

Rajendra Diwan vs Pradeep Kumar Ranibala on 10 December, 2019

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Bench: S. Ravindra Bhat, M.R. Shah, Vineet Saran, Indira Banerjee, Arun Mishra

REPORTAB

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3613 OF 2016

Rajendra Diwan

.... App

versus

Pradeep Kumar Ranibala & Anr.

....Respondent

WITH

CA. NO. 10214 OF 2016

AND

C.A. NO. 3051 OF 2017

JUDGMENT

Indira Banerjee, J.

This appeal, purportedly under Section 13(2) of the Chhattisgarh Rent Control Act, 2011, hereinafter referred to as the “Rent Control Act”, is against an order dated 1.12.2015 of the Rent Control Tribunal at Raipur, confirming an order dated 14.09.2015 passed by the Rent Control Authority, whereby an application filed by the respondent-landlord for eviction of the appellant tenant under

Section 12 of the Rent Control Act has been allowed.

2. Section 13(2) of the Rent Control Act provides:-

(1) Notwithstanding anything to the contrary contained in this Act, a landlord and/or tenant aggrieved by any order of the Rent Controller shall have the right to appeal in the prescribed manner within the prescribed time to the Rent Control Tribunal.

(2) Appeal against an order of the Rent Control Tribunal shall lie with the Supreme Court.

3. By an order dated 18.4.2016, a Bench of this Court expressed serious doubts about the maintainability of the appeal, observing that the State of Chhattisgarh prima facie lacked legislative competence to enact law providing for statutory appeals directly to the Supreme Court, from the orders of a Tribunal. Notice was, accordingly, directed to be issued to the Attorney General for India and the Advocate General for the State of Chhattisgarh.

4. On 19.4.2017, another Bench of this Court heard amongst others, the Advocate General for the State of Chhattisgarh. The Advocate General, inter alia, argued that the Rent Control Act having received the assent of the President of India, Section 13(2) thereof was protected by Article 138(2) read with Article 200 of the Constitution of India and was valid and enforceable.

5. After hearing Counsel and the learned Advocate General for the State of Chhattisgarh, the Bench was of the view that the appeal involved a substantial question of law as to the interpretation of the Constitution, and accordingly referred the appeal to the Chief Justice of India, for assignment to a Constitution Bench of this Court, in terms of Article 145(3) of the Constitution. The Chief Justice has referred the appeal to this Bench.

6. The question which requires to be determined by this Bench is, whether Section 13(2) of the Rent Control Act is ultra vires the Constitution of India, by reason of lack of legislative competence of the Chhattisgarh State legislature to enact the provision.

7. Before dealing with the arguments advanced before this Bench, the relevant provisions of the Constitution of India are set out hereinbelow for convenience:-

“124. Establishment and constitution of Supreme Court (1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges

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130. Seat of Supreme Court. - The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

131: Original jurisdiction of the Supreme Court Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute –

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

132: Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.-

(1) An appeal shall lie to the Supreme Court from any judgement, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) omitted w.e.f. 1.8.1979 (3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Explanation.- For the purpose of this article, the expression “final order” includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

133: Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.-

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134A

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgement, decree or final order of one Judge of a High Court.

134: Appellate jurisdiction of Supreme Court in regard to criminal matters.-

(1) An appeal shall lie to the Supreme Court from any judgement, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court –

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) certifies under article 134A that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

134A: Certificate for appeal to the Supreme Court.- Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134. –

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.

135: Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.- Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article

134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law. 136: Special leave to appeal by the Supreme Court.- (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

137: Review of judgments or orders by the Supreme Court.-

Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it. 138: Enlargement of the jurisdiction of the Supreme Court.-

(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court. 139: Conferment on the Supreme Court of powers to issue certain writs.-

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

139A: Transfer of certain cases.-

(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any

other High Court.

140: Ancillary powers of Supreme Court.-

Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

141: Law declared by Supreme Court to be binding on all courts.-

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

142: Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.-

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself. 143: Power of President to consult Supreme Court.- (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

144: Civil and judicial authorities to act in aid of the Supreme Court.-

All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

145: Rules of Court, etc.-

(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court....” xxx xxx xxx

200. Assent to Bills. When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

201. Bill reserved for consideration.- When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as it mentioned in the first proviso to Article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.

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245. Extent of laws made by Parliament and by the Legislatures of States.-

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation.

246. Subject-matter of laws made by Parliament and by the Legislatures of States.- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution

referred to as the “Union List”).

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”). (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

247. Power of Parliament to provide for the establishment of certain additional courts.- Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

248. Residuary powers of legislation.-

(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List (2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists

262. Adjudication of disputes relating to waters of inter- State rivers or river valleys.- (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.- (1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides-

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts-

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State, shall be in the English language.

(2) Notwithstanding anything in sub-clause (a) of clause (1), the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State:

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.”

8. Learned Counsel appearing on behalf of the appellant submitted that the Rent Control Act has been enacted by the Chhattisgarh State Legislature, in exercise of legislative power conferred by Entry 18 of List II, that is, the State List in the Seventh Schedule to the Constitution of India.

9. Counsel argued that Entry 77 of List I, that is, the Union List, confers exclusive power to the Union Legislature, to legislate with regard to the constitution, organisation, jurisdiction and powers of the Supreme Court, including contempt of such Court, whereas Entry 65 of the State List enables the State Legislature to legislate in respect of the jurisdiction and power of all Courts, except the Supreme Court.

10. Learned Counsel argued that Section 13(2) of the Rent Control Act does not confer any additional jurisdiction to the Supreme Court, which the Supreme Court did not otherwise possess. Section 13(2) of the Rent Control Act confers appellate jurisdiction to the Supreme Court of India, which the Supreme Court, in any case, always had and still has under Article 136 of the Constitution.

11. Learned Counsel further argued that Entry 77 enables the Union Parliament to legislate with regard to the constitution, organization, jurisdiction and powers of the Supreme Court of India. According to Counsel, the scope of this Entry cannot be widened to include the appellate jurisdiction of the Supreme Court.

12. Counsel emphatically asserted that Article 138(1) provides that the Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List, as Parliament may by law confer. This provision, according to Counsel, can only be understood to include the original jurisdiction of the Supreme Court.

13. Counsel argued that Article 138(2) provides that the Supreme Court shall have such further jurisdiction and powers with respect to any matter, as Government of India and the Government of any State may, by special agreement, confer, if Parliament by law provides for exercise of such jurisdiction and powers by the Supreme Court.

14. Learned Counsel next argued that Section 13(2) of the Rent Control Act is in consonance with Article 138, read with Article 200 of the Constitution of India, which enables the State Legislature to enact law curtailing the jurisdiction of the High Court, subject to the assent of the President of India.

15. Counsel further argued that if, in the opinion of the Governor, any Bill, if it becomes law, would so derogate from the powers of the High Court, as to endanger the position which the High Court is by the Constitution, designed to fill, the Governor is not to assent to the bill, but reserve the same for the consideration of the President.

16. Counsel submitted that a law which curtails powers of the High Court may be validated by Presidential assent. The State Legislature can restrict the appellate power of the High Court by providing for direct appeals to the Supreme Court.

17. Counsel argued that a comparative reading of Articles 138(2) and Article 200 show that the State can make a law conferring appellate jurisdiction on the Supreme Court in the following two conditions:

(i) When Government of India and Government of any State agree to confer jurisdiction and power on the Supreme Court [Article 138(2)];

(ii) When the President assents to the Bill forwarded by the Governor of the State [second proviso to Article 200]

18. Learned Counsel submitted that in this case, the conditions of Article 138(2) and the Second proviso to Article 200 have both been complied with. The President has, on reference by the Governor, assented to the Bill, which has resulted in a new enactment.

19. Learned Counsel argued that, as per Article 74 of the Constitution, the President is to act as per the aid and advice of the Council of Ministers. To strengthen his argument that the President cannot act independently, but can only act on the aid and advice of his Council of Ministers, Counsel cited *Samsher Singh vs. the State of Punjab and Anr.* reported in AIR 1974 SC 2192: (1974) 2 SCC 831.

20. According to Counsel, assent by the President, on the aid and advice of the Council of Ministers, tantamounts to compliance with the conditions in Article 138(2)

of the Constitution, as Presidential assent on the aid and advice of the Council of Ministers, means agreement between the State Government and the Government of India to confer appellate jurisdiction and power to the Supreme Court in relation to orders of the Rent Control Tribunal.

21. Counsel also emphasized on the difference in the language of Article 138 (1) and Article 138(2) and in particular the use of the expression, 'Government of India' in Article 138(2) as against the expression 'Parliament' in Article 138(1), to argue that the Government of India and the Government of any State may by special agreement confer further jurisdiction and powers to the Supreme Court, for which no statutory enactment of Parliament is necessary. The advice of the Council of Ministers to the President of India, to assent to a State enactment evinces an agreement between the Government of India and the State Government in that regard.

22. Counsel has also cited Puthiyadath Jayamathy Avva and Ors. vs. K.J. Naga Kumar and Ors. reported in AIR 2001 KER

38. The part of the judgment cited is extracted hereinbelow:-

“...if the President assents to a State law which has been reserved for consideration under Article 200, it will prevail notwithstanding its repugnancy to an earlier law of the Union. Thus, even if there is repugnancy, the law made by the Legislature of the State, if it was reserved for consideration of the President and has received his assent, will prevail in the State. Thus, from the Act XXX of 1976, it can be seen that it was reserved for the consideration of the President and the President has given his assent on 10-8-1976. Therefore, the argument of the learned Counsel for the appellants that the State enactment cannot override the Central enactment cannot be accepted as correct...”

23. Counsel finally argued that it was settled law that in case of any inconsistency between the provisions of the Constitution and the provisions of any statutory enactment, the various articles of the Constitution and the various provisions of the statutory enactments should be harmoniously construed.

24. Elaborating on his argument, Counsel pointed out that the expression “derogate from the powers of the High Court as to endanger the position which that Court by this Constitution, is designed to fill” in the last part of the second proviso to Article 200 alludes to derogation of the inherent powers of the High Court under Articles 226 and Article 227 of the Constitution of India. The Rent Control Act does not touch the power of the High Courts, of judicial review under Articles 226 and 227 of the Constitution of India. Section 13(2) of the Rent Control Act only confers appellate jurisdiction on the Supreme Court of India, which is not prohibited or barred under the Constitution.

25. Counsel emphatically reiterated his argument that the Rent Control Act has not conferred any jurisdiction on the Supreme Court, which it did not earlier possess. Article 136 provides for appeal to the Supreme Court against any order of any Court or Tribunal. Section 13(2) of the Rent Control Act is only in consonance with or may be an extension of the powers of the Supreme Court under Article 136.

26. The learned Attorney General for India, on the other hand, submitted that Section 13(2) of the Rent Control Act which provides for direct appeal to the Supreme Court of India, from any order passed by the Rent Control Tribunal, set up under the Rent Control Act, is unconstitutional, the same being beyond the legislative competence of the State Legislature of Chhattisgarh.

27. The learned Attorney General submitted that lack of legislative competence of the Chhattisgarh State Legislature, to enact Section 13(2) of the Rent Control Act, is evident from a mere reading of three entries in the Seventh Schedule of the Constitution of India, that is, Entry 77 of List I (Union List), Entry 65 of List II (State List) and Entry 46 of List III (Concurrent List).

28. The learned Attorney General submitted that it would be seen that Entry 77 of List I, read with Article 146(1) of the Constitution, confers on Parliament the exclusive jurisdiction to legislate with regard to the jurisdiction and powers of the Supreme Court of India. Furthermore, Entry 65 of List II, as well as Entry 46 of List III, prohibit a State Legislature from legislating in regard to the jurisdiction of the Supreme Court of India.

29. The learned Attorney General further submitted that the clear scheme and architecture of these entries is buttressed by other provisions in the Constitution, which confer only on Parliament the competence to legislate in regard to the Supreme Court of India. These provisions include Articles 124(1), 125(1), 125(2), 133(3), 134(2), 135(1), 137, 138(1), 138(2), 139, 140, 145(1), 262 and 348(1).

30. The learned Attorney General submitted that, the fact that the Rent Control Act had been reserved for the assent of the President of India, under Article 200 of the Constitution, and had received the assent of the President in terms of Article 201, would not in any manner alter the extent of legislative competence of the State Legislature. This is for the reason that, neither the Governor of any State, nor the President of India, may confer legislative competence on any legislative body, whether Parliament or a State Legislature, contrary to the provisions of the Constitution.

31. The learned Attorney General argued that the distribution of legislative powers between Parliament and the State Legislatures is governed by Chapter I of Part XI of the Constitution, including Articles 246 and 248, along with the three Lists contained in the Seventh Schedule to the Constitution. Any question of legislative competence

would have to be decided finally by this Court, in accordance with these provisions of the Constitution.

32. The learned Attorney General referred to the decision of this Court in K.K. Poonacha vs. State of Karnataka and Ors.

reported in (2010) 9 SCC 671, which interprets, inter alia, Article 31(3) of the Constitution, as it stood prior to its repeal. Article 31 pertained to the compulsory acquisition of property, and Clause (3) thereof stated that “No such law as stated in Clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent”. In K.K. Poonacha (supra), this Court opined:-

“What was implicit in the language of Article 31(3) was that the particular law was within the legislative competence of the State and such law did not violate the provisions contained in Part III or any other provision of the Constitution. The assent given by the President in terms of Article 31(3) of the Constitution to a law enacted by the legislature of a State did not mean that the particular enactment acquired immunity from challenge even though the same was not within the legislative competence of the State or was otherwise violative of any constitutional provision.”

33. The learned Attorney General submitted, and rightly, that the observations of this Court in K.K. Poonacha (supra) squarely apply to the grant of assent by the President of India under Article 201 of the Constitution.

34. The learned Attorney General submitted that it is worth noting that the Governor of a State may reserve a Bill for the consideration of the President of India for various reasons, including inconsistency with a parliamentary statute, impact of the statute on relations with other states, etc. In certain situations, the Governor is bound to reserve a Bill for the consideration of the President, including matters covered by the second proviso to Article 200, i.e. a Bill, which in the opinion of the Governor would “so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill”.

This is consistent with the role and duty of the Governor of a State, and the President of India, who, like the King of England will still have the right “to be consulted, to encourage and to warn”, as explained in Shamsher Singh (supra). However, the grant of assent by the Governor, or by the President, would not in any manner affect or control the issue of legislative competence of the legislature of the State.

35. The learned Attorney General also referred to a recent judgment of a Division Bench of this Court rendered on 15.10.2019 in Civil Appeal No.5153 of 2019 (H.S. Yadav vs. Shakuntala Devi Parakh) striking down Section 13(2) of the Rent Control Act as ultra vires the Constitution and beyond the scope of the powers of the State Legislature.

36. Parliament and the State Legislatures derive their power to make laws from Article 245(1) of the Constitution of India and such power is subject to and/or limited by the provisions of the Constitution. While Parliament can make law for the whole or any part of the territory of India, the State Legislature can only make laws for the State or any part thereof, subject to the restrictions in the Constitution of India.

37. Article 246, which distributes legislative powers between the Union Legislature and the State Legislature, confers exclusive power to Parliament to make laws in respect of the matters specified in List I in the Seventh Schedule, that is, the Union List. The Union Parliament also has, subject to Clause (3) of Article 246, the power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule, that is, the Concurrent List.

38. While Parliament has exclusive power under Article 246(1) of the Constitution to make laws with respect to the matters enumerated in the Union List, the State Legislature has exclusive power to make laws with respect to matters enumerated in the State List, subject to Clauses (1) and (2) of Article 246. Along with the Union Legislature, the State Legislature is also competent to enact laws in respect of the matters enumerated in the Concurrent List, subject to the provisions of Article 246(1).

39. The entries in the three lists, relevant to the issues referred to this Bench, that is, Entry 77 of the Union List, Entries 18 and 65 of the State List and Entry 46 of the Concurrent List are set out hereinbelow for convenience:-

“List I- Union List “77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.” List II – State List “18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

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65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.” List III - Concurrent List

46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.”

40. The Supreme Court has been established under Article 124 of the Constitution of India and derives its jurisdiction and powers from Articles 131 to 145 thereof. There is no provision in the Constitution which provides for direct appeal to the Supreme Court, from an order of a Tribunal constituted under any law enacted by a State Legislature.

41. Article 262(2) of the Indian Constitution which enables Parliament to enact law abrogating the power of the Supreme Court to adjudicate the disputes referred to in Article 262(1), and Article 348 of the Constitution of India in respect of parliamentary enactments relating to the language of the Supreme Court and the High Courts, referred to by the Learned Attorney General for India, are not really of relevance to the issue referred to this Bench for determination, except to demonstrate that all matters pertaining to the Supreme Court are exclusively within the legislative domain of Union Parliament.

42. Entry 18 of the State List enables the State Legislature to enact law with respect to land, including rights in and over land, land tenures including relation of landlord and tenant and the collection of rent. The State Legislature being clothed with power to enact law in respect of land tenures, including the relation of landlord and tenant and the collection of rent, it had legislative competence to enact the Rent Control Act, in so far as the same regulates the relationship of landlord and tenant and the collection of rent.

43. Article 323B inserted in the Constitution of India, with effect from 3rd January, 1977, by the Constitution (Forty Second Amendment) Act 1976 empowers the appropriate legislature to enact law providing for adjudication and/or trial by Tribunals, of any disputes, offences or complaints with respect to all or any of the matters in Clause (2) of the said Article.

44. Clause (2) of Article 323B was amended by the Constitution (Seventy fifth Amendment) Act, with effect from 15 th May, 1994 to inter alia insert clause (h), thereby enabling the appropriate legislature to make law, providing for adjudication or trial by Tribunals of any disputes, complaints or offences, in respect of issues relating to tenancy and rent, including regulation and control of rent.

45. The Explanation appended to Section 323B of the Constitution explains “appropriate legislature” in Article 323B to mean Parliament, or as the case may be, a State Legislature, competent to make laws with respect to the matter in accordance with the provisions of Part XI of the Constitution of India, which includes Articles 245 and 246.

46. On a conjoint reading of Article 323B and Articles 245 and 246 of the Constitution of India with Entry 18 of the State List in the Seventh Schedule, there can be no doubt that the State Legislature was competent to enact law to provide for adjudication and trial of all disputes, complaints and offences relating to tenancy and rent, by a Tribunal.

47. The Chhattisgarh State Legislature was thus competent to enact the Rent Control Act, to the extent that it provides for the adjudication of original disputes relating to tenancy and rent by the Rent Controller, and creates a Tribunal to decide appeals from orders of the Rent Controller, but subject to the exception, as discussed hereafter.

48. When the question of vires of any enactment is considered, it is to be seen, whether looking at the legislation as a whole, it can be said to be a legislation, substantially with respect to any of the matters, with regard to which the Legislature is competent to legislate, under any specific Article of

the Constitution, or any of the Entries in the relevant List in the Seventh Schedule thereto. Once it is held that it is so, the legislative power conferred by that Entry is to extend to all ancillary matters, which may fairly and reasonably be said to be comprehended in that arena, as held by the Federal Court in *United Provinces vs. Atika Begum* reported in AIR 1941 FC 16 (25) and reiterated by this Court in numerous judgments.

49. Section 13(2) of the Rent Control Act, providing for direct appeal to the Supreme Court from orders passed by the Rent Control Tribunal, is not ancillary or incidental to the power of the Chhattisgarh State Legislature to enact a Rent Control Act, which provides for appellate adjudication of appeals relating to tenancy and rent by a Tribunal. In enacting Section 13(2) of the Rent Control Act, the Chhattisgarh State Legislature has overtly transgressed the limits of its legislative power, as reiterated and discussed hereinafter.

50. While the widest amplitude should be given to the language used in one entry, every attempt has to be made to harmonize its contents with those of other Entries, so that the latter may not be rendered nugatory.

51. As observed above, both the Union legislature and the State Legislature derive their power to legislate from Article 245 of the Constitution of India. It is axiomatic that the legislature of a State may only make laws for the whole or any part of the State, while Parliament may make laws for the whole or any part of the territory of India. There is no provision in the Constitution which saves State laws with extra-territorial operation, similar to Article 245(2) which expressly saves Union laws with extra-territorial operation, enacted by Parliament. The Chhattisgarh State Legislature, thus, patently lacks competence to enact any law which affects the jurisdiction of the Supreme Court, outside the State of Chhattisgarh.

52. Entry 18 of the State List only enables the State Legislature to legislate with regard to landlord tenant relationship, collection of rents etc. This Entry does not enable the State Legislature to circumvent Entry 64 of the State List or Entry 46 of the Concurrent List which enable the State Legislature to enact laws with respect to the jurisdiction and powers of Courts, except the Supreme Court, or to render otiose, Entry 77 of the Union List, which expressly confers law making power in respect of the jurisdiction of the Supreme Court, exclusively to Parliament.

53. Entry 18 of the State List, which only enables the State Legislature to legislate with regard to land, land tenures, landlord tenant relationship, collection of rents etc. does not enable the State Legislature to enact law conferring appellate jurisdiction to the Supreme Court in respect of orders passed by an Appellate Rent Control Tribunal, constituted under a state law.

54. In view of Entry 77 of the Union List, only Parliament has the legislative competence to legislate with respect to the constitution, organization, jurisdiction or powers of the Supreme Court. Entry 64 of the State List and Entry 46 of the Concurrent List enable the State Legislature to enact law with respect to the jurisdiction and powers of Courts except the Supreme Court. In other words, the said Entries expressly debar the State Legislature from legislating with respect to the jurisdiction of the Supreme Court.

55. Article 323B (3)(d) provides that a law made under Article 323B (1) may exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals. Article 323B does not enable a State Legislature to expand the jurisdiction of the Supreme Court by enacting a provision for further statutory appeal to the Supreme Court from an order of an Appellate Tribunal.

56. The contention of Counsel for the appellant that Section 13(2) of the Rent Control Act does not confer on the Supreme Court, jurisdiction it did not already possess, but is only incidental to and/or extension of its power under Article 136, is not sustainable in law.

57. Under Article 136 of the Constitution, the Supreme Court does not act as a regular court of appeal. The power of the Supreme Court under Article 136 is not to be confused with the appellate power ordinarily exercised by appellate courts and Tribunals under specific statutes.

58. Article 136 does not confer a right of appeal on any party, but confers a discretionary power on the Supreme Court to interfere in appropriate cases. This power can be exercised in spite of other provisions for appeal contained in the Constitution, or any other law, as held in *N. Natarajan vs. B. K. Subba Rao* reported in (2003) 2 SCC 76.

59. Conclusiveness or finality given by a statute to decision of a Court or Tribunal, cannot deter the Supreme Court from exercising this jurisdiction under Article 136 of the Constitution as held by a Constitution Bench of this Court, inter alia, in *Dhakeshwari Cotton Mills Ltd. vs. Commissioner of Income Tax, West Bengal* reported in AIR 1955 SC 65 and reiterated in numerous other decisions. appellate jurisdiction is not exercised when a statute gives finality to a decision of the Court or Tribunal.

60. Under Article 136 of the Constitution of India, the Supreme Court entertains appeals by special leave, where substantial questions of law or questions of public importance are involved. Where there is any uncertainty in the law, the Supreme Court, in its discretion, settles the law. The Supreme Court does not ordinarily interfere with concurrent findings of fact under Article

136. If the concurrent findings are based on accepted oral or documentary evidence, there is no interference under Article 136 of the Constitution.

61. While exercising power under Article 136 of the Constitution, the Supreme Court does not re-appreciate evidence which has been appreciated by the Trial Court and the High Courts, unless extraordinary circumstances exist. It is only where the High Court has completely missed the real point requiring adjudication or has missed or ignored the relevant material, would the Supreme Court be justified in getting into evidence for the purpose of preventing grave injustice to a party.

62. An appeal, on the other hand, is a continuation of the original proceedings. Where there is a statutory appeal from an appellate order of the Tribunal, the appellate court is obliged to rehear the case, re-appreciate and re-analyze the evidence on record, adjudicate the correctness of the order impugned and correct errors both of fact and of law, that the Tribunal may have made.

63. Article 200 of the Constitution relating to the passage of Bills except money Bills, requires Bills passed by the Legislative Assembly of a State, or in case of a State having a Legislative Council, a bill passed by both the houses of the Legislature of the State, to be presented to the Governor for assent. Such Bills become law on receipt of assent of the Governor.

64. The second proviso to Article 200 of the Constitution mandates the Governor not to assent, but reserve for the consideration of the President, any Bill, which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court, as to endanger the position which that Court is, by the Constitution, designed to fill.

65. Presidential assent is imperative in the case of law enacted by a State Legislature, which would derogate from the powers of the High Court, as to endanger the position which that Court is, by the Constitution, designed to fill.

66. Entry 65 of the State List read with Entry 46 of the Concurrent List, as stated above, enables the State Legislature to enact law with respect to the jurisdiction and powers of all Courts, except the Supreme Court with respect to any of the matters in those lists. The State Legislature may, therefore, be competent to enact law which affects the jurisdiction and powers of the High Court, except the jurisdiction and powers of the High Court under Articles 226 and 227 of the Constitution, held by a Constitution Bench of this Court, to be an inviolable basic feature of the Constitution in *L Chandra Kumar vs. Union of India* and others reported in AIR 1997 SC 1125.

67. Counsel for the appellant is right in arguing that *L Chandra Kumar* (supra) pertains to the power of the High Court under Articles 226 and 227 of the Constitution of India. The State Legislature has the power to enact law which abridges the powers of the High Court, except those powers, which constitute an inviolable basic feature of the Constitution, such as the powers of the High Court under Articles 226 and 227.

68. The second proviso to Article 200, of the Constitution prohibits the Governor from assenting to a Bill, which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court, as to endanger the position which the High Court is, by the Constitution of India, design to fill. The Governor is obliged to reserve such bill for the consideration of the President.

69. The second proviso to Article 200 is not attracted in the case of Section 13(2) of the Rent Control Act, since it does not derogate from any power of the High Court. It is well settled that there is no inherent right of appeal. Right of appeal is conferred by Statute. A Statute is not invalid only because it has no provision of appeal to the High Court.

70. For the purpose of this reference, it is not necessary for us to go into the question of which curtailments of the power of the High Court would threaten the position which the High Court is required by the Constitution to fill.

71. The amplitude of power conferred by Clauses 1 and 2 of Article 246, makes the Parliament competent to make a law enlarging the jurisdiction of the Supreme Court with respect to any of the

matters enumerated in List I and III, even though such enlargement may not be contemplated by the various Articles of Chapter IV of Part V of the Constitution.

72. By virtue of the power conferred by Article 248 of the Constitution of India, the Parliament has, subject to Article 246 A of the Constitution, exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List. The residuary power of legislation thus rests with Parliament.

73. Suffice it to note that in view of Entry 65 of the State List and Entry 46 of the Concurrent List, the State Legislature can enact law which affects the jurisdiction of all Courts, except the Supreme Court. In other words it can enact law which affects the jurisdiction of the High Court, except under Articles 226 and 227, but it cannot enact law which touches the jurisdiction of the Supreme Court. The Rent Control Tribunal having been established under Article 323B of the Constitution, as observed above, the diminution, if any, of the jurisdiction of the High Court, except under Article 226 and 227, would be saved by Article 323B(3)(d) of the Constitution, but not the provision for statutory appeal to the Supreme Court.

74. The argument of Learned Counsel for the appellant that Article 138(1) and/or Entry 77 of the Union List only takes within its ambit, the Original jurisdiction of the Supreme Court, and not its appellate jurisdiction, is fallacious and without basis. There is no reason to restrict the scope of Article 138(1) or of Entry 77 of the Union List in the Schedule to the Constitution artificially. Entry 77 of the Union List, going by its plain meaning, as also Article 138(1) should include both Original and appellate jurisdiction of the Supreme Court.

75. The proposition urged by Counsel for the appellant that when a State Law gets the assent of the President of India, that law prevails in the States, notwithstanding repugnancy with an earlier Union law, is unexceptionable.

76. However, Presidential assent makes no difference in case of legislative incompetence. Presidential assent cannot and does not validate an enactment in excess of the legislative powers of the State Legislature, nor validate a statutory provision, which would render express provisions of the Constitution otiose. Presidential assent cures repugnancy with an earlier Central Statute, provided the State Legislature is otherwise competent to enact the Statute.

77. In view of our finding that Presidential assent would not validate a statutory provision which the legislature was incompetent to enact, we need not go into the question of whether the President had occasion to consider the repugnancy of Section 13(2) of the Rent Control Act with the provisions of the Constitution, including in particular, Entry 65 of the State List and Entry 46 of the Concurrent List, which expressly exclude from the State Legislature, the competence and/or power to enact law affecting the jurisdiction of the Supreme Court.

78. A law made under Article 323B (1) of the Constitution may exclude the jurisdiction of all Courts except the jurisdiction of the Supreme Court under Article 136 with respect to the matters falling within the jurisdiction of the said Tribunals. However, as observed above, Article 323B (2) (d) or any

other provision of the Constitution does not enable the State Legislature to enact law which provides for statutory appeals to the Supreme Court.

79. Section 13(2) of the Rent Control Act purports to confer a right of statutory Second Appeal to the Supreme Court. Even in case of concurrent findings of the Rent Controller and Rent Control Tribunal, where no serious question of law were involved, an appeal would have to be entertained and decided. Such a provision which mandates the Supreme Court to consider an appeal is clearly beyond the legislative competence of the State Legislature, as argued by the learned Attorney General. Article 200 as observed above does not and cannot validate an ultra vires enactment, which the concerned Legislature lacked competence to enact.

80. Article 138 (2) of the Constitution provides that the Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

81. It is difficult to accept the submission of Counsel appearing on behalf of the appellant, that reservation of a Bill for Presidential assent and consequential grant of Presidential assent, tantamounts to special agreement between the Government of India and the State Government, because the President acts on the aid and advice of the Council of Ministers.

82. A special agreement, in our considered view means, an independent agreement arrived at between the Government of India and the Government of a State through deliberations and negotiations and not just an approval of legislation by the President on the aid and advice of the Council of Ministers.

83. In any case, the Supreme Court may exercise further jurisdiction pursuant to a special agreement between the Government of India and the State Government on any particular issue, provided Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court. Parliament has not enacted any such law enabling the Supreme Court to exercise jurisdiction in respect of a subject matter agreed upon between the Government of India and the State Government. Article 138(2) is not attracted.

84. We are in full agreement with the judgment of this Court in H. S. Yadav (supra) declaring Section 13(2) of the Rent Control Act ultra vires the Constitution and beyond the scope of the power of the State legislature.

85. It is true, that in L. Chandra Kumar (supra) this Court held that Tribunals constituted under Articles 323A and 323B of the Constitution were subject to the writ jurisdiction of the High Courts, within whose jurisdiction they were located, as noted by this Court in H.S Yadav (supra).

86. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has

acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised “in the cloak of an appeal in disguise”.

87. In exercise of its extraordinary power of superintendence and/or judicial review under Article 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyze the evidence and/or materials on record. Whether the High Court would exercise its writ jurisdiction to test a decision of the Rent Control Tribunal would depend on the facts and circumstances of the case. The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of law.

88. In *L Chandrakumar* (supra) the Supreme Court in effect held that the power of the High Court under Article 226/227 of the Constitution, being an inviolable basic feature of the Constitution such power cannot be abrogated by statutory enactment or for that matter even by constitutional amendment. *L Chandrakumar* (supra) cannot be construed to enlarge the jurisdiction of the High Court under Article 226 and 227, to enable it to exercise appellate powers.

89. For the reasons discussed above, we hold that the State Legislature lacked legislative competence to enact Section 13(2) of the Rent Control Act. We, therefore, declare Section 13(2) of the Rent Control Act ultra vires the Constitution of India, null and void and of no effect.

.....J [ARUN MISHRA]J. [INDIRA BANERJEE]
.....J [VINEET SARAN]J. [M.R. SHAH]
.....J. [S. RAVINDRA BHAT] NEW DELHI;

DECEMBER 10, 2019