

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No. 7171 /2010**

ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 34125 OF 2009

Banatwala & Company

...Appellants

Versus

L.I.C of India & Anr.

...Respondents

**JUDGEMENT**

**H.L. Gokhale J.**

This appeal, by Special leave raises a question as to whether the provisions for fixation of standard rent, and provisions prescribing other obligations for the landlord such as maintenance of essential services under the concerned Rent Control Act viz. Maharashtra Rent Control Act, 1999 as in the present case (hereinafter referred to as the MRC Act), are applicable in respect of public premises owned by a corporation such as the first respondent Life Insurance Corporation of India (L.I.C in short) which is otherwise covered by the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the Public Premises Act).

**Short facts leading to this appeal are as follows -**

2. The appellant is a firm of Advocates and Solicitors, and is a tenant in possession of 5<sup>th</sup> floor of a seven storey building, situated at 269 D.N. Road, Fort Mumbai owned by the first Respondent, L.I.C. L.I.C. is a statutory corporation constituted under the Life Insurance Corporation Act, 1956. The area under occupation of the appellant is 1289.16 sq. feet (equivalent to 113 sq. metres). The petitioner is a tenant of these premises since 1<sup>st</sup> August, 1988 under an agreement of lease which has been extended from time to time. It is relevant to note that there are no proceedings of eviction filed by the respondent No. 1 against the appellant. The second respondent is the Regional Manager (estates) of L.I.C.
3. The respondent No. 2 revised the monthly rent of these premises suddenly by his letter of 14<sup>th</sup> July, 2004 from Rs. 6,891/- to Rs. 39,069/-, including Municipal taxes and miscellaneous charges. The appellant filed a Writ Petition in the Bombay High Court being Writ Petition No. 2266 of 2004 to challenge the increasing of rent as arbitrary. The respondents made a statement in the High Court that if the petitioner abides by clause IV (e) of the lease agreement between the parties and pays increased rent as provided therein, the respondents will not enforce the increase in the rent that was proposed through letter dated 14.7.2001. Thereupon the writ petition was withdrawn. Subsequently, the respondents sent a reduced bill of Rs. 9144/- per month which included basic rent of Rs. 6181/- plus municipal taxes

and water charges of Rs. 355/- and misc. charges of Rs. 100/-. We place the above clause IV (e) on record. It reads as follows:-

*"(e) The Lessor doth hereby covenant with the Lessee that upon the Lessee paying the rent hereby reserved regularly and observing and performing all the covenants and conditions herein contained, the Lessor shall on Lessee's request extend the period of the lease on the same terms and conditions not exceeding five years from the expiration of the terms hereby granted subject however that there will be an escalation/increase in the rent hereby reserved by 35% of the rate mentioned hereinabove."*

4. It so transpired that the lift of the building (wherein these premises are situated) was not working properly, and hence, sometime in 2007, the appellant, alongwith two other tenants, filed an application bearing R.E.S. Application No.48/Res of 2007 in the Small Causes Court, Mumbai for restoration of the lift services under Section 29 of the MRC Act. A Single Judge of that Court who heard an Interim application therein, directed the respondents by his order dated 3.10.2007 to repair the lift. A revision petition bearing Revision Application No.308/2007 was filed by the respondents to challenge that order. The submission of the respondents, that the MRC Act was not applicable, was turned down by a Division Bench of that Court, which dismissed that petition by its order dated 11.1.2008. In the meanwhile, in April, 2007 the respondents further decreased the rent from Rs. 9144/- to Rs. 6891/- per month.

5. The monthly rent for the premises, however continued to be uncertain. The respondents increased the rent for the premises once again in March, 2008 to

Rs. 8689/-. In April, 2008 they demanded rent of Rs. 25,063/- on the basis that the rateable value of the building had been raised by the Mumbai Municipal Corporation from the month of April, 2006 onwards from Rs. 17,895/- to Rs. 1,21,805/-. The appellant was called upon to pay the arrears of rent also from April 2006 amounting to Rs. 8,89,503/-.

6. The appellant therefore asked for the break up of the rent bill by their letter dated 2.4.2008. Since no reply was received, appellant filed an Application (registered as RAN application No.24/SR/08) under Section 8 (3) of the MRC Act in the Court of Small Causes for fixation of standard rent, and also filed an application for fixing interim rent. Respondents in their turn challenged the jurisdiction of the Small Causes Court to entertain the proceeding, and contended that the suit premises were public premises covered under the Public Premises Act, and the MRC Act did not apply to them. They filed an application (exhibit 14) seeking a decision on that issue as a preliminary issue. The Small Causes Court, vide its order dated 30.3.2009, rejected this application Exhibit 14 and held that the said Standard Rent Application was maintainable under the provisions of MRC Act. Being aggrieved by that order, the respondents filed a Writ Petition invoking Article 227 of the Constitution of India in the Bombay High Court bearing Writ Petition No. 5023 of 2009.

7. A Learned Single Judge of the High Court who heard the matter, accepted the contention raised by the respondents, and allowed the petition by his order dated 8.9.2009. Thereby, he set-aside the said order dated 30.3.2009 and

dismissed the Standard Rent Application. Being aggrieved by that judgment and order, this Appeal by way of special leave has been filed. Mr. Vijay Hansaria, Sr. Advocate appeared for the appellant, and Mr. H.P. Rawal, Additional Solicitor General appeared for the respondents.

**Rival Submissions in a nutshell -**

8. The learned counsel for the appellant submitted that under Section 3 (1) (a) of the MRC Act, only the premises belonging to the Government or a local authority are exempted from the application of the Act. The MRC Act covers five subjects viz. (i) control of rent, (ii) repairs of certain premises, (iii) eviction, (iv) encouraging the construction of new houses by assuring of fair return on the investment to the landlord, and (v) matters connected with the aforesaid purposes. It was submitted that on the other hand, the Public Premises Act provided only for the third subject out of these five subjects viz. (iii) eviction of unauthorized occupants from public premises and for certain incidental matters including recovery of arrears of rent from the tenant. The MRC Act contains a specific chapter namely Chapter II regarding the fixation of standard rent and permitted increases. Section 29 of the MRC Act lays down the duty of the landlord not to cut off or withhold essential supply or service enjoyed by the tenant, and provides for a remedy to the tenant in the events of any breach of this duty by the landlord. As against that, there is no provision in that behalf in the Public Premises Act. Mr. Hansaria, learned counsel for the appellant submitted that in as much as there is no provision for fixation of standard rent or restoration of essential services in the Public Premises

Act, and since the MRC Act is a subsequent Act, the provisions of the MRC Act will have to be held as available to the tenants for these purposes. Mr. Hansaria, did not dispute that the premises occupied by the appellant are public premises within the definition of the concept of public premises under the Public Premises Act. He did not also dispute that in regard to matters relating to eviction and recovery of arrears of rent, the Public Premises Act will apply to applications by respondents against appellant. He however, contended that for the purpose of fixation of standard rent of the premises of the appellant, the MRC Act will apply.

9. As against this, the submission of Mr. H.P. Rawal, Additional Solicitor General, was that the concept of standard rent was foreign to the Public Premises Act, and should not be permitted to be applied to the public premises by permitting applications under the MRC Act for that purpose, particularly when the Parliament has not made any provision in this behalf in the Public Premises Act. That apart, according to the respondents they were seeking to recover the permitted increases on account of increase in the ratable value of the building by the Mumbai Municipal Corporation, which was being disputed by the appellant. With a view to appreciate these rival submissions, we shall look into the general principles governing the relationship between landlord and tenants, and relevant provisions of the MRC Act as well as the Public Premises Act.

#### **Relationship of landlord and tenant in general -**

10. A 'lease' is defined in Section 105 of Transfer of Property Act, 1882 (in short T.P. Act), thus:-

**"105. Lease defined -** *A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.*

**Lessor, lessee, premium and rent defined –** *The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."*

A tenancy is created as a result of an agreement between the landlord and a tenant. Since the premises owned by the landlord are leased out to the tenant by virtue of the agreement between the parties, the agreement is normally called a 'lease deed'. To put it in the words of Prof. P.F. Smith *"The relationship of landlord and tenant arises where one person, who possesses either a freehold or leasehold property interest expressly or impliedly grants to another, by means of a contract, an estate in that property which is less than the freehold interest or for a shorter duration than the leasehold interest of the grantor, as the case may be."* (The Law of Landlord and Tenant, Fourth Edition, Page 9). Although, the lease deed is also a contract between the parties, the provisions of T.P. Act relating to contracts, shall be taken as part of the Indian Contract Act, 1872 (vide Section 4 of T.P. Act). As a 'lease deed' is a contract relating to 'leases' governed by T.P. Act, the relationship between the landlord and the tenant would be governed by the

terms of the lease deed and subject to its terms, by Section 108 relating to the rights and liabilities of lessor and lessee, and other statutory provisions controlling leases under the T.P. Act.

11. Generally, the terms of the agreement between the landlord and the tenant would require the landlord to maintain the premises in tenantable condition, and he will get the premises repaired when necessary. The tenant will be required to vacate the premises at the end of the period of lease. During the lease period, it will be the responsibility of the tenant to pay the rent regularly and 'keep the premises in good condition subject only to changes caused by reasonable wear and tear or irresistible force' and 'when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left' (See Section 108 (m) of T.P. Act. If the tenant commits breaches of the lease agreement by not paying the rent regularly or remaining in arrears thereof, or causing damage to the premises, the landlord may terminate the lease earlier, even before the expiry of the agreed term as per the provisions concerning the termination provided in the agreement and the Transfer of Property Act. If the tenant does not vacate the premises after the termination of lease, the landlord will have to file a suit for evicting him in the Civil Court.

12. On the other hand 'if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest



from the rent, or otherwise recover it from the lessor' (see Section 108 (f) of T.P. Act). Section 108 (l) of the T.P. Act lays down that 'the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf'. This implies that the amount of rent that the landlord will require shall be a certain definite amount.

### **The changes brought about by the Rent Control Acts -**

13. These general rules governing the relationship of the landlord and the tenant have undergone a change after the Second World War. There is a change in the economic scenario world over, and the intervention of the welfare state in different walks of life became necessary. *"Due to scarcity of accommodation following the second World War, it was found necessary to give special protection to tenants against increase of rent and ejectment in supersession of the ordinary law of landlord and tenant, embodied in the Transfer of Property Act."* (The Law of Rent Control, by R.B. Andhyarujina, Second Edition, Page 12). The shortage of residential houses in urban areas led to the regulation of the relationship between the landlord and the tenants by specific acts in that behalf. The concept of standard rent arrived at after considering the totality of the factors, came to control the rent to be charged by the landlord. The landlord would not be entitled to charge in excess of the standard rent, although the additions therein on account of Municipal Taxes etc. became permissible. The Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, (Bombay Rent Act for short) is one such legislation which is an advancement over the Transfer of Property Act. This Act laid down that a tenant

will not be evicted unless the landlord establishes that the tenant has committed breaches as laid down under that Act, and the burden will be on the landlord to establish that the tenant has committed the particular breach, such as being in arrears of standard rent over a specified period, erecting permanent structures on the premises without landlord's permission, sub-letting the premises and causing nuisance to the neighbours etc. A reasonable and bonafide requirement of the landlord was also provided as a ground for eviction. If the landlord was charging rent excessively, a right was given to the tenant to have the standard rent fixed under Section 11 of that act. A further right was given to the tenant to approach the Court under Section 24 of that act for maintenance and restoration of essential services in case the landlord neglected the same.

14. The first respondent L.I.C owns a large number of properties in the city of Mumbai and elsewhere. Earlier, the relationship between L.I.C as the landlord and its tenants was governed under the Bombay Rent Act 1947. The question is as to what change has been brought about by the Public Premises Act 1971, into this relationship? The Public Premises Act 1971, provides only for eviction of unauthorized occupants, and recovery of arrears of rent from the tenant. Can it therefore be said that the other provisions of the Bombay Rent Act, ceased to apply to the tenancies which were earlier covered thereunder? Or would it be proper to say that only the aspect of the eviction and recovery of arrears of rent came to be covered under the Public Premises Act? Can it be said that because the Public Premises Act came to be applied in 1999, L.I.C could suddenly charge any rent as it

deemed fit in excess of the standard rent? Can it be said that the remedy for the tenant for fixation of standard rent, and getting the essential services restored when necessary by moving the Court was no longer available merely because the Public Premises Act came to be applied? Does the Public Premises Act have an overriding effect denying these remedies to the tenants for all purposes?

15. The Bombay Rent Act came to be replaced by the MRC Act 1999. The MRC Act is subsequent to the Public Premises Act, 1971, and has come into force with effect from 31.3.2000 after receiving the assent of the President of India. Therefore, the subjects which were covered under the Bombay Rent Act came to be covered under the MRC Act, 1999 as appropriately modified including the concept of standard rent. Can it therefore not be said that as far as premises of L.I.C. are concerned, on all other subjects excluding the subject of eviction of unauthorized occupants and recovery of arrears of rent, the modified provisions under the MRC Act will apply wherever the Bombay Rent Act was applicable?

16. As far as the petitioner is concerned, it occupied the suit premises in the year 1988 under an agreement of lease with L.I.C, at which time the Public Premises Act as well as Bombay Rent Act were in force. This agreement has been extended from time to time. As stated above, the Bombay Rent Act was replaced with effect from 31.3.2000 by the MRC Act. Would it therefore not be correct to say that for aspects other than eviction, and recovery of arrears of rent, the relationship between the petitioner and the respondent (which was earlier governed by the Bombay Rent Act) will now be governed under the MRC Act?

### **The Maharashtra Rent Control Act, 1999 -**

17. The MRC Act consists of sixty sections which are divided in nine separate chapters, Chapter (I) is on preliminary provisions, Chapter (II) contains the provisions regarding fixation of standard rent and permitted increase, Chapter (III) contains the provisions concerning relief against forfeiture, Chapter (IV) is for recovery of possession, or eviction of the tenant by the Landlord, Chapter (V) contains the special provisions for recovery of possession in certain cases such as where the premises are owned by members of Armed Forces, Scientists etc, Chapter (VI) contains the provisions regarding sub-tenancies and other matters concerning tenancies, Chapter (VII) contains provisions regarding jurisdiction of the Courts, suits, appeals, practice and procedure, Chapter (VIII) contains provisions for the summary disposal of certain applications and Chapter (IX) contains the miscellaneous provisions.

18. As stated earlier, the preamble of MRC Act states that it is an Act relating to five subjects, namely (i) control of rent, (ii) repairs of certain premises, (iii) eviction, (iv) encouraging the construction of new houses by assuring fair return of investment by the landlord, and (v) matters connected with the purposes mentioned above. Section 2 of the act gives the applicability of the act. Sub-section (1) thereof lays down that in the first instance, the act applies to premises

let for the purposes of residence, education, business, trade or storage, and in the areas specified in Schedule I and Schedule II of the Act. Schedule I and II mention the cities and towns to which this Act applies.

19. Section 3 of MRC Act provides for the exemptions from this Act. Whereas sub-section 1 (a) thereof excludes from the application of this Act, the premises belonging to the Government or a local authority, Sub-Section 1 (b) declines to give protection of the provisions of this Act to certain tenants where the tenants are banks, public sector undertakings, multi-national companies, private and public limited companies with a share capital of more than Rs. 1 crore, etc. Section 4 gives the power of the State Government to prescribe conditions for exemption in respect of premises belonging to local authority. We quote these two sections in their entirety.

### **"3. Exemption**

*(1) This Act shall not apply-----*

*(a) to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorized in this behalf, but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer.*

- (b) *To any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of more than rupee one crore or more.*

*Explanation. For the purpose of this clause the expression "bank" means,-*

- (i) *the State Bank of India constituted under the State Bank of India Act, 1955;*
- (ii) *a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959;*
- (iii) *a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980, or*
- (iv) *any other bank, being a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934.*

(2) *The State Government may direct that all or any of the provisions of this Act shall, subject to such conditions and terms as it may specify, not apply-*

- (i) *to premises used for public purposes of a charitable nature or to any class of premises used for such purposes;*
- (ii) *to premises held by a public trust for a religious or charitable purpose and let at a nominal or concessional rent;*
- (iii) *to premises held by a public trust for a religious or charitable purpose and administered by a local authority; or*
- (iv) *to premises belonging to or vested in an university established by any law for the time being in force*

*Provided that, before issuing any direction under this sub-section, the State Government shall ensure that the tenancy rights of the existing tenants are not adversely affected.*

*(3) The expression "premises belonging to the Government or a local authority" in sub-section (1) shall, notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, nor include a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant of building so erected may belong or continue to belong to the Government or the local authority, as the case may be, and such person shall be entitled to create a tenancy in respect of such building or a part thereof.*

**4. Power of State Government to issue orders In respect of premises belonging to local authority, etc.**

*Notwithstanding anything contained in this Act, the State Government may, from time to time, by general or special order, direct that the exemption granted to a local authority under sub-section (1) of section 3 shall be subject to such conditions and terms as it may specify either generally or specially in any particular case, as the State Government may in its direction determine.*

20. Section 7 (6) of MRC Act defines the local authority which includes certain Municipal Corporations such as Mumbai Municipal Corporation, Nagpur Municipal Corporation, Municipal Councils constituted under the Maharashtra Municipal Council, Nagar Panchayats and Industrial Townships Act, 1965, Zila Parishads and Panchayat Samitis, Village Panchayats, Maharashtra Housing and Area Development Authority, City and Industrial Development Corporation etc.

21. Section 2 (14) defines the standard rent. Section 6 states that provision with regard to standard rent will not apply to certain premises which

include, (a) buildings reconstructed after demolishing the old building in the circumstances mentioned in Sections 20 & 21 of the Act, and (b) the premises which are constructed or reconstructed in any housing scheme, undertaken by Government of the Maharashtra Housing and Area Development Authority or by any of its Boards established under Section 18 of the Maharashtra Housing and Area Development Act, 1976. Section 8 lays down that the Court may fix the standard rent and permitted increases, and Section 10 states that claiming rent in excess of standard rent is illegal. Section 11 permits the increase in rent only on account of improvements and special additions, or for heavy repairs. Section 12 permits the increase in rent on account of payment of rates to the public bodies. Section 14 lays down the duty of the landlord to keep the premises in good repairs. Section 29 lays down that the landlord shall not cut off or withhold essential supplies or services and provides for the remedy to the tenant against the same. Section 33 of the Act gives the jurisdiction of Courts in that behalf. In Mumbai, the jurisdiction is with the Court of Small Causes.

22. Sections 2(14), 8 and 29 are relevant for our purpose. They read as follows:-

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

*(a) where the standard rent is fixed by the Court or, as the case may be, the Controller under the Bombay Rent Restriction Act 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 or the Bombay Rents, Hotel and Lodging House Rates Control Act , 1947, or the Central Provinces and Berar Letting of Houses and Retnt Control Order, 1949 issued under the*



*Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946, or the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, such rent plus an increase of 5 per cent, in the rent so fixed ; or*

*(b) where the standard rent or fair rent is not so fixed, then subject to the provisions of sections 6 and 8. –*

*(i) the rent at which the premises were let on the 1st day of October 1987; or*

*(ii) where the premises were not let on the 1st day of October 1987, or the rent at which they were last let before that day, plus an increase of 5 per cent, in the rent of the premises let before the 1st day of October, 1987, or*

*(c) in any of the cases specified in section 8, the rent fixed by the court;*

**"8. Court may fix standard rent and permitted increases in certain cases**

*(1) Subject to the provisions of section 9 in any of the following cases, the court may, upon an application made to it for the purpose, or in any suit or proceedings, fix the standard rent at such amount as, having regard to the provisions of this Act and the circumstances of the case, the court deems just, -*

*(a) where the court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in paragraphs (i) and (ii) of sub-clause (14) of section 7; or*

*(b) whereby reasons of the premises having been let at one time as a whole or in parts and at another time, in parts or as a whole, or for any other reasons; or*

*(c) where any premises have been or are let rent-free or, at a nominal rent; or for some consideration in addition to rent; or*

*(d) where there is any dispute between the landlord and the tenant regarding the amount of standard rent.*

- (2) *If there is any dispute between the landlord and the tenant regarding the amount of permitted increase, the court may determine such amount.*
- (3) *If any application for fixing the standard rent or for determining the permitted increase is made by a tenant,-*
- (a) *the court shall forthwith specify the amount of rent, or permitted increase which are to be deposited in court by the tenant, and make an order directing the tenant to deposit such amount in court or, at the option of the tenant, make an order to pay to the landlord such amount thereof as the court may specify pending the final decision of the application. A copy of the order shall be served upon the landlord;*
- (b) *out of any amount deposited in the court under clause (a), the court may make an order for payment of such reasonable sum to the landlord towards payment of the rent or increases due to him as it thinks fit;*
- (c) *if the tenant fails to deposit such amount or, as the case may be, to pay such amount thereof to the landlord, his application shall be dismissed.*
- (4) (a) *Where at any stage of a suit for recovery of rent, whether with or without a claim for possession, of the premises, the court is satisfied that the rent is excessive and standard rent should be fixed, the court may, and in any other case, if it appears to the court that it is just and proper to make such an order, the court may make an order directing the tenant to deposit in court forthwith such amount of the rent as the court considers to be reasonable due to the landlord, or at the option of the tenant, an order directing him to pay to the landlord such amount thereof as the court may specify.*
- (b) *The court may further make an order directing the tenant to deposit in court periodically such amount as it considers proper as interim standard rent, or at the option of the tenant, an order to pay to the landlord, such amount thereof as the court may specify, during the pendency of the suit;*
- (c) *The court may also direct that if the tenant fails to comply with any order made as aforesaid, within such time as may be allowed by it, he shall not be entitled to appear in or defend the*

*suit except with leave of the court, which leave may be granted subject to such terms and conditions as the court may specify.*

*(5) No appeal shall lie from any order of the court under sub-sections (3) and (4).*

*(6) An application under this section may be made jointly by all or any of the tenants interested in respect of the premises situated in the same building.*

**29. Landlord not to cut-off or withhold essential supply or service**

*(1) No landlord, either himself or through any person acting or purporting to act on his behalf, shall, without just or sufficient cause, cut-off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him.*

*(2) A tenant in occupation of the premises may, if the landlord has contravened the provisions of sub-section (1), make an application to the court for a direction to restore such supply or service.*

*(3) Having regard to the circumstances of a particular case the court, may, if it is satisfied that it is necessary to make an interim order, make such order directing the landlord to restore the essential supply or service before the date specified in such order, before giving notice to the landlord of the enquiry to be made in the application under sub-section (3) or during the pendency of such enquiry. On the failure of the landlord to comply with such interim order of the court, the landlord shall be liable to the same penalty as is provided for in sub-section (4).*

*(4) If the court on inquiry finds that the tenant has been in enjoyment of the essential supply or service and that it was cut-off or withheld by the landlord without just or sufficient cause, the court shall make an order directing the landlord, to restore such supply or service before a date to be specified in the order. Any landlord who fails, to restore the supply or service before the date so specified, shall, for each day during which the default continues thereafter, be liable upon further directions by the court to that effect, to fine which may extend to one hundred rupees.*

(5) Any landlord, who contravenes, the provisions of sub-section (1), shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

(6) An application under this section may be made jointly by all or any of the tenants of the premises situated in the same building.

*Explanation – In this section, -*

(a) essential supply or service includes supply of water, electricity, lights in passages and on stair-cases, lifts and conservancy or sanitary service;

(b) withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or services is cut-off by the municipal authority or any other competent authority.

(7) Without prejudice to the provisions of sub-sections (1) to (6) or any other law for the time being in force, where the tenant, -

(a) who has been in enjoyment of any essential supply or service and the landlord has withheld the same, or

(b) who desires to have, at his own cost, any other essential supply or service for the premises in his occupation,

the tenant may apply to the Municipal or any other authority authorized in this behalf, for the permission or for supply of the essential service and it shall be lawful for that authority to grant permission for, supply of such essential supply or service applied for without insisting on production of a "No Objection Certificate" from the landlord by such tenant."

### **The Public Premises Act (Eviction of Unauthorised Occupants) Act, 1971-**

23. Now, when we turn to the Public Premises Act, the preamble of the Act states that it is an Act to provide for the eviction of unauthorized occupants from public premises and for certain incidental matters. It was enacted to deal with the

problem of rampant unauthorised occupation of public premises by providing a speedy machinery for the recovery of these premises and the arrears of rent from the occupants thereof. Section 2 (e) of this Act defines the public premises, Section 2 (f) defines rent, and Section 2 (g) defines unauthorized occupation. Section 2 (g) is in two parts. The first part of the said section states, that it means the occupation by any person of the public premises without any authority for such occupation. The second part is inclusive in nature, and it expressly covers the continuation in occupation by any person of the public premises after his authority to occupy the same has expired or has been determined for any reason whatsoever. These sections read as follows:-

2(e) *"public premises" means-*

- (1) *any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;*
- (2) *any premises belonging to, or taken on lease by, or on behalf of,-*
  - (i) *any company as defined in section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty-one per cent of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company;*
  - (ii) *any corporation (not being a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) or*

*a local authority) established by or under a Central Act and owned or controlled by the Central Government;*

- (iii) any University established or incorporated by any Central Act.*
  - (iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961);*
  - (v) any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963);*
  - (vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6 of section 80 of that Act;*
  - (vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory;*
  - (viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and*
- (3) in relation to the [National Capital Territory of Delhi]-*
- (i) any premises belonging to the Municipal Corporation of Delhi, or any Municipal Committee or notified area committee;*
  - (ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority; and*
  - (iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory;]*
- 2(f) "rent", in relation to any public premises, means the consideration payable periodically for the authorized occupation of the premises, and includes,-*

- (i) *any charge for electricity, water or any other services in connection with the occupation of the premises,*
- (ii) *any tax (by whatever name called) payable in respect of the premises,*

*where such charge or tax is payable by the Central Government or the corporate authority,*

2(g) *"unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."*

24. Section 3 of the Public Premises Act provides for the appointment of estate officers who have the authority to hold inquiries under this Act, Section 4 provides for issuance of show cause notice, which proposes an order of eviction. Section 5 provides for the inquiry in pursuance to the show cause notice, and the order of eviction to be passed thereafter. Section 7 deals with the power of the estate officer to pass orders concerning arrears of rent and damages in respect of unauthorized occupation, Section 9 provides for appeals against the order of the estate officers to the Appellate officer who shall be the District Judge of the District. Section 14 provides for the recovery of rent as arrears of land revenue, and Section 15 for the bar of jurisdiction of courts to entertain any suit or proceeding in respect of the matters mentioned in the Section. Thus, it is an act for speedy recovery of public premises and arrears of rent from the unauthorized occupants, and it

provides a separate mechanism for the same. Section 5, 7 and 15 of this Act are relevant for our purpose. These sections read as follows:-

***Section 5 - Eviction of unauthorised occupants***

*(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of section 4], the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.*

*(2) If any person refused or fails to comply with the order of eviction [on or before, the date specified in the said order or within fifteen days of its publication under sub-section(1) whichever is later,] the estate officer or any other officer duly authorized by the estate officer in this behalf may evict that person from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.*

***Section 7 - Power to require payment of rent or damages in respect of public premises***

*(1) Where any person, is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such installments as may be specified in the order.*

*(2) Where any person is, or has at anytime been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.*



1 [(2A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the interest Act, 1978.]

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

### **Section 15 - Bar of jurisdiction**

No Court shall have jurisdiction to entertain any suit or proceeding in respect of--

(a) the eviction of any person who is in unauthorised occupation of any public premises, or

(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under [Section 5A](#), or

(c) the demolition of any building or other structure made, or ordered to be made, under [Section 5B](#), or

[(cc) the sealing of any erection or work or of any public premises under [Section 5C](#), or]

(d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under subsection (2), or interest payable under sub-section (2A); of that section, or

(e) the recovery of--

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under [Section 5A](#), or

(ii) expenses of demolition under [Section 5B](#), or (iii) costs awarded to the Central Government or statutory authority under sub-section (5) of section 9, or (iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.]

**Order passed by the Small Causes Court:-**

25. Reverting to the order passed by the Small Causes Court, it is seen that it dismissed the application exhibit 14 filed by the respondent principally for the following reasons:-

- (i) The public premises are not specifically exempted from the applicability of the MRC Act;
- (ii) Since an application for fixation of standard rent is not a proceeding for eviction of a tenant, Small Causes Court can entertain it;
- (iii) The respondent, LIC has framed guidelines for charging rent. These guidelines have a statutory force under Section 21 of the LIC Act. They require LIC to charge reasonable rent, and therefore the Bombay High Court has in Writ Petition No.2436 of 2003 (Persis Kothawala Versus LIC) held that these guidelines are binding on LIC. On that basis, the standard rent application would be maintainable.
- (iv) Section 3 of the MRC Act does not exempt LIC and hence the provisions of MRC Act are applicable to its premises.
- (v) Merely because the premises were covered under the Public Premises Act, the jurisdiction to entertain the Standard Rent Application under the MRC Act was not ousted. There was no conflict between the two Acts for that purpose.

**The impugned judgment of the High Court and its reliance on the constitution bench judgment in Ashoka Marketing Ltd. -**

26. The learned Single Judge who decided the petition principally relied upon the judgment of a constitution bench of this Court in **Ashoka Marketing Ltd. and Another Versus Punjab National Bank and Others [1990 (4) SCC 406]**, in support of his view. This judgment decided four Civil Appeals concerning the properties of four respondents situated in Delhi. Two of them were concerning the properties of Punjab National Bank, one of Union of India and one of LIC. In all these matters the respondents had initiated actions for eviction under the Public Premises Act. The question in those appeals was whether the occupants could be evicted under the Public Premises Act, or whether they could invoke the protection of Delhi Rent Control Act, 1958. This Court held that the proceedings under the Public Premises Act were valid and legal. Relying on this judgment the High Court held that in the present case the Public Premises Act will govern the field, and the Standard Rent Application was not maintainable. The learned Judge has observed in para 17 of the impugned judgment as follows:-

*"There may not be a provision in the said Act of 1971 for fixing standard rent but there are provisions in the said Act of 1971 which empower the authorities to pass an order for recovery of rent and/or compensation from the tenant".*

This is a reference to the power of the estate officer under section 7 of the Public Premises Act for recovery of rent. Section 7(2) empowers the estate officer to assess the damages on account of use and occupation of the public premises by an

unauthorized occupant. This assessment is to be made having regard to the principles that may be prescribed under the rules. This power is entirely different from the authority to fix the standard rent, which is nowhere provided in the Public Premises Act. Thus, this is not an answer to the issue raised before the learned Judge, viz. as to whether a standard rent application under the concerned Rent Control Act was maintainable, when there is no specific provision for the same under the Public Premises Act.

27. Besides, section 7 of the Act is a procedural provision as held by this Court in **New Delhi Municipal Committee Vs. Kalu Ram & Anr.** reported in **[AIR 1976 SC 1637]** equivalent to **[1976 (3) SCC 407]**. In that matter the Municipality had contended that section 7 permitted it to recover arrears of rent which were even time barred. This Court rejected the contention and held that it was only a section for providing a special procedure for realization of arrears of rent, and which was a summary procedure. It did not constitute a source or foundation of a right to claim a debt which was otherwise time barred. The Learned Judge has, however, tried to get over this position by relying upon Section 15 of the Public Premises Act as follows:-

*"Apart from that, in view of the overriding effect of the said Act of 1971, an occupant of the public premises cannot claim protection under the Rent Control Legislation in as much as section 15 of the said Act of 1971 ousts the jurisdiction of the Courts under the Rent Control Legislation to deal with the matter of recovery of rent in respect of public premises."*

Again, it is difficult to say that this approach is a correct one. That is because the High Court was not concerned with the recovery of arrears of rent by a public authority, an action against which would get ousted in view the provision of section 15 of the Public Premises Act, as also one against eviction. The question is whether a tenant's application for fixation of Standard Rent would get ousted. The respondents are claiming that what they are charging are permissible increases, whereas the appellant contends that what is charged is in excess of what should be the Standard Rent, and for that purpose it has filed an application for fixation of Standard Rent under the MRC Act. Would it, not be maintainable under that act?

28. In **Ashoka Marketing**, this Court noted that the rent control legislation would fall within the ambit of entries 6, 7 and 13 of List III (Concurrent List). The Public Premises Act would otherwise fall under entry 32 of List I being a law with respect to the property of Union of India. However, in relation to the properties belonging to the various legal entities, mentioned in clauses (2) and (3) of Section 2 (e), the Public Premises Act would be covered under entries 6, 7 and 46 of List III. The Court, therefore, noted that both the statutes were enacted by the same legislature i.e. Parliament, in exercise of its legislative power in respect of matters enumerated in the concurrent list. It was, therefore, of the opinion that the question as to whether the Public Premises Act will override the Rent Control Act will have to be considered in the light of the principles of statutory interpretation applicable to the laws made by the same legislature. Having said that, the

constitution bench noted the relevant principles in this behalf in paragraph 50 as follows:-

*"50. One such principle of statutory interpretation which is applied is contained in the latin maxim : leges posteriores priores contrarias abrogant (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim : generalia specialibus non derogant (a general provision does not derogate from a special one.) This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the alter general one (Bennion, Statutory Interpretation pp. 433-34)."*

The Court, therefore, examined the schemes of the two enactments, and noted the features of the two enactments in para 55 as follows:-

*"55.(i) The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes provision for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union Territory of Delhi. (ii) The Public Premises Act makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent court and for trial of such a suit in accordance with the procedure laid down in the Code of Civil Procedure, the Public Premises Act confers the power to pass an order of eviction of an unauthorized occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order. (iii) Therefore, the Public Premises Act is also a special statute relating to eviction of unauthorized occupants from public premises. In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, are special statutes in relation to the*

*matters dealt with therein.”  
paragraphs supplied)*

*.....(nos. to sub-*

Having noted the distinctive features of the two acts, the Court held that the principle that a subsequent general law cannot derogate from an earlier special law could not be invoked in that case because the later act, namely, Public Premises Act was also special statute and not a general enactment. Therefore, it further held that the Public Premises Act must prevail over the Rent Control Act in accordance with the principle that the later laws abrogate earlier contrary laws.

29. In view of the fact that both the enactments had non-obstante clauses, a reference was made to an earlier judgment of a bench of three judges on such a situation in the case of **Shri Sarwan Singh and another Versus Shri Kasturi Lal** reported in **1977 (1) SCC 750**. In that matter the question before the Court was whether provisions of Slum Areas (Improvement and Clearance) Act, 1956 will override those of the Delhi Rent Control Act, 1958. If so, no person can initiate any suit or proceeding for eviction of a tenant from any building or land in slum area without the permission in writing of the competent authority under the Slum Act. The respondent in that matter was a government employee and was staying in a quarter allotted to him, and he was asked to vacate this quarter on the ground that he owned another residential house. The house constructed by him was occupied by the appellant and it was in an area covered under the Slum Act. On being asked to vacate the quarter, the respondent gave a notice to the appellant to vacate his premises, and followed it up by filing an application under the Rent Control Act. The

appellant pleaded that he cannot be asked to vacate unless permission from the authority under the Slum Clearance Act was obtained. This Court noted that although Section 19 (1) of the Slum Clearance Act required a permission of the competent authority before instituting proceeding for eviction of a tenant, notwithstanding that provision, by an amendment Section 14-A and Chapter III-A were brought into Delhi Rent Control Act. The Court examined the schemes of the two acts and then held that the provision of the Delhi Rent Control Act had to be given precedence, as in the present case although the government servant is asked to vacate his quarter, he will not be able to proceed against his tenant unless he obtains the permission from the Slum Clearance Authority. It is to obviate such difficulty that the amendment in the Delhi Rent Control Act had been brought in. In that context it was observed in para 20 as follows:-

**"20. ....When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. *Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration.....*"**

*(emphasis supplied)*

Therefore, the Court concluded in para 23 as follows:-

**"23. ....Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-obstante clauses in the earlier law, we have come to the conclusion that the provisions of Section 14A and Chapter IIIA of the Rent Control Act must prevail over those contained in Sections 19 and 39 of the Slum Clearance Act."**



30. Accordingly, in the context of the conflict between the two Acts, this Court held in **Ashoka Marketing**, as follows:-

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

It becomes relevant to note the conclusion arrived at by this Court in Ashoka Marketing Co.'s case, which is in following words:-

*"70. For the reasons aforesaid, we are unable to accept the contention of the learned counsel for the petitioners that the provisions contained in the Public Premises Act cannot be applied to premises which fall within the ambit of the Rent Control Act. **In our opinion, the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act** and a person in unauthorized occupation of public premises under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act."* ... (emphasis supplied)

31. The impugned judgment in the present case relies upon the above observations to hold that once the premises were covered under the Public Premises Act, that Act will override the Rent Control Act and therefore in the instant case, standard rent application was not maintainable. On the other hand, it was submitted on behalf of the appellant that the above statement in paragraph 70 of **Ashoka Marketing** Judgment, when it speaks of 'provisions to the extent they cover', it means the 'subject matter' covered by the provisions under the two acts. In this context, it must also be noted that the controversy in the case of **Ashoka**

**Marketing** was with respect to the subject of eviction of the unauthorized occupants from the public premises. Eviction of tenants in general was a subject covered by both the statutes under considerations before the Court. However, the Public Premises Act contains the special provisions for the eviction of unauthorized occupants from the public premises, but for which they would fall within the ambit of the Rent Control Act. Consequently, in view of the above dicta, the proceedings under the Public Premises Act were held to be valid and legal, and not those under the Delhi Rent Control Act. The subject matter of controversy in our case is with respect to the fixation of standard rent, which is not covered under the provision in the Public Premises Act. On the other hand the same is very much covered under the MRC Act. The overriding effect given to Public Premises Act cannot mean overriding with reference to a matter which was not dealt with by that Act, since the Public Premises Act did not claim to cover the subject other than eviction of unauthorized occupants from public premises and recovery of arrears of rent. Therefore, it was submitted that the application for fixation of standard rent will be very much maintainable under the provisions of the MRC Act.

**Public Premises Act vis-à-vis the Bombay Rent Act and the MRC Act on the issue of eviction of unauthorised occupants from Public Premises-**

32. Before we deal with the rival submissions on the maintainability of the standard rent application, we may note that with respect to the aspect of eviction of unauthorised occupants from the public premises, it is now well settled that the

Public Premises Act will apply and not the Bombay Rent Act or the subsequent MRC Act.

(i) In **Kaiser-I-Hind Pvt. Ltd. & Anr. vs. National Textile Corpn. (Maharashtra North) Ltd. & Ors. [2002 (8) SCC 182]** one of the questions before the Constitution Bench was whether the provisions of Bombay Rent Act having been re-enacted after 1971 by the State Legislature with the assent of the President will prevail over the provisions of the Public Premises Act by virtue of Article 254 (2) of the Constitution. The court noted that although the Public Premises Act received the assent of President on 23.8.1971, in view of Section 1 (3) of Public Premises Act, it is deemed to have come into force from 16.9.1958. On the other hand, the duration of Bombay Rent Act was extended by Maharashtra Act No. 12 of 1970. Therefore, the Court held specifically in para 40 of its judgment that Article 254 (1) was the relevant one in the present case, and to the extent of repugnancy, the State law will not prevail under Article 254 (1), and the law made by the Parliament shall hold good.

(ii) Between the Public Premises Act and the MRC Act this Court held in **Crawford Bayley & Co. & Ors. v. Union of India & Ors. [2006 (6) SCC 25]** that to the extent specific provisions were made in the Public Premises Act for eviction of unauthorized occupants, that Act will apply with respect to the Premises of the State Bank of India which were in dispute in that matter and not the MRC Act.

**Other submissions on behalf of the appellant -**

33. The learned senior counsel for the appellant Mr. Hansaria relied upon quite a few judgments in support of his submission that the Standard Rent Application in the present case was very much maintainable under the MRC Act. We will refer to some of them which lay down the principles relevant for our purpose. In **M/s Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another** which is a judgment of 3 Judges reported in **[1980 (4) SCC 435]**, the provisions of the Public Premises Act were considered in the light of those of Delhi Rent Control Act 1958, and the Slum Areas (Improvement) and Clearance Act 1956. In that matter L.I.C had purchased the premises in question in which the appellant was a tenant inducted by the original owner of the premises. L.I.C had initiated the proceedings for the eviction of the tenant before the estate officer. The appellant had challenged the applicability of the Public Premises Act. This Court rejected that objection. The observations of this Court in paragraph 8 and 9 are relevant for our purpose which read as follows:-

**8. .... So far as the Premises Act is concerned it operates in a very limited field in that it applies only to a limited nature of premises belonging only to particular sets of individuals, a particular set of juristic persons like companies, corporations or the Central Government. Thus, the Premises Act has a very limited application. Secondly, the object of the Premises Act is to provide for eviction of unauthorised occupants from public premises by a summary procedure so that the premises may be available to the authorities mentioned in the Premises Act which constitute a class by themselves. ....**

**9. Thus, it would appear that both the scope and the object of the Premises Act is quite different from that of the Rent Act. The Rent Act is of much wider application than the Premises Act inasmuch as it applies to all private premises which do not fall within the limited exceptions indicated in Section 2 of the Premises Act. The object of the Rent Act is to afford special protection to all the tenants or private landlords or landlords who are neither a corporation nor government or**

*corporate bodies. It would be seen that even under the Rent Act, by virtue of an amendment a special category has been carved out under Section 25-B which provides for special procedure for eviction to landlords who require premises for their personal necessity. Thus, Section 25-B itself becomes a special law within the Rent Act. On a parity of reasoning, therefore, there can be no doubt that the Premises Act as compared to the Rent Act, which has a very broad spectrum, is a special Act and overrides the provisions of the Rent Act."*

*(emphasis supplied)*

As is seen from this quotation, just as there is a special category carved out under the Rent Control Act in favour of the landlord who requires premises for his personal necessity, somewhat a similar provision is made under the Public Premises Act. The reasonable and bonafide requirement of the landlord to occupy the premises has been made a separate permissible ground for recovery of possession under section 16 (1) (g) of the MRC Act. This section 16 (1) (g) is similar to section 25 B referred into the above judgment, and it reads as follows:-

**"16. When landlord may recovery possession**

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied –

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) .....

(g) *that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or"*

The Public Premises Act creates a forum for eviction of the unauthorised occupants and provides for a special procedure for recovery of the premises from such occupants. Unauthorised occupation has been defined in a wide manner and it includes the continuation in occupation of any person of the public premises after his authority to occupy has expired or has been determined for any reason whatsoever. It would as well include the determination of the authority to occupy whenever the premises are required bonafide and reasonably by the public authority. There was no such special procedure for the public bodies until the Public Premises Act was enacted. When it comes to the requirement of the Government or the Public Corporation, now the public body will be taking steps under the Public Premises Act. It is, however, relevant to note as held in this judgment that the Public Premises Act has a very limited application as against the Rent Act which affords a special protection to the tenants by fixing standard rent and requiring the landlord to maintain the essential services. It was, therefore, submitted that the standard rent application under the Rent Act would remain available to the tenant even if the premises are otherwise covered under the Public Premises Act for the purposes of eviction and recovery of arrears of rent from the unauthorised occupants.

### **The question of Repugnancy -**

34. The question is as to whether the provision for fixation of standard rent and the provision requiring landlord to maintain the essential services under the MRC Act, which is a subsequent Act passed by the State Legislature are in any way

repugnant to the Public Premises Act which is an earlier Act passed by the Parliament. The distribution of legislative powers between the Union of India and the States has been provided in the Seventh Schedule of the Constitution. It consists of **List I** which is the Union List, **List II** which is the State List and **List III** which is the Concurrent List. The question of repugnancy can arise only in connection with the subjects which are enumerated in the Concurrent List with respect to which both the Union and the State Legislatures have the concurrent power to legislate, and when the State Legislature makes a law on a subject on which the Parliament has already made a law. It is to deal with such a conflict that Article 254 has been enacted. Article 254 of the Constitution deals with the question of inconsistency between the laws made by the Parliament and laws made by the Legislatures of States. This Article reads as follows:-

**“ 254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States -**

*(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.*

*(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*

*Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."*

35. The question of repugnancy between the law made by the Parliament and the law made by the State Legislature may arise in cases when both the legislation occupy the same field with respect to one of the matters enumerated in List III and where a direct conflict is seen between the two. The Principles laid down by a bench of 3 Judges in **Hoechst Pharmaceuticals Ltd. Vs. State of Bihar** reported in **[1983 (4) SCC 45]** were reiterated by a Constitution Bench in **State of West Bengal Vs. Kesoram Industries Ltd. And Ors.** reported in **[2004 (10) SCC 201]**. Para 31 (5) thereof is instructive for our purpose and it reads as follows:-

**"31 (5)** *Where the legislative competence of the legislature of any State is questioned on the ground that it encroaches upon the legislative competence of Parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in List I or III. If it does, no further question need be asked and Parliament's legislative competence must be upheld. Where there are three lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other legislature is of no consequence. The court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of ascertaining the true character of legislation. The name given by the legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded."*



36. The question therefore to be examined is as to whether the two legislations occupy the same field. If they do not, then there is no repugnancy. Unless the provisions are irreconcilable, there will be a presumption in favour of the constitutionality. In **Ch. Tika Ramji and Ors. etc. v. The State of Uttar Pradesh and Ors. [AIR 1956 SC 676]**, the question before the Constitution Bench was as to whether the UP Sugarcane (Regulation of Supply and Purchase) Act, 1953 was repugnant to the Industries (Development and Regulation) Act of 1951 which was a Central Act. The Apex Court noted that Section 18G of the Central Act deals with finished products and not raw materials. This section did not cover the field of sugarcane which was covered under the UP Act. The Court held that there was no repugnancy between the two legislations, since one deals with the finished products whereas the other deals with raw materials.

37. In the case of **M. Karunanidhi vs. Union of India & Anr. [1979 (3) SCC 431]** a Constitution Bench was concerned with the question as to whether certain provisions of the Tamil Nadu Public Men (Criminal Misconduct) Act 1973, were repugnant to the provisions of Prevention of Corruption Act 1947 and the Criminal Law Amendment Act 1952. The appellant was being prosecuted under sections 161, 468 and 471 of Indian Penal Code and section 5 (2) read with section 5 (1) (d) of the Prevention of Corruption Act 1947. The Court referred to earlier decisions including the one in **Deep Chand Vs. State of U.P. [AIR 1959 SC 648]** wherein it was held that the repugnancy between the two statutes may be ascertained by considering whether the Parliament intended to lay down an

exhaustive code in respect of the subject matter considered in the State Act replacing the Act of the State Legislature. The Constitution Bench then laid down the principles governing the rule of repugnancy in paragraph 35 which are as follows:-

**35.** *On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:*

- 1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.*
- 2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.*
- 3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.*
- 4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.*

Consequently the Court held that there was no conflict amongst the legislations concerned.

38. The question with respect to conflict between two such legislations came up before a Bench of three Judges in the case of **Vijay Kumar Sharma and Ors. Vs. State of Karnataka and Ors.** reported in **[1990(2) SCC 562]**, where the question was whether there was any conflict between the Karnataka Contract Carriages (Acquisition) Act 1976 and Motor Vehicles Act, 1988. This Court looked into the judgments holding the field and held that there was no conflict between the two. It laid down the law in paragraph 53 as follows:-

**53.** *The aforesaid review of the authorities makes it clear that whenever repugnancy between the State and Central legislation is alleged, what has to be first examined is whether the two legislations*

*cover or relate to the same subject matter. The test for determining the same is the usual one, namely, to find out the dominant intention of the two legislations. If the dominant intention, i.e. the pith and substance of the two legislations is different, they cover different subject matters. If the subject matters covered by the legislations are thus different, then merely because the two legislations refer to some allied or cognate subjects they do not cover the same field. The legislation, to be on the same subject matter must further cover the entire field covered by the other. A provision in one legislation to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation. But such partial coverage of the same area in a different context and to achieve a different purpose does not bring about the repugnancy which is intended to be covered by Article 254(2). Both the legislations must be substantially on the same subject to attract the article."*

**In the event of two Acts governing a common field, whether both can apply for different purposes-**

39. There could be provisions for certain purposes in one statute, and for another purpose in another statute, though both govern the common field. Thus, in **Krishna Distt. Coop. Mktg. Society Ltd. Vijayawada vs. N.V. Purnachandra Rao & Ors. [1987 (4) SCC 99]**, the issue was, with respect to the application of section 25-F of Industrial Disputes Act, to the employees who were otherwise governed under the A.P. Shops and Establishments Act, 1966. In that context this Court had to examine whether there was any conflict between the two Acts and particularly when the A.P. Act was a later act and it had received the assent of the President. The question was whether compliance with Section 25-F of the Industrial Disputes Act could be insisted for establishments governed under the Shops and Establishments Act. This Court held that those provisions will be applicable and there was no conflict between the provisions of the two Acts. Section 25-F of the

Central Act provided for the conditions precedent for retrenchment, and the non-compliance therewith made the order of retrenchment fatal. Section 41 (1) and (3) of the A.P. Act provided for the authorities to settle the disputes arising out of retrenchment. Section 25 J (2) of the I.D. Act reads as follows:-

***"25-J.Effect of laws inconsistent with this chapter.-(1).....***

*(2) For the removal of doubts, it is hereby declared that nothing contained in this chapter shall be deemed to affect the provisions of any other law for the time being in force in any State insofar as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen insofar as they relate to lay off and retrenchment shall be determined in accordance with the provisions of this chapter."*

The court noted in para 8 that "the State Act does not contain any express provision making the provision relating to retrenchment in the Central Act ineffective in so far as Andhra Pradesh is concerned". What is observed in para 6 is relevant for our purpose:-

*"6..... Sub-section (1) of Section 25-J of the Central Act lays down that Chapter V-A, shall have effect notwithstanding anything inconsistent therewith contained in any other law. The proviso to that sub-section however saves any higher benefit available to a workman under any law, agreement or settlement or award. Sub-section (2) of Section 25-J however makes a distinction between any machinery provided by any State law for settlement of industrial disputes and the substantive rights and liabilities arising under Chapter V-A of the Central Act where a lay off or retrenchment takes place. It provides that while Section 25-J would not affect the provisions in a State law relating to settlement of industrial disputes, the rights and liabilities of employers and workmen insofar as they relate to lay off and retrenchment shall be determined in accordance with Chapter V-A of the Central Act. It is thus seen that Section 41(1) and Section 41(3) of the State Act prescribe alternative authorities to settle a dispute arising out of a retrenchment. Those authorities may exercise their*

*jurisdiction under the State Act but they have to decide such dispute in accordance with the provisions of Chapter V-A.....”*

40. Similarly, in the case of **National Engineering Industries Ltd. vs. Shri Kishan Bhageria & Ors. [1988 Supp. SCC 82]**, the question was whether a Reference under Section 10 of the Industrial Disputes Act, 1947 could be sought by the employees covered under the Rajasthan Shops and Establishments Act, 1958. This Court held that it would be so. In a similar way in **Bharat Hydro Power Corpn. Ltd. & Ors. v. State of Assam & Anr. [2004 (2) SCC 553]**, this Court held in the context of Electricity Act 1910, and Assam Act No. 1 of 1997 that if two legislations operate in different fields without encroaching upon each other fields there cannot be any repugnancy.

41. In the field of criminal law also the same approach has been adopted by this Court. In **State of Maharashtra v. Bharat Shanti Lal Shah and Ors. [2008 (13) SCC 5]**, the question was with respect to the conflict between the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act for short) and Telegraph Act, 1885. In **Zameer Ahmed Latifur Rehman Sheikh vs. State of Maharashtra & Ors. [2010 (5) SCC 246]**, the question was with respect to the conflict between the MCOC Act and Unlawful Activities (Prevention Act), 1967. In both matters this Court took the view that mere difference in the two Acts is not sufficient, and an incidental encroachment is irrelevant. This Court held that there was no conflict in both the cases.

### **Fixation of Standard Rent in the context of exemptions from the Rent Control Laws – The question of remedy**

42. Whatever be the object of granting exemption, where the object is to see that the properties of the State or semi-state bodies should not suffer by the rigours of the Rent Control Laws or the possession of the public premises be recovered expeditiously, "the Courts have expressed their views that these authorities being public bodies should so behave as not to act contrary to the policies laid down in the Rent Control Laws namely not to increase the rent unreasonably or excessively, nor to evict their tenant unreasonably or arbitrarily, save and except in public interest." (J.H. Dalal in his Commentary on the Bombay Rent Act, Fifth Edition, Page 65).

43. In this context one of the earliest cases coming before the Bombay High court was **Rampratap Jaidayal Vs. Dominion of India** reported in **[AIR 1953 Bom 170]**. Central Government had served upon the appellant tenant a notice to quit and the suit for ejectment was decreed. In the first appeal filed by the defendant tenant the question arose with respect to the nature of exemption available to the Government under section 4 (1) of the Bombay Rent Act. The appeal filed was dismissed by the Division Bench consisting of Chagla C.J and Gajendragadkar, J (as he then was in the Bombay High Court). What was observed by Chagla C.J. in the judgment with respect to the rent to be charged by the public bodies is relevant for our purpose. Amongst other arguments the exemption granted to the State was challenged as amounting to unreasonable classification hit

by Article 14 of the Constitution. The Division Bench repelled the argument by relying upon the judgment of a constitution bench of this Court in **State of Bombay Vs. F.N. Balsara** reported in [1951 SCR 682] equivalent to [53 Bom. LR 982 (SC)], wherein Fazl Ali, J had drawn seven principles on the meaning and scope of Article 14 of the Constitution from the earlier judgment of this Court in '**Chiranjitlal v. Union of India**' reported in [AIR 1951 SC 41], and relied upon the very first principle therefrom and observed as follows:-

*"8. .... perhaps attention might be drawn to the very first where the Supreme Court emphasizes the fact that the presumption is always in favour of the constitutionality of an enactment and this presumption arises from the fact that the Legislature understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience and therefore it must always be presumed that discriminations are based on adequate grounds....."*

Thereafter what the Court observed at the end of this para 8 is relevant for our purpose:-

*" ..... it is clear that in this case the Legislature was not in any sense exempting the Government from the operation of the Act in order to permit the Government to do the very thing which the Legislature was prohibiting in the case of landlords who were not a local authority or Central or State Government. It is not too much to assume, as the Legislature did in this case assume, that the very Government whose object was to protect the tenants and prevent rent being increased and prevent people being ejected, would not itself when it was the landlord do those very things which it sought to prohibit its people from doing, and therefore the underlying assumption of this exemption is that Government would not increase rents and would not eject tenants unless it was absolutely necessary in public interest and unless a particular building was required for a public purpose."*

44. In another case **Baburao Shantaram More Vs. The Bombay Housing Board** reported in **[AIR 1954 SC 153]** which came up before a Constitution Bench of this Court, the question was with respect to the eviction of a tenant of the then Bombay Housing Board, constituted under the Bombay Housing Board Act, 1948. A decree for eviction had been passed against the tenant which had been upheld by the High Court. The appeal therefrom was dismissed by this Court. While upholding the exemption of the Bombay Housing Board under section 4 of the Bombay Rent Act, the Court held that the classification was based on an intelligible differentia, and held that the tenant or the local authority or the board were not in need of such protection as the tenants of private landlords. This was for the reason as stated by S.R. Das J (as he then was) for the Court:-

*"6. .... It is not to be expected that the Government or Local authority or the Board would be actuated by any profit making motive so as to unduly enhance the rents or eject the tenants from their respective properties as private landlords are or are likely to be....."*

45. In **M/s Dwarkadas Marfatia V. Bombay Port Trust** reported in **[1989 (3) SCC 293]**, the trustees of Bombay Port had evicted the appellant from a plot of land and allotted it to another tenant, and obtained the decree of eviction. While upholding the decree, this Court examined the question of exemption of a local authority under section 4 of the Bombay Rent Act. In paragraph 14 and 15 of its judgment a Bench of 3 Judges quoted with approval the above referred quotation of Chagla C.J. and S.R. Das, J, and thereafter observed as follows in para 17:-



**"17. It, therefore, follows that the public authorities which enjoy this benefit without being hidebound by the requirements of the Rent Act must act for public benefit. Hence, to that extent, this is liable to be gone into and can be the subject matter of adjudication."**

(emphasis supplied)

What this Court observed further per Sabyasachi Mukharji, J. (as he then was) in paragraph 24 is relevant for our purpose:-

**"24. The field of letting and eviction of tenants is normally governed by the Rent Act. The Port Trust is statutorily exempted from the operation of the Rent Act on the basis of its public/governmental character. The legislative assumption or expectation as noted in the observations of Chagla, C.J. in Rampratap Jaidayal case cannot make such conduct a matter of contract pure and simple. These corporations must act in accordance with certain constitutional conscience and whether they have so acted, must be discernible from the conduct of such corporations....."**

(emphasis supplied)

Thereafter, in para 27 the Court further observed in the following words:-

**"27. We are inclined to accept the submission that every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigours of the Rent Act, must be informed by reason and guided by the public interest. All exercise of discretion or power by public authorities as the respondent, in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assumption that they would not act as private landlords, must be judged by that standard. If a governmental policy or action even in contractual matters fails to satisfy the test of reasonableness, it would be unconstitutional. See the observations of this Court in Kasturi Lal Lakshmi Reddy and R.D. Shetty v.**

*International Airport Authority of India (SCC pp. 505-06 : SCR p. 1034)."*

*(emphasis supplied)*

### **Yardstick for Standard Rent:-**

46. Relying upon the above judgments Mr. Hansaria submitted that the Public authorities cannot raise rent arbitrarily. In this behalf he referred to the guidelines framed by the Central Government to prevent arbitrary use of the power under this Act. These guidelines are issued by the Central Government under resolution dated 30.5.2002 and published in the Government of India Gazette dated 8.6.2002. Guidelines No. 2 (i) and 2 (iii) are relevant for our purposes. He relied upon the judgment of a Division Bench of Bombay High Court in **Persis Kothawala vs. LIC** reported in **2004 (4) BCR 610** to submit that these guidelines are expected to be followed. These guidelines are as follows:-

*"MINISTRY OF URBAN DEVELOPMENT AND POVERTY ALLEVIATION*

*(DIRECTORATE OF ESTATES)*

*RESOLUTION*

*New Delhi, the 30<sup>th</sup> May 2002*

*Subject: Guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertakings/financial institutions.*

*No.21013/1/2000-Pol.I – The question of notification of guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertakings/financial institutions has been under consideration of the Government for some time past.*

2. To prevent arbitrary use of powers to evict genuine tenants from public premises and to limit the use of powers by the Estate Officers appointed under Section 3 of the P.P.(E) Act, 1971, it has been decided by Government to lay down the following guidelines:-

(i) The provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [P.P. (E) Act, 1971] should be used primarily to evict totally unauthorised occupants of the premises of public authorities or subletees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises.

(ii) The provisions of the P.P.(E) Act, 1971 should not be resorted to either with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in occupation of the original tenants to whom the premises were let either by the public authorities or the persons from whom the premises were acquired.

(iii) A person in occupation of any premises should not be treated or declared to be an unauthorised occupant merely on service of notice of termination of tenancy, but the fact of unauthorised occupation shall be decided by following the due procedure of law. Further, the contractual agreement shall not be wound up by taking advantage of the provisions of the P.P. (E) Act, 1971. At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.

(iv) It is necessary to give no room for allegations that evictions were selectively resorted to for the purpose of securing and unwarranted increase in rent, or that a change in tenancy was permitted in order to benefit particular individuals or institutions. In order to avoid such imputations or abuse of discretionary powers, the release of premises or change of tenancy should be decided at the level of Board of Directors of Public Sector Undertakings.

*(v) All the Public Undertakings should immediately review all pending cases before the Estate Officer or Courts with reference to these guidelines, and withdraw eviction proceedings against genuine tenants on ground otherwise than as provided under these guidelines. The provisions under the P.P. (E) Act, 1971 should be used henceforth only in accordance with these guidelines.*

3. *These orders take immediate effect.*

VINEETA RAI  
Additional Secy."

47. Mr. Hansaria pointed that when the MRC Act was being framed, LIC specifically represented to Maharashtra State Law Commission that it be exempted from the coverage of the proposed law. This is recorded in Twelfth Report of July 1979 of the State Law Commission which finds a reference in paragraph 33 of the Bombay High Court judgment in **Minoo Framroze Balsara Vs. The Union of India & ors. [AIR 1992 Bom 375]**. However, that representation of L.I.C was not accepted. Later on in view of the amendment of section 2 (e) of the Public Premises Act, L.I.C came to be covered under the Public Premises Act, but was not exempted from the MRC Act.

48. Lastly, Mr. Hansaria relied upon the judgment of a Division Bench of Karnataka High Court in the case of **Bharath Gold Mines Ltd vs. Kannappa [ILR 1988 KAR 3092]** equivalent to 1989 (2) All India Rent Control Journal 154, where the Division Bench has held that the power to evict does not include the power to fix rent. Fixation of rent was independent from eviction, and it was not dealt with under the Public Premises Act. The Public Premises Act does not override the

provisions of the Karnataka Rent Control Act, 1961 regarding the fixation of fair rent. It is submitted that the same approach ought to be adopted in the present case.

**Reply on behalf of L.I.C -**

49. The learned Additional Solicitor General Mr. Rawal appearing for the respondents submitted that the appellant had agreed to 35% rise in the rent every five years. Section 7 of the Public Premises Act provides for payment of rent by the authorized tenant, and makes a provision for damages for the unauthorized occupation. A hearing is provided for recovery of the arrears of rent and the damages under that section, and the order, if any, passed against the occupant is appealable under Section 9 of the Act. The order is given finality under Section 10 of the Act. He pointed out that as noted by this Court also in **Shangrila Food Products Ltd. and Another Vs. L.I.C. and Another** reported in **[1996 (5) SCC 54]**, that “unless the occupant is first adjudged as an unauthorized occupant, his liability to pay damages does not arise. In other words, if he is an authorized occupant, he may be required to pay rent but not damages. The quality of occupation and the quality of recompense for the use and occupation of the public premises go hand in hand and are interdependent”.

50. The rent was being fixed on one of the three yardsticks, i.e. (i) as per the document of lease, (ii) as per the contract between the parties, or (iii) as per the grant. If the arrears of rent remained to be recovered from the tenant, there is a

power to recover the same even from the heirs and legal representatives under Section 13 of the Act, and if the rent or damages are not paid, they can be recovered as arrears of land revenue under Section 14 and an unlawful occupant can be prosecuted under Section 11 of the Act. This being the position the idea of standard rent was foreign to the Public Premises Act.

51. A reference was made to the rules which are framed under the Act alongwith the relevant forms framed thereunder. Thus, Form D contains the format for the notice under Section 7 (3) read with Sub-section (1) thereof which is to be issued by the Estate Officer for calling the tenant for an enquiry into the arrears of rent. Form F is the format of the notice for enquiry for determining the damages for unauthorized occupation to be assessed under Section 7 (3) read with Sub-section (2) thereof. It was, therefore, submitted that necessary mechanism is provided under the Act and the Rules.

52. Thereafter it was pointed out that all that the respondents had done was to pass on the amount of property tax demanded by the Municipal Corporation to the appellant. It was submitted that when the respondent received a notice dated 23.3.2006 from the Municipal Corporation of Mumbai to enhance the property tax, to begin with the respondent objected to the revision by their reply dated 13.4.2006. The officers of the respondent attended the proceedings in the municipal office whereafter the Municipal Corporation reduced their demand by 10%. It is only a proportion of this amount which was passed on to the appellant

and which is sought to be recovered and they should not make any grievances about the same.

53. The respondents then relied upon the judgment of a Division Bench of Bombay High Court in *Minoo Framroze Balsara* (supra). In that matter the challenge to the validity of the Public Premises Act by invoking Article 14 was repelled by the High Court. It is however, material to note that this judgment was essentially concerning eviction of unauthorized occupants and did not deal with the aspect of fixation of standard rent.

54. Mr. Rawal then referred to us two judgments of this Court. Firstly, he referred to para 10 of **Jain Ink Mfg. Co. vs. LIC** (supra), wherein this Court had held that once the Public Premises Act applies, the Delhi Rent Control Act will stand superseded. He then referred to **Prithipal Singh v. Satpal Singh (dead) thr. its Lrs. [2010 (2) SCC 15]** where in para 29 this court has held that the Delhi Rent Control Act and the Maharashtra Act are pari-materia, and therefore, on that footing he submitted that by applying the judgment in *Jain Ink Mfg. Co.* (supra), Maharashtra Act also gets eclipsed by the Public Premises Act. We have already referred to the judgment in *Jain Ink Mfg. Co.* (supra). The judgment was in the context of eviction from Public Premises and not concerning fixation of standard rent, and therefore, the observations in para 10 thereof will have to be looked into from that point of view.

55. The submission of Mr. Rawal was that an exclusionary clause has to be read strictly. In the present case Section 2 (f) read with Section 15 (d) of the Act dealt with the definition of rent and exclusion of proceedings for recovery of rent by way of Civil suit, and there was no non-obstante clause in the MRC Act. In this context, he relied upon a judgment of this Court in **Church of North India Vs. Lavajibhai Ratanjibhai** reported in **[2005 (10) SCC 760]**. In that matter, after examining the scheme of Bombay Public Trusts Act, 1950 and relying upon the dicta of the constitution bench in **Dhulabhai Vs. State of M.P.** reported **[AIR 1969 SC 78]**, this Court had held that a suit for declaration as to the succession to a public trust was not maintainable, since the authorities under the Bombay Public Trusts Act had exclusive jurisdiction. A similar approach was suggested in the present case.

56. It was then submitted that the MRC Act excludes some tenants from the protection of the rent Act such as the Banks, Insurance Companies and Multi National Companies being rich tenants. In the same way, under the Public Premises Act, fixing of standard rent has been excluded, and that should be held to be permissible. If a tenant is aggrieved by the rent fixed, his remedy will be to invoke Article 226 of the Constitution, but one cannot permit part of the proceedings regarding arrears of rent before the Court of the Estate Officer, and another part concerning fixation of standard rent before the Rent Controller.

57. With respect to the guidelines framed by the Central Government, it was submitted by Mr. Rawal that non-statutory guidelines are to be treated as advisory in character and present guidelines need not be read as conferring any



legal rights on the tenants. He relied upon paragraph 23 of the judgment of a Bench of two Judges of this court in **New India Assurance Co. Ltd. Vs. Nusli Neville Wadia** reported in **[2008 (3) SCC 279]** in this behalf.

### **Consideration of rival submissions**

#### **The issue with respect to maintainability of the Standard Rent Application and the question of conflict with the provisions of the Public Premises Act-**

58. As we have noted earlier, the question for our considerations is whether the application of the appellant for fixation of standard rent was maintainable under the MRC Act, notwithstanding the fact that the premises of the appellant were otherwise covered under the Public Premises Act for the purposes of that Act. Again, as we have noted earlier, the appellants do not dispute that for the purposes of eviction of unauthorised occupants, and for the recovery of arrears of rent from them, the proceedings to be initiated by the respondents would be fully competent under the Public Premises Act, and that in such an eventuality the occupants will not be entitled to seek any remedy under the MRC Act, since the jurisdiction of the Civil Court has been ousted under Section 15 of the Public Premises Act in this behalf. It is also already held by this Court in the cases of **Kaiser-I-Hind** and **Crawford Bayley** (supra) that as far as the issue of eviction of unauthorised occupants from Public Premises is concerned, the authorities under the Public Premises Act alone will have jurisdiction to deal therewith, and no proceedings will lie either under the Bombay Rent Act or the MRC Act. The question in the present matter is with respect to the maintainability of the Standard Rent

Application by the occupants of these premises under the MRC Act. Mr. Hansaria, learned counsel for the appellants points out that this issue has not been decided by this Court so far.

59. Before we deal with the rival submissions, we may state once again that under the general law of landlord and tenant also, the landlord had the obligation to charge only the rent agreed under the lease agreement, and to carry out the repairs to the property which were necessary, failing which the tenant would be entitled to carry out the same and deduct the expenses from the rent [see Section 108 (B) (f) of the Transfer of Property Act]. As we have noted earlier, due to the problems of the scarcity of accommodation following the Second World War, special protection was made available to the tenants against unjustified increases in rent and ejection from the tenancies. This protection was reflected in the provisions of various Rent Control Acts such as the Bombay Rent Act, 1947 which governed the premises of the appellant for all purposes prior to the coming into force of the Public Premises Act, 1971. When the Public Premises Act was enforced, it covered the subject of eviction of unauthorised occupants of the public premises and recovery of arrears of rent from them, and those subjects no longer remained covered under the Bombay Rent Act. The question is whether the remedies for fixation of Standard Rent and getting the essential services restored when necessary, no longer remained available to the tenants like the appellant merely because the Public Premises Act came to be applied. And secondly, after the MRC

Act came into force from 31<sup>st</sup> March, 2000 whether these remedies once again came to be reinforced.

60. We have noted the observations from the leading judgment of the Constitution Bench in **Ashoka Marketing**. In that matter this Court was concerned with the question as to whether the proceedings for eviction initiated under the Public Premises Act were maintainable or whether they had to be taken under the Delhi Rent Control Act, 1958. As we have noted earlier this Court has held that since both the acts were concerning entries no. 6, 7 and 13 of the Concurrent List, and since the Public Premises Act was a subsequent Act, and governing the particular subject, the same will override, and the eviction proceedings thereunder were valid and competent.

61. The question in this case is different in the sense that the MRC Act which is a State Act, is an Act subsequent to the Public Premises Act, and has been assented by the President, notwithstanding the existence of the Public Premises Act. The situation, therefore, would be governed by Sub-article (2) of Article 254 of the Constitution, and we will have to see whether the provisions of MRC Act with respect to the fixing of the standard rent and restoring the essential supplies and services are in any way repugnant to the Public Premises Act. In **Vijay Kumar Sharma Vs. State of Karnataka** (supra) a Bench of three Judges of this Court has laid down that whenever repugnancy is alleged, what has to be first examined is whether the two legislations cover or relate to the same subject matter. The test for that is to find out the dominant intention of the two legislations. If the subject

matters covered by the legislations are different, merely because the two legislations refer to some allied or cognate subjects they do not cover the same field.

62. We have noted the observations of a Bench of three Judges of this Court in **M/s Jain Ink Mfg. Co.** (supra) that the Public Premises Act has a very limited application, whereas the Rent Act is an Act with much wider application than the Public Premises Act. In the present case, the subjects of fixation of Standard Rent and restoration of essential services by the landlord are covered under the MRC Act, but in no way under the Public Premises Act. The Public Premises Act, in fact does not claim to cover these subjects. As held by the Constitution Bench in **Kesoram Industries Ltd.** (supra), the Court has to look at the substance of the matter. Regard must be had to the enactment as a whole, to its main objects and scope of its provisions. Incidental and superficial encroachments are to be disregarded. Eviction and recovery of arrears of rent are alone covered under the Public Premises Act. The subject of fixation of rent is different and independent from eviction as held by the division bench of the Karnataka High in **Bharath Gold Mines**. That being the position, there is no conflict between the MRC Act and the Public Premises Act when it comes to the provisions in the MRC Act with respect to fixation of Standard Rent and requiring the landlord to maintain the essential services and supplies. Therefore, the provisions of MRC Act in that behalf cannot in any way be said to be repugnant to those under the Public Premises Act. The presumption is in favour of constitutionality, and the Court is not expected to strike

down a provision unless the conflict is a real one. In the present matter there is no such real conflict.

### **On ouster of the jurisdiction of the Civil Courts-**

63. We may next deal with the contention of the respondents that the exclusionary clauses are to be read strictly. In the case of **Church of North India** (supra), relied upon by the respondents, this Court was concerned with a suit for declaration as to the succession to a particular trust governed under the Bombay Public Trust Act. Such a suit was squarely covered under that Act and, therefore, it was held that the Civil Court will not have the jurisdiction to entertain the suit. The seven principles laid down by the Constitution Bench in *Dhulabhai Vs. State of M.P.* (supra) were relied upon in that case. It is sufficient to refer to the first two principles therefrom which are as follows:-

*"(1) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.*

*(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court."*

If we apply these two tests and examine the scheme of the Public Premises Act, it will be seen that section 10 of the Act does give a finality to the orders passed by

the Estate Officers or the Appellate Officers, and states that 'the same shall not be called in question in any original suit, application or execution proceeding, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act'. Section 15 of the Act specifically states that no court shall have jurisdiction to entertain any suit or proceeding in respect of the subjects, amongst others concerning, '(a) the eviction of any person who is in unauthorised occupation of any public premises, and (d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section'. Therefore, to that extent the jurisdiction of the Civil Court is ousted. The actions which are covered under the Public Premises Act are concerning eviction of unauthorised occupants and recovery of arrears of rent. The Act however does not claim to speak anything about the fixation of Standard Rent or maintenance of essential services. For these purposes no remedy is provided under the Public Premises Act. Therefore, the jurisdiction of the Civil Court for these remedies cannot be held to be ousted.

64. It was submitted on behalf of the respondent that if the submission of the appellant is accepted it will mean permitting proceedings before the Court of Estate Officer for recovery of arrears of rent, and before the Rent Controller for fixation of standard rent, and the same is not desirable. In our view, this by itself can be no reason to hold the Standard Rent Application to be not maintainable before the Court of Small Causes. We have referred to the judgment in the case of

**National Engineering Industries Ltd. Vs. Shri Kishan Bhageria** (supra). In that case the establishment wherein the respondent/workman was employed was covered under the Rajasthan Shops and Establishment Act, 1958. It was also covered under the Industrial Disputes Act, 1947. Dismissal of his application for reinstatement under Section 28A of the Rajasthan Act on the ground of limitation was held as not preventing a reference under Section 10 of the Industrial Disputes Act. The observation of this Court at the end of para 12 of that judgment is relevant for our purposes, and which reads as follows:-

*"12.....It appears to us that it cannot be said that these two Acts do not tread the same field. Both these Acts deal with the rights of the workman or employee to get redressal and damages in case of dismissal or discharge, but there is no repugnancy because there is no conflict between these two Acts, in pith and substance. There is no inconsistency between these two Acts. These two Acts, in our opinion, are supplemental to each other."*

65. Same is the position with respect to the Labour Laws in various States. Thus, for example, where an industry is covered under a State Act such as the Bombay Industrial Relation Act, 1946 in Maharashtra, the workmen engaged therein will be required to raise the disputes concerning reinstatement and backwages in the event of dismissal, retrenchment, removal or termination before the authority under that Act. At the same time, whenever any money, including unpaid wages is due to the workmen, they also have the right to file the claim applications under section 33 C (2) of the Industrial Disputes Act, 1947, in the Labour Courts constituted under that Act, since similar provision is not made under the said

Bombay Act. The MRC Act being a welfare statute like the labour laws is enacted after considering the requirements of the tenants, and contains the provisions for fixation of standard rent and for restoring essential services and supplies when necessary. The public premises are not specifically exempted from the applicability of the MRC Act. That being so, there is no reason to hold that these remedies will not be available to the tenants of the public premises, though for the purposes of eviction of unauthorised occupants and recovery of arrears of rent, the proceedings will lie only under the Public Premises Act. It is also to be noted that the proceedings for the recovery of arrears of rent are at the instance of landlord, whereas those for fixation of standard rent are at the instance of the tenant. Both these proceedings are quite different in their prayers and scope of consideration. The fact that the proceeding for one purpose is provided under one statute can not lead to an automatic conclusion that the remedy for a different purpose provided under another competent statute becomes unavailable.

#### **Expectations from Public Bodies -**

66. Although the question of maintainability of the Standard Rent Applications concerning the public premises is only coming up now before this Court, we have referred to the views of Courts when different facets of this issue came up for consideration from time to time. The exemption from the Bombay Rent Act to the government premises was upheld in **Rampratap Jaidayal** (supra), on the basis of the presumption in favour of the constitutionality of the enactment which was also on the footing that Legislature correctly appreciates the needs of its own



people. Chief Justice Chagla has clearly observed in that matter that the Legislature was not in any sense exempting the Government from the operation of the Act in order to permit the Government to do the very thing which the Legislature was prohibiting the landlords from doing, viz. not to increase rents and not to eject tenants unless it was absolutely necessary in the public interest. S.R. Das, J. (as he then was) has also observed similarly in **Baburao Shantaram More** (supra) that it was not expected that the Government or the Local Authority would be actuated by any profit making motive so as to unduly enhance the rents or eject the tenants from their respective properties as private landlords are or are likely to be. Sabyasachi Mukharji, J (as he then was) has gone further in **Dwarkadas Marfatia** (supra), and observed that when public authorities enjoy this benefit of being hidebound by the requirements of the Rent Act, they must act for public benefit, and to that extent this issue is liable to be gone into and can be the subject-matter of adjudication. He has stated in no uncertain terms that the legislative expectations as observed by the Chagla, C.J. in **Rampratap Jaidayal** (supra) cannot make such conduct a matter of contract pure and simple. He has further observed that the exercise of discretion of public authorities must be tested on the assumption that they would not act as private landlords and they must be judged by that standard. We may however, add that these principles will have no relevance while considering a dispute between a statutory body as landlord and an affluent tenant in regard to a commercial or non-residential premises.

#### **On the relevance of the Guidelines -**

67. In the instant case, the activities of the respondent/L.I.C are controlled by the LIC Act. Section 21 of the LIC Act lays down that the Corporation shall be guided by the directions issued by the Central Government. This Section reads as follows:-

***"21. Corporation to be guided by the directions of Central Government-***

*In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing; and if any question arises whether a direction relates to a matter of policy involving public interest the decision of the Central Government thereon shall be final."*

The guidelines dated 30.5.2002 are not directions under section 21 of the LIC Act.

68. We have referred to the general guidelines dated 30.5.2002, laid down by the Central Government in this behalf. Guidelines no. 2(i) and 2 (iii) are relevant for our purpose. Guideline no. 2 (i) states that the provisions of the Public Premises Act, 1971 should be used primarily to evict totally unauthorised occupants. Guideline No. 2 (iii) specifically states that it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State, or to move under genuine grounds under the Rent Control Act for resuming possession. Thus, these guidelines specifically recognise the relevance of certain provisions of Rent Control Acts for their application to the properties covered under the Public Premises Act. It is stated in the guidelines that the public authorities would have rights similar to private landlords under the Rent Control Acts in dealing with genuine legal tenants. It follows that the public authorities will have the

obligations of the private landlords also. It is relevant to note that the purpose of these guidelines is to prevent arbitrary use of powers under the Public Premises Act. The relevance of the guidelines will depend upon the nature of guidelines and the source of power to issue such guidelines. The source of the right to apply for determination of standard rent is the Rent Control Act, and not the guidelines.

69. We may also note by subsequent clarificatory order dated 23.7.2003, the Central Government has made it clear that the guidelines dated 30.5.2002 will not apply to affluent tenants:

*"The Government resolution dated 30.5.2002 embodies the guidelines dated 14.1.1992 for observance by the public sector undertakings. However, clarification was issued vide OM No. 21011/790 Pol-I IV H. 11 dated 7.7.1993 that the guidelines are meant for genuine non-affluent tenants and these are not applicable to the large business houses and commercial entrepreneurs."*

70. It was submitted on behalf of the respondents that if the appellant or the tenants are aggrieved by the fixation of the rent, their remedy is to invoke the writ jurisdiction of the High Court. In making this submission, the respondents are ignoring that the writ jurisdiction is a discretionary jurisdiction. Besides, normally oral evidence is not recorded while exercising the writ jurisdiction. Although part of the evidence to be examined in the process of rent fixation would be documentary, such as the provisions of the contract between the parties, there would also be many other factors which may require oral evidence, particularly with respect to the comparable properties. An appropriate remedy, forum and procedure are therefore necessary in the interest of fairness and proper adjudication. That apart, there is no reason to insist upon such an interpretation which will deny to the tenants of the

public premises, a remedy and a forum which are otherwise available to the tenants under the MRC Act,.

71. In view of what is stated above, the interpretation as canvassed by the respondents will deny the appropriate remedy to the petitioner and the like tenants, to have the rent of their premises being fixed by filing a Standard Rent Application, and also to get the essential services restored in the event of any difficulty. There is no reason to accept any such interpretation because as stated above there is no conflict between this provisions of the MRC Act with those under the Public Premises Act, when it comes to fixation of standard rent and restoring the essential supplies. Otherwise it will expose the provisions of Public Premises Act to the vires of unreasonableness also. The interpretation canvassed by the respondents is not in consonance with the welfare state that is contemplated under the Indian Constitution. Accordingly, we hold that the impugned judgment of the learned Single Judge of Bombay High Court does not lay down the correct position in law. As against that we approve the approach and the interpretation adopted by the Karnataka High Court in **Bharath Gold Mines Ltd.** (supra).

72. In the circumstances, we hold as follows:-

(a) The provisions of the Maharashtra Rent Control Act, 1999 with respect to fixation of Standard Rent for premises, and requiring the landlord not to cut off or withhold essential supply or service, and to restore the same when necessary, are

not in conflict with or repugnant to any of the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

(b) The provisions of the Public Premises Act, 1971 shall govern the relationship between the public undertakings covered under the Act and their occupants to the extent they provide for eviction of unauthorised occupants from public premises, recovery of arrears of rent or damages for such unauthorised occupation, and other incidental matters specified under the Act.

(c) The provisions of the Maharashtra Rent Control Act, 1999 shall govern the relationship between the public undertakings and their occupants to the extent this Act covers the other aspects of the relationship between the landlord and tenants, not covered under the Public Premises Act, 1971.

(d) The application of appellant and similar applications of the tenants for fixation of Standard Rent or for restoration of essential supplies and services when necessary, shall be maintainable under the Maharashtra Rent Control Act, 1999.

73. Hence, we pass the following order-

(a) This appeal is allowed, and the order dated 8.9.2009 passed by the learned Single Judge of Bombay High Court, in Writ Petition No. 5023/2009 filed by the respondents is set aside. The said Writ Petition shall stand dismissed.

(b) The order dated 30.3.2009 passed by the Court of Small Causes, Mumbai rejecting respondents' application objecting to the maintainability of appellant's Application No.RAN24/SR/08 for fixation of Standard Rent is upheld. The said

Standard Rent Application will now be heard and decided on its merits and in accordance with law.

(c) In the facts of this case, there will be no order as to costs.

.....J.  
( R.V. Raveendran )

.....J.  
( H.L. Gokhale )

New Delhi

Dated : September 19, 2011



