

EFFECTIVE IMPLEMENTATION OF RAJASTHAN RENT CONTROL ACT

THE LEGAL HISTORY OF RENT CONTROL LAWS

As in several other countries, rent control has been used in India as a tool of welfare governance. Though legislations have existed since pre-independence times, the Jawaharlal Nehru National Urban Renewal Mission ('JNNURM') has made rent control a contentious issue. JNNURM sees these legislations as an urban bottleneck that needs reform. Rent control in India was introduced to prevent pseudo-scarcity of rental housing post-World War II. In India first rent control legislation was introduced immediately after the First World War in Bombay in 1918 followed by similar legislations in Calcutta in 1920. By the end of the Second World War almost all the major cities and towns in the countries were covered by rent control measures. All these acts, born out of the inflationary aftermath of the First World War, were conceived as purely temporary measures to provide relief to the tenants against the demand of exorbitant rent and indiscriminate eviction by the landlords due to scarcity of houses in the urban areas. In India rent control laws can be differentiated into three distinct phases. The pre independence legislations form the First generation laws. The post independence legislation that protected tenancy rights forms the second generation laws. The legislations implemented in the period post the circulation of the Model Rent Control Legislation, 1992 ('MRCL') marked the era of third generation laws on the subject. A catena of judgments accepts that second generation rent control laws have been interpreted in favour of the tenant a lot more than was initially intended. Such is the gravity of the situation that 'biased' provisions in second generation laws have been declared to be void and ineffective. The accepted position of law remains that the legislations have to promote the complete intent behind the Act and not remain restricted to mere fulfilment of the object of the Act. In addition, the Model Rent Legislation that was to be the basis of reform of state laws, was adopted, albeit partly, in only four states. It has been accepted by the Law Commission of India in its 129th Report that the maximum number of disputes pending before courts is those relating to eviction. The legislations allowed for requisitioning houses lying vacant in tenantable conditions. Although introduced as a temporary measure, rent control legislations have somehow continued as a policy decision.

Under the Indian Constitution, housing (provision of) is a state subject. The enactment and enforcement of rent control laws is the responsibility of the individual states. Thus, the onus to implement reform lies on the states. Hence, the Central Government may guide the states but the power of implementation and reforming of these laws is left to the individual states. So to overcome this situation, the Ministry of Urban Development had prepared a Model Rent Control Legislation(MRCL) on the basis of series of consultations with State Governments and various experts in 1992. According to the MRCL overview, in 1992, rent control laws were to become applicable to towns which had a population above three lakhs as per 1991 Census. MRCL provides that Standard Rent is to be determined on the basis of 10 per cent or such percentage return as the State Government may decide on total cost consisting of two components viz., the market price of land in the year of commencement of construction, enhanced in the manner specified in (b) below, and the cost of construction, plus, where applicable, the cost of

renovations or major repairs. The MRCL recommends that landlords be heavily penalized for not occupying or for again letting out the premises within three years of getting possession on the basis of bona fide need. The MRCL provides for better care and repair of houses by including maintenance cost as part of payables by the tenant, thus making it feasible for the landlord to carry out repairs. The landlord can apply for a revision of rent on account of expenditure on special repairs to the house. Despite the circulation of a Model Rent Control Law among all the states by the central government in 1992, nothing of note has been done with regard to reforming the existing laws. Essential rights like the right to receipt of payment of rent are not provided for in all the acts. Provision like these should be standardized across all states. And in many states, no increase in rent is allowed except when improvements or modifications are made to the premises by the landlord with the consent of the tenants.

The common thread running through almost all rent control Acts and legislations is that they are intended to serve two purposes:

1. To protect the tenant from eviction from the house where he is living except for defined reasons and on defined conditions; and
2. To protect him from having to pay more than a fair/standard rent.

But most acts also confer upon the landlord the right to evict a tenant who is guilty of certain specified acts and also when the landlord requires the house for his own personal occupation. There are various grounds under which a landlord can evict a tenant. The most common of these are listed below.

1. Breach of condition of tenancy
2. Subletting
3. Default in payment of rent for specified period
4. Requirement of building for own occupation
5. Material deterioration in the condition of the building

One bone of contention over the years has been the feature of most Rent Control Acts to grant exemptions to the properties owned by the government. While some say that this is a discriminatory practice, their argument is dismissed by the assertion that the government is not expected to raise rents or eject tenants in the pursuit of higher revenues. Thus tenants of government owned properties are in no need of protection.

RAJASTHAN RENT CONTROL ACT, 2001

This Act has repealed the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. Issues that primarily arise in Landlord Tenant dispute pertain to following heads:

- **Title**

Madanlal Vs. M/s. Jain Brothers, 2015(2) DNJ (Raj.) 586

Question of title is not material in eviction matters.

LRS of Late Shri Guru Bux Singh Vs. Khem Singh, 2014(4) WLC (Raj.) 238

Transfer of property during eviction proceedings, purchaser can become landlord. Question of title, as such is alien to the proceedings under Rent Act.

- **Relationship**

Smt. Sharda Vs. Harji Lal Alika, 2017(2) WLC (UC) 642(Raj.)

It is duty of plaintiff to prove landlord tenant relationship. Court should see if landlord tenant relationship is proved or not in absence of which there can be no jurisdiction for decreeing the suit of landlord.

Ram Rao Singh Vs. Rikumoni Borkakoty, AIR 2018 Gau. 76

Section 9 of the Act can only be applied when it is proved that the litigating parties are landlord and tenant. Tenant paying rent to receiver appointed by High Court. Petitioner filing eviction proceedings claims to be landlord. Petition held not maintainable.

Om Prasad Sarin Vs. Ajit Mehra, AIR 2015(NOC) 1017(Del.)

Petitioners, legal heirs of original landlord co-owners were entitled to receive rent from tenant. Tenant failed to prove if petitioners are not owner then who else is. Existence of landlord tenant relationship established. Landlord is entitled to receive rent.

- **Ambit and scope of definition of Tenant**

Trilok Chand Jain Vs. Ratni Bai, AIR 2014 (NOC) 46(CHH)

After death of father, son continued father's business in same premises. Rent being paid by him on behalf of all LRS. Thus he is one of the joint tenants. Suit filed against him without impleading other LRS is maintainable (AIR 2001 SC 2251 followed).

Dr. Rikhy V. The New Delhi Municipality AIR 1962 SC 554

Occupier of a room in hotels cannot be a tenant.

Rameshwar V Sardar Amrik AIR 1974 Patna 195.

Person who is employee of a landlord and is occupying a building whether on payment of rent or without it is a tenant.

M/s. Bennett Coleman & Co Vs. P.C. Jain 1979(1) RCR 549(Delhi).

A servant permitted to live in house is a licensee, but he will be a tenant if he is given an interest in property separate and distinct from contract of service.

Smt. Suggi Devi Vs. ADJ, 1978(1) RCJ (All.) 452.

A person who occupies a portion of a building for a short period with the permission of the landlord; without entering into a contract, can be treated only as a licensee.

Rattan Devi Vs. Ball Kishan, 1978(2) RCJ 179(Delhi).

A long possession of premises by a person does not make him a tenant. He has to prove that he is the tenant.

Ghamandi Ram v. Shankarlal, 1965 RIW 333.

A person who occupies premises without the consent of the landlord and the occupier is not a sub-tenant or licensee, but is a trespasser, thus, he cannot be treated as agent under the Act.

Ram Prakash V. ShambooDayal, AIR 1960 All 395.

A paying guest is not a tenant.

- **Agreement**

LaxmiKanwar Vs. Mahesh Kumar , 2016(2) WLN(Raj.) 455.

Unregistered and unstamped agreement to sale is non-admissible in evidence.

Shakeel Ahmed VsAzizAhamad Khan, 2008(6)418

It was held that agreement of leave and licence in writing is conclusive proof of facts stated therein and no other evidence can be lead to prove otherwise.

- **Eviction**

Flora Elias nahoum Vs. Idrish Ali Laskar, AIR 2018 SC 650.;Halim Ali Vs. Smt. Barkat Ali, 2016(2) WLC(Raj.) 469.

Eviction can be ordered on sole proved ground.

Smt. ShardaNarayanlalAalikaVs.Harjilal AIR 2018(NOC) 174(Raj.)

When there is no proof as to when the tenancy was created; duration of tenancy, payment of rent, landlord-tenant also not proved. Defendant not liable to be evicted.

KhadiGramodhyogMandir Vs. KunwarBhagat Singh Choudhary, 2017(2)WLC (UC) 97(Raj.).

Availability of a shop to landlord during continuance of eviction proceedings cannot eclipse the necessity which existed at the time of filing eviction petition on ground of bonafide requirement of the landlord.

Rajendra Kumar Vs. KasturiBai, 2017(2)WLC(UC) 485(Raj.)

Renewal of lease requires fresh lease deed and registration and it cannot be automatic in terms of existing lease deed . Renewal clause only entitles the tenant to file a suit for specific performance. Bonafide need of landlord proved and tenant purchased premises which is adequate and suitable for him. Eviction order proper.

K. Ramnarayan and Ors. vs.Pukhraj and Ors. 2018(3)RLW2334(Raj.)

Once the Rajasthan Rent Control Act, 2001 was extended to the municipal areas, the Civil Courts would lose jurisdiction to adjudicate a dispute between a landlord and a tenant. No tenant could be evicted by a Civil Court. The eviction had to be as per the

Rajasthan Rent Control Act, 2001 and on the grounds specified in Section 9 thereof. Even where decrees of ejectment had been passed by the Civil Courts and matters were pending consideration in appeal, the civil proceedings would lapse.

Mohd.IrshadVs. MohdRiyaz, AIR 2018(NOC) 256(Chh).

Eviction suit by one co-owner without impleading other co-owners is maintainable.

Smt. Hazra Begum Vs. Mansoor Ali Hazi Ali, AIR 2013 (NOC) 197(All)

The objection of non-impleadment shall not be heard at the instance of a co-tenant who is very well represented and had full opportunity to contest the eviction proceedings.

Shyam Sunder Vs. Prakash Chand 2012(4)WLC(Raj.) 624.

New ground of eviction can be raised by amendment of the suit.

Roma Bhagat Vs. Nopany& Sons Pvt Ltd. , AIR 2015 (NOC) 21(Cal).

No eviction decree can be passed on ambiguous and conditional admission of tenant.

Habib Khan Vs. JaitunBai, AIR 2013(NOC)400(M.P.)

Mandatory requirement of bonafide need is not pleaded in absence of which eviction cannot be ordered.

V. DhanapalChettiar v. YesodaiAmmal, AIR 1979 SC 1745,

A seven judge bench of the Supreme Court of India, held that, In order to get a decree for eviction against the tenant, the notice is not necessary. The tenant continues to be a tenant even thereafter, that post the serving of the eviction notice. The landlord is under a duty to make out a case from the grounds mentioned under the concerned rent control legislation, and it shall be sufficient to have the eviction thereafter.

Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, AIR 1999 SC 2507 :

A bona fide requirement must be an outcome of a sincere and honest desire in contra-distinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a Judge of facts by placing himself in the place of the landlord is whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life.

- **Rent to be as agreed between parties**

M/s Zakia Begum Vs. Mrs.Sanaz Ali AIR 2010 SC 3385

The Act is a socio-economic legislative measure to give protection to certain classes of tenants. Rent payable in respect of the premises is the rent agreed between the landlord and the tenant . In case of agreed rent there is no dispute about the quantum of the rent.

- **Mode of Paying rent**

Smt. Krishna Bhasin Vs. Appellate Rent Tribunal 2017(8)WLC(Raj.)340

Payment of rent after notice by landlord if not made in mode contemplated in the Act makes tenant liable for eviction.

Lakhpatt Jain Vs. Appellate Rent Tribunal 2016(3)WLN 251(Raj.)

If a tenant is not being issued receipt for rent paid in cash , he can by sending notice to landlord ask for details of his Bank account. His failure to do so is at his peril.

Mode of deposit of rent in Court has been dropped in this Section 5. But it has been reintroduced in Section 22G wherein depositing of rent with the Rent Authority under certain conditions has been provided for.

- **Revision of Rent**

Iqbal Singh Vs. HarbansKaur 2015(2)WLC (Raj.) 395

Section 6 of the Act also permits revision of rent but it can be at the fixed rate provided under Section 6(1) of the Act notwithstanding any agreement contrary to it. The agreement executed prior to the commencement of the Act of 2001 would not be void, 'if it provides lower or higher rate for revision of rent though would be ineffective to the extent of rate of revision, if it is not @5% per year.

- **Receiver can file suit**

Shri Ram Infrastructure Ltd. Vs. Court Receiver AIR 2014 SC 2286

Receiver appointed to tenanted property with giving all powers by the court under O.41 R.1(d) can file eviction suit as he acts for purpose of administering and preserving estate which includes institution of eviction suit.

- **Bank**

Ratan Kumar Vs. State Bank of India, AIR 2013 All 115.

Bank while taking actual possession of mortgaged premises, can evict tenant only by taking recourse to provision of Rent Act & not otherwise.

- **Interlocutory Order**

KapilChandla vs. Appellate Rent Tribunal, Kota and Ors. (11.08.2015 - RAJHC) : 2016(4)CDR1621(Raj)

Primarily, the question which arise for our consideration, is as to whether the Appellate Rent Tribunal, in a pending appeal, against order of the Rent Tribunal, has a discretion vested to pass interlocutory order u/Sec. 19(10) of the Act, 2001 or it is dependent and

has to be in consonance/conformity with sub-sec. (3) of Sec. 20 of the Act, 2001. The Id. Single Judge of this court in *Naveen Sharma vs. Ram Dayal & Ors.*, decided on 10.02.2011 reported in 2011 (3) RLW 2060 (Raj.) after examining the scope of Secs. 19(10) & 20(3) of the Act, 2001 has observed that the discretion vested with the Appellate Rent Tribunal of passing interlocutory orders, pending appeal, u/Sec. 19(10) has to be restricted for grant of mesne profit, which cannot be at a rate more than provided/contemplated u/sub-sec. (3) of Sec. 20 of the Act, 2001.

Held

Sec. 20(3) of the Act, 2001 applies only in execution of final order or other orders on application of any party before the Rent Tribunal and Sec. 19(10) is neither dependent nor interrelated to Sec. 20(3) of the Act. Appellate Rent Tribunal u/Sec. 19(10) has a discretion to pass such interlocutory order, during pendency of appeal, which it may deem fit and proper in the facts & circumstances of the case keeping in view the inter-se rights of the litigating parties, while exercising equitable discretionary jurisdiction vested with the Appellate Rent Tribunal and exercise of discretion u/Sec. 19(10) is not restricted/dependent upon Sec. 20(3) of the Act and the Explanation appended thereto is in the form of a clarification for the Rent Tribunal while executing the orders passed under the Act, 2001 not to put the proceedings in abeyance mere on filing of appeal or other proceedings, if any, against order of issuance of certificate for recovery of possession and use of premises or immediate possession, before the Appellate Rent Tribunal but that is always subject to interlocutory orders, if any, passed by the Appellate Rent Tribunal u/Sec. 19(10) of the Act, 2001.

- **Delay in initiating proceedings, immaterial:**

Allegation of non-payment of rent by tenant for a long time made by landlord cannot be brushed aside merely on the ground that in case rent had not been paid, landlord would not have remained silent for such a long time vide Mohinder Singh v. MadanLal Sharma AIR 2002 SC 2624

- **Regular deposit in suit for eviction:**

Under various Rent Control Acts it is provided that in a suit for eviction on the ground of default in payment of rent tenant must pay/ deposit entire arrears of rent and shall continue to deposit monthly rent failing which his defence will be struck off; however, if he has made requisite deposit then decree for eviction on the ground of default in payment of rent will not be passed.

In .Shiv DuttJadiya v. Ganga Devi AIR 2002 SC 1163 it has been held that the monthly rent must be continued to be deposited in appeal also as appeal is continuation of suit and tenant cannot be permitted to enjoy the property without payment of rent. In the said case appeal had been filed by the landlord.

- **Mesne Profit**

Pokhar Das Vs. Govind Saran, 2012(3)WLC 438.

Mesne profit need not be bound on unrevised rate of rent.

Mohanlal Vs. Shri Krishna Kumar, 2014(4) WLC(Raj.)137.

Mesne profit are fixed looking to the location of premises, existing trend and rising trend in rental values. Amount can be awarded in addition to the contractual rent.

LRs BhanwarlalVs.Nirmal Kumar Duggar, 2013(2)WLC(Raj.)159.

Mesne profit need not be confined to rent payable.

ShyamShaanvsSheojiBhai and Anr.,(1977) 4 SCC 393.

The tenant continuing in occupation of the tenancy premises after the termination of the tenancy is an unauthorized and wrongful occupant and a decree for damages or mesne profits can be passed for the period of such occupation, till the date he delivers the vacant possession. Thus the court while deciding the suit can grant mesne profits to the landlord.

- **Defence to be struck off in what type of suit or proceeding:**

In Ladu Ram v. Ganesh Lal, AIR 1999 SC 3057 it has been held that if the suit for eviction is instituted on the ground of default for the requisite period of six months however in the plaint only relief of eviction is sought but no relief for payment of arrears is sought still provision of Section 13(5) will apply and the defence will be struck off.

- **Writ Jurisdiction in landlord tenant dispute**

Jacky Vs. Tiny and Ors. 2014(2)RCR(Rent)3,AIR 2014 SC 1615.

A petition under Article 226 or Article 227 of Constitution of India can neither be entertained to decide the landlord-tenant dispute nor it is maintainable against a private individual to determine an intense dispute including the question whether one party harassing the other party.

Hindustan Petroleum Corporation Limited vs. M/s. ShyamNarainMehra& Brothers,
(High Court vide judgment dated 29.7.2015 in D.B. Special Appeal (Writ) No. 345/2015:
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In eviction matters between landlord and tenant, the High Court exercises its power of superintendence, which is vested in it under Article 227 and not under Article 226 as in the case of power under Article 226 of the Constitution of India, the High Court in view of the pronouncement of the Supreme Court in ShaliniShyamShetty vs. Rajendra Shankar Patil,: (2010) 8 SCC 329 and Jacky vs. Tiny Alias Antony &Ors.,: (2014) 6 SCC 508 could not have been entertained such prayers and hence, writ appeal is not maintainable.

LaxmikantRevchandBhojwani Vs. Pratapsingh ,MohansinghPardeshi deceased through his heirs and LRs. 1995(6) SCC 576

The Act is a special legislation governing landlord-tenant relationship and disputes. The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

- **Rent Controller, the Rent Tribunal and the Appellate Board deemed to be Civil Courts or not**

Waryam Singh and Anr. Vs. Amarnath and Anr. AIR 1954 SC 215

The case debated on whether the High Court had conferred the power of judicial superintendence on the Judicial Commissioner over rent controller and the district judge and whether they were tribunals within the meaning of Article 227 of the Constitution of India. It was held that the rent controller and the district judge exercising jurisdiction under the East Punjab Rent Registration Act, 1949 were tribunals over which the Court of the Judicial Commissioner had the power of superintendence. It was also held that the Court of the Judicial Commissioner was right in interfering with the decision of the lower courts regarding the refusal to make an order of ejectment against the tenants who had failed to pay the rent as provided by the rent deed.

- **Directory nature of Section 15 of Rajasthan Rent Control Act 2001.**

Ramesh Kumar vs. Chandu Lal & Anr. (D.B.C. Special Appeal No. 1132/08) decided vide judgment dated 14.1.09.

- **Notice under Transfer of Property Act**

In Dhanapal Chettiar vs. Yesodai Ammal AIR 1979 SC 1745, the question before the Apex Court was as to whether in order to get a decree or order for eviction against a tenant under any State Rent Control Act it is necessary to give a notice u/s. 106 of the Transfer of Property Act?

The Court observed that it is true that the Rent Act is intended to restrict the rights which the landlord possessed either for charging excessive rents or for evicting tenants, but if within the ambit of those restricted rights he makes out his case, it is a mere empty formality to ask him to determine the contractual tenancy before institution of a suit for eviction. This was necessary under the Transfer of Property Act as mere termination of the lease entitled the landlord to recover possession. But under the Rent Control Acts it becomes an unnecessary technicality to insist that the landlord must determine the contractual tenancy. It is of no practical use after so many restrictions on his right to evict the tenant have been put.

The restricted area under the various State Rent Acts has done away to a large extent with requirement of the law of contract and the Transfer of Property Act. If “protection from

eviction is claimable by the tenant even after, determination of the contractual tenancy” then why import the contractual law engrafted in the Transfer of Property Act for seeking eviction of the tenant?

The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act, not otherwise. In many State statutes different provisions have been made as to the grounds on which a tenant can be evicted and in relation to his incurring the liability to be so evicted. Some provisions overlap those of the Transfer of Property Act. Some are new which are mostly in favour of the tenants but some are in favour of the landlord also. Here, one has to look to the provisions law contained in the four corners of any State Rent Act to find out whether a tenant can be evicted or not. The theory of double protection or additional protection held to have stretched too far and without a proper and due consideration of all its ramifications.

It was accordingly held that no notice to quit is necessary under Section 106 of the Transfer of Property Act in order to enable the landlord to get an order of eviction against the tenant.

- **Limitation Act not applicable**

Om Prakash Vs. Aswini Kumar Diss, AIR 2010 SC 379

If the statute doesn't provide extension of time for filing objection, the Rent Control Act cannot allow time under Section 5 of the Limitation Act.

- **Suspension of rent due to Covid**

Ramanand & Ors. Vs. Dr. Girish Soni & Anr. [CM APPL. 10847/2020]

Delhi High Court

The Tenants filed an application before the single bench of the DHC seeking suspension of the monthly rent directed to be paid by them to the Landlord vide the Stay Order due to the outbreak of COVID-19 and consequential disruption of business of the Tenants due to the lockdown imposed by the government. The Tenants pleaded that the outbreak of COVID-19 being a force majeure circumstance was beyond their control and therefore claimed waiver of the monthly rent. The DHC analysed the rights and obligation of the landlord and tenant qua force majeure under the provisions of ICA and TPA while determining whether a lessee has a right to claim suspension of rent due to occurrence of a force majeure event.

Held:

Temporary suspension of lease rent by the lessee for the occurrence of a force majeure event can be sought if the same is stipulated under the contract and not under Section 108(B)(e) of TPA. In the absence of a contract or a contractual stipulation, the tenant can seek suspension of rent by invoking the equitable jurisdiction of the court due to temporary non-use of the premises and question as to whether the suspension of rent ought to be granted or not would depend upon the facts and circumstances of each case.

Relying on the aforesaid observation and other factors relevant to the case of the Tenants, the DHC directed the Tenants to pay the use and occupation charges for the month of March 2020 on or before May 30, 2020 and for the months of April and May, 2020 by June 25, 2020. From June 2020 onwards, the payment of rent shall be strictly in accordance with the Stay Order.

LATEST JUDGMENTS OF SUPREME COURT

- HarbansKaur vs. Iqbal Singh and Ors. (29.01.2019 - SC) – 2019(2)SCALE193

Appellant was landlord of Shop which was let out to Respondent-tenant in August, 1995 at rent of Rs. 8,500 per month. A Rent Deed dated 19th August, 1995 was executed between parties. Rent deed contained a Clause for yearly increase of rent by 10%. Tenant continued to pay rent to landlord as per agreed rent with 10% enhancement yearly. Landlord filed an Application under Section 9 of Act, 2001 praying for eviction on ground of arrears of rent. Tenant filed reply opposing application. Tenant took stand that, in accordance with provisions of Act, 2001, which had come into effect from 1st April, 2003, on increasing rent under provisions of Section 6 in prescribed rent of Rs. 8,500 @ 7.5% per annum rate of rent from 1st April, 2003 came to be Rs. 13,600 per month. Rent Tribunal held that, case of tenant that rent was payable @ Rs. 13,600 per month could not be accepted. Tenant having not deposited at rate of Rs. 16,564 per month, had committed default in paying rent. An appeal was filed by tenant before Rent Appellate Tribunal which too was dismissed by order. Order of Rent Tribunal was upheld. Tenant aggrieved by order of Appellate Tribunal filed Writ Petition in High Court which writ petition was allowed by Single Judge vide its judgment. Against judgment of the learned Single Judge, Special Appeal (Writ) was filed which was dismissed by Division Bench vide its judgment holding writ appeal as not maintainable. Aggrieved against judgments of High Court landlord had filed present appeals.

Held, while allowing the appeal

1. A comparison of scheme of Section 6 as it existed in Act, 1950 and Section 6 as it brought under Act, 2001 made it clear that, although tenant under old Act was entitled to apply for fixation of standard rent, if rent was excessive whereas under Section 6 of Act, 2001 tenant had not been given any right to pray for reduction of rent. Section 6(1) began with words "Notwithstanding anything contained in any agreement". Section 6(1) Sub-clause (b) provided for "where premises had been let out on or after 1st January, 1950", provision contemplated that, rent payable at time of commencement of tenancy shall be liable to be increased at rate of 7.5% per annum.
2. Observation of High Court that landlord was entitled to rent as was payable on the date of commencement of Act, 2001 without its revision was perfectly correct. Landlord could not claim revision of rent as per agreement at rate of 10% per annum after enforcement of Act. However, present was not a case that, landlord was claiming rent after enforcement of the Act by adding 10% increase in rent.

3. When tenant was paying rent of Rs. 16,564 per month before enforcement of Act as per rent agreement, said amount was agreed amount which was being paid before enforcement of Act. In agreed amount which was being paid immediately before commencement of Act, the landlord could not increase @ 10% of rent as per agreement. Increase after enforcement of Act shall be in accordance with Section 6 and in event the tenant did not agree for said increase, landlord was free to file application under Section 6 read with Section 14.

4. Words "arrears of rent" meant arrears as demanded by notice and ground for eviction as contemplated under Section 9(a) was "tenant had neither paid nor tendered amount of rent due from him for four months". Payment and tendering of rent thus related to rent for four months. Tenant could not be heard saying that, since although his payment was done complying arrears of rent as demanded but since he had made payment upto December, 2003 and part of January, 2004, he should be relieved from eviction. Section 9 contemplated payment or tendering amount of rent due from him for four months. In event rent due from him for four months was not paid ground as contemplated under Section 9(a) was made out.

5. In present case, arrears demanded by notice i.e. Rs. 16,564 per month starting from August, 2003 to February, 2004 totalling Rs. 1,15,945 were required to be paid by tenant, tenant having paid only Rs. 95,200 as per his calculation of rent at rate of Rs. 13,600 per month had committed default. Landlord having not added 10% increase in rent demanded, there was no breach of Section 6 and High Court had committed error in allowing writ petition of tenant.

6. Judgment and order of the High Court was set aside and order of Rent Tribunal was restored. Appeal allowed.

- Kalpna Vyas vs. Raj Kumar Rangwani (29.10.2018 - SC) : AIR 2018 SC 5282

So the short question, which arises for consideration in this appeal, is whether the High Court was justified in allowing the Respondent's (tenant's) writ petition thereby justified in setting aside the appellate order of the Rent Appellate Tribunal and restoring that of the Rent Tribunal.

Held: The High Court had two options: first either to remand the case to the Rent Appellate Tribunal for deciding the appeal afresh on merits in accordance with law and second, to decide the matter itself on merits in accordance with law. Since the High Court heard the matter in its writ jurisdiction Under Article 227 of the Constitution, it was not possible to examine the issue on facts in detail like an Appellate Court. It is for this reason, in our view, the High Court ought to have resorted to first option and remanded the case back to the Rent Appellate Tribunal for deciding the appeal afresh on merits in accordance with law. The High Court, therefore, committed an error in not taking recourse to any option and without deciding the issue arising in the case on its merit, simply restored the order of the Rent Tribunal. This approach of the High Court caused prejudice to the Appellant (landlady) because there was no factual finding recorded either by the first appellate Court or the High Court on the question of bona fide need. It is for

this reason that we uphold the finding of the High Court in relation to the approach and the manner in which the Rent Appellate Tribunal decided the Appellant's appeal but consider it just and proper to remand the case to the Rent Appellate Tribunal for its decision on merits afresh in accordance with law.

- **AMENDMENT ACT 2017: BIRD EYE VIEW**

The Central Government had prepared a Model Rent Act as a part of the National Housing Policy, 2007 which is called “Draft Model Tenancy Act , 2015”. This was circulated to the States seeking their comments. This model was prepared keeping in view the interest of both the parties i.e. Tenants and Landlords.

The Rajasthan government brought The Rajasthan Rent Control Act, 2001(Act. No.1 of 2003) containing most of the features of the Model Act prepared by the Central Government but it still lacked on some aspects. By this amending Act these loopholes have been tried to be plugged. Some new features have been added suiting the State of Rajasthan including provision of ordering payment of rent and arrears during pendency of suit or/ and appeal.

A new authority named Rent Authority has been created under Section 22A to unburden judicial officers posted as Presiding Officers of Rent Tribunals and save their time from trivial or administrative like matters and rather concentrate on quick disposal of disputes between landlords and tenants.

Under Section 22A offices of the RAS not below the rank of Sub-Divisional Officers (SDOs) will be appointed by the State Government on the newly created office of the Rent Authority for jurisdictional area of every rent tribunal to perform functions under sections 22B, 22 D, 22G, 23 and 24 of the Act. Rent authorities will be ex-officio RAS Officers holding different offices who will perform duties of Rent Authority in addition to their existing duties.

All S.D.Os have been appointed ex-officio Rent Authorities for Municipalities falling within their jurisdiction for which Rent Act is applicable.

Amendments have been made in Section 9, 23, 24 and 28.

In clause€ of Section 2 of the Act reference was to repealed Municipal Act of 1959 which has now been rectified by referring it to new Municipal Act of 2009. This should have been done ling back. Again in this section definition of “Rent Authority” has been given by inserting a new clause (fa) .

Existing clauses (i) (ii) and (iii) in Section 3 of the Act have been deleted. Economic criteria of exemption has also been done away with.

In Section 9 a new option has been given to the tenant to deposit rent with the newly created Rent Authority. Where the tenant feels that the premises are in dispute or there is no clarity about who is the actual landlord, he, instead of withholding has to deposit the rent with the Rent Authority. This will serve double purpose. The Landlord can obtain rent regularly through the Rent Authority and tenant will not fall in default for non payment of rent or in arrear till the disposal of suit.

Insertion of new Section 19-A is aimed at empowering the Tribunal to order payment of rent as also arrear of rent by tenant to landlord regularly during pendency of petition or appeal. At present the tenant can withhold payment of rent during the trial of petition or/ and appeal. The Rent Tribunal and Appellate Tribunal at present, can only finally decide the matter of payment of rent. But now with this amendment a landlord can apply to Rent Authority to order the tenant to pay “all dues on account of rent forthwith” and also to continue to pay the rent during the pendency of the petition or appeal as and when it becomes due.

In newly inserted Section-21A, newly created Rent Authority has been bestowed powers and to adopt procedure as prescribed for the Rent Tribunal and Rent Appellate Tribunal under Section 21 of the Act while trying applications.

New Chapters V-A and V-B have been newly inserted.

In Chapter V-A under Section 22-A appointment of R.A.S. Officers, not below the rank of S.D.O.s are to be appointed as ex-officio Rent Authority which mean R.A.S Officers of any rank may be appointed to the office. Such appointment is to be notified in the official gazette viz. Rajasthan Gazette.

Any order passed by rent Authority is made appealable to the Rent Tribunal within a period of 60 days.

Order passed by Rent Authority cannot be challenged in any Civil Court which means it can only be challenged by filing of writ petition under Article 227 of the Constitution of India. Civil Court jurisdiction has been ousted in the matters assigned by the Rent Authority, under the Act of 2001.

Under Section 22-B no premises can be let out without written agreement in writing particulars of which has to be communicated to the Rent Authority jointly by landlord and tenant in Form ‘D’ prescribed by this Amending Act. Premises rented before the amendment Act are also required to be communicated in a similar way within a period of one year of commencement of the amending Act of 2017(Act No. 33 of 2017).

The Rent Authority shall maintain a register of such rent deeds which will be taken as evidence in the Rent and Appellate Tribunal. Anything not contained in the agreement shall not be received in evidence.

Section 22-C provides period of tenancy as may be agreed and also for its renewal at the request of the tenant by mutual agreement.

Chapter V-B provides for revision of rent upward in Section 22-D when landlord has made improvement. Repairs are not to be considered and if accommodation is reduced , tenant can claim reduction of rent. In case of conflict matter can be referred to Rent Authority who will under Section 22-E fix revised rent.

Section 22-F provides for security deposit “equals to one month rent” which will be refundable on vacation of premises within one month.

If landlord refuses to accept rent, tenant can deposit it with Rent Authority under Section 22-G to be credited to Personal Deposit Account.

This will augment ways and means of the State Government.

By amending of Section 23 powers powers to hear and decide discontinuance of amenities have been given to the Rent Authority instead of the Rent Tribunal.

By new Section 24-A neglect of repairs of the premises now will be referred to the Rent Authority instead of Rent Tribunal.

By Section 26-A Rent Authority has been declared as a public servant.

By substituting sub-section (3) of Section 28 court fee of Rs.100/- has been prescribed for petition under Section 22-F fixing of revised rent, Section 23 disconnection of amenities and Section 24 neglect of repairs.

Lastly a new Schedule D has been added for furnishing information of tenancy under newly inserted Section 22-B of the Act.

The amendments are prospective and not retrospective in absence of express intendment to be effective retrospectively.

Amending legislation has creased out difficulties faced by both, the landlord and the tenant, and has protected interests of them in a very balanced manner. Legislature has done a balancing work of providing much needed protection to both the parties viz. the landlord and the tenant.

THE FLAWED NATURE OF RAJASTHAN RENT CONTROL ACT, 2001

- Provisions posing hurdle in effective implementation of Act

Large chunk of the urban group has been excluded from the provision of the Rajasthan Rent Control Act. Section 3 clearly states that Chapter II and Chapter III of the Act will not apply

- To any premises belonging to or let out by the Central Government or the State Government or a local authority;
- To any premises belonging to or let out by any body corporate constituted by a Central Act or a Rajasthan Act;
- To any premises belonging to a Government company as defined under Sec. 617 of the Companies Act, 1956 (Central Act No. 1 of 1956);
- To any premises belonging to the Devasthan Department of the State, which are managed and controlled by the State Government or to any property of a Wakf, registered under the Wakf Act, 1995 (Central Act No. 43 of 1995);
- To any premises belonging to such religious, charitable or educational trust or class of such trusts as may be specified by the Slate Government by notification in the Official Gazette;
- To any premises belonging to or vested in a University established by any law for the time being in force;
- To any premises let to banks, or any Public Sector Undertaking or any Corporation established by or under any Central or State Act, or multinational companies, and private limited companies or public limited companies having a paid up share capital of rupees one crore or more;
- To an premises let out to a citizen of a foreign country or to an embassy, High Commission, Legation or other holy of a foreign State, or such international organisation as may be specified by the State Government by notification in the Official Gazette.

Moreover there is nothing illegal about charging a rent higher than the standard rent. Standard rents are fixed by the Rent Controller, only if the tenant or the landlord approaches him for this purpose. Even if there are no provisions in the Rent Control Act for increasing rents over time, the tenants often agree to an increase in rents to maintain good relations with the landlord.

- General

The structure of Rajasthan Rent Control Act renders them contradictory to other laws of the land in some situations:

- a) The law relating to the landlord's rights to evict the tenant can be found in the Transfer of Property Act, 1882. While a landlord can immediately start an action for eviction of a tenant on expiry of the notice of eviction under Section 106 of the Transfer of Property Act, 1882, he cannot start such an action where the rent control act applies, unless he can prove the existence of one of the grounds of eviction under the Rent Act.
- b) Some provisions of these acts have been repeatedly denounced by the courts as unreasonable.
- c) The various acts relating to the control of accommodation in urban areas including the Rent Control Acts are examples of legislation interfering with the right to hold and dispose of property under Article 19(1)(f) of the Constitution of India. But such acts exist because they are considered to be necessary in public interest in times of shortage of houses.

- **MODEL TENANCY ACT 2019**

Recently, the Ministry of Housing and Urban Affairs has drafted a 'Model Tenancy Act' (MTA), 2019.

- The Tenancy law is a 'model act', because land is a state subject and states will have the option to adopt or reject it.
- It envisages to balance the interest and rights of both the owner and tenant and to create an accountable and transparent ecosystem for renting the premises in disciplined and efficient manner.
- **Salient features of the draft:**
 - MTA stipulates a robust grievance redressal mechanism comprising of Rent Authority, Rent Court and Rent Tribunal.
 - Landlords will also be able to charge rents that are to be decided by the respective state governments, on par with market rates.

Also, It has been proposed to cap the security deposit equal to a maximum of two month's rent in case of residential properties and, a minimum of one month's rent in case of non-residential property.

- After coming into force of this Act, no person shall let or take on rent any premises except by an agreement in writing.
- The Model Act provides for its applicability for the whole of the State i.e. urban as well as rural areas in the State.

- It will be mandatory for both the landlord and the tenant to inform the rent authority after getting into an agreement.

This will ensure that a landlord does not arbitrarily increase the rent in variance with what has been agreed to in the agreement.

It will also ensure that the tenant is not evicted at the whim of the landlord

- A digital platform will be set up in the local vernacular language of the State for submitting tenancy agreement and other documents.
- This MTA will be applicable prospectively and will not affect the existing tenancies.

▪ **Significance of the draft MTA**

- It is expected to give a fillip to private participation in rental housing for addressing the huge housing shortage across the country.
- It will enable creation of adequate rental housing stock for various income segments of society including migrants, formal and informal sector workers, professionals, students etc. and increase access to quality rented accommodation, enable gradual formalization of rental housing market.
- The move could provide relief for both tenants and landlords and help take some load off India's overburdened litigation process.
- As per Census 2011, nearly 1.1 crore houses were lying vacant in the country and making these houses available on rent will complement the vision of 'Housing for All' by 2022.
- The draft seeks to unlock the potential of the vacant houses In India, by bringing transparency and accountability in the existing system of renting of premises and to balance the interests of both the property owner and tenant in a judicious manner.

▪ **Protection to Landlord and Tenant under MTA**

MTA proposes to give protection to landlord in following manner-

- a. Subletting of rented premises cannot be effected without prior consent of landlord inwriting along with disclosure of all details of sub-letting to landlord by the tenant.
- b. Landlord is allowed to make deduction from security deposit amount for any liability of the tenant.
- c. Landlord is allowed to deduct the amount from the security deposit or can ask the amount payable from the tenant, in case the tenant refuses to carry out scheduled or agreed repairs in the premises.
- d. Landlord can file an application to the Rent Authority against the tenant in case of cut-off or withhold of any essential supply or service in the premises by the tenant.

- e. Landlord can evict the tenant on an application made to the Rent Court on any of the grounds mentioned under Section 21. These grounds are-
- Failure of agreement on rent payable;
 - Failure of tenant to pay the arrears of rent in full and other charges payable unless the payment of the same within 1 month of notice being served on the tenant;
 - Tenant has parted with the possession of whole or any part of the premises without obtaining the written consent of the landlord;
 - Tenant has continued misuse of the premises even after receipt of notice from the landowner to stop such misuse;
 - The premises are required by the landlord for carrying out any repairs, additions, alterations etc., which cannot be carried out without the premises being vacated unless re-entry of tenant has been pre-agreed between the parties;
 - The premises or any part thereof are required by the landlord for carrying out any repairs, additions, alterations etc. for change of its use as a consequence of change of land use by the competent authority;
 - Tenant has given written notice to vacate the premises and in consequence of that notice, the landlord has contracted to sell the accommodation or has taken any other step, as a result of which his interests would seriously suffer if he is not put in possession of that accommodation.
- f. In case of overstay of the tenant beyond tenancy period, the landlord is entitled to get compensation of double of the monthly rent for 2 months and 4 times of the monthly rent.
- g. Landlord can make any construction or improvement to the rented premises after permission of the Rent Court obtained in this behalf.
- h. Landlord is allowed to fix or revise the rent payable by the tenant, provided the same should be agreed by the tenant in the tenancy agreement.

MTA has not only given protection to landlords but balances the interests of the tenants as well. With this view, MTA proposes to give protection to landlord in the following manner-

- a. In the event of death of the tenant, his/her successors will have the same rights and obligations as agreed in tenancy agreement for the remaining period of the tenancy.
- a. Rent cannot be increased during the tenancy period, unless the amount of increase or method for increase is expressly set out in the Tenancy Agreement.

- b. Tenant is entitled to get refund of the security deposit amount at the time of vacating the premises after deduction of amount of liability, if any.
- c. Tenant is entitled to get a written acknowledgment rent receipt by the landlord.
- d. Where the landlord refuses to accept the rent, tenant may deposit it with the Rent Authority.
- e. Tenant is allowed to deduct the amount from periodic rent, in case the landlord refuses to carry out the scheduled or agreed repairs in the premises.
- f. Where the premises becomes uninhabitable and landlord refuses for repairs, then the tenant has the right to vacate the premises after giving 15 days notice in writing to the landlord or with the permission of the Rent Authority, in case the.
- g. Tenant can file an application to the Rent Authority against the landlord in case of cut-off or withhold of any essential supply or service in the premises by the landlord.
- h. Tenant is entitled to get refund of such an advance amount and interest, in case of default, after deduction of rent and other charges in case of eviction proceedings initiated by the landlord under Section 21.
- i. Tenant may give up possession of the premises on giving a one-month prior notice or notice as required under the tenancy agreement to the landlord.

▪ **Drawbacks of the MTA**

Despite all the good attempts made in the provisions of MTA to remove the current problems relating to rental housing, MTA shortfalls on following grounds:

- a. Moreover, the term 'Landlord' covers 'Lessor' and the term 'Tenant' covers 'Lessee' in its definitions, but the MTA nowhere provides that it will override the provisions relating to Lease under the Transfer of Property Act, 1882. Therefore, usage of the term lessor/lessee would create conflict in practice since application of the Transfer of Property Act, 1882 is not clarified under the MTA .
- b. Lodging house and hotels are kept outside the scope of MTA. Therefore, application of the MTA to premises providing paying guest facilities is not clear.
- c. MTA provides for prospective application and gives no redress to tenancies, which are already in existence, prior to the commencement of MTA. Hence, position regarding existing tenancies is left untouched.
- d. Successor-in-interest has not been included in the definition of the term 'tenant' under Section 2 (m) of the MTA. However, Section 6 provides for successors of the tenant to come into the shoes of tenant in case of his/her

death. This provision creates anomaly that after death of tenant, his/her successor-in-interest may deny acceptance of tenancy agreement on the ground that he/she is not covered within the definition of the term 'tenant'.

- e. The term 'rent' is not defined under the Act, because of which, the form of rent payable is not clear, i.e. whether it has to be necessarily in cash or kind or crops or services rendered.
- f. The MTA does not address the situation in case of failure to execute tenancy agreement, failure to obtain consent of landowner for subletting, failure to refund security deposit at the time of taking over vacant possession of the premises by the landlord, failure to observe obligations imposed on parties. Although specific establishment of adjudicatory bodies has been provided under the MTA but the same results in increase of litigation matters before judicial bodies established under the MTA.
- g. MTA is open to be adopted by the States and does not necessarily impose application of its provisions to State.
- h. MTA does not talk about weak bargaining power of tenants and allows parties to agree on rent amount, which may cause prejudice to weaker sections of the society.
- i. MTA does not talk about over-riding effect of MTA on existing laws on tenancy, lease under the TPA, license under the Indian Easements Act, 1882 to uphold the objectives of the MTA.