SUPREME COURT OF INDIA

M/S. AMBALAL SARABHAI ENTERPRISES LTD.

Vs.

M/S. AMRIT LAL & CO. & ANR.

27/08/2001

(A.P. Misra & D.P. Mohapatra)

Appeal (civil) 5706 of 2001
Appeal (civil) 5707 of 2001

JUDGMENT

MISRA, J.
Leave granted.

It is unfortunate, an eviction petition which was filed on the 13th September 1985 still the parties are battling to find which court would have the jurisdiction. Whether the court of Rent Controller under Delhi Rent Control Act or ordinary Civil Court having jurisdiction over the subject matter in issue? As discipline and culture in every walk of life is essential for smooth functioning in all its activities, similarly judicial culture and discipline has to be followed in order to achieve the desired result viz. to give litigant justice in the shortest period of time. Every legislation legislates for the benefit of its subject but many a times, raising issues for every thing and stretching it too long percolates the very objective for which it is made. With the increasing complexities of laws coupled with faulty legislation, using inappropriate language, a stress is created which the courts through its judicial interpretations have been attempting to simplify it. In spite of this the hope for an early adjudication has been eluding like a mirage. With the advancement of legal studies there is sharpening of the acumen of advocacy. Every word of a statute, if interpreted when equipped with such dynamism, could be intellectually misused, hence interpreters including counsel, has to keep balance not to let this misuse surface. As knife in the hand of a murderer and doctor has different roles to play, so the interpreters have to select to play the role of a doctor to confer benefit to the subject. The words in a statute are dynamic, not static, hence has to be interpreted to subserve to the objectives of an Act. Such Judicial discipline in interpreting has to be followed for yielding legislative intent. Similarly judicial culture has to be cultivated even by counsels appearing for a cause, who has to see that the judicial system does not rust or get stains for a delayed justice.

To win a battle for a client is the legitimate expectation of all but in doing so deliberations should not be such which lengthens the litigation, even if it confers temporary gain to ones client in a lis. Every member of the judicial fraternity has to play its role with the main object to find the truth and render justice to the litigant. This judicial culture has not to be lost sight. The present case is one of such cases, which causes concern in this regard.

The aforesaid appeals raise an interesting but somewhat complex question for adjudication with reference to the jurisdiction of the court. The question for consideration is, what is the effect of the amendment which incorporated Section 3(c) in the Delhi Rent Control Act, hereinafter referred to as the Rent Act in the pending eviction proceedings. Section 3(c) of the Rent Act was brought through amendment which became effective from 1.12.1988 which reads as under:

3. Act not to apply to certain premises Nothing in this Act shall apply; .

(c) to any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees;

In effect it makes Rent Act inapplicable to the tenancies whose monthly rent exceeds Rs.3500/-. It is not in dispute, in the present case, the rate of monthly rent is Rs.8625/- per month and proceeding for the eviction was pending under the Rent Act when the said amendment came into force. In order to appreciate the controversy effectively we are hereunder giving certain essential matrix of facts.

The aforesaid two appeals arise out of judgment and order dated 29th November, 1999 passed by the High Court. The first being from an order in second appeal from order No.5/1999 and the second being from an order in Civil Revision No. 10/1998.

The High Court allowed landlords second appeal from order but dismissed the revision of the tenant. Hence both these appeals are filed by the tenant. The respondent-landlord filed an eviction petition against the appellant on the ground of sub-letting as enumerated in Section 14(1)(b) of the Delhi Rent Control Act, in the court of Rent Controller Delhi on the 13.9.1985. When this petition was pending, as aforesaid, Section 3(c) was brought in, through amendment w.e.f. 1.12.1988 by which it excluded the jurisdiction of Rent Controller with respect to those tenancies fetching monthly rent exceeding Rs.3500/-. In effect it took away such tenancies from the purview of the aforesaid Act. Thereafter the landlord sent a notice on 11.9.1991 terminating the tenancy of the appellant under Section 106 of the Transfer of Property Act. On 18.11.1991 landlord filed a suit for recovery of possession in the Delhi High Court in its original side which is registered as suit No. 390/1995. When this fact was brought to the notice of the Additional Rent Controller that the landlord has already filed a suit appellant prayed that this eviction petition be dismissed or in the alternative its proceedings be stayed. However, the Rent Controller rejected such a request by his order dated 23.11.1992 relying on the ratio of D.C. Bhatia & Ors. vs. Union of India & Anr. 56 (1994) DLT 324. Thereafter in the suit the appellant filed an application under Order 7 Rule 11 CPC to reject the plaint as parallel proceedings cannot be continued both before the Rent Controller and the Civil Court. The Trial Court on 18.10.1997 rejected appellants aforesaid application. Aggrieved by that the appellant filed revision before the High Court.

As aforesaid, in the meanwhile the appellant moved an application before the Additional Rent Controller under Section 9 read with Section 151 CPC praying that the court of Rent Controller has no jurisdiction to proceed with the matter under the aforesaid Act in view of the amendment brought in the year 1988. The Rent Controller dismissed this application. The Rent Control Tribunal allowed the appellants appeal and quashed eviction proceedings. Aggrieved by that landlord filed second appeal from order in the High Court which was allowed which is the subject matter of one of the aforesaid appeal before us.

So far the appeal arising out of revisional order, the High Court held the protection enjoyed by the tenant on account of statute was no more in operation and in such a case parties would be governed

by the ordinary common law, hence respondent-landlord was fully justified in filing a suit for possession before the competing civil court having jurisdiction. In other words High Court held respondent-landlord rightly filed suit before the Civil Court.

We may point out here that learned counsel for the appellant, in view of his submissions which he is making in appeal arising out of judgment and order in second appeal from order, which we shall be dealing hereinafter, does not want to press this appeal, viz., Civil Appeal No/2001 (Arising out of S.L.P. (C) No.4233 of 2000), hence it is dismissed.

This takes us to consider only the other appeal. The appellant- tenant submits, it is the Civil Court alone which has the jurisdiction after the aforesaid amendment and not the Rent Controller, while respondent-landlord submits, notwithstanding the aforesaid amendment it is the Rent Controller which would have the jurisdiction. From these submissions, following questions arise:

(1) Whether the landlord and tenant are relegated to seek their rights and remedies under the common law once the protection given to a tenant under rent control legislation is withdrawn through amendment?

(2) Can a ground of eviction based on illegal subletting under proviso (b) to Section 14 of the said Act be claimed by a landlord as a vested right?

(3) In case a protection given to a tenant under the Rent Act is said to be not a vested right and if that protection is withdrawn, can a landlord claim any ground of eviction under the Rent Act to be his vested right?

Thus question for our consideration is, whether proceedings which were initiated before the Rent Controller having jurisdiction could continue before it even after the said amendment. Submission for tenant is, since tenant has no vested right on the date when amendment came into force and amendment is not retrospective in operation hence it is only the Civil Court which would have jurisdiction. On the other hand submission on behalf of the landlord is, even if it could be said tenant has no vested right, landlord has vested right under the Rent Act and further in view of Section 6 of the General Clauses Act, the pending proceedings would continue before the Rent Controller as if the amending provision has not come into play. Further it is submitted, Section 6 spells out, where this Act or any Central Act repeals any enactment then unless a different intention appears, the repeal shall not affect any right, privilege accrued or incurred under any such enactment so repealed. Since landlord in addition to his vested right under the Rent Act, by virtue of this Section 6 has in any case right under the repealing provision hence the pending proceeding would continue, as there is nothing in the amending Act showing any different intention. So the case of tenant-appellant is that amendment covers pending cases while respondent landlord case is it does not cover hence it would not apply to the pending cases.

First we proceed to examine, whether tenant has any vested right.

Submission on behalf of the tenant is, a tenant has no vested right under the Rent Act. If tenants have no vested rights under the Rent Control Act, the pending proceedings would not be saved from the effect of the repealing Act. In Mohinder Kumar and Ors. vs. State of Haryana and Anr. (1985) 4 SCC 221 this was observed by this Court:

The argument that the tenants have acquired a vested right under the Act prior to its amendment is without any substance. Prior to the amendment of Section 1(3) by the Amending Act of 1978, the

provision as it originally stood cannot be said to have conferred any vested right on the tenants. The provision, as it originally stood prior to its amendment, might not have been constitutionally valid as the exemption sought to be granted was for an indefinite period. That does not necessarily imply that any vested right in any tenant was thereby created. The right claimed is the right to be governed by the Act prior to its amendment. If the Legislature had thought it fit to repeal the entire Act, could the tenant have claimed any such right? Obviously, they could not have; the question of acquiring any vested rights really does not arise.

D.C. Bhatia and Ors. vs. Union of India and Anr. (1995) 1 SCC 104, is also a case under the Delhi Rent Control Act where the same Section 3(c) which we are considering was brought in through the same Delhi Rent Control (Amendment) Act, 1988. In this case also submission was, that since the amending Act is not retrospective, it would not affect the rights conferred on the tenants under the repealed provisions of the Rent Control Act. This submission was rejected by this Court. The Court held:

We are unable to uphold this contention for a number of reasons. Prior to the enactment of the Rent Control Act by the various State Legislature, the legal relationship between the landlord and tenant was governed by the provisions of the Transfer of Property Act. Delhi Rent Control Act provided protection to the tenants from drastic enhancement of rent by the landlord as well as eviction, except on certain specific grounds. The legislature by the Amendment Act No. 57 of 1988 has partially repealed the Delhi Rent Control Act. This is a case of express repeal. By Amending Act the legislature has withdrawn the protection hitherto enjoyed by the tenants who were paying Rs.3500 or above as monthly rent. If the tenants were sought to be evicted prior to the amendment of the Act, they could have taken advantage of the provisions of the Act to resist such eviction by the landlord. But this was nothing more than a right to take advantage of the enactment. The tenant enjoyed statutory protection as long as the statute remained in force and was applicable to him. If the statute ceases to be operative, the tenant cannot claim to continue to have the old statutory protection.

In the instant case, the legislature has decided to curtail or take away the protection of the Delhi Rent Control Act from a section of the tenants. The tenants had not acquired any vested right under the Delhi Rent Control Act, but had a right to take advantage of the provisions of the repealed Act so long as that law remained in force.

In view of the aforesaid, we are unable to uphold the contention that the tenants had acquired a vested right in the properties occupied by them under the statute. [Emphasis supplied]

Thus this case holds that the tenant under the Rent Act had no vested right.

Parripati Chandrasekharrao & Sons vs. Alapati Jalaiah (1995) 3 SCC 709. This case deals with the similar provision but under the A.P. Rent Control Act. This Court held:

Shri Sitaramiah, leaned counsel appearing for the appellant-landlord contended that on the coming into operation of the said notification from 26.10.1983, the protection given to the tenant stood withdrawn and, therefore, whatever rights he had under the provisions of the Act, stood extinguished on and from the said date. As against this, it was contended by Shri Subba Rao for the tenant that the tenant had acquired vested rights under the Act and they were alive when the applications were made and he could not be divested of the same by the notification which came into operation from a subsequent date.

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 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 landlords 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 landlords 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 tenants rights relying upon the decision of this Court in Atma Ram Mittal is misplaced. In that case the landlords 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 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 reasons 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."

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 is governed by the general law, may be 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 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 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 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 remains suspended. In other words the landlords vested right under the general law continue so long it is not abridged by such protective legislation, but the moment when this protection is withdrawn the landlords normal vested right reappears which could be enforced by him.

In Kolhapur Canesugar Works Ltd. vs. Union of India and Ors. (2000) 2 SCC 536, this Court held:

The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed.

Relying on this the submission for the tenant is, if repealing statute deletes the provisions, it would mean it never existed hence pending proceedings under the Rent Act cannot continue. This

submission has no merits. This is not a case under the Rent Act, also not a case where Section 6 of the General Clauses Act is applicable. This is a case where repeal of rules under Central Excise Rule was under consideration. This would have no bearing on the question we are considering, whether a tenant has any vested right or not under a Rent Act?

Submission on behalf of the respondent-landlord is, even if tenant have no vested right landlord has a vested right under the Rent Act by virtue of Section 14 of the Delhi Rent Act. Section 14 is quoted hereunder:

14. Protection of tenant against eviction (1) Notwithstanding anything to the contrary contained in any other law for contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(a) that the tenant has neither paid or tendered the whole of the arrears of the rent legally recoverable from him within two months of the dte on which a notice of demand for the arrears has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1992 (4 of 1882);

(b) that the tenant has, on or after the 9th day of June, 1942, sublet, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;

(c) that the tenant has used the premises for a purpose other than that for which they were let

(i) if the premises have been let on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord; or (ii) if the premises have been let before the said date without obtaining his consent;

(d) that the premises were let for use as a residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of the filing of the application for the recovery of possession thereof;

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;

Explanation For the purposes of this clause, premises let for residential purposes include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

(f) that the premises have become unsafe or unfit for human habitation and are required bona fide by the landlord for carrying out repairs which cannot be carried out without the premises being vacated;

(g) that the premises are required bona fide by the landlord for the purpose of building or re-

building or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the premises being vacated;

(h) that the tenant has, whether before or after the commencement of this Act, acquired vacant possession of, or been allotted, a residence;

(hh) that the tenant has, after the commencement of the Delhi Rent Control (Amendment) Act, 1988, built a residence and ten years have elapsed thereafter;

(i) that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment;

(j) that the tenant has, whether before or after the commencement of this Act, causes or permitted to be caused substantial damage to the premises;

(k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate;

(l) that the landlord requires the premises in order to carry out any building work at the instance of the Government or the Delhi Development Authority or the Municipal Corporation of Delhi in pursuance of any improvement scheme or development scheme and that such building work cannot be carried out without the premises being vacated.

Under Clause (a) landlord could evict a tenant if he defaults in the payment of rent. Under Clause (b) if he sublets the premises in question, under Clause (c) if he uses the premises other than that for which it was let, under Clause (d) if he or any member of his family is not residing therein for a period of 6 months, under (e) premises is bonafide required by landlord, under (f) premises is unfit for human habitation, under (g) premises is required for rebuilding, under (h) he has acquired an alternative accommodation, under (hh) he built residence and 10 years have expired after 1988 amending Act, under (i) he has ceased to be in service of the landlord, under (j) he caused substantial damage to the property, under (k) he has used the premises contrary to the condition of lease given by the Government or local bodies to the landlord, and under (l) where the landlord is required to carry out any construction therein as requirement by the Government or local bodies. These various sub-clauses under Section 14 is our considered opinion cannot be construed to be a vested right of a landlord. In fact, Section 14 gives complete protection to a tenant against his eviction but relaxes it on one of the grounds referred to under its proviso. These sub-clauses are only part of this proviso of Section 14. The heading of this Section itself is;

Protection of tenant against eviction. Sub- section (1) expressly states;

Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or controller in favour of landlord against a tenant.

This section thus gives complete protection to a tenant. The right which is sought to be inferred as vested right is only under its proviso. Proviso cannot enlarge the main section. When main section is only a protective right of a tenant, various sub-clauses of its proviso cannot be construed as it gives

vested right to a landlord. The right if at all could be said of the landlord it flows only under the protective tenants umbrella which cannot be enlarge into a vested right of a landlord. Hence in our considered opinion by no stretch of imagination it could be held that the landlord has any vested right by virtue of Section 14 of the Rent Act.

This leads us to the question, whether in a case where Section 6 of the General Clauses Act is applicable, what effect it would have on a pending proceeding, when repealing provisions come into operation. It is not in dispute in the present case that the Delhi Rent Act is the Central Act hence Section 6 of the General Clauses Act is applicable. We may also record here, in none of the aforesaid decisions cited by the learned counsels application of Section 6 of the General Clauses Act was considered.

We may quote here Section 6 of the General Clauses Act, 1897: Section 6: Effect of repeal

Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

The opening words of Section 6 specify the field over which it is operative. It is operative over all the enactment under the General Clauses Act, Central Act or Regulations made after the commencement of General Clauses Act. It also clarifies in case of repeal of any provision under the aforesaid Act or regulation, unless a different intention appears from such repeal, it would have no affect over the matters covered in its sub-clauses, viz., (a) to (e). It clearly specifies that the repeal shall not revive anything not in force or in existence or effect the previous operation of any enactment so repealed or anything duly done or suffered or affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed statute, affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed statute and also does not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid. Thus the Central theme which spells out is that any investigation or legal proceeding pending may be continued and enforced as if the repealing Act or Regulation had not come into force.

As a general rule, in view of Section 6, the repeal of an statute, which is not retrospective in operation, does not prima facie affect the pending proceedings which may be continued as if the

repealed enactment were still in force. In other words such repeal does not effect the pending cases which would continue to be concluded as if the enactment has not been repealed. In fact when a lis commences, all rights and obligations of the parties gets crystalised on that date. The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceedings unaffected which commenced under the unrepealed provisions unless contrary intention is expressed. We find Clause (c) of Section 6, refers the words any right, privilege, obligation. acquired or accrued under the repealed statute would not be affected by the repealing statute. We may hasten to clarify here, mere existence of a right not being acquired or accrued, on the date of the repeal would not get protection of Section 6 of the General Clauses Act. At the most such a provision can be said to be granting a privilege to the landlord to seek intervention of the Controller for eviction of the tenant under the Statute. Such a privilege is not a benefit vested in general but is a benefit granted and may be enforced by approaching the Controller in the manner prescribed under the statute. On filing the petition for eviction of the tenant the privilege accrued with the landlord is not affected by repeal of the Act in view of section 6(c) and the pending proceeding is saved under section 6(e) of the Act.

This Court in Isha Valimohamad and another vs. Haji Gulam Mohamad & Haji Dada Trust (1974) 2 SCC 484) held, inter alia, that the right of a landlord to recover possession on the ground that the tenant has sub-let the premises is not an accrued right within the meaning of section 51 of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, (57 of 1947). But the landlord had the legal freedom as against the tenants to terminate the tenancy or not. The tenants had no right or claim that the landlord should not terminate the tenancy and the landlord is therefore the privilege of terminating it on the ground that tenant has sub-let the premises. This privilege would survive the repeal. In para 16 of the judgment this Court summed up the position as follows: Under the Transfer of Property Act, mere sub-letting, by a tenant, unless the contract of tenancy so provides, is no ground for terminating the tenancy. Under that Act a landlord cannot terminate a tenancy on the ground that the tenant had sub-let the premises unless the contract of tenancy prohibits him from doing so. The respondent- landlord therefore could not have issued a notice under any of the provisions of the Transfer of Property Act to determine the tenancy, as the contract of tenancy did not prohibit sub-letting by the tenant. To put it, differently, under the Transfer of Property Act, it is only if the contract of tenancy prohibits sub-letting by tenant that a landlord can forfeit the tenancy on the ground that the tenant has sub-let the premises and recover possession of the same after issuing a notice. Section 111 of the Transfer of Property Act provides that a lease may be determined by forfeiture if the tenant commits breach of any of the conditions of the contract of tenancy which entails a forfeiture of the tenancy. If sub-letting is not prohibited under the contract of tenancy, sub-letting would not be a breach of any condition in the contract of tenancy which would enable the landlord to forfeit the tenancy on that score by issuing a notice. If that be so, there was no question of the respondent landlord terminating the tenancy under the Transfer of Property Act on the ground that the tenant had sub-let the premises. It is only under Section 13(1)(e) of the Saurashtra Act that a landlord was entitled to recover possession of the property on the basis that the tenant had sub-let the premises; and, that is because, Section 15 of that Act unconditionally prohibited a tenant from sub- letting. The Saurashtra Act nowhere insists that the landlord should issue a notice and terminate the tenancy before instituting a suit for recovery of possession under S 13(1) (e) on the ground that the tenant had sub-let the premises. The position, therefore, was that the landlord was entitled to recover possession of the premises under Section 13(1) of the Saurashtra Act on the ground that the tenant sub-let the premises. It would follow that a right accrued to the landlord to recover possession under Section 13(1) of the Saurashtra Act when the tenant sub- let the premises during the currency of that Act and the right survived the repeal of that Act under proviso (2) to Section 51 of the Bombay Act and, therefore, the suit for recovery of possession of

the premises under Section 13(1) read with clause (e) of the Saurashtra Act after the repeal of that Act on the basis of the sub-letting during the currency of the Saurashtra Act was maintainable. In this view, we think that the judgment of the High Court must be upheld and we do so.

In this connection the decision of this Court in M.S.Shivananda vs. Karnataka State Road Transport Corporation and others (1980) 1 SCC 149 may be seen. Para 15 of the judgment which is relevant is quoted hereunder:

The distinction between what is, and what is not a right preserved by the provisions of Section 6 of the General Clauses Act is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere hope or expectation of, or liberty to apply for, acquiring a right. In Director of Public Works v. Ho Po Sang Lord Morris speaking for the Privy Council, observed:

It may be, therefore, that under some repealed enactment, a right has been given but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should be or should not be given. On a repeal, the former is preserved by the Interpretation Act. The latter is not.

(Emphasis supplied)

It must be mentioned that the object of Section 31(2)(i) is to preserve only the things done and action taken under the repealed Ordinance, and not the rights and privileges acquired and accrued on the one side, and the corresponding obligation or liability incurred on the other side, so that if no right acquired under the repealed Ordinance was preserved, there is no question of any liability being enforced.

In the case of Bansidhar and others vs. State of Rajasthan and others (1989) 2 SCC 557) a Constitution Bench of this Court interpreting the provisions of section 6 of the Rajasthan Tenancy Act, 1955, which is pari- material with section 6 of the Act, it was observed :

This takes us to the next question whether in the present cases even if the provisions of Section 6 of the Rajasthan General Clauses Act, 1955, are attracted, the present cases did not involve any rights accrued or obligations incurred so as to attract the old law to them to support initiation or continuation of the proceedings against the landholders after the repeal. It was contended that even if the provisions of the old Act were held to have been saved it could not be said that there was any right accrued in favour of the State or any liability incurred by the landholders in the matter of determination of the ceiling area so as to attract to their cases the provision the old law. The point emphasised by the learned counsel is that the excess land would vest in the State only after the completion of the proceedings and upon the landholder signifying his choice as to the identity of the land to be surrendered. Clauses (c) and (e) of Section 6 of the Rajasthan General Clauses Act, 1955, provide, respectively, that the repeal of an enactment shall not, unless a different intention appears, affect any right, privilege, obligation or liability, acquired, accrued or incurred under any enactment so repealed or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine, penalty, forfeiture or punishment as aforesaid.

For purposes of these clauses the right must be accrued and not merely an inchoate one. The

distinction between what is and what is not a right preserved by Section 6 of the General Clauses Act, it is said, if often one of great fineness. What is unaffected by the repeal is a right acquired or accrued under the repealed statute and not a mere hope or expectation of acquiring a right or liberty to apply for a right.

In Commissioner of Income-Tax, Bombay City-1 vs. Godavari Sagar Mills Ltd. 1967 (1) SCR this Court observed:

We proceed to consider the next contention of the appellant that s.13 of the 1949 Act repealed the Ordinance completely and the effect of this section was that the Ordinance was obliterated from the Statute Book as if it never existed and, therefore, there was no bar in the way of the Income-tax Officer to make the order on March 11, 1955.

Mr. S.T. Desai is not right in his contention that the effect of s.13 of the 1949 Act is to obliterate the Ordinance completely from the Statute Book. Section 6 of the General Clauses Act (Act 10 of 1897) states as follows:

6. Whereas this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

The reason for enacting s.6 of the General Clauses Act has been described by this Court in State of Punjab v. Mohar Singh as follows:

Under the law of England, as it stood prior to the Interpretation Act of 1889, the effect of repealing a statute was said to be to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law. A repeal therefore without any saving clause would destroy any proceeding whether not yet begun or whether pending at the time of the enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right. To obviate such results a practice came into existence in England to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the

repealed enactment. Later on, to dispense with the necessity of having to insert a saving clause on each occasion, section 38(2) was inserted in the Interpretation Act of 1889 which provides that a repeal, unless the contrary intention appears, does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any right, liability and penalty under the repealed Act as if the Repealing Act had not been passed. Section 6 of the General Clauses Act, as is well know, is on the same lines as Section 38(2) of the Interpretation Act of England.

Section 13 of the 1949 Act is almost identical in language with s.11 of Punjab Act XII of 1948 which was the subject-matter of consideration in State of Punjab v. Mohar Singh and for the reason given by this Court in that case the provisions of s. 6 (c), (d) and (e) of the General Clauses Act are applicable to this case since there is no contrary intention appearing in the repealing statute.

In M.S. Shivananda vs. Karnataka State Road Transport Corporation and Ors. (1980) 1 SCC 149, this Court observed:

If, however, the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. In order to ascertain whether the rights and liabilities under the repealed Ordinance have been put an end to by the Act, the line of enquiry would be not whether the new Act expressly keeps alive old rights and liabilities under the repealed Ordinance but whether it manifests an intention to destroy them. Another line of approach may be to see as to how far the new Act is retrospective in operation.

Thus we find Section 6 of the General Clauses Act covers wider field and saves wide range of proceedings referred to in its various sub-clauses. We find two sets of cases, one where Section 6 of the General Clauses Act is applicable and other where it is not applicable.

In cases where Section 6 is not applicable, the courts have to scrutinise and find, whether a person under a repealed statute had any vested right. In case he had, then pending proceedings would be saved. However, in cases where Section 6 is applicable, it is not merely a vested right but all those covered under various sub-clauses from (a) to (e) of Section 6. We have already clarified right and privileges under it is limited to those which is acquired and accrued. In such cases pending proceedings is to be continued as if the statute has not been repealed.

In view of the aforesaid legal principle emerging, we come to the conclusion since proceeding for the eviction of the tenant was pending when repealing Act came into operation, Section 6 of the General Clauses Act would be applicable in the present case. As it is Landlords accrued right in terms of Section 6. Sub-section (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) is wide enough to include landlords 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.

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 remdies 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 subletting 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 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 Rent Act except where sub-clause (c) of Section 6 of the General Clauses Act is applicable.

In view of these findings we hold 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 repealed Act is still in force.

In view of our aforesaid findings, since Rent Controller has the jurisdiction over the subject-matter, it will not be right for the landlord to continue with two parallel proceedings; one under the General Law and other before the Rent Controller. Hence we further order that the respondent-landlord to withdraw one of the two proceedings within a period of 6 weeks from today.

For the aforesaid reasons, the present appeals fail and are dismissed. Costs on the parties.