

RAJASTHAN HIGH COURT

Bhag Chand

Vs.

Additional District Judge No. 5 Kota

S.B. Civil Writ Petition No. 7289 of 2004

(Mr. Deepak Verma, C.J., Dalip Singh and Narendra Kumar Jain, JJ.)

04.05.2009

JUDGMENT

Dalip Singh, J.

1. The questions for consideration which have been referred to the Larger Bench for decision are as follows :-

- (1) Whether Section 29 of the Rajasthan Rent Control Act, 2001 has its overriding effect on Section 32(3)(a) of the Rajasthan Rent Control Act, 2001;
- (2) Whether the suits, applications and other proceedings relating to fixation of standard or provisional rent under Sections 6 and 7 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, which have been saved by Section 32(3) (a) of the Rajasthan Rent Control Act, 2001, will be governed by the provisions of the Old Act of 1950, after coming into force of the New Act of 2001 or will be governed by the provisions of the New Act of 2001 as Sections 6 and 7 of the Act of 1950, having been impliedly repealed, by virtue of Section 29 of the New Act of 2001 as held by the Division Bench in Kamal Kishore's case (supra) ?

2. The background in which these questions arise are that a writ petition was filed by the defendant-tenant against whom an order dated 29.01.2004 was passed determining the provisional rent under Section 7 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 as Rs. 1,600/- enhancing the rent from Rs. 400/- per month which was being paid by the defendant-tenant- petitioner. The defendant-tenant petitioner challenged the aforesaid order dated 29.01.2004 in appeal. The learned Additional District Judge No.5, Kota hearing the appeal dismissed the appeal by the judgment dated 09.09.2004.

3. It is in this background that the orders dated 29.01.2004 passed by the learned trial court and 09.09.2004 passed by the learned appellate court were challenged by the defendant tenant- petitioner in writ petition before this court. It was the contention of the defendant-tenant-petitioner before the two courts below as also before the learned Single Judge that with the coming into force of the Rajasthan Rent Control Act, 2001 (Act No. 1 of 2003) w.e.f. 01.04.2003, the provisions of Section 6 and 7 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as "the Old Act of 1950") stood repealed and, therefore, the application filed by the plaintiff-landlord under Section 6 and 7 of the Old Act of 1950 was not maintainable and if at all the rent was to be revised, the same was to be revised in accordance with the provisions of Section 6 of the Rajasthan Rent Control Act, 2001 (hereinafter referred to as "the New Act of 2001").

4. Before the learned Single Judge when the matter came up for consideration on 25.04.2008, the aforesaid contention of the defendant-tenant-petitioner was raised and in support of the same, learned counsel for the petitioner relied upon a Division Bench decision of this court in *Kamal Kishore and 16 Others v. State of Rajasthan reported¹* in wherein the Division Bench of this court held as follows:-

"40. Under the non obstante clause provided for in Section 32(3)(a) of the New Act, pending suits for fixation of rent either standard or provisional, shall be governed by the repealed Act, whereas under Section 29 of the New Act, the provisions of the New Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. If these two provisions are read together and the situation arises where the suit of same premises is pending for fixation of standard rent filed by the tenant prior to coming into force of the New Act which is for reducing the rent as agreed upon, that suit will have to be decided by the court under the Old Act but after coming into force of the New Act, if the landlord files a suit or application for revision of rent under Section 6 of the New Act in accordance with the formula of 5% per annum increase of the agreed rent then what will be the fate of the suit filed by the tenant, has not been answered in the saving clause. This apparent anomaly whereby course of justice is diluted in disposal of both the petitions; one filed under the Old Act by the tenant and another under the New Act by the landlord, will lead to a direct conflict between the two suits arising out of the saving clause under the New Act.

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43. Though, we are not questioning the policy of the legislature in enacting the New law which is social legislation, being enacted from time to time keeping in view the paucity of accommodation and market value of the rupee but as discussed above, when incompatibility or irreconcilable inconsistency emerges in interpreting the new law, the Court has to harmonize provisions of both the Old & the New Acts. We, therefore, without striking down any of the provisions of the Old Act and the New Act, deem it proper that non-obstante clause contained in Section 32(3)(a) which saves the pending proceedings should be read with Section 29 of the New Act, which gives effect to the provisions of the New Act, notwithstanding anything inconsistent in any other law.

44. The fixation of standard rent is a substantive right and the saving clause cannot restrict a substantive right. It merely affect the procedure as held by the Hon'ble Supreme Court in Northern India Caterers Ltd's case (supra) in which it has been held that if by repeal, two rights co-exist together and produce inconvenience then the Court should legitimately infer that the legislature did not intend such a consequences in such a case, the Court should give effect to the New provisions by harmonizing both the Statutes. This is the only and sound rule of construction to avoid anomaly & irreconcilable inconsistency. That is why, it is said that judges declare the law by ascertaining legislative intent and are not to make it.

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46. Therefore, while drawing the above conclusions on the true intent of Section 29, which is an internal aid for construction & Section 32(3) (a) of the New Act vis-a-vis Section 6 of the Old Act, we are left with no other alternative except to cure the anomaly, absurdity, inconsistency and incompatibility by giving true effect to the provisions of the New Act in the light of the observations made above.

47. Consequently, we hold that the New Act is not violative of Article 14 of the Constitution and is a valid social legislation. However, we also hold that the non obstante clause contained in Section 32(3)(a) of the New Act saving pending proceedings, shall not be applicable in case of fixation of standard rent or provisional rent under Sections 6 and 7 of the Act as having been impliedly repealed and shall be governed by the provisions of the New Act without declaring Section 6 of the Old Act and Section 32 (3)(a) of the New Act to be ultravires to the Constitution of India or referring the decision of Khem Chand's

case (supra) to a larger Bench.

Accordingly, we dispose-of these writ petitions and direct the concerned Courts to dispose of the matters in the light of the above directions by reviewing their impugned orders, if they are inconsistent with the decision on the subject with no order as to costs."

5. The learned Single Judge having gone through the aforesaid judgment of the Division Bench found that the Division Bench of this court had relied heavily while deciding Kamal Kishore's case (supra) on the judgment of the Hon'ble Supreme Court in *Northern India Caterers (Pvt.) Ltd. v. State of Punjab reported* ² in The learned Single Judge found that the fact that the decision in the case of North India Caterers (supra) of the Hon'ble Supreme Court had been specifically overruled by the Constitutional Bench of seven Judges of the Hon'ble Supreme Court in the case of *Madanlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay and Others reported* ³ in had not been brought to the notice of the learned Division Bench while deciding Kamal Kishore's case. The learned Single Judge also found that three earlier judgments of separate Single Benches in the case of (1) *Balbeer Kumar Jain and Another v. Tripti Kumar Kothari reported* ⁴ in (2) *Ugam Raj v. Civil Judge (SC), Sojat City and Others reported* ⁵ in and (3) *Heera Lal v. M/s. Uttam Chand Deshraj reported* ⁶ in had not been brought to the notice of the learned Division Bench and, therefore, the learned Single Judge thought it proper to place the matter before Hon'ble the Chief Justice requesting him to make a reference to an appropriate Bench for reconsideration of the judgment in Kamal Kishore's case given by the Division Bench of this Court while framing the aforementioned two questions for consideration. The order of the learned Single Judge dated 25.04.2008 is reported in 2008(3) RLW 1857 (Raj.).

6. Hon'ble the Chief Justice vide order dated 21.05.2008 having gone through the order of the learned Single Judge deemed it proper to refer the matter to a Larger Bench and it is in this background that the matter comes up for consideration before this Bench for consideration of the aforesaid two questions.

7. With a view to appreciate the aforesaid questions, it is necessary that the relevant provisions of the New Act of 2001 more particularly Section 29 and 32 thereof may be taken note of and they are reproduced for ready reference as follows :-

"29. Act of have overriding effect. - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law

other than this Act.

32. Repeal and savings. - (1) The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act No.17 of 1950) shall stand repealed with effect from the date notified under sub-section (3) of Section 1 of this Act.

(2) XXX XXX XXX

(3) Notwithstanding the repeal under sub-section

(1),-

(a) all applications, suits or other proceedings under the repealed Act pending on the date of commencement of this Act before any court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted. However, the plaintiff within a period of one hundred and eighty days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceedings pending under the repealed Act with liberty to file fresh petition in respect of the subject matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this Act and for the purposes of limitation such petition shall, if it is filed within a period of two hundred and seventy days from the commencement of this Act, be deemed to have been filed on the date of filing of the suit which was so withdrawn and in case of withdrawal of appeal or other proceeding, on the date on which the suit, out of which such appeal or proceeding originated, was filed;

(b) XXX XXX XXX;

(c) XXX XXX XXX;

(d) XXX XXX XXX."

8. As has been quoted above, from the judgment in Kamal Kishore's case, the learned Division Bench after considering the provisions of Section 29 and 32 of the New Act of 2001, came to the conclusion that there was a conflict so far as the Section 29 and Section 32(3)(a) of the New Act of 2001 is concerned and in the opinion of the learned Division Bench with a view to cure the aforesaid anomaly and inconsistency, the only interpretation possible was that despite the provisions of Section 32(3)(a) of the New Act of 2001 which provides for saving the pending proceedings including one under Section 6 and 7 of the Old Act, they stood impliedly repealed and these proceedings were required to be determined and decided in accordance with the provisions of the New Act, notwithstanding the fact that they had been initiated and instituted under the Old Act of 1950 on account of the language of Section 29 of the New Act of 2001. It is for this purpose that the first question which has been referred comes up for the

consideration before this Bench. The aforesaid question is "Whether Section 29 of the Rajasthan Rent Control Act, 2001 has its overriding effect on Section 32(3)(a) of the Rajasthan Rent Control Act, 2001".

9. Learned counsel appearing in support of the reference have contended that the Section 32(3)(a) is clear and unambiguous so far as the repeal and savings under the New Act of 2001 are concerned. Learned counsel pointed out that under clause (a) of sub-section (3) of Section 32 of the New Act of 2001 it has specifically been provided that all the applications, suits and other proceedings under the Repealed Act (Old Act of 1950) which were pending on the date of commencement of the New Act of 2001 (on 01.04.2003) were required to be continued and disposed of in accordance with the provisions of the Old Act of 1950 as though the Old Act of 1950 continues to be in force and the New Act of 2001 was not enacted. The option, however, had been given to the plaintiffs in such cases which had been instituted under the Old Act of 1950 that they would be at liberty to withdraw the pending suits and file fresh petitions within the time provided under clause (a) of sub-section (3) of Section 32 of the New Act of 2001 after coming into force of the New Act of 2001 in accordance with the provisions of Section 6 of the New Act of 2001 if the plaintiffs so wanted and for this purpose even the period of limitation would stand extended as provided under the aforesaid provisions.

10. Learned counsel were in agreement that the judgment of the Hon'ble Supreme Court in Maganlal Chhagganlal's case (supra) which had expressly overruled the judgment in the Northern India Caterers' case (supra) had not been brought to the notice of the learned Division Bench which decided Kamal Kishore's case (supra). Attention of the court was invited in this behalf to paragraph 16 of the judgment of Maganlal Chhagganlal's case (supra) delivered by Hon'ble Alagiriswami, J, on behalf of Hon'ble A.N. Ray, CJ, D.G. Palekar; and K.K. Methew JJ and for himself, wherein the Hon'ble Supreme Court held as follows :-

"We, therefore, find ourselves unable to agree with the majority in the Northern India Caterers' case (1967) 3 SCR 399 = (AIR 1967 SC 1581)."

Hon'ble P.N.Bhagwati, J who delivered a separate judgment for himself and Justice V.R. Krishna Iyer in para 25 of the said judgment also concurred with the aforesaid view of Hon'ble four Judges of the Hon'ble Supreme Court and held as follows :-

"We do not think this argument is sound. The majority decision in (1967) 3 SCR 399 = (AIR 1967 SC 1581) has no application in the present case, and in

any event, we are of the view that that decision does not represent the correct law."

(Emphasis supplied.)

11. It may be stated that Hon'ble Justice H.R. Khanna delivered a separate judgment while dissenting from the aforesaid majority view expressed by the Hon'ble Six Judges in para 46 of the aforesaid judgment.

12. It would, thus, be seen that the judgment of the learned Division Bench in Kamal Kishore's case is based upon the judgment of the Hon'ble Supreme Court in Northern India Caterers' case (supra) which had not been found to "represent a correct law" by the Hon'ble Supreme Court in Maganlal Chhaganlal's case which might have persuaded the Division Bench to hold that pending cases under Sections 6 and 7 were required to be decided in accordance with the provisions of Section 6 of the New Act of 2001 in view of the provisions of Section 29 notwithstanding the saving clause in Section 32(3) (a) of the New Act of 2001.

13. It would be useful here to take note of some of the Single Bench decisions of this court wherein the similar question was raised and decided by the learned Single Judges of this court.

14. In Balbeer Kumar Jain's case (supra) the learned Single Judge framed the following question while deciding the appeal:-

"Whether the proceedings for fixation of standard rent under the repealed Act pending on the date of commencement of the Rajasthan Rent Control Act, 2001, would be governed by the Rajasthan Premises (Control of Rent and Control) Act, 1950 (for short the Old Act) or by the provisions of Rajasthan Rent Control Act (New Act) which came into force w.e.f. 01.04.2003".

15. It would be evident from the aforesaid question that the learned Single Judge was dealing with the same question with which we are concerned in this reference. The learned Single Judge after considering the submissions made by the learned counsel for the parties on the aforesaid question which has been quoted above in para 13 of the judgment held as follows :-

"(13) A bare perusal of Section 6 of the Old Act goes to show that it provides for fixation of standard rent where no rent has been agreed upon or where for any reason the rent agreed upon is claimed to be low or excessive, the landlord or the tenant may institute a suit in then lowest court of competent jurisdiction

for fixation of standard rent for any premises. Sub-Section (3) of the above Section provides that the court shall determine such rent having due regard to the prevailing rent or standard rent for similar premises in the same locality including some other factors as contained therein. As pointed out by senior counsel Mr. Bhandari the Court may look into other relevant considerations also as provided in sub-section (3) of Section 6 of the Old Act. Learned counsel Mr. Agarwal also contended that the Court should take into consideration the provisions of Sections 6 and 7 of the New Act while determining the standard rent. What may be the other relevant considerations and the Provisions of the new Act whether should be taken into consideration are the points to be considered while hearing these appeals on merits. There are no similar provisions for fixation of standard rent in the new Act while Section 7 of the Old Act provides for fixation of provisional standard rent. Sections 6 and 7 of the new Act respectively provide for revision of rent in respect of existing and new tenancies. The provisions of Old Sections 6 and 7, in my view are not consistent with the provisions of Section 6 of the New Act, rather Sections 6 and 7 of the New Act provide for revision of rent according to the formula as indicated in Sections 6 and 7 of the New Act. Further, this submission of learned counsel Mr. R.K. Agarwal with regard to interpretation of the intention of the legislation in accordance with the provisions of Sections 6 of the Rajasthan General Clause Act is not acceptable in view of the clear provisions contained in the new Act. The provisions of subsection (3) (a) of Section 32 of the New Act are clear on this point that all applications, suits or other proceedings under the repealed Act, pending on the date of commencement of this Act before any court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted. In view of such clear and specific provisions, question of interpretation of legislative intent does not arise here at all. *This submission also that Section 29 of the New Act has got overriding effect over the provisions of Section 32(3) of the New Act is devoid of merit.* As stated hereinabove the provisions of Sections 6 & 7 of the Old Act providing for fixation of standard rent in absence of an agreement or in case of the agreed rent is law or excessive as the case may be are not inconsistent with the provisions of Section 6 of the New Act providing for revision of rent in existing tenancies. Only on account of this aspect that in case standard rent is fixed in accordance with provisions of old Section 6, that may be higher in comparison to the rent

revised under Section 6 of the New Act is no ground to hold that pending applications, suits or other proceedings under the repealed Act on the date of commencement of this New Act would be governed by the New Act. At the cost of the repetition, it is observed that the Provisions of Section 32(3)(a) of the new Act are very clear and thus all the proceedings for fixation of standard rent pending under the old Act on the date of commencement of the New Act shall be continued and disposed of in accordance with the provisions of the Repealed Act." (Emphasis supplied.)

16. From the above it is clear that the learned Single Judge came to the conclusion that Section 29 of the New Act of 2001 does not have any overriding effect over the provisions of Section 32(3)(a) of the New Act of 2001 and the proceedings instituted under the Old Act of 1950 commenced before the coming into force of the New Act of 2001 would be required to be decided in accordance with the provisions of the Old Act of 1950. The learned Single Judge made a distinction while negating the contention based upon sub-section (3) of Section 6 of the Old Act of 1950 inasmuch as sub-section (3) of Section 6 of the Old Act of 1950 inter alia provides the criteria for the revision of the rent and the relevant considerations for doing so namely the prevailing rent or standard rent for similar premises in the same locality, the various amenities such as electricity, water connection, sanitary fittings and the like attached to the premises, the cost of construction, maintenance and repairs thereof, the special reasons, if any, proved by the plaintiff *and other relevant considerations*. The learned Single Judge explained the position while rejecting the contention put forward by the learned counsel for the tenants that the words "other relevant considerations" in sub-section (3) of Section 6 of the Old Act of 1950 suggested that once the New Act of 2001 came into force in which under Section 6 a different criteria had been provided for the revision of rent, the court was required even while deciding the applications instituted under the Old Act of 1950 to take into consideration the criteria referred to under Section 6 of the New Act of 2001. The learned Single Judge held that that was a matter to be taken into consideration by the court while determining the merits of the application but that cannot be a ground to lead to the conclusion that by virtue of a different approach being given under the new provisions of Section 6, the provisions of Section 6 of the Old Act of 1950 stood repealed and the considerations mentioned therein were not to be taken into account by the court while dealing with the applications instituted prior to coming into force of the New Act of 2001.

17. The next judgment of the learned Single Judge of this court is in the case of Ugam Raj (supra) where the question for consideration before the learned Single Judge was

with regard to the scope and intent of Section 32(3)(a) of the New Act of 2001. The learned Single Judge came to the conclusion in para 10 as follows:-

"10. From reading of Clause (a) of sub-section (3) of Section 32 of the Act of 2001 it is crystal clear that notwithstanding the repeal under sub-section (1) all applications, suits or other proceedings under the repealed Act pending on the date of commencement of the Act of 2001 before any Court remain continued and are required to be disposed of in accordance with the provisions of repealed Act as if the repealed Act had continued in force and the Act of 2001 had not been enacted. Under subsection (3) of Section 32 of the Act of 2001 a liberty is given to the plaintiff with a right to withdraw any suit or appeal or any other proceedings pending under the Act of 1950 with liberty to file fresh petition in respect of subject matter of such suit or appeal or any other proceedings."
(Emphasis supplied.)

18. The next judgment given by the learned Single Bench of this court is in the case of Heera Lal's case (supra) wherein the learned Single Judge also took the same view that all pending proceedings filed under the Old Act of 1950, on the date of commencement of the New Act of 2001 were to be decided under the provisions of the Old Act of 1950.

19. Apart from the above, there is yet another judgment of the learned Single Judge in the case of *M/s. A. Mukherjee Company and Others v. M/s. Conventry Metals Pvt. Ltd. Reported ⁷ in* where the learned Single Judge relying upon the judgment in Balbeer Kumar Jain's case (supra) and Heera Lal's case (supra) and taking note of the provisions of the Old Act of 1950 and the New Act of 2001 held in para 15 as follows:-

"15. While enacting the new Act, the legislature was certainly aware that it might lead to an anomalous situation where determination of provisional rent under the Old Act and the revision of the rent under the New Act Might be disproportionate. However, even after being fully conscious of this fact, still it declared that the New Act should not be applied retrospectively. Considering the tenor, the plain and grammatical meaning of Section 32 of the new Act, the learned Judge was duty bound to apply the criteria as laid down by Section 6(3) of the Old Act, while deciding the provisional rent. Therefore, clearly the learned Judge has erred in applying the New Act to a suit which was instituted under the Old Act."

20. The learned Single Judge further took note of the fact of the distinction between

the provisions contained in the Old Act of 1950 and the New Act of 2001 with regard to the determination of standard rent and provisional rent and revisional rent respectively. Para 18 and 19 of the aforesaid judgment may be reproduced as follows:-

"18. The contention raised by the learned counsel for the respondent that the words 'other relevant considerations' occurring in Section 6(3) of the Old Act should be interpreted to mean that the revised rent fixed under the New Act and relevant consideration is untenable. For, according to Section 32 of the New Act, the pending suits under the Old Act are to be determined as though the New Act does not exist. Therefore, the revised rent under the New Act cannot be taken into account. To do so, would be contrary to the mandate of Section 32 of the new Act. Secondly, the court cannot be permitted to import the revised rent under the new Act while deciding the standard rent/provisional rent under the old Act. For, what the court cannot do directly, it cannot be permitted to do indirectly. Thirdly, Section 6(3) of the Old Act uses the words "prevailing rent" and the words "other relevant considerations". The two categories cannot be fused into a single class. Thus, the meaning of the phrase "other relevant consideration would have to be different than the meaning of the words "the prevailing rent". According to the rule of ejusdem generis, a residuary phrase or expression takes its color from the words it keeps company with. Black's Law Dictionary has defined the Rule of ejusdem generis as, "A canon of construction that when a general word or phrase follows a list of specific persons or things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed". Thus, the above noted words would have to be interpreted in the light of the other words used in the section. The other words used are "amenities, the cost of construction, maintenance and repairs, the special reasons etc.". Hence, the words 'other relevant consideration' would mean other factors which throw light on the issue of standard/provisional rent. Such relevant consideration could be the report of a valuer, or the rate of the land fixed by the District level Committee (the DLC rates, for short).

19. Moreover, under the New Act there is no provision for fixation of standard or provisional rent. Under Section 6 of the New Act, the court is empowered to revise the rent according to the given formula. While considering the revision of rent under the New Act, the court would be alive to the fact that the said rent has been revised/increased under the New Act and under a different yardstick than the yardstick provided for fixation of standard/provisional rent under the Old Act. By the mere fact that the rent is fixed under the New Act and under a

different set of criteria, such rent becomes 'irrelevant' for the purpose of fixing the standard rent under Section 6(3) of the Old Act. Hence, the contention raised by the learned counsel for the respondent is without merit."

21. Having noticed the aforesaid judgment of this court given by the various Single Benches on the aforesaid question in which there is an unanimity that so far as the pending proceedings filed prior to the coming into force of the Act of 2001 on 01.04.2003 filed under the Old Act of 1950 are concerned, those proceedings shall be decided under and in accordance with the provisions of the Old Act of 1950 and such proceedings have been saved under Section 32(3)(a) of the New Act of 2001 and Section 29 of the New Act of 2001 is no bar to the same.

22. A comparison of the provisions of Section 6 and 7 of the Old Act of 1950 and the provisions of Section 6 of the New Act of 2001 may also be made. The said provisions are as follows:-

<i>Old Act of 1950</i>	<i>New Act of 2001</i>
6. Fixation of Standard rent.-	Revision of rent in respect of existing tenancies.-
(1) Where no rent has been agreed upon or where for any reason the rent agreed upon is claimed to be low or excessive the landlord or the tenant may institute a suit in the lowest court of competent jurisdiction for fixation of standard rent for any premises.	(1) Notwithstanding anything contained in any agreement, where the premises have been let out before the commencement of this Act, the rent thereof shall be liable to be revised according to the formula indicated below:-
	(a) where the premises have been let out prior to 1st January, 1950, it shall be deemed to have been let out on 1st January, 1950 and the rent payable at that time shall be liable to be increased at the rate of 5% per annum and the amount of

	<p>increase of rent shall be merged in such rent after ten years. The amount of rent so arrived at shall again be liable to be increased at the rate of 5% per annum in similar manner upto the year of commencement of this Act;</p>
	<p>(b) where the premises have been let out on or after 1st January, 1950, the rent payable at the time of commencement of the tenancy shall be liable to be increased at the rate of 5% per annum and the amount of increase of rent shall be merged in such rent after ten years. The amount of rent so arrived at shall again be liable to be increased at the rate of 5% per annum and the amount of increase of rent shall be merged in such rent after ten years. The amount of rent so arrived at shall again be liable to be increased at the rate 5% per annum in similar manner upto the year of commencement of this Act.</p>
<p>(2) The Court shall after holding such summary inquiry as it may consider just and necessary determine the standard rent for such premises and shall, in doing so, act according to the following principles, namely :-</p>	<p>(2) Notwithstanding anything contained in sub-section (1), where the period of ten years for merger of increase of rent under sub-section (1), is not completed upto the year of the commencement of this Act, the rent at the rate of 5% per annum shall be increased upto</p>

	the year of the commencement of this Act and amount of increase of rent shall be merged in rent.
(a) where the premises are let for residential purposes or for any of the purposes of a public hospital, aushadhalaya or dawakhana, a recognised educational institution, a public library or reading room or any orphanage, the standard rent shall not exceed the basic rent increased by 50% thereof; and	
(b) where the premises are let for any other purpose, the standard rent shall not exceed two and a half times the basic rent thereof.	
Provided that where the premises have been First let after the first day of Januar, 1965 the standard rent shall not exceed the basic rent thereof :	
Provided further that where the fair rent or standard rent for any Premises has been determined or re-determined by any court under this Act or by any authority under any law or order repealed by section 30 before the commencement of the Rajasthan Premisees (Control of Rent and Eviction) (Amendment) Ordinance, 1975	

<p>and the amount of such fair rent or standard rent is the same as would be determinable as standard rent by the Court under this section, the fair rent or standard rent previously determined or re-determined shall not be disturbed.</p>	
<p>(3) Where for any reason it is not possible to determine the standard rent of any premises on the principles set out in sub-section (2), the Court shall determine such rent having due regard to the prevailing rent or standard rent for similar premises in the same locality, the various amenities (such as electricity, water connection, sanitary fittings and the like) attached to the premises, the cost of construction, maintenance and repairs thereof, the special reasons, if any, proved by the plaintiff and other relevant considerations.</p>	<p>(3) The rent arrived at according to the formula given in sub-section (1) and (2) shall, after completion of each year from the year of commencement of this Act, again be liable to be increased and paid at the rate of 5% per annum and the amount of increase of rent shall be merged in such rent after ten years. Such rent shall further be liable to be increased at similar rate and merged in similar manner till the tenency subsists.</p>
<p>(4) In fixing the standard rent for any premises under this section the Court shall determine such rent in respect of the premises in an unfurnished state but may also determine additional charge to be payable on account of fittings or</p>	<p>(4) The rent revised as per formula given under subsection (1) or subsection (2) shall be payable, after the commencement of this Act, from the date agreed upon between the landlord and the tenant or where any petition is filed in a Rent Tribunal, from the date of</p>

<p>furnishings and it shall be lawful for the landlord to recover such additional charge from the tenant.</p>	<p>filing of such petition.</p>
<p>(5) In every case in which the Court determine the standard rent of any premises under this section it shall appoint a date from which the standard rent so determined shall be deemed to have effect :</p>	
<p>Provided that such date shall, in the case of a tenant who institutes a suit under this Section after the expiration of six months from the commencement of his tenancy on the ground of the rent agreed upon being excessive, be the date of the institution of such suit or such later date as the Court may in the circumstances of the case deem reasonable.</p>	
<p>7. Fixation of provisional rent. - (1) Upon the institution of a suit under section 6, the Court shall forthwith make an order fixing in a summary manner a provisional rent for the premises in question, which shall be binding on all parties concerned and shall remain in force till a decree fixing the standard rent</p>	<p>7. Revision of rent in respect of new tenancies. - (1) In the absence of any agreement to the contrary, the rent of the premises let out after the commencement of this Act shall be liable to be increased at the rate of 5% per annum and the amount of increase of rent shall be merged in such rent after ten years. Such rent shall</p>

<p>therefore it finally made in such suit.</p>	<p>further be liable to be increased at the similar rate and merged in similar manner till the tenancy subsists.</p>
<p>(2) The provisional rent fixed under this section shall also apply to such arrears of rent as, in the case of a tenant who has instituted within six months from the commencement of tenancy a suit under section 6 on the between the landlord and the tenant or where any petition is filed in a Rent Tribunal, from the date of filing of such petition.</p>	<p>(2) Any agreement for increase of rent in excess of 5% per annum shall be void to that extent. ground of the rent agreed upon being excessive relate to the period intervening between such commencement and institution.</p>
<p>(3) A suit for the recovery of arrears of rent to which the provisional rent fixed under this section is applicable shall be stayed by the Court upon the payment by the tenant in Court of the total amount due to the landlord on the basis of such provisional rent.</p>	
<p>(4) Any failure to pay the provisional rent for any month by the fifteenth day of the next following month shall render the tenant liable to eviction under clause (a) of subsection 13 and all sums due from the tenant as such rent shall be recoverable</p>	

from him as if the order under subsection (1) were a decree of the Court in a suit for periodical payments.	
(5) All amounts paid as provisional rent shall be adjusted towards payment of the standard rent finally decreed.	

23-24. As may be seen from the above provisions under the scheme of the Old Act of 1950, under Section 6 there was a provision for fixation of standard rent as against the revision of rent under the provisions of the New Act of 2001. The aforesaid distinction is further highlighted from the fact that under the scheme of the Old Act of 1950 a right was given to the landlord and the tenant for instituting a suit for fixation of standard rent. In contrast, under the New Act of 2001, an application under Section 6 can only be filed for upward increase and revision of the rent which would undoubtedly be at the behest of the landlord only. While Section 6 of the Old Act of 1950 provides that where the agreed rent was claimed to be **excessive** the **tenant** could also institute the suit for fixation of the standard rent. Thus, it would be seen that any proceedings instituted under the Old Act of 1950, it was open for a tenant either to institute the suit for reduction of the rent claiming it to be excessive and fixation of the standard rent accordingly or in reply to an application or suit instituted by the landlord for upward revision of the rent the tenant could file a counter stating that the rent agreed was excessive and standard rent be fixed in the suit. In case, it is held that even the pending proceedings are required to be determined and decided in accordance with the provisions of Section 6 of the New Act of 2001 and not in accordance with the provisions of Old Act of 1950, the accrued right given under the Old Act of 1950 is thus taken away. This would be contrary to the provisions of Section 6 of the General Clauses Act which provides for protection of the vested rights notwithstanding the repeal.

Reliance was placed by the Division Bench in Kamal Kishore's case to hold that there was apparent conflict between the provisions of Section 29 and 32(3)(a) of the New Act of 2001. So far as the above is concerned, the wordings of Section 29 of the Act of 2001 are very clear. Section 29 only refers to any inconsistency with the provisions of New Act of 2001 and provides that the New Act of 2001

shall have an overriding effect over "any other law" for the time being in force. Since the provisions of Section 32(3)(a) have specifically saved the pending proceedings to the extent mentioned therein, there is no inconsistency between the provisions of Section 29 and 32(3)(a) of the New Act of 2001. In this regard we may refer to the order of the learned Single Judge dated 25.04.2008 while placing the matter for being referred in this case (reported in 2008(3) RLW 1857 (Raj.) wherein in paras 10, 11, 12, 13 and 14 the position has been aptly summarized. The same is as follows :-

"(10) A bare reading of Section 29 of the New Act shows that it will have overriding effect on the "other law". The words "other law" does not include New Act i.e. Act of 2001 itself. The words "any law other than this Act" at the end of this Section, makes this position quite clear. Other law includes any enactment, ordinance, regulation, order, by-law, rule, scheme, notification or other instrument having force of law except the New Act i.e. 2001 Act and the Rules framed and Notification issued thereunder. Section 29 does not have overriding effect on the Act of 2001, which is also clear from the phrases/words used by the Legislature while enacting the 2001 Act.

(11) The following phrases/words appearing in different Sections of 2001 Act make the position further clear and leave no doubt that Section 29 does not have overriding effect on 2001 Act :-

S. No.	Phrases/Words appearing	Sections of 2001 Act
1.	"Subject to other provisions of the Act....."	4
2.	"Notwithstanding anything contained in any other law or contract but subject to other provisions of the Act...."	9
3.	"Notwithstanding anything to the contrary contained in this 10(1) Act or any other law for the time being in force or in any contract or usage....."	10(1)
4.	"Notwithstanding anything contained in Sub-Section (3)"	13(5)

5.	"Notwithstanding anything contained in any other law."	18
6.	"Subject to provisions of this Act"	27
7.	"Except as provided in Sub-Sections (2), (3) & 28(1) (4)....."	28(1)

(12) If the intention would have been as stated in Para 43 of Kamal Kishore's judgment (supra), the legislature could have specified so, as has been done in the above referred Sections of the 2001 Act.

(13) Section 32(3)(a) of the New Act enshrines that all applications, suits and proceedings under the Old Act, pending on the date of the commencement of the New Act, shall be continued and disposed of in accordance with the provisions of the Old Act as if the repealed Act had continued in force and the New Act (including Section 29) has not been enacted. As such there arises no questions of any anomaly, irreconcilable inconsistency and incompatibility in between Section 29 and Section 32 (3)(a) of the 2001 Act . (14) Rule of Harmonious construction requires that Section 29 and Section 32(3)(a) should be so interpreted that there may not be a 'head on clash' and effect should be given to both. No part should be rendered otiose or futile. Even according to the decision in Kamal Kishore's case (supra), Section 29 is a general provision while Section 32(3))(a) is a special provision dealing with suits, applications and proceedings pending at the time of the commencement of the New Act. Special provisions will prevail. There is no question of implied repeal of Section 32(3)(a) by Section 29."

25. We are in complete agreement with the aforesaid reasoning given by the learned Single Judge (one of us).

26. We, therefore, find that the learned Division Bench decided Kamal Kishore's case (supra) relying heavily upon the judgment of the Hon'ble Supreme Court in Northern India Caterers' case (supra) without it being brought to the notice of the learned Division Bench that the subsequent constitutional Bench in Maganlal Chhagganlal's case (supra) had found that it does not "represent the correct law" (Per Hon'ble P.N. Bhagwati and Hon'ble V.R. Krishna Iyer, JJ.) in Maganlal Chhagganlal's case (supra).

27. Mr. Mathur appearing to support the judgment in Kamal Kishore's case (supra) rendered by the learned Division Bench, on the other hand, sought to contend that in

Maganlal Chhaganlal's case (supra) there is a distinction inasmuch as the Hon'ble Supreme Court held that there was no unjust discrimination based upon the classification provided under the two separate procedures and that does not find place in the present case as in the present case with respect to the tenant against whom the applications have been filed prior to the coming into force of the New Act of 2001, they would be governed by a different yardstick whereas the suits instituted after coming into force of the New Act of 2001 against the tenant for revision of the rent, the same would be governed by different yardstick which may result in different results and discrimination. He, therefore, submits that as against Maganlal Chhaganlal's case (supra) where it was found to be reasonable classification in the present case, there is no such reasonable classification for adopting different standards under the Old Act of 1950 and the New Act of 2001. So far as the aforesaid submission is concerned, as has been stated above, there is a mark distinction between the provisions of the Old Act of 1950 and New Act of 2001 after the legislature took into account the changed circumstances, as mentioned in the statement of object and reasons and both provide for different eventualities. While under the Old Act of 1950, a right had been created in favour of the tenant also for seeking revision of the rent if it was excessive, there was no such right under the New Act of 2001 permitting the tenant to seek revision of the rent. The New Act of 2001 has been enacted as would be evident from the statement of object and reasons are as follows:-

"Statement of objects and reasons

The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act No. 17 of 1950) has been in force for nearly five decades and during these years the situation prevailing with regard to the premises in the State has undergone a considerable change and as a result of changed scenario, the law relating to premises warrants change. This matter has been engaging attention of the State Government for the past several years and the matter was considered time and again from all angles.

The existing law owing to feeling of insecurity among the landlords in getting the premises vacated, is impeding the growth of lettable premises. Hence, adequate provision for timely vacation of premises as also determination of fair rent is the necessity of the hour. Certain inbuilt safeguards for tenants are also required to be retained and certain premises are required to be kept out of the scope of new law. It has, therefore, become necessary to replace the existing law relating to control of rent and eviction of premises."

28. The Legislature took into consideration the fact that the Old Act of 1950 had

remained in force for 50 years and in the prevailing situation with regard to the availability of the premises, the State has undergone a considerable change. Taking note of the changed circumstances and the fact that the operation of the Old Act of 1950 had resulted in hardship to the landlords both so far as the vacation of the premises was concerned as also taking note of the fact of the hardship caused for determination of the fair rent it was necessary to replace the Old provisions under the Act of 1950 with new provisions for the control of rent and eviction. The Legislature, therefore, considered it appropriate not to keep a provision such as Section 6 of the Old Act which enable the tenants to seek revision of rent in the cases where it was suggested to be excessive by doing away with the aforesaid provisions and only making provision in revision of the rent upward for its increase under the New Act of 2001 and for that purpose provided a structured formula whereas in a given case filed under the Old Act a tenant may have claimed the revision of rent contending the same to be excessive was to be decided depending upon the facts and circumstances of each case on the basis of the material and evidence placed before the court to determine the prevailing rate of rent. But the Legislature has while enacting the New Act of 2001, taken into account the fact of the increasing costs and only provided for the increase of rent under Sections 6 and 7, in contrast to the provisions of Section 6 of the Old Act of 1950. Looking to the availability of the premises to a tenant in the present times in case the tenant finds the rent to be excessive, he may choose to vacate and take another premises after weighing the pros and cons. We may add that there are certain other differences in the Old and New Acts also under Section 9 of the New Act and Section 13 of the Old Act which provide the grounds and procedure for seeking eviction.

29. We would, therefore, answer the question No. 1 in the negative and hold that Section 29 of the Rajasthan Rent Control Act, 2001 does not have any overriding effect over Section 32(3)(a) of the Rajasthan Rent Control Act, 2001.

30. This leads just to the next question which is "Whether the suits, applications and other proceedings relating to fixation of standard or provisional rent under Sections 6 and 7 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, which have been saved by Section 32(3)(a) of the Rajasthan Rent Control Act, 2001, will be governed by the provisions of the Old Act of 1950, after coming into force of the New Act of 2001 or will be governed by the provisions of the New Act of 2001 as Sections 6 and 7 of the Act of 1950, having been impliedly repealed, by virtue of Section 29 of the New Act of 2001 as held by the Division Bench in Kamal Kishore's case (supra)

?"

31. Having answered the question No. 1 in the negative, the answer to the question No. 2 is that by virtue of Section 32(3)(a) of the New Act of 2001 all the suits, applications and other proceedings relating to the fixation of the standard rent and provisional rent under Section 6 and 7 of the Old Act of 1950 would be governed by the provisions of the Old Act of 1950 despite coming into force of the New Act of 2001 and not by the provisions of Section 6 and 7 of the New Act of 2001, as held by the learned Division Bench in Kamal Kishore's case (supra).

32. Registry is directed to list the case before Single Bench for final hearing of the writ petition.

Cases Referred.

1. 2008(1) R.C.R.(Rent) 236 : 2008 (1) WLC (Raj.) 29
2. AIR 1967 SC 1581
3. AIR 1974 SC 2009
4. 2004(1) R.C.R.(Rent) 621 : 2003(4) WLC (Raj.) 790
5. 2005(2) DNJ (Raj.) 1136
6. 2005 WLC (Raj.) UC 759
7. 2007 (5) WLC (Raj.) 478

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