ANDHRA PRADESH HIGH COURT

Ullgappa

Vs.

S. Mohan Rao

C.R.Ps. No. 1026 of 1965, 1980 of 1964, 954 of 1968, 701 of 1967, 386 of 1967, 1845 of 1967, 109 of 1966 and 437 of 1968

(Gopal Roa Ekbote and Vankateswara Rao, JJ.)

29.11.1968

JUDGMENT

Gopal Rao Ekbote, J.

1. The question which must necessarily be answered in this batch of revision petitions, is whether the Andhra Pradesh Buildings (Lease, Rent and Eviction), Control Act (XV of 1960), herein-after called "the Act' is a self-contained code governing relationship between landlord and tenant, and therefore, it is unnecessary to determine the tenancy by the landlord by the issue of a notice under Section 111(g) or 111(h) read with Section 106 of the Transfer of the Property Act before a petition for eviction is filed on anyone of the grounds under Section 10 of the Act.

2. In order to answer this question effectively, it is necessary to know as to in what setting Section 106 of the Transfer of Property Act appears. Chapter V of the Transfer of Property Act concerns itself with the lease of immovable property. The provisions of that chapter apply to all leases except agricultural leases. These provisions do not apply unless there is a notification issued by the State Government under Section 117 of the Transfer of Property Act to make Chapter V applicable to such leases. Section 105 defines the term 'lease'. Section 106 pertains to the duration of certain leases. In the absence of written contract, local law or usage, the section applies. The section being relevant must be read in full :

"In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen day's notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing singed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be intended or

delivered personally to such party or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

3. It is plain that this section only applies in the absence of the contract of local law or usage to the contrary. Wherever there is a contract or local law of the contrary, Section 106 will not apply. Wherever the right of a landlord to eject his tenant after determining the tenancy under the general law is inferred by a local enactment governing completely the relationship of landlord and tenant, Section 106 would not apply. That section is divided into two parts. The first part states that in the absence of a contract, etc., to the contrary (a) an agricultural lease shall be deemed to be a lease from year to year terminable by six month's notice; and (b) a lease for any other purpose shall be deemed to be a lease from month to month terminable by 15 days, notice. The second part relates to the manner in which the notice should be issued and served.

4. Section 107 shows how lessee can be made. Section 108 relates to the right of and liabilities of lessor and leases. Section 109 concerns itself with the rights transferee. Section 110 relates to the exclusion of the day on which lease commences, its duration and option to determine it.

5. Section 111 is now relevant. It relates to determination of leases. It will be seen that while in cases coming under anyone of the clauses (a) to (f) both inclusive, the lease stand determined and it is not necessary to determine it by the issue of notice, it is only under clauses (g) and (h) that notice of one's intention to determine the lease is necessary. The word 'for forfeiture' used in this section implies the loss of a legal right by reason of some breach of obligation. Clause (g) provides that a lease will determine by forfeiture in three cases. (1) on breach of an express condition where a right of re-entry is provided for on such breach; (2) on denial of the lessor's title by the lessee; and (3) on the insolvency of the lessee, where the lease provides, on such contingency, for a right to re-entry.

6. It may be noted that there can be no forfeiture in the first and third cases unless a right of re-entry is provided for. This qualification is not necessary in the second case. It is also necessary before a lease can be determined in any of those three cases that the lessor must give a notice in writing to the lessee of his intention to determine the lease when it is a case of forfeiture.

7. Forfeiture of a lease requires the operation of two factors. (1) A breach by the lessee of an express condition of the lease which provides for re-entry on such breach; and (2) a notice by the lessor expressing his intention to determine the lease. As breach of condition only makes the lease voidable, therefore, the forfeiture is not complete unless and until the lessor gives notice that he has exercised his option to determine the lease. It is not in doubt that whenever the covenant to pay rent is express and a provision of re-entry is accompanied, non-payment of rent will support a forfeiture. Unless therefore, there is an express condition to pay rent at a stipulated time accompanied by a provision for re-entry in default of such payment, the non-payment of rent will not by itself entail forfeiture.

8. In cases coming under clause (h), the lease shall be determined on the expiration of a notice to determine the lease or to quit or of intention to quit the property leased.
9. The difference of language of the said two clauses (g) and (h) in reference to notice must be marked. While clause (g) requires in the case of a forfeiture that the lessor or his transferee gives

notice in writing to the lessee of his mere intention to determine the lease, but it does not prescribe any period for that purpose. Nor does it require that it should state the ground upon which the lessor claims to be entitled to determine the lease. Under clause (h) however the lease shall be determined on the expiration of notice. It must be noted that it further requires that such a notice should be 'duly given'. The notice to determine the lease, to quit or intention to quit the property must be duly given by one party to the other before the tenancy can be determined. That is to say, it must be given as required by Section 106 or as is required by the contract of lease, if any, or by any local law or usage governing the case. It is only in such cases that a notice to determine the lease would be required before a suit for ejectment is instituted.

10. What must follow from the difference in language of clauses (g) and (h), which we have noted, is that in cases of non-payment of rent, notice under clause (g) would be required where there is a breach of an express condition relating to payment of rent and a provision that in default of non-payment of rent, the landlord has a right of re-entry. Where, however, such a provision does not exist in the contract or tenancy, a due notice, that is a notice under Section 106 will have to be given and on the expiration of such notice, the tenancy shall be determined.
11. Thus, it is not in all cases of default in payment of rent that notice under Section 106 is necessary. Cases falling under clause (g) of Section 111 also require notice to determine the tenancy. But that notice will not be given under Section 106 of the Transfer of Property Act.

12. Sections 112, 114 and 114-A relate to the forfeiture referred to in Section 111, clause (g). While Section 112 speaks of waiver of forfeiture, the latter two sections speak of relief against forfeiture for non-payment of rent. Thus, Sections 112, 114 and 114-A read with Section 111(g) make a group of provisos relating to forfeiture.

13. Section 113 relates to waiver of notice to quit. This section deals with waiver of notice to quit under Section 111, clause (h). There is a fundamental difference between a waiver of forfeiture which is a matter which can be done at the election of the landlord alone, and what is inaccurately referred to as a waiver of a notice to quit, which can only proceed on the basis that the landlord and tenant are *ad idem* in making a new agreement.

14. Section 115 speaks of the effect of surrender and forfeiture on under- leases. Section 116 relates to the effect of holding over, and as noticed earlier, Section 117 exempts leases for agricultural purposes unless Chapter V is made applicable to such leases by the State Government by a notification.

15. The result of the foregoing is that Section 106 merely raises a presumption that the tenancy is from year to year or month to month according to the nature of the property and terminable by six month's or 15 day's notice, as the case may be. But the presumption is rebutted by local usage, local law of express contract. The parties enter into any special stipulation not only as to the length of the notice and the time when the tenancy may be determined but also that the tenancy will be determinable without any provision of notice. See *Suryanaryana Row v. Somayya*[1], and *Moosa Kutty v. Thakka*[2], The parties may provide that on a specified event or on a date following a specified event, the tenancy shall be determined without notice.

16. The next question, which must immediately arise for our consideration is whether Section 111(g) and 111(h) read with Section 106 are applicable to cases governed by the Act. In other

words, does the Act exclude the application of these provisions ? The contention is that since the Act is self-contained and complete in itself, the provisions of Chapter V of the Transfer of Property Act are automatically excluded.

17. It becomes, therefore, necessary to examine as to whether the Act is a complete code governing the relationship of landlord and tenant. Broadly speaking on matters on which specific or special provisions are provided in the enactment itself, it could be taken as exhaustive. What has to be seen in such cases is whether such enactment covers substantially the provisions concerning the relationship of landlord and tenant. One need not be meticulous in finding out whether the special Act covers even minor or subsidiary matters concerning such relationship. The provisions of such special enactment need not be complicated by importing extraneous ideas from other enactments. If it is found that the Act in several important respects differs or varies or somewhat is inconsistent with the provisions of the Transfer of Property Act, then the question would arise whether it is safe or permissible to import technical notions or conceptions which belong to the ordinary law of landlord and tenant, that is the Transfer of Property Act.

18. It is common knowledge that during or immediately following the two Great Wars, it was found necessary to give special protection to tenants against enhancement of rent and ejectment in supersession of the ordinary law of landlord and tenant laid down in the Transfer of Property Act. It is not necessary for our purposes to got into the detailed history of this legislation. It is enough to say that at the time of reorganisation of the States in 1956, in the Andhra Area of the State, the Madras Building (Lease and Rent Control) Act (XXV of 1949), as amended by Acts VIII and XXV of 1951, was in force. In the Telangana region of the State, the Hyderabad Houses (Rent, Eviction and Lease) Control Act (XX of 1954), was in force. In order, however to secure uniformity in the administration of the law on the subject it was considered necessary to have a unified law applicable throughout the State. This opportunity to bring out an integrated law was utilised to incorporation some new provisions with a view to overcome certain difficulties experienced in the working of the two above said enactments. The Andhra Pradesh Building (Lease, Rent and Eviction) Control Act (XV of 1960), came to be passed. It received the assent of the President on 25th March, 1960.

19. The preamble of the Act shows that it is an Act to "consolidate and amend the law relating to the regulation of leasing of buildings, the control of rent thereof and the prevention of unreasonable eviction of tenants therefrom". The Act is meant to substantially cover all the important aspects of the relationship of landlord and tenant in regard to tenancies.

20. A close and careful scrutiny of the Act would reveal that provisions are made

[1](1906)16 M.L.J. 557

[2] AIR 1928 Mad 687

regarding :

(1) The notice of vacancy to be given by the landlord to the Authorised Officer, his power to allot the house to the Government servants or for Government purposes, his power to fix reasonable rent (Section 3); (2) determination of fair rent and provisions relating to its allied matters (Section 4 to 9); (3) eviction of tenants under Sections 10 and 11 recovery of possession by the landlord under Section 12 to 14; (4) execution of orders passed by the Rent Controller; (5) the appeal to the appellate authority and revision to the High Court; (6) conversion into non-residential

building after permission; (7) obligation of the landlords to make necessary repairs; (8) principal of *res judicata* and the binding nature of the order on the sub-tenants; (9) power to exempt certain building; and (10) issue of summonses and proceedings by or against the legal representatives.

21. The Act empowers the State Government to make rules. The rules made under the Act provide for a complete procedure relating to the proceedings at all three stages.

22. The main objects of the Act are to give the tenants 'fair rents' and a 'status' of in irremovability, or, other words (1) to prevent landlords increasing rents by more than a permitted amount above a basic figure; and (2) to give tenants security of tenure by preventing landlords from evicting them without an order of the Court, and forbidding the Court to make an order for possession except on specified grounds. The second object is a necessary corollary of the first; any protection as to rent is likely to prove illusory unless coupled with security of tenure.

23. It will thus be abundantly plain that the Act, and the Rules made thereunder practically enact a self-contained code with a special machinery of Rent Control Tribunals together with appeal to the civil Court and revisions and orders thereon. They also provide for the execution of such orders. Similarly, the procedure relating to such proceedings is also provided. It will thus be clear that Section 10, which can be said to be the heart of the whole Act, is a self-contained section. Read with it, the other provisions provide a complete code for the eviction of tenants on certain grounds with a special machinery to decide the disputes. It is pertinent to note that one of the ground for eviction available is if the tenant has not paid or tendered the rent due by him in respect of the building within 15 days after the expiry of the time fixed in the agreement of tenancy. It is not necessary to make a detailed reference to the other grounds available. Suffice it to say that these provisions not only differ and vary from the provisions of the Transfer of Property Act, but in certain respects, some provisions are inconsistent with some of the provisions of the Transfer of Property Act. What has to particularly noted is that in cases of willful default in payment of rent, no provision is made to determine the tenancy before a petition under Section 10 is filed. Sections 10(1) and 19(7) in fact are clear pointers to the fact that the Legislature did not consider it necessary or useful to provide for a prior notice to determine the tenancy. It must have been thought to be an empty formality, which is not likely to serve any beneficial purpose to the tenant. In cases falling under Section 111(g), mere expression of intention to determine is enough and in cases coming under clause (h) the tenancy is determined after the expiry of the notice. The tenant cannot offer nor can the landlord be forced to accept the rent as it is not obligatory on him under Section 10. The formality of issuing notice thus neither confers any additional benefit on the tenant nor alters in any manner the relationship of landlord and tenant.

24. Section 10(1) enjoins that "A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of the Section or Sections 12 and 13. Section 10(7) provides :

"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)."

25. A combined reading of these two provisions can leave no one in doubt that the Act does not visualize determination of the tenancy by a notice prior to any proceedings under Section 10 are instituted. Otherwise the words "the tenancy shall not be terminable by the landlord except on one or more of the grounds" mentioned in sub-section (2) or sub-section (3) would not have been employed in Section 10(7). It is true that sub-section (7) applies to cases to tenants against whom eviction applications were filed but were rejected. It is however, clear that the Legislature intended to emphasize that merely because of such proceeding against them which resulted in their dismissal, their tenancy shall not be considered as determined. The tenancy even in such cases can be determined only on any one of the ground mentioned in sub-section (20) or sub-section (3). If that is the principle applicable to tenants against whom petitions were filed and dismissed; there is no reason why the same principle should not apply to the tenants whom no applications for eviction were filed. In their cases also, Section 10(1) provides 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 Sections 12 and 13". This provision, in our view, is similar in effect to that of sub-section (7) although the language employed is slightly different. In both the cases, however, the tenants cannot be evicted except on anyone of the grounds mentioned in sub-section (2) or sub-section (3). If that is so, then the termination of tenancy is considered to be equivalent to an order of eviction. Thus, along with the eviction order, the tenancy is considered to be determined under Section 10 in both these types of cases. Any other interpretation would give discriminatory treatment to persons falling in the same class. Any difference, if at all it exists, between a right of the landlord to determine a tenancy and his right to get possession from the tenant after his eviction, vanishes in the thin air because of these two provisions. If the Legislature wanted that the tenancy should be determined before an application under Section 10 is filed on the ground of willful default nothing precluded the Legislature from providing such a clear provision in the Act itself as is done in several similar enactments of other States or provide the same in the Rules made there under. The conclusion therefore, is irresistible that the Act is a complete Code by itself and it is not postulated to import into this self-contained Code an additional condition for coming to the Controller for an order of eviction that the landlord should give notice determining the tenancy either under Section 111(g) or under Section 111(h) read with Section 106 of the Transfer of Property Act. There is no warrant for the argument that apart from the provisions of the Act the provisions of Sections 111(g) and (h) read with Section 106, Transfer of Property Act, are applicable. It was not and could not be seriously argued that the Act is not a self-contained Code. Once that is conceded, Sections 106 and 111 have no place in the exhaustive scheme of the Act. Their application is excluded. It may be that the Act provides certain benefits not available to the tenants under the Transfer of Property Act or correspondingly puts restriction on the right of the landlord to evict the tenant. But on that account, it would not be correct to contend that the Act in addition to the provisions of Sections 111 and 106 provides restrictions on the landlord and confers additional benefits. We have already noticed that the

notice contemplated by the said two provisions of the Transfer of Property Act in practice in the context of the Act do not confer any additional benefit on the tenant and is practically of no avail to him. Any argument of additional benefit to the tenant would be inconsistent with the self-contained, complete and exhaustive scheme of the Act and would be quite contrary to the Legislature.

26. This conclusion is further supported by the fact that the Act is intended to "consolidate and amend the law relating to the regulation of leasing of buildings, the control of rent thereof, and the prevention of unreasonable eviction of tenants therefrom". Now, "consolidation" is the reduction into a systematic form of the whole of the statute law relating to the given subject, as illustrated or explained by judicial decision. The very object of consolidation is to collect the statutory law bearing upon a particular subject, and to bring it down to date in order that it may form a useful code applicable to the circumstances existing when the Consolidating Act is passed" *Vide* Craies on Statute Law, Sixth Eviction, page 361.

27. it must be remembered that the Courts lean against any presumption that a Consolidation Act was intended to alter the law unless such a position is made clear. We will in a moment note that not only the Madras High Court but the Hyderabad and the Andhra Pradesh High Courts in a number of decisions prior to the present Consolidation Act passed in 1960, had held that the repealed Rent Acts were complete Codes in themselves governing the relationship of landlord and tenant. The Legislature therefore, was fully aware of this position when it passed the Consolidation Act, in 1960, reducing into a systematic form of the whole of the Statute Law as explained by the said judicial decisions. It would therefore, be proper to presume that in the process of consolidation, These decisions were approved and the law was allowed to continue in the same form. Otherwise, the law would have been altered to make the intention of the Legislature clear that the Legislature wanted the tenancies to be determined by appropriate notices before applications under Section 10 of the Act are filed. On a proper construction of the Consolidation Act, prior statutes, repealed but reproduced in substance are regarded as in *pari materia* and judicial decisions on the repealed statutes are treated as applicable to substantially identical provision in the repealing Act. See *Inland Revenue Commissioner v. Hinchy, L.R*[3]. (Craies on Statute Law, Sixth Edition, P.135). There is nothing to indicate in the Act that the Legislature intended to make any alteration in positions of the law and it is clear that in a plain Consolidation Act if it re-enacts in this particular context, the same provisions which had received judicial interpretation, that interpretation will generally be applicable to the provision in the Consolidation Act. See Maxwell on Interpretation of Statutes, 11th edition, page 24.

28. This conclusion finds further support from the word 'amend' in the preamble of the Act. The reference obviously is to Chapter V of the Transfer of Property Act which

[3](1960) A.C. 748

according to the consolidated and amended Act stood amended.

29. It is necessary to an take extreme view that because of the special Act, Chapter V of the Transfer of Property Act stands impliedly repealed. Such a repeal, if not expressed, must flow from necessary implication. It is true that wherever the special Act subsequently enacted on the same subject which although expressed in affirmative language, introduces special conditions and restriction, the subsequent special Act may usually be considered as repealing by implication

the law enacted in general terms previously on the same subject. But prior enactments can be rendered inoperative without being actually repealed either expressly or by necessary implication. (See Craies on Statute Law, page 373). In other words, the general enactment would be considered as *pro tanto* avoided by the special enactment on the same subject although the general law may remain in existence and unrepealed notwithstanding that the special Act in specified cases may intercept the operation of the general law.

In *N.I. Caterers Ltd. v. State of Punjab*[4], it is held :

"Even where the later Act does not contain such express words (of repeal) if the co-existence of two sets of provisions is destructive of the object with which the later Act was passed, the Court would treat the earlier provision as "impliedly repealed".

30. It will thus be plain that although Chapter V, Transfer of Property Act, may continue as unrepealed and may continue to apply to cases and to places where the Rent Act is not made applicable, wherever the Rent Act applies, the cases would be governed exclusively by the provision of the Act and not by the provision of the Transfer of Property Act also. In this connection, it is useful to refer to what Dr. Lushington has stated :

"What words", said Dr. Lushington in *The India* will establish a repeal by implication it is impossible to say from authority or decided cases. If, on the one hand, the general presumption must be against such a repeal, on the ground that the intention to repeal, if any, had existed, it would have been declared in express terms, so, on the other hand, it is not necessary that any express reference be made to the statute which it is intended to repeal. The prior statute would, I conceive, be repealed by implication if its provisions were wholly incompatible with a subsequent one; or if the two statutes together would lead to wholly absurd consequences; or if the subject-matter were taken away by the subsequent statute. Perhaps the most difficult case for consideration is where the subject-matter has been so dealt with in subsequent statutes that, according to all ordinary reasoning the particular provision in the prior statutes could not have been intended to subsist, and yet, if it were left subsisting no palpable absurdity would have been occasioned. (Craies on Statute Law, Sixth Edition, page, 371 and 372.)"

We must mark the words 'If the entire subject-matter were taken away by the subsequent statute", which are apposite, to this case.

31. In this connection, we must dispose of the argument that the Act makes a difference

[4](1967)3 S.C.R. 399 (1968)1 S.C.J. 475 : AIR 1967 SC 1581

between the contractual and statutory tenants. What was contended was that after the contractual tenancy is terminated by notice, statutory tenancy under the Act commences. It was conceded that in case of statutory tenancies however no notice to determine under Section 106 or, Section 111(g) would be necessary. The learned Advocates appearing for the tenants, however, could not point out any provision of the Act showing that the Act makes such a distinction. From the mere existence of general law, that is, Transfer of Property Act, and a special law, that is Rent Act, it

would not be correct to presume that both the laws must co-exist in all cases. It will be unsafe to import England concepts into Indian Rent Acts. One has to look mainly to the provisions of the Act with a view to find out whether it makes any such distinction. It is admitted that in English Rent Act, such a distinction is expressly made either in the enactments or is evolved by process of decisions in view of the special language employed in those Acts. Those Acts do not interfere with leases and tenancy agreements more than it is considered necessary to carry out their purposes. With that objective, those enactments are made a statutory tenancy according to those Acts "arises when a tenant under a lease or other contractual tenancy of premises within the Acts hold over, that is, remains in possession after the expiration of the contractual tenancy". *Vide* Rent Act by R.E. Megarry, page 172. (No statutory tenancy thus can arise while contractual tenancy still exists). The position in English seems to be that the Rent Acts contain no mention of the term "statutory tenancy", which, has been said to come from the marginal note to Section 15 of the Act of 1920, although in fact it has earlier judicial origin. The provision of the Act of 1920, which prescribes the terms upon which a tenant "who by virtue of the provisions of this Act retains possession" of a house within the Acts, is treated as referring to the provisions in the Act restricting the landlord's right to possession and the conception of a statutory tenancy is derived from this.

32. It is from this somewhat insufficient statutory basis that the English Courts have very slowly been trying to frame a consistent theory in their task of making bricks with very insufficient statutory straw. *See* Rent Acts by Megarry, page 194.

33. A statutory tenant, according to the English law, is a person who, after his contractual tenancy has expired, retains possession of his house by virtue of the provisions of the Acts. This retention of possession is dependent upon the observance of the condition of the contractual tenancy so far as those conditions are consistent with the Acts and is entitled to the benefit of the contractual tenancy on the same terms. If he commits a breach of covenant, while his contractual tenancy continues to run, by assigning or sub-letting, the landlord can allege this fact as a reason for applying for an order for recovering possession of the house. *See* Hill and Redman's Law of Landlord and Tenant, Eleventh Edition, page 924.

34. It will thus be clear that under the English law, while the contractual tenancy still exists the landlord cannot obtain an order for possession unless he is entitled to one both under the tenancy agreement and under the Rent Acts. The Acts bring into being not a new right to possession which does not exist at common law, that merely superimposes a general restriction which is relatable in certain specified cases as that restriction is so patent that it has been said that "a landlord's right to recover possession is now a right to got to the County Court for an order for possession." It is because, of a clear distinction drawn by the Acts and the judicial decisions between the contractual and statuttenancy that the contractual tenant is able to plead in England any or all of the following defenses

(1) that the tenancy has not been determined,
(2) that the Rent Acts do not allow an order for possession to be made.

35. Where statutory tenancy has arisen the position in England is different. The contractual tenancy having determined by the lapse of time or act of parties, the tenant's sole right to retain

possession is that given to him by the Acts. Thus the 1st ground would be not longer open to him as a defense in a case where he has become a statutory tenant, and he can only rely upon the second ground.

36. Can it be said that such distinction is made in the Act ? We do not find any such distinction insofar as the Act with which we are concerned. It may be that the tenancy commences under a contract, but the relationship thereafter is controlled by the provisions of the Act. The tenant or the landlord has a right to get fair rent fixed immediately after they enter into the contract. The landlord, however, can evict the tenant only on any of the grounds mentioned in Sections 10(2) and (3). In such cases, because of the absence of a provision which makes a distinction between a contractual and statutory tenant and in the absence of any provision regarding determination of tenancy by notice, prior determination of contractual tenancy is not necessary to make the provisions of the Act applicable to such cases. This distinction must be borne in mind before we make an attempt to import English concepts into our Rent Acts. The provision of the Rent Acts apply to all cases of contractual tenancy even when they subsist and the Act does not postulate determination of contractual tenancy before the provisions relating to accommodation control, the provisions relating to fixation of fair rent or the provisions relating to eviction, apply. The landlord's right to get possession arises not on the determination of tenancy but arises only when he makes out anyone of the grounds under Section to 10(2) and 10(3). Both the facets, that is to say, determination of tenancy and eviction are covered by section to, as we have already noticed.

37. We are fortified in our view by a decision of this Court, in *Brijmohanlal v. Rajalingam*[5], *Mohammad Ahmed Ansari, J.,* (as he then was) observed :

"The effect of the Rent Control Order or of the Hyderabad Houses (Rent, Eviction and Lease) Control act of 1954, is that once the relationship of landlord and tenant is created, it continues till grounds contained in the enactment for evicting the tenant are made out. In other words the contractual tenancy because of the enactment, becomes statutory. Therefore, after the lapse of four years the respondent in the case has not become a trespasser."

38. In *Rangaswami Naidu v. Bangaru Chetty*[6], it is observed:

"It is not permissible to import conception which belong to the ordinary law of landlord and tenant obtaining either in England or under the provisions of the Transfer of Property Act. The same view is taken by the Full Bench of the Madras

High Court in *Raval and Co. v. Ramachandran*[7],

[5] 1959 Andh. L.T. 206

[6] AIR 1959 Mad139

[7](1966)2 M.L.J. 68 : ILR (1966)2 Mad. 437 : AIR 1967 Mad 57

40. In this connection, it is useful to refer to Mulla's Transfer of Property Act, Fifth Edition, page 722 where the learned author refers to emergency legislations and to page 672 where it is observed :

"The effect of this Section (106) as of Section 108(g) and Section 111 has been for all practical purposes superseded by special legislation in certain places to give protection to tenants against enhancement of rent and eviction."

41. That the Act is self-contained and, therefore, the provisions of the Transfer of Property Act are excluded is fully supported by the following decisions. In *Parthasarthy v. Krishanamoorthy*[8], Subba Rao, J., (as he then was) held :

"The Rent Controller, therefore, has no jurisdiction to order eviction under Section 7 (of the Madras Ac of 1946), where there has not been a previous or antecedent determination of the tenancy in accordance with the provisions of the Transfer of Property Act."

42. This decision, however, was reversed in appeal by Horwill and Rajagopalan, JJ., in *Krishnamurthi v. Parthasathy*[9], where it is held that to an application under Section 7, Section 111(h) of the Transfer of Property Act has no application and the determination of tenancy therefore by notice to quit was not necessary.

43. In *Kuppuswami v. Mahadava*[10], the learned Judges observed :

"It is unnecessary to pursue this matter further; for we entirely agree with the learned Judge that the Transfer of Property Act can have no application to a state of affairs governed by the Rent Control Act. As the learned Judge pertinently pointed out, one cannot divorce Section 116, Transfer of Property Act from the other provisions of that Act : and when Section 116 speaks of the determination of the lease, it must have reference to a determination of the lease such as is contemplated in Section 111, Transfer of Property Act, which sets out the various methods by which a lease may be determined. It is conceded here, as before the learned Judge that the lease was not determined in any of the ways set out in Section 111.

The Rent Control Act does not concern itself with the termination of leases. It gives the tenant (as defined in that Act) a right to continue in possession as long as he pays his rent regularly; if the rent is no paid regularly, then whether the lease has been determined or not the landlord has a right to evict the tenet. Mr. D Ramaswami Aiyangar for the
appellant argues that despite the provisions of the Rent Control Act, the month to month tenancy originally entered into must be considered to have been continued right upto the date of eviction, since no notice to quit had been sent to the tenant. We do not agree that such a useless formality was at all necessary."

44. In *Venkataratnam v. Lalluram*[11], another Bench of the Madras High Court observed :

> "The opening words of Section 7, sub-section (1) makes it abundantly clear that even during the continuance of the tenancy a tenant may be evicted in accordance

[8](1948)2 M.L.J. 391 : AIR 1949 Mad 387

[9](1949)1 MLJ 412 : AIR 1949 Mad 780 [10](1950)1 MLJ 72; ILR (1950) Mad 844 : AIR 1950 Mad 746

with the provisions of that section. It has been held by this Court that it is not necessary to terminate the tenancy in accordance with the provision of the Transfer of Property Act before an application for eviction can be filed under Section 7 of Madras Act, XV of 1946. It follows that provided any of the conditions laid down in Section 7, sub-section (2) of that Act is satisfied, the landlord will be entitled to an order of evicting the tenant.

45. In Rawal & Co v. Ramachandran, (supra) a Full Bench of the Madras High Court held :

"The Madras Buildings (Lease and Rent, Control Act (XVIII of 1960) plainly purports to deal with all tenancies in respect of residential and non-residential buildings, which had been let out both contractual and statutory. The argument that the Act does not deal with or interfere with contractual tenancies at all during their subsistence, and that it applies only to statutory tenancies after the contractual tenancy has been terminated by a notice under Section 106 read with Section 111(h) of the Transfer of Property Act is unsustainable. Such a view is opposed (i) to the Preamble and the intendment expressed in the enactment, (ii) to the definitions of 'landlord' and "tenant" in the Act (iii) to the self-sufficient Code enacted in Section 10 including a special machinery for eviction (iv) to the provisions of Section 7 which enacts specific inroads upon the rental tenancies, and (v) to the provisions of Section 4 as to the fixation of fair rent, as available to all landlords and all tenants as defined in the Act. Thus, the Madras Act (XVIII of 1960), has to be interpreted as a special Act which does abrogate the Transfer of Property Act with reference to several of its provisions, of course, it goes further add applies in its terms, not merely to contractual tenancies during their subsistence, but also to statutory tenancies after the determination of contractual tenancy. Under the terms of this Act, therefore, a landlord can evict a tenant on the special grounds available, notwithstanding the subsistence of a contractual tenancy and even though it has not been determined by a statutory notice under Section 106 of the Transfer of Property Act. But equally, the tenant has the protection of the Act, even after the termination of the contractual tenancy so long as he does not do anything which removes the bar of eviction and provides no ground for eviction in terms of the Act. Similarly both during the subsistence of the contractual tenancy and thereafter the parties have the right to get the fair rent determined under the Act."

46. A Bench of the Hyderabad Court in *Mohd. Gaus v. Karunissa Begum*[12], held that Section 111 of the Transfer of Property Act is inapplicable to cases coming within the Rent Control Order. It is, therefore, not necessary to issue notice under the Transfer of Property Act.

47. Satyanarayana Raju, J. (as he then was) in *Ranjalkar v. Mangalgiri Khajamia*[13], , also held that there is a complete machinery provided under the Act with regard to the eviction

of a tenant and Section 111(h) of the Transfer of Property act has no place in the scheme envisaged by the Rent Control Act. An antecedent notice to quit is not a pre-

[11](1950)2 M.L.J. 489 [13]1960 Andh. L.T. 40

[12] AIR 1951 Hyd 111

condition for the filing of an application for eviction.

48. In *Bawa Singh v. Kundan Lal*[14], a Bench of the Punjab High Court held that the Controller must confine himself to the provisions of the Rent Restrictions Act and to no other provision contained in any other Act such as Transfer of Property Act.

49. In 1967 Punjab Law Reporter 67, it is held that the Delhi Rent Control Act is a complete Code itself and thus supersedes the provisions of the Transfer of Property Act and it is not incumbent on the landlord to serve notice terminating the tenancies under Section 106, Transfer of Property Act, on the tenants before instituting the petitions for their ejectment from the premises.

50. In *Brij Raj Krishna v. Shaw and Brother*[15], *Fazi Ali, J.,* who spoke for the Court, observed :
"The Act (Bihar Buildings, Lease, Rent and Eviction Control Act, III of 1947), thus sets up 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. The Act empowers the Controller alone to decide whether or not there is non-payment of rent, and his decision on that question is essential before an order can be passed by him under Section 11."
It cannot be questioned in a civil Court. Earlier, their Lordships observed that there is no place for the provisions of the Transfer of Property Act in the scheme of the said Act.

51. In *Kanaia Lal v. Paramnidhi*[16], it was held that Section 5(1) of the Calcutta Thika Tenancy Act (II of 1949), provides for a self-contained procedure for dealing with applications for ejectment made by landlords against their Thika tenants before the Controller.

52. In C.A. No. 70 of 1962 dated 5th April, 1962, the Supreme Court held that Section 114 of the Transfer of Property Act is not applicable to the Hyderabad Rent Act. It was also held that the tenant could be evicted not because of the forfeiture of tenancy under Section 111(g) of the Transfer of Property, but because of the operation of a special law.

53. In *Pooram Chand v. Motilal*[17], it was held :

"It is, therefore, manifest that the lease was for a period of one year and that it is to a monthly tenancy. As the term fixed under the deed had expired, the appellant was not entitled to any statutory notice under Section 106 of the Transfer of Property Act, 1882."

54. In spite of this very clear position of law, which prevailed almost for a quarter of a century in

this region of the country and accepted by the Madras, Hyderabad and Andhra Pradesh High Courts, it was contended by the learned Advocates for the tenants that *Manujendra v. Purnedu*[18], has over-ruled this position of law, that is to say, that the Act is a self contained Code and that it does not require a previous notice determining the

[14] AIR 1952 Pun 422 [16](1958) S.C.J 99 : 1958 S.C.R. 360 : AIR 1957 SC 907
[15](1951) S.C.J. 238 : 1951 S.C.R. 145 : AIR 1951 SC 115 [17] AIR 1964 SC 461
[18](1967) 1 An. W.R. (S.C.) 61: (1967) 1 S.C.J. 503 : (1969)1 S.C.J. 503; (1969) 1 SCR 495 : AIR 1967 SC 1419

ternary under Section 106 of the Transfer of Property Act. It is, therefore, necessary to examine this decision very carefully,

55. The facts of that case were : By a registered lease the appellant entered into possession. The lease was for a term of 10 years. It gave the tenant option of renewal. Clause 7, provided as follows : "Provided always and it is thereby 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's 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 month's notice to quit and vacate the said premises." The manager intimated to the tenant that a renewal of the lease was not sanctioned and asked whether the tenant was agreeable to pay rent at the stipulated rate. The tenant, however, informed that he had already exercised his option and that he has been paying the rent accordingly. He declined to pay the excessive rent demanded. The manager thereupon gave a notice to the tenant that as the tenant did not agree to pay the rent demanded he was not entitled to notice under the lease and called upon him to vacate the premises within two weeks. A suit was subsequently instituted in a civil Court. During the pendency of the said suit, Thika Tenancy Act, 1949, came into force. It was conceded before the Court that the case will have to be transferred to the Thika Controller under Section 29 of the said Act which section, however was subsequently deleted. The Controller, by his judgment, directed the eviction of the tenant holding him, a trespasser after term was over and, therefore, was not entitled to a six months notice as per the lease. The subordinate Judge dismissed the appeal preferred to him against the order of the Controller.

56. In a petition under Article 227 of the Constitution, the High Court rejected the tenant's contention as to notice on the ground that the *non obstante* provisions in Section 3 of the said Act entitled the landlords to a decree for eviction without first determining the contractual tenancy as per the lease.

57. It was contended before the Supreme Court that inspite of the *non obstante* clause appearing in Section 3, it did not have the effect of depriving the tenant of his right to have a notice before the termination of his tenancy either under the lease or under the Transfer of Property Act.

58. After observing that Rent Acts are intended to prevent indiscriminate eviction of tenants and to safeguard security of possession and they should be construed as a social legislation, it was held : "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."

59. It is in the light of this construction of Section 3 that their Lordships considered the import of the *non obstante* clause. Their Lordships said :

> "The word 'notwithstanding' in Section 3 on a true construction therefore, means that even where the contractual tenancy is properly terminated, notwithstanding the landlord's right to possession under the Transfer of Property Act or the contract of lease he cannot evict the tenant unless he satisfied any one of the ground set out in Section 3."

60. Thus, the *non obstante* clause was held not to stand in the way of the construction which their Lordships had put earlier on Section 3 of the said Act. It is in support of this construction put on Section 3 that their Lordships made reference to the difference between a contractual tenancy and a statutory tenancy and observed :

"It is well-settled that statutory tenancy normally arises when a tenant under a lease holds over, that is he remains in possession after the expiry of determination of the contractual tenancy." In support of this observation, their Lordships relied upon *Abbasbhai v. Gulamnabi*[19], and *Mangilal v. Sugan Chand*[20], Referring to Monmatha Nath v. Banarasi, (supra) their Lordships noted that in matters not dealt with by the Act, Transfer of Property Act would apply for, the Thika Tenancy Act is not a complete Code and deals only with some aspects of Thika tenancy. It does not provide for the rights and liabilities of the lessor and lessee in a Thika tenancy and therefore, for these purposes, one has still to look to the Transfer of Property Act."

61. It is pertinent in this respect to note that the earlier decision of the Supreme Court in Kanaia Lal v. Paramnidhi (supra) which, as was already noticed has held that Sections of Thika Tenancy Act provides a self-contained procedure for eviction was not brought to their Lordships notice. It is in this context that their Lordships referred to Krishnamurthy v. parthasarathy (supra) and they observed :

"The only decision which has taken a contrary view is Krishnamurthy v. Parthasarathy (supra) where it was held that Section 7 of the Madras Buildings (Lease and Rent Control) Act (XV of 1946) had its own scheme of procedure and therefore, there was no question of an attempt to reconcile that Act with the Transfer of property Act, On that view, the High Court held that an application for eviction could be made to the Rent Controller even before the contractual tenancy was terminated by notice to quit. The decision is clearly contrary to the decision of this Court in Abbasbhai's case (supra) and Mangilal's case (supra) and therefore, is not correct law"

62. A careful analysis of this decision would indicate that following are the ratios : (1) Section 3 of the Thika Tenancy Act makes a distinction between a contractual tenancy and a statutory tenancy and consequently contractual tenancy had to be terminated by a proper notice before an application for eviction is filed under the said Act; (2) The word 'notwithstanding' in Section 3 was interpreted to mean that even after the termination of contractual tenancy and

notwithstanding the landlord's right to possession under the contract of lease, he cannot evict the tenant unless he satisfied the requirements of Section 3; (3) Thika Tenancy Act is not a complete Code but it deals only with some aspects of tenancy and therefore, certain provisions of the Transfer of Property Act would still apply and; (4) Krishnamurthy v. Parthsarathy (supra) is contrary to the decision in Abbasbhai v. Gulamnabi (supra) and Mangilal v. Sugan Chand (supra) and therefore, is not correct law.

[19](1964)5 S.C.R. 157 : AIR 1964 SC 1341
[20](1964)5 S.C.R. 239 : AIR 1965 SC 101

63. We are not in the present case concerned with the construction of Section 3 of the Thika Tenancy Act. It was not argued before us that Section 10 or any other provision of the Act is capable of being construed to the effect that the Act makes any distinction between the contractual and statutory tenancy.

64. We are not concerned with the second ratio as there is no *non obstante* clause in Section 10. Therefore, it is not necessary for us to consider the meaning and scope of a *non obstante* clause. We would however, in deference to the arguments advanced before us refer to those arguments. "Anything in this Act to the contrary notwithstanding means according to Law of Lexicon by Sri P.Ramanatha Iyer : This phrase is equivalent to saying that the Act shall be no impediment to the measure".

65. In Brij Raj Krishna v. Shaw and Bros (supra), the *non obstante* clause appearing in Section 11(1)(a) of the relevant Act was "notwithstanding anything contained in any agreement or law to the contrary". Their Lordships held that the Act confers on Controller complete powers to decide all question arising under the Rent Act in view of the scheme of the Act. It was in reference to this clause specifically observed : "Section 11 begins with the words 'notwithstanding etc.' and hence any attempt to import the provisions relating to the law of transfer of property for the interpretation of the section would seem to be out of place. Section 11 is self-contained section and it is wholly unnecessary to got outside the Act for 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."

66. In *Ashwini Kumar v. S. Arbinda Bose*[21], the *non obstante* clause in Section 2 was as follows :

> "Notwithstanding anything contained in the Indian Bar Council Act or in any other law". Their Lordships said that it should be ascertained as to what Section 2 means "and the *non obstante* clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment." Their Lordships, therefore, held that the *non obstante* clause not only repeals particular provisions but when the enacting part of Section 2 covers all advocates of the Supreme Court, the *non obstante* clause can reasonably be read as overriding anything contained in any relevant existing law which is inconsistent with the new enactment....."

67. In *Waman Shriniwas v. R.B. and Co*[22]., their Lordships considered the import of such a *non*

obstante clause. The wording of Section 15 of the relevant Bombay Act, which fell for their Lordship' consideration was "notwithstanding anything contained in any law," Their Lordships interpreting the clause observed :

> "The *non obstante* clause would mean that even if any other law allowed sub-letting, e.g., Section 108 of the Transfer of Property Act the sub-letting would, because of Section 15, be unlawful."

[21](1952) S.C.J. 568 : 1953 SCR 1 : AIR 1952 SC 369
[22](1959) S.C.J. 635 AIR 1959 SC 689

An agreement contrary to Section 15 was held to be unenforceable. Adverting to the argument that the *non obstante* clause in Section 10 of the Bombay Act (VII of 1944) and of Section 15 of the Act under their Lordships' consideration were similar and therefore, must be similarly interpreted, their Lordships observed : "The *non obstante* clause has to be read in conjunction with the rest of the section. Section 10 of the Act of 1944 permitted sub-letting on certain conditions. By Section 9 of that Act provision was made for a contract between the landlord and the tenant prohibiting sub-letting and in *D.N Cooper v. Shiawan Cowasji*[23], the two provisions were reconciled by saying that a contract under Section 9 prevailed over the permission given by Section 10. But Section 15 expressly prohibits sub-letting and therefore, a contract to the contrary naturalize its prohibitory effect. The *non obstante* clause of the two sections, Section 10 of the Act of 1944 and of Section 15 of the Act therefore, cannot be said to have the same effect."

68. It is pertinent to note that the *non obstante* clause of Section 10 of the Act referred to by their Lordships was as follows : "Notwithstanding anything to the contrary in any law for the time being in force."

69. In *Vasant Raw v. Election Commission*[24], it was held :

> "A *'non obstante'* clause is used in a provision to indicate that provision should prevail despite anything to the contrary in any other provision. No doubt, one of the objects is to indicate that despite any repugnancy between the provision containing a *non obstante* clause and another provision, the former is to prevail. But it does not mean that there must necessarily be repugnancy between the two.....when the intention is that each (Tribunal) can exercise its power independently of the other, it becomes necessary to use a *non obstante* clause"

70. It was argued on the basis of these decisions that there are two types of *non obstante* clauses one in which provisions of contrariety or repugnancy is made and the other in which such a provision does not exist. The effect of these two type of clauses, however, is altogether different. In one case contrariety or repugnancy of the other Act with the Act in which such clause appears has to be found out and in the other type of clause the operative clause overrides any other law

for the time being in force. But in no case it was argued *non obstante* clause was construed to mean apart from the enacting clause, other law also would apply.

71. In this connection it is connection it is relevant to note that the *non obstante* clause of Section 3 of the Thika Tenancy Act is as follows :

> "Notwithstanding anything contained in any other law for the time being in force or in any contract....."

72. As stated earlier, however it is not necessary for us to go into this argument because such *non obstante* clause does not exist in Section 10.

[23] AIR 1949 Bom 131
[24] AIR 1953 Nag 237

73. We are not concerned in these cases with the third ratio, that is, the Thika Tenancy Act is not itself a self-contained Act. We have pointed out that the decision of the Supreme Court in Kanaia Lal v. Paramnidhi (supra) in which it was held that Section 5 provides a complete procedure was not cited before their Lordships. We have to accept the third ratio that the Thika Tenancy Act is not a complete Code. That does not, however, help the tenants in these cases unless they succeed in showing that the Act with which we are concerned is also not a self-contained Code. We have already pointed out that it was not seriously denied by a learned Advocate appearing for the tenants that the Act is not a self-contained Code. Once that is not disputed, then the Supreme Court decision cases to apply to the present case because that was the main basis on which the Supreme Court decision rest.

74. Turning then to the fourth ratio with which we are mainly concerned. it must be noted that in fact it cannot be called a ratio of the decision of the Supreme Court. Their Lordships considered that decision as holding contrary to what their Lordships were holding and that is why they declared it as an incorrect law. It has to be examined whether the Supreme Court has by declaring Krishnamurthy v. Parthsarathy (supra), as incorrect law disapproved in effect the consistent view held by the Madras, Hyderabad and Andhra Pradesh High Courts for over two decades that the repealed Rent Acts were self-contained Codes or those Acts did not make any distinction between contractual and statutory tenants. We do not think that is the effect of the decision of the Supreme Court. It is conceded, and in our view, very fairly that the Supreme Court did not examine either of the two questions which were really involved in the Madras case which case related to the Madras Rent Act, XV of 1946. There is no whisper in the Judgment of the Supreme Court in regard to consideration of any such question, nor there was any occasion to examine these question. What all is stated is that Krishnamuthy v. Parthasarathi (supra).being clearly contrary to the decisions in Abbashai v. Gulamnabi and Mangilal v. Suganchand. It is incorrect law. Earlier, these two Supreme Court decisions were considered by the Supreme Court in the judgment. The same contention was urged before us. It was contended that since Krishnamutthy v. Parthasarathi (supra), has been overruled, prior notice for determination of tenancy would be necessary. Let us carefully examine this contention.

75. In Abbashai v. Gulamnabi (supra) the Supreme Court was concerned with Sections 12 and 13 of the Bombay Rent Act (57 of 1947). These sections were interpreted to apply "to 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". The language of Section 12(2) of the said Act is very clear. It says :
"No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882."

76. In view of this specific language of Section 12(2) read with Section 13 of the Act, the decision was given that prior notice is necessary. The Supreme Court was not concerned with the question whether the Bombay Act is a self-contained Act and naturally neither there is any discussion nor a decision thereon. The words of Madras Act of 1946 on which the Madras decision rested were not before their Lordships. Nor they are in *pari materia* with the words of Section 12(2) which we have extracted above. The said decision neither considers nor holds that Madras Act, XV of 1946, was not a self-contained Code nor it makes a distinction between the two types of tenancies. Admittedly there were no provisions in the Madras Rent Act, 1946, nor there are any in the present Act of 1960 which can be said to be parallel to Sections 12 and 13 of the Bombay Act. It is therefore, difficult to see as to in what respect the Madras decision would be contrary to the decision of the Supreme Court.

77. It must be particularly noted that the Bench of the Madras High Court in Krishnamurthy v. Parthasarathy, (supra) were confronted with the argument that the Act, XV of 1946 was self-contained and that in it are found all the provisions of law and procedure necessary for dealing with the case between landlord and tenant that came within the purview of the Act and *so pro tanto* they repealed by implication the corresponding provisions of the Transfer of Property Act. The learned Judge declined to go into it, observing :

"There is something to be said for this argument but in the view that we are taking, it is not necessary for us to consider this extreme contention.

78. The learned Judges confined their consideration only to the narrower question "Does Section 7 of Act, XV of 1946 by necessary implication abrogate or repeal Section 111(h), Transfer of Property Act ?" The answer to this exclusively depended upon the language of Section 7. The relevant portion of it which the learned Judges considered was as follows :

"A tenant in possession of a building shall not be evicted therefrom....before.....the termination of the tenancy except in accordance with the provision of this section."

79. In view of this specific language of Section 7 it was held that determination of tenancy by a notice to quit prior to the filing of an application under Section 7 is not necessary. The other question dealt within that case related to the jurisdiction of Rent Controller to deal with the

application in the absence of a notice to quit. On the assumption that a notice to quit was necessary although the learned Judges had decided otherwise, it was held that "if notice to quit was necessary it would be merely one of the issues to be decided by the Rent Controller and would not in any way after his jurisdiction to enter in the application."

80. It will thus be plain that the first question was answered upon the specific language of Section 7 and the second related to the jurisdiction of the Rent Controller. It is difficult to understand how the decision on these two points could be said to be in conflict with the ratio of the decision in Abbasbhai v. Gulamnabi (supra).

81. It is quit relevant to note that the specific words of Section 7 considered in the above said Madras case and which we have extracted above do not now appear in Section 10 of the present Act with which we are concerned.

82. We will then turn to Mangi Lal v. Sugan Chand, (supra). In that case, their Lordships were concerned with Madhya Pradesh Accommodation
Control Act (XXIII of 1955). It was held in view of Section 4 of that Act that :

"The provision of Section 4 are in addition to those of the Transfer of Property Act and that before a tenant can be evicted by a landlord be must comply both with the provisions of Section 106 of the Transfer of Property Act and those of Section 4 of the said Act."
It was further held that the said Act does not abrogate Chapter V of the Transfer of Property Act. Section 4 itself provides that no suit in a civil Court shall be filed unless a written notice of demand from the landlord is served upon the tenant. It was noted that Section 4 is quite different from the analogous provisions of the Bombay Rent Hotel and Lodging Houses Rates (Control Act), 1947, or the West Bengal Premises Tenancy Act, 1956, it is observed :

> "The effect of clause (a) of Section 4 is merely to remove the bar created by the opening words of Section 4 on the right which a landlord has under Section 106 of the Transfer of Property Act to terminate a tenancy of a tenant from month to month by giving a notice terminating his tenancy."

83. It will thus be plain that the two points decided in the Madras case were in no way before the Supreme Court. The supreme Court in the above said case was concerned with altogether a different law and different questions. It is therefore, difficult to see how the ratios in the Madras case are inconsistent with the ratios in the said Supreme Court case. The Supreme Court case does not decide that the Madhya Pradesh Act is not a self-contained Act and it does not consider whether the Madras Act is or is not a complete Code nor does it even refer to the question of contractual and statutory tenancy.

84. It will thus be clear that the two ratios of Krishnamuthy v. Parthasarathy (supra), do not in any manner come in conflict with the two said decision of the Supreme Court. It is relevant to note that the two ratios of the Madras decision cannot be said to be inconsistent with the ratios of

Raval & Co. v. Ramchandran (supra), itself.

85. Whatever that may be since the decision in Manujendra v. Purnedu (supra), holds that Krishnamurthy v. Parthasarthy (supra) is not correct law, even if the Supreme Court observation is taken to be biter and not a ratio, even then it has persuasive force almost equivalent to binding authority. We cannot therefore, take that decision into consideration.

86. It is however difficult to agree with the contention that because of this declaration, the earlier and subsequent decisions of the Madras, Hyderabad and Andhra Pradesh High Courts should be considered as no more good law, even where they hold that the Act is a self-contained Code, that it excludes the application of Chapter V of the Transfer of Property Act and that the Act does not recognize the distinction between the contractual and statutory tenancy. It seems to be an extravagant contention which cannot be accepted, firstly because the provisions of Section 10 of the Act in material respects are different than what fell for consideration of the Supreme Court in reference to Krishnamuthy v. Parthasarathy (supra) in which Section 7 of Act, XV of 1946, was considered. Secondly, the Supreme Court on occasion and in fact has not considered the provisions of the present Act.

87. Even if Krishnamurthy v. Parthasarathy (supra), goes out of consideration alongwith its two ratios even than as we are not concerned with the two ratios decided therein and now taken to be disapproved by the Supreme Court, we think we can distinguish the Supreme Court decision mainly on the ground that Supreme Court decision does not consider the points raised before us and hold anything contrary in reference to the Act with which we are concerned. The argument here is that the Act is a self-contained Code and therefore, excludes the provisions of Chapter V of the Transfer of Property Act and secondly that the Act does not distinguish between contractual and statutory tenancies. Both these questions were not before the Madras High Court in Krishnamurthy v. Parthasarathy (supra) nor they were before the Supreme Court in the decision referred to above. The disapproval of the Madras decision cannot and in our view, does not mean that the Supreme Court's decision is also an authority on the point in reference to the present Act urged before us. The on the point in reference to the present act urged before us. The language Section 7 of the Act, XV of 1946 and that of 1960 Act materially differs inasmuch as the words with which Krishnamurthy v. Parthasarathy (supra), was concerned are omitted from the present Act.

88. We are, therefore, satisfied that merely because Krishnamurthy v. Parthsarathy (supra), is held to be incorrect law, it does not necessarily follow that the series of decisions considered above on altogether different basis also become incorrect law without specifically being considered. We have distinguished the decision of the Supreme Court and shown how it does not govern the present case. We have no doubt that decision is not applicable to the provisions of the present Act and cannot be taken as an authority for the points raised before us which are based on the language, and scope scheme of 1960 Act.

89. It is now well settled that a decision is only an authority for that it actually decides and not every proposition that may seem to follow logically from it. To use the words of Lord Halsbury in *Quinn v. Leathem*[25],

"every judgment must be read as application to the particular facts...since the generality of the

expressions which may be found there intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it."

90. In *Scruttons Ltd. v. Midland Silicons*[26], Lord Reid, observed :

"I would certainly not lightly disregard or depart from any *ratio decidendi* of this House. But there are at least three classes of cases where I think we are entitled to question or limit it first, where it is obscure, secondly, where the decision itself is out of line with other authorities are established principles, and thirdly, where it is much wider than was

[25] L.R. (1901) A.C. 495

[26](1962)1 All England Reporter 1

necessary for the decision so that it become a question of how far it is proper to distinguish the earlier decision." It is, however, on the third ground that with due respect we have attempted distinguish the Supreme Court from the facts of the present case.

91. It is also advisable to keep in view the observations of Lord Greene, M.R. in *Carter v. Carburetter Co*[27]*.,*

"The first thing to observe is, that in using that language the learned Judges had not before them the question which is before us. They were not considering S.I. Its language was not considered and the question they had to decide was a totally different one. I protest, with all respect, against the view that wide language used by Judges in dealing with a particular class of protection given by an Act should be treated to other and distinct parts of the Act which were not before them, which were never discussed, and which were not present to their minds. That is contrary to what I have always understood to be the proper way of construing judgments."

92. We do not, therefore, experience any difficulty in rejecting the extreme contention advanced by the learned Advocates for the tenants before us. We have no difficulty in holding that the ratio of the Supreme Court decision nor that of Krishnamurthy v. Parthasarathy (supra) governs the present case. The overruling of Krishnamurthy v. Parthasarathy (supra) does not affect in any manner the decisions of the Madras, Andhra Pradesh and Hyderabad High Courts holding that the Rent Act is a self-contained Code that they do not make any distinction between the contractual and statutory tenancies and consequently exclude the operation of Section 111(g) and 111(h) read with Section 106 of the Transfer of Property Act.

93. We have then referred to *Punjalal v. Bhagwathprasad*[28]*,* After going through that case, we are satisfied that far from assisting the tenants in a way it goes against them and supports the conclusion at which we have arrived. That was a case relating to Bombay Act (57 of 1947). After holding that it is only after determination of tenancy by any of the modes referred to in Section 111 of the Transfer of Property Act and also after serving him with a notice under Section 12(2) of the said Bombay Act that the landlord can file an application for eviction, it was observed :

"There is nothing in the Act which would give a right to the landlord to determine the tenancy and thereby to get the right to evict the tenant and recover possession."

94. Their Lordships' attention was drawn to *Brij Raj Krishna v. Shaw and Brothers (supra).* Their Lordships extracted the following portion appearing at page 124 : "Section 11 begins with the words, 'Notwithstanding anything contained in any agreement or law' to the contrary, and hence any attempt to import the provisions relating to the law of transfer of property for the interpretation of the section would seem to be out of place. Section 11 is a self-contained section, and it is wholly unnecessary to go outside the Act for determining whether a evicted or not, and under what conditions he can be evicted. I 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 payment of

[27] LR (1942)2 K.B. 288

[28](1963)2 S.C.J. 441 : AIR 1963 SC 120

rent."

95. Their Lordships distinguished that case and observed : "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 provision of the Transfer of Property Act.

96. It will thus be plain that if Section 12 of the Bombay Act like Section 11 of the Bihar Act were to be a complete Code, their Lordships had no doubt that such a provision would override the provisions of the Transfer of Property Act. Since it is now settled that Section 10 of the Act is a complete Code in itself, it must necessarily override Chapter V of the Transfer of Property Act. That is the view which Brij Raj Krishna v. Shaw and Brothers (supra) has taken and has in a way been approved by the Supreme Court in Punjalal v. Bhagwat Prasad (supra). In that view it is fatile to make any distinction between the right to possession and a right to recover possession. Both these rights if there is any difference between the two flow from Section 10 and from no other provision outside the Act.

97. We are next refeed to the following cases. It was urged that these cases take the view that prior determination of tenancy is necessary for filing an application for eviction; *Siddappa v. Vankatesh*[29]*, Abanikumar v. Ramgopal*[30]*, Adit Prasad v. Chhaganlal*[31]*, Adbul Gani v. Mohanmmed Israil*[32]*,*

97. After going through these cases carefully we must observe that they could easily be distinguished on the language scheme and scope of the Act with which they were concerned from the language, scheme and scope of the Act with which we are concerned. We agree with the view taken in Rawal & Co. v. Ramachandran (supra), that the Act under which such decisions have been taken cannot be lumped together into one category of legislation regarding rent and lease control. Such generalization would be misleading as there are significant and substantial difference not only in the language but in this scope and extent of these legislations. It is,

therefore, hazardous to take assistance from cases decided under Rent Acts which are not *pari materia* with our Act. We are clear in our view, that those cases and the decisions of the Supreme Court relating to other Rents Acts referred to above could easily be distinguished not only on the language employed, but also in view of the different scheme of those Acts with which those cases were concerned and the language, scheme and scope of the Act with which we are concerned. It would not be wise to compare Rent Acts which are self-contained and complete in themselves with those which are not so complete but are merely supplementary or intended to be in addition to the general law. Nor it would be advisable to import without proper examination the English law which makes distinction between the contractual and statutory tenancy, unless the Rent Acts specifically adopt such distinction as seems to be the case with certain Rent Acts which came up for consideration before the Supreme Court or certain other High Courts. But we are clear, in our view, that the Act does not make any such distinction nor there is any scope to import the distinction borrowed from English law into the scheme of our Act, as it is seen that the Act applies not only to contractual tenancies but also to statutory tenancies. We do not therefore, propose to consider these cases in detail.

[29] AIR 1965; Mys. 165 [31] AIR 1968 Pat 26

[30] AIR 1967 Orissa 113 [32](1968) 2 M.L.J. 68: AIR 1967 Mad 57

99. There is much to be said for the argument which Mr. N. Rajeswara Rao, the learned Advocate, advanced before us. His contention was that the State Act should prevail over Chapter V of the Transfer of Property Act because the State Act comes under Entry 18 of the State List (List II of the Seventh Schedule of the Constitution) and the Transfer of Property Act, 1882, is an existing law falling under Entry 6 of the concurrent list (List III) and in case of repugnancy between the two Acts, since the assent of the President has been obtained the State Act must prevail by virtue of Article 254 of the Constitution. In support of his contention, he cited the opinion of D. Basu, J., expressed in *Santose Kumar v. Smtt. Chinmoyee Sen*[33], We found the argument extremely compelling and it could not be effectively countered.

100. Now, Entry 18 of the State List relates not only to the agricultural lands but to non-agricultural lands also. The word 'land' occurring in Entry 18 is not confined to agricultural land only. It includes every form of land, agricultural or not. Land is primarily a subject of State concerned. It would be strange if the land in a State is to be broken up into separate portions, some falling within and some outside the legislative powers of the State. The words which follow the word 'land' in the Entry are appropriate not only agricultural land but equally to non-agricultural land. The particular and limited specification of 'agricultural' land in connection with 'Transfer and alienation' and 'improvement and loans' proves that the word 'land' used at the outset of the Entry is used with a wider reference and relates to land in general followed by a reference to specific subject as agricultural lands. We are, therefore, inclined to hold that this 'land' in its general connotation includes not only the non-agricultural land but also houses and buildings constructed thereon. Reference to the word 'buildings' in Entry 49 of the State list regarding taxes does not militate against the interpretation which we are placing on Entry 18. Broadly speaking 'land' not only means the surface of the ground but also everything over or under it and unless a contrary intention appears, land includes houses and buildings. *See Great Western Railway Co; v. Swindon and Cheltanham Railway Co*[34]*.,* In this connection, it is important to note that unless the land in Entry 18 of the List II includes houses and buildings, the State Legislature would have no power to control accommodation in houses and building which power is specifically given in a respect of a specified area to Parliament by Entry 3 of the List I. The expression 'relation of landlord and tenant' and the next expression 'collection of rents', in

our view, relate to agricultural as well as non-agricultural lands including houses and buildings constructed thereon.

101. We are supported in our view by the following decisions : *Manohar Ramkrishana v. G.C. Desai*[35], *Mangilal v. State of Madhya Pradesh*[36], and *A.C. Patel v. Viswanath*[37],

102. Entry 6 in the List III relates to transfer of property other than agricultural land. Chapter V of the Transfer of Property Act falls under this entry. Assuming that the Rent Act wholly or partly falls under this entry even then it would not alter the position in law.

103. Under Article 254 of the Constitution, if any State law is repugnant to a law made by Parliament or to any existing law relating matter enumerated in the concurrent list, then subject to clause (2) of that Article, the law of the Parliament shall prevail and the State

[33] AIR 1956 Cal 615 [35] AIR 1951 Nag 33 [37] AIR 1954 Bom 204
[34](1883-84) L.R. 9 AC 787 [36] AIR 1955 Nag153

law to the extent of the repugnancy would be void. Clause (2) of that Article, however, states that a State law made in reference to concurrent list if repugnant to any law made by Parliament or an existing law, would prevail if it has been reserved for the consideration of the President and has received his assent. Thus the question of repugnancy could properly arise in connection with the concurrent list. In applying the principle of implied repeal to cases combining under Article 254, it is not necessary to have a direct conflict between the two enactments. Though there may not be direct enactment, a State law may prevail and be operative if it is intended to be a complete and exhaustive code. If a competent Legislature expressly or impliedly evidences its intention of covering the whole fields that is a conclusive test of inconsistency where another Legislature assumes to enter to any extent upon the same field. When a State law, if valid, alters, impairs, or detracts from the operation of the law made by the Parliament, then to that extent the State law would be invalid. But, where under clause (2) of Article 254 President's assent is obtained, then evidently the State law shall prevail the Central law.

104. Moreover, if it appears from the terms, nature or the subject-matter of the State enactment that it is intended as a complete statement of the law governing a particular matter of set of rights or duties, then such a State law would prevail over the general law made by the Parliament on the same subject or over an existing law relating thereto if the assent of the President is received. It is however, necessary to clearly establish the intention of the State Legislature to occupy the whole field on a particular subject-matter of legislation. If it however, appears that the State law in such a case is not intended to cover the field wholly but intended to be supplemental to or cumulative upon the central law, then plainly no inconsistency would be established. The inconsistency does no lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. It must therefore, depend in each case upon the intention of the Legislature to express by its enactment completely, exhaustively or exclusively that the law governing the particular conduct or matter is a complete Code and legislates wholly on the matter. And if such a State law in the concurrent list receive that assent of the President, it shall prevail over the central law in the concurrent list on the same subject and logically and consequently exclude the application or operation of the central law on the same matter, whether it is in direct conflict with the State law or not. It will thus be plain that if it is a subject falling within the State list although it may incidentally or otherwise trench upon the filed of concurrent list, if the President's assent in regard to concurrent list is obtained, then the State law shall prevail over the central law on the

same subject.

105. Examined in this background, the State Rent Act seems to us to be a complete Code intended by the Legislature to wholly occupy the three subjects mentioned in the preamble of the Act concerning the relationship of landlord and tenant in regard to houses and buildings and such law was reserved for the consideration of the President and has received his assent. It must necessarily prevail over Chapter V of the Transfer of Property Act although it may not in some respects be in direct conflict with the provision of the Transfer of Property Act. Consequently Chapter V is not applicable to cases coming under the Act. That is what D. Basu, J., has opined in the above said Calcutta Case, and we are in respectful agreement with the learned Judge.

106. For the reasons aforesaid, we hold that no notice either under Section 111(g) in cases coming under that clauses or under Section 111(h) read with Section 106 in cases falling within the ambit of that provision of the Transfer of Property Act is necessary to determine the tenancy before an application for eviction on any of the grounds mentioned in Section 10 of the Act is filed before the Rent Controller.
Answered accordingly.