

(2019) 01 DEL CK 0085

In the Delhi High Court

Case No : Civil Writ Petition No. 516 Of 2010, 7489 Of 2012, 4951 Of 2014, 917 Of 2018, Civil Suits (OS) 3518 Of 2012, Miscellaneous Applications No. 3927, 15957 Of 2013, Civil Miscellaneous Application No. 26668 Of 2018

Shobha Aggarwal & Ors

APPELLANT

Vs

Uoi & Anr

RESPONDENT

Date of Decision : 07-01-2019

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 19(1)(g), 19(6), 21
Delhi Rent Act, 1958 — Section 2(1), 2(l)(iii), 3, 3(a), 3(b), 3(c), 3(d), 4, 6, 6A, 8, 9, 14, 14(1), 14(1)(d), 14(l)(e), 25B, 50, 50(1)
Delhi Rent Control (Amendment) Act, 1988 — Section 3(c)
Delhi Rent Control (Amendment) Act, 1976 — Section 3
Transfers of Property Act, 1882 — Section 106
Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 6
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2(e)

Citation : (2019) 256 DLT 210

Hon'ble Judges : S. Ravindra Bhat, J;A.K. Chawla J

Bench : Division Bench

Advocate : Pranav Jain, Shalini Kapoor, Rhea. G. Munjal, Bindita Chaturvedi, Dikshant Khanna, Ashwani Bhardwaj, Ananya Mukherjee, Ankit Jain, Siddhnat Nath, Anuj Aggarwal, Vivek Goyal, Akshay Makhija, Aditya Goyal, Simran Mehta, Surhid Bhandari, Anuj Sarma, Jaswinder Singh, Pradeep K.B., S.D. Windlesh, Abhineet Gulati, Anjana Thukral

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J

1. The petitioners [in W.P.(C) 516/2010] are co-owners along with other heirs, of late Sharbati Devi, of property, being No. 4/14A, Asaf Ali Road; they mount a wholesale challenge to the provisions of the Delhi Rent Control Act, 1958 (hereafter "DRC Act" or "the Act" for short) as violative of Articles 14, 19(1) (g) and 21 of the Constitution. The Shri Raghubir Saran Charitable Trust (hereafter

"the trust") filed a suit [CS (OS) No. 3518/2012], seeking declaration that Section 6A of the DRC Act is void and unconstitutional, as violative of the said articles of the Constitution of India. This suit was referred to the Division Bench on the question of validity of a law by order dated 12-12-2013. In W.P.(C) 7489/2012, Shri Mahinder Yadav, the petitioner, seeks reliefs identical to what is sought by Ms. Shobha Agarwal and her co-owners in W.P.(C) 516/2010. In all the other proceedings too, provisions of the DRC Act are impugned. Section 14(1)(d) of the DRC Act has been challenged in two writ petitions, i.e. Raj Rani Vs. Union of India - W.P.(C) 7726/14 and Harsh Kumar Aggarwal v Union of India - W.P.(C) No. 4951/14. In Amrit Lal Ghai v Union of India - (W.P. (C) 1622/2012), the petitioner challenges the vires of Section 50(1) of the Act. The validity of Section 1 (2) of the Act so far as the said Section provides for extension of provisions of the said Act to select urban areas within Municipal Corporation of Delhi is impugned in Jagdish Kumar v Union of India - W.P.(C) 5542/14 and in Raj Narain v Union of India - W.P.(C) 3189/14. In Kusum Ansari v Union of India (W.P.(C) 733/2013) provisions of Sections 2(1) and 3 of the Act so far as they confer protection of statutory tenant upon the Government, are impugned.

2. It is argued that the Act, once thought to be a socially beneficial legislation, is one of the most draconian laws on the statute books today. DRC Act came into existence as a special and temporary legislation curtailing the rights of landlords under the general law on transfer of property to meet the specific needs of the time viz "emergency" conditions created first by World War II and later by the partition of India - the conditions which have long ceased to exist. The long passage of time in which the ground realities completely changed made this temporary law - which has assumed permanence because of executive inaction unconstitutional. It is argued that this so called temporary law has resulted in artificially low rents, lifetime tenancy along with succession rights conferred upon an arbitrary population denying landlords any substantive rights in their own property. It has also resulted in reduced taxes and destruction of the city of Delhi. DRC Act is a discriminatory legislation which serves no legitimate state interest and is in-fact against the interest of the general public.

3. It is argued by the petitioner that the DRC Act has become socially and economically destructive as is evident from the various Government committee reports on the subject over the last thirty years. Ms. Shobha Agarwal, the petitioner who argued one of the writ petitions contended that the Economic Administration Reforms Commission set up under the chairmanship of Shri L.K. Jha in its Report No. 11 presented to the Government in September, 1982 pointed out the negative effects of rent control law. The Jain Commission, 1998, reiterated that Rent Control Act negatively impacts housing supply, investment flow in the housing and increases the housing price. The Planning Commission in its 10th Five Year Plan 2002-07 stated that rent control and tenancy laws prevent the development of rental housing, thus contracting housing stock and also act as barriers of growth of cities and that they are also the single most important reason for proliferation of slums in India. Likewise, The Report on Real Estate

Sector, Committee on National Competition Policy, Ministry of Corporate Affairs, January 2012- which concluded that the existing Rent control legislations are restrictive in the sense that it precludes probable home owners from renting out their properties due to control in rent, impedes large scale investment in developing rental properties and renting premises as a business model. It stated that determination of rent should be left to market forces and not be controlled through Government regulations or legislations. The McKinsey Report on the Economic Performance of India published in 2001 opined that removing land market barriers and eliminating Government ownership will increase growth by 1.3 per cent and 0.7 per cent respectively, was also cited.

4. It was urged that the land market barriers according to McKinsey Report are unclear titles, low property taxes, subsidized user charges, rent control and stringent tenancy laws and zoning laws. It is evident from these and many other such reports that DRC Act apart from being socially destructive is not contributing to India's growth story either. It is argued that the DRC Act is against Government Policy. The reports referred to and other expert reports resulted in policy changes over the last twenty-two years or so, starting from gradual decontrol as envisaged in Model Rent Act, 1992 based on National Housing Policy, 1992 to total decontrol in National Urban Housing and Habitat Policy, 2007. The policy changes resulted in several reform oriented programs like Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awas Yojana which stipulated mandatory reform of rent control laws with incentives to State Governments. However, the exchequer's money was wasted in these schemes as they have not resulted in the reform of rent control laws. Within the city of Delhi the influential tenant-trader has effectively stalled implementation of the policies and programs to reform DRC Act by not allowing enforcement of the Delhi Rent Act, 1995.

5. It is argued that the DRC Act violates Fundamental Rights and Human Rights of the landlords such as the right to equality. In this context, it is urged that this court had struck down Sections 4, 6, and 9 of the DRC Act as violative of Articles 14, 19(1)(g) and 21 of the Constitution in *Raghunandan Saran Ashok Saran (HUF) v. UOI and Ors.* [2002 (II) AD Del 261]. It was argued that there was a presumption that the striking down these provisions would result in payment of market rent to the owners but the presumption stands rebutted by the later Division Bench judgement of this Court in *Model Press Pvt. Ltd. v. Mohd. Saied & Anr* 155 (2008) DLT 403 and other similar decisions. It is submitted that when part of an Act is held unconstitutional, it is not for an academic exercise and if does not result in removing the injustice, then the only logical solution would be to strike down the entire legislation.

6. It is submitted that the DRC Act no longer has any rational nexus with its objects and reasons. The adjudication under rent control spans decades and generations as it is in the tenant's interest to prolong the life of the litigation. Approximately 10.15% of all civil litigation at the District Courts in Delhi is under

DRC Act. In the Central District which comprises of many old markets, 27.9% of all civil cases at the level of the Civil Judge/ Rent Controllers/Additional Rent Controllers are under the DRC Act. The provisions relating to standard rent - section 4, 6 and 9 of the Act - were struck down by this court in 2002 in *Raghunandan Saran (supra)*. The court was of the view that the provisions are archaic and contain no mechanism to compensate the landlords to offset inflation. The third object and reason of the Act is also redundant as after the 1988 Amendment, the Act protects only one class of tenants who are paying less than Rs. 3,500/- as rent. This protection is given regardless of the financial status of the tenants/ landlords or the market rent of the property and has no reasonable nexus with the object sought to be achieved by the Act. Various expert committee reports show how the Act is adversely affecting the poor and needy, and is contrary to its object.

7. It is submitted that the preamble of the DRC is that it is to provide "for the control of rents and evictions and of the rates of hotels and lodging houses and for the lease of vacant premises to Government, in certain areas in the Union Territory of Delhi." The petitioners argue that the Act has hardly ever been used for fixing the rates of hotels and lodging houses (there are almost no reported cases) or for that matter for the lease of vacant premises to the Government. These provisions have thus fallen into desuetude. The Act was amended five times. The object of the 1975 Amendment Act was to introduce limited succession rights for the tenants. This is evident from the parliamentary debates on the issue. However, the Supreme Court's judgement in *Gian Devi Anand vs. Jeevan Kumar & Ors* [1985 (2) SCC 683] has ensured unlimited succession rights to tenants of commercial premises. The seven judge bench judgement of the Supreme Court in *V. Dhanapal Chettiar vs. Yesodai Ammal* [(1979) 4 SCC 214] which held that there is no requirement to give notice to a tenant before filing an eviction suit, has been wrongly interpreted and implemented by the courts below, leading to unlimited succession rights for the tenants in residential properties too for all practical purpose. This is in spite of the Supreme Court judgement in *Gauri Shanker and others v Union of India* [AIR 1995 SC 55] which upheld the vires of Section 2(I)(iii) of the Act and held that limitations placed on the inheritance of tenancy rights of the heirs of statutory tenants in residential premises are reasonable and just. This leaves no scope of getting the property back even for the future generations of the landlords for all times to come. The unfortunate fall out has been that a law which was to apply equally to all communities is governed by the personal laws of succession of the tenant and not the landlord. This is against the object of the 1976 Amendment Act which introduced uniform criteria for succession for all tenants by virtue of Section 2(I)(iii). This is further substantiated by the fact that the Delhi Rent Act, 1995 by virtue of Section 5 has provided for limited succession of one year only for nonresidential tenancies and has done away with the confusing words "termination of tenancy" which in 1958 Act led to conflicting and wrong judgements. The DRC Act is liable to be struck down on this ground only.

8. Dealing with the allegation of the discrimination, it is urged that landlords whose properties are under rent control face discrimination vis-a vis landlords whose properties fall outside the rent control. There are several unreasonable and arbitrary classifications under Sections 2, 3 and 14 of the Act and all of these classifications have no rational nexus with the object sought to be achieved by the Act. The classifications under the DRC Act are not saved by the reasonable restrictions under Article 19(6). The right to business of letting out properties on market rent for livelihood is violated; and this leads to the right to life itself being in jeopardy. Ms. Agarwal elaborated the argument, through various classifications under the DRC Act stating, firstly, that by virtue of Section 3(a) and (b), Government properties are exempted from the purview of the DRC Act; secondly, the classification of residential and commercial properties under Section 14(I)(d) and 14(I)(e) has lost meaning. It is submitted thirdly that the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 overrides the provisions of State Rent Acts where both are applicable. Further, by virtue of the 1976 Amendment and its interpretation by the Supreme Court in *Gian Devi Anand* (supra); different rules of succession apply to commercial and residential premises. This was never the legislative intent, originally. It is submitted that fifthly by virtue of Section 3(c) & (d) inserted by 1988 Amendment, premises whose rent exceeds Rs. 3500/- per month are taken out of the ambit of the Act, as also new constructions for a period of ten years. Sixthly, it is stated the Supreme Court's judgement in *Satyawati Sharma (Dead) by LRs v. UOI and Ors.* AIR 2008 SC 3148 struck down part of Section 14(I)(e) removing the discrimination between residential and commercial properties. However, the same discrimination persists in Section 14(I)(d).

9. The first classification between government properties and private properties- it is stated, is absurd as it is the government's duty to provide housing to the citizens. However, the government is protecting its properties from rent control and instead transferring the burden on to private individuals. The landlords who constructed these properties without any subsidy from the government are made to suffer financial burden of the tenants. The entire logic is inverted. Counsel submits that the classification between residential and commercial tenancies in various sections is hit by the ratio of the Supreme Court Judgement in *Satyawati Sharma* (supra) striking down part of Section 14(I)(e) of DRC Act and placing tenants of both commercial and residential properties on the same footing for eviction on the ground of bona fide need of landlords. However, the Act itself is a classification as it applies only to some properties in Delhi. At present there are three Acts governing rent leases in Delhi viz. Transfer of Property Act, 1882; Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the DRC Act. These create three distinct classes of landlords and tenants in Delhi. The landlords and their tenants in the properties fetching more than Rs. 3,500/- are governed by the Transfer of Property Act, 1882. In these cases, the rent and the tenure of tenancy can be freely negotiated. Landlords of private property fetching less than Rs. 3500/- as rent are governed by the DRC Act, 1958. These landlords

can neither determine the rent nor evict the tenant except under certain limited conditions/grounds. There is no freedom of contract. Properties under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 are governed by that Act and a separate simplified procedure is followed for eviction of tenants/unauthorized occupants of such premises.

10. The classification created by Section 3(c) of the Act on the basis of the monthly rent is totally arbitrary and irrational as it has no bearing with the economic status of either the tenant or the landlord. In fact, it is obvious that the landlords who are receiving paltry sum as monthly rent would have their finances dwindled over the decades instead of increasing whereas the finances of the tenants in their properties would have gone up.

11. This classification was questioned by the statutory tenants in *D. C. Bhatia v. Union of India* 1995 (1) SCC 104 as arbitrary; however, the Supreme Court held that the tenants paying more than Rs. 42,000/- per year as annual rent are not in need of protection. The underlying presumption in this reasoning is that a tenant should be from weaker section of the society to avail the benefit of the Act. However, the question whether tenants paying less than Rs. 3500/- per month as rent need protection/or not was not raised before the Supreme Court. It was also observed by the Court that the "legislature could have repealed the Rent Act altogether. It can also repeal it step by step."

12. The scheme of the DRC Act rested on Section 4, 6 and 9 which controlled rents and Section 14 which controls eviction. If the striking down of these sections do not result in removing the control on rent then the kingpin Section 14 which controls eviction has to be struck down which would in any case lead to the entire Act getting nullified. The DRC Act fails the test of reasonable classification based on intelligible differentia bearing a rational nexus to a legitimate state interest, as well as the test of non-arbitrariness. Firstly, there is no rationale behind three separate laws viz Transfer of Property Act, Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the DRC Act governing rent leases in Delhi. Any historical justification for such discriminating laws has been eroded with the passage of time. There is no reason why the profit-making desire of corporations be put on a higher pedestal than an individual's right to make financial gains out of his/her own property. The only beneficiaries of these unequal laws are big corporations like the Life Insurance Corporation and the rich tenant-trader lobby of Delhi. The landlords and the society as a whole are the losers.

13. It is submitted that also, the classification of properties on the basis of monthly rent paid too is absurd and illogical as it has no nexus with the stated objects and reasons of the DRC Act and is not a discernible criterion for judging the financial status either of the tenant or the landlord. If the objective of the DRC Act is to provide premises to the poor at reasonable rates it fails miserably in achieving the same. The actual poor in Delhi are forced to live in slums because of the DRC Act and are outside the protective reach of the same. There

is no apparent rational reason for the affluent tenant-trader community and rich corporations to pay absurdly miniscule amount as rents when their earning is in lakhs and crores of rupees per month. It is unjustifiable oppression of the landlords under the garb of a "socially welfare legislation." Thirdly, the classification that the DRC Act creates between Government properties and private properties by restricting the application of DRC Act only to private properties has now become arbitrary and irrational. Exemption provided to Government properties while permitting it to take advantage of the DRC Act is not justifiable any more as Government has constructed massive properties of its own since independence and cannot continue to make illegal gains out of private property on the pretext of shortage of office space.

14. Counsel argues that the evolution of the right to equality in India underwent a transformation in 1974 when the Supreme Court, in *E.P. Royappa v. State of Tamil Nadu* AIR 1974 SC 555, decided to liberate Article 14 from the limited "cribbed, cabined and confined" limits of classification based equality. Counsel relied on the observations in *H.H. Shri Swamiji of Shri Admar Mutt v Commissioner of Hindu Religious and Charitable Endowments* AIR 1980 SC 1 that "An indefinite extension and application of unequal laws for all time to come will militate against their true character as temporary measures taken in order to serve a temporary purpose. Thereby, the very foundation of their constitutionality shall have been destroyed..." These observations were applied in *Motor & General Traders v State of Andhra Pradesh* 1984 (3) SCC 222 that a law, which earlier had "the garb of constitutionality" may "become worn out and its unconstitutionality is now brought to a successful challenge." The same view was followed in *Malpe Vishwanath Acharya v. State of Maharashtra*, 1998 (2) SCC 1.

15. The reasons for bringing the DRC Act have long ceased to exist. The historical reasons of Second World War and Partition of India which justified the application of unequal laws have now worn out. They have no relevance to the present day social and economic reality and the DRC Act has become otiose with efflux of time. The application of three unequal laws governing rent leases in Delhi cannot continue forever.

16. It is next urged that the right to Freedom to practice any profession, or to carry on any occupation, trade or business is violated by the DRC Act and is violative of Article 19(1)(g) and not saved by the reasonable restriction under Article 19(6). The rent between landlords and rent-controlled tenants are not negotiated (except at the time of first letting), and the transactions are not, on the landlords' part, in any sense "voluntary." The provisions of the DRC Act amount to unreasonable restriction on the property, owners right to carry on the business of renting out buildings and they offend Article 19(1)(g) of the Constitution of India. The buildings constructed by landlords were for the business activity of making profit through rental income and "not for a charitable purpose". It is submitted that in *Raghunandan Saran* (supra) after considering a detailed chart of dwindling value of rupee and increases under

Section 6A, this court was constrained to observe that "the so-called increase under Section 6A of the Act is an eye-wash." As the DRC Act contains no mechanism to bring the historical rent to the present market rent the tenant would forever pay less than Rs. 3500/- and continue to be protected. With 10% increase in rent permissible every three years, the time period required to reach the threshold limit of Rs. 3500/- for the monthly rent ranging from Rs. 10/- to Rs. 1000/- would be 184.38 years to 39.42 years respectively. Most rent-controlled properties in Delhi fall in this category. As the increases are not automatic from the date of 1988 amendment and only prospective increases are allowed under section 6(A) of the DRC Act, endless litigation is generated between landlords and tenants which lasts for decades thus keeping the society under constant litigation and creating social disharmony. The excessive protection provided to the rich and influential tenants against rent increases in the DRC Act do not give effect to any legitimate aim of the state.

17. Counsel argue that the DRC Act in effect compels a landlord, to refrain in perpetuity from evicting a tenant unless one of the grounds in Section 14(1) becomes available to him or the threshold of Rs. 3500/- is reached both of which are illusory for most landlords. As a result of the DRC Act the landlords have been deprived of possession of their property, the right to derive profit from property has been destroyed and, at the same time the right to dispose of one's property has been stripped of its substance.

18. Relying on *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors* AIR 1986 SC 180, it is stated that a five-judge bench of the Supreme Court observed that if the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Property rights provide a sphere of personal sovereignty, a zone of privacy into which Government should be able to intrude only with difficulty and only so far. Salmond is referred to say that possession of material things is essential to life, it is the most basic relationship between men and things. A property right in a physical thing is a right to possess, use and dispose of this thing. The Government compelled rent control law has ensured that the possession of the property of landlords stay with a third party for generations at miniscule rent thereby nullifying their right to property and at the same time violating their right to life by not allowing them to earn livelihood out of their property.

19. Next, it is urged that though removed from the list of fundamental rights, right to property continues to be not only a constitutional or statutory right but also a human right. The development of the right to property as a human right can be ascertained from the Declaration of the Rights of Man and Citizen, 1789; the Charter of Fundamental Rights of the European Union, 2000; the Universal Declaration of Human Rights, 1948 and the First Protocol, European Convention on Human Rights, 1952. Even the European Court of Human Rights has placed the right to property at the same pedestal as a human right.

20. The petitioners" counsel submits that in many judgments the Courts have issued directives to amend the DRC Act so that it is just both to landlords and tenants. In Model Press (supra), a Division Bench observed:

"It is unfortunate that after the decision in Raghunandan Saran's case, the legislature has not filled up the vacuum created in the law with Sections 4, 6 and 9 of the Delhi Rent Control Act 1958 being held ultra vires the Constitution." It is highlighted that eleven years have elapsed since the Government assured the Supreme Court in Common Cause that it is taking proactive measures on the issue. Finally, in view of the apathy shown by the Government the Supreme Court laid down guidelines in Mohammad Ahmad & Anr. v. Atma Ram Chauhan & Ors. AIR 2011 SC 1940 to minimize landlord-tenant litigation at all levels. These guidelines should have had the same force- contend the petitioners, as guidelines in Vineet Narain & Others v. Union of India & Anr. 1996 (2) SCC 199, Vishaka and others v. State of Rajasthan & Ors AIR 1997 SC 3911, Lakshmi Kant Pandey v. Union of India, AIR 1984 SC 469 have all over the country.

21. The directions given by Committee on Petitions, Rajya Sabha in 2004; Committee on Subordinate Legislation in 1999 to take very urgent steps to notify the Delhi Rent Act, 1995; several reports of Parliamentary Committee on Urban Development; and assurances given by successive Governments in power are referred to. It is stated that legislative and policy apathy have flagrantly violated these reports, resulting in deprivation of the petitioners" rights.

22. It is stated that the Act does not pass the test of principles of constitutional validity as laid down by the Supreme Court in Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar & Ors and Synthetics and Chemicals Ltd & Ors v. State of UP AIR 1990 SC 1927 wherein the court said "restrictions" valid under one circumstance may become invalid in changed "circumstances." Reliance in support of this view was not only placed on some American decisions but also on the decision of the Supreme Court in Motor General Trader's case. In Satyawati Sharma (supra) the issue before the Supreme Court was whether the classification under Section 14(I)e of the DRC Act is ultra vires the Constitution. Taking into consideration matters of common knowledge, matters of common report and the present-day, history the Supreme Court held that a legislation which may have been reasonable at the time of its enactment may with the passage of time and changed circumstances become unreasonable and violative of the doctrine of equality and the court may strike down the same if it is found that the rationale of "classification" has become non-existent. The same observations about the change in the economic and other spheres of tenants in the last 56 years would hold true not just to one section of DRC Act but to the entire Act. On this ground alone and in accordance with principles enunciated in Dalmia's case the DRC Act has become otiose and unconstitutional.

23. It is urged that successive governments have abdicated its responsibility by not notifying the Delhi Rent Act, 1995 and is in fact in the process of repealing it thereby setting the entire process backwards by over 22 years, it is the

constitutional obligation of this court to strike down the DRC Act as unconstitutional. Deference to the wisdom of the Government in power is appropriate only when the Government's purpose is legitimate and its means rational. Even though the courts have no power to issue a mandamus to notify an Act but judicial review of legislation is an integral part of the Constitution.

24. Arguing that the DRC Act is a forced welfare program funded by those landlords who happen to have rent- controlled tenants. Such a forced welfare program on private citizens can pass the rigors of the constitutional guarantees only in extreme emergency situations like the aftermath of the partition of the country. The entire scheme of the DRC Act is unconstitutional as it places excessive and disproportionate burden on the landlords to subsidize the rent-controlled tenants who are mostly quite affluent. An anomalous situation has been created in which the circle rates. Property taxes etc are all based on market value of the property but rent under DRC Act stay frozen to a miniscule amount at which the property was first let with negligible permissible increases. If this particular section of the society - for an undisclosed reason - has to be subsidized then the burden of such subsidy has to be shared by the society as a whole like in Public Distribution System or the subsidy on diesel, cooking gas etc. The DRC Act instead of allowing landlords to make profit out of their property is inflicting losses on them. The observations of the European Court of Human Rights in *Hutten-Czapska v. Poland* [GC], [no. 35014/97, ECHR 2006-VIII - (19.6.06)] that "One of the essential elements of the right of property is the possibility of deriving profit from the object of ownership, which is of particular importance in a market economy ." is relied upon. Counsel stress that the State is under a moral obligation to compensate the landlords for the financial losses suffered by them on account of the DRC Act. The non-consensual, unwanted, continued occupation of premises by the tenants under the sanction of the State amounts to requisition of the premises making the landlords entitled to be compensated by the state. As the tenants are forcibly occupying the property against the will of the landlords by the force of an unjust law, the Government is deemed to be in occupation of the property through the tenants which entitles landlords to compensation at the same rate of rent which they would have received if the property had been directly requisitioned by the Government for its own use. The violation of principles of promissory estoppels and legitimate expectations would also entitle the landlords to compensation as the Government has failed to keep its promise to reform the Act. The promise was first made in 1995 when the President of India gave his assent to Delhi Rent Act, 1995 giving rise to legitimate expectations of the landlords of getting back the possession of their property or atleast deriving a reasonable income from it. The promise was reiterated in assurances given by the Government in Parliament and in courts. This promise has not been fulfilled till date. It is unfair and immoral on the part of the State not to fulfil its promise. The landlords are therefore entitled to compensation from the Government. [*M/s S. V.A. Steel Re-rolling Mills Ltd v. State of Kerala* (2014) 4 SCC 186].

25. The stated position of the Union of India ("UOI" hereafter) is that the DRC Act has been amended from time to time keeping in view the changing needs of society and in order to strike a balance between the interest of landlords as also the tenants and for giving a boost to house building activity. It is urged that the constitutional validity of various provisions and amendments to the Act has been challenged from time to time and on all occasions the constitutional validity has been upheld by this Court and the Supreme Court of India. The classification made by the Act has time and again been held to be a reasonable classification within legislative competency of the legislation. It is further pointed out that even today the position with regard to Rent Control legislation is not static, though it is correct. That the Delhi Rent Control Act, 1995 has not been notified and it is submitted that after examining and considering representations from all sections of the society, it was decided to amend the 1995 Bill and accordingly, Delhi Rent (Amendment) Bill, 1997 was drafted and introduced in the Rajya Sabha on 28th July, 1997. The said Bill was referred to the Parliamentary Standing Committee on Urban and Rural Development to examine and report. The Committee could not submit its report since 11th Lok Sabha was dissolved in January, 1998. Subsequently, the Bill could not be taken up even in the 12th Lok Sabha which was dissolved on 26th April, 1999. After formation of the 13th Lok Sabha, the Cabinet approved the decision to pursue the Amendment Bill, 1997 in its existing form and the said Bill was referred to the Standing Committee on Urban and Rural Development which submitted its Report to the Parliament on 21st December, 2000. However, recommendations of the Committee once again required consideration, before being taken up for discussion by the Rajya Sabha and Lok Sabha.

26. It is submitted that in a meeting of the representatives of the Government of NCT of Delhi and the Ministry of Urban Development held in March, 2012, the Government of NCT of Delhi favored preparation of new Draft Bill to be placed in a public domain for adequate discussion in light of the changed scenario. Accordingly, the Cabinet approval was obtained in July, 2013 to repeal Delhi Rent Control Act, 1995 and withdraw the Delhi Rent (Amendment) Bill, 1997 pending in the Rajya Sabha. The Bill to repeal the Delhi Rent Control Act, 1995 was introduced in the Rajya Sabha on 29th August, 2013 and is pending for consideration.

27. It is stated that the concerned authorities in a meeting held on 27th June, 2014, directed that inputs from all important stakeholders along with inputs from the Government of NCT of Delhi be taken for drafting a new Bill with respect to Rent Control Legislation, Delhi. As such, it is apparent that the Government keeping in view the interest of various stakeholders is in the process of evolving Rent Control Legislation in order to balance the interest of both landlords and tenants. It cannot be said that there is no requirement whatsoever for any rent control legislation to be in place as there are numerous sections of the society which cannot afford housing in Delhi and their tenancy needs to be protected. It is also pertinent to point out that rent control legislation exists in all States in the

country albeit in varying forms.

28. It is submitted that the challenge to the validity of the Act based on the violation of Article 19(1)(g), i.e. the right to practice any profession or to carry on any occupation, trade or business is subject to the restriction provided under Article 19(6) which does not prevent the State from making any law imposing reasonable restriction on the exercise of the right conferred under Article 19(1) (g). It is further submitted that the said challenge is also premised on an alleged economic hardship suffered by landlords to rent their premises at a market rent and an alleged subsidization of rich tenants. It is stated that for a challenge to succeed under Article 19 (1)(g), the petitioner must show that there has been restriction / prohibition on the right to carry on business or trade. In the present case, there is no restriction on a landlord to rent out his / her premises. In fact, Section 6A of the Delhi Rent Control Act also provides for an increase in the rent by 10% every three years. The allegation of the petitioners is merely that their properties may be able to fetch high rents. In this regard, it is submitted that just because there is a reduction in the profit that the landlord may make cannot be the basis of a challenge under Article 19(1)(g). There is no restriction of letting and the mere ground that their business of letting is not profitable cannot be ground under Article 19(1)(g). Thus, correspondingly there is no violation of Article 13 as well.

29. As far as the right to equality under Article 14 and the right to protection of life under Article 21 are concerned, it is submitted that there is no violation whatsoever of the right available to a citizen under Article 21 by the imposition of the Delhi Rent Control Act. As far as Article 14 is concerned, it is submitted that the constitutional validity of the classification that has been done by the Delhi Rent Control Act has been upheld by the Supreme Court of India on various occasions, and as such, challenge under Article 14 is not maintainable.

30. It is submitted that there is nothing in the Objects and Reasons of the Delhi Rent Control Act, 1958 or its subsequent amendments right upto the Delhi Rent Control (Amendment) Act, 1988 to suggest that the Act was meant to be a temporary measures. The Supreme Court in the case of *Rahabar Productions Pvt. Ltd. v Rajinder K. Tandon* - (1998) 4 SCC 49 has summed up the essence of the Act as under:

" 8. The Act which was brought on the Statute book in 1958 is a composite legislation in the sense that while providing protection to the tenants, who, under common law, including Transfer of Property Act, could be evicted from the premises let out to them, at any time by the landlord on the termination of their tenancy, it restricts the right of the landlords to evict the tenants at their will. This Act is thus beneficial as also restrictive in nature. The Courts are, therefore, under a legal compulsion to harmoniously read the provisions of the Act so as to balance the rights of the landlord and the obligations of the tenant towards each other keeping in mind that one of the objects of the legislature while enacting the Act was to curb the tendency of the greedy landlords to throw out the

tenants, paying lower rent, in the name of personal occupation and rent out the premises at the market rate."

31. Counsel urged that the DRC Act is not a one-sided legislation - the classification of Rs. 3,500/- is not arbitrary. It was highlighted that the Act was enacted for the control rental housing market, fixation of standard rents, protection of tenants against indiscriminate eviction and the obligation of landlord regarding maintenance and the rights of the landlords to maintain a petition for recovery of possession under certain circumstances. Counsel submitted that the Rent Control Tribunals set up under the Act are functioning in an efficient manner and innumerable landlords have obtained eviction orders against tenants on the basis of the grounds enumerated under the Act. Thus, to say that the Act provides an unfettered protection to a tenant is incorrect.

32. As far as classification of Rs. 3,500/- rent being the cut-off is concerned, it is submitted that the said classification as enacted under Section 3(c) and inserted vide the Delhi Rent Control (Amendment) Act, 1988 has been held to be a valid classification and in no way violative of the Constitution of India by the Supreme Court in the case of D. C. Bhatia (supra). The Supreme Court of India has held the said classification to be reasonable and having been made in order to strike a balance between the interest of landlord and tenant as also for giving a boost to household activity.

33. It is pointed out that the Supreme Court has held that it is for the legislature to decide what should be the cut-off point for the purpose of classification and the legislature must necessarily have a lot of latitude in this regard. It is well settled that safeguard provided under Article 14 can only be invoked if a classification is made on the ground which are totally irrelevant to the object of statute. However, if there exists some nexus between the object sought to be achieved and the classification, the legislature shall be presumed to have acted in proper exercise of its constitutional powers. It is further submitted that classification may in practice result in some hardship but such a statutory classification cannot be set aside on account of hardships if there are facts on the basis of which the said classification can be justified and relatable to the object of the statute.

34. The UOI highlights that various provisions of the DRC Act have been challenged from time to time and upheld by the Supreme Court. The Courts have time and again held that the Rent Control legislation is a beneficial legislation both for landlords and tenants. Some of the illustrative cases relating to constitutional challenge to specific Sections of the Delhi Rent Control Act are as under:

Section

Particulars of the Case

14B

Mahendra Raj v. UOI - 1990 (2) Rent LR 63

14C

B.M. Channa v. UOI - 1990 (1) RCR 312

14D

K.L. Malhotra v. Prakash Mehra - AIR 1991 SC 99

14(1)(e)

Amritjit Singh v. Khatoon Quamarain 1986 (4) SCC 736

H.C. Sharma v. LIC - 1973 (1) ILR (Del) 90

25B

Kewal Singh Lajwanti AIR 1980 SC 161

3(c)

D.C. Bhatia v. UOI - 1995 (1) SCC 104 (Delhi High Court decision - 1991 (43) DLT 425

2(I)(iii)

Gauri Shankar v. UOI 1994 (6) SCC 349

35. It is submitted that the DRC Act cannot be said to have lost its relevance inasmuch as there is a large section of society which still requires protection under the Act so that their needs for housing can be met and are not violated by unscrupulous landlords in search for profits. It is highlighted that rent control legislation exists in almost every State of India and challenges to the said legislation and their provisions many of which are pari-materia to the provisions of the Delhi Rent Control Act have been upheld by their respective High Courts and also by the Supreme Court of India.

36. Dealing with the issue of challenge to the DRC Act vis-à-vis the classification of premises as residential and non-residential, it is contended that it is a well-considered classification. This classification of properties as such is well accepted and practiced while fixing rate of property tax, rate of charges for consumption of electricity and water etc. This classification had withstood judicial scrutiny. The Legislature has clearly distinguished residential premises from non-residential premises while deciding the grounds of equity as enshrined in Article 14. It is further submitted that the classification as above was deliberated upon and considered by the Legislature as well as Parliamentary Standing Committee while examining the Delhi Rent Control Bill, 1994 and it is after due deliberation that the classification has been retained. It is denied that the difference between premises may proceed to file an application for recovery of possession of the premises. There is no warrant for either holding Section 14(1)(d) to be unreasonable or for reading anything into it beyond what the Legislature has

prescribed. In any case, in *Satyawanti Sharma (supra)*, the Supreme Court had struck down the reference to let for residential purposes only with respect to Section 14(1)(e) of the Act and the consequent 'Explanation' following the above said Section. The petitioner cannot agitate parity in residential and non-residential premises on account of the broad objectives of the DRC Act.

37. As to the vires of Section 50 (1) it is submitted that though *Raghunandan Saran (supra)* struck down and declared unconstitutional provisions of the DRC Act outlining the manner of determining standard rent, that did not mean that per se Section 50 (1) was rendered void. It is highlighted that the argument on which the petition is premised, i.e. a Civil Court would be entitled to maintain petition for fixation of standard rent is without merit. It is also submitted that Sections 4, 6 and 8 of the DRC Act provides for the method of fixation of standard rent and in view of the method provided under the DRC Act power was conferred exclusively on the Controller to fix standard rent. Fixation of standard rent is not a relief in common law that can be claimed without reference to a specific statute. It is argued that this court declares Sections 4, 6 and 9 of the DRC Act as unconstitutional, there is no existing statute under which a Civil Court can be asked to determine and fix standard rent. Relevant provisions of the DRC Act.

38. The definition clause (Section 2) of the DRC Act, to the extent it is relevant, states as follows:

"2. Definitions. - In this Act, unless the context otherwise requires-

(a) "Basic rent", in relation to premises let out before the 2nd day of June, 1944, means the basic rent of such premises as determined in accordance with the provisions of the Second Schedule;

(b) "Controller" means a Controller appointed under sub-section (1) of section 35 and includes an additional Controller appointed under sub-section (2) of that section;

(c) "Fair rate" means the fair rate fixed under section 31 and includes the rate as revised under section 32;

(d) "Hotel or lodging house" means a building or part of a building where lodging with or without board or other services is provided for a monetary consideration;

(e) "Landlord" means a person who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent to be entitled to receive the rent, if the premises were let to a tenant;

(f) "Lawful increase" means an increase in rent permitted under the provisions of this Act;

(g) "Manager of a hotel" includes any person in charge of the management of the

hotel;

(h) "Owner of a lodging house" means a person who receives or is entitled to receive whether on this own account or on behalf of himself and others or as an agent or a trustee for any other person, any monetary consideration from any person on account of board, and lodging or other services provided in the lodging house;

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

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

(ii) any furniture supplied by the landlord for use in such building or part of the building; but does not include a room in a hotel or lodging house;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "standard rent", in relation to any premises, means the standard rent referred to in section 6 or where the standard rent has been increased under section 7, such increased rent;

[(l) (Note: Subs. by Act 18 of 1976, sec.2, for clause (1) (w.e.f. 1-12-1975)) "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes-

(i) a sub-tenant;

(ii) any person continuing in possession after the termination of his tenancy; and

(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and to this clause, such of the aforesaid person's-

(a) spouse,

(b) son or daughter, or, where there are both son and daughter, both of them,

(c) parents,

(d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include,-

(A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso of section 3 of the Delhi Rent Control (Amendment) Act, 1976 (18 of 1976);

(B) any person to whom a licence, as defined by section 52 of the Indian

Easements Act, 1882 (5 of 1882), has been granted.

Explanation1.- The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows:-

- (a) firstly, his surviving spouse;
- (b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death;
- (c) thirdly, his parents, if there is no surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and
- (d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death.

Explanation II.- If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.

Explanation III.-For the removal of doubts, it is hereby declared that, -

- (a) where, by reason of Explanation II, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguished shall not affect the right of any other succession of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishments, pass on to any other successor, specified in any lower category or categories, as the case may be;
- (b) the right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, develop on any of his heirs]"

39. The other relevant provisions of the Act, are extracted below:

"3. Act not to apply to certain premises.- Nothing in this Act shall apply -

(a) To any premises belonging to the Government; (Note: The word "or" omitted by Act 57 of 1988, sec.2 (w.e.f. 1-12-1988).

(b) To any tenancy or other like relationship created by a grant from the

Government in respect of the premises taken on lease, or requisitioned, by the Government:

[(Note: Added by Act 4 of 1963, sec.2 (with retrospective effect) Provided that where any premises belonging to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any court or other authority, the provisions of this Act shall apply to such tenancy;]

[(c) (Note: Ins. by Act 37 of 1988, sec.2 (w.e.f. 1-12-1988) To any premises, whether residential or not, whose monthly rent exceeds there thousand and five hundred rupees; or

(d) To any premises constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988, for a period of ten years from the date of completion of such construction;]

4. Rent in excess of standard rent not recoverable. - (1) Except where rent is liable to periodical increase by virtue of an agreement entered into before the 1st day of January, 1939, no tenant shall, notwithstanding any agreement to the contrary, be liable to pay to his landlord for the occupation of any premises any amount in excess of the standard rent of the premises, unless such amount is a lawful increase of the standard rent in accordance with the provisions of this Act.

(2) Subject to the provision of sub-section (1) any agreement for the payment of rent in excess of the standard rent shall be construed as if it were an agreement for the payment of the standard rent only.

5. Unlawful changes not to be claimed or received. - (1) Subject to the provisions of this Act, no person shall claim or receive any rent in excess of the standard rent, notwithstanding any agreement to the contrary.

(2) No person shall, in consideration of the grant, renewal or continuance of a tenancy or sub-tenancy or sub-tenancy of any premises,-

(a) Claim or receive the payment of any sum as premium or pugree of claim or receive any consideration whatsoever, in cash or in kind, in addition to the rent; or

(b) Except with the previous permission of the Controller, claim or receive the payment of any sum exceeding one month's rent of such premises as rent in advance.

(3) It shall not be lawful for the tenant or any other person acting or purporting to act on behalf of the tenant or a sub-tenant to claim or receive any payment in consideration of the relinquishment, transfer or assignment of his tenancy or sub-tenancy, as the case may be, of any premises.

(4) Nothing in this section shall apply-

(a) To any payment made in pursuance of an agreement entered into before the 1st day of January, 1939; or

(b) To any payment made under an agreement by any person to a landlord for the purpose of financing the construction of the whole or part of any premises on the land belonging to taken on lease by, the landlord, if one of the conditions of the agreement is that the landlord is to let to that person the whole or part of the premises when completed for the use of that person or any member of his family:

Provided that such payment does not exceed the amount of agreed rent for a period of five years of the whole or part of the premises to be let to such person.

Explanation. - For the purpose of clause (b) of this sub-section, "member of the family" of a person means, in the case of an undivided Hindu Family, any member of the family of that person and in the case of any other family, the husband, wife, son, daughter, father, mother, brother, sister or any other relative dependent on that person.

6. Standard rent. - (1) Subject to the provisions of sub-section

(2), "standard rent", in relation to any premises means -

(A) In the case of residential premises-

(1) Where such premises have been let out at any time before the 2nd day of June, 1944,-

(a) If the basic rent of such premises per annum does not exceed six hundred rupees, the basic rent; or

(b) If the basic rent of such premises per annum exceeds six hundred rupees, the basic rent together with ten per cent, of such basic rent;

(2) Where such premises have been let out at any time on or after the 2nd day of June, 1994,-

(a) In any case where the rent of such premises has been fixed under the Delhi and Ajmer- Merwar Rent Control Act, 1947 (19 of 1947), or the Delhi and Ajmer Rent Control Act, 1952 (37 of 1952),-

(i) If such rent per annum does not exceed twelve hundred rupees, the rent so fixed; or

(ii) If such rent per annum exceeds twelve hundred rupees, rent so fixed together with ten per cent. of such rent;

(b) In any other case, the rent calculated on the basis of [(Note: Subs. by Act 57 of 1988, sec.3, for "seven and one-half per cent." (w.e.f. 1-12-1988) ten per cent]. per annum of the aggregate amount of the [(Note: Subs. by Act 57 of

1988, sec.3, for "reasonable" (w.e.f. 1-12-1988) actual] cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction :

(Note: Proviso omitted by Act 57 of 1988, sec.3 (w.e.f. 1-12-1988))

(B) In the case of premises other than residential premises-

(1) Where the premises have been let out at any time before the 2nd day of June, 1944, the basic rent of such premises together with ten per cent. of such basic rent:

Provided that where the rent so calculated exceeds twelve hundred rupees per annum, this clause shall have effect as if for the words "ten per cent.", the words "fifteen per cent." had been substituted;

(2) Where the premises have been let out at any time on or after the 2nd day of June, 1944,-

(a) In any case where the rent of such premises has been fixed under the Delhi and Ajmer-Merwar Rent Control Act, 1947 (19 of 1947) or the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952),-

(i) If such rent per annum does not exceed twelve hundred rupees, the rent so fixed; or

(ii) If such rent per annum exceeds twelve hundred rupees, the rent so fixed together with fifteen per cent. of such rent;

(b) In any other case, the rent calculated on the basis of [(Note: Subs. by Act 57 of 1988, sec.3, for "seven and one-half per cent" (w.e.f. 1-12-1988) ten per cent] per annum of the aggregate amount of the [(Note: Subs. by Act 57 of 1988, sec.3, for "reasonable" (w.e.f. 1-12-1988) actual] cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction:

(Note: Proviso omitted by Act 57 of 1988, sec.3 (w.e.f. 1-12-1988))

(2) Notwithstanding anything contained in sub-section (1),-

(a) In the case of any premises, whether residential or not, constructed on or after the 2nd day of June, 1951, but before the 9th day of June, 1955, the annual rent calculated with reference to the rent at which the premises were let for the month of March, 1958, or if they were not so let, with reference, to the rent at which they were last let out, shall be deemed to be standard rent for a period of seven years from the date of the completion of the construction of such premises; (Note: The word "and" omitted by Act 57 of 1988, sec.3 (w.e.f. 1-12-1988))

(b) In the case of any premises, whether residential or no, constructed on or after the 9th day of June, 1955, including premises constructed after the

commencement of this Act [(Note: Ins. by Act 57 of 1988, sec.3 (w.e.f. 1-12-1988) but before the commencement of the Delhi Rent Control (Amendment) Act, 1988], the annual rent calculated with reference to the rent agreed upon between the landlord and the tenant when such premises were first let out shall be deemed to be the standard rent for a period of five years from the date of such letting out.

[(c) (Note: Ins. by Act 57 of 1988, sec.3 (w.e.f. 1-12-1988) In the case of any premises, whether residential or not, constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988 and to which the provisions of this Act are made applicable by virtue of clauses (d) of section 3, the rent calculated on the basis of ten per cent, per annum of the aggregate amount of the actual cost of construction of the premises and the market price of the land comprised in the premises on the date of commencement of the construction, of the premises shall be deemed to be the standard rent]

(3) For the purpose of this section, residential premises include premises let out for the purpose of a public hospital, an educational institution, a public library, reading room or an orphanage."

14. Protection of tenant against eviction. -

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenet:

Provided that 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 only, namely:-

(a) That the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a landlord in the manner provided in section 106 of the Transfers of Property Act, 1882 (4 of 1882);

(b) That the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise without obtaining the consent in writing of the landlord;

(c) That the tenant has used the premises for 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 corisent;

(d) That the premises were let for use as a residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of the filing of the application for the recovery of possession thereof;

(e) That the premises let for residential purpose 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 the landlord or such person has no other reasonably suitable residential accommodation;

Explanation.- For the purpose of this clause, "premises let for residential purpose" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

(f) That the premises have become unsafe or unfit for human habitation and are required bona fide by the landlord for carrying out repairs which cannot be carried out without the premises being vacated;

(g) That the premises are required bona fide by the landlord for the purpose building or re-building or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the premises being vacated;

(h) That the tenant has, whether before or after the commencement of this Act, (Note: The word "built" omitted by Act 57 of 1988, sec.8 (w.e.f. 1-12-1988)) acquired vacant possession of, or been allotted, a residence;

[(hh) (Note: Ins. by Act 57 of 1988, sec.8 (w.e.f. 1-12-1988)) That the tenant has, after the commencement of the Delhi Rent Control (Amendment) Act, 1988, built a residence and ten years have elapsed there-after;]

(i) 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 commencement of this Act, to be in such service or employment;

(j) That the tenant has, whether before or after the commencement of this Act, caused or permitted to be caused substantial damage to the premises;

(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;

(i) That the landlord requires the premises in order to carry out any building work at the instance of the Government or the Delhi Development Authority or the Municipal Corporation of Delhi in pursuance of any improvement scheme or development scheme and that such building work cannot be carried out without

the premises being vacated.

(2) No order for the recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1) if the tenant makes payment or deposit as required by section 15:

Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent of those premises for three consecutive months.

(3) No order for the recovery of possession in any proceeding under sub-section (1) shall be binding on any sub-tenant referred to in section 17 who has given notice of his sub-tenancy to the landlord under the provisions of that section, unless the sub-tenant is made a party to the proceeding and the order for eviction is made binding on him.

(4) For the purpose of clause (b) of the proviso to sub-section

(1), any premises which have been let for being used for the purpose of business or profession shall be deemed to have been sub-let by the tenant, if the Controller is satisfied that the tenant without obtaining the consent in writing of the landlord has, after the 16th day of August, 1958, allowed any person is a partner of the tenant in the business or profession but really for the purpose of sub-letting such premises to the person.

(5) No application for the recovery of possession of any premises shall lie under sub-section (1) on the ground specified in clause (c) of the proviso thereto, unless the landlord has given to the tenant a notice in the prescribed manner requiring him to stop the misuse of the premises and the tenant has refused or failed to comply with such requirement within one month of the date of service of the notice; and no order for eviction against the tenant shall be made in such a case, unless the Controller is satisfied that the misuse of the premises is of such a nature that it is a public nuisance or that it causes damage to the premises or is otherwise detrimental to the interest of the landlord.

(6) Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under sub-section (1), on the ground specified in clause (e) of the proviso thereto, unless a period of five years have elapsed from the date of the acquisition.

(7) Where an order for the recovery of possession of any premises is made on the ground specified in clause(c) of the proviso to sub-section (1), the landlord shall not be entitled to obtain possession thereof before the expiration of a period of six months from the date of the order.

(8) No order for the recovery or possession of any premises shall be made on the ground specified in clause (g) of the proviso to sub-section (1), unless the Controller is satisfied that the proposed reconstruction will not radically alter the purpose for which the premises were let or such radically alteration is in the

public interest, and that the plans and estimates of such reconstruction have been properly prepared and that necessary fund for the purpose are available with the landlord.

(9) No order for the recovery of possession of any premises shall be made on the ground specified in clause (I) of the proviso to sub-section (1), if the Controller is of opinion that there is any bona fide dispute as to whether the tenant has ceased to be in the service or employment of the landlord.

(10) No order for the recovery of possession of any premises shall be made on the ground specified in clause ,(i) of the proviso to sub-second (1) if the tenant, within such time as may be specified in this behalf by the Controller, carries out repairs to the damage caused to the satisfaction of the Controller or pays to the landlord such amount by way of compensation as the Controller may direct .

(11) No order for the recovery of possession of any premises shall be made on the ground specified in clause(k) of the proviso of sub-section (1), if the tenant, within such time as may be specified in this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct."

Analysis and Conclusions

40. The petitioners no doubt, frontally challenge the vires of the DRC Act on the ground that it is discriminatory and arbitrary (and therefore violates Article 14 of the Constitution of India) and is also unreasonable, since it unreasonably restricts the occupation of landlords (of rented premises) of carrying on business and deriving income from them. Amongst other grounds, it was urged that past rulings which upheld the reasonableness of the restrictions, or the classifications, are of no consequence, given the passage of time, and changing realities. The main decision cited by the petitioners, i.e Malpe Vishwanath Acharya (supra), was concerned with a challenge to provisions of the Bombay enactment, vis-à-vis the fixation of standard rent of tenanted premises. The relevant facts which the court considered, and the conclusions it recorded are as follows:

"The appellants are landlords or their representatives of different premises in Bombay which have been given on rent to various tenants. They had filed in the High Court of Bombay writ petitions challenging the constitutional validity of Section 5 (10) (B), Section 11 (1) and Section 12(3) of the Bombay Rent Act, inter alia, on the ground that the said provisions pertaining to standard rent were ultra vires Articles 14, 19 and 21 of the Constitution and consequently void. The main challenge to the said provisions was on the ground that the restriction on the right of the Landlords to increase rents, which has been frozen as on 1st September, 1940 or at the time of the first letting, was no long a reasonable restriction and the said provisions had, with the passage of time, become arbitrary, discriminatory, unreasonable and consequently ultra vires Article 14 of the Constitution. By the impugned judgment the High Court dismissed the writ

petitions, inter alia, holding that the object of the Bombay Rent Act was not to provide to the landlord an adequate return on its investment and it was not open to him to claim an increase in the rent by taking into account the increase in the land privies etc. The Court also observed that the writ petitions lacked particulars in order to satisfy the Court that the relevant provisions of the Bombay Rent Act were unreasonable or arbitrary.

Taking all the facts and circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable. The said provisions would have been struck down as having now become unreasonable and arbitrary but we think it is not necessary to strike down the same in view of the fact that the present extended period of the Bombay Rent Act comes to an end on 31st march, 1998. The government's thinking reflected in various documents itself shows that the existing provisions have now become unreasonable and, therefore, require reconsideration. The new bill is under consideration and we leave it to the legislature to frame a just and fair law keeping in view the interests of all concerned and in particular the resolution of the State Ministers for Housing of 1992 and the National Model law which has been circulated by the Central Government in 1992. We are not expressing any opinion on the provisions of the said Model law but as the same has been drafted and circulated amongst all the States after due deliberation and thought, there will, perhaps, have to be very good end compelling reasons in departing from the said Model Law. Mr. Nargolkar assured us that this Model law will be taken into consideration in the framing of the proposed new Rent Control Act."

41. The reports that the petitioners have largely relied on: the LK Jha report, resolutions of the conference of Housing Ministers, of 1987; National Housing Policy, 1992, find mention in both Malpe Vishwanath Acharya (supra) and Raghunandan Saran (supra). In fact, taking a leaf from out of Malpe Vishwanath Acharya (supra), and relying on its conclusions, the Division Bench, in Raghunandan Saran (supra), held Sections 4-6 of the DRC Act, unconstitutional, observing as follows:

"27. In Issac Nina v. State of Kerala, 1995 (2) KLT 848, the Kerala High Court while dwelling with the issue of the vires of the Buildings (Lease and Rent Control) Act, 1965 (Kerala) held as follows:

".....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 fundamental rights of the Constitution."

".....As held by the Supreme Court in Inder Mohan Lal v Ramesh Khanna, there is no presumption in all case that the tenant are weaker sections. By lapse of time the tenants (at least many of them) doing business in commercial buildings taken on rent are far more affluent financially than the owners of the building in

which they do business. Though the rent control legislation is stated to be a beneficial one, it must be reasonable, just and fair. It is true that there is a presumption as to the constitutionality of the provision of a legislative enactment and the Act should be so read as to prevent it from being exposed to the vice of unconstitutionality. But the presumption will stand rebutted if the scrutiny of the impugned provision would unmistakably establish that it violates a fundamental right."

".....The Supreme Court held in *State of Madras v V.G. Row* , that reasonableness of the restriction is to be considered both from the point of substantive law as well as procedural law. In deciding the reasonableness of the restriction several circumstances such as the purpose of the Act, the condition prevailing in the country at the time enactment, duration of the restriction, extent and nature of the restriction, are to be taken into consideration."

"Disparity between the cost of living or the rupee value in 1965 and 1995 is so massively vast it is absolutely unrealistic to act on the former for any final reckoning as for the latter. If a building was leased out in 1950, the property tax would have been, from the angle of today's money value, a piffling. The requirement in Section 5 (2) that the Court shall take into consideration the property tax fixed at the time of lease, if to be followed in 1995 in respect of a building leased in 1950, the result would be ostensibly unjust and unreasonable. We bear in mind that no provision is included in the Act for updating according to the rupee value while fixing the fair rent."

"Nor can we shut our eyes to the other side of the picture. A tenant who took the building for commercial purposes in 1950 could increase turnover of his business many times and as a corollary his margin of profit would have enhanced leaps and bounds. But the person who built the building (in which the tenant conducts the business) is entitled to get a rent based on 1950 money value. Similar position arises in the case of a residential building. The tenant who occupies the building would have augmented the resources or at least his income today is on par with the present money value. But the man who invested money to build a house in which the tenant is residing is entitled to get rent only at the rate based on the money value which prevailed at the time of letting."

"Apart from the fact that the impugned provisions are unjust and unreasonable as they offend Article 14 of the Constitution, we may say that those provisions would offend Article 19 (1) (g) also."

"We are, therefore, of the opinion that the impugned provisions do not stand the test of reasonableness. Accordingly, we declare that provisions relating to fair rent, i.e., Sections 5, 6 and 8 of the Act, put together are ultra vires the Constitution of India and are void."

28. Applying the same rationale as was applied by the Supreme Court in *Malpe Vishwanath Acharya* (supra) and the Kerala High Court in *Issac Nina* (supra), we are of the view that Sections 4, 6 and 9 of the Delhi Rent Control Act, 1958,

dealing with determination and fixation of standard rent, which have not taken into account the huge difference between the cost of living in the past and the present time, do not pass the test of reasonableness. The provisions are archaic. They contain no mechanism to compensate the landlords to offset inflation. There ought to be a mechanism to increase the agreed rents keeping in view the price index. The landlords are being treated arbitrarily, unreasonably and unfairly affecting their livelihood and in turn right to life and avocation. These provisions relating to standard rent, therefore, offend Articles 14, 19(1)(g) and 21 of the Constitution."

42. Interestingly, just like Raghunandan Saran (supra), - in Delhi, but before it, the Rajasthan High Court, in Khem Chand v. State of Rajasthan & Anr AIR 1999 Raj 305 held as ultra vires the standard rent provisions (Section 6) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950.

43. As far as the omnibus challenge to provisions that according to the petitioners, this court notices that in Amarjit Singh v Smt. Khatoon Quamarin 1986 (4) SCC 736, it was held that:

"The Act in question is the authority of law. There is no denial of equality nor any arbitrariness in the second limb of Section 14 (1) (e) of the Act read in the manner contended for by the appellant. Article 21 is not violated so far as the landlord is concerned. The rent restricting acts are beneficial legislations for the protection of the weaker party in the bargains of letting very often. These must be so read that these balance harmoniously the rights of the landlords and the obligations of the tenants. The Rent Restriction Acts deal with the problem of rack renting and shortage of accommodation. It is in consonance with the recognition of the right of both the landlord and the tenant and that a harmony is sought to be struck whereby the bona-fide requirements of the landlords and the tenants in the expanding explosion of need and population and shortage of accommodation are sought to be harmonised and the conditions imposed to evict a tenant are that the landlord must have bona fide need. That is satisfied in this case. That position is not disputed. The second condition is that landlord should not have in his or her possession any other reasonably suitable accommodation. This does not violate either Article 14 or Article 21 of the Constitution. Shri Kacker submitted that this section should be read literally and we should ask ourselves the question today whether can it be said that the landlady had reasonably suitable other accommodation. We are unable to read it in that sense. If the landlady or the landlord could have reasonable accommodation after his or her need arose and she by her own conduct disentitled herself to that property by letting it out for higher income, she would be disentitled to evict her tenant on ground of her need. The philosophy and principle of rent restriction law have nothing to do with the private exploitation of property by the owners of the property in derogation of the tenant's need of protection from eviction in a society of shortage of accommodation.

In the premises we are of the opinion that the High Court was wrong in the view

and the approach it took and in view of the undisputed facts that the landlady had in her choice to go into the premises in question but she did not, she has become disentitled to the right of eviction. The fact that the tenant was a troublesome tenant inasmuch as that he questioned the liability to the landlord is irrelevant."

43. In *Satyawati Sharma* (supra), the Supreme Court held that the existing Section 14 (1) (e) could not stand the scrutiny of Article 14 and therefore, read it down" to enable a fair resolution; the relevant discussion is as follows:

"8. In view of the above discussion, we hold that Section 14 (1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.

39. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14 (1) (e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned counsel argued that Section 14 (1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14 (1) (e) so that the remaining part thereof may read as under :-

"that the premises are required bona fide by the landlord 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 accommodation."

While adopting this course, we have kept in view well recognized rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible *R.M. D. Chamarbaugwalla v Union of India* (AIR 1957 SC 628) and *Bhawani Singh v State of Rajasthan* [1996 (3) SCC 105]. As a sequel to the above, the explanation appearing below Section 14 (1) (e) of the 1958 Act will have to be treated as redundant."

44. The combined effect of *Satyawati Sharma* (supra) and *Raghunandan Saran* (supra) is that the constraints and restrictive conditions for rent increase, on account of Sections 4 to 6 of the original enactment, are inapplicable; also, a landlady (or landlord) can, on establishing bona fide need, secure eviction orders for all classes of premises: residential and commercial. The question then is, whether the classification that survives- firstly between non-Government premises and government owned premises and secondly between premises that yield more than three thousand five hundred rupees monthly and those that are rented for less than that amount, are discriminatory and unreasonable.

45. As far as the classification between Government owned premises and those that are not so owned is concerned, it is interesting to note that after D.C Bhatia (supra), a similar effort, through a statutory notification, fixing a ceiling on the rental threshold at Rs. 1500/- per month, for applicability of the local law, was challenged by tenants in Vasu Dev Singh v Union of India 2006 (12) SCC 753. The court held that such threshold for protection was not rational, as it was based on insufficient data. Interestingly, the court noticed that before introduction of the amendment the executive had not collected sufficient material, whereas in D.C. Bhatia (supra), the concerned report had suggested Rs. 1500/- as the limit for applicability of rent control law; however, after deliberation, that limit was revised to Rs. 3500/- per month.

46. Time and again, the courts have stressed that rent legislation: be it in respect of control of premises for letting, or in regard to fixation of standard rent, are aimed at general social welfare- and conversely, at eliminating the baneful effect of laissez faire in the field of leasing and letting out of premises in providing some measure of social control and protecting tenants. Even Malpe Vishwanath Acharya (supra), contained that statement:

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

When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not have a narrow or short sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abdication of responsibility of the Legislative Authority. Social legislation is treated with deference by the Courts not merely because the Legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The Legislature is no shackled by the same constraints as the Courts of Law. But its power is coupled with a responsibility. It is also the responsibility of the Courts to look at legislation from the alter of Article 14 of the Constitution. This Article is intended, as is obvious from its

words, to check this tenancy, giving undue preference to some over others."

47. In *M/s Rahabhar Productions Pvt. Ltd. v. Rajendra K. Tandon* (1998) 4 SCC 49 the Supreme Court held that provisions of the rent law must be construed harmoniously so as to balance the rights and obligations of the tenant and the landlord; yet the courts cannot be unmindful of the fact that the legislative object of the law continues to be to curb the tendency of the landlords to evict the tenants on one pretext or the other so that the former can rent out the premises at a higher rate of rent. The court observed:

"..The Act which was brought on the Statute book in 1958 is a composite legislation in the sense that while providing protection to the tenants who, under common law, including Transfer of Property Act, could be evicted from the premises let out to them, at any time by the landlord on the termination of their tenancy, it restricts the right of the landlords to evict the tenants at their will. The Act is thus beneficial as also restrictive in nature. The Courts are, therefore, under a legal compulsion to harmoniously read the provisions of the Act so as to balance the rights of the landlord and the obligations of the tenant towards each other keeping in mind that one of the objects of the legislature while enacting the Act was to curb the tendency of the greedy landlords to throw out the tenants, paying lower rent, in the name of personal occupation and rent out the premises at the market rate..."

Again, in *Dina Nath Saini v Subhash Chand Saini* 2014 (11) SCC 20, the Supreme Court, while interpreting provisions of the DRC Act, and after noticing *Rahabhar Productions* (supra) stated as follows:

"7. There is thus no gainsaying that while legislative intervention has tried to moderate the law with a view to restoring the balance between the rights and obligations of the landlords on the one hand and the tenants on the other, the spirit and purpose underlying the rent legislation continues to be to protect the tenants against arbitrary and unfair demands for eviction or enhancement of rents. The pendulum has undoubtedly swung in favour of the landlords not only by reason of these amendments to the rent legislation which were perceived to be halting house-building activity and leading to a visible reluctance among the owners to let out the available accommodation for fear of losing the same altogether. Judicial pronouncements have also liberalized the approach to be adopted qua the landlord's prayer for eviction when such eviction is sought on the ground of bonafide personal need of the landlord. Decisions of this Court in *Mst. Bega Begum and Ors. v. Abdul Ahad Khan (Dead) by LRs. and Ors.* (1979) 1 SCC 273, *M/s Central Tobacco Co. Bangalore v. Chandra Pakash* 1969 (2) UJ 432 and *Phiroze Bamanji Desai v. Chandrakant N. Patel and Ors.* 1974 (1) SCC 661, interpreted the Rent Control legislation rather narrowly placing a relatively heavier burden on the landlords in cases where vacation of the tenants was sought on the ground of bona fide personal requirement of the former. Recent decisions have made a significant departure from that approach. In *Mohd. Ayub and Anr. v. Mukesh Chand* (2012) 2 SCC 155 this Court observed that the

landlord's requirement need not be one of dire necessity. So long as the need was bona fide, the mere affluence of the landlord would not be a ground to reject his application for eviction. To the same effect is the decision of this Court in *Bhimanagouda Basanagouda Patil v. Mohd. Gudusaheb* (2003) 3 SCC 101.

8. The noticeable shift in the approach adopted towards eviction matters based on personal bona fide requirement does not, however, necessarily cascade into a similar approach towards grounds other than personal requirement, especially where the default in the payment of rent is set up as a ground for eviction. In such cases, the Courts will have to adopt a relatively liberal approach towards the tenant. Just because there is a default in payment of rent may not necessarily result in an order of eviction unless the statute clearly or unequivocally so mandates."

48. The reasoning of the Supreme Court in *D.C. Bhatia* (supra) which upheld the classification of premises (Rs. 3500/- rent or more on the one hand and those yielding less rents on the other) is as follows:

"47. In the instant case, the classification has been made on the basis of the rent payable on the premises. A person, who can afford to pay more than Rs. 42,000/- a year by way of rent will be, by any standard, an affluent person in our society. He cannot be said to belong to the weaker section of the community. The argument that the rent payable for any building in Delhi is very high and, therefore, Rs. 3,500/- per month is comparatively a low figure of rent, overlooks the fact that the Rent Act was passed initially to save the weaker section of the people from arbitrary and sudden enhancement of rent and also from eviction. If the argument advanced on behalf of the appellants is to be upheld, then it will have to be held that the people, who can afford to pay rent at the rate of more than Rs. 3,500/- per month, belong to the economically weaker section of the community and must also be protected. It was argued on behalf of the respondents that if a man is paying more than Rs. 42,000/- per year by way of rent, then his annual income should be at least Rs. 1,50,000/- per annum. Having regard to the average income of the people in India, such a person cannot be treated as an economically handicapped person. There is considerable force in this argument advanced on behalf of the respondents.

48. However, we need not go too deeply into this aspect of the controversy, as in our opinion, it is for the Legislature to decide whether or not any section of the people should be protected in any way by law. For this purpose, the Legislature can identify the section of the people who needs protection and decide how the classification will be done or what will be the cut-off point for the purpose of making such classification. The classification may be done on income basis or rental basis or some other basis. The Court can only consider whether the classification has been done on an understandable basis having regard to the object of the statute. The Court will not question its validity on the ground of lack of legislative wisdom.

49. Moreover, the classification cannot be done with mathematical precision. The Legislature must have considerable latitude for making the classification having regard to the surrounding circumstances and facts. The Court cannot act as a super-legislature and decide whether cut-off point for the classification on the basis of monthly rent should be Rs. 3,500/- or Rs. 4,000/- or Rs. 5,000/-. If the classification is totally irrational and has no nexus with the object sought to be achieved by the statute, then only will the Court strike down such classification.

50. In the facts of this case, we are not persuaded to hold that the impugned Section 3 (c) of the Delhi Rent Control Act violates Article 14 of the Constitution in any manner.

51. The next point relates to interpretation of Section 3 (c) of the Delhi Rent Control Act. It was urged that the Delhi Rent Control (Amendment) Act came into force on 1.12.1988. The effect of Section 3 (c) which was introduced by the Amendment Act was to remove those premises whose monthly rent exceeded Rs. 3,500/- from the ambit of the Section 3 (c) of the Delhi Rent Control Act. This amendment of the Rent Control Act would not apply to those tenancies which were created prior to 1.12.1988. It was argued that the Amendment Act has not been specifically made retrospective. Therefore, it could not affect the rights acquired by the tenants under the Rent Control Act before its amendment in 1988. Under the existing law, the tenants had acquired valuable property rights. The landlord could neither evict the tenant nor enhance the rent at will. A suit could not be brought against a tenant on the ground of expiry of the lease, whether a lease was for a fixed term, year to year or month to month, on the ground of expiration of period of lease. Filing of such suit was barred by virtue of Section 14 of the Rent Act. Some of the tenants who could afford to build did not build houses of their own because of the protection provided by the provisions of the Rent Act . Had these provisions not been there, these tenants or lessees might have built houses of their own or purchased properties elsewhere. These vested rights could not be disturbed unless the Amendment Act contained specific provisions to that effect.

52. We are unable to uphold this contention for a number of reasons. Prior to the enactment of the Rent Control Act by the various State Legislatures, the legal relationship between the landlord and tenant was governed by the provisions of the Transfer of Property Act. Delhi Rent Control Act provided protection to the tenants from drastic enhancement of rent by the landlord as well as eviction, except on certain specific grounds. The Legislature by the Amendment Act No. 57 of 1988 has partially repealed the Section 3 (c) of the Delhi Rent Control Act. This is a case of express repeal. By Amending Act the Legislature has withdrawn the protection hitherto enjoyed by the tenants who were paying Rs. 3,500/- or above as monthly rent. If the tenants were sought to be evicted prior to the amendment of the Act, they could have taken advantage of the provisions of the Act to resist such eviction by the landlord. But this was nothing more than a right to take advantage of the enactment The tenant enjoyed statutory protection as

long as the statute remained in force and was applicable to him. If the statute ceases to be operative, the tenant cannot claim to continue to have the old statutory protection. It was observed by Tindal, C.J., in the case of *Kay v. Goodwin* (1830) 6 Bing. 576, 582:

The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.

53. The provisions of a repealed statute cannot be relied upon after it has been repealed. But, what has been acquired under the Repealed Act cannot be disturbed. But, if any new or further step is needed to be taken under the Act, that cannot be taken even after the Act is repealed.

54. In the case of *Kewal Singh v Smt. Lajwanti* (1981) 1 SCC 290, vires of Section 25B of the Delhi Rent Control Act was challenged. Section 25B was inserted to provide the landlord with a speedy remedy of eviction in case of bona fide necessity of the landlord. A contention was raised on behalf of the tenants that the provisions of Section 25B violated Article 14 of the Constitution. Fazal Ali, J., speaking on behalf of the Court, repelled this argument by observing:

"Thus any right that the tenant possessed after the expiry of the lease was conferred on him only by virtue of the Rent Control Act. It is, therefore, manifest that if the legislature considered in its wisdom to confer certain rights or facilities on the tenants, it could due to changed circumstances curtail, modify, alter or even take away such rights or the procedure enacted for the purpose of eviction and leave the tenants to seek their remedy under the common law."

55. In the instant case, the Legislature has decided to curtail or take away the protection of the Delhi Rent Control Act from a section of the tenants. The tenants had not acquired any vested right under the Delhi Rent Control Act, but had a right to take advantage of the provisions of the repealed Act so long as that law remained in force."

49. The petitioners' grievances are that despite the amendment, several anomalies exist in the rent control law, which operate harshly and unreasonably against the landlords. One of the acutest complaints is that old tenancies, typically yield less than Rs. 3500/- and that Parliamentary assumption that this class of tenants need protection the most, is unfounded. Some examples cited by the petitioners are old tenancies of insurance and banking companies, which are cash rich and do not need the protection of rent laws. It is also urged that large public sector corporations, which do not deserve any protection, but can comfortably negotiate good rental bargains, are undeservedly and unreasonably the beneficiaries of such laws. It is urged also that those who deserve protection are outside the pale of law, as they live in unauthorized colonies or unauthorized premises.

50. As was noticed earlier, the response of courts to rent control legislation has been balanced; as on date there is no perceived "tilt" towards any particular class. The courts now recognize that there are amongst landlords "weaker sections" too. This sensitivity, in the opinion of the court is removed from the earlier understanding that all tenants as a class are oppressed and need protection. Further, the courts' response to standard rent provisions too has uniformly been in keeping with the times; whenever they felt that laws unduly constrain choices and are therefore, unreasonable, the declaration that they are ultra vires or unreasonable has been forthcoming. For Delhi, the amending Act and the reasoning in D.C. Bhatia (supra), generally supportive of it, as well as the "reading down" exercise performed in Satyawati Sharma (supra), have breathed fresh air into the DRC Act; coupled with the declaration in Raghunandan Saran (supra) the provisions are not as restrictive as they were originally. Furthermore, Section 25B of the DRC Act now enacts a special procedure for obtaining eviction in regard to certain grounds: the procedure is akin to the summary procedure under Order 37 of the Code of Civil Procedure. This court is also cognizant of the fact that as on date about 14 courts exercise jurisdiction under the DRC Act (as Rent Controller/Additional Rent Controller): far greater in number than a decade ago, when there were only a few judicial officers.

51. In terms of a recent study of housing and urban development contained in the economic survey of Delhi 2016-17, low income settlements were steadily increasing over a period of 55 years. Such low income settlements accommodated 6.75 million of the total 9 million residents of Delhi NCT. The survey also showed that majority of such dwellings are sub-standard housings, including 695 slum settlements and other jhuggi jhopri clusters and 1797 unauthorised colonies. The survey noted that by 2021, Delhi needs 24 lakh new housing units to provide proper homes for all its residents. If one looks at these figures and keeps in the background the legislative change that occurred to the DRC Act, on the one hand, and the changes consequent to Court's interpretation, it is apparent that the "reality check" which the petitioners urge is far from it. Whilst it is perhaps true that several tenants do not deserve protection of a beneficial legislation - which owe its origin as a temporary measure, to address best, what were housing security, the fact remains that the housing situation is far from ideal even today. Whilst the petitioners may be at the receiving end, in the sense that they are landlords/landladies, of commercial tenancies and therefore, unable to establish need for all the premises that they own, surely that ipso facto cannot surely outweigh that consideration; i.e. that the landlords need to carry on the occupation or business of making a living out of rents and cannot outweigh all other considerations which underlie the objective of DRC Act. Those objectives, i.e. protection of a section (which apparently continues to be a large section of the population) from the depredations of unscrupulous landlords, still has relevance. Without the protection of rent legislations, the weakest section of the society to whom the

DRC Act still has relevance, may well face a daily threat of eviction. That some of them are vacated outside the framework of the law (through strongarm tactics or extra legal force) is not a ground for ignoring that if they choose to approach the Court, the law does afford protection. In this context, it is useful to again iterate that the abuse of law is not a ground for its unconstitutionality. Equally, that it cannot be taken recourse to by some who deserved its benefit cannot be a ground for ignoring the protection it gives.

52. For the above reasons, the Court is of the opinion that the charge of unreasonableness and discrimination with respect to the amendment of Section 3(c) and the general challenge to the DRC Act inasmuch as it restricts the landlords' right to protect their business or occupation or derive any income through rents has to fail. Turning now to the other challenge with respect to the classification based upon ownership of the premises (government owned) falling outside the DRC Act, whereas those yielding less than Rs. 3500 per month falling within its scope, the Court is of the view that this challenge too is unfounded. So far as the government property or premises owned by the government are concerned, the availability of another remedy through Parliament legislation (Public Premises (Eviction of Unauthorised Occupants Act, 1971), cannot per se be a ground for holding that in the context of a somewhat similar challenge - to the overriding challenge to the Public Premises Act, the Supreme Court, in its Constitution Bench decision in *Ashoka Marketing Private Limited v. PNB* AIR 1991 SC 855 held as follows:"

".....The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as Special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. We propose to consider this matter in the light of this principle.

The statement of objects and reasons for the enactment of the Rent Control Act, indicates that it has been enacted with a view:

- (a) to devise a suitable machinery for expeditious adjudication of proceedings between landlords and tenants;
- (b) to provide for the determination of the standard rent payable by tenants of the various categories of premises which should be fair to the tenants, and at the same time, provide incentive for keeping the existing houses in good repairs, and for further investment in house construction; and
- (c) to give tenants a larger measure of protection against eviction.

This indicates that the object underlying the Rent Control Act is to make provision for expeditious adjudication of disputes between landlords and tenants, determination of standard rent payable by tenants and giving protection against eviction to tenants. The premises belonging to the Government are excluded

from the ambit of the Rent Control Act which means that the Act has been enacted primarily to regulate the private relationship between landlords and tenants with a view to confer certain benefits on the tenants and at the same time to balance the interest of the landlords by providing for expeditious adjudication of proceedings between landlords and tenant. As mentioned earlier, the Public Premises Act has been enacted with a view to provide for eviction of unauthorised occupants from public premises. In the statement of objects and reasons for this enactment reference has been made to the judicial decisions whereby by the 1958 Act was declared as unconstitutional and it has been mentioned: "The court decisions, referred to above, have created serious difficulties for the Government inasmuch as the proceedings taken by the various Estate Officers appointed under the Act either for the eviction of persons who are in unauthorised occupation of public premises or for the recovery of rent or damages from such persons stand null and void. It has become impossible for Government to take expeditious action even in flagrant cases of unauthorised occupation of public premises and recovery of rent or damages for such unauthorised occupation. It is, therefore, considered imperative to restore a speedy machinery for the eviction of persons who are in unauthorised occupation of public premises keeping in view at the same time the necessity of complying with the provision of the Constitution and the judicial pronouncements, referred to above." This shows that the Public Premises Act has been enacted to deal with the mischief of rampant unauthorised occupation of public premises by providing a speedy machinery for the eviction of persons in unauthorised occupation. In order to secure this object the said Act prescribes the time period for the various steps which are enquired to be taken for securing eviction of the persons in unauthorised occupation.. The object underlying the enactment is to safeguard public interest by making available for public use premises belonging to Central Government, Companies in which the Central Government has substantial interest, Corporations owned or controlled by the Central Government and certain autonomous bodies and to prevent misuse of such premises.

It would thus appear that, while the Rent Control Act is intended to deal with the general relationship of landlords and tenants in respect of premises other than government premises, the Public Premises Act is intended to deal with speedy recovery of possession of premises of public nature, i.e. property belonging to the Central Government, or Companies in which the Central Government has substantial interest or Corporations owned or controlled by the Central Government and certain corporations, institutions, autonomous bodies and local authorities. The effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that buildings belonging to Companies Corporations and Autonomous bodies referred to in Section 2(e) of the Public Premises Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that Government while dealing with the

citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest. What can be said with regard to Government in relation to property belonging to it can also be said with regard to companies, corporations and other statutory bodies mentioned in Section 2(e) of the Public Premises Act. In our opinion, therefore, keeping in view the object and purpose underlying both the enactments viz., the Rent Control Act and the Public Premises Act, the provisions of the Public Premises Act have to be construed as overriding the provisions contained in the Rent Control Act.

As regards the non obstante clauses contained in Sections 14 and 22 and the provisions contained in Sections 50 and 54 of the Rent Control Act, it may be stated that Parliament was aware of these provisions when it enacted the Public Premises Act contained a specific provision in Section 15 barring jurisdiction of all courts (which would include the Rent Controller under the Rent Control Act). This indicates that Parliament intended that the provisions of the Public Premises Act would prevail over the provisions of the Rent Control Act inspite of the above mentioned provisions contained in the Rent Control Act. It has been urged by the learned counsel for the petitioner that there is no conflict between the provisions of the Rent Control Act and the Public Premises Act and that both the provisions can be given effect to without one overriding the other. In this regard, it has been pointed out that since no provisions has been made in the Public Premises Act for the termination of the lease, the provisions of the Rent Control Act can be held applicable upto the stage of termination of the lease, and thereafter, proceedings can be initiated for eviction under the provisions of the Public Premises Act. In support of this submission, reliance has been placed on Dhanpal Chettiar's case (supra), wherein it has been held that in view of the special provisions contained in the State Rent Control Acts, it is no longer necessary to issue a notice under Section 106 of the Transfer of Property Act to terminate the tenancy because inspite of the said notice the tenant is entitled to continue in occupation by virtue of the provisions of the said Acts. In the said case, it has been further laid down that the relationship between the landlord and tenant continues till the passing of the order of eviction in accordance with the provisions of the Rent act, and therefore, for the eviction of the tenant in accordance with the law, an order of the competent Court under the Rent Control Act is necessary. This would mean that in order to evict a person who is continuing in occupation after the expiration or termination of his contractual tenancy in accordance with law, two proceedings will have to be initiated. First, there will be proceedings under Rent Control Act before the Rent Controller followed by appeal before the Rent Control Tribunal and revision before the High Court. After these proceedings have ended they would be followed by proceedings under the Public Premises Act, before the Estate Officer and the Appellate Authority. In other words, persons in occupation of public premises would receive greater protection than tenants in premises owned by private persons. It could not be the intention of Parliament to confer this dual benefit on

persons in occupation of public premises."

53. Earlier in another judgment - Northern India Caterers v. State of Punjab AIR 1967 SC 1581, it was held that providing a different remedy to the government is a class for eviction from its premises was discriminatory. This decision (of 5 Judges) was overruled subsequently in Magan Lal Chhagan Lal Private Limited v. Municipal Corporation of Greater Bombay and Ors. AIR 1974 SC 209 as follows:

"To summarise:

Where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, as in Anwar Ali Sarkar's case and Suraj Mall Mehta's case without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Article 14. Even there, as mentioned in Suraj Mall Mehta's case, a provision for appeal may cure the defect. Further, in such cases if from the preamble and surrounding circumstances, as well as the provisions of the statute themselves explained and amplified by affidavits, necessary guidelines could be inferred as in Saurashtra case and Jyoti Pershad's case the statute will not be hit by Art. 14. Then again where the statute itself covers only a class of cases as in Halder's case and Bajoria's case the statute will not be bad. The fact that in such cases the executive will choose which cases are to be tried under the special procedure will not affect the validity of the statute. Therefore, the contention that the mere availability of two procedures will vitiate one of them, that is the special procedure, is not supported by reason or authority.

The statute itself in the two classes of cases before us clearly lays down the purpose behind them, that is premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorized persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the statutes one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the ordinary Civil Court. Even normally one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be a prolonged one, to resort to the latter. Administrative officers, no less than the courts, do not function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking proceedings for eviction of unauthorized occupants of Government property or Municipal property resort to the procedure prescribed by the two Acts. In one case and to the ordinary Civil Court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account.

This is not one of those cases where discrimination is writ large on the face of the statute. Discrimination may be possible but is very improbable. And if there is discrimination in actual practice this Court is not powerless. Furthermore, the fact that the Legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants of Government and Corporation property and provided a special speedy procedure therefore is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We, therefore, find ourselves unable to agree with the majority in the Northern India Caterers' case'.

We should add that the basis of that decision is that section 5 of the Act enables the Collector to discriminate against some by exercising his power under section 5 and take proceedings by way of suit against others. In proceeding on that basis the majority made an obvious mistake. Under section 4 of the Act 'if the Collector is of opinion that any person is in unauthorised occupation of- any public Premises and that he has to be evicted he shall issue a notice in writing calling upon such person to show cause why an order of eviction should not be passed'. Thus the Collector has no option at all but to issue a notice. But after considering the cause and the evidence produced by such person and after giving him a reasonable opportunity of being heard. he may make an order of eviction. Therefore, if he is of opinion that it is a case where, a suit is a more proper remedy because, of the circumstances of the case or its complicated nature he may not order eviction. Then it would be for the Government to institute a suit. It is not for the Collector to do so. The Collector has no discretion either to file a suit or to take proceedings under the Act. Nor can the Government order the Collector to pass an order of eviction in every case under section 5 as the power under that section is the Collector's statutory-power. Thus, the majority, in ignoring the obligatory nature of the, notice under section 4 and the discretionary power under section 5 which has to be exercised after hearing the party was in error in proceeding on the basis of section 5 alone and holding that it conferred arbitrary power on the Collector to resort to the power under the Act in the case of some and a suit in the case of some others. It is also necessary to point out that the procedures laid down by the two Acts now under consideration are not so harsh or onerous as to suggest that a discrimination would result if resort is made to the provisions of these two Acts in some cases and to the ordinary Civil Court in other cases. Even though the officers deciding these questions would be administrative officers there is provision in these Acts for giving notice to the: party affected, to inform him of the grounds on which the order of eviction is proposed to be made, for the party affected to file a written statement and Produce documents and be represented by lawyers. The provisions of the Civil Procedure Code regarding summoning and enforcing attendance of persons and examining them on oath, and requiring the discovery and production of documents are a valuable safeguard-for the person affected. So is the provision for appeal to the Principal Judge of the City Civil Court in the city of Bombay, or to' a District Judge in the districts who has got to deal with the

matter as expeditiously as possible, also a sufficient safeguard as was recognised in Suraj Mall Mehta's case. The main difference between the procedure before an ordinary Civil Court and the executive authorities under these two Acts is that in one case it will be decided by a judicial officer trained in law and it might also be that more than one appeal- is available. As against that there is only one appeal available in the other but it is also open to the aggrieved party to resort to the High Court under the provisions of Art. 226 and Art. 227 of the Constitution. This is no less effective than the provision for a second appeal. On the whole, considering the object with which these special procedures were enacted by the legislature we would not be prepared to hold that the difference between the two procedures is so unconscionable as to attract the vice of discrimination. After all, Art. 14 does not demand a fanatical approach. We, therefore, hold that neither the provisions of Chapter V-A of the Bombay Municipal Corporation Act nor the provisions of the Bombay Government Premises (Eviction) Act, 1955 are hit by Art. 14 of the Constitution."

54. It is therefore evident that the government and its premises have always been treated as a separate class; exclusion of premises owned by the government to enable it to obtain speedily and in public interest its premises, and evict the tenants who occupy it, therefore, does not result in discrimination or arbitrariness.

55. As far as the petition with respect to ground under Section 14(1)(d), i.e. if the tenant or his family has not been residing in the premises for 6 months immediately prior to the filing of the eviction proceeding is concerned, the argument is that 6 months period is undoubtedly long and therefore, unreasonable. In this regard, the Court is of the opinion that this provision is meant to balance the rights of both landlord and tenant. The intention of a period of 6 months is a legislative choice of what the law deems to be a reasonable period for a tenant to move in and use the tenanted premises. This ground is separate from the case of non-payment of rent. Thus, if the tenant concerned consistently pays the rent and does not fall into arrears and yet does not move in for reasons best known, nevertheless, the outer limit for keeping the premises vacant is 6 months. Like in the case of cut off dates, there could possibly be an argument with respect to arbitrariness; at the same time, whether a reasonable period is 3 months (which would clearly favour the landlord or one year in which event it would be more favourable to the tenant) is a decision that is ultimately be taken by the concerned legislature - in this case, the Parliament. The mere fact that a six month period can operate unfairly in some given cases, is not a ground for its being characterised as arbitrary or unreasonable.

56. As regards the challenge to Section 50(1) goes, it is evident that the bar of civil Court is only with respect to matters that concerned standard rent. With respect to other issues, i.e. eviction of tenants on enumerated grounds for which they are protected, the jurisdiction of the tribunal is exclusive. Therefore, in the light of the decision in Raghunandan Saran (supra), the challenge to Section 50

to this Court's mind without any foundational facts is rendered academic. It is also worthwhile noting in this context that Section 6A to the extent it is on the statute books survives inasmuch as it enables enhancement of rent sans the concept of standard rent, to the extent of 10% every three years. The Court, therefore, is unable to hold the challenge to Section 50, and is of the opinion that it cannot be countenanced. For the foregoing reasons, it is held that the challenge to the various provisions of the DRC act, especially Sections 3, 14 and 50 are not merited.

57. In view of the foregoing, the writ petitions fail. The reference to this Bench in CS (OS) 3518/2012 too is answered in terms of the above reasons. List CS(OS) 3518/2012 before the roster Bench on 04.02.2019. The writ petitions are, therefore, dismissed without order on costs.