

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.1150 OF 2015**

- 1) M/s. Labhshetwar & Sakkarwar  
Constructions, a registered  
Partnership Firm Reg. No.58/2001,  
Having its office at Lab Chambers,  
Station Road, Aurangabad,  
Through its partners.
- 2) Vitthal Ganpatrao Labhshetwar,  
Age-70 years, Occu:Business,  
R/o-Plot No.50, Vedant Nagar,  
Aurangabad,
- 3) Mahesh Vitthalrao Labhshetwar,  
Age-41 years, Occu:Business,  
R/o-Plot No.50, Vedant Nagar,  
Aurangabad,
- 4) Sau Shanta Vitthalrao Labhshetwar,  
Age-64 years, Occu:Business,  
R/o-Plot No.50, Vedant Nagar,  
Aurangabad,
- 5) Sau. Madhuri w/o Mahesh Labhshetwar,  
Age-37 years, Occu:Business,  
R/o-Plot No.50, Vedant Nagar,  
Aurangabad,
- 6) Vijay s/o Ramdas Sakkarwar,  
Age-37 years, Occu:Business,  
R/o-Labh Chambers, Station Road,  
Aurangabad,

- 7) Sau. Vijayalaxmi Ramdas Sakkarwar,  
Age-64 years, Occu:Household & Business,  
R/o-"Gurukrupa", Ganeshnagar,  
Nanded,

**...PETITIONERS**

**VERSUS**

- 1) The State of Maharashtra,  
Through the Secretary,  
Law and Judiciary Department,  
Mantralaya, Mumbai,
- 2) Ravindra s/o Vitthalrao Songire,  
Age-44 years, Occu:Business,  
R/o-Bansilal Nagar,  
Aurangabad.

**...RESPONDENTS**

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Mr. A.P. Bhandari Advocate for Petitioners.  
Mr. Ashutosh Kumbhkoni, learned Advocate  
General with Mr. A.B. Girase, Government  
Pleader and Mr. Akshay Shinde Advocate  
for Respondent No.1.  
Mr. A.P. Avhad, Advocate for Respondent No.2.

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**CORAM: S.S. SHINDE AND  
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING JUDGMENT : 27TH NOVEMBER, 2017**

**DATE OF PRONOUNCING JUDGMENT: 19TH DECEMBER, 2017**

**JUDGMENT [PER S.S. SHINDE, J.] :**

1. Rule. Rule made returnable forthwith and

heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition is filed with following prayers:

"(C) By a suitable writ, order or direction the Section 55 of the Maharashtra Rent Control Act, 1999 be struck down on the ground that, the same is beyond legislative competence of State Legislature.

(D) By a suitable writ, order or direction Section 55 of the Maharashtra Rent Control Act, 1999 be struck down on the ground that, the same is violative of fundamental right of the Petitioners guaranteed by Article 14, 19(1)(g) of the Constitution of India,

(E) By a suitable writ, order or direction the order dated 06.08.2015 passed by the learned XIIIth Judicial Magistrate, First Class, Aurangabad and

entire proceedings in SCC No.3181 of 2015 be quashed."

3. The background facts for filing the present Petition as disclosed in the memo of the Petition, in brief, are as under:

A). It is the case of the Petitioners that Petitioner No.1 is a partnership firm and Petitioner Nos.2 to 7 are the partners of said firm. The hotel premises constructed on Plot No.4, CTS No.18349/1/4, situated at Vedant Nagar, Aurangabad is the subject matter of various proceedings between the parties (for short "the property"). Said premises is owned by the Petitioners. Petitioner No.1 firm executed a registered leave and license document in favour of Respondent No.2 on 21st April, 2004 and the same was registered at Sr. No.1591 of 2004 with Sub-Registrar-1, Aurangabad. Said Leave and license Agreement was to operate for a period of 33 months

and the agreement clearly spells out the terms and conditions agreed upon by and between the parties.

B) It is the further case of the Petitioners that according to allegations made in complaint on 19th January, 2007 another agreement was executed for a period of 27 months. Initially, proceeding under Section 9 of Arbitration Act bearing MARJI No.133 of 2009 were filed by Respondent No.2 thereby praying for the relief of injunction. In the said proceedings, by order dated 27th April, 2009 learned Principal District Judge, Aurangabad directed the Petitioners to deposit an amount of Rs.7,00,000/-, which was deposited by the Petitioners. Feeling aggrieved by order dated 19th June, 2009, Respondent No.2 filed Arbitration Appeal No.3 of 2009 before this Court, which was later on withdrawn.

C) It is the case of the Petitioners that on 26th November, 2009, Respondent No.2 filed Regular

Civil Suit No.1001 of 2009 praying therein for grant of relief of injunction. Along with the said suit, application Exhibit 5 was filed for temporary injunction, which came to be allowed. Feeling aggrieved by the said order, the Petitioners filed Misc. Civil Appeal No.26 of 2010 before the District Court, which came to be rejected by order dated 6th April, 2010. Being aggrieved by the orders passed by Courts below, Petitioners filed Writ Petition No.3668 of 2010 before this Court. In the said Petition, order dated 3rd May, 2010 was passed by consent of parties.

D) It is the further case of the Petitioners that ultimately Regular Civil Suit No.1001 of 2009 filed by Respondent No.2 was heard and dismissed by order dated 20th February, 2013 by the Civil Court, Aurangabad. Respondent No.2 preferred Regular Civil Appeal No.66 of 2013 before the District Court, Aurangabad, along with an

application below Exhibit 5 for temporary injunction. The said application for temporary injunction came to be allowed. Against the said order dated 16th March, 2013 the Petitioners filed Appeal from Order No.36 of 2013 before this Court, which came to be disposed of. The Petitioners were granted specific liberty to file an application for escalation in the amount of compensation paid to the Petitioners.

E) It is the case of the Petitioners that in terms of liberty granted to the Petitioners, application Exhibit 63 was filed, praying therein for escalation in amount of compensation. The said application was partly allowed and it was held that an amount of Rs.4,00,000/- is payable with effect from 1st April, 2015. The said order is challenged by the Petitioners for further escalation in the amount of compensation. Respondent No.2 filed an application for review of said order, which application came to be

dismissed.

F) It is submitted by the Petitioners that parties are litigating various proceedings for more than six years. Respondent No.2 then filed S.C.C. No.3181 of 2015 against the Petitioners for the offence under Section 55 of the Maharashtra Rent Control Act, 1999 read with Section 34 of the Indian Penal Code. It is the case of the Petitioners that the learned XIII Judicial Magistrate, First Class, Aurangabad, by order dated 12th May, 2015, without even considering the fact that the complaint in question is hopelessly time barred, issued process against the Petitioners. The said order dated 12th May, 2015 is a subject matter of challenge in this Petition.

4. It is submitted that the Petitioners are challenging the constitutional validity of Section 55 of the Maharashtra Rent Control Act,

1999 on the ground that the same is inconsistent with the provisions of the Central Act, and also on the ground that the said provision imposes unjust, unfair and unreasonable restriction on the landlord to get the instrument registered. In fact such a responsibility is required to be imposed on the licensee. Furthermore, the said provision discourages the transactions of leave and licence. It is submitted that said provision has now become a tool in the hands of licensees to obstruct the proceedings for eviction and to coerce the landlord for bringing him to terms. It is submitted that the relations between a Licensor and Licensee were governed by the provisions of Indian Easements Act, 1882. Said Act is a Central Act and the same does not prescribe compulsory registration of a Leave and Licence agreement and an agreement for continuation of the same. Therefore, the obligation now cast to compulsorily register such agreement is inconsistent with the provisions of Indian Easements Act. Therefore,

provision of Section 55 of the Maharashtra Rent Control Act being inconsistent with the provisions of Central Act, is beyond legislative competence of State Legislature and is therefore void.

5. Referring to the grounds taken in the Petition, learned counsel appearing for the Petitioners submitted that the registration and requirement of compulsory registration of agreements between the parties are prescribed in the Indian Registration Act. Section 17 of the said Act does not prescribe compulsory registration of a leave and licence agreement. Thus, provision of Section 55 of the Maharashtra Rent Control Act is inconsistent with the provisions of the Central Act.

6. Learned counsel appearing for the Petitioners submitted that the said provision imposes unjust, unfair and unreasonable restriction on the landlords/ licensors. There may

be several cases wherein the tenant is responsible for non-registration of documents and therefore casting duty only on the landlord is unjust. It is submitted that Section 55 of the Maharashtra Rent Control Act is misused by the licensees, not desirous of handing over the possession of property, with sole intention of obstructing the proceedings for eviction or to coerce the licensor and therefore the said provision is not sustainable in law.

7. Referring to the grounds taken in the Petition for quashing the proceedings in S.C.C. No.3181 of 2015, it is submitted that according to the contents of the complaint the alleged offence is committed on and between 19th January, 2007 to 18th July, 2009 and till date. The factum of non registration of the document occurred for the first time on 19th January, 2007 and the period of limitation deserves to be counted from the said date. Learned counsel invited our attention to the

provisions of Section 468 (2)(b) of the Code of Criminal Procedure and submitted that the prosecution is barred and therefore the learned Magistrate could not have taken cognizance of the matter.

8. Learned counsel placed reliance upon the exposition of law by the Supreme Court in the case of Zandu Pharmaceutical Works Ltd. vs. Mohd. Sharful Hgaue<sup>1</sup>, and submitted that when the complaint itself is barred by limitation, the same can be quashed by the High Court, by exercising powers under Section 482 of the Code of Criminal Procedure read with Article 226 and 227 of the Constitution of India. It is submitted that the parties are prosecuting various proceedings for more than six years and filing of such proceedings by Respondent No.2 at this stage, clearly demonstrates that the proceedings are filed by abusing the process of law and therefore the same

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<sup>1</sup> AIR 2005 S.C. 9

deserves to be quashed. Learned counsel further placed reliance upon the exposition of law by the Supreme Court in the case of State of Haryana vs. Bhajanlal<sup>2</sup> and submitted that the proceedings deserve to be quashed.

9. On the other hand, relying upon the brief note submitted on record on behalf of the State of Maharashtra, learned Advocate General submitted that it is settled principle of law that there is always presumption of constitutionality of the Statute and the burden is upon the person who questions it, to show that there has been clear transgression of Constitutional principles. It is submitted that this rule is based on judicially recognized and accepted assumption that, the legislature understands and correctly appreciates the needs of its people and its laws are directed to problems made manifest by experience. It is submitted that in order to sustain the strong

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<sup>2</sup> AIR 1992 S.C. 604

presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common reports, history of times and may assume every state of facts which can be conceived existing at the time legislation was made. It is further submitted that the only grounds on which it is permissible in law to question the constitutional validity of a statutory provision are: a) Lack of legislative competence and b) Inconsistency with Part-III of the Constitution. Learned Advocate General invites our attention to the grounds taken in the Petition and submits that the grounds taken by the Petitioners that Section 55 of the Maharashtra Rent Control Act is violative of fundamental rights of all licensors and that the said provision is misused by Licensee and the same is unsustainable in the eyes of law is concerned, these grounds are tried to be made out without any pleadings and the same are vague. There is no material placed on record in support of such tall

claims.

10. Learned Advocate General further submitted that the Petition does not mention any specific fundamental right out of the rights comprised in Part-III of the Constitution, which is adversely affected. It is submitted that 'Right to acquire, hold and dispose of property' no longer continues to be a fundamental right with deletion of Article 19(1)(f) and Article 31 of the Constitution of India vide Constitution (Forty Fourth Amendment) Act, 1978 with effect from 20th July, 1979. It is further submitted that in the absence of any fundamental right having been spelt out, no occasion has arisen for this Court to examine the contention of the Petitioners whether or not the provision in issue imposes any unjust, unfair and unreasonable restriction on any such right of the landlords/ licensors. The Petitioners miserably failed to plead as to how the duty cast upon the landlord by the provision is unjust,

unfair and unreasonable.

11. It is further submitted that it is well settled position of law that mere possibility of abuse of a provision of law does not per se invalidate a legislation. Such a claim does not make a legislation arbitrary, discriminatory or violative of Article 14. Even in case of an abuse or misuse of a provision of law, the impugned 'action' becomes illegal and vulnerable and not the 'section' under which such an action is taken. It is further submitted that claim of inconsistency and resultant alleged legislative incompetence in as much as Indian Easement Act is concerned, the said contention is fundamentally unsustainable since the provisions of the Indian Easements Act have no application at all to 'the licence' contemplated under the provision in issue. It is settled position of law that licence contemplated by the provisions of Rent Act and the one contemplated by the provisions of Indian

Easements Act are not pari-materia. Even otherwise the Indian Easements Act does not prohibit registration of documents in issue so as to say that the provision in issue is inconsistent with the Central Act. It is submitted that Section 17 of Indian Registration Act also does not prohibit registration of documents in issue and therefore it cannot be said that the said provision is inconsistent with the provision in issue.

12. It is further submitted that the provision in issue is enacted by the State Legislature in exercise of its legislative power under Entry 6, List-III of the Seventh Schedule of the Constitution of India which reads thus: "Transfer of property other than Agricultural land; registration of deeds and documents". It is submitted that the aforesaid provision clearly spells out legislative competence of the State Legislature, being concurrent list, to enact a law relating to 'registration of deeds and documents'.

Since the State Legislature has legislative competence to enact an independent State law in the aforesaid regard, it has legislative competence to make a law for registration of a document by including/inserting only a separate provision i.e. a section in a State law which has been done by virtue of provision in issue. It is further submitted that it was also open for the State legislature to provide for a "State amendment" to any provision of the said Central Act, including Section 17 thereof and to make such a provision. It is submitted that many States have made State amendments to various provisions of the said Central Act, including Section 17 in respect of various documents, which amendments have been upheld. It is submitted that once legislative power is traced out, the challenge ought to fail.

13. It is further submitted that the provision in issue is certainly not inconsistent with any of the provisions of the aforesaid

Central Acts. The impugned provision and both the aforesaid Central Acts operate in different fields, without encroaching upon each other's filed. Since all these Statutes can operate simultaneously without any collision, this quest of repugnancy does not even arise for consideration.

14. It is further submitted that the Presidential assent has been obtained on 10th March, 2000 to the entire Rent Act, which contains the provision in issue and only thereafter the Act has come into force with effect from 31st March, 2000. Therefore, by virtue of the provisions of Article 254(2) of the Constitution, the State Act containing the provision in issue will prevail over the Central Act, the State Act being a later Act promulgated with the Presidential assent. It is therefore prayed that the challenge to constitutional validity of Section 55 of the Rent Act is not at all valid and the same may be turned

down.

15. It is further submitted that, even according to the contents of the complaint the alleged offence is committed since 19th January, 2007 and till date the offence is being committed and therefore the proceedings are not at all time barred. It is further submitted that the order dated 6th August, 2015 passed by the XIII Judicial Magistrate, First Class, Aurangabad is perfectly right and therefore the proceedings in S.C.C. No.3181 of 2015 are not liable to be quashed. Hence it is prayed that the Writ Petition be rejected.

16. In support of aforesaid submissions, learned Advocate General placed reliance on exposition of law in following cases:

(i) Amrit Banaspati Co. Ltd. vs. Union of

India and others<sup>3</sup>,

(ii) Sushil Kumar Sharma vs. Union of India<sup>4</sup>,

(iii) M. Karunanidhi vs. Union of India and another<sup>5</sup>,

(iv) Bharat Hydro Power Corpn. Ltd. and others vs. state of Assam and another<sup>6</sup>

(v) Amit B. Dalal vs. Rajesh K. Doctor<sup>7</sup>,

(vi) Prabhudas Damodar Kotecha and others vs. Manhabala Jeram Damodar and another<sup>8</sup>

(vii) Raj Prasanna Kondur vs. Arif Taker Khan and others<sup>9</sup>,

(viii) Suraj Lamp and Industries Private Limited Through Director vs. State of Haryana and another<sup>10</sup>,

(ix) Suraj Lamp and Industries Private Limited (2) Through Director vs. State of

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3 (1995) 3 S.C.C. 335

4 (2005) 6 S.C.C. 281

5 1979(3) S.C.C. 431

6 (2004) 2 S.C.C. 553

7 2010(7) Mh.L.J. 1

8 (2013) 15 S.C.C. 358

9 (2005) 4 Bom.C.R. 383

10 (2009) 7 S.C.C. 363

Haryana and another<sup>11</sup>,

(x) State of Rajasthan and others vs.  
Basant Nahata<sup>12</sup>.

17. We have carefully considered the submissions of learned counsel appearing for the Petitioners, learned Advocate General appearing for the State and learned counsel appearing for Respondent No.2. With their able assistance we have carefully perused the grounds taken in the Petition, annexures thereto, and also the other documents placed on record including brief note submitted on record on behalf of the State of Maharashtra.

18. At this juncture, it would be apt to reproduce herein below the grounds taken in the Petition challenging the constitutional validity of Section 55 of the Maharashtra Rent Control Act, which read thus:

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11 (2012) 1 S.C.C. 656

12 (2005) 12 S.C.C. 77

"I) The Petitioners say and submit that, the relations between a Licensor and Licensee were governed by the provisions of Indian Easements Act, 1882. Said Act is a Central Act and the same does not prescribe compulsory registration of a Leave and License agreement and an agreement for continuation of the same. Therefore, the obligation now cast to compulsorily register such agreement is inconsistent with the provisions of Indian Easements Act, 1882. Therefore, provisions of section 55 of the Maharashtra Rent Control Act, 1999 being inconsistent with the provisions of Central Act, are beyond legislative competence of State legislature and therefore, void.

II) The Petitioners say and submit that, the registration and requirement of compulsory registration of agreements between the parties are prescribed in the Indian Registration Act, 1908. Section 17 of the said Act, which has been amended from time to time does not prescribe the requirement of compulsory registration of a leave and license agreement. Therefore, provisions of section 55 of the Maharashtra

Rent Control Act, 1999 being inconsistent with the provisions of Central Act, are beyond legislative competence of State legislature and therefore, void.

IV) The Petitioners say and submit that, Section 55 of the Maharashtra Rent Control Act, 1999 is misused by the Licensees, not desirous of handing over of the possession of the property, with sole intention of obstructing the proceedings for eviction or to coerce the Licensor, therefore, said provision is not sustainable in the eyes of law."

19. Upon careful perusal of the aforementioned grounds, it is abundantly clear that without giving better particulars or clearly spelling out specific grievances, only aforesaid grounds are incorporated in the Petition with prayer to struck down the provisions of Section 55 of the Maharashtra Rent Control Act, 1999, on the ground that the same is beyond competence of State Legislature. The Supreme Court in the case of Amrit Banaspati Co. Ltd. vs. Union of India and

others, cited supra, in Para 6 of the Judgment held as under:

"6. It is settled law that the allegations regarding the violation of constitutional provision should be specific, clear and unambiguous and should give relevant particulars, and the burden is on the person who impeaches the law as violative of constitutional guarantee to show that the particular provision is infirm for all or any of the reasons stated by him. In the recent decision of this Court *Gauri Shanker v. Union of India*<sup>13</sup> to which both of us were parties, it was reiterated that-

(a) there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

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13 (1994) 6 SCC 349

(b) it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(c) in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

20. We scanned the entire pleadings and grounds in the Petition. If the pleadings and grounds are tested in the light of above principles, we are of the opinion that there is no sufficient or specific or definite pleadings with

particulars, to state that the provisions of Section 55 of the Maharashtra Rent Control Act are inconsistent with the provisions of Section 17 of the Indian Registration Act, 1908 and the provisions of Indian Easement Act, 1882. There are no specific, clear, unambiguous, relevant and material particulars in the Petition to show that there is violation of constitutional provision and in particular fundamental rights of the Petitioner. Merely because Section 55 of the Maharashtra Rent Control Act provides for compulsory registration of leave and licence, does not mean it is inconsistent with the provisions of Section 17 of the Indian Registration Act and the provisions of Indian Easement Act, when the aforesaid provisions can be harmoniously constructed and interpreted so as to achieve the legislative object/intent.

21. The provision of Section 55 of the Maharashtra Rent Control Act, 1999 reads as under:

"55. Tenancy Agreement to be compulsorily registered:-

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement for leave and license or letting of any premises, entered into between the landlord and tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908 (XVI, 1908),

(2) The responsibility of getting such agreement registered shall be on landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which a premises have been given to him by the landlord on leave and license or have been let to him, shall prevail, unless proved otherwise.

(3) Any landlord who contravenes the provisions of this section shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding rupees five thousand or

with both."

22. So far as legislative competence of State Legislature to enact the Maharashtra Rent Control Act is concerned, it would be apt to reproduce herein below Entry 6 in List III of Schedule 7 under Article 246 of the Constitution of India, which reads as under:

"6. Transfer of property other than agricultural land; registration of deeds and documents."

. Therefore, the contention of learned counsel appearing for the Petitioner that the State Legislature was not competent to enact Section 55 of the Maharashtra Rent Control Act has no substance.

23. The Supreme Court in the case of M. Karunanidhi vs. Union of India and another, cited supra, in Para 24 of the Judgment, held as under:

"24. It is well-settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied :

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."

24. As is already observed, the pleadings and grounds taken in the Petition are too general,

vague and do not spell out that there is clear and direct inconsistency between the provision of Section 55 of the Maharashtra Rent Control Act vis-a-vis the provision of Section 17 of the Indian Registration Act, 1908 and the provisions of Indian Easement Act, 1882 and that such an inconsistency is absolutely irreconcilable. The Petitioner has not demonstrated as to how the provision of Section 55 of the Maharashtra Rent Control Act is inconsistent with the provisions of Section 17 of the Indian Registration Act, 1908 and the provisions of Indian Easement Act, 1882.

25. Another argument of the counsel appearing for the Petitioner that the provision of Section 55 of the Maharashtra Rent Control Act is misused by the Licensees and therefore the said provision be struck down, deserves to be rejected in view of the exposition of law by the Supreme Court in the case of Sushil Kumar Sharma vs. Union of India and others, cited supra. In Para 12 of the said

Judgment, the Supreme Court has held as under:

"12. It is well settled that mere possibility of abuse of a provision of law does not per se invalidate a legislation. It must be presumed, unless the contrary is proved, that administration and application of a particular law would be done "not with an evil eye and unequal hand". (See A. Thangal Kunju Musaliar v. M. Venkatchalam Potti<sup>14</sup>)."

26. As is already observed, the State Legislature was competent to legislate the Maharashtra Rent Control Act. The said Act has received the assent of the Hon'ble President of India, on 10th March, 2000 which contains the provision of Section 55 of the Act, and only thereafter the Act came into force with effect from 31st March, 2000.

27. Learned counsel appearing for the Petitioner pressed into service exposition of law

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14 (1955) 2 SCR 1196: AIR 1956 SC 246

in the case of Kaiser-I-Hind Pvt. Ltd. and others vs. National Textile Corporation Ltd. and others<sup>15</sup> and submitted that merely because the Hon'ble President of India has given assent to the Maharashtra Rent Control Act, it would not automatically lead to the conclusion that provision of Section 55 of the Maharashtra Rent Control Act is valid and it cannot be subject matter of challenge. If the specific inconsistency of particular provision is pointed out, like the provision of the State Act is repugnant/inconsistent to the provision in the Central Act, in that case in view of the aforesaid Judgment, such challenge can survive and can be gone into.

28. Upon careful perusal of the provision of Section 55 of the Maharashtra Rent Control Act vis-a-vis the provision of Section 17 of the Indian Registration Act, 1908 and the provisions

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15 AIR 2002 S.C. 3404

of Indian Easement Act, 1882, we do not find any repugnance as such and the pleadings and the grounds taken in the Petition proceed on mere possibilities without demonstrating how the provision of Section 55 of the Maharashtra Rent Control Act is inconsistent with the provision of Section 17 of the Indian Registration Act and the provisions of Indian Easement Act. The provisions of Section 55 of the Maharashtra Rent Control Act, Section 17 of the Indian Registration Act, 1908 and the provisions of Indian Easement Act, 1882 can be harmoniously interpreted, and there is no inconsistency as such giving rise to challenge and judicial scrutiny, to hold that said provisions are inconsistent.

29. Upon careful perusal of the relevant provisions, it is clear that the provision of Section 55 of the Maharashtra Rent Control Act is not inconsistent with the provisions of the Indian Easement Act and Indian Registration Act.

Section 55 of the Maharashtra Rent Control Act and the provisions of Indian Easement Act and Indian Registration Act operate in different fields. As is already observed, we find considerable force in the arguments advanced by the learned Advocate General that the Petitioners have challenged the constitutional validity of Section 55 of the Maharashtra Rent Control Act without any pleadings or better particulars, and the Petitioners have not specifically mentioned that the said provision is violative of which fundamental right of the Petitioners. Hence the challenge to the constitutional validity of Section 55 of the Maharashtra Rent Control Act deserves to be rejected.

30. We need not go into greater details since in our opinion the pleadings and grounds taken in the Petition are without particulars or clearly spell out specific grievance of the Petitioner or which fundamental right has been violated because

of the provision of Section 55 of the Maharashtra Rent Control Act. As is already observed, the grounds are vague and general in nature and therefore the prayer of the Petitioner to grant relief in terms of prayer clause (C) and (D) reproduced herein above in Para-2 of the Judgment stands rejected.

31. The Petitioners have also challenged the order passed by the Judicial Magistrate directing issuance of process under Section 55 of the Maharashtra Rent Control Act read with Section 34 of the Indian Penal Code, against the Petitioners.

32. We have perused the impugned order passed by the Magistrate. While passing the order dated 6th August, 2015, the Magistrate has not recorded the reasons. The Magistrate ought to have assigned the reasons, at least in brief, keeping in view the exposition of law by the Supreme Court in the case of Anil Kumar and others vs. M.K. Aiyappa and

another<sup>16</sup> and the Division Bench of the Bombay High Court Bench at Nagpur in the case of State of Maharashtra vs. Shashikant Eknath Shide<sup>17</sup>.

33. It is also relevant to mention that already the civil dispute arising out of the proceedings of Regular Civil Suit No.1001 of 2009 is pending between the parties.

34. Thus, on both counts, firstly no reasons are assigned by the Magistrate while passing the said order, and secondly the civil dispute is pending between the parties, the order dated 6th August, 2015 passed by XIII Judicial Magistrate, First Class, Aurangabad and consequential proceedings in S.C.C. No.3181 of 2015 deserve to be quashed and set aside.

35. For the reasons stated herein above, the order dated 6th August, 2015 passed by XIII

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16 (2013) 10 S.C.C. 705

17 2013(4) Bom.C.R.(Cri.) 801

Judicial Magistrate, First Class, Aurangabad and consequential proceedings in S.C.C. No.3181 of 2015 are quashed and set aside.

36. Rule is partly made absolute in above terms. The Writ Petition stands disposed of, accordingly.

**[MANGESH S. PATIL, J.]**

asb/NOV17

**[S.S. SHINDE, J.]**