Kaiser-I-Hind Pvt. Ltd. And Ors vs National Textile Corporation ... on 25 September, 2002

Bench: M.B.Shah, Doraiswamy Raju, S.N.Variava, D.M.Dharmadhikari

CASE NO.:
Appeal (civil) 2555 of 1991

PETITIONER:
Kaiser-I-Hind Pvt. Ltd. and Ors.

RESPONDENT:
National Textile Corporation (Maharashtra North) Ltd. and Ors.

DATE OF JUDGMENT: 25/09/2002

BENCH:
G.B.PATTANAIK & M.B.SHAH & DORAISWAMY RAJU & S.N.VARIAVA & D.M.DHARMADHIKARI

JUDGMENT:

JUDGMENT WITH CA Nos. 1320, 1351, 2192, 2218, 2622-2623, 3047, and 3053 of 1991:

DELIVERED BY:

SHAH, J.

DORAISWAMY RAJU, J.

D.M.DHARMADHIKARI, J.

Shah, J.

1. Short but important question involved in these matters is-- whether the "assent" given by the President under Article 254(2) of the Constitution of India with regard to the repugnancy of the State legislation and the earlier law made by the Parliament or the existing law could only be qua the "assent" sought by the State with regard to repugnancy of the laws mentioned in the submission made to the President for his consideration before grant of assent? Or would it prevail qua other laws for which no assent was sought?

2. The contention is, once the President grants the 'assent' to the State legislation, the State law would prevail on the said subject and such 'assent' would be deemed to be an assent qua all earlier enactments made by the Parliament on the subject.

3. This contention is negatived for the reasons recorded hereinafter. It is held that consideration by the President and his assent under Article 254(2) is limited to the proposal made by the State Government; the State legislation would prevail only qua the laws for which repugnancy was pointed out and the 'assent' of the President was sought for. Proposal by the State is sine qua non for 'consideration' and 'assent'.

4. The aforesaid question arose before the High Court of Bombay in writ petitions and appeals which were filed challenging the vires of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the P.P. Eviction Act") insofar as it is made applicable to the premises belonging to Government companies and corporations. Firstly, it was submitted that the P.P. Eviction Act was violative of Articles 14, 19(1)(f) and 19(1)(g) of the Constitution of India. It was further contended the having regard to Article 254(2) of the Constitution of India, provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Act") would prevail over those of the P.P. Eviction Act. The contentions raised by the appellant were rejected by the High Court and the Court upheld the validity of the P.P. Eviction Act. The Court after elaborate discussion negatived the contention that the provisions of the Bombay Rent Act prevail in the state of Maharashtra over the P.P. Eviction Act. Thereafter, the Court granted Certificate that substantial question of law relating to the interpretation of the Constitution arises and hence, on the basis of that certificate, these appeals are filed before us.

5. Mr. F.S. Nariman, learned senior counsel for the appellant submitted that following questions arise for determination by this Court:--

1. Whether the P.P. Eviction Act specifically empowering government companies and statutory corporations to evict their tenants through the summary procedure provided therein took away or abridged the rights conferred by Article 19(1)(f) of the Constitution and was, to that extent, void from its inception?.

Note: In Municipal Corporation of Greater Bombay v. Lala Pancham of Bombay and Ors., this Court held that "no doubt that a tenant has both under the Transfer of Property Act, and under Section 12 of Bombay Rents Hotel and Lodging House Rates Control Act, 1947, an interest in the demised premises which squarely falls within the expression "property" occurring in Sub- clause (f) of Clause (1) of Article 19 of the Constitution".

2. (a) Whether the deletion of Article 19(1)(f) by the Constitution 44th Amendment Act, 1978 (with effect from 20th June, 1979) has made the Public Premises Act, 1971, "wholly enforceable" (as held by the Division Bench judgment of the High Court)?

(b) Whether the challenge to the P.P. Eviction Act rooted in Article 19(1)

(f) could not survive after the repeal of Article 19(1)(f) of the Constitution (as held by the Division Bench judgment of the High Court)? Note --Involved in the above is the applicability of the "doctrine of Eclipse" to post constitutional laws: the judgment of the Division Bench of the Bombay High Court under appeal holds that it is so applicable.

3. (a) Whether the provisions of the Bombay Rent Act, 1947 having bene re- enacted after 1971 by the State Legislature with the assent of the President must prevail in the State of Maharashtra over the provisions of the P.P Eviction Act by virtue of Article 254(2) of the Constitution?

(b) As a consequence, whether Government companies and statutory corporations could not and cannot avail of the provisions of the P.P. Eviction Act against their tenants and protected licensees for securing eviction except on grounds specified in Sections 12 and 13 of the Bombay Rent Act, 1947?

4. Whether it is permissible for a Court of Law to enquire into and ascertain the circumstances in which assent to a law under Article 254(2) was given and hold as a result of such consideration that the State law even with respect to a matter enumerated in the Concurrent List (after having been reserved for the consideration of the President and after having received his assent) does not prevail in that State. Contention Nos. 1 and 2.

6. It is submitted by the learned senior counsel that the P.P. Eviction Act abridges the right conferred by Article 19(1)(f) [which is deleted from the Chapter of Fundamental Rights w.e.f. 20.6.1979] of the Constitution insofar as it empowers the Government companies and statutory corporations to evict their tenants thought the summary procedure provided therein and was to that extent void from its very inception. In our view, it cannot be held that because summary procedure under the P.P. Eviction Act is prescribed for evicting the tenants or unauthorised occupants or sub-tenants, it abridges the rights of the tenants conferred by Article 19(1)(f) of the Constitution. It is for the Legislature to provide summary procedure for evicting such persons or to direct the parties to approach the Civil Court. If the Legislature considers in its wisdom that under General law the eviction process is dilatory and provides for other speedier procedure for evicting unauthorised occupants, sub-tenants, whose tenancy is terminated, it cannot be said that the said procedure would be in any way, violative of Article 19(1)(f) of the Constitution. Reliance is placed on the decision of the Court in Lala Panchanm (Supra) wherein this Court has observed that under the Transfer of Property Act as well as under the Rent Act, a thnate has an interest in the demised premises which squarely falls within the expression "property" occurring in Sub-clause (f) of Clause (1) of Article 19 of the Constitution. But this would not mean that legislature has no power to prescribe the procedure for evicting the tenant whose tenancy is determined either by afflux of time or by giving notice or on the ground that there is sub-letting etc. There cannot be any doubt that a lessee would have an interest in the property and thereby it would fall within the expression "property" occurring in Sub-clause (f) of Clause (1) of Article 19 of the Constitution. Further, under the Bombay Rent Act, even a thionate w hose tenancy has come to an end by afflux of time or by giving notice as provide under the Transfer of Property Act, would have further statutory protection from being evicted except as provided under the Bombay Rent Act. However, withdrawal of such statutory protection would not mean that right to property is abridged. It is for the legislature to

provide to what extent, to whom and how, tenants or sub-tenants of any premises are to be given protection. Unauthorised occupant including a person whose tenancy has come to an end, has no right to contend that particular procedure which was in existence at some point of time should continue. It is for the legislature to provide reasonable procedure in accordance with principles of natural justice for evicting unauthorised occupants including the person whose tenancy is terminated or a sub-tenant. Further , while upholding validity of the P.P. Eviction Act, this Court in Northern India Caterers Private Ltd. Anr. v. State of Punjab and Anr, clarified--"the Act does not create any new right of eviction. It creates remedy for a right existing under the General law. The remedy is speedier than one by way of a suit under the ordinary law of eviction."

7. The learned senior counsel at the time of hearing of this matter did not press the contention No. 2 as enumerated above. Hence, it is not required to be dealt with further.

8. It is contended that it was not permissible for the High Court to enquire into and ascertain the circumstances in which "assent" to law made by the State under Article 254(2) of the Constitution was given and to hold, as a result of such enquiry, that the said law even with respect to a matter enumerated in the Concurrent List does not prevail in the State. In substance, it has been contended by the learned senior counsel Mr. Nariman that since 1947, the Bombay Rent Act is extended from time to time and on each occasion assent of the President is received. Once assent of the President is obtained, the Bombay Rent Act prevails in the State of Maharashtra and not the P.P. Eviction Act. He further submitted that once the assent is received it is not open to the Court to go behind the said assent' and arrive at the conclusion that President's assent is given qua repugnancy of a particular law or laws, made by the Parliament such as, Transfer of Property Act and Indian Contract Act. He also submitted that giving of assent by the President is law making process and the steps taken in such process cannot be examined by the Court. Advisors of the President would point out the relevant laws on the subject and if the assent is unconditional or unrestricted, the law of laws of the Parliament on the subject have to give way to the State legislation. It in his contention that 'assent' given by the President is not subject to judicial review. In any case, there was no reason for the High Court to summon the file submitted before the President before grant of assent.

9. As against this, learned Addl. Solicitor General Mr. Altaf Ahmad,learned senior counsel Mr. T.R. Andhyarujina, Mr. Sudhir Chandra and learned counsel Mr. C. Ravichandran Iyer submitted that before granting 'assent' the President has to consider specific provisions of the State legislation which are repugnant to the provisions of an earlier or existing law made by the Parliament. Before granting assent, the President has to apply his mind to the proposed State law and the law made by the Parliament. The consideration would be restricted to the proposal made by the State Government and President's assent would only be with regard to the laws specified therein. For this, proposal made by the State Government for obtaining assent is required to be looked into and that has been done in almost all such cases. It has also been submitted as under:-

> a) That the assent of the President given to the Extension Acts of 1981 and 1986 of the Bombay Rent Act, 1947 was only for the limited purpose of repugnancy to the Transfer of Property Act, 1882 and the Presidency Small Cause Courts Act, 1882. There is no assent applicable to the P.P. Eviction Act.

b) The High Court committed an error in holding that Bombay Rent Act was extended by Act 10 of 1981 and by Act 16 of 1986 and, therefore, the Bombay Rent Act must be considered to be a new law and the P.P. Eviction Act is the earlier law, for the purpose of Article 254(2).

c) In the alternative, in any case the assent given to the Extension Acts of 1981 and 1986 is also limited to specified repugnancies to the Transfer of Property Act and to the Presidency Small Cause Courts Act. For this purpose, the High Court rightly referred to the documents tendered as Ex.F collectively. There documents were allowed tobe exhibited without objection by the appellants herein.

d) The phrase "reserved for the consideration of the President" under Article 254(2) implies that the State has to draw the attention of the President to the particular repugnancy arising between specified Central Laws and the contemplated State legislation requiring consideration of the President for obtaining his assent.

Essentials of Article 254-

10. For deciding the controversy, we found first refer to Article 254, which reads thus:--

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.--(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

2. Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending varying or repealing the law so made by the Legislature of the State."

[Emphasis supplied]

11. It is apparent that language of Clause (1) of Article 254 gives supremacy to the made by the Parliament, which Parliament is competent to enact. It inter alia provides [subject to the provisions of Clause (2)] that --

(a) if any provision of law made by the Legislature of State is repugnant to any provision of a law made by the Parliament which the Parliament is competent to enact, then the law, made by the Parliament whether passed before or after the law made by the Legislature of such State shall prevail and the law made by Legislature of the State shall, to the extent of repugnancy, be void; or

(b) if any provision of a law made by the legislature of State is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then the existing law shall prevail and the law made by the legislature of the State shall, to the extent of repugnancy, be void.

12. For the purpose of the present case, Clause (2) requires interpretation, which on the analysis provides that where a law:--

> (a) made by the legislature of a State;
>
> (b) with respect to one of the matters enumerated in the Concurrent List;
>
> (c) contains any provision repugnant to the provisions of an earlier law made by the Parliament or existing law with respect to that matter; then, the law so made by the legislature of the State shall-- (1) if it has been 'reserved for consideration of the President'; and (2) has received 'his assent';

would prevail in that State.

13. Hence, it can be stated that for the State law to prevail, following requirements must be satisfied--

(1)law made by the legislature of a State should be with respect to one of the matters enumerated in the Concurrent List;

(2) it contains any provision repugnant to the provision of an earlier law made by the Parliament or an existing law with respect to that matter; (3) the law so made by the Legislature of the State has been reserved for the consideration of the President; and (4) it has received 'his assent'.

14. In view of aforesaid requirements, before obtaining the assent of the President, the State Government has to point out that the law made by the State legislature is in respect of one of the matters enumerated int eh Concurrent List by mentioning entry/entries of Concurrent List and that it contains provision or provisions repugnant to the law made by the Parliament or existing law. Further, the words "reserved for consideration"

would definitely indicate that there should be active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by the Parliament and the necessity of having such a law, in facts and circumstances of the matter, which is repugnant to a law enacted by the Parliament prevailing in a State. The word 'consideration' would main feast that after careful thinking over and due application of mind regarding the necessity of having State law which is repugnant to the law made by the Parliament, the President may grant assent. This aspect is further reaffirmed by use of word "assent" in Clause (2) which implies knowledge of the President to the repugnancy between the State law and the earlier law made by the Parliament on the same subject matter and the reasons for grant of such assent. The word "assent" would mean in the context as an expressed agreement of mind to what is proposed by the State.

15. The learned counsel Mr. Ravichandran has rightly pointed out the different meanings given to the word "assent" in various dictionaries, which are as under:--

Corpus Juris Secundum--

Assent--(As a Noun)-- A passive act of concurrence; the act of the mind in admitting or agreeing to anything; the act of agreeing or consenting to accept some proposition; and, by context, "acceptance". It also has been defined as agreement or approval;..... "Assent" implies knowledge of some kind in the party assenting to that to which he assents; also permission on the part of the party assenting....As used in some statutes, however,the term has been held to require affirmative, positive action on the apart of the party assenting.. It has been said that the term indicates the meeting of the minds of the contracting parties, and that the word is applicable only to conduct before or at the time of the doing of an act and hence does not include an approval after the commission of an act.... Assent--(As a Verb)-- The verb implies affirmative action of some sort as distinguished from mere silence and inaction; and has been defined as meaning to accept, agree to or consent, to accord agree, concede, or yield; to express and agreement of the mind to what is alleged or proposed; to express one's agreement acquiescence, or concurrence; also to admit a thing as true; to approve, ratify, or confirm; and sometimes to authorize or empower.

Shorter Oxford Dictionary--

Assent--The concurrence of the will compliance with a desire. 2. Official, judicial,or formal sanction; the actio or instrument that signifies such sanction ME. 3. Accord. 4.Opinion. 5. Agreement with a statement, or matter of opinion; mental acceptance.

Bouvier's Law Dictionary--

Assent--Approval of something done. An undertaking to do something in compliance with a request...

Law Lexicon of British India by P. Ramanatha Aiyar-- Assent.--The act of the mind in admitting or agreeing to the truth of a proposition proposed for acceptance; consent, agreeing to; to admit, yield, or conceded: to express an agreement of the mind to what is alleged or proposed, (as) Royal assent or Viceeroy's assent to an enactment passed in the Legislative Assembly; Executor's assent to a legacy; assent of a corporation to bye-laws.

Royal Assent, in England, the approbation given by the Sovereign in Parliament to a bill which has passed both houses, after which it becomes law. This assent may be given in two ways; (a) in person, when the Sovereign comes to the House of Peers, the Commons are sent for, and the titles of all the bills which have passed are read. The royal assent in declared in Norman. French by the Clerk of the Parliament. (b) By letters patent, under the great seal signed by the Sovereign, and notified in his or her absence.

Websters' 3rd New International Dictionary (Vol.I)-- Assent-1. common accord; general approval a concurrence with approval: 2:

the accepting as true or certain of something (as a doctrine or conclusion) proposed for belief..

Random House Dictionary--

Assent--To agree or concur, subscribe to)often fol. By to): to assent to a statement. 2. To give in; yield; concede; assenting to his demands, she did as she was told-n. 3. Agreement as to a proposal; concurrence. 4. Acquiesence; compliance.

Words & Phrases Judicial Dictionary -Mitra--

Assent--Assent means agreeing to or recognizing a matter...etc. Wharton's Law Lexicon.

16. Applying the aforesaid meaning of the word assent' and form the phraseology use din Clause (2) the object of Article 254(2) appears that even though the law made by the Parliament would have supremacy, after considering the situation prevailing in the State and after considering the repugnancy between the State legislation and earlier law made by the Parliament, the President may give his assent to the law made by the State legislature. This would require application of mind to both the laws and the repugnancy as well as the peculiar requirement of the State to have such a law, which is repugnant to the law made by the Parliament. The word assent is used purposefully indicating affirmative actio of the proposal made by the State for having law repugnant to the earlier law made by the Parliament. It would amount to accepting or conceding and concurring to the demand made by the State of such law. This cannot be done without consideration of the relevant material. Hence the paras used is reserved for consideration, which under the Constatation cannot be an idle formality but would require serious consideration on the material placed before the

President. The 'consideration' could only be to the proposal made by the State.

17. This aspect has been succinctly stated at the earliest by Chagla, CJ, in Basantlal Banarsilal v. Bansilal Dagdulal, as under:--

> "The principle underlying this clause is clear, viz., that the President should apply his mind to what Parliament has enacted and also consider the local conditions prevailing in a particular State, and if he is satisfied that judging by the local conditions a particular State should be permitted to make a provision of law different from the provision made by Parliament, he should give his assent and thereupon the State legislation would prevail."

[Emphasis supplied]

18. Further, in Gram Panchayat of Village Jamalpur v. Malwinder Singh and Ors., this Court has also held that the assent o the President under Article 254(2) of the Constitution is not a matter of ideal formality and the President has at least to be apprised of the reason as to why his assent is sought and the special reason for doing so.

19. Mr. Nariman, learned senior counsel submitted that when the President has given assent to a State legislation, the Court cannot call for the files to find out whether the assent was limited to repugnancy between the State legislation and laws mentioned therein.

20. It is true that President's assent as notified in the Act nowhere mentions that assent was obtained qua repugnancy between the State legislation and specified certain law or laws of the Parliament. But from this, if also cannot be inferred that as the President has given assent, all earlier law/ laws on the subject would not prevail in the State. As discussed above before grant of the assent, consideration of the reasons for having such law is necessary and the consideration would mean consideration of the proposal made by the State for the law enacted despite it being repugnant to the earlier law made by the Parliament on the same subject. If the proposal made by the State is limited qua the repugnancy of the State law or laws specified in the said proposal, then it cannot be said that the assent was granted qua the repugnancy between the State law and other laws for which no assent was sought for. Take for illustration -- that a particular provision, 'A made by Parliament; other provision namely Section 4 is repugnant to some provisions of enactment 'B' made by Parliament and Sections 5 and 6 are repugnant to some provisions of enactment 'C' and the State submits proposal seeking assent mentioning repugnancy between State law and provisions of enactments 'A' and 'B' without mentioning anything with regard to enactment 'C'. In this set of circumstances, if the absent of the President is obtained, the State law with regard to enactments 'A' and 'B' would prevail but with regard to 'C' there is no proposal and hence there is no 'consideration' or 'assent'. Proposal by the State pointing out repugnancy between the State law and of the law enacted by the Parliament is sine qua non for 'consideration and assent'. If there is no proposal no question of 'consideration' or 'assent' arises. For finding out whether 'assent' given by the President is restricted or unrestricted,the letter or the proposal made by the State Government for obtaining 'assent' is required to be looked into.

21. We would also make it clear that in all the decisions relied upon, wherein such question was raised, this Court has referred to the correspondence made by the State Government for obtaining the assent of the President to find out whether the assent was with regard to repugnancy between the State legislature and particular enactment of the Parliament. For this purpose, we would straightaway refer to the decision in Gram Panchayat's case (supra), wherein the Court considered the alleged repugnancy between the Adminsatation of Evacuee Property Act of 1950 and the Punjab Common Lands (Regulation) Act of 1953. The controversy was between the right of Gram Panchayats (eight petitioner-panchyats) o the Shamlat-deh lands situated in those villages which fell within their jurisdiction and the right of Rehabilitation Department of the Central Government to allot ladns of that description to the extent of evacuee interest therein to person who migrated from Pakistan to India after partition of the country. Under the provisions of the Punjab Act, the land on the specified day vested in the Panchayat having jurisdiction over the village. Under Section 8(2) of the Central Act, namely, Administration of Evacuee Property Act, 1950, evacuee property is deemed to have been vested in the custodian. The Court thereafter considered Article 254 and observed that Punjab Act was reserved for consideration of the President and received his assent on December 26, 1953. Prima facie , by reason of the assent of the President, the Punjab Act would prevail in the State of Punjab over the Act of the Parliament and the Panchayats would be at liberty to deal with the Shamlat-deh lands according to the relevant Rules or bye-laws governing the mater, including the evacuee interest therein. In that case also the High Court of Punjab had adjourned the matter to enable the State Government to place material before the Court showing the purpose for which the Punjab Act of 1953 was forwarded to the President for his assent. As per the record of that case, the Act was not reserved for the assent of the President on the ground that it was repugnant to the earlier Act passed by the Parliament namely Central Act of 1950. The Court thereafter pertinently held thus:--

> "....The record shows, and it was not disputed either before us or in the High Court, that the Act was not reserved for the assent of the President on the ground that it was repugnant to an earlier Act passed by the Parliament, namely, the Central Act of 1950. In these circumstance, we agree with the High Court that the Punjab Act of 1953 cannot be said to have been reserved for the assent of the President within the meaning of Clause (2) of Article 254 of the Constitution in so far as its repugnancy with the Central Act of 1950 is concerned. The assent of the President under Article 254(2) of the Constitution is not a matter of ideal formality. The President has, at least , to be apprised of the reason for doing so If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise. But if, a as in the instant case, the assent of the President is sought to the Law for a specific purpose, the efficacy of the absent would be limited to that purpose and cannot be extended beyond it. Not only was the President not apprised in the instant case that his assent was sought baccy of the repugnancy between the State Act and the pre-existing Central Act on the vesting of evacuee properties but, his assent was sought for a different, specific purpose altogether. Therefore, that assent cannot avail the State Government for the purpose of according precedence to the law made by the State Legislature, namely, the Punjab Act of 1953, over the law made by the Parliament, even within the jurisdiction of the State."

22. We are in entire agreement with the aforesaid enunciation of law with regard to interpretation of Article 254(2) of the Constitution. In P.N. Krishan Lal and Ors. v. Govt. of Kerala and Anr. [1995 Supp. (2) SCC 187] this Court has relied upon the aforesaid decision.

23. The learned senior counsel Mr. Nariman next submitted that the assent given by the President is not justiciable and placed reliance on decision of this Court in Bharat Sevashram Sangh and Ors. v. State of Gujarat and Ors., wherein this Court observed thus:--

> "...it cannot be said that the assent which was given by the President was conditional. The records relating to the above proceedings were also made available to the court. On going through the material placed before us we are satisfied that the President had given assent to the Act and it is not correct to say that it was a qualified assent. The Act which was duly published in the official Gazette contains the recital that the said Act had received the assent of the President on September 28, 1973. Moreover, questions relating to the fact whether assent is given by the Governor or the President cannot be agitated also in this manner. In Hoechst Pharmaceuticals Ltd. v. State of Bihar, this Court has observed thus-- We have no hesitation in holding that the asset of the President is not justiciable and we cannot spell out any infirmity arising out of his decision to give such assent.
>
> The above contention relating to the assent given by the President is, therefore, rejected."

24. In the aforesaid decision also the records relating to assent were made available to the Court and on going through the material placed before it, the Court was satisfied that the President had given assent to the Act and it was incorrect to say that it was qualified assent. In HOECHST Pharmaceuticals Ltd. and Ors. v. State of Bihar and Ors., this Court held thus:-

> "84. ...That being so, the decision in The Cheng Poh alias Char Meh v. Public Prosecutor, Malaysia [1980 AC 458] is not a authority for the proposition that the assent of the President is justiciable nor can it be spelled out that the court can enquire into the reasons why the Bill was reserved by the Governor under Article 200 for the assent of the President or whether the President applied his mind to the question whether there was repugnancy between the Bill reserved for his consideration and received his assent under Article 254(2)."

The Court further observed:--

> "...We have no hesitation in holding that the assent of the President is not justiciable, and we cannot spell out any infirmity arising out of his decision to give such assent."

25. In our view, for finding out whether the assent was given qua the repugnancy between the State legislation and the earlier law made by the Parliament, there is no question of deciding validity of such assent nor the assent is subjected to any judicial review. That is to say, merely looking at the

record, for which assent was sought, would not mean that the Court is deciding whether the absent is rightly, wrongly or erroneously granted. The consideration by the Court is limited to the extent that whether the State has sought assent qua particular earlier law or laws made by the Parliament prevailing in the State or it has sought general assent. In such case, the Court is not required to decide the validity of the 'assent' granted by the President. In the present case, the assent was given after considering extent and nature of repugnancy between the Bombay Rent Act and Transfer of Property Act as well as the Presidency Small Cause Courts Act. Therefore, it would be totally unjustified to hold that once the assent is granted by the President, the State law would prevail qua earlier other law enacted by the Parliament for which no assent was sought for nor which was reserved for the consideration of the President.

26. The learned senior counsel for the appellant further referred to the decision of Madras High Court in Bapalal and Co. v. P. Thakurdas and Ors. wherein the Court held thus:--

> "...In this case the assent is sought to be invalidated on the ground that the President was not made aware of the repugnancy between the proposed State Law (Rent Control Act) and the existing Central Law (the Transfer of Property Act) in Ex.P.12, which does indicate the extent to which the State law is repugnant to the earlier existing Central Law. It is said that in this case Ex.P.12 does not exactly indicate how far the proposed State Act is repugnant to the provisions of the existing Central law and any assent given without considering the extent and the nature of the repugnancy should be taken to be no assent at all. However, a perusal of Ex.P.12 shows that Section 10 of the Act has been referred as a provision which can be said to be repugnant to the provisions of the Civil Procedure Code and the Transfer of Property Act which are existing laws on the concurrent subject. Further, a copy of the Bill has been reserved for the consideration of the President under Article 254(2) of the Constitution. Therefore, even if the State Legislature did not point out the provisions of the Bill which are repugnant to the existing Central Law, the President should be presumed to have gone through the Bill to see whether any of the provisions is repugnant to the Central Law and whether such a legislation is to be permitted before giving assent to the Bill . Merely because the State Government when seeking the assent of the President does not indicate the exact provisions which are repugnant to the earlier Central Law under Concurrent List, the assent given by the President cannot be said to be invalid. According to the learned Advocate-General inconsistency between the proposed law and the existing Central Law has been pointed out under Ex.P.12, and the Bill has been sent for scrutiny and that the Central Government should be taken to know its job while considering the question as to whether the assent is to be given or withheld, and, therefore, there is no room for any contention that the assent in this case is not valid."

27. In that case, the Court also observed thus:--

> "The assent given by the President to the Tamil Nadu Buildings (Lease and Rent Control) Act of 1960 cannot be held to be invalid for two reasons (i) the inconsistency

between the State Law and the Central Law on the subject was in fact pointed out while seeking the assent of the President and -

(ii) even otherwise the Bill having been sent for the scrutiny of the President, the President should be taken to have scrutinised the bill before giving his assent with the assistance of his legal advisers."

28. In this case, we have made it clear that we are not considering a question that the assent of the President was rightly or wrongly given. We are also not considering the question that-whether 'assent' given without considering the extent and the nature of the repugnancy should be taken as no assent at all. Further, in the aforesaid case, before Madras High Court, also the relevant proposal made by the State was produced. The Court had specifically arrived at a conclusion that Ex.P.12 shows that Section 10 of the Act has been referred to as the provision which can be said to be repugnant to the provisions of Code of Civil Procedure and the Transfer of Property Act, which are existing laws on the concurrent subject. After observing that, the Court has raised the presumption. We do not think that it was necessary to do so. In any case as discussed above, the essential ingredients of Article 254(2) are -- (1) mentioning of the entry/entries with respect to one of the matters enumerated in the Concurrent List; (2) stating repugnancy to the provisions of an earlier law made by the Parliament and the State law and reasons for having such law; (3) thereafter it is required to be reserved for consideration of the President; and (4) receipt of the assent of the President.

29. In this view of the matter, it cannot be said that the High Court committed any error in looking at the file of the correspondence Ex.F collectively for finding out - for what purpose 'assent' of the President to the Extension of Acts extending the duration of Bombay Rent Act was sought for and given. After looking at the said file, the Court considered relevant portion of the letter, which referred to the Bill passed by the Maharashtra Legislative Council and the Maharashtra Legislative Assembly extending the duration of the Bombay Rent Act for 5 years from Ist April, 1986. The letter stated: "As the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 are repugnant to the provisions of the Transfer of Property Act, 1882 and the Presidency Small Cause Courts Act, 1882, which are the existing laws relating to entries 6, 13 and 46 in the Concurrent Legislative List, and as Clause 2 of the Bill is intended to extend the life of the principal Act for a period of five years, it is necessary to reserve the Bill for the consideration and assent of the President with reference to Article 254(2) of the Constitution of India. The Governor has reserved the Bill for the consideration of the President under Article 200 of the Constitution of India." A telegraphic message dated 25th February, 1986 sent by the Special Commissioner, New Delhi, addressed to two Secretaries of the State of Maharashtra and the Secretary to the Governor of the State of Maharashtra shows that the President accorded his assent to this Bill on 23rd February, 1986. Thereafter, the Court rightly relied upon the decision in Gram Panchayat's case (supra) for arriving at the conclusion that the assent of the President was sought to the Extension Acts for the purpose of overcoming its repugnancy between the Bombay Rent Act on the one hand and the Transfer of Property Act and the President Small Cause Courts Act on the other. The efficacy of the President's assent was limited to that purpose only. Therefore, the P.P. Eviction Act would prevail and not the Bombay Rent Act.

30. We further make it clear that granting of assent under Article 254(2) is not exercise of legislative power of President such as contemplated under Article 123 but is part of legislative procedure. Whether procedure prescribed by the Constitution before enacting the law is followed or not can always be looked into by the Court.

31. Finally, we would observe that the challenge of this nature could be avoided if at the commencement of the Act, it is stated that the Act has received the assent with regard to the repugnancy between the State Law and specified Central law or laws.

Whether extension of temporary enactment amounts to enactment of new law? Or Is it an extension of existing law?

Submissions--

32. Learned senior counsel, Mr. Nariman, submitted that the Bombay Rent Act, 1947 was enacted by the Bombay Legislature and received the assent of the Governor General on 13th January, 1948. It was published in the official gazette on 19th January, 1948 under Section 107 of the Government of India Act, 1935. It prevails over all Central Acts to the extent of any repugnancy between the Rent Act and the relevant Central Acts. It was a temporary law as provided in Section 2 and it was to remain in force up to 31st day of March, 1950. The said period was extended up to 31st March, 1952. It is also pointed out that after the Constitution, the Bombay Amending Act 43 of 1951 extended and amended the Bombay Rent Act by providing that it was extended from 31st March, 1952 to 31st March, 1953. It received Presidential assent under Article 254(2) read with Article 201, since it was reserved by the Governor for Presidential Assent- which could only be if it was treated as enacting a substantive law repugnant to existing Central law (e.g. the Transfer of Property Act 1882): otherwise a mere extension Act only required Governor's assent.

33. It is also pointed out that on 31st March, 1970, the operation of the Bombay Rent Act was extended by Maharashtra Act No. 12 of 1970 up to 31st March, 1973, and thereafter by Maharashtra Act No. 17 of 1973 up to 31st March, 1976, by Maharashtra Act No. 4 of 1976 up to 31st March, 1977, by Maharashtra Act No. 8 of 1977 up to 31st March, 1978, by Maharashtra Act No. 67 of 1977 up to 31st March, 1979, by Maharashtra Act No. 3 of 1979 up to 31st March, 1981, by Maharashtra Act No. 16 of 1981 up to 31st March, 1986 and by Maharashtra Act No. 10 of 1986 up to 31st March, 1991.

34. It is further submitted that the necessity of passing Bombay Amending Act 43 of 1951 was because the Bombay Rent Act was not an "existing law"

> which continued after the commencement of the Constitution by force of Article 372 read with Article 366(10). For this purpose, he referred to Article 366(10) and relevant part of Article 372 of the Constitution. Article 366(10) reads thus:--
>
> "366. Definition.--In this Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say:--

> (10) existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation."

35. Relevant part of Article 372 and Explanation III thereto read thus:--

> "372. Continuation in force of existing laws and their adaptation:-- (1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.
>
> Explanation-III - Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force."

36. There is nothing in Explanation III to Article 372 which even remotely suggests that it is restricted to the provisions of that Article alone. On the contrary it is of general application, ie.e., it applies to all temporary enactments which were enacted pre-Constitution : Article 372(1) applies in general terms to all existing laws/laws in force and continues their operation after the commencement of the Constitution: And Explanation-III explains or clarifies that nothing in Article 372 shall be construed as continuing any temporary law in force, beyond the date fixed for this expiration.

37. It is submitted that thus on a conjoint reading of Article 372(1) and Explanation III thereof, read with Article 366(10) it is clear that the Constitution did not envisage or provide for the continuance in force of existing laws if such existing laws were only temporary laws. Such temporary laws continued in force only till the date fixed for their expiration; alternatively, till the date on which they would have expired if the Constitution had not come into force.

38. It is his submission that being a temporary law in force till 31st March, 1952, the Bombay Rent Act 1947 could not have continued after 31.3.1952 unless re-enacted and the words 'existing law' and 'law in force' are inter-changeable. For this purpose, he relied upon the decision in Keshavan Madhava Menon v. The State of Bombay (1951 SCR 228). He also relied upon the State of Bombay v. Heman Santlal Alreja [AIR 1952 (39) Bombay 16], wherein Chagla, CJ observed thus:--

> "In Keshavan Madhava Menon v. The State of Bombay, Mr. Justice Das says (P.
>
> 234) :
>
> ...What Article 13(1) provides is that all existing laws which clash with the exercise of the fundamental rights (which are for the first time created by the Constitution) shall

> to that extent be void. Now it may be remembered that the expression used in Article 13(1) is "laws in force" and not "existing laws" and yet the learned Judge reads that expression as meaning "existing laws". Frankly the point is not free from difficulty or doubt, but on the whole we have come to the conclusion that in the Constitution the expressions "existing laws" and "laws in force"

have been used without any distinction or difference."

39. For deciding the aforesaid submissions, we would deal with the same as under:-

> 1. Effect of Article 254(1) on the Bombay Rent Act after enactment of the P.P. Eviction Act in 1971.

II. Legislative intent while extending the duration of Bombay Rent Act. III. Whether it can be deemed to be a new enactment?

Re.--I. [Article 254(1)]:-

40. It is to be stated that the P.P. Eviction Act received the assent of the President on 23rd August, 1971 but is deemed to have come into force on September 16, 1958. This is provided in Sub-section (3) of Section 1, which reads thus:--

> "1. Short title, extent and commencement.
>
> (1) - (2) .....
>
> (3). It shall be deemed to have come into force on the 16th day of September, 1958 except Sections 11, 19 and 29 whish shall come into force at once."

41. Once the P.P. Eviction Act is enacted then Bombay Rent Act would not prevail qua the repugnancy between it and the P.P. Eviction Act. To the extent of repugnancy, the State law would be void under Article 254(1) and the law made by the Parliament would prevail.

Admittedly, the duration of the Bombay Rent Act was extended up to 31st March, 1973 by Maharashtra Act No. 12 of 1970. The result would be fro the date of the coming into force of the P.P. Eviction Act, the Bombay Rent Act qua the properties of the Government and Government companies would be inoperative. For this purpose, language of Article 254(1) is unambiguous and specifically provides that if any provision of law made by the Legislature of State is repugnant to the provision of law made by the Parliament, then the law made by the Parliament whether passed before or after the law made by the Legislature of the State, would prevail. It also makes it clear that the law made by the Legislature of the State, to the extent of repugnancy, would be void.

42. Hence, once the P.P. Eviction Act came into force w.e.f. 23rd August, 1971, the existing Bombay Rent Act would be void so far as it is repugnant to the law made by the Parliament as in view of

Article 254(1), the law made by the Parliament would prevail.

Re.--(II) and (III):-

43. he next question is--what is the effect of extension of the Bombay Rent Act from time to time after 31st March, 1973 -- whether it can be held that there was new enactment (new Bombay Rent Act)? Or whether the Bombay Rent Act which was for a temporary period continues by the Act by which its duration or life is extended? After 1970, the next extension is given by Maharashtra Act No. 17 of 1973. Section 4 of the said Act only substitutes the figures '1973' by figures '1976' meaning thereby the duration of the Bombay Rent Act is extended up to 1976. It is equally true that by the said Act, licesees are also given protection of the Rent Act and correspondingly Bombay Rent Act is amended. Some other minor amendments are also provided. However, it nowhere provides that notwithstanding anything contained in the P.P. Eviction Act, the Rent Act would prevail qua the properties owned by the Government companies/corporations etc.

44. Thereafter, last extension for our consideration in these matters would be Maharashtra Act No. 16 of 1986 and the relevant provisions thereof are as under:--

> 1. This Act may be called the Bombay Rents, Hotel and Lodging House Rates Control (Extension of Duration) Act, 1986;
>
> 2. In Section 3 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, in Sub-section (2), for the figures "1986" the figures "1991"

shall be substituted."

45. From the aforesaid language used by the State Legislature, it is crystal clear that Legislature considers this as extension of the duration of Bombay Rent Act and not enactment of new law or re-enactment of the law in force. The phraseology used by the Legislature is only "extension of duration".

46. Learned senior counsel for the appellants submitted that for extension of the Act also the assent of the President is taken and therefore it would amount to re-enactment of the existing law or enactment the new law. In our view, merely because assent of the President is taken, as it is required to be taken, it would not mean that there is new enactment. For extending the duration of the temporary Legislation the assent of the President is required, otherwise in case of repugnancy law enacted by the Parliament would prevail.

47. On the question whether extension of duration of the law which is in force amounts to re-enactment of a law or passing of a new Act, the learned counsel for the parties at the time of hearing of this matter referred to decisions in The State of Bombay v. Heman Santlal Alreja [AIR (39) 1952 Bombay 16], Mangtulal and Anr. v. Radha Shyam and Anr., Basantlal Bansilal v. Bansilal Dagdulal, State of Uttar Pradesh v. The Benaras Electric Light and Power Co. Ltd. and Anr. and Kerala State Electricity Board v. The Indian Aluminium Co. Ltd.

48. In Heman Santlal's case (supra) Chagla, CJ dealt with a question whether the Bombay Land Requisition Act, 1948 provided for requisitioning the premises was a temporary statute. The duration of the said law was extended from 31st March, 1950 to 31st March, 1952 and in that context Court observed that when an Act is passed extending the duration of some law, it cannot be said that new law was created. The old law already on the statute book continues. For this proposition, relevant discussion is as under--

> "15. The authorities also draw a distinction between the repeal of an old Act and the re-enacting of a new Act and the extension of an old Act. When an Act is passed extending the duration of some law, it cannot be said that some new law was created. The old law already on the statute book continues. Our attention was drawn to an American case which is relevant on the point. In United States v. Powers [(1938) 307 USR 1245] the Connally Act of 22.2.1935, originally provided that it should cease to be in effect on 16.6.1937, but it was extended prior to 16.6.1937 to 30.6.1939, and the Supreme Court of America held that the amended Act authorised a prosecution for violations committed prior to 16.6.1937, under an indictment returned subsequent thereto but prior to 30.6.1939. In the judgment of Douglas J., it is stated (p. 1248) "...Due to the amendment, the Act has never ceased to be in effect. No new law was created: no old one was repealed. Without hiatus of any kind, the originally Act was given extended life."

It is true that in this case the amending Act did not in any way alter the substantive provisions of the original Act. But, as I said before, we are only considering the effect of Act II (2) of 1950 to the extent that it extends the duration of Act XXXIII (33) of 1948. Even temporary statutes which are made perpetual by subsequent Acts become perpetual not from the date of the subsequent Act but ab initio . See Halsbury, Vol.31 p.512, Article 665. And Maxwell on Interpretation of Statutes, Edn.9, p.406, states the law thus:

> "If a temporary Act be continued by a subsequent one, or an expired Act be revived by a later one, all infringements of the provisions contained in it are breaches of it rather than of the renewing or reviving statutes."

Therefore, to the extent that the Legislature enacted Section 2 of Act II (2) of 1950, it did not put on the statute book any new legislation. The old law instead of expiring on 31.3.1950, continued till 21.3.1952."

49. We agree with the aforesaid observations. In case of a temporary statute when the Act is passed extending the duration of the said statute, it cannot be said that some new Act was created. The old law continues. Result is-duration or life of old temporary statute is extended for a further period. As observed by Douglas, J., the Act never ceased to be in effect and the original Act was given extended life. Similarly, Craies on Statute Law (7th Edn. - Page No. 908) defines 'commencement' as-if an Act is in the first instance temporary, and is continued from time to time by subsequent Acts, it is considered as a statute passed in the session when it was first passed, and not as a statute passed in the session in which the Act which continues its operation was passed.

50. In the aforesaid case, the Court also considered the phrase "existing law" as defines under Article 366(10) and observed that in order that a law should be an existing law, the only qualification laid down by the Constitution is that it should have bene passed before the commencement of the Constitution by any legislature, authority or person having power to make such a law and, therefore, the Bombay Land Requisition Act was existing law. The Court, therefore, held that the Legislature when passed Act 2 of 1950 which extended the duration of the existing law, was not making any law contrary to the provisions of Article 31(2) and it had been saved by Article 31(5)(a).

51. However, learned senior counsel Mr. Nariman submitted that in Basantlal Banarsilal's case (supra), the Court distinguished its earlier decision rendered in Heman Santlal's case (supra) . In that case, the Court was considering the provisions of Bombay Forward Contracts Control Act, 1947. Section 8 of that Act declared forward contracts of any goods specified in a notification to be issued under Section 1(3) to be illegal, if these were not entered into, made or performed in the manner laid down in that Section. The Court was also required to consider the provisions of the Essential Supplies (Temporary Powers) Act, which would have expired on 1.4.1951 but for the fact that Article 369 of the Constitution gave to the Parliament, during a period of five years from the commencement of the Constitution, the power to make laws with respect to certain matters enumerated in the Concurrent List, and in exercise of the power, the original Essential Supplies Act with certain important amendments was continued up to 31st December, 1952. While dealing with the contention that bombay forward Contracts Control Act being a legislation passed by the State, it would prevail in view of Article 254, the Court considered Article 254 and observed thus:--

> "...if the State legislature passes a law subsequent to the law passed by the Parliament and the State Legislature want sin any way to depart from the provisions of the law as laid down by the Parliament, it could do so, "provided it satisfies the condition, viz., that it reserves the bill for the consideration of the President and the President give his assent."

52. Thereafter, the Court considered the contention that once the Bombay Forward Contracts Control Act passed in 1947 and received the assent of the Governor General, there is no subsequent legislation which has altered the position with regard to the prohibition against entering into forward contracts in the State of Bombay. The Court also considered the contention that whether the extension given to the Essential Supplies (Temporary Powers) Act, was mere continuation of the Old Act or not. In that context, the Court referred to Heman Santlal's case and observed that it is difficult to accept the view that Act 52 of 1950 is merely extension of Essential Supplies Act, 1946, firstly because it is an Act passed for the purpose of amending the Act of 1946 and in the body of this, there were many provisions which substantially amended the provisions of law contained in the Act. The Court observed that other important consideration was that the Act was not a extension of the old Act as the Act was passed in exercise of a power expressly conferred by the Constitution upon the Parliament by Article 369, which empowered the Parliament for a period of five years, the power to legislate upon certain matters which were in the said list as if they were in Concurrent List. The Court specifically observed thus:--

> "It is, therefore, difficult to accept the position that all that Parliament was doing when it passed Act 52 of 1950 was extending the life of the Essential Supplies Act of 1946. It was not a normal legislative activity on the part of Parliament . In the course of its ordinary legislative activity it had no power to extend the life of the Essential Supplies Act of 1946, and it would have died a natural death on 1.4.1951. It was really a different legislative activity on the part of Parliament when it put Act 52 of 1950 on the statute book. It was an activity, the justification for which was to be found in Article 369 and which was in the exercise of the power conferred by that article."

53. From the aforesaid decision, it cannot be held that the law laid down in Heman Santlal's case was in any way altered or modified by the Court. In that particular case, as Essential Supplies Act, 1946 was not only extended but substantially altered and was also passed by the Parliament in exercise of its legislative power conferred under Article 369.

54. Further reliance is placed on the decision rendered by the Full Bench of Patna High Court in Mangtulal's case (supra) . In that case, the Full Bench considered the following questions:--

> "1. Whether, in the circumstances stated above, the Bihar Buildings, (Lease, Rent and Eviction) Control (Amendment) Act, 1951, required assent of the President under the provisions of Article 254 of the Constitution of India, and
>
> 2. Whether in the absence of such assent, the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, still operate, after the 14th of March, 1952, in spite of the provisions being repugnant to existing law contained in the Civil Procedure Code, the Indian Contract Act or the Transfer of Property Act."

55. In the said case, it was admitted position that though the Act of 1947 namely Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 and the Amending Act, 1949 had received the assent of the Governor General in accordance with the provisions of Government of India Act, 1935, which were in force prior to the commencement of the Constitution, the Amending Act of 1951 had not received the assent of the President. In that context, Narayan, J. first observed thus:--

> "In a bald and simple form it may also the correct to say that the amended statute or the statute which extends the duration of the original statute is not a new and independent statute and that, in effect and substance, it remains the same statute as had been originally passed. But these abstract propositions of law cannot be applied regardless of the facts and regardless of the constitutional inhibition if any....."

56. Thereafter, with regard to Article 254(2) the Court observed thus:--

> "...The only manner in which the repugnancy between the provisions of the Act of 1947 and the existing laws contained in the Code of Civil Procedure, the Indian Control Act and the Transfer of Property Act could be resolved was by obtaining the assent of the President. If the assent of the President has not been obtained to the

> amending Act of 1951 by which the duration of the Act of 1947 was extended "up to and including the 14th March, 1954", this amending Act cannot be deemed to be valid law, and the Act of 1947 would be deemed to have been extended only for the period mentioned in the Amending Act of 1949. Under the Amending Act of 1949 there was an extension for only five years, and the Act thus expired on the 14th of March, 1952. Not taking the President's assent is an omission which is fatal to the Act and it cannot be remedied by the Court by any recognised canons of interpretation. The Act having been passed in absolute contravention of Article 254(2) so much of it as it repugnant to or inconsistent with the existing law as embodied in the Code of Civil Procedure, the Indian Contract Act and the Transfer of Property Act must be declared to be void."

57. Thereafter, the Court considered the decision in Heman Santlal's case (supra) and observed that the Amending Act of 1951 came to be passed after the Constitution had come into force and according to the Constitution the repugnancy of the temporary Act to the provisions of the existing law could be resolved only by obtaining the assent of the President. In concurring judgment, Ramaswami, J. observed that in Heman Santlal's case question at issue was different namely what is the correct interpretation to be placed on the phrase "existing law" in Article 31(5) and no question was raised under Article 254 of the Constitution and the effect of the absence of the President's assent to an Amending Act was not considered in that case. Concurring with the aforesaid judgment, Das, J. held that whether Amending Act is new Act or not is material for the purpose of Article 254 and that such a continuation of the Act would require the assent of the President so as to make the State law prevail over the existing law.

58. From this decision also, it cannot be stated that the Court arrived at the conclusion that by extending duration of a temporary statute, new and independent statute comes into existence.

59. Reliance is also placed on decision rendered by the High Court of Allahabad in Benaras Electric Light and Power Co. Ltd.'s case (supra) . In that case, the Court considered the observation made by the Douglas, J., Maxwell on Interpretation of Statutes, Craies (in Treatise on Statute Law) and referred to Heman Santlal's case and observed that in the eye of law, the extending Act did not place any new legislation on the statute book; the various continuing Acts had, in law, the effect of continuing in force the original Act of 1947 as it was; they were not fresh legislation on the subject of electricity.

60. As against this, Mr. Nariman learned senior counsel submitted that the High Court rightly referred to the decision rendered by this Court in Kerala State Electricity Board's case (supra) for arriving at the conclusion that by amending and extending duration of the temporary statute and thereafter obtaining the assent of the President would mean that there is re-enactment of the existing law. In that case, Constitution Bench was considering the validity of Kerala State Electricity Supply (Kerala State Electricity Board and Licensees Areas) Surcharge Order, 1968. That order was passed in exercise of the powers conferred by Section 3 of the Kerala Essential Articles Control (Temporary Powers) Act, 1961. It obliged the Board to collect surcharges from non-licensee consumers of electricity even though the Board may have entered into long-term contract with them

with regard to the rate at which electricity is to be supplied to them. The Court, firstly, observed that the Act in question in pith and substance was with respect to trade and commerce and production, supply and distribution:

> it was not a permanent legislation with respect to electricity but a temporary one dealing with a temporary situation thereafter and that it was a matter falling under Entries No. 26 and 27 of List II. Thereafter, while dealing with the alternative submission, the Court observed thus:--
>
> "The Kerala Act insofar as it deals with electricity can be deemed to be legislation under Entry 38 of List III. Though the Act itself has not declared any article as an essential article, when a declaration was made under Section 2(a) in 1965 declaring electricity as an essential article for the purposes of the Act, it became part of the Act. When the President assented to the Kerala Act in 1962 it may be that it cannot be deemed that he had assented to it on the basis that the provisions of that Act were repugnant to some Act made by Parliament (SIC) some existing law in the concurrent field because there was nothing in the Act itself which made it repugnant to any Act passed by Parliament or any existing law. But when he assented in 1967 to the Act extending the life of the Kerala Act by another two years the declaration of electricity as an essential article had been made and should be deemed to have become part of the Act. So far we are in agreement with the argument of the learned Solicitor General. But when he goes further and argues that in so far as the consequence of such declaration was that the State Government was enabled to make orders regarding production, supply and distribution of electricity, there was a possibility of such orders being repugnant to the provisions of the Electricity Act, 1910 and the Electricity (Supply) Act, 1948 and therefore any such repugnance was cured by the assent given by the President, we cannot agree. We agree that the assent should be deemed not merely to the substitution of the words "five years" by the words "seven years" in the Kerala Act, but to the Act as a whole, that is, as amended by the 1967 Act and any repugnance between the Kerala Act and the Electricity Act, 1910 and the Electricity (Supply) Act, 1948 should be deemed to have been cured by such assent. When assenting to the 1967 Act the President should naturally have looked into the whole Act, that is, the 1961 Act as amended by the 1967 Act. But the declaration itself did not create any repugnancy with the 1948 Act. It was in 1968 that the Surcharge Order was made, in pursuance of which the bills were served on the various respondents in these appeals and demands made for enhancing charges for electricity. And it was the Surcharge Order that can be said to create the repugnancy if at all. It is only actual repugnancy that can be cured by Presidential assent and not the possibility of repugnancy."

61. From the aforesaid observations, it is clear that when the President gave assent to Kerala Act in 1962, there was no repugnancy to the Act made by the Parliament or some existing law in concurrent field. However, before grant of subsequent assent in 1967 to the Act extending the life of the Kerala ct by another two years the declaration of electricity as an essential article had been made

and was part of the Act. Thereafter, the Court observed that the assent of the President should be deemed not merely to the substitution of the words "five years" by the words "seven years" in the Kerala Act but to the Act as a whole, that is the Act as amended by the 1967 Act and any repugnancy between the Kerala Act and Electricity Act, 1910 and the Electricity (Supply) Act, 1948 should be deemed to have been cured by such assent.

62. From the aforesaid discussion, it would appear that (a) if there is extension of the duration of the temporary Act, it cannot be said that new Act is enacted, old act continues and its life is extended; (b) however, while extending the duration if there is any substantial amendment in the statutory provisions as found in Basantilal Banarsilal's case (supra) , it cannot be said that it was mere extension of existing law. Additional contention:-

63. On behalf of the appellant, following additional ground is raised in the written submission.

> "Article 254(1) incorporates the principle of Supremacy of Parliament law - it applies to any provisions of "a law made by the Legislature of a State"

which is repugnant to any Parliamentary law or (which is repugnant) to any existing law. Article 254(1) opening part, does not expressly give supremacy to Parliamentary law over existing State/Provincial law - i.e. law made in the Provinces before the Constitution: hence Constitution, the Bombay Amending Act 43 of 1951 (the first law enacted byt eh State legislature after the Constitution) - even though a mere extension law - must Constitutionally be regarded as a law made by the legislature of a State, for purposes of applicability of Article 254(1), which it could only be if it was a substantive law re-enacting or incorporating the provisions of the Act 1947 Act, post-Constitution. That it was reserved for the consideration of the President and received his assent lend support to the fact that it was not a mere extension but treated as a substantive enactment."

64. The aforesaid submission requires to be rejected mainly because Article 254(1) as quoted above clearly inter alia provides that if any provision of a law made by the legislature of State is repugnant to any provision of a law made by Parliament then the law made by Parliament, whether passed before or after the law made by the legislature of such State, shall prevail - . It also provides that the law made by the legislature of the State shall, to the extent of repugnancy, be void.

65. Further, in the present case, there is no question of considering that the Bombay Rent Act was an existing law as defined under Article 366(1). Explanation III to Article 372 specifically provides that nothing in the said Article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if the Constitution had not come into force. Therefore, there is no question of applying the concept of "existing law" as defined under Article 366 to a law of which duration is extended from time to time. Article 254(1), inter alia , also provides that if any provision of a law made by the Legislature of State is repugnant to any provision of an existing law, the exiting law shall prevail and law made by the Legislature of the State shall to the extent of repugnancy be void but in the present case there is no question of applying the said part of Article 254(1).

66. The result of the foregoing discussion is:-

1. It cannot be held that summary speedier procedure prescribed under the P.P. Eviction Act for evicting the tenants, sub-tenants or unauthorised occupants, if it is reasonable and in conformity with the principles of natural justice, would abridge the right conferred under the Constitution. 2 (a) Article 254(2) contemplates 'reservation for consideration of the President' and also 'assent'. Reservation for consideration is not an empty formality. Pointed attention of the President is required to be drawn to the repugnancy between the earlier law made by the Parliament and the contemplated State legislature and the reasons for having such law despite the enactment by the Parliament.

(b) The word 'assent' used in Clause (2) of Article 254 would in context mean express agreement of mind to what is proposed by the State.

(c) In case where it is not indicated that 'assent' is qua a particular law made by the Parliament, then it is open to the Court to call for the proposals made by the State for the consideration of the President before obtaining assent.

3. Extending the duration of a temporary enactment does not amount to enactment of a new law. However such extension may require assent of the President in case of repugnancy.

67. In this view of the matter, in the present case there is no question of giving supremacy to the Bombay Rent Act qua the law made by the Parliament.

68. In the result, the appeals are dismissed.

WP (Civil) Nos. 1056, 1081 of 1991 and 162 of 1992

69. These writ petitions are filed challenging the vires of certain provisions of the P.P. Eviction Act. In view of the order passed above, these writ petitions are dismissed.

SLP (Civil) Nos. 20669, 20731 of 1995 AND 3404-05 of 1992.

70. These petitions are filed against the judgments and orders dated 9.8.1995, 14.2.1992 and 8.1.1992 passed by the High Court of Bombay in Writ Petition Nos. 3141/95, 3162/95, RP No. 836 of 1992 and WP No. 32 of 1992 respectively. By orders dated 4.12.1995 and 11.9.1995, these petitions were ordered to be listed along with Civil Appeal No. 2555 of 1991 etc. In view of the order passed above in C.A. No. 2555/91 etc., these petitions would not survive and are dismissed accordingly.

71. There shall be no order as to costs.

D. Raju, J.

72. I have carefully gone though the judgment prepared by learned brother justice M.B. Shah, dismissing the appeals and other connected writ allied petitions and I am in respectful agreement with the same. Yet, having regard to the nature of issues involved and the likelihood of recurrence of such question in the light of similar and frequent recourse often made to Article 254(2) of the Constitution, I wish to place on record some of my view also in the matter.

73. The factual background, the details relating to the decision arrived at by the Bombay High Court and the contentions raised on behalf of the appellants/petitioners before us have been adverted to in detail in the judgment of Shah, J. and I do not want to refer to them and further burden this judgment Article 254(1) declares that, if any provision of a law including an 'existing law' made by the legislature of a State is 'repugnant' to any provision of a law enacted by the Parliament, which it is competent to enact or to any provision of an existing law, with respect to 'one of the matters' enumerated in the concurrent list, subject to the exception provided in Clause (2) of Article 254, the law made by the Parliament whether passed before or after the law made by the State Legislature concerned or the existing law, as the case may be, shall prevail and to that extent of repugnancy, the State law shall be void. The exception engrafted in Clause (2) to enable the State law ot prevail in that State, the Legislature of which has enacted it, notwithstanding its repugnancy, as above, as long as both the laws deal with a concurrent subject, will enure to its benefit, if it has been reserved for the consideration of the President and has received his assent', under the said provision of the Constitution of India. Thus, the sweep of mandate and serious nature of the result flowing from the assent renders, in my view, the very exercise of power by the President and the attendant formalities whereof, as of great significance and vitally important, and not a mere routine of mechanical exercise. Despite, such assent having been obtained, power of the Parliament to enact, at any time, any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State, with the assent envisaged under Clause (2) of Article 254 has also been conserved and preserved in the proviso to the said clause.In substance, the Parliament has undisputed power to undo the effect or consequences flowing from the presidential assent obtained under Clause (2), by enacting a subsequent law creating once more a 'repugnancy' and thereby override or repeal impliedly, to the extent of such repugnancy, the State law.

74. The assent of the President envisaged under Article 254(2) is neither an idle or empty formality, nor an automatic event, necessitated or to be given for the mere asking, in whatever form or manner and whether specific, vague, general of indefinite - in the terms sought for the claim that once sought and obtained as well as published, a curtain or vell is drawn, to preclude any probe or contention for consideration that what was sought and obtained was not really what should and ought to have been, to claim the protection envisaged under Clause (2) in respect of a particular State law vis-a-vis or with reference to any particular or specified law on the same subject made by the Parliament or an existing law, in force. The repugnancy envisaged under Clause (1) or enabled under Clause (2) to get excepted from under the protective coverage of the assent obtained from the President, is such that there is a legislation or legislative provision(s), covering and operating on the same field or identical subject matter made by both the Union and the State, both of them being competent to enact in respect of the same subject matter or the legislative field, but the legislation by the Parliament has come to occupy the entire field. Necessarily, in the quasi-federal structure adopted for the nation predominance is given to the law made by the Parliament and in such

circumstances only the State law which secured the assent of the President under Clause (2) of Article 254 comes to as protected, subject of course to the powers of Parliament under the Proviso to the said clause. Therefore, the President has to be apprised of the reasons at least as to why is assent is being sought, the need or necessity and the justification or otherwise for claiming predominance for the State law concerned. This itself would postulate an obligation, inherent in the scheme underlying as well as the very purpose and object of seeking the assent under Clause (2) of Article 254 to enumerate or specify and illustrate the particular Central law or provision with reference to which the predominance is desired. The absence of any standardized or stipulated form in which it is to be sought for, should not detract the State concerned, to disown its obligation to be precise and specific in the extent of protection sought having regard to the serious consequences which thereby inevitably follows, i.e. the substitution of the Union law in force by the State law, in the territorial limits of the State concerned, with drastic alteration or change in the rights of citizen, which it may, thereby bring about.

75. The mere forwarding of a copy of the bill may obviate, if at all, only the need to refer to each one of the provisions therein in detail in the requisition sent or the letter forwarding it, but not obliterate the necessity to point out specifically the particular Central law or provisions with reference to which, the predominance is claimed or purported to be claimed. The deliberate use of the word 'consideration' in Clause (2) of Article 254, in my view, not only connote that there should be an active application of mind, but also postulate a deliberate and careful thought process before taking a decision to accord or not to accord the assent sought for. If the object of referring the State law for consideration is to have the repugnancy resolved by securing predominance to the State law, the President has to necessarily consider the nature and extent of repugnancy, the feasibility, practicalities and desirabilities involved therein, though may not be obliged to write a judgment in the same manner, the courts of law does, before arriving at a conclusion to grant or refuse to grant or even grant partially, if the repugnancy is with reference to more than one law in force made by the Parliament. Protection cannot be claimed for the State law, when questioned before courts, taking cover under the assent, merely asserting that it was in general form, irrespective of the actual fact whether the State claimed for such protection against a specific law or the attention of the President was invited to at least an apprehended repugnancy vis-a-vis the particular Central law. In the teeth of innumerable Central laws enacted and in force on concurrent subjects enumerated in List III of the VIIth Schedule to the Constitution, and the heard of provisions contained therein, artificial assumptions based on some supposed knowledge of all those provisions and the presumed regularity of official acts, cannot be blown out of proportion, to do away with an essential exercise, to make the 'assent' meaningful, as if they are empty formalities, except at the risk of rendering Article 254 itself a dead letter or mere otiose. The significant and serious alteration in or modification of the rights of parties, both individuals or institution resulting from the 'assent' cannot be overlooked or lightly brushed aside as of no significance, whatsoever. In a Federal structure, peculiar to the one adopted by our Constitution it would become necessary for the President to be apprised of the reason as to why and for what special reason or object and purpose, predominance for the State law over the Central law is sought deviating from the law in force made by the Parliament for the entire country, including that part of the State. When this Court observed in Gram Panchayat of Village Jamalpur v. Malwinder Singh and Ors., that when the assent of President is sought for a specific purpose the efficacy of the assent would be limited to that purpose

and cannot be extended beyond it, and that if the assent is sought and given in general terms so as to be effective for all purposes different considerations may legitimately arise, it cannot legitimately be contended that this court had also declared that reservation of the State law can also be by mere reference to Article 254(2) alone with no further disclosure to be made or that the mere forwarding of the bill, no other information or detail was either a permissible or legalized and approved course to be adopted or that such course was held to be sufficient, by this Court, to serve the purpose of the said Article. The observation 'general terms' need to be understood, in my view, a reference to a particular law as a whole in contrast to any one particular or individual in the said law and not that, it can be even without any reference whatsoever. The further observation therein, "not only was the President not apprised in the instant case that his assent was sought because of the repugnancy between the State Act and the pre-existing Central Act on the vesting of evacuee properties but his assent was sought for a different, specific purpose altogether" would belic any such claim. Per contra, it would only reinforce the principle that the consideration as well as the decision to accord consent should be a conscious one, after due application of mind, relevant and necessary for the purpose. Though, submission of a thesis on the various aspects of repugnancy involved may not be the requirement the reservation for 'consideration' would necessarily obligate an invitation of the attention of the President as to which of the pre-existing central enactments or which provisions of those enactments are considered or apprehended to be repugnant, with reference to which the assent envisaged in Article 254(2) is sough for. This becomes all the more necessary also for the reason that the repugnancy in respect of which predominance is sought to be secured must be shown to exist or apprehended on the date of the State law and not in vacuum to cure any and every possible repugnancy in respect of all laws-irrespective of whether it was in the contemplation or not of the seeker of the assent or of the President at the time 'consideration' for according assent.

76. This court has, no doubt, held that the assent accorded by the President is not justifiable, and courts cannot spell out any infirmity in the decision arrived at, to give the assent. Similarly, when the President was found to have accorded assent and the same was duly published, it cannot be contended that the assent was not really that of the President, as claimed. It is also not give to anyone to challenge the decision of the President according assent, on merits and as to its legality property or desirability. But that is not the same thing as approving an attempt to draw blanket or veil so as to preclude an examination by this court or the High Court as to the justifiability and sufficiency or otherwise of the protection or predominance claimed for the State law over the law made by the Parliament or the existing law, based upon the assent accorded, resulting at times in substantial alteration, change or modification in the rights and obligations of citizen, including the Fundamental Rights. When the Constitution extends a form of protection to a repugnant State law, permitting predominance and also to hold the field in the place of the law made by the Centre, conditioned upon the reservation of the State law for consideration of the President and obtaining his assent, it is to be necessarily viewed as an essential prerequisite to be effectively and meticulously fulfilled before ever availing of the protection and the same cannot be viewed merely as a ceremonial ritual. If such a vitally essential procedure and safeguard is to be merely viewed as a routine formality which can be observed in whatever manner desired by those concerned and that it would be merely enough, if the assent has been secured howsoever obtained, it would amount to belittling its very importance in the context of distribution of legislative powers and the absolute necessity to preserve the supremacy of the Parliament to enact a law on a concurrent topic in List

III, for the entire country. It would also amount to acceptance of even a farce of compliance to be actual or real compliance. Such a course could not be adopted by Courts except by doing violence to the language, as well as the scheme, and very object underlying Article 254(2).

77. Different provisions of the Constitution envisage the grant of assent by the President as well the Governor of a State. Article 111 provides for the assent of the President to a Bill passed by the Houses of Parliament, in the same manner in which Article 200 empowers the Governor of a State in respect of a Bill passed by the Legislative Assembly or by the Houses of the Legislature where there is a Legislative Council in addition to the Assembly. The Parliament for the Union consists of the President and two Houses as the Legislature of States consist of the Governor and the House or Houses, as the case may be (vide Article 79 and 168). The policy making executive power of the Union also vest with the President, as the executive power of the State vest with the Governor, and those powers have to be exercised with the aid and advice of the council of ministers, for the Union headed by the Prime Minister and for the State to be headed by the Chief Minister. The President or the Governor, as the case may be, as the when a Bill after having been passed is presented, may accord assent or as soon as possible thereafter return the Bill to the Houses with a message requesting to reconsider the Bill or any provisions thereof, including the introduction of any amendment as recommended in his message and if thereafter the Houses on reconsideration of the Bill, pass the Bill again with or without amendment and present the same for the assent, the President/Governor, as the case may be, shall not withhold his assent. Being an exercise pertaining to expression of political will, apparently, the will of the people expressed through the legislation passed by their elected representatives is given prominence by specifically providing for a compulsory consent or assent. The same could not be said with reference to the 'assant' of the President envisaged under Article 31A, 31C, 254(2) and 304(b) of the Constitution. In my view, the 'assent' envisaged in these Articles by the very nature and character of the powers conferred constitute a distinct class and category of their own, different from the normal 'assent' envisaged under Articles 111 of the President or 200 of the Governor. Article 201 also would indicate that even when for the second time the Houses of the State Legislature passes the Bill and presented for 'consideration', there is no compulsion for the President to accord assent. Therefore, the reservation of any Bill/Act for the 'consideration' of the President for according his assent, keeping in view, also the allowed object envisaged under Article 254(2), renders it quantitatively different from the ordinary assent to be given by the President to a Bill passed by the Parliament or that of the Governor to a Bill passed by the Legislature(s) of the State concerned.

78. The assent of the President or the Governor, as the case may be, is considered to be part of the legislative process only for the limited purpose that the legislative process is incomplete without them for enacting a law and in the absence of the assent the Bill passed could not be considered to be an Act or a piece of legislation, effective and enforceable and not to extend the immunity in respect of procedural formalities to be observed inside the respective houses and certification by the presiding officer concerned of their due compliance, to areas or acts outside the besides those formalities. The powers actually exercised by the President, at any rate under Articles 31A, 31C, 254(2) and 304(b) is a special constituent power vested with the Head of the Union, as the protector and defender of the Constitution and safety valve to safeguard the Fundamental Right of citizens and Federal structure of the country's policy as adopted in the Constitution. A genuine, real and

effective consideration would depend upon specific and sufficient information being provided to him inviting, at any rate, his attention to the Central law with which the State law is considered or apprehended to be repugnant, and in the absence of any effort or exercise shown to have been undertaken, when questioned before courts, the State law cannot be permitted or allowed to have predominance or overriding effect over that Central enactment of the Parliament to which no specific reference of the President at all has been invited to. This, in my view, is a must and an essential requirement to be satisfied; in the absence of which the 'consideration' claimed would be one in vacuum and really oblivious to the hoard of Legislations falling under the Concurrent List in force in the country and enacted by the Parliament. To uphold as valid the claim for any such blanket assent or all round predominance over any and every such law - whether brought to the notice of the President or not, would amount to legitimization of what was not even in the contemplation or consideration on the basis of some assumed 'consideration'. In order to find out the real state of affairs as to whether the 'Assent' in a given case was after a due and proper application of mind and effective 'consideration' as envisaged by the Constitution, this court as well as the High Court exercising powers of judicial review are entitled to call for the relevant records and look into the same. This the courts have been doing, as and when considered necessary, all along. No reception therefore could be taken to the High Court in this case adopting such a procedure, in discharge of its obligations and exercise of jurisdiction under the Constitution of India.

Dharmadhikari J.

79. After going through the opinion of learned Brother M.B. Shah J, with utmost respect, I find myself unable to agree with his view.

80. The main question that needs decision by this Constitution Bench is on the application of Article 254 of the Constitution of India. Learned Brother Shah J, in his opinion, has already reproduced Article 254 and discussed relevant decisions of the Supreme Court and other High Courts cited by the counsel of the parties at the Bar. I would not, therefore, burden the record with repetition of the same.

81. It is not in dispute that there is a clear repugnancy between the provisions of Bombay Rents (Hotel and Lodging House Rates) Control Act 1947, as has been extended from time to time, after coming into force of the Constitution in its application, to erstwhile State of Bombay and to the present State of Maharashtra and Public Premises (Eviction and Unauthorized Occupants) Act 1977. The two Acts mentioned above would hereinafter be referred to as the 'State Act' and the 'Central respectively.

82. Under the provisions of the State Act, all occupant of leased or licensed premises including those owned by government companies and corporations have protection against their eviction which can be granted only on proof of specified grounds before the competent authority. In accordance with the Central Act, the premises belonging to government companies and corporations which are in occupation of tenants and licensees can be got evicted by the prescribed summary procedure after

service of notice to the occupier of the alleged unauthorized occupation.

83. The State Act of 1947 was the pre-constitutional law and 'existing law' for application of Article 254 read with definition of that expression 'existing law' in Clause 10 of Article 366. The said 'existing law' by virtue of Extension Laws passed from time to time by the State Legislature continued in force after coming into force of the Constitution.

84. The Central Law of 1977 is post-constitutional law and as an effect of Clause (1) of Article 254, in view of its admitted and clear repugnancy with State Law, the former would have prevailed; but Clause (2) is an exception to Clause (1) of Article 254 and if the State Law has received 'assent of the President' and the subject of Legislation is in Concurrent List, the State Law prevails in its application to the State.

85. The State Act of 1947 which was a pre-constitutional law after it was extended by various Extension Laws (mentioned in detail in the opinion of learned Brother Shah J.) became a post-constitutional law. In order to prevail over the Central Law, the State Law required the 'assent of the President' in accordance with Article 254(2) of the Constitution. It is not in dispute that the subject matter of Central and State Legislation is covered by entries in the Concurrent List of Seventh Schedule of the Constitutional.

86. It is also not in dispute that the 'assent of the President' has been obtained to each of the State Acts which were passed after coming into force of the Constitution, either to extend the duration of 'existing law' of 1947 or to extend its application with amendments to the State. The file containing proposals which were moved for obtaining 'assent of the President' was not produced by any of the parties but was summoned by the Court. A perusal of file containing proposals moved for obtaining the 'assent of the President' shows that each time, the Extension Law was passed with or without amendments for extending duration of the 'existing law' that is Bombay Act of 1947, its repugnancy to Central Laws like Transfer of Property Act 1882 and Presidency Small Causes Courts Act 1882, the Indian Contract Act 1892 and Civil Procedure Code, was pointed out but there is no specific mention of its repugnancy to the Central Act under consideration before us. It is on the basis of the letters of the State addressed to the Government of India containing the proposals for obtaining 'assent of the President', learned Brother Shah J, has come to the conclusion that there is no 'Presidential Assent' sought or obtained to the State Act qua the Central Act under consideration before us. Such a conclusion on reading of the file containing the proposals is not borne out. Two specific proposals relied on behalf of the appellants from the letters dated 15.12.1980 and 27.1.1986, need mentioned and reproduction in its relevant parts. They read as under:-

> No. BRA 2180/CR-3222/DESK-3.
>
> Housing and Special Assistance Department Mantralaya, Bombay - 400032 15th December, 1980 To, The Secretary to Government of India, Ministry of Home Affairs, New Delhi.

Sub: Bill of extend the duration of the Bombay Rent, Hotel and Lodging Houses Rate Control Act 1974 upto 31st March, 1986.

Sir, ...

The subject matter of the Bill falls under entries 3, 5, 18, 31, 35, 49, 64 and 65 in List-II and entries 1, 2, 6, 7, 11-A and 46 in a List-III in the Seventh Schedule of the Constitution of the India. As the provision of the Principal Act are repugnant to the provisions of some of the existing laws relating to entries 6, 13, 46 in the concurrent Legislative List such as Transfer of Property Act 1882 and the Presidency Small Causes Courts Act 1882 and Clause (2) of the Bill is intended to extend the life of the Principal Act by a further period of five years i.e. upto 31.3.1986, it is necessary to reserve the Bill after it is passed for consideration and the assent of the President under Article 254(2) of the Constitution of India after it is passed by the State Legislature. Further as the subject matter of the Bill falls under the entries relatable to the Concurrent Legislative List and administrative approval of the Government of India is required to be obtained before it is introduced in the State Legislature. I am, therefore, to request you to move the Government of India to kindly accord their administrative approval to the proposed Bill..... .....

GOVERNMENT OF MAHARASHTRA No. 1419/B : : : : :

LAW AND JUDICIARY DEPARTMENT Mantralaya, Bombay - 400 032 Dated: 27th Jan., 1986 To, The Secretary to the Governor of Maharashtra, Raj Bhawan, Bombay - 400 035.

Sub: L.C. Bill No. X of 1986 The Bombay Rents, Hotel and Lodging House Rates Control (Extension of Duration) Bill, 1986.

Sir, ...

The subject matter of the Bill falls under entries 3, 5, 18, 31, 35, 49, 64 and 65 in List-II and entries 1, 2, 6, 7, 11-A, 12, 13 and 46 in List-III in the Seventh Schedule to the Constitution of India. As the provisions of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 are repugnant to the provisions of the Transfer of Property Act 1882 and the Presidency Small Cause Courts Act 1882 which are the existing laws relating to entries 6, 13 and 46 in the Concurrent Legislative List and as Clause 2 of the Bill is intended to extend the life of the Principal Act for a period of five years, it is necessary to reserve the Bill for the consideration and assent of the President with reference to article 254(2) of the Constitution of India.

.....

87. Several letters addressed from time to time to the Government of India by the State for obtaining 'assent of the President', which are contained in the file, are somewhat similar in wording and phraseology. From the contents of letters dated 15.12.1980, what is to be noted (as reproduced above) is that entries 1, 2, 6, 7, 11-A and 46 in List-III that is the Concurrent List in the Seventh Schedule of the Constitution have been specifically mentioned. The language of the proposals contained in the letter is noteworthy, It reads : "the provisions of some of the existing laws relating to entries 6, 13, 46 in the Concurrent Legislative List such as Transfer of Property Act 1882 and the Presidency Small Cause Courts Act 1882.....".

88. Similarly, in the proposals contained in letter dated 27.1.1986, there is specific mention of entries 1, 2, 6, 7, 11-A, 12, 13 and 46 of Concurrent List in Seventh Schedule of the Constitution with specific mention of repugnancy to the provisions of Transfer Property Act 1882 and Presidency Small Cause Courts Act 1882.

89. Each time when the proposal was moved for obtaining Presidential sanction, relevant entries of the Concurrent List have been mentioned. It is not disputed that the Central Act under consideration covers entries 6 and 7 of the Concurrent List which are specifically mentioned in the proposal. In the letter dated 15.12.1980, while moving proposal for obtaining assent, it has been very clearly mentioned that the State Act is repugnant to "some of the existing laws relating to entries 6, 13 and 46 in the Concurrent Legislative List" and the above language is follows by words "such as" with words following them 'Transfer of Property Act' and 'Presidency Small Cause Courts Act'. The mention of entries in the Concurrent Legislative List Including entry 6 which covers the Central Act and use of such expression as repugnancy to "some of the existing laws"

> relating to the entries mentioned in Concurrent List followed by use of words "such as" clearly go to show that 'assent of the President' was obtained in a general way to give overriding effect to the State Law which is admittedly repugnant to many Central Laws referable to various entries in the Concurrent List. Mention of Central Acts was not exhaustive but only illustrative , otherwise the language, in the proposal contained in the letters of the State Government, would have been different.

90. On such an 'assent of the President' having been granted in general way to the State Act to give it an overriding effect over all repugnant Central Acts on legislative fields covered by specific entries of the Concurrent List, it is not open to the Court to interpret differently the contents of the letters in the file and come to a conclusion that the 'assent of the President' was restricted only to Central Acts mentioned in the proposal and non-mention of the present Central Act was an indication of the mind of the President that no assent was given to the State Act qua the present Central Act.

91. Learned Brother Shah J. has taken note of all the previous decisions of this court and other High Courts cited by the counsel for the parties at the Bar. The file containing proposals for obtaining assent of the President was summoned and perused. This exercise of going into the contents of the file was undertaken with the limited purpose of finding out whether the 'assent of the President' to the State Act, in fact, existed or not. Learned Brother Shah J. accepts the legal position that the court cannot go into the question of validity or invalidity of the 'assent of the President' and the scrutiny of

the file containing proposals moved for seeking 'assent of the President' is limited to find out whether, in fact, 'assent' has been granted to the State Act or not and to what extent it has been granted. Law has also been taken note of on the basis of previous decisions of this court that 'Presidential assent' can be obtained qua specific Central Acts and also in a general way .

92. As discussed above by me on the contents of two letters containing proposals for 'assent of the President', it is evident that the 'assent' was obtained in a general way by making mention of relevant entries of the Concurrent List and a few repugnant Central enactments illustratively and not exhaustively. The 'assent of the President' was sought in the manner mentioned above and granted.

93. The Preamble of the State Act as notified and published in the Government Gazette contains a declaration that the State Act has received an 'assent of the President' under Article 254(2) of the Constitution. Such declaration of receipt of 'assent of the President' is to be found in the preamble of all Extension Laws passed after coming into force of the Constitution.

94. I do not find myself persuaded to agree with the view that 'assent of the President' is subject of legislative procedure . In giving overriding effect to the State Law over Central Laws covered by entries in Concurrent List, the grant of 'assent' by the President in exercise of powers under Clause (2) of Article 254 is a substantive legislative act. It cannot be described merely as part of legislative procedure . It is only the President who is empowered to exercise that legislative power in the event of inconsistency between the State Law and Central Law. Such legislative power has been given by the Constitution only to the President and exercise thereof involves no other procedure. In granting or refusing 'assent' to a State Act which is repugnant to Central Law, the President alone exercises the legislative function. The provision in Article 254(2) is a substantive provision on the subject of resolving conflict between State and Central Law when both are legislation on entries in Concurrent List. Obtaining and giving 'assent by the President' is not part of any legislative procedure because in the event of conflict between State and Central Law on legislative fields in Concurrent List, the subject does not go either to Parliament or to the State Legislature. In the event of conflict between State and Central Law, the only legislative activity involved and to be exercised by the President is to give an 'assent' for giving overriding effect to the State Law or withhold such assent to allow Central Law to overriding the State Law in its application to the concerned State.

95. The action of the President of granting 'assent' being a legislative Act, it is not open to the Court to sit in judicial review over it. The laws are enacted and notified for knowledge of law enforcing agencies and general public who are affected by it. When an Act duly notified and published contains a declaration in its preamble, of the law having received 'assent of the President' such declaration becomes part of the Act and it is not open to the court to go into the question whether the President had, in fact, applied his mind to the alleged repugnancy of the State Act to a particular Central Act. The President occupies the highest constitutional office and by virtue of privilege and protection available to him under Article 361 of the Constitution, he is not made answerable personally to any court with regard to the discharge of his constitutional functions.

96. The validity of the State Act is not under challenge nor any material was produced by the State and Central Governments before the court as to what weighed with President in granting assent to the State Act under Article 254(2) of the Constitution. Merely on the basis of the contents of the letters contained in the file summoned and perused by the court, it is not possible to ascertain whether there was due application of mind of the President to the repugnancy between the State and the Central Act under consideration before us. It is not possible for the court to probe into the mind of the President why and how he exercised his power of granting of refusing 'assent' under Article 254. In my considered opinion, the court cannot go behind the declaration duly notified and published in the Government Gazette containing the text of the State Act with preamble therein stating that it has received 'assent of the President' under Article 254(2).

97. The question whether Central Act, in its application to leased and licensed premises of government companies and corporations, should be regulated by Central Act to make available to the owners of those premises a summary procedure of eviction or they be governed by State Act with protection extended to occupants on specified circumstances and grounds is a matter purely of legislative wisdom and beyond judicial review.

98. I may also and that State Act of 1947 was an 'existing law' as defined in Clause (10) of Article 366 at the time of coming into force of the Constitution, because it was a pre-constitutional law. Explanation III to Article 372 makes it clear that any "existing law" which was a temporary law in force because of its limited duration would not continue if it had expired before the Constitution came into force. The said "existing law"

> which was revived and extended by State Laws made from time to time with or without amendments by the State Legislature, after coming into force of the Constitution, is a post-constitutional law. The 'existing law' of 1947 and all Extension Laws passed by the State Legislature after coming into force of the Constitution made them all post-constitutional laws and each of them has received 'assent of the President' because of its repugnancy to the Central Act. I do not find it relevant that the Extension Laws passed from time to time were only for the purpose of continuing the 'existing law' or pre-constitutional law of 1947 in the same form. The fact remains that 'Extension Laws' made from time to time to revive State Act of 1947, in its application to the States after the Constitution, were legislations of the State Legislature on one of the entries in the Concurrent List and each time because of their repugnancy to the Central Law, they were assented to by the President to give them overriding effect. My understanding of the proposals contained in the file is that the 'assent of the President' was obtained each time in a general way by referring to some of the Central Laws covered by the relevant entries in the Concurrent List.

99. My conclusion, therefore, is that the 'assent of the President' to the State Act having been obtained in a general way, State Act would prevail over the Central Act.

100. Consequently this appeal and all connected appeals and writ petitions on this point succeed. The impugned order of the High Court of Bombay deserves to be set aside. The cases be sent to

competent courts for deciding remaining legal and factual questions as are involved in each of them. The cost incurred in this court in each case shall abide the final result of the each case. The connected SLPs are accordingly disposed of.