MADHYA PRADESH HIGH COURT

B. Jhonson

Vs.

C.S. Naidu

M.C.C. No. 409 of 1984
(J.S. Verma and K.K. Adhikari, JJ.)

09.08.1985

JUDGMENT

J.S. Verma, J.

1. The main question for decision in this case is the constitutional validity of the amendments made in the M.P. Accommodation Control Act, 1961, by the two amending Acts, namely, M.P. Accommodation Control (Amendment) Act, 1983 (M.P. Act No. 27 of 1983) and the M.P. Accommodation Control Amendment) Act, 1985, (M.P. Act No. 7 of 1985). The M.P. Act No. 7 of 1985 replaces the M.P. Accommodation Control (Amendment) Ordinance, 1985, (No. 1 of 1985), and, therefore, reference to the Ordinance is now not necessary.

2. The petitioner is a tenant of the respondent and proceeding was commenced by the respondent for eviction of the petitioner before the Rent Controlling Authority on the ground of respondent's *bonafide* need, which is governed by Section 23-A of the amended Act. The petitioner filed an application under Section 113 C.P.C. before the Rent Controlling Authority for a reference to be made to this Court for deciding the Constitutional validity of the amended provisions, but the same having been rejected, this petition under Article 228 of the Constitution has been filed for the same purpose. This is how the question of vires of the aforesaid Amendment Acts arises for decision in this case.

3. In the M.P. Accommodation Control Act, 1961, (hereinafter called the 'Principal Act'), several clauses in sub-section (1) of Section 12, contain the grounds on which a tenant may be evicted. Clauses (e) and (f) therein contain grounds for eviction of the tenant on the basis of *bonafide* requirement of accommodation for residential or non-

residential purposes respectively. A suit for eviction is required to be filed in the Civil Court on one or more of these grounds permitting eviction. The purpose of enacting the M.P. Accommodation Control (Amendment) Act, 1983 (hereinafter called the '1983 Amendment Act') is primarily to provide for the expeditious trial of eviction cases on ground of *bonafide* requirement of the landlord and for matters connected therewith or incidental thereto. The effect of this amendment substantially was to omit clauses (e) and (f) from sub-section (1) of Section 12 of the Principal Act as well as sub-sections (4), (5) and (6) therein, to amend Section 13; to omit Sections 17, 20-A and 20-AA; and to insert a new Chapter III-A in the Principal Act in order to provide for eviction of tenants on grounds of *bonafide* requirement, containing Sections 23-A to 23-I. A new Section 35 was substituted to give powers of the civil Court to the Rent Controlling Authority for execution of an order made under Chapter III-A; and Section 43 was amended by substitution of sub-section (4) therein to provide for penalty for re-letting or transfer of any part of the accommodation in contravention of sub-sections (3) or (4) of Section 23-G, Section 12 of the Amendment Act provided for the pending suits and proceedings in the civil Courts. The net result of the amendments made by the 1983 Amendment Act was the grounds of *bonafide* requirement of the landlord, which were earlier contained in clauses (e) and (f) of sub-section (1) of Section 12 of the Principal Act, were now in Section 23-A and proceedings for eviction of tenants on these grounds were to lie before the Rent Controlling Authority, governed by the special procedure enacted in the newly added Chapter III-A; and the pending suits and proceedings were to be governed by Section 12 of the Amendment Act.

4. Some time after these amendments, it was felt that proceedings for eviction of the tenants on the grounds of *bonafide* requirement of landlords need not go before the Rent Controlling Authority to be disposed of in accordance with the special procedure in case of all categories of landlords and that this special procedure governing the proceedings before the Rent Controlling Authority should be available only to certain specified categories of landlords. Accordingly, the Principal Act was further amended by the M.P. Accommodation Control (Amendment) Ordinance, 1985, (Ordinance No. 1 of 1985). This Ordinance has been subsequently replaced by the M.P. Accommodation Control (Amendment) Act, 1985 (No. 7 of 1985), (hereinafter called the '1985 Act'). In view of this Act replacing the Ordinance which is to the same effect it is sufficient to refer only to the provisions of the 1985 Amendment Act and the effect thereof.

5. The statement of objects and reasons of the 1985 Amendment Act, stated that the amendment made in 1983 was 'to provide a special forum for expeditious disposal of eviction proceedings filed by landlords in general on the ground of *bonafide* need'; but 'it was brought to the notice of the Government that the new forum provided by the amendment was being misused by certain landlords to evict tenants'; and, therefore, it was proposed to restrict the application of the provision relating to the new forum only to the specified categories of landlords, like retired Government servants, including members of Defense Services, widows and divorced wife and physically handicapped persons, etc.' This 1985 Amendment Act inserted a new Section 23-J in Chapter III-A of the Principal Act, defining 'landlord' for the purpose of Chapter III-A, and also added a new Section 11-A, saying that availability of the new forum and the special procedure was confined only to landlords of the categories specified in Section 23-J. Simultaneously Section 12 of the Principal Act has been re-amended to once again interest clauses (e) and (f) in sub-section (1), and sub-sections (4), (5) and (6) have been restored therein; new Section 17 for recovery of possession in certain cases was also restored. In sub-section (3) of Section 23-D only consequential amendment has been made on account of benefit of Chapter III-A being confined only to landlords specified in Section 23-J. Section 43 was further amended to punish re-letting or transfer of whole or any part of the accommodation in contravention of Section 17. Section 9 of the amending Act provides for transfer of pending proceedings. The consequence of this amendment is that, in respect of landlords not covered by Section 23-J, the original forum of civil Court and the general procedure therein has been restored for eviction of tenants also on the ground of *bonafide* requirement.

6. The challenge made is essentially to the validity of Section 11-A, introduced in the Principal Act by the 1985 Amendment Act, Section 23-A to Section 23-J, introduced as Chapter III-A by these two amending Acts; Section 12 of the 1983. Amendment Act and Section 9 of the 1985 Amendment Act providing for pending proceedings. It is, therefore, only these provisions which are reproduced for ready reference as under :-

PRINCIPAL ACT

> "*Section 11-A. Certain provisions not to apply to certain categories of landlords.* - The provisions of this Chapter so far as they relate to matter specially provided in Chapter III-A shall not apply to the landlord defined in Section 23-J."

x x x x

CHAPTER III-A

"Eviction of tenants on ground of '*bonafide*' requirement.

Section 23-A. Special provision for eviction of tenant on ground of bonafide requirement. - Notwithstanding anything contained in any other law for the time being in force or contract to the contrary, a landlord may submit an application, signed and verified in manner provided in Rules 14 and 15 of Order 6 of the First Schedule to the Code of Civil Procedure, 1908, (V of 1908) as if it were a plaint to the Rent Controlling Authority on one or more of the following grounds for an order directing the tenant to put the landlord in possession of the accommodation, namely :-

(a) That the accommodation let for residential purpose is required '*bonafide*' by the landlord for occupation as residence for himself or for any member of his family, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned.

Explanation. - For the purpose of this clause, 'accommodation let for residential purposes' includes –

(i) any accommodation which having been let for use as a residence is without the express consent of the landlord, used wholly or partly for any non-residential purpose;
(ii) any accommodation which has not been let under an express provision of contract for non-residential purpose :
(b) That the accommodation let for non-residential purpose is required '*bonafide*' by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters, if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned :
Provided that where a person who is a landlord has acquired any accommodation or any interest therein by transfer, no application for eviction of

tenant of such accommodation shall be maintainable at the instance of such person unless a period of one year has elapsed from the date of such acquisition.

23-B. Rent Controlling Authority to issue summons in relation to every application under Section 23-A. –

(1) The Rent Controlling Authority shall issue to the tenant a summons, in relation to every application referred to in Section 23-A, in the form specified in the Second Schedule.

(2) Save as otherwise provided in this Act, the provisions of Order 5 and Order 16 of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) regarding issue and service of summons to a defendant and summoning and attendance of witnesses to give evidence or to produce documents shall apply 'mutatis mutandis' to issue and service of any summons to a tenant or opposite party or to a witness to give evidence or to produce documents in an inquiry or proceeding under this Chapter.

23-C. Tenant not entitled to contest except under certain circumstances. –

(1) The tenant on whom the summons is served in the form specified in the Second Schedule shall not contest the prayer for eviction from the accommodation unless he files within fifteen days from the date of service of the summons, an application supported by an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Controlling Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or in default of his obtaining such leave or if such leave is refused, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant. The Rent Controlling Authority shall in such a case pass an order of eviction of the tenant from the accommodation :

Provided that the Rent Controlling Authority may, for sufficient cause shown by the tenant, execute the delay of the tenant in entering appearance or in applying for leave to defend the application for eviction and where '*ex parte*' order has been passed, may set it aside.

(2) The Rent Controlling Authority shall within one month of the date of receipt of application, give to the tenant, if necessary, leave to contest the application, if

the application supported by an affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in Section 23-A.

23-D. Procedure to be followed by Rent Controlling Authority on grant of leave to the tenant to contest. –

(1) Where leave is granted to the tenant to contest the application, the Rent Controlling Authority shall commence the hearing of the application as early as practicable and decide the same, as far as may be, within six months of the order of granting of leave to the tenant to contest the application.

(2) The Rent Controlling Authority shall, while holding an inquiry in a proceeding to which this Chapter applies, follow as far as applicable the practice and procedure of a Court of Small Causes including the recording of evidence under the Provincial Small Causes Courts Act, 1887 (IX of 1887). The Rent Controlling Authority shall as far as possible, proceed with hearing of the application from day to day.

(3) In respect of an application by a landlord it shall be presumed, unless the contrary is proved, the requirement by the landlord with reference to clause (a) or clause (b) as the case may be of Section 23-A is *bonafide*.

23-E Revision by High Court. –

(1) Notwithstanding anything contained in Section 31 or Section 32, no appeal shall lie from any order passed by the Rent Controlling Authority under this Chapter.

(2) The High Court may, at any time, '*suo motu*' or on the application of any person aggrieved for the purpose of satisfying itself as to the legality, propriety or correctness of any order passed by or as to the regularity of the proceedings of the Rent Controlling Authority call for and examine the record of the case and may pass such order in revision in reference thereto as it thinks fit and save as otherwise provided by this section, the High Court shall, as far as may be, exercise the same powers and follow the same procedure as it does for disposal of a revision under Section 115 of the Code of Civil Procedure , 1908 (V of 1908) as if any such proceeding of the Rent Controlling Authority is of a Court subordinate to such High Court :-

Provided that no powers of revision at the instance of person aggrieved shall be exercised unless an application is presented within ninety days of the date of the order sought to be revised.

23-F. Duration of stay. - The stay of the operation of the order of eviction passed by a Rent Controlling Authority or by the High Court shall not ensure for a total period of more than six months.

23-G. Recovery of possession for occupation and re-entry. –

(1) Where an order for the eviction of a tenant is made on the ground specified in clause (a) of Section 23-A, the landlord shall not be entitled to obtain possession thereof before the expiration of a period of two months from the date of the order.

(2) Where an order for the eviction of a tenant is made on the grounds specified in clauses (b) of Section 23-A, the landlord shall not be entitled to possession thereof -

(a) before the expiration of period of two months from the date of the order;

(b) if the accommodation is situate in cities of Gwalior (including Lashkar and Morar), Indore, Ujjain, Ratlam, Bhopal, Jabalpur, Raipur or Drug or such other towns or cities specified by the State Government by notification in that behalf, unless the landlord pays to the tenant such amount by way of compensation as may be equal to -

(i) double the amount of the annual standard rent of the accommodation in the following cases :-

(a) where the accommodation has, for a period of ten complete years immediately preceding the date on which the landlord files an application for possession thereof, been used for business purposes along with such purpose, by the tenant who is being evicted;

(b) where during the aforesaid period of ten years, the tenant carrying on any business in the accommodation has left it and the tenant immediately succeeding has acquired the business of his predecessor either through transfer or inheritance;

(ii) The account of the annual standard rent in other cases.

(3) where landlord recovers possession of any accommodation from the tenant in pursuance of an order made under clause (a) or clause (b) of Section 23-A,

the landlord shall not, except with the permission of the Rent Controlling Authority obtained in the prescribed manner, re-let the whole or any part of the accommodation within two years from the date of obtaining such possession, and in granting such permission the Rent Controlling Authority may direct the landlord to put such evicted tenant in possession of the accommodation.

(4) where a landlord recovers possession of any accommodation as aforesaid and the accommodation is not occupied by the landlord, if he is the owner thereof, or by the person for whose benefit the accommodation is held, within two months of obtaining such possession or the accommodation having been so occupied is, at any time, within two years from the date of obtaining possession re-let to any person other than the evicted tenant without obtaining the permission of the Rent Controlling Authority under sub-section (3) or the possession of such accommodation is transferred to another person for reasons which do not appear to the Rent Controlling Authority to be "*bonafide*", the Rent Controlling Authority may, on an application made to it in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the accommodation or to pay him such compensations as the Rent Controlling Authority thinks fit.

(5) Where the landlord makes any payment to the tenant by way of compensation under sub-section (2) the evicted tenant shall not be liable to refund the same to the landlord on being put in possession of the accommodation under sub-section (3) or sub-section (4).

23-H. Deposit of rent pending proceedings for eviction or for revision. - The provisions of Section 13 shall apply "*mutatis mutandis*" in respect of an application for recovery of possession of accommodation under Section 23-A and in respect of proceeding for revision under Section 23-E, against final order by the Rent Controlling Authority under Section 23-C or under Section 23-D as they apply to a suit or proceeding instituted on any of the grounds referred to in Section 12 :

Provided that no suit or proceeding for eviction of the tenant is pending before any Court at any of its stages in relation to the same accommodation.

23-I. False and frivolous application etc. - A landlord making a false or frivolous application under Section 23-A or a tenant seeking either permission to defend the application, or adjournment on false or frivolous or vexatious grounds may be saddled

with heavy compensatory costs not exceeding six months rent of the accommodation at a time as the Rent Controlling Authority may fix.

23-J. Definition of landlord for the purposes of Chapter III-A. For the purposes of this Chapter 'landlord' means a landlord who is –

(i) a retired servant of any Government, including a retired member of Defense Services; or
(ii) a retired servant of a company owned or controlled either by the Central or State Government; or
(iii) a widow or a divorced wife; or
(iv) physically handicapped person; or
(v) a servant of any Government, including a member of defiance services who, according to his service conditions, is not entitled to Government accommodation on his posting to a place where he owns a house or is entitled to such accommodation only on payment of a penal rent on his posting to such a place."

AMENDMENT ACT OF 1983

"*Section 12. Pending suits and proceedings in Civil Court.* -
(1) Subject to sub-section (2) all suits filed by landlords for eviction of tenants on the ground of '*bonafide*' requirement of accommodation for residential or non-residential purposes and pending on the date of commencement of this Act shall, unless the landlord withdraws the same in relation to such relief, be heard, proceeded with and disposed of by the Civil Courts as if this Act has not been passed.
(2) Any landlord seeking to evict the tenant exclusively on the grounds of '*bonafide*' requirement of the accommodation under Section 23-A of the Principal Act, may, if he has already proceeded against the tenant under clause (e) or clause (f) of sub-section (1) of Section 12 of the Principal Act, as it existed prior to the commencement of this Act, withdraw the suit in relation to said grounds with leave of the Court and proceed against the tenant in accordance with Section 23-A of the Principal Act."

AMENDMENT ACT OF 1985

"*Section 9. Transfer of pending application of Civil Court.* - An application filed by the landlord, other than that defined in Section 23-J to evict the tenant exclusively on the ground of '*bonafide*' requirement of accommodation under Section 23-A of the Principal Act before 16th January, 1985 and pending on such date before the Rent Controlling Authority shall stand transferred to a Civil Court of competent jurisdiction and such court shall proceed to dispose of the same in accordance with the provisions of Chapter III as if it were a plaint."

7. A large number of cases were filed in this Court when the 1983 amendment was made to challenge its validity. During the pendency of these matters, the 1985 amendment came to be made. Accordingly, a fresh batch of cases was filed to challenge the later amendment also, while a further challenge was added in the earlier cases as well. All these cases, classified differently as Misc. Petitions, Civil Revisions and Misc. Civil Cases were heard together on the common question of constitutional validity of these amendments and that question is being decided by this order which will dispose of that point in all such cases.

8. We shall first mention that substance of the provisions contained in Chapter III-A and the result thereof before taking up for consideration the grounds on which these amendments have been challenged.

9. Section 23-A makes a special provision for eviction of a tenant on the ground of *bonafide* requirement in respect of residential as well as non-residential accommodation. Clauses (a) and (b) therein lay down the grounds for eviction on the basis of the landlords *bonafide* need in the same manner in which it was provided in clauses (e) and (f) of sub-section (1) of Section 12 of the Principal Act. It also provides a new forum of the Rent Controlling Authority in place of the Civil Court for passing an order of eviction on these grounds. Section 23-B provides for issue of summons to the tenant by the Rent Controlling Authority and the procedure to be followed by the Rent Controlling Authority for service of summons to the tenant and the witnesses, which is substantially the same as in the Code of Civil Procedure. Section 23-C lays down that the tenant is not entitled to contest the landlord's application, unless he applies for grant of leave to contest within 15 days from the date of service, by an application supported by an affidavit, stating the grounds on which he seeks leave to contest. It also provides that on failure of the tenant to make such an application within the period specified, the statement made by the landlord in his

application for eviction shall be deemed to be admitted and the same result ensues where leave to contest is refused to the tenant. The Rent Controlling Authority is empowered to make an order of eviction in such cases, but it has also been given power to set aside the *ex parte* order in case sufficient cause is shown by the tenant for his failure to enter appearance or to apply for leave to defend within the specified period. The provision also requires the Rent Controlling Authority to decide the tenant's application for leave to defend within one month and it says that where the tenant discloses facts as would disentitle the landlord to recover possession, leave to defend shall be granted to him. Section 23-D lays down the procedure to be followed by the RCA on grant of leave to the tenant to contest. It requires the RCA to decide the landlord's application as far as may be within six months of the order granting the tenant leave to contest the application. The practice and procedure of a Court of Small Causes is to be followed by the Rent Controlling Authority and he has to proceed with the hearing of the applicant, as far as possible, from day to day. It is also provided in this section that it shall be presumed, unless the contrary is proved, that the requirement of the landlords of the categories specified in Section 23-J is *bonafide*. In other words, a rebuttable presumption is raised by sub-section (3) of Section 23-D in the landlord's favor of his *bonafide* requirement, which he has set up in the application. In sub-section (3) enacted by the 1983 Amendment Act, the categories of landlords later specified in Section 23-J, introduced by the 1985 amendment, had alone been mentioned to indicate that this presumption was available only in their favor and not the remaining landlords. However, when the 1985 amendment introduced Section 23-J and confined the benefit of Chapter III-A only to the landlords defined in Section 23-J, consequential amendment was made in sub-section (3) of Section 23-D, to retain the same result. Sub-section (1) of Section 23-E lays down that no appeal shall lie from any order passed by the Rent Controlling Authority under Chapter III-A and sub-section (2) provides a revision to the High Court. Section 23-F provides for duration of the stay order against an order of eviction. Sections 23-E and 23-F shall be considered at length later, since they are subject of an independent challenge. Section 23-G provides for recovery of possession for occupation and re-entry where an order of eviction has been made on the grounds specified in Section 23-A, and the ancillary matter. Section 23-H is for deposit of rent pending proceedings for eviction and it says that the provisions of Section 13 of the Principal Act shall apply *mutatis mutandis* in respect of proceedings in Chapter III-A. Section 23-I provides for imposition of compensatory costs in case of false and frivolous applications by the landlord and tenant.

10. As earlier stated, by the 1985 amendment, the new forum of the Rent Controlling Authority and the special procedure laid down in Chapter III-A have been confined only to landlords specified in Section 23-J inserted therein, making consequential amendments in the Principal Act. Section 9 of the 1985 Amendment Act provides for transfer of pending application to the Civil Court where the application was by the landlords other than those defined in Section 23-J. Section 12 of the 1983 Amendment Act and Section 9 of the 1985 Amendment Act will be dealt with separately later, since they too have been challenged independently.

11. The main challenge to the constitutional validity of these amendment is on the ground of hostile discrimination, offending Article 14 of the Constitution. It has been urged that providing new forum of Rent Controlling Authority, instead of the Civil Court, for eviction on the grounds of *bonafide* requirement, in case of all landlords by the 1983 Amendment Act and subsequently confining the same only to landlords falling in the categories specified in Section 23-J by the 1985 amendment, violates Article 14 of the Constitution in many ways. It is argued that the forum of the Rent Controlling Authority, presided by an executive officer, instead of the Civil Court, presided by a judicial officer, violates not only Article 14 but also the directive principle contained in Article 50, of separation of judiciary from the executive. It is urged that the classification also of the landlords by insertion of Section 23-J, resulting in application of Chapter III-A only to the landlords defined in Section 23-J amounts to hostile discrimination even between the landlords. It was further argued that the special procedure to be followed by the R.C.A. is too harsh and onerous and deprives the tenants of the protection available to them under the general procedure prescribed by the Code of Civil Procedure to be followed by the Civil Court. Undue harassment to the tenants resulting from more than one action initiated by the landlord where he seeks eviction also in the Civil Court on any ground other than that of *bonafide* requirement, is also alleged to offend Article 14. It was further contended that the object of the rent control legislation is primarily to protect the tenants from eviction but these amendments take away that protection by making the provisions favourable to the landlords. We shall first dispose of this general contention, which is the main challenge to the amended provisions.

12. Most of the points urged in support of the general challenge based on Article 14 of the Constitution are concluded by the Supreme Court's decision in *Kewal Singh v.*

Lajwanti, [1], wherein a similar challenge to similar provisions of the Delhi Rent Control Act, 1958, was rejected. In another decision of the Supreme Court, *Ravi Dutt Sharma v. Ratanlal Bhargava,* [2], challenge to the classification between landlords in order to provide benefit of the special procedure only to some of them constituting a distinct class, was upheld as permissible and reasonable classification. These two decisions, therefore, answer most of the arguments addressed to us to assail the constitutional validity of the amended provisions. We shall, therefore, first refer to the provisions to which challenge has to be rejected on the basis of these decisions and then take up the remaining provisions which requires separate consideration.

13. Section 23-J specifies the categories of landlord, who alone are entitled to the benefit of Chapter III-A. These categories are retired servants of the Government of Defense Services; retired servants of Government owned or controlled companies; widow or a divorced wife; physically handicapped person; or a servant of any Government or Defense Services, who is not entitled to his service condition to Government accommodation, on his posting to a place where he owns a house or is entitled to Government accommodation only on payment of penal rent. The test laid down by the Supreme Court in Ravi Dutt Sharma v. Ratanlal Bhargava, (supra) for permissible classification amongst the landlords for conferral of the benefit of the special procedure is fully satisfied by Section 23-J. These landlords specified in Section 23-J belong to special category distinct from the remaining landlords, who deserve the benefit of the special procedure on account of their need being more pressing and the handicap from which they suffer as compared to the remaining landlords, the object of the amendment being to provide for expeditious trial of eviction cases on the ground of *bonafide* requirement of the landlord. Confining this benefit only to these categories of the landlords specified in Section 23-J, on account of the greater handicap from which they suffer as compared to other landlords, after taking into account the misuse of the special procedure by certain landlords not falling in these categories, indicates a reasonable nexus of the classification with the object sought to be achieved by the legislature. Following the Supreme Court decision in Ravi Dutt Sharma's case (supra), the challenge to the classification of the landlords by enacting Section 23-J specifying certain categories of landlords only and simultaneously by Section 11-A confining the applicability of Chapter III-A to landlords defined in Section 23-J, is rejected.

14. An incidential argument advanced in connection with classification of landlords

may also be mentioned. It was urged that a retired servant of the Government etc. acquiring a house after his retirement and inducting a tenant thereafter may also claim to be within the ambit of clause (i) or (ii) of Section 23-J, as the case may be. It was argued that acquisition of a house after retirement does not justify his classification under this head. This point need not detain us since the answer is given by the Supreme Court in *Winifred Ross v. Fonseca,* [3] A similar provision in the Bombay Act was read down as conferring benefit only on those retired persons who were landlords while in service and avail the benefit after retirement in respect of a tenancy subsisting during his service. Section 23-J of the M.P. Act has to be construed accordingly and then there is no discrimination.

15. Section 23-A to Section 23-I are the remaining sections in Chapter III-A. The provisions contained in these sections are substantially similar to those of the Delhi Act, which were upheld as valid and not violative of Article 14 of the Constitution, in Kewal Singh's case (supra). However, an attempt to distinguish Kewal Singh's case (supra) was made with reference to a part of sub-section (1) and sub-section (2) of Section 23-G, sub-section (3) of Section 23-D, Section 23-E and Section 23-F. It is, therefore, necessary to consider only the attempted distinction between the M.P. Act and the Delhi Act.

16. We may briefly mention what was decided in Kewal Singh's case (supra). It was held by the Supreme Court that a reasonable classification is permissible in such cases and even though a summary procedure had been evolved the tenant had been afforded full opportunity to defend; and further safeguard by the provision for revision to the High Court and a review by the Rent Controlling Authority had been made. It is significant that the Supreme Court also reiterated and clarified that the Rent Control Act is a piece of social legislation, meant mainly to protect the tenant from frivolous eviction and at the same time to do justice to the landlords by making provisions which put only a reasonable restriction on their right to evict the tenant under the general law, without destroying their legal right to property as its owner. In other words, the rent control legislation attempts the balancing trick of protecting the tenant from frivolous eviction, while ensuring that only such restrictions are placed on the landlord's right to evict, which are sufficient to protect the tenant from frivolous eviction, without destroying the landlord's legal right to property as its owner. It is in this background that the impugned amendments to the M.P. Act have to be examined.

17. If the result of the impugned legislation is merely to simplify the procedure for eviction of tenants, in case the landlord requires the premises *bonafide* for his personal occupation, the provisions are not only in accord with the objective but also furtherance thereof. A similar summary procedure enacted in the Delhi Act was upheld by the Supreme Court in Kewal Singh's case, as permissible classification made by the legislature in public interest, which was in complete consonance with the objective sought to be achieved. It was pointed out that these salutary provisions were made to prevent frivolous pleas taken by the tenants to avoid eviction, even where the landlords need was genuine, requiring grant of speedy relief to him. It was also pointed out that the provisions ensure that if the tenant presents a plausible Defense, the landlord can be non-suited, if the Defense is ultimately accepted for which the tenant had opportunity. Their Lordships also pointed out that the rent control legislation restricted the landlord's right of eviction under the general law and, therefore, it was open to the legislature to decide the extent to which the landlord's right under the general law should remain curtailed in the changed circumstances. It is important to bear in mind this aspect, which is pointed out by their Lordships as under :

> "There is yet another important aspect of matter which may be mentioned here. Prior to the enactment of the Rent Control legislation in our country, the relationship of landlord and tenant was governed by our common law viz. the Transfer of Property Act (Sections 107 and 111). The tenant was inducted with his tacit agreement to be regulated by the conditions embodied in the contract and could not be allowed to repudiate the agreement reached between him and the landlord during the period. The tenant was, therefore, bound in law to vacate the premises either voluntarily or through a suit after he was given a notice as required by the Transfer of Property Act under the terms and conditions of the lease. However, as a piece of social reform in order to protect the tenant from capricious and frivolous eviction the legislature stepped in and afforded special protection to the tenant by conferring on him the status of a statutory tenant who could not be evicted except under the conditions specified and the procedure prescribed by the Rent Control Acts. Thus, to this extent, the agreement of lease and the provisions of the Transfer of Property Act stood superseded. At the same time, the Rent Control Acts provided the facilities of eviction to the landlord on certain specified grounds like *bonafide* personal necessity or default in payment of rent, etc. Thus, any right that the tenant possessed after the expiry

> of the lease was conferred on him only by virtue of the Rent Control Act. It is, therefore, manifest that if the legislature considered in its wisdom to confer certain rights or facilities on the tenant, it could, due to changed circumstances curtail, modify, alter or even take away such rights or the procedure enacted for the purpose of eviction and leave the tenants to seek their remedy under the common law."

(emphasis supplied)

18. We are now taking up the points of difference relied on as the distinguishing features in an attempt to distinguish the decision in Kewal Singh's case (supra). Sub-section (1) of Section 23-C lays down that in case of default in obtaining leave to defend or if such leave is refused to the tenant, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant. It then provides that 'the Rent Controlling Authority shall in such a case pass an order of eviction of the tenant from the accommodation'. It was argued that in this manner, the RCA has been left with no option and he is bound to make an order of eviction, once there is default on the part of the tenant to obtain leave or if it is refused. In other words, it is suggested that the Rent Controlling Authority is bound to make an order of eviction, even when the statement made by the landlord in his application for eviction does not make not a *prima facie* case for eviction. The apprehension on which this argument is founded is baseless, as such a situation is not contemplated by this provision. Section 23-A requires an application to be made by the landlord signed are verified in the manner provided in the Code of Civil Procedure, as if it were a plaint on one or more of the grounds for eviction relating to the landlord's *bonafide* requirement. The application contemplated is clearly an application in which the statement made by the landlord makes out a *prima facie* case for eviction of the tenant in case the statement remains uncontroverted and is deemed to be admitted by the tenant. Obviously, in such a situation, the deemed admission of the tenant makes out a ground for eviction and nothing more being required to be done by the Rent Controlling Authority, he has to pass an order of eviction of the tenant on that ground. There is thus no basis to contend that sub-section (1) of Section 23-C enables the Rent Controlling Authority to pass an order of eviction of the tenant even where the statement made by the landlord in his application does not make out a ground for eviction contained in Section 23-A.

19. The next provision, which has been referred is sub-section (2) of Section 23-C. It

was argued that the words 'if necessary' give the Rent Controlling Authority unanalyzed power to grant or refuse leave to defend without providing any guidelines. This provision requires the R.C.A. to decide the question of grant of leave to defend within one month and the guidelines for decision of the question are contained in the latter part of the provisions, which says that leave to contest the application is to be given 'if the application supported by an affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in Section 23-A.' It is, therefore, clear that if the leave tenant's application for to contest is supported by an affidavit of the tenant disclosing facts disentitling the landlord to grant of the relief of recovery of possession, then leave to defend has to be given to the tenant. The words 'if necessary' are followed by these guidelines which indicates the situation in which leave is to be granted and, therefore, the discretion of the Rent Controlling Authority is not unbridled or uncalalised. It is required to be exercised judicially in the manner indicated. The provision clearly means that where the tenant's application, supported by an affidavit 'disclosing such facts would disentitle the landlord from obtaining an order for recovery of possession of the accommodation on the ground specified in Section 23-A' is filed, then it is necessary for the Rent Controlling Authority to grant leave to the tenant to contest the landlord's application. There is thus no such invalidity in sub-section (2) of Section 23-C.

20. The next provisions requiring consideration is sub-section (3) of Section 23-D, which provides for a rebuttable presumption in favor of the landlord defined in Section 23-J, to whom alone Chapter III-A applies. This provision is assailed on the ground that it is discriminatory on account of providing for an initial presumption in the landlord's favor, resulting in shifting of the onus to the tenant to prove that the landlord's requirement is not *bonafide*. The crux of the matter is, whether a provision like this, shifting the onus to the tenant by raising a rebuttable presumption in favor of the landlord, results in making the procedure so onerous or harsh as to amount to discrimination. It may be mentioned that such a rebuttable presumption in favor of the landlord arises only where the landlord has set out a *prima facie* case entitling him to the relief of eviction and the tenant has been given leave to defend, on his setting out in an affidavit facts which, if found proved would disentitle the landlord to the relief claimed by him. This provision only lays down that at this stage the onus is on the tenant to prove the facts on the basis of which he has been granted leave to defend, the scheme being that on a *prima facie* case for eviction of the tenant being made out in

the landlord's application, he should be granted the relief, unless the tenant first satisfies that there is basis for him to contest the landlord's claim and he then proceeds to prove his assertion.

21. Provisions in enactments raising presumption of guilt against the accused and shifting the onus to him to rebut that presumption on proof of certain facts by the prosecution, have been upheld as valid and not violating Article 14 of the Constitution. It is sufficient to refer to *C.I. Emden v. State of U.P.,* [4] upholding the validity of Section 4(1) of the Prevention of Corruption Act, providing for presumption of guilt of the accused; and *Badulal v. Collector of Custom,* [5] wherein Section 178-A of the Sea Customs Act, containing a similar provision was upheld as valid. Provisions of Civil Law raising a rebuttable presumption in plaintiff's favor and shifting the onus to defendant in certain situations are well known. No fault can, therefore, be found with sub-section (3) of Section 23-D, which provides for a rebuttable presumption in favor of the landlord when the procedure gives an opportunity to the tenant to rebut the same.

22. Section 23-E provides for a revision by the High Court. Sub-section (1) says that no appeal shall lie from any order passed by the Rent Controlling Authority under Chapter III-A. Sub-section (2) then provides for a revision by the High Court, either *suo motu* or on the application of any aggrieved person. An attempt to distinguish Kewal Singh's case (supra) was made on the ground that the power of revision given in Section 23-E(2) is narrower as compared to the power of revision given by the Delhi Act. It was contended that the proviso to sub-section (8) of Section 25-B of the Delhi Act quoted at page 166 of the report in A.I.R. of Kewal Singh's case (supra) which enables the High Court for the purpose of satisfying itself that the order made by the Controller under this section is according to law to call for the record of the case and pass such order in respect thereto as it thinks fit, is a wider power than the power of revision given by sub-section (2) of Section 23-E of the M.P. Act. It was urged by some counsel, assailing the provision that the power of revision in the M.P. Act is akin to the narrow power of revision under Section 115 C.P.C. and, therefore, the power of revision in the Delhi Act is wider. Some other counsel, however, contended that the power of revision in the M.P. Act is not so narrow.

23. In Kewal Singh's case, the Supreme Court took into account the availability of the High Court's power to interfere in revision as one of the factors to reach the conclusion

that the special procedure enacted was not unduly onerous or harsh to result in discrimination. The underlying principle is availability of power in the High Court to correct the error of the Rent Controlling Authority in revision as a relevant circumstance to hold that due protection is given to the tenant and not its real extent. Similarly, power of review with the Controller in the Delhi Act was pointed out as another factor but it does not mean that absence of review in the M.P. Act denies protection to the tenant. It is pertinent to refer in this connection to a recent decision of the Supreme Court in *M/s Babubhai & Co. v. State of Gujarat,* [6] It was held therein that procedure for summary eviction could not be held unreasonable or arbitrary merely because of absence of corrective machinery by way of appeal or revision; and that the cumulative effect of all relevant factors has to be considered in the light of the enactment and the purpose intended to be achieved by the concerned provision. This being so, the provision for revision by the High Court for correcting the Rent Controlling Authority's order being as much there in the M.P. Act, as it was in the Delhi Act, the decision in Kewal Singh's case cannot be distinguished on the basis of any difference in its scope. The cumulative effect of all the provisions is to provide sufficient protection to the tenant against frivolous claim of the landlord.

24. It would be appropriate to examine briefly the scope of the revisional power of the High Court contained in sub-section (2) of Section 23-E since this question is bound to be of frequent occurrence. No doubt, this provision is ill-drafted wherein the first part appears to be of wide import, while the latter part attempts to limit the first part, but margin for exercise of discretion is given by using the words 'as far as may be', to connect the two parts. It is clear from sub-section (1) that no appeal lies against an order passed by the Rent Controlling Authority and, therefore, the scope of revision provided in sub-section (2) has to be narrower than the scope of appeal. The first part of sub-section (2) appears to give comparatively wider power of revision by using the words 'for the purpose of satisfying itself as to the legality, propriety or correctness of any order passed by or as to the regularity of the proceeding ..... and may pass much order in revision.. as it thinks fit'. Thereafter, in the latter part, it says, in substance that 'as far as may be', for the disposal of the revision, the High Court shall exercise the same powers and follow the same procedure, as it does for disposal of revision under Section 115 C.P.C., as if the Rent Controlling Authority is a Court subordinate to such High Court. Thus, in the latter part of sub-section (2), the indication is that 'as far as may be' the power of revision to be exercised by the High Court is to be the same as given by Section 115 C.P.C., which is undoubtedly narrower than the wider

given by the first part of sub-section (2).

25. The decision of the Supreme Court in *Sri Raja Lakshmi Dyeing Works v. Rangswami,* [7], helps to construe the first part of sub-section (2) of Section 23-E as the decision relates to a similar provision of revision in Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960. It was held as follows :-

"Section 25 provides that :-

The High Court may on the application of any person aggrieved by an order of the appellate authority call for and examine the record of appellate authority, to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and if, in any case it appears to the High Court that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly.

The language of Section 25 is indeed very wide. But we must attach some significance to the circumstance that both the expressions 'appeal' and 'revision' are employed in the statute. Quite obviously, the expression 'revision' is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression 'appeal'. In fact it has to be noticed that under Section 25 the High Court calls for and examines the record of the appellate authority in order to satisfy itself. The dominant idea conveyed by the incorporation of the words 'to satisfy itself' under Section 25 appears to be that the power conferred on the High Court under Section 25 is essentially a power of superintendence. Therefore, despite the wide language employed in Section 25, the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority. The power conferred on the High Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act may not be as narrow as the revisional power of the High Court under Section 115 of the Code of Civil Procedure but in the words of Untwalia, J. in *Dattonpant Gopalrao Devakate v. Vithalrao Maruthirao Janagaval,* [8] it is not wide enough to make the High Court a second court of first appeal'.

x x x x x

Merely to hold that a question is a mixed question of fact and law is not sufficient to warrant the exercise of revisional power. It must, however, be shown that there was a

taint of such unreasonableness resulting in a miscarriage of justice."

The first part of sub-section (2) of Section 23-E of the M.P. Act has therefore, to be construed similarly, as conferring a power of revision wider than that given by Section 115 C.P.C. but narrower than the power of appeal which permits interference where, 'there was a taint of such unreasonableness resulting in a miscarriage of justice.'

26. It appears to us that the only manner in which the other part of sub-section (2) can be given a meaning and it can also be reconciled with sub-section (1), which expressly provides that no appeal lies, is to construe sub-section (2) as providing for the power of revision to correct any defect in the order of the Rent Controlling Authority, which taints it with such unreasonableness that it results in miscarriage of justice, and this has to be done keeping within the limits prescribed by Section 115 C.P.C. 'as far as may be'. In other words, the power of revision is not restricted to the narrow limits of Section 115 C.P.C. but it is not as wide as that of an appeal and the indication is that an attempt should be made to keep as near as possible to the limits of the power of revision under Section 115 C.P.C., exceeding the same only to the extent necessary for preventing miscarriage of justice. Use of the expressions 'save as otherwise provided by this section' and 'as far as may be' to connect the two parts of sub-section (2), supports this conclusion.

27. We are conscious that such a construction of sub-section (2) can give rise to wide divergence in its application but we do not think there is any escape from this conclusion, since this is the only manner in which no part of sub-section (2) is rendered superfluous, and while giving effect to both parts of sub-section (2), the same is also reconciled with sub-section (1), which expressly negatives an appeal. We do hope that the legislature will notice this ill-drafting, giving rise to such a situation and it will step in to make the provision clear and precise by a suitable amendment.

28. Section 23-F providing for duration of stay enacts that 'the stay of operation of the order of eviction passed by a Rent Controlling Authority or by the High Court shall not ensure for a total period 'of more than six months'. It was argued that the period for which a stay order should operate is a matter for judicial determination and by prescribing this time limit, the legislature has usurped a judicial function, which renders this provision invalid. It was also urged that the result of the stay order being vacated on expiry of the prescribed period would be to render the revision against the

order of eviction in fructuous and in this manner the provision for revision by the High Court would be rendered nugatory. It was also pointed out that on account of the heavy pressure of work, it may not be possible to dispose of the revision within the period of six months. There was also some doubt expressed about the starting point of the period of six months, prescribed in Section 23-F. We may, however, state at the outset that there appears to be no ambiguity in this respect. The starting point of the total period of six months for the stay order to remain in operation is obviously, the date on which the stay order is made and not the order of eviction. It is also clear from Section 23-G that the order of eviction obtained by the landlord under Section 23-A would not entitle the landlord to recover possession before the expiry of two months from the date of the order. Obviously no stay order of any Court for the period of two months from the date of the order of eviction is, therefore, necessary. The question of granting stay would arise only after the expiry of the initial period of two months from the date of the order of eviction. The period of six months during which the stay order can remain in operation by virtue of Section 23-F has, therefore, to be reckoned from the date of the stay order and not the date of the order of eviction, the operation of which has been stayed by the stay order.

29. In our opinion, it is not necessary in the present case, to decide whether prescribing a rigid time limit for operation of a judicial order is beyond the competence of the legislature, the same being a judicial function, as contended for assailing the validity of this provision. In the present case, the consequence of rendering the revision in fructuous, if not decided within this period of six months, can be avoided by making the construction indicated hereinafter.

30. There can be no doubt that by prescribing the total period for the operation of the stay order in Section 23-F, the legislature has indicated that the Court while passing stay order is expected to dispose of the proceedings in which the stay order has been passed, within a period of six months. No objection can be taken to such indication or requirement, since that is also in keeping with the object of the enactment, which provides for expeditious trial of eviction cases on the ground of *bonafide* requirement of the landlord. This provision is, therefore, clearly in consonance with the objective sought to be achieved by it. All the same, it is true that there may be cases in which in spite of the best efforts of all concerned, it may not be possible to dispose of the proceeding within six months of passing of the stay order and on automatic vacation of the stay order by efflux of time, the tenant is bound to be evicted, so that even if the

proceeding continues and the tenant ultimately succeeds, he would have been thrown out in the meantime and restitution at a later date would not be much consolation. Undue hardship in such cases can be avoided, if a fresh stay order can be passed on the earlier stay order being vacated automatically by efflux of the period specified. This will also ensure that the Court on expiry of the period so specified, or shortly before it, if moved for that purpose, can re-apply its mind to the facts of the case and either decide it within the specified period of six months, or pass a fresh stay order to operate immediately on vacation of the earlier stay order by efflux of time. Such a course, while ensuring expeditious disposal of the proceeding, will also not render the Court powerless, as it will have power to make a stay order to avoid undue hardship in genuine case, where disposal of the proceeding within the period of six months is not possible. We do not find anything either in Section 23-F or elsewhere to suggest that such a construction cannot be made of Section 23-F. The power to grant stay when a strong *prima facie* case is made out and without it the power of revision will become ineffective, is incidental or ancillary to the express grant of statutory power of revision, being available even without an express grant. (See *I.T. Officer v. Mohd. Kunhi,*[9] This appears to us, the proper construction of the provision, which takes care of all aspects.

31. We are, therefore, of the opinion that Section 23-F prescribes the time limit of six months for operation of the stay order and the same stands automatically vacated by efflux of time on expiry of six months from the date of the stay order. However, a fresh stay order can be passed in suitable case, which would operate for the same time limit, as there is no prohibition against a fresh stay order being made on the expiry of the earlier stay order by efflux of time. There is thus no basis to challenge the validity of this provision.

32. The argument that option is given to the landlords defined in Section 23-J, to file proceedings on the grounds of *bonafide* personal need under Section 23-A before the Rent Controlling Authority and on the other grounds in the Civil Court, while other landlords have only to go to Civil Court is difficult to appreciate. There is actually no option given to choose, there being only one forum for each ground for each category of landlords. It has already been shown that classification of the landlords is valid. No further consideration of this argument is necessary.

33. It is also difficult to appreciate how the provision for an application for eviction

before the Rent Controlling Authority, who is an executive officer, offends Article 50 of the Constitution, which requires the State to take steps for separation of judiciary from the executive. It is settled that merely because the order forum is manned by an executive officer instead of a judicial officer, it cannot be said that it results in violation of Article 14. It is also settled that mere availability of two procedures, one under the ordinary law and the other under the impugned provisions, does not by itself attract the vice of discrimination, unless one of them is so harsh or onerous as to suggest that a discrimination would result, if resort, is made to it, instead of the ordinary remedy under the general law. After referring to the decisions of the Supreme Court on the point, this was reiterated by this Court in *Suhag Hotels v. M.P. Housing Board, Bhopal,* [10]

34. The above discussion disposes of the main challenge which is to the validity of the new Chapter II-A introduced in the principal Act by the two amending Acts. The only remaining question relates to the provisions governing the pending proceedings enacted in the amending Act, which are considered hereafter.

35. Section 12 of the 1983 Amendment Act contains two sub-sections. Sub-sections (1) is subject to sub-section (2) and it lays down that all suits for eviction of tenants on the grounds of *bonafide* requirement of accommodation for residential or non-residential purpose, which are pending on the date of the commencement of the amendment Act shall be heard and disposed of by the Civil Court, unless the suit in relation to such relief is withdrawn. Sub-section (2) provides for suits for eviction exclusively on the grounds of *bonafide* requirement of accommodation and enables the landlord to withdraw the suit and to proceed against the tenant in accordance with the new Section 23-A by initiating proceedings before the Rent Controlling Authority. In short, pending suits based on the ground of *bonafide* requirement of the landlord for residential or non-residential purpose would continue to be heard and disposed of by the Civil Court, unless such relief was withdrawn by the landlord, with a view to initiate proceeding under the new provision before the Rent Controlling Authority. It is difficult to appreciate the tenants grievance against this provision it merely enables the landlord to continue a pending suit in the Civil Court on the ground of *bonafide* requirement instead of withdrawing that relief to be claimed before the Rent Controlling Authority in accordance with the new Chapter III-A.

36. Section 9 of the 1985 Act, provides for proceedings which were pending when that

amendment came into force. It lays down that an application by any landlord not covered by the categories enumerated in Section 23-J, for eviction of the tenant on the ground contained in Section 23-A, pending before the Rent Controlling Authority on 16th January, 1985, shall stand transferred to a Civil Court of competent jurisdiction to be heard and disposed of as a suit in accordance with Chapter III of the Act. In other words, pending proceedings before the Rent Controlling Authority initiated by the landlord not covered by Section 23-J, were to stand transferred to the Civil Court, since by the 1985 amendment, it was only the landlords covered by Section 23-J of the Act, who were given the benefit of the new forum of the Rent Controlling Authority and the special procedure provided in Chapter III-A. The date, 16th January, 1985 is the date on which the Ordinance came into force which was later replaced by M.P. Act No. 7 of 1985. It is difficult to see what objection can be taken to this express provision made in respect of pending proceedings to avoid any ambiguity, arising as a result of the amendment made in the principal Act, in order to govern pending proceedings.

37. It is settled that a litigant has no vested right to a particular forum and it is competent for the legislature to provide for pending proceedings by making an express provision to that effect. That has been done by the provisions made in the two amending Acts to govern pending suits and proceedings. No invalidity attaching to these provisions has been made out. The challenge to the validity of these provisions also is, therefore, rejected.

38. The true meaning and intent of Section 12 of the 1983 Amendment Act may now be stated. It was enacted to provide for the effect of the amendment on pending suits for eviction against tenant in which *bonafide* requirement of the landlord was the only ground or one of the several grounds of eviction, depending on withdrawal of the suit to that extent or not. Suits in which the *bonafide* requirement of the landlord was not a ground of eviction were obviously unaffected by the amendment. Sub-section (2) of Section 12 provided that landlord could proceed against the tenant in the new forum of R.C.A. in accordance with the newly inserted Section 23-A after withdrawal of the pending civil suit, if it was exclusively on the grounds of *bonafide* requirement. Sub-section (1) of Section 12 provided that all pending suits in which *bonafide* requirement of the landlord was ground of eviction shall be decided by the Civil Court according to the unamended law, unless the landlord withdrew the same in relation to the relief claimed on the ground of *bonafide* requirement. Section 12 of the Amendment Act,

therefore, gave liberty to the landlord to this extent since the tenant would not feel aggrieved by the landlord continuing the suit in Civil Court instead of preferring the new forum of R.C. Authority. In short, Section 12 of the Amendment Act provided merely for the consequence of withdrawal or failure to withdraw the suit or a part of it based on the ground of *bonafide* need while the withdrawal itself was to be governed by the provision of the Code of Civil Procedure.

39. The Supreme Court decision in Kewal Singh v. Lajwanti case (supra) clearly indicates the above conclusion. It was held by the Supreme Court, while dealing with the question of amendment to permit withdrawal or addition of a ground for eviction, that each of the grounds for eviction of the tenant, on which the suit is based, is a separate and distinct cause of action; it is open to the plaintiff-landlord as he chooses, to relinquish one or the other of them, and to file a fresh suit on the basis of a distinct cause of action, which he may have so relinquished. It was pointed out that Order 2 Rule 2, C.P.C., has no application, for this reason. In the face of this authority, it cannot be doubted that the landlord has an option to relinquish one or more of the causes of action, on which the suit is based, subject to the provision of the Code of Civil Procedure, permitting withdrawal of the suit as a whole or in part. The ground of eviction based on *bonafide* need of the landlord being a separate and distinct cause of action, withdrawal of the same when the suit is based on several grounds is governed by the same principle and can be permitted in accordance with the provisions of the Code of Civil Procedure. Section 12 of the 1983 Amendment Act does not govern its withdrawal and merely provides for the consequence thereof.

40. Two Single Bench decisions in *Nanuram v. Pundlik,* [11] and *Bankim Chandra v. Radhakishan,* [12] were cited at the bar to show that a contrary view of the meaning of Section 12 of the 1983 Amendment Act has been taken therein. These decisions proceed on the basis that all grounds of eviction together constitute one cause of action on account of which the whole suit can be withdrawn and not merely one of the grounds on which it is based, as it would result in splitting of cause of action which is not permissible. Obviously, this is in direct conflict with the Supreme Court's decision in Kewal Singh's case (supra), which does not appear to have been brought to the notice of the learned Judges taking that view. We, therefore, regret our inability to subscribe to that view.

41. As a result of the above conclusion, it must be held that no ground has been made

out to assail of the validity the aforesaid amendments made in the M.P. Accommodation Control Act, 1961, by the M.P. Accommodation Control (Amendment) Act, 1983, (M.P. Act No. 27 of 1983) and the M.P. Accommodation Control (Amendment) Act, 1985, (M.P. Act No. 7 of 1985). Challenge to its validity is, therefore, rejected.

42. The question of constitutional validity of the impugned amendments is decided accordingly. The Court below shall now proceed to dispose of the case pending before it in conformity with this decision. There will be no order as to costs.

Petition dismissed.

Cases Referred.

1. AIR 1980 SC 161: 1980(1) RCR 273
2. AIR 1984 SC 697: 1984(1) RCR 357
3. AIR 1984 SC 458: 1984(1) RCR 117
4. AIR 1960 SC 548
5. AIR 1957 SC 877
6. AIR 1985 SC 613
7. (1980) 4 SCC 259: 1981(1) RCR 559
8. (1975) 2 SCC 246
9. AIR 1969 SC 430
10. 1984 MPLJ 163
11. 1984 MPRCJ 184
12. AIR 1985 Mad Pra 10