# D.C. Bhatia And Ors. vs Union Of India (Uoi) And Anr. on 19 October, 1994

## Equivalent citations: JT1994(7)SC114, 1994(4)SCALE613, (1995)1SCC104, [1994]SUPP4SCR539, 1994 AIR SCW 5011, 1995 (1) SCC 104, 1994 SCFBRC 421, (1994) 56 DLT 324, (1994) 2 RENCJ 595, (1995) 1 RENCR 24, (1994) 2 RENTLR 610, (1994) 7 JT 114 (SC)

## Author: Suhas C. Sen

## Bench: M.N. Venkatachaliah, S.C. Sen, S.B. Majmudar

JUDGMENT

Suhas C. Sen, J.

1. This appeal has been heard along with a number of other appeals, special leave petitions and writ petitions. Common questions of law have arisen in all these matters relating to interpretation and constitutional validity of Section 3(c) of the Rent Control Act, 1958.

2. The Delhi Rent Control Act, as amended by Act No. 52 of 1988 came into effect from 1.12.88. Section 3(c) of the amended Act provided that the provisions of the Delhi Rent Control Act will not apply to any premises whose monthly rent exceeded Rs. 3,500/-.

3. The appellant thereupon filed a writ petition in the Delhi High Court challenging the validity of the newly inserted Section 3(c) of the Act. The appellant's writ petition was heard along with a batch of other writ petitions. By a judgment dated February 11, 1991, the Delhi High Court held that Section 3(c) was a valid piece of legislation and did not contravene any of the provisions of the Constitution. Following its judgment in Civil Revision No. 470 of 1981 (Nirmaljit Arora v. Bharat Steel Tubes), it also held that Section 3(c) was prospective and did not affect the cases that were pending on the date it came into operation.

4. The present batch of appeals are directed against the judgment of the Delhi High Court dated 11th February, 1991.

5. Section 3 of the Act lays down:

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

(a) to any premises belonging to the Government;

(b) to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government: Provided that where any premises belonging to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any court or other authority, the provisions of this Act shall apply to such tenancy.

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

(d) to any premises constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988, for a period of ten years from the date of completion of such construction.

6. The main contention of the appellant is that the provisions of Sub-section (c) of Section 3 is ultra vires Article 14 of the Constitution. It has been contended that the Legislature has not appreciated the present day realities of landlord-tenant relationship. If landlords are given a free hand to raise the rent of the premises then they will abuse this freedom and will demand unreasonable and exhorbitant rents. The classification of properties on the rental basis was arbitrary and discriminatory. In any event, the cut-off point of Rs. 3,500/- for the purpose of exclusion from the benefit of the Rent Control Legislation was fixed arbitrarily. Lastly, it was contended that provisions of Section 3(c) are prospective and will not apply to premises which were already tenanted on the date on which the Amending Act came into force.

7. Before dealing with the various contentions raised specifically, it will be useful to note certain facts leading to the insertion of Sub-section (c) in Section 3 of the Delhi Rent Control Act.

8. Various representations had been received by the Government about the hardship and injustice caused by the provisions of the Rent Act. An Economic Administration Reforms Commission set up under the Chairmanship of Shri L.K. Jha went into this question and its Report No. 11 presented to the Government in September, 1982, suggested a number of changes in the rent control law. The Commission pointed out that the freezing of rentals at old historic levels, the excessive protection of tenancy rights and the extreme difficulty of recovering possession of the accommodation even for the owner's own use had (a) hit hard the house-owner of modest means; (b) depressed property values and affected adversely the revenues of municipal bodies and the State and Central Governments; (c) imposed onerous burden on the administration and the judiciary and led to large number of pending cases; (d) rendered investment in housing for rental unattractive, inhibited the letting out of available accommodation, brought about a deterioration of the existing stock of housing through the neglect of maintenance, and thus had aggravated the acute scarcity of accommodation for hire; (e) encouraged various malpractices and abuses such as on-money (pugree), partial receipts for rent, capital consideration (in black money) for tenancy transfers, etc.; and (f) in general, tended to protect the haves against the have-nots, i.e., the tenant (even in affluent) as against the landlord (even in not so affluent) and the sitting tenant as against the prospective tenant who was looking for accommodation on rent.

9. The Commission in the background of the aforesaid findings made, inter alia, the following recommendations:

> (i) There is a case for confining rent control to the relatively modest premises occupied by the less affluent though it is difficult to draw a suitable dividing line for the purpose. We would urge the State Governments to consider this possibility. (ii) Considering the urgent need for new housing, and as an incentive for the construction of houses, there should be an exemption from rent control on all the new construction for a period of five years from the date of completion.

10. The National Commission of Urbanisation also made a report in which the following points were made:

> (i) Housing has been recognised as the basic need, ranked next only to food and clothing. But resources allocated and policies pursued have not yielded the expected results. Forty million people (about 25 per cent of India's total urban population) live in slums and under conditions of multiple deprivation - illegal land tenure, deficient environment and kutcha shelter. In addition, a significant number live in inner-city neighbourhood with decaying buildings and deficient services. The supply of new shelter units is not adequate to meet incremental needs - leave aside the backlog. This may lead to a doubling of slum population - 75 million by 2001. Nearly sixty per cent of households cannot afford a conventional pucca house and the lowest 10-15 per cent cannot even afford a serviced site. Furthermore, given the resource constraints, it is not possible to provide new pucca houses for all in the near future. The emphasis of housing policy therefore has to be on increasing shelter supply, improving and upgrading slums and conserving the existing housing stock.
>
> (ii) There are always some households which are either not interested in owning a house or just cannot afford to own one. For such households rental housing is the only option. In 1981, 56.80 per cent of urban households were living in rented premises. The main factors inhibiting investment in rental housing and in the maintenance of rental stock are the various rent control laws. The Commission had made extensive recommendations concerning reforming rent laws in its Interim Report, which have been reiterated here.

11. The Committee of the Secretaries recommended, inter alia,:

> The Committee endorsed the view that there was need basically to confine the protection of rent control law to the weak tenant and by and large exclude accommodations which were either non-residential in nature or were being used by better-off tenants. It was agreed that large residential premises with a rental value higher than a prescribed limit should be taken outside the purview of the Rent Control Act, since these are used by the relatively affluent tenants. In such cases higher rental incomes derived from the property would be subject to various taxes,

> and there was no need to artificially depress these incomes by application of Rent Control Act.

12. Subsequently the recommendations made by the Secretaries' Committee were examined by the Ministry and thereafter the decision was taken to amend the Delhi Rent Control Act.

13. In the Statement of Objects and Reasons, the purpose of the amendment by the Delhi Rent Control (Amendment) Act, 1988 was stated as under:

> The Delhi Rent Control Act, 1958 (59 of 1958) which came into effect on 9th February, 1959, provides for control of rents and lodging houses and for the lease of vacant premises to the Government within the Union Territory of Delhi.
>
> 2. For quite sometime, there have been demands from the Associations of house owners as well as tenants for amendment of Delhi Rent Control Act, 1958. The Committee on Petitions of Rajya Sabha, The Economic Administration Reforms Commission, Secretaries Committee and National Commission on Urbanisation have also recommended amendment of certain provisions of the Act. Considering these demands/recommendations as also the fact that with the passage of time, the circumstances have also changed, necessitating a fresh look at the tenant-landlord relationship, the amendment of Delhi Rent Control Act, 1958 has been proposed with the following objects:
>
> (a) To rationalise the present rent control law by bringing about a balance between the interests of landlords and tenants.
>
> (b) To give a boost to house building activity and maintain the existing housing stock in a reasonable state of repairs.
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> (c) To reduce litigation between landlords and tenants and to ensure expeditious disposal of disputes between them.
>
> 3. The Bill seeks to achieve the above objects.

14. The original proposal in the Bill was to exempt from the purview of the Rent Act those premises whose monthly rent exceeded Rs. 1,500/-. The Legislature, however, after considering various factors, drew the dividing line at Rs. 3,500/-.

15. On behalf of the appellants it has been contended that under the Act the premises have been divided into two categories - (a) premises in respect of which rent payable per month is more than Rs. 3,500/- and (b) the other premises in respect of which rent is Rs. 3,500/ - or less per month. This classification, according to the appellants, is unrealistic and without any reasonable basis. Having regard to the rent at which flats are let out in Delhi, one cannot possibly get any reasonable accommodation for less than Rs. 3,500/-. This means practically everybody in Delhi is being taken

out of the protection of the Rent Control Act.

16. It has further been contended that the figure of Rs. 3,500/- is a static and non escalating figure. In the case of Rattan Arya v. State of Tamil Nadu , it was clearly held that if the cut-off figure is static and non-escalating, then the same is arbitrary and invalid.

17. Moreover, by introducing a figure of Rs. 3,500/- for all tenancies irrespective of the vital differences in respect of the same, the Legislature has treated unequals equally and therefore the provision is contrary to Article 14 of the Constitution of India and therefore invalid. The Legislature has failed to take into account relevant factors such as the locality where the premises are situated, the number of persons inhabiting the premises, the size of the premises and the period of tenancy.

18. It was further contended that Section 3(d) applies to new buildings constructed after the Amending Act of 1988, came into force and its object is to give a boost to building activity. This has genuine nexus with the policy of the Act; but if Section 3(c) is retrospective, in the sense that it would apply to existing premises, then it cannot obviously give a boost to building activity and the introduction of such a provision will have no nexus to the object of the Act.

19. Various other arguments were made to establish that the classification of premises on the rental basis of Rs. 3,500/- was wrong and unreasonable. It was argued that premises being used for commercial purposes could not be equated to premises being used for residential purposes only. It was argued that a businessman may initially start his business in a locality in a small way and thereafter develop the business step by step. The locality, accessibility of the business place to the customers, goodwill are important factors for commercial establishments. If a landlord is given a free hand to evict a commercial establishment from his premises then it will be very difficult for the tenant to set up another commercial establishment in a new part of the city. This may in the long run lead to closure of the business altogether.

20. Taking this argument one step further it has been contended on behalf of the State Bank of India, Union Bank of India, Indian Banks' Association and other Banks that the Act has not made any distinction between public sector banks and other tenants. It was argued that if a public sector bank has to shift its place of business, then it will have to shift the entire banking services from one area to another. Banking services include setting up of vaults, and providing lockers to customers apart from usual merchant banking activities. Banks are opened only at sites approved by the Reserve Bank of India. The Banks have set up large number of branches in tenanted premises all over Delhi with the approval of Reserve Bank of India. The Banks did not try to purchase or build their own houses because of the security provided by the existing rent laws. It was, therefore, submitted that a classification on the rental basis regardless of all these factors make the classification arbitrary and violative of Article 14 of the Constitution and should be struck down.

21. It was contended on behalf of National Textile Corporation that it has been set up solely for the purpose of reviving sick textile mills. It could not be subjected to the same treatment as any other commercial establishment. The Government Companies have to discharge public duties and their activities have to abide by the provisions of Part-Ill of the Constitution. The distinction between

commercial activities of Government Companies and commercial activities of private corporate bodies has been ignored in the impugned legislation. This was also the argument of the Bihar State Electricity Board.

22. We are unable to uphold any of these contentions. The Rent Acts were enacted originally as temporary measures in order to protect the tenants from eviction and also from arbitrary enhancements of rent. Before these Rent Acts were passed rights and obligations of landlords and tenants were regulated by the provisions of the Transfer of Property Act, which was enacted in 1882. The Rent Laws which were passed by various State Legislatures drastically curtailed the landlord's power to enhance rent and evict the tenant.

23. The question whether these restrictions were justified in law or not, was raised in a large number of cases before this Court and the High Courts. The challenges were turned down by the Courts on the ground that these restrictions were necessary having regard to the economic condition of the Country at that time.

24. It was observed by Sarkaria, J., in the case of Naginda Ramdas v. Dalpatram Ichharam :

> The strain of the last World War, Industrial Revolution, the large scale exodus of the working people to the urban areas and the social and political changes brought in their wake social problems of considerable magnitude and complexity and their concomitant evils. The country was faced with spiralling inflation, soaring cost of living, increasing urban population and scarcity of accommodation. Rack renting and large scale eviction of tenants under the guise of the ordinary law, exacerbated those conditions making the economic life of the community unstable and insecure. To tackle these problems and curb these evils, the Legislatures of the States in India enacted Rent Control legislations.

25. The Rent Control Laws are now in force in Delhi for more than 50 years. New Delhi House Rent Control Order, 1939 was issued under Rule 21 of the Defence of India Rules. This was followed by a number of legislations like Punjab Urban Rent Restriction Act, 1941 which was extended to Delhi, Delhi Control Ordinance 1944, Delhi and Ajmer, Bhilwara Control Act, Delhi Tenants (Temporary Protection) Act, 1956. The present law i.e. Delhi Rent Control Act, 1958 was the last of a long line of legislations which were passed to control the rents and to restrict eviction of tenants except on the special grounds stated in the statute.

26. As a result of these legislations a host of problems have cropped up. These problems have been stated in the various Committee Reports set out earlier in the judgment. Representations were also made by the landlords highlighting these problems. In order to tackle the problems created by the Rent Act, the Delhi Rent Control Act was amended in 1988 by Delhi Rent Control Amending Act, 1988 (Act 57 of 1988).

27. The objects of the Amending Act are quite different from the objects of the parent Act. One of the objects of Amending Act was to rationalise the Rent Control Law by bringing about a balance

between the interest of landlords and tenants. The object was not merely to protect the weaker section of the community. In fact, the representations made by the landlords' association and the reports of various Committees indicated, the laws were being very often abused by the rich tenants against poor or middle class landlords. The Rent Act had brought to a halt house-building activity for letting out. Many people with accommodation to spare did not let out such accommodation for the fear of losing the accommodation altogether. As a result of all these, there was acute shortage of accommodation which caused hardship to the rich and the poor alike. In the light of this experience, the Amending Act of 1988 was passed.

28. In order to strike a balance between the interests of the landlords and also the tenants and for giving a boost to house building activity, the Legislature in its wisdom has decided to restrict the protection of the Rent Act only to those premises for which rent is payable upto the sum of Rs. 3,500/- per month and has decided not to extend this statutory protection to the premises constructed on or after the date of coming into operation of the Amending Act for a period of ten years. This is a matter of legislative policy. The Legislature could have repealed the Rent Act altogether. It can also repeal it step by step. It has decided to confine the statutory protection to the existing tenancies whose monthly rent did not exceed Rs. 3,500/-.

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

30. In the case of Harmon Singh and Ors. v. Regional Transport Authority, Calcutta and Ors. (1954) SCR 371, a Bench consisting of five Judges of this Court upheld a notification issued by the Regional Transport Authority, Calcutta Region, fixing lower tariff for smaller taxis. The benefit of this lower fare was given to "small motor taxi cabs of not below 10 H.P. and not above 19 H.P.". Mahajan, J., speaking for the Court observed:

> The only point for consideration in the appeal is whether the issue of licences to small taxi cabs between 10 and 19 H.P. to ply in the streets of Calcutta and the fixation of lower rates of tariff for this class of taxis than that prescribed for taxis between 22 and 30 H.P. violates the fundamental rights of the appellants who are owners of taxi cabs between 22 and 30 H.P., under articles 14 and 19(1)(g) of the Constitution. In our judgment, this question can be answered only in the negative. It has been repeatedly pointed put by this Court that in construing article 14 the courts should not adopt a doctrinaire approach which might well choke all beneficial legislation and that legislation which is based on a rational classification is permissible. A law applying to a class is constitutional if there is sufficient basis or reason for it. In other words, a statutory discrimination cannot be set aside as the denial of equal protection

of the laws if any state of facts may reasonably be conceived to justify it.

31. The Supreme Court of United States of America has also repeatedly stated that the constitutional guarantee of equality is offered only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. In the case of City of New Orleans v. Dukes 427 U.S. 297 (1976), the Court had to deal with an ordinance that banned all pushcart vendors from the French Quarter, except those in continuous operations for more than eight years. It was held:

> When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. ... Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude. Legislatures may implement their programme step-by-step ... in such economic areas, adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations ... In short, the judiciary may not sit as a super-legislature to judge the wisdom or undesirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines ..., in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment.

32. We were referred to a number of cases in course of the arguments. In the case of Raval & Co. v. K.C. Ramachandra and Ors. , the landlords had purchased a tenanted property in 1962 and made an application under Section 4 of the Madras (now Tamil Nadu) Buildings (Lease and Rent Control) Act, 1960 for fixation of fair rent. The tenants filed a writ petition seeking to restrain the landlords from proceeding with this petition, on the ground that the application was misconceived. The points raised in the writ petition were ultimately referred to a Full Bench of the Madras High Court, which held that the Tamil Nadu Act controlled both contractual tenancies and statutory tenancies, it was a complete Code in itself and enabled both landlords and tenants to seek the benefits of fixation of fair rent. Ultimately, the matter came to this Court and was heard by a Bench of Five Judges. Justice Alagiriswami, who delivered the majority judgment, analysed the Tamil Nadu Act and after referring to the earlier legislations relating to rent control, observed:

> The 1960 Act which replaced the 1949 Act adopted a completely new scheme of its own. It provided for the fixation of a fair rent on the basis of the cost of construction and the cost of land and after allowing for depreciation provided for a return of 6 per cent in the case of residential buildings and 9 per cent in the case of non-residential buildings. It also provided for increase in rent for such factors as locality, nearness to railway station, market, hospital, school etc. Another significant fact is that all new

> buildings constructed after 1960 were exempt from the scope of the Act. Still another departure was that the Act applies, in the case of residential buildings, only if the monthly rent does not exceed Rs. 250. The Act also provides for fixation of fair rent under the new provisions even though fair rent for the building might have been fixed under the earlier repealed enactments. All these show that the Madras Legislature had applied its mind to the problem of housing and control of rents and provided a scheme of its own. It did not proceed on the basis that the legislation regarding rent control was only for the benefit of the tenants. It wanted it to be fair both to the landlord as well as the tenant. Apparently it realised that the pegging of the rents at the 1940 rates had discouraged building construction activity which ultimately is likely to affect every body and therefore in order to encourage new constructions exempted them altogether from the provisions of the Act. It did not proceed on the basis that all tenants belonged to the weaker section of the community and needed protection and that all landlords belonged to the better off classes. It confined the protection of the Act to the weaker section paying rents below Rs. 250. It is clear, therefore, that the Madras Legislature deliberately proceeded on the basis that fair rent was to be fixed which was to be fair both to the landlords as well as to the tenants and that only the poorer classes of tenants needed protection. The facile assumption on the basis of which an argument was advanced before this Court that all Rent Acts are intended for the protection of tenants and, therefore, this Act also should be held to be intended only for the protection of tenants breaks down when the provisions of the Act are examined in detail. The provision that both the tenant as well as the landlord can apply for fixation of a fair rent would become meaningless if fixation of fair rent can only be downwards from the contracted rent and the contract rent was not to be increased. Of course, it has happened over the last few years that rents have increased enormously and that is why it is argued on behalf of the tenants that the contract rents should not be changed. If we could contemplate a situation where rents and prices are coming down this argument will break down. It is a realisation of the fact that prices and rents have enormously increased and therefore if the rents are pegged at 1940 rates there would be no new construction and the community as a whole would suffer that led the Madras Legislature to exempt new buildings from the scope of the Act. It realised apparently how dangerous was the feeling that only 'fools build houses for wise men to live in'.

33. Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 came up for consideration before this Court once again in the case of Rattan Arya v. State of Tamil Nadu and Anr. . In that case, vires of Section 30(ii) of the Act was challenged. This provision exempted from the operation of the Act 'any residential building or part thereof occupied by anyone tenant if the monthly rent paid by him in respect of that building or part exceeds four hundred rupees'. It was held:

> As a result of this provision while the tenant of a non-residential building is protected, whether the rent is Rs. 50, Rs. 500 or Rs. 5000 per month, a tenant of a residential building is protected if the rent is Rs. 50, but not if it is Rs. 500 or Rs. 5000 per month.

> The counter-affidavit does not explain why any distinction should be made between residential and non-residential buildings in the matter of affording the protection of the provisions of the Act.

34. The counter-affidavit was set out in extenso in the judgment to show that it did not state the reason for giving preferential treatment to the non-residential premises having regard to the object of the statute i.e., protection of the weaker section of the community.

35. The Court ultimately held:

> As we pointed out earlier, the argument based on protection of the weaker sections of the community is entirely inconsistent with the protection given to tenants of non-residential buildings who are in a position to pay much higher rents than the rents which those who are in occupation of residential buildings can ever pay. We are, therefore, satisfied that Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has to be struck down as violative of Article 14 of the Constitution. A writ will issue declaring Section 30(ii) as unconstitutional.

36. The main controversy in Rattan Arya's case was about the discrimination between residential and non-residential buildings. Section 30(ii) of the Tamil Nadu Buildings Act, 1960 was struck down on the ground that the argument based on protection of the weaker section of the community was entirely inconsistent with the protection given to tenants of non-residential premises.

37. Some observations were also made in a passage in that judgment on which strong emphasis has been placed by the appellants:

> It certainly cannot be pretended that the provision is intended to benefit the weaker sections of the people only. We must also observe here that whatever justification there may have been in 1973 when Section 30(ii) was amended by imposing a ceiling of Rs. 400 on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. We are entitled to take judicial notice of the enormous multifold increase of rents through out the country, particularly in urban areas. It is common knowledge today that the accommodation which one could have possibly got for Rs. 400 per month in 1973 will today cost at least five times more. In these days of universal, day to day escalation of rentals any ceiling such as that imposed by Section 30(ii) in 1973 can only be considered to be totally artificial and irrelevant today.

38. This observation has to be understood in the context of the facts of this case and also the provisions and the objects of the Tamil Nadu Act which were under consideration in that case. Reasonableness of taking away the protection of the Act from residential premises whose rent exceeded Rs. 400/- while continuing to give full protection to the non-residential premises, was under challenge. The object of the Act, as was emphasised in the judgment, was to give protection to the weaker section of the community and the various provisions of the Act were enacted to prevent

the unreasonable eviction of tenants in the State of Tamil Nadu. It was in that context observed that the ceiling of Rs. 400/- imposed in 1973 had become unreal in 1986.

39. But the amendment made to Delhi Rent Control Act is for a different purpose altogether. The various objects, as set out earlier in the judgment, include bringing about a balance between the interest of landlords and tenants and also giving a boost to house building activity. For this purpose, not only clause (c), but clause (d) also has been inserted in Section 3. Premises construed on or after coming into operation of the Delhi Rent Control (Amendment) Act, 1988 will be out of the purview of the Act for a period of ten years. The existing premises, residential or otherwise, whose monthly rent exceeded Rs. 3,500/- will also be out of the ambit of the Act.

40. So far the ceiling limit of Rs. 3,500/- is concerned, it is well settled that a provision initially valid can in the long run turn out to have become discriminatory. An exemption with the passage of time may not have any nexus with the objects sought to be achieved by the statute. But, as of now, it cannot be said that the persons, who are paying more than Rs. 42,000/- per year as rent, belong to the weaker section of the community. It is for the Legislature to decide which particular section of people require protection of any given point of time. This is a matter of legislative policy/The argument that unless an escalating figure of ceiling limit of rent is fixed the classification will become meaningless, pre-supposes that there will be continuous high price rise in future. It also pre-supposes that in such a situation the Legislature will not take any corrective step.

41. In the case of Motor General Traders v. State of Andhra Pradesh , Section 32(b) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 was held invalid by this Court, because it was per se discriminatory. It was pointed out that there were some justification for exempting new buildings which were 5, 7 or 10 years old when the Act came into force, in order to provide incentive to builders to build buildings. But there could not be any justification for continuing with this exemption indefinitely. A long period had elapsed after passing of the Act and this was a crucial factor in deciding the question whether the impugned law had become discriminatory or not. This case was decided on October 26, 1983. It was pointed out that the exemption had continued to remain in force for more than 25 years.

42. In the case of Delhi Cloth & General Mills Ltd. v. S. Paramjit Singh and Anr. , the writ-petitioners questioned the validity of Section 1(3) of Jammu & Kashmir Houses and Shops Rent Control Act, 1966 which at the material time stood as under:

> 1.(3) Notwithstanding anything contained in Sub-section (2), nothing in this Act shall apply to -
>
> (i) ...
>
> (ii) omitted
>
> (iii) any tenancy in respect of any house or shop where the income of the tenant, whether accruing within or outside the State, exceeds rupees 40,000 per annum;

Explanation: the word 'income' means 'net income'.

43. It was argued in that case that this clause was discriminatory and arbitrary because:-"it draws an artificial distinction between tenants on the basis of their income. Those tenants earning net income below Rs. 40,000 per annum are fortunate enough to be protected by the beneficial provisions of the Act, while a person like the appellant whose annual net income is undoubtedly in excess of the statutory limit of Rs. 40,000 is unreasonably and unfairly denied the protection of the Act. This statutory discrimination, it is contended, places persons like the appellant at the mercy of the landlords who can easily evict them by recourse to the far less restrictive provisions of the Transfer of Property Act, 1882 and on the strength of their agreements of lease.

Counsel for the appellant submits that the impugned clause does not take into account the nature of the building, but only the income of the tenant. The income of the landlord himself is irrelevant. The protection of the Act is withheld or extended, dependent solely on the financial capacity of the tenant and without regard to the need of the landlord or the age or other conditions of the building or any other factor. Treating tenants differently with reference to their annual income is not an intelligible classification, for the income of a tenant may very from year to year, depending upon the nature of his business and other factOrs. This variation in income may expose him to eviction in a particular year when the business is prosperous but protects him from eviction when the business declines and income falls. Furthermore, counsel says, "income" is not a clear and precise concept. Limiting it to net income does not make it clearer. What are the permissible deductions to arrive at the "net", the Act does not say. The section is invalid because it is too broad or vague. Any classification based on such vague differentia is unintelligible and, therefore, violative of Article 14. In any view, counsel submits, the classification sought to be made between persons falling on either side of the specified income has no reasonable relation to the object sought to be achieved by the statute. Counsel relies on the observation of this Court in Rattan Arya v. State of Tamil Nadu , declaring Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as unconstitutional. Counsel also relied upon the decision of this Court in Motor General Traders v. State of Andhra Pradesh , declaring Section 32(b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 as unconstitutional."

44. This argument was repelled by a Bench of three Judges of this Court. It was held:

> In Rattan Arya , this Court stated that a distinction between residential buildings leased on rent not exceeding Rs. 400 per month and all other buildings - whether residential or non-residential - was an unreasonable classification. There was no reason why non-residential buildings leased on rent of Rs. 400 per month or less should be treated differently from residential building of like rent or why in the case of residential buildings the limit should have been limited to Rs. 400 per month. To so restrict the protection of the Act was an unreasonable classification. In the Motor General Traders (1984) 1 SCC 222, this Court stated that to arbitrarily prescribe a cut off date, i.e., August 26, 1957, for denying the protection of the Act, without regard to the age of the building or to the extent of realisation of the investment by the owner was an unreasonable classification. These decisions do not, in our view, support the

> contentions of the appellant. On the other hand, a classification with reference to economic realities was upheld by this Court in Kerala Hotel & Restaurant Association v. State of Kerala . This Court stated (SCC p.517, para 31) "...those who can afford the costlier cooked food, being more affluent, would find the burden lighter. This object cannot be faulted on principle and is, indeed, laudable." Though that principle was stated in a different context, significantly this Court accepted a classification based on financial capacity.

45. It was observed in that judgment that "the Legislature in its wisdom is presumed to understand and appreciate correctly the problems of the State and the needs of the people made manifest by experience.... legislative innovation by social and economic experimentation must be permitted to continue without judicial interference." It was ultimately held:

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

46. The issues involved in this judgment bear close similarity to the issues raised in the instant case. In the case of Delhi Cloth & General Mills Ltd. v. S. Paramjit Singh (supra), the classification had been made on the basis of income of the tenant. Persons earning more than Rs. 40,000/- per annum were classified in one category and taken out of the ambit of the Act, whereas tenants having income upto Rs. 40,000/- were allowed to continue to enjoy the protection of the Rent Act.

47. In the instant case, the classification has been made on the basis of the rent payable on the premises. A person, who can afford to pay more than Rs. 42,000/- a year by way of rent will be, by any standard, an affluent person in our society. He cannot be said to belong to the weaker section of the community. The argument that the rent payable for any building in Delhi is very high and, therefore, Rs. 3,500/- per month is comparatively a low figure of rent, overlooks the fact that the Rent Act was passed initially to save the weaker section of the people from arbitrary and sudden enhancement of rent and also from eviction. If the argument advanced on behalf of the appellants is to be upheld, then it will have to be held that the people, who can afford to pay rent at the rate of more than Rs. 3,500/- per month, belong to the economically weaker section of the community and must also be protected. It was argued on behalf of the respondents that if a man is paying more than Rs. 42,000/- per year by way of rent, then his annual income should be at least Rs. 1,50,000/- per annum. Having regard to the average income of the people in India, such a person cannot be treated as an economically handicapped person. There is considerable force in this argument advanced on behalf of the respondents.

48. However, we need not go too deeply into this aspect of the controversy, as in our opinion, it is for the Legislature to decide whether or not any section of the people should be protected in any way by law. For this purpose, the Legislature can identify the section of the people who needs protection and decide how the classification will be done or what will be the cut-off point for the purpose of making such classification. The classification may be done on income basis or rental basis or some other basis. The Court can only consider whether the classification has been done on an understandable basis having regard to the object of the statute. The Court will not question its validity on the ground of lake of legislative wisdont

49. Moreover, the classification cannot be done with mathematical precision. The Legislature must have considerable latitude for making the classification having regard to the surrounding circumstances and facts. The Court cannot act as a super-legislature and decide whether cut-off point for the classification on the basis of monthly rent should be Rs. 3,500/- or Rs. 4,000/- or Rs. 5,000/-. If the classification is totally irrational and has no nexus with the object sought to be achieved by the statute, then only will the Court strike down such classification.

50. In the facts of this case, we are not persuaded to hold that the impugned Section 3(c) of the Delhi Rent Control Act violates Article 14 of the Constitution in any manner.

51. The next point relates to interpretation of Section 3(c) of the Delhi Rent Control Act. It was urged that the Delhi Rent Control (Amendment) Act came into force on 1.12.1988. The effect of Section 3(c) which was introduced by the Amendment Act was to remove those premises whose monthly rent exceeded Rs. 3,500/- from the ambit of the Delhi Rent Control Act. This amendment of the Rent Control Act would not apply to those tenancies which were created prior to 1.12.1988. It was argued that the Amendment Act has not been specifically made retrospective. Therefore, it could not affect the rights acquired by the tenants under the Rent Control Act before its amendment in 1988. Under the existing law, the tenants had acquired valuable property rights. The landlord could neither evict the tenant nor enhance the rent at will. A suit could not be brought against a tenant on the ground of expiry of the lease, whether a lease was for a fixed term, year to year or month to month, on the ground of expiration of period of lease. Filing of such suit was barred by virtue of Section 14 of the Rent Act. Some of the tenants who could afford to build did not build houses of their own because of the protection provided by the provisions of the Rent Act. Had these provisions not been there, these tenants or lessees might have built houses of their own or purchased properties elsewhere. These vested rights could not be disturbed unless the Amendment Act contained specific provisions to that effect.

52. We are unable to uphold this contention for a number of reasons. Prior to the enactment of the Rent Control Act by the various State Legislatures, the legal relationship between the landlord and tenant was governed by the provisions of the Transfer of Property Act. Delhi Rent Control Act provided protection to the tenants from drastic enhancement of rent by the landlord as well as eviction, except on certain specific grounds. The Legislature by the Amendment Act No. 57 of 1988 has partially repealed the Delhi Rent Control Act. This is a case of express repeal. By Amending Act the Legislature has withdrawn the protection hitherto enjoyed by the tenants who were paying Rs. 3,500/- or above as monthly rent. If the tenants were sought to be evicted prior to the amendment

of the Act, they could have taken advantage of the provisions of the Act to resist such eviction by the landlord. But this was nothing more than a right to take advantage of the enactment The tenant enjoyed statutory protection as long as the statute remained in force and was applicable to him. If the statute ceases to be operative, the tenant cannot claim to continue to have the old statutory protection. It was observed by Tindal, C.J., in the case of Kay v. Goodwin (1830) 6 Bing. 576, 582:

> The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.

53. The provisions of a repealed statute cannot be relied upon after it has been repealed. But, what has been acquired under the Repealed Act cannot be disturbed. But, if any new or further step is needed to be taken under the Act, that cannot be taken even after the Act is repealed.

54. In the case of Kewal Singh v. Smt. Lajwanti (1981) 1 SCC 290, vires of Section 25B of the Delhi Rent Control Act was challenged. Section 25B was inserted to provide the landlord with a speedy remedy of eviction in case of bona fide necessity of the landlord. A contention was raised on behalf of the tenants that the provisions of Section 25B violated Article 14 of the Constitution. Fazal Ali, J., speaking on behalf of the Court, repelled this argument by observing:

> Thus any right that the tenant possessed after the expiry of the lease was conferred on him only by virtue of the Rent Control Act. It is, therefore, manifest that if the legislature considered in its wisdom to confer certain rights or facilities on the tenants, it could due to changed circumstances curtail, modify, alter or even take away such rights or the procedure enacted for the purpose of eviction and leave the tenants to seek their remedy under the common law.

55. In the instant case, the Legislature has decided to curtail or take away the protection of the Delhi Rent Control Act from a section of the tenants. The tenants had not acquired any vested right under the Delhi Rent Control Act, but had a right to take advantage of the provisions of the repealed Act so long as that law remained in force.

56. In the case of Mohinder Kumar and Ors. v. State of Haryana and Anr. , the validity of the Amending Act of 1978 by which Haryana Urban (Control of Rent and Eviction) Act, 1973, was challenged. The Amending Act by which a category of newly constructed buildings were exempted from the provisions of the Act for a period of ten years, was challenged, inter alia, on the ground that the provisions operated retrospectively and sought to take away the vested rights of the tenants under the Act. This contention was repelled by this Court in the following words:

> The argument that the tenants have acquired a vested right under the Act prior to its amendment is without any substance. Prior to the amendment of Section 1(3) by the Amending Act of 1978, the provision as it originally stood cannot be said to have conferred any vested right on the tenants. The provision, as it originally stood prior to

> its amendment, might not have been constitutionally valid as the exemption sought to be granted was for an indefinite period. That does not necessarily imply that any vested right in any tenant was thereby created. The right claimed is the right to be governed by the Act prior to its amendment. If the Legislature had thought it fit to repeal the entire Act, could the tenant have claimed any such right Obviously, they could not have; the question of acquiring any vested rights really does not arise.

57. In view of the aforesaid, we are unable to uphold the contention that the tenants had acquired a vested right in the properties occupied by them under the statute. We are of the view that the provisions of Section 3(c) will also apply to the premises which had already been let out at the monthly rent in excess of Rs. 3,500/- when the amendment made in 1988 came into force.

58. The last contention was as to whether the term 'rent' is to be construed as 'standard rent' and not as the rent which is actually being paid. This argument is also not acceptable for a number of reasons. Firstly, the Legislature has not used the expression 'standard rent' in clause (c) of Section 3. Words normally should be understood in the ordinary dictionary meaning.

59. 'Standard rent' has been defined in the definition Section 2(k) to mean 'the standard rent referred to in Section 6 or where the standard rent has been increased under Section 7, such increased rent'. Section 3(c) applies to any premises whose 'monthly rent exceeds three thousand and five hundred rupees'. Clause (c) of Section 3 was introduced with a view to take away the benefit of the protection of the Act from the tenants who could afford to pay more than Rs. 3,500/- per month as rent.

60. It had been contended on behalf of the tenants that unless 'standard rent' was determined in accordance with the provisions of Section 6 of the Act, the provisions of Section 3(c) could not be made applicable. There is nothing in the wording of Section 3(c) to support this contention. Section 3(c) speaks of premises 'whose monthly rent exceeds three thousand and five hundred rupees'.

61. Moreover, the scheme and the purpose of the Act are clear. Tenants who could afford to pay more than Rs. 3,500/- per month by way of rent, were being removed from the protective umbrella of the Rent Act. Only thing that has to be seen for the purpose of deciding the class of tenants, who were being excluded from the ambit of the Rent Act, was the exact amount of monthly rent that was being paid on the relevant date i.e. 1.12.1988. There is no pre-condition of fixation of standard rent before application of the provisions of Section 3(c) of the Act.

62. In the judgment under appeal, it has been held that the provisions of Section 3(c) will not be applicable to the cases which were pending before the court. No argument was advanced on this point by any of the parties. We make it clear that we have not expressed any opinion on this controversy.

63. In view of the aforesaid, the appeal fails and is dismissed. There will be no order as to costs.

Civil Appeals Nos. 4264, 4345, 4351, 4353, 4354, 4355, 4356, 4357, 4489 and 5080 of 1991, Civil Appeal No. 447 of 1992, Special Leave Petitions (Civil) Nos. 11376, 12822, 13865, 14401 and 19250 of 1991, Special Leave Petitions (Civil) Nos. 2024, 8272 and 13586 of 1992, special Leave Petition (Civil) No. 142 of 1993, Special Leave Petition (Civil) No. ... (CC 15210) of 1991, Writ Petitions (Civil) Nos. 383 and 1141 of 1989, Writ Petitions (Civil) Nos. 228 and 946 of 1990, Writ Petitions (Civil) Nos. 9, 843, 920 and 1134 of 1991, Writ Petitions (Civil) Nos. 53, 166, 492, 529, 576, 665, 695, 697, 698, 752 and 951 of 1992, Writ Petitions (Civil) Nos. 16, 54, 251, 257, 262, 306 and 358 of 1993, Special Leave Petition (Civil) No. 11069 of 1993, Writ Petition (Civil) No. 530 of 1991, Writ Petitions (Civil) Nos. 51, 832, 889 and 895 of 1993 and Writ Petitions (Civil) Nos. 436 and 238 of 1994.

64. In view of our judgment in Civil Appeal No. 4265 of 1991, the above Appeals, Special Leave Petitions and Writ Petitions are also dismissed. There will be no order as to costs.