

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.249 OF 2018

Shireen Dady Adenwalla ... Applicant
Vs.
Yasmin Dinyar Ilavia ... Respondent

Mr. Mayur Khandeparkar a/w. Mr. Ameya Deosthale a/w. Ms Juhi
Bahirwani i/b. M/s. Hariani & Co. for Applicant.
Mr. S.M. Gorwadkar, Senior Advocate a/w. Ms Jasmin i/b. PDS Legal for
Respondent.

WITH
CIVIL REVISION APPLICATION NO.352 OF 2015

Tabassum Mirvakely and another ... Applicants
Vs.
Tehmi Sorabji Poonawala Pvt. Trust & Ors. ... Respondents

Mr. S. C. Wakankar for Applicants.
Mr. Nitin Deshpande for Respondents.

WITH
WRIT PETITION NO.765 OF 2018

Leela Vinayak Kale ... Petitioner
Vs.
Union of India through its Defence Estate
Officer and others ... Respondents

Mr. Mahadji Phalke for Petitioner.
Ms Alefiya Madviwala for Respondent No.1.

CORAM : R. G. KETKAR, J.
Reserved on : AUGUST 8, 2018
Pronounced on : SEPTEMBER 24, 2018

P.C. :

Heard Mr. Khandeparkar, learned Counsel for the applicant and
Mr. Gorwadkar, learned Senior Counsel for the respondent in

C.R.A.No.249 of 2018 at length.

2. Heard Mr. Wakankar, learned Counsel for the applicant and Mr. Deshpande, learned Counsel for the respondents in C.R.A.No.352 of 2015 at length.

3. Heard Mr. Phalke, learned Counsel for the petitioner and Ms Alefiya Madviwala, learned Counsel for the respondent No.1 in Writ Petition No.765 of 2018 at length.

4. C.R.A.No.249 of 2018 is instituted by the applicant / defendant challenging the order dated 04.04.2018 passed by the learned District Judge-12, Pune below exhibits-42 and 43. Application exhibit-42 was filed by the applicant-defendant for stay of hearing of appeal filed by the defendant challenging the eviction decree passed by the learned trial Judge on 29.09.2016. Application exhibit-43 was filed under Order VII, Rule 10 of the Code of Civil Procedure, 1908 for return of the plaint for presentation before the proper Court. By order dated 04.04.2018, the learned District Judge rejected the applications and adjourned the hearing of the appeal for final arguments to 16.04.2018. It is the contention of the defendant that the suit premises is situate in Pune Cantonment area. The Suit is instituted under the provisions of the Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act'). The provisions of the Maharashtra Rent Act are not applicable to the Pune Cantonment area. The defendant, therefore, filed applications exhibits-42 and 43 pending the appeal, which were rejected by the learned District Judge.

5. C.R.A.No.352 of 2015 takes exception to the order dated 01.07.2014 passed by the learned Additional Judge, Small Causes Court, Pune below exhibit-50 in Civil Suit No.541 of 2008. By that order, the

learned trial Judge rejected the application. The applicants / defendants have filed application for return of the plaint on the ground that suit property is situate in Pune Cantonment area, and therefore, the Small Causes Court has no jurisdiction to entertain and try the Suit. The provisions of the Maharashtra Rent Act are not applicable to Pune Cantonment area.

6. Writ Petition No.765 of 2018 takes exception to the order dated 11.12.2017 passed by the learned Ad-hoc District Judge-5, Pune below exhibit-56 in Regular Civil Appeal No.155 of 2008. By that order, the learned District Judge rejected the application made by the defendants under Section 113 read with Order XLVI of C.P.C. for making reference to this Court for decision on the issue of applicability of the provisions of the Maharashtra Rent Act to Pune Cantonment area and whether the Suit is cognizable by the Small Causes Court, Pune. Thus, in the above proceedings, the only question raised by the defendant/s is applicability of the provisions of the Maharashtra Rent Act to Pune Cantonment area.

7. The above issue is raised along with other issues, in the following proceedings:

- W.P. No.10221 of 2016, C.R.A.No.552 of 2017, C.R.A.No.542 of 2017, W.P.No.1579 of 2015, W.P.No.12254 of 2017, W.P.No.8268 of 2016, W.P.No.2093 of 2015, W.P.No.8177 of 2017, C.R.A.(St.)No.9541 of 2018, C.R.A.No.1152 of 2014, C.R.A.No.817 of 2014, C.R.A.No.863 of 2014, C.R.A.No.868 of 2014, C.R.A.No.869 of 2014, C.R.A.No.870 of 2014 and W.P.No.5435 of 2015.

8. As the issue about applicability of the Maharashtra Rent Act is also raised in the above proceedings, all these matters were clubbed together and Advocates were also heard at length as regards applicability of the provisions of the Maharashtra Rent Act to Pune Cantonment area.

On one hand, defendants-tenants are contending that the provisions of the Maharashtra Rent Act are not applicable to the Pune Cantonment area and on the other, respondents - plaintiffs / landlords are contending that notwithstanding repeal of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act'), the notification dated 27.12.1969 issued by the Ministry of Defence under Section 3 of the Cantonments (Extension of Rent Control Laws) Act 46 of 1957 (for short '1957 Act') has not lapsed and continues to be in force even after repeal of Bombay Rent Act and enforcement of Maharashtra Rent Act w.e.f. 31.03.2000.

9. In support of C.R.A.(St.) No.9541 of 2018 instituted by the tenant, Mr. Kulkarni submitted that after the repealment of the Bombay Rent Act, the notification dated 27.12.1969 issued under Section 3 of the 1957 Act by the Ministry of Defence is not saved. He submitted that after enforcement of the Maharashtra Rent Act with effect from 31.03.2000, the Ministry of Defence ought to have issued fresh notification as the notification dated 27.12.1969 was issued when the Bombay Rent Act was in force in the State of Maharashtra. The said notification has outlived after the repealment of the Bombay Rent Act. Mr. Kulkarni has invited my attention to Section 8 of the General Clauses Act, 1897 (for short 'G.C. Act') and Section 9 of the Maharashtra General Clauses Act (for short 'M.G.C. Act'). He submitted that these Sections apply to cases of referential legislation i.e. where the repealed enactment is referred in the other Statute. Section 3 of the 1957 Act confers the power upon the Central Government to extend the State Law of Rent Control Act to Cantonment area by notification. Section 3 refers words "to extend the State law to Cantonment Board". Thus, there is fundamental distinction between word 'to extend' and 'references'. Extending an enactment means applying the existing law, whereas word 'reference' denotes the referential legislation or legislation by reference

for the purpose of Section 8 of the G.C. Act or Section 9 of the M.G.C. Act. He submitted that the Central Government has to apply its mind with regard to which part of legislation is to be applied and then it has to apply it with such restrictions and modifications to cantonment area. Therefore, Central Government has to examine in pith and substance, the changes effected by State Legislature to new Rent Act and then it has to apply it with such restrictions and modifications. Whenever, such power is conferred then Central Government has to decide which portion is to be applied. The words “such restrictions or modifications” denote the intention that the Central Government has to take a conscious decision as to which part of the State law is to be made applicable to Cantonment area and such a discretion is not an empty formality. Therefore, the intention is different and Section 9 of the M.G.C. Act has no application at all.

10. While enacting Maharashtra Rent Act, the State Legislature has made substantial modification to Bombay Rent Act such as enhancement of rent, pagdi, non-application of Rent Act to open lands and to companies having a paid up share capital more than Rs.1 crore. This needs to be taken into account by the Central Government for deciding as to what modifications or restrictions are to be made. The Central Government may have different stand on these aspects. Mr. Kulkarni relied upon the decision in ***Brij Sundar Kapoor Vs. Additional District Judge***¹, and in particular paragraph 25. He also relied upon the decision in ***Ramesh Birch Vs. Union of India***². He submitted that both these decisions lay down the ratio that the power is required to be exercised by the delegate and has to take a conscious decision for adapting the local Rent Act to the area. If the Bombay Rent Act which was extended by 1969 notification was repealed and re-enacted then fresh notification is

1 (1989) 1 SCC 581

2 1989 Supp. (1) SCC 430

required because the Central Government has to adapt and extend the Act. The Central Government had issued notification in the year 1969 and applied Bombay Rent Act to the Cantonment area which was in force “on the date of the notification”. The 1957 Act was amended by Act 22 of 1972 and the words “on the date of notification” came to be deleted with retrospective effect obviously with a view to applying the same enactment to the Cantonment area even with future modifications. He invited my attention to the decision of the Division Bench of this Court (Coram: A. P. Shah, Acting C.J. & S. U. Kamdar, J.) in ***Munawar Khan Hussein Khan, since deceased, through his LRs Vs. Somnath Laxman Holkar, since deceased through his LRs***³. The Division Bench referred to the decision of **Brij Sundar Kapoor**¹ as also effect of the Amendment Act 22 of 1972. The Division Bench was considering whether the future amendments in Bombay Rent Act post 1969 notification could be made applicable to the cantonment areas or not. The deletion of the words 'on the date of notification' may be relevant with regard to the amendment made to the Bombay Rent Act, which was then applicable to the Cantonment area by a notification in the absence of express provisions of law. The said deletion cannot be stretched to say that the repealed enactment namely, Bombay Rent Act stands replaced by the new Rent Act namely, Maharashtra Rent Act and the new enactment can also be read with corresponding changes to be read in the notification in view of Section 3(1) and further, it will be too broader proposition to say so in the absence of the law. Similarly, if the law adapted for extension of the cantonment area is repealed and re-enacted then in view of the decision of the Apex Court in **Brij Sundar Kapoor**¹ and **Ramesh Birch**², it is the statutory duty of the Central Government to extend Maharashtra Rent Act with such restrictions and modifications, as it thinks fit.

3 Writ Petition No.1596 of 1987 decided on 14.06.2004.

11. Mr. Khandeparkar in support of C.R.A.No.249 of 2018 filed by the tenant submitted that the Maharashtra Rent Act does not apply to the Cantonment areas in the absence of fresh notification being issued by the Central Government under Section 3 of the 1957 Act. The Court, under Maharashtra Rent Act, will have no jurisdiction to entertain and try the Suit thereunder. He submitted that in respect of Cantonment area, the Parliament alone can legislate as the subject of relationship between landlord and tenant / lessor and lessee in so far as the premises situate in Cantonment areas falls in Entry 3 of List I - Union List. By enacting 1957 Act, the Parliament has delegated the said function to the Central Government. Only the Central Government is empowered to extend an enactment to Cantonment areas under the 1957 Act. In the absence of any notification, State Government, by itself, has no power to extend the application of the Maharashtra Rent Act to Cantonment areas.

12. He submitted that notification dated 27.12.1969 was in respect of a particular enactment i.e. Bombay Rent Act and not in respect of an area, which is evident from the Notification, relevant portion of which reads thus,

“In exercise of the powers conferred by the Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957 (46 of 1957), the Central Government hereby extends to all the cantonments in the State of Maharashtra except the Cantonments of Aurangabad and Kamptee, **the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Act No.LVII of 1947) as in force on the date of this notification in the State of Maharashtra in which the Cantonments are situated with the following modifications...**

(emphasis supplied)”

13. Section 3 of the 1957 Act provides that the Central Government is empowered, by notification in the Official Gazette, to extend “any enactment” relating to the control of rent and regulation of house accommodation in a Cantonment area. Even from a bare reading of

Section 3, it is clear that the intention is to extend 'a particular enactment' to Cantonment area, that is in the present case Bombay Rent Act. He submitted that power to issue notification under Section 3 of the 1957 Act to extend an enactment to Cantonment area is not a blind delegation of the power i.e. the Central Government is empowered to extend the enactment with such restrictions and modifications as it thinks fit. While issuing the notification dated 27.12.1969, the Central Government has considered the scheme of the Bombay Rent Act and has extended the same to Cantonment areas subject to modifications as are more particularly mentioned in the notification. He submitted that the notification dated 27.12.1969 is a delegated legislation and the same is issued under Section 3 of the 1957 Act, which is an Act of the Central Government. Under the 1957 Act, as it stood then, the notifications under Section 3 could be issued only prospectively and the same could not save decrees already passed. In view of the representations made by the tenants, the Central Government decided to amend Section 3 of the 1957 Act and delete the words “on the date of the notification” to - (i) give retrospective operation to the enactment either from commencement of the enactment or 26 January 1950, whichever is later and (ii) save the decrees already passed under the enactment deemed to be in force in the Cantonment i.e. Bombay Rent Act in the present case. By deletion of the words “on the date of the notification”, by the Amendment Act, should not be construed to mean that the notification would continue to apply to any subsequent enactment. Such interpretation would be even beyond the objects and reasons of the Amendment Act 22 of 1972.

14. Mr. Khandeparkar submitted that in the case of **Munawar Khan Hussein Khan**³, the Division Bench of this Court held that in view of the deletion of the words “on the date of the notification” in Section 3 of the 1957 Act by the Amendment Act 22 of 1972, no further notification

is required to make the amendments to the Bombay Rent Act applicable to the Cantonment area. The said judgment cannot be applied to the situation where the enactment in respect of which the notification was issued under Section 3 of the 1957 Act has been subsequently repealed and a new enactment, namely Maharashtra Rent Act has been passed by the State Legislature. All that this judgment lays down is that in view of the omission of the words “on the date of the notification” was retrospective the subsequent amendments to the said Bombay Rent Act were to operate as if it were done at the time when the notification dated 27.12.1969 was issued. It cannot possibly mean to include within its ambit a subsequent enactment as that situation was neither comprehended nor deliberated by the Division Bench in that decision.

15. Mr. Khandeparkar submitted that Section 9 of the M.G.C. Act relates to repeal of the State Act by subsequent State Act. Section 9 of the M.G.C. Act does not apply to the facts of the present case as the provisions of State Statute cannot be relied upon to save, repeal or nullify a notification / instrument issued under a Central Statute, namely 1957 Act. Any such exercise to save, repeal or nullify any notification / instrument by placing reliance on Section 9 or any other provision of the M.G.C. Act would be in violation of the constitutional principles i.e. it would be transgressing in the domain of the Central Government. At the same time, Section 8 of the G.C. Act would also not apply as the Maharashtra Rent Act is not a Central Act.

16. Mr. Khandeparkar submitted that Section 58(2)(a) of the Maharashtra Rent Act saves the Bombay Rent Act (with any modifications made thereto) only in respect of the pending proceedings. Notification dated 27.12.1969 continues to apply only to the pending proceedings. Upon repeal of the Bombay Rent Act under Section 58(1) (a), the notification has lapsed and no longer applies to the Cantonment

areas. The decision of the Division Bench of this Court in ***Rama Balu @ Balayya Yadav Vs. State of Maharashtra***⁴, which related to vires challenge of schedule of the Maharashtra Rent Act will not apply to the present case. He submitted that Notification dated 27.12.1969 was issued under Section 3 of the 1957 Act and not under Bombay Rent Act and therefore, Section 25 of the M.G.C. Act does not have any application to the facts of the present case. The said Section will apply only if the notification was issued under the Bombay Rent Act.

17. He submitted that the non-obstante clause contained in Section 2(2) of the Maharashtra Rent Act will merely override the provisions of Section 2(1) and cannot be said to have an overriding effect on the remaining provisions of the Maharashtra Rent Act especially in the context of repealed provision under Section 58 thereof. This is clarified in the later part of Section 2(2) where the wordings used are “area ceases to be of the description therein specified”. What it only means is that the Maharashtra Rent Act would apply to all areas irrespective of its present description i.e. if the limits of Pune region had changed i.e. areas earlier forming part of Pune region are now known by another name. It is the intention of the Legislature that the Maharashtra Rent Act would apply to even these areas irrespective of description. But this cannot for want of legislative competence be extended to Cantonment areas. The wordings that Maharashtra Rent Act is applicable to the areas to which the earlier act was extended and applied cannot be interpreted to mean that the same would also apply to the Cantonment areas, which are in exclusive domain of the Parliament. Assuming that Notification dated 27.12.1969 continues post the repeal of the Bombay Rent Act and the enforcement of the Maharashtra Rent Act, the modifications provided in the notification were in relation to the Bombay Rent Act and it is not

4 Writ Petition No.8430 of 2008 decided on 26.11.2009 by this Court (Coram : D. K. Deshmukh and K. K. Tated, JJ.)

possible to juxtapose or extend the said modification with the Maharashtra Rent Act. The notification would be incongruous with the provisions of the Maharashtra Rent Act.

18. He submitted that if the intention of the Central Government is to be considered, the same has to be uniform through out the country. It cannot be contended that in relation to the State of Maharashtra, intention of the Central Government was to continue the existing notification dated 27.12.1969 to the subsequent enactment on the same subject i.e. Maharashtra Rent Act and in another State, the Central Government issues a fresh notification under Section 3 of the 1957 Act in view of repeal of earlier enactment for which the notification was earlier issued. This fact is borne out from the decision in **Brij Sundar Kapoor's case**¹ as is evident from the following passages of that decision:

“... 7. It was only on April 3, 1972 that a notification was issued by the Central Government under Section 3 of the Act 46 of 1957 extending the provisions of U.P. Act 3 of 1947 to the cantonment in the State of Uttar Pradesh. But soon after above notificaion was issued, U.P.Act 3 of 1947 itself was repealed and replaced by U.P.13 of 1972 which came into force on July 15, 1972. This necessitated the issue of another notification under Section 3 of Act 46 of 1957 extending the provisions of U.P.Act 13 of 1972 to the cantonments in Uttar Pradesh. This notification dated September 1, 1973, and gazetted on September 29, 1973 reads as follows,

15. ... The provisions of Section 3 of the Act 46 of 1957 should, in the circumstances be construed so as to achieve this purpose and as enabling the Central Government to issue notifications from time to time and not as exhausted by a single invocation as in the case of the statute considered in the Delhi Laws Act case. Section 3 could, therefore, be invoked from time to time as occasion arises...”

19. He submitted that from the above extracted portion, it is clear that the Central Government has made its intention clear that a fresh notification is required to be issued under Section 3 of the 1957 Act to

extend the provision of subsequent enactment to the Cantonment areas in place of repealed enactment. In view of the Legislature making its intention clear, it cannot now be contended that a fresh notification is not required to be issued for the Maharashtra Rent Act and the notification dated 27.12.1969 issued under the Bombay Rent Act continues to apply. He, therefore, submitted that the Courts under the Maharashtra Rent Act have no jurisdiction to entertain any Suit thereunder.

20. In support of C.R.A.No.817 of 2014 filed by the tenant, Mr.Paranjpe submitted that only the Central Government is empowered to extend an enactment to Cantonment areas under the 1957 Act. In the absence of any notification, the State Government by itself has no power to extend the application of Maharashtra Rent Act to the Cantonment areas. The notification dated 27.12.1969 was in respect of Bombay Rent Act and clearly in view of repeal of that Act, the said notification has lapsed. The provisions of M.G.C. Act would not aid the respondents nor would G.C.Act apply to the Maharashtra Rent Act. The Saving Clause under Section 58 of the Maharashtra Rent Act would also not apply. He submitted that in the absence of the fresh notification under Section 3, the Maharashtra Rent Act does not apply to the premises situate in the Cantonment area and the Courts under the Maharashtra Rent Act have no jurisdiction to entertain and try any Suit thereunder.

21. In support of C.R.A.No.1152 of 2014 filed on behalf of the defendants-tenants, Mr. Pungliya submitted that Section 8 of the G.C.Act or even Section 9 of the M.G.C.Act has no application in the present case. The 1957 Act has been passed by the Parliament to confirm that only the Parliament and the Central Government can decide and amend laws applicable to the cantonment areas in respect of the regulation of house accommodation including the control of rents in

such areas. He submitted that the deletion of the words “on the date of the notification” by the Amendment Act 22 of 1972 did not in any way affect the power or the necessity of issuing a notification under Section 3 of the 1957 Act to extend any State Law to cantonment areas. The said amendment merely removed any perceived ambiguity in respect of which State Laws could be extended. The amendment merely clarified that the Central Government could extend any State Law to the cantonments irrespective of the date of any such State Law. It would be wrong to stress on whether the State Law sought to be extended was passed before or after the passing of the 1957 Act or before or after issuing the notification under section 3 of the 1957 Act. He relied upon paragraph 3 of the decision of Allahabad High Court in ***Lekh Raj Vs. 4th Additional District Judge, Meerut***⁵. He submitted that the unreported judgment passed on reference by this Court to resolve the conflict in ***Munawar Khan Hussein Khan***³ and ***Mohamad Ali Umar Musa Vs. Pesi D. Pocha***⁶, was only in respect of amendments to Bombay Rent Act. It cannot have any application to the facts of the present case where the Bombay Rent Act itself stood repealed and Maharashtra Rent Act was enacted. He submitted that the word 'any' and the words 'which is in force' used in Section 3 are of significance. Section 3 confers power on the Central Government to issue not one but even successive notifications in order to extend any enactment to any cantonment area. He relied upon paragraph 7 of ***Lekh Raj's case***⁵ where it was held that “in other words, the extension of an enactment to a cantonment was to remain operative till the said Act had not been repealed”. In paragraph 10 of ***Lekh Raj***⁵, it was held that “in this connection, Section 3 contemplates extension of an enactment, which is in force namely an existing enactment ... What is non-existent cannot be extended”.

5 AIR 1982 ALLAHABAD 265

6 1990 Mh.L.J. 131

22. He submitted that Section 8 of the G.C. Act or even Section 9 of the M.G.C. Act has no application as the notification dated 27.12.1969 issued by the Ministry of Defendant is very specific to the provisions of the Bombay Rent Act and had extended the said Act to the cantonments of Maharashtra with very specific modifications to the provisions of the Bombay Rent Act. The provisions of the Bombay Rent Act are completely different from the Maharashtra Rent Act. The Maharashtra Rent Act has omitted Sections 10A, 11A, 18, 19, 20, 21, 22, 23A, 32 to 46A and Sections 5, 7(1), 7(6), 7(10), 7(12), 7(13), 16(j), 16(k), 22, 28, 38, 55, 56 and 60 of the Bombay Rent Act have no corresponding provisions in the Maharashtra Rent Act. He further submitted that Section 2(2) of the Maharashtra Rent Act in so far as it applies to the Cantonment areas of Pune is beyond the legislative competence of the Legislature of State of Maharashtra in as much as the control of rent within cantonment areas is within the exclusive competence of the Union Parliament. He relied upon paragraphs 16 and 17 of *Nawal Mal Vs. Nathu Mal*⁷. Lastly, he submitted that the provisions of M.G.C. Act cannot in any way affect the power or necessity of issuing a notification under Section 3 of the 1957 Act as it has State enactment, which cannot affect the requirement of a notification to be issued under an Act passed by the Parliament.

23. By virtue of order dated 26.02.2015, prayer clauses (a) and (b) of Writ Petition No.2093 of 2015 were deleted. The Petition is now confined to prayer clauses (c), (d) and (e). In support of Writ Petition No.2093 of 2015 filed by the defendant-tenant, Mr. Satyavrat Joshi submitted that Bombay Rent Act was repealed and thereafter Maharashtra Rent Act was enacted with effect from 31.03.2000. It was, therefore, incumbent that a new notification is published. As no notification is issued under Section 3 of the 1957 Act, the provisions of

the Maharashtra Rent Act cannot be made applicable to the Pune Cantonment areas. He referred to Section 58(1) of the Maharashtra Rent Act. By virtue of this provision, provisions of the Bombay Rent Act ceased to operate and consequently, notification dated 27.12.1969 published on 17.02.1970 making the provisions of the Bombay Rent Act applicable to the cantonment area was rendered a nullity. He submitted that the State Government has no legislative competence to enact and extend the Maharashtra Rent Act to Pune Cantonment area. Entry No.1 in Part IV of Schedule of the Maharashtra Rent Act is ultra vires the provisions of the Constitution. The very fact that the notification issued by the respondent No.1 - Union of India under Section 3 of the 1957 Act making Bombay Rent Act applicable to the cantonment areas itself demonstrates that respondent No.2 - State of Maharashtra does not have the legislative competence to legislate in this regard. The provision, namely, Entry No.1 in Part IV of the Schedule of the Maharashtra Rent Act is a colourable exercise of the legislative power in relation to the List No.I-Union List in the Seventh Schedule of the Constitution. The doctrine of Pith and Substance has no relevance. The said provision being ultra vires deserves to be struck down as unconstitutional.

24. Mr. Joshi further submitted that there is no provision in the Constitution of India to delegate the legislative power of the Union to the State and hence Entry No.1 in Part IV of Schedule of the Maharashtra Rent Act is required to be struck down as it is in gross contravention of the provisions of the Constitution of India. After the repealment of the Bombay Rent Act and enforcement of Maharashtra Rent Act, the notification dated 27.12.1969 ceased to be in operation. Entry No.3 in List I-Union List in the Seventh Schedule of the Constitution of India empowers Union of India to enact the law with reference to the regulation of the housing accommodation in the

cantonment area. Respondent No.2-State of Maharashtra is not competent to enact any law in this regard. After the repealment of the Bombay Rent Act, it was incumbent to issue a new notification after enforcement of the Maharashtra Rent Act. As no fresh notification is issued, the Maharashtra Rent Act cannot be made applicable to the Pune Cantonment area. Entry No.18 in List II-State List and Entry No.6 and 7 in List III-Concurrent List in the Seventh Schedule does not empower the State to enact law with reference to the houses within the Cantonment area. In view of Section 58(1) of the Maharashtra Rent Act, the provisions of the Bombay Rent Act have ceased to operate and consequently, the notification dated 27.12.1969 published on 17.02.1970 making Bombay Rent Act applicable to the Cantonment area has become a nullity as no fresh notification is issued making provisions of Maharashtra Rent Act applicable to Pune Cantonment area. Apart from that, the notification dated 27.12.1969 is not amended. In short, he submitted that unless and until a fresh notification is issued, Maharashtra Rent Act cannot be made applicable to Pune Cantonment area and consequently, the Small Causes Court, Pune does not have jurisdiction to entertain and try any dispute between landlord and tenant. He, therefore, submitted that Petition requires to be allowed in terms of prayer clauses (c) and (d) and alternatively, necessary directions may be issued in terms of prayer clause (c) of the Petition.

25. In support of Writ Petition No.10221 of 2016 and C.R.A.No.352 of 2015, filed by the tenant, Mr. Wakankar has filed Purshis adopting arguments advanced by Mr. Kulkarni and Mr. Khandparkar. In addition, he submitted that provisions of the Bombay Rent Act and Maharashtra Rent Act are not *pari materia*. The definition of the expression 'premises' in Bombay Rent Act and Maharashtra Rent Act is different. Section 3 of the Maharashtra Rent Act deals with exemption of certain

entities from application of the Maharashtra Rent Act. This was not the position under the Bombay Rent Act. In view thereof, the notification issued making Bombay Rent Act applicable to the Cantonment area cannot be said to make the provisions of the Maharashtra Rent Act applicable.

26. In support of Writ Petition No.5435 of 2015, Mr. Nagaradaria has filed Purshis dated 09.08.2018 adopting the arguments advanced on behalf of the tenant in C.R.A.No.249 of 2017 and C.R.A.(St.) No.9541 of 2018.

27. In support of Writ Petition No.8177 of 2017, Mr. Tilak has filed Purshis adopting the submissions advanced by Mr. Kulkarni in C.R.A. (St.) No.9541 of 2018 and Mr. Mayur Khandeparkar.

28. In support of Writ Petition No.1579 of 2015, C.R.A.No.868 of 2014, C.R.A.No.869 of 2014 and C.R.A.No.870 of 2014, Mr. More has filed Purshis adopting submissions advanced by Mr. Kulkarni.

29. On the other hand, Mr. Gorwadkar submitted that the intention of the Parliament in enacting 1957 Act can be gathered from the Statement of Objects and Reasons as also plain language of that Act. Section 3 of the 1957 Act empowers the Central Government to extend any enactment relating to control of rent and regulation of housing accommodation which is in force in that State to any Cantonment area in that State. By deleting the words “on the date of notification” from Section 3 of the 1957 Act, the Parliament made it abundantly clear that the power of the Central Government was not restricted to extend only a particular Act that existed on the date of the notification but any law relating to rent and regulation of accommodation to the Cantonment

where it is situate. The notification under Section 3 is an instrument or tool for the purpose of expressing that intention. Mentioning of a particular Act or nomenclature of the Act, for its extension in cantonment, in the notification under Section 3 is inconsequential. All that is required is the new Act prevailing in the State has to be the law relating to rent and accommodation. It gets automatically extended to the Cantonments. He submitted that the 1957 Act is a conditional legislation where the executive namely, the Central Government decides time and area to apply existing State Acts about rents and accommodation in Cantonments by 'reference'. It means, whatever law about rent and accommodation is available in the State on the given date, gets applied to the Cantonments. It is with a view to getting over the vice of discrimination within the same class of landlords and tenants residing in the same State. Section 9 of the M.G.C. Act is a complete answer to the contentions raised by the tenants about necessity of fresh notification by the Central Government for application of the Maharashtra Rent Act to Pune Cantonment area.

30. Mr. Gorwadkar submitted that prior to 1947, there was no law regulating the relationship of landlord and tenants in Cantonment areas. The Cantonments (House Accommodation) Act, 1923 was enacted only for the acquisition of houses for the military services, personnel and for determination of rate of rent after the acquisition. On 13.01.1948, the Bombay Rent Act was enacted for the control of rents and for regulating landlord-tenant relationship as also for protection of tenants from unreasonable evictions. As stated in Section 3(2), the said enactment was for a fixed duration i.e. till 31.03.1961. Since the inception, Parts I and IV, Parts II and IIA of the Bombay Rent Act were made applicable to Pune and Ahmednagar Cantonments. After commencement of the Constitution i.e. since 26.01.1950, as per Entry 3 of List I-Union List in the Seventh Schedule, the Cantonments became subject for the

Parliament and the State Legislature could not make laws about them. Even the existing provisions in State Acts became inoperative in the Cantonments. The duration of the Bombay Rent Act was extended by the Act 31 of 1961 till 31.03.1999 and again it was extended till 31.03.2000 by Act 28 of 1999. Section 2 gave power to the State Government to extend the various parts of the Act to specific areas. In order to bring about uniformity in the application of Rent Control Acts in the respective States, in the year 1957, the Cantonments (Extension of Rent Control Laws) Act, 1957 was passed by the Parliament and power was given to the Central Government to extend to any cantonment any enactment relating to the control of rent and regulation of house accommodation with such restrictions and modifications as it thinks fit in the State in which the cantonment is situate. He submitted that in the case of *Indu Bhusan Bose Vs. Rama Sundari Debi*⁸, the Apex Court held that the general power to legislate in respect of relationship between landlord and tenant exercisable by State Legislature either under Entry 18 of List-II – State List or Entry 6 and 7 of List III-Concurrent List is subject to the overriding power of Parliament in respect of matters in List I – Union List so that effect of Entry 3 of the List I – Union List is that on the subject of relationship between landlord and tenant in so far as it arises in respect of house accommodation situate in cantonment areas, Parliament alone can legislate and not the State Legislatures.

31. Mr. Gorwadkar submitted that in view thereof, Central Government issued Notification dated 27.12.1969 under Section 3 of the 1957 Act extending rent laws to the cantonments in the State. At that time, Bombay Rent Act was applicable in Bombay State especially to the areas adjacent to the Pune Cantonment area. Therefore, logically, in the notification, the said Act was named. As per Section 2 of the

Bombay Rent Act, Parts I and IV and Parts II and IIA of the Bombay Rent Act could be made applicable to the Cantonments. By Amendment Act 22 of 1972, Section 3 of the 1957 Act was amended by deleting the words “on the date of notification”. In the years 1973 and 1987, Bombay Rent Act was substantially amended. By Act 28 of 1999, the Bombay Rent Act was extended from 31.03.1999 to 31.03.2000. The Maharashtra Rent Act was made applicable to the premises let for the specified purposes in the areas mentioned in Schedules I and II of the Act. It was a re-enactment of the Rent Control Laws and Pune Cantonment area was included in Schedule I Part IV of the Act. It is the case of the tenants that to the premises situate in cantonment area, the Maharashtra Rent Act is not applicable in the absence of fresh notification under Section 3 of the 1957 Act and the Suits instituted or decreed under the Maharashtra Rent Act are without jurisdiction and decrees passed thereunder are nullity.

32. Mr. Gorwadkar submitted that Section 3 of the 1957 Act empowers the Central Government to extend to any cantonment any enactment relating to the control of rent and regulation of housing accommodation which is in force in that State. By deleting the words “on the date of notification” from Section 3 of the 1957 Act, the Parliament made it abundantly clear that the power of the Central Government was not restricted to extend only a particular Act that existed on the date of the notification but any law relating to rent and regulation of accommodation to the Cantonments where it is situate. The notification issued under Section 3 is an instrument or a tool for the purpose of expressing that intention.

33. Mr. Gorwadkar submitted that once the intention is expressed, it is immaterial as to whether the Act on the date of notification retains its

form or not so long as it remains law on the rent and regulation of accommodation. It can exist with additions or in truncated form. Similarly, in parts, its can be applied or in a substituted form, it can exist as had happened in the instant case. The name of the Act in the notification is immaterial or inconsequential. He submitted that since the notification dated 27.12.1969, the Bombay Rent Act was changed by almost 20 amendments periodically. However, the Central Government never felt the necessity of issuing fresh notification under Section 3 of the 1957 Act for every amendment. In the case of **Munawar Khan Hussein Khan**³, the Division Bench held that it was not necessary to issue fresh notification under Section 3 of the 1957 Act for making the amendments (or extensions) applicable to the cantonments named in the Bombay Rent Act. The Bombay Rent Act expired twice i.e. in the year 1961 and 1999. It was revived by amending Section 3. Technically, it was a new law but without issuing fresh notification, it was continued in Pune Cantonment on account of initial declaration of intention to apply laws relating to rent and regulation of house accommodation. On the expiry of extended duration given to Bombay Rent Act, in reality, it was a new Act. It was a re-enactment by the amendment. However, no fresh notification under Section 3 was required to be issued. By the same analogy, the Maharashtra Rent Act is also a legislation dealing with rent and regulation of accommodation. It is a re-enactment of Bombay Rent Act. By reason of language and intent of Section 3 of the 1957 Act, no new Notification under Section 3 is required to be issued for applying the Maharashtra Rent Act in cantonments.

34. Mr. Gorwadkar submitted that mentioning of a particular Act or nomenclature of the Act for its extension in Cantonment, in the notification under Section 3 is inconsequential. All that is required is the new Act prevailing in the State has to be the law relating to rent and

regulation of house accommodation. It gets automatically extended to the Cantonments. Even if there are substantial or marked changes in the re-enacted law, so long as it retains its character as rent and regulation on the house accommodation, no notification under Section 3 is required to be issued. He further submitted that the 1957 Act is a conditional legislation by nature where then existing State Acts about rents and accommodation are applied in Cantonments by 'reference'. It means, whatever the law about rent and accommodation is available in the State on the given date, gets applied to the Cantonments. It is to get over the vice of discrimination within the same class of landlords and tenants. Had it been a law by incorporation, only those provisions of State rent laws, prevalent on the date of notification, could be applied to the Cantonments. It would give absurd results, not intended by the Parliament. Object of the 1957 Act would be defeated. He submitted that in case of re-enactment such as Maharashtra Rent Act, the 1957 Act, being the legislation by reference, the new enactment on the subject of rent and regulation of house accommodation gets applied to the Cantonments on the basis of notification dated 27.12.1969. In support of his submissions, Mr. Gorwadkar relied upon the following decisions:

- (i) **Rama Balu @ Balayya Yadav**⁴;
- (ii) **Harkesh Chand Vs. Krishan Gopal Mehta**⁹;
- (iii) **Malpe Vishwanath Acharya Vs. State of Maharashtra**¹⁰; and
- (iv) **Vasu Dev Singh Vs. Union of India**¹¹.

35. Mr. Gorwadkar adopted submissions of Mr. Jamdar about the implications of the G.C. Act and M.G.C. Act.

36. On behalf of respondent in Writ Petition No.10221 of 2016, Mr.

9 (2017) 4 SCC 537

10 (1998) 2 SCC 1

11 (2006) 12 SCC 753

Jamdar invited my attention to the Statement of Objects and Reasons of the 1957 Act, which inter alia mentioned that the large number of eviction cases have been filed in Cantonment areas by the landlords by taking advantage of non-existence of any Rent Control Law and to protect the tenants from improper evictions, it is proposed to confer powers on the Central Government to extend the relevant relevant Rent Control Laws of the State to the Cantonments situate in that State by notification in the Gazette of India. Thus, it is clear that the purpose for enacting 1957 Act is to protect the tenants of premises situate in Cantonment areas from improper evictions by providing them the protection of the Rent Control Laws of the concerned State.

37. Mr. Jamdar further submitted that the notification dated 27.12.1969 is applicable to the Maharashtra Rent Act in view of Section 20 of the G.C. Act. By notification dated 27.12.1969, the provisions of the Bombay Rent Act are made applicable to the Cantonment areas specified therein. Bombay Rent Act is repealed by Maharashtra Rent Act. Now, the Maharashtra Rent Act is applicable to the State of Maharashtra. He, therefore, submitted that the notification dated 27.12.1969 continues to apply to the Maharashtra Rent Act and in view of Section 20 of G.C.Act, the provisions of the Maharashtra Rent Act are applicable to the Cantonments area. He gave emphasize on the following portion of Section 20 of the G.C.Act, which reads thus,

“where, by any Central Act or Regulation, a power to issue any notification, order, scheme, rule, form or bye-law is conferred, then **expressions used in the notification**, order, scheme, rule, form or bye-law, if it is made after the commencement of this Act, shall, **unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act** or Regulation conferring the power.

(emphasis supplied)”

38. He submitted that the 1957 Act gives power to the Central Government to extend to any Cantonment, enactment relating to the control of rent and regulation of house accommodation which is in force in the State in which the Cantonment is situate. The notification dated 27.12.1969 extends to the Cantonments in Maharashtra as specified therein, the provisions of the Bombay Rent Act. He submitted that Section 3 of the 1957 Act uses the expression, “**enactment relating to the control of rent and regulation of house accommodation**”. Thus, what is contemplated is applicability of the Rent Legislation of the State to the Cantonment areas situate in that State. He submitted that as presently, the Maharashtra Rent Act is applicable in the State of Maharashtra and in view of repeal of the Bombay Rent Act, it has to be held that the expression “the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Act No.LVII of 1947) used in the notification dated 27.12.1969 will have to be read as 'Maharashtra Rent Control Act, 1999”, and therefore, the provisions of the Maharashtra Rent Control Act are applicable to the Cantonment areas.

39. Mr. Jamdar further submitted that in view of Section 9 of the M.G.C. Act, the notification dated 27.12.1969 is applicable to the Maharashtra Rent Act. He gave emphasis on the following words of Section 9 of the M.G.C. Act, which reads thus,

9. Construction of references to repealed enactments.

“Where this Act, or any Bombay Act [or Maharashtra Act] made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment, or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as reference to the provision so re-enacted.”

40. He submitted that Section 3(5) of the M.G.C.Act defines “Bombay Act” and reads thus,

“3. In this Act, and in all Bombay Acts or [Maharashtra Acts] made after the commencement of this Act, unless there is anything repugnant in the subject or context,-

“Bombay Act”

(5) “Bombay Act” shall mean an Act made by the [Governor of Bombay] in Council under the [Indian Council Act, 1861] or the Indian Councils Act, 1861 and 1892 [or the Indian Councils Act, 1861 to 1909 or the Government of India Act, 1915, or made by the local Legislature, or the Governor of the Presidency of Bombay under the Government of India Act, or by the Provincial Legislature, or the [Governor of Bombay], under the Government of India Act, 1935], [or made by the Legislature of the [pre-Reorganization or Reorganized [State of Bombay] under the Constitution;”

41. He submitted that as per Section 9 of the M.G.C. Act as the Bombay Rent Act is repealed and re-enacted by Maharashtra Rent Act, references in any other enactment or in any instrument in the provisions so repealed be construed as reference to the provisions so re-enacted. Thus, in the notification dated 27.12.1969, reference to 'the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947' will have to be construed as reference to the “Maharashtra Rent Control Act, 1999”. Mr. Jamdar submitted that basically the object of both the legislations, namely Bombay Rent Act and Maharashtra Rent Act is to protect the tenants from unauthorized evictions and therefore, it is clear that there is no different intention while enacting both the enactments. The exception carved out in Section 9 is, therefore, not applicable. He submitted that the expression “instrument” contemplated in Section 9 of the M.G.C. Act includes '27.12.1969 notification'. Mr. Jamdar relied upon the decision of ***Sree Mohan Chowdhury Vs. Chief Commissioner, Union Territory of Tripura***¹², where the Apex Court held that the order made by the President in exercise of his constitutional powers is included in

the expression 'instrument' as contemplated under Section 8 of the G.C.Act. In particular, he heavily relied upon paragraph 10 of that decision, which reads thus,

“10. Is the President's Order in question an "instrument" within the meaning of the section? The General Clauses Act does not define the expression "instrument". Therefore, the expression must be taken to have been used in the sense in which it is generally understood in legal parlance. In Stroud's Judicial Dictionary of Words and Phrases (Third Edition, Volume 2, page 1472), "instrument" is described as follows :

"An 'instrument' is a writing, and generally imports a document of a formal legal kind. Semble, the word may include an Act of Parliament..... (11) Conveyancing Act, 1881 (44 & 45 Vict. c.41), s.2(xiii), 'instrument' includes deed, will, inclosure, award and Act of Parliament.....

The expression is also used to signify a deed inter-partes or a charter or a record or other writing of a formal nature. But in the context of the General Clauses Act, it has to be understood as including reference to a formal legal writing like an Order made under a statute or subordinate legislation or any document of a formal character made under constitutional or statutory authority. We have no doubt in our mind that the expression "instrument" in s.8 was meant to include reference to the Order made by the President in exercise of his constitutional powers. So construed the President's Order would, even after the repeal of the Ordinance aforesaid continue to govern cases of detention made under r. 30 aforesaid under the Ordinances. It must therefore, -be held that there is no substance in the contention that the petitioner's detention originally made under the rule under the Ordinance would not be deemed to have continued under the Act (LI of 1962). Equally clearly, there is no substance in the contention that the same Order should have been repeated by the President after the enactment of the Act. It would have been a sheer act of supererogation and the legal fiction laid down in s.8 is meant to avoid such unnecessary duplication of the use of the constitutional machinery. A proper construction of the provisions of s.48 of the Act, which has replaced the Ordinances aforesaid, read in the light of the provisions of s.8 of the General Clauses Act leaves no room for doubt that the detention order passed against the petitioner was intended to be continued even after the repeal of the Ordinances which were incorporated in the Act (LI of 1962).

That being so, the Order of the President must have the effect of suspending the petitioner's right to move this Court for a writ of habeas corpus under Art. 32 of the Constitution. After the petitioner had been deprived, for the time being, of his right to move this Court, it is manifest that he cannot raise any questions as regards the vires of the Ordinances or of the Rules and Orders made thereunder. In the result, the application is held to be not maintainable, and, is therefore, dismissed.”

42. Mr. Jamdar also relied upon the decision of the Apex Court in *State of Orissa Vs. State of A.P.*¹³, and in particular paragraphs 24 and 25. He also relied upon the decision in **Munawar Khan Hussein Khan**³, and submitted that the notification dated 27.12.1969 is still in force and is applicable to the Maharashtra Rent Act. He submitted that if it is not so held, the following consequences will follow:

(i) As the 1957 Act is in operation and the notification dated 27.12.1969 is not revoked, the said notification will remain in operation;

(ii) The notification dated 27.12.1969 is applicable to the Bombay Rent Act, which is repealed;

(iii) If the Bombay Rent Act is not applicable to the Cantonments areas in Maharashtra as it is not mentioned in the notification dated 27.12.1969, the protection afforded to the tenants under the Bombay Rent Act and therefore, under the Maharashtra Rent Act will not be available to the tenants. The said situation will be contrary to the intention behind the 1957 Act and the notification dated 27.12.1969;

(iv) As notification dated 27.12.1969 issued under the 1957 Act is not revoked by the Central Government, the provisions of the repealed Bombay Rent Act will still apply to the Cantonments areas as specified in the said notification in contrast to the rest of Maharashtra, which will be governed by the provisions of the Maharashtra Rent Act. The said

discrimination will not be in conformity with Article 14 of the Constitution and against the intention of the State Legislature of repealing the Bombay Rent Act and enacting Maharashtra Rent Act. The same will also be completely contrary to the provisions of the 1957 Act and according to which the Rent Law applicable in the particular State is to be made applicable to the Cantonment area situate in that State. He submitted that in view of Section 20 of the G.C.Act and / or in view of Section 9 of the M.G.C.Act, the notification dated 27.12.1969 is still in force and is applicable to the Maharashtra Rent Act.

43. Mr. Lengare appearing on behalf of respondents No.1 and 2 in C.R.A.(St.) No.9541 of 2018 adopted the submissions advanced by Mr. Gorwadkar and Mr. Jamdar. Apart from that, he submitted that the applicant had filed application exhibit-68 in Civil Appeal No.496 of 2009 raising issue of applicability of the Maharashtra Rent Act. By order dated 20.02.2013, the learned District Judge rejected the application. Aggrieved by that decision, the applicant instituted Writ Petition No.2918 of 2013 in this Court. By order dated 05.04.2013, the Division Bench (Coram: A. S. Oka and Smt. Mridula Bhatkar, JJ.) made it clear that this Court has not granted stay to the proceedings of Civil Appeal No.496 of 2009. Accordingly, Appeal was decided on 23.02.2018. The submissions advanced on behalf of the learned Counsel for the applicants are hit by the principle of *res judicata*.

44. Ms Gite, learned Counsel appearing for the respondent in Writ Petition No.1579 of 2015 adopted the arguments of Mr. Gorwadkar by filing Purshis dated 08.08.2018 to that effect.

45. Mr. Tajane, learned Counsel appearing for the Pune Cantonment Board supported the submissions advanced on behalf of the landlords.

He has invited my attention to the Statement of Objects and Reasons behind enacting the Maharashtra Rent Act. He submitted that Schedule I under Section 2(2), Part IV of the Maharashtra Rent Act lays down that the Maharashtra Rent Act is applicable to as many as 7 Cantonments situate within the State of Maharashtra. In short, he submitted that after repealment of the Bombay Rent Act, the notification dated 27.12.1969 has not lapsed and / or outlived or is in force making the provisions of the Maharashtra Rent Act applicable to the premises situate in Cantonment area.

46. In rejoinder, Mr. Kulkarni submitted that Section 24 of the M.G.C. Act and the judgment based upon identical provision in the U.P. General Clauses Act relied by the respondent, has no application to the facts of the present case. Section 24 has application only to those cases where the notification under the repealed enactment continues to operate even in the new enactment unless the intention is otherwise. In the present case, notification dated 27.12.1969 is issued under the Central Act and the Central Act is not repealed. In the present case the Act which is repealed and re-enacted is a State Law which was extended by the notification to the Cantonment area. Section 24 of the M.G.C. Act has, therefore, no application. Similarly, Section 3 of the 1957 Act is not a conditional legislation in view of paragraph 16 of **Vasu Dev Singh's judgment**¹¹.

47. I have considered the extensive submissions advanced by the learned Counsel appearing for the parties. I have also perused the written submissions submitted by the learned Counsel appearing for the parties. Before considering the controversy raised between the parties, it is necessary to refer to the decision of the Apex Court in **Delhi Laws Act case**¹⁴ and other decisions. That case arose out of a reference made by

the President of India under Article 143 of the Constitution asking the Court's opinion on the following 3 questions submitted for its consideration and report:

- (1) Was Section 7 of the Delhi Laws Act, 1912, or any of the provisions thereof and in what particular or particulars or to what extent “*ultra vires*” the Legislature which passed the said Act?
 - This question covered the legislative powers of the Indian Legislature during the period prior to the Government of India Act, 1915.

- (2) Was the Ajmer-Merwara (Extension of Laws) Act, 1947, or any of the provisions thereof and in what particular or particulars or to what extent “*ultra vires*” the Legislature which passed the said Act ?
 - The second question was in respect of its legislative power after the Government of India Act, 1935, as amended by the Indian Independence Act of 1947.

- (3) Is section 2 of the Part C States (Laws) Act, 1950, or any of the provisions thereof and in what particular or particulars or to what extent “*ultra vires*” the Parliament?
 - The last question was in respect of the power of the Indian Parliament under the present Constitution of 1950.

48. Kania, C.J. held that all the provisions under Constitution were *ultra vires* to the extent that they permitted the extension of Acts other than those of the Central Legislature to the areas in question. It was held that the essentials of a legislative function are the determination of the legislative policy and its formulation as a rule of conduct and these essentials are the characteristics of the Legislature by itself. These

essentials are preserved, when the Legislature specifies the basic conclusions of fact, upon ascertainment of which, from relevant data, by a designed administrative agency it ordains that its statutory command is to be effective.

49. In paragraph 35, His Lordship, after closely reading and analyzing all the decisions of the Privy Council, judgments of the Supreme Court of Canada and Australia came to the conclusion that while a Legislature, as a part of its legislative functions, can confer powers to make rules and regulations for carrying the enactment into operation and effect, and while a Legislature has power to lay down the policy and principles providing the rule of conduct, and while it may further provide that on certain date or facts being found and ascertained by an executive authority, the operation of the Act can be extended to certain areas or may be brought into force on such determination which is described as conditional legislation, the power to delegate legislative functions generally is not warranted under the Constitution of India at any stage. In cases of emergency, like war where a large latitude has to be necessarily left in the matter of enforcing regulations to the executive, the scope of the power to make regulations is very wide, but even in those cases the suggestion that there was delegation of "legislative functions" has been repudiated. His Lordship repelled the contention urged by the learned Attorney-General that legislative power carries with it a general power to delegate legislative functions, so that the Legislature may not define its policy at all and may lay down no rule of conduct but that whole thing may be left either to the executive authority or administrative or other body, by observing that it is unsound and not supported by the authorities on which he relied. In paragraph 38, His Lordship adhered to what he stated in *Jatindra Nath Gupta's case*, (1949) 11 F.C.R. 595 and observed that *Jatindra Nath Gupta's case* lays down correctly that the Legislature has no power of delegation.

50. S. Murtaza Fazal Ali, J. observed that what constitutes abdication and what class of cases will be covered by that expression will always be a question of fact, and it is by no means easy to lay down any comprehensive formula to define it, but it should be recognized that the rule against abdication does not prohibit the Legislature from employing any subordinate agency of its own choice for doing such subsidiary acts as may be necessary to make its legislation effective, useful and complete. Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and that it may utilize any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words it can do everything which is ancillary to and necessary for the full and effective exercise of its power of legislation. There are only two main checks in this country on the power of the Legislature to delegate, these being its good sense and the principle that it should not cross the line beyond which delegation amounts to "abdication and self-effacement".

51. Following the line of reasoning in *Sprigg Vs. Sigcau*, [1897] A.C. 238, His Lordship held that what the Central Government has been empowered to do under the impugned Legislations was not to enact "new laws" but only "to transplant" to the territory concerned laws operating in other parts of the country. His Lordship concluded by observing that the Legislature has now to make so many laws that it has no time to devote to all the legislative details, and sometimes the subject on which it has to legislate is of such a technical nature that all it can do is to state the broad principles and leave the details to be worked out by

those who are more familiar with that subject. Again, when complex schemes of reform are to be the subject of legislation, it is difficult to bring out a self-contained and complete Act straightaway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provision is to be made. Thus, some degree of flexibility becomes necessarily, so as to permit constant adaptation to unknown future conditions without the necessity of having to amend the law again and again. The advantage of such a course is that it enables the delegate authority to consult interests likely to be affected by a particular law, make actual experiments when necessary, and utilize the results of its investigations and experiments in the best way possible.

52. Patanjali Sastri, J. (*as His Lordship then was*) upheld the validity of the impugned provisions. His Lordship drew a distinction between delegation of the legislative authority and a creation of the new legislative power by observing that in the former, the delegating body does not efface itself but retains its legislative power intact and merely elects to exercise such power through an agency or instrumentality of its choice. In the latter, there is no delegation of power to subordinate units but a grant of power to an independent and coordinate body to make laws operating of their own force. In the first case, according to English constitutional law, no express provision authorizing delegation is required. In the absence of a constitutional inhibition, delegation of legislative power, however extensive, could be made so long as the delegating body retains its own legislative power intact. In the second case, a positive enabling provision in the constitutional document is required.

53. Mahajan, J. (*as His Lordship then was*) held that all the impugned provisions were *ultra vires*. His Lordship considered it a settled maxim

of constitutional law that a legislative body cannot delegate its power. The Legislature cannot substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust. Unless the power to delegate is expressly given by the Constitution, and it has not been, a Legislature cannot abdicate its functions and delegate essential legislative functions to any other body. There is such abdication when in respect of a subject in the legislative list that body says in effect that it will not legislate but would leave it to another to legislate on it.

54. Mukharjea, J. (as His Lordship then was) did not accept the principle that an unlimited right of delegation is inherent in the legislative power itself. His Lordship held that if the competent legislature has framed a statute and left it to an outside authority to extend the operation of the whole or any part of it, by notification, to any particular area, it would certainly be an instance of conditional legislation and no question of delegation would really arise. It was further held that the facts did not indicate a surrender of the essential powers of legislation by the legislature. The essential legislative power consists in formulating the legislative policy and enacting it into a binding rule of law. His Lordship observed that the delegate cannot be allowed to change the policy declared by the legislature and it cannot be given the power to repeal or abrogate any statute.

55. S. R. Das, J. (as His Lordship then was) upheld the validity of Section 7 of the Delhi Laws Act, Section 2 of Ajmer-Marwara Act and both parts of Section 2 of Part C States (Laws) Act. It was observed / held that the only rational limitation upon the exercise of this absolute power of delegation by the Indian Legislature as by any Dominion Legislature is what has been laid down in the several Privy Council and

other cases from which relevant passages have been quoted. His Lordship observed that the Legislature must not efface itself or abdicate all its powers and give up its control over the subordinate authority to whom it delegates its law making powers.

56. Bose, J. upheld the Statute in question. Thus, the majority upheld the validity of the provisions in question on different lines of reasoning.

57. In *Rajnarain Singh Vs. Chairman, Patna Administration Committee*¹⁵, Bose, J. referred to the decision in Delhi Laws Act case. In paragraph 23, it was observed thus,

“23. Because of the elaborate care with which every aspect of the problem was examined in that case, the decision has tended to become diffuse, but if one concentrates on the matters actually decided and forgets for a moment the reasons given, a plain pattern emerges leaving only a narrow margin of doubt for future dispute.”

58. It was observed that the majority view was that an executive authority can be authorised to modify either existing or future laws but not any essential feature.

59. In the case of **Brij Sunder Kapoor**¹, respondent No.3 Bhagwandas Gupta was the landlord of the Brij Sunder Kapoor in respect of premises situate in Jhansi Cantonment area in U.P. Respondent No.3 instituted proceedings under Section 21 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 on the ground that he needed the premises for his personal occupation and the same may be released to him. The contention raised on behalf of the tenant was that the Act did not apply to the cantonments in Uttar Pradesh and the orders releasing the premises under Section 21 were nullity.

15 AIR 1954 SC 569

60. The Apex Court considered the history of tenancy legislation in the State of Uttar Pradesh. The rent and eviction control legislation was initiated by the United Provinces (Temporary) Control of Rent & Eviction Ordinance promulgated on 1.10.1946. This Ordinance was followed by U.P. Act III of 1947 (1947 U.P. Act) which was made retrospective with effect from 1.10.1946. Both, the Act and the Ordinance, applied to cantonment areas as well as other parts of the State of Uttar Pradesh. Subsequently, 1947 U.P. Act was amended by U.P. (Amendment) Act 44 of 1948 and the cantonment areas were excluded from the purview of Act III of 1947 U.P. Act. This amendment was introduced as it was felt that the cantonment areas were to be governed by the Cantonments (House Accommodation) Act, 1923 and that the simultaneous application of 1947 U.P. Act to cantonment areas would create problems. A number of representations were made by residents of cantonments for extending the provisions of the 1947 U.P. Act to cantonment areas as well. Because of the representations, U.P. Ordinance 5 of 1949 was promulgated on 26.09.1949. This Ordinance was allowed to lapse. Allahabad High Court in *Smt. Ahmedi Begam v. District Magistrate, Agra*, **AIR 1951 All 830** took the view that the State Legislature was incompetent to regulate accommodation lying in cantonments since that was a subject on which Parliament alone was competent to legislate. The view of Allahabad High Court was subsequently approved by the Apex Court in **Indu Bhusan Bose's case**⁸. Parliament enacted the U.P. Cantonments (Control of Rent and Eviction) Act, 1952 (1952 Act). Operation of this Act was confined to cantonments in Uttar Pradesh. The Parliament enacted 1957 Act. The Amendment Act 22 of 1972 gave its retrospective effect from 26.01.1950. The words “on the date of the notification” in Section 3 were omitted by Section 3 of the Amendment Act, 1972 with full retrospective effect. The promulgation of this Act created anomalous

situation in the State of Uttar Pradesh. 1952 Act was already in force in cantonment areas of the State and the issue of notification by the Central Government purporting to apply 1947 U.P. Act also to Cantonments in Uttar Pradesh would create complications. If 1947 U.P. Act had to be extended in Cantonment areas in Uttar Pradesh in place of 1952 Act, it was necessary that the provisions of the 1952 Act should be repealed by a Parliamentary enactment. This was done by enacting U.P. Cantonments (Control of Rent and Eviction) (Repeal) Act, 1971. By Section 2, on and from the date on which the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 was extended by notification under Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957 to the cantonments in the State of Uttar Pradesh, the Uttar Pradesh Cantonments (Control of Rent and Eviction) Act, 1952 was to stand repealed.

61. On 03.04.1972, a notification was issued by the Central Government under section 3 of 1957 extending the provisions of 1947 U.P. Act to the cantonments in the State of Uttar Pradesh. 1947 U.P. Act itself was repealed and replaced by U.P. Act 13 of 1972, which came into force on 15.07.1972. This necessitated the issue of another notification under section 3 of the 1957 Act extending the provisions of 1972 Act to the cantonments in Uttar Pradesh. The notification dated 01.09.1973 was published on 29.09.1973. This notification was issued under Section 3 of the 1957 Act and in supersession of the notification dated 03.04.1972 extending to all the cantonments in the State of Uttar Pradesh, the 1972 U.P. Act as in force on the date of this notification subject to modifications.

62. In paragraph 9, the Apex Court reproduced the 3 questions posed on behalf of the appellants. U.P. Act 1972 was amended in 1974 and again in 1976. On 17.02.1982, a further notification was issued superseding the notification dated 01.09.1973, in view of the

amendments of 1972 U.P. Act in 1974 and again in 1976. The Apex Court observed that the whole purpose of the 1971 Act was to ensure that the cantonment areas in the State have the same rent laws as the other areas thereof. When 1947 U.P. Act ceased to be in force in the rest of the State, no purpose would be served by its continuing in force in the cantonment areas alone. The Apex Court held that as the U.P. Act 1972 was applicable to the cantonment of Jhansi area, application made by the respondent No.3 landlord under Section 21 was maintainable and the orders passed releasing the premises were not nullity. In this case, the notifications dated 03.04.1972 and 01.09.1973 were superseded. The question whether the notifications dated 03.04.1972 and 01.09.1973 continued to be in force in view of repeal of 1947 U.P. Act and enforcement of the 1972 U.P. Act and amendments in 1974 and 1976 in 1972 U.P. Act did not fall for consideration in that case.

63. The decision in **Brij Sunder Kapoor's case**¹ was subsequently considered in **Ramesh Birch's case**². In that case, notification dated 15.11.1986 issued on 15.12.1986 under Section 87 of the Punjab Reorganization Act, 1966 as also vires of Section 87 was challenged. Section 87 reads thus,

“87. Power to extend enactment to Chandigarh.- The Central Government may, by notification in the official Gazette, extend with such restrictions or modifications as it thinks fit, to the Union Territory of Chandigarh any enactment which is in force in a State at the date of the notification.”

A comparison of Section 87 with unamended Section 3 of the 1957 Act shows that the said provisions are almost *pari materia*. In that case, Territories originally comprised in the former Province of East Punjab, later designated as the State of Punjab, were governed by the East Punjab Urban Rent Restriction Act, 1949 (1949 Act). This Act applied to all urban areas in the State of Punjab. Section 2(j) of that Act defined 'urban area' as any area administered by a municipal committee, a

cantonment board, a town committee or a notified area committee or **any area declared by the State Government by notification to be an urban area for the purposes of the Act.** The Central Government had earlier issued, under Section 89, the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1968 w.e.f. 01.11.1966. Paragraph 4 of the order directed that in all the existing laws, in its application to the Union Territory of Chandigarh, any reference to the State of Punjab should be read as a reference to the Union Territory of Chandigarh and paragraph 2(1)(b) defined the expression 'existing law'. In exercise of powers conferred by Section 2(j), the Central Government issued notification on 13.10.1972 declaring the area comprising Chandigarh to be an 'urban area' for the purpose of the 1949 Act. The notification was published in the Gazette of India on 04.11.1972. The notification was quashed by Punjab & Haryana High Court in *Harkishan Singh Vs. Union*, **AIR 1975 P & H 160** on the short ground that as no notification had been issued prior to 01.11.1966 under section 2(j) declaring Chandigarh to be an urban area, the Act could not be said to have been in force within the said area prior to 01.11.1966. Neither Section 88 nor notification dated 13.10.1972 could be effective to make the principal Act (1949 Act) operative in Chandigarh unless it had first been applied to the Union Territory of Chandigarh or any part thereof by a notification under Section 87 with the necessary adaptation.

64. In view thereof, two courses were open to the Government to set right the lacuna pointed out by the High Court. The first as pointed out by the Full Bench was to extend the 1949 Act to Chandigarh by a notification under Section 87. The second was to invoke the legislative powers of Parliament available in respect of Chandigarh under Article 246(4) of the Constitution to enact a legislation for this purpose. At the same time, any corrective measure had to be made retrospective in its

operation if the large number of suits for eviction that had been filed in the meanwhile on the strength of the notification and were pending disposal in various courts were to be saved from being rendered non-maintainable consequent on the decision of the High Court. In view thereof, second course was adopted and Parliament enacted the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974. Section 3 thereof lays down that,

"3. Extension of East Punjab Act 3 of 1949 to Chandigarh--

Notwithstanding anything contained in any judgment, decree or order of any court, the Act shall, subject to the modifications specified in the Schedule, be in force in, and be deemed to have been in force with effect from 4th day of November, 1972 in the Union Territory of Chandigarh, as if the provisions of the Act so modified had been included in and formed part of this section and as if this section had been in force at all material times."

65. In 1985, the provisions of the 1949 Act were amended in their application to the State of Punjab. The legislature of the State of Punjab enacted Punjab Act 2 of 1985 by which the 1949 Act was amended to insert therein new Sections 13A, 18A and 18B and a new Second Schedule and to make certain amendments in Sections 13 and 19 of the Act. The Central Government therefore, considered it necessary to extend the 1985 Act to the territory of Chandigarh. In order to effectuate this object, it issued a notification dated 15.11.1986 in exercise of power under Section 87 extending to the Union Territory of Chandigarh the provisions of the 1985 Act as in force in the State of Punjab on the date of the notification i.e. on 15.12.1986, subject to the modifications mentioned therein. The resultant position was that while the provisions of the 1949 Act were brought into force w.e.f. 4.11.1972 by an Act of Parliament, the provisions of the 1985 Act were extended to the territory of Chandigarh by means of a notification of the Central Government issued under Section 87. The short question was therefore, whether the latter extension was permissible and valid in law.

66. After considering various decisions including Delhi Laws Act case, in paragraph 27, the Apex Court rejected the challenge to the constitutional validity of Section 87. From paragraph 28 onwards, the Apex Court dealt with the contention about the applicability of the 1974 Act and the 1985 Act and observed in paragraph 32 that the extension of 1985 Act only added provisions in respect of aspects not covered by the 1974 Act and in the manner not inconsistent therewith, the notification was therefore, valid and not liable to be struck down.

67. In the case of **Harkesh Chand**⁹, the Apex Court was dealing with somewhat identical situation. In that case, the premises were situate in the rural area in the village of Daishwala, Doiwala Town, located in the Dehradun district of Uttarakhand, The landlord had issued notice under Section 106 of the Transfer of Property Act, 1882 and demanded possession of the shop premises. The learned trial Judge dismissed the Suit on the ground that even though The United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (for short '1947 Act') had been repealed by The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, which was brought into force on 15.07.1972, the old Act applied to the suit property. The learned District Judge dismissed the revision application filed by the landlord. It was held that the notification by which the provisions of the old Act were applicable to Doiwala area in the year 1949 continued and remained in force on the date when the notice of termination of the tenancy was issued. The tenancy was accordingly protected by 1947 Act. The High Court of Uttarakhand upheld the landlord's plea that the notice under Section 106 of the T.P. Act was valid. The High Court held that the old Act under which Doiwala area was covered by a notification had been repealed and replaced by the new Act. The old Act did not cover the rural area that are not specifically notified. The special notification with

respect to Doiwala area came into existence only on the 23.01.1973 and therefore, between 15.07.1972 when the old act along with its notification stood repealed, and 23.01.1973 when the notification was issued, there was no protection to the tenants in Doiwala area under any law. The High Court accordingly, allowed the Petition and decreed the Suit. Against that order, tenant approached the Apex Court. Before the Apex Court, questions fell for consideration were-

- I. Whether or not a tenancy in question was protected by 1947 Act.
- II. Whether or not, the notification dated 31.03.1949 which applied the provisions of the 1947 Act to Doiwala town was in force on 19.09.1972, when the landlord terminated the tenancy by issuing notice under Section 106 of the T.P. Act and sought possession.
- III. Whether or not, Section 24 of the U.P. General Clauses Act, 1904 continued the notification dated 31.03.1949 that protects Doiwala town by applying the provisions of the 1947 Act.

68. In paragraphs 22 to 25, it was observed thus,

“22. It is, therefore, necessary to see whether the notification dated 31st March, 1949, issued under the Act of 1947 is inconsistent with the re-enacted provisions of the Act of 1972. Obviously, if the 1949 notification cannot stand along with the re-enacted provisions and is inconsistent with them, it cannot be said to have been continued in force by virtue of Section 24 of the U. P. General Clauses Act, 1904. The Governor of the erstwhile United Provinces, through the said notification, simply declared that the provisions of Sections 2, 3 (a), 4, 5, 6 etc. shall apply to Doiwala town in Dehradun district. The effect of this notification thus, was that the protection to the tenants offered by Section 3 (a) i.e. the restrictions on eviction, applied to Doiwala town.

23. We find nothing inconsistent between the protection accorded to the tenants under the Act of 1947 as applied to Doiwala town by the notification dated 31st March, 1949, and

the protection accorded to the tenants in the re-enacted provision of the Act of 1972, both of which regulated the eviction of tenants in the whole of Uttar Pradesh. Section 21 of the later Act provided the same restrictions on the eviction of tenants on specified grounds that Section 3 (a) of the 1947 Act did. Thus, there is no inconsistency whatsoever found between the two provisions. We also, do not find any express provision to the contrary in the subsequent enactment.

24. The provisions of an Act, and a conditional legislation such as a notification, belong to a different order of things. A statutory instrument (i.e. the notification) itself does not enact the protection to the tenants. The Act of 1947 does that. The notification merely makes the enactment applicable to the Doiwala area. Apparently the purpose of the re-enacted provision is, inter alia, to protect the tenants from eviction, except on special grounds. Nothing in the Act shows that such a protection was intended to be removed from any area or for that matter, the Doiwala area. In fact, the contrary is clear from the fact that a notification expressly applying the re-enacted provisions to the Doiwala area was issued on the 21st of March, 1973. Thus, there can be no inconsistency between the notification applying the Act to the Doiwala area, and the re-enacted provisions of the Act unless the Act of 1972 clearly expresses an intention to remove the protection accorded to the tenants from an area.

25. Section 24 of the U.P. General Clauses Act, 1904 clearly provides that a statutory instrument issued under a repealed enactment shall continue in force and be deemed to have been made or issued under the re-enacted provisions unless-

- (a) the re-enacted provision expressly provides otherwise or,
- (b) it is superseded by a statutory instrument made under the re-enacted provision.

The section further provides that the extent to which the statutory instrument under the repealed enactment shall continue is "so far as it is not inconsistent with the re-enacted provisions."

69. In paragraph 34, the Apex Court held that the notification under the 1947 Act continued in spite of its repeal and re-enactment in 1972 Act. It was further held that it cannot be said that in the hiatus between the repeal of the 1947 Act and the issuance of a notification applying the

1972 Act to the Doiwala area, the Legislature intended that the tenants had no protection from eviction and there was an unrestricted right to evict them. The Apex Court considered decisions in-

- (a) *Chief Inspector of Mines Vs. Lala Karam Chand Thapar*, **AIR 1961 SC 838**;
- (b) *State of Bombay Vs. Pandurang Vinayak Chaphalkar*, **AIR 1953 SC 244**;
- (c) *Neel Vs. State of West Bengal*, **(1972) 2 SCC 668**; and
- (d) *State of Punjab Vs. Harnek Singh*, **(2002) 3 SCC 481**.

70. In paragraph 37, ultimately, the Apex Court held that the old Act, i.e. the Act No.III of 1947 applied to the Doiwala area by virtue of notification dated 31.03.1949, when the suit for the eviction of the appellant was filed. The Suit was untenable for the want of permission under the provisions of the U.P. Act No. XIII of 1972 and was liable to be dismissed.

71. Having considered the decisions on this aspect, it is necessary to consider the legislative history in respect of Pune Cantonment area in so far as the provisions of the Rent Control Act are concerned. Entry 3 of List I - Union List in the Seventh Schedule reads thus,

“3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities **and the regulation of house accommodation (including the control of rents) in such areas.**”

72. A perusal of the Statement of Objects and Reasons of the 1957 Act shows that under Article 246 of the Constitution of India read with Entry 3 of List I - Union List in the Seventh Schedule, powers to make laws with respect to rent control in Cantonment areas belongs exclusively to Parliament. Before the Constitution came into force, this power belonged to the Legislatures of the former Provinces and States.

It is however matter of record that no Rent Control Law was in existence in the Cantonment area. Taking advantage of this situation, a large number of eviction cases were filed by the landlords. To protect the tenants from improper evictions, the Central Legislation, therefore, proposed to confer powers on the Central Government to extend the relevant rent control laws of the State to the Cantonments situate in that State by notification in the Gazette of India. The Parliament, therefore, enacted the 1957 Act. The Act of Parliament received the assent of the President on 18.12.1957 and was published on 19.12.1957. Section 1 at the relevant time was to the following effect:

“1. This may be called The Cantonments (Extension of Rent Control Laws) Act, 1957.”

73. Section 2 thereof lays down that, “in this Act, 'cantonment' means any place declared to be a cantonment under Section 3 of the Cantonments Act, 1924.” Section 3 deals with power to extend the cantonment laws relating to control of rents and regulation of house accommodation. Section 3, as originally stood, was to the following effect:

3. The Central Government may, by notification in the Official Gazette, extend to any cantonment with such restrictions and modifications as it thinks fit, any enactment relating to the control of rent and regulation of house accommodation which is in force on the date of the notification in the State in which the cantonment is situated:

Provided that nothing contained in any enactment so extended shall apply to –

- (a) any premises within the cantonment belonging to the Government;
- (b) any tenancy or other like relationship created by a grant from the Government in respect of premises within the cantonment taken on lease or requisitioned by the Government; or
- (c) any house within the cantonment which is, or may be, appropriated by the Central Government on lease under the Cantonments (House Accommodation) Act, 1923.

74. On 27.12.1969, the Ministry of Defence, in exercise of powers conferred by Section 3, the Central Government extended to the Cantonments in the State of Maharashtra except the Cantonments of Aurangabad and Kamptee, the Bombay Rent Act as in force on the date of the notification in the State of Maharashtra in which the Cantonments are situate with the modifications stated therein. On 28.02.1970, the Ministry of Defence, in exercise of powers conferred by Section 3, issued the notification extending to the Cantonment of Kamptee in the State of Maharashtra, the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 as in force on the date of the notification in that part of the State of Maharashtra in which Kamptee Cantonment is situated with the modifications stated therein. On 08.08.1973, the Central Government, in exercise of powers conferred by Section 3, extended to the Cantonment of Aurangabad, the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, as in force in the State of Maharashtra with the modifications stated therein.

75. A perusal of the Statement of Objects and Reasons of Amendment Act 22 of 1972 shows that before the Constitution came in force, the power to make laws with respect to rent control in Cantonment areas belonged to the Legislatures of the former Provinces and States. Certain State Legislatures had applied the laws with respect to rent control also to Cantonment areas either under the provisions as prevailed before the Constitution or after the Constitution.

76. In **Indu Bhusan Bose**⁸, the Supreme court held that the general power of legislating in respect of relationship between landlord and tenant exercisable by a State Legislature either under Entry 18 of the State List, or Entries 6 and 7 of the Concurrent List, is subject to the overriding power of Parliament in respect of matters in the Union List, so that the effect of Entry 3 of the Union List is that, on the subject of

relationship between landlord and tenant in so far as it arises in respect of house accommodation situated in Cantonment areas, Parliament alone can legislate and not the State Legislatures. The effect of this judgment was that the State Law with respect to rent control did not apply to the Cantonment situated within the State. To remove this difficulty the Central Government extended the relevant rent control laws under section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957. But these notifications could be issued only prospectively and could not save the decrees already passed. A number of representations have been received from and on behalf of tenants and tenants' associations ventilating their grievances in this regard. It is accordingly proposed to amend section 3 of this Act to empower the Government to extend to any Cantonment any enactment relating to control of rent and regulation of house accommodation in force in the State in which the Cantonment is situated either from the commencement of such enactment or from 26th January 1950, the date when the Constitution came into force, whichever is later, and to save decrees already passed under the enactment deemed to be in force in the Cantonment before such extension.

77. The 1957 Act was amended by the Cantonments (Extension of Rent Control Laws) Amendment Act (22 of 1972). Section 1, extracted hereinabove, was re-numbered as sub-section (1), which is to the following effect:

“(1) This Act may be called the Cantonments (Extension of Rent Control Laws) Amendment Act, 1957.”

78. Sub-section (2) was inserted, which was to the following effect:

“(2) It shall be deemed to have come into force on the 26th day of January, 1950.”

79. Section 3 was re-numbered as sub-section (1) and the words “on

the date of the notification” were deleted from Section 3 and deemed always to have been so deleted. Section 3, as amended by Act 22 of 1972 is to the following effect:

“3. Power to extend to cantonments laws relating to control of rents and regulation of house accommodation:- (1) The Central Government may, by notification in the Official Gazette, extend to any cantonment with such restrictions and modifications as it thinks fit, any enactment relating to the control of rent and regulation of house accommodation which is in force in the State in which the cantonment is situated:

Provided that nothing contained in any enactment so extended shall apply to –

- (a) any premises within the cantonment belonging to the Government;
- (b) any tenancy or other like relationship created by a grant from the Government in respect of premises within the cantonment taken on lease or requisitioned by the Government; or
- (c) any house within the cantonment which is, or may be, appropriated by the Central Government on lease under the Cantonments (House Accommodation) Act, 1923.

(2) The extension of any enactment under sub-section (1) may be made from such earlier or future date as the Central Government may think fit:

Provided that no such extension shall be made from a date earlier than -

- (a) the commencement of such enactment, or
 - (b) the establishment of the cantonment, or
 - (c) the commencement of this Act,
- whichever is later.

(3) Where any enactment in force in any State relating to the control of rent and regulation of house accommodation is extended to a cantonment from a date earlier than the date on which such extension is made (hereafter referred to as the 'earlier date') such enactment, as in force on such earlier date, shall apply to cantonment, and, where any such enactment has been amended at any time, after the earlier date but before the commencement of the Cantonments (Extension of Rent Control Laws) Amendment Act, 1972, such enactment, as amended shall apply to the cantonment on and from the date on which the enactment by which such amendment was

made came into force.

(4) Where, before the extension to a cantonment of any enactment relating to the control of rent and regulation of house accommodation therein (hereafter referred to as the 'Rent Control Act').-

(i) any decree or order for the regulation of or for eviction from any house accommodation in that cantonment, or

(ii) any order in the proceedings for the execution of such decree or order, or

(iii) any order relating to the control of rent or other incident of such accommodation,

was made by and Court, tribunal or other authority in accordance with any law for the control of rent and regulation of house accommodation for the time being in force in the State in which such cantonment is situated, such decree or order shall, on and from the date on which the Rent Control Act is extended to that cantonment, be deemed to have been made under the corresponding provisions of the Rent Control Act, as extended to that cantonment as if the said Rent Control Act, as so extended, were in force in that cantonment, on the date on which such decree or order was made.”

80. It is also at this stage necessary to consider the history of the Rent Legislation in the State of Maharashtra. The Bombay Rent Act came into force on 13.02.1938. This Act was meant to be a temporary measure. The original Act was enacted only for 2 years, with a power to the Government to extend the same by notification in this behalf. This Act was extended from time to time, at least on 20 occasions and the extension remained in force upto 31.03.1998. The landlords or their representatives of different premises in Mumbai had given different premises on rent to various tenants. They instituted Writ Petitions in this Court 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

restrictions on the rights of the landlord to increase rents, which had been frozen as on 01.09.1940 or at the time of the first letting, was no longer 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. This 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 prices etc. This 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.

81. The matter was carried to the Supreme Court. The decision is reported in **Malpe Vishwanath Acharya**¹⁰. The Apex Court considered the resolution of the State Ministers for Housing of 1992 and the National Model Law which was circulated by the Central Government in 1992. In paragraph 31, after taking all the facts and circumstances in this consideration, the Apex Court held 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 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 31.03.1998. The Apex Court noted the assurance given on behalf of the State of Maharashtra that the Model Law will be taken into consideration in framing of the proposed new Rent Control Act. In paragraph 32, the Apex Court held that the decision of this Court upholding the validity of the impugned provisions relating to standard rent was not correct and refrained from striking down the said provisions as the existing Act was to elapse on 31.03.1998 and

hoped that the new Rent Control Act would be enacted with effect from 01.04.1998 keeping in view the observations made in the judgment insofar as fixation of standard rent is concerned. It was made clear that any further extension of the existing provisions without bringing them in line with the views expressed in the judgment would be invalid as being arbitrary and violative of Article 14 of the Constitution and therefore, of no consequence.

82. A perusal of the Statement of Objects and Reasons of the Maharashtra Rent Act shows that three different rent control laws were in operation in the State of Maharashtra. In the areas of erstwhile Bombay State, which is now included in the State of Maharashtra on re-organization of States, the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, was in operation. In the areas of Central Provinces and Berar, namely, the Vidarbha areas, which were formerly in the State of Madhya Pradesh and which are now included in the State of Maharashtra, the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1949, was in operation; and in the Marathwada areas which were formerly in the State of Hyderabad now included in the State of Maharashtra, the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, was in operation. The Bombay Rent Act was a temporary Act, the duration of which was extended from time to time. The Rent Control Laws, which were in operation in Vidarbha areas and the Marathwada areas were permanent laws. All these three laws had different provisions and the courts or authorities which had the jurisdiction to decide matters arising out of those laws were also not uniform. The procedures under all three laws were also different in many material aspects.

83. Many features of the rent control laws outlived their utility. The

task, therefore, of unifying, consolidating and amending the rent control laws in the State and to bring the rent control legislation in tune with the changed circumstances was engaging the attention of the Government. The Government had, therefore, initially appointed the Rent Act Enquiry Committee generally to study and examine and to make recommendations to Government with respect to unified legislation if considered desirable and feasible or otherwise to suggest modifications in the existing three rent control laws. The committee, had in its report, recommended that there should be one unified Act which should extend to the whole of the State and for that matter the Committee had also appended a draft legislation to its report. The State Law Commission which was functioning for some time had also examined the three rent control laws including the report submitted and the draft legislation prepared by the Rent Act Enquiry Committee. The State Law Commission has also attempted unification and revision of the rent control laws and in its Twelfth Report on the Unification of Rent Restriction Laws, it had recommended to enact a unified and consolidated rent Act for the entire State. The State Law Commission had also appended to its report a draft legislation.

84. In the meantime, the Central Government announced the National Housing policy which recommended inter alia to carry out suitable amendments to the existing rent control laws for creating and enabling involvement in housing activity and for guaranteeing access to shelter for the poor. The National Housing Policy further recognized the important role of rental housing in urban areas in different income groups and low-income households in particular who cannot afford ownership house. The existing rent control legislation had resulted in a freeze of rent, very low returns in investment and difficulty in resuming possession and has adversely affected investment in rental housing, and caused deterioration of the rental housing stock. A number of expert

bodies such as Economic Administration Reforms Commission and the National Commission on Urbanization recommended reform of the rent legislation in a way that balances the interests of both landlords and the tenants and also stimulates future construction. The National Housing Policy envisaged amendment of the State Rent Control Laws for bringing about uniformity in their application throughout the country. Having regard to all these aspects, the Central Government formulated a suitable model rent law incorporating the view outlined in the policy paper and in July 1992 had laid the same on the Table of both Houses of Parliament.

85. The Model Rent Control Legislation formulated by the Central Government inter alia envisaged provisions for eviction of tenant under limited or long term tenancy to enable resumption or possession by the landlord in stipulated circumstances, with summary procedure for certain vulnerable groups. The Maharashtra Rent Act was brought into force with effect from 31.03.2000 vide Government Notification No.MRA2000/CR-14/Bha.Ni.Ka dated 30.03.2000. Section 58 deals with repeal and saving. It reads thus,

“58. Repeal and saving.- (1) On the commencement of this Act, the following laws, that is to say,-

- (a) the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947;
- (b) the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 including the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949; and
- (c) the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954;

shall stand repealed.

(2) Notwithstanding such repeal -

- (a) all applications, suits and other proceedings under the said Acts, pending, on the date of commencement of this Act before any Court, Controller, Competent Authority or other

office or authority shall be continued and disposed of, in accordance with the provisions of the Acts so repealed, as if the said Acts had continued in force and this Act had not been passed;

(b) the provisions for appeal under the Acts so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder;

(c) any appointment, rule and notification made or issued under any of the repealed Acts and in force on the date of commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made or issued under this Act and shall continue in force until it is superseded or modified by any appointment, rule or notification made or issued under this Act;

(d) all prosecutions instituted under the provisions of any of the repealed Acts shall be effective and disposed of in accordance with the law.”

86. Learned Counsel for the tenants relied upon the decision of the learned Single Judge of this Court (Coram : G. H. Guttal, J.) in **Mohamed Ali Umar Musa**⁶, and the decision of the learned Single Judge (Coram : D. G. Karnik, J.) in **Munawar Khan Hussein Khan Vs. Somnath H. Holkar**¹⁶ and the decision of the Division Bench of this Court in Writ Petition No.1596 of 1987 decided on 14.06.2004. Mr. Khandeparkar relied upon the decision in **Brij Sunder Kapoor**¹. In the case of **Munawar Khan Hussein Khan**¹⁶, the learned Single Judge disagreed with the view taken in **Mohamed Ali Umar Musa's case**⁶ and referred the question to the larger Bench. After considering the decision in **Brij Sunder Kapoor's case**¹, the Division Bench held that after the Amendment Act 22 of 1972 deleting the words “on the date of the notification”, it is unnecessary to have fresh notification extending the Act with any retrospective effect to invoke the same. The submission that fresh notification is required for making the subsequent amendment in Bombay Rent Act applicable to the cantonment areas was rejected. The Division Bench held that the amendment to the Bombay Rent Act

made by the Legislature after it was made applicable to the cantonment areas in the State of Maharashtra by notification dated 27.12.1969 issued by the Central Government are applicable to the Cantonment areas.

87. On behalf of the tenants, it is contended that after repeal of the Bombay Rent Act, the notification dated 27.12.1969 has lapsed. In view of Section 58 of the Maharashtra Rent Act, the proceedings instituted under the Bombay Rent Act, which were / are pending at the enforcement of the Maharashtra Rent Act will be governed by the notification dated 27.12.1969. After repealment of the Bombay Rent Act and enforcement of the Maharashtra Rent Act, as no notification is issued under Section 3 of the 1957 Act, in respect of the premises situate in cantonment areas, the provisions of the Maharashtra Rent Act will not be applicable. In order to make the provisions of the Maharashtra Rent Act applicable, the Central Government has to issue fresh notification under Section 3 of the 1957 Act. On the other hand, on behalf of the landlords, it is contended that notwithstanding repeal of the Bombay Rent Act, the notification dated 27.12.1969 is not lapsed and continues to be in force so as to make the provisions of the Maharashtra Rent Act applicable to the cantonment areas.

88. Section 3(1) of the 1957 Act, as originally stood, laid down that the Central Government may, by notification in the Official Gazette, extend to any cantonment with such restrictions and modifications as it thinks fit, any enactment relating to the control of rent and regulation of house accommodation, which is in force on the date of the notification in the State in which the cantonment is situated. By Amendment Act 22 of 1972, the words “on the date of the notification” were deleted. After amendment, Section 3(1) lays down that the Central Government may, by notification in the Official Gazette, extend to any cantonment with

such restrictions and modifications as it thinks fit, any enactment relating to the control of rent and regulation of house accommodation, which is in force in the State in which the cantonment is situated.

89. Now, reverting to the controversy at hands, the defendants / tenants contend that notification dated 27.12.1969 is not saved and has outlived after repeal of the Bombay Rent Act. After repeal of the Bombay Rent Act and enforcement of the Maharashtra Rent Act, the Central Government ought to have issued notification under Section 3 of the 1957 Act. Section 8 of the G.C. Act or Section 9 of M.G.C. Act is not applicable. It is also contended that notification dated 27.12.1969 was in respect of Bombay Rent Act and not in respect of area, namely, in the instant case, Cantonment area. Section 9 of M.G.C. Act relates to repeal of the State Act by the subsequent Act. Section 9, therefore, cannot be relied to save notification issued under the Central Act as Maharashtra Rent Act is not a Central Act. Section 8 of G.C. Act is inapplicable. The notification dated 27.12.1969 applies to pending cases under Bombay Rent Act and in view of Section 58(2) of the Maharashtra Rent Act, Section 25 of M.G.C. Act is also not applicable. Section 2(2) of the Maharashtra Rent Act overrides Section 2(1) and not the remaining provisions.

90. On the other hand, plaintiffs-landlords contend that intention of the Parliament in enacting the 1957 Act shows that Section 3 of the 1957 Act empowers the Central Government to extend any enactment relating to control of rent and regulation of housing accommodation which is in force in that State to any Cantonment area in that State. By deleting the words “on the date of notification” from Section 3 of the 1957 Act, the Parliament made it abundantly clear that the power of the Central Government is not restricted to extend only a particular Act that existed

on the date of the notification but any law relating to rent and regulation of accommodation to the Cantonment where it is situate. Mentioning of a particular enactment in the notification is inconsequential. It is further contended that in view of Section 20 of the G.C.Act, notification dated 27.12.1969 is applicable to Maharashtra Rent Act. Section 3 of the 1957 Act uses the expression “enactment relating to the control of rent and regulation of house accommodation”. Thus, what is contemplated is applicability of the rent legislation of the State to the Cantonment area situate in that State. Section 8 of the G.C. Act or Section 9 of the M.G.C. Act is applicable in the present case.

91. Before proceeding further, it is necessary to note down the admitted position:

- (i) Entry 3 in List-I Union List in the Seventh Schedule confers exclusive power on the Parliament to legislate in respect of regulation of house accommodation (including the control of rents) in Cantonment areas.
- (ii) The Parliament has not passed any legislation regulating house accommodation (including the control of rents) in State of Maharashtra.
- (iii) In view of Entry 3 of List-I Union List, the 1957 Act was enacted.
- (iv) Section 3 of the 1957 Act empowers the Central Government to extend to any cantonment any enactment relating to control of rent and regulation of house accommodation which is in force on the date of the Notification in the State in which the cantonment is situate.
- (v) On 29.04.1969, the Apex Court decided **Indu Bhusan Bose's Case**⁸ and held that Parliament alone has power to make laws with respect to rent control in cantonment areas.

(vi) On 27.12.1969, Ministry of Defence issued notification under Section 3 of the 1957 Act extending to the cantonments in the State of Maharashtra except the cantonments of Aurangabad and Kamptee, the Bombay Rent Act as in force on the date of the notification in the State of Maharashtra in which the cantonments are situate subject to the modifications stated therein.

(vii) Notification dated 27.12.1969 is neither revoked nor superseded by the Central Government.

(viii) On 02.06.1972, by Amendment Act 22 of 1972, the words “on the date of notification” were deleted and deemed always to have been so deleted.

(ix) After the repealment of the Bombay Rent Act and enforcement of the Maharashtra Rent Act, no notification under Section 3 is issued.

92. As mentioned earlier, prior to enforcement of Maharashtra Rent Act, 3 different Rent Control Laws were in operation in the State of Maharashtra. In the areas of erstwhile Bombay State, which is now included in the State of Maharashtra on re-organization of States, the Bombay Rent Act, was in operation. In the areas of Central Provinces and Berar, namely, the Vidarbha areas, which were formerly in the State of Madhya Pradesh and which are now included in the State of Maharashtra, the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1949, was in force and in the Marathwada areas which were formerly in the State of Hyderabad now included in the State of Maharashtra, the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, was in operation.

93. Section 3(6) of the M.G.C. Act defines the expression “Bombay area of the State of Maharashtra” to mean the area of the State of Maharashtra excluding the Vidarbha region, and the Hyderabad area, of that State. Section 2(23) defines the expression “Hyderabad area of the State of Bombay” shall mean the territories transferred to the new State of Bombay under clause (b) of sub-section (1) of section 8 of the States Reorganization Act, 1956 [and after the 1st day of May 1960, the said territories which form part of the State of Maharashtra shall be known as the Hyderabad area of the State of Maharashtra. Section 2(48A) defines the expression “Vidarbha region, or Madhya Pradesh area or, Vidarbha area of the State of Bombay” shall mean the territories transferred to the new State of Bombay under clause (c) of sub-section (1) of section 8 of the States Reorganization Act, 1956 and after the 1st day of May 1960, the said territories which form part of the State of Maharashtra shall be known as the Vidarbha region, or Madhya Pradesh area, or Vidarbha area, or the State of Maharashtra.

94. The Maharashtra Rent Act is enacted with a view to unifying, consolidating and amending the law relating to control of rent and repairs to certain premises and of eviction and for encouraging the construction of new houses by assuring a fair return on the investment by landlords and to provide for the matters connected with the purposes stated therein. A perusal of Section 58 of the Maharashtra Rent Act shows that on the commencement of the Maharashtra Rent Act, the Bombay Rent Act, the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 including the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 and the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 stood repealed. After repealment of these Acts and enforcement of the Maharashtra Rent Act with effect from 31.03.2000, the provisions of the

Maharashtra Rent Act are applicable throughout the State of Maharashtra.

95. It is not in dispute that in so far as the State of Maharashtra is concerned, the Parliament did not enact any law under Entry No.3, List I - Union List in the Seventh Schedule dealing with the regulation of house accommodation including the control of rents in cantonment areas. To protect the tenants from improper evictions, the Central Legislation thought it necessary to provide for application of the State Rent Act. It was, therefore, proposed to confer powers on the Central Government to extend relevant rent control laws to any State to Cantonment situate in that State by notification in the Gazette of India. With that view in mind, the Parliament enacted 1957 Act. Section 3, as it originally stood, laid down that the Central Government may, by notification in the Official Gazette, **extend to any cantonment with such restrictions and modifications as it thinks fit, any enactment relating to the control of rent and regulation of house accommodation, which is in force on the date of the notification in the State in which the cantonment is situated.**

96. In paragraph 20 of **Ramesh Birch**², the Apex Court considered the submissions of the petitioner that since the reasonings of the learned Judges in **Delhi Laws Act case**¹⁴ are so different, no assistance can be derived and the said case should be ignored. The Apex Court did not accept that submission. It was observed thus,

“... One may doubt the wisdom of attempting to trace a common ratio decidendi from such divergent views but it seems equally illogical to altogether ignore a clear conclusion arrived at by the majority of judges only because they arrived at that conclusion by different processes of reasoning. One would rather have thought that a conclusion stands more fortified when it can be supported not on one but on several lines of reasoning. At least for an identical prob- lem,

the final answer, we think, should be the same. This should particularly be so when we remind ourselves that the Delhi Laws Act case arose because, soon after India became a Republic, the Government, envisaging the necessity of having recourse to legislation of this type in the context of the changing topography of India, took the precaution of seeking the advice of the Supreme Court for its future guidance and that they have acted upon the answers propounded by the Supreme Court in enacting a provision of this type. In this situation we find ourselves unable to accept the contention that, after a lapse of thirty-eight years, we should declare that the Delhi Laws Act case decided nothing or, as counsel euphemistically put it, that it should be confined to its own facts.”

The effect of the decision of **Indu Bushan's case**⁸ was that the State Law with respect to rent control did not apply to the cantonment situate within the State. To remove this difficulty, the Central Government extended the relevant rent control laws under Section 3 of the 1957 Act. All these notifications could be issued only prospectively and could not save the decrees already passed. A number of representations were received from tenants and tenants' association ventilating their grievances in this regard. It was accordingly proposed to amend Section 3 of the 1957 Act to empower the Central Government to extend to any cantonment any enactment relating to control of rent and regulation of house accommodation in force in State in which the cantonment is situated either from the commencement of such enactment or from 26.01.1950, the date when the Constitution came into force, whichever is later and to save the decrees already passed under the enactment deemed to be in force in the cantonment. By Amendment Act 22 of 1972, the 1957 Act was amended. Section 3 of the 1957 Act was renumbered as sub-section (1) thereof and in re-numbered sub-section (1), the words “on the date of the notification” shall and shall be deemed always to have been omitted. In **Delhi Laws Act Case**¹⁴, S. Murtaza Fazal Ali, J. held that what the Central Government has been

empowered to do under the impugned legislations was not to enact "new laws" but only "to transplant" to the territory concerned laws operative in other parts of the country. A comparison of the provisions of Section 7 of the Delhi Laws Act, 1912, Ajmer-Merwara (Extension of Laws) Act, 1947 and Section 2 of the Part C States (Laws) Act, 1950 with unamended Section 3 of the 1957 Act shows that these provisions are almost *pari materia*.

97. It is not in dispute that Ministry of Defence issued notification dated 27.12.1969, in exercise of the powers conferred by Section 3 of the 1957 Act, extending to the Cantonments in the State of Maharashtra except the Cantonments of Aurangabad and Kamptee, the Bombay Rent Act as in force on the date of the notification in the State of Maharashtra in which the Cantonments are situate with the modifications. So far as present controversy is concerned, in Section 2 of the Bombay Rent Act, following Section was substituted, namely, 2(1) - It extends to the cantonments of Ahmednagar, Dehu Road, Deolali, Kirkee and Poona. In the State of Maharashtra, there are as many as 7 cantonments, namely,-

- (i) Pune Cantonments;
- (ii) Kirkee Cantonments;
- (iii) Ahmednagar Cantonments;
- (iv) Deolali Cantonments;
- (v) Kamptee Cantonments;
- (vi) Aurangabad Cantonments; and
- (vii) Dehu Road Cantonments.

98. It is material to note that prior to that State Re-organization Act, 1956, Aurangabad was included in the State of Hyderabad and was regulated by the provisions of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954. In so far as Kamptee is concerned, it is in Vidarbha region, and therefore, eviction proceedings were regulated by the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 including the Central Provinces and Berar

Letting of Houses and Rent Control Order, 1949. After repealment of all these Acts, the Maharashtra Rent Act is now applicable in the entire State of Maharashtra. The question is, therefore, whether the notification dated 27.12.1969 issued under Section 3 of the 1957 Act is saved and continues to be in force so as to make provisions of Maharashtra Rent Act applicable to the cantonment areas situate in the State of Maharashtra. In order to deal with this controversy, reference to Section 9 of the M.G.C. Act is necessary. Section 9 reads thus,

“9. Construction of references to repealed enactments.

Where this Act, or any Bombay Act or Maharashtra Act made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as reference to the provision so re-enacted.”

99. A perusal of Section 9, extracted hereinabove, shows that where any Bombay Act made after commencement of the M.G.C. Act is repealed and re-enacted, with or without modification **then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as reference to the provision so re-enacted.**

100. Now, whether notification dated 27.12.1969 can be construed as an instrument. In order to consider this submission, it is necessary to refer to the decision of the Apex Court in **Sree Mohan Chowdhury's case**¹². In that case, the President issued proclamation on 26.10.1962 declaring emergency under Article 352 of the Constitution. On the same day, after the proclamation of emergency, as the Parliament was not in session and as the President was satisfied that circumstances existed which rendered it necessary for him to take immediate action for exercise of powers conferred by clause (i) of Article 123 of the

Constitution, he promulgated the Defence of India Ordinance (IV of 1962). On 03.11.1962, President issued order suspending the right to move any Court for the enforcement of rights conferred by Articles 21 and 22 of the Constitution. In exercise of the powers conferred by Section 3 of the Ordinance, the Central Government promulgated Defence of India Rules, 1962, by notification in the Official Gazette, Extraordinary dated 05.11.1962. On 08.11.1962, the declaration of emergency dated 26.10.1962 was laid before both the Houses of Parliament. On 13.11.1962, it was approved by the Rajya Sabha and by the Lok Sabha on 14.11.1962. On 20.11.1962, the Chief Commissioner of Tripura issued an order of detention in respect of the petitioner directing the petitioner to be detained in the Central Jail at Agartala, until further orders. By subsequent order dated 03.12.1962 of the Chief Commissioner, Tripura, the petitioner was transferred from Agartala Central Jail to Hazaribagh Central Jail. On 12.12.1962, the Defence of India Act, 1962 came into force. By application of Section 48 of that Act, the Ordinances were repealed.

101. The petitioner instituted Petition under Article 32 of the Constitution for a Writ of Habeas Corpus against his detention. It is not necessary to refer to the preliminary objection raised on behalf of the respondent and the finding recorded thereon. On behalf of the petitioner, contention was advanced on the basis of Section 48(2) of the Defence of India Act (51 of 1962). It was contended that the detention order passed against the petitioner will be deemed to have been made under the Defence of India Act, 1962, and that therefore, the President's order dated 03.11.1962, which had reference to the detention order passed against the petitioner under the Defence of India Ordinance and the Rules thereunder, was wholly inoperative. The Apex Court referred to Section 8 of the G.C.Act and posed question in paragraph 9 of the report, namely, are the provisions set out above, namely, Section 8(1) of

the G.C. Act are applicable for construction of order dated 03.11.1962 passed by the President suspending the petitioner's right to move the Court? In paragraph 10, the question whether the President's order is an **instrument** within the meaning of Section 8(1) of the G.C. Act was considered. It was noted that the G.C. Act does not define the expression "instrument". The expression must be taken to have been used in the sense in which it is generally understood in legal parlance. After extracting the description of the expression "instrument", it was observed thus,

The expression is also used to signify a deed inter-partes or a charter or a record or other writing of a formal nature. But in the context of the General Clauses Act, it has to be understood as including reference to a formal legal writing like an Order made under a statute or subordinate legislation or any document of a formal character made under constitutional or statutory authority. We have no doubt in our mind that the expression "instrument" in s.8 was meant to include reference to the Order made by the President in exercise of his constitutional powers. So construed the President's Order would, even after the repeal of the Ordinance aforesaid continue to govern cases of detention made under Rule 30 aforesaid under the Ordinances. It must therefore, be held that there is no substance in the contention that the petitioner's detention originally made under the rule under the Ordinance would not be deemed to have continued under the Act (51 of 1962). Equally clearly, there is no substance in the contention that the same Order should have been repeated by the President after the enactment of the Act. It would have been a sheer act of supererogation and the legal fiction laid down in Section 8 is meant to avoid such unnecessary duplication of the use of the constitutional machinery. A proper construction of the provisions of Section 48 of the Act, which has replaced the Ordinances aforesaid, read in the light of the provisions of Section 8 of the General Clauses Act leaves no room for doubt that the detention order passed against the petitioner was intended to be continued even after the repeal of the Ordinances which were incorporated in the Act (51 of 1962). That being so, the Order of the President must have the effect of suspending the petitioner's right to move this Court for a writ of habeas corpus under Article 32 of the Constitution. After the petitioner had been deprived, for the time being, of his right to move this Court, it is manifest that he cannot raise

any questions as regards the vires of the Ordinances or of the Rules and Orders made thereunder. In the result, the application is held to be not maintainable, and, is therefore, dismissed.”

102. In the case of **State of Orissa**¹³, the decision in **Sree Mohan Chowdhury's case**¹² was referred in paragraph 24. In paragraph 25, the definition of the word “instrument” from P. Ramanatha Aiyar, Law Lexicon, 2nd Edn. (Wadhwa & Co., 1997) at p.957 was extracted.

103. In the light of the aforesaid discussion, notification dated 27.12.1969 will have to be held as an 'instrument'. As a corollary, Section 9 of the M.G.C. Act is clearly applicable. The reference made in any other enactment or in any other instrument (in the present case, the notification dated 27.12.1969) to the provisions so repealed (in the present case Bombay Rent Act), shall, unless a different intention appears, have to be construed as reference to the provisions so re-enacted (in the present case, Maharashtra Rent Act).

104. It is also necessary, at this stage, to emphasis that power to make laws with respect to rent control in cantonment areas belongs exclusively to Parliament. In so far as State of Maharashtra is concerned, it is not in dispute and is rather a matter of record that no rent control law governing the landlord and tenant relationship was and is in existence in cantonment area. Taking advantage of this situation, a large number of eviction cases were filed by the landlords. To protect the tenants from improper evictions, the Central Legislature, therefore, proposed to confer powers on the Central Government to extend the relevant relevant Rent Control Laws of any State to the Cantonments situate in that State by notification in the Gazette of India. The Parliament, therefore, enacted the 1957 Act, which received the assent of the President on 18.12.1957 and was published on 19.12.1957.

105. By deleting the words 'on the date of the notification', Section 3, as amended by Amendment Act 22 of 1972 empowers the Central Government, by a notification in the Official Gazette **to extend, with such restrictions and modifications as it thinks fit, any enactment, relating to control of rent and regulation of house accommodation, which is in force in the State in which the Cantonment is situate.** It is, therefore, evident that the Central Government has power to extend any enactment relating to control of rent and regulation of house accommodation, which is in force in the State in which the Cantonment is situate to that enactment. It is not in dispute that when the notification dated 27.12.1969 was issued, in the areas of erstwhile Bombay State, which is now included in the State of Maharashtra on re-organization of States, Bombay Rent Act was in operation. The Bombay Rent Act was extended to the Cantonments in the State of Maharashtra except the cantonments of Aurangabad and Kamptee, as in force on the date of the notification in the State of Maharashtra in which the cantonments are situate. By notification dated 27.12.1969, Section 2 of the Bombay Rent Act was substituted thereby extending the application of the Bombay Rent Act to the Cantonments of Ahmednagar, Dehu Road, Deolali, Kirkee and Poona. In the areas of erstwhile Bombay State, city of Aurangabad and Kamptee were not included and were included respectively in the State of Hyderabad and Vidarbha Region, namely, the Vidarbha areas, which were formerly in the State of Madhya Pradesh.

106. The Statement of Objects and Reasons of the Maharashtra Rent Act also shows that 3 different Rent Control Laws were in operation in the State of Maharashtra. The Maharashtra Rent Act is enacted with a view to unifying, consolidating and amending the law relating to control of rent and repairs to certain premises and of eviction and for encouraging the construction of new houses by assuring a fair return on the investment by landlords and to provide for the matters connected

with the purposes stated therein. Thus, after repealment of the Bombay Rent Act, the Maharashtra Rent Act is enacted. In view thereof, the provisions of the Maharashtra Rent Act would be applicable to the Cantonment areas situate in the State of Maharashtra. If the contention of the defendants / tenants is accepted, it will defeat the very purpose of enacting the 1957 Act, Amendment Act 22 of 1972 as also the Maharashtra Rent Act. In the absence of any Rent Legislation in the Cantonment areas, landlords will exploit the situation by instituting eviction proceedings against the tenants, who will be without the protection afforded under the Rent Legislation. In that event, the landlords can evict the tenants by simply issuing valid notice under Section 106 of the Transfer of Property Act, 1882 without making out any ground for eviction under Sections 15 and 16 of the Maharashtra Rent Act. As mentioned earlier, there was and is no rent control legislation governing the landlord-tenant relationship, applicable in the Cantonment areas, enacted by the Central Government. The Bombay Rent Act is repealed. If the contention of the defendants-tenants is accepted, even in that case, the Maharashtra Rent Act will not be applicable to the Cantonment areas. That apart, the Cantonment areas in the State of Maharashtra will be regulated by the provisions of the Transfer of Property Act, 1882 and the rest of the areas will be regulated by the Maharashtra Rent Act. This will also give rise to vice of discrimination under Article 14 of the Constitution.

107. In the light of the aforesaid discussion, in my opinion, the notification dated 27.12.1969 is saved and has not outlived after repealment of the Bombay Rent Act and enforcement of the Maharashtra Rent Act. It will get over the vice of discrimination between the same class of landlords and tenants in the State of Maharashtra. In view thereof, I do not find any merit in the submission of Mr. Kulkarni and Mr. Khandeparkar that Section 9 of the M.G.C. Act is not applicable in

the present case, and that, the Central Government ought to have issued notification under Section 3 of the 1957 Act. Equally, I do not find any merit in the submission that the notification dated 27.12.1969 was in respect of the Bombay Rent Act and not in respect of area, namely, in the instant case, Cantonment area. As held by Justice S. Murtaza Fazal Ali in **Delhi Laws Act case**¹⁴, in the present case, the Central Government has not enacted new law regulating on the subject of relationship between landlord and tenant in so far as it arises in respect of house accommodation situate in cantonment areas but transplanted the rent control legislation applicable to the cantonment areas in the State of Maharashtra.

108. Mr. Pungaliya relied upon the decision in **Lekh Raj's case**⁵. In that case, in exercise of powers conferred by Entry 3 of List I of the Seventh Schedule, the Parliament enacted U.P. Cantonments (Control of Rent and Eviction) Act, 1952 (1952 Act). In the non-cantonment areas, U.P. (Temporary) Control of Rent and Eviction Act, 1947 (1947 Act) was in force. The Parliament enacted 1957 Act. By Amendment Act 22 of 1972, the words "on the date of notification" in Section 3 of the 1957 Act were omitted. Thus, 1952 Act was the enactment dealing with regulation of letting, rent and eviction of houses situate within the various cantonments in the State of Uttar Pradesh, and in the areas outside, 1947 Act was applicable. In order to have uniform legislation dealing with letting, rent and eviction of house accommodation in the whole of Uttar Pradesh subject to such modifications as may be considered necessary, the Parliament enacted U.P. Cantonments (Control of Rent and Eviction) (Repeal) Act, 1971 (1971 Act). The purpose of the said Act was "to provide for the repeal of the Uttar Pradesh Cantonments (Control of Rent and Eviction) Act 1952." Section 2 of the 1971 Act provides that on and from the date on which the United Provinces (Temporary) Control of Rent and Eviction Act 1947 is extended by

notification under Section 3 of the Cantonments (Extension of Rent Control Laws) Act 1957, to the cantonments in the State of Uttar Pradesh, the Uttar Pradesh Cantonments (Control of Rent and Eviction) Act, 1952 shall stand repealed. The enactment of 1971 Act was necessary in as much as unless 1952 Act was repealed, the provisions of 1947 Act could not be extended to the Cantonments in the State of Uttar Pradesh by issuing a notification under Section 3 of the 1957 Act. Under Section 3 of the 1957 Act, a notification dated 03.04.1972 extending the provisions of the 1947 Act as in force on the date of that notification to the cantonments in the State of Uttar Pradesh with certain modifications, was issued. 1947 Act, in its turn, was repealed by 1972 Act which came into force on 15.07.1972. The Central Government thereupon issued another notification dated 01.09.1973, which was published in the Gazette of India dated 29.09.1973 whereby the earlier notification dated 03.04.1972 was superseded and the provisions of the 1972 Act as in force on the date of that notification were extended to the cantonments in the State of U.P. with certain modifications mentioned therein.

109. Mr. Pungliya relied upon paragraph 7 and 10 of this decision to contend that after repealment of Bombay Rent Act and enforcement of Maharashtra Rent Act, the Central Government ought to have issued fresh notification making the provisions of the Maharashtra Rent Act applicable to the Pune Cantonment area. In that case, by a notification dated 01.09.1973, earlier notification dated 03.04.1972 was superceded. In my opinion, the said decision is not applicable in the facts of the present case. As mentioned earlier, it is an admitted position that notification dated 27.12.1969 is neither revoked nor superseded by the Central Government. Mr.Pungliya relied upon paragraphs 16 and 17 of **Nawal Mal's case**⁷. In that case, the questions which fell for consideration before the Rajasthan High Court were as follows:

“(1) Whether Section 2(i) of the Rajasthan Premises (Control

of Rent and Eviction) Act, 1950 (Act No. XVII of 1950) as amended by the Amending and Extending Act, 1957 (Act No. 34 of 1957) in so far as it applies to the Cantonment Area of Nasirabad and Section 2(2) of the said Act which brings into force at once Sections 1 to 4 and 27 to 31 of that Act and authorises the State of Rajasthan to extend the remaining provisions to such areas in that State and from such date as may from time to time be notified by the State Government in the official Gazette in so far as it affects the Cantonment area of Nasirabad is beyond the legislative competence of the Rajasthan State Legislature for the reason that the subject-matter covered by the said Rajasthan Act is within the exclusive competence of the Union Parliament by virtue of Article 246 read with entry 3 in list 1 of the 7th schedule of the Constitution of India so far as Cantonment Area of Nasirabad is concerned?

(2) Whether the provisions contained in Section 2(1) and (2) of the said Rajasthan Act in so far as they apply or affect the cantonment area of Nasirabad are repugnant to the provisions contained in Section 3 of the Cantonment (Extension of Rent Control Laws) Act, 1957 (Act No. 46 of 1957) of the Union Parliament and void under Article 254 of the Constitution of India?”

110. In my opinion, the said decision is also not applicable in the facts of the present case as it is undisputed position that power to make laws with respect to rent control in Cantonment areas belongs exclusively to Parliament in view of Entry 3 of List-I-Union List in the Seventh Schedule as also in view of the decision of the Apex Court in **Indu Bhusan's case**⁸. It is precisely for that reason, the Parliament enacted 1957 Act and under Section 3 of the 1957 Act, Central Government is empowered to extend to any cantonment, any enactment relating to control of rent and house accommodation with such restrictions and modifications, as it thinks fit. The Rajasthan High Court answered question No.1 in the following terms:

“(17) (1) Section 2(1) and (2) of the Rajasthan Premises (Control of Rent and Eviction) Act 1950, as amended by the Rajasthan Premises (Control of Rent and Eviction) Amending and Extending Act, 1957 (Act No. 34 of 1957), in so far as

they apply to the cantonment area of Nasirabad, are beyond the legislative competence of the legislature of this State inasmuch as the control of rent within cantonment areas is within the exclusive competence of the Union Parliament by virtue of Entry 3 in List I of the seventh schedule, read with Article 246 of the Constitution. We may also add that the notification No. F 7 (i)H(D)/57 dated the 27th November, 1957, by which Ss. 5 to 26 of the Act of 1950 were made applicable to the cantonment area of Nasirabad, was beyond the competence of the State Government, and is, therefore, of no legal effect.”

111. Mr. Satyavrat Joshi submitted that Entry No.1 in Part IV of the Schedule of the Maharashtra Rent Act is ultra vires the Constitution. The said provision is a colourable exercise of the legislative power in relation to List I - Union List in the Seventh Schedule of the Constitution. In my opinion, the submission is misconceived. By order dated 26.02.2015, prayer clauses (a) and (b) of Writ Petition No.2093 of 2015 were deleted. The Petition is now confined to prayer clauses (c), (d) and (e), which read thus,

“c) This Hon'ble Court may be pleased to quash and set aside the impugned Order dated 26.11.2014 passed below Exh.49 in Civil Suit No.425 of 2011, which is pending on the file of Ld. Judge, Small Causes Court, Pune;

d) This Hon'ble Court may be pleased to direct the Small Causes Court, Pune to return the plaint for want of jurisdiction in connection with Civil Suit No.425 of 2011 pending on the file of Ld. Judge, Small Causes Court, Pune;

e) This Hon'ble Court in the alternative to prayer clause (d) may be pleased to direct that the Hon'ble Small Causes Court to frame an issue as regards the jurisdiction in connection with the Civil Suit No.425 of 2011 pending on the file of Ld. Judge, Small Causes Court, Pune;”

112. A perusal of prayer clauses, extracted hereinabove, shows that the challenge in the Petition is restricted to the order dated 26.11.2014 passed by the learned trial Judge below exhibit-49 in Civil Suit No.425 of 2011. It is, therefore, not open to the petitioners-tenants to raise these contentions.

113. It is also necessary to deal with the decision in **Vasu Dev Singh**¹¹ relied by Mr. Gorwadkar, and in particular paragraphs 16 and 17, where the distinction between conditional legislation and delegated legislation is explained. It is unnecessary to go into this question in view of the decision of the Apex Court in **Lachmi Narain Vs. Union of India**¹⁷. In paragraphs 49 and 50, it was observed thus,

“49. Before proceeding further, it will be proper to say a few words in regard to the argument that the power conferred by Section 2 of the Laws Act is a power of conditional legislation and not a power of delegated legislation. In our opinion, no useful purpose will be served to pursue this line of argument because the distinction propounded between the two categories of legislative powers makes no difference, in principle. In either case, the person to whom the power is entrusted can do nothing beyond the limits which circumscribe the power; he has to act-to use the words of Lord Selborne-"within the general scope of the affirmative words which give the power" and without violating any "express conditions or restrictions by which that power is limited". There is no magic in a name. Whether you call it the power of "conditional legislation" as Privy Council called it in *Burah's case* (supra) or 'ancillary legislation' as the Federal Court termed it in *Choitram v. Commissioner of Income-tax, Bihar* or 'subsidiary legislation' as *Kania C.J.* styled, it or whether you camouflage it under the veiling name of 'administrative or quasi-legislative power'-as Professor Cushman and other authorities have done it-necessary for bringing into operation and effect an enactment, the fact remains that it has a content, howsoever small and restricted of the law making power itself. There is ample authority in support of the proposition that the power to extend and carry into operation an enactment with necessary modifications and adaptations is in truth and reality in the nature of a power of delegated legislation. In *Re: Delhi Laws Act* (supra) *S.R. Das J.* said that on strict analysis it was "nothing but a delegation of a fractional legislative power". *Anglin J.* in *Grays case* regarded this what is called conditional legislation' as "a very common instance of limited delegation. More or less to the same effect is the view taken by *Evatt J.* of Australia in *Dignams case*. Prof. Kennedy (vide his treatise 'Constitution of Canada', 2nd Edn. p. 463), is also of opinion that 'conditional legislation' is "a form of delegation".

50. We do not want to multiply authorities nor wish to carry

this academic discussion to a final conclusion because it is not necessary for solution of the problem in hand.”

114. In view thereof, the reliance placed by the tenants / defendants on the decision of-

- (a) **Ramesh Birch²**,
- (b) **Indu Bhusan Bose⁸**,
- (c) **Munawar Khan Hussein Khan¹⁶ (Single Judge)**,
- (d) **Brij Sunder Kapoor¹**,
- (e) **Lekh Raj⁵**,
- (f) **Nawal Mal⁷** does not advance their case.

115. As against this, the reliance placed by the plaintiffs / landlords on the decision of-

- (a) **Mohammad Ali Umar Musa⁶**,
- (b) **Munawar Khan Hussein³ (Division Bench)**,
- (c) **Harkesh Chand⁹**,
- (d) **Rama Balu @ Balayya Yadav⁴**,
- (e) **Sree Mohan Chowdhury¹²**,
- (f) **State of Orissa¹³** is well founded.

116. In the light of the discussion, I pass the following order:

- (i) Notification dated 27.12.1969 issued by the Ministry of Defence under Section 3 of the 1957 Act has not lapsed and / or outlived after repealment of the Bombay Rent Act. The notification dated 27.12.1969 continues to hold the field that makes the provisions of Maharashtra Rent Act applicable to the cantonment areas in the State of Maharashtra;
- (ii) After repealment of Bombay Rent Act and enforcement of Maharashtra Rent Act, it is not necessary to issue fresh notification under Section 3 of the 1957 Act;
- (iii) The Small Causes Court, Pune has jurisdiction to entertain and try the Suits between landlords and tenants in respect of the premises situate in Pune Cantonment area.

117. In the light of the aforesaid discussion, C.R.A.No.249 of 2018, C.R.A.No.352 of 2015 and Writ Petition No.765 of 2018 are dismissed with no order as to costs. Let the copy of this order be kept in W.P. No.10221 of 2016, C.R.A.No.552 of 2017, C.R.A.No.542 of 2017, W.P.No.1579 of 2015, W.P.No.12254 of 2017, W.P.No.8268 of 2016, W.P.No.2093 of 2015, W.P.No.8177 of 2017, C.R.A.(St.)No.9541 of 2018, C.R.A.No.1152 of 2014, C.R.A.No.817 of 2014, C.R.A.No.863 of 2014, C.R.A.No.868 of 2014, C.R.A.No.869 of 2014, C.R.A.No.870 of 2014 and W.P.No.5435 of 2015.

118. At this stage, Mr. Deosthale appearing for the applicant in C.R.A. No.249/2018 orally applies for continuation of the arrangement recorded in the order dated 8.6.2018 which was continued from time to time. The learned Counsel for the respondent opposes this oral application. The arrangement was made as the hearing was not completed and the order was reserved. As now the order is pronounced, I do not find that the oral request made by Mr. Deosthale is reasonable. Hence, oral application for continuation of the interim arrangement is rejected.

(R. G. KETKAR, J.)