
(1995) 03 GUJ CK 0031
In the Gujarat High Court
Case No : Criminal Appeal No. 621 of 1994

Prahadbhai Rajaram Mehta	Vs	APPELLANT
Popatbhai Haribhai Patel and Another		RESPONDENT

Date of Decision : 26-03-1995

Acts Referred:

Companies Act, 1956 — Section 28, 630, 630(1), 630(2)

Citation : (1996) 87 CompCas 557 : (1995) 2 GLR 1752

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : Arun H. Mehta, for the Appellant; A.J. Patel and S.T. Mehta, for the Respondent

Judgement

J.N. Bhatt, J.—A very substantial and significant question that arises for consideration and determination is whether a conviction and eviction

of a service occupier u/s 630 of the Companies Act, 1956, for withholding company's premises after termination of employment, by any reason, is

competent and maintainable or not in view of the protection and provision of section 28 of the Bombay Rents, Hotel and Lodging House Rates

Control Act, 1947.

2. The appellant herein - original complainant who was working as deputy manager in "New Shorrock Mills", a unit of Mafatlal Industries Limited

("the company", for short) had filed Criminal Case No. 6545 of 1988 on October 18, 1988, in the court of the learned Chief J.M.F.C., Nadiad,

inter alia, contending that respondent No. 1 original accused has wrong fully withheld possession of room No. 30 in New Shorrock Nagar, the

property of the company ("the disputes property", for short), after his retirement from the employment of the company.

3. According to the complainant's case, the disputed room was given to the accused on account of the fact of his being in the service of the company at that time. The accused was given the disputed room in a chawl of the company for his use and occupation, on leave and licence basis.

One of the conditions of the said leave and licence agreement between the company and the accused, was that the accused shall not be entitled to

occupy the disputed room after termination of his service. Thus, it is alleged by the complainant that the accused was entitled to keep the disputed

room, as long as he was in the service of the company and as per the terms and conditions of the licence agreement between the company and the

employee-accused, the company is entitled to possession from him on severance of the relationship of master and servant. The accused retired

from the service of the company with effect from September 1, 1984, receiving all the retiral benefits from the company. Therefore, the accused

was bound to hand over peaceful and vacant possession of the disputed room to the company as he was no more in the service of the company

and he has obtained a big bungalow in Punit Park Society, Nadiad. The accused was also paid all dues and retirement benefits in accordance with

law. However, in spite of repeated requests and demands made by and on behalf of the company, the accused failed to hand over possession and

continued to wrongly and unlawfully occupy and possess the disputed room. Therefore, the case of the complainant is that the accused had

committed an offence punishable u/s 630 of the Companies Act, 1956 ("the Companies Act", for short).

4. The accused came to be tried by the learned Chief J.M.F.C., Nadiad, for the aforesaid offence. The prosecution relied on the evidence of P.W.

1, Deputy Manager, Mr. P.R. Mehta, at Ex. 26, and also on the evidence of an old employee of the company who was working as a sanitary

inspector, at the relevant time, P.W. 2. Mr. V.D. Rana at Ex. 30. The prosecution also relied on the complaint, at Ex. 25, the letter of resignation

of the accused, at Ex. 29, and the leave and licence agreement, dated July 11, 1970. Ex. 31 and July 10, 1980, at Ex. 32. The accused admitted

that he had retired from service with effect from September 1, 1984. However, he, inter alia, contended that he is a protected tenant and not a

licensee and, therefore, he is not liable for the alleged offence punishable u/s 630 of the Companies Act, in support of his contentions, he relied on

the evidence of the defence witness, one Mr. S.M. Patel, at Ex. 36.

5. On the examination of the facts and circumstances and the evidence on record, the trial court acquitted the accused of the charge u/s 630 of the

Companies Act holding that he is a lessee (tenant) and not a licensee as contended by the complainant, by his judgment and order of acquittal of

the trial court, passed in Criminal Case No. 6445 of 1988. The original complainant has come up before this court challenging its legality and

validity by filing this acquittal appeal under the provisions of section 378(4) of the Code of Criminal Procedure, 1973 ("the Code", for short).

6. The learned advocate, Mr. Mehta, appearing for the appellant-original complainant, has seriously criticised the impugned acquittal judgment on

the following premises :

1. That the finding of the trial court that the accused is a lessee and not a licensee is totally perverse and erroneous.

2. That even in case of the accused being lessee or tenant, prosecution u/s 630 of the Companies Act is maintainable.

3. That the provisions of section 630 will override the provisions of the Bombay Rent Act.

4. That the trial court has committed a grave error in acquitting the accused despite clear and consistent evidence that the accused has wrongly

withheld the disputed room of the company after his retirement from service and having obtained a beautiful, big bungalow in Punit Park Society at

Nadiad.

5. That the accused is liable for punishment for wrongful withholding of the property of the company u/s 630 of the Companies Act and that the

accused should be directed to deliver or return the disputed room of the company meant for employees of the company, wrongfully withheld by

him or, in default, to undergo exemplary imprisonment.

While challenging the aforesaid contentions, learned advocate, Mr. A.J. Patel, for the original accused has raised the following contentions :

1. That the provisions of section 630 of the Companies Act are not attracted in the present case as there is a bona fide dispute with regard to the

tenancy right in relation to the disputed room.

2. That the prosecution initiated by the company is barred by limitation it is filed beyond the period of three years.

3. That, in the alternative, the matter may be remanded back to the trial court as the question of tenancy right was not placed in focus.

4. That the discretionary provisions of section 630(2) of the Companies Act should not be invoked against the accused.

The learned A.P.P., Mr. S.T. Mehta, has supported the submissions raised on behalf of the appellant-original complainant and has also contended

that the accused is liable for punishment for the offence punishable u/s 630 of the Companies Act and the discretion should not be exercised in

favour of the accused in view of the special and peculiar circumstances of the case. The complaint came to be filed under the provisions of section

630 of the Companies Act on the allegation that the accused was given possession of the disputed room as an employee of the company and after

termination of service on account of voluntary retirement of the accused with effect from September 1, 1984, the accused was obliged to return or

restore the possession of the disputed room to the company. Having not done so, the accused is liable penalty in wrongfully withholding of the

property of the company u/s 630.

7. It would be necessary, at this stage to refer to the provisions of section 630 of the Companies Act. It reads as under :

630. (1) If any officer or employee of a company -

(a) Wrongfully obtains possession of any property of the company; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in

the articles and authorised by this Act;

he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to one thousand

rupees.

(2) The court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the court, any such

property, wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to

two years"".

The provisions of section 630 clearly go to show that the purpose of enacting section 630 is to provide a speedy relief to the company when its

property is wrongfully withheld by a service-employee. The analysis of the section shows that what is penalised is not only wrongful possession of property and the subsequent wrongful withholding of it but also refusal to the delivery of the property within the time fixed by the court for such delivery. The former is punishable under the sub-section (1) and latter under sub-section (2) of section 630. There is no doubt about the fact that this section does not apply to any person unless he has been officer or employee. It thus applies to a past officer or employee, if the wrongful obtaining, withholding or application of the property was done in his capacity as such officer or employee. Thus, when an employee refuses to vacate the premises of the company on determination of the employment or on his retirement but continues in possession even after his retirement, the employee can be held liable u/s 630.

8. The learned Magistrate while passing the impugned acquittal order has held that the complainant has, successfully, proved that the accused was given possession of the disputed room of the company for the limited period of his employment. Thus, it is held by the learned trial Magistrate that the accused got inducted in the disputed room of the company as an employee out of his relationship with the company as an employee. Thus, the case of the company is that the accused was allotted and given possession of the disputed room as a result of his employment with the company. However, the case of the company for an offence u/s 630 did not find favour with the trial court as according to the opinion of the trial court, the accused is a lessee-tenant and not a licensee. Therefore, wrongful withholding of the property of the company is not believed. In the opinion of the trial court, the provision of section 630(1)(b) is not applicable as retention of the possession of the disputed room cannot be said to be wrongful or illegal in view of the fact that the accused is an allottee as a tenant and not a licensee and is entitled to protection of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("the Bombay Rent Act", for short). Therefore, though the learned Magistrate held that the accused was given possession of the disputed room by the company only in his relation to the employment, the company is not entitled to possession in view of the fact that the accused is a protected tenant. This is precisely the reason why the original complainant has come up before this court in this

acquittal appeal.

9. The question, therefore, requires to be adjudicated upon at this juncture is as to whether or not the accused is liable for the offence punishable

u/s 630 of the Companies Act. What is the effect of provision of the Bombay Rent Act ? The trial court has placed reliance on the decision of this

court rendered in Govindbhai Parshottamdas Patel and Others Vs. New Shorrock Mills, Nadiad, for concluding and deciding that the agreement

of licence executed by the accused in favour of the company is, as such, an agreement of tenancy. Therefore, it is observed that the clauses in the

leave and licence agreement providing for termination of licence with the termination of service are not binding on the accused. Thus the

interpretation of the trial court is that in view of the tenancy created in favour of the accused, he is not obliged to return possession of the disputed

room to the company on termination of his service being a tenanted property under the Bombay Rent Act. The agreement of leave and licence

between the parties providing a clause coterminous with the termination of service is in reality creating a tenancy in favour of the accused-employee

and his continuance in the property as tenant under the Bombay Rent Act cannot be said to be wrongful or illegal.

10. The question requiring adjudication is - as to whether the provisions incorporated in section 630 of the Companies Act are in any way

repugnant or conflicting with the provision of the Bombay Rent Act, and if yes what is the legal effect ? In order to appreciate this important issue,

it may be stated that the following aspects have emerged from the evidence on record unquestionably :

1. That the accused was inducted in the disputed room situated in the chawl of the company meant for employees by the company on account of employment.

2. That the disputed room is situated in the company's premises and it is belonging to the company. There are several such rooms meant and given to its employees on account of their employment with company only.

3. That the agreement between the accused and the complainant company provided termination of possession or occupation of the disputed room co-terminous with the termination of service.

4. The accused agreed to vacate the premises of the company on his retirement

but continued in possession even after his retirement claiming to be a tenant under the Bombay Rent Act.

5. The accused agreed to vacate the premises of the company on his retirement. The accused retired from the service receiving all retirement benefits with effect from September 1, 1984.

Assuming that the finding of the trial court that the accused is a tenant is accepted to be true, then in that case, could it be said that the provisions of section 630 of the Companies Act will not be attracted ? In other words, even on the premise that the accused is a tenant the criminal complaint

u/s 630 of the Companies Act is not maintainable ? The Trial court took the view that section 630 providing a criminal complaint is not applicable

against the tenant. Could tenancy to be taken as defence to obviate criminal prosecution u/s 630 of the Companies Act ? It appears from the

impugned judgment of acquittal that the trial court has held that criminal prosecution u/s 630 is not maintainable against the accused as he is held to be a tenant and not licensee.

11. Relying upon the finding of the trial court, it has been vehemently contended that there was no wrongful withholding of possession of the

disputed room of the company. It is, therefore, contended on behalf of the accused that since tenancy was created in favour of the accused, the

provisions of section 630 are not applicable. The initial occupation and possession of the disputed room was in accordance with law and once the

tenancy has been created, it has been contended that the only remedy available to the company was under the Bombay Rent Act for recovery of

the company's premises on termination of service. As against that, it has been canvassed on behalf of the company that the tenancy "ipso facto

does not preclude or bar criminal prosecution u/s 630 of the Companies Act after termination of service, as there is a special provision for a

particular class of landlords like the companies for getting speedier relief u/s 630. It is also contended that the provisions of the Companies Act

should be harmoniously interpreted so that the object and policy for which provisions of section 630 are incorporated, are advanced. In short, the

submission raised on behalf of the company is that even if on the interpretation of the agreement of leave and licence the accused is held to be a

tenant, there will not be a ban or a bar on the enforcement of the statutes. The

right to occupy and possess is limited to the period of service or employment in the agreement. The accused is rightly held to be a "service occupier". The right to occupy premises of the company is co-terminous on termination of the service. Therefore, after severance of the service relationship on account of voluntary retirement or by any mode from the company, the right to occupy it comes to an end. Even under the provisions of the Bombay Rent Act, a service occupier has no right to continue in the tenanted premises after the end of service. In section 13(1)(f) of the Bombay Rent Act, a specific provision is made for eviction of a service-tenant. It would be necessary at this stage to refer to section 13(1)(f). It reads under :

13(1). Notwithstanding anything contained in this Act (but subject to the provisions of section 15 and 15(A), a landlord shall be entitled to recover possession of any premises if the court is satisfied...

(f) that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the coming into operation of this Act, to be in such service or employment...

It can very well be seen from the aforesaid provision that if the premises are let to a tenant for use as residence in consequence of his being in

service, it is also a ground for eviction. This clause refers to an occupation by a servant as tenant, whether by way of remuneration or a part-

payment for services or whether paying rent or not. The grant of tenancy to an employee may be either simultaneous or at a later date in

consequence of his employment. The finding of the trial court that occupation of the room of company by the accused was in consequence of his

employment with the company is justified. It is, therefore, clear from the evidence on record that the accused who was an employee was inducted

in the premises of the company in relation to his employment and his possession was conditional upon his remaining in the employment of the

company. That relationship of master and servant or employee and employer resulted in the occupation of the disputed room of the company,

under the provisions of section 13(1)(f) of the Bombay Rent Act, if the company proves that the accused was a tenant on account of his being in

service of the company and that such employee has ceased to be in such service,

such "service-occupier" is also liable to be evicted. He has a personal right to occupy the premises of the company so long as he remains in the service of the company. If the premises were let to the tenant for use as residence by reason of his being in the service or employment of the company and that tenant has ceased to be in such service or employment, it is also a ground for eviction u/s 13(1)(f). Therefore, even in the case of tenancy between the accused and the company u/s 13(1)(f), the accused as a tenant is liable to be ejected and the company is entitled to possession. If the company decides to seek possession u/s 13(1) against the employee tenant the company has to pursue the remedies before a competent court as provided u/s 28 of the Rent Act. The provisions of section 630 of the Companies Act, also provide a special remedy which is summary in nature against a person who ceases to be in the employment of the company who was given possession of the premises out of such service relation, the company has an option either to pursue the remedy provided u/s 630 of the Companies Act or u/s 13(1)(f) under the Rent Act. There are thus two remedies open to companies. In view of the decision in the case of Govindbhai v. New Shorrock Mills [1984] 1 GLR 156, the remedy for seeking possession of the demised premises in a civil court u/s 13(1)(f) is only filing a suit in a competent city court u/s 28 of the Rent Act. If the company decides to file an eviction suit under the Rent Act, the same has to be pursued in a civil court created u/s 28. However, the provisions enacted in section 13(1)(f) or section 28 of the Rent Act do not constitute a hurdle or hindrance in the way of pursuing remedy u/s 630 of the Companies Act.

12. It cannot, therefore, be contended that the company is not entitled to pursue remedy u/s 630 on the ground that the accused is held to be a tenant. Even in case of service-tenancy between the accused and the company, the option is with the company either to pursue the remedy provided u/s 630 of the Companies Act or u/s 13(1)(f) of the Rent Act, both the provisions give different but concurrent remedies to the companies. It is for the company to pursue any one of the concurrent legal remedies at its option. In the present case, the company has resorted to the provisions of section 630 of the Companies Act. The learned trial magistrate has given a clear finding that the accused was inducted in the

premises of the company in relation to the employment with the company, i.e., as a service-occupier and that there was termination of service.

However, he has further held that the criminal prosecution contemplated by the provisions of section 630 of the Companies Act is not

maintainable. This finding, with due respect to the learned Magistrate, is not only illogical but is illegal and perverse requiring interference in this

acquittal appeal. If the view taken by the learned magistrate is subscribed to, it would undoubtedly render the provisions of section 630 otiose.

Such interpretation can never be allowed to be made. It appears that the learned magistrate has also failed to appreciate in its proper perspective

the decision of this court in the case of Govindbhai Parshottamdas Patel and Others Vs. New Shorrock Mills, Nadiad, . There is no dispute about

the fact that the question precisely in focus in the present case was not at all under consideration before the Division Bench in that case. It is very

clear from the said decision that the question of interpretation and the applicability and enforcement of the provisions of section 630 was not at all

under consideration before this court in that decision. What is held by the Division Bench in that case is that a civil remedy for possession under a

civil law against a tenant is competent in a court, specially created only u/s 28 of the Bombay Rent Act. Therefore, the aforesaid decision of this

court cannot be pressed into service to thwart the criminal prosecution u/s 630 of the Companies Act. It cannot be said, therefore, that the

provisions of section 630 cannot be invoked.

13. Two remedies available to the landlords are concurrent, one is for criminal prosecution u/s 630 of the Companies Act, whereas, the other

remedy is provided under the provisions of the Bombay Rent Act. Once the court finds that where even tenancy and, not a licence was created in

consequence of the employment of the accused, the company is empowered to invoke provisions of section 630 for filing prosecution. The

company incorporated under the Companies Act can be a landlord for the purposes of section 13(1)(f) and is entitled to file a suit for recovery of

possession under the Bombay Rent Act. The right of the service-occupier may be as licensee or lessee, is personal and is attributable to the

employment with the company or master. Therefore, even in case of death of such an employee, pending the proceedings before the court, his

heirs or legal representatives have no "locus standi" and have no right to claim tenancy rights. This proposition is very well explained and established by several decisions. It is also held by many courts that in such a case heirs of deceased employees may be directed to vacate such premises. Entitlement of an employee of a company registered under the Companies Act to occupy the company's premises is coterminous with termination of his service and such right would stand extinguished as soon as the employment ceases and the employee is bound to hand over possession to the company. This view is very well explained and established in Baldev Krishna Sahi Vs. Shipping Corporation of India Limited and Another, . Special provisions are made in section 630 for conviction and eviction which will be rendered unworkable if not nugatory if the contention of the accused is accepted that in a case of tenancy, the provisions of section 630 are not invocable. Special provisions for certain classes of public premises are also made even in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Public Premises Act, for short). Section 13(1)(f) of the Rent Act deals with the rights of landlords and tenants in general, while the provisions of section 630 of the Companies Act and section 2(c)(ii) of the Public Premises Act, are special provisions contained in special statutes. The objective of the said statutes cannot be said to be conflicting but as such is common and the remedy is concurrent provided thereunder. It would be interesting to mention at this stage that pursuant to the policy of the Legislature in the similar Act in the Maharashtra State by the Maharashtra Act (XVII of 1973) embodied in section 5(4A) in the Bombay Rent Act, a person in the service or employment of the licensor and occupying his employer's (licensor's) premises is not protected as a licensee under the provisions. It will also be interesting to mention that in one case of Government premises, the employee was allotted premises with a condition in the agreement of tenancy that the premises should exclusively be used by the allottee and his family members but the employee on his marriage shifted to other premises with his wife leaving other members of his family like brothers and sisters to continue to reside in the Government premises, it was held by the apex court in State of West Bengal and Another Vs. Saral Kumar Sen Gupta and Another, , that the employee had violated the terms of tenancy. Thus, the provisions of section 13(1)(f) of the Rent Act are

providing two concurrent remedies. Therefore, it cannot be contended that once tenancy is proved, the remedy u/s 630 is barred or not available

to the company of employer.

14. The principle to be followed for construction or interpretation of a statute is that if the meaning of the statute is plain, no regard should be paid

to the previous law. The proper course in the first instance is to examine the language of the statute and ask what is its natural meaning,

uninfluenced by any consideration derived from the previous state of the law. In order to arrive at the real meaning, it is always necessary to get an

exact conception of the aim, scope and object of the whole statute, to consider what was the law before the Act was passed, what was the

mischievous or effect for which the previous law had not provided, what remedy the Legislature has provided in the present statute and the reasons for

the remedy. If the words are capable of one meaning alone, it must be adopted, but if they are susceptible of wider import, the court has to pay

regard to the objects and purposes for which the particular piece of legislation had been enacted. The paramount object in statutory interpretation

is to discover what the Legislature intended. The intention is primarily to be ascertained from the text of the enactment in question. The text is not

to be interpreted without reference to its nature or purpose. The statute should be construed not as theorems of Euclid, but with some imagination

of the purpose which lie behind them. No doubt, if there is an obvious anomaly in the application of the law, the courts could shape the law to

remove the anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency, the court should discard such interpretation and

adopt an interpretation which will give effect to the purpose of the Legislature.

15. The words of an Act of Parliament must be so construed as to give them a sensible meaning, following the principle, "ut res magis valeat quam

periret". The primary test is, however, the language employed in the Act, it is the paramount duty of the judicial interpreter to put upon the language

of the Legislature its plain and rational meaning and to promote its objects. Could it be said that right to file a complaint u/s 630 available to the

company in the case of a service-occupier or tenancy is affected or jeopardised by reason of the provision contained in section 28 of the Rent Act

? The obvious answer would be in the negative. If it is interpreted otherwise, it

would render the provisions of section 630 not only unworkable but also may render it nugatory.

16. No doubt, a non-obstante clause in section 28 of the Rent Act makes a provision self-contained in section 28. However, the non-obstante clause does not override subsequent special provisions in the statute made by the same Legislative or by Parliament. Where the court has to construe non-obstante clauses of two different statutes, the court must determine the effect of such clauses on a broad consideration of the purpose and policy underlying the two statutes, viz., the Delhi Rent Control Act of 1952 and the Slum Clearance Act of 1956, it was held by the apex court in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, that both the said Acts would operate in the area declared as slum.

Likewise, the provision of section 630 of the Companies Act and the provisions of section 13 read with section 28 of the Rent Act are operating in the field of tenancy, simultaneously providing two concurrent remedies in both the statutes.

17. The learned magistrate should not have terminated the proceedings by passing the impugned acquittal order u/s 630 or merely by finding that the accused is a tenant. Even in the case of tenancy, the provisions of section 630 are invocable and are available to the company. Many companies have adopted a broad and liberal outlook or policy to provide service accommodation with a view to see that employees or their staff members remain contented and have no worry to find out residential accommodation, while in service and in this manner their work will be more satisfactorily done. The companies, therefore, provide good accommodation, quarters, flats or premises to the staff during the period of service.

Thus, companies in many cases provide residential accommodation to some of the members of their staff during the period of service for which accommodation the employee has either not to pay anything or to pay house rent which is deducted from the house rent allowance and which accommodation the employee has to vacate when the employee is transferred from one place to another or in case of expiry of service. In several cases, the employees fail to vacate residential accommodation given to them and they contend that they are either tenants or protected licensees. The Legislature has, therefore, designedly treated such an attitude on the part of

the employee as an abuse of the benefit or privilege and has made a specific provision for that purpose by providing section 630 of the Companies Act. Section 630 provides conviction and consequential eviction

against such employees. In order to protect proceedings u/s 630, applications are made by the employees for staying proceedings u/s 630.

Sometimes, even suits are filed by the employees after termination of service so as to lengthen the proceedings u/s 630. In such a situation, the

attitude of the employees cannot be encouraged by staying the criminal proceedings.

18. It has been rightly held by the apex court that criminal proceedings u/s 630 should not be stayed pending civil litigation between the company

and the employee. Not only that, the contentions that such employees are tenants, that there are bona fide disputes, that it does not apply to past

officers or employees and so on and so forth have been rejected by the courts. Some of the decisions in that regard will be considered and

examined a little later. However, there is no conflict between section 630 and the provisions of the Rent Act. Section 630 is intended to give two

special summary remedies civil as well as criminal, which would be speedier than those provided under the Rent Act. The provisions of section

13(1)(f) read with section 28 provide a remedy for eviction of the employee, even if he pleads tenancy. The provisions of sub-section (4A) of

section 5 of the Bombay Rent Act (applicable in Maharashtra) provide that even as a licensee such an employee has no protection of the Rent Act.

The relevant words in that sub-section are "'a person in the service or employment of the licensor'". Such a person is excluded from the protection

of the Rent Act. Thus, the provisions of the Rent Act and the provision of section 630 of the Companies Act are required to be interpreted

harmoniously so that the object of both the statutes is advanced and not defeated. The interpretation made by the trial court and supported by the

learned advocate for the respondent accused, if accepted, would not only have paralytic impact on the provisions of section 630 which is a Central

law but in reality will as such render it otiose. Such an interpretation is not warranted and not permissible. Therefore, applying the test and

yardstick of harmonious construction, it can very well be concluded that the yardstick of harmonious construction, it can very well be concluded

that the provisions of both the statutes, one of the State and one Central are required to be construed and interpreted harmoniously so that the

object of each statute can be advanced. The interpretation made by the learned magistrate would mean obliterating the material provisions of

section 630 from the live statute book apart from doubting the wisdom of Parliament. Such a construction or interpretation is not only erroneous

and unreasonable but is patently perverse and manifestly illegal.

19. It is true that under the Rent Act, specified courts (section 28) are given exclusive jurisdiction and they act according to the prescribed

procedure. Presumably and probably, such procedure is more liked or preferred. This is in respect of getting peaceful and vacant possession of the

tenanted premises from the employee. The underlying purport and purpose of providing speedy and summary procedure in section 630 against

service-occupier on termination of service appears to provide residential accommodation to deserving, desiring and requiring and waiting employees

of the companies. The said class of landlords like corporate-landlords is given a special remedy as they are not engaged in professional profiteering

and real estate business but with a view to see that a similarly situated employee or needy and deserving employee is given residential

accommodation for his convenience as well as for effectual and efficient discharge of duties connected with the employment of the companies. When

a special provision is devised, designed by the Central Legislature with such a motto and object, the same cannot be interpreted in such a way as it

is done by the learned Magistrate, rendering it not only ineffective and unworkable but rendering them otiose.

20. While considering the question of interpretation of statutes even in the case of conflicting statutes, the court's approach is in the first instance to

find out whether there can be harmonious interpretation of two Acts having regard to the purport, purpose, policy, scope and object of both the

statutes. Apparently, therefore, there would be no conflict. In the second instance, the court should consider the scope of both such Acts. The Rent

Act is intended to provide speedy remedy or machinery for dealing with diverse relations and matters between ordinary landlords and their tenants

and licensors and licensees, in general. The Rent Act has a broader spectrum compared to section 630 of the Companies Act. The provisions of

section 630 of the Companies Act would prevail over the provisions of section 28 of the Rent Act. One approach is whether the legislation is by the same Legislative or by different Legislatures. In case, two statutes are made by the same Legislature, then the principle to be applied is that subsequent or later law should prevail over the earlier one. The approach in the second instance should be - whether it is enacted by Parliament or by the State Legislature and in that eventuality, the provision of article 254 of the Constitution would come into play. Article 254 makes constitutional provisions in case of inconsistency between the laws made by Parliament and laws made by the Legislature of States. Applying the test envisaged by article 254, in the alternative also, the provisions of the Central Act which again are later in point of time will prevail over the provisions of the State law. It is a settled proposition of law that in case of conflict between the Central law and the State law, the Central law will prevail over the State law. Therefore, from any angle, either interpreting the provisions of the Acts on the touchstone of harmonious construction or from later in point of time or in light of the provisions of article 254 of the Constitution of India, the provisions of section 630 of the Companies Act are unaffected and also invocable irrespective of the non-obstante clause contained in section 28 of the Rent Act.

21. The decision of the Punjab and Haryana High Court in *Sushila Mittal v. VXL India Ltd.* [1992] 74 Comp Cas 836 is a very appropriate

decision to mention here. In that case, criminal complaint u/s 630 was filed by the company against the petitioner Sushila who was allotted

residential quarters on the basis of her employment with the company. She continued to be in possession of the said quarters even after she ceased

to be an employee of the company. A suit was filed by her for a declaration that she was entitled to possession as a tenant. Thus, it was contended

by her that she was in possession of the quarters which was rented to her by the company and she was protected by the Rent Act. She had filed a

civil suit for perpetual injunction against the company restraining the company from evicting the petitioner by force. A suit which was also filed by

the company for possession was decreed against the employee directing her to vacate the quarters and hand over possession. An appeal which

was filed by the petitioner against the decree was also dismissed. The petitioner, however, continued to retain possession, the company thereafter

filed a complaint u/s 630 of the Companies Act. The petitioner filed a petition u/s 482 of the Criminal Procedure Code to have the complaint

quashed. It was held, dismissing the petition that the complaint u/s 630 of the Companies Act is maintainable. Relying on the said decision, it is

contended by the company that, merely because the respondent is intending to file a suit or raise a dispute of tenancy, the criminal prosecution is

not incompetent.

22. In *Ajoy Kumar Banerjee and Others Vs. Union of India (UOI) and Others*, , it was held that in case of conflict between the two statutes - one

special and the other general - the tests to determine as to which one would prevail are :

(i) the Legislature has the right to alter a law already promulgated through subsequent legislation,

(ii) a special law may be altered, abrogated or repealed by a latter general law by an express provision,

(iii) a later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express

provision in that behalf is found in the general law, and

(iv) it is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later

general law. Thus, it can very well be seen from the said decision that the later general law will also override prior special law if the two are so

repugnant to each other that they cannot co-exist, even in the absence of a specific provision in that behalf in the general law; whereas, in the

present case the special provision is made in section 630 of the Companies Act out of general law of landlords and tenants. Even if the provisions

of sections 28 and 630 both are treated as special laws, then also, the Bombay Rent Act is of 1947 and the Companies Act is of 1956. Section

630 even if held to be in conflict will prevail over the provisions of section 28 of the Rent Act. No doubt, it is found by this court that provisions of

section 28 read with section 13(1)(f) of the Rent Act and the provisions of section 630 of the Companies Act are operating simultaneously and

providing different remedies which are concurrent in nature. Thus on a harmonious construction and considering the object and purpose of the both

the statutes, this court has found that both can exist together. Even in case of

repugnancy or conflict between the two laws, the provisions of section 630 will prevail over the provisions of section 13(1)(f) read with section 28 of the Rent Act being a statute of the State Legislature and an earlier one.

In *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, the Constitution Bench of the Supreme Court has held that in case

of conflicting laws, the later law should abrogate an earlier contrary law. The provisions of the Public Premises Act to the extent they cover

premises falling within the ambit of the Delhi Rent Court Act, override the provisions of the Rent Act, and a person in unauthorised occupation of

public premises u/s 2(c) of the Act cannot invoke the protection of the Rent Control Act. It is also held in that case that one of the principles of

statutory interpretation which is applied to resolve conflict in laws is contained in the maxim "*leges posteriores priores contrarias abrogant*" (later

laws abrogate earlier contrary laws). Of course, it is true that this principle is subject to exception embodied in the maxim *generalia specialibus non*

derogant (a general provision does not derogate from a special one). It is observed by the Supreme Court that the Public Premises Act is a later

enactment, having been enacted on August 23, 1971, whereas the Delhi Rent Control Act was enacted on December 31, 1958. It represented the

later will of Parliament and should prevail over the Rent Control Act unless it can be said that the Public Premises Act is a general enactment

whereas the Rent Control Act is a special enactment, and being a special enactment, the Rent Control Act should prevail over the Public Premises

Act. The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of

Property Act inasmuch as it makes provisions for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction

of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants, and the procedure which has to be followed in such

proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union

Territory of Delhi. The Public Premises Act makes provision for a speedy machinery to secure eviction of unauthorised occupants from public

premises. As opposed to the general law which provides for filing of a regular suit

for recovery of possession of property in a competent court and for trial of such a suit in accordance with the procedure laid down in the Civil Procedure Code, the Public Premises Act confers the power to pass an order for eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order. Therefore, the Public Premises Act is also a special statute relating to eviction of unauthorised occupants from public premises. Both the enactments, namely, the Rent Control Act and the Public Premises Act are, therefore, special statutes in relation to the matters dealt with therein, since the Public Premises Act is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that later laws abrogate earlier laws, the Public Premises Act must prevail over the Rent Control Act. Thus, the Supreme Court has clearly held that the provisions of the Public Premises Act would override the provisions of the Rent Control Act in relation to premises which fall within the ambit of both the enactments.

23. In the present case, it can very well be seen that the Bombay Rent Act is a special law relating to the relationship between landlords and tenants. Thus, special provisions are designed relating to the general class of landlords and tenants in a special enactment, so, the sphere and horizon under the Bombay Rent Act of its subjects is wider in relation to the relationship of landlords and tenants. In the Public Premises Act provisions are also made with a view to provide speedy and effective remedies for eviction against unauthorised occupants of certain premises. Thus, the circle or sphere of the subject and object both is smaller than the Bombay Rent Act and it is still smaller and wholly circumscribed to the special class of corporate owners or landlords and service occupiers under the provisions of section 630 of the Companies Act. Thus, a special class is carved out by Parliament by enacting provisions in section 630. Therefore, the special law regulating relationship between landlords and tenants under the Bombay Rent Act which is wider in nature is circumscribed by the enacting provisions u/s 630 limiting to the special class of companies and service occupiers. It can very well be seen from the provisions of

section 630 that it is intended to deal with the mischief of rampant unauthorised and wrongful withholding of company premises by providing speedy and summary machinery for eviction of persons in wrongful and unlawful occupation of the premises of the companies. In order to secure such an object and purpose Parliament in its wisdom designedly provided special and specific provisions for speedy and effectual machinery for conviction and eviction u/s 630 against service occupiers.

24. The object underlying the provisions of section 630 is to safeguard the public interest of corporate landlords and personalities by making available the premises for waiting, needy, deserving employees of the companies. For smooth and proper use and occupation of the premises of the company, a speedy machinery is provided in section 630 so as to prevent case abuse and misuse of such premises, as it has happened in the present case. An employee who has been out of service since September 1, 1984, after having received full dues and retiral benefits from the company is using the premises belonging to the company for more than a decade, though he has his own bungalow constructed in Punit Park Society, Nadiad. Could a person who has been an owner of a bungalow be allowed to contend that the prosecution u/s 630 of the Companies Act is not maintainable only because of the fact that he has raised the dispute of tenancy and envisaged protection of Bombay Rent Act ? The obvious answer would be in the negative. Such a dishonest contention goes counter to the purpose, purport and objective of the beneficent provisions of section 630. Therefore, even from any angle, the contention that prosecution u/s 630 is incompetent is farthest from the truth. In order to obviate such dilatory tactics and to make speedy and effective machinery for recovery of possession of the premises belonging to the company, Parliament has designedly provided special and specific provisions in the Companies Act in section 630 for conviction and eviction which cannot be allowed to be rendered nugatory by holding that the accused employee of the company has raised a dispute of tenancy and protection under the Bombay Rent Act. Therefore, this court is unable to accept the contention of the learned advocate for the respondent accused that the provisions contained in section 630 cannot be applied to the disputed premises as it falls within the ambit of the Bombay Rent Act. The scope and ambit of the

provisions of section 630 cannot be restricted by reference to the provisions contained in section 28 of the Rent Act. Such an approach adopted

by the learned magistrate is not only illogical, unjust but is arbitrary and illegal. Such an approach would strike at the very root and object of the

provisions of section 630. This court cannot cut down the provisions of section 630 on the basis of the provisions under the Rent Act.

25. It is also contended that if the view taken by the learned magistrate is not confirmed, then, it is likely that many companies under the

Companies Act may abuse the provisions for profiteering motives. Prima facie, such submission may appear to be subtle but it is not sound and

sustainable. The provisions of section 630 enable the companies to recover possession of the premises under the speedier machinery and disable

the right, if any, of the service occupiers under the local Rent Act.

26. The Supreme Court in Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another, , had an occasion to consider

the provisions of sections 3(a), 14 and 25B of the Public Premises Act and section 1 of the Delhi Rent Control Act. The question was whether the

provisions of the Public Premises Act would override the provisions of the Delhi Rent Control Act. The Supreme Court held that in both the Acts,

there is a non-obstante clause but the question to be determined is whether the non-obstante clause operates in the same field or two different

spheres though there may be some amount of overlapping. Both the scope and the object of the Public Premises Act is quite different from that of

the Rent Act. The Rent Act is of much wider application than the Public Premises Act inasmuch as it applies to all private premises which do not

fall within the limited exceptions indicated in section 2 of the Public Premises Act. The object of the Rent Act is to afford special protection to all

the tenants or private landlords or landlords who are neither corporations nor the Government nor corporate bodies. Even under the Rent Act, by

virtue of an amendment a special category has been carved out u/s 25B which provides for special procedure for eviction to landlords who require

premises for their personal necessity. It is clearly held that there can be no doubt that the Public Premises Act as compared to the Rent Act which

has a very broad spectrum is a special Act and overrides the provisions of the Rent Act.

27. In the said decision, it is also held that the provisions of the Slum Areas (Improvement and Clearance) Act, 1956, are earlier and the provisions of the Public Premises Act are subsequent and therefore, the provision of the Public Premises Act will override the Slum Areas Act. It has been vehemently contended that the criminal prosecution should not be allowed to continue in view of the bona fide dispute of tenancy raised by the tenant-employee. In other words, it is contended that once the bona fide dispute with regard to tenancy is raised, the criminal prosecution should not be allowed and the parties should be permitted to exhaust their rights and remedies under the civil law. This contention cannot be sustained. What is a bona fide dispute is the question of fact depending upon the circumstances of the case. Apart from that, the mere raising of a bona fide dispute would not constitute a hurdle in the criminal prosecution u/s 630 and with a view to support this contention and with a view to appreciate the important question, it would be necessary to refer to relevant case-law. The Bombay High Court has consistently held that under the guise of bona fide dispute criminal prosecution u/s 630 cannot be sacrificed. It is consistently held that section 630 plainly makes it an offence if an officer or employee of a company, who was permitted to use any property of the company during his employment, wrongfully retains or occupies the same after the termination of his employment. The term officer or employee in section 630 applies not only to existing officers or employees, but also to past officers or employees if such officer or employee either (a) wrongfully obtains possession of any property of the company, or (b) having obtained such property during the course of his employment, withholds the same after the termination of his employment. The prosecution cannot be stalled on the ground of alleged bona fide civil dispute. In *Baldev Krishna Sahi v. Shipping Corporation of India Ltd.* [1988] 63 Comp Cas 1, the Bombay High Court took the view that prosecution u/s 630 against a service occupier who has retired from the company will be competent and maintainable even if the accused or the employee has filed a suit in the civil court on the ground of tenancy. The contention that there is a bona fide civil dispute between the parties which can be resolved in a civil court and, therefore, on that ground, summary proceedings u/s 630 should not be permitted to thwart legal rights pertaining to tenancy under the Bombay Rent Act is without any substance. Where there is a

statutory provision and statutory remedy, providing effective and efficient speedy mechanism for conviction and eviction for the service-occupiers

of the company, it cannot be said that the parties should only be permitted to resolve their dispute in the civil court. Admittedly, there is no question

of title involved in the present case. There is no dispute about ownership of the property. There is no dispute about termination of service. It is

succinctly established without any doubt that the respondent was inducted in the company's premises on account of his being in the employment of

the company. The right to occupy the company's premises is found to be coterminous with termination of service. When the service or

employment has come to an end, the right to occupy premises of the company also ends. Protection under the provisions of the Bombay Rent Act

does not exclude or supersede the special provisions made for the said class of companies in section 630 which provide speedy and effective

summary machinery for conviction and eviction. In this connection, it may be noted that a similar contention was raised before the Bombay High

Court in Baldev Krishna's case [1988] 63 Comp Cas 1 which was rejected relying on three earlier decisions of the Bombay High Court. The

Bombay High Court held in Krishan Avtar Bahadur v. Col. Irwin Extrass [1986] 59 Comp Cas 417, while dealing with almost identical facts that

merely because the petitioner had raised a dispute of tenancy, criminal proceedings u/s 630 cannot be stayed. The Bombay High Court again took

the consistent view in Harkishin Lakhimal Gidwani v. Achyut Kashinath Wagh [1982] 52 Comp Cas 1 and also in Govind T. Jagtiani v. Sirajudin

S. Kazi [1984] 56 Comp Cas 329. Following the ratio in the aforesaid three decisions, the Bombay High Court thus once again took the same

view in Baldev Krishna's case [1988] 63 Comp Cas 1. In Baldev Krishna Sahi Vs. Shipping Corporation of India Limited and Another, , the

Supreme Court has upheld the view taken by the Bombay High Court that criminal proceedings cannot be stalled or stayed on the specious plea of

tenancy under the Rent Act raised by the accused employee. The following observations of the Supreme Court are very important (at page 10 of

63 Comp Cas) :

The beneficent provision contained in section 630, no doubt penal, has been purposely enacted by the Legislature with the object of providing a

summary procedure for retrieving the property of the company (a) where an officer or employee of a company wrongfully obtains possession of

property of the company, or (b) where having been placed in possession of any such property during the course of his employment, wrongfully

withholds possession of it after the termination of his employment. It is the duty of the court to place a broad and liberal construction on the

provision in furtherance of the object and purpose of the legislation which would suppress the mischief and advance the remedy." It is also held that

the term "officer" or "employee" in section 630 applies not only to existing officers or employees of a company but also to past officers or

employees, if such officer or employee either (a) wrongfully obtains possession of any property of the company, or (b) having obtained such

property during the course of his employment, withholds the same after the termination of his employment.

It is very clear from the provisions of section 630 that it is wrongful withholding of such property, meaning the property of the company after

termination of the employment which is an offence u/s 630(1)(b) as rightly pointed out by V.S. Kotwal J., Harkishin Lakhimal Gidwani's case

[1982] 52 Comp Cas 1 (Bom). In that case, the petitioner had been general manager of a company known as English Electrical Co. of India Ltd.

having its registered office at Calcutta. He had been allotted the premises of a flat, approximately 3,500 square feet in area located at Mayfair

Gardens, Little Gibbs Road, Bombay. He had been inducted into the flat only by virtue of his capacity as the general manager of the company's

branch office at Bombay but the company allowed him to retain the same on humanitarian grounds for a short period after his retirement to enable

him to find alternative accommodation. The humanitarian and charitable consideration shown by the company was reciprocated by the petitioner

by adopting an adamant attitude and he declined to vacate the same on one pretext or another. Therefore, a question had arisen as to whether

there was wrongful retention of the flat amounting to an offence u/s 630. The court repelled the contention that section 630 applies only to the

existing officers and employees of the company and not to former officers and employees and that the phrase "any such property" used in clause

(b), even though clauses (a) and (b) are separated by the word "or" which must in the context in which it appears be read as "and", and so

construed, must mean withholding of property wrongfully obtained by an existing officer or employee. The Bombay High Court, on a careful

analysis of section 630 held that the said section applies not only to the present officers and employees of the company but to the past officers and employees as well.

28. In Govind T. Jagtiani's case [1984] 56 Comp Cas 329 (Bom), Ranade J., following the critical analysis of section 630 in the above case,

observed that entitlement of an officer to the property of the company and the duration of such right would be coterminous with the terms of

employment and the right would stand extinguished with the termination to the employment giving rise to an obligation to hand over the property

back to the company. The following observations at page 336 of the said decision are very pertinent (at page 336) :

If the property is held back, the retained possession would amount to wrongful withholding of the property of the company. While the existence of

the capacity, right and possession would be during employment, the withholding may be even after the termination of the employment and though

the possession as it precedes the act of retention or withholding may be rightful in the past affording an opportunity to withhold, the withholding

may be wrongful in the present case.

It can safely be presumed that while making special speedy mechanism, in section 630 of the Companies Act, Parliament must have taken note of

the non obstante clause in section 28 of the Rent Act providing that its provisions will override those of any other law. Of course, the statutory

interpretation has no convention or protocol but in frequent situations like the one on hand, it can be inferred that Parliament noticed and took note

of the non obstante clause contained in section 28 of the Rent Act which came into force on January 19, 1948, while making the special provisions

of section 630 of the Companies Act, 1956, which came into force on April 1, 1956. Therefore, even in case of conflict or repugnancy, the

provisions of section 630 shall override the provisions of the Rent Act. Interpretation of the provisions of the statute should be such which would

advance the object thereof and not frustrate it. The court cannot be oblivious to the special and specific purpose for which provisions of section

630 of the Companies Act are motivated and enacted. If the interpretation made

by the trial court and supported by the learned advocate for the respondent accused is accepted, it would mean that the court would be reading section 630 of the Companies Act with the words "'subject to the provisions of the Rent Act as applicable'". Had that been the intention while enacting the special provisions of section 630 Parliament would have expressly added such words or expression in section 630. The court cannot legislative, the court can interpret only. One of the fundamental objects and tests of interpretation of statutes is that it should be done in a modern manner which further the end and policy and not frustrate or fetter it. A question would arise, if the interpretation of section 630 made by the learned magistrate is accepted and as supported by the learned advocate for the respondent-accused, would it foster or fetter the underlying aim and policy of the provisions of section 630 ? Undoubtedly, it would fetter and not foster the purpose, such interpretation cannot be accepted. Therefore, such interpretation made by the learned magistrate is, totally, with due respect, without merit. It is also a cardinal principal of interpretation of statutes that the later enactment must prevail over the earlier one even if a non obstante clause is provided in the earlier enactment. Article 254 of the Constitution makes a provision for inconsistencies between the laws made by Parliament and the laws made by the Legislatures of States. It reads as under :

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the concurrent list, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that nothing in this clauses shall prevent Parliament from enacting at any time any law with respect to the same matter including a law

adding to, amending, varying or repealing the law so made by the Legislature.

The following aspects become very clear from a plain perusal of article 254 :

(i) The State law does not become void as soon as the Union Parliament legislates with respect to the same subject. There is nothing to prevent the

State Legislature from legislating with respect to a concurrent subject merely because there is a Union law relating to the same subject. Article

254(2) is attracted only if the State law is ""repugnant"" to the Union Act, which means that the two cannot stand together. The doctrine of

occupied field"" has obviously no application in the interpretation of article 254;

(ii) There is no question of applying article 254 unless the State law is in its ""pith and substance"" a law relating to the concurrent list. If it is covered

by an entry in the State List but only touches the concurrent list incidentally, there is no application of article 254; and

(iii) The onus of showing the ""repugnancy"" and the extent thereof is on the party who attacks the validity of the State law. The State law may be

repugnant in any of the following situations :

(i) When there is direct conflict between the two provisions. This may happen :

(a) where one cannot be obeyed without disobeying the other;

(b) two enactments may also be inconsistent although obedience to each of them may be possible without disobeying the other. Statutes do more

often impose duties; they may, for instance, confer rights and one statute is inconsistent with another when it takes away a right conferred by the

other even though the right be one which might be waived and abandoned without disobeying the statute which conferred the right. In other words,

repugnancy is not confined only to the case where there is a direct conflict between two Legislatures, e.g., where the one says ""do"" the other says

don't"". It may also arise where both laws operate in the same field and the two cannot possibly stand together, e.g., where both prescribe

punishment for the same offence but the punishment differs in degree or kind or in th