is no warrant for modifying that language because while dealing with other grounds set out in other clauses the legislature has used different language. If we were to uphold the contention of the learned Addl. Solicitor General we would be virtually re-writing the section by saying "that the tenant was in arrears of rent at the date of suit" in place of that the "tenant has failed to make payment etc." It is certainly not open to a Court to usurp the

functions of a legislature."

These observations apply with equal force to the present case. If we were to uphold the contention of the advocates for the tenant we would have to re-write the section by saying "that the tenant was in arrears of rent at the date of the petition" in place of the words "the tenant as not paid or tendered the rent due etc." Their Lordships went on to deal with the submission that such an interpretation would lead to the result that the landlord may go on receiving sweet will may terminate the tenancy. It has already been seen that a similar argument found favour with the Full Bench in *Adapa Abbayi Vs. Reddipantulu Choudhry and Others*, but the Supreme Court rejected that argument saying (at page 105 of AIR SC):-

"The argument based upon it is farfetched. The landlord who wants to evict the tenant therefore avails himself of the ground furnished by cl. (a) of S.4 would not wait for years to file a suit against his defaulting tenant. It seems to us that in furnishing the ground to the landlord the legislature intended to give protection only to a tenant who was diligent and regular enough in the matter of payment of rent".

This is a sufficient answer to the observation made by the Full Bench that it would make a mockery of S. 13 of the Andhra Tenancy Act if the landlords are permitted to receive the rent even after the breach still protect their right of action against the tenant. It is surprising that this decision of the Supreme Court directly in point was not noticed by the learned Judges of the Full Bench.

10. In this connection the other parts of S.10 (2) (i) may also be noticed, The tenant is liable to be evicted under S.10 (2) (ii) if the tenant has without the written consent of the landlord (a) transferred his right under the lease or sublet the entire building or any portion thereof if the lease does not confer on him any right to do so, or (b) user the building for the purpose other that that for which it was leased; under S. 10 (2) (iii) of the tenant has committed such acts of waste as are likely to impair materially the value or utility of the building; under S. 10 (2) (v) if the tenant has secured alternative building; and under S. 10 (2) (vi) if the tenant has denied the title of the landlord. It is seen from these sub-sections that the phraseology used is "has transferred his right or sublet" (S.10 (2)(ii) (a)); "has committed acts of waste" (S.10 (2) (iii)); " has secured alternative building" (S. 10 (2) (v)); "has denied the title of the landlord" (S.10 (2) (vi)); If the argument that is advanced based on the expression "has not paid or tendered" is also advanced with reference to S. 10 (2) (ii), (iii), (v) or (vi) the position would be that it would be open to the tenant to say that though he had transferred his right or sublet prior to the eviction petition he had cancelled such transfer or subletting before the eviction petition and therefore he is not liable to be evicted. Similarly, it can be argued that though he committed waste, he had made good the acts of waste prior to the eviction petition and hence that ground is not available to the landlord. In the same manner though he had secured alternative building he had given up that building prior to the eviction petition

and hence the landlord cannot ask for eviction under S.10 (2) (v). Lastly, even though he had denied title of the landlord the tenant may come forward and say on the date of the eviction petition that he would accept his title and therefore the landlord cannot proceed with the eviction petition. We did not think that such a position was envisaged by the framers of the Act with regard to any of the sub-cl. 10 (2) (i), (ii), (iii), (v), (vi). On the same reasoning it would follow that the mere fact that the rent which had not been paid or tendered within 15 days after the expiry of the time fixed in the agreement or in the absence of such agreement before the last day of the month next following that for which rent is payable was tendered prior to the petition would not be an answer to an eviction petition under S. 10 (2) (i). In *Gajanan Dattatraya Vs. Sherbanu Hosang Patel and Others*, the Supreme Court had to consider S. 13 (1) (e) of the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1997) which provided that the landlord could obtain possession on the ground that

"the tenant has since the coming into operation of the Act, unlawfully sublet..... the whole or part of the premises or assigned or transferred in any other manner his interest therein".

It was argued the expression "the tenant has sublet" means that sub-letting must continue at the date of the suit. The contention was rejected by the Supreme Court which held that on the language of S. 13 (1) (e) If the tenant has sublet the protection ceases. They observed that the accede to the contention of the tenant would mean that a tenant would be within the mischief of unlawful sub-letting if after the landlord gives a notice terminating the tenancy on the ground of unlawful subletting the subtenant vacates. The landlord will not be able to get any relief against the tenant in spite of unlawful subletting. In that way the tenant can foil the attempt of the landlord to obtain possession of the premises on the ground of subletting every time by getting the sub-tenant to vacate the premises. The tenant's liability to eviction arises once the fact of unlawful subletting is proved. As the date of the notice it is proved that there was unlawful subletting. the tenant is liable to be evicted.

11. In *Goppulal Vs. Thakurji Shriji Shriji Dwarakadheeshji and Another*, it was held that if the tenant has sublet the premises without the permission of the landlord either before or after the coming into force of the Rajasthan Premises Control (Control of Rent and Eviction) Act (17 of 1950) he is not protected from eviction under S.13 (1) (c) of the Act. It was observed that the relevant words in cl. (e) are "has sublet". The present perfect tense contemplates a completed event connected in some way with present time. The words "take within their sweep any sub-letting which was made in the past and has continued up to the present time." This decision which was relied on by the learned counsel for the tenants, according to us, is of no assistance to them. What was decided was that if a subletting was made in the past and continued up to the present time that would give landlord a right of eviction. This decision cannot be understood to have laid down that unless and until the subletting continues till the date of the

petition, the landlord had no right to ask for eviction. This decision was referred to and distinguished in *Gajanan Dattatraya Vs. Sherbanu Hosang Patel and Others*, .

12. The learned counsel for the tenants relied strongly upon the decision in *Vithal Vasudeo Kulkarni and Others Vs. Maruti Rama Nagane and Others*, . In that case as the tenant made a default in paying the rent the learned lord served him with a notice terminating the tenancy and filed an application under S. 25 of the Bombay Tenancy and Agricultural Lands Act (67 of 1948) before the Mamlatdar for eviction on the ground that the tenant had failed to pay rent on the due dates, that is, March 20 of each of the years 1951-52 to 1954-55. Under S.25 (1) of the Act where any tenancy held by a tenant is terminated for non-payment of rent and the landlord files any proceeding to the eject the tenant, the Mamlatdar has to call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding within 15 days from the date of the order and if the tenant complies with such order the Mamlatdar shall pass an order directing that the tenancy had not been terminated. Section 25 (2) provides that the sub-section shall not apply to a tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent within the period specifies in S. 14 . In that case the tenant had paid and the landlord had received the rent due on the date of the application in view of certain suits having been filed by the landlord recovery of the rent. The Revenue Tribunal held that though the tenant had failed to pay the rent on the due date, the landlords having admittedly accepted all the rents due to them before the institution of their application the defaults were not wilful and the Deputy Collector had therefore the discretion not to order eviction. The High Court, on an application under Art. 227 of the Constitution, observed that as it was admitted position that the landlord had received all the rents due by the tenant there were no arrears due by him at the date of the application and there was no ground for interfering with the Tribunal's order. The Supreme Court dismissed the appeal as against the judgement of the High Court. On a construction of S. 25 (1) (2) of the Act they observed that the Act does not rule out the payment by the tenant and acceptance by the landlord of arrears of rent before a suit for eviction is instituted resulting in waiver by the landlord of the termination of tenancy by him. This decision therefore mainly proceeded on the footings that the receipt of arrears of rent resulted in waiver by the landlord, an aspect which we will consider at a later stage of this judgement. It is no doubt true that they also observed that the legislature could never have intended such a result that even where the tenant has paid up all the arrears and the landlord has accepted them, he would still have the right to evict the tenant though his reason for terminating the tenancy and his cause of action for an action for eviction has disappeared by his acceptance of the arrears due to him. This is a decision which is based upon particular provisions of the Bombay Tenancy and Agricultural Lands Act (67 of 1948) which are not in *pari materia* with the provision of the Act with which we are concerned. Even if some of the observations are of assistance

to the tenants we have to prefer the decision of the larger Bench of the Supreme Court consisting of five judges in *Mangilal Vs. Suganchand Rathi*, to the later decision of the Supreme Court in *Gajanan Dattatraya Vs. Sherbanu Hosang Patel and Others*,

13. Another decision which was relied on by the Advocates for the landlord (sic) (tenant) i in *Ranjit Chandra Chowdhury Vs. Mohitosh Mukherjee*, . In that case after the landlord served the notice determining the tenancy and asking the tenant to quit accepted the rent for subsequent periods and thereafter gave a second notice determining the tenancy and calling upon him to deliver possession. It was argued that the old tenancy was dead after the notice and on acceptance of the rent a new tenancy came into existence. It was held in that case that the landlord by accepting rent did not assent to a new tenancy but continued the old tenancy. We are unable to see how this decision is of any assistance to the landlord (sic) (tenant). On the other hand the following observations in Para. 9 of the judgement would lend support to the view which we have taken:

"There is no question in this case that the tenant was in default according to S. 12 (1) (i) because he had been paying rents beyond the period limited by the agreement or by the section. These defaults were also more than three and therefore the proviso S. 14 (3) deprived the tenant of the benefit of S. 14 (1). On the whole therefore, the decision of the High Court was correct and we see no reason to differ from it."

Reference was also made to the decision in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, . In that case the landlord required that he may be placed in possession of the building on the ground that he was occupying a non-residential building in the town. It so happened that during the pendency of the proceedings the landlord came into possession of a shop. The High Court took into account the subsequent event and held that as the prerequisite for the entitlement of the petitioner to institute and continue any petition has ceased to exist the petition was no longer maintainable and must be dismissed. This decision was upheld by the Supreme Court which observed that the court can, and in many cases must, take the cautious cognizance of events and developments subsequent the institution of proceedings The later recovery of another accommodation by the landlord during the pendency of the case has a material bearing on the right to evict in view of S. 10 (3) (iii) of the Act. We do not think that this decision has any application to the facts of the case. Under S. 10 (3) (iii) the landlord may apply to the controller for an order directing the tenant to put him in possession of the building in the case of non-residential building in the city....." which is his own or to the possession of which he is entitled whether under this Act or otherwise. The language would clearly indicate that the position which the court has to consider is the position which the court has to consider is the position which exists on the date when the controller makes an order directing the tenant to put the landlord in possession which

exists on the date when the Controller makes an order directing the tenant to put the landlord in possession of the building. The language is different from the language in S. 10 (2) of the Act.

14. For the reasons stated above and particularly in view of the decisions of the Supreme Court in *Mangilal Vs. Suganchand Rathi*, and *Gajanan Dattatraya Vs. Sherbanu Hosang Patel and Others*, we are of the view that it cannot be contented that the eviction petition was not maintainable merely because the landlord received the rent prior to the eviction petition and on this aspect the decisions in *Adapa Abbayi Vs. Reddipantulu Choudhry and Others*, and *Paru Bai v. Sitaramji Bajaj* (1974) (1) APLJ 148) were not correctly decided.

15. The next contention that is urged on behalf of the tenants is that the acceptance of rent by the landlord constitutes waiver under S. 112 of the Transfer of Property Act. we are unable to accept this contention as we are of the view that the provisions of the Transfer of Property Act are not applicable to leases governed by the Rent Control Act. This question was considered in depth in the decision of this Court in "*Uligappa v. S. Mohan Rao* (1969 (1) APLJ 351). It was held in that case that the power of the State legislature to enact the Rent Control Act is traceable to entry 18 of the state list, namely, land, that is to say "right in or over land, land tenure including the relation of the landlord and tenant and the collection of rents". It was held that the expression "land" would also include buildings and the expression ""relation of landlord and tenant" and "collection of rents" relate to non-agricultural lands also including house and buildings constructed thereon. They followed the decisions in *Manohar Ramkrishna v. G. G. Desai* (AIR 1951 Nag 33); *Mangilal v, State of Madhya Pradesh* (AIR 1955 Nag 153) and *A.C. Patel Vs. Vishwanath Chada*, . It was also held that even assuming that the legislation is traceable to Entry 6 in the Concurrent List relating to transfer of property other than agricultural land, the State Legislation would prevail if it were repugnant to the provisions of the existing law as the Rent Control Act received the assent of the President. After examining the various provisions of the Rent Control Act it was held that the Rent Control Act is a complete code intended by the legislature wholly occupy the three subjects mentioned in preamble of the Act concerning the relationship of landlord and tenant in regard to houses and buildings. The Supreme Court in *Puwada Venkateswara Rao Vs. Chidamana Venkata Ramana*, also held that the Andhra Pradesh Buildings (Lease, Rent, Eviction) Control Act is a complete code dealing with the relationship of landlord and tenant in respect of buildings governed by that Act. In that case the Supreme Court approved of the decision of this Court in *Uligappa v. S. Mohan Rao* (supra) where the Division Bench held that as the Act provided a procedure for eviction of tenant which was self-contained, no recourse to the provisions of S. 106 of the Transfer of Property Act is necessary before filing of an application for eviction. In *Raval and Co. Vs. K.G. Ramachandran and Others*, also it was pointed out by the Supreme Court that an analysis of the Tamil Nadu Buildings (Lease, Rent and Eviction) Control Act (which is in similar terms as the Andhra Pradesh Act) would show that the Act

provides a complete code for every contingency that is likely to arise in the relationship of landlord and tenant.

16. Sri N. V. Suryanarayanamurthy argued that there is no repugancy between the provisions of the Transfer of Property Act and the Rent Control Act and it is possible to work them together. We are however unable to agree with this submission. Under S.111 of the Transfer of Property Act a lease determines by efflux of time; whereas even if the duration of the lease fixed by the contract a lease cannot be terminated and the lessee evicted except under S. 10 of the Act on proof that any of the conditions referred to in that section are satisfied, namely, default, subletting, committing acts of waste, etc. Again , the leased governed by the Transfer of Property Act is determined where the time is limited conditionally by happening of such an event. It is also determined by implied surrender or by forfeiture that is to stay by the lessee breaking the express condition providing that on breach thereof the lessor may re-enter. On the other hand, under Rent Control Act the tenant cannot be evicted unless the conditions referred to in S. 10 (2) (ii) or S. 10 (2) (3) and Ss.12 and 13 of the Act are satisfied. The very object of enacting the Rent Control Act was to provide security of tenancy and preventing unreasonable eviction of the tenant. We have no hesitation in rejecting the contention Sri Sathyanaryamurthy that it is possible to apply both the provisions of the Transfer of Property Act as well as the Rent Control Act. at the same time.

17. Sri Suryanaryanamurthy further submitted that in any event there is nothing preventing the application of S. 111 (g) of the Transfer of Property Act to leases of buildings governed by the Rent Control Act. If the Rent Control Act is a complete code, as pointed out by the Supreme Court and this Court, dealing with the relation of tenants in respect of buildings and is intended to provide for every contingency, it is not proper to split up the provisions of the Transfer of Property Act and argue that one such provision can be applied without offending the provisions of the Rent Control Act. Even assuming that this can be done we have no hesitation in holding that S. 112 of the Transfer of Property Act can have no application to leases governed by the Rent Control Act. Section 112 provides that a forfeiture under S.111 (g) is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent or by any other act on the part of the lessors showing an intention to treat the lease as subsisting Under S. 111 (g) a lease of immovable property determines by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof, the lessor may re-enter; (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease. It is thus seen that Section 112 which deals with waiver is inseparably linked with Section 111 (g) which deals with forfeiture as it is the forfeiture under S. 111 (g) that is waived under S.112 by acceptance of rent.

Therefore, in order that S. 112 may apply Sec. 111 (g) also should be applicable in matters arising under the Rent Control Act. But Sec 111 (g) is obviously inapplicable to such matters as there is no determination of a lease by forfeiture contemplated under the Rent Control Act. Under that Act the landlord can seek eviction only on the grounds referred to in Sec. 10 (2) (ii) or to ask for possession of the buildings on the grounds referred in Sec. 10 (2) (iii). Neither forfeiture under Sec. 111 (g) of the Transfer of Property Act nor waiver of such forfeiture by acceptance of rent therefore is applicable to tenancies governed by the Rent Control Act. Even in *Adapa Abbayi Vs. Reddipantulu Choudhry and Others*, it was held that Sec. 111 (g) and Sec. 112 are not applicable to a case falling under the Rent Control Act. It was observed that the mode of determining the tenancy under the Act differs materially from the mode of determining a tenancy under the Transfer of Property Act. There is no right to forfeiture by issue of notice available to a landlord under the Rent Control Act and therefore even it is not possible to apply sec. 112 of the Transfer of Property Act and therefore even if Sec. 112 was not taken to be inconsistent it would not in terms apply. In *Raja Ram Mahadev Paranjype and Others Vs. Aba Maruti Mali and Others*, the Supreme Court held that Sec. 114 of the Transfer of Property Act is inconsistent with the provisions of the Bombay Tenancy and Agricultural lands Act . The Bombay Act intends a relief against the termination of tenancy for non-payment of rent to be given only in the cases mentioned under Sec. 25 (1) and in no others. Under Sec. 114 of the Transfer of Property Act relief may be given in other circumstances. Therefore, the provisions of this section are inconsistent with the provisions of the Bombay Act. On the same reasoning it would follow that the provisions of Sec. 112 of the Transfer of Property Act would be inconsistent with the provisions of the Rent Control Act. In *Bhaiya Punjalal Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad*, the Supreme Court held that where a landlord institutes a suit for eviction on the ground of arrears of rent under Sec. 12 (2) of the Bombay Rent, Hotels and Lodging House Rates (Control) Act, the tenant" paying the arrears of rent after the institution of the suit does not affect his liability to eviction. The landlord became entitled to recover possession when the tenant failed to pay rent and the court was bound to pass the decree when the requirements of sub-s (2) of S. 12 were satisfied. The court came to the that conclusion in spite of the language used in that Act that the court may pass a decree for eviction, observing that this does not mean that the court has discretion to pass or not to pass a decree for eviction because the other conditions mentioned in the clauses were satisfied. They observed that where the legislature intended to give some benefit to the tenant on account of the payment of the arrears during the pendency of the suit it made a specific provision in the Act itself. In the present case also specific provision is made in Sec. 10(2) proviso for payment of arrears up to the date of payment within fifteen days and on such payment the application for eviction has to be rejected, but it may be noted that the arrears of rent referred to therein are arrears not merely up to the date of petition but up to the date of payment. Further, the Controller must be satisfied that the tenant"s prior to default to pay or tender

the rent was not wilful. There is no other provisions in the Act which allows rejection of petition in any other case. Reliance was place upon the decision in *Ranjit Chandra Chowdhury Vs. Mohitosh Mukherjee*, where in respect of a tenancy governed by West Bengal Premises Rent Control (Temporary Provisions) Act the monthly rent of 8 months between September 1954 and April 1955 was admittedly paid by the tenant limited by the agreement. On the 11th August 1955 the landlord served a notice determining the tenancy and asking the tenant to quit on the expiry of August 1955. In October 1955 the landlord accepted rent up to September 1955 to February 1956. On 9-2-1956 he gave a second notice determining the tenancy and calling upon the tenant do deliver the possession on the expiry of February 1956. It was held that the landlord by accepting rent did not assent to new tenancy but continued to old tenancy. While observing that under S. 113 of the Transfer of Property Act a notice is waived by an act on the part of the person giving it, showing an intention to treat the lease as subsisting, provided there is the express or implied consent of the person to whom it is given, the Supreme Court went on to say that the difficulty was solved in this cases by the attitude of the tenant viz. that the old tenancy continued. They observed that if so it continued with the default and under Sec. 12 (1) (i) of the Act he was liable to be evicted and as the default were more than three the tenant could not get the protection of Sec. 14 (1). Thus far from assisting the tenants this a case where the Supreme Court did not apply the provisions of the Transfer of Property Act.

18. For all the above reasons we are in agreement with the decision of the Full Bench in *Adapa Abbayi Vs. Reddipantulu Choudhry and Others*, that the Transfer of Property Act cannot be relied upon by the tenants in support of the contention that there was a waiver by the landlord.

19. In *Adapa Abbayi Vs. Reddipantulu Choudhry and Others*, the Full Bench however proceeded to hold that equitable principles of waiver are applicable even though the provisions of the Transfer of Property Act do not apply. The learned Counsel for the tenants therefore submitted that it must be held on grounds of equity that there was a waiver by acceptance of rent. Dealing with a similar submission it was held in *Raja Ram Mahadev Paranjype and Others Vs. Aba Maruti Mali and Others*, that where tenancies are terminated under a statutory provision the landlord acquires a statutory right to eject the tenants. As equity does not operate to annual a statute on relief can be granted to the tenants. As equity relief may be granted to the tenants who has incurred a forfeiture under the contract of tenancy with his landlord. However, no such relief in equity can be granted where the tenancy is terminated by a statute, the learned Judges in the Full Bench observed that the principles of waiver are not confined to the Transfer of Property Act or the Contract Act. The waiver or abandonment of a right may be express or implied from conduct. A person who is entitled to the benefit of a stipulation in a contract or of a statutory provision can waive it or allow the contract or transaction to proceed as though the stipulation of the provision did not exist. With great respect to the learned Judges, the learned Judges did not

appreciate the distinction between waiver in the general sense, namely, the abandonment of a right either expressly or impliedly by the conduct and the waiver of forfeiture which is presumed by the mere acceptance of rent which is the case under Sec. 112 of the Transfer of Property Act. In ordinary cases of waiver not covered by Sec. 112 the question whether there is a waiver or not would be a question of fact depending upon the circumstances of the case whereas under Sec. 112 of the Transfer of Property Act there is a forfeiture by mere acceptance of rent which has become due without any reference to the intention of the landlord to waive the forfeiture or not. In other words, it is an arbitrary rule imposed by Sec. 112 that the acceptance of rent by itself would constitute a waiver, and the Section in doing so does not embody any equitable principle. The learned counsel for the respondents relied in this connection also upon the decision in *Vithal Vasudeo Kulkarni and Others Vs. Maruti Rama Nagane and Others*, already referred to Dealing with the Bombay Tenancy and Agricultural Lands Act, the Supreme Court observed that the Act does not rule out the payment by the tenant and acceptance by the landlord of arrears of rent before a suit for eviction is instituted resulting in waive by the landlord of the termination of tenancy by him. Reliance was placed on Sec. 20 which provided that except as provided in Sec. 6 (3) and Sec. 27 (1) no other provision in the Act shall be construed to limit or abridge the rights or privileges of any tenant under any usage as law for the time being in force or arising out of any contract, grant, decree or otherwise. The decision therefore appears to proceed on the footing that any reason of this express provision Sec. 112 of the Transfer of Property Act or the ordinary law governing relationship of landlord and tenant will not apply. This decision cannot be regarded as an authority for the proposition that equitable principles of waiver should apply in all cases of statutory tenancy. On the other hand reference was made to the decision in *Raja Ram Mahadev Paranjype and Others Vs. Aba Maruti Mali and Others*, and particularly to the observation in that case that no relief against forfeiture could be granted but an equitable grounds such relief can be granted only against contractual rights, while the decision in *Raja Ram Mahadev Pranjape v. Aba Maruti Mali (supra)* was distinguished no exception was made to the above statement of law in the earlier decision.

20. Though the Transfer of Property Act or the principles of relief against forfeiture may not be applicable it is still open to the tenants to contend that though the landlords acquire a statutory right to evict the tenants on their failure to pay the rent within the prescribed time the landlords by their conduct may still waive their right to the benefits of the Act by accepting the rent subsequently and hence they must not be permitted to maintain the eviction petition. The decision in *Vithal Vasudeo Kulkarni and Others Vs. Maruti Rama Nagane and Others*, can also be supported on this principle. This contention as we have pointed is different from contending that the mere acceptance of rent by itself constitutes waiver. Further, the waiver referred to here is not the waiver of forfeiture but the waiver of right to the benefit granted to the landlord under the

Act. It was not disputed and it could not be disputed that unless a question of public policy is involved it is always open to a person who is conferred certain benefits under an Act to waive those benefits. The landholder who is entitled to the order of eviction when the tenant failed to pay the rent within the time prescribed can waive the benefits of the Act and such waiver is not opposed to public policy. But whether there has been such a waiver or not is a question of fact which has to be gone into by the tribunal concerned. It may be noted that acceptance of rent may be one of the factors that may be taken into consideration in considering whether there has been waiver or not in the sense referred to above. But in the proceedings before us in one case the tribunals below proceeded on the footing that the mere acceptance of rent constitutes a waiver. In another case it was held that the Full Bench decision has no application as it was a decision rendered under the Andhra Tenancy Act and there could not be any waiver at all. In both the cases the tribunals adopted two extreme propositions. They did not proceed on the footing that there can be waiver by the landlord of his right to evict under the Act and such a waiver has to be decided with reference to the evidence in each case. We therefore consider it proper to remand both the cases to the appellate authority and direct him to consider whether there has been a waiver of the benefits of the Act in the circumstances of each case. The learned Counsel drew our attention to such facts as the terms of the notice given by the landlord in each case, the acceptance of rent being received under protest in one case, and so on. We do not wish to express our view as to whether such conduct amounts to waiving the benefits of the Act or not as it is for the Court below to decide whether there has been waiver by the landlord of the right to eviction under the Act having regard to the evidence in each case.

21. It remains to consider two submissions made by Sri Suryanaryanamurthy which are peculiar to C. R. P. NO. 2234/74.

22. In that case the landlord filed a petition for eviction which was ordered by the Rent Controller. The tenant preferred an appeal to the learned Subordinate Judge. During the pendency of the appeal, the landlord sold the premises to the petitioner herein and the petitioner was added as the second respondent in the appeal before the Sub Court On 9-7-1974 in I. A. No. 1713/72. The appeal was allowed and the petitioner (Purchaser of the Property) has preferred this revision. It is contended by Sri Surayanarayanamurthy that the revision petition is not maintainable at the instance of the petitioner who is the purchaser of the property. He submitted that the lower appellate court erred in adding the petitioner as second respondent in the appeal before it under O.22, R. 10, C. P. C. His case is that O. 22, R. 10 C.P.C. is not applicable to proceedings under the Rent Control Act and it is original owner alone that has to continue the proceedings and file a revision petition. We regret we are unable to accept this contention. Sec 2 (6) defines "landlord" meaning the owner of a building and includes a person who is receiving and who is entitled to receive rent of a building. It is clear therefore that the definition of "landlord" would include not

only the original owner but every person who becomes the owner of the building by reason of transfer or otherwise. The transferee would therefore be also a landlord within the meaning of Sec. 2(6) and would be entitled to continue the proceedings initiated by the original owner. As a matter of fact he could have come on record in the place of the original owner in appeal by virtue of this definition alone without having regard to O.22, R. 10 C. P. C. and the order of the court below implying him as the respondent could be justified even without referring to O.22, R. 10 C.P.C. further we are of the view that the provisions of CPC is so far as they are not inconsistent with provisions of the Act may be applied to the proceedings under the Act. Vide *Hari Kishan Singh v. B. Naryana* (1969 (2) APLJ 290). Further even if the provisions of CPC are strictly not applicable, the principles underlying them can be applied to proceedings under the Rent Control Act so long as they are not inconsistent with any provision of the Act or the rules made thereunder. Reliance was placed upon the decision of this court in *Seetharama Murthy Raju v. Rama Raju* (1964 (1) AnWR 213) We do not think it has any application to the facts of the case. In that case the landlord filed a petition for eviction and during the pendency of the proceedings sold the property under a sale deed, one of the conditions of which was that the vendor will take all proceedings at his own cost to get the tenants evicted from the land and deliver possession of the same. The original owner therefore preferred an appeal. The appeal was dismissed on the ground that as the landlord had parted with his right he could not prefer the appeal. This Court held that the landlord could continue the proceedings. It is therefore seen that this court was concerned with a converse case, namely whether the landlord who had parted with the property could continue the proceedings or whether it was necessary for the transferee to come on record and continue the proceedings. The decision is not an authority for the proposition that the transferee is not entitled to step into the shoes of the original owner and continue the proceedings. It is to be noted that this decision related to Andhra Tenancy Act which is not in pari materia with the Rent Control Act. Further it is also to be noticed that the transferee was added as second respondent in the appeal in the lower court. No objection was taken by the tenant to the present petitioner being added as second respondent. We do not think this is a proper case to permit the respondent to raise the contention that the petitioner cannot continue the proceedings and file a revision petition as he had not questioned the order of the court below permitting him to come on record as second respondent.

23. Sri Suryanarayana Murthy has also raised another contention. It appears that this petition was dismissed against the second respondent who was the original owner for non-payment of batta. He therefore contends that this dismissal order operates as *res judicata* and the order of the Subordinate Judge allowing the appeal and dismissing the petition for eviction has therefore become final not only against the second respondent, the original owner but also against the petitioner, the transferee. We have no hesitation in rejecting this contention. The original owner was only added as a pro forma respondent. No relief was claimed

against him. The revision petition is directed only against the first respondent who is the tenant. We fail to see how a dismissal order for non-payment of batta against the second respondent would constitute res judicata. Sri Suryanarayana murthy drew out attention to Sec. 16 of the Act which provides that the Controller shall summarily reject any application under Sec. 10 (2) or 10 (3) which raises between the same parties or between the parties under whom they or any of them claim substantially the same issue as having been finally decided or purports to have been decided in the former proceedings under this Act or under any law corresponding thereto in force at the relevant time prior to the commencement of this Act. A bare reading of this section will make it clear that this section has absolutely no relevance. Sri suryanarayanamurthy also relied upon the decision of the Supreme Court in Sheodan Singh Vs. Smt. Daryao Kunwar, . In that case the trial court decided two suits having common issues on merits and there were two appeals therefrom and one of them was dismissed on a preliminary ground; with the result the trial court's decision stood confirmed. It was held that the decision of the appellate court will be res judicata and the appellate court must be deemed to have finally decided the matter. In such a case the result of the decision of the appellate court is to confirm the decision of the trial court and give its reasons and if that is so the decision of the appellate Court will be res judicata. We fail to see how this decision has any relevance. In this case dismissal of the transferee's revision petition against the transferor who is a pro forma party for non-payment of batta can in no sense be held to be a decision in favour of the first respondent the assignee. We reject this contention also.

24. In the result both the revision petitions are allowed and remanded with a direction to the court below to consider whether there has been a waiver by the landlord in each case of the right to exercise his right under the Act to file a petition for eviction.

25. Each party will bear its own costs in each of the revision petition.

26. Revision petitions allowed.