Vasu Dev Singh & Ors vs Union Of India & Ors on 7 November, 2006

Equivalent citations: AIRONLINE 2006 SC 309

Author: S.B. Sinha

Bench: S.B. Sinha, P.P. Naolekar

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           CASE NO.:
Appeal (civil)  4688 of 2006

PETITIONER:
Vasu Dev Singh & Ors.

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 07/11/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
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J U D G M E N T [Arising out of S.L.P. (Civil) No. 1804 of 2005] W I T H CIVIL APPEAL NO. 4689 OF 2006 @ S.L.P.(Civil)No.1810/2005, CIVIL APPEAL NO. 4690 OF 2006 @ S.L.P.(Civil)No.2758/2005, CIVIL APPEAL NO. 4691 OF 2006 @ S.L.P.(Civil)No.2760/2005, CIVIL APPEAL NO. 4692 OF 2006 @ S.L.P.(Civil)No.5354/2005, CIVIL APPEAL NO. 4693 OF 2006 @ S.L.P.(Civil)No.5647/2005 & CIVIL APPEAL NO. 4694 OF 2006 @ S.L.P.(Civil)No.6657/2005.

S.B. SINHA , J :

Leave granted.

Background facts:

Appellants are tenants in the premises situated within the Union Territory of Chandigarh. They were protected in terms of the East Punjab Urban Rent Restriction Act, 1949 (for short, 'the 1949 Act'). The Administrator of Chandigarh in exercise of his power conferred upon him under Section 3 of the 1949 Act issued a notification dated 07.11.2002 whereby and whereunder it was directed that the provisions thereof would not apply to the buildings; monthly rent whereof exceeded Rs.1,500/-. Aggrieved by issuance of the said notification, Appellants filed writ petitions before

the High Court of Punjab and Haryana at Chandigarh, questioning the vires of Section 3 of the 1949 Act as also the validity of the said notification dated 07.11.2002 on diverse grounds. The said petitions have been dismissed. These appeals arise for the said judgments and orders. Before adverting to the questions involved in these appeals, we may notice the legislative history of the legislations in question.

Rent Act :

Union Territory of Chandigarh was a part of the State of Punjab prior to coming into force of the Punjab Reorganization Act, 1966. The Central Government in exercise of its power conferred under Section 87 thereof issued a notification for extending the provisions of 'the Act' to the Union Territory of Chandigarh. The 1949 Act is a pre-constitution Act.

The 1949 Act was enacted to restrict the increase of rent of certain premises situated within the limits of urban areas and the eviction of tenants therefrom. We may hereinafter notice a few provisions of the said Act.

"Building" has been defined in Section 2(a) to mean "any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, go-downs, out-houses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding-house;"

"Urban Area" has been defined in section 2(j) to include an area comprised in the Union Territory of Chandigarh. Section 3 of the 1949 Act provides for exemptions from the operation of the said Act, which is in the following terms :

"Exemptions. The Central Government may direct that all or any of the provisions of this Act shall not apply to any particular building or rented land or any class of buildings or rented lands."

Sections 4 and 5 of the 1949 Act provide for prevention of unfair rent and increase in fair rent in the cases admissible as prescribed thereunder.

Section 8 of the 1949 Act provides for recovery of the rent which should have been paid. Section 9 provides for increase of rent on account of payment of rates of local authority but prohibits increase thereof on account of payment of other taxes. Section 10 provides that the landlord without just or sufficient cause cannot interfere with the amenities enjoyed by the tenant. Section 13 protects the tenants from eviction, envisaging that unless one or more ground specified therein is satisfied, no tenant shall be evicted from the tenanted premises save and except in execution of a decree passed by the Rent Controller. Section 13A provides for right to recover immediate possession of residential or scheduled building to accrue to certain persons.

The operation of the said Act was extended to the Union Territory of Chandigarh by a notification, in terms whereof it with certain modifications came into force w.e.f. 04.11.1972. The said notification was struck down by the High Court on the premise that it was not declared to be an urban area. Chandigarh was declared to be an urban area in 1972.

The Parliament thereafter enacted the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 (for short "1974 Act"), the relevant provisions whereof read as under:

"1. This Act may be called the East Punjab Urban Rent Restriction Act (Extension to Chandigarh) Act, 1974.

2. In this Act, "the Act" means the East Punjab Urban Rent Restriction Act, 1949 as it extended to, and was in force, in certain areas in the pre-reorganisation State of Punjab (being areas which were administered by municipal committees, cantonment boards, town committee or notified area committee or areas notified as urban areas for the purposes of that Act) immediately before the 1st day of November, 1966.

3. Notwithstanding anything contained in any judgment, decree or order of any court, the Act shall subject to the modifications specified in the Schedule, be in force in, and be deemed to have been in force with effect from the 4th day of November, 1972 in the Union Territory of Chandigarh as if the provisions of the Act as so modified had been included in and formed part of this section and as if this section had been in force at all material times.

4. (1) Notwithstanding anything contained in any judgment, decree or order of any court, anything done or any action taken (including any notification or direction issued or rents fixed or permission granted or order made) or purported to have been done or taken under the Act shall be deemed to be as valid and effective as if the provisions of this Act had been in force at all material times when such thing was done or such action was taken.

(2) Nothing in this Act shall render any person guilty of any offence for any contravention of the provisions of the Act, which occurred before the commencement of this Act."

Writ Proceedings :

Appellants herein filed separate writ petitions before the Punjab and Haryana High Court questioning the validity of the said notification dated 7.11.2002, wherein various contentions including the one relating to jurisdiction of the Administrator in that behalf was raised. In the said writ petition it was furthermore contended that the impugned notification was beyond the rule making power of the State Act.

The High Court, after hearing the matter on 11th March, 2004 at some length and upon taking notice of the submissions made on behalf of the parties considered it expedient to give opportunity to the Chandigarh Administration 'to have a rethinking in the light of the observations made therein so that a balance could be maintained between the rights of the tenants as well as those of the landlords'. Pursuant thereto an additional affidavit was filed on 29th July, 2004 wherein, inter ala, reference was made to the National Housing Policy adopted by the Central Government as also various correspondences entered into by and between it and Administration of Union Territory of Chandigarh to which we would advert to later. The High Court dismissed the said writ petitions holding that the said notification dated 7.11.2002 was not ultra vires the provisions of the 1949 Act.

High Court Judgment :

The High Court upheld the validity of the said notification stating :

(a) The Administrator has not acted contrary to the legislative policy enshrined under the statute.

(b) While considering the legislative policy and object behind the enactment of the 1949 Act, the court cannot overlook the fact that in the original enactment, amendments had been carried out by the legislature on at least on two different occasions.

(c) The Administrator having acted in furtherance of the power conferred upon him under Section 3 of the 1949 Act by the legislature itself, exercise of such power was not contrary to the legislative policy and/or preamble to the 1949 Act.

(d) By reason of the said notification exempting application of the provisions of the Act in respect of the tenanted premises fetching monthly rent of Rs.1500/- or more would not amount to repeal of the Act itself.

(e) The said notification having been issued pursuant to or in furtherance of the National Housing Policy and in terms of the Model Rent Law suggested by the Government of India, the same is valid in law.

(f) As the protection to the tenant was given in terms of the provisions of the Act read with the 1974 Act, the Administrator was fully empowered to withdraw the said protection in respect of a class of tenants.

(g) Section 3 of the Act does not suffer from the vice of excessive delegation as thereby no unguided or unfettered power has been conferred upon the Administrator.

(h) As by reason of Section 3 of the Act, any particular building or rented land or class of buildings can be subject matter thereof, the tenants who were paying monthly rent

exceeding Rs.1500/-

constituted a class by themselves.

(i) The classification made by the Administrator that the exemption as regard application of the Act shall be granted in respect of those premises which fetch rent exceeding a sum of Rs.1500/- per month was not arbitrary and, thus does not offend Article 14 of the Constitution of India.

(j) The notification would not be violative of Article 14 of the Constitution of India only because it may not be applicable in respect of a part of the same building.

Contentions :

The contentions of Appellants before us, inter alia, are:

(i) The Administrator as a delegatee could exercise his power under Section 3 of the Act only in terms of the legislative policy contained therein which would appear from the preamble, the Statements of Objects and Reasons and the core provisions thereof and not de' hors the same and, thus, the impugned notification being violative of the legislative policy, is unsustainable in law;

(ii) As the Administrator in a representative democracy represents the will of the people as a delegatee he was bound to act within the four-

corners thereof;

(iii) A delegatee cannot transgress the basic features or essential policy of the Act;

(iv) As the power to lay down essential legislative functions vests in the Legislature, the same could not be delegated in favour of the Administrator.

(v) By reason of such delegation, the delegatee cannot in effect and substance repeal the provisions of the main Act so as to take away the heart and soul of beneficent legislations like the Rent Act;

(vi) Before exercising the power of delegated legislation, the Administrator was bound to take into consideration the relevant factors and for the said purpose it was required of him to be adequately informed as to how and to what extent the legislative policy may be given effect to;

(vii) The impugned notification being not restricted to particular buildings or class of buildings, the classification sought to be made on the basis of paying capacity of a tenant or the tenants themselves is ultra vires Section 3 of the Act;

(viii) The impugned notification is unconstitutional as it contravenes the legal philosophy underlying a beneficent legislation insofar as it has done away with the statutory limitations

imposed upon the landlords to evict the tenant except on the grounds enumerated in Section 13 of the Act as also from enhancement of rent in an arbitrary manner.

The contentions of Respondents, on the other hand, are:

(i) Reasonable classification of 'tenants' and 'tenanted premises' is permissible in terms of Article 14 of the Constitution of India.

(ii) The Objects and Reasons of the 1974 Act, inter alia, was to regulate rent of the premises situated within the urban areas and there being no provision for enhancement of rent; by reason of the said notification, the Administrator sought to achieve a balance between the interests of the landlords and those of the tenants;

(iii) The notification whereby the landlord's property had been taken out of the rent control laws is in accordance with the policy of the Government of India as is reflected from the model rent laws circulated by the Ministry of Urban Development for the purpose of stimulating private investment in rental housing, and by reason thereof the balance was tilted in favour of the tenants which was causing deleterious, economic and social consequences;

(iv) The State having adopted a policy of allowing Foreign Direct Investment in housing, the said notification, being in tune with the current economic policy of the Government, the High Court rightly refrained from exercising its power of judicial review;

(v) In view of a large number of decisions of this Court it is now well settled that Section 3 of the Act is intra vires the Constitution;

(vi) The impugned notification is a conditional legislation and not a delegated legislation;

(vii) Merely because the exemption granted by the impugned notification is perpetual in nature, the same per se does not offend the legislative policy particularly in view of the fact that almost similar notifications have been upheld by this Court;

(viii) Though the Rent Act confers right on the tenants against exorbitant increase in rent and/or mala fide eviction; such statutory protection having caused great hardship to the landlords and having been abused by the tenants, corrective measures could be taken in terms of the said statute;

(ix) There being no provision for determination of a fair rent, Sections 4 and 5 of the Act cannot be implemented in case of a tenanted premises situated in Chandigarh;

(x) Despite the fact that the value of the property has increased, mala fide enhancement of rent and mala fide eviction of the tenants intended by the legislature acquire an ugly mood by the landlord at the hands of the tenants;

(xi) The court cannot overlook the fact, while considering the legislative policy, that several amendments have been carried out by the legislature to mitigate the hardships of the landlords and as the delegatee has acted keeping in view the legislative history, no exception can be taken to the exercise of the power of delegated legislation by the Administrator;

(xii) In view of the National Housing Scheme framed by the Government of India in the year 1991, the Administrator cannot be said to have committed any illegality in issuing the said notification as by reason thereof a balance has been sought to be maintained between the interests of the landlords and those of the tenants, particularly, in view of the fact that by reason thereof the landlords were to be provided adequate return on their investment and so as to see that the tenants do not enjoy any unfair advantage over the landlords.

Conditional legislation and delegated legislation :

> We, at the outset, would like to express our disagreement to the contentions raised before us by the learned counsel appearing on behalf of Respondents that the impugned notification is in effect and substance a conditional legislation and not a delegated legislation. 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 in 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. By reason of Section 3 of the Act, Administrator, however, has been empowered to issue a notification whereby and whereunder, an exemption is granted for application of the Act itself.
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> In Hamdard Dawakhana (Wakf) Lal Kuan, Delhi & Anr. vs. Union of India & Ors. [(1960) 2 SCR 671], this Court stated:

> "The distinction between conditional legislation and delegated legislation is this that in the former the delegate's power is that of determining when a legislative declared rule of conduct shall become effective; Hampton & Co. v. U.S. (276 U.S. 394) 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;"

{See also M.P. High Court Bar Association vs. Union of India & Ors. [(2004) 11 SCC 766]; State of Tamil Nadu, represented by Secretary, Housing Deptt., Madras vs. K. Sabanayagam & Anr. [(1998) 1 SCC 318]; and Orient Paper and Industries Ltd. & Anr. Vs. State of Orissa & Ors. [(1991) Supp.1 SCC 81].} Judicial review of delegated legislation :

> While considering the validity of delegated legislation, the scope of judicial review is limited but the scope and effect thereof has to be considered having regard to the nature and object thereof.
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> The nature of delegated legislation can be broadly classified as:
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> (i) the rule-making power;
>
> (ii) grant of exemption from the operation of a statute.

In the latter category, the scope of judicial review would be wider as the statutory authority while exercising its statutory power must show that the same had not only been done within the four-corners thereof but otherwise fulfils the criteria laid down therefor as was held by this Court, inter alia, in P.J. Irani vs. State of Madras & Anr. [(1962) 2 SCR 169].

In Craies on Statute Law, 7th edition, it is stated at page 297:

> "The initial difference between subordinate legislation (of the kind dealt with in this chapter) and statute law lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority, and that courts of law, as a general rule, will not give effect to the rules, etc., thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled. The validity of statutes cannot be canvassed by the courts, the validity of delegated legislation as a general rule can be. The courts therefore (1) will require due proof that the rules have been made and promulgated in accordance with the statutory authority, unless the statute directs them to be judicially noticed; (2) in the absence of express statutory

> provision to the contrary, may inquire whether the rule-making power has been exercised in accordance with the provisions of the statute by which it is created, either with respect to the procedure adopted, the form or substance of the regulation, or the sanction, if any, attached to the regulation : and it follows that the court may reject as invalid and ultra vires a regulation which fails to comply with the statutory essentials."

In G.P. Singh's Principles of Statutory Interpretation, Tenth Edition, it is stated at page 916:

> "Grounds for judicial review Delegated legislation is open to the scrutiny of courts and may be declared invalid particularly on two grounds: (a) Violation of the Constitution; and (b) Violation of the enabling Act. The second ground includes within itself not only cases of violation of the substantive provisions of the enabling Act, but also cases of violation of the mandatory procedure prescribed. It may also be challenged on the ground that it is contrary to other statutory provisions or that it so arbitrary that it cannot be said to be in conformity with the statute or Article 14 of the Constitution or that it has been exercised in bad faith. The limitations which apply to the exercise of administrative or quasi-judicial power conferred by a statute except the requirement of natural justice also apply to the exercise of power of delegated legislation. Rules made under the Constitution do not qualify as legislation in true sense and are treated as subordinate legislation and can be challenged in judicial review like delegated legislation. Compliance with the laying requirement or even approval by a resolution of Parliament does not confer any immunity to the delegated legislation but it may be a circumstance to be taken into account along with other factors to uphold its validity although as earlier seen a laying clause may prevent the enabling Act being declared invalid for excessive delegation."

In Clariant International Ltd. & Anr. vs. Securities & Exchange Board of India [(2004) 8 SCC 524], this Court observed:

> "When any criterion is fixed by a statute or by a policy, an attempt should be made by the authority making the delegated legislation to follow the policy formulation broadly and substantially and in conformity therewith. [See Secy., Ministry of Chemicals & Fertilizers, Govt. of India v. Cipla Ltd., SCC para 4.1.)"

We may notice that in State of Rajasthan & Ors. vs. Basant Nahata [(2005) 12 SCC 77 : AIR 2005 SC 3401], it was pointed out :

> "The contention raised to the effect that this Court would not interfere with the policy decision is again devoid of any merit. A legislative policy must conform to the provisions of the constitutional mandates. Even otherwise a policy decision can be subjected to judicial review."

In B.K. Industries & Ors. vs. Union of India & Ors. [(1993) Supp. 3 SCC 621], this Court clearly held that a delegate cannot act contrary to the basic feature of the Act stating:

> " ..The words "so far as may be" occurring in Section 3(4) of the Cess Act cannot be stretched to that extent. Above all it is extremely doubtful whether the power of exemption conferred by Rule 8 can be carried to the extent of nullifying the very Act itself. It would be difficult to agree that by view of the power of exemption, the very levy created by Section 3(1) can be dispensed with. Doing so would amount to nullifying the Cess Act itself. Nothing remains thereafter to be done under the Cess Act. Even the language of Rule 8 does not warrant such extensive power. Rule 8 contemplates merely exempting of certain exciseable goods from the whole or any part of the duty leviable on such goods. The principle of the decision of this Court in Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225, applies here perfectly. It was held therein that the power of amendment conferred by Article 368 cannot extend to scrapping of the Constitution or to altering the basic structure of the Constitution. Applying the principle of the decision, it must be held that the power of exemption cannot be utilised for, nor can it extend to, the scrapping of the very Act itself. To repeat, the power of exemption cannot be utilised to dispense with the very levy created under Section 3 of the Cess Act or for that matter under Section 3 of the Central Excise Act."

The law, which, therefore, has been laid down is that if by a notification, the Act itself stands effaced; the notification may be struck down. But that may not be the only factor.

In Hindustan Lever & Ors. vs. Hindustan Lever Mazdoor Sabha & Ors. [(1994) Supp.1 SCC 1] this Court again laid down the law that exercise of power of exemption can be made on the basis of twin tests of the basic object underlying the Act and valid classification stating :

> " ..But such exemption cannot be on the basis of the workers and their wages differentiating between different classes of workmen of the same unit."

{See also Nedurimilli Janardhana Reddy vs. Progressive Democratic Students' Union & Ors. [(1994) 6 SCC 506], Agricultural Market Committee vs. Shalimar Chemical Works Ltd [(1997) 5 SCC 516], Additional District Magistrate (Rev.) Delhi Admn. etc. vs. Siri Ram etc. [(2000) 5 SCC 451] and ITW Signode India Ltd. vs. Collector of Central Excise [(2004) 3 SCC 48].} It is interesting to note that in Secretary, Ministry of Chemicals & Fertilizers, Government of India vs. Cipla Ltd. & Ors. [(2003) 7 SCC 1], this Court opined:

> "It is axiomatic that the contents of a policy document cannot be read and interpreted as statutory provisions. Too much of legalism cannot be imported in understanding the scope and meaning of the clauses contained in policy formulations. At the same time, the Central Government which combines the dual role of policy-maker and the delegate of legislative power, cannot at its sweet will and pleasure give a go-by to the policy guidelines evolved by itself in the matter of selection of drugs for price control.

> The Government itself stressed on the need to evolve and adopt transparent criteria to be applied across the board so as to minimize the scope for subjective approach and therefore came forward with specific criteria. It is nobody's case that for any good reasons, the policy or norms have been changed or have become impracticable of compliance."

We may hereinafter notice the decisions relied upon by Mr. Nariman.

In Maharashtra State Board of Secondary and Higher Secondary Education & Anr. etc. vs. Paritosh Bhupeshkumar Sheth and Ors. [(1984) 4 SCC 27], this Court was concerned with a regulation laying down the terms and conditions for revaluating the answer papers. Indisputably, there exists a distinction between regulations, rules and bye-laws. The sources of framing regulations and bye-laws are different and distinct but the same, in our opinion, would not mean that the court will have no jurisdiction to interfere with any policy decision, legislative or otherwise.

In Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. etc. vs. Union of India & Ors. etc. [(1985) 1 SCC 641], the question which arose for consideration therein was as to whether the exemption notification issued under Section 25 of the Customs Act, 1962 was beyond the reach of the Administrative Law. Venkataramiah, J. speaking for the Bench, held that the Court exercising power of judicial review of a piece of subordinate legislation can exercise its jurisdiction, apart from the grounds on which a plenary legislation can be challenged, but if it is contrary to other statute or if it is so unreasonable so as to attract the wrath of Article 14 of the Constitution of India opined that the arbitrariness is not treated as a separate ground in India as it is a part of Article 14 of the Constitution stating:

> " .A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind, taking irrelevant matters into consideration, failure to take relevant matters into consideration, etc., etc. On the facts and circumstances of a case, a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statue or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution. It cannot, no doubt, be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant."

It was categorically held that a subordinate legislation would not enjoy the same degree of immunity as a legislative act would.

To the same effect are the decisions of this Court in Khoday Distilleries Ltd. & Ors. vs. State of Karnataka & Ors. [(1996) 10 SCC 304] and Dai-ichi Karkaria Ltd. vs. Union of India & Ors. [(2000) 4 SCC 57], wherein Indian Express Newspapers (Bombay) Pvt. Ltd. (supra) was followed. We, therefore, need not deal with them separately It is not necessary for us to dilate on this subject as in Bombay Dyeing & Mfg. Co. Ltd. (3) vs. Bombay Environmental Action Group & Ors., reported in (2006) 3 SCC 434, the power of judicial review on delegated legislation has been considered at some details, opining :

> "For the foregoing reasons, we are of the opinion that in cases where constitutionality and/ or interpretation of any legislation, be it made by the Parliament or an executive authority by way of delegated legislation, is in question, it would be idle to contend that a court of superior jurisdiction cannot exercise the power of judicial review. A distinction must be made between an executive decision laying down a policy and executive decision in exercise of its legislative making power. A legislation be it made by the Parliament/Legislature or by the executive must be interpreted within the parameters of the well-known principles enunciated by this Court. Whether a legislation would be declared ultra vires or what would be the effect and Page 1243 purport of a legislation upon interpretation thereof will depend upon the legislation in question vis-`-vis the constitutional provisions and other relevant factors. We would have to bear some of the aforementioned principles in mind while adverting to the rival contentions raised at the bar in regard to interpretation of DCR 58 as well as constitutionality thereof."

{See also Kerala Samsthana Chetu Thozhilali Union vs. State of Kerala & Ors. [(2006) 4 SCC 327].} Judicial review of delegated legislation is, therefore, permissible.

National Housing Policy & other reasons for issuing the impugned notification :

> It is not in dispute that the Central Government evolved a National Housing Policy. The said Policy, according to Respondents, was made pursuant to or in furtherance of a decision of this Court in Prabhakaran Nair & Ors. Vs. State of Tamil Nadu & Ors. [(1987) 4 SCC 238] stating :
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> "It is common knowledge that there is acute shortage of housing, various factors have led to this problem. The laws relating to letting and of landlord and tenant in different States have from different States' angles tried to grapple the problem. Yet in view of the magnitude of the problem, the problem has become insoluble and the litigations abound and the people suffer. More houses must, therefore, be built, more accommodation and more spaces made available for the people to live in. The laws of landlord and tenant must be made rational, humane, certain and capable of being quickly implemented. Those landlords who are having premises in their control should be induced and encouraged to part with available accommodation for limited periods on certain safeguards which will strictly ensure their recovery when wanted. Men with money should be given proper and meaningful incentives as in some

> European countries to build houses, tax holidays for new houses can be encouraged. The tenants should also be given protection and security and certain amount of reasonableness in the rent. Escalation of prices in the urban properties, land, materials and houses must be rationally checked. This country very vitally and very urgently requires a National Housing Policy if we want to prevent a major breakdown of law and order and gradual disillusionment of people. After all shelter is one of our fundamental rights. New national housing policy must attract new buildings, encourage new buildings, make available new spaces, rationalise the rent structure and rationalise the rent provisions and bring certain amount of uniformity though leaving scope for sufficient flexibility among the States to adjust such legislation according to its needs. This Court and the High Court should also be relieved of the heavy burdens of this rent litigations. Tier of appeals should be curtailed. Laws must be simple, rational and clear. Tenants are in all cases not the weaker sections. There are those who are weak both among the landlords as well as the tenants. Litigations must come to end quickly. Such new Housing Policy must comprehend the present and anticipate the future. The idea of a National Rent Tribunal on an All India basis with quicker procedure should be examined. This has become an urgent imperative of today's revolution. A fast changing society cannot operate with unchanging law and preconceived judicial attitude."

The said national policy was made on or about 17.7.2002. Therein, it was, inter alia, recommended that appropriate amendments be made in the existing laws and regulations so as to achieve a balance of interests of both the landlords and tenants, which would stimulate further constructions. On the basis of series of consultations with the State Governments and various experts, the Ministry of Urban Development suggested various features of a model rent control law which was considered in the Chief Ministers' Conference held on 7.3.1992 laying down a broad frame-work therefor. The features as regards exemption laid down therein are as under: (1) No rent control law should apply to an urban area, population whereof as per the 1991 census exceeds 3 million; (2) Exemption to residential and non- residential premises carrying more than a rental value ranging from Rs.1500/- to Rs.3500/- per month as may be specified on city-wise basis. The ceiling for rent will be automatically revised upwards as per escalation formula of standard rent. Exemption would extend to existing as well as new tenancies and covering new and existing constructions. (3) There should be a provision for fixation of standard rent by a certain specified percentage. (4) Rent Control Act should be made a permanent one.

Additional affidavit by the Administrator We have noticed hereinbefore that pursuant to an observation made by the High Court on 11.3.2004 an additional affidavit was filed before the High Court by the Administrator. In his additional affidavit affirmed on 24.7.2002, the Administrator assigned reasons for issuing the said notification. Reference was also made to the correspondences passed between the Central Government and the Union Territory culminating in issuance of the said notification.

We may take note of the contents of the said affidavit at some details. In the said additional affidavit, it was stated:

" Given the nature of Rent Control Laws, it is submitted that the balance of rights of landlords and tenants is tilted in favour of tenants by these laws resulting in deleterious economic and social consequences as noted in the Urban Reforms Policy of Government of India. Therefore, the balance of rights would be fully restored if and when Urban Rent Control Laws, as they presently exist are repealed and contracts between tenants and landlords are governed by the law of the land subject to such special provisions as may be required to regulate such contracts given their specific nature. In these circumstances the Administration's notification dated 7.11.2002 is a step towards improving the balance of rights between landlords and tenants.

As regards the limit of exemption, which is Rs.1500/- p.m. it has been brought out that in various other States similar exemptions are in the range of Rs.1000-3500 p.m. Specific mention has been made of Section 3 of the Punjab Rent Act, 1995 which has not so far been notified by Government of Punjab, but wherein the State Government would have to notify the exemption for properties that have a deemed monthly rent above certain limit, that limit being between Rs.1500-3500/-. The Chandigarh Administration's notification limit of Rs.1500/- is in line with the range mentioned in the Punjab Act of 1995. As such it will not be in public interest to alter this limit."

It was further averred :

"The Act came into effect in December 1988. Large number of writ petitions were filed in the Supreme Court challenging the constitutionality of the amendments. The Supreme Court, in a series of judgments, has upheld the validity of these amendments. The Govt. of India has requested all the State Governments to enact amendments to rent control laws on similar lines. This was broadly endorsed, as a part of the Draft National Housing Policy, in the Conference of Housing Ministers in October 1990. A number of States have initiated amendments in this regard."

In para 5 of the said recommendations, provisions have been made for grant of exemption to the residential or non-residential property according to the current price index.

In the written statement filed on behalf of Administrator it was stated :

" ..The city of Chandigarh has grown in size, economy, population etc. and has occupied an important position so far as other cities in India are concerned. Further, Chandigarh has the highest per capita income compared to any other city/state in the country as per the latest census. Suffice, it to submit the classification has a nexus with the object sought to be achieved. It is not violative of Article 14 of the Constitution of India nor does it amount to repeal of the 1974 Act.

It may be mentioned here that the stamp duty on conveyance deeds has been reduced from 12.5% to 6% by the Chandigarh Administration vide notification

no.5645-HIII(5)-2002/14968 dated 2.8.02 issued under Section 9-A of the Indian Stamp Act, 1899.

. That the contents of ground (xiii) to (xix) denied being wrong and incorrect. As stated above, the Administrator has the jurisdiction to issue the notification dated 7-11-02. There is no requirement of any consultation or prior sanction."

By a letter dated 17th July, 2002, the State Governments were, asked by Union of India to regulate the rent control and rental housing, inter alia, stating:

"As you are aware, in his Budget Speech 2002- 03, the Union Finance Minister has announced the creation of an Urban Reforms Incentive Fund with an outlay of Rs.500 crore for the year. During finalization of the size of Annual Plan of your State, the Planning Coimmission has indicated the amount out of this Fund, as part of State's share of resources (vide Annexure-I). However, actual release is to be based on action on the reform front, for which a Memorandum of Agreement is to be signed between the State Government and Government of India. I enclose the draft of the MoA (Annexure II).

xxx xxx xxx xxx xxx

3. The specific actions to be taken by the States are indicated in the separate note at Annexure III. The first instalment, equal to 1/3rd of the eligible amount, will be released on the State signing the MoA, to be followed by two further instalments for the financial year which will be based on the progress in implementing the agreed reform calendar, as indicated in Annexure III. We will also provide Guidelines for the reform items, for which an Expert Committee is at work. It may please be noted that "for purposes of release of funds the total package is to be taken into account and not any individual component".

4. You will agree that the reforms which have been mentioned in the Budget Speech and in this letter are long overdue in the urban sector. The incentive Fund only highlights them and encourages their adoption. The over-all intention is to encourage construction of housing including rental housing, to reduce transaction costs and delays in property transactions, to provide for easier availability of land for construction, and improve municipal finances with a view to developing infrastructure and civic services in our cities."

The Central Government issued another letter on or about 10th December, 2002, wherein upon reference to the said notification dated 7.11.2002, a detailed report was called for as to what steps have been taken by the States concerned by the Ministry of Urban Development and Poverty Alleviation.

As regards reforming the Rent Control Act it was stated :

" .In the MoA the State will undertake to carry out a range of reforms in rent control commencing, during the current year, with legislative measures to ensure that new construction (i.e., buildings constructed on or after 1-4-2002), and any vacancy of any existing building occurring on or after the date of the signing of the MoA, will not come under the ambit of Rent Control or tenancy protection. States which do not have a Rent Control Act will undertake not to introduce such a measure (rent control).

In order to qualify for the second and third instalments, the two measures to be taken are :

(i) the required legislation should have been enacted and brought into effect in respect of new construction/newly arising vacancy as agreed to in the MoA;

(ii) the State Government should have issued a Government Order/Resolution laying down the total policy of reform of rent control. The policy statement should include, in addition to the policy in respect of new construction or newly arising vacancy in an existing building as stated above, also the policy regarding existing tenancies. In respect of existing tenancies, the State will adopt the following in their policy:

i. To remove ceiling on rent on existing tenancies, and to provide for rents to move to market rates, ii. To fix time limit of three years for existing tenancies which do not have a proper written lease agreement between landlords and tenants, iii. To restrict tenancies to the life-time of lessee, iv. To permit possession on termination of tenancy without recourse to litigation, v. To create an Authority and provide guidelines to fix rents on the basis of market rates in respect of existing tenancies.

Action in the Year 2003-04 : The policy on existing tenancies should be brought into effect through appropriate legislative changes; in the second year of the scheme. Release of URIF in future years will be based on implementation of the agreed schedule of reform in respect of existing tenancies."

[Emphasis supplied] Union of India, in its affidavit filed before the High Court, had referred to its letter dated 10.12.2002. The Joint Secretary, Finance, Chandigarh in response thereto by letter dated 23.12.2002 informed the Central Government about issuance of the said notification dated 7.11.2002 and the background thereof.

Notifications issued in respect of the city of Chandigarh and issued under Section 3 of the Act of 1949 :

Let us now consider some of the notifications to which our attention has been drawn by Mr. Nariman which were applicable to the city of Chandigarh and issued under Section 3 of the Act.

A press note was issued on 23rd May, 1959 by the Government of Punjab exempting the city of Chandigarh from the operation of the Act for a period of 25 years, the reference whereof, has been made in a Full Bench judgment of the Punjab and Haryana High Court in Dr. Harikishan Singh vs. Union of India & Ors. [AIR 1975 P&H 160]. The said press note was found to be invalid in law by the High Court. On or about 24.9.1974 a notification was issued by the Chief Commissioner under Section 3 of the Act exempting all new buildings from the purview of the Act for a period of five years. Yet again on 5.3.1985 the Chief Commissioner granted exemptions to all buildings and rented lands belonging to the Government. We would deal with the said notification and similar other notifications issued by the State of Punjab and other States consequently a little later.

The Administrator of Union Territory of Chandigarh issued the impugned notification dated 7.11.2002 directing that the provision of the Act was not applied to the buildings and rented lands whose monthly rent exceeds Rs.1,500/-.

Before adverting to the question involved in these appeals, we may also notice similar notifications issued by the State of Punjab and other States to which our attention has been drawn by Mr. Nariman.

Other exemption notifications :

By reason of a notification dated 12.9.1950, the evacuee properties were exempted from the purview of rent laws. The premises vested in local Government bodies were also exempted by issue of notification dated 21.2.1947. Similarly, the lands and buildings belonging to Municipal Committee and Notified Area Committee, District Boards or Panchayats were also exempted by a notification dated 3.6.1959. The validity of the said notification has been upheld by the Full Bench of the Punjab & Haryana High Court in Hari Prasad Gupta vs. Jitender Kumar Kaushik reported in AIR 1982 P&H 165. By a notification dated 8.10.1959, buildings and rented lands belonging to the improvement trust were exempted. A similar notification was issued on 5.11.1959 exempting buildings and rented lands belonging to the Cantonment Boards of Ambala, Ferozpur and Jullunder.

The buildings belonging to the Government of India and the State of Punjab and other States were exempted by a notification dated 5.1.1949. Yet again, all the buildings and rented lands in the urban area of Mohali were exempted for the period from 28.1.1983 and expiring on 31.3.1995 by a notification dated 9.2.1984.

Indisputably, the validity of some of the aforementioned notification has been upheld by this Court in Punjab Tin Supply Co., Chandigarh & Ors. vs. Central Government & Ors. [(1984) 1 SCC 206], M/s. Kesho Ram & Co.& Ors. Etc. vs. Union of India & Ors. [(1989) 3 SCC 151], Firm Amar Nath Basheshar Dass vs. Tek Chand [(1972) 1 SCC 893] and Sadhu Singh vs. District Board, Gurdaspur & Anr. [(1969) RCR 156], however, we would consider the applicability of the decisions of this Court in

this case hereinafter. The applicability of the said decision vis-`-vis the notifications which fall for consideration therein would be noticed by us.

Notifications issued by other States :

The Government of Rajasthan issued notification dated 19.5.1976 exempting the properties of Wakf Board which has been upheld by this Court in Tharumal & Anr. Vs. Masjid Hajum Pharosan Va Madrassa Talimul Islam, Mirza Izsmail Road, Jaipur [(1994) 3 SCC 375].

The Andhra Pradesh Government has issued a notification dated 29.12.1983 under Section 26 of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 exempting all buildings fetching rental of Rs.1,000/- from the purview of the Act w.e.f. 26.10.1983. The validity of the said notification came up for consideration before a learned Single Judge of the Andhra Pradesh High Court in Writ Petition No.8081 of 1986.

Following a Division Bench decision of the said Court in M/s. Buywell Corporation vs. Mahadevmal [1988 APLJ-1-345], the said writ petition was dismissed.

Statutes exempting application of the Act :

Mr. Nariman has drawn our attention to the amendments in the statutes made by some other States.

Section 2(g) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was inserted, exempting buildings fetching rent of more than Rs.2000/-, by U.P. (Amendment) Act 5, 1995.

Legislature of the National Capital Region of Delhi amended Section 3(c) of the Delhi Rent Control Act, 1958 which was considered to be the role model by the Central Government exempting buildings fetching rent of more than Rs.3500/-. We would notice the decisions of the court in relation to the said amendments and in particular the amendment of Section 3(c) of Delhi Rent Control Act at an appropriate stage.

Precedents dealing with notifications :

The power of the superior Court to interfere with a notification by way of judicial review came up for consideration before this Court in P.J. Irani vs. The State of Madras & Anr. [I962 (2) SCR 169]. Having regard to the fact that the correctness and otherwise of the said decision of this Court is not in question and furthermore, as therein, the Court has laid down the parameters of judicial review elaborately, we would consider the same at some details.

In P.J. Irani (supra), a notification was issued exempting a cinema house, the lease whereof expired in 1942. Despite expiry of lease, he remained in possession. In terms of Madras (Lease & Rent Control) Act, 1946 came into force protecting tenants in possession from eviction even after expiry of their leases. In terms of Section 13 of the Act, the State was empowered to exempt any building or class of buildings from all or any of the provisions of the Act. The State of Madras issued a notification in exercise of the said power exempting the cinema house occupied by the said tenants. Validity of Section 13 of the said Act came to be questioned by the landlord before the High Court of Madras. The High Court held Section 13 of the Act to be ultra vires and also quashed the said notification dated 4th June, 1952. This Court in appeal thereagainst, although, upheld the validity of Section 13 of the Act but opined that the notification in question was bad in law. An order made under Section 13 of the Act was held to be amenable to judicial review on three grounds : (1) If it was discriminatory, (2) If it was made on grounds which were not germane or relevant to the policy and purpose of the Act; and (3) if it was made on grounds which were mala fide.

This Court noticed that the legislation was enacted for achieving three purposes: (i) the regulation of letting, (ii) the control of rents; and (iii) prevention of unreasonable eviction obtaining from the residential or non- residential buildings.

Before the High Court a memorandum, setting out the reasons why exemption was thought to be granted was filed, stating:

"(1) When the High Court offered in 1940 to lease out the premises in question for period of 21 years, Sri Chettiar elected to take it on lease only for period of seven years, which expired in 1947. As per the High Court's order in C.S.Nos.280 to 286 of 1939, Sri J.H. Irani, father of Sri P.J. Irani took a lease of the premises for a period of 13 years 11= months from 1947 and he deposited Rs.10,000/- towards the said lease. He is therefore entitled for the benefits from 1948 onwards.

(2) Had not the Rent Control Act come into force, Sri P.J. Irani would have got possession in the ordinary course as per High Court's order and the terms of the lease deed. The operation of the Act is therefore really a hardship to him.

(3) Sri Chettiar is only an absentee lessee and he is having several other business in South India.

(4) The conduct of Sri Chidambaram Chettiar in refusing to surrender the possession of the building to Sri P.J. Irani who had taken a valid lease under the order of the High Court is that of a hard litigant seeking to exploit the letter of the law without much regard to bona fides; and (5) Sri Chettiar had already managed to be in possession of the building for five more years than he was legitimately entitled to be."

The notification was quashed by the High Court stating:

> "Reasons 1, 2 and 4 go together to have reference to the order of the High Court in 1940 directing the Receivers to execute a lease for seven years to the appellant and after the expiry of that period to grant a lease for fourteen years to the second respondent's father. It is undoubtedly true that but for the application of the Act, the second respondent's father would have obtained possession of the premises after the expiry of lease in favour of the appellant. That could be said of thousands of cases in which the leases in favour of tenants have expired and, but for the Act the owners would be entitled to obtain possession of the demised premises. If this circumstance alone is sufficient to exempt any premises from the operation of the Act, then the Act itself should be repealed There is no policy or principle involved in this circumstance."

This Court agreed with the said view of the High Court holding ground Nos. 1 and 2 to be contrary to the legislative policy of the Act and ground No.3 not germane for granting exemption. Reason No.5 was held to be really no reason at all.

The scope of judicial review has, thus, been laid down succinctly.

Although we would notice hereinafter that various notifications issued by the Chief Commissioner, as also the Administrator of the Union Territory of Chandigarh and various other notifications issued by the State of Punjab and other States had been upheld in various judgments of this Court which we have noticed hereinbefore in those cases also, as for example in Sadhu Singh (supra), Punjab Tin Supply Co. (supra) and Kesho Ram (Supra), the ratio of P.J. Irani (supra) was followed. In Sadhu Singh (supra) while upholding the notification of exemption granted in favour of the District Board by this Court, a distinction was sought to be made that whereas in the Madras Act which was applicable in the case of P.J. Irani (supra), the expression used was "unreasonable eviction of tenants", in Punjab Act, the expression used was "eviction of tenants". But this Court found no distinction between the two Acts as one of the objects of the Acts was unreasonable eviction of tenants and the expression "unreasonable" thus was read in the title of the Rent Act.

So far as the first notification is concerned, the same has been upheld by this Court in Sadhu Singh vs. District Board, Gurdaspur & Anr. [(1969) RCR 156] following the case of P.J. Irani vs. State of Madras & Anr. [(1962) 2 SCR 169].

In Sadhu Singh (supra) P.J. Irani was distinguished stating :

> "The learned counsel says that it may be that the decision of this Court in Irani's case concludes the question as far as Art.14 is concerned but different issues arise while dealing with the case of excessive delegated legislation. But, in our opinion, in this case the conclusion of the Court that enough guidance is afforded by the preamble and the operative provisions of the Act for the exercise of the discretionary powers vested in the Government also repels the argument regarding excessive delegation because if an Act gives sufficient guidance to an authority for the purpose of issuing a notification it cannot be said that there is excessive delegation."

The notification dated 23.5.1959 has been quashed by the Punjab & Haryana High Court in Dr. Harkishan Singh vs. Union of India & Ors. [AIR 1975 P&H 160 = 1975 PLR 163], stating that :

> " . all that section 88 of the Punjab Re-organization Act means is that any law which was in force immediately before the appointed date i.e. 01.11.1966 in the erstwhile State of Punjab or any part thereof was to continue to apply to those territories irrespective of the re-organization of that State into four successor States. .Since the East Punjab Rent Restriction Act did not apply to or was not in force in the territories, now comprised in the Union Territory of Chandigarh immediately before the appointed date, references to "Punjab" in section 1, clause 2 of the East Punjab Rent Restriction Act cannot be read as Union Territory of Chandigarh nor could this act be adopted under Section 89 of the Re-organization for facilitating its application to the Union Territory of Chandigarh or any part thereof. The Act had first to be applied to the Union Territory of Chandigarh or any part thereof by a notification in the official Gazette by the Central Government under Section 87 of the Re-organization Act with the necessary adaptation."

Paragraph 16 of the Judgment concludes as follows :

> "For the reasons given above, this petition is accepted and the notification of the Central Government dated October 13, 1972 published in the Government of India Gazette (Extraordinary) dated November 28, 1972 is hereby quashed and it is held that the Act has not been brought into force in the Union Territory of Chandigarh or any part thereof."

The said decision has been approved by a larger Bench of this Court in M/s. Kesho Ram & Co. & Ors. Etc. vs. Union of India & Ors. [(1989) 3 SCC 151], wherein it was observed as follows :

> "This is the third round of litigation initiated by tenants in challenging Section 3 of the East Punjab Rent Restriction Act, 1949 and notifications issued thereunder for the purpose of granting exemption to the newly constructed buildings in the urban areas for a period of five years from the operation of the provisions of the Act."

In State of Madhya Pradesh vs. Kanhaiyalal & Ors. [1969 RCJ 695], P.J. Irani and Sadhu singh were followed opining :

> "Before we can hold in favour of the State Government, we must be satisfied that the ground of exemption was germane to the policy of the Act. In this case there is no affidavit by any officer who had anything to do with the order granting exemption. The returns filed on behalf of the State Government do not throw any light on this question. It would appear that in granting the exemption the State applied merely a rule of thumb and issued the notification on the basis of the assertion by the trust that the entire rental income from the property was being applied to meet the expenses of the trust. Such a statement only allows an institution to apply for

> exemption under section 3(2). By itself it is not enough. Any institution covered by section 3(2) had to allege why it had become necessary for it to apply for exemption. It was not the case of the trust that they wanted to evict the tenants because they wanted the whole of the accommodation itself nor was it their plea that the income accruing to them was very low compared to prevailing rates of rent and that it was wholly inadequate for meeting the expenses of the trust. If grounds like these or other relevant grounds had been alleged it would have been open to the State Government to consider the same and pass an order thereon. In our view State Government did not apply its mind which it was required to do under the Act before issuing a notification and the return does not disclose any ground which was germane to the purpose of the Act to support the claim for exemption."

[Emphasis supplied] In Punjab Tin Supply (supra) the buildings which were granted either sewerage connection or electric connection were exempted for a period of five years by reason of the notification dated 31.1.1973. Following P.J. Irani (supra) it was held that the object of the Act can be gathered from its preamble. The legislative policy could be culled out from other provisions contained therein holding that the object and policy of the Act appears to be wider than some of the key provisions thereof. The Court noticed that the Act was passed as one of the measures was taken to mitigate the hardship caused to the tenants. Such mitigation can be attained by several measures, one of them being creation of incentive to persons with capital who were otherwise reluctant to invest in the construction of new buildings in view of the chilling effect of the rent control laws and to persuade the landlords to invest in the construction of new buildings by granting exemption in their favour for a period of 5 years is not the basis to the legislative policy stating :

> "The impugned notification is not, therefore, ultra vires Section 3 of the Act as in its true effect, it advances the scheme, object and purposes of the Act which are articulated in the preamble and the substantive provisions of the Act. Moreover the classification of buildings into exempted buildings and unexempted buildings brought about by the notification bears a just and reasonable nexus to the object to be achieved namely the creation of additional housing accommodation to meet the growing needs of persons who have no accommodation to reside or to carry on business and it cannot be considered as discriminatory or arbitrary or unreasonable in view of the shortness of the period of exemption available in the case of each exempted building. The exemption granted for a period of five years only serves as an incentive as stated above and does not create a class of landlords who are forever kept outside the scope of the Act. The notification tries to balance the interests of the landlords on the one hand and of the tenants on the other in a reasonable way. We do not, therefore, agree with the submission that the notification either falls outside the object and policy of the statute or is discriminatory."

[Emphasis supplied] Exemption from the application of the said Act was, thus, for a short period, and as such found to be in tune with the policy of the State. Had such exemption been for ever in favour of the landlords, the matter might have been otherwise. The validity of the said notification, therefore, was upheld because of the temporary nature of the statute.

Even in the said case, the Act was directed to be applied prospectively and not retrospectively.

In Motor General Traders & Anr. vs. State of Andhra Pradesh & Ors. [(1984) 1 SCC 222], exemption was initially granted in favour of the landlords for a period of five years but the same was being extended from time to time. In that situation, this Court was of the opinion that while earlier the exemption granted to the tenants under Section 32(b) of the Act had short life and the concession should be tolerated for a short while, but having regard to the extension granted, the same having not been done, the amendment was struck down holding that :

> " This is a case where the Legislature while passing the law had given the exemption apparently as an incentive to encourage building activity. The learned counsel were not able to show how the continuance of the exemption in the case of persons who have built houses more than two decades ago will act as an incentive to builders of new houses now. If that is really so, then there is no justification to continue to have the restrictions imposed by the Act on buildings built prior to August 26, 1957 also and the whole Act should have to be repealed for if the impugned exemption can act as an incentive the repeal of the Act should also act as an incentive. We are of the view that in the instant cases no investigation as contemplated in the above two decisions of this Court is necessary. The long period that has elapsed after the passing of the Act itself serves as a crucial factor in deciding the question whether the impugned law has become discriminatory or not because the ground on which the classification of buildings into two categories is made is not a historical or geographical one but is an economic one. Exemption was granted by way of an incentive to encourage building activity and in the circumstances such exemption cannot be allowed to last for ever."

[Emphasis supplied] This Court referred to, with approval, the decision of this Court in R.M.D. Chamarbaugwalla & Anr. etc. vs. Union of India & Anr. etc. [1957 SCR 930] stating that it is legitimate to take into account the history of legislation, its object and title and preamble to it holding :

> "The incentive to build provides a rational basis for classification and it is necessary in the national interest, that there should be freedom from restrictions for a limited period of time. It is always open to the State Legislature or the State Government to take action by amending the Act itself or under Section 26 of the Act, as the case may be, not only to provide incentive to persons who are desirous of building new houses, as it serves a definite social purpose but also to mitigate the rigour to such class of landlords who may have recently built their houses for a limited period as it has been done in the Union Territory of Chandigarh as brought out in our recent judgment in Punjab Tin Supply Co., chandigarh v. Central Government."

In M/s. Kesho Ram (supra) also exemption was granted for a period of five years and following P.J. Irani, Sadhu Singh and Punjab Tin Supply validity of the notification was upheld.

This Court upheld the validity of a notification in Parripati Chandrasekharrao & Sons vs. Alapati Jalaiah [(1995) 3 SCC 709] on different ground. The questions which have been raised herein did not fall for consideration in the said decision. It is, therefore, not an authority for the proposition as to whether such a notification is ultra vires Section 3 of the Act or not. In that case, this Court was considering a question as to whether the right vested in the tenant can be taken away during the pendency of a proceeding as therein the High Court, while exercising its revisional jurisdiction held that the Rent controller had jurisdiction to interfere and decide the application filed by the tenant, upon arriving at a finding that the notification impugned therein had no application to the tenant's proceedings.

The said view of the High Court was reversed by this Court opining that the right of a tenant could be taken away by such notification.

In S. Kandaswamy Chettiar vs. State of Tamil Nadu & Anr. [(1985) 1 SCC 290] this Court, while following P.J. Irani, held that exemption issued in favour of those which are public trusts, was valid having regard to the provisions contained in Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. This Court referred to decision in Gorieb v. Fox (71 L Ed 1228 : 274 US 603) and held that there must be some rationale behind the conferral of such power on the State Government to grant exemption and stated that:

> " .Obviously the power to grant exemptions under Section 29 of the Act has been conferred not for making any discrimination between tenants and tenants but to avoid undue hardship or abuse of the beneficial provisions that may result from uniform application of such provisions to cases which deserve different treatment. Of course, as observed by this Court in P.J. Irani case the power has to be exercised in accordance with the policy and object of the enactment gatherable from the Preamble as well as its operative provisions or as said in the American decision without subverting the general purposes of the enactment."

This Court again noticed that the notification was in consonance with the object of the Act which had three purposes, namely, (1) the regulation of letting of residential and non-residential buildings, (2) the control of rents of such buildings, and (3) the prevention of unreasonable eviction of tenants from such buildings.

In Buywell Corporation (supra), a bench of the Andhra Pradesh High Court upheld a notification granting permanent exemption to all buildings whose rent was more than Rs.1000/-. We do not, for the reasons stated hereinafter, think that the law laid down therein is correct.

Classification for exclusion of building :

> The word 'building' includes a part of building let out for any purpose whether being actually used for that purpose or not. The Act applies to rented building. Section 3 refers to `a building'. While constituting the term 'building', it is to be read as 'rented building' and having regard to the definition of 'building', a part of the building would

> also come within the purview thereof. In that view of the matter, rent of a building, which has been let out, would be a relevant criteria for classification of the tenanted premises.
>
> The question, however, is whether by fixing Rs.1500/- as the monthly rental for granting exemption from operation of the said Act most of the buildings in the Union Territory would be covered and what would be the effect thereof.
>
> In this connection, our attention was drawn to a notice dated 30.11.2002 purported to be issued under Section 106 of the Transfer of Property Act on behalf of one Sarabjit Singh and Kamaljit Singh to his tenant Shri Brij Mohan Gaind wherein although monthly rent was Rs.3000/-;

damages were claimed @ Rs.90,000/-. Yet again, in terms of a letter of an advocate dated 27.01.2003, issued on behalf of one S. Harcharan Singh Brar to M/s. Sodhi Boot House, wherein monthly rent was Rs.2,100/-, but damages were claimed @ Rs.2,00,000/- per month from the date of expiry of the notice period upto the date of handing over the possession.

It was further shown that after the said notification was issued, the price of land have sky-rocketed.

We, for the purpose of determination of the issue, need not go into the correctness or otherwise of the said contentions but we may only notice that they have not been specifically denied or disputed by Respondents. We, however, hasten to add that we would not intend to lay down a law that even for the purpose of enactment of an amending legislation the consequence thereof would be a relevant criteria.

We, however, do not agree with the submissions of the learned counsel appearing on behalf of Appellants that notification issued on the basis of rental of a building premise is bad in law. We may notice some of the decisions of this court upholding validity of notification issued under similar provisions as under:

> (a) The notification dated 12.8.1974 issued by the State of Madras under Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 exempting all buildings owned by Hindu, Christian and Muslim religious public trusts and public charitable trusts without any restriction on the period of its operation was upheld in S. Kandaswamy Chettiar (supra).
>
> (b) Notification dated 21.11.1976 issued by the State of Madras under Section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 exempting all buildings belonging to all co-

operative societies was upheld in S.M. Mahendru & Co. & Ors. vs. State of Tamil Nadu & Anr. [(1985) 1 SCC 395]. Precedent dealing with the amending statutes :

The amendment made in Section 3(c) of the Delhi Rent Act, 1958 was the first legislation where the National Housing Policy was implemented. The effect of the said legislation has been noticed hereinbefore.

Rental not exceeding Rs.3500/- per month by the Government of Delhi amending Delhi Rent Control Act was upheld in D.C. Bhatia & Ors. vs. Union of India & Anr. [(1995) 1 SCC 104]. The Karnataka Rent Control Act, 1961 exempting the buildings fetching a rental for more than Rs.500/- in C.N. Rudramurthy vs. K. Barkathulla Khan & Ors. [(1998) 8 SCC 275] has also been upheld. Similarly amendment made by the State of Jammu and Kashmir in the Jammu and Kashmir Rent Control Act, exempting the tenants whose income exceeds Rs.40,000/- per annum was held to be intra vires in Delhi Cloth & General Mills etc. vs. S. Paramjit Singh & Anr. etc. [(1990) 4 SCC 723]. Indisputably the legislature of a State has the requisite legislative power therefor.

The question, however, which falls for our consideration is as to whether such exemption could be granted by an executive order issued under Section 3 or only by way of an amendment.

We would, for the said purpose, notice D.C. Bhatia (supra) in some details. This Court, therein was dealing with an amendment made by the Legislature to the following effect :

"3. Act not to apply to certain premises Nothing in this Act shall apply;

(a) ..

(b) ..

(c) to any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees; or "

The Court took notice of the materials brought on records of the case including the National Housing Policy leading to insertion of sub-Section (c) in Section 3 of the Delhi Rent Control Act. It also referred to the Statement of Objects and Reasons of the said Act. It was noticed that :

"The original proposal in the bill was to exempt from the purview of the Rent Act those premises whose monthly rent exceeded Rs.1500. The legislature, however, after considering various factors, drew the dividing line at Rs.3500."

The Delhi Rent Control Act was amended in the year 1988, the Statements of Objects and Reasons whereof was as under:

> "For quite some time, there have been demands from the associations of house-owners as well as tenants for amendment of Delhi Rent Control Act, 1958. The Committee on Petitions of Rajya Sabha, the Economic Administration Reforms Commission, Secretaries' Committee and National Commission on Urbanisation have also recommended amendment of certain provisions of the Act. Considering these demands/recommendations as also the fact that with the passage of time, the circumstances have also changed, necessitating a fresh look at the tenant-landlord relationship, the amendment of Delhi Rent Control Act, 1958 has been proposed with the following objects:
>
> (a) To rationalise the present rent control law by bringing about a balance between the interests of landlords and tenants.
>
> (b) To give a boost to house-building activity and maintain the existing housing stock in a reasonable state of repairs.
>
> (c) To reduce litigation between landlords and tenants and to ensure expeditious disposal of disputes between them."

One of the contentions raised therein was that Rs.3500/- per month was such a meagre amount of rent for the town of Delhi; practically everybody would be taken out of the protection of the Rent Control Act. Repelling the said contention, this Court opined that the objects of the amending Act were quite different from the objects of the Parent Act as the object of the Amending Act was not merely to protect the weaker sections of the society, i.e., the tenants but also the landlords. It was noticed that prior to enactment of the said amendment, various representations were made by the landlords' association. It was thought by the legislature that the Rent Act had brought halt to the housing building activity for letting out. Keeping in view the acute shortage of accommodation causing hardship to the rich and the poor alike, the Act was held to have been enacted to strike a balance between the interests of the landlords and those of the tenants and for giving a boost to house building activity and pursuant thereto the legislature in its wisdom decided to restrict the protection of the Rent Act not only to those premises in respect whereof rent payable was upto Rs.3500/- per month but also decided not to extend the statutory protection to the premises constructed on or after the date of coming into operation of the Act for a period of ten years. It was categorically held that as the Legislature could repeal the Rent Act altogether, it could do so also step by step. The said amendment was found to be one of the steps for repealing the Act opining :

> "In our view, it is for the legislature to decide what should be the cut-off point for the purpose of classification and the legislature of necessity must have a lot of latitude in this regard. It is well settled that the safeguard provided by Article 14 of the Constitution can only be invoked, if the classification is made on the grounds which are totally irrelevant to the object of the statute. But, if there is some nexus between the objects sought to be achieved and the classification, the legislature is presumed to have acted in proper exercise of its constitutional power. The classification in practice may result in some hardship. But, a statutory discrimination cannot be set aside, if

there are facts on the basis of which this statutory discrimination can be justified."

As regards the nexus for the ceiling limit of Rs.3500/-, the Court observed that the exemption, with the passage of time, may not have any nexus with the objects sought to be achieved by the statute. But, it was for the legislature to decide which particular section of people requires protection at any given point of time. The persons who, as of then, were paying less than Rs.42,000/- per year were considered to be belonging to weaker section. The wisdom of the legislature was again emphasized in paragraph 52 thereof holding:

> "We are unable to uphold this contention for a number of reasons. Prior to the enactment of the Rent Control Act by the various State Legislatures, the legal relationship between the landlord and tenant was governed by the provisions of the Transfer of Property Act. Delhi Rent Control Act provided protection to the tenants from drastic enhancement of rent by the landlord as well as eviction, except on certain specific grounds. The legislature by the Amendment Act No. 57 of 1988 has partially repealed the Delhi Rent Control Act. This is a case of express repeal. By Amending Act the legislature has withdrawn the protection hitherto enjoyed by the tenants who were paying Rs. 3500 or above as monthly rent. If the tenants were sought to be evicted prior to the amendment of the Act, they could have taken advantage of the provisions of the Act to resist such eviction by the landlord. But this was nothing more than a right to take advantage of the enactment. The tenant enjoyed statutory protection as long as the statute remained in force and was applicable to him. If the statute ceases to be operative, the tenant cannot claim to continue to have the old statutory protection. It was observed by Tindal, C.J., in the case of Kay v. Goodwin, 130 ER 1403 : (ER p.1405) "The effect of repealing a statute is to obliterate it as completely from the records of the parliament as if it had never been passed; and, it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted, and concluded whilst it was an existing law.""

The Karnataka Rent Control Act, 1961 was amended by reason of Section 31 of the Amending Act exempting buildings fetching a rental of more than Rs.3500/- from the ambit thereof. The question as regards validity of the said provision came up for consideration before this Court in C.N. Rudramurthy vs. K. Barkathulla Khan & Ors. [(1998) 8 SCC 275], wherein D.C. Bhatia (supra) was followed. We need not, therefore, deal with the ratio in the said decision separately.

The legislature of Jammu and Kashmir amended Section 3(iii). The classification of tenants on the basis of income made therein was upheld by this Court in Delhi Cloth & General Mills etc. vs. S. Paramjit Singh & Anr. etc. [(1990) 4 SCC 723] in the following terms :

> " It is the tenant that the legislature intends to protect and not the landlord or his building. The test adopted by the legislature for this purpose is with reference to the tenant's net income, whether accruing inside or outside the State, as on the date of the landlord's application for eviction as well as on the date of the decree for eviction.

> The legislative object is, therefore, to protect tenants who are economically weaker in comparison to those affluent tenants falling outside the specified limit of income, and at the same time to encourage construction of new buildings which will result in better availability of accommodation, employment opportunity and economic prosperity. This is a reasonable classification which does not suffer from the vice of being too vague or broad. Classification based on income is well known to law. Such classification has a reasonable relation to the twin legislative objects mentioned above. We see nothing unreasonable or irrational or unworkable or vague or unfair or unjust in the classification adopted by the impugned provision."

Having noticed the notifications and the precedents operating in the field, we may notice the distinguishing features of this case.

Statutory scheme :

> It is trite that legal history can be taken into consideration for construction of a statute. Chandigarh, admittedly, is a new town. It was meant to be used as a union territory in terms of the provisions of the Punjab Resettlement Act. It enjoys a unique feature which no other town in India does, namely, capital of two States as also being an Union Territory in itself. Although it is a capital of two States, the essential functions of a legislative authority as also power of administrations are in the hands of the Central Government in terms of Article 239 of the Constitution of India. It is the Parliament alone which would legislate on its behalf. The Central Government extended the beneficial legislation of rent control in the Union Territory. It was declared an urban area only in November, 1972. In view of the Full Bench Decision of the Punjab & Haryana High Court in Dr. Harkishan Singh vs. Union of India & Ors., (AIR 1975 P&H 160 : 1975 PLR 163), the Parliament enacted the 1974 Act in terms whereof the provisions of 1949 Act were extended to the Union Territory of Chandigarh. The 1949 Act is a pre-constitutional legislation. The 1974 Act was enacted immediately after partition of India. The State of Punjab during pre-partition days was known as State of East Punjab. It consisted of areas both urban and rural. The main purpose at the time of enactment of the said Act might have been restricted to two areas, i.e., (1) rent of certain premises situated within the limits of urban areas (2) eviction of tenants therefrom, whereas the main enactment applied to the entire State of Punjab. The extension of 1949 Act, evidently would apply to the Union Territory of Chandigarh. Sub-section (2) of Section 1 of the 1949 Act made a distinction between the urban area and cantonment area. It was not to apply to the cantonment area and presumably for that reason the preamble uses the word "certain premises". The definition of building in the Act provides for a broad meaning. It includes out houses, go-downs, furniture, except a room in a hotel, hostel or boarding house. The types of premises to which the said Act would apply, thus may be found out from the definition of 'building' itself. Unlike similar legislations enacted by other State Governments, the Act is not a temporary Act. It is indisputably in force for a period of more than 57 years.

Legislative policy :

Legislative Policy of a State can be gathered from the Preamble, the Statement of Objects and Reasons and the core provisions contained therein. It is, however, not much in dispute that the Rent Act was a beneficent legislation which sought to protect a category of the tenants occupying rented buildings specified therein not only from enhancement of rent, but also from unreasonable eviction. The Act furthermore provides for protection of the tenants from unreasonable harassment at the hands of the landlords.

The Transfer of Property Act governed the field relating to eviction of all kinds of tenants. For eviction of a monthly tenant, 15 days' notice ending with the tenancy month, as envisaged under Section, 106 thereof was sufficient to bring an action for a landlord to evict his tenant. The tenant, inter alia, could raise a defence of defect in the said notice in case eviction is sought for or applicability of other provisions thereof as also non-compliance of the other requirements contained therein. The Transfer of Property Act does not contain any provision empowering any court to regulate enhancement of rent. No provision existed therein also for protection of tenants from harassment at the hands of the landlords, as for example, disconnecting the electrical and water connection from the tenanted premises. The Rent Control Act, on the other hand, was enacted to protect the tenant, inter alia, in relation to the matters noticed hereinbefore.

We may briefly notice the core provisions of the 1949 Act. Section 3 of the Act empowers the Administrator to issue an exemption notification. Sections 4, 5 and 6 deal with determination of fair rent. Section 10 prohibits the landlord from disconnecting electrical energy, etc. Section13 enumerates the grounds upon which the landlord seeks eviction of a tenant.

The legislative policy of the State was, therefore, required to be deciphered from the said provisions.

Different Rent Control Acts enacted by different States use different preambles. Some Acts provide for control of rents, eviction and rents, letting houses, the lease of vacant premises to Government and some Acts seek to control only enhancement of rent or fixation of rent, unreasonable eviction of tenants. It is permissible to read the preamble of a statute to ascertain the legislative policy.

We are not oblivious that in construing a statute, preamble may not have a role to play unless the meaning thereof is obscure or if plain meaning is to be given, the same would lead to an absurdity, but, (1) the preamble being a part of the statute can be read along with other portions of the Act to give clear meaning to the provisions and to decide whether they are clear or ambiguous, (2) the preamble in itself is not an enacting provision as other relevant enacting words have to be found elsewhere in the

Act, and (3) the utility of the preamble diminishes if the statutory provisions are themselves capable of given a literal meaning. {See Union of India vs. Elphinstone Spg. & Wvg. Co. Ltd. & Ors. [(2001) 4 SCC 139].} Preamble of a statute, as stated in State of Rajasthan & Ors. v. Basant Nahata (supra), however, provides for a key to understand it. It, together with the Statement of Objects and Reasons which are called heart and soul of the statute, may have to be considered in a given situation for the purpose of giving effect thereto.

In Vasantlal Maganbhai Sanjanwala vs. State of Bombay & Ors. [(1961) 1 SCR 341] a provision empowering Provincial Government to fix a lower rent of the maximum rent payable by the tenants was upheld on the ground that the legislation policy and principles may be found out from the preamble and provisions of the Act. Subba Rao, J., while expressing his dissention, opined :

" ..When the decisions say that the legislature shall lay down the legislative policy and its formulation as a rule of conduct, they do not mean vague and general declaration of policy, but a definite policy controlling and regulating the powers conferred on the executive for carrying into effect that policy."

Both the majority and minority, therefore emphasized on the importance of the legislative policy which must not be vague and should be definite and bona fide.

It is equally well settled that a policy underlying the statute should be gathered from reading the statute, including its preamble as a whole. Once, however, the words used in statute have a plain meaning, the courts should not busy themselves to find out the supposed intention or the policy underlying statute. {See Sardar Gurmej Singh vs. Sardar Partap Singh Kairon, 1960 (1) SCR 909.} But we are herein concerned with somewhat a different question, viz., whether the impugned notification is violative of the legislative policy.

In Lachmi Narain & Ors. v. Union of India & Ors. [(1976) 2 SCC 953], this Court was considering the effect of a notification issued in terms of Section 2 of the Union Territories (Laws) Act, 1950, where the words "not less than three months' notice" were substituted by the words "such previous notice as it considers reasonable" were struck down stating that :

"The impugned notification, dated December 7, 1957, transgress the limits which circumscribe the scope and exercise of the power conferred by Section 2 of Laws Act, at least in two respects.

Firstly, the power has not been exercised contemporaneously with the extension or for the purposes of the extension of the Bengal Act to Delhi. The power given by Section 2 of the Laws Act had exhausted itself when the Bengal Act was extended, with some alterations, to Delhi by notification, dated April 28, 1951. The impugned

notification has been issued on December 7, 1957, more than 6= years after the extension."

It was further held that:

"Secondly, the alteration sought to be introduced by this notification (December 7, 1957) in Section 6(2), goes beyond the scope of the "restrictions and modifications" permissible under Section 2 of the Laws Act; it purports to change the essential features of sub- section (2) of Section 6, and the legislative policy inherent therein."

This Court was also of the opinion that Section 6(2) of the Act embodies a determination of a legislative policy and its formulation as an absolute rule of conduct which could be diluted, changed or amended only by the legislature in exercise of its essential legislative function. Necessarily taking recourse to executive action was forbidden. In State of Rajasthan & Ors. v. Basant Nahata (supra), the question as to whether the public policy could be the subject matter of delegation of essential legislative function, this Court opined:

"There cannot be any doubt whatsoever that the court shall not invalidate a legislation on the ground of delegation of essential legislative function or on the ground of conferring unguided, uncontrolled and vague powers upon the delegate without taking into account the preamble of the Act as also other provisions of the statute in the event they provide good means of finding out the meaning of the offending statute."

It was further held :

"Hence, Section 22-A of the Act through a subordinate legislation cannot control the transactions which fall out of scope thereof.

We have noticed hereinbefore the effect of a power of attorney under the Indian Contract Act or the Power-of-Attorney Act. A subordinate legislation which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, in our opinion, thus, would not be valid."

Analysis :

The decisions of this Court clearly point out the distinctive features between the power of the Administrator in terms of a provision of the nature of Section 3 of the Act and the power of the legislature to amend the law. The executive government can exercise its power of exemption in the following circumstances:

(1) Where such exemption had been granted only for a limited period;

(2) in respect of new buildings;

(3) in respect of the government buildings, buildings belonging to the local-self government and other public sector undertakings; and (4) areas belonging to the Cantonment Board which was outside the purview of the applicability of the original act having regard to the fact that such areas of the cantonment are governed by separate Act, like Cantonment Acts.

(5) Where the same would come within the purview of the delegated legislation.

(6) Where the tenants or tenanted premises form a distinct and separate class.

(7) Where having regard to the constitutional scheme that any State within the meaning of Article 12 of the Constitution of India would not treat its tenants in an unfair and arbitrary manner despite the rent control laws being not applicable in their case; as they would be treated to be forming a separate class; and (8) Where the exemption notification is granted for a limited period or in respect of new buildings for a limited period.

In other words, the Administrator will have no jurisdiction to issue a notification which would have a permanent impact. The Administrator cannot change the basic features of the law or act contrary to the legislative policy.

The legislature, on the other hand, can not only repeal the statute, it can change the basic features of the law. The only limitation on the part of the legislature is that ordinarily it cannot take away a vested right.

Validity of the impugned notification :

At the outset, we may notice that the learned counsel appearing on behalf of Appellants did not question the constitutionality of Section 3 of the Act. We are, therefore, concerned only with the validity of the impugned notification dated 7.11.2002. For the aforementioned purpose we would proceed on the basis that the rental fetched by a tenanted building or a part thereof can give rise to reasonable classification. The principal question, therefore, which would arise for consideration is as to whether the impugned notification satisfies the tests laid down in P.J. Irani (supra).

One of the grounds for invalidating the notification would be if irrelevant factors have been taken into consideration. Another test which can be applied is as to whether the notification is otherwise malafide in the sense that the same has been used for unauthorised purpose.

The Administrator is said to have taken into consideration the National Housing Policy, which was circulated as far back in the year 1992. Such a balancing procedure indisputably was recommended to be done by way of legislation and not by executive action. The National Housing Policy recommended for step by step repeal of the Act and substituted the same by a new permanent Act. By reason thereof the fact that most of the States had enacted temporary Acts which had been extended from time to time, was, thus, taken into consideration. Only because some exemption notifications had been issued under the Punjab Act by itself may not be a ground to follow the same blindly inasmuch as the Punjab Act applies to the entire State. There may not be any town in the said State which may be as important as Chandigarh and where the rental of the tenanted premises would be as high as in the said town. We have seen hereinbefore how the Administrator himself has described the status of Chandigarh. Despite the same, he equated Chandigarh with other towns of the State of Punjab.

The Administrator in issuing the notification has missed the relevance of the distinction between the National Housing Policy and the legislative policy. The power of exemption could be exercised having regard to the legislative intent and policy whereas the National Housing Policy could be given effect to by the legislature in modifying, varying or altogether doing away with the existing legislative policy and laying down a new policy therefor. Change of legislative policy with the aid of the National Housing Policy was not within the domain of the Administrator. It was the sole prerogative of the legislature.

A statute can be amended, partially repealed or wholly repealed by the legislature only. The philosophy underlying a statute or the legislative policy, with the passage of time, may be altered but therefor only the legislature has the requisite power and not the executive. The delegated legislation must be exercised, it is trite, within the parameters of essential legislative policy. The question must be considered from another angle. Delegation of essential legislative function is impermissible. It is essential for the legislature to declare its legislative policy which can be gathered from the express words used in the statute or by necessary implication, having regard to the attending circumstances. It is impermissible for the legislature to abdicate its essential legislative functions. The legislature cannot delegate its power to repeal the law or modify its essential features.

Section 3 of the Act, indisputably, is constitutionally valid. It, however, provides for an enabling provision. The Central Government, by reason of the said provision, has been empowered to direct that all or any of the said provisions would not apply to any of the building or rented buildings or any class of buildings or any rented lands.

Sections 4, 5 and 6 of the Act dealt with the determination of fair rent. Submissions of Mr. Nariman and Mr. Venugopal, both appearing for the landlords, however, are, inconsistent with each other. Whereas Mr. Nariman submitted that Sections 4,5 and

6 for all practical purport and intent are not applicable as regard to the town of Chandigarh; according to Mr. Venugopal, Section 4(4)(ii)(c) would be applicable and thus enhancement of rent even in respect of the buildings, which came into existence after 1965- 66, is permissible.

When the 1949 Act was passed, there was no 'building' in Chandigarh within the meaning of the said Act. In terms of Section 4(3)(i) & (ii) of the said Act, the increase in the basic rent was contemplated where the rate of rental was Rs.25/- to Rs.50/-. It may not, thus, be correct to contend that Sections 4, 5 and 6 of the Act did not provide for enhancement of rent at all. Any rent which exceeded a sum of Rs.50/- would also come within the purview of Section 5 of the Act but by reason thereof, it cannot be said that the Act sought to provide for a cut-off mark as regard the quantum of rent which could have been the subject matter of enhancement. However, it cannot be denied that having regard to the fact that the question as regard enhancement of rent was required to be considered by the Rent Controller with reference to rent payable when the Act came into force, hardly any relief could be granted in favour of the landlord. Appellants also in their writ petition stated:

"That at this stage, it is important to mention here that Sections 4 and 5 of the Punjab Act of 1949 are not applicable to Chandigarh, as no building existed in the year 1939. The Parliament, while enacting the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 intentionally did not provide fixation of fair rent or increase in the fair rent and gave more protection to the tenants of Chandigarh than the tenants of State of Punjab."

If the rental of Rs.50/- cannot be considered to be a cut-off mark, the same by itself would not mean, as was contended by Mr. Venugopal, that exemption granted in respect of a building the rent whereof exceeds Rs.1500/- would meet the object of the Act as the philosophy underlying it was to protect only such buildings where only tenants belonging to weaker sections reside. Sections 4, 5 and 6 of the Act are not the only provisions which provide for the protection of the tenants. What shall be the criteria to determine the question as to who would fall within the purview thereof depends upon a host of factors. Due application of mind was, thus, necessary for determining the said question.

Section 13 of the Act enumerates the grounds upon which the landlord may seek eviction of a tenant. Section 13-A is an exception to Section 13 in the sense that the same provides for grounds for eviction of a tenant in certain cases enumerated therein. Section 13-B enables the landlords named therein to recover immediate possession of the residential building or scheduled building and/or non-residential building to accrue to Non-resident Indian. The legislature itself, therefore, provided for speedy relief to a section of landlords. It is interesting to note that whereas eviction of a tenant from a residential building was permissible, it was made impermissible so far as non-residential premises are concerned, but, the same has been declared ultra vires by this Court.

The provisions have been enacted for the purpose of protection of tenants of certain provisions.

The word "certain premises", thus, for the purpose of ascertaining the legislative policy must be construed having regard to the definition of "building" only. The word "certain premises", having regard to its applicability in the urban areas, would also mean that the premises situated in the urban area and not in rural area.

The reason behind the enactment of the 1949 Act is well known and has been noticed by this Court in a large number of cases. It was conceived as a measure to overcome shortage of rental accommodation in the wake of Second World War and the influx of refugees following partition. The Union of India also accepts that the object of the State Act to provide for control and regulation of the rental housing market, determination of fair rent, protection of tenants against indiscriminate eviction at the hands of landlords and the rights of the landlords for recovery of tenanted premises in specific cases.

The reasons for which the impugned notification was issued was stated to be that the social objective of the Rent Control Act had not been realised and it had various other adverse effects including simulation of investment in rental housing especially from the lower and middle income groups. A model Rent Control legislation was circulated in the year 1992 wherein proposal was made to give exemption to residential non-residential premises carrying more than specified rental of Rs.1500/- per month. The Government of India had been advocating urban section reforms and had introduced an urban reforms incentive scheme whereunder funds are to be provided by it and to urban sector reforms such reform was to be carried out for removing the rental laws.

However, National Housing Policy itself suggests that the existing rent control laws were to be repealed. The National Housing Policy, it was proposed, should be achieved step by step so as to enable the States to enact a permanent law.

What was, therefore, contemplated was amendment of the existing legislation by the legislature so as to achieve partial repeal of the Act. The National Housing Policy or the Central Government did not and could not recommend that what can be done only by the legislature, can be achieved through the route of notification issued by the Administration under section 3 of the Act.

Mr. Nariman contended that it is a virtual amendment by the Administrator but an Administrator cannot make an amendment. Concept of virtual amendment of a legislative act by the executive is unknown. He has a limited jurisdiction and such jurisdiction must be exercised within the parameters of law as laid down in P.J. Irani (supra).

In D.C. Bhatia (supra) it has clearly been pointed out that it is the legislature's function alone to make amendment and such measures are permissible so as to enable the legislature to achieve the goal as set down in terms of the national policy. The Government of Delhi did so.

Even in Motor General (Supra) this Court has held that what can be done by a temporary measure cannot be done for an indefinite period, inasmuch as the exemption cannot be granted in perpetuity. This Court clearly pointed out that an earlier notification which was applicable for a limited period cannot be sustained after a lapse of 23 years. Kandasamy (supra) is again an authority for the

proposition that certain institutions, as for example, charitable institution which let out its property can be granted exemption having regard to the purport and object for which the same had been constituted.

It is not disputed that a delegate must act within the four corners of the Act, the guidelines wherefor must be provided for in the Act itself.

The classification as regards the premises occupied and possessed by the State the Local Self Government or other public sectors, however, stand on a different footing. It is now beyond any controversy that this Court treated the houses stated to be belonging to the State or public sector undertaking absolutely on a different footing on the pre-supposition that they would not unreasonably enhance the rental of the premises and they would conduct themselves in such a manner so as to make a tenant feel that they would be subjected to unreasonable eviction.

In Baburao Shantaram More vs. Bombay Housing Board & Anr. [(1954) SCR 572 : AIR 1954 SC 153], this Court has held:

> "It is not to be expected that the Government or local authority or the Board would be actuated by any profit-making motive so as to unduly enhance the rents or eject the tenants from their respective properties as private landlords are or are likely to be. Therefore, the tenants of the Government or local authority or the Board are not in need of such protection as the tenants of private landlords are and this circumstance is a cogent basis for differentiation. The two classes of tenants are not by force of circumstances placed on an equal footing and the tenants of the Government or local authority or the Board cannot, therefore, complain of any denial of equality before the law or of equal protection of the law. "

M/s. Dwarkadas Marfatia & Sons vs. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293] is another instance where the Court placed faith on the public sector stating:

> "The field of letting and eviction of tenants is normally governed by the Rent Act. The Port Trust is statutorily exempted from the operation of the Rent Act on the basis of its public/governmental character. The legislative assumption or expectation as noted in the observations of Chagla, C.J. in Rampratap Jaidayal case cannot make such conduct a matter of contract pure and simple. These corporations must act in accordance with certain constitutional conscience and whether they have so acted, must be discernible from the conduct of such corporations. In this connection, reference may be made on the observations of this Court in Som Prakash Rekhi v. Union of India reiterated in M.C. Mehta v. Union of India wherein at p. 148 this Court observed: (SCC p. 480, para 55) "It is dangerous to exonerate corporations from the need to have constitutional con-
>
> science; and so, that interpretation, language permitting, which makes governmental agencies, whatever their mien, amenable to constitutional limitations must be

adopted by the court as against the alternative of permitting them to flourish as an imperium in imperio."

Therefore, Mr Chinai was right in contending that every action/activity of the Bombay Port Trust which constituted "State"

within Article 12 of the Constitution, in respect of any right conferred or privilege granted by any statute is subject to Article 14 and must be reasonable and taken only upon lawful and relevant grounds of public interest.'"

{See also Jamshed Hormusji Wadia vs. Board of Trustees, Port of Mumbai & Anr. [(2004) 3 SCC 214]; and Municipal Corpn., Chandigarh & Ors. vs. Shantikunj Investment (P) Ltd. & Ors. [(2006) 4 SCC 109].} Even the criterion underlying the policy is required to be changed by way of modification or variation in the standard of rent, object whereof should have been achieved only by making suitable amendments in the Act itself. The Administrator could not have tinkered with the provisions of the Act.

What should have been the criterion for fixing the quantum of rent so as to render the classification constitutional and valid in law although is not a matter which would ordinarily fall for consideration of the court, but the question as to whether by reason of fixation of such a rent which would render the Act inapplicable to a large section of the tenants, in our considered view, would come within the scope of judicial review.

We, however, cannot accept the submission that as Appellants themselves in the writ petition contended that as in the year 1978 a building standing on a land of 1500 square yards with 3 to 4 bed rooms, one drawing and dining room, garage and servant quarter, was available on a monthly rent of Rs.1000/-and, thus, on that premise a presumption can be raised that such tenanted premises used to be occupied by the affluent families, those who are paying less than Rs.1500/- continued to be protected and, thus, the same would come within the purview of the legislative policy and the object and purport of the Act. The criterion which was required to be considered was not as to what rent a building could have fetched in 1978 but what would have been a fair criterion as regard the quantum of rent when the notification was issued. For that purpose, no data has been collected nor has any study been made. As to how the said criterion had been fixed is not known. Except stating that the rent of Rs.1500/- to Rs.3500/- was made the criterion in terms of the National Housing Policy, the Administrator did not assign any other reason.

If the contention of Appellants is correct that in Chandigarh 99% of the lands have already been leased out, the scope of applicability of the new housing scheme might not be of much relevance. The Administrator while issuing the impugned notification misdirected himself in law insofar as he failed to take into consideration that he could not have exercised any jurisdiction in terms thereof as the National Housing Policy,

inter alia, contains the guidelines for the State legislatures for enactment of law and the same was not meant to be taken recourse to by the Executive Government of the State. While exercising his jurisdiction under Section 3 of the Act, the Administrator was required to apply his own mind to the relevant facts. Application of mind on the part of the Administrator was also necessary having regard to the rate of inflation and other factors including the prevalent rental in the neighbouring areas of the States of Punjab and Haryana. He further failed to take into consideration that in terms of National Housing Policy, that quantum of rent was made flexible. Only a broad guideline had been provided therefor. What was necessary to be applied was the principle and not the minimum rent specified therein.

For the aforementioned purpose, it was necessary to collect relevant data. Rental of Rs.1500/- could not have been applied mechanically. The High Court has followed D.C. Bhatia (supra) but it has failed to notice that in D.C. Bhatia (supra) itself whereas the proposal in the bill was to fix Rs.1500/- as the outer limit, the members of the legislature upon deliberation in the matter, had fixed the quantum of rent at Rs.3500/-. Furthermore, for the aforementioned purpose, the lowest ceiling of Rs.1500/- might have been treated to be fair in the year 1992 but the same would have lost much significance and relevance in the year 2002 in view of the passage of time. The rate of inflation and other relevant factors as well as the fact that the per capita income in UT of Chandigarh is considered to be the highest in the country, were necessary to be taken into consideration. This Court, in Prabhakaran Nair & Ors. vs. State of Tamil Nadu & Ors. [(1987) 4 SCC 238], opined that a National Housing Policy should be formulated and the observations made therein had been given effect to. But, this Court never intended that a National Housing Policy would be applied in a manner not contemplated under our constitutional scheme.

A new legislative policy indisputably was framed having regard to the new economic policy of the Central Government as was formulated in the year 1991. However, by reason thereof only it cannot be said that the social justice doctrine, as adumbrated in the preamble of the Constitution, need not be given effect to under any situation. Social justice legislations and other legislations beneficent to the weaker sections of the country are still on the statute book. The rent Acts would continue to control the terms and conditions of tenancy. On some occasions, only the same can be interpreted differently having regard to change in time. But, it was not for the executive government to do so. They have not been repealed. Repealing of such acts can be brought about by the competent legislature. What would be the legislative policy in relation thereto was within the exclusive domain of the Central Government. The Constitution of India, having regard to the provisions of Articles 245 and 246 of the Constitution of India clearly demarcate the fields of legislation and, thus, it would not be correct to contend that only because that the Central Government has changed its economic policy, the same must be reflected in all the legislative fields occupied by the State legislature.

In D.C. Bhatia (supra), this Court clearly held that what can be done by the legislature cannot be done by the delegatee. Yet again, in B.K. Industries & Ors. v. Union of India & Ors. [(1993) Supp. 3 SCC 621], this Court clearly opined that by reason of such notification the delegatee cannot take recourse of the virtual repeal of the Act. Having regard to the fact that the rental of Rs.1500 per month for the town of Chandigarh was too low a rent, the submissions of Appellants are of some significance that by reason thereof, over 9/10th of the tenanted premises would go out of the purview of the Rent Act.

In Rattan Arya & Ors. vs. State of Tamil Nadu & Anr. [AIR 1986 SC 1444], this Court categorically observed that fixing exemption limit at Rs.400/- had become unrealistic with the passage of time particularly in view of the hike in rents. In this case, the manner in which the rate of rent of the tenanted premise or the value of the property has gone up as evident from the data furnished by Appellants in their writ petition. The same was not denied or disputed.

For the aforementioned purpose, our attention has been down to certain documents to show the effect of the said notification, i.e., that immediately thereafter exorbitant rent was claimed from the tenants by the landlords.

We, therefore, in this case, have sufficient materials on record to hold that Rs.1500/- could not have been fixed as the quantum of rent for the purpose of extending the exemption provision under Section 3 of the Act to the Administrator.

The legislative objective and policy indisputably must be considered having regard to the preamble and other core provisions of the Act. Section 3 although is a part of the Act, but the same cannot be said to contain an in- built policy so as to empower the Administrator to do all such things which can be done by the legislature itself.

By taking recourse to the preamble, it cannot be said, as has been submitted by Mr. Nariman, that the power to exclude the tenanted premises can be exercised without taking into consideration the legislative policy and the object of the Act. It may be true that by reason of Section 3 of the Act, no arbitrary power as such has been conferred in view of the fact that the Act applies only to certain classes of land and building but the same would not mean that the Administrator is free to take any action in any manner he likes. The action of the Administrator is indisputably subject to judicial review.

It is also true that the term 'building' having regard to its definition would mean tenanted building and, thus, the building fetching a rent to a prescribed extent can form the base for determining criterion for the purpose of classification but the same would not mean that the Administrator would be entitled to lay down a criterion which would be applicable only to a large section of the tenants.

Moreover, the notification has not been issued for a limited period. It will have, therefore, a permanent effect. Submission of Mr. Nariman that having regard to the provisions of the General Clauses Act, the same can be modified, amended at any time and withdrawn, cannot be accepted for more than one reason. Firstly, Respondent proceeded on the basis that the said notification has been issued with a view to give effect to the National policy, i.e., amendments must be carried out until a new Rent Act is enacted. Whether the Act would be enacted or not is a matter of surmises and conjectures. It would be again a matter of legislative policy which was not within the domain of the Administrator. Secondly, the Administrator in following the National policy proceeded on the basis that the provisions of the Act must ultimately be repealed. When steps are taken to repeal the Act either wholly or in part, the intention becomes clear i.e. the same is not meant to be given a temporary effect. When the repealed provisions are sought to be brought back to the statute-book, it has to be done by way of fresh legislation. In any event, the General Clauses Act shall not apply to an executive action. Executive actions can be taken by a person who is statutorily authorized therefor. He is required to apply his own mind. What can be done in future by another authority cannot be a ground for upholding an executive act.

Conclusion :

For the reasons, aforementioned, the impugned judgments cannot be sustained which are set aside accordingly. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.