REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3467-3468 OF 2010

SMT.NOORUNISSA BEGUM ... APPELLANT

VERSUS

BRIJ KISHORE SANGHI ... RESPONDENT

WITH

CIVIL APPEAL NO.3471 OF 2010,
CIVIL APPEAL NO.3472 OF 2010,
CIVIL APPEAL NO.3473 OF 2010,
CIVIL APPEAL NOs.3474-3475 OF 2010,
CIVIL APPEAL NO.3476 OF 2010,
CIVIL APPEAL NOs.7825-7826 OF 2012,
CIVIL APPEAL NO.2569 OF 2013,
C.A.NO. 2406 OF 2015
[@ SLP (C)NO.16508 OF 2012],
C.A.NOS. 2403-2405 OF 2015
[@ SLP (C)NOS.15230-15232 OF 2012],
C.A.NO. 2407 OF 2015
[@ SLP (C)NO.35787 OF 2012] AND
C.A.NOS. 2408-2409 OF 2015
[@ SLP (C)NOS.15154-15155 OF 2014]

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA,J

Leave granted.

2. All these appeals involves common question of law as to the applicability of Section 32(c) of the Andhra Pradesh Buildings

(Lease, Rent & Eviction) Control (Amendment) Act, 2005 (hereinafter referred to as the 'Amendment Act, 2005') to eviction cases pending on the date of its coming into force and the effect of the said Section on G.O. dated 29th December, 1983 issued by the Government of Andhra Pradesh. Therefore they were heard together and being disposed of by this common judgment.

3. The background of Section 32 of Andhra Pradesh Buildings

(Lease, Rent & Eviction) Control Act, 1960 (Act No. XV of 1960):

The State of Andhra Pradesh came into existence on 1st October, 1953 under the provisions of Andhra State Act, 1953. By virtue of the provisions of the said Act, the Madras Buildings (Lease and Rent Control) Act, 1949 continued to be in operation in the State of Andhra Pradesh. By the States Reorganisation Act, 1956 with the merger of Telangana area, which formerly formed a part of the erstwhile State of Hyderabad, to the territories of State of Andhra Pradesh the new State of Andhra Pradesh came into existence by Notification dated 1 st November, 1956. By virtue of States Reorganisation Act, Hyderabad House (Rent, Eviction and Lease) Control Act, 1954 continued to be in force in the Telangana area. In the Andhra area, the Madras Buildings (Lease and Rent Control) Act, 1949 also continued to be in force. In this background both the Madras Act and Hyderabad Act were repealed and replaced by the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960

(hereinafter referred to as the 'Act'). The Section 32 of the Act, as it stood on the date of enactment exempted buildings owned by the Government and buildings constructed on and after 26th August, 1957 from the purview of the Act.

4. The constitutional validity of Section 32(b) of the Act which exempted buildings constructed on or after 26 th August, 1957 from the operation of the Act was challenged before this Court in Motor General Traders and another vs. State of Andhra Pradesh and others, (1984) 1 SCC 222. This Court by judgment dated 26th October, 1983 held the said section to be unconstitutional being violative of Article 14 of the Constitution of India.

5. Section 26 of the Act authorizes the State Government to exempt any building or class of building from all or any of the provisions of the Act.

Later, in exercise of power under Section 26 of the Act the Government of Andhra Pradesh issued G.O.Ms. No.636 dated 29 th

December, 1983 whereby it exempted from operation of the provisions of the Act, (a) all buildings for a period of 10 years from the date on which the construction is completed, and (b)buildings, the monthly rent of which exceeds Rs.1,000/-.

The exemption was given effect from 26th October, 1983 i.e. the date on which this Court struck down Section 32(b) of the Act.

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6. After declaration of Section 32(b) unconstitutional and invalid, Section 32 (a) which exempted buildings owned by the Government from the operation of the Act stood till Section 32 was amended by the Amendment Act, 2005. By amended Section 32, the Act was made inapplicable to buildings the rent of which as on the date of commencement of the Amendment Act, 2005, exceeds Rs.3,500/- per month in the areas covered by the Municipal Corporations in the State and Rs.2,000/- per month in other areas.

7. All the buildings with respect to which these appeals are preferred belong to the category of buildings of which rent was more than Rs.1,000/-(one thousand).i.e. who were exempted by G.O.Ms.No.636 dated 29th December, 1983. On the amendment of Section 32 the tenants of such buildings against whom eviction cases or appeal or revision or execution cases were pending before various courts approached the Andhra Pradesh High Court raised a contention before the learned Single Judge that in view of the amended Section 32, the pending suits cannot be adjudicated by the civil courts and the decrees already passed cannot be executed because courts which passed the decrees will be deemed to have become "coram non judice".

8. The learned Single Judge of the High Court referred the matter to the Division Bench.

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The Division Bench noticed the judgments in Shah Bhojraj Kuverji Oil Mills and Ginning Factory vs. Subhash Chandra Yograj Sinha, AIR 1961 SC 1596; Rafeequnnesa vs. Lal Bahadur Chetri, AIR 1964 SC 1511; Dilip vs. Mohd. Azizul Haq & Anr., AIR 2000 SC

1976 and other cases including unreported judgment of Full Bench of the said High Court in Second Appeal No.532 of 2002 dated 6th January,2005 and felt that the issue raised in the cases needs to be addressed by a Full Bench and accordingly referred the matter to Full Bench.

9. The Full Bench, after hearing the cases at some length, by an elaborate order, observed that the judgment rendered by a Bench of equal strength in Second Appeal No.532 of 2002 requires reconsideration by a Larger Bench in the light of various judgments referred to in the reference order.

10. On such reference, the matter was heard by the Larger Bench of 5-Judge of the High Court of Judicature of Andhra Pradesh at Hyderabad. By the impugned common judgment dated 30th April, 2007 in S.A.No.1475, 1449 of 2005 etc., the Larger Bench by majority held the Amendment Act, 2005 to be prospective and observed that:

> "A reading of the amended Section 32 makes it clear that Section 32(b) as it originally stood has been substituted with Section 32(c) and with this, G.O.Ms.No.636 dated 29.12.1983 issued by the State Government under Section 26 of the Act has become redundant."

The Larger Bench further answered the reference as follows:

> "(a) Section 32(c)of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 as brought into force by Section 3 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 2005 is prospective in operation and this provision does not affect the proceedings pending as on the date of its coming into force before the Civil Courts or Appellate, Revisional or Executing Courts. These cases are required to be decided without reference to and application of the provisions of the amendment Act of 2005."

11. In his minority judgment, one of the Judges held the Amended Section to be retrospective and answered the reference as follows:

> "i) with effect from28.05.2005, when the amended Section 32(c) came into force, persons, by whom rent payable for a building does not exceed Rs.3,500/-p.m. within the Municipal Corporations of the State and does not exceed Rs.2,000/- p.m. in other areas, would come

within the definition of "tenant" under Section 2(ix) of Act 15 of 1960.

ii) even if such persons have suffered a decree for eviction prior thereto, they are entitled for the protection of Act 15 of 1960 provided they continue in possession of the building.

iii)

after 28.05.2005, such tenants cannot be evicted in execution of a decree in view of the protection conferred on them by Section 10(1) of Act 15 of 1960.

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iv) after the amended Section 32(c)came into force, with effect from 28.05.2005, the civil court must be held to have become coram non judice, not to have jurisdiction to pass a decree of eviction in respect of buildings the rent of which in areas within Municipal Corporations of the State does not exceed Rs.3,500/- p.m. and in other areas not exceeding Rs.2,000/- p.m. and its proceedings, resulting in the decree, a nullity.

v) even if at the time of institution of the suit, or when a decree for eviction was passed, the amended Section 32(c) was not in force, but was introduced during the pendency of the appeal a tenant, who continues to remain in possession of a building whose rent is below the limits prescribed in the amended Section 32(c), for being exempted from the provisions of the Act, is entitled for the protection of Act 15 of 1960, more particularly Section 10(1) thereof, and the Appellate Court is divested of its jurisdiction to pass a decree of eviction."

12. As one or other party in all these appeals addressed the Court either supporting the majority decision of the Larger Bench or minority decision, it is not necessary to record the individuals' submissions made by the learned counsel.

13. THE STATUTORY PROVISIONS:
To determine the issue involved it is necessary to refer to relevant provisions of the Act. Section 2(iii) of the Act defines 'building' as under:

"Section 2(iii)-'Building' means any house or hut or part of a house or hut, let or to be let separately for residential or non-residential purposes and includes:-

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(a) the gardens, grounds, garages and out-houses if any, appurtenant to such house, hut or part of such of

house or hut and let or to be let along with such house or hut or part of such house or hut;

(b) any furniture supplied or any fittings affixed by the landlord for use in such house or hut or part of a house or hut, but does not include a room in a hotel or boarding house;

Section 2(ix) of the Act defines 'tenant' for the purpose of the Act as under:

"Section 2(ix)-'Tenant' means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son or daughter, of a deceased tenant who had been living with the tenant in the building as a member of tenant's family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building, by its tenant or a person to whom the collection of rents or fees in public market, cart-stand or slaughter-house or of rents for shops has been framed out or leased by a local authority.

Section 10 of the Act deals with 'eviction of tenants'. It protects the tenant from eviction in execution of a decree or otherwise in all cases except in those cases where the eviction is in accordance with the provisions of the Section 10 or 9 Sections 12 and 13 of the Act. Relevant portion of the said section reads as under:

"Section 10(1):- A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this Section or Sections 12 and 13:

Provided that where the tenant, denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded."

Section 26 of the Act empowers the State Government to exempt any building or class of building from all or any of the provisions of the Act subject to such conditions and terms, if any, the State may specify. Section 26 reads as follows:

> "Section 26. Exemptions:- Notwithstanding anything in this Act the Government may, by notification in the Andhra Pradesh Gazette, exempt subject to such conditions and terms, if any, as they may specify in the notification, any building or class of building from all or any of the provisions of the Act."

Section 32 of the Act as it stood on the date of enactment is as follows:

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> "32. Act not to apply to certain buildings.- The provisions of this Act shall not apply:
>
> (a) To any building owned by the Government;
>
> (b) to any building constructed on and after August 26, 1957."

Upon striking down of Section 32(b) by this Court on 26th October, 1983 only Government buildings were exempted from the purview of the Act.

14. Since enactment of the Act in 1960 the State Government never exercised its power under Section 26 of the Act to grant exemption to any building or class of building from or any of the provisions of the Act, till it issued G.O. Ms. No.636 dated 29th December, 1983 exempting all buildings for a period of 10 years from the date of completion of their construction and the building(s) the monthly rent of which exceeds Rs.1,000/- from the provisions of the Act. The said G.O. Ms is quoted here under:

> "[G.O.Ms.No.636, General Administration (Accommodation-A) 29th December, 1983]
>
> In exercise of the powers conferred by Section 26 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (Andhra Pradesh Act XV of 1960), the Governor of Andhra Pradesh hereby exempts with effect on and from

the 26th October, 1983, from the operation of the provisions of the said Act,-

(a) all buildings for a period of ten years from the date on which their construction is completed and;

(b) buildings the monthly rent of which exceeds rupees one thousand.

Explanation:- For the purpose of clause (a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by, the local authority having jurisdiction and in the absence of any such report or record the date on which it is actually occupied (not including occupation merely for the purpose of supervising the construction or guarding the buildings under construction) for the first time:

Provided that there may be different dates of completion of construction in respect of different parts of building which are either designed as separate units or occupied separately by the land-lord and one or more tenants or by different tenants."

The said G.O.Ms was issued by the State Government in exercise of its power under Section 26 of the Act to fill up the void created by the judgment of this Court in 'Motor General Traders'. The said G.O.Ms was issued on 29th December,

1983 and was made applicable from 26th October, 1983, i.e., the date of the judgment in 'Motor General Traders'.

15. Section 32 as amended by Amendment Act, 2005:

32.Act not apply to certain buildings:- The provisions of this Act shall not apply,-

(a) to any building belonging to the State Government or the Central Government, or Cantonment Board or any local authority;

(b) to any building constructed or substantially renovated, either before or after the commencement of this Act for a period of fifteen years from the date of completion of such construction or substantial renovation.

Explanation I:- A building may be said to be substantially renovated if not less than seventy five percent of the premises is built new in accordance of completion of such construction or substantial renovation.

Explanation II:- Date of completion of construction shall be the date of completion as intimated to the concerned authority or of assessment of property tax, whichever is earlier, and where the premises have been constructed in stages the date on which the initial building was completed and an intimation thereof was sent to the concerned authority or was assessed to property tax, whichever is earlier.

(c) to any building the rent of which as on the date of commencement of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 2005, exceeds rupees three thousand and five hundred per month in the areas covered by the Municipal Corporations in the State and rupees two thousand per month in other areas.

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16. The submission made by the learned counsel on behalf of the tenants is summarised as follows:

(1) The amended Section 32 would make the provisions of the Act applicable to pending proceedings.

(2) The definition of "Tenant" in Section 2(ix) of the Act would even include a former tenant continuing possession after the termination of the tenancy in his favour. Thus, irrespective of any decree for eviction which may have been passed, if the tenant continues in possession, he would be covered by the statutory definition of "Tenant".

(3) The purpose of the Amendment Act is to bring within its fold buildings, whose rent are upto Rs.3,500/-p.m. Thus, on the date the Amendment Act came into force, all those persons who were in possession of buildings the rents of which were below Rs.3,500/- p.m. would come under the definition of "Tenant" as defined in Section 2(ix) of the Act and such buildings would come under

the definition of "building" as given in Section 2(iii) of the Act.

(4) For the purposes of the Act a person ceases to be a tenant only when he loses possession of the building, i.e. on the date of execution of a decree of eviction passed against him. Therefore, it is with reference to the date of execution of the decree that it has to be determined whether or not the person is a "Tenant". If the person falls within the definition of "Tenant", irrespective of whether or not there exists a decree of eviction against him, the provisions of the Act would apply.

(5) As a result of the coming into force of the Amendment Act, the cases of tenants are brought within the protective umbrella of Section 10(1) of the Act. Accordingly, the power of civil courts to evict the tenant (which includes a tenant continuing in possession after the termination of the tenancy) who is in possession of

the buildings whose rents do not exceed Rs.3,500/- p.m. is taken away. The Civil Court therefore, becomes coram non judice.

(6) An appeal is in continuation of the suit and an appeal, arising from a suit which was decided before the amendment came into force, would be governed by the amendment provided the original or the appellate decree has

not been executed by the date the amendment came into force.

(7) The State Legislature was aware of G.O.Ms dated 29th December, 1983 when amendment to Section 32 was passed. The State Government while exercising power made Section 26 is merely a delegate which otherwise originally vests in the State Legislature. The State Legislature by amendment of Section 32 has taken over the occupied field. In such an event the G.O. dated 29th December, 1983 issued by the delegatee cannot eclipse or undermine

the exercise of power by the delegator itself.

(8) Even though, Section 26 is a non-obstante clause, the same cannot override Section 32, in as much as Section 32 is a non-obstante clause itself. In the event Section 26 is held to invest power with the delegatee to override or eclipse the intention of the delegator itself, the said Section would be open to challenge on the ground of excessive delegation.

17. Learned counsel appearing for the landlords submitted that all the above said contentions were advanced before the Full Bench of the High Court and on careful consideration of these contentions the Full Bench rightly came to the conclusion that Section 32(c) of the Act brought into force by Section 3 of Amendment Act, 2005 is prospective in operation and does not affect proceedings pending at various stages.

18. Further according to the learned counsel for the landlord

retrospective amendment of a law is always resorted to only when the Legislature intends to deal with a situation which deserves a remedial process. By amending a law retrospectively, a benefit

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or an interest which has been put in jeopardy owing to any reason or cause is retrieved. In other words a retrospective amendment intends to achieve a specific object or purpose remedial in character. If no purpose or object is discernible, retrospectively will not be imputed or assumed.

19. In support of the contentions both the learned counsel relied on the judgments of this Court relevant of which will be noticed at the appropriate stage.

20. Before dealing with the rival contentions in the light of the judgments relied on by the learned counsel for the parties, we deem it appropriate to consider the precise nature of rights of landlord and tenant in the common law and under the provisions of the Act.

21. The rights of the landlord to evict a tenant by way of suit before a civil court of competent jurisdiction exist as long as it is not abridged by a special legislation conferring protection in favour of the tenant.

22. In Parripati Chandrasekharrao & sons vs. Alapati Jalaiah, (1995) 3 SCC 709, this Court drew a distinction between the rights which accrue to the landlord under the common law and the protection which is available to the tenant under the Act. While upholding the G.O.Ms. No.636 dated 29th December, 1983 this Court observed as under:

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"12. According to us there is a material difference between the rights which accrue to a landlord under the common law and the protection which is afforded to the tenant by such legislation as the Act. In the former case the rights and remedies of the landlord and tenant are governed by the law of contract and the law governing the property relations. These rights and remedies continue to govern their relationship unless they are regulated by such protective legislation as the present Act in which case the said rights and

remedies remain suspended till the protective legislation continues in operation. Hence while it can legitimately be said that the landlord's normal rights vested in him by the general law continue to exist till and so long as they are not abridged by a special protective legislation in the case of the tenant, the protective shield extended to him survives only so long as and to the extent the special legislation operates. In the case of the tenant, therefore, the protection does not create any vested right which can operate beyond the period of protection or during the period the protection is not in existence. When the protection does not exist, the normal relations of the landlord and tenant come into operation. Hence the theory of the vested right which may validly be pleaded to support the landlord's case is not available to the tenant. It is for this reason that the analogy sought to be drawn by Shri Subbarao between the landlord's and the tenant's rights relying upon the decision of this Court in Atma Ram Mittal, (1988) 4 SCC 284, is misplaced. In that case the landlord's normal right to evict the tenant from the premises was not interfered with for the first ten years of the construction of the premises by an exemption specifically incorporated in the protective rent legislation in question. The normal right

was obviously the vested right under the general law and once accrued it continued to operate. The protection given to the tenant by the rent legislation came into operation after the expiry of the period of ten years. Hence, notwithstanding the coming into operation of the protection and in the absence of the provisions to the contrary, the proceedings already commenced on the basis of the vested right could not be defeated by mere passage of time consumed by the said proceedings. It is for this reason that the Court there held that the right which had accrued to the landlord being a vested right could not be denied to him by the efflux of time."

23. In Garikapati Veeraya v. N. Subbaiah Choudhary, AIR 1957 SC 540, while dealing with the golden rule of construction this Court held that in the absence of anything in the enactment to show that the amendment is to have retrospective operation it cannot be so construed so as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. The Constitution Bench held:

"(25)In construing the articles of the Constitution we must bear in mind certain

cardinal rules of construction. It has been said in Hough v. Windus, 1884-12 QBD 224 at p.237(V)that "statutes should be interpreted, if possible, so as to respect vested right." The golden rule of construction is that, in the absence of anything in the enactment to, show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. Leeds and County Bank

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Ltd.v.Walker,(1883) 11 QBD 84 at p.91(W); Moon v. Durden,(1948) 2 Ex 22:76RR 479 at p.495 (X). The following observation of Rankin C.J. in Sadar Ali v. Dalimuddin (supra) at page 520 (of ILR Cal); (at p.643 of AIR) is also apposite and helpful: "Unless the contrary can be shown the provision which takes away the jurisdiction is itself subject to the implied saving of the litigant's right." In Janardan Reddy v. The State, 1950 SCR 940 at pp.946, 947); (AIR 1951 SC 124 at pp.126-127) (Y) Kania C.J. in delivering the judgment of the Court observed that our Constitution is generally speaking prospective in its operation and is not to have retroactive operation in the absence of any express provision to that effect. The same principle was reiterated in Keshavan Madhava Menon v. The State of Bombay, 1951 SCR 228; (AIR 1951 SC 128) (Z) and finally in Dajisaheb Mane and Others v. Shankar Rao Vithal Rao, 1955-2 SCR 872 at pp.876-877; (S) AIR 1956 SC 29 at p.31) (Z1)to which reference will be made in greater detail hereafter."

24. In Moti Ram v. Suraj Bhan, AIR 1960 SC 655, this Court decided a case of ejectment of tenant by the landlord under Section 13(1) of the East Punjab Urban Rent Restriction Act, 1949. Under Section 13 of the said Act, a tenant in possession of a building cannot be evicted therefrom except in accordance with the said Section.

This Court held that where an amendment affects vested rights, the amendment would operate prospectively unless it is

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expressly made retrospective or its retrospective operation follows as a matter of necessary implication. It was held:

"It is well settled that where an amendment affects vested rights, the amendment would operate prospectively unless it is expressly made retrospective

> or its retrospective operation follows as a matter of necessary implication. The amending Act obviously does not make the relevant provision retrospective in terms and we see no reason to accept the suggestion that the retrospective operation of the relevant provision can be spelt out as a matter of necessary implication...."

This Court further held:

> "Where the legislature intends to make substantive provisions of law retrospective in operation it generally makes its intention clear by express provision in that behalf."

25. Ordinarily a Court of appeal cannot take into account a new law brought into existence after the judgment appealed from has been rendered, because the rights of the litigants in appeal are determined applying the law in force at the date of the suit. This view was expressed by this Court in Dayavati v. Inderjit, AIR 1966 SC 1423. This Court further held that if the new law speaks a language which expressly or by clear intendment takes in even pending matter the Court of trial as well as the Court of appeal must have regard to the intention so expressed and the Court of appeal may give effect to such a law even after the judgment of the Court of first instance.

26. In Atma Ram Mittal vs. Ishwar Singh Punia, (1988) 4 SCC 284, this Court dealt with the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 which mandates that the tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of that Act. Section 1(3) of the said Act provides that "nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion.

The appellant-landlord in the said case filed a suit for possession in the civil court of Hissar in Haryana on the basis that the respondent was in arrears of rent from December 1, 1981 to May 31, 1982 and the tenancy of the respondent had been terminated by giving him notice. The suit was filed for recovery

of possession on the termination or expiry of the period of tenancy. Later the respondent-tenant moved an application for dismissal of suit stating that shop in question was constructed in June, 1974 and ten years had elapsed by June, 1984 and in terms of Section 1(3) of the said Act, immunity from application of Act had expired. It was contended that jurisdiction of Civil Courts stood barred due to the said provision. This Court held that the exemption applies for ten years and landlord was entitled to the exemption until the final disposal of the suit. This Court held:

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> "8. It is well-settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim "actus curiae neminem gravabit" -- an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in asocial amelioration legislation is an imperative irrespective of anything else."

This Court further held:

> "11.....In our opinion, bearing in mind the well-settled principle that the rights of the parties crystallise to (sic on) the date of the institution of the suit as enunciated by this Court in Om Prakash Gupta v. Digvijendrapal Gupta, (1982) 2 SCC 61, the meaningful construction must be that the exemption would apply for a period of ten years and will continue to be available until suit is disposed of or adjudicated. Such suit or proceeding must be instituted within the stipulated period of ten years. Once rights crystallise the adjudication must be in accordance with law."

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27. The learned counsel for the landlord placed much reliance on this Court's decision in Ambalal Sarabhai Enterprises Ltd. vs. Amrit Lal & Co. and another, (2001) 8 SCC 397. The said case was related to Delhi Rent Control Act, 1958. An amendment was made in the Act making the Act inapplicable to the tenancy of any premises monthly rent of which exceeds Rs.3,500/-. In the said case, the Division Bench of this Court held that the said amendment would not affect the pending proceedings and observed as follows:

> "17. The aforesaid decision holds that tenants have no vested right under the Rent Act. In effect, the law is well settled. Prior to the enactment of the Rent Act the relationship between the landlord and the tenant was governed by the general law, maybe the Transfer of Property Act or any other law in relation to the property. The Rent Act merely provides a protection to a tenant as against the unbridled power of the landlord under the general law of the land. The Rent Act gives protection to the tenant from being ejected except on the grounds referred to under the Rent Act. In other words, it protects the tenant from ejectment, it protects a tenant from the drastic enhancement of the rent by the landlord which may otherwise the landlord could do under the general law. Thus the right of a tenant under the Rent Act at the best could be said to be a protective right, which cannot be construed to be a vested right. In effect, in view of this special enactment of the Rent Act, the right and remedies available to a landlord under

the general law remain suspended. In other words the landlord's vested right under the general law continues so long it is not abridged by such protective legislation, but the moment when this protection is withdrawn

the landlord's normal vested right reappears which could be enforced by him.

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36. In view of the aforesaid legal principle emerging, we come to the conclusion that since proceeding for the eviction of the tenant was pending when the repealing Act came into operation,

Section 6 of the General Clauses Act would be applicable in the present case, as it is the landlord's accrued right in terms of Section 6. Clause (c) of Section 6 refers to "any right" which may not be limited as a vested right but is limited to be an accrued right. The words "any right accrued" in Section 6(c) are wide enough to include the landlord's right to evict a tenant in case proceeding was pending when repeal came in. Thus a pending proceeding before the Rent Controller for the eviction of a tenant on the date when the repealing Act came into force would not be affected by the repealing statute and will be continued and concluded in accordance with the law as existed under the repealed statute.

37. In view of the aforesaid findings, we conclude by recording our findings on the question posed earlier by holding:

(1) A landlord or tenant are relegated to seek their rights and remedies under the common law once the protection given to a tenant under the Rent Act is

withdrawn, except in cases where Section 6 of the General Clauses Act, 1897 is applicable.

(2) A ground of eviction based on illegal sub-letting under proviso (b) to Section 14 of the Rent Act would not constitute to be a vested right of a landlord, but it would be a right and privilege accrued within the meaning of Section 6(c) of the General Clauses Act in a matter if proceeding for eviction is pending.

(3) When the tenant has no vested right under a Rent Act having only protective right, withdrawal of such protection would not confer on a landlord a vested right to evict a tenant under the Rent Act except where clause (c) of Section 6 of the General Clauses Act is applicable.

38. In view of these findings we hold that the landlord has a right under the repealed Rent Act by virtue of Section 6(c) of the General Clauses Act, which would save the pending proceedings before the Rent Controller, which may continue to be proceeded with as if the repealed Act is still in force."

28. In Mani Subrat Jain vs. Raja Ram Vohra, (1980) 1 SCC 1, this Court dealt with the case of an advocate who belonged to 'scheduled' class of tenants whose dwellings enjoy special

protection. The appellant-advocate tenanted a building belonging to the respondent-landlord. The latter sued for possession and the former, entered into a compromise and agreed to vacate by a

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certain date on certain terms regarding rent. A decree in terms thereof was passed on October 9, 1972. Then came the East Punjab Rent Restriction Act, 1949, which by extension of its operation, applied to Chandigarh where the suit premises was situated w.e.f. November 4, 1972. Had the decree been passed but a few days later, the Act would have admittedly interdicted the eviction because of Section 13. In the said case having noticed the definition of tenant [Section 2(i)] and Section 13(1) of the Act, the Court held:

> "6. Section 2(i) reads:
> "'tenant' means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter house or of rents for shops has been farmed out or leased by a municipal, town or notified area committee;
> In this context, we may also read Section 13(1) which is integral to and makes impact upon the meaning of Section 2(i) even if there be any marginal obscurity.
>
> "13. Eviction of tenants.--(1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the

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provisions of this section, or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

The expression "tenant" includes "a tenant continuing in possession after the termination of the tenancy in his favour". It thus includes, by express provision, a quondam tenant whose nexus with the property is continuance in possession. The fact that a decree or any other process extinguishes the

tenancy under the general law of real property does not terminate the status of a tenant under the Act having regard to the carefully drawn inclusive clause. Even here, we may mention by way of contrast that Subudhi case,(1969) 2 SCR 559)related to a statute where the definition in Section 2(5) of that Act expressly included "any person against whom a suit for ejectment is pending in a Court of competent jurisdiction" and more pertinent to the point specially excluded "a person against whom a decree or order for eviction has been made by such a court". We feel no difficulty in holding that the text, reinforced by the context, especially Section 13, convincingly includes ex-tenants against whom decrees for eviction might have been passed, whether on compromise or otherwise. The effect of the compromise decree, in counsel's submission, is that the tenancy has been terminated. Nobody has a case that the appellant is not continuously in possession. The conclusion is inevitable that he remains a tenant and enjoys immunity under Section 13(1). The execution proceedings must, therefore, fail because the statutory road-block cannot be removed. Indeed, an application under the Act was filed by the landlord defendant which was dismissed because the ground required by the Act was not made out.

7. We have been told by counsel, and supporting citations have been brought to our

notice, that the High Court at Chandigarh has taken the contrary view for some time. It is better to be ultimately right rather than consistently wrong. The interpretation we have given in Section 2(i) is strengthened by our conviction that a beneficial statute intended to quieten a burning issue affecting the economics of the human condition in India should be so interpreted as to subserve the social justice purpose and not to subvert it. Even apart from this value-vision, the construction we have adopted is sustainable."

29. In Lakshmi Narayan Guin and others vs.Niranjan Modak, (1985) 1 SCC 270, the Court dealt with a case where West Bengal Premises Tenancy Act, 1956 was made extended to the location of suit premises during the pendency of the appeal. The Court held that the appeal would be governed by the said Act and the provisions of the Act would retrospective operate from the date of the filing of the eviction suit. The relevant portion of the said judgment reads as follows:

"7. As has been stated earlier, sub-section (1) of Section 13 of the Act

provides that no order or decree for the recovery of possession shall be made by any court in a landlord's suit against the tenant except on certain enumerated grounds. Does the decree here refer to the decree of the trial court or, where an appeal has been preferred, to the appellate decree? Plainly, reference is intended to the decree which disposes of the suit finally. It is well settled that when a trial court decrees a suit and the decree is challenged by a competent appeal, the appeal is considered as a continuation of the suit, and when the appellate decree

affirms, modifies or reverses the decree on the merits, the trial court decree is said in law to merge in the appellate decree, and it is the appellate decree which rules. The object of sub-section (1) of Section 13 is to protect the possession of the tenant, subject to the exceptions specified in the sub-section, and that protection is ensured if we construe the sub-section to mean that, subject to those exceptions, no effective or operative order or decree can be made by the court in a landlord's suit for possession against a tenant. To our mind, therefore, sub-section (1) of Section 13 of the Act can be invoked by a tenant during the pendency of an appeal against a trial court decree.

8. The next point is whether sub-section (1) of Section 13 can be invoked where the suit was instituted before the Act came into force. In the instant case, the suit was instituted long before the Act was extended to Memari. Sub-section (1) of Section 13 directs the court not to make any order or decree for possession subject, of course, to the statutory exceptions. The legislative command in effect deprives the Court of its unqualified jurisdiction to make such order or decree. It is true that when the suit was instituted the court possessed such jurisdiction and could pass a decree for possession. But it was divested of that jurisdiction when the Act was brought into force. The language of the sub-section makes that abundantly clear, and regard must be had to its object. In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha (1962)2 SCR 159, a Bench of five Judges of this Court had occasion to consider sub-section (1) of Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Sub-section (1) of Section 12 provided:

"A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount

of the standard rent...."

On the question whether the provision applied to pending suits for possession, the learned Judges drew attention to the point of time specifically mentioned in the sub-section. It operated, they said, "when the decree for recovery of possession will have to be passed" and did not refer back to the institution of the suit. By a unanimous judgment the learned Judges held that the sub-section applied to pending suits. In passing, it may be noted that the learned Judges expressed a degree of hesitation on whether a statutory injunction of that nature could be applied retrospectively to appeals against decrees already made. But any doubt on the point must be considered to have been finally removed by this Court when in Rafiquennessa v. Lal Bahadur Chetri, (1964)6 SCR 876, another Bench of five Judges, which included J.C. Shah, J. who was a member of the Bench in the earlier case, held on an interpretation of clause (a) of sub-section (1) of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955, which prohibited the eviction of a tenant, that the statutory provision came into play for the protection of the tenant even at the appellate stage. The learned Judges relied on the principle that an appeal was a continuation of the suit and that the appeal would be governed by the newly enacted clause (a) of sub-section (1) of Section 5 even though the trial court decree had been passed earlier."

30. A Constitution Bench of five-Judge in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha, AIR 1961 SC 1596, considered the question as to whether a section is prospective or retrospective. This Court dealt with a case where during the pendency of possession suit by respondent-landlord a notification was issued u/s 6 of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, applying part II of the said Act to the area where the suit property was situated. The appellant-tenants claimed protection of Section 12 as part II of the said Act which deprived the landlord of the right to possession under certain circumstances. The Court allowed the appeal filed by the tenant holding Section 12(1) to be retrospective. The Court in the said case held that a section may be prospective in some parts and retrospective in

other parts. The relevant portion of said judgment reads as follows:

> "(11) The second contention urged by the learned Attorney-General that s. 12(1) applied from the date on which the Act was extended to the area in question is, in our opinion, sound. Section 12(1) enacts a rule of decision, and it says that a landlord is not entitled to possession if the tenant pays or shows his readiness and willingness to pay the standard rent and to observe the other conditions of the tenancy. The word "tenant" is defined in the Act to include not only a tenant, whose tenancy subsists but also any person remaining, after the determination of the lease, in possession

with or without the assent of the landlord. The present appellants, as statutory tenants, were within the rule enacted by s. 12(1) and entitled to its protection, if the sub-section could be held applicable to this suit.

(12) Both the Bombay High Court and this Court had, on the previous occasions, observed that s. 12 of the Act was prospective. In those cases, the learned Judges were concerned with the interpretation of sub ss. (2) and (3) only, which, as the words of those subsections then existing show, were clearly prospective, and were applicable to suits to be instituted after the coming into force of the Act. But a section may be prospective in some parts and retrospective in other parts. While it is the ordinary rule that substantive rights should not be held to be taken away except by express provision or clear implication, many Acts, though prospective in form, have been given retrospective operation, if the intention of the legislature is apparent. This is more so, when Acts are passed to protect the public against some evil or abuse. (See Craies on Statute Law, 5th Edn., p. 365). The sub-section says that a landlord Shall not be entitled tothe recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the standard rent etc., and observes and performs the other conditions of the tenancy. In other words, no decree can be passed granting possession to the landlord, if the tenant fulfils the conditions above mentioned. The Explanation to S. 12 makes it clear that the tenant in case of a dispute may make an application to the Court under sub-s. (3) of S. 11 for fixation of a standard rent and may thereafter pay or tender the amount of rent or permitted increases specified in the order to be made by the Court. The tenants,

in the present case, have expressed their readiness and willingness to pay, and it is clear that they fulfil the requirements of sub-s.(1) of S. 12, and the landlord is, therefore, not entitled to the relief of possession.

(13) Both the High Court as well as this Court in their previous decisions, referred to above, were not called upon to interpret sub-s. (1) of the Act. They were dealing with appeals arising out of decrees already passed. The observations that S. 12 was prospective were made with reference to sub-ss. (2) and (3) and not with respect to sub-s. (1), which did not even find a mention in those judgments. The question then was whether S. 12 by itself or read with the proviso to S. 50 was applicable retrospectively to appeals. That is not the question which has arisen here. Then again, S. 12(1) enacts that the landlord shall not be entitled to recover possession, not "no suit shall be instituted by the landlord to recover possession". The point of time when the sub-section will operate is when the decree for recovery of possession would have to be passed. Thus, the language of the subsection applies equally to suits pending when Part 11 comes into force and those to be filed subsequently. The contention of the respondent that the operation of S. 12(1) is limited to suits filed after the Act comes into force in a particular area cannot be accepted. The conclusion must follow that the present suit cannot be decreed in favour of the respondent. The decisions of the High Court and the Court of First Instance are thus erroneous, and must be set aside."

31. Subsequently, another Constitution Bench of five-Judge of this Court in Mst. Rafiquennessa v. Lal Bahadur Chetri and another, AIR 1964 SC 1511, having noticed the scope of Assam Non-Agricultural Urban Areas Tenancy Act held:-

"(9).....In order to make the statement of the law relating to the relevant rule of construction which has to be adopted in dealing with the effect of statutory provisions in this connection, we ought to add that retroactive operation of a statutory provision can be inferred even in cases where such retroactive operation appears to be clearly implicit in the Provision construed in the context where it occurs. In other words, a statutory provision is held to be retroactive either when it is so declared by express terms, or the intention to make it retroactive clearly follows from the relevant words and

the context in which they occur.

(10) Bearing in mind these principles, let us look at s. S. Before doing so, it is necessary to consider s. 2 which provides that notwithstanding anything contained in any contract or in any law for the time being in force, the provisions of this Act shall apply to all non-agricultural tenancies whether created before or after the date on which this Act comes into force. This provision clearly indicates that the legislature wanted the beneficent provisions enacted by it to take within their protection not only leases executed after the Act came into force, but also leases executed prior to the operation of the Act. In other words, leases which bad been created before the Act applied are intended to receive the benefit of the provisions of the Act, and in that sense, the Act clearly affects vested rights of the landlords who had let out their urban properties to the tenants prior to the date of the Act. That is one important fact which is material in determining the scope and effect of s. 5.

(11) Now, s. 5 itself gives an unmistakable indication of the legislative intention to make its provisions retrospective. What does s. 5 provide? It provides protection to the tenants who have actually built within five years from the date of leases executed in their favour, permanent structures on the land let out to them for residential or business purposes, and this protection is available either when the construction of the permanent structure has been made by the tenant in pursuance of the terms of the lease, or even without any term of that kind and the landlord had knowledge of it and had acquiesced in it. Thus, the plain object of s. 5 is to protect the tenants who have built a permanent structure either for business or for residence, provided it has been built within 5 years from the date of contract of tenancy. Therefore, cases where permanent structures had been built within 5 years of the terms of contract, would fall within s. 5 (1) (a), even though those constructions had been made before the date of the Act. Thus, the very scheme of 5 (1) (a) clearly postulates the extension of its protection to constructions already made. That is another point which is significant in dealing with the controversy between the parties before us.

(12) There is yet another point which is relevant in this connection. S. 5(1)(a) provides that the tenant shall not be evicted by the landlord from the tenancy except on the ground of non-payment of

rent, provided, of course, the conditions prescribed by it are satisfied. If the legislature had intended that this protection should operate prospectively. it would have been easy to say that the tenant shall not be sued in ejectment; such an expression would have indicated that the protection is afforded to the suits brought

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after the Act came into force, and that might have introduced the element of prospective operation; instead, what is prohibited by s. 5 (1)(a) is the eviction of the tenant, and so, inevitably, the section must come into play for the protection of the tenant even at the appellate stage when it is clear that by the proceedings pending before the appellate court, the landlord is seeking to evict the tenant, and that obviously indicates that the pending proceedings are governed by s. 5(1)(a), though they may have been initially instituted before the Act came into force."

32. In the present case Section 2(ix) of the Act defines

'tenant' as any person by whom or on whose account rent is

payable for a building and includes the surviving spouse, or any

son or daughter, of a deceased tenant who had been living with

the with the tenant in the building as a member of tenant's

family up to the death of the tenant including a person

continuing in possession after the termination of the tenancy in

his favour. Thus it is clear that even if any person after

termination of tenancy in his favour is continuing in

possession, is covered by definition of 'tenant'.

33. Section 10 of the Act relates to 'eviction of tenants'. It

protects the tenant from eviction in execution of a decree or

otherwise except where eviction is in accordance with the

provisions of Section 10 or Sections 12 and 13. A tenant,

including a person continuing in possession of the premises

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after the termination of his tenancy thereby cannot be evicted

by execution of a decree or otherwise except in accordance with

the provisions of Section 10 or Sections 12 and 13. Therefore, it is clear that till the execution of a decree, the tenant including a person continuing in possession after termination of tenancy in his favour is protected under the Act.

34. Section 32, as it originally stood, consequent to its striking down in 'Motor General Traders' case and after Amendment Act, 2005 is reproduced below:

Original Section 32 prior to striking down	Section 32 consequent on its striking down	Section 32 as amended by Amendment Act, 2005
32. Act not to apply to certain Buildings:- The provision of this Act shall not apply-	32. Act not to apply to certain Buildings:- The provision of this Act shall not apply-	32.Act not apply to certain buildings:- The provisions of this Act shall not apply,-
(a) to any building owned by the Government;	(a) to any building owned by the Government;	(a) to any building belonging to the State Government or the Central Government, or Cantonment Board or any local authority;
(b) to any building constructed on or after the 26th August,1957.		(b) to any building constructed or substantially renovated, either before or after the commencement of this Act for a period of fifteen years from the date of completion of such construction or substantial renovation.
		Explanation I:- A building may be said to be substantially renovated if not less than seventy five percent of the premises is built new in accordance of completion of such

construction or substantial renovation.

Explanation II:- Date of completion of construction shall be the date of completion as intimated to the concerned authority or of assessment of property tax, whichever is earlier, and where the premises have been constructed in stages the date on which the initial building was completed and an intimation thereof was sent to the concerned authority or was assessed to property tax,

whichever is earlier.

(c) to any building the rent of which as on the date of commencement of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 2005, exceeds rupees three thousand and five hundred per month in the areas covered by the Municipal Corporations in the State and rupees two thousand per month in other areas.

35. In its original form the Act protected tenants of all buildings, irrespective of rent, except (a) the tenants of a building owned by the Government and (b) the tenants of a building constructed on or after 26th August, 1957.

36. After striking down of Section 32(b), the tenants of all buildings, including any building constructed on or after 26 th August, 1957 irrespective of rent were protected under the Act except the tenants of a building owned by the Government.

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37. After amendment of Section 32 by the Amendment Act, 2005, w.e.f 27th April, 2005, tenants of a building, rent of which is Rs.3,500/- p.m. or below in the areas covered by the Municipal Corporations and the tenants of a building, rent of which is Rs.2,000/- p.m. or below in other areas, only remain as protected tenants. In effect, the rest of the tenants of any building rent of which exceeds Rs.3,500/- p.m. in the area covered by the Municipal Corporation and Rs.2,000/- p.m. in other areas, no more remain tenant within the meaning of Section 2(ix) of the Act as the Act is not applicable to them.

Therefore, since, 27th April, 2005 this class of tenants of building whose rent exceeds Rs.3,500/- p.m. in Municipal Corporation areas and Rs.2,000/-per month in other areas, lost

their right of protection under the Act in view of amended

Section 32(c). This apart the tenants of any building

constructed or substantially renovated, either before or after

the commencement of the Act for a period of fifteen years from

the date of completion of such construction or substantial

renovation, no more remain 'tenant' within the meaning of

Section 2(ix) of the Act and they also lost their right of

protection in view of the amended Section 32(b). The position

with regard to the building belonging to the Government remained

the same. The tenants of building belonging to the Cantonment

Board or local authority also lost their rights to claim

protection in view of amended Section 32(a).

38. If the effect of Section 32 in the inception of the Act,

after striking down in Motor General Traders case and after

amendment of the Act in 2005 is shown in a tabular chart, it

will be as follows:

Original Section 32 prior to striking down	Section 32 consequent on its striking down	Section 32 as amended by Amendment Act, 2005
(a)tenants of a building owned by the Government; and building constructed, on or after the 26th August,1957 do not come within the definition of tenant - Section 2(ix) of the Act;	(a) tenants of a building owned by the Government (State or Central Government) do not fall within the meaning of tenant under the Act.	(a)tenants of building belonging to State Government or Central Government or Cantonment Board or any other local authority do not come within the meaning of tenant;
(b) tenants of all other buildings, irrespective of rent, including belonging to Cantonment Board or any local authority come within the meaning of tenant under the Act.	(b) tenant of all other buildings, irrespective of rent, including the tenant of Cantonment Board or any local authority come within the definition of tenant of the Act.	(b)tenants of building constructed or substantially renovated for a period of 15 years from the date of completion of such construction or substantial renovation do not come within the meaning of tenant under the Act;
This includes the building whose rent is between Rs.1001-Rs.3500 p.m. in the municipal area and from Rs.1001/- to Rs.2000/- in other	This includes the building whose rent is between Rs.1001-Rs.3500 p.m. in the municipal area and from Rs.1001 to Rs.2000/- in other areas.	(c) tenants of any building the rent of which exceeds Rs.3,500/- p.m. in the areas covered by Municipal Corporation and Rs.2,000/- p.m. in other areas do not come within the meaning of tenant under the Act;
	(c)	(d) tenants of all other

areas. buildings rent of which is Rs.3,500/- p.m. or below in the Municipal area and Rs.2,000/- p.m. or below in other areas continued to be protected tenant.

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39. In view of the aforesaid discussion, we hold that part of Section 32 i.e. Section 32(a) and (c) is prospective and other part i.e. Section 32(b) is retrospective.

40. Effect of G.O.Ms.No.636 dated 29th December, 1983 on the Act

Section 32 of the Act specifies the buildings to which the Act will not apply. It is not an exemption granted in the Act but a specific provision under the Act stipulating non-application of the Act to certain buildings. Section 26 is the power of exemption granted to the State Government to exempt certain buildings or class of buildings from all or any of the provisions of the said Act. With the cost of repetition, it is desirable to produce Section 26 again as follows:

> "Section 26. Exemptions:- Notwithstanding anything in this Act the Government may, by notification in the Andhra Pradesh Gazette, exempt subject to such conditions and terms, if any, as they may specify in the notification, any building or class of building from all or any of the provisions of the Act."

41. Nature and effect of a non obstante clause was considered by this Court in Union of India and another vs. G.M. Kokil and another, 1984 (Suppl.) SCC 196. In the said case this Court held as follows:

> "11.....It is well-known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions

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> over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions....."

42. In Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram, (1986) 4 SCC 447, this Court while dealing with a case of statutory tenant discussed the merit of non obstante clause and

held as follows:

> "67. A clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in South India Corpn. (P) Ltd. v. Secretary, Board of Revenue, Trivandrum, AIR 1964 SC 207."

This Court further held that the expression notwithstanding is in contradistinction to the phrase ‘subject to’, the latter

conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject.

43. In view of the aforesaid decision, we hold that Section 26 and the exemption granted by the State Government under Section 26 of the Act by G.O.Ms.636 dated 29th December, 1983 has overriding effect over rest of the provisions of the Act.

44. It cannot be said that by amending Section 32, the legislature intended to bring about a remedial situation relating to certain classes of buildings which were the subject matter of exceptions under Section 26 granted in the year 1983. Such classes of buildings enjoying the benefit of exemption from the operation of the Act since 1983 cannot be said to have lost the benefit of exemption by way of such amendment.

45. It is wrong to state that buildings whose rent are upto Rs.3,500/- in the municipal area and Rs.2,000/- in other area have been brought into the fold of the Act by amended Section 32(c). In fact, as noticed above, a building whose rent were

upto Rs.3,500/- in the municipal area and Rs.2,000/- in other area were already covered by the Act in view of original Section 32. But the tenant of such building could not claim protection in view of exemption granted by the State under Section 26 by G.O.Ms. No. 636 dated 29th December, 1983.

46. Sections 26 and 32 of the Act operate in two different fields. Section 32 has been enacted to enable the legislature to

provide for non-application of the Act in its entirety without any qualifications. It is open to the legislature to choose any subject for such non-application. It can be an area, class of buildings etc. Section 32 is an independent provision in respect of the non-application of the Act.

47. On the other hand, Section 26 confers power on the Government to exempt buildings or classes of buildings to which Act is applicable from all or any of the provisions of the Act. Section 26 has a non-obstante clause, which is widely worded. The Government need not, for the purposes of exercise of power under Section 26 take any guidance or be influenced by the provisions of Section 32.

48. We have noticed that at the inception of the Act, tenants of all the buildings, irrespective of rent, were covered under the Act and were tenants within the meaning of the Act, except the tenant of any building owned by the Government or building constructed on or after 26th August, 1957, the Act was applied to all tenants.

49. After striking down of Section 32(b) w.e.f. from 26 th October, 1983, though the Act applied to all the buildings, by virtue of G.O.Ms.636 dated 29th December, 1983 issued by State Government under Section 26 of the Act all buildings for a period of ten years from the date on which their construction is completed and buildings the monthly rent of which exceeds rupees

one thousand were exempted from the operation of the provisio[ns of the said Act.

50. The effect is that except the tenant whose rent is Rs.1,000/- or below, rest of the tenants in view of exemption could not claim protection.

51. By amended Section 32 (clause (b) of Section 32), the Act has been made not applicable to any building constructed or substantially renovated, for a period of 15 years from the date of such construction or substantial renovation. In view of such amendment the first part of exemption granted by G.O.Ms.636 dated 29th December, 1983 with regard to all buildings for a period of 10 years from the date of construction has become redundant.

Though clause (a) of G.O.Ms.636 dated 29th December, 1983 has become redundant, clause (b) of the said G.O.Ms.636 dated 29th December, 1983 still applies to the building the monthly rent of which exceeds Rs.1,000/- i.e. the building monthly rent of which is between Rs.1001/- to Rs.3,500/- in the Municipal areas and Rs.1001/- to Rs.2,000/- in other areas. The aforesaid buildings whose monthly rent exceeds Rs.1,000/- still continue to enjoy the exemption granted to them under Section 26 of the Act. The larger Bench of the High Court wrongly held that clause (b)

of the G.O.Ms.636 dated 29th December, 1983 has become a redundant in view of the amended Section 32.

52. In view of the discussion above, we hold:-

(a) Part of Section 32 is prospective and some part of it is retrospective.

(b) The exemption granted by the State Government under Section 26 of the Act by G.O.Ms.636 dated 29 th December, 1983 has overriding effect over rest of the provisions of the Act.

(c) The buildings whose rents are upto Rs.3,500/- in the Municipal areas and Rs.2,000/- in other areas were already covered by the Act and after amendment it continues to be covered by the Act but the tenants of buildings, rent of which is more than Rs.1,000/- and does not exceed Rs.3,500/- in the Municipal area or Rs.2,000/- in other area even after amendment of Section 32 cannot claim protection in view of the exemption granted under Section 26 of the Act.

(d) Section 26 and Section 32 of the Act operate in two different fields. Section 32 relates to non applicability of the Act to a class of building(s) whereas Section 26 deals with the power of the State to exempt the building or class of buildings to which Act is applicable. In fact, there is no clash between Section 26 and Section 32, as they operate

in two different fields and, therefore, the question of overriding of one over another does not arise.

(e) Clause (a) of G.O.Ms.636 dated 29th December, 1983 has become redundant. However, clause (b) of the G.O.Ms.636 dated 29th December, 1983 still holds good.

(f) The suit(s), appeal(s), revision application(s) or execution case(s) which are pending for determination under the General Law are not affected by amended Section 32 and will continue to be decided in accordance with General Law.

53. In view of the aforesaid discussion and the judgment (majority) dated 30th April, 2007 passed by the High Court of Andhra Pradesh is upheld in so far as it relates to prospective operation of Section 32(c) and its effect on the pending proceedings.

The finding of majority decision dated 30th April, 2007 in regard to clause (b) of G.O.Ms.636 dated 29th December, 1983 declaring the said part of the G.O.Ms. 636 as redundant is declared bad in law and is set aside. Civil Appeal Nos.3467-3468, 3471, 3472, 3473, 3474-3475, 3476 OF 2010 and Civil Appeal No. 2406 of 2015 [@ SLP (C)No.16508 of 2012], Civil Appeal Nos.7825-7826 OF 2012, Civil Appeal No.2569 of 2013, Civil Appeal Nos. 2408-2409 of 2015[@ SLP (C)Nos.15154-15155 of 2014] and Civil Appeal No. 2407 of 2015 [@ SLP (C) No.35787 of 2012]

all filed by the tenants are dismissed. Civil Appeal Nos. 2403-2405 of 2015 [@ SLP (C)NOS.15230-15232 of 2012] stand disposed of in terms of the finding as recorded above. However, on the facts and circumstances, there shall be no order as to costs.

.....
.....J.

(SUDHANSU JYOTI MUKHOPADHAYA)

.....
.....J.

(S.A. BOBDE)

NEW DELHI,
FEBRUARY 24, 2015.

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ITEM NO.1A COURT NO.4 SECTION XIIA
(For judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 3467-3468/2010

SMT. NOORUNISSA BEGUM Appellant(s)

VERSUS

BRIJ KISHORE SANGHI Respondent(s)
(with office report)

WITH
C.A. No. 3471/2010
C.A. No. 3472/2010
C.A. No. 3473/2010
C.A. No. 3474-3475/2010
C.A. No. 3476/2010
C.A. No. 7825-7826/2012
C.A. No. 2569/2013
C.A. No.2403-2405/2015
(@ SLP(C) No. 15230-15232/2012)
C.A. No.2406/2015
(@ SLP(C) No. 16508/2012)
C.A. No. 2407/2015
(@ SLP(C) No. 35787/2012)
C.A. No.2408-2409/2015
(@ SLP(C) No. 15154-15155/2014)

Date : 24/02/2015
These appeals were called on for judgment today.

For Appellant(s) M/s Mitter & Mitter Co., Advs.

Ms. Promila,Adv.
Mr. V. N. Raghupathy,Adv.

Mr. Roy Abraham, Adv.
Ms. Seema Jain, Adv.
Ms. Chandrani Prasad, Adv.
Mr. Himinder Lal, Adv.

Mrs. D. Bharathi Reddy,Adv.
Mr. Pramod B. Agarwala,Adv.
Mr. Ajay Choudhary,Adv.

For Respondent(s) Mr. Sridhar Potaraju, Adv.

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Mr. Gaichang Pou Gungme, Adv.
Mr. Arjun Singh, Adv.
Mr. Mukunda Rao Angara, Adv.

Mr. Anil Kumar Tandale,Adv.

Mrs. Sudha Gupta,Adv.
Mr. Amit Pawan,Adv.
Ms. T. Anamika,Adv.
Mr. Ashok Mathur,Adv.
Mr. M. Vijaya Bhaskar,Adv.

Mr. M. Shoeb Alam, Adv.
Mr. Talha Rahman, Adv.
Mr. Pranab Kumar Mullick,Adv.

Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice S. A. Bobde.

Civil Appeal Nos.3467-3468, 3471, 3472, 3473, 3474-3475, 3476 OF 2010 and Civil Appeal No. 2406 of 2015 [@ SLP (C)No.16508 of 2012], Civil Appeal Nos.7825-7826 OF 2012, Civil Appeal No.2569 of 2013, Civil Appeal Nos. 2408-2409 of 2015[@ SLP (C)Nos.15154-15155 of 2014] and Civil Appeal No. 2407 of 2015 [@ SLP (C) No.35787 of 2012] all filed by the tenants are dismissed, Civil Appeal Nos. 2403-2405 of 2015 [@ SLP (C)NOS.15230-15232 of 2012] stand disposed of in terms of the signed reportable judgment.

(Nidhi Ahuja)
COURT MASTER

(Suman Jain)
COURT MASTER

[Signed reportable judgment is placed on the file.]