Abdul Khuddus vs H.M. Chandiramani(Dead) Thr Lrs. on 14 September, 2021

Equivalent citations: AIRONLINE 2021 SC 714

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Bench: A.S. Bopanna, Hemant Gupta

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1833 OF 2008

ABDUL KHUDDUS

VERSUS

H.M. CHANDIRAMANI (DEAD) THR LRS. &
ORS.

WITH

CIVIL APPEAL NO. 1834 OF 2008

JUDGMENT

HEMANT GUPTA, J.

1. The present appeals are directed against an order passed by the Division Bench of the High Court of Karnataka on 28.9.2006 in three First Appeals filed before it. The first appeal was against the judgment and decree passed by the Additional City Civil & Sessions Judge, Bangalore on 16.4.2005 in O.S. No. 10082 of 19951 whereby the suit of plaintiff, now represented by his legal heirs, for permanent and mandatory injunction was dismissed on 16.4.2005. The other appeal arises out of another suit filed by the plaintiff for claiming damages in O.S. No. 16643 of 1999 2 which was 17:19:39 IST Reason:

> 1 Hereinafter referred to as the 'first suit' 2 Hereinafter referred to as the 'second suit' decreed on 6.10.2003. The Plaintiff was found entitled to recover a sum of Rs.1,25,000/- as damages towards the loss/destruction of machineries, furniture, fittings and stock-

in-trade apart from the damages @ Rs.10,000/- per month towards the loss of business of plaintiff from 9.1.1995 till the possession is restored, subject to final decision of first suit. The defendants, official respondents and the owner, filed two separate appeals against the same. The third appeal arises out of first suit decided by the Additional City Civil Judge, Bangalore on 16.4.2005 whereby the suit of the plaintiff for permanent and mandatory injunction was dismissed.

2. All the three appeals were taken up and decided together by the High Court. The High Court dismissed the appeals arising out of the judgment and decree passed by the trial court in favour of the plaintiff whereas, the appeal arising out of judgment and decree in first suit filed by the plaintiff was allowed.

3. The plaintiff was inducted as a tenant on 7.5.1974 by an allotment order passed by the Rent Controller under Section 5 of the Karnataka Rent Control Act, 1961 3. The rented portion was on the first floor of the two-floor building of Premises No. 50, Ebrahim Saheb Street, Civil Station, Bangalore.

4. One Panduranga Shetty was the owner of the building. Such 3 For short, the 'Rent Act' building was constructed in 1903 with Mangalore tiles and wooden beams. The appellant Abdul Khuddus was arrayed as defendant No. 7 in the first suit and defendant No. 1 in the second suit and was the purchaser of the front portion of the building vide sale deed dated 18.3.1994. Sheikh Hyder purchased the rear portion of the building on the same date whereas one Sheikh Mohd. purchased the northern side of the building on 9.12.1994. The Bangalore City Corporation4 is the appellant in the third appeal.

5. The appellant herein filed an ejectment petition seeking ejectment of the plaintiff under Section 21(1)(j) of the Rent Act on the ground that the premises were required for bonafide use by the landlord for the immediate purpose of demolishing them and erecting a new building in place of the premises sought to be demolished.

6. A notice under Section 322 of the Karnataka Municipal Corporations Act, 19765 was issued by the Corporation on the ground that the building was in dilapidated condition, unsafe and dangerous. The plaintiff challenged the said show cause notice in W.P. No. 20400 of 1994 whereby an ad-interim stay was granted by the High Court. Later, Shri B. Ravi Kumar, Advocate was appointed as a Commissioner on 27.9.1994 to visit the property and submit a report which was done on 4 For short, the 'Corporation' 5 For short, the 'Act' 16.11.1994. In the report, it was stated that the building was in a bad condition and that there were also cracks in the building, leakage of water etc.

7. The High Court dismissed the writ petition on 8.12.1994 as the same was directed only against show cause notice. However, the High Court directed the officials of the Corporation not to demolish the building except pursuant to a final order to be made within four weeks. The operative part of the order of the High Court reads as under:

> "5. Accordingly this petition is disposed of with a direction to respondent-2 not to dismantle the building in question without making any final order pursuant to notice,

> Annexure-A and serving a copy of the final order on the petitioner. It is made clear that none of the respondents should take any steps to dismantle the building except pursuant to a final order made by respondent-2. It is further made clear that if the petitioner sustains any injury on account of the alleged dilapidated condition of the building, respondents 7 to 10 shall not be held responsible. Respondent-2 shall make the final order within four weeks to serve a copy of the same on the petition a week therefrom. Liberty is reserved petitioner to take steps as are allowed against the final order."

8. It is thereafter the Deputy Commissioner of the Corporation passed an order on 5.1.1995 after personally inspecting the building and returning a finding that the building was in poor condition. It was noticed that it was the duty of the Corporation to take action in order to prevent any imminent danger to the public independently of the dispute, if any, between the parties. The operative part of the order reads as under:

> "After careful consideration of all aspects the objections filed by the occupier Sri. H.M. Chandiramani are overruled and it is ordered and directed that the building situated at No. 50, Ibrahim Saheb Street, Bangalore, which is in a dilapidated and dangerous condition be taken down immediately to avoid any danger to the passers by.
>
> If the owner or occupier fails to take down the building within 3 days action will be taken by the Bangalore Mahanagar Palika under Section 462(2) of the K.M.C. Act, 1976 to take down the building at the cost of the owner and the said cost will be recovered as per Section 470 of K.M.C. Act, 1976."

9. The said order was served upon the plaintiff on 6.1.1995 at 5.20 PM and the building was demolished by the Corporation on 9.1.1995 at around 9 AM. The possession of vacant land was given to the owners. The order of demolition was not challenged in appeal in terms of Section 444 of the Act or before any other authority or forum.

10. The appellant relies upon the communication dated 09.01.1995 on behalf of Bina Chandiramani, wife of the deceased plaintiff, and Sharmila Chandiramani, daughter of the deceased plaintiff which was made in the handwriting of the daughter. It was averred that they have carried the goods such as garments, machinery, fittings etc., in the absence of the plaintiff in vehicle No. CAS 337, thus it was an implied surrender of possession.

11. The first suit was filed on 27.1.1995 for permanent injunction, though the building stood demolished on 9.1.1995. Subsequently, the suit was amended to claim relief for mandatory injunction and possession. The plaintiff had pleaded that he would be taking steps for contempt of court for disobedience of the orders of Court and for damages incurred, actual or general. The cause of action was said to have arisen on 25.01.1995 when the appellant attempted to commit criminal trespass into the schedule property in possession of the plaintiff. The relevant extract from the plaint reads thus:

> "9. .....The plaintiff will be taking steps against the defendant and corporation officials for contempt of court, disobedience of orders of Court and for damages incurred actual, general by the plaintiff separately.
>
> 10. In the meanwhile, the defendant, who, under law cannot be in possession of schedule premises and is attempting to take forcible possession of the same and letting out and alienate the same to others and also to put up construction. He cannot do so under law, until disposal of the HRC Petition. The plaintiff has legal right to be protected. The plaintiff is rudely shocked at the high handedness of the defendant. In the evening of 25.01.95, alongwith his henchmen, the defendant tried to commit criminal trespass into the schedule property and wanted to put up wall etc. whereupon the plaintiff made hue and cry and by which there was commotion and a oral complaint also given to the police, and in writing on 25.01.95 for which no acknowledgement was given, however the defendant could not succeed in his attempt and the plaintiff has sent copy of the said complaint under certificate of posting today to the police.
>
> 11. The cause of action for the suit arises within the jurisdiction of this Hon'ble Court at Bangalore on 25.01.95 and subsequently thereafter, when the plaintiff attempted to commit criminal trespass into the suit schedule property, within the jurisdiction of this Hon'ble Court."

12. The second suit was filed on 30.10.1995 claiming damages, though such right of damages was also available when the first suit was filed on 27.1.1995. As mentioned above, the first suit was decided on 16.4.2005 which is later than the decree in the second suit. In the first suit, a finding was returned that the second suit was barred by the provisions of Order II Rule 2 of the Code of Civil Procedure, 1908 6. The second suit was filed as an indigent person wherein the plaintiff claimed that he had 12 sewing machines, and other materials at the shop at the time of demolition. The learned trial court assessed the value of stock-in-trade of readymade garments and finished goods at around Rs.50,000/- and another Rs.25,000/- for fittings, fixtures, furniture, electrical fittings etc. The trial court further found that he had lost his earnings of Rs.10,000/- per month on the basis of Ex.P/40. The decree was to grant quantified damages and to pay Rs. 10,000/- per month till such time, the possession is handed over to the plaintiff.

13. In the first appeal, the Division Bench of the High Court inter-

alia held that:

> (i) There is lack of bonafides in issuing notice under 6 For short, the 'Code' Section 322 of the Act, therefore, the order passed is not legal and valid.

(ii) The notice has been issued without examining the fact that the plaintiff has got statutory protection under the Rent Act. The cause of action to demolish the building would arise only after passing an order under Section 462 of the Act and that action of the Corporation is tainted with legal

malafide.

(iii) The building was demolished in haste as the order was served upon the plaintiff at 17:20 hours on 6.1.1995 and the building was demolished on 9.1.1995 without giving clear 3 days of notice period.

(iv) Section 21 of the Rent Act has overriding effect under Section 322 of the Act as statutory protection is granted to the tenant. Therefore, the proceeding under Section 322 of the Act was not permissible.

(v) That the suit is not barred by the principles of Order II of Rule 2 of the CPC.

14. The High Court, thus, allowed the appeal holding that the building in question was demolished in haste and the plaintiff was thus entitled to possession of the building as he was unlawfully dispossessed of the same. The Corporation and the appellant were therefore directed to restore the possession within two months of a shop comparable in size and form in the built portion of the suit property.

15. Learned counsel for the appellant vehemently argued that the High Court proceeded on the assumption that there was an interim injunction on 15.2.1995 in the first suit, however the building already stood demolished on 9.1.1995. The first suit was filed on 27.1.1995 subsequent to the demolition. Still further, an application filed by the plaintiff under Order XXXIX Rule 2A of the CPC for violation of an interim order dated 15.2.1995 was dismissed on 10.8.1998. Thereafter, the first suit was decided on 16.4.2005. Thus, there is a factual error in the order passed by the High Court.

16. The proceedings were initiated against the plaintiff under the Act vide notice issued on 24.5.1994. The said order was challenged by the plaintiff before the Writ Court wherein a Court Commissioner was appointed who reported about the dilapidated condition of the building. The High Court had given four weeks' time to the Corporation to pass an order on the show cause notice issued. The order was passed on 5.1.1995 after giving an opportunity of hearing to the plaintiff and after visiting the site by the Deputy Commissioner of the Corporation. Thus, the plaintiff was well aware of the proceedings initiated against him by the Corporation. The order of dismissal of the writ petition on 8.12.1994 was not challenged by the plaintiff. Since the Corporation was given four weeks' time to pass a final order, therefore, the Corporation was bound to pass an order in terms of the direction of the High Court, which was passed on 5.1.1995. The said order was served on 6.1.1995. The building was demolished on 9.1.1995, which was the third day of serving of the said order. Therefore, there is no violation neither of the order of the High Court nor the building was demolished in haste.

17. It was also argued that the plaintiff was bound to include his claim for damages in the first suit which was filed on 27.1.1995 after the demolition had taken place. Since no grievance was raised in the first suit regarding damage to the property or to the loss of business, the second suit would be barred by the provision of Order II Rule 2 CPC. However, as per the plaintiff, the cause of action arose on 09.01.1995, when the plaintiff was dispossessed from the schedule property. The relevant

extract from the plaint of the second suit reads as under:

> "The cause of action for the suit arises within the jurisdiction of this Hon'ble Court at Bangalore on 09.01.95 being date when plaintiff was disposed from the schedule premises with his belongings etc. and as stated above and subsequently on various dates when notices have been issued and acknowledged by the defendants-6. The value of the suit for purpose of (illegible) and jurisdiction is as per valuation (illegible) plaintiff is indigent person and he may be permitted to prosecute the above case in pharma (illegible) as he is unable to pay court fee."

18. The finding of the High Court that notice under Section 322 of the Act was not bonafide as tenant has the protection of the Rent Act was assailed on the ground that the proceedings under the Rent Act are restricted between landlord and tenant to seek ejectment on the permissible grounds whereas the Act is much wider to ensure public safety on account of dilapidated building endangering the life and property of the occupants. Both the Acts operate in their assigned separate fields and therefore, it cannot be said that the Rent Act has the preference over the Act. It was also argued that the order passed by the Corporation on 5.1.1995 was keeping in view the building which was in old dilapidated condition and could be a cause of danger to the public. The finding of the High Court that the proceedings under the Act was an act of collusion between the owner and the Corporation is misconceived only for the reason that the appellant has withdrawn rent proceedings after the demolition of the building on 6.2.1995. The tenanted portion had ceased to exist after demolition; therefore, the relief of ejectment was no longer available to the appellant.

19. On the other hand, learned counsel for the respondents herein argued that the order of demolition was served upon the deceased plaintiff on 6.1.1995 at 5:20 pm and the building was demolished on 9.1.1995 at 9:00 am. Therefore, there was no clear three days' notice granted to the plaintiff to vacate the premises nor to avail any legal remedy. It was further argued that order under Section 322 of the Act could not be executed without passing an order under Section 462 of the Act. Learned counsel supported the findings of the High Court that it was high handedness of the officials of the Corporation and the appellant which led not only to loss of the premises but loss of business as well. Section 322 and Section 462 of the Act read as under:

> "322. Precautions in case of dangerous structures. – (1) If any structure be deemed by the Commissioner to be in a ruinous state or dangerous to passersby or to the occupiers of neighbouring structures, the Commissioner may, by notice require the owner or occupier to fence off, take down, secure or repair such structure so as to prevent any danger therefrom.
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> (2) If immediate action is necessary, the Commissioner may himself, before giving such notice or before the period of notice expires fence off, take down, secure or repair such structure or fence off a part of any street or take such temporary

> measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the manner provided in Section 470.
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> (3) If in the Commissioner's opinion the said structure is imminently dangerous to the inmates thereof, the Commissioner shall order the immediate evacuation thereof and any person disobeying may be removed by any police officer.
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> 462. Time for complying with order and power to enforce in default. – (1) Whenever by any notice, requisition or order made under this Act or under any rule, bye-law or regulation made under it, any person in required to execute any work, or to take any measures or do anything, a reasonable time shall be named in such notice, requisition or order within which the work shall be executed, the measures taken, or the thing done.

(2) If such notice, requisition or order is not complied with within the time so named, then whether or not a fine is provided for such default and whether or not the person in default is liable to punishment or has been prosecuted or sentenced to any punishment for such default, the Commissioner may cause such work to be executed, or may take any measure or do anything which may, in his opinion, be necessary for giving due effect to the notice, requisition or order as aforesaid.

(3) If no penalty has been specially provided in this Act for failure to comply with such notice, the said person shall, on conviction, be punished with fine not exceeding fifty rupees for such offence."

20. The plaintiff asserted that the area of the subject shop was 1000 sq. feet (approx.). Reliance was placed upon schedule of property given in plaint of the first suit. It was submitted that the right of a tenant survives even after demolition of tenanted premises. Reference was made to Section 27 of the Rent Act as well as three-judge bench judgment of this Court reported as Shaha Ratansi Khimji and Sons v. Kumbhar Sons Hotel Private Limited and Ors.7 holding that in terms of Section 108B(e) of the Transfer of Property Act, 18828, the destruction of tenanted property would not amount to determination of tenancy under Section 111 of the TP Act. Reliance was also placed upon some judgments of 7 (2014) 14 SCC 1 8 For short, the 'TP Act' the High Courts in support of such argument.

21. In respect of area of tenanted premises, the plaintiff relied upon the schedule of the property in the suit for injunction. Such schedule does not show the area in possession but shows the boundaries of the building. As per the Court Commissioner, the entire building measured about 38 feet x 16 feet. The Commissioner had given the report that northern side of the ground floor was damaged as in the inside wall, there were air cracks and leakage of water. Some of the portion of the building towards the northern side had already fallen down. The western side, adjacent to the northern wall was also in a very bad condition as the roof of the room was damaged by the cracks and leakage of water from the roof inside the northern wall. In the middle of northern wall on the first floor, 1½" cracks appeared inside the wall from the top of the roof. The length of the said crack

was about 6 feet from the top. The leakage of the water from the roof of the first floor and cracks were coming in the wall of the southern side as well. The Court Commissioner found that there were cracks in the building and leakage of water on the northern side wall. The area of tenanted premises was not an issue, which would be relevant as to whether the tenanted premises had been demolished without adequate notice or if the tenant has right to enter into possession of building constructed on the site in question.

22. We have heard learned counsel for the parties and found that the judgment and decree of the High Court cannot be sustained. The argument of the plaintiff was that in spite of demolition of the building by the Corporation, the tenancy rights survive as the right of tenancy is not only in building but also in the land. Thus, the plaintiff was entitled to equivalent size of shop in the building which has been constructed on the land of which the Plaintiff was a tenant on the first floor. Reliance has been placed on judgment of this Court in Shaha Ratansi Khimji wherein the godown in possession of the tenant was demolished. The assertion of the tenant in the said case was that the owner started digging of basement for construction of a hotel next to the wall of godown. The tenant filed a suit for injunction claiming restraint order against the owner from digging as it would endanger the godown. The tenant claimed by way of an amendment to reconstruct the walls of godown. The learned trial court dismissed the suit. The appeal as well as the second appeal against the said judgment was also dismissed. This Court, in an appeal directed against the three orders passed by the courts below interpreted Section 108(B)(e) of the TP Act holding that right has not been conferred by the statute on the lessor for determination, therefore, it will not be permissible for the Court to add another ground of base or fulcrum of ethicality, difficulty or assumed supposition. The tenancy rights would continue over the land even after the building was demolished. This Court approved the judgment of this Court reported as T. Lakshmipathi & Ors. v. P. Nithyananda Reddy & Ors.9 wherein the landlord initiated eviction proceedings on the ground that he requires the premises for his own bona fide use and that tenant was in arrears of rent and had also sub-let the premises. This Court overruled the judgment of this Court reported as Vannattankandy Ibrayi v. Kunhabdulla Hajee10 and held as under:

> “23. In Vannattankandy Ibrayi the learned Judges referred to the decision on common law, the principles in American jurisprudence, and various decisions of the High Courts and adverted to two categories of tenants, namely, a tenant under the Transfer of Property Act and the other under the State rent of laws and proceeded to interpret Section 108(B)(e) to hold that where a premises has fallen down under the circumstances mentioned therein, the destruction of the shop itself does not amount to determination of tenancy under Section 111 of the Act and there is no automatic determination of tenancy and it continues to exist.....
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> xx xx xx 27..... On the touchstone of this analysis, we respectfully opine that the decision rendered in Vannattankandy Ibrayi (supra) does not correctly lay down the law and it is, accordingly, overruled.
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> 28. In the present case, it is not in dispute that the respondent purchased the lessor's interest. The lease continued even thereafter and did not extinguish. The lease was

> subsisting when the shares of the land were purchased by the respondent. But the interest of the 9 (2003) 5 SCC 150 10 (2001) 1 SCC 564 lessee was not purchased by the respondent. What has been purchased by the respondent is the right and interest of ownership of the property. The interest of the appellant as lessee has not been vested with the respondent. Therefore, we are of the view that the tenancy of the appellant cannot be said to have been determined consequent upon demolition and destruction of the tenanted premises.
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> 29. In view of the facts and circumstances of the case, we have no other option but to set aside the impugned judgment and decree dated 18-7-2006 passed by the High Court of Judicature of Bombay in Shaha Ratansi Khimji & Sons v. Proposed Kumbhar Sons Hotel (P) Ltd. [Shaha Ratansi Khimji & Sons v. Proposed Kumbhar Sons Hotel (P) Ltd., Second Appeal No. 109 of 2006, decided on 18-7-2006 (Bom)] and judgment and decree dated 30-11-2005 passed by the Additional District Judge, Karad in RCA No. 86 of 2002. However, taking into consideration the fact that the appellant is not in possession of the suit property since long, we are not inclined to direct restoration of possession of suit property to the appellant. Instead we direct the respondent to pay a sum of Rs 20,00,000 (Rupees twenty lakhs only) in favour of the appellant towards compensation for depriving the appellant from enjoying the suit property within two months, failing which it shall be liable to pay interest @ 6% per annum from the date of the judgment."

23. A perusal of the above extract from the judgment shows that this Court noticed that there are two categories of tenants namely, a tenant under the TP Act and the other under the State Rent Laws. There is no assertion that the property in question in the said case was governed by State Rent Laws. It was a case where the owner started digging a ditch towards the northern side wall of the suit property. During the rainy season, the water used to get accumulated in the said ditch and that the owner closed the access road to the said property. It was also alleged that the owner went ahead with destruction of the godown and demolished the western wall of the godown. The judgment does not deal with statutory tenant protected by a particular statute but with the principles of a contractual tenancy in terms of Section 108(B)

(e) of the TP Act. In fact, the para quoted in the three judge bench judgment is an alternate argument raised in the Vannattankandy Ibrayi, which is evident from the following para:-

> "20. From the aforesaid decisions there is no doubt that if a building is governed by the State Rent Act the tenant cannot claim benefit of the provisions of Sections 106, 108 and 114 of the Act. Let us test the arguments of learned counsel for the appellant that on the destruction of the shop the tenant can resist his dispossession on the strength of Section 108B(e). In this case what was let out to the tenant was a shop for occupation to carry on business. On the destruction of the shop the tenant has ceased to occupy the shop and he was no longer carrying on business therein. A perusal of Section 108(B)(e) shows that where a premises has fallen down under the circumstances mentioned therein the destruction of the shop itself does not amount

> to determination of tenancy under Section 111 of the Act. In other words there is no automatic determination of tenancy and it continues to exist……." (Emphasis Supplied)

24. In Shaha Ratansi Khimji, the Court has considered the alternative argument assuming that Section 108(B)(e) of the TP Act is applicable. However, the primary argument that being a statutory tenant, right has to be culled out only from the Rent Laws had not been raised or considered. It is the alternative argument which has not found favour with the three Judge Bench in Khimji case. In respect of the statutory tenant, different aspects of rights of statutory tenant need to be examined, which are not the same as rights of a lessee under the TP Act.

25. A Seven Judge Bench in the judgment reported as V. Dhanpal Chettiar v. Yesodai Ammal11 was examining a question as to whether a statutory tenant is entitled to notice of termination of tenancy contemplated by Section 106 of the TP Act or not. It was held that since statutory tenant is entitled to protection under the Rent Act, therefore, the procedure prescribed under the TP Act would not be applicable. The Court held as under:

> "5. ….The subject being in the concurrent list, many State Rent Acts have by necessary implication and many of them by starting certain provisions with a non-obstante clause have done away with the law engrafted in Section 108 of the Transfer of Property Act except in regard to any matter which is not provided for in the State Act either expressly or by necessary implication.
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> xxx xxx xxx
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> 13. …The notice does not bring to an end such a relationship because of the protection given to the tenant under the Rent Act. If that be so then it is not necessary for the landlord to terminate the contractual relationship to obtain possession of the premises for evicting the tenant. If the termination of the contractual tenancy by notice does not, because of the Rent Act provisions, entitle the landlord to recover possession and he becomes entitled only if he makes out a case under the special provision of the State Rent Act, then, in our opinion, termination of the 11 (1979) 4 SCC 214 contractual relationship by a notice is not necessary.

The termination comes into effect when a case is successfully made out for eviction of the tenant under the State Rent Act. We say with utmost respect that on the point of requirement of a notice under Section 106 of the Transfer of Property Act Mangilal case [AIR 1965 SC 101: (1964) 5 SCR 239] was not correctly decided.

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16. …Even if the lease is determined by a forfeiture under the Transfer of Property Act the tenant continues to be a tenant, that is to say, there is no forfeiture in the eye of law. 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. That being so the dictum of this Court in Raj Brij case [AIR 1951 SC 115: 1951 SCR 145: 1951 SCJ 238] comes into play and one has to look to the provisions of 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, it seems to us, has been stretched too far and without a proper and due consideration of all its ramifications.

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18. ....If we were to agree with the view that determination of lease in accordance with the Transfer of Property Act is a condition precedent to the starting of a proceeding under the State Rent Act for eviction of the tenant, we could have said so with respect that the view expressed in the above passage is quite correct because there was no question of determination of the lease again once it was determined by efflux of time. But on the first assumption we have taken a different view of the matter and have come to the conclusion that determination of a lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the Transfer of Property Act."

26. In a later judgment reported as Pradesh Kumar Bajpai v.

Binod Behari Sarkar (Dead) by Lrs.12, a three Judge Bench of this Court was examining the claim of tenant with respect to right to pay arrears of rent in terms of Section 114 of the TP Act. The following argument was examined:

> "9. .....The only question that arises and which was seriously contended for on behalf of the respondent is that in addition to the safeguards provided to the tenant under the Act, he is also entitled to the benefits of Section 114 of the Transfer of Property Act. Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act 3 of 1947 restricts the rights of the landlord to have the tenant evicted. But for the statutory provisions, the landlord would be entitled to evict the tenant according to the terms of the contract or the provisions of the Transfer of Property Act. As the Rent Act has restricted the power of the landlord to evict the tenant except in accordance with the provisions of the Act, the terms of the contract and the provisions of the Transfer of Property Act to that extent are no longer applicable ."

27. The question raised on the basis of the argument of the tenant was found to be without any substance that he was entitled to double protection under the Rent Act and under the TP Act. The Court held as under:

> "12. .....If the relief provided for under the section is available, as the lessee had tendered the rent in 12 (1980) 3 SCC 348 arrears along with the interest thereon and his full costs in the suit, it was open to the court to pass an order relieving the lessee against the forfeiture. The plea of the learned Counsel for the tenant is that this provision should also be read into the U.P. (Temporary) Control of Rent and Eviction Act. In a decision of seven-Judges, Bench of this Court in V. Dhanapal Chettiar v. Yasodai Ammal [(1979) 4 SCC 214 : (1980) 1 SCR 334] the question as to whether in order to get a decree for eviction, the landlord under the Rent Control Act should give notice as required under Section 106 of the Transfer of Property Act was considered. This Court held that determination of the lease in accordance with the Transfer of Property Act is unnecessary and that if a case is made out for eviction under the Rent Act, it is itself sufficient and it is not obligatory to determine the lease by issue of notice as required in accordance with Section 106 of the Transfer of Property Act. The learned Counsel for the tenant submitted that the decision is confined only to the question as to whether notice under Section 106 of the Transfer of Property Act is necessary and did not decide as to whether the provisions of the other sections of the Transfer of Property Act are applicable. It is to be noted, however, that the question of determination of a lease by forfeiture under the Transfer of Property Act, was specifically dealt with by the court and it was held that the claim of the tenant that he is entitled to a double protection (1) under the Rent Act and (2) under the Transfer of Property Act, is without any substance.
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> xxx xxx xxx In the case before us, it is not in dispute that after the Rent Act came into force, the landlord cannot avail himself of clause 12 which provides for forfeiture, even if the tenant neglected to pay the rent for over two months. The landlord cannot enter into possession forthwith without notice. The only remedy for him is to seek eviction under the provisions of the Rent Act. In such circumstances the tenant cannot rely on Section 114 of Transfer of Property Act and claim that he should be given an opportunity to pay the arrears of rent, even though the requirements of Section 3(1) had been fulfilled."

28. In another judgment reported as K. K. Krishnan v. M. K. Vijaya Ragavan13 an argument was raised relying upon Section 108(j) of the TP Act that lessee has a right to sublease the whole or any part of his interest in the property. Therefore, the landlord cannot seek eviction on the ground of subletting under the Kerala Buildings (Lease and Rent Control) Act. The Court held as under:

> "8. It is clear from what has been said that not all the rights conferred on landlord and tenant by Section 108 and other provisions of the Transfer of Property Act have been left in tact by the various State Rent Acts and that if a State Rent Act makes provision for eviction on certain specified grounds, eviction cannot be resisted on the basis of rights conferred by the Transfer of Property Act. Section 108(j) of the Transfer of Property Act stands displaced by Section 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act and is no defence to an action for eviction based on Section 11(4)(i)."

29. In another judgment reported as R.S. Grewal & Ors. v.

Chander Prakash Soni & Anr.14, the Court was examining a case where a legatee under a Will was given life interest. It was argued that creation of a tenancy which will continue beyond the life of the legatee will amount to transfer of the interest beyond the life of the legatee. The Court held that the protection which is conferred upon the tenant against eviction, except on specified grounds, arises as a consequence of statutory prescription under rent control legislation. The Court held as under:

> 13 (1980) 4 SCC 88 14 (2019) 6 SCC 216 "28. A statutory protection granted for the benefit of the tenants under specific tenancy laws is to be viewed from a standpoint of protecting the interests of a particular class. Restrictions on recovery of possession of the premises let out to the tenants have been imposed for the benefit of the tenants as a matter of legislative policy.
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> 29. There is a fallacy in the submission which was urged on behalf of the appellant. The appellant postulates that a life interest is personal to the person who possesses it and the creation of a tenancy which will enure beyond her life amounts to a transfer of the life interest. What the submission overlooks is that the creation of the tenancy was an act of the person enjoying a life interest in the present case and was an incident of the authority of that individual to generate income from the property for her own sustenance. The creation of a tenancy is an incident of the exercise of such an authority. The protection which is conferred upon the tenant against eviction, except on specified grounds, arises as a consequence of statutory prescription under rent control legislation. The reason why the tenant is entitled to occupy the premises beyond the lifetime of the landlord who created the tenancy is simply as a result of a statutory enactment, in this case, the East Punjab Rent Restriction Act, 1949. It is the intervention of a legislative mandate which enures to the benefit of the tenant. Once this has taken place, it was not open to the civil court to entertain a suit for possession founded on the hypothesis that the tenant is a trespasser."
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> 30. In another judgment reported as N. Motilal & Ors. v. Faisal Bin Ali & Anr.15, it was held that even during the period of contractual tenancy, if the premises are governed by the Rent Laws, the parties have an option to seek determination of fair rent. It was held as under:
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> "14. The Constitution Bench judgment in Raval & Co. case [Raval & Co. v. K.G. Ramachandran, (1974) 1 SCC 424] as well as the seven-Judge Bench judgment in V. 15 (2020) 13 SCC 667 Dhanapal Chettiar case [V. Dhanapal Chettiar v. Yesodai Ammal, (1979) 4 SCC 214] are binding which categorically had laid down that the application for determination of fair rent can be made both by the landlord and the tenant which can be made even during currency of contractual tenancy.

We, thus, find the submission made by the learned counsel for the appellants in the above regard without any substance."

31. In view of the binding decisions of the larger bench and keeping in view the fact that the judgment of this Court in Shaha Ratansi Khimji was dealing with the rights of contractual tenant, the statutory tenant cannot seek repossession after the demolition of building under Section 108(B)(e) of the TP Act as the rights and liabilities of a statutory tenant have to be found under the Rent Act alone.

32. The petition for eviction filed by the landlord was withdrawn.

Since the premises are situated within the urban areas governed by the Rent Act, the tenant has a right to seek possession only in terms of Section 27 of the Act if the decree for eviction has been passed by a Court on the ground specified under clause (j) of the proviso to sub-section (1) of Section 21. Even if it is assumed that decree of eviction was passed on the withdrawal of the eviction petition, the tenant has to seek possession of the premises from the date on which he delivered vacant possession of the premises to the landlord. The plaintiff filed first suit claiming right over the land after demolition of the building but being a statutory tenant, he had to avail the remedy under the Rent Act as the provisions of the TP Act are not applicable to the building and land situated within urban area. In view of the provisions of the Act, the terms of the TP Act cannot be applied for in respect of statutory tenants. The High Court has returned a finding that the plaintiff was a statutory tenant. In view of the said fact, the remedy of the tenant, if any, has to be found within four corners of the Rent Act and not under the TP Act.

33. Another argument raised by the tenant was that a notice under Section 462 of the Act was not served. We do not find any merit in the said argument. Section 322 of the Act is a self-contained provision which empowers the Commissioner for immediate evacuation of the property and any person disobeying such orders was to be removed by any Police Officer. Section 462 of the Act is in respect of execution of any work or to take any measures or to do anything. The works and the measures mentioned therein are in respect of other provisions in the statute which contemplate compliance by the citizens. Section 322 of the Act is an independent provision. Therefore, the notice under Section 462 of the Act was not required to be issued. The time for complying with the order does not arise in the case of a building which was in dilapidated condition endangering life of the citizens. Thus, we do not find any merit in the said argument as well.

34. The plaintiff had filed the first suit on 27.1.1995 after the tenanted premises were demolished. The right to claim damages for loss of the property including goods and machines was available to the plaintiff on the said date. In fact, in the second suit, the plaintiff has pleaded that the cause of action arose to him on 9.1.1995. The Order II Rule 2 CPC reads thus:

> "2. Suit to include the whole claim. – (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.
>
> (2) Relinquishment of part of claim .—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in

respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs .—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

35. A perusal of the above Rule would show that every suit shall include whole of the claim which the plaintiff is entitled to make in respect of the cause of action. The cause of action is a bundle of facts and relief of damages is construed to be a component of such bundle of facts. The plaintiff was con- scious of the fact that he wants to sue for damages which is evident from his averment in para 9 of the plaint of the first suit but the plaintiff was required to obtain leave of the Court before filing suit for damages subsequently. The High Court has clearly erred in law in holding that the cause of action for both the suits is different.

36. The cause of action as held in Suraj Rattan Thirani v.

Azamabad Tea Co. Ltd.16 is a bundle of facts which included the relief of possession as well as the loss which occurred on account of alleged demolition. This Court held as under:

"29. We consider that the test adopted by the Judicial Committee for determining the identity of the causes of action in two suits in Mohammed Khalil Khan v. Mahbub Ali Mian [75 IA 121] is sound and expresses correctly the proper interpretation of the provision. In that case Sir Madhavan Nair, after an exhaustive discussion of the meaning of the expression "same cause of action" which occurs in a similar context in para (1) of Order 2 Rule 2 of the Civil Procedure Code observed:

"In considering whether the cause of action in the subsequent suit is the same or not, as the cause of action in the previous suit, the test to be applied is/are the causes of action in the two suits in substance — not technically — identical?"

30. The learned Judge thereafter referred to an earlier decision of the Privy Council in Soorijomonse Dasee v.

Suddanund [(1873) 12 Beng LR 304, 315] and extracted the following passage as laying down the approach to the question:

"Their Lordships are of opinion that the term 'cause of action' is to be construed with reference rather to the substance than to the form of action...." Applying this test we consider that the essential bundle of facts on which the plaintiffs based their title and their right to relief were identical in the two suits.

16 AIR 1965 SC 295 The property sought to be recovered in the two suits was the same. The title of the persons from whom the plaintiffs claimed title by purchase, was

based on the same fact……."

37. In State of Rajasthan v. Swaika Properties17, this Court held that cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to seek relief against the defendant. The Court held as under:-

> "8. The expression "cause of action" is tersely defined in Mulla's Code of Civil Procedure:
>
> "The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court." In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. ……." 17 (1985) 3 SCC 217

38. The High Court has returned a finding that the Rent Act will prevail over the Act. However, we are unable to agree with this observation. Both the statutes are enacted by the State of Karnataka. The Act deals with the municipal functions which are wider and welfare-oriented towards the residents of the area of Corporation, whereas the Rent Act has a limited application for determining the rights of land owner and ten- ant. Both operate in separate spheres as both have different objectives to be achieved.

39. In Ashoka Marketing Ltd. v. Punjab National Bank18, a Constitution Bench held that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. The Court held as under:-

> "41. As a result of this comparison it can be said that certain premises, viz. building or parts of buildings lying within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and in urban areas within the limits of the Municipal Corporation of Delhi, which belong to or are taken on lease by any of the companies

> or statutory bodies mentioned in clauses (2) and (3) of Section 2(e) of the Public Premises Act and which are in occupation of a person who obtained possession of the said premises as a tenant and whose tenancy has expired or has been terminated but who is continuing in occupation of the same, would ex-facie fall within the purview of both the enactments. The question which, therefore, arises is whether the occupant of such premises can seek protection available under the provisions of Rent 18 (1990) 4 SCC 406 Control Act and he can be evicted from the premises only in accordance with the said provisions and proceedings for eviction of such a person cannot be initiated under the provisions of the Public Premises Act.
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> 49. This means that both the statutes, viz. the Public Premises Act and the Rent Control Act, have been enacted by the same legislature, Parliament, in exercise of the legislative powers in respect of the matters enumerated in the Concurrent List. We are, therefore, unable to accept the contention of the learned Additional Solicitor General that the Public Premises Act, having been enacted by Parliament in exercise of legislative powers in respect of matters enumerated in the Union List would ipso facto override the provisions of the Rent Control Act enacted in exercise of the legislative powers in respect of matters enumerated in the Concurrent List.

In our opinion the question as to whether the provisions of the Public Premises Act override the provisions of the Rent Control Act will have to be considered in the light of the principles of statutory interpretation applicable to laws made by the same legislature.

50. One such principle of statutory interpretation which is applied is contained in the latin maxim :

> leges posteriores priores conterarias abrogant (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim :
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> generalia specialibus non derogant (a general provision does not derogate from a special one.) This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Bennion, Statutory Interpretation pp. 433-34).
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> xx xx xx
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> 55. The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes provision for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which

has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union territory of Delhi. The Public Premises Act makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent court and for trial of such a suit in accordance with the procedure laid down in the Code of Civil Procedure, the Public Premises Act confers the power to pass an order of eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order. Therefore, the Public Premises Act is also a special statute relating to eviction of unauthorised occupants from public premises. In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Rent Control Act.

56. We arrive at the same conclusion by applying the principle which is followed for resolving a conflict between the provisions of two special enactments made by the same legislature. We may in this context refer to some of the cases which have come before this Court where the provisions of two enactments made by the same legislature were found to be inconsistent and each enactment was claimed to be a special enactment and had a non-obstante clause giving overriding effect to its provisions.

xx xx xx

61. The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. We propose to consider this matter in the light of this principle.

xx xx xx

64. It would thus appear that, while the Rent Control Act is intended to deal with the general relationship of landlords and tenants in respect of premises other than government premises, the Public Premises Act is intended to deal with speedy recovery of possession of premises of public nature, i.e. property belonging to the Central Government, or companies in which the Central Government has substantial interest or corporations owned or controlled by the Central Government and certain

> corporations, institutions, autonomous bodies and local authorities. The effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that buildings belonging to companies, corporations and autonomous bodies referred to in Section 2(e) of the Public Premises Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that the Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest. What can be said with regard to government in relation to property belonging to it can also be said with regard to companies, corporations and other statutory bodies mentioned in Section 2(e) of the Public Premises Act.

In our opinion, therefore, keeping in view the object and purpose underlying both the enactments viz. the Rent Control Act and the Public Premises Act, the provisions of the Public Premises Act have to be construed as overriding the provisions contained in the Rent Control Act."

40. In Allahabad Bank v. Canara Bank & Anr19, this Court held that there can be a situation in law where the same statute is treated as a special statute vis-à-vis one legislation and again as a general statute vis-à-vis another legislation. Between the Act and the Rent Act, the Act is a general statute enacted as a third tier of local Government administration. The func- tions of the Corporation, inter alia, includes the regulation and maintenance of the land and building, hygiene and health, public streets and other for a larger section of the in- habitants falling in the municipal area, whereas the Rent Act deals with the issues between the landlord and the tenant conferring right to the landlord to seek eviction and corre- spondingly provide protection to the tenant. Therefore, the finding of the High Court that Rent Act would prevail over the Act is clearly erroneous as both legislations operate in sepa- rate distinct spheres having different objectives in mind.

41. The finding of the High Court that the building was demolished without giving clear three days' notice is partly correct. The notice was served upon the plaintiff on 6.1.1995 and the building was demolished on 9.1.1995. Thus, clear three days' notice was not served upon the plaintiff. The plaintiff was however aware of the proceedings initiated by the Corporation on the ground that the building in question was in dilapidated condition and unsafe for 19 (2000) 4 SCC 406 human inhabitation. The plaintiff had challenged such notice before the High Court. The High Court had given four weeks' time to the Corporation to pass a speaking order after giving an opportunity of hearing to the plaintiff. The building was inspected by the Deputy Commissioner of the Corporation and opportunity of hearing was granted to the plaintiff as well. Therefore, it is not a case where there was any sudden development leading to the demolition of the building but the order of demolition was a considerate action passed after the report of the Court Commissioner was submitted before the High Court and the Corporation was given time to finally decide the show cause notice issued on 24.5.1994.

42. In fact, there is three days' notice from the date of the order but not from the date of receipt of the notice. This Court in State of Punjab v. Khemi Ram20 held as under:

"17. The question then is whether communicating the order means its actual receipt by the concerned government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word "communicate" is to impart, confer or transmit information. (Cf. Shorter Oxford English Dictionary, Vol. 1, p. 352). As already stated, telegrams, dated July 31, and August 2, 1958, were dispatched to the respondent at the address given by him where communications by Government should be dispatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or 20 (1969) 3 SCC 28 about the middle of August 1958, after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2, 1958 i.e. before August 4, 1958, when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word "communication" ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in The State of Punjab v. Amar Singh contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid."

43. Once the order was passed by the Corporation on 5.1.1995 and was put on the means of communication, the date of actual receipt of notice is insignificant as the receipt could be delayed by the recipient, though there is no such attempt or finding. The wife and daughter of the plaintiff had

removed the goods including sewing machines etc., hence the damages would include any loss of goods and the machines which were in the tenanted premises in question. Keeping in view the fact that the building was demolished within three days of the receipt of notice, we deem it appropriate to order the appellant to compensate the plaintiff with the damages of Rs.5 lakhs. Such amount will be payable to the legal heirs of the deceased plaintiff in accordance with law. The appellant shall deposit a sum of Rs. 5 lakhs within a period of two months before the trial court.

44. Consequently, the order of the High Court dated 28.09.2006 is hereby set aside and both the suits are dismissed, subject to payment of Rs. 5 lakhs to the legal representatives of the plaintiff within two months. The appeals are allowed.

.....J. (HEMANT GUPTA) .....J. (A.S. BOPANNA)
NEW DELHI;

SEPTEMBER 14, 2021.