Niti/Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS.726 OF 2017, 377 & 811 OF 2019

WRIT PETITION NO.726 OF 2017

1. M/s. Alcon Construction (Goa) Pvt. Ltd., a Private Limited Company, registered under the Indian Companies Act, 1956, Having its registered office at Velho Building, Panjim, Goa.
Represented herein through its authorized signatory, the petitioner no.2 herein.

2. Shri Aakash Nanda Naik Khaunte, Director of the petitioner no.1, Son of Nanda Sadassiva Naique Counto, major of age, Indian National, residing at 503, Gurudatta Apartments, Panaji, Goa. ... Petitioners

Versus

1. State of Goa, Through the Revenue Secretary, Secretariat, Alto Porvorim-Goa.

2. Arun Narayandas, Residing at Arun Niwas, Swami Vivekanand Road, Panaji, Goa. ... Respondents

Mr J.E. Coelho Pereira, Senior Advocate, with Mr V. Korgaonkar, and Mr Vilas Pavithran, Advocates *for the Petitioners.*

Mr R.G. Ramani, Senior Advocate, with Mr P. Kakodkar, Advocate *for Respondent No.2.*
Mr D. Pangam, Advocate General, with Mr P. Arolkar, Additional Government Advocate *for Respondent No.1.*

WITH
WRIT PETITION NO.377 OF 2019

Shri Prashant M. Shirodkar,
son of late Manohar G. Shirodkar,
54 years of age, businessman,
resident of FT 6/7, 'A' Building,
Adwalpalkar Shelter,
Caranzalem, Tiswadi - Goa 403002. ... Petitioner

Versus

1) STATE OF GOA
through its Chief Secretary,
Secretariat, Vidhan Sabha Complex,
Porvorim, Bardez – Goa.

2) Shri. JERRY FERNANDES

3) Shri. RUI FERNANDES

4) Smt. MARIE FERNANDES
(since deceased represented by
legal representative respondent nos.2 & 3).

All of full age, Shop no. 4, Ground floor,
"Meera Building', Near Gomantak Press,
Santa-inez, Panaji – Goa.

5) Smt. KALPANA K. KARAPURKAR

6) Shri. ANAND K. KARAPURKAR

7) RESHMA K. KARAPURKAR

All of full age, House no. 47
Behind Mahalaxmi Temple,

Panaji – Goa. … Respondents

Mr. Rui Alberto Gomes Pereira, Advocate *for the Petitioners.*
Mr. D. Pangam, Advocate General with Mr. Tukaram Gawas, Additional Government Advocate *for Respondent No.1.*

AND

WRIT PETITION NO.811 OF 2019

The Karnataka Bank Ltd.
A Banking Company, incorporated
Under the Indian Companies Act, 1913,
With registered office at Pumwell Circle,
Kankanady, Magalore-575002 and
one of its Branch office at Ground Floor,
Mabai Hotel Building,
Opp. to MMC Garden Square,
Margao, P.C. No. 403601, Goa,
Representation herein through its
Senior Branch Manager & Authorized
Officer, Mr. Mahabaleshwar Dixit,
Son of Vigneshwar Dixit, Age 55 Years,
Residing at A4/F2, Kurtarkar Classic,
Near Power House Aquem,
Margao-Goa 403601. ... Petitioner

Versus

1) The Goa Co-operative Marketing and
Supply Federation Ltd. Registered
under the Maharashtra Co-operative
Societies Act With its registered office
at Sahakar Bhavan, Opp. Municipal Market,
Panaji - Goa In charge of its unit,
M/S Goa Sahakar Bhandar,
At Ground Floor, Mabai Hotel Building,
Near MMC Garden Square,
Margao-Goa, Represented
by its Managing Director,
Mr. Kashinath Naik, Major in age,

2) The State of Goa
Through the Chief Secretary

Secretariat, Porvorim-Goa.

3) The Secretary the Govt. of Goa
Law Department (Legal Affairs)
Secretariat, Porvorim-Goa. … Respondents

Mr J.E. Coelho Pereira, Senior Advocate, with Mr V. Korgaonkar and Mr Vilas Pavithran, Advocates *for the Petitioners.*
Mr D. Pangam, Advocate General, with Mr G. Shetye, Additional Government Advocate *for the Respondent – State.*

CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.

Reserved on : 1st FEBRUARY 2023
Pronounced on : 7th FEBRUARY 2023

JUDGMENT : (*Per M.S. Sonak, J.*)

1. Heard learned Counsel for the parties.

2. The learned Counsel for the parties agree that a common judgment and order can dispose of these three petitions since they raise substantially common issues of Law.

3. In all these petitions, the principal challenge is to the provision in Section 23 of the Goa Buildings (Lease, Rent & Eviction) Control Act, 1968 (Rent Control Act) to the extent the said provision prohibits landlords from securing eviction of their tenants from non-residential buildings on the ground of bonafide need for personal occupation.

4. The Petitioner, in Writ Petition No.377 of 2019, has urged the striking down of the entire Rent Control Act or in the alternate Sections 12 to 16, 18, 21, 22, 33 and Section 2(p) of the Rent Control Act, in addition to the challenge to Section 23 of the Rent Control Act. However, in our Judgment, the challenges to the entire Rent Control Act or the provisions other than Section 23 of the Rent Control Act are presently academic. Therefore, we propose only to consider the issue of the constitutional validity of Section 23 of the Rent Control Act and not the other challenges left open for examination in appropriate cases.

5. In Writ Petition No. 726 of 2017, the Petitioner's application for eviction of Respondent No.2 from the commercial premises let out to him on the grounds of the bonafide requirement was dismissed by the trial Court and such dismissal was upheld by the First Appellate Court. The dismissal was because Section 23 of the Rent Control Act does not permit a landlord to seek eviction of his tenant from the commercial premises on the ground of bonafide requirement. Hence, the petition to question the constitutional validity of Section 23 of the Goa Rent Control Act.

6. In Writ Petition No.811 of 2019, the trial Court did order the eviction of Respondent No.1 – the tenant, from the commercial premises on the ground of Petitioner's bonafide requirement. However, the First Appellate Court reversed the trial Court by holding

that Section 23 does not apply to commercial premises. Hence, Writ Petition No.811 of 2019 to challenge the validity of Section 23 of the Rent Control Act.

7. In Writ Petition No.377 of 2019, the Petitioner has instituted the proceedings for eviction of Respondent Nos. 2 to 7 (Tenants) from the commercial premises on the ground of bonafide requirement. The proceedings are pending, but the Petitioner apprehends that such proceedings would fail given the provisions of Section 23 of the Rent Control Act and the decision of the learned Single Judge of this Court in ***Evaristo Esteneslaoc Rodrigues & Ors. V/s. Vaman Anant Parab Mahambrey & Ors.***[1]. Hence, the Writ Petition No.377 of 2019 questioning *inter alia* the constitutional validity of Section 23 of the Rent Control Act.

8. At the outset, Mr J. E. Coelho Pereira and Mr Rui Alberto Gomes Pereira submitted that the issue of the constitutionality of identical provisions stands answered in the Petitioners' favour by several decisions of the Hon'ble Supreme Court, including but not restricted to ***Gian Devi Anand V/s. Jeevan Kumar & Ors.***[2], ***Harbilas Rai Bansal V/s. State of Punjab & Anr.***[3], ***Rakesh Vij V/s. Dr. Raminder Pal Singh & Ors.***[4], ***Satyawati Sharma (dead) by***

1 1986 (3) Bom.CR 560

2 1985 2 SCC 683

3 (1996) 1 SCC 1

4 (2005) 8 SCC 504

LR's V/s. Union of India & Anr.[5], ***Ashok Kumar V/s. Ved Prakash & Ors.***[6], ***Vinod Kumar V/s. Ashok Kumar Gandhi***[7], ***Mohinder Prasad Jain V/s. Manohar Lal Jain***[8] and ***Malpe Vishwanath Acharya & Ors. V/s. State of Maharashtra & Anr.***[9].

9. The learned Counsel for the Petitioners submitted that legal relations between the landlords and tenants before the Rent Control Act entered force in 1969 were governed by Portuguese Decree-Law No. 43425 dated 07.03.1961. They pointed out that under this Law, there was no distinction between residential and commercial premises in the context of a landlord's right to seek eviction of his tenant on the ground of a bonafide requirement. They pointed out that most of the provisions of the Rent Control Act also make no such distinction. They, therefore, submitted that the distinction made in Section 23 is arbitrary, and the classification has no nexus whatsoever with the object of the Law. Based on this, they contended that the impugned Section, to the extent it discriminates between landlords who have created residential and commercial tenancies, violates Article 14 of the Constitution of India and must be struck down given the provisions in Article 13 of the Constitution of India. They refer to other judgments in the context of the doctrine of severability and under-inclusiveness to buttress their arguments.

5 (2008) 5 SCC 287
6 (2010) 2 SCC 264
7 (2019) 17 SCC 237
8 (2006) 2 SCC 724
9 (1998) 2 SCC 1

10. Mr D. Pangam learned Advocate General submitted that most of the decisions relied upon by the learned Counsel for the Petitioners concerned the situation where the Rent Control Legislation, initially enacted, had made no distinction based on the user of the tenanted premises. However, such distinction was introduced by amending the legislation, and it is such amendments that the Hon'ble Supreme Court struck down. Therefore, he submitted that most decisions were distinguishable based on this circumstance.

11. The learned Advocate General then submitted that several provisions offered differential treatment to residential and commercial buildings even under the Rent Control Act. In particular, he referred to the provisions of Sections 3(1)(cc), 22(2)(e) and 23A to submit that there was nothing wrong in treating the residential and commercial premises differently. He submitted that the classification was reasonable and there was a nexus between such classification and the object of the Law. According to him, such differential treatment was upheld by the Hon'ble Supreme Court in *Gian Devi Anand* (supra) and ***Gauri Shanker & Ors. V/s. Union of India & Ors***[10]

12. The learned Advocate General submitted that *Satyawati Sharma* (supra) was the decision that might appear to support the Petitioners' contention. However, he pointed out that this decision was peculiar to the fact situation in Delhi, and the same could not be

10 (1994) 6 SCC 349

extended to other States where the situation would be different. Therefore, he submitted that such matters must be left for determination by the Legislature and not the Courts.

13. The learned Advocate General submitted that even in *Gian Devi Anand* (supra), the Constitution Bench did not strike down the provisions of Section 14(1)(e) of the Delhi Rent Control Act but only suggested to the Legislature to consider amending the same. He pointed out that the Legislative Assembly of Goa has already taken cognizance of the decision in *Harbilas Rai Bansal* (supra), and based on the same, a bill to remove the distinction between residential and commercial premises in Section 23 of the Rent Control Act is passed. He pointed out that such a bill is pending the assent of the President of India, and therefore, no relief may be granted in these petitions.

14. The learned Advocate General finally submitted that the Affidavit filed on behalf of the State Government, in this case, is not very relevant for deciding the issue of constitutional validity. Instead, he relied on ***Sanjeev Coke Manufacturing Company V/s. M/s. Bharat Coking Coal Limited & Anr.***[11] to support this contention.

15. Mr Ramani, while adopting the submissions of the learned Advocate General, submitted that the ground of bonafide requirement under Section 23 would not be available to the Petitioners in Writ

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11 (1983) 1 SCC 147

Petition No.726 of 2017 because it was a company incorporated under the Companies Act. He made an argument based on the scheme of the Rent Control Act in general and the provisions of Section 23 in particular. He also referred to the decision in ***Joginder Pal V/s. Naval Kishore Behal***[12], in which it was observed that the Rent Control Legislations also protect landlords where such landlords are too weak and feeble. He submitted that the Petitioner in Writ Petition No.726 of 2017 does not fit such description and, therefore, lacks locus standi even to maintain the present petition or to seek eviction for a bonafide requirement.

16. Mr Ramani submitted that the Constitution Bench in *Gian Devi Anand* (supra), even after making strong observations in paragraph 39, refrained from striking down the Law but only recommended an amendment. He submitted that such an approach was binding on all Courts and, following the same, provisions of Section 23 may not be struck down.

17. The rival contentions now fall for our determination.

18. The main question involved in these petitions concerns the constitutional validity of Section 23 of the Rent Control Act to the extent this provision denies the landlords the right to seek eviction of

12 2002 5 SCC 397

their tenants from non-residential buildings on the ground of bonafide requirements.

19. The Rent Control Act was enacted by the legislative assembly of the Goa, Daman and Diu and received the assent of His Excellency, the President of India, on 22.02.1969. The Rent Control Act was enacted to control rents and evictions, rates of hotels and lodging houses, and requisition of vacant buildings in the State of Goa. In the first instance, it was extended to the Cities of Panaji, Margao, Mapusa and Vasco (including the Harbour area). However, in terms of Section 1(2), the Government was empowered from time to time by notification in the Official Gazette to extend the Rent Control Act or any provision thereof to other areas in the State of Goa. Therefore, it was submitted that the Rent Control Act has been extended and consequently applies to the entire State of Goa.

20. Section 2(c) defines "Building" to mean any building, or part of a building, which is, or is intended to be, let separately for use as a residence or commercial use or any other purpose, and includes the garden, ground and out-houses, if any, appertaining to such building or part of the building; any furniture supplied by the landlord for use in such building or part of the building; but does not include a room in a hotel or lodging house. Thus, the definition of "Building" is quite comprehensive and, most importantly, makes no distinction based on the use of the building as a residence or for commerce.

21. Section 2(i) of the Rent Control Act defines "Landlord" to mean a person who, for the time being, is receiving, or is entitled to receive, the rent of any building, whether on his own account or on account of, or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant. But, again, the definition of the expression "Landlord" makes no distinction based on the use of the building that he lets out to a tenant.

22. Section 2(o) defines "Tenant" to mean any person by whom or on whose account or behalf the rent of any building is, or but for special contract would be, payable and includes [in the event of his death the surviving spouse, or any son, or unmarried daughter or father or mother who had been living with him as a member of his family upto the date of his death and] a sub-tenant and also any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any order, or decree for eviction has been made. But, again, even the definition of "Tenant" makes no distinction based on the tenanted premises being residential or non-residential.

23. Section 3 provides that the Rent Control Act would not apply to certain buildings. Section 3(1)(cc) provides that nothing in the Rent Control Act shall apply to any building let out or leased for the

first time on or after 20.04.1994, whose monthly rent exceeds ₹2,500/-if such building is used for residential purposes and ₹5,000/- if such building is used for commercial purpose. This is one of the provisions where a distinction is made between buildings used for residential purposes and commercial purposes. But even this distinction is only partial and has a rational nexus with the object of the Act. The difference proceeds based on the premise that commercial buildings generally fetch higher rents.

24. Chapter II of the Rent Control Act is concerned with the Control of letting. At least, *prima facie*, none of the Sections in this Chapter, except Section 11, appear to distinguish between buildings used for residential or non-residential (commercial) purposes. The various provisions in Chapter II, therefore, at least *prima facie*, apply to residential and non-residential buildings in the context of Control of Letting such buildings. Only section 11 provides that nothing in Chapter II shall apply to residential buildings, the monthly rent of which does not exceed twenty-five rupees, and to a non-residential building, the monthly rent of which does not exceed fifty rupees. However, even Section 11 of the Rent Control Act does not exempt non-residential buildings, the monthly rent exceeding fifty rupees. Even this partial distinction is based on the nexus discussed above.

25. Chapter III of the Rent Control Act is concerned with determining fair rent. But, again, at least, *prima facie*, none of the

Sections in this Chapter distinguish between buildings used for residential and non-residential purposes. Therefore, even when determining fair rent, the Legislature did not consider it appropriate to distinguish substantially between buildings used for residential or non-residential purposes.

26. Chapter IV of the Rent control Act is concerned with the payment and deposit of rent. But, again, at least *prima facie*, no distinction is made between buildings used for residential and non-residential purposes. Therefore, even in matters of payment and deposit of rent, the Legislature did not deem it fit to distinguish between buildings used for residential or non-residential purposes.

27. Chapter V of the Rent Control Act is concerned with Control over the eviction of tenants. This Chapter, by and far, is regarded as one of the most critical Chapters of the Rent Control Act. Section 23 is a part of this Chapter and is concerned with the landlord's right to obtain possession on the ground of a bonafide requirement. Chapter V comprises Sections 21 to 32.

28. Section 21 provides that notwithstanding anything to the contrary contained in any other law or contract, a tenant shall not be evicted, whether in the execution of a decree or otherwise, except in accordance with the provisions of Chapter V. There is a proviso that concerns with the effect of a tenant denying the title of a landlord or

claiming the right of permanent tenancy. However, even Section 21 makes no distinction between buildings used for residential or non-residential purposes.

29. Section 22 of the Rent Control Act is concerned with most of the grounds based on which a landlord may apply to the Controller seeking eviction of his tenant. This includes grounds like the tenant being in arrears of rent for a total period of three months, the tenant without the written consent of the landlord transferring his right when the lease or sub-letting or using the building for a purpose other than that for which it was leased, or the tenant committing acts of damage as are likely to impair the value or utility of the building materially, or the tenant is guilty of such acts or conducts which are a nuisance to the occupiers of the same building or buildings in the neighbourhood, or the tenant ceasing to occupy the building for a continuous period of four months without reasonable cause, or the tenant denying the title of the landlord or claiming the right of permanent tenancy malafide.

30. But, again, none of the provisions of Section 22 of the Rent Control Act, perhaps except Section 22(2)(e), make any distinction between the building being used for residential or non-residential purposes in the context of a landlord's right to apply to the Controller for eviction of his tenant on the grounds referred to in Section 22(2) of the Rent Control Act (except the ground referred to in sub-clause

(e)). The ground referred to in sub-clause (e) of Section 22(2) speaks about the tenant of a "dwelling house" who has built, acquired vacant possession of, or has been allotted residence. Therefore, the provision in Section 22(2)(e) at least *prima facie* refers to a 'building' or a 'dwelling house' used for residential purposes. Still, except for this clause, the rest of the clauses in Section 22 would apply to buildings used for residential or commercial purposes.

31. Section 23 of the Rent Control Act, which is the provision which is challenged in these petitions, is transcribed below for the convenience of reference:

> "***23. Landlord's right to obtain possession***.–
> *(1) A landlord may, subject to the provisions of section 24, apply to the Controller for an order directing the tenant to put him in possession of the building–*
> *(a) in case it is a residential building,–*
> *(i) if the landlord is not occupying a residential building of his own in the city, town or village concerned and he requires it for his own occupation or for the occupation of any member of his family; or*
> *(ii) if the landlord who has more buildings than one in the city, town or village concerned is in occupation of one such building and he bonafide requires another building instead, for his own occupation;*
> *(b) in case it is a non-residential* ***building which is used for the purpose of keeping a vehicle or adapted for such use,*** *if the landlord requires if for his own or to the possession of which he is entitled in the city, town or village concerned which is own or to the possession of which he is entitled whether under this Act or otherwise:*

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument 'inter vivos' shall not be entitled to apply under 16[this sub--section] before the expiry of five years from the date on which the instrument was registered :
[Provided further that in case of gift from parents the above period of five years shall be reduced to two years]:
Provided further that where a landlord has obtained possession of a building under this Section, he shall not be entitled to apply again under this Section–
(i) in case he has obtained possession of a residential building for possession of another residential building of his own;
(ii) in case he has obtained possession of a non-residential building for possession of another non-residential building of his own.
(2) Where the landlord of a residential building is a religious, charitable, educational or other public institution, it may, if the building is required for the purposes of the institution, apply to the Controller, subject to the provisions of section 24, for an order directing the tenant to put the institution in possession of the building.
(3) A landlord who is occupying only a part of a residential building, may notwithstanding anything in sub-section (1), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his own use or for the use of any member of his family.
Explanation:– For the purpose of this Section, a landlord means a person, on account of or on behalf of or for the benefit of whom the rent of a building is received but does not include an agent, trustees, guardian or receiver."

32. Section 23(A), inserted by an amendment that entered force on 21.06.1979, is concerned with the right to recover immediate possession of premises. This right is made available only to some specified categories of landlords like employees of the Government, local authorities, railways, public sector undertakings, armed forces, etc. At least, *prima facie*, this right to recover immediate possession is restricted to residential premises and not to commercial premises. The classification of the landlords shows that the Legislature wished they had a priority to secure the eviction of their tenants from residential premises. Therefore, the classification has a prima facie nexus to this object of providing special treatment to those who have served in the armed forces, etc. We say *prima facie* because we do not wish to preclude any future challenges to these provisions and because this is not directly the issue that arises for our determination in these petitions.

33. Section 24 provides for saving in case of tenancy for a fixed term. Section 25 requires the Controller to consider bonafide and comparative hardships where eviction is claimed under Section 23 of the Rent Control Act. Section 26 makes special provisions for certain classes of tenants. Section 27 provides consequences for the failure of the landlord to occupy premises vacated under Section 25. Section 28 is concerned with vexatious proceedings. Section 29 deals with the dismissal of a petition for ejectment.

34. Section 30 concerns a landlord recovering possession for repairs, alterations, additions, or reconstruction. Again, this provision makes no substantial distinction between buildings used for residential or non-residential purposes. Section 31 is concerned with the recovery of possession by a landlord for repairs, alterations or additions or for the reconstruction of the building, the possession of which has been taken over under Section 6. Again, no substantial distinction is made between residential and non-residential buildings.

35. Section 32 concerns payment or deposit of rent during the pendency of proceedings for eviction. Again, this provision makes no substantial distinction between residential and non-residential buildings. Accordingly, the obligation to deposit rent during the pending proceedings for eviction applies to tenants of residential and non-residential buildings.

36. Chapter VI is concerned with the obligation of the landlord and the tenant. But, again, none of the Sections in this Chapter distinguishes between residential and non-residential buildings.

37. Chapter VII deals with hotels and lodging houses. Chapter VIII deals with authorities, procedures and appeals, and Chapter IX deals with miscellaneous provisions. Again in these Chapters, there is no question of any distinction based on residential or non-residential buildings.

38. Thus, from the scheme of the Rent Control Act, it is evident that most of the provisions make no distinction based upon the user of the building being residential or commercial. In the context of Control and letting, determination of fair rent, payment and deposit of rents, practically no distinction has been made based upon the user of the said building being residential or commercial. In the most critical Chapter on the Control of eviction of tenants, it is evident that most of the Sections of this Chapter make no substantial distinction based on the user of the tenanted building being residential or non-residential. Most of the grounds for securing eviction of the tenants are to be found in Section 22 of the Rent Control Act. Almost all such grounds except the one specified in Section 22(2)(e) make no distinction between buildings used for residential or non-residential purposes. This means that landlords can apply to the Controller for eviction of their tenants on all grounds specified in Section 22(2) of the Rent Control Act except the ground in Section 22(2)(e).

39. However, when it comes to Section 23 of the Rent Control Act, which deals with the ground of the landlord's bonafide requirement, there is a distinction made that discriminates between landlords of residential and commercial buildings. The landlord, however bonafide and pressing his need, is precluded from seeking eviction of his tenant from a building used for non-residential or commercial purposes. But, again, this bar is not absolute because Section 23(1)(b) entitles a landlord to seek eviction of his tenant from a non-residential building

used to keep a vehicle or adapted for such use if the landlord bonafide requires the same for his own occupation. Neither the Rent Control Act nor the State's Affidavit provides a clue for this discrimination or differential treatment. Neither such clue is found in the statement of objects and reasons nor in any circumstances of which judicial notice could be legitimately taken.

40. Now, although classification *per se* between residential or non-residential premises could be regarded as a classification founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others left out from the group, at least the statement of objects and reasons of the Rent Control Act or the other provisions of the Rent Control Act gives no significant clue about such differentia having a rational relation to the objects sought to be achieved by the provision in question. Even the Affidavit filed on behalf of the State Government offers no clue on the nexus, if any, between the basis of classification and the object of the legislative provision under consideration.

41. Such an explanation was necessary if the challenge had to be defended or justified on the doctrine of reasonable classification for legislation. In *Shri Ram Krishna Dalmia* (supra), the Hon'ble Supreme Court has held that in order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely; (i*) that the classification must be founded on an intelligible differentia which*

distinguishes persons or things that are grouped together from others left out of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question.

42. The classification may be founded on different bases, namely, geographical or according to objects or occupations or the like. What is necessary is that there *'Must be a nexus between the basis of classification and the object of the Act under consideration'*. It is also well established by the decisions of the Hon'ble Supreme Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

43. Further, the Hon'ble Supreme Court held that there is always a presumption in favour of the constitutionality of an enactment, and the burden is upon the party who attacks it to show that there has been a clear transgression of the constitutional principles. The Court also held that there is a presumption that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. The Court also acknowledged that the Legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed clearest.

44. However, the Court also held that to sustain the presumption of constitutionality, the Court may consider matters of common knowledge, matters of common report, and the history of the times. It may assume every state of facts that can be conceived at the time of legislation. *Further, the Court held that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the Law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.*

45. In ***Mohammad Shujat Ali & Ors. V/s. Union Of India & Ors.***[13], the Hon'ble Supreme Court, whilst reiterating the principle that Article 14 forbids class legislation but does not forbid reasonable classification, *cautioned against the ready-made invoking of the doctrine of classification to ward off every challenge to legislative instruments on the ground of the equality clause.* The Court referred to the paradox pointed out by Justice Brewer in ***Morey V/s. Doud***[14], the very idea of classification is that of inequality. The Court has tackled this paradox over the years, and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to

13 1975 3 SCC 76

14 354 US 457

classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. This doctrine recognizes that the Legislature may classify for the purpose of legislation but requires that the classification be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated.

46. In *Mohammad Shujat Ali* (supra), the Court observed that the reasonable classification is one which includes all persons or things similarly situated concerning the purpose of the Law. Accordingly, there should be no discrimination between one person or thing and another if their position is substantially the same as the subject matter of the legislation. This is sometimes epigrammatically described by saying that the constitutional code of equality and equal opportunity requires the Law to be equal among equals and that like should be treated alike.

47. The Court explained that the basic principle underlying the doctrine is that the Legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification*, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation so that all persons or things similarly*

situated *are treated alike by Law*. Thus, the test which has been evolved for this purpose is, and the Court has consistently applied this test in all decided cases since the commencement of the Constitution- *that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation.*

48. The Court once again cautioned about being constantly on guard to see that the above test which has evolved as a matter of practical necessity to reconcile the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which required solution at the hands of the Legislature, *does not degenerate into a rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question*. On the contrary, the fundamental guarantee is of equal protection of the laws, and the doctrine of classification is only a subsidiary rule evolved by courts to give practical content to that guarantee by accommodating it with the practical needs of society. Therefore, it should not be allowed to submerge and drown the precious equality guarantee.

49. In ***State of Jammu & Kashmir V/s. Triloki Nath Khosa & Ors.***[15], the Hon'ble Supreme Court reiterated that the doctrine of

15 1974 1 SCC 19

classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterized by different and distinct attainments'. *Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content.* That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the Law and equal protection of the laws may be replaced by the overworked classification methodology.

50. In *Triloki Nath Khosa* (supra), the same caution was also advised by Krishna Iyer, J in his inimitable words :

> *"Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."*

51. Analysis of the Rent Control Act's provisions shows that most of the provisions, right from inception, make no distinction between

the treatment meted out to residential and commercial premises. However, some of the provisions which make a distinction, at least *prima facie,* offer some nexus between the basis of the classification and the object of such provisions. For example, the Rent Control Act is inapplicable to residential premises if the rent exceeds ₹2500/-but to commercial premises only if the rent exceeds ₹5000/-. This distinction proceeds on the well-established assumption that commercial premises generally fetch higher rent. So also, the benefit of summary eviction to which a particular class of landlords is entitled is restricted only to residential premises. Considering the categories of such landlords, i.e. members of the Defence forces or the Government servants etc., the classification, at least *prima facie,* is reasonable and has a rational nexus with the object that such provisions seek to achieve.

52. However, the position is quite different regarding the provisions of Section 23 of the Rent Control Act. Even if it is assumed that the classification is based on an intelligible differentia, the nexus between such differentia and the object Section 23 seeks to achieve is not discernible in the impugned provisions and/or statement of object and reasons to the Rent Control Act. No such nexus was even suggested in the Affidavit filed on behalf of the State Government. The learned Advocate General was also unclear on this aspect of nexus. However, he referred to the decision in *Gauri Shankar* (supra) and the reasoning for differential treatment between residential and commercial premises.

53. The Affidavit filed on behalf of the State Government supports the Petitioners' case. The Affidavit does not admit that the impugned provision is unconstitutional but denies that it prohibits the landlords from seeking eviction of their tenant on the grounds of bonafide requirements from commercial buildings. In paragraph 6, the affiant has stated that "*on a careful perusal of the provisions of the Rent Control Act would disclose that there is no embargo on a landlord of commercial premises seeking eviction of a tenant on the ground of bonafide personal requirement*".

54. The State Government's Affidavit qualifies the above assertion by stating that the Petitioners' apprehension about not being able to secure eviction of their tenants from commercial premises "*is based on a narrow reading of the provisions of the said Act*". The affiant further states in para 12 of the Affidavit as follows:

> "1*2..................... I say that it is incorrect to state that the right to apply for obtaining possession of a non-residential building would be limited to only certain situations which are mentioned under clauses (a) and (b) of Section 23(1). I say that the situations/examples provided under clauses (a) and (b) are merely illustrative and not exhaustive. The right is provided to a landlord to apply to the Controller for an order directing the tenant to put him in possession of a building. As such, this right applies to both residential and non-residential building. I say that it would not be appropriate to give a restricted meaning to the provisions of Section 23 and to read clauses (a) and*

> *(b) as circumscribing and limiting the rights to only certain situations as specified in the clauses."*

55. The State Government's Affidavit further states that the provisions of the Rent Control Act have to be read as a whole, and so read, Section 23 would mean that "*there is an equal right for the landlords of both residential as well as non-residential premises to apply to the Controller for an order directing the tenant to put him in possession if there is a bonafide personal requirement established*" The affiant further states that reference to the residential or non-residential building are mere illustrations and they cannot be read as controlling or restricting the main provision which applies to "*building*".

56. The Affidavit in paragraph 17 reads as follows:-

> *"17. I say that even otherwise, if Section 23 is read in the manner suggested by the Petitioners, even then clause (b) of Section 23(1) is wide enough to cover any non-residential building used for purpose of keeping a vehicle or adapted for such use. I say that these words are wide enough and include almost all types of non-residential buildings, since such buildings are adapted for the uses mentioned in the provision. I say that it is not the Petitioners case that the building in question of which the Petitioners are claiming right to obtain possession, is not a non-residential building used for the purpose of keeping a vehicle or adapted for such use. In such circumstances, the issues raised in the petition are purely academic in nature."*

57. Though the State Government's Affidavit completely supports the Petitioners, based only on such an affidavit, the Constitutional Court would not be justified in striking down the provisions of an Act. In *Sanjeev Coke Manufacturing Company* (supra), the Hon'ble Supreme Court has held that such an affidavit cannot be the sole basis for striking down the legislative provisions. The deponents of the affidavits filed into Court may speak for the parties on whose behalf they swear to the statements. They do not speak for the Parliament. No one may speak for the Parliament, which is never before the Court. After Parliament has said what it intends to say, only the Court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court is the only authentic voice which may echo (interpret) the Parliament. This the Court will do with reference to the language of the statute and other permissible aids. The executive Government may place before the Court their understanding of what Parliament has said or intended to say or what they think was Parliament's object and all the facts and circumstances which, in their view, led to the legislation. When they do so, they do not speak for Parliament. No Act of Parliament may be struck down because of the understanding or misunderstanding of Parliamentary intention by the executive Government or because their (the Government's) spokesmen do not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not, and they cannot bind Parliament. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State but by all the relevant circumstances which the

Court may ultimately find and more especially by what may be gathered from what the Legislature has itself said.

58. Therefore, it is clear that neither the provisions of Section 23 nor any other provisions of the Rent Control Act give any clue about the nexus between the classification of tenanted premises into residential and commercial in the context of tenant eviction on the ground of bonafide requirement of the landlord. However, the learned Advocate General, taking a clue from the decision in *Gauri Shanker* (supra), submitted that commercial tenancy is different from residential tenancy because a business undertaken at a particular place may have its own goodwill and other distinct advantages. Accordingly, he submitted that this could be regarded as nexus for classification in Section 23 of the Rent Control Act. This argument is backed with no material and, in any case, does not commend us for reasons that follow.

59. *Gauri Shanker* (supra) was a case concerning the issue of the heritability of tenancies. The Constitution Bench in *Gian Devi Anand* (supra) had already upheld the differential treatment meted out to residential and commercial tenancies in the context of their "*heritability*". *Gauri Shanker* (supra) explained that the classification was reasonable and had nexus with the object of heritability that the Law sought to achieve because commercial tenancies are more valuable and precious than residential tenancies. Therefore, it would not be

appropriate to deprive all legal representatives of their share of inheritance qua the commercial tenancies. In any case, even the Constitution Bench held that these are matters for the Legislature to decide. However, what is important is that the observations in *Gauri Shanker* (supra) were in the context of the heritability of residential or commercial tenancies and not in the context of a landlord's right to secure eviction of his tenant from residential or commercial premises. Therefore, such observations cannot be torn out of context or applied to an entirely different context.

60. Apart from the submissions made by the learned Advocate General based on *Gauri Shanker* (supra), it is not as if any cogent material was produced on record to support the submissions. Neither the provisions of the Rent Control Act nor its statement of objects and reasons supports the line adopted by the A.G. The Affidavit on behalf of the State Government, as noted above, supports the Petitioners' case based on the interpretation of provisions of Section 23 of the Rent Control Act. Thus, it is apparent that the classification based on the residential or non-residential user in the context of tenant eviction on the ground of bonafide requirement has no nexus with the object that the provision seeks to achieve or the provisions of the Rent Control Act seek to achieve. On this ground, the provisions of Section 23, to the extent they deny a landlord the right to secure eviction of their tenants from the commercial premises on the ground of bonafide

requirement, will have to be struck down as violative of Article 14 of the Constitution.

61. Even if we presume good faith and knowledge of the existing conditions on the part of the Legislature, if there is nothing on the face of the Law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. [see *R. K. Dalmia (supra)* discussed earlier]

62. In the absence of some perceptible nexus between the classification of landlords creating residential and commercial tenancies in the context of their tenants' eviction on the ground of bonafide requirement, the provision cannot be sustained, given the equality mandate. Simple classification is never enough, even if based on an intelligible differentia. The nexus is vital, and if the nexus is absent, the provision cannot pass the muster of Article 14.

63. As was explained by the Hon'ble Supreme Court, the doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, the guarantee of equality will be submerged in class legislation

masquerading as laws meant to govern well-marked classes characterized by different and distinct attainments'. Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the Law and equal protection of the laws may be replaced by the overworked classification methodology. To overdo classification is to undo equality.

64. A long line of precedents supports the view that the classification between landlords creating residential or commercial tenancies precisely in the context of eviction of tenants from commercial premises on the ground of the bonafide requirement of the landlord is arbitrary and infringes Article 14 of the Constitution.

65. In *Gian Devi Anand* (supra), the Hon'ble Supreme Court was concerned with the issue of the heritability of residential and commercial tenancies. The Constitution Bench, upon a detailed consideration of the provisions of not only the Delhi Rent Control Act, 1958 but also provisions of the other Rent Control Acts in general, held that the differential treatment on the issue of heritability of residential and commercial tenancies was a matter of policy to be determined by the Legislature. Therefore, there was nothing wrong in

providing that a commercial tenancy would be inherited by following the normal rules of succession. However, after recording this conclusion, the Constitution Bench in paragraph 39, deemed it desirable to make certain observations in the precise context of Section 14(1)(e) of the Delhi Rent Control Act that had provided for a landlord to seek eviction of his tenant only from residential buildings and not commercial buildings.

66. Paragraph 39 of *Gian Devi Anand* (supra), reads as follows:-

> "39. *Before concluding, there is one aspect on which we consider it desirable to make certain observations. The owner of any premises, whether residential or commercial, let out to any tenant, is permitted by the Rent Control Acts to seek eviction of the tenant only on the grounds specified in the Act, entitling the landlord to evict the tenant from the premises. The restrictions on the power of the landlords in the matter of recovery of possession of the premises let out by him to a tenant have been imposed for the benefit of the tenants. Inspite of various restrictions put on the landlord's right to recover possession of the premises from a tenant, the right of the landlord to recover possession of the premises from the tenant for the bona fide need of the premises by the landlord is recognized by the Act, in case of residential premises. A landlord may let out the premises under various circumstances. Usually a landlord lets out the premises when he does not need it for own use. Circumstances may change and a situation may arise when the landlord may require the premises let out by him for his own use. It is just and proper that when the landlord*

requires the premises bona fide for his own use and occupation, the landlord should be entitled to recover the possession of the premises which continues to be his property inspite of his letting out the same to a tenant. The Legislature in its wisdom did recognize this fact and the Legislature has provided that bona fide requirement of the landlord for his own use will be a legitimate ground under the Act for the eviction of his tenant from any residential premises. This ground is, however, confined to residential premises and is not made available in case of commercial premises. A landlord who lets out commercial premises to a tenant under certain circumstances may need bona fide the premises for his own use under changed conditions on some future date should not in fairness be deprived of his right to recover the commercial premises. ***Bona fide need of the landlord will stand very much on the same footing in regard to either class of premisses, residential or commercial.*** *We therefore, suggest that Legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well."*

67. In *Harbilas Rai Bansal* (supra), it was argued that the classification of buildings into residential and non-residential to enable a landlord to secure eviction of his tenant on the ground of bonafide requirement had no reasonable nexus with the object sought to be achieved by the Act. Therefore, depriving a landlord to seek eviction of his tenant from a non-residential building on the ground of a bonafide requirement was wholly arbitrary and hit by Article 14 of the Constitution.

68. The provision was, however, sought to be defended on the ground that if the Petitioner's arguments were to be accepted, the ground of hardship would be heaped on the tenant of commercial premises. The second line of defence was that certain landlords misused the eviction provision on the grounds of personal use. Finally, some provisions from the Act were relied upon to show how the Legislature had treated the residential and commercial tenancies differently.

69. The Hon'ble Supreme Court, however, concluded that the classification had no nexus with the object sought to be achieved by the Act. First, the Court observed that by vacating the premises on the ground of the bonafide requirement of the landlord, the tenant would not be put to any undue hardship. The Court observed that statutory protection to the tenant could not be extended to such an extent that the landlord is precluded from evicting the tenant for the rest of his life even if he bonafide requires the premises for his personal use and occupation. Finally, the Court noted that it is not the tenant but the landlords who are suffering great hardships due to such classification.

70. The Hon'ble Supreme Court illustrated that a landlord may genuinely like to let out a shop until he bonafide needs the same. The Court also gave an illustration of the shopkeeper (owner) dying young leaving behind no family members, competent to undertake the business activities through the shop immediately. Even the widow may

not be able to run the business from the shop. She may even like to let out the shop until her children grow up and need the shop for their use. The Court reasoned that it could be wholly arbitrary in a situation like this to deny her right to evict the tenant from the shop.

71. The Court noted that the impugned provision created a situation where a tenant could continue possessing non-residential premises for life. Moreover, even after the tenant's death, his heirs may continue the tenancy. The Court held that objects, reasons, and schemes of the Act could not have envisaged this type of situation which would be patently harsh and grossly unjust for the landlord of non-residential premises.

72. The Hon'ble Supreme Court further held that even if classification between the residential and non-residential building could be assumed reasonable, such classification had no nexus with the object sought to be achieved by the Act. The tenants of both kinds of buildings need equal and same protection of the beneficial provisions of the Act. Neither from the objects and reasons of the Act nor the provisions of the Act, it was possible to discern any basis for classification created by the provision.

73. In *Harbilas Rai Bansal* (supra), the Hon'ble Supreme Court referred to the observations made by the Constitution Bench in *Gian Devi Anand* (supra), that "*bonafide need of the landlord will stand*

very much on the same footing in regard to either class of premises, residential or commercial" and held that such observations fully support the view that the classification has no reasonable nexus with the object sought to be achieved by the Act. Accordingly, the impugned provision was struck down as violative of Article 14 of the Constitution.

74. In *Rakesh Vij* (supra), the Hon'ble Supreme Court, after considering the Law in *Gian Devi Anand* (supra) and *Harbilas Rai Bansal* (supra), struck down the provisions of the impugned Act to the extent they denied the landlord's right to secure eviction of his tenant from commercial buildings as violative of Article 14 of the Constitution. The Court further held that the Act had to be interpreted justly and equitably. To completely deprive a landlord of his right to seek eviction of a tenant from a non-residential building, even on the ground of his own use for all times to come, would be highly unjust and inequitable to him.

75. The learned Advocate General tried to distinguish *Harbilas Rai Bansal* (supra) and *Rakesh Vij* (supra) by contending that the Acts the Hon'ble Supreme Court considered in said cases did not initially distinguish between residential and commercial tenancies. The distinction was made much later by amending the Acts. Based on this circumstance, the decisions of the Hon'ble Supreme Court cannot be distinguished. This factor is irrelevant for determining whether the

discrimination between landlords who had let out their premises for residential or commercial purposes passed the muster of Article 14. Article 13 of the Constitution makes no distinction based on such a factor. A law, as initially enacted or introduced by amendment, if it infringes any fundamental rights in Part III, would be unconstitutional and ultra vires. Incidentally, an identical contention was raised but was rejected by the Hon'ble Supreme Court in *Ashok Kumar* (supra) by referring to *Mohinder Prasad Jain (supra).*

76. In *Mohinder Prasad Jain* (supra), the Hon'ble Supreme Court was concerned with the provisions of Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, which had also provided for eviction of a tenant on the ground of landlord's bonafide requirement restricted however only to residential premises. This was the position of the Act right from its inception. Still, the striking down of such a provision was accepted. Therefore, any attempt to distinguish the decisions of the Hon'ble Supreme Court in *Harbilas Rai Bansal* (supra) or *Rakesh Vij* (supra) would not hold good. Based on such distinction, the two decisions' precedential authority cannot be watered down. At this stage, we record that the Portuguese Decree-Law No. 43425, dated 07.03.1961, the Law before the Rent Control Act entered force, did not distinguish between residential and non-residential premises in the context of landlord seeking eviction of his tenant on the ground of bonafide requirement.

77. The learned Advocate General also contended that the observations in *Gian Devi Anand* (supra), *Harbilas Rai Bansal* (supra), and *Rakesh Vij* (supra) were in the context of the position prevalent in the respective States in which the impugned Acts operated. In our Judgement, however, the observations and the illustrations in the two decisions were not restricted to the particular provisions of the Acts that were considered or the States to which such Acts applied. The observations and illustrations apply generally. A similar contention was raised in *Ashok Kumar* (supra). However, the Hon'ble Supreme Court rejected such an argument holding that the decision concerning one legislation could always have persuasive value for the Court while considering the constitutionality of a similar provision, albeit in different legislation.

78. The crucial decision which clinches the issue is that of *Satyawati Sharma* (supra). There, the Hon'ble Supreme Court, by rejecting all contentions similar to those now raised by the learned Advocate General and Mr Ramani, the Hon'ble Supreme Court struck down the provisions of Section 14(1)(e) of the Delhi Rent Control Act to the extent this provision prevented a landlord of commercial premises securing eviction of his tenant on the ground of bonafide requirement. However, the Court also noted that the legislation, which may be quite reasonable and rational at the time of its enactment, may, with the lapse of time and/or due to a change of circumstances, become arbitrary, unreasonable, and violative of the

doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.

79. In *Vinod Kumar* (supra), the argument was that the decision in *Satyawati Sharma* (supra) was *per incuriam* because the Court did not adopt the same course of action that the Constitution Bench followed in *Gian Devi Anand's* case of suggesting to the Legislature to bring about an amendment rather than striking down the provision. It is also contended that *Satyawati Sharma* (supra) was *per incuriam* because it had not considered the decision in *Gauri Shanker* (supra). These arguments are almost identical to what A.G. and Mr Ramani urged.

80. After detailed consideration, the Hon'ble Supreme Court rejected the above contentions by pointing out that the decision of *Gian Devi Anand* (supra) was not ignored but was followed by *Satyawati Sharma* (supra). Further, the Court held that the observations in *Gauri Shanker* (supra) concerning residential and commercial tenancies were made in the context of heritability and not in the context of eviction due to the bonafide requirement of the landlord. Further, the Court pointed out that *Gauri Shanker* (supra) was not a case in which the provisions of Section 14(1)(e) came for consideration, nor was any observation made concerning eviction

available to the landlord about commercial premises. *Gauri Shanker* (supra) has dealt with an entirely different provision and context where a specific limitation was attached to residential premises itself to heritability. Therefore, the Court concluded that *Satyawati Sharma* (supra) could not be held as *per incuriam.*

81. Even the argument based on judicial usurpation or overreach was considered and rejected by the Court in *Vinod Kumar (supra).* The Court also took note of the circumstance that the Legislature had enacted a new law in 1995, taking cognizance of the observations in paragraph 39 of *Gian Devi Anand (supra),* it was not brought into force.

82. Although even in Goa, by taking specific cognizance of the decision in *Harbilas Rai Bansal (supra*), the Legislature has amended Section 23, enabling landlords to evict tenants from commercial premises on the grounds of bonafide requirements, the amendment has, to date, not entered force. Therefore, considering the Affidavit of the State Government and the passage of the bill by the Legislature to amend section 23 to do away with the discrimination, the Executive and the Legislature appears to be on the same page regarding the inequity of depriving the landlords, for all times to come, the right to evict their tenants from commercial premises on the grounds of bonafide requirement.

83. Even though the Learned A.G. pointed to the passage of the bill by the Legislative Assembly to remove the distinction between residential and non-residential buildings in Section 23, he did not go to the extent of urging that this circumstance would preclude this Court considering the issue of Constitutional validity. Instead, he submitted that the Court could await the assent instead of striking down the provision. He also submitted that there was no case for striking down.

84. There are apparent uncertainties revolving around the issue of assent. Nothing could be definite about if and when the bill would be assented. Mr Periera also flagged the issue of retrospectivity and the usual complications that accompany it. In *Satyawati Sharma (supra),* the offending provision was struck down even though a bill to pass a new act was passed by the Legislature, but the Act had not entered force. As noted earlier, considering the Affidavit of the State Government and the passage of the bill by the Legislature to amend section 23 to do away with the discrimination, the Executive and the Legislature appear to be on the same page regarding the inequity of depriving the landlords, for all times to come, the right to evict their tenants from commercial premises on the grounds of bonafide requirement. No purpose would therefore be served by simply awaiting the assent to the bill and deferring relief in these petitions, mainly because such assent may or may not come.

85. Thus, on principle and precedent, Section 23 of the Rent Control Act will have to be held as *ultra vires* and unconstitutional to the extent such provisions deny a landlord the right to seek eviction of his tenant from commercial premises on the ground of bonafide requirement. Section 23(1)(b) of the Rent Control Act provides that in case of a non-residential building used to keep a vehicle or adapted for such use, the ground of bonafide requirement would be available to a landlord to secure eviction of his tenant. No explanation was offered for restricting a landlord's right only to a non-residential building used to keep the vehicle or adapted for such use. The provision, as it stands, appears to apply even to stand-alone garages.

86. The State Government's Affidavit reads this provision as applying to all categories of non-residential premises. But even if we are to ignore the Affidavit at the A.G.'s urging, we are satisfied that the words "*which is used for the purpose of keeping a vehicle or adapted for such use"* in Section 23(1)(b) of the Rent Control Act will have to be struck down by applying the doctrine of severability so that a landlord would be in a position to secure eviction of his tenant on the ground of bonafide requirement from non-residential or premises irrespective the type of commercial or non-residential use to which such premises are put to. Similarly, the word "*residential*" in Section 23(3) will also have to be struck down for the same reasons.

87. Mr Ramani's contention about a company not being entitled to seek recovery of possession of residential or commercial premises need not be decided in this petition. However, after striking down the impugned provision, the matter will have to be remanded to enable the authorities under the Rent Control Act to decide whether the landlord's requirement was indeed bonafide and further whether the predicates of Section 25 are complied with. In these matters, it is not for us to examine the factual aspects of bonafide requirements, comparative hardships etc. The Rent Controllers of competent jurisdiction would have to examine these and other issues in the first instance by allowing parties to lead evidence. Therefore, all contentions of all parties, including Mr Ramani's contention that a company lacks locus standi, are left open for determination by the Rent Controllers.

88. *Evaristo Rodrigues (supra)* did not involve the issue of Constitutional validity of the impugned portion of Section 23 of the Rent Control Act. Now that the impugned portion is to be struck down, *Evaristo Rodrigues (supra)* would no longer apply and prevent landlords from evicting their tenants from non-residential premises on the grounds of bonafide requirements.

89. In Writ Petition No.726/2017, the Rent Controller dismissed the petitioners' application for eviction on the preliminary ground that under Section 23, a landlord cannot seek eviction of his tenant from

non-residential premises based on the ground of bonafide requirement. The Appeal Court has upheld this ground without substantially touching the merits of the matter. For the view that we have taken on the constitutional validity of Section 23, it is only appropriate that both these judgments and orders are set aside, and the matter is remanded to the Rent Controller for fresh determination on merits. The Rent Controller must allow all the parties to lead fresh evidence and then dispose of Rent Case No.25/2013/C in accordance with the Law and on its own merits. All contentions of all parties on merits except the issue of the constitutionality of Section 23 are left open for determination by the Rent Controller in the first instance.

90. In Writ Petition No.811/2019, the learned Trial Court/Rent Controller ordered the tenant's eviction. The Appeal Court, however, reversed the Trial Court holding that Section 23 did not apply to non-residential buildings. Considering the view we have now taken on the constitutionality of Section 23, typically, only the order of the Appeal Court would have to be set aside. However, on perusing the Trial Court's order dated 01.09.2018, we find that the said Judgment and order are not only cursory, but further, it is possible that the evidence led by the parties before the Rent Controller was influenced by the fact that Section 23 did not apply to commercial premises other than premises for keeping a vehicle or adapted for such use. Even the Appeal Court did not examine the matter on merits but only held that the provisions of Section 23 do not apply to commercial premises.

Based on this finding and after relying on *Evaristo Esteneslaoc Rodrigues* (supra), the appeal was allowed, and the Rent Controller's order dated 01.09.2018 was set aside. Therefore, on cumulative consideration of all such factors, we think that the interest of justice would be better served if Trial Court's order dated 01.09.2018 and Appeal Court's order dated 26.04.2019 is set aside. The matter is remanded to the Rent Controller/Competent Civil Court to dispose of the petitioners' application for eviction, that is, Regular Civil Suit No.25/2014/I. The Rent Controller/Competent Civil Court must allow the parties to lead fresh evidence and then dispose of the matter in accordance with the Law and on its own merits. All contentions of all parties on merits, except the issue of the constitutionality of Section 23, are left open for determination by the Rent Controller/Civil Court in the first instance.

91. Concerning Writ Petition No.377/2019, the petitioners' application seeking eviction of its tenants is pending before the Rent Controller. Such application should now be decided in accordance with Law and on merits, given our ruling on the constitutional validity of Section 23 of the Rent Control Act. But, again, all contentions of all parties on merits, except the issue of the constitutionality of Section 23, are kept open for determination by the Rent Controller in the first instance.

92. The Rule is disposed of in each of these Petitions by making the following order:

> *(a) The portion in Section 23(1)(b) of the Goa Buildings (Lease, Rent & Eviction) Control Act, 1968, namely* ***"which is used for the purpose of keeping a vehicle or adapted for such use",*** *is struck down. Similarly, the word "****residential****" in Section 23(3) is also struck down. Consequently, it is declared that the provisions of Section 23 of the said Act entitle a landlord to seek eviction of his/her tenant from non-residential buildings on the ground of bonafide requirement;*
>
> *(b) In Writ Petition No.726/2017, judgments and orders dated 18.10.2016 and 31.08.2017 made by the Rent Controller and the Appeal Court is set aside, and the Rent Case No.25/2013/C is remanded to the Rent Controller for fresh determination in accordance with Law and by following the directions in paragraph 89 of this Judgment and order;*
>
> *(c) In Writ Petition No.811/2019, the judgments and orders dated 01.09.2018 and 26.04.2019 made by the Rent Controller and the Appeal Court are set aside, and the Rent Case numbered as Regular Civil Suit No.25/2014/I is remanded to the Rent Controller for fresh determination in accordance with Law and by following the directions in paragraph 90 of this Judgment and order;*
>
> *(d) In Writ Petition No.377/2019, the Rent Controller is directed to dispose of the Rent Case instituted by the Petitioner by considering the relief in terms of clause (a) above and the directions in paragraph 91 of this Judgement. All contentions of all*

parties on merits, except the issue of the constitutionality of Section 23, are left open;

(e) There shall be no order for costs.

BHARAT P. DESHPANDE, J. **M. S. SONAK, J.**