Karnataka High Court Sri Ramakrishna Theatres Ltd. vs General Investments And ... on 27 March, 1992 Equivalent citations: AIR 1993 Kant 90, ILR 1992 KAR 1296, 1992 (2) KarLJ 158 Author: S Bhat Bench: S Bharucha, K S Bhat, S Patil ORDER Shivashankar Bhat, J. 1. This writ petition was referred by the learned single Judge for consideration by the Division Bench on the ground that it involves a substantial question of law. The Division Bench in turn referred the matter for consideration by a larger Bench on the ground that an earlier decision of a Division Bench of this Court in Bharath Petroleum Corporation Ltd. v. Mohammed Haneef, , hereinafter referred as Bharath Petroleum Corporation's case, may require reconsideration. 2. The petitioner obtained a land measuring 11 1/2 cents in Udupi town on term lease from the first respondent, along with a building thereon and other appurtenant land and buildings. It was a term lease and the lease deed was registered. The lease deed was executed on 3-9-1973. The lease was for a period of 25 years with effect from 1-4-1973. The lease deed indicates that the lessee was already in possession by virtue of an earlier lease deed dated 28-7-1950 and the land had a theatre building thereon and that the lessee (petitioner) had re-modelled the said old building. The lease deed of the year 1973 inter alia provided that on the expiration of the lease period, the theatre building also shall vest in the lessor (first respondent) absolutely without payment of any compensation and till then the lessee may hold and enjoy the demised premises without any lawful interruption by the lessor. The monthly rent was Rs. 650/ - and the lessee had to pay all taxes in excess of the prevailing rate of tax at the time of the execution of the lease deed and the lessee was liable to pay interest on arrears of rent at the rate of 12 1/2 per cent per annum. There was no clause anywhere providing for forfeiture of the lease. Thus the lease was to be in operation till 31-3-1998. 3. In the year 1989 the first respondent-landlord issued a quit notice and thereafter filed an eviction petition invoking S. 21(1)(h) of the Karnataka Rent Control Act, 1961 ('the Act' for short). The first respondent herein stated that it intended to use the premises for exhibition of cinema shows, etc. and that its requirement was reasonable and bona fide and that it was entitled to seek possession of the leasehold under the provisions of the Act. The petitioner-lessee filed a counter statement, inter alia, questioning the right of the landlord to seek possession before the expiry of the lease period. These proceedings were initiated as per H.R.C. No. 19/1989 in the Court of Additional Munsiff, Udupi. The petitioner also filed an application requesting the Munsiff Court to decide the question of maintainability of the eviction petition as a preliminary point. Though this application was filed on 6-9-1989, so far it has not been taken up. 4. The sole question that arises under this preliminary point is whether a landlord is entitled to seek eviction of a tenant who is holding the leasehold premises as a lessee under a term lease, before the expiry of the period of lease when there is no provision for the forfeiture of lease in the lease-deed. The first respondent herein has relied on a decision of, this Court rendered by a Division Bench in the aforesaid Bharath Petroleum Corporation's case. It was held in the said decision that non-obstante clause in Section 21(1) of the Act has overriding effect and even if there is a contract of lease for a stipulated term, the Act gives to the landlord a right to

initiate action for eviction if the conditions stated in Section21 are fulfilled and it was further held therein that the contractual rights are replaced by the rights created by the Act. Since the landlord would be seeking to enforce his right under the Act any term to the contrary in the contract between the parties cannot be set up as a defence by the tenant. In view of this decision, there can be no doubt that the Munsiff Court was bound to entertain the eviction petition and to decide the preliminary question against the petitioner-tenant. In these circumstances the petitioner has thought it necessary to invoke the writ jurisdiction of this Court questioning the maintainability of the proceedings before the Munsiff Court. It will be a futile exercise for the subordinate court to go into this question raised by the parties having regard to the aforesaid decision in Bharath Petroleum Corporation's case. The importance of the question raised by the petitioner has been noticed by the learned single judge as well as by the Division Bench and we concur with those views that the question will have to be considered having regard to the substantial question of law involved and the importance of the matter, once for all. 5. In Bharath Petroleum Corporation's case the tenant was a term lessee with an option to renew the lease period. The tenant had exercised the said option, in the meanwhile the landlord initiated the proceedings seeking the eviction of the tenant under the provisions of the Act. The Bench assumes that the lease period was renewed by the exercise of the option by the tenant in the said case. Thereafter the Bench referred to an earlier decision of this Court in K. Gurusiddaiah v. A Vittal Bhat, therein the learned single Judge of this Court had held that before initiating proceedings under Section 21 of the Act the landlord should have a right of re-entry and in the case of a lease for a fixed term the landlord has no such right of re-entry before the expiry of the lease period. The Division Bench in Bharath Petroleum Corporation's case then referred to a decision of the Supreme Court rendered in V. Dhanpal Chettiar v. Yesodai Animal, and held that because of the provisions of the Act, the terms of the contract between the parties have no effect and the Act overrides in other law or contract in the matter of evicting a tenant. The Division Bench held at page 193 of : ".... The non-obstante clause in sub-sec. (1) of Section 21 of the Rent Control Act, make it clear that the right given to the landlord is"notwithstanding anything to the contrary contained in any other law or contract". It is obvious, the clause has an overriding effect. It follows, therefore that even if there is a contract for a stipulated term, the law gives a right to the landlord, to initiate action, for eviction, if the conditions in the section are fulfilled. To hold otherwise, would be making the non-obstante clause redundant. Hence, we are clearly of the view, that even in cases of 'term lease', the landlord can initiate proceedings under S. 21(1) of the Act. The view taken by the learned single Judge in Gurusiddaiah's case is not correct and hence it has to be overruled." Again, after referring to a few move earlier decisions of this Court and the contention of the learned Counsel for the tenant in the said case, the Bench observed at pages 193 and 194: "..... The contractual rights are replaced by the rights created by Statute. When the landlord seeks to enforce his right, under the statute, the contract to the contrary cannot be set up as a defence, because to that extent, the contract stands eclipsed

by the Statute." Therefore it is necessary to consider first the decision of the Supreme Court in Dhanpal Chettiar's case to see whether the ratio therein has been correctly applied by the Division Bench of this Court while rendering its decision in Bharath Petroleum Corporation's case. 6. The provisions of the Act are to be understood in the light of its purpose. Unless any particular provision of the statute explicitely states something which may go beyond the scope of the particular legislation, no provision should be normally construed so as to surpass the intention of the legislature while enacting the particular law. The Act was enacted in the year 1961. The preamble shows that the Act is to provide for the control of rents and eviction, for the leasing of buildings, to control rates of hotels and lodging houses and for certain other matters, in the State of Karnataka. Thus the scope of the Act has to be understood with reference these objectives – (i) control of rents, (ii) control of evictions, (iii) leasing of buildings, (iv) controlling the rates of hotels and lodging houses, and (v) certain other matters, which would certainly be incidental to these specified subjects. 7. Control of rents is sought primarily by some of the following provisions – (i) Section 14 which provides for the fixation of fair rent of any building. Along with this Section, Sections 15 to 18 are to be read which provide as to when the rent is to be increased or reduced, prohibition against imposing a condition for the grant, renewal or continuance of tenancy regarding the sale or hire of furniture, prohibition against taking advance rent by any means except the advance specifically permitted by the Act, etc. (ii) Section 19 provides a machinery whereby tenant may deposit the rent in the Court in certain cases either when the landlord refuses to accept the rent or when there is a bona fide doubt or dispute as to the person who is entitled to receive the rent. (iii) The landlord's right regarding the rent which is safeguarded by the provisions of Sections 20, 21(1)(a) and 29. These provisions in no way enlarges the landlord's right but compels the tenant to discharge his obligation to the landlord in the matter of paying the rents as a condition to avail the protection given to the tenant by the Act. The object of controlling the lease of the building under the Act is primarily achieved by the provisions stated in Part II of the Act commencing with Section 4. Whenever a building is found to be vacant or becomes vacant the leasing of the same has to be done by the Rent Controller and the right of the landlord to occupy the same is regulated by the relevant provisions under the said Part. However, it is necessary to note here that Parts II and III of the Act, that is to say, Sections4 to 18 are applicable only to the areas specified in Schedule I to the Act and further that these Parts are not applicable to buildings constructed after 1st August, 1957 for a period of 5 years from the date of construction of such buildings. Even in a case where the landlord obtains possession by evicting a tenant under any of the grounds stated in Section 21, legislature has taken sufficient care to see that those buildings are utilised or leased appropriately. For example, if the landlord evicts the tenant on the ground that he requires the premises for his own occupation under Sec. 21(1)(h), the landlord cannot lease the said premises to anyone else but will have to occupy the same within the prescribed period, failing which the evicted tenant may seek reentry and further, such a landlord is liable to be punished

(vide Section 25). Similarly, when a landlord gets possession of a tenanted premises after evicting the tenant on the ground that he requires the premises for putting up a new construction, Section 26, etc.. provide for leasing the reconstructed premises to the tenant. There is a separate Chapter governing the hotels and lodging houses as per Part VI. There is also a separate Part to safeguard the amenities in the premises leased. There are a few provisions enacted providing for eviction of the tenant, when the landlord requires the same after his retirement from defence service, etc. 8. The subject of control of evictions is dealt in Part V containing Sections 21 to 31 of the Act. The basic provision is Section 21 in this regard. The heading of this Part V reads "Control of eviction of tenants and obligation of landlords". We are concerned in the instant case with the scope of Section 21 and its scope will have to be understood in the background in which it is enacted and the setting in which it is placed, in case there is any doubt about it. Section 21(1), to the extent it is relevant here, reads thus : "21. Protection of tenants against eviction.– (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or other authority in favour of the landlord against the tenant : Provided that the court may on an application made to make an order for the recovery of possession of a premises on one or more of the following grounds only, namely :–" Clauses (a) to (p) are omitted here. Clauses (a) to (p) enumerates the grounds enabling the landlord to recover possession of the premises from the tenant. 9. A plain reading of the opening sentence of Section 21 would show that it imposes a general ban against the recovery of possession by the landlord of any premises by evicting the tenant. The substance of the main clause in Section 21(1) is to direct that "no order or decree for the recovery of possession of any premises shall be made in favour of the landlord against the tenant". But this clause is not to be read in isolation. It will have to be read along with the opening clause. In other words it says that, even though any other law or contract enables the landlord to recover possession of the premises by an order or decree, no order or decree shall be made by any court of authority. The bar is actually against the court or the authority from making an order or decree for the recovery of possession of any premises in favour of the landlord against the tenant even though any other law or contracts provides for making such an order or decree. Nowhere this main provision has expressed an intention to enlarge, the right of the landlord to get an order or decree for the recovery of possession of the premises. This ban imposed under Sec. 21(1) is lifted under certain circumstances; that is to say, if the grounds enumerated in any one of the clauses (a) to (p) are available, the bar against recovery of possession as stated in Section 21(1) stands lifted. Thus, the main part of Section 21(1) bars the enforcement of the landlord's right to recover possession from the tenant; the latter is protected from eviction absolutely. This normal rule of a ban against eviction and the protection afforded to the tenant against evictions has to give way only when any one of the grounds enumerated in clauses (a) to (p), exists. In other words, a landlord who is otherwise entitled to evict his tenant, can recover possession from his tenant, only, under any of the circumstances falling under

clauses (a) to (p) of the Proviso to Section 21(1). 10. Thus a plain reading of the main provision of Section 21 along with its proviso shows that its object is not to enlarge the rights of the landlord in any manner but actually it is restrictive of his right to recover possession. For example, if the lease is for a fixed term, under general law, the said contract of lease would enable the landlord to seek an order or decree for the recovery of possession of the leasehold on the expiry of the lease period. Such a right is completely taken away by the main provision of S. 21(1) because the said right is a right, which is contrary to the ban imposed by the section. The ban would operate at the time recovery of possession is to be sought and it will be lifted only when any one of the grounds stated in clauses (a) to (p) are proved. The grounds stated in clauses (a) to (p) of the proviso do not enlarge the rights of the landlord but give him cause, or causes of action to seek possession of the premises. 11. Strong reliance was placed on the decision of the Supreme Court in Dhanapal Chettiar's case to contend that all rights and obligations between the landlord and the tenant under a contract stood obliterated by virtue of Rent Control Act and this obliteration would result in erasing the guaranteed period in a term lease. In other words, it was contended that the clause giving a fixed period of lease to the tenant has no existence in law so as to be recognised and respected while considering the application of Section 21(1) of the Act. As and when a landlord is able to show that any of the grounds stated in clauses (a) to (p) are available, the tenant can be evicted in spite of the lease being for a fixed period. It was argued that the distinction between the contractual tenant and a statutory tenant no more exists for any purpose and all tenancies are governed exclusively by the provisions of the Rent Control Act, having regard to the aforesaid decision of the Supreme Court in Dhanpal Chettiar's case. 12. The short question before the Supreme Court in the aforesaid case was whether a quit notice under Section 106 of the Transfer of Property Act (for short 'T.P. Act') is a condition precedent before seeking an eviction of the tenant. This is very clear from the very opening paragraph of the judgment which reads thus : "This appeal by special leave at the instance of the tenant of certain premises in the town of Vellore was heard by a larger Bench of this Court consisting of seven Judges to resolve the cleavage of opinion between the various High Courts in India as also between several decisions of this Court, on the question as to whether in order to get a decree or order for eviction against a tenant under any State Rent Control Act it is necessary to give a notice under Section 106 of the Transfer of Property Act. We proceed to do so in this judgment." After discussing the various aspects, the Supreme Court found that issuance of a notice under Section 106 of the T.P. Act does not serve any purpose and a landlord cannot recover possession only because such a notice has been issued terminating the tenancy and that the landlord will have to prove the facts constituting the grounds for eviction enumerated in the Rent Control Act; the purpose of issuing a notice is only to determine the lease and to convey the intention of the landlord that he intends to terminate the lease; these are achieved by filing the eviction petition itself. In these circumstances issuance of a notice under Section 106 of the T.P. Act was found to be a highly technical procedure not to be insisted upon. At page

1748, the Supreme Court observed :– "...But when under the various State Rent Acts, either in one language or the other, it has been provided that a tenant can be evicted on the grounds mentioned in certain sections of the said Acts, then how does the question of determination of a tenancy by notice arise? If the State Rent Act requires the giving of a particular type of notice in order to get a particular kind of relief, such a notice will have to be given. Or, it may be, that a landlord will be well advised by way of abundant precaution and in order to lend additional support to his case, to give a notice to his. tenant intimating that he intended to file a suit against him for his eviction on the ground mentioned in the notice. But that is not to say that such a notice is compulsory or obligatory or that it must fulfil all the technical requirements of Section 106 of the Transfer of Property Act. Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jurat relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction." It is in these circumstances, again, the Supreme Court observed at page 1750 : "It is true that the Rent Act is intended to restrict the rights which the landlord possessed either for charging excessive rents or for eviction of tenants. But if within the ambit of those restricted rights he makes out his case it is a mere empty formality to ask him to determine the contractual tenancy before institution of a suit for eviction. As we have pointed out above, this was necessary under the Transfer of Property Act as mere termination of the lease entitled the landlord to recover possession. But under the Rent Control Acts it becomes an unnecessary technicality to insist that the landlord must determine the contractual tenancy. It is of no practical use after so many restrictions of his right to evict the tenant have been put. The restricted area under the various State Rent Acts has done away to a large extent with the requirements of the law of contract and the Transfer of Property Act. If this be so why unnecessarily, illogically and unjustifiably a formality of terminating the contractual lease should be insisted upon." The observation that the various State Rent Acts have done away to a large extent that requirement of the law of contract and the T.P. Act, has to be read along with the previous observations and the immediately following sentence. This observation was made in the context of pointing out that issuance of a quit notice under Section 106 of the T.P. Act is an unnecessary technicality and a formality which need not be insisted upon. The several decisions referred by the Supreme Court in Dhanapal Chettiar's case are all cases pertaining to quit notices and the leases were either month to month leases or periodic leases, but not involving any term lease or perpetual lease. The Supreme Court was concerned mainly with the fact that the relationship between the landlord and the tenant would stand terminated only by an order of eviction under the Rent Control Act and not by a mere quit notice. Some observations made, at page 1752, were again pointed out to us in support of the contention that the contractual relationship stands obliterated by virtue of the Rent Control Act : "...It should be remembered,

as we have said above, that the field of freedom of contract was encroached upon to a very large extent by the State Rent Acts. The encroachment was not entirely and wholly onesided. Some encroachment was envisaged in the interest of the landlord also and equity and justice demanded a fair play on the part of the legislature not to completely ignore the helpless situation of many landlords who are also compared to some big tenants sometimes weaker section of the society. As for example a widow or a minor lets out a family house in a helpless situation to tide over the financial difficulty and later wants a fair rent to be determined. Again suppose for instance in a city there is an apprehension of external aggressipn, severe internal disturbances or spread of epidemics. A man in possession of his house may go to another town letting out his premises to a tenant financially strong and of strong nerves at a rate comparatively much lower than the prevailing market rates. Later on, on the normalization of the situation as against the agreed rate of rent he approaches the Building Controller for fixing a fair rent in accordance with a particular State Rent Act. Why should she or he be debarred from doing so. The Statute gives him the protection and enables the Controller to intervene to fix a fair rent as against the term of contract between the parties. In a large number of cases it is the tenant who gets this protection. But in some as in the case of Raval the landlord needs and gets the protection." The above observations were made in the context of the availability of the provision for fixation of fair rent to a landlord. The Supreme Court was pointing out that the Rent Control Act had also taken into consideration the need to protect the interest of the landlord to some extent and one such instance is, by enabling him also to get the rent re-fixed ignoring the contractual rent. This is necessary because when the tenant has been given the statutory protection from being evicted, the landlord also should correspondingly be permitted to have a proper return by way of a fair rent. At page 1753 the Supreme Court was considering an earlier decision as to the applicability of S. 111(g) of the T.P. Act and made an observation that a notice under the said provision was also unnecessary to have the tenancy right forfeited, because, again it will be superfluous to issue such a notice in the face of protection given by the Act. This again illustrates that the Supreme Court was concerned with the procedure governing the detemination of the lease by issuance of a notice. At page 1754 another decision of the said Court in Firm Sardarilal Vishwanath v. Pritam Singh, , was referred and considered. There, the lease had come to an end by efflux of time. The tenant continued in possession. While eviction was sought against him he contended that a fresh notice under Section 106 of the T.P. Act was necessary. This contention was rejected. The Supreme Court had observed that question of giving notice to quit to a lessee whose term had come to an end by efflux of time would not arise at all. On this aspect, at page 1754 in 'Dhanpal Chettiar's case, it was observed : "If we were to agree with the view that determination of lease in accordance with the Transfer of Property Act is a condition precedent to the starting of a proceeding under the State Rent Act for eviction of the tenant, we could have said so with respect that the view expressed in the above passage is quite correct because there was no question of determination of the lease

again once it was determined by efflux of time. But on the first assumption we have taken a different view of the matter and have come to the conclusion that determination of a lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Sec. 106 of Transfer of Property Act." Here again the observations of the Supreme Court were only, with reference to the mode of determining the lease by issuance of a notice in accordance with Section 106 of the T.P. Act. Even after the termination of the relationship of landlord and tenant created by the contract, the relationship continues until the Court orders eviction of the tenant and therefore issuance of notice under Section 106 is an unnecessary exercise, is the Clear ratio of this decision of the Supreme Court. It is not possible to read this decision as laying down the principle that the entire contractual relationship stands substituted by the statutory relationship under the Act for all purposes and that the Rent Control Act has given a go-bye to the concept of lease and the interest that is created by a valid contractual lease. 13. 'Lease' is defined under S. 105 of the T.P. Act, which reads under :– "A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent." Essentially, a lease is a transfer of right to enjoy the immovable property. It may also be made for a certain period or in perpetuaty. Therefore, when the lease is for a particular term, the landlord's right to enjoy the properly during that period is transferred to the tenant or at any rate during that lease period agreed upon between the parties a right is created in the tenant to enjoy the immoveable property. Thus a term lease creates and vests a right in the lessee to enjoy the immoveable property. This right may be subject to other conditions such as the payment of rent, preservation of property appropriately, etc. So long as the conditions of the lease are complied with by the tenant the right vested in him cannot be divested unless law provides for the same specifically. This right of the tenant itself is a right to property. The Act was enacted, (Karnataka Rent Control Act, 1961), when Article 19(1)(f) of the Constitution was in force. The Act will have to be interpreted so as to harmonise it with the fundamental right of the tenant regarding his property. Section 21 of the Act will have to be read reasonably so as not to cause any unreasonable injury to this right of the tenant. Even assuming that Article 19(1)(f) of the Constitution is not available, still divesting of a vested right to enjoy a property may invite attack under other clauses of Article 19(1) of the Constitution as well as Article 14 of the Constitution. 14. Firm Sardarilal Vishwanath's case is also . In the said

decision it was pointed out that even after the termination of the contractual lease, the tenant continues to be a tenant by virtue of the provisions of the Rent Restriction Act (Rent Control Act) and therefore there was no question of terminating the contract once again by giving a notice to quit to such a lessee who continued in possession after the determination of the lease. At page 1524, it was held that, "if the contract once came to an end there was no question of terminating the contract over again by a fresh notice". As already noticed it was a case where the lease period came to an end and thereafter the tenant continued in possession under the protective wing of the East Punjab Urban Restriction Act. In Dhanapal Chettiar's case this was referred by the Supreme Court. The larger Bench in Dhanapal Chettiar's case observed that it was unnecessary to determine the lease in accordance with the T.P. Act, as a condition precedent to the starting of a proceeding under the State Rent Act for eviction because such a determination of the lease in accordance with the T.P. Act is unnecessary and a mere surplusage because the landlord cannot get the eviction in spite of such a determination of the lease. This observation of the Supreme Court in Dhanapal Chettiar's case necessarily implies that the determination of lease referred therein is a determination by a notice by the landlord under the provisions of S. 111 of the T.P. Act and such a notice is held to be a mere surplusagejust like a case of notice under S. 106 of the same Act being a mere technicality. The observations found at page 1754 after quoting the decision rendered in Firm Sardarilal Vishwanath's case simply states that "because there was no question of determination of the lease again once it was determined by the efflux of time", there was no question of determination of the lease once again. No where, the Supreme Court stated that the lease of immovable property would be determined even before the efflux of the time limiting the lease period by recourse to the provisions of the Rent Control Act. It is only in a case where the mode of determination of a lease in accordance with the T.P. Act is unnecessary and a mere surplusage in the context of the provisions of the Rent Control Act, the ratio of Dhanapal Chettiar's case could be applied. It cannot be said that a right to evict a tenant, which did not exist in a landlord during the lease period because such a right would be a negation of the right that vested in the tenant by virtue of the transfer of interest to enjoy the property transferred to him by the landlord, is a mere surplusage and is an unnecessary technicality in the face of the provisions of the Rent Control Act. Tt should be remembered that a decision of Court is only an authority for what it actually decides. The Court cannot be attributed as laying down law when the Court had no occasion to consider the said aspect at all and the issue before the Court was entirely different; any sentence in a decision of the Supreme Court while rendering the judgment with reference to the point in issue before the Supreme Court cannot be taken out of the context and applied to a different situation altogether. In State of Orissa v. Sudhansu Sekhar Misra, the Supreme Court observed : "... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury LC said in Quinn v. Leathem, 1901 AC

495."Now before discussing the case of Allen v. Flood, (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all". It is not a profitable task to extract a sentence here and there from a judgment and to build upon it." 15. A few more decisions require to be referred. In Mangat Rai v. Kidar Nath, , there is a reference to Dhanapal Cheltiar's case. But actually the eviction of the tenant was sought on the ground that the tenant had committed default in the payment of rent. It was not a case of any term lease. Though the tenant had committed default he had deposited the same which entitled him for a protection from eviction by virtue of the provisions of the Rent Control Act. The relevant provision in the Rent Control Act therein enabled the tenant to pay the arrears together with cost and interest before the date of first hearing of the case and if so he was protected from eviction on the ground of default in the payment of rent. This decision has nothing to do with the issue before us. 16. In Pradesh Kumar Bajpai v. Benod Behari Sarkar (dead) by L.Rs., , it was held that the landlord cannot avail himself of the agreement of lease which provided for forfeiture of the lease even if the tenant neglected to pay the rents for over two months and that the landlord could not enter into possession forthwith after issuing a notice under the agreement. His only remedy is to seek eviction under the provisions of the Rent Act; in such a situation the tenant also cannot rely on S. 114 of the T.P. Act and claim that he should be given an opportunity to pay the arrears of rent as provided in the T.P. Act. There is a reference to Dhanapa! Chettiar's case also in this decision. It was held therein at page 1217 : "... In a decision of seven Judges' Bench of this court in V. Dhanpal Chettiar v. Yasodai Ammal, the question as to whether in order to get a decree for eviction, the landlord under the Rent Control Act should give notice as required under S. 106 of the Transfer of Property Act was considered. This Court held that determination of the lease in accordance with the Transfer of Property Act is unnecessary and that if a case is made out for eviction under the Rent Act, it is itself sufficient and it is not obligatory to determine the lease by issue of notice as required in accordance with S. 106 of the Transfer of Property Act. The learned Counsel for the tenant submitted that the decision is confined only to the question as to whether notice under S. 106 of the Transfer of Property Act is necessary and did not decide as to whether the provisions of the other sections of Transfer of Property Act are applicable. It is to be noted, however, that the question of determination of a lease by forfeiture under the Transfer of Property Act, was specifically dealt with by the Court and it was held that the claim of the

tenant that he is entitled to a double protection, (1) under the Rent Act and, (2) under the Transfer of Property Act, is without any substance." This was cited to point out that the tenant was not entitled to double protection, one under the I. P. Act and another under the Rent Act. Here again the Supreme Court was not concerned with the availability of the right in the landlord to evict the tenant before the expiry of the lease period. The case is an authority for the proposition that if the tenant is liable to be evicted then his eviction will have to be only under the provisions of the Rent Control Act and in such a situation the tenant cannot seek protection elsewhere except the protec-. tion available to him under the Rent Control Act. 17. Another decision wherein Dhanpal Chettiar's case is referred is reported in K. K. Krishnan y. M. K. Vijaya Raghavan, . Under the relevant Kerala Act a tenant was liable to be evicted, if the tenant after the commencement of the Act sublet the premises without the consent of the landlord and if the lease did not confer him any right to sublease. Supreme Court said that the right to sublease will have to be conferred on the tenant either at the time of lease or subsequently. But a tenant cannot claim such a right unilaterally. In this context Dhanapal Chettiar's case was quoted, wherein Section 108 of the T.P. Act was referred. Therefter, Supreme Court observed (in K. K. Krishnan's case) at page 1758 : "It is clear from what has been said that not all the rights conferred on landlord and tenant by S. 108 and other provisions of the Transfer of Property Act have been left intact by the various State Rent Acts and that if a State Rent Act makes provision for eviction on certain specified grounds, eviction cannot be resisted on the basis of rights conferred by the Transfer of Property. Act. Section 108(j) of the Transfer of Property Act stands displaced by S. 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act and is no defence to an action for eviction based on S. 11(4)(i)." The above enunciation implies that some of the rights conferred on the landlord and tenant by S. 108 and other provisions of the T.P. Act may have been left intact and to the extent a subject is specifically covered by the Rent Act, it will displace the operation of the T.P. Act. That is why the subject of sublease having been covered by the Kerala Act it displaced the provisions of S. 108(j) of the T.P. Act. 18. It is also necessary to refer to Smi. Gian Devi Anand v. Jeevan Kumar, . This is a decision of the Constitution Bench of the Supreme Court (Five Judges). Under the Delhi Rent Control Act the heirs of the tenant were protected specifically in the case of residential premises but no provision was made with regard to the heirs of tenants in respect of commercial tenancies. The question therefore was whether the statutory tenancy in respect of commercial premises was heritable or not. The Supreme Court held that heirs were entitled to the protection of the Rent Control Act even though the Act was silent on the said question. One of the reasons given is found at page 812 : "...If it be held that commercial tenancies after the termination of the contractual tenancy of the tenant are not heritable on the death of the tenant and the heirs of the tenant are no! entitled to enjoy the protection under the Act, an irreparable mischief which the Legislature could never have intended is likely to be caused. Any time after the creation of the contractual tenancy, the landlord may determine the contractual tenancy, allowing the tenant to

continue to remain in possession of the premises, hoping for an early death of the tenant, so that on the death of a tenant he can immediately proceed to institute the proceeding for recovery and recover possession of the premises as a matter of course, becaue the heirs would not have any right to remain in occupation and would not enjoy the protection of the Act. This could never have been intended by the Legislature while framing the Rent Ac!s for affording protection to the tenant against eviction that the landlord would be entitled to recover possession, even no grounds for evictioin as prescribed in the Rent Acts are made out." The same reasoning can be applied to the facts of the instant case before us. If the landlord is permitted to evict the tenant even before the expiry of the lease period by resorting to the provisions of the Act the resultant mischief will be irreparable. Many of the commercial and industrial premises are obtained by the enterprenuers on term lease and huge investments are made on buildings and machineries on the assurance that such a tenant is secured in possession of the leasehold during the lease period. If, however, a landlord can evict such a tenant within a few months after the grant of the lease or even before the expiry of the lease period under Section 21 of the Act the exercise of the tenant in developing the land for commercial or industrial purposes will be rendered futile. For example, under Section 21(1)(b), if the leased premises is a land only, the landlord is entitled to seek eviction if such land is reasonably and bona fide required by him for the erection of a new building which a local authority or other competent authority has approved or permitted him to build thereon. If a landlord makes out a case that he requires the land leased by him for the erection of a new building and that such a requirement is reasonable and bona fide, an unconditional order of eviction will have to be made under clause (1) of Section 21(1). If so, the entire investment of the tenant will have to be sacrificed and it will not be of any consolation to him that probably he may dismantle and remove the structures and machineries put up by him. A law cannot be interpreted in such a way as to cause such a mischief and hardship. Such an interpretation of the law would not advance any public interest. The object of the Act is not to confer such a wide and large right on the landlord, as to enable him to recover possession of the leased premises at a time when he possessed no such right under general law. 19. Again, coming to the Gian Devi's case, the following observations made at page 812 are to be noted : ".... These decisions correctly lay down that the termination of the contractual tenancy by the landlord does not bring about a change in the status of the tenant who continues to remain in possession after the termination of the tenancy by virtue of the provisions of the Rent Act. A proper interpretation of the definition of tenant in the light of the provisions made in the Rent Acts makes it clear that the tenant continues to enjoy an estate or interest in the tenanted premises despite the termination of the contractual tenancy. Accordingly, we hold that if the Rent Act in question defines a tenant in substance to mean a tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed, the tenant even after the determination of the tenancy continues to have an estate or interest in the tenanted premises and the tenancy rights both in respect of residential premises

and commercial premises are heritable. The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant." The tenant's estate or interest in the tenanted premises is a valuable right and, if so, such an estate or interest cannot be defeated by interpreting the Act in a particular manner when the words used in the Act specifically do not provide for the taking away of the estate or interest vested in the tenant. One more decision which is very relevant is the one reported in Modern Hotel, Gudur v. K. Radhakrishnaiah, . The tenant therein was a term lessee. An action for eviction was initiated against the tenant in the plea that the tenant had failed to pay the rent for a certain period. There was an order of eviction which was affirmed by the Supreme Court. The Supreme Court held that the action was not maintainable because : " ....It has next been contended that the lease of 1969 was for a term of 30 years certain and eviction has been claimed against a contractual tenant during the subsistence of the lease. Admittedly, the lease does not have a forfeiture clause so as to bring the matter within the ambit of S. 111(g) of the Transfer of Property Act. The application for eviction, a copy of which is available on the record (at p. 10 of the second paper book), refers to a notice in paragraph 7 in the following terms : "The petitioners caused a registered notice through their counsel dated 28-10-1973 to the respondent demanding the rent due and also for the eviction from the schedule mentioned premises since the respondent has become a wilful defaulter. The respondent received the notice and has not chosen to give any reply". It, therefore, follows, appellant's counsel has contended, that the lease remained unterminated and the right created under the lease cannot be taken away by filing an application for eviction on the plea of wilful default in the matter of payment of rent." This contention was accepted by the Supreme Court at page 1513, thus : ".....The lease being for a term of 30 years to expire in Sept., 1999. As we have already said, the lease did not stipulate a forfeiture clause in the lease leading to terminating by forfeiture, the contractual tenancy was subsisting under the provisions of the Transfer of Property Act and there could not be any eviction from such a tenancy." 20. From the above it is clear that while the contractual tenancy subsists, the Rent Control Act cannot be applied to evict the tenant. The observation of the Supreme Court is not based on any particular provision of the relevant Andhra Pradesh Rent Control Act but is based on the principles flowing out of the provisions of the T. P. Act and the interest created in the tenant under a term lease. Mr. A. G. Holla, learned Counsel for the petitioner, however, very fairly brought to our notice that term leases were excluded from the ambit of the Andhra Pradesh Act. But the learned Counsel also rightly contended that the decision of the Supreme Court is not based on any such provision because such provision was not noticed in the decision of the Supreme Court as a ground for the above observation. 21. It is unnecessary to multiply the citations as we do not find any other decision which is quite relevant to the question raised before us. The meaning attributed to the non obstante clause in sub-section

(1) of Section 21 of the Act in Bharath Petroleum Corporation's case is not correct; the overriding effect of the clause in sub-section (I) of S. 21 of the Act is limited to the subject referred to immediately by the words following. In other words, even if any other law or contract provides for recovery of possession the same shall be of no effect and the eviction can be made only on the grounds stated in clauses (a) to (p) of the proviso. This indicates that the landlord should have a right to recover possession and that right cannot be held to vest in him during the period of the term lease unless there is something in the lease deed which provides for the determination of the lease; in such a situation, even after the determination of the lease in the manner stated in the term lease, the recovery of possession will have to be made only by recourse to Section 21(1). 22. We are clearly of the opinion that the view expressed in Bharath Petroleum Corporation's case is not correct and, therefore, the same is overruled. 23. The entire writ petition is before us and, therefore, the question is whether we should proceed to quash the proceedings pending before the Court of Munsiff, Udupi. A formal quashing of the proceedings may not be necessary in the instant case as we have already declared the law and the same is bound to be applied by the Court of Munsiff, Udupi. We direct, therefore, the Court of Munsiff, Udupi, to take up the proceedings before it in H.R.C. No. 19 of 1989 and decide the same in the light of this judgment. 24. The writ petition is disposed of accordingly. Rule made absolute. 25. Order accordingly.