

(2008) 11 KAR CK 0036
In the Karnataka High Court
Case No : Writ Petition No. 35360 of 2002

Savani Transport Limited

APPELLANT

Vs

State of Karnataka and K.R. Prasanna Kumar Setty

RESPONDENT

Date of Decision : 24-11-2008

Acts Referred:

Karnataka Rent Act, 1999 — Section 2 (3) (g), 70 (2) (c)
Karnataka Rent Control Act, 1961 — Section 21 (1) (h), 31, 50

Citation : AIR 2009 Kar 160 : (2009) 2 KarLJ 712

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : G.K.V. Murthy, for the Appellant; Udaya Holla, General and H.K. Basavaraj, HCGP for R-1 and M. Ramakrishna, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petitioner, a tenant in respect of a nonresidential premises bearing (Old) No 59, (New) No. 32, 3rd Cross, Kalasipalyam, Bangalore-2, is making efforts through the present writ petition to get over an order eviction dated 13-6-2001 passed in HRC No 24 of 1996, on the file of the XIX Additional Small Causes Judge Bangalore, under the provisions of Section 21(1)(h) of the Karnataka Rent Control Act, 1961 [for short, the 1961 Act], and for such purpose, has called in question not only the legality of this order, but also the constitutional validity of Section 2(3)(g) and Section 70(2)(c) of the Karnataka Rent Act, 1999 [for short, the 1999 Act], which enactment has replaced the 1961 Act, contending that these provisions are arbitrary, discriminatory and violative of Article 14 of the Constitution of India, though petitioner itself has not suffered an order of eviction under such provision.

2. The brief facts leading to this writ petition are that: The petitioner is the tenant in respect of the premises as mentioned above under the second respondent. The second respondent-landlord had filed the eviction petition u/s 21(1)(h) of the 1961 Act seeking for eviction of the tenant-petitioner on the

ground of bona fide use and occupation viz., to start a jewellery shop in the schedule premises by the landlord and his son.

3. The eviction petition was resisted by the tenant. The matter was examined by the designated court and the learned judge of the court being satisfied that the landlord had made out a case for grant of an order of eviction in favour of the eviction petitioner, passed the impugned order directing the tenant to vacate and hand over the vacant possession of the premises within six months from the date of the order.

4. The tenant Deferred HRRP No. 702 of 2001 u/s 50(1) of the 1961 Act before this court, challenging the eviction order. While the revision petition was pending before this court, two developments took place. Firstly the 1961 Act came to be replaced by the 1999 Act, in the sense 1961 Act was repealed by Section 70 of the 1999 Act and this court applying the provisions of Clause -c of Sub-section (2) of Section 70 of the 1999 Act to the pending revision petition, ordered that the revision petition has abated in terms of the order dated 23-7-2002.

5. To this writ petition, the petitioner has appended the eviction order dated 13-6-2001 as Annexure-A and the order of abatement passed by this court in HRRP on 23-7-2002 as Annexure-B.

6. Normally, the matter should have attained finality at that stage, but the writ petitioner undeterred has tried to get over the eviction order by questioning the constitutional validity of the provisions of Sections 2(3)(g) and 70(2)(c) of the 1999 Act.

7. The effort is to demonstrate that the denial of the protection of the provisions of the 1999 Act to a tenant of a premises other than residential premises where the plinth area of the structure in such premises is more 14 sq.mtrs in terms of the provisions of Section 2(3)(g) of 1999 Act, is a provision which makes an artificial classification of the tenants, who are denied protection if they are not in occupation of a premises other than a residential premises, the plinth area of which is more than 14 sq.mtrs but also as the provision which makes a further discrimination vis-a-vis a class of tenants who are tenants in respect of residential premises with the rent of the premises being less than Rs. 3,500/- per month. The contention is that the writ petitioner though the rent that is being paid in respect of the premises in its occupation is Rs. 375/- per month, much less than the limit of Rs. 3,500/- fixed in respect of a residential premises over and above which the protection under the 1999 Act is denied, the petitioner is denied the protection under the 1999 Act even when the rent payable per month is only Rs. 375/-only for the reason that the petitioner is in occupation of a premises, the plinth area of which is more than 14 sq.mtrs.

8. The petitioner, though is not a person who has suffered any order of eviction under the 1999 Act and such provisions through are not applied to the petitioner directly for bringing about any adverse impact on the petitioner, these provisions are questioned in the context of the 1999 Act had a bearing on the existing

revision petitions and the petition which had been filed u/s 50 of the 1961 Act, particularly as If the premises of the petitioner went out of the applicability of the provisions of the 1999 Act, the pending revision petition automatically abates in terras of Section 70(2)(c) of the 1999 Act and that having happened on the petitioner and the revision petition u/s 50 of the 1961 Act having been dismissed as abated, the petitioner has now come back to this court praying for a declaration that the provisions of Sections 2(3)(g) and 70(2)(c) of the 1999 Act are discriminatory, unconstitutional and unenforceable etc. It is for such purpose and on such premise, the present writ petition.

9. Initially notices were issued to the respondents on the writ petition and an interim order has been granted staying the execution of the eviction order, which has come to be extended from time to time. The writ petition has been taken up for hearing.

10. The first respondent-state is represented by Sri Udaya Holla, learned Advocate General. Statement of objections has also been filed on behalf of the State. Objections have also been filed on behalf of the second respondent-landlord.

11. The state has sought to defend the validity of the provisions of the 1999 Act, contending that there is absolutely no discrimination brought about by the impugned legislation; that it is a piece of welfare legislation, but enacted in the background of the model rent control legislation which was sought to be enacted through the country, though by different state legislatures; that the protection under the 1999 Act to tenants in occupation of commercial premises, the plinth area of which is more than 14 sq.mtrs and residential premises where the monthly rent is less than Rs. 3,500/-is a reasonable classification; that it has a definite nexus to the object that not only providing protection to the tenant, but taking care of the interest of the landlord also, which is the main object of the present legislation; that the statement of objects and reasons, which was laid before the Assembly as a preamble to the introduction of the 1999 Act, which reads as under:

Economic Administration Reforms Commission and the National Commission on Urbanisation have recommended reform of the Rent Legislation in a way that balances the interests of both landlord and the tenant and also stimulates future construction. The Government of India have formulated a model rent control law and recommended to the State Governments to undertake amendments to existing rent control laws or enact new laws on the basis of the model law.

It is considered necessary and expedient to bring about a new legislation to provide for regulation of rent and eviction in the spirit of modern economy in a manner more suited to our State, by adopting some provisions of the model rent control law and some of the existing law of Rent Control in the State. Therefore it is proposed to enact new legislation to replace the existing Karnataka Rent Control Act, 1961, which is due to expire by 31.12.1999.

Following are some of the features of the proposed measure:

(1) Its application is now restricted,-

(i) to any residential building the Standard rent of which does not exceed rupees 3,500 per month in the areas covered by Karnataka Municipal Corporation Act, 1976 and rupees 2,000 per month in other areas and a commercial building having plinth area of not exceeding 14 square metres.

(ii) to buildings which are more than 15 years old.

(2) The Rent Deed is required to be in writing and registered.

(3) Tenancy is made inheritable to a limited extent.

(4) Provision is made,-

(a) for collection of standard rent in relation to the investment on property and for enhancement of rent, and for determination of Standard Rent by Rent Controllers;

(b) for registration of middlemen and estate agents;

(c) for adjudication of eviction application by Rent Controllers with only Right of Revision, but no appeal;

(d) for immediate eviction of tenants of State or Central Government Employees, members of Armed Forces, widows, handicapped persons and persons above the age of 65 years under certain circumstances;

(e) to lay down Special Procedure for trial of cases before the Controllers and also the Courts so as to achieve quick disposals and negotiated settlement.

(f) to impose certain Special obligations on the landlords and tenants, etc.

Certain other necessary consequential and incidental provisions are also made.

Hence the Bill

clearly spells out such object; that the norms of making a discrimination as to who amongst the classes of tenants in commercial premises who get protection under the 1999 Act and who does not need such a protection is a matter within the wisdom and prudence of the legislature; that even persons who are tenants in respect of a commercial premises above the plinth area measuring 14 sq.mtrs of the building therein are also tenants, who need protection, as there may be poor tenants even within this category, is a hypothetical and unrealistic argument; that there is no compulsion on the legislature to choose the yardstick of the rent alone as the measure for making a distinction between the classes of tenants in non-residential premises who get protection and who may not get protection under the 1999 Act; that making a classification in this manner has a definite nexus to the object of the not only providing a measure of protection to the tenants even in occupation of a commercial premises but also in balancing

the interest of the landlords particularly with a view to encourage the increased activity in leasing of nonresidential premises and also in making available bigger non-residential premises to the landlords who can use it for developmental purposes and pave the way for creating greater number of the tenements; that the provisions are to subserve this object of the legislation and therefore there is no substance in the contention of the petitioner to plead that the provisions are discriminatory, and has sought for dismissal of the writ petition.

12. The state has also defended the validity of the provisions of Section 70(2)(c) of the Act, contending that it is only the imagination of the petitioner that any right is taken away under this provision; that the petitioner in the first instance did not have any vested right which has been taken away by the impugned statutory provision; that a right to revision is one created by the statute and if it was so denied by a statute, there is no question of complaining that the statutory provisions which take away such right are either arbitrary or discriminatory and has therefore sought for upholding the impugned provision and has urged for dismissal of the writ petition.

13. The contention that the provisions of Section 2(3)(g) of the 1999 Act has sacrificed the interest of the poor tenants of non-residential premises having a plinth area of more than 14 sq.mtrs. is denied and it is also countered that the contention is not made good on facts, by adducing commensurate evidence.

14. Statement of objections filed on behalf of the second respondent-landlord while discloses that the grounds of the impugned provisions being discriminatory and therefore unconstitutional are all not tenable on the strength of the interpretation as given to the provisions of Section 70(2)(c) of the 1999 Act by this court in the earlier decided cases, it is urged that no case of discrimination can be made out; that the provisions have come up for scrutiny on earlier occasions and this court had not noticed any such discriminatory element in the statutory provisions; that there is no need for further examination of the provisions on the premise that there still exists some defect in the statutory provisions; that the classification if at all under the Act is between two classes of tenants, which is a justifiable classification, as they form two distinct groups; that both in the 1961 Act and the 1999 Act. definite norms are applied for extending the protection or otherwise in respect of the two categories of tenants - in occupation of residential tenants and tenants in occupation if premises other than residential purpose -have been different, in the sense, the norms are not the same and such provisions having already been upheld, there is no need to examine the validity of the provisions etc.

15. The order of eviction is also sought to be supported contending that the grounds urged to invalidate the order are not tenable; that the landlord has a very limited scope for seeking eviction and that having been found to be existing in the case and the court at the first instance having ordered eviction, there is no need for disturbing that order at this point of time and therefore the writ petition should be dismissed.

16. It is in the light, of such contentions urged and the pleadings before the court, the matter is taken up for examination.

17. I have heard Sri G.K.V. Murthy, learned Counsel for the petitioner, Sri Udaya Holla, learned Advocate General assisted by Sri. H.K. Basavaraj, learned government pleader for the State and Sri M. Ramakrishna, learned Counsel for the second respondent-landlord.

18. Learned Counsel for the petitioner has mainly contended that the provisions of Section 2(3)(g) of the 1999 Act bring about an artificial classification for the purpose of providing protection and denying protection under the 1999 Act, even within the group of tenants; that the main discrimination that is sought to be projected on behalf of the petitioner is that in so far as the tenant in occupation of a residential premises while enjoys the protection of the Act so long as the monthly rent is below Rs. 3,500/- irrespective of the plinth area of the building in his occupation, such a benefit is deprived to the tenants in occupation of a commercial premises, the moment the plinth area of the premises crosses 14 sq.mtrs, though the rent may be still within Rs. 3,500/- per month, in the sense, even within the class of tenants who pay a monthly rent of less than Rs. 3,500/- an artificial classification is brought about between the tenants in occupation of a residential premises and tenants in occupation of the commercial premises; that such classification has no nexus to the object of providing protection to all classes of tenants and therefore the provisions are one discriminating between classes of tenants who fall within the group of persons like the petitioners in occupation of commercial premises paying a monthly rent of less than Rs. 3,500/-, but only for the reason that the plinth area of the structure is more than 14 sq.mtrs, they are forced out of the protection of the Act.

19. In support of the submission, learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of Rattan Arya and Others Vs. State of Tamil Nadu and Another, , wherein the Supreme Court had occasion to hold that making a distinction between the class of tenants in occupation of residential premises paying monthly rent of Rs. 400/- and below from those who pay monthly rent of Rs. 400/- above, in the sense, an occupant of residential premises paying rent of more than Rs. 400/- per month, being denied protection under the provisions of Section 30(1)(ii) of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 is discriminatory and had declared the provision as unconstitutional; that the same logic applies to the present legislation also and for the same reasoning, the provision should be declared as unconstitutional.

20. Sri Murthy, learned Counsel for the petitioner would also urge that the provisions of Section 70(2)(c) of the 1999 Act should also be held bad for the same reasoning, as this provision brings about a discrimination between the two classes of tenants as noticed in terms of Section 2(3)(g) of the 1999 Act by rendering the revision petition which had been filed by persons like the petitioner to abate, whereas revision petitions which had been filed by tenants who are in

occupation of a commercial premises with less than 145 sq.mtrs in plinth area being still surviving for examination as in view of the provisions of Section 70(2) (b) of the 1999 Act and the revision petition which had been filed u/s 50 of the 1961 Act being nevertheless continued as a revision u/s 46 of the 1999 Act. It is because of this consequence namely that the revision petition filed by the writ petitioner getting abated but the revision petition filed u/s 50 of the 1961 Act by the other class of tenants not abating, but nevertheless being converted into revision petition u/s 46 of the 1999 Act and different results being arrived at in respect of two classes of tenants in occupation of commercial premises, the provisions of Section 70(2)(c) is also sought to be challenged as discriminatory and unconstitutional and for being declared so.

21. Sri Udaya Holla, learned Advocate General, appearing for the State has very stoutly defended the validity of the legislation. Learned Advocate General has drawn attention to the statement of objects and reasons to the 1999 Act and also elaborated on the background to the present legislation. It is submitted that the present legislation seeks to bring about a balance between the interest of the tenants as well as the landlords, in the sense, while the object of the earlier enactment was only for providing protection in favour of the tenants, the present enactment seeks to ensure a degree of assurance even to the landlords with a view to encourage the tendency for leasing even commercial premises without much apprehension for repossession and for giving a fillip to construction activity so that the available tenements for commercial purpose get increased if the existing premises are made available to the landlords easily; that they can take development works in such premises.

22. Learned Advocate General submits that the impugned legislation having been enacted in the background of the statement of objects as noticed earlier and with a view to bring about a measure of uniformity throughout the country in such rent control legislations providing a measure of security and protection to tenants and at the same time not a totally discarding the interest of the landlords, as was suggested in the draft model rent control law mooted by the central government and based on such recommendations, the present legislation being modeled, the provisions of the 1999 Act seeks to strike a balance between the interest of the tenants and the interest of the landlords and the existing rent control legislation which was enacted in the year 1961 has come to be replaced by the present enactment viz., 1999 Act; that the provisions being an attempt at reasonable classification of the different classes of tenants who can be provided protection under the Act; that different reasonable norms have been adopted in respect of different classes of tenants to identify them for the protection under the Act; that the protection to tenants as a class is while restricted to identified class of tenants within the class with reference to a ceiling or cut off line, by the general class of tenants being further grouped as tenants in residential premises and tenants in other than residential premises, as two different groups; that necessarily different norms have been stipulated as can be seen in Section 2(3) (e)(i) of the 1999 Act in respect of group of tenants in residential premises within

the municipal areas to which the Karnataka Municipal Corporations Act, 1976 is applicable, to be upto Rs. 3,500/- per month, and the tenants entitled for protection and u/s 2(3)(g) in respect of tenants in premises used for non-residential purpose, upto plinth area of 14 sq.mtrs used for commercial purpose, protection being confined to occupation of the premises upto this extent; that the subject classification is a reasonable classification having regard to the fact that the tenants in residential premises and tenants in commercial premises cannot be treated alike; that it is within the wisdom of the legislature to identify or to fix the extent of protection that should be accorded to the tenants under the two different groups within the class of tenants viz., tenants in residential and non-residential premises; that it is settled law that the legislature enjoys a wide degree of freedom and leverage in stipulating such norms and standards; that it is within the wisdom of the legislature as to which class of tenants should receive protection and to what extent, and the mere fact that identical norm is not employed for extending protection under the Act in respect of tenants in residential premises and tenants in non-residential premises by itself does not amount to an act of discrimination; that the classification of tenants into tenants occupying residential premises and tenants in the premises used for commercial purpose being a reasonable classification and also having a nexus to the object sought to be achieved under the Act viz., extending a limited protection within a class of tenants identified for protection; that there is no illegality or discrimination that can be attributed to the legislation, particularly to Section 2(3)(g) and Section 70 of the 1999 Act, as is contended and has urged for dismissal of the writ petition.

23. Learned Advocate General has placed reliance on the judgments of the Supreme Court in the following decisions in support of such submissions:

a) Ram Krishna Dalmia v. Justice Tendulkar AIR 1956 SC 538 - head-not-D to buttress the argument of valid classification and the freedom enjoyed by the legislature in choosing the subject for extending a benefit and the norm for classification.

b) Saraswat Co-op. Bank Ltd. and Another Vs. State of Maharashtra and Others, , wherein the Supreme Court had occasion to examine an analogous provision under the Maharashtra Rent Control Act, 1999 i.e. Section 3(1)(b), providing for an exemption from the applicability of the legislation in respect of premises belonging to the government or local authorities and the logic in the said case and having upholding the validity of the provisions; that the reasoning equally applies to sustaining the validity of Section 3(1)(g) of the 1999 Act;

c) D.C. Bhatia and Others Vs. Union of India (UOI) and Another, , wherein the Supreme Court had occasion to distinguish its earlier decision in the case of Rattan Ariya [supra], which has been referred to and relied upon by Sri G.K.V. Murthy, learned Counsel for the petitioner; that it is of no avail to support the challenge to the constitutional validity of either Section 2(1)(g) or Section 70 of the 1999 Act;

d) C.N. Rudramurthy v. K. Barkathulla Khan ILR 1998 Kar 3371, wherein the Supreme Court has clarified that the decision of this court in H. Padmanabha Rao Vs. State of Karnataka, , declaring that Section 31 of the 1961 Act was violative of Article 14 of the Constitution of India by fixing rent at Rs. 500/- per month in respect of nonresidential premises had stood overruled by implication in the wake of the subsequent observations made by the Supreme Court in this decision and particularly having distinguished the earlier decision of the Supreme Court in the case of Rattan Ariya [supra];

and therefore submits that the classification of the nature provided for in Section 2(3)(g) having been upheld by the Supreme Court, while the cut off line of Rs. 3,500/- monthly rent in respect of residential premises and 14 sq.mtrs of plinth area in respect of non-residential premises used for commercial purpose, both independently are reasonable provisions providing protection to tenants up to this limit, applying the norm of a limit on the monthly rent in respect of residential premises and plinth area in respect of non-residential premises used for commercial purposes, being in respect of two different groups of tenants within the class of tenants, such different norms by themselves do not bring about any hostile discrimination; that when once either norm within the group is held to be a reasonable norm, there cannot be any further discrimination by comparison of the norms stipulated for one group with the norm stipulated for the other group; that the legislative provision does not suffer from any infirmity and therefore submits that the writ petition should be dismissed.

24. I have bestowed my anxious consideration to the pleadings, submissions made at the Bar as also various authorities relied upon by the respective learned Counsel for parties and State.

25. The limited question that arises for examination in the background of petitioner complaining that a possible remedy of revision which could have opened up in favour of the petitioner in terms of Section 46 of the 1999 Act is deprived of and denied to the petitioner only for the reason that in respect of the premises that was in occupation by the petitioner, though protection was available under the provisions of 1961 Act, which governed the situation when the eviction petition had been filed by the respondent-landlord, is denied to the petitioner, as the earlier Act has now been replaced by the 1999 Act and the benefit of examination by a revisional authority in respect of an order of eviction is deprived to the petitioner only because of the provisions of Section 2(3)(g) of the 1999 Act, the protection under Act itself is not made available to the kind of premises in occupation of the writ petitioner and Section 70(2)(c) of the 1999 Act, a provision in the Section providing for repeal and savings, and providing for the manner of consequences in respect of a pending proceeding as on its application, while extinguished the Section 50 revision which was pending before the court under the 1961 Act also ensured that no corresponding benefit was made available to the persons like the petitioners under the 1999 Act.

26. As noticed earlier, the petitioner is aggrieved only because the yardstick or

norm applied for extending the protection under the provisions of 1999 Act, are different in respect of a group of tenants in residential premises vis-a-vis tenants in non-residential premises used for commercial purpose. The petitioner in fact is not a person directly denied the benefit under the 1999 Act, but is before this court as the impact of Section 70 has denied a remedy of revision to the persons like the petitioner against an eviction order.

27. In the first instance, a remedy in the nature of an appeal or revision in itself is a creature of the statute and can be availed of only in the manner provided for by the statute itself and cannot be claimed as an independent right. Even a right of appeal or revision once given under a particular enactment if is discontinued later, that by itself cannot be a ground of challenge to the provision on the premise that there is no remedy of appeal or revision. This aspect is mentioned only to illustrate the very limited nature of the grievance that can be ventilated by a person like the writ petitioner in a matter of the present nature. The challenge to the provisions of Section 2(3)(g) and Section 70(2)(c) of the 1999 Act is because of the indirect effect of these provisions on the petitioner and not because the petitioner by itself has suffered any adverse order on the application of these provisions, in the sense; the protection is either taken away or an existing right extinguished.

28. In so far as making a distinction between the class of tenants in residential premises and tenants in nonresidential premises used for commercial purpose is concerned, there cannot be any two opinions that they constitute two different and distinct groups, who cannot be treated alike and therefore, the provision not treating them alike cannot be complained as one bringing about a discrimination by itself. When once it is conceded that the classification of tenants in residential premises into one group and tenants in non-residential premises used for commercial purpose as another distinct group is a valid classification or is found to be a valid classification, the further limited question is only as to providing for different norms for extending the protection to the two different groups of tenants within the class of tenants, by itself constitutes an act of discrimination. The two groups being dissimilar, it cannot be contended that even tenants in occupation of non-residential premises used for commercial purpose also should have been given protection up to a monthly rent of Rs. 3,500/-. That can be neither a claim as a matter of right nor can be said that it brings bout any discrimination.

29. Now, while tenants in non-residential premises used for commercial purpose are also given protection under the Act, that protection is confined to such tenants who are in occupation of non-residential premises upto a plinth area of 14 sq.mtrs used for commercial purpose. The discrimination if at all, as contended by Sri Murthy, learned Counsel for the petitioner, is because of the limit of Rs. 3,500/- per month in respect of tenants in occupation of residential premises, is not comparable to the limit prescribed for a non-residential premises upto an extent of 14 sq.mtrs plinth area used for commercial purpose and

complaining that the protection if confined to a plinth area of 14 sq.mtrs in respect of a tenant in occupation of a non-residential premises is a protection to a lesser degree and therefore brings about a discrimination.

30. It is settled law that in the matter of claiming exemption or seeking a benefit, no one has a right. However, the State, when extends such benefits and grants exemptions, on the applicability of any provision or obligation, is expected to act in a fair and nondiscriminatory manner and that is how Article 14 of the Constitution of India is attracted to even such situations. It is now well settled that a classification per se does not bring about any discrimination, unless there is no reasonable and identifiable criterion for making a distinction between the persons sought to be grouped together and persons sought to be excluded or kept out of the group. If the persons who were excluded from the group have a distinct feature, and such classification has a nexus to the object of the enactment, i.e. object of the legislation, the classification is said to be valid and not a violation of Article 14 of the Constitution of India as it will be a reasonable classification and having a nexus to the object.

31. Even while making a classification an intelligible criterion should have been adopted is the requirement of Article 14 of the Constitution of India. In the present case, while independently the criterion for classification being one group as tenants in residential premises and the other tenants in non-residential premises used for commercial purpose by itself constitute a reasonable classification and cannot be found fault with. The further complaint that different yardsticks have been applied for putting a cut off line for the protection under the two classes of tenants and therefore the enactment brings about discrimination, also cannot be accepted mainly for the reason that the legislature has indicated different yardsticks or different norms.

32. The classic illustration of the principles of reasonable classification" as spelt out by the Supreme Court in *Ram Krishna Dalmia* [supra] has stood the test of times and constitutes a ready reckoner for the testing of validity of a legislation attacked on the ground of violation of Article 14 of the Constitution of India. It is now well settled that in such matters, the measure used for classification and for extending or not extending a benefit cannot be tested on the touchstone of an arithmetic formula nor can it be expected to be with any degree of mathematical precision. It is now well settled that as to what degree of protection is needed for the class of tenants who are in occupation of residential premises and what degree of protection is needed for the tenants in occupation of non-residential premises used for commercial purpose, is also within the wisdom and domain of the legislature. Courts cannot sit in judgment over such standards or norms, unless a provision palpably on the face of it adopts such irrelevant norms and totally different yardsticks in respect of the different groups, which are classified.

33. The mere fact that there being some variance it does not constitute an act of discrimination on the part of the legislature in making a particular provision of law. Tested on the touch stone of the principle as laid down in the case of *Ram*

Krishna Dalmla [supra], relied upon by Sri Udaya Holla, learned Advocate General appearing on behalf of the State, the provisions particularly Section 2(3)(g) of the Act cannot be held to be a provision discriminatory per se between a class of tenants in residential premises and tenants in nonresidential premises used for commercial purpose.

34. While Section 2(3)(g) of the 1999 Act by itself sustain in such manner, next question will be as to the challenge to the validity of Section 70(2)(c) of the Act. Section 70(2)(c) of the 1999 Act by itself does not attempt any classification. It is a provision in the nature of a transitory provision providing for transitory matters in consonance with the object of the present enactment. The provisions of Section 70 had come for examination independently before courts and has been understood in the manner in which the judgment rendered by this court in the case of Mercury Press Vs. Ameen Shacoor and Others, which has come to be approved by the Supreme Court in the case of M. Subbarao & Sons v. Yashodamma ILR 2002 Kar 4665, relied on by Sri M. Ramakrishna, learned Counsel for the respondent-tenant.

35. While that by itself may not be an authority with regard to upholding a constitutional validity of a provision, the provisions of Section 70(2)(c) of the 1999 Act are only provisions providing for consequences as a consequence of the provisions of the 1999 Act, coming into force and particularly in the light of the provisions of Section 2 and in the case of the petitioner herein, Section 2(3)(g) being the relevant provision, which by itself does not bring about any classification, leave alone a discrimination. Section 70(2)(c) being the consequential, cannot be found fault with as being violative of Article 14 of the Constitution of India as discriminatory in nature. The challenge to this provision does not sustain.

36. The present writ petition being subsequent to the 4 dismissal of the pending revision petition of the writ petitioner before this court, which had been preferred u/s 50 of the 1961 Act and as a sequence to Section 70(2)(c) of the 1999 Act, and after the revision petition had been dismissed as having abated and the question as to whether the examination with regard to the validity of this provision was really necessitated in the background of such earlier adverse orders passed against the petitioner was debatable, the petitioner having invoked Article 14 of the Constitution of India in support of the present writ petition and having urged that the provision had a direct bearing on the rights of the petitioners, as even under the 1999 Act, some rights such as an existing Section 50 revision petition under the 1961 Act had been converted into a revision petition u/s 46 of the 1999 Act, being a possible question, is examined in this background and answered in this writ petition.

37. The challenge fails and the writ petition is dismissed. Rule discharged.