KARNATAKA HIGH COURT

M.M. Yaragatti

Vs.

Vasant

W.P. No. 21519 of 1981

(Prem Chand Jain, CJ., M. Rama Jois and S.A. Hakeem, JJ.)

10.04.1987

ORDER

Prem Chand Jain, C.J.

1. The following two questions have been referred to be decided by larger Bench :-

> "(1) Whether a revision under Section 115 of the Code of Civil Procedure lies to the High Court from a revisional order made by a District Judge under sub-section (2) of Section 50 of the Karnataka Rent Control Act, 1961, as substituted by Karnataka Act 31 of 1975.
> (2) Whether the ruling of the Full Bench of this Court in *Krishnaji Venkatesh Shirockar v. Gurupad Shivram Kavalekar*[1], requires reconsideration in view of the ruling of the Supreme Court in *Vishesh Kumar v. Shanti Prasad*[2]."

2. This petition has been filed under Article 227 of the Constitution calling in question the legality of the order made by the District Judge under sub-section (2) of Section 50 of the Karnataka Rent Control Act, 1961, (hereinafter referred to as 'the Act'). An office objection was raised as to how in view of the Full Bench decision of this Court in *Krishnaji v. Venkatesh Shirodkar v. Gurupad Shivram Kavalekar (supra)* a petition under Article 227 of the Constitution was maintainable. Before the learned Single Judge a contention was sought to be raised that in the wake of the judgment of the Supreme Court in *Vishesh Kumar v. Shanti Prasad (supra)* the law laid down in Krishnaji Venkatesh Shirodkar's case was no longer good law. Finding that the question raised was of importance and deserved to be deciding by a Division Bench, a reference was made the learned Single Judge under Section 9 of the Karnataka High Court Act. Thereafter, the matter came up for hearing before a Division Bench and, as earlier observed, the aforesaid two questions have been referred to be decided by a Full Bench. This is how we are seized of the matter.

3. Before adverting to the contentions of the learned counsel for the parties, it would be appropriate to notice some relevant provision of the Act before the Amendment Act No. 31/1975 and after the Amendment Act. Section 3(d) of the Act defines 'Court' as follows :

[1] ILR 1987(2) Karnataka 1585)

[2](AIR 1980 SC 892)

"Court' means -

(i) in respect of the area comprised within the limits of the City of Bangalore as defined in the Bangalore City Civil Court Act, 1979, the Court of Small Causes;

(ii) in such other areas as the State Government may, in consultation with the High Court, by notification specify, the Court of the Civil Judge having territorial jurisdiction over such area; and

(iii) in respect of areas other than those referred to in sub-clauses (i) and (ii), the Court of Munsiff having territorial jurisdiction over such area;"

Sections 48 and 50 of the Act, before the Amendment Act 31/1975 and after that Amendment Act read as follows :

	BEFORE THE AMENDMENT		AFTER THE AMENDMENT
48.	Appeals :- (1) Notwithstanding anything contained in any law for the time being in force, every person aggrieved by an order under Section 14, Section 16, Section 17 or Section 21, passed by the Controller or the Court may within thirty days from the date of the order, prefer an appeal in writing to the District Judge having jurisdiction over the area in which the premises are situated.	48.	Appeals :- (1) Omitted.
(2)	In computing the period specified in this Act for filing appeals the time taken to obtain certified copies of the order appealed against shall be excluded.	(2)	In computing the period specified in this Act for filing appeals the time taken to obtain certified copies of the order appealed against shall be excluded.

(3)	The provisions of Section 5 of the Indian Limitation Act 1908, shall be applicable to appeals under this Act.	(3)The provisions of Section 5 of the Indian Limitation Act, 1908, shall be applicable to appeals under this Act.	
(4)	On an appeal being preferred under this Act, the Appellate Authority may order stay of further proceedings in the matter pending decision on the Appeal.	(4)	On an appeal being preferred under this Act, the Appellate Authority may order stay of further proceedings in the matter pending decision on the Appeal.
(5)	The Appellate Authority shall send for the records of the case from the Court or the Controller, as the case may and be, after giving the parties an opportunity of being heard and if necessary after making such further enquiry as it thinks fit, either itself or through the Court or the Controller, as the case may be, shall decide the appeal. Explanation : The District Judge may, while confirming the order of eviction passed by the Court, grant extension of time to the tenant for putting the landlord in possession of the building.	(5)	The Appellate Authority shall send for the records of the case from the Controller and after giving the parties an opportunity of being heard and if necessary after making such further enquiry as it thinks fit either itself or through the Controller shall decide the appeal.
(6)	Subject to any decision of the High Court under Section 50 the decision of the District Judge shall be final; and an order of the Court or the	(6)	An order of the Court or the Controller shall, subject to the decision of the District Judge or the High Court under

	Controller shall, subject to the decision of the relevant Appellate Authority under this Act or of the High Court under Section 50, be final and shall not be liable to be called in question in any Court of law whether in a suit or other proceedings or by way of appeal or revision.		Section 50 or the relevant Appellate Authority under this Act, be final and shall not be liable to be called in question in any Court of law whether in a suit or other proceeding or by way of appeal or revision.

	REVISION BY THE HIGH COURT		REVISION
(1)	The High Court may, at any time, call for and examine. (i) the records relating to any decision given or proceedings taken by the District Judge. (ii) any order passed or proceeding taken by the Court under this Act or any order passed by the Controller under Section 14, Section 15 or Section 16, for the purpose of satisfying itself as to the legality or correctness of such decision, order or proceeding and may pass such order in reference thereto as it thinks fit;	(1)	The High Court may, at any time, call for and examine any order passed or proceeding taken by the Court of Civil Judge under this Act or any order passed by the Controller under Sections 14, 15, 16 or 17 for the purpose of satisfying itself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as it thinks fit.
(2)	The costs of, and incidental to, all proceedings before the High Court shall be in	(2)	The District Judge, may, at any time, call for and examine any order passed or proceeding taken by the

	its discretion.		Court of Munsiff referred to in sub-clause (iii) of clause (d) of Section (3) for the purpose of satisfying himself as to the legality or correctness of such order in reference thereto as he thinks fit. The order of the District Judge shall be final.
		(3)The costs of and incidental to all proceedings before the High Court or the District Judge shall be in the discretion of the High Court or the District Judge, as the case may be."	

Under Section 48 of the Act as it stood prior to the amendment, an appeal lay to the District Judge against the order passed under Sections 15, 16, 17, or 21 by the Rent Controller or the Court; thereafter, a revision lay to the High Court as provided under Section 50 of the Act. Further analysis of the two provisions shows that under sub-section (6) of the Section 48 of the Act it is provided that the decision of the District Judge under Section 48 subject to the decision of the High Court under Section 50, shall be final and an order of the Court or the Controller shall subject to the decision of the relevant Appellate Authority under the Act or of the High Court under Section 50, be final and shall not be liable to be called in question in any Court of law whether in a suit or other proceedings or by way of appeal or revision.

4. In the year 1975, Sections 48 and 50 of the Act underwent some change. As to what necessitated the amendment may be noticed from the aims and objects annexed to the Amendment Bill the relevant portion of which, for our purpose, reads as under :

> "A large number of cases under the Karnataka Rent Control Act pertaining to tenancy termination, rent-recovery etc. (but not if respect of fair rent or accommodation control) are pending for over two years in the Cities of Bangalore, Mysore, Hubli, Mangalore and Belgaum. The delay in the disposal of the cases by the Courts of Munsiffs is stated to be due to the fact that there are two tiers of appeals as well as the revisional Jurisdiction of

> the High Court. The Courts are at the same time pre-occupied with the disposal of complicated cases relating to immovable properties.

In order of avoid such delay in the cities, jurisdiction to entertain the above-mentioned class of House Rent Control cases has to be conferred on the Courts of the Civil Judge in the City of Bangalore and the Courts of Munsiff in other cities. Simultaneously, provision for appeals in the H.R.C. Act, to the Courts of District Judges has to be removed, as such removal will shorten the life of the Rent Control litigation. Instead, Revision petitions can be filed from the Courts of Munsiffs to District Judges in other Cities and from the Courts of District Judges direct to the High Court in the City of Bangalore. The Revision petitions now coming before the High Court are virtually second appeals. By eliminating the first appeal, a large segment of time and much expense to the litigants will be saved. Further, the Revision petitions to the High Court or District Courts are not very expensive. The High Court which has been consulted has also opined that the wording of the revisional jurisdiction under the H.R.C. Act is wide enough to go into the questions of not merely jurisdiction of law, but also of facts. The greatest benefit of the proposed amendment is that high level consideration to a case and to the aggrieved party will be given in one final forum instead of making him traverse one or two intermediate Courts of lower level." By the amendment in Section 48, sub-section (1) which had made a provision for appeal, has been omitted thereby taking away the right of appeal and instead remedy by way of revision only has been provided. Now under Section 50 a revision lies to the High Court against any order passed or proceeding taken by the Court of Civil Judge under the Act or any order passed by the Controller under Sections 14, 15, 16, or 17 of the Act, while under sub-section (2) from the order passed or proceeding taken by the Court of Munsiff referred to in Clause (iii) of clause (d) of Section 3 a revision shall lie before the District Judge. So far as the right to challenge, except as provided in Section 50 is concerned, no change has been made in sub-section (6) of Section 48 as even after the amendment, an order of the Court or the Controller, subject to the decision of the District Judge or the High Court, or of the relevant Appellate Authority shall be final and shall not be liable to be called in question in any Court of law whether in a suit or other proceeding or by way of appeal or revision. Further under sub-section (2) of Section 50 the decision of the District Judge has been made final. The question with which we are confronted is whether an aggrieved person has a right to file a Revision Petition under Section 115 of the Code of Civil Procedure against the order of the District Judge made under Section 50 of the Act. The point, so far as this Court is concerned, is not *res integra* as the same has been authoritatively decided in Krishnaji Venkatesh Shirodkar's case wherein it has been held thus :-

> "The second point for consideration is whether the declaration made in Section 50(2) that the order of the District Judge shall be final takes away the jurisdiction of this Court to exercise its powers of revision under Section 115 C.P.C. A doubt about the above question arose in view of some observations made by a Division Bench of this Court in *Diwakar Hegde v. Karkala Taluk Agricultural Produce Co-operative Marketing Society Ltd*[3]*.,* to the effect that when a statute declares that the decision of an authority shall be

final it cannot be questioned either in appeal or revision under the statute. The doubt, however, stands resolved by the decision of the Supreme Court in *Chhaganlal v. The Municipal Pradesh Corporation, Indore*[4], In that case Section 149 of the Madhya Pradesh Municipal Corporation Act, 1956, which provided that the decision of the District Court in an appeal filed against an order of the Municipal Commissioner was final, came up for consideration. Rejecting the contention that the said provision debarred the revisional jurisdiction of the High Court under Section 115 of C.P.C. over the order of the District Court passed in appeal, the Supreme Court observed :-

"The second contention is based on Section 149 of the Madhya Pradesh Municipal Corporation Act, 1956. It provides that an appeal shall lie from the decision of the Municipal Commissioner to the District Court when any dispute arises as to the liability of any land or building to assessment. Sub-section (1) of Section 149

[3]1975(2) Kar LJ 390

[4] AIR 1977 SC 1555

provides that the decision of the District Court shall be final. It was submitted that the decision of the District Court was, therefore, final and that the High Court was in error in entertaining a revision petition. This plea cannot be accepted for, under Section 115 of the C.P.C., the High Court has got the power to revise the order passed by Courts subordinate to it. It cannot be disputed that the District Court is a subordinate Court and is liable to the revisional jurisdiction of the High Court".

(Para 5)

In *Krishnadas Bhatija v. A.S. Venkatachala Shetty (dead) By Lrs*[5]*.,* Which was a case arising under the Principal Act after its amendment by the Amending Act, the Supreme Court observed as follows :

"The petitioner contends that the order of the High Court is without jurisdiction because under Section 50 of the Karnataka Rent Control Act, 1961, a revision does not lie to the High Court. We do not agree. Section 115 C.P.C. gives powers to the High Court to revise any order from the District Court, subject of course to the limitations set out therein. The narrow point then is as to whether the District Judge can be equated with a District Court. The High Court, following its own earlier decision, has held so. We agree that in the scheme of Karnataka Rent Control Act, the District Judge and the District Court are inter-changeable expressions and nothing turns on the mere fact that the Section uses the expression "District Judge". Section 115 C.P.C. therefore, applies and the revisional jurisdiction is vested in the High Court."

In view of the above decision of the Supreme Court it has to be held that the fact that the order or the District Judge under Section 50(2) is made final, does not affect the jurisdiction of this Court under Section 115 of the Code of Civil Procedure to revise the orders of the District Judge made under Section 50(2) in the absence of any express words in the statute taking away such jurisdiction." As is evident from the aforesaid observations, in coming to the conclusion the

learned Judges of the Full Bench have placed reliance on the judgment of the Supreme Court rendered by 3 learned Judges in Chhaganlal's case and the judgment of 2 learned Judges in Special Leave Petition (Civil) No. 913/78. That Special Leave Petition arose under the Act of 1961 wherein the Supreme Court has held that the High Court has the power under Section 115 C.P.C. to revise an order passed by the District Court under Section 50 of the Act.

5. If the matter had rested here, there would not have been any controversy, but after the decision of the Full Bench in Krishnaji Venkatesh Shirodkar's case, two decisions of the Supreme Court have been rendered i.e., one in Vishesh Kumar's case and the other in *Aundal Ammal v. Sadasivan Pillai*[6], It was on the basis of the judgment of the Supreme Court in Vishesh Kumar's case that the questions posed by the Division Bench had to be referred for decision to a larger Bench. After the reference, the latest judgment of the Supreme Court in Aundal Ammal's case has also been rendered. It is in the wake of these two judgments that we are required to decide whether the law laid down in Krishnaji Venkatesh Sirodkar's case still survives.

[5] SLP (Civil) No. 913 of 1978 dated 13th February, 1978
[6] AIR 1987 SC 203 : 1987(1) RCJ 62 (S.C)

6. Before, I advert to the points debated before us, it would be appropriate to advert to the two cases of the Supreme Court referred to in para 5 above and the view taken therein.

7. In *Vishesh Kumar v. Shanti Prasad (supra)* two questions arose for consideration, viz.,

> "(1) Whether the High Court possesses revisional jurisdiction under Section 115 Code of Civil Procedure in respect of an order of the District Court under Section 115 disposing of a revision petition ?
> (2) Whether the High Court possesses revisional jurisdiction under Section 115 against an order of the District Court under Section 25, Provincial Small Causes Courts Act disposing of a revision petition ?"

After considering the various amendments, in para 13 of the report Pathak, J. (now My Lord the Chief Justice of India), speaking for the Court, observed thus :-

> "..... In determining whether the Legislature intended a further revision petition to the High Court, regard must be had to the principle that the construction given to a statute should be such as would advance the object of the legislation and suppress the mischief sought to be cured by it. It seems to us that to recognise a revisional power in the High Court over a revisional order passed by the District Judge would plainly defeat the object of the legislative scheme. The intent behind the bifurcation of jurisdiction to reduce the number of revision petitions filed in the High Court would be frustrated. The scheme would, in large measure, lose its meaning. If a revision petition is permitted to the High

> Court against the revisional order of the District Court arising out of a suit of a value less than Rs. 20,000/-, a fundamental contradiction would be allowed to invade and destroy mental contradiction would be allowed to invade and destroy the division of revisional power between the High Court and the District Court for the High Court would then enjoy jurisdictional power in respect of an order arising out of a suit of a valuation below Rs. 20,000/-. That was never intended at all."

(emphasis supplied by us)

Ultimately on Question No. 1, it has been held that the High Court is not vested with the revisional jurisdiction under Section 115 C.P.C. over a revisional order made by the District Judge under that Section. On question No. 2 again it has been held in para 19 that an order passed under Section 25 of the Provincial Small Causes Courts Act by a District Court is not amenable to the revisional jurisdiction of the High Court under Section 115 C.P.C.

8. In *Aundal v. Sadasivaan Pillai, (supra)* the case arose out of a dispute relating to a portion of the ground-floor of three-storeyed building situated in one of the busiest commercial areas Pazhavangadi of the City of Trivandrum where the appellant had been conducting a tea shop by name 'Sourashtra Hotel'. In the adjacent rooms on the ground-floor, the landlord was conducting a business in textiles namely "Sarada Textiles". The tenant began on 12th June, 1965. The tenancy was taken by the husband of the appellant. The rent was Rs. 140/- per month. The husband of the appellant died. Thereafter, the appellant had been conducting the business from there. On or about 15th April, 1976 the respondent purchased a three-storeyed building. The petition schedule premises was a portion of the ground-floor of the said three-storeyed building. It was the case of the appellant that there were seven rooms on the first-floor of the said building out of which four were in possession of the respondent and three rented out as aforesaid. The premises on the second floor were used by the respondent-landlord as a lodge. On 9th April, 1977, the respondent filed an application under Section 17 of the Kerala Buildings (Lease and Rent Control) Act 1965 (hereinafter referred to as 'the Kerala Act') to convert the non-residential building to a residential building. On 30th November, 1977 the Accommodation Controller rejected the said application. On 2nd June, 1978 the respondent filed the petition for eviction of the appellant on the ground of *bonafide* need of the premises in question for his residence. The Rent Control Court dismissed the respondent-landlord's petition for eviction on 31st December, 1978, appeal of the respondent-landlord was also dismissed by the Rent Control Authority on or about 2nd July, 1979. On 28th March, 1980, the revision petition filed by the respondent-landlord was also dismissed by the District Court. The High Court was moved by the respondent-landlord under Section 115 C.P.C. By order dated 20th August, 1985, the High Court by its impugned order set aside all the orders of the Courts below. The tenant then preferred an appeal to the Supreme Court under Article 136 of the Constitution. Though several contentions were raised, yet the one question with which we are directly concerned was whether a revision under Section 115 C.P.C. lay to the High Court from a revisional order passed under Section 20 of the

Kerala Act. The provisions of the Kerala Act which came up for consideration may be reproduced for facility of reference :-

> "11(3). A landlord may apply to the Rent Controller for an order directing the tenant to put the landlord in possession of the building if he *bonafide* needs the building for his own occupation or by any member of his family dependent on him.

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18. APPEAL : (1) (a) The Government may, by general or special order notified in the Gazette, counter on such officers and authorities not below the rank of a Subordinate Judge the powers of appellate authorities for the purposes of this act in such areas or in such classes of cases as may be specified in the order.

> (b) any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the Appellate Authority having jurisdiction. In computing the thirty days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded.
> (2) On such appeal being preferred, the Appellate Authority may order stay of further proceedings in the matter pending decision on the appeal.
> (3) The Appellate Authority shall send for the records of the case from the Rent Control Court and after giving the parties an opportunity of being heard and if necessary, after making such further inquiry as it thinks fit either directly or through the Rent Control Court, shall decide the appeal.

Explanation : The Appellate Authority may while confirming the order of eviction passed by the Rent Control Court, grant an extention of time to the tenant for putting the landlord in possession of the building.

> (4) The Appellate Authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent.
> (5) The decision of the Appellate Authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any Court of law, except as provided in Section 20.
> xxx xxx xxx

20. REVISION : (1) In cases where the Appellate Authority empowered under Section 18 is a Subordinate Judge, the District Court, and in other cases the High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under his Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings and may pass such order in reference thereto as it thinks fit.

(2) The costs of and incidental to all proceedings before the High Court or District Court under sub-section (8) shall be in its discretion."

The contention that was raised before the Supreme Court was that Section 18(5) read with Section 20 of the Kerala Act had completely ousted the High Court's jurisdiction to interfere with this matter under Section 115 C.P.C. While dealing with the aforesaid point, Sabyasachi Mukharji, J. speaking for the Court, has observed thus :-

"16. In *Kydd v. Watch Committee of City of Liverpool*[7], at pp. 331-332, Lord Loreburn LC, construing the provisions of Section 11 of the Police Act, 1890 of England which provided an appeal to quarter sessions as to the amount of a constable's pension, and also stipulated that the Court shall make an order which would be just and final observed :
'Where it says, speaking of such an order, that it is to be final, I think it means there is to be an end of the business at quarter sessions -'

17. The said observation could most appropriately be applied to the expression used by the legislature in sub-section (5) of Section 18 of the Act in question. It means what it says that subject to the decision of the Appellate Authority, the decision of the Rent Controller shall be final and could only be questioned in the manner provided in Section 20 and in no other manner. The intention of the legislature in enacting the said Act is to say, to regulate the leasing of buildings and to control the rent of such buildings and to provide a tier of Courts by themselves for eviction of the rented premises. This is writ large in the different provisions of the Act. This Court, referring to the different observations of Lord Loreburn, LC in the case of *South Asia Industries Pvt. Ltd. v. S.B. Garup Singh*[8], observed at page 766 (of SCR) : (at P. 1447 of AIR) of the report that the expression 'final' *prima facie* means that an order passed on appeal under the Act was conclusive and no further appeal lay. This Court was construing Sections 39 and 43 of the

[7](1908) AC 327
[8](1965)2 SCR 756 : (AIR 1965 SC 1442)

Delhi Rent Control Act, 1958 and the effect thereof
in the context of Letters Patent Appeal. There Sections 39 and 43 provided as follows :

'Section 39. (1) Subject to the provisions of sub-section (2), an appeal shall lie to the High Court from an order made by the Tribunal within sixty days from the date of such order.
(2) No appeal shall lie under sub-section (1), unless the appeal involves some substantial question of law.
Section 43. Save as otherwise expressly provided in this Act, every order made by the Controller or an order passed on appeal under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings'.
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> 24. It was urged that in case we are of the opinion that a revision under Section 115 of the Code of Civil Procedure does not lie, the case should be remitted to the High Court for consideration as a petition under Article 227 of the Constitution. We are unable to accede. A petition under Article 227 of the Constitution is different from revision under Section 115 of the Code of Civil Procedure . The two procedures are not interchangeable though there are same common features. It must, however, be emphasised that we are not dealing in this appeal with the Constitutional powers of the High Court under Article 227 of the Constitutional nor are we concerned with the powers of the High Court regulating appeals under the Kerala High Court Act, 1958. We are concerned in this case whether the High Court, in view of the scheme of the Act, had jurisdiction to interfere under Section 115 of the Code of Civil Procedure . We reiterate that to vest the High Court with any such jurisdiction would be contrary to the scheme of the Act, would be contrary to the public policy, and would be contrary to the legislative intent as manifest from the different sections of the Act."

(emphasis supplied by us)

9. As earlier observed, it is these two decisions of the Supreme Court in the light of which it has to be determined whether the law laid down in Krishnaji Venkatesh Shirodkar's case is still a good law. For facility of reference, the relevant observations of the Supreme Court in the two judgments have been reproduced in extenso and an analysis of the observations reproduced above, in our view, leaves no room for any doubt that the law laid down in Krishnaji Venkatesh Shirodkar's case no more survives. In Aundal Ammal's case, the provisions of the Kerala Buildings (Lease and Rent Control) Act 1965 are *pari materia* with the provisions in our Rent Act.

10. Section 18(5) of the Kerala Rent Act is similar to Section 48(6) of the Karnataka Rent Control Act, while Section 20 is in *pari materia* with Section 50. As is evident from the aims and objects, the amendments were brought in the Act with a view to eliminate delay in the disposal of cases under the Rent Act pertaining to the tenancy termination, rent recovery etc. By making the amendment, the intention of the legislature is clear that it wished to provide a tier of Courts by themselves for the matters arising out of the Rent Act. As is clear from sub-section (6) of Section 48, the decision of the District Court or the High Court and subject to such decision an order of the Court of the Controller shall 'be final' and shall not be liable to be called in question in any Court of law whether in a suit or other proceeding or by way of appeal or revision. Under Section 50 a revision is provided against any order passed or proceeding taken by the Court of Civil Judge or any order passed by the Controller under Sections 14, 15, 16 or 17 to the High Court and against an order or proceeding taken by the Court of Munsiff referred to in sub-clause (iii) of Clause (d) of Section 3 to the District Judge. The scope of exercise of revisional power is again indicated in Section 50.

11. From the scheme of our Act, filing of a Revision under Section 115 of the C.P.C. to this

Court against the order of the District Judge cannot be envisaged. The scheme of the Act does not warrant a conclusion that two revisions are permissible. The intention of the Legislature in enacting the amended provisions is clear and manifest. It has provided a self sufficient complete machinery for adjudication of matters under the Rent Act. There is no ambiguity in the provisions. The Legislature had made the decision as provided under Section 48(6) final and such orders have been made immune from challenge in a suit or other proceeding or by way of appeal or revision. It may be emphasised here that the language employed in sub-section (6) of Section 48 making the order immune from any challenge is more strong than the language of sub-section (5) of Section 18 of the Kerala Rent Act. Here it is specifically stated that the order shall not be liable to be called in question in any Court of law whether in a suit, or other proceeding or by way of appeal or revision. While excluding the jurisdiction, what more could be said by the Legislature we fail to understand. The observations of the Supreme Court in Aundal Ammal's case that it is inconceivable to have two revisions and that to vest the High Court with any such jurisdiction (i.e. under Section 115 of the C.P.C.) would be contrary to the scheme of the Act, would be contrary to the public policy and would be contrary to the legislative intent as manifest from the different sections of the Act, squarely apply to the facts of our case. In this view of the matter there can hardly be any escape from this conclusion that Section 48(6) read with Section 50 of the Act completely inhibits further revision.

12. But the learned counsel appearing for the petitioner made a vain effort of distinguishing the said two judgments and in persuading us to hold that the view enunciated in Full Bench case still holds the field.

13. Arguments on behalf of the petitioner were opened by Sri V. Krishna Murthy, a Senior Counsel of this Court. As the point raised was likely to affect a large number of cases, we allowed the other learned Single Judge also to intervene. Sarvashri N.A. Mandagi, Ganapathi Bhat, R.B. Guttal, S.P. Shankar, R.U. Goulay also advanced arguments for the proposition that a revision is maintainable under Section 115 of the C.P.C. against the order of the District Judge. On the other hand, Sri Narasimha Murthy, Senior Advocate and Sri B.P. Holla advanced arguments controverting the stand taken on behalf of the petitioner.

14. The first point that was sought to be made out on behalf of the petitioner was that the amendment sought to be introduced in Sections 48 and 50 of the Act through Amendment Act No. 31/1975 by the State Legislature cannot affect the jurisdiction of the High Court under Section 115 of the C.P.C. inasmuch as the Amendment Act falls under Entry 6 and 7 of the Concurrent List of the VII Schedule of the Constitution, that the provisions of the State Act are repugnant to the provisions of the Central Act (i.e. Section 115 of the C.P.C.) and that as the procedure laid down in Article 254(2) of the Constitution has not been followed, by such legislation the Court's jurisdiction could not be affected.

15. On the other hand what was contended by the learned counsel for the respondents was that the Rent Control Act is a special enactment, that there is no Central Law, that by the amending

Act only jurisdiction has been provided for dealing with or hearing the matters arising out of the Rent Act, that the Act in question is neither repugnant to nor impinges on any provision of a Central Act, that under Entry No. 46 of the Concurrent List jurisdiction could be conferred by the State Legislature, that the two provisions of the Amendment Act deal with the jurisdiction of the Court, and that the State Legislature was fully competent to confer jurisdiction with regard to matters enumerated in List-III which includes the entries under which the Rent Control Act falls. Mr. Narasimha Murthy had also sought to argue that impugned legislation does not fall in any Entry in Concurrent List but falls exclusively under Entry 18 of List-II i.e. Land.

16. After giving our thoughtful consideration to the entire matter, we find no merit in the point canvassed on behalf of the petitioner. Entry 6 of List-III (Concurrent List) deals with transfer of property other than agricultural land; registration of deeds and documents. Entry 7 deals with contracts including partnership, agency, contracts of carriage and other special forms of contracts, but not including contracts relating to agricultural lands. Entry 13 talks of Civil Procedure, including all matters included in the Code of Civil Procedure at the commencement of the Constitution, limitation and arbitration. Entry 46 refers to jurisdiction and powers of all Courts except the Supreme Court with respect to any of the matters in this List. At this stage, Article 254 of the Constitution be also noticed, which reads as under :

"254. INCONSISTENCY BETWEEN LAWS MADE BY PARLIAMENT AND LAWS MADE BY THE LEGISLATURES OF STATES :

> (1) If any provision of law made by the Legislature of a State is repugnant to any provision of law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2) the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.
> (2) Where a law made by the Legislature of a State with respect to any of the matters enumerated in the Concurrent List contains any provision repugnant to the provision of an earlier law made by the Parliament or an existing law with respect to that matter, then, the law made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :
> Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to amending varying or repealing the law so made by the Legislature of the State."

There is no dispute that the amending Act has not received the assent of the President, and that the original Act has received the assent of the President. A reference to the provision of the amending Act would show that the only change brought about by the amending Act is with

regard to the jurisdiction of the Courts pertaining to the matters arising out of the Rent Act.
17. In order to succeed, the petitioners have to show that the provisions of the amending Act are repugnant to some law made by the Parliament on the same topic. The law with reference to which repugnancy is claimed is Section 115 of the Code of Civil Procedure . The thrust of the argument on behalf of the petitioner was that by taking away the revisional jurisdiction in the case in which power of revision is exercised by the District Court under the amending Act, a law has been made by the Legislature which is repugnant to Section 115 of Code of Civil Procedure. We are unable to agree with this line of reasoning.

18. The question, though lot of arguments were advanced, whether rent law falls in Entries 6 and 7 of List-III (Concurrent List) or Entry 18 of List-II (State List), need not be adverted to and opined as for determining the real controversy it is not necessary to do so. The original Act has received the assent of the President and its validity is not under challenge. By the amending Act certain provisions have been made regarding the exercise of jurisdiction by the Courts on matters arising out of the Act. The impugned legislation apparently falls under Entry 46 which deals with the jurisdiction and powers of all Courts except the Supreme Court with respect to any of the matters in this list. Under this Entry the State Legislature has jurisdiction to confer special jurisdiction on Courts within the State with respect to the matter over which it can legislate. If the rent control law falls under Entries 6 and 7, then the provision which confer special jurisdiction on Courts specified in the law and restrict the general jurisdiction of the Courts in respect of matters falling under those Entries, fall under Entry 46 of List-III and therefore validly enacted by the State Legislature. The first condition to attract the principle of repugnancy incorporated in Article 254(2) of the Constitution of India in respect of the provision of any State law is that both the State Law and the Central Law on the basis of which repugnancy is sought to be made out, must be in respect of the same matter. That circumstances itself is absent in this case. There is no Central Law corresponding to the Rent Control legislation. Section 115 of the C.P.C. is a general provision which confers general jurisdiction on the High Court and the C.P.C. is a law which falls under Entry 13 of List-III. Therefore, as held by the Supreme Court in the case of State of *Bombay v. Narottamdas*[9] Page 85, as soon as special legislative power is exercised, the causes that arise in respect to those subjects would then only be heard in jurisdictions created by those statutes and not in the Courts of general jurisdiction entrusted with the normal administration of justice. In the language of Section 9 C.P.C. jurisdiction of all the general Courts will then become barred by those statutes. On this principle, when the jurisdiction of Courts under the provisions of the Rent Control Act is specified and the jurisdiction of all other Courts is excluded as done under Section 48 of the Act, the applicability of Section 115 of the C.P.C. a general provision, stands excluded. Under the Special enactment, jurisdiction has been conferred specially on certain Courts to deal with the conferred for dealing with the matters arising out of the Act specifically on the Courts. To emphasize, a revision lay under the old Act to High Court against an order passed in appeal by the District Court. That revision lay under the Act and not under Section 115 of the C.P.C. The power of revision conferred under the Act is different from the power exercisable under Section 115 of the C.P.C. By conferring a revisional power under the

Act, the power of revision under Section 115 of the C.P.C. has been excluded. There can be no gainsaying that special rights and liabilities can be created under a statute and a special forum for redressal of the grievances arising out of the statute can be provided

[9] AIR 1951 SC 69

resulting in the exclusion of the remedy available under the common law. In this manner, what has been done by the State Legislature is that by virtue of Entry 46, legislation is made under which jurisdiction is exclusively conferred on certain Courts to deal with matters arising out of the Rent Control Act. In this view of the matter, we are unable to hold that the law made by the Legislature is repugnant to any Central Law.

19. We have dealt with the aforesaid point as it was urged before us. In case on question No. 2 we hold that in view of the later judgments of the Supreme Court the law laid down in Krishnaji Venkatesh Shirodkar's case no more survives, then question No. 1 has straight-away to be answered in the negative. Thus the real question which has to be decided is whether the later judgments of the Supreme Court are applicable to the facts of the case in hand or not. If on that point we give a finding in the affirmative, as we have already found that they directly apply and squarely cover the case in hand, then the only point that would require decision would be as to which of the judgments of the Supreme Court we should follow, as the Full Bench judgments of this Court in Krishnaji Venkatesh Shirodkar's case also relies on the two judgments of the Supreme Court for arriving at a conclusion that revision under Section 115 of the C.P.C. is maintainable.

20. It was contended by the learned counsel for the petitioner that the judgment in Krishnaji Venkatesh Shirodkar's case is based on the judgment of the Supreme Court in *Chhaganlal v. Municipal Corporation, Indore (supra)* that the decision of the Supreme Court in Chhaganlal's case is rendered by three learned Judges while the two later decisions of the Supreme Court have been given by two learned Judges and that Chhaganlal's case being of larger Bench has to be preferred over the two judgments of the Supreme Court, which are of a Smaller Bench. According to the learned counsel, as the view of the Full Bench in Krishnaji Venkatesh Shirodkar is based on the decision of the Supreme Court in Chhaganlal's case the said view cannot be held to be no more good law on the basis of the later two judgments of the Supreme Court rendered by smaller Benches.

21. It was also contended that in the Full Bench judgment reliance was also placed on Krishnadas Bhatija's case wherein the precise question relating to the maintainability of revision under Section 115 of the C.P.C. was involved, that the said SLP had arisen out of a case under the Karnataka Rent Act and that the said SLP decision has to be preferred over the two decisions of the Supreme Court.

22. After giving our considered thought, in the circumstances of the case, we find ourselves unable to agree with the learned counsel for the petitioner. So far as Chhanganlal's case is concerned, the provisions of the Madhya Pradesh Municipal Corporation Act, 1956 are not in

pari materia with the provisions of the Rent Act. It has already been brought out in the earlier part of the judgment that the language of Section 48(6) is unambiguous and leaves no scope for holding that revision could lie under Section 115 of the C.P.C. It has also been brought out that the provisions of the Kerala Rent Act are similar to the provisions of our Rent Act. In our view, Chhaganlal's case is distinguishable as it was dealing with the provisions not similar to the one with which we are concerned.

23. Coming to the Special Leave Petition in Krishnadas Bhatija's case it is correct that the petition arose out of the provisions of the Karnatka Rent Act. It was sought to be argued by the learned counsel for the respondents that the said decision was rendered without issuing notice to the respondents and that the same did not lay down any law. It was also submitted that in view of the Full Bench decision of this Court in *Govindnaik G. Kalaghatgi v. West Patent Press Co. Ltd*[10]. if there is any conflict between the decision of co-equal Benches of the Supreme Court, then the later view should be allowed. In this view of the matter, with respect, we have to follow the view in Aundal Ammal's case which is later in point of time.

24. Another point sought to be raised by Sri Krishna Murthi, Senior Counsel for the petitioner, was that the District Judge decides the case as a Court and not persona designata, that power of revision exercisable under Section 50 is different from the power exercisable under Section 115 of the C.P.C. and that for the purpose of the exercise of power under Section 115 of the C.P.C. the provisions of Section 48(6) could not be a bar. This contention of the learned counsel is straight away liable to be rejected in view of our conclusion on the first point.

25. No other point arises for consideration :

26. For the reasons recorded above, our answer to the two questions is as follows :

> (i) In view of the judgments of the Supreme Court in Vishesh Kumar and Aundal Ammal's case, a revision under Section 115 of the C.P.C. does not lie to the High Court from a revisional order made by a District Judge under sub-section (2) of Section 50.
> (ii) That in view of the two later judgments of the Supreme Court in Vishesh Kumar and Aundal Ammal' cases, the law laid down in Krishnaji Venkatesh Shirodkar's case is no more a good law.

Order accordingly.

[10] AIR 1980 Kar 92