

(2002) 08 DEL CK 0151
In the Delhi High Court
Case No : CWP 1092 and 1093 of 1999

Satyawati Sharma

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Delhi Rent Act, 1995 — Section 29(2)

Delhi Rent Control Act, 1958 — Section 14, 14(1)

Citation : AIR 2002 Delhi 509 : (2002) 100 DLT 259

Hon'ble Judges : S.B. Sinha, C.J.; Madan B. Lokur, J; A.D. Singh, J

Bench : Full Bench

Advocate : A.C. Gambhir and H.D. Pathak, for the Appellant; A.S. Chandhiok Manmeet Arora as amicus Curiae, Maninder Singh and Kirtiman Singh, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Another, AIR 2008 SC 3148 : (2008) 1 CLT 432 : (2008) 5 JT 376 : (2008) 6 SCALE 325 : (2008) 5 SCC 287 : (2008) AIRSCW 5324

S.B. Sinha, C.J.—Constitutionality of a part of Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter called for the sake of brevity "the said Act" for short) is in question in these writ petitions.

BACKGROUND FACTS :-

2. The petitioners are owners of the premises in question. The said premises had originally been leased out to Delhi Improvement Trust by an Indenture dated 18th August 1953. The said leasehold rights were purchased by the petitioner in 1973.

Clause 4(c) of the said Indenture reads thus:

"4(c) The lessee shall not use the said land and building that may be erected thereon during the said terms for any other purpose than for purpose of a residential house, without the consent in writing of the Lesser."

3. The petitioner asserted that the second respondent/tenant had not been using the premises for residential purposes and the user had been permitted by the lesser in terms of the lease deed. She filed an application for eviction of the respondent No.2 from the tenanted premises on the ground that she was in bona fide requirement thereof for its occupation for residence for herself and members of her family. The said application was dismissed by the Additional Rent Controller, Delhi by an order dated 17th May 1991, inter alia, holding that the petitioner herein had failed to prove that the premises in question was initially let out to the petitioner for residential purposes. So far as the claim of bona fide requirement of the tenanted premises by the petitioner in terms of Section 14(1) (e) of the said act is concerned, it was held:

"Summing up, since in the ground u/s 14(1)(e) of the Delhi Rent Control Act, I find that the petitioner has not succeeded in establishing that the premises in suit were let out to the respondents only for the purposes of residence, so consequently, the petitioner is not entitled for eviction order against the respondents u/s 14(1)(e) of the DRC Act because she has failed in establishing one of the four essential ingredients in her favor as discussed above in detail."

4. An appeal was preferred there against by the petitioner herein before the Rent Control Tribunal and the said Tribunal by a judgment dated 10th November 1998 dismissed the said appeal. In the afore-mentioned situation, this writ petition has been filed.

SUBMISSIONS

5. Mr. Gambhir, the learned counsel appearing on behalf of the petitioner would contend that a similar provision occurring in East Punjab Urban Rent Restriction Act had been held to be discriminatory in Harbilas Rai Bansal Vs. State of Punjab and another, and thus, the same Section 14(1)(e) of the Act should also be held to be ultra virus in so far as thereby no provision has been made for eviction of tenant holding non-residential premises on the ground of bona fide requirement of the landlord.

6. The learned counsel would contend that the Act was enacted having regard to the need of the society prevailing thence. According to the learned counsel, although virus of the said provision have been upheld by a Division Bench of this court in H.C. Sharma v. Life Insurance Corporation of India (1973) Del 90 but the said decision must be held to have been impliedly over-ruled by the Supreme Court in Harbilas Rai Bansal (supra). In any event, after a lapse of 48 years, it was argued, keeping in view the changed situation, it does not stand to any reason as to why a decree for eviction in respect of a building which is used for commercial purposes, cannot be sought for although the landlord requires the same for residential purposes. The distinction between the residential purpose

and non-residential purpose, the learned counsel would contend, being artificial, the same cannot stand the scrutiny of Article 14 of the Constitution of India. It was submitted that having regard to the present day need, the Parliament also thought it fit to make a new provision by enacting the Delhi Rent Act, 1995, the relevant provisions whereof read thus:

"22(2)(r) That the premises let for residential or non-residential purposes are required, whether in the same form or after re-construction or re-building, by the landlord for occupation for residential or non-residential purposes for himself or for any member of his family if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation."

7. Mr. Gambhir, relying on the basis of the decision of Apex Court in *Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another*, would argue that the tenancy law should be revised periodically so as to ensure that a proportionately larger benefit than the one which was intended, is not given to the tenants. The learned counsel would urge that with the changing need of the people and for historical reason also, the court may find a provision discriminatory and thus violative of Article 14 of the Constitution of India. Strong reliance in this connection has been placed on *Motor General Traders & Anr. v. State of Andhra Pradesh and Ors.* AIR 1984 SC 121.

8. The learned counsel would submit that even this court in exercise of its jurisdiction of judicial review of legislation may strike down a statutory provision as a result whereof the scope and purport thereof would be enlarged. It was, Therefore, argued that by striking down the word "for residential purposes" in Section 14(1)(e), law can be altered and enlarged. Reliance in this connection has also been placed on *Punjab University, Chandigarh Vs. Devjani Chakrabarti and Others*, .

9. Mr. Maninder Singh, the learned counsel appearing for the respondents, on the other hand, would submit that the constitutional validity of Section 14(1)(e) having been upheld not only by this Court in *H.C. Sharma v. Life Insurance Corporation of India* (supra), but also by the Apex Court in *Amarjit Singh Vs. Smt. Khatoon Quamarain*, . According to the learned counsel, this court in exercise of its jurisdiction under Article 226 of the Constitution of India, would not go beyond the decision of the Apex Court only on the ground that some arguments had not been advanced therein. In support of the said contention, strong reliance has been placed on *Somwanti v. State of Punjab* AIR 1963 SC 11 and *T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others*,

10. The learned counsel would contend that the decision of this Court in *H.C. Sharma v. Life Insurance Corporation of India* (supra) cannot be said to have been impliedly over-ruled by the Apex Court in *Harblas Rai Bansal* (supra), inasmuch as the said decision was rendered under a different Act. Reliance in this connection has been placed on *K. Sahdev v. Suresh Bir* . The learned counsel

would contend that the decision of the Apex Court in Harbilas Rai Bansal (supra), does not apply in the instant case inasmuch as the question which arose for consideration therein was with regard to the change by way of an amendment on the ground of bona fide requirement in respect of non-residential premises as a ground for eviction whereas in the present case, the petitioner has sought for a direction declaring only a part of the original enactment as unconstitutional.

11. The learned counsel would contend that a bare perusal of the relevant provisions in the Delhi Act vis-a-vis East Punjab Rent Restriction Act would clearly go to show that the Parliament has thought it fit to treat the residential premises as a separate class for the purpose of eviction on bona fide requirement. The learned counsel would submit that in the event, even if the writ petition is allowed and the words "for residential premises" occurring in Section 14(1)(e) are struck down, still then the provisions would apply to the residential premises only. He would contend that this court in exercise of its jurisdiction under Article 226 of the Constitution of India would not re-write the statute. Reliance in this connection has been placed on Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others etc.,

12. Mr. Chandhiok, the learned Senior Advocate acting as amicus curiae, inter alia, submitted that from a perusal of definition of "premises" as contained in Section 2(i) itself, it would appear that a distinction has been made between a residential premises and a non-residential premises. The learned counsel would contend that a part of the provision of an Act cannot be questioned to be ultra virus Article 14 of the Constitution of India. Such exercise of power by the High Court, according to the learned counsel, cannot be taken recourse to. Reliance in this connection has been placed on Gauri Shanker and others Vs. Union of India and others, , Mewa Devi and Others Vs. Sri Kishan Das and Others, , Smt. Nai Bahu Vs. Lala Ramnarayan and Others, and the The State of Madhya Pradesh Vs. G.C. Mandawar,

FINDINGS:

13. The said Act was enacted to provide for the control of rents of hotels and lodging houses and for the lease of vacant houses to Government in certain areas in the Union Territory of Delhi.

Premises has been defined in Section 2(j) to mean:

"2(j) "premises" means any building or part of building which is, or is intended to be, let separately for use as a residence or for non-residential use or for any other purpose, and includes--

(i) the garden grounds and out-houses, if any, appertaining to such building or part of the building;

(ii) any fittings to such buildings or part of the building for the more beneficial enjoyment thereof,

but does not include a room in a hotel or a lodging house."

14. Chapter III of the said Act relates to Control of Eviction of Tenants. In terms of Section 14 of the said Act, notwithstanding anything to the contrary contained in any other law or contract for the time being in force, no order or decree for recovery of possession of any premises shall be made by any court or controller in favor of the landlord against a tenant. In terms of the proviso appended thereof, however, the controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds namely:

"14(c) That the tenant has used the premises for a purpose other than that for which they were let-

(i) if the premises have been let on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord; or

(ii) if the premises have been let before the said date without obtaining his consent;

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;.....

(k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate."

15. The petitioner herein filed the said eviction petition, inter alia, on the alleged existence of the grounds for eviction as contained in Clause (e) and (k) of the proviso appended to Section 14 of the Act. It is conceded at the bar that having regard to the finding of fact arrived at by the learned Rent Controller as also the learned Tribunal, Section 14(1)(k) was not applicable.

16. IN the afore-mentioned situation, Clause (c) would also not be applicable. The Act, with a view to granting protection to the tenant, having regard to the interpretation clause, made a classification between the residential and non-residential purposes. A residential tenancy may be subject matter of an order of eviction only in the even the landlord proves his bona fide requirement in respect thereof or for occupation as a residence for himself or for any other member of his family dependent on him.

17. A Division Bench of this court in H.C. Sharma v. Life Insurance Corporation of India (supra), as far back as in 1973 categorically held that the said provisions are not unconstitutional. It may be; as has been submitted by Mr. Gambhir that therein the reasons assigned Therefore was that at the relevant point of time,

there was influx of refugees from Pakistan, but the question which arises for consideration in this writ petition is as to whether the classification of residential and non-residential premises can be said to be discriminatory so as to render it unconstitutional. The answer to the said question must be rendered in the negative.

18. Tenants of non-residential premises are a class by themselves. The Parliament in its legislative wisdom did not think it fit to make any provision for eviction of a tenant from such premises on the ground of bona fide requirement of the landlord for residential purpose. Reference to Section 29(2)(r) of the 1995 Act, in our opinion, cannot be said to have any relevance whatsoever for the purpose of determining. Admittedly, the 1995 Act is yet to come into force. If the said Act is yet to come into force, the question of taking recourse to the provisions of the said Act would not arise more so because this court in exercise of its jurisdiction under Article 226 of the Constitution of India would not be in a position to direct the Government to do so which is a legislative function. On the other hand, the very fact that said Act is yet to come into force in an indicia to the fact that the Central Government does not in its wisdom consider that the said benefit should be extended to non-residential premises also.

19. Judicial review of legislation is permissible only on limited grounds, namely when a statute is enacted by a legislature which had no authority Therefore or when it inter alias violates any of the provisions contained in Part III of the Constitution. Once it is held, as we are bound to, that the non-residential premises having regard to the interpretation clause, forms a separate class, such classification, having a reasonable nexus with the ground of eviction, cannot be said to be discriminatory in nature. Article 14 of the Constitution would apply only to persons similarly situated. owners of residential and non-residential premises stand on different footings. In the event, the legislature in its wisdom thinks it fit to extend its protective wing to a class of tenants from being evicted on a particular ground, the same by itself cannot be said to be discriminatory so as to attract the wrath of Article 14 of the Constitution of India. The court in a situation of this nature is only entitled to see as to whether such classification is valid and rational. Once the rationality in such legislation is found, the court will put its hands off.

20. Furthermore, the provisions of the said Act had been declared intra virus by the Apex Court in *Amarjit Singh v. Khatton Quamarain* (supra). In that case, an argument was advanced that unless the second limb of Section 14(1)(e) of the Act is read in such a way that it was in consonance with Articles 14 and 21 of the Constitution of India, the same would be void as being unconstitutional. The question raised therein has been dealt with by the Apex Court.

21. In the instant case, the Statute itself has indicated the persons or things to whom its provisions are recommended to apply. The said Act is a beneficial legislation. It seeks to protect the tenants. Tenants are broadly classified into three categories -- residential, non-residential and/or any other tenant. Such a

classification as regards premises or tenancy cannot per se be said to be unreasonable.

22. In the instant case, so far as Sections 14(1)(e) and 14(1)(k) are concerned, the statute itself has indicated the persons to whom the provisions would apply. The provision is absolutely clear and unambiguous. In such a case, the Court is only required to examine whether the classification is based upon reasonable differentia, distinguishing the person, group from those left out and whether such differentia has reasonable nexus with the objects to be achieved. The impugned provision indisputably was intended to beneficially apply to landlords and of one class of tenancy viz, tenancy in respect of the residential premises and not non-residential premises.

23. If the policy or object of the legislation can be determined, the Court will not go further and test the doctrine of reasonableness with a microscope. (See *Ram Krishna Dalmia v. Shri Justice S.R.Tendolkar & Ors.* AIR 1958 S.C. 358; *Express Hotels Private Ltd. Vs. State of Gujarat and Another*, *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*,

24. In *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, , it was observed:-

" 14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary / See *M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd.*,]. The legislative casus omissus cannot be supplied by judicial interpretive process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in *N. Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others*, . In *State of Karnataka and Others Vs. D.C. Nanjudaiah and Others*, , the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Section 6 (1). If the view is accepted it would mean that a case can be covered by not only Clauses (i) and/or (ii) of the proviso to Section 6(1), but also by a non- prescribed period. Same can, never be the legislative intent.

15. Two principles of construction -- one relating to casus omissus and the other in regard to reading the statute as a whole- *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the Statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clause thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This

would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in *Artemious v. Precocious*, 1966 (1) QB 878, "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. I.R.C.* 1966 AC 557 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".]

25. Yet again in *Bhatia International Vs. Bulk Trading S.A. and Another*, it was observed:-

"15..... The conventional way of interpreting a statute is to seek the intention of its makers. If a statutory provision is open to more than one interpretation then the Court has to choose that interpretation which represents the true intention of the legislature. This task often is not an easy one and several difficulties arise on account of variety of reasons, but at the same, it must be borne in mind that it is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. It is in such a situation the Courts' duty to expound arises with a caution that the Court should not try to legislate. while examining a particular provision of a statute to find out whether the jurisdiction of a Court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the Court arrives at the same when such a conclusion is the only conclusion. Notwithstanding the conventional principle that the duty of judges is to expound and not to legislate. The Courts have taken the view that the judicial art of interpretation and appraisal is imbued with creativity and realism and since interpretation always implied a degree of discretion and choice, the Court would adopt particularly in areas such as constitutional adjudication dealing with social and defuse rights. Courts are Therefore, held as "finishers, refines, and polishers of legislatures which gives them in a state requiring varying degrees of further processing". (see. *Corrocraft Ltd. v. Pan American Airways* (1968) 3 WLR 714 AIR 1975 SC 1951

26. Thus, in the opinion of this Court, the classification on the basis of the class of the premises and the requirement of the landlord being found on a reasonable differentia, Section 14(1)(e) of the said act cannot be said to be unconstitutional.

27. We are not oblivious of the fact that legislature should periodically review the need of the society, but if it does not, the Court would not and cannot issue any direction in this behalf.

28. Recently in *Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others*, it was observed:

"12. It is high time when State of Punjab should have a fresh look at Section 13 and other relevant provisions of the Act learning lessons from the manner in which these provisions have so far worked and by reviewing how far the object which the legislation sought to achieve has been achieved or frustrated. Useful assistance can be taken from the rent control legislations in other states to see how pari material provisions have been drafted therein. The phraseology employed in drafting Section 13(2)(i) with its proviso and the manner in which it has been so far interpreted, are, in our opinion, far from serving the object of enactment, rather defeating it."

29. It was held that the said Act was a beneficent piece of legislation for the tenants. As regard Rule 7, interpretation of the Act,

"27. We may with advantage quote a passage from Law in the Making by Sir Allen (Seventh Edition, 1964, at p. 308):

"This Court", said Scrutton L.J., "sits to administer the law; not to make new law if there are cases not provided for." "It may be", said Lord Denning M.R. in *Att. Gen. v. Butterworth*, (1963) 1 Q.B. 696, "that there is no authority to be found in the books, but if this be so all I can say is that the sooner we make one the better," But how did the master of the rolls "make" this authority? By reference to "many pointers to be found in the books in favor of the new which I have expressed."

Again at page 521, the eminent jurist states:

"There is no doubt that some judges will read into" a statute, under the guise of the "implied intention" of the legislator, what justice and convenience require."

30. Such a question does not arise in the present case.

31. In *Gian Devi Anand Vs. Jeevan Kumar and Others*, the Apex Court itself has made a distinction between the residential and commercial purposes as postulated under the said Act.

32. We may at this juncture notice the decision of the Apex Court in *Harbilas Rai Bansal Vs. State of Punjab* and another, . In that case, the Apex Court was considering the provisions of the East Punjab Urban Rent Restriction Act, 1949. The Court for interpreting the provisions of the Act noticed the amendments carried out in Section 13.

The relevant provisions were as under:-

"Section 13 -- Eviction of Tenants

(3)(a). A landlord may apply to Controller for an order directing the tenant to put the landlord in possession:

.....

(ii) in case of a non-residential building or rented land, if

(a) he requires it for his own use:

(b) he is not occupying in the Urban Area concerned for the purpose of his business any other such building or rented and as the case may be; and

(c) has not vacated such a building or rented land without sufficient cause after the commencement of this Act, in the Urban Area concerned."

33. However, by an amendment by way of notification dated 24.09.1956, the words "non-residential building" was omitted. The said Act after amendment reads as follows:-

"(3)(a). A landlord may apply to Controller for an order directing the tenant to put the landlord in possessions.

(ii) in case of (XXX) rented land, if.

(d) he requires it for his own use:

(e) he is not occupying in the urban area concerned for the purpose of his business any other such 2 (XXX) rented land 3 (XXX); and

(c) has not vacated such 4(XXX) rented land without sufficient cause after the commencement of this Act, in the urban are concerned."

34. The Apex Court considered the matter from the angle as to whether a right vested in a landlord to seek eviction of his tenant from a non-residential premises for his bona fide requirement can be taken away.

In the aforementioned backdrop, it was held:-

"13. The provisions of the Act, prior to the amendment, were uniformly applicable to the residential and non-residential buildings. The amendment, in the year 1956, created the impugned classification. The objects and reasons of the Act indicate that it was enacted with a view to restrict the increase of rents and to safeguard against the mala fide eviction of tenants. The Act, Therefore, initially provided -- conforming to its objects and reasons -- bona fide requirement of the premises by the landlord, whether residential or non-residential, as a ground of eviction of the tenant. The classification created by the amendment has no nexus with the objects sought to be achieved by the Act. To vacate a premises for the bona fide requirement of the landlord would not cause any hardships to the tenant. Statutory protection to a tenant cannot be extended to such an extent that the landlord is precluded form evicting the tenant for the rest of his life even when he bona fide requires the premises for his personal use and occupation. It is not the tenants but the landlords who are suffering great hardships because of the amendment. A landlord may genuinely like to let out a shop till the time he bona fide needs the same. Visualize a case of a shopkeeper (owner) dying young. There may not be a member in the family to continue the business and the widow may not need the shop for quite some time. She may like to let out the shop till the time her children grow-up and need

the premises for their personal use. It would be wholly arbitrary -- in a situation like this -- to deny her the right to evict the tenant. The amendment has created a situation where a tenant can continue in possession of a non-residential premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and the scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly unjust for the landlord of a non-residential premises."

35. The object and reasons of the said Act, thus were considered having regard to the provisions made at the time of commencement of the said Act. Such a contingency does not arise in the instant case. Reasonable nexus to the object to be achieved of the said Act having regard to the performance for which the building is being used must be found out from the legislative intent. Legislative intent may change from State to State.

36. We may notice that in *Parripati Chandrasekharrao and Sons Vs. Alapati Jalaiah*, the Apex Court inter alia held:-

"4. It appears that while the tenant's appeal were pending before the Subordinate Judge, he had preferred a writ petition being WP No. 8081 of 1986 in the High Court challenging the validity of Clause (b) of the said notification which states that the building fetching monthly rent exceeding Rs. 1000 stood exempted from the provisions of the Act. The learned Single Judge of the High Court dismissed the writ petition upholding the validity of the said provisions. The tenant preferred a writ appeal which also met the same fate. Against the decision in the writ appeal, the tenant preferred SLP in this Court which was dismissed summarily at the admission stage without a speaking order.

5. Shri Sitaramiah, learned counsel appearing for the appellant-landlord contended that on the coming into operation of the said notification from 26-10-1983, the protection given to the tenant stood withdrawn and, Therefore, whatever rights he had under the provisions of the Act, stood extinguished on and from the said date. As against this, it was contended by Shri Subba Rao for the tenant that the tenant had acquired vested rights under the Act and they were alive when the applications were made and he could not be divested of the same by the notification which came into operation from a subsequent date, as held by the Division Bench of the High Court."

37. Even in *Gian Devi Anand's* case (Supra) , the Apex Court did not strike down the statute on the ground that the same had not been expanded to the non-residential purpose. Suggestion had merely been made to the Legislature for its consideration, the feasibility of taking the bona fide requirement of the landlord, as a ground of eviction in respect of commercial premises as well. It is for the Parliament, Therefore, to accede to or not to accede to such a request.

38. We may notice that 1995 Act seeks to fulfill the said object, but unfortunately, the same has not yet been brought into force.

39. It is, Therefore, evident that the decision of the Apex Court in Harbilas Rai Bansal's case (Supra) cannot be said to have any application whatsoever in the instant case.

40. Mr. Gambhir, the learned counsel appearing on behalf of the petitioner, has placed strong reliance upon the decision of the Apex Court in Motor General Traders and Anr. v. State of Andhra Pradesh and Ors. AIR 1984 SC 121 In the said decision, the question, which arose for consideration, was as to whether there existed any valid justification to apply the said Act to building, which is 26 year old. The Apex Court holding that such a classification is wholly unconstitutional observed:-

"22. In all these cases while it is true that no provision actually struck down, there is a firm foundation laid in support of the proposition that what was once a non-discriminatory piece of legislation may in course of time become discriminatory and be exposed to a successful challenge on the ground that it violated Article 14 of the Constitution. This is a sufficient answer to the contention that if at the time when the Act was enacted Section 32(b) of the Act was not unconstitutional, it cannot at any time thereafter be challenged on the ground of unconstitutionality."

41. However, we may notice that the Apex Court in C.N. Rudramurthy Vs. K. Barkathulla Khan and Others, upon taking into consideration various decisions including Motor General Traders's case (Supra) , held:-

"9. It is submitted that if we take the view that Section 31 of the Karnataka Rent Act is valid in view of D.C. Bhatia and Others Vs. Union of India (UOI) and Another, , then the enactment will keep out of its purview a large number of premises inasmuch as the rent payable in respect of commercial premise in Bangalore will certainly be more than Rs. 500 per month. We have given our careful consideration to this aspect of the matter. Relying upon the decisions in Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another, , Rattan Arya and Others Vs. State of Tamil Nadu and Another, Motor General Traders and Another Vs. State of Andhra Pradesh and Others, , Sant Lal Bharti Vs. State of Punjab, it was submitted that with the passage of time and change of circumstances the continued operation of an Act which was valid were (sic when) enacted may become invalid as being arbitrary and unreasonable. Though karnataka Rent Control Act was enacted in the year 1961 and was to lapse by the end of 10 years" time, it has been extended from time to time in the same form in which it was enacted originally or with some modification wherever it was necessary. We cannot imagine that the legislature was not aware or conscious of the fact as to the rents prevalent in the city of Bangalore or in other parts of the State in respect of non-residential premises. Perhaps, the legislature thought it was necessary to give protection of the Act to only very poor tenants who pay rent less than Rs. 500 per month considering the fact that tenants in other premises are economically of superior class and can withstand the manoeuvres of a landlord, however powerful he may be. If that was the policy of the law, we

do not think as stated in D.C. Bhatia and Others Vs. Union of India (UOI) and Another, it was open to the Court to have declared the same to be invalid."

42. Mr. Gambhir wants us, as it is evident from the prayer made in the writ petition, to re-write the statute. This Court cannot do so. We cannot change the law, as it is the duty of the Parliament.

43. It is trite, in the words of Lord Denning MR, the Court while interpreting the statute may iron out the crease, but cannot change its fabric.

44. In Union of India v. Elphinstone Spinning and Weaving Co. Ltd. & Ors. (2001) 1 SCC 139 , it was held:-

"13.....While examining a particular statute for finding out the legislative intent it is the attitude of Judges in arriving at a solution by striking a balance between the letter and spirit of the statute without acknowledging that they have in any way supplemented the statute would be the proper criterion. The duty of Judges is to expound and not to legislate is a fundamental rule. There is no doubt a marginal area in which the courts mould or creatively interpret legislation and they are thus finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing. (See: Corocraft Ltd. v. Pan American Airway Inc. (1968) 3 WLR 714 : (1968) 2 AER 1059 : (1969) 1 QB 616 and State of Haryana and Others Vs. Sampuran Singh and Others, . But by no stretch of imagination a Judge is entitled to add something more than what is there in the statute by way of a supposed intention of the legislature. It is, Therefore, a cardinal principle of construction of statutes that the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed....."

45. In The State of Madhya Pradesh Vs. G.C. Mandawar , it was held:-

"9.....It is conceivable that when the same legislature enacts two different laws but in substance they form one legislation, it might be open to the Court to disregard the form and treat them as one law and strike it down, if in their conjunction they result in discrimination. But such a course is not open where, as here, the two laws sought to be read in conjunction are by different Governments and by different legislatures. Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor does the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two enactments. The sources of authority for the two statutes being different, Article 14 can have no application....."

46. In Mewa Devi and Others Vs. Sri Kishan Das and Others, , it was clearly held:-

"61. That there is a basic reasonable classification between the premises let for

residential purpose and the premises "not let for" residential purposes running throughout the Rent Control Act, 1958 before its amendment and after its amendment and this classification is reasonable and in view of this classification there may be difference in their incidence and in their treatment. The distinction between the two types of premises may be in its applicability to heritability of statutory tenancy and that there is rational nexus between this classification and the purpose of the Act,"

47. In Gauri Shanker and others Vs. Union of India and others, it was held:-

"9. It is evident from the above decision of the Constitution Bench of this Court that a commercial tenancy is invaluable and has got distinct features and characteristics of its own different from that of a residential tenancy. None of the peculiar or unique features present in the case of commercial tenancies exist in the case of residential tenancies. In the above background, if the legislature thought it fit to afford a greater and extended right or benefit to the heirs of the statutory tenants of commercial premises and not to extend such rights to the heirs of the statutory tenants of residential premises, we would say that it only stands to reason and reckons the stark realities of the prevailing situation. The protection afforded by the Rent Act of a tenant after the termination of the tenancy and to the heirs of the tenants is only a creation of the Act and it is open to the legislature to make appropriate provisions in that behalf....."

48. For the views we have taken, we are of the opinion that the Section 14(1)(e) of the said Act cannot be said to be ultra virus Article 14 of the Constitution as it is not possible for us to hold that the words "let for residential purposes" is unconstitutional. If such a contention is upheld, the same would amount to rewrite the statute. Furthermore, the Court cannot direct the legislature to enact a statute in a particular manner.

49. Before parting with these writ petitions, we may however notice the submission of the learned counsel appearing for the petitioner to the effect that the said Act should be read in such a manner that even non-residential premises may be permitted to be used for residential purposes, if there exists a bona fide requirement of the landlord. Such an argument cannot be accepted having regard to the provisions of the Delhi Development Authority Act.

50. Furthermore, in the instant case, the very ground upon which the petition for eviction was filed, namely, the tenancy was for residential purpose has been negatived by both the Rent Controller as also the tribunal. It has been conceded that having regard to the provisions of Section 14(1)(k) of the said Act, in the instant case Section 14(1)(c) of the said Act would not be attracted.

51. The learned counsel, when questioned, very fairly stated that the petitioner cannot ask for declaration that the provisions of Section 14(1)(k) of the said Act in its entirety as unconstitutional. However, having regard to the facts and circumstances of the case, we are of the opinion that it is appropriate that the Central Government may seriously consider the desirability of coming into force

the 1995 Act as the same evidently has been enacted pursuant to the desire of the Apex Court in Gian Devi Anan's case (Supra) .

52. For the reasons aforementioned, we are of the opinion that there is no merit in these writ petitions, which are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.