V. Dhanapal Chettiar

Vs

Yesodai Ammal

Civil Appeal No. 1303 of 1977

(CJI Y.V. Chandrachud, R.S. Sarkaria, N.L. Untwalia, P.N. Shinghal, P.S. Kailasam, O. Chinnappa Reddy, E.S. Venkataramiah JJ)

23.08.1979

JUDGMENT

UNTWALIA J. -

1. This appeal by special leave at the instance of the tenant of certain premises in the town of Vellore was heard by a larger Bench of this Court consisting of seven Judges to resolve the cleavage of opinion between several decisions of this Court, on the question as to whether in order to get a decree or order for eviction against a tenant under any State Rent Control Act it is necessary to give a notice under Section 106 of the Transfer of Property Act. We proceed to do so in this judgment.

2. The respondent filed an application against the appellant under Section 10(3)(a)(iii) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, hereinafter referred to as the Tamil Nadu Rent Act, on the ground of personal necessity. The Rent Controller held that the requirement of the respondent was not genuine and he accordingly dismissed her petition. On appeal by the landlady the appellate Court held in her favour on the point of her requiring the premises bona fide for her personal necessity but maintained the dismissal of her application on the ground that a notice to quit was necessary and the one given by her was not in accordance with law. The landlady took up the matter in revision to the Madras High Court. A learned single Judge of that Court following his earlier decision in K. Sukumaran Nair v. S. Neelakantan Nair ((1976) 2 MLJ 84) held that notice to quit under Section 106 of the Transfer of Property Act was not necessary for seeking an eviction of a tenant under the Tamil Nadu Rent Act. Hence this appeal by the tenant.

3. We do not think it necessary to decide in this appeal whether the notice to quite given to the appellant was a valid notice in accordance with Section 106 of the Transfer of Property Act. The controversy before us centred round the question whether such a notice was at all necessary to be given.

4. We shall presently refer to the various decisions of the High Courts and this Court taking contrary views. But before we do so we may make some general observations. It is well-known that after the Second World War to give protection to a tenant against unnecessary, undue or unreasonable eviction and in the matter of being exploited for payment of exorbitant rent all States in India at one time or the other passed Building Rent and Control Acts. Amendments in them were brought about from time to time. The language and the scheme of the Acts varied and differed from State to State. Even though there was no basic or fundamental difference in regard to the law of eviction of a tenant in any of the State statutes, different constructions were put in regard to them and principles were culled out in varying manners to arrive at the conclusions in some cases that a notice to quit in

accordance with Section 106 of the Transfer of Property Act was necessary and in some it was held that it was not necessary. The gravamen of the underlying principles seems to have been overlooked in many cases.

5. Under the Transfer of Property Act the subject of "Leases of Immovable Property" is dealt with in Chapter V. Section 105 defines the lease, the lessor, the lessee and the rent. Purely as a matter of contract, a lease comes into existence under the Transfer of Property Act. But in all social legislations meant for the protection of the needy, not necessarily the so-called weaker section of the society as is commonly and popularly called, there is appreciable inroad on the freedom of contract and a person becomes a tenant of a landlord even against his wishes on the allotment of a particular premises to him by the authority concerned. Under Section 107 of the Transfer of Property Act a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. None of the State Rent Acts has abrogated or affected this provision. Section 108 deals with the rights and liabilities of lessors and lessees. Many State Rent Acts have brought about considerable changes in the rights and liabilities of a lessor and a lessee, largely in favour of the latter, although not wholly. The topic of Transfer of Property other than agricultural land is covered by Entry 6 of List III to the Seventh Schedule to the Constitution. The subject being in the concurrent list, many State Rent Acts have by necessary implication and many of them by starting certain provisions with a non-obstante clause have done away with the law engrafted in Section 108 of the Transfer of Property Act except in regard to any matter which is not provided for in the State Act either expressly or by necessary implication.

6. Section 111 deals with the question of determination of lease, and in various clauses (a) to (h) methods of determination of a lease of immovable property are provided. Clause (g) deals with the forfeiture of lease under certain circumstances and at the end are added the words "and in any of these cases the lessor his transferee gives notice in writing to the lessee of his intention to determine the leases". The notice spoken of in clause (g) is a different kind of notice and even without the State Rent Acts different views have been expressed as to whether such a notice in all cases is necessary necessary or not. We only observe here that when the State Rent Acts provide under what circumstances and on what grounds a tenant can be evicted, it does provide that a tenant forfeits his right to continue in occupation of the property and makes himself liable to be evicted on fulfilment of those conditions. Only in those State Acts were a specific provision has been made for the giving of any notice requiring the tenant either to pay the arrears of rent within the specified period or to do any other thing, such as the Bombay Rent Act or the West Bengal Rent Act, no notice in accordance with clause (g) is necessary. A lease of immovable property determines under clause (h) :

> On the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

It is this clause which brings into operation the requirement of Section 106 of the Transfer of Property Act. Without adverting to the effect and the details of waiver of forfeiture, waiver of notice to quit, relief against forfeiture for non-payment of rent, etc. as provided for in Sections 112 to 114-A of the Transfer of Property Act, suffice it to say that under the said Act no ground of eviction of a tenant has to be made out once a contractual tenancy is put to an end by service of a valid notice under Section 106 of the Transfer of Property Act. Until and unless the lease is determined, the lessee is entitled to continue in possession. Once it is determined it becomes open to the lessor to enforce his right of recovery of possession of the property against him. In such a situation it was plain and clear that if the lease of the immovable property did not stand determined under any of the

clauses (a) to (g) of Section 111, a notice to determine it under Section 106 was necessary. But when under the various State Rent Acts, either in one language or the other, it has been provided that a tenant can be evicted on the grounds mentioned in certain sections of the said Acts, then how does the question of determination of a tenancy by notice arise ? If the State Rent Act requires the giving of a particular type of notice in order to get a particular kind of relief, such a notice will have to be given. Or, it may be, that a landlord will be well advised by way of abundant precaution and in order to lend additional support to this case, to give a notice to his tenant intimating that he intended to file a suit against him for his eviction on the ground mentioned in the notice. But that is not to say that such a notice is compulsory or obligatory or that it must fulfil all the technical requirements of Section 106 of the Transfer of Property Act. Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction. Until then, under the extended definition of the word 'tenant' under the various State Rent Acts, the tenant continues to be a tenant even though the contractual tenancy has been determined by giving of a valid notice under Section 106 of the Transfer of Property Act. In many cases the distinction between a contractual tenant and a statutory tenant was alluded to for the purpose of elucidating some particular aspects which cropped up in a particular case. That led to the criticism of that expression in some of the decisions. Without detaining ourselves on this aspect of the matter by any elaborate discussion, in our opinion it will suffice to say that the various State Rent Control Acts make a serious encroachment in the field of freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. In spite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent, etc. in accordance with the law.

7. In Sukumaran Nair case ((1976) 2 MLJ 84) the learned Judge has pointed out the difference of opinion expressed in the various decisions of the Madras High Court from time to time in regard to notice to quit under Section 106 of the Transfer of Property Act. In Parthasarthy v. Krishnamoorthy (AIR 1949 Mad 387) a learned single Judge of that Court held that a notice to quit was necessary. A contrary view was expressed by a Division Bench of the High Court in R. Krishnamurthy v. S. Parthasarthy (AIR 1949 Mad 780 (DB) (reversing AIR 1949 Mad 387). Difference of opinion in Madras High Court continued in many other cases and then came the Full Bench decision in the case of M/s. Raval and Co. v. K. G. Ramachandran (AIR 1967 Mad 57 (FB) : (1966) 2 MLJ 68 : ILR (1966) 2 Mad 437). This decision was approved in the majority decision of this Court in Raval & Co. v. K. G. Ramachandran ((1974) 1 SCC 424 : (1974) 2 SCR 629 : AIR 1974 SC 818). Raval case was not directly a case in relation to Section 106 of the Transfer of Property Act but some observations made therein did tend to show that notice would not be necessary. In spite of the Full Bench decision of the Madras High Court in Raval case a Division Bench of that Court in B. Kalyanasundaram v. A. R. Natarajan ((1969) 2 MLJ 585) stuck to the view that notice was necessary. The Punjab High Court in Shri Hem Chand v. Shrimati Sham Devi (ILR 1955 Punj 36) had expressed the view that notice was not necessary. The Full Bench of the Punjab and Haryana High Court in Bhaiya Ram Hargo Lal v. Mahavir Parshad Murari Lal Mahajan (AIR 1969 P & H 110 (FB) : ILR (1969) 1 Punj 132 : 70 Punj LR 1011) took a contrary view. After the majority view of the Full Bench of the Patna High Court in Niranjan Pal v. Chaitanyalal Ghosh (AIR 1964 Pat 401 (FB) : 1964 BLJR 152) it has been consistently held in the Patna High Court that a notice is necessary. A Special Bench of the Calcutta High Court in Surya Properties Private Ltd. v.

Bimalendu Nath Sarkar (AIR 1964 Cal 1 : 67 Cal WN 977) has taken the view that over and above the notice required to be given under the State Act a notice under Section 106 of the Transfer of Property Act is also necessary. To the same effect is the view expressed in Chhotelal Banshidhar v. Abdullabhai Abdul Gafoor (AIR 1952 MB 121); Shambhooram v. Mangal Singh (AIR 1959 Raj 59 : ILR (1958) 8 Raj 501 : 1958 Raj LW 574); Siddappa Adiveppa v. Venkatesh Raghavendra Hubballi (AIR 1965 Mys 65); Batoo Mal v. Rameshwar Nath (AIR 1971 Delhi 98) and Parshotam Lal v. Kalayan Singh (AIR 1971 J & K 20). As against this, and specially after some decisions of this Court, the preponderance of recent view in the High Courts of Andhra Pradesh, Madras, Kerala, Karnataka and Punjab and Haryana is that no notice under Section 106 of the Transfer of Property Act is necessary. These cases are Ulligappa v. S. Mohan Rao, minor by guardian Chaogamma ((1971) 2 Andh WR 293); K. Sukumaran Nair v. S. Neelakantan Nair (AIR 1976 Mad 329 : (1976) 2 MLJ 84); Lelitha v. Ayissumma (AIR 1978 Ker 167 : Ker LT 587 : ILR (1977) 2 Ker 112); Govindaswamy R. v. Pannalal C. S. ((1978) 1 Kar LJ 506) and Vinod Kumar v. Harbans Singh Azad (AIR 1977 P & H 262 (FB) : ILR (1977) 1 Punj 629 : 79 Punj LR 144). Such a cleavage of opinion cropped up in the various High Courts because of some observations of this Court in some decisions which will be presently alluded to. It was so on an erroneous assumption, if we may say so with great respect, that the difference in the phraseology of the different State Rent Acts justified this difference of views. In our considered judgment on the question of a requirement of a notice under Section 106 of the Transfer of Property Act there is no scope for taking different views on the basis of the difference in the phraseology of the various Rent Acts. In this regard the difference in the phraseology of the various rent Acts. In this regard the difference in the language does not bring about any distinction. In all the States the law should be uniform, viz. that either a notice is necessary or it is not. It was high time, therefore, that this larger Bench was constituted to lay down a uniform law for the governance of the whole country and not permit the unjustified different trend of decisions to continue.

8. Before we embark upon a review of some of the decisions of this Court we think it necessary and advisable to briefly refer to the provisions of some of the State Rent Acts in support of the observations made by us above that on the question of notice no different result is possible on the language of any State Act. Section 10 of the Tamil Nadu Rent Act says : "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 14 to 16". In other words if a case is made out for his eviction in accordance with the provisions aforesaid, he can be evicted. Even after the termination of the contractual tenancy under the definition of the landlord in clause (6) and of the tenant under clause (8) of Section 2 the landlord remains a landlord and the tenant remains a tenant as clause (8) expressly says that tenant means "a person continuing in possession after the termination of the tenancy in his favour". Section 3 indicated that no landlord can treat the building to have become vacant by merely terminating the contractual tenancy as the tenant still lawfully continues in possession of the premises. The tenancy actually terminates on the passing of the order or decree for eviction and the building falls vacant by his actual eviction. The giving of the notice, therefore, is a mere surplusage and unlike the law under the Transfer of Property Act it does not entitle the landlord to evict the tenant.

9. Adverting to the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 it would be found from the definition in Section 5 that any person remaining in the building after the determination of the lease is a tenant within the meaning of clause (11). Section 12 of the Bombay Act says that the landlord shall not be entitled to the recovery of possession of any premises so long as the conditions mentioned in sub-section (1) are fulfilled nor any suit for recovery of possession shall be instituted by a landlord against a tenant on the happening of the

events mentioned in sub-section (2) until the expiration of one month next after the notice is served on the tenant in the manner provided in Section 106 of the Transfer of Property Act, as required by the said sub-section. Section 13 provides that a landlord may recover possession on certain grounds. Is it not plain then that on the happenings of the events or on the fulfilment of the conditions mentioned in Sections 12 and 13, etc. the landlord becomes entitled to recover possession from the tenant, otherwise not. It will bear repetition to say that under the Transfer of Property Act in order to entitle the landlord to recover possession determination of the lease is necessary as during its continuance he could not recover possession, while under the State Rent Act the landlord becomes entitled to recover possession only on the fulfilment of the rigour of law provided therein. Otherwise not. He cannot recover possession merely by determination of tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy. Under the State Rent Control Acts the concept of the contractual tenancy has lost much of it significance and force. Identical is the position under the Bihar Act. The definition section permits the tenant to continue as a tenant even after the determination of the contractual tenancy. Section 11 gives him protection against eviction by starting with a non-obstante clause and providing further that he shall not be liable to eviction from any building except in execution of a decree passed by the Court for one or more grounds mentioned in Section 11. Does it not stand to reason to say that a decree can be passed if one or more of the grounds exist and such a decree can be passed against an existing tenant within the meaning of the State Rent Act. Similar is the position under the Kerala Lease and Rent Control Act, 1965 and the East Punjab Urban Rent Restriction Act, 1949. We shall refer to the provisions of the Madhya Pradesh and Andhra Pradesh State Rent Acts when we come to review the decisions of this Court in relation to those Acts.

10. A Constitution Bench of this Court in Rai Brij Raj Krishna v. S. K. Shaw and Brothers (1951 SCR 145 : AIR 1951 SC 115 : 1951 SCJ 238) in a different context dealing with Section 11 of the Bihar Rent Act observed at page 150 :

> Section 11 is a self-contained section, and it is wholly unnecessary to go outside the Act of determining whether a tenant is liable to be evicted or not, and under what conditions he can be evicted. It clearly provides that a tenant is not liable to be evicted except on certain conditions, and one of the conditions laid down for the eviction of a month to month tenant is non-payment of rent ... The Act thus sets up a complete machinery for the investigation of those matters upon which the jurisdiction of the Controller to order eviction of a tenant depends, and it expressly makes his order final and subject only to the decision of the Commissioner.

It was on that account held that the decision of the controlling authority was final and it was not open to the Civil Court to take a different view of the matter on the question of non-payment of rent. It was not a case where a question of notice arose for determination.

11. The first decision of this Court which is necessary to be noticed on the point of notice is the case of Bhaiya Punjalal Bhagwanddin v. Dave Bhagwatprasad Prabhuprasad ((1963) 3 SCR 312 : AIR 1963 SC 120 : (1963) 2 SCJ 441). The case related to Bombay Rent Act. Raghubar Dayal, J., speaking on behalf of the Division Bench of this Court expressed the view at page 318 thus :

> We are therefore of opinion that where a tenant is in possession under a lease from the landlord, he is not to be evicted for a cause which would give rise to a suit for recovery of possession under Section 12 if his tenancy has not been determined already. It follows that whenever a tenant acts in a way which would remove the bar

> on the landlord's right to evict him it is necessary for the landlord to serve him with a notice under sub-section (2) of Section 12 of the Act.

It is true that the Rent Act is intended to restrict the rights which the landlord possessed either for charging excessive rents or for evicting tenants. But if within the ambit of those restricted rights he makes out his case it is a mere empty formality to ask him to determine the contractual tenancy before institution of a suit for eviction. As we have pointed out above, this was necessary under the Transfer of Property Act as mere termination of the lease entitled the landlord to recover possession. But under the Rent Control Acts it becomes an unnecessary technicality to insist that the landlord must determine the contractual tenancy. It is of no practical use after so many restrictions of his right to evict the tenant have been put. The restricted area under the various State Rent Acts has done away to a large extent with the requirement of the law of contract and the Transfer of Property Act. If this be so why unnecessarily, illogically and unjustifiably a formality of terminating the contractual lease should be insisted upon ? In Bhaiya Punjalal case ((1963) 3 SCR 312 : AIR 1963 SC 120 : (1963) 2 SCJ 441), if we may say so with very great respect, the principle of law laid down by this Court in Rai Brij Raj Krishna case (1951 SCR 145 : AIR 1951 SC 115 : 1951 SCJ 238) and by the Punjab High Court in Hem Chand case (ILR 1955 Punj 36) was wrongly distinguished. After quoting the passage from the former it was said at page 322 :

> In the present case, Section 12 of the Act is differently worded and cannot therefore be said to be a complete Code in itself. There is nothing in it which overrides the provisions of the Transfer of Property Act.

The difference in the wordings of Section 11 of the Bihar Act and Section 12 of the Bombay Act does not justify the conclusion that the provisions of the Transfer of Property Act have not been overridden by Section 12 of the Bombay Act reading it with Section 13, etc. This was the ground given for distinguishing Hem Chand case (ILR 1955 Punj 36) also by erroneously pointing out the distinction between Section 13(1) of the Delhi and Ajmer Merwara Rent Control Act, 1952 and the Bombay Act. In our considered judgment Bhaiya Punjalal case ((1963) 3 SCR 312 : AIR 1963 SC 120 : (1963) 2 SCJ 441) was not correctly decided.

12. In another decision of this Court in Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai ((1964) 5 SCR 157 : AIR 1964 SC 1341), in relation to the Bombay Rent Act again there are some lines at page 162 wherein it has been observed thus :

> The clause applies to a tenant who continues to remain in occupation after the contractual tenancy is determined : it does not grant a right to evict a contractual tenant without determination of the contractual tenancy.

But this above observation is followed by the words :

> Protection from eviction is claimable by the tenant even after determination of the contractual tenancy so long as he pays or is ready and willing to pay the amount of the standard rent and permitted increases and observes and performs the other conditions of the tenancy consistent with the provisions of the Act.

In our view if "protection from eviction is claimable by the tenant even after determination of the contractual tenancy" then why import the contractual law engrafted in the Transfer of Property Act for seeking eviction of the tenant ?

13. The decision of this Court in the case of Mangilal v. Suganchand Rathi ((1964) 5 SCR 239 : AIR 1965 SC 101), being a decision of a Constitution Bench consisting of five learned and eminent Judges of this Court requires careful consideration. Therein it was held at page 244 with reference to Section 4 of the Madhya Pradesh Accommodation Control Act, 1955, thus :

> The Accommodation Act does not in any way abrogate Chapter V of the Transfer of Property Act which deals with leases of immovable property. The requirement of Section 106 of the Transfer of Property Act is that a lease from month to month can be terminated only after giving fifteen days' notice expiring with the end of a month of the tenancy either by the landlord to the tenant or by the tenant to the landlord. Such a notice is essential for bringing to an end the relation ship of landlord and tenant. Unless the relationship is validly terminated the landlord does not get the right to obtain possession of the premises by evicting the tenant. Section 106 of the Transfer of Property Act does not provide for the satisfaction of any additional requirements. But then, Section 4 of the Accommodation Act steps in and provides that unless one of the several grounds set out therein is established or exists, the landlord cannot evict the tenant.

Section 4 of the Madhya Pradesh Rent Act, 1955 provided that no suit could be filed in any Civil Court against a tenant for his eviction for any accommodation except on one or more grounds set out in that Section. The corresponding provision in Madhya Pradesh Accommodation Act of 1961 is contained in Section 12 which starts with a non-obstante clause also but the definition of the tenant as in other State Acts includes "any person continuing in possession after the termination of his tenancy". How then is it correct to say that a notice is essential for bringing to an end the relationship between the landlord and the tenant ? The notice does not bring to an end such a relationship because of the protection given to the tenant under the Rent Act. If that be so then it is not necessary for the landlord to terminate the contractual relationship to obtain possession of the premises for evicting the tenant. If the termination of the contractual tenancy by notice does not, because of the Rent Act provisions, entitle the landlord to recover possession and he becomes entitled only if he makes out a case under the special provision of the State Rent Act, then, in our opinion, termination of the contractual relationship by a notice is not necessary. The termination comes into effect when a case is successfully made out for eviction of the tenant under the State Rent Act. We say with utmost respect that on the point of requirement of a notice under Section 106 of the Transfer of Property Act Mangilal case ((1964) 5 SCR 239 : AIR 1965 SC 101) was not correctly decided.

14. In Manujendra Dutt v. Purendu Prasad Boy Chowdhury ((1967) 1 SCR 475 : AIR 1967 SC 1419 : (1967) 1 SCJ 503), the question of notice came to be considered with reference to the Calcutta Thika Tenancy Act, 1949 and in that connection it was said at page 480 :

> The Thika Tenancy Act like similar Rent Acts passed in different States is intended to prevent indiscriminate eviction of tenants and is intended to be a protective statue to safeguard security of possession of tenants and therefore should be construed in the light of its being a social legislation. What Section 3 therefore does is to provide that even where a landlord has terminated the contractual tenancy by a proper notice such landlord can succeed in evicting his tenant provided that he falls under one or more of the clauses of that section.

For the reasons already stated we do not agree, and we say so with respect, with the above

enunciation of law. This apart there is scope for distinguishing Manujendra case ((1967) 1 SCR 475 : AIR 1967 SC 1419 : (1967) 1 SCJ 503) because Clause 7 of the lease deed therein ran as follows :

> Provided always and it is hereby agreed and declared that if it be required that the lessee should vacate the said premises at the end of the said term of 10 years the lessee will be served with a 6 month notice ending with the expiry of the said term and it is further agreed that if the lessee is permitted to hold over the land after the expiry of the said term of 10 years the lessee will be allowed a six months' notice to quit and vacate the said premises.

Over and above the protection under the Thika Tenancy Act, Clause 7 of the lease deed gave an extra protection of getting six months' notice to quite and vacate the premises. In that event one can say that such a clause being not unlawful and giving an extra protection to the tenant against eviction must also be adhered to. But it is not correct to say that Section 106 of the Transfer of Property Act merely providing for termination of a lease either by the lessor or the lessee by giving the requisite notice is an extra protection against eviction. The purpose of this provision is merely to terminate the contract which the overriding Rent Acts do not permit to be terminated.

15. In Raval case ((1967) 1 SCR 475 : AIR 1967 SC 1419 : (1967) 1 SCJ 503) the question for consideration was whether Section 4 of the Tamil Nadu Rent Act providing for an application for fixation of fair rent was available both to the tenant and the landlord. The majority speaking through Alagiriswami, J., took the view that it was so. A contrary view was expressed by Bhagwati, J., speaking for the minority. While discussing the question the relevant passage from the decision of this Court in Rai Brij Raj Krishna case (1951 SCR 145 : AIR 1951 SC 115 : 1951 SCJ 238) was quoted at age 634 ((1974) 1 SCC p. 430, para 15) and reference was made to the decision of the Punjab High Court in Hem Chand case (ILR 1955 Punj 36). Thereafter the observation of this Court in Bhaiya Punjalal case ((1963) 3 SCR 312 : AIR 1963 SC 120 : (1963) 2 SCJ 441) to the effect that "Rent Acts are not ordinarily intended to interfere with contractual leases and are Acts for the protection of tenants and are consequently restrictive and not enabling, conferring no new rights of action but restricting the existing rights either under the contract or under the general law", were held not to apply to all Rent Acts irrespective of the scheme of those Acts and their provisions. This observation given with reference to the dictum of this Court in Bhaiya Punjalal case ((1963) 3 SCR 312 : AIR 1963 SC 120 : (1963) 2 SCJ 441) concerned with the question of notice under Section 106. It enabled certain High Courts to make a firm departure and take the view with reference to the scheme of their respective State Acts to say that a notice was not necessary. This happened in Madras, Andhra Pradesh, Kerala, Karnataka and Punjab and Haryana. Alagiriswami, J., at page 635 (SCC p. 431, para 16) after having made that observation with reference to Bhaiya Punjalal case ((1963) 3 SCR 321 : AIR 1963 SC 120 : (1963) 2 SCJ 441) has said : "Be that as it may, we are now concerned with the question of fixation of a fair rent". In our opinion the majority decision with regard to Section 4 was undoubtedly correct and the minority stretched the law, if we may say so with respect, too far to hold that Section 4 was not available to the landlord. It should be remembered, as we have said above, that the filed of landlord. It should be remembered, as we have said above, that the field of freedom of contract was encroached upon to a very large extent by the State Rent Acts. The encroachment was not entirely and wholly one-sided. Some encroachment was envisaged in the interest of the landlord also and equity and justice demanded a fair play on the part of the legislature not to completely ignore the helpless situation of many landlords who are also, compared to some big tenants, sometimes weaker section of the society. As for example a widow or a minor lets out a family house in a helpless situation to tide over the financial difficulty and later wants a fair rent to be determined. Again suppose for instance in a city there is an apprehension of

external aggression, severe internal disturbances or spread of epidemics. A man in possession of his house may go to another town letting out his premises to a tenant financially strong and of strong nerves at a rate comparatively much lower than the prevailing market rates. Later on, on the normalization of the situation as against the agreed rate of rent he approaches the Building Controller for fixing a fair rent in accordance with a particular State Rent Act. Why should she or he be debarred from doing so ? The statute gives him the protection and enables the Controller to intervene to fix a fair rent as against the term who gets this protection. But in some as in the case of Raval ((1967) 1 SCR 475 : AIR 1967 SC 1419 : (1967) 1 SCJ 503) the landlord needs and gets the protection. But this is not a direct authority on the point of notice.

16. In Isha Valimohamad v. Haji Gulam Mohamad and Haji Dada Trust ((1974) 2 SCC 484 : (1975) 1 SCR 720), Mathew, J., speaking for a Division Bench of this Court had to consider the question with reference to the Saurashtra Rent Control Act, 1951. In that connection it was observed at page 726 (SCC p. 490, para 15) that the High Court was (sic not) right in the assumption that a notice under the Transfer of Property Act was necessary to terminate the tenancy on the ground that the appellants has sublet the premises. Says the learned further that the landlord could have issused a notice under any of the provisions of the Transfer of Property Act to determine the tenancy on the ground of subletting by the tenant. It is not correct assume that a notice under Section 106 of the Transfer of property Act as required by clause (h) of Section 111 needs a ground to be made out for the termination of the tenancy. Such a view could be taken only under clause (g). Beg, J., as he then was in P. J. Gupta & Co. v. K. Venkatesan Merchant ((1975) 1 SCC 46 : (1975) 2 SCR 401) speaking for himself and Krishna Iyer, J., following Raval case ((1967) 1 SCR 475 : AIR 1967 SC 1419 : (1967) 1 SCJ 503) observed at page 403 : (SCC p. 48, para 4)

> In other words, the special procedure provided by the Act displaces the requirements of the procedure for eviction under the Transfer of Property Act and by an ordinary civil suit. Therefore, we need not concern ourselves with the provisions of Transfer of Property Act. A tenancy is essentially based on and governed by an agreement or contract even when a statute intervenes to limit the area within which an agreement of contract operates, or, subject contractual rights to statutory rights and obligations.

In Dattonpant Gopalvarao Devakate v. Vithabrao Maruthirao Janagavai ((1975) 2 SCC 246 : (1975) Supp SCR 67) one of us (Untwalia, J.) speaking on behalf of himself and Krishna Iyer, J, said at page 71 : (SCC p. 250, para 11)

> We do not think that the alternative argument put forward by Mr. Chitale that no notice was necessary in this case is correct. The appellant was a contractual tenant who would have become a statutory tenant within the meaning of clause (r) of Section 2 of the Act if he would have continued in possession after termination of the tenancy in his favour. Otherwise not. Without termination of the contractual tenancy by a valid notice or other mode set out in Section 111 TP Act it was not open to the landlord to treat the appellant as a statutory tenant and seek his eviction without service of a notice to quit.

On a careful consideration and approach of the matter in the instant case we think that we cannot approve of the view expressed in the passage extracted above. In Ratan Lal v. Vardesh Chander ((1976) 2 SCC 103 : (1976) 2 SCR 906), Krishna Iyer, J. delivered the judgment on behalf of a Bench of this Court consisting of himself, Chandrachud, J., as he then was and Gupta, J., as he then was and Gupta, J. The case related to a building in Delhi. The Court was concerned with clause (g)

of Section 111 of the Transfer of Property Act. Tracing the history of the legislation it was pointed out by the Court at page 918 (SCC p. 115, para 23 relving on Namdeo case, 1953 SCR 1009 : AIR 1953 SC 228) that the requirement as to written notice provided in Section 111(g) cannot be said to be based on any general rule of equity and therefore forfeiture of lease brought about in terms of Section 111(g) of the Transfer of Property Act not by notice but on the application of justice, equity and good conscience was held to be good determination of the lease. Quoting from Manujendra case ((1967) 1 SCR 475 : AIR 1967 SC 1419 : (1967) 1 SCJ 503) it was said at page 911 : (SCC p. 109, para 8)

> We are inclined to hold that the landlord in the present case cannot secure an order for eviction without first establishing that he has validly determined the lease under the TP Act.

Why this dual requirement ? Even if the lease is determined by a forfeiture under the Transfer of Property Act the tenant continues to be a tenant, that is to say, there is no forfeiture in the eye of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurring the liability to be evicted under the State Rent Act, not otherwise. In many State statues different provisions have been made as to the grounds on which a tenant can be evicted and in relation to his incurring the liability to be so evicted. Some provisions overlap those of the Transfer of Property Act. Some are which are mostly in favour of the tenants but some are in favour of the landlord also. That being so the dictum of this Court in Raj Brij case (1951 SCR 145 : AIR 1951 SC 115 : 1951 SCJ 238) comes into play and one has to look to the provisions of law contained in the four corners of any State Rent Act to find out whether a tenant can be evicted or not. The theory of double protection or additional protection, it seems to us, has been stretched too far and without a proper and due consideration of all its ramifications.

17. Beg, J., as he then was, speaking for the Court in the case of Puwada Venkateswara Rao v. Chidamana Venkata Ramana ((1976) 2 SCC 409 : (1976) 3 SCR 551) had to deal with the question as to whether a notice to quite was necessary for seeking an order for eviction under the Andhra Pradesh (Lease, Rent and Eviction) Control Act, 1960. The Andhra Pradesh High Court had relied upon the decision of that Court in Ulligamma v. S. Mohan Rao ((1969) 1 APLJ 351 : (1971) 2 Andh WR 298) for taking the view that a notice under Section 106 of the Transfer of Property Act was not necessary. Gopal Rao Ekbote, J., delivering the judgment on behalf of a Bench of the Andhra Pradesh High Court in Ulligappa case reviewed several decisions of the High Courts and this Court and considered the special provision of the Andhra Pradesh Rent Act. The view expressed by him that no notice was necessary under Section 106 of the Transfer of Property Act was approved by this Court. We find no justification for saying that because of some special provisions contained in the Andhra Act a different view was possible to be taken. This is exactly the reason why we have though it fit to review all the decisions and lay down a uniform law for all the States.

Section 10(1) of the Andhra Pradesh Act provided that "a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or Section 12 and 13". A special provision in the Andhra Act was contained in Section 10(7) which says :

> Where an application under sub-section (2) or sub-section (3) for evicting a tenant has been rejected by the Controller, the tenancy shall, subject to the provisions of this Act, be deemed to continue on the same terms and conditions as before and shall not be terminable by the landlord except on one or more of the grounds mentioned in

sub-section (2) or sub-section (3).

This special provision is provided by way of abundant precaution only. Even without this a tenant continuing in possession after the termination of the contractual tenancy and until an eviction order is passed against him continues on the same terms and conditions as before and he cannot be evicted unless a ground is made out for his eviction according to the State Rent Act. The said provision by itself did not justify a departure from the view expressed by this Court in Mangilal case ((1964) 5 SCR 239 : AIR 1965 SC 101). Beg, J., followed the decision of this Court in Raval case ((1967) 1 SCR 475 : AIR 1967 SC 1419 : (1967) 1 SCJ 503) and of the Punjab High Court in Hem Chand case (ILR 1955 Punj 36). For the reasons stated by us, we approve of his view not on the grounds that the Andhra Pradesh State Act is a different on but because in respect of any State Act that is the correct view to take.

18. Lastly our attention was drawn to the decision of this Court in Firm Sardarilal Vishwanath v. Pritam Singh ((1978) 4 SCC 1 : (1979) 1 SCR 111 : AIR 1978 SC 1518). The lease in that case had come to an end by efflux of time. A tenant continued in possession and became a so-called statutory tenant. The argument put forward before this Court that a fresh notice under Section 106 of the Transfer of Property Act was necessary was rejected on the ground : (SCC p. 10, para 18)

> Having examined the matter on authority and precedent it must be frankly confessed that no other conclusion is possible on the first principle. Lease of urban immovable property represents a contract between the lessor and the lessee. If the contract is to be put to an end it has to be terminated by a notice to quit as envisaged under Section 106 of the Transfer of Property Act. But it is equally clear as provided by Section 111 of the Transfer of Property Act that the lease of immovable property determines by various modes therein prescribed. Now, if the lease of immovable property determines in any one of the modes prescribed under Section 111, the contract of lease comes to an end, and the landlord can exercise his right of re-entry. The right of re-entry is further restricted and fettered by the provisions of the Rent Restriction Act. Nonetheless the contract of lease had expired and the tenant lessee continues in possession under the protective wing of the Rent Restriction Act until the lessee lose protection. But there is no question of terminating the contract because the contract comes to an end once the lease determines in any one of the modes prescribed under Section 111. There is, therefore, no question of giving a notice to quit to such a lessee who continued in possession after the determination of the lease, i.e. after the contract came to an end under the protection of the Rent Restriction Act. If the contract once came to an end there was no question of terminating the contract over again by a fresh notice.

If we were to agree with the view that determination of lease in accordance with the Transfer of Property Act is condition precedent to the starting of a proceeding under the State Rent Act for eviction of the tenant, we could have said so with respect that the view expressed in the above passage is quite correct because there was no question of determination of the lease again once it was determined by efflux of time. But on the first assumption we have taken a different view of the matter and have come to the conclusion that determination of a lease in accordance with the Transfer of Property Act is unnecessary and mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by

issue of notice in accordance with Section 106 of the Transfer of Property Act.

19. For the reasons stated above we hold that the High Court was right in its view that no notice to quite was necessary under Section 106 of the Transfer of Property Act in order to enable the landlady-respondent to get an order of eviction against the tenant-appellant. But we were told by learned Counsel for the appellant that he had some more points to urge before the High Court to challenge the order of eviction. We do not find from the judgment of the High Court that the appellant was prevented from supporting the orders of the courts below in his favour by urging any other point. No point of substance could be indicated before us which was worth consideration after a clear and definite finding by the appellate Court that the respondent required the premises bona fide for a personal necessity. We do not think it advisable to delay the proceeding any further and send back the case to the High Court on this account. We accordingly dismiss the appeal but in the circumstances direct the parties to bear their own costs throughout.

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