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SLP(C)No.4895-4897/2000  
ITEM No. 2

Court No. 8

SECTION XIA  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) Nos.4895-4897/2000

(From the judgement and order dated 23/02/2000 in CRP 153/99,  
1419/96 & 1422/96 of The HIGH COURT OF KERALA AT ERNAKULAM)

K.N. RAGHAVAN

Petitioner (s)

VERSUS

HABEEB MUHAMMED & ORS.

Respondent (s)

(With appn. for permission to submit addl. documents and with  
prayer for interim relief)  
(For final disposal)

Date : 16/01/2001 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.P. MISRA  
HON'BLE MR. JUSTICE U.C. BANERJEE

For Petitioner (s) Mr. Krishnomoorthy Iyer, Sr. Adv.  
Mr. G. Prakash, Adv.

For Respondent (s) Mr. R.F. Nariman, Sr. Adv.  
Mr. S.V. Rajah, Adv.  
Mr. Anil Kumar, Adv.  
Ms. Bina Madhavan, Adv.

UPON hearing counsel the Court made the following  
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Leave granted.

The appeals are dismissed in terms of the signed  
order. Costs on the parties.

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(Ganga Thakur)  
P.S.to Registrar

(V.P. Tyagi)  
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 779-781 OF 2001@@

K.N. RAGHAVAN

...APPELLANT

VERSUS

HABEEB MOHAMMED & ORS.

...RESPONDENTS

O R D E R@@  
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Leave granted.

Heard learned counsel for the parties.

The present appeals are directed against the order passed in revision by the High court dismissing the revision petitions filed by the appellant. In order to appreciate controversy we are herewith giving certain essential facts.

The appellant is running Tourist Hotel in the disputed premises. In earlier proceedings for eviction before the High Court the appellant was found to be in arrears of rent and hence directed unless he deposits arrears of rent within a month eviction against him is decreed. So far order fixing rent, it was set aside and the matter was remanded back to the Rent Controller for adjudication afresh in accordance with law. Learned counsel for the appellant placed strong reliance in this order of the High Court, wherein certain claims made by the tenant from as against the landlord were referred to get it adjudicated from civil court, for which he sought adjustment in the rent.

It seems in spite of the aforesaid litigation and decree the appellant again fell into arrears of rent as no payment was made by him from September 1986 till February,1993 which led the landlord to file another suit for eviction for arrears of rent. Learned counsel for the landlord submits, even thereafter he did not pay till February, 1999. It is not in dispute the agreed rent is Rs.20,000/- per month under an agreement with provisions of 10% increase every year. The case of the appellant tenant is that towards renovation construction of the building and furniture he spent Rs.7,99,290.52p. coupled with other expenses on the construction, it comes to Rs.21,79,299.33p. The tenant filed a petition for fixation of fair rent in the year 1988 in respect of schedule building as the fixation at Rs.20,000/- per month agreed rent was excessive. The petition of tenant was allowed by the Rent Controller and he fixed the rent of the building at Rs.9,780/- per month. Both the landlord and the tenant filed appeal before the appellate authority. The appellate authority relying upon the decision of the High Court in 1995(2) KLJ 848, Issac Nina@@

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Vs. State of Kerala allowed the appeal filed by the@@  
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landlord and dismissed that of the tenant on the ground that the High Court has declared the provisions relating to fixation of fair rent, namely, Sections 5, 6 and 8 of the Act as unconstitutional and void. The court hence fixed the rate of rent of the disputed building at Rs.20,000/- per month as contained in the agreed terms. Thereafter the tenant filed revision before the High Court. During the pendency of the proceedings, the

landlord filed Eviction Petition in the year 1994 before the Rent Controller seeking eviction of the tenant under Section 11(2)(b) of the Kerala Buildings (Lease & Rent Control) Act alleging huge amount of rent being in arrears as against the present appellant. The Rent Controller decreed the eviction petition of the landlord as the appeal preferred by the tenant was also dismissed by holding that the rent amount of Rs.12,46,000/- is in arrears. At this point we further make clear, initially the arrears was approx. to the tune of Rs.20,00000/- but seven lacs from the security deposit were adjusted towards the said arrears hence at the state of revision the arrears still remained to the tune of Rs.12,46,000/-. During its pendency the High Court further directed appellant to deposit rupees seven lakhs as a condition precedent before hearing of the appeal itself. This amount was deposited by the appellant. The High Court finally dismissed the revision petition filed by the tenant, holding the decision of Issac (supra) is fully@@

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applicable and covers the filed. Therefore, the fixation of fair rent under the aforesaid Act does not arise. It is against this order the present appeals have been preferred.

Mr. Krishnamoorthy Iyer, learned senior counsel appearing for the appellant submits, in view of the fixation of the fair rent by the Rent Controller, if that be taken into consideration, he would not be in arrears of rent. Learned counsel made attempt to submit that the provisions is not ultra vires hence fixation of rent by the Rent Controller was just and proper hence the decree of eviction is bad in law.

This submission suffers from patent illegality as there could no question of fixing a fair rent under provisions which are held to be ultra vires. The only reason submitted for accepting fixation of rent by the rent controller is, since appellant was not party to the proceedings in which High Court declared the said provisions as ultra vires hence not binding. The submission has no merit. When any provision is held to be ultra vires, it covers the field as against all its subjects who are within the jurisdiction of the said legislation and the Court. Thus this submission to us looks strange that as he was not a party to it hence would not bind him has no merit and rejected.

The second submission relates to the adjustment of the amount which he has filed separate suit in pursuance to the observations made by the High Court in the earlier revision. Without going into question, whether that could be adjusted or not, we are informed that suit stands dismissed for default on 10th November, 2000. The submission for the appellant is that application for setting aside ex parte is pending. In any case there is no decree of his said claim then how could it be pleaded for adjustment towards the arrears of rent. In view of the aforesaid facts and finding which we have recorded, we do not find any merit in the present appeal. Accordingly, it fail and are dismissed. Costs on the parties. Any amount deposited pursuant to the order of this Court may be withdrawn by the landlord respondent.

.....J.  
(A.P. MISRA)

New Delhi,  
January 16, 2001.

.....J.  
(K.G. BALAKRISHNAN)