REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8597 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 26925 OF 2011)

RAM KRISHAN GROVER AND OTHERS ..... APPELLANT(S)

VERSUS

UNION OF INDIA AND OTHERS ..... RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 8598 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 28107 OF 2011)

CIVIL APPEAL NO. 8599 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 28371 OF 2011)

CIVIL APPEAL NO. 8600 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 28593 OF 2011)

CIVIL APPEAL NO. 8601 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 31284 OF 2011)

CIVIL APPEAL NO. 8602 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 2091 OF 2012)

CIVIL APPEAL NO. 8603 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 34304 OF 2012)

CIVIL APPEAL NO. 8604 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 17458 OF 2013)

A N D

CIVIL APPEAL NO. 8605 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 35980 OF 2013)

J U D G M E N T

SANJIV KHANNA, J.

Leave granted.

2. The afore-captioned appeals are by tenants of different residential and non-residential buildings in the Union Territory of Chandigarh and urban areas in the State of Punjab, who have challenged the constitutional validity of Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Rent Act') and its extension to the Union Territory of Chandigarh by the Central Government vide Notification dated 09.10.2009 in exercise of powers under Section 87 of the Punjab Reorganisation Act, 1966 (for short, the 'Reorganisation Act').

3. Section 13-B of the Rent Act, reads as under:

> "**13-B. Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to Non-resident Indian.—** (1) Where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinarily living with and dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be:

Provided that a right to apply in respect of such a building under this Section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.

(2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building under this Section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly."

The expression ‘Non-Resident Indian’ has been defined in clause (dd) to Section 2 of the Rent Act and reads:

“(dd) "Non-resident Indian" means a person of Indian origin, who is either permanently or temporarily settled outside India in either case –

(a) for or on taking up employment outside India; or

(b) for carrying on a business or vocation outside India; or

(c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for an uncertain period;”

Section 13-B of the Rent Act gives a right to Non-Resident Indians to recover immediate possession of residential/ scheduled/non-residential buildings situated in the Union Territory of Chandigarh and urban areas in the State of Punjab on the satisfaction of the conditions stated. We shall elaborate the provisions subsequently and would first refer to the legislative history and procedure adopted for enforcement of the challenged provisions in the Union Territory of Chandigarh.

4. In 1956, the unified State of Punjab was created by merging the erstwhile States of Pepsu and Punjab. In 1966, a new State of Haryana was created and carved out of certain territories from the State of Punjab. Certain hill areas of Punjab were merged in the Union Territory of Himachal Pradesh. A new Union Territory of Chandigarh was created and became the joint capital of Punjab and Haryana. The Reorganisation Act, that is, the Punjab Reorganisation Act, 1966 gave effect to the proposals vide provisions relating to the delimitation of territories. Another important aspect of the Reorganisation Act dealt with the applicability of laws in territories that had undergone reorganisation. This was effected by Part X of the Reorganisation Act comprising of Sections 86 to 97. Sections 87, 88 and 89 of the

Reorganisation Act are relevant for the present decision and are reproduced below:

> "87. Power to extend enactments to Chandigarh – The Central Government may, by notification in the Official Gazette, extend with such restrictions or modifications as it thinks fit, to the Union territory of Chandigarh any enactment which is in force in a State at the date of the notification.
>
> 88. Territorial extent of laws.—The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within the State immediately before the appointed day.
>
> 89. Power to adapt laws.—For the purpose of facilitating the application in relation to the State of Punjab or Haryana or to the Union Territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature or other competent authority."

We shall subsequently elucidate on the sections, with specific reference to Section 87 of the Reorganisation Act.

5. Territories originally comprised in the former province of East Punjab and later designated as the State of Punjab were governed by the Rent Act, which applied to all "urban areas"

defined in Section 2(j) as any area administered by a municipal committee, a cantonment board, a town committee or an area notified by the State Government as an "urban area" for the purposes of the Rent Act.

6. Central Government in exercise of power under Section 89 of the Reorganisation Act had issued the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1968 with effect from 1.11.1966 whereby in all the "existing laws" in its application to the Union Territory of Chandigarh, any reference to the State of Punjab should be read as a reference to the Union Territory of Chandigarh. The expression "existing laws" was defined in para 2(1)(b) of the Order. It is an accepted position that the Rent Act was not a part of the "existing laws" as the area forming the Union Territory of Chandigarh was not an "urban area" within the Rent Act.

7. The Central Government by Notification dated 13.10.1972 and published in the Official Gazette on 04.11.1972 had declared the area comprising of the Union Territory of Chandigarh to be an "urban area" for the Rent Act. This Notification was struck down by the Punjab and Haryana High Court in ***Harkishan Singh*** v. ***Union of India***[1], on the short ground that no notification extending the

1 AIR 1975 Punj. & Har 160 (FB)

Rent Act to the Union Territory of Chandigarh as an “urban area” under Section 2(j) of the Rent Act could have been issued post reorganisation on 1.11.1966. The Rent Act was not operative in Chandigarh in terms of Section 88 of the Reorganisation Act nor any part would become operative by a notification under Section 87 without necessary adaptation. Thus, neither the Order nor the Notification dated 13.10.1972 could have the effect of making the Rent Act applicable to the Union Territory of Chandigarh.

8. The Parliament had thereupon to rectify the defect exercised its power under Article 246(4) of the Constitution by enacting the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 (for short, the ‘Extension Act’) to extend the Rent Act, subject to modification specified in the Schedule, to the Union Territory of Chandigarh. This enactment had stipulated that the Rent Act would be deemed to be in force from 04.11.1972, that is the day on which the earlier Notification that was quashed in ***Harkishan Singh’s*** case (supra), was made effective. Thereby all proceedings for eviction initiated in view of the Notification dated 04.11.1972 were regularised. The Extension Act was in principle and substance a Parliamentary enactment to incorporate by reference and to avoid repetition all the provisions of the Rent Act to the Union Territory of Chandigarh.

9. On 17.12.1976, when the Parliament was not in session, the President had promulgated Ordinance 14 of 1976 by which the Rent Act was amended by the introduction of an Explanation and addition of sub-section (4A) to Section 13 and sub-section (2A) to Section 19. New sections 13A, 18A and 18B were inserted and in Schedule II the form of summons to be issued under Section 13A was added. This Ordinance was allowed to lapse and was not enacted as law thereafter.

10. In 1982, the Parliament passed the East Punjab Rent Restriction (Chandigarh Amendment) Act replacing the words "East Punjab" with the word "Punjab" and by substituting the definition of "non-residential building" in the Rent Act as applicable to Chandigarh. Lapsed amendments to the Rent Act vide Ordinance 14 of 1976 were not incorporated.

11. In 1985, the provisions of the Rent Act as applicable to the State of Punjab were amended by the Legislature of the State of Punjab vide Punjab Act 2 of 1985 by inserting new Sections 13A, 18A and 18B, a new Second Schedule and amendments in Sections 13 and 19 substantially similar to those that had been effected by Ordinance 14 of 1976. A new definition of "specified landlord" was also added. These amendments came into force on 16.11.1985.

12. Central Government thereafter issued Notification dated 15.12.1986 purportedly in exercise of the power under Section 87 of the Reorganisation Act extending the provisions of the Punjab Act 2 of 1985, subject to the modifications mentioned therein, to the Rent Act applicable to the Union Territory of Chandigarh, that is, the Extension Act.

13. The extension whether permissible by means of a notification issued under Section 87 of the Reorganisation Act was challenged, but rejected by this Court in ***Ramesh Birch*** v. ***Union of India***[2]. We shall subsequently refer to this judgment.

14. The provision under challenge before us, namely Section 13-B was inserted in the Rent Act vide East Punjab Urban Rent Restriction (Amendment) Act, 2001 (for short, the 'Amendment Act') as enacted by the State Legislature of Punjab. Section 13-B and other related sections in the Amendment Act were extended to the Union Territory of Chandigarh by the Central Government vide Notification dated 09.10.2009 in purported exercise of powers under Section 87 of the Reorganisation Act.

15. To avoid prolixity, we do not propose to refer to the factual matrix as after hearing arguments we had declined to interfere on facts

2 1989 Supp (1) SCC 430

and had heard arguments on legal issues that can be summarised as under:

(i) The Notification dated 09.10.2009 which extends the Amendment Act to Chandigarh by an executive action in exercise of powers under Section 87 of the Reorganisation Act amounts to and suffers from the vice of excessive delegation as it amends the rent legislation in force in Chandigarh, that is, the Extension Act were enacted by the Parliament in exercise of powers under Article 246(4) of the Constitution.

(ii) The State Legislature of Punjab was incompetent to enact the Amendment Act, for the subject matter and rights of Non-Resident Indians fall under the field of *'Citizenship, Naturalization and Aliens'* under Entry 17 of List I; *'Extradition'* under Entry 18 of List I and *'Admission into, and Emigration and Expulsion from India; Passports and Visas'* under Entry 19 of List I of the Seventh Schedule. The subject matter of legislation is in direct conflict with and repugnant to various Central enactments concerning the rights of Non-Resident Indians including the Citizenship Act, 1955 and the Foreign Exchange Management Act, 1999, etc.

(iii) Section 13-B which gives a preferential right to claim eviction to Non-Residents, including foreigners, is arbitrary, unreasonable and discriminatory, and creates an artificial classification for benefit of Non-Residents vis-à-vis Indian Residents and thus, violates Article 14 of the Constitution.

For the sake of convenience and clarity, we shall deal with each of the respective submissions and give our reasons separately.

A. Whether Notification dated 09.10.2009 issued under Section 87 of the Reorganisation Act extending Section 13-B of the Rent Act to Chandigarh by executive action is invalid?

16. In ***Ramesh Birch*** (supra), earlier Constitutional Bench judgment of this Court in ***Re Delhi Laws Act 1912, Ajmer Merwara (Extension of Laws) Act, 1947 and Part C States (Laws) Act, 1950***[3] was examined and elucidated after considering seven different opinions of Kania, CJ., Fazl Ali, Patanjali Sastri, Mahajan, Mukherjea, Das and Bose JJ. All the Judges except Kania, CJ. and Mahajan, J. had upheld provisions of Section 7 of the Delhi Laws Act, 1912, Section 2 of the Ajmer Merwara (Extension of Laws) Act, 1947 and the first portion of Section 2 of Part C States (Laws) Act. However, Bose and Mukherjea, JJ. had for reasons

3 AIR 1951 SC 332

stated by them formed the majority with Kania, CJ. and Mahajan, J. in striking down second part of Section 2 of Part C States (Laws) Act, 1950 by which the executive had been given the power to make a provision in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which was for the time being applicable to that Part C State. This part of Section 2, it was observed, suffers from the vice of excessive delegation and abdication of power by the Legislature. On the touchstone of an earlier decision of the Privy Council in ***R.*** v. ***Burah***[4], this Court in ***Ramesh Birch*** (supra) had upheld constitutional validity of Section 87 of the Reorganisation Act, holding it to be valid on the 'policy and guideline' theory if one has proper regard to the context of the Reorganisation Act and the object and purpose sought to be achieved by Section 87 of the Reorganisation Act. It was observed:

> "23. But, these niceties apart, we think that Section 87 is quite valid even on the "policy and guideline" theory if one has proper regard to the context of the Act and the object and purpose sought to be achieved by Section 87 of the Act. The judicial decisions referred to above make it clear that it is not necessary that the legislature should "dot all the *i's* and cross all the *t's*" of its policy. It is sufficient if it gives the broadest indication of a general policy of the legislature. If we bear this in mind and have regard to the history of this type of legislation, there will be no difficulty at all. Section 87, like the provisions of Acts I, II and III, is a provision necessitated by changes resulting in territories coming under the legislative jurisdiction of the Centre.

4 (1878) 5 Ind App 178 (PC).

> These are territories situated in the midst of contiguous territories which have a proper legislature. They are small territories falling under the legislative jurisdiction of Parliament which has hardly sufficient time to look after the details of all their legislative needs and requirements. To require or expect Parliament to legislate for them will entail a disproportionate pressure on its legislative schedule. It will also mean the unnecessary utilisation of the time of a large number of members of Parliament for, except the few (less than ten) members returned to Parliament from the Union territory, none else is likely to be interested in such legislation. In such a situation, the most convenient course of legislating for them is the adaptation, *by extension*, of laws in force in other areas of the country. As Fazl Ali, J. pointed out in the *Delhi Laws Act case* [AIR 1951 SC 332 : 1951 SCR 747] it is not a power to make laws that is delegated but only a power to "transplant" laws already in force after having undergone scrutiny by Parliament or one of the State legislatures, and that too, without any material change. There is no dispute before us — and it has been unanimously held in all the decisions — that the power to make modifications and restrictions in a clause of this type is a very limited power, which permits only changes that the different context requires and not changes in substance. There is certainly no power of modification by way of repeal or amendment as is available under Section 89."

17. ***Ramesh Birch*** (supra) had held that once a policy of extension of the Rent Act is clear and permissible, it would seem only natural as a necessary corollary that the executive should be permitted to extend future amendments in the Rent Act to the Union Territory of Chandigarh. After extensively examining the different judgments and the views expressed in ***Re Delhi Laws Act*** (supra), the notification was upheld with the following findings:

> "31. There is certainly a good deal of force in these arguments but we think that they proceed on an incorrect

view of the effect of the notification impugned in the present case. We might have been inclined to accept the submissions of the learned Counsel had the effect of the notification been to extend law which is in "actual conflict" with any parliamentary enactment or which has the effect of "throwing out" any existing law in the Union territory. To borrow an expression used in an analogous context, we would have considered the validity of the extension doubtful had the extended provisions been repugnant to an Act of Parliament in force in the Union territory. So long as that is not the effect or result, we think, there is no reason to construe the scope of Section 87 in the restricted manner suggested by counsel. It is no doubt true that Section 87 permits an extension because there is no law in the Union territory in relation to a particular subject and Parliament has not the requisite time to attend to the matter because of its preoccupations. But this purpose does not require for its validity that there should be no existing law of Parliament at all on a subject. Again the concept of "subject" for the purposes of this argument is also an elastic one the precise scope of which cannot be defined. The concept of vacuum is as much relevant to a case where there is absence of a particular provision in an existing law as to a case where there is no existing law at all in the Union territory on a subject. For instance, if Parliament had not enacted the 1974 Act but had only enacted an extension of the Transfer of Property Act to Chandigarh, could it have been said that a subsequent notification cannot extend the provisions of the 1949 Act to Chandigarh because the subject of leases is governed by the Transfer of Property Act which has been already extended and there is, therefore, no "vacuum" left which could be filled in by such extension ? Again, suppose, initially, a Rent Act is extended by Parliament which does not contain a provision regarding one of the grounds on which a landlord can seek eviction — say, one enabling the owner to get back his house for reoccupation — and then the Government thinks that another enactment containing such a provision may also be extended, can it not be plausibly said that the latter is a matter on which there is no legislation enacted in the territory and that the extension of the latter enactment only fills up a void or vacancy ? Again, suppose the provisions of a general code like, say, the Code of Civil Procedure are extended to the

Union territory, should we construe Section 87 so as to preclude the extension of a later amendment to one of the rules to one of the orders of the CPC merely on the ground that it will have effect of varying or amending an existing law? We think it would not be correct to thus unduly restrict the scope of a provision like Section 87. The better way to put the principle, we think, is to say that the extension of an enactment which makes additions to the existing law would also be permissible under Section 87 so long as it does not, expressly or impliedly, repeal or conflict with, or is not repugnant to, an already existing law. In this context, reference can usefully be made to the observations in Hari Shankar Bagla [*Harishankar Bagla v. State of M.P.*, (1955) 1 SCR 380] at p. 391, which seem to countenance the "bypassing" of an existing law by a piece of delegated legislation and to draw the line only at its attempt to repeal the existing law, expressly or by necessary implication. In a sense, no doubt, any addition, however small, does amend or vary the existing law but so long as it does not really detract from or conflict with it, there is no reason why it should not stand alongside the existing law. In our view Section 87 should be interpreted constructively so as to permit its object being achieved rather than in a manner that will detract from its efficacy or purpose. We may also note, incidentally in legislative practice also, such successive changes have been allowed to stand together. *Lachmi Narain v. Union of India* [(1976) 2 SCC 953] narrates how the Bengal Finance (Sales Tax) Act, 1941 extended to Delhi under Act III was subsequently amended by Parliament Acts of 1956 and 1959 but was also sought to be modified by various notifications from time to time. These notifications were challenged on the ground that the power to extend by notification could be exercised only once and that the impugned notification did not merely extend but also effected modifications of a substantial nature in the Act sought to be extended. No contention was, however, raised that after the intervention of Parliament in 1956 and 1959 there could have been no extension of the Bengal Act as it would have the effect of adding to or varying the Parliamentary legislation apparently because they could stand side by side with each other. We, therefore, think that since the extension of the 1985 Act only adds provisions in respect of aspects not covered by the 1974 Act and in a manner not inconsistent

therewith, the impugned notification is quite valid and not liable to be struck down."

18. The distinction between conditional legislation and delegated legislation was explained by this Court in ***Vasu Dev Singh*** v. ***Union of India***[5] in the following words:

> "16. … The distinction between conditional legislation and delegated legislation is clear and unambiguous. In a conditional legislation the delegatee has to apply the law to an area or to determine the time and manner of carrying it into effect or at such time, as it decides or to understand the rule of legislation, it would be a conditional legislation. The legislature in such a case makes the law, which is complete in all respects but the same is not brought into operation immediately. The enforcement of the law would depend upon the fulfilment of a condition and what is delegated to the executive is the authority to determine by exercising its own judgment as to whether such conditions have been fulfilled and/or the time has come when such legislation should be brought into force. The taking effect of a legislation, therefore, is made dependent upon the determination of such fact or condition by the executive organ of the Government. Delegated legislation, however, involves delegation of rule-making power of legislation and authorises an executive authority to bring in force such an area by reason thereof. The discretion conferred on the executive by way of delegated legislation is much wider. Such power to make rules or regulations, however, must be exercised within the four corners of the Act. Delegated legislation, thus, is a device which has been fashioned by the legislature to be exercised in the manner laid down in the legislation itself...
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> 17. In *Hamdard Dawakhana* v. *Union of India*[6] this Court stated:
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> "The distinction between conditional legislation and delegated legislation is this that in the former the delegate's power is that of determining when a

5 (2006) 12 SCC 753
6 AIR 1960 SC 554

> legislative declared rule of conduct shall become effective; *Hampton & Co.* v. *U.S.* and the latter involves delegation of rule-making power which constitutionally may be exercised by the administrative agent. This *means* that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend;""

In the present case, the extension of the Amendment Act to the Union Territory of Chandigarh falls within the ambit of conditional delegation and is valid and permissible.

19. In light of the aforesaid decisions and for the same reasons as stated in ***Ramesh Birch*** (supra), we would reject the first contention raised by the appellants. Once a policy of extension of laws has been laid down by the Parliament and is clear and permissible, it would only seem as an inevitable fallout that the executive should be permitted to extend future amendments to the existing laws. Therefore, the challenge predicated on the doctrine of excessive delegation, separation of powers, doctrine of the law of agency, fails and must be rejected. Such challenge must also be rejected in view of the large number of eviction suits filed by

Non-Resident Indian landlords on the strength of Notification dated 09.10.2009 who would be left remediless if contentions to the contrary are accepted.

B. Whether amendments made vide the Amendment Act with regard to the rights of Non-Resident Indians by the State Legislature of Punjab were beyond its competence?

20. The contention that the Amendment Act enacted by the State Legislature of Punjab has overstepped the jurisdiction assigned to it or has encroached upon a forbidden field is determinable by finding out the true nature and character or *pith and substance* of the Amendment Act which turns upon construction of the entries in the legislative Lists under the Seventh Schedule of the Constitution.

21. Relevant entries from the three Lists which are germane to the determination of nature and character of the Amendment Act are:

List I

Entry 17 – *Citizenship, naturalisation and aliens.*

Entry 18 – *Extradition.*

Entry 19 – *Admission into, and emigration and expulsion from, India; passports and visas.*

List II

Entry 18 – *Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; and colonization.*

List III

Entry 6 – *Transfer of property other than agricultural land; registration of deeds and documents.*

Entry 7 – *Contracts including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.*

Entry 13 – *Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.*

22. The entries in the three Lists are not mutually exclusive. Further, the entries are fields of legislation that demarcate the area and heads of legislation. Accordingly, they should receive the widest construction unless their rigour and import need to be castrated by competing entries and other parts of the Constitution. Interpretation of each entry has to be fair and liberal so as to cover all incidental and subsidiary matters which can reasonably be said

to have been comprehended in it. The entries should not be interpreted in a narrow and pedantic sense. *"Pith and substance"* doctrine states that if the legislation is covered by an entry, that is, it is within the permitted jurisdiction of the legislature, any incidental encroachment in the rival field has to be disregarded. Only when wide construction of an entry leads to heads-on-clash with another entry in the same or different List, the principle of harmonious construction applies to reconcile the conflict and to give effect to each of them.

23. Repugnancy arises between a Central and a State Act when there is a direct and irreconcilable conflict between the two enactments. It is when there is an irreconcilable conflict between the two legislations that the Central Legislation prevails by virtue of Article 254 of the Constitution. Such repugnancy or inconsistency is not to be readily inferred as the entries in the three Lists permit incidental encroachment. Consequently, every attempt must be made to placate the conflict and only when and in case of oppugnant clash, the Court should proceed to strike down the legislation as trespassing beyond its legitimate and legal confines.

24. In ***Vijay Kumar Sharma and Others*** v. ***State of Karnataka and Others***[7], this Court referring to the *"pith and substance"* doctrine

7 (1990) 2 SCC 562

had held that a provision in a particular legislation in order to give effect to its dominant purpose may incidentally encroach on the same subject matter as covered by the provision of another legislation. Such partial coverage of the same area in a different context and to achieve a different purpose does not bring about the repugnancy which is intended to be covered by Article 254(2). Both the legislations must be substantially on the same subject matter for repugnancy to arise and to attract Article 254. If the subject matters covered by the legislations are different, then merely because the two legislations refer to some allied or cognate subjects, they do not cover the same field.

25. A Constitutional Bench judgment of this Court in ***Indu Bhushan Bose*** v. ***Rama Sundari Debi and Another***[8] had *inter alia* examined Entry 3 in List I, Entry 18 in List II and Entries 6, 7 and 13 in List III to observe that the general power of legislating in respect of relationship between landlord and tenant can be traced either under Entry 18 of List II or Entries 6 and 7 of List III. The expression *'land tenures including the relation of landlord and tenant'* appearing in Entry 18 of List II, it was observed, was used only with reference to the relationship of landlord and tenant in respect of vacant lands and does not cover tenancy of buildings or house accommodation. Nevertheless, the Court did not give a

8 (1969) 2 SCC 289

finding in definite terms as the relationship of landlord and tenant in question was in respect of a house accommodation situated in a cantonment area and therefore was covered by Entry 3 of List I which vests exclusive power to make laws for the cantonment areas in the Parliament. Subsequent decision in ***Jaisingh Jairam Tyagi and Others*** v. ***Mamanchand Ratilal Agarwal and Others***[9] and a Constitution Bench judgment in ***V. Dhanapal Chettiar*** v. ***Yesodai Ammal***[10] substantially follow ***Indu Bhushan*** (supra) to hold that the subject matter of housing and accommodation falls within the purview of the Concurrent List.

26. In ***Accountant and Secretarial Services Pvt. Ltd. and Another*** v. ***Union of India and Others***[11], this Court had examined the question of repugnancy and interplay between the Central enactment, viz. the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 based on the pattern of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 and the West Bengal Premises Tenancy Act, 1956 and the question which of these enactments would prevail. The Court had interpreted Entries 3, 32, 43 and 44 of List I, Entry 18 of List II and Entries 5, 6 and 7 of the List III and the corresponding entries in the Government of India Act, 1935 to hold that all the three

9 (1980) 3 SCC 162
10 (1979) 4 SCC 214
11 (1988) 4 SCC 324

legislations were passed in exercise of powers conferred with respect to matters contained in the Concurrent List. In view of the repugnancy and conflict between the Central enactment on one hand and the State law on the other, in terms of Article 254, the Central enactment shall prevail. Further, notwithstanding the earlier precedents, the Court had examined the question of the relevant entry applicable to the tenancy legislation and rejected the contention that Entry 18 of List II should be interpreted as encompassing within its ambit legislation on the relationship of landlord and tenant in regard to housing and buildings. Setting out several reasons it was observed that the power to legislate in respect of tenanted premises would fall within the ambit and scope of Entries 6, 7 and 13 of the Concurrent List and would not be referable to Entry 18 of List II. The expression ‘land’ in Entry 18 of List II should be given as wide a construction as possible, but has to be read with the relevant entries in other Lists to give meaning and content to all of them. Inclusion of buildings and housing in the Concurrent List is appropriate and to place buildings and housing within the ambit of the expression ‘land’ in Entry 18 of List II would denude other entries in Lists I and III concerning transfer of property, devolution and succession of land and buildings, etc. of their vigour and would render them otiose.

27. The Amendment Act on its true construction and by reference to the doctrine of *"pith and substance"* is relatable to the relationship of landlord and tenant for housing and accommodation and falls under the Concurrent List. The dominant intention or *"pith and substance"* of the legislation is to regulate the relationship between Non-Resident Indian landlords and tenants for housing and accommodation. Merely because the Amendment Act to achieve its object touches upon the subject matter in respect of Non-Resident Indian landlords in the Rent Act, does not make the Amendment or the Rent Act ultra vires the Constitution. The Rent Act as amended by the Amendment Act and the Central legislations relating to citizenship, regulation of the right of non-residents to own and acquire immovable property, cover different subject matters and serve different objects and there is no repugnancy between the Rent Act and any Central enactment like Citizenship Act, Foreign Exchange Regulation Act, etc. We do not subscribe to the view that the legislative lists under the Seventh Schedule envisage and mandate separate legislation by the Central Government for Non-Resident Indian landlords.

28. Keeping in view the aforesaid position, the Amendment Act enacted by the State legislature was well within its competence.

We would, however, note that in the context of the Union Territory of Chandigarh and as the subject matter falls within the Concurrent List, it will be immaterial to decide on the competence of the legislating body. The power to make laws in respect of a Union Territory vests with the Parliament under Article 246(4). In terms of Section 87 of the Reorganisation Act, the power to extend laws to the Union Territory of Chandigarh vests with the Central Government, that is the Parliament or the Central Executive, as the case may be, and is permissible.

C. Whether Section 13-B of the Rent Act is arbitrary and unreasonable inasmuch as it does not afford any legal remedy to the tenants?

29. Before we delve into this question, we would reproduce Section 19(2-B) of the Rent Act which reads as under:

> "19. (2-B) The owner, who is a Non-Resident Indian and who having evicted a tenant from a residential building or a scheduled building and/or non-residential building in pursuance of an order made under Section 13-B, does not occupy it for a continuous period of three months from the date of such eviction, or lets out the whole or any part of such building from which the tenant was evicted to any person, other than the tenant in contravention of the provisions of sub-section (3) of Section 13-B, shall be punishable with imprisonment for a term, which may extend to six months or with fine which may be extended to one thousand rupees or both."

The provision incorporates statutory safeguards to check and penalise deceitful and two-faced landlords and gives the right of restitution to the defrauded tenant.

30. Section 18-A of the Rent Act prescribes a summary procedure for recovery of possession applicable to eviction petitions filed by Non-Resident Indian landlords under Section 13-B of the Rent Act. Sub-sections (4), (5), (6) and (8) to Section 18-A of the Rent Act are reproduced:

> "18-A. (4) The tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the residential building or scheduled building and/or non-residential building, as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlord or the owner, who is a non-resident Indian in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.
>
> (5) The Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord or, as the case may be, the widow, widower, child, grandchild or widowed daughter-in-law of such specified landlord or the owner, who is a non-resident Indian, from obtaining an order for the recovery of possession of the residential building or scheduled

building and/or non-residential building, as the case may be, under Section 13-A or Section 13-B.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing on a date not later than one month from the date on which leave is granted to the tenant to contest and shall hear the application from day to day till the hearing is concluded and application decided.

xx xx xx

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any residential building or scheduled building and/or non-residential building, as the case may be, made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is in accordance with law, call for the records of the case and pass such order in respect thereto as it thinks fit."

31. In ***Baldev Singh Bajwa*** v. ***Monish Saini***[12], this Court referring to the provisions of Section 18-A of the Rent Act had observed:

"11. [...] These provisions indicate that in order to obtain leave to contest the application of the landlord, the tenant has to file an affidavit taking the grounds on which he wants to contest that application. If the affidavit filed by the tenant discloses such facts as would disentitle the NRI landlord from obtaining an order for the recovery of immediate possession, the Controller would grant leave to the tenant to contest the landlord's application for eviction. Once the leave is granted, the application is required to be disposed of as per the procedure applicable to the Court of Small Causes. The Controller is required to commence the hearing within one month from the date on which the leave is granted to the tenant to contest. The

12 (2005) 12 SCC 778

> application shall be heard day to day till hearing is concluded and application decided. The order to direct recovery of possession of the suit accommodation made by the Controller is not subject to appeal or second appeal. However, the High Court may call for the record of the case to satisfy itself that the order passed by the Controller is in accordance with law and may pass such order as it thinks fit."

32. In ***Ravi Dutt Sharma*** v. ***Ratan Lal Bhargava***[13], this Court had discussed the object of rent control legislation and also insertions made to provide expeditious, effective and speedy remedy for a class of landlords who require the premises for bona fide use, to hold:

> "7. […] The dominant object of the amending act [is] to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Sections 14(1)(*e*) and 14-A and for avoiding unusual dilatory process provided otherwise by the Rent Act. It is common experience that suits for eviction under the Act take a long time commencing with the Rent Controller and ending up with the Supreme Court. In many cases experience has indicated that by the time the eviction decree became final several years elapsed and either the landlord died or the necessity which provided the cause of action disappeared and if there was further delay in securing eviction and the family of the landlord had by then expanded, in the absence of accommodation the members of the family were virtually thrown on the road. It was this mischief which the Legislature intended to avoid by incorporating the new procedure in Chapter III-A. The Legislature in its wisdom thought that in cases where the landlords required their own premises for bona fide and personal necessity they should be treated as a separate class along with the landlords covered by Section 14-A and should be allowed to reap the fruits of decrees for eviction within the quickest possible time. It cannot,

13 (1984) 2 SCC 75

> therefore, be said that the classification of such landlords would be an unreasonable one because such a classification has got a clear nexus with the objects of the amending Act and the purposes which it seeks to subserve."

33. Section 18-A of the Rent Act requires the Controller to take up the matter on a day-to-day basis until the hearing on an application for leave to defend is concluded. No litigant can possibly object to a provision stipulating day-to-day hearing which ensures speedy, expeditious and effective decisions. The observations of this Court in ***Ravi Dutt Sharma*** (supra) are apposite. Section 18-A also states that the decision of the Controller is final as no appeal or second appeal lies against the order of eviction except that the High Court could, to satisfy itself of the correctness of the decision, examine the matter by calling for the records of the case. Repelling a similar challenge on the ground that 25-B of the Delhi Rent Control Act, 1958 does not provide for an appeal or second appeal against an order of eviction, in ***Kewal Singh*** v. ***Smt. Lajwanti***[14] it was observed:

> "19. […] An appeal is purely a creature of the statute and this right has not been given in order to cut out unnecessary delay. Instead the highest Court of the State has been given a wide power of revision where the said Court can examine the case of the tenant and the landlord and the validity of the order passed by the Controller. The right of the tenant, therefore, is sufficiently safeguarded by the proviso to sub-section (8) of S. 25B of the Act referred to above. In order to

14 (1980) 1 SCC 290

give relief to the tenant against any apparent error of law or fact where no revision has been filed in the High Court the statute confers power of review on the Controller."

34. On the requirement of '*bona fide* need' of Non-Resident Indian landlords under Section 13-B in ***Baldev Singh Bajwa*** (supra), it was elucidated:

> "14. The phrase "bona fide requirement" or "bona fide need" or "required reasonably in good faith" or "required", occurs in almost all Rent Control Acts with the underlying legislative intent which has been considered and demonstrated innumerable times by various High Courts as also by this Court, some of which we would like to refer to. In *Ram Dass* v. *Ishwar Chander* it is said that the bona fide need should be genuine and honest, conceived in good faith. It was also indicated that the landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it, and that desire, to become a "requirement" in law must have the objective element of a "need", which can be decided only by taking all the relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down.
>
> 15. In *Bega Begum* v. *Abdul Ahad Khan* it was held by this Court that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.
>
> 16. In *Surjit Singh Kalra* v. *Union of India* a three-Judge Bench of this Court has held as under:
>
> > "*20*. The tenant of course is entitled to raise all relevant contentions as against the claim of the classified landlords. The fact that there is no reference to the words bona fide requirement in

> Sections 14-B to 14-D does not absolve the landlord from proving that his requirement is bona fide or the tenant from showing that it is not bona fide. In fact every claim for eviction against a tenant must be a bona fide one. There is also enough indication in support of this construction from the title of Section 25-B which states 'special procedure for the disposal of applications for eviction on the ground of bona fide requirement'."

17. In *Shiv Sarup Gupta* v. *Dr. Mahesh Chand Gupta* this Court while dealing with the aspect of bona fide requirement has said that the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself — whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere and honest.

18. From the aforesaid decisions the requirement of the landlord of the suit accommodation is to be established as a genuine need and not a pretext to get the accommodation vacated. The provisions of Sections 18-A(4) and (5) concede to the tenant's right to defend the proceedings initiated under Section 13-B showing that the requirement of the landlord is not genuine or bona fide. The legislative intent for setting up of a special procedure for NRI landlords is obvious from the legislative text which has been deliberately designed making distinction between the ordinary landlords and special category of landlords. The Controller's power to give leave to contest the application filed under Section 13-B is restricted by the condition that the affidavit filed by the tenant discloses such fact as would disentitle the landlord from obtaining an order for recovery of possession. It is needless to say that in the summary proceedings the tenant's right to contest the application would be

> restricted to the parameters of Section 13-B of the Act. He cannot widen the scope of his defence by relying on any other fact which does not fall within the parameters of Section 13-B. The tenant's defence is restricted and cannot go beyond the scope of the provisions of the Act applicable to the NRI landlord. Under Section 13-B the landlord is entitled to eviction if he requires the suit accommodation for his or her use or the use of the dependant, who ordinarily lives with him or her. The requirement would necessarily have to be genuine or bona fide requirement and it cannot be said that although the requirement is not genuine or bona fide, he would be entitled to the ejectment of the tenant nor can it be said that in no circumstances will the tenant not be allowed to prove that the requirement of the landlord is not genuine or bona fide. A tenant's right to defend the claim of the landlord under Section 13-B for ejectment would arise if the tenant could be able to show that the landlord in the proceedings is not an NRI landlord; that he is not the owner thereof or that his ownership is not for the required period of five years before the institution of proceedings and that the landlord's requirement is not bona fide."

35. In terms of Section 13-B of the Rent Act, the landlord should have been the owner of the premises for five years before the eviction petition is filed. Such landlord/owner is permitted to file an eviction petition only once during the lifetime and in respect of one building. Sub-section (3) to Section 13-B of the Rent Act imposes a restriction on sale or lease of the premises for a period of five years from the date of taking possession from the tenant. On breach of the conditions/ restrictions mentioned in sub-section (3) to Section 13-B, the tenant has a right to seek restoration of possession. Sub-section (2-B) to Section 19 imposes a maximum

punishment of six months imprisonment or a fine of one thousand rupees or both in case the landlord does not occupy the premises for a continuous period of three months after getting an eviction order or lets out the whole or any part of the premises to a third person other than the tenant in contravention of the provisions of sub-section (3) to Section 13-B. The reasoning in ***Baldev Singh Bajwa*** (supra) exposits that these restrictions and conditions are strong in-built checks to ensure that the need of the landlord should be genuine and *bona fide* and the tenant should not be subjected to frivolous and dubious eviction order by relying on false assertions.

36. The presumption raised with regard to the genuine need of the landlord as pleaded in the petition should not be read as an axiom or self-evident truth, which entitles the landlord and mandates the Court to pass a decree of eviction. This is clear from subsequent elucidation by this Court in paragraphs 20 and 21 in ***Baldev Singh Bajwa*** (supra). The true ratio, in our opinion, is reflected in paragraph 25 which reads as under:

> "25. On the interpretation given by us and on a plain reading of the provisions, once in a lifetime possession is given to an NRI to get one building vacated in a summary manner. A non-resident Indian landlord is required to prove that: (*i*) he is an NRI; (*ii*) that he has returned to India permanently or for a temporary period; (*iii*) requirement of the accommodation by him

> or his dependant is genuine; and (*iv*) he is the owner of the property for the last five years before the institution of the proceedings for ejectment before the Controller. The tenant's affidavit asking for leave to contest the NRI landlord's application should confine itself to the grounds which NRI landlord is required to prove, to get ejectment under Section 13-B of the Act. The Controller's power to give leave to contest the application filed under Section 13-B is circumscribed to the grounds and inquiry on the aspects specified in Section 13-B. The tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds. Inquiry would be confined to Section 13-B and no other aspect shall be considered by the Controller."

The requirement of a 'strong case' for obtaining leave to defend means a good case that brings to fore reasonable and well-grounded basis on which the tenant seeks leave to contest the eviction proceedings. It does not mean setting up and establishing at that stage a case beyond any scintilla of doubt and debate. The grounds and pleas raised should reflect clear and strong defence and relate to the grounds mentioned in paragraph 25 in ***Baldev Singh Bajwa*** (supra). The standard applied is similar to parameters elucidated in ***Inderjeet Kaur*** v. ***Nirpal Singh***[15], in which this Court had held that the leave to defend should not be granted on mere asking but when the pleas and contentions raise triable issues and the dispute on facts demands that the matter be properly adjudicated after ascertaining the truth of affidavits filed by the witnesses in their cross-examination. Each

15 (2001) 1 SCC 706

case has to be decided on its merits and not on the basis of any pre-conceived suppositions and presumptions. By providing for a simplified procedure of eviction by the Non-Resident Indians, Section 13-B does not dilute the rights of tenants. It gives a chance to the tenants on merits to establish their case and when justified and necessary to take the matter to trial. By no means, therefore, Section 13-B can be held to be arbitrary and unreasonable.

37. The expression *'one building'* appearing in sub-clause (2) to Section 13-B was examined by a three Judge Bench of this Court in ***Swami Nath*** v. ***Nirmal Singh***[16] by referring to the earlier judgment of this Court in ***Baldev Singh Bajwa*** (supra), to observe:

> "13. Reliance was placed on the decision of this Court in *Baldev Singh Bajwa* v. *Monish Saini* where the same question had come up for consideration and it was observed that on a plain reading of the provisions of Section 13-B, it would be obvious that once in a lifetime possession is given to an NRI to get one building vacated in a summary manner. It was also submitted that the ownership of the respondent landlord in respect of only one building had not been disputed by the petitioners and the only contention that was raised on their behalf was that each separate tenancy in a building would amount to a separate unit and after exhausting the right of summary possession once, it was no longer available to the NRI landlord to exercise such an option for the second time to a particular

16 (2010) 9 SCC 452

> building, which contention had been negated by the courts below.
>
> 14. We have carefully considered the submissions made on behalf of the respective parties and we are unable to agree with the submissions made on behalf of the petitioners. The interpretation sought to be given to the proviso to Section 13-B(1) of the 1949 Act would lead to an absurd situation which was not contemplated by the legislature while introducing the provisions of Section 13-B by way of amendment in 2001. The very object of the amendment would be frustrated if the narrow and constricted meaning being canvassed on behalf of the petitioners is to be accepted.
>
> 15. The provisions of Section 13-B of the 1949 Act have been correctly interpreted and dealt with in *Baldev Singh Bajwa case* and in that view of the matter, the special leave petitions must fail and are dismissed. …"

The third contention is accordingly rejected.

D. Whether classifying Non-Resident Indian landlords as a separate category renders Section 13-B invalid and ultra vires Article 14 of the Constitution?

38. Legislature's primary function is to make laws for all or different groups or classes of persons. The lawmakers as elected representatives are in a better position than any other body which is removed from local and other circumstances, to know the needs, requirements and expectations of citizens. It, therefore, seems only logical that the legislature possesses the power to distinguish and classify persons or things subjected to such laws. Such a classification, however, must pass the muster of Article 14

which proscribes hostile and invidious discrimination. Recognising that Article 14 does not entirely prohibit classification by grouping certain persons with special peculiarities in a special category to meet certain specific ends, this Court in ***Ram Krishna Dalmia*** v. ***Justice S.R. Tendolkar***[17] had postulated two conditions which must be satisfied for a classification to withstand a challenge under Article 14, namely: i) the classification should be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) the differentia must have a rational relation or nexus to the object sought to be achieved by the statute in question. In ***State of A.P. and Others*** v. ***Nallamilli Rami Reddi and Others***[18], this Court had further elucidated that a challenge on the ground of denial of equal treatment will not sustain when the legislature intends to classify persons under a well-defined class. A classification need not be scientifically perfect or logically complete and would be justified unless it is palpably arbitrary. The test to judge the validity of any classification has to be practical and pragmatic by looking beyond the classification to the purpose of the law, that is, the purpose or object of the legislation and the circumstances which had prevailed when the law was passed and which had

17 1959 SCR 279: AIR 1958 SC 538
18 (2001) 7 SCC 708

necessitated passing of that law. Not only this, there is a presumption as to constitutional validity of an enactment predicated on the belief that the legislature understands and correctly appreciates the need of its own people and is free to recognise degrees of harm and may confine its restriction to only those cases where the need is deemed to be the clearest. The hardship that may result from the classification cannot be the basis for determining the validity of any statute. This requires distinguishing between under-inclusiveness and over-inclusiveness. The former classification does not confer the same benefit or place the same burden on others who are similarly situated whereas over-inclusiveness includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. The latter is frowned upon but the former may pass the judicial test for the courts do exercise tolerance to under-inclusiveness unless it is clear that there is no fair reason for the law which would not require with equal force its extension to those whom it leaves untouched (See ***Pioneer Urban Land & Infrastructure Limited and Another*** v. ***Union of India and Others*** in Writ Petition (Civil) No. 43 of 2019 decided on 09.08.2019).

39. The object and reasons for enacting Section 13-B in the Rent Act vide the Amendment Act were explained in ***Baldev Singh Bajwa*** (supra) in the following words:

> "The State Government had been receiving representations from various NRI individuals and through their associations highlighting the plight of Indian residents returning to India after long years abroad. It was represented that the NRIs having spent long years of their life abroad did not find conditions congenial in their own country on their return either to settle down or to take up any business. On account of rigid legal provisions of the existing rent laws, the NRIs were unable to recover possession of their own residential building from the tenants. The Government having considered the situation had decided that the existing rent legislation viz. the East Punjab Urban Rent Restriction Act, 1949 should be amended to provide relief to NRIs to enable them to recover possession of a residential or scheduled building and/or one non-residential building for their own use."

The effect of Section 13-B and other provisions of the Rent Act was explained as:

> "10. The amendment introduced in the Act created a special class of NRI landlords and reposed special rights in them to recover immediate possession from the tenants occupying their premises, provided such premises were required by them. Section 13-B intends to provide immediate possession of the accommodation to the NRI landlord which is in possession of the tenant if the landlord requires the same for his or her use or for the use of anyone ordinarily living with him/her and is dependent on him or her. Sub-section (1) of Section 13-B postulates that the NRI landlord should be the owner of the building from which he has asked ejectment of the tenant. He should require the same for his or her use or for the use of anyone ordinarily living with him/her and is dependent on him or her. He should be the owner of

that building for five years before he applied to the Controller for possession of such building. The right under Section 13-B of immediate possession could be availed of only once during the lifetime of such an owner/NRI landlord. Sub-section (2) of Section 13-B gives a choice to the NRI landlord to select one among several other residential buildings or scheduled buildings and/or non-residential buildings for the purpose of eviction of the tenant from that premises. Residential building is defined in Section 2(g) to mean a building which is not a non-residential building. Scheduled building is defined in Section 2(h) of the Act which means a residential building being used by a person engaged in one or more of the professions, namely, lawyers, architects, dentists, engineers, veterinary surgeons, medical practitioners including practitioners of indigenous systems of medicine and who occupies the same partly for his business and partly for his residence. Sub-section (3) of Section 13-B puts a restriction on the landlord to deal with building of which he has taken possession by virtue of the order passed under Section 13-B of the Act of 1949. Under this section the owner who recovers the possession of the building by virtue of the order passed under Section 13-B shall neither transfer it either by sale or by any other mode nor shall he let it out for the period of five years from the date he took possession of the building. In case there is a breach on the part of the owner who took possession of the building, of any of the conditions, the tenant who had been evicted would be entitled to apply to the Controller for an order directing that the tenant be restored back possession of that building and on such a petition being moved, the Controller would pass an appropriate order. Apart from the restriction which is imposed by sub-section (3) of Section 13-B on the landlord's right to deal with the building of which he took possession under the provisions of Section 13-B, a further restriction has been imposed on the landlord under Section 19(2-B) of the Act of 1949. Section 19(2-B) contemplates that when the order for possession is being passed in favour of the owner-landlord under Section 13-B, he is required to occupy the premises continuously for the period of three months from the date of eviction of the

> tenant. He is prohibited from letting out the whole or any part of that building from which the tenant was evicted to any other person except the tenant who had been evicted by virtue of the order passed under Section 13-B. In contravention of these restrictions, the landlord is liable for a penal action and can be imposed punishment of imprisonment for a term which may extend to six months or with fine which may extend to Rupees one thousand or with both."

40. Rent control legislation are quintessentially social legislation that were enacted in the 1940's and 1950's to protect and curb exploitation of tenants in view of the prevailing socio-economic conditions due to large scale immigration to towns and cities, increase in population, lack of housing facilities as landed property was owned by a few well-off and wealthy persons. The rent control legislation, therefore, interfered with the general freedom of contract and right of the landlord to seek eviction under the Transfer of Property Act. However, all such legislations invariably also provide for balancing the conflicting rights of the landlords. In several decisions, this Court has emphasised that there is a need for balancing the two rival interests as has been observed in ***Malpe Vishwanath Acharya and Others*** v. ***State of Maharashtra and Another***[19], ***Joginder Pal*** v. ***Naval Kishore Behal***[20], ***Satyawati Sharma (Dead) By LRs*** v. ***Union of India***

19 (1998) 2 SCC 1
20 (2002) 5 SCC 397

and Another[21] and in the recent decision in ***Vinod Kumar*** v. ***Ashok Kumar Gandhi*** in Civil Appeal No. 3793 of 2016 decided on 05.08.2019.

41. In ***Kewal Singh*** (supra) this Court had rejected the challenge of discrimination and arbitrariness predicated on Article 14 to the summary procedure under Section 25-B of the Delhi Rent Control Act, 1958 applicable in cases of personal necessity of landlords. The contention that Section 25-B creates a special class of landlords who are given favourable treatment for speedy eviction of tenants was rejected as without any substance. The rent control legislation should be just and fair to the landlords. Accordingly, it was observed that it is always open to the legislature to check, regulate and also confer rights upon the landlords to enable them to seek eviction in certain circumstances. Referring to the ground of personal necessity, it was observed:

> "17. [...] Thus, such a landlord becomes a class by himself. The statute thus puts personal necessity of the landlord as a special class requiring special treatment for quick eviction of the tenant and cuts out all delays and plugs all the loopholes which may cause delay in getting the relief by the landlord. It is obvious, therefore, that the classification made by the legislature is in public interest and is in complete consonance with the objectives sought to be achieved. The landlords having personal necessity have been brought together as a separate class because of their special needs and such a classification cannot be said to be unreasonable

21 (2008) 5 SCC 287

particularly when the legislature in its wisdom feels that the landlords should get this relief as quickly as possible."

42. The following observations in ***Ravi Dutt Sharma*** (supra) relating to the right given to the landlords for eviction in context of the rent control legislation are pertinent:

> "7. […] Tenants cannot complain of any discrimination because the Rent Act merely gave certain protection to them in public interest and if the protection or a part of it afforded by the Rent Act was withdrawn and the common law right of the tenant under the Transfer of Property Act was still preserved, no genuine grievance could be made."

Similar views were also expressed in ***Kewal Singh*** (supra) in the following words:

> **"**22. Thus, we do not see how can the tenant challenge the validity of such a provision enacted by the legislature from which the tenant itself derived such rights.
>
> 23. In the instant case, the legislature has not taken away the right of the tenant at all but has merely simplified the procedure for eviction of the tenant in cases falling within the ambit of Sections 14-A and 14(1)(e) of the Act as discussed in the judgment. In these circumstances, therefore, any challenge by the tenant to the constitutionality of the Act must necessarily fail and hence Section 25-B is constitutionally valid."

43. Section 13-B of the Rent Act cannot be held to be unconstitutional because it grants a right to claim eviction for bona fide need by summary procedure to a certain group of landlords, that is, Non-Resident Indians subject to and on the satisfaction of statutory

conditions which incorporate a check on frivolous evictions. The plea that Section 13-B ought to be struck down on the ground that similar rights can be extended to other landlords is without substance and should be rejected. It rests with the legislature to make laws and extend it to other similarly situated persons. The rent act(s) invariably give similar rights by a controlled mechanism and alluded riders to various other classes/groups of landlords, namely, government servants, members of armed forces, the retired or soon to retire employees of the Central and the State Governments, widows, etc.

44. The right of Non-Resident Indians to initiate eviction under the summary procedure provided in Section 18-A of the Rent Act is not an unfettered and absolute right. It is subject to satisfaction of various pre-requisites and imperatives that ensure and check potential abuse by resorting to a short-circuit procedure. The requirement should arise from a genuine need of the Non-Resident Indian landlord or his dependent. Such landlord should be an owner for five years preceding the date of filing of the eviction petition. There is a cap on permitting the use of the provision which is available only once in a lifetime and only in respect of one building. There are restrictions and constraints on the re-sale and re-letting and a further requirement to possess the

property for a continuous period of three months after the possession is taken. These pre-conditions and post possession restrictions suggest that Section 13-B serves a specific policy objective to ensure the right of Non-Resident Indians to occupy their property in the Union Territory of Chandigarh and the State of Punjab as the case may be, after “returning” to their country. This right has to be balanced with the right of the tenants to establish their case on merits by disproving the genuine requirement of the Non-Resident Indians.

45. Section 13-B cannot, therefore, be treated as an arbitrary classification that infringes and violates Article 14 of the Constitution. The challenge predicated on the basis of unconstitutionality of the classification is rejected.

46. Before reserving the judgment, we had heard counsel for the appellants on merits and had expressed that we were not inclined to interfere with the factual findings. Accordingly, we have not dealt with the factual matrix in each case and have examined and answered the legal issues raised. In view of the findings upholding the constitutional validity of Section 13-B of the Rent Act and its extension and applicability to the Union Territory of

Chandigarh, we would dismiss the afore-captioned appeals by the tenants. There would be no order as to costs.

.....CJI
(RANJAN GOGOI)

.....J.
(L. NAGESWARA RAO)

.....J.
(SANJIV KHANNA)

NEW DELHI;
NOVEMBER 14, 2019.