Vinod Kumar vs Ashok Kumar Gandhi on 5 August, 2019

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Author: Ashok Bhushan

Bench: K.M. Joseph, Ashok Bhushan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3793 OF 2016

VINOD KUMAR … APPELLANT(S)

VERSUS

ASHOK KUMAR GANDHI … RESPONDENT(S)

With

C.A. No. 8972-8973/2017, C.A.No. 6063 of 2019(arising out of SLP(C) No. 19965/2017), C.A.No. 6064 of 2019 (arising out of SLP(C) No. 20414/2017), C.A.Nos. 6066-6072 of 2019 (arising out of SLP(C) No. 20735-20741/2017), C.A.No. 6073 of 2019 (arising out of SLP(C) No. 22383/2017), C.A. No. 16916/2017 and C.A.No. 6075 of 2019 (arising out of SLP(C) No. 28455/2017)

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted.

2. These appeals, except one where leave to defend was granted, have been filed against the judgment of Delhi High Court dismissing the Rent Control Revisions filed by the appellants in which the order passed by the Rent Controller rejecting the application filed by the appellants-tenants seeking leave to defend in a petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 have been challenged.

3. The appellants are tenants occupying non- residential buildings for whose eviction petitions have been filed by the landlord on the ground of bonafide need of landlord. The appellants at the very outset challenge the maintainability of eviction petitions filed by the landlord under 14(1)(e) on the ground of bonafide need. The facts are being taken from C.A.No.3793 of 2016 (Vinod Kumar vs. Ashok Kumar Gandhi) for considering the issues which have been raised by the learned counsel for the appellant at the very beginning of the submission. C.A.No.3793 of 2016(Vinod Kumar vs. Ashok Kumar Gandhi)

4. The appellant is a tenant of a shop bearing No.J- 3/188-B, Nehru Market, Rajouri Garden, New Delhi- 110027. The respondent-landlord of the premises filed an Eviction Petition on 03.01.2011 to obtain possession of the shop on the ground that son of the landlord was without any job and the premises in question are bonafide required by his son to start business of sale of readymade garments and accessories. It was further pleaded in the application that the landlord has planned to make a passage of around six feet wide throughout the length of the property, from the front side, to have access to the stairs case in the rear side of the property. The Rent Controller after receipt of the said application issued notice to the appellant-tenant. On 25.01.2011, the appellant filed an application seeking leave to defend along with a detailed affidavit in support thereof. The landlord filed a reply to the application alongwith counter-affidavit. The Additional Rent Controller vide order dated 05.05.2015 rejected the application seeking leave to defend filed by the appellant. Aggrieved by the order of the Additional Rent Controller dated 05.05.2015 revision petition was filed by the appellant under Section 25-B(8) of the Delhi Rent Control Act, 1958 challenging the order or Additional Rent Controller. The High Court vide its judgment dated 14.03.2016 dismissed the revision petition filed by the appellant. Aggrieved by the judgment of the High Court, this appeal has been filed by the appellant.

5. In C.A.No.3793 of 2016 various grounds have been raised in support of the appeal. Other appeals included in this group also raise several grounds on the merits questioning the refusal to grant leave to defend by the Rent Controller. However, on the opening of the submissions, learned counsel for the appellants have confined their submissions on the judgment of this Court in Satyawati Sharma (Dead) by LRs. Vs. Union of India and another, (2008) 5 SCC

287. Questioning the correctness of judgment of Satyawati Sharma various grounds have been canvassed before us. Learned counsel for the appellant submits that the said judgment needs to be referred to a larger Bench to examine its correctness. It is the submission of the appellant that the Eviction Petitions have been filed under 14(1)(e) for eviction from non-residential premises on the projected bonafide need of landlord only on the basis of judgment of Satyawati Sharma, which had, in fact, re- written the provision of 14(1)(e). It is submitted that as per provision of 14(1)(e) as contained in Delhi Rent Control Act, 1958, the landlord was precluded from filing application for

eviction on the ground of bonafide need regarding non-residential premises. It is submitted that application under 14(1)(e) was contemplated by the Act only with regard to premises let for residential purposes.

6. Learned counsel appearing for the landlord has countered the submission of the appellant and submits that the judgment of this Court in Satyawati Sharma lays down the correct law and needs no reference to a larger Bench.

7. Learned counsel for the parties have confined their submissions only on the question as to whether judgment of this Court in Satyawati Sharma needs reference to larger Bench or not. We, in these appeals, thus, proceed to consider limited submission as to whether judgment of this Court in Satyawati Sharma needs reference to larger bench or not. The issues on merits of the order passed by the Rent Controller rejecting leave to defend application are not being examined as of now.

8. Before we notice the respective submissions of the learned counsel for the parties in detail, we may first notice the provisions of Section 14 of Delhi Rent Control Act, 1958 as enacted. The Delhi Rent Control Act, 1958 had been enacted to provide for the regulation of rents, repairs and maintenance and evictions relating to premises and of rates of hotels and lodging houses in the National Capital Territory of Delhi. The premises have been defined in Section 2(i) which is to the following effect:

> “2(i) "premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes—
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> (i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;
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> (ii) any furniture supplied by the landlord for use in such building or part of the building; but does not include a room in a hotel or lodging house;”

9. Chapter III of Delhi Rent Control Act, 1958 deals with control of eviction of tenants. Section 14(1) which has arisen for consideration in these cases is as follows:

> “Section 14. Protection of tenant against eviction.- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:
>
> Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in section 106 of the Transfer of Property Act, 1882 (4 of 1882).

(b) that the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;

(c) that the tenant has used the premises for a purpose other than that for which they were let-

(i) if the premises have been let on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord; or

(ii) if the premises have been let before the said date without obtaining his consent;

(d) that the premises were let for use as a residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of the filing of the application for the recovery of possession thereof;

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;

Explanation.-For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

(f) that the premises have become unsafe or unfit for human habitation and are required bona fide by the landlord for carrying out repairs which cannot be carried out without the premises being vacated;

(g) that the premises are required bona fide by the landlord for the purpose of building or re-building or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the premises being vacated;

(h) that the tenant has, whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted, a residence:

> (i) that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment;
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> (j) that the tenant has, whether before or after the commencement of this Act, caused or permitted to be caused substantial damage to the premises;
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> (k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate;
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> (l) that the landlord requires the premises in order to carry out any building work at the instance of the Government or the Delhi Development Authority or the Municipal Corporation of Delhi in pursuance of any improvement scheme or development scheme and that such building work cannot be carried out without the premises being vacated."

10. A perusal of the various grounds available to a landlord to recover possession of any premises indicates that although several grounds are available both for residential and non-residential premises but few grounds are available only for premises let for residential purposes. The provision of Section 14(1)

(e) which needs consideration confine to the premises let for residential purposes which may be required bonafide by the landlord for occupation as a residence for himself or for any member of his family dependent on him. The explanation explains that premises let for residential purposes which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes are also included in residential premises.

11. The provisions of Section 14(1)(e) were resorted by the landlord for seeking recovery of possession only with regard to residential premises till part of Section 14(1)(e) has been struck down in Satyawati Sharma case. This Court held that Section 14(1)(e) of Act, 1958 is violative of the doctrine of equality embodied in Article 14 of the Constitution in so far as it discriminates between the premises let for residential and non-residential purposes when the same are required bonafide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the landlord's right to seek eviction of the tenant from the premises let for residential purposes only. This Court clarified that it is not totally striking down of Section 14(1)(e) of the Act in its entirety but it has struck down only the discriminatory portion of Section 14(1)(e). In Satyawati Sharma(AIR 2008 SC 3148) this Court held that striking down the discriminatory portion of Section 14(1)(e) the remaining part of the Section 14(1)(e) shall be read in the manner as extracted in paragraph 39 of the judgment which is as follows:

> "39. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned Counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under:
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> "that the premises are required bona fide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation." ....."

12. It is on the strength of the judgment of this Court in Satyawati Sharma that after the said judgment landlords of non-residential premises have also filed application for eviction under Section 14(1)(e) which are dealt with by the Rent Controller as per procedure contained in Chapter III-A of the Act, 1958. Chapter III-A contains 'Summary Trial of Certain Applications'. The Rent Controller treating the said procedure applicable on applications filed by the landlords under Section 14(1)(e) has issued summons to the tenants in the form prescribed in the Third Schedule and have passed order either rejecting the leave to defend or granting leave to defend which orders, were challenged in the High Court giving rise to these appeals.

13. After noticing the brief background of one of the issues which has been pressed at the very outset, we now proceed to notice the submissions of learned counsel for the parties in detail as canvassed before us.

14. Shri Uday Gupta, learned counsel who led the submission on behalf of the appellant has very ably and persuasively put forward his submissions. Shri Gupta submits that validity of the provision of Section 14(1)(e) was challenged in Delhi High Court more than once which challenge was repelled by the High Court. Shri Gupta submits that Delhi High court in H.C.Sharma vs. LIC of India,(1973) ILR 1 Del 90, in which restriction placed on the rights of landlord to evict the tenant from non-residential premises as discriminatory and violative of Section 19 and 14(1)

(f) was considered and rejected. In Satyawati Sharma appellant had filed an application for eviction of the tenant which application was rejected by the Rent Controller on the ground that application is not maintainable under Section 14(1)(e) for non- residential purposes. Apart from a revision challenging the said order in the High court a writ petition was also filed by Satyawati Sharma challenging the constitutional validity of Section 14(1)(e) which challenge was repelled by Delhi High Court in Satyawati Sharma vs. Union of India and others, 2002 (65) SRJ 615 (Full Bench), which judgment was subject matter of the Civil Appeals before this Court giving rise to the judgment of this Court in Satyawati Sharma (supra). Shri Gupta relying on the judgment of Constitution Bench judgment in Gian Devi Anand vs. Jeevan Kumar and others, (1985) 2 SCC 683, submits that Gian Devi Anand itself has noticed the distinction in provision of Section 14(1)

(e) which was confined to residential premises and not available in case of commercial premises. It is submitted that Gian Devi Anand suggested that Legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well. The legislature having not yet enforced the Delhi Rent Act, 1995 it was not open for this Court in Satyawati Sharma (supra) to read down the provision of Section 14(1)(e). Shri Gupta submits that the judgment of Satyawati Sharma is contrary to the Constitution Bench judgment in Gian Devi Anand. A Bench of two Hon'ble Judges could not have adopted the course which was not adopted by the Constitution Bench itself in Gian Devi Anand. Shri Gupta further submits that Satyawati Sharma failed to take notice of three-Judge Bench judgment of this Court in Gauri Shanker and others vs. Union of India and others, (1994) 6 SCC 349. It is submitted that view taken in paragraph 41 of Satyawati Sharma is per incuriam in view of the judgment already rendered in Gauri Shanker case. Alternatively, Shri Gupta submits that even judgment of Satyawati Sharma is not held to be per incuriam, the said judgment necessarily needs to be revisited, in view of the fact that the Satyawati Sharma did not consider several relevant provisions of Act, 1958 including Section 25B and Section 19. It is submitted that summary procedure which was brought in the statute by inserting Chapter III-A by Act 18 of 1976 with effect from 01.12.1975 specially Section 25B which was special procedure for the disposal of applications for eviction on the ground of bonafide requirement under Section 14(1)(e) was meant only for residential premises. Without adverting to Section 25B, this Court in Satyawati Sharma could not have held that Section 14(1)(e) should also be available for non-residential premises. The very premise in Satyawati Sharma that Rent Control legislation did not make any distinction in residential and non- residential purposes was erroneous, which led Satyawati Sharma to fall in error. The two-Judge Bench of this Court in Satyawati Sharma has re- written Section 14(1)(e) which could not have been done by the Court and matter ought to have been left for legislature as was said by the Constitution Bench in Gian Devi Anand case. The Constitution Bench in Gian Devi Anand itself has observed that there has been distinction between residential and commercial premises in Delhi. Satyawati Sharma has relied on judgment of this Court in Harbilas Rai Bansal vs. State of Punjab and another, (1996) 1 SCC 1, and Rakesh Vij vs. Raminder Pal Singh Seth and others, (2005) 8 SCC 504, which were the judgments on East Punjab Urban Rent Restriction Act, 1949, and could not have been applied with regard to interpretation of Delhi Rent Control Act, 1958. In East Punjab Urban Rent Restriction Act the remedy for landlord for seeking eviction on the bonafide requirement both for residential and non-residential premises was very much available from the very beginning and it was, for the first time, sought to be taken away by 1956 Amendment which amendment was struck down by this Court. Those cases were not relevant for Delhi Rent Control Act. The tenants occupying non-residential premises are dependent on their livelihood. Applying summary procedure as prescribed under Section 25B brings hardship in denying them protection of law since they are not able to defend their cases on merits. Referring to statement of Minister, Shri H.K.L. Bhagat on debate in the House on 1976 Amendment, it is submitted that statement was made that Section 25B was not to apply to non-residential premises since under Section 14(1)(e) eviction can be sought only with regard to residential premises. It is submitted that due to Explanation to Section 14(1)

(e) having held to be redundant the benefit given under Section 19 is also denied to the tenant. Section 19(2) has been rendered otiose. The principle of reading down was not attracted in the present case. It is submitted that reading down cannot be used when the legislative intent is clear.

15. Satyawati Sharma even does not refer to Sections 14A to 14D which were also inserted by Act 18 of 1976. There is reasonable doubt of correctness of Satyawati Sharma, hence, it needs to be referred to a larger Bench for final opinion. Legislature never intended to apply Section 25B to commercial tenancy. Since, the procedure of Section 25B was harsh which was made looking to bonafide need for residential premises, Section 25B should not be ipso facto applied to commercial tenancy. In other case, the tenant has right to file written statement which is now denied by applying procedure under Section 25B. Section 25B having not referred to it is to be seen as to whether Section 25B shall apply. In any view of the matter judgment of Satyawati Sharma should be applied to the tenancy coming into the existence after the judgment of this Court in Satyawati Sharma case.

16. Shri Neeraj Krishan Kaul, senior counsel, led arguments on behalf of the landlord. Shri Kaul submits that this Court in Satyawati Sharma found Section 14(1)(e) to be ultra vires to Article 14 of the Constitution. However, instead of striking down the provisions altogether, this Court removed the offending part of the legislation by obliterating the classification between residential and non-residential premises and holding that Section 14(1)

(e) would apply equally to residential and non- residential premises. Satyawati Sharma took notice of Constitutional Bench judgment in Gian Devi Anand (supra)which had suggested the Legislature to remove the discrimination between residential and non- residential premises in the Delhi Rent Control Act, 1958 with regard to seeking eviction by landlord on the ground of bona fide need. When the Legislation had not acted in removing aforesaid classification, this Court applying the doctrine of temporal reasonableness held that a Legislation which may have been reasonable and rational at the time of enactment may over passage of time become arbitrary, unreasonable and violative of Article 14. This Court in Satyawati Sharma took judicial notice of the fact that the Delhi Rent Act, 1995 which was a subsequent Legislation, but yet to be notified by the Central Government, did not distinguish between the residential and non-residential premises in sofaras landlord's right to seek eviction on bona fide need is concerned. The observations made in Gian Devi Anand were in the background of a discussion in relation to heritability of tenancies vis-à-vis Section 2(l)of Delhi Rent Control Act, 1958. The judgment of this Court in Satyawati Sharma has also been affirmed by a three-Judge Bench in State of Maharasthra and Anr. Vs. Super Max International (P) Ltd. and Ors., (2009) 9 SCC 772.

17. This Court in Harbilas Rai Bansal (supra) and Rakesh Vij (supra)had held no distinction can be made with regard to residential tenancy and non- residential tenancy in sofaras eviction is concerned at the instance of the landlord on the ground of bona fide need. The judgment of Satyawati Sharma cannot be held to be any kind of judicial Legislation. What has been done in Satyawati Sharma is to only strike down the unconstitutional portion of Section 14(1)(e). The part of Section 14(1)(e) which is severable has been retained. The judgment of Satyawati Sharma cannot be held to be per incuriam either Gian Devi Anand case or Gauri Shanker case. The observations in Gauri Shanker were in the background of Section 2(l)(iii) of Act, 1958 wherein heritability of tenancy is provided.

18. There can be no distinction in sofaras bona fide need of the landlord is concerned regarding residential and commercial premises. The observations of three-Judge Bench in Super Max

International are not obiter but are the judicial dicta which has re- confirmed the principles in Satyawati Sharma case. Replying the submission of the appellant in sofaras Section 25B of the Act is concerned, Shri Kaul submits that procedure for eviction cannot be different in sofaras residential and commercial tenancies are concerned. Adopting different procedures for eviction in the above two cases itself be treated as discriminatory. There are various safeguards under Act, 1958 which amply protect the tenant. There is nothing in the Satyawati Sharma judgment which can be said to be per incuriam. The appellant is asking this Court to violate certainty of law and comity of the Courts. There is no ground today to refer the judgment of Satyawati Sharma case for consideration of a larger Bench. The judgment of this Court in Satyawati Sharma case is just, reasonable and protects both landlord and tenant. The provision of Section 14(1)(e) which was enacted at the time when circumstances were different can no longer be said to be reasonable and valid and has rightly done away with the unjust classification between residential and commercial in sofaras eviction on the ground of bona fide need of the landlord was concerned.

19. The Judgement of this Court in Satyawati Sharma has stood test of time and at this distance of time this Court cannot revive the unjust classification between residential and non-residential premises in sofaras landlord's right of eviction is concerned on the ground of bona fide need. Shri Kaul submits that there is absolutely no reason for referring the Satyawati Sharma case for consideration of a larger Bench. Shri Kaul further has referred to the order dated 20.07.2015 passed in Special Leave Petition (C)No.31687 of 2014, Jag Mohini Kaur vs. Tilak Raj and ors., where this Court after noticing the judgment of this Court in Satyawati Sharma dismissed the petition of tenant wherein submission was sought to be raised that landlord cannot file an application under Section 14(1)(e) with regard to non-residential premises. Satyawati Sharma has time and again relied by this Court and the High Courts and there is no occasion to have any re-look in these appeals. The mere fact that the procedure under Section 25B is applicable with regard to non-residential premises also has no bearing on the unconstitutionality of part of the provision of Section 14(1)(e). No distinction can be made with regard to procedure applicable regarding residential and non-residential premises. Shri Kaul submits that the prayer of the appellant to refer the judgment of Satyawati Sharma to a larger Bench be rejected and the appeals be heard and dismissed.

20. From the submissions of learned counsel for the parties as noted above following two questions arise for consideration by us:

(1) Whether the judgment of this Court in Satyawati Sharma (supra) is per incuriam.

(2) Whether there are any other grounds to refer the judgment of this Court in Satyawati Sharma for reconsideration by a larger Bench.

Question No.1

21. The submission of the learned counsel for the appellant is that Satyawati Sharma having not followed the binding Constitution Bench judgment in Gian Devi Anand and three-Judge Bench judgment in Gauri Shanker is a judgment rendered per incuriam. Further, submission is that Satyawati Sharma ignores provisions of Section 25B of the Delhi Rent Control Act. Hence, the

judgment in Satyawati Sharma is per incuriam.

22. The principle of per incuriam has been developed by the English Courts in relaxation of the rule of stare decisis. In practice per incuriam is per ignoratium. The above principle has been developed, accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedent as a matter of law. A Constitution Bench in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh vs. Presiding Officer, Labour Court, Chandigarh and another, (1990) 3 SCC 682 dealing with question of per incuriam laid down following in paragraph 40:

> "40. We now deal with the question of per incuriam by reason of allegedly not following the Constitution Bench decisions. The Latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court. It cannot be doubted that Article 141 embodies, as a rule of law, the doctrine of precedents on which our judicial system is based. In Bengal Immunity Company Ltd. v. State of Bihar, AIR 1955 SC 66, it was held that the words of Article 141, "binding on all courts within the territory of India", though wide enough to include the Supreme Court, do not include the Supreme Court itself, and it is not bound by its own judgments but is free to reconsider them in appropriate cases. This is necessary for proper development of law and justice. May be for the same reasons before judgments were given in the House of Lords and Re Dawson's Settlement Lloyds Bank Ltd. v. Dawson, (1966) 3 All ER 68, on July 26, 1966 Lord Gardiner, L.C. made the following statement on behalf of himself and the Lords of Appeal in Ordinary:
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> "Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.
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> In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law."

23. In V.Kishan Rao vs. Nikhil Super Specially Hospital and another, 2010(5) SCC 513, this Court again explaining the concept of per incuriam laid down following in paragraph 54:

> "54. When a judgment is rendered by ignoring the provisions of the governing statute and earlier larger Bench decision on the point such decisions are rendered per incuriam. This concept of per incuriam has been explained in many decisions of this Court. Sabyasachi Mukharji, J. (as his Lordship then was) speaking for the majority in A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602, explained the concept in the following words: (SCC p. 652, para 42) "42. ... 'Per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong." Subsequently also in the Constitution Bench judgment of this Court in Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court, (1990) 3 SCC 682, similar views were expressed in para 40 at p. 705 of the report."

24. When a Court delivers judgment ignoring the binding precedent of a larger Bench, the judgment so delivered is held to be per incuriam and has no precedential value. Whether the judgment of Satyawati Sharma can be said to be per incuriam. The Constitution Bench judgment of Gian Devi Anand is first to be examined. The Constitution Bench judgment in Gian Devi Anand(supra) was delivered by Amarendra Nath Sen, J. with which opinion Bhagwati, J. concurred. The question which arose for consideration was noticed in paragraph 5 of the judgment.

"Amarendra Nath Sen, J.- The question for consideration in this appeal by special leave is whether under the Delhi Rent Control Act, 1958 (for the sake of brevity hereinafter referred to as 'the Act'), the statutory tenancy, to use the popular phraseology, in respect of commercial premises is heritable or not. To state it more precisely, the question is whether the heirs of a deceased tenant whose contractual tenancy in respect of commercial premises has been determined, are entitled to the same protection against eviction afforded by the Act to the tenant."

25. In the above case landlord has determined tenancy of the tenant and thereafter filed a petition under Section 14 for eviction of the tenant on various grounds. Tenancy was of a shop situate in New Market, West Patel Nagar, New Delhi. Rent Controller had allowed the petition of the landlord on the ground of default in payment of rent rejecting other grounds. Landlord preferred an appeal to which tenant had also filed cross-objection. During pendency of the appeal tenant died on 05.09.1977 in whose place the appellant, the widow of deceased tenant was impleaded. Cross-objection of tenant was allowed. Appellate Court remanded the matter to decide the question of sub-letting. The widow of deceased tenant filed an appeal before the High Court to which landlord filed a cross-objection. The High Court held that on the death of the statutory tenant, the heirs of the statutory tenant had no right to remain in possession of the premises, as statutory tenancy was not heritable and the protection afforded to a statutory tenant by the Act is not available to the heirs and legal representatives of the statutory tenant. A decree for eviction was passed by the High Court which judgment was challenged by the widow of the deceased tenant before this Court. This Court

held that Act does not make any distinction between 'so-called statutory tenant' and 'contractual tenant' but seeks to restrict the right of the heirs of such tenant in respect of residential premises. One more submission was raised before this Court that in view of the amendment of definition of 'tenant' under Section 2(l)(iii) right of continuing in possession in respect of residential premises only and not with regard to so-called statutory tenant in respect of commercial premises, rejecting the said submission the Court laid down following in paragraph 31:

> "31.....Section 2(1)(iii) of the Act does not create any additional or special right in favour of the heirs of the `so called statutory tenant' on his death, but seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and rights of a contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory tenant, are fully protected by the Act and the heirs of such tenants become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the Legislature which has created this right has thought it fit in the case of residential premises to limit the rights of the heirs in the manner and to the extent provided in Section 2(1)
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> (iii). It appears that the Legislature has not thought it fit to put any such restrictions with regard to tenants in respect of commercial premises in this Act."

26. The Constitution Bench of this Court also noticed Section 14(1)(e) which makes bona fide requirement of the landlord of the premises let out to the tenant for residential purposes a good ground for eviction of the tenant from such premises. The Constitution Bench concluded that commercial tenancy is heritable under the scheme of the Act. In paragraph 34 following has been observed:

> "34.....It may be noticed that the Legislature itself treats commercial tenancy differently from residential tenancy in the matter of eviction of the tenant in the Delhi Rent Act and also in various other Rent Acts. All the grounds for eviction of a tenant of residential premises are not made grounds for eviction of a tenant in respect of commercial premises. S. 14(1)(d) of the Delhi Rent Act provides that non-user of the residential premises by the tenant for a period of six months immediately before the filing of the application for the recovery of possession of the premises will be a good ground for eviction, though in case of a commercial premises no such provision is made. Similarly, S. 14(1)(e) which makes bona fide requirement of the landlord of the premises let out to the tenant for residential purposes a ground for eviction of the tenant, is not made applicable to commercial premises. A tenant of any commercial premises has necessarily to use the premises for business purposes. Business carried on by a tenant of any commercial premises may be and often is, his only occupation and the source of livelihood of the tenant and his family. Out of the income earned by the tenant from his business in the commercial premises, the tenant maintains himself and his family; and the tenant, if he is residing in a tenanted house, may also be paying his rent out of the said income. Even if tenant is evicted from his residential premises, he may with the earnings out of the business be

> in a position to arrange for some other accommodation for his residence with his family. When, however, a tenant is thrown out of the commercial premises, his business which enables him to maintain himself and his family comes to a stand-still. It is common knowledge that it is much more difficult to find suitable business premises than to find suitable premises for residence..... We are of the opinion that in case of commercial premises governed by the Delhi Act, the Legislature has not thought it fit in the light of the situation at Delhi to place any kind of restriction on the ordinary law of inheritance with regard to succession. It may also be borne in mind that in case of commercial premises the heirs of the deceased tenant not only succeed to the tenancy rights in the premises but they succeed to the business as a whole. It might have been open to the Legislature to limit or restrict the right of inheritance with regard to the tenancy as the Legislature had done in the case of the tenancies with regard to the residential houses but it would not have been open to the Legislature to alter under the Rent Act, the Law of Succession regarding the business which is a valuable heritable right and which must necessarily devolve on all the heirs in accordance with law. The absence of any provision restricting the heritability of the tenancy in respect of the commercial premises only establishes that commercial tenancies notwithstanding the determination of the contractual tenancies will devolve on the heirs in accordance with law and the heirs who step into the position of the deceased tenant will continue to enjoy the protection afforded by the Act and they can only be evicted in accordance with the provisions of the Act....."

27. After laying down above following was held in paragraph 38:

> "38.We must, therefore, hold that Wasti Ram enjoyed the statute of the premises in dispute even after determination of the contractual tenancy and notwithstanding the termination of the contractual tenancy, Wasti Ram had an estate or interest in the demised premises; and tenancy rights of Wasti Ram did not come to an end with his death but they devolved on the heirs and legal representative of Wasti Ram. The heirs and legal representatives of Wasti Ram step into his position and they are entitled to the benefit and protection of the Act. We must, accordingly, hold that the High Court was not right in coming to the conclusion that the heirs of Wasti Ram, the so called statutory tenant, did not have any right to remain in possession of the tenanted premises and did not enjoy any protection under the Act. It appears that the High Court passed an order for eviction against the heirs of Wasti Ram only on this ground without going into the merits of the appeal filed by the appellant in the High Court against the order of remand and also without considering the cross-objections filed in the High Court by the landlord. We accordingly, set aside the judgment and order of the High Court and we remand the case to the High Court for decision of the appeal and the cross objection on merits. The appeal is accordingly allowed to the extent indicated above with no order as to costs."

28. The most important observations which are relevant in present case were made by the Constitution Bench in paragraph 39 of the judgment. The Constitution Bench observed the landlord

who let out commercial premises under circumstances may need bona fide premises for his own use under changed conditions. The Constitution Bench suggested that Legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well. Following was observed in paragraph 39:

> "39.Before concluding, there is one aspect which we consider it desirable to make certain observations. The owner of any premises, whether residential or commercial, let out to any tenant, is permitted by the Rent Control Acts to seek eviction of the tenant only on the ground specified in the Act, entitling the landlord to evict the tenant from the premises. The restrictions on the power of the landlords in the matter of recovery of possession of the premises let out by him to a tenant have been imposed for the benefit of the tenants. Inspite of various restrictions put on the landlords right to recover possession of the premises from a tenant, the right of the landlord to recover possession of the premises from the tenant for the bona fide need of the premises by the landlord is recognised by the Act, in case of residential premises. A landlord may let out the premises under various circumstances. Usually a landlord lets out the premises when he does not need it for own use. Circumstances may change and a situation may arise when the landlord may require the premises let out by him for his own use. It is just and proper that when the landlord requires the premises bona fide for his own use and occupation, the landlord should be entitled to recover the possession of the premises which continues to be his property inspite of his letting out the same to a tenant. The legislature in its wisdom did recognise this fact and the Legislature has provided that bona fide requirement of the landlord for his own use will be a legitimate ground under the Act for the eviction of his tenant from any residential premises. This ground is, however, confined to residential premises and is not made available in case of commercial premises. A landlord who lets out commercial premises to a tenant under certain circumstances may need bona fide the premises for his own use under changed conditions in some future date should not in fairness be deprived of his right to recover the commercial premises. Bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial. We therefore, suggest that Legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well."

29. Now, we revert back to Satyawati Sharma's case. Satyawati Sharma case has noticed Gian Devi Anand case in paragraphs 20 and 21. Satyawati Sharma extracted the entire paragraph 39 of Constitution Bench judgment in paragraph 20. Satyawati Sharma in paragraph 21 states following:

> "21. What is significant to be noted is that in para 34 of the aforementioned judgment, the distinction between residential and non-residential tenancies was made in the context of the rights of the heirs of the tenant to continue to enjoy the protection envisaged under Section 14(1). The Court was of the view that the heirs of the tenants of the commercial premises cannot be deprived of the protection else the family of the tenant may be brought on road or deprived of the only source of

> livelihood. The Court also opined that if the heirs of the individual tenants of commercial tenancies are deprived of the protection, extremely anomalous consequences will ensue because the companies, corporations and juridical entities carrying on business or commercial activities in rented premises will continue to enjoy the protection even after the change of management, but the heirs of individual tenants will be denuded of similar protection. At the same time, the Court noted that the landlord of a premises let for residential purpose may bona fide require the same for his own use or the use of his dependent family members and observed that the legislature should remove apparent discrimination between residential and non-residential tenancies when the landlord bona fide requires the same. If the observations contained in para 34 are read in any other manner, the same would become totally incompatible with the observation contained in the penultimate paragraph of the judgment and we do not see any reason for adopting such course, more so, because the later part of the judgment has been relied in Harbilas Rai Bansal v. State of Punjab, (1996) 1 SCC 1 and Rakesh Vij v. Dr. Raminder Pal Singh Sethi, (2005) 8 SCC
>
> 504."

30. The submission which has been pressed by Shri Uday Gupta is that the Constitution Bench in Gian Devi Anand did not declare provisions of Section 14(1)(e) unconstitutional rather left it to the Legislature to amend the law. When Gian Devi Anand has itself not struck down Section 14(1)(e) Satyawati Sharma doing the same is contrary to the judgment of Gian Devi Anand. The observation in paragraph 39 of Gian Devi Anand's case itself suggest that the Constitution Bench was satisfied that a ground for eviction of tenant of commercial premises on bona fide requirement of landlord should also be provided for. The basis for what has been done in Satyawati Sharma was clearly laid down in Gian Devi Anand for striking down the unconstitutional part in Section 14(1)(e). We fail to see that how can Satyawati Sharma judgment be said as per incuriam. The ratio of Gian Devi Anand has neither been ignored nor any contrary view has been taken by Satyawati Sharma. We may observe that Gian Devi Anand in paragraphs 32 and 34 has noticed the provisions of Section 14(1) specifically Section 14(1)(e) as existed in the Act, 1958. There was no challenge for the classification in Section 14(1)(e) in the above case, hence neither Gian Devi Anand was required to pronounce on the classification in Section 14(1)(e) nor was required to consider striking down of the provisions. In any view of the matter, the observation in paragraph 39, Gian Devi Ananad justified that there is ground to seek eviction on bona fide need. Thus, Satyadevi Sharma seeks support of what has been done in Gian Devi Anand's case.

31. Now, we come to three-Judge Bench judgment of Gauri Shanker which according to appellant is binding precedent and Satyawati Sharma having not noticed the said, the judgment of Satyawati Sharma is per incuriam. Gauri Shanker was a case where restriction on rights of heir of statutory tenant of residential premises placed by explanation to Section 2(l)(iii) of Delhi Rent Control Act as introduced Act 18 of 1976 while no restrictions were placed on tenants of commercial premises where challenge on the ground of violation of Article 14 and 21 of the Constitution of India. Gauri Shanker has noticed the Gian Devi Anand, especially paragraphs 32 and 34. The ground of

distinction was repelled and following was laid down in paragraph 12:

> "12. It is evident from the above decision of the Constitution Bench of this Court that a commercial tenancy is invaluable and has got distinct features and characteristics of its own different from that of a residential tenancy. None of the peculiar or unique features present in the case of commercial tenancies exist in the case of residential tenancies. In the above background, if the legislature thought it fit to afford a greater and extended right or benefit to the heirs of the statutory tenants of commercial premises and not to extend such rights to the heirs of the statutory tenants of residential premises, we should say that it only stands to reason and reckons the stark realities of the prevailing situation. The protection afforded by the Rent Act to a tenant after the termination of the tenancy and to the heirs of the tenant is only a creation of the Act and it is open to the Legislature to make appropriate provisions in that behalf. It can make suitable and appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be so enjoyed and the manner in which the same is to be enjoyed. In the above perspective, we are of the view that the provisions in Section 2(l)(iii) of the Act, which seeks to restrict or limit the right of the heirs, insofar as the statutory tenants of residential premises are concerned and to the extent provided therein, are not in any way discriminatory and do not offend the guarantee under Article 14 of the Constitution. This is not a case where the residential tenancy and the commercial tenancy are similarly placed. They belong to two different categories with distinct features and characteristics of their own. No question of discrimination arises. In this context, it is only proper to quote the following observations in Sakhawat Ali v. State of Orissa, AIR 1955 SC 166, which is apposite:
>
> "... legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution." (emphasis supplied) Nor are we impressed by the plea that the right to shelter is a guarantee under Article 21 of the Constitution of India and so the abridgement or limitation placed on the rights of the legal heirs in the case of a statutory tenancy of residential premises makes an inroad into the rights of the tenant under Article 21 of the Constitution of India. We hold that the statutory tenancies regarding residential premises are distinct and different from statutory tenancies regarding commercial premises and the limitations or the restrictions placed by Section 2(l)(iii) of the Act on the rights of the heirs of the statutory tenants of residential premises are reasonable, fair and just in all the circumstances of the case. There is no violation of the guarantee enshrined in Article 14 or Article 21 of the Constitution of India."

32. Gauri Shanker upheld Section 2(l)(iii) of the Act holding it not violating Article 14 and 21 of the Constitution. The observations in the judgment with respect to residential tenancy and commercial tenancy were made in reference to heritability. In the above context, this Court held that they belong to two different categories with distinct features and characteristics of their own. Gauri Shanker was not a case in which provision of Section 14(1)(e) came for consideration nor any observation has been made with regard to ground of eviction available to landlord with regard to commercial premises. Gauri Shanker had dealt with entirely different provision, certain limitation which was attached to residential premises itself to heritability. The case of Gauri Shanker being on different provision and premise, it cannot be said that Gauri Shanker was a binding precedent to be followed by Satyawati Sharma. The judgment of Gauri Shanker being on different provision cannot be said to be binding precedent in reference to what has been dealt in Satyawati Sharma. We, thus, conclude that the judgment of Satyawati Sharma cannot be held to be per incuriam.

33. The next limb of attack of the appellant on Satyawati Sharma is on the basis of non-consideration of Section 25B of the Act, 1958. Section 25A to Section 25C were inserted by Act 18 of 1976 w.e.f. 01.12.1975. Section 25 B provided for special procedure for the disposal of applications for eviction on the ground of bona fide requirement. Learned counsel for the appellant has also relied on Parliamentary debate on Delhi Rent Control Amendment Bill, 1976. Learned counsel submits that Hon'ble Minister of State in the Ministry of Works and Housing on the Floor of the House stated the following:

> "An apprehension was also expressed that commercial tenants would be evicted through summary procedure. First of all, this procedure is confined to residential premises and secondly, it is applicable only to Government servants and bona fide necessities. Nothing else. It does not apply to commercial premises and, therefore, there is no question of tenants being evicted from commercial premises."

> 34. There cannot be any dispute to the submission of the appellant that provision of Section 25B when it was inserted, the procedure was confined to residential premises as has been stated by the Hon'ble Minister on the Floor of the House. There being no ground available to landlord for eviction of a tenant of commercial premises on bona fide need, there was no contemplation for applying the procedure under Section 25B.

> 35. The question is as to whether non-consideration of Section 25B by Satyawati Sharma renders judgment of Satyawati Sharma per incuriam. Satyawati Sharma was considering the challenge to provisions of Section 14(1)(e) in sofaras the ground of bona fide need of landlord is also available for commercial premises. Section 25B being related to only procedure for considering the application under Section 14(1)

> (e)has no bearing on the issue which had propped up before this Court in Satyawati Sharma. Nothing in Section 25B can be read which runs counter to what has been laid down by Satyawati Sharma. Whether a procedure giving more flexibility to tenants of commercial premises should be provided for is another subject but non-reference of Section 25B by Satyawati Sharma does not render the judgment per

incuriam.

36. We may also at this stage notice one submission raised by the counsel for the respondent that judgment of Satyawati Sharma has been affirmed by three-Judge Bench judgment in Super Max International Pvt. Ltd. (supra). The submission is countered by the counsel for the appellant who contends that Super Max was a case which was dealing entirely different subject and it cannot be said that ratio of Satyawati Sharma has been affirmed in Super Max.

37. We may now notice judgment of Super Max in some detail. Super Max was a case where this Court had occasion to consider Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In the above case, the Government of Maharashtra was in occupation of sixth floor of a building which used for housing the Office of the Registrar, Cooperative Societies. The appellant suffered a decree of ejectment passed by the Court of Small Causes. The decree came to be challenged by civil revision application where the High Court stayed the execution of the decree subject to the condition that the shall deposit Rs.

5,40,000/- every month which amount was, however, not allowed to be withdrawn by the appellant. In paragraph 8 this Court noticed:

"8. Of late, orders are coming to this Court where, in cases arising from ejectment proceedings, the High Courts, with a view to strike a balance between the competing interests of the landlord and the tenant, pass interim orders asking the tenant to pay to the landlord or deposit in Court, as monthly rent, certain sum fixed by it (that, according to the High Court, should be the reasonable market rent for the tenanted premises), far in excess of the existing monthly rent."

38. Three-Judge Bench in the above case noticed both the judgments in Gian Devi Anand and Satyawati Sharma. The judgment of Satyawati Sharma specifically paragraphs 12, 29 and 32 have been considered in paragraphs 67 to 70 of the judgment which are as follows:

"67. The way this Court has been looking at the relationship between the landlord and the tenant in the past and the shift in the Court's approach in recent times have been examined in some detail in the decision in Satyawati Sharma v. Union of India, (2008) 5 SCC

287. In that decision one of us (Singhvi, J.) speaking for the Court referred to a number of earlier decisions of the Court and (in para 12 of the judgment) observed as follows: (SCC pp. 304-05) "12. Before proceeding further we consider it necessary to observe that there has been a definite shift in the Court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s to early 1990s would indicate that in majority of cases the courts heavily leaned in favour of an

> interpretation which would benefit the tenant—Mohinder Kumar v. State of Haryana, (1985) 4 SCC 221, Prabhakaran Nair v.

State of T.N. (1987) 4 SCC 238, D.C. Bhatia v. Union of India, (1995) 1 SCC 104 and C.N. Rudramurthy v. K. Barkathulla Khan, (1998) 8 SCC 275. In these and other cases, the Court consistently held that the paramount object of every rent control legislation is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the later judgments."

68. The learned Judge then referred to some later decisions and (in para 14 at SCC p. 306 of the judgment) quoted a passage from the decision in Joginder Pal v. Naval Kishore Behal, (2002) 5 SCC 397 to the following effect: (Joginder Pal case, SCC p. 404, para 9) "14. ... '9. ... The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society.

In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as to take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.' " (emphasis in original)

69. Commenting upon the Full Bench decision of the Delhi High Court that had upheld the constitutional validity of Section 14(1)(e) of the Delhi Rent Control Act and that came under challenge in Satyawati Sharma, Singhvi, J. (in para 29 of the judgment) observed as follows:

> (SCC p. 318) "29. ... It is significant to note that the Full Bench did not, at all, advert to the question whether the reason/cause which supplied rationale to the classification continued to subsist even after lapse of 44 years and whether the tenants of premises let for non-
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> residential purposes should continue to avail the benefit of implicit exemption from eviction in the case of bona fide requirement of the landlord despite see-saw change in the housing scenario in Delhi and substantial increase in the availability of buildings and premises which could be let for non-residential or commercial purposes."
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> 70. The decision in Satyawati Sharma then referred to the doctrine of temporal reasonableness and in para 32 observed as follows: (SCC p. 320) "32. It is trite to say that legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court

> may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent."
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> 39. The ratio which was quoted by three-Judge Bench from Satyawati Sharma was that which was laid down in paragraph 32 of the Satyawati Sharma case. The ratio in Satyawati Sharma that a Legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality has been affirmed which is clear from paragraph 71 of the judgment. Paragraph 71 of three-

Judge Bench judgment is as follows:

> "71. We reaffirm the views expressed in Satyawati Sharma and emphasise the need for a more balanced and objective approach to the relationship between the landlord and tenant. This is not to say that the Court should lean in favour of the landlord but merely that there is no longer any room for the assumption that all tenants, as a class, are in dire circumstances and in desperate need of the Court's protection under all circumstances. (The case of the present appellant who is in occupation of an area of 9000 sq ft in a building situate at Fort, Mumbai on a rental of Rs 5236.58, plus water charges at the rate of Rs 515.35 per month more than amply highlights the point.)"
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> 40. It is true that in the above three-Judge Bench judgment, the Court was not directly concerned with Section 14(1)(e) of the Delhi Rent Control Act. Thus, three-Judge Bench had the basis of Satyawati Sharma and on which basis Section 14(1)(e) was struck down after working of the Act after more than 50 years.

We, thus, are of the view that three-Judge Bench in Super Max approved limited ratio of Satyawati Sharma as extracted by three-Judge Bench which fully supports the submission that basis and reasoning on which Satyawati Sharma struck down Section 14(1)(e) partly stood on firm footing.

Question No.2

41. We having rejected the submission of learned counsel for the appellant that the judgment of Satyawati Sharma is per incuriam. Whether there is any ground or basis on which the judgment of Satyawati Sharma can be referred for re-consideration is the next question to be answered.

42. Learned counsel for the appellant has not referred to any judgment of this Court which has sounded different note or which has taken a contrary view to what has held in Satyawati Sharma case. What is emphasised by the learned counsel for the appellant is, that as the Legislature has never intended to apply Section 14(1)(e)for commercial premises which was clear from legislative intendment, Satyawati Sharma could not have taken a view which is contrary to the legislative intendment. By noticing the three-Judge Bench judgment in Super Max, we have already noticed that three-Bench has reaffirmed ratio of Satyawati Sharma that the Legislation which was quite

reasonable and rational at the time of its enactment may with the lapse of time and due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality. Various judgment pertaining to Rent Control Legislations have been referred to and relied in Satyawati Sharma itself. Satyawati Sharma also dealt with the reasons which were given by the Delhi High court in upholding Section 14(1)(e) in paragraph 31 of the judgment. Satyawati Sharma observed following in paragraph 31:

> "31. In H.C. Sharma vs. Life Insurance Corporation of India (supra), the Division Bench of the High Court, after taking cognizance of the acute problem of housing created due to partition of the country, upheld the classification by observing that the Government could legitimately restrict the right of the landlord to recover possession of only those premises which were let for residential purposes. The Court felt that if such restriction was not imposed, those up-rooted from Pakistan may not get settled in their life. As of now a period of almost 50 years has elapsed from the enactment of the 1958 Act. During this long span of time much water has flown down the Ganges. Those who came from West Pakistan as refugees and even their next generations have settled down in different parts of the country, more particularly in Punjab, Haryana, Delhi and surrounding areas. They are occupying prime positions in political and bureaucratic set up of the Government and have earned huge wealth in different trades, occupation, business and similar ventures. Not only this, the availability of buildings and premises which can be let for non- residential or commercial purposes has substantially increased. Therefore, the reason/cause which prompted the Division Bench of the High Court to sustain the differentiation/classification of the premises with reference to the purpose of their user, is no longer available for negating the challenge to Section 14(1)
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> (e) on the ground of violation of Article 14 of the Constitution, and we cannot uphold such arbitrary classification ignoring the ratio of Harbilas Rai Bansal vs. State of Punjab (supra), which was reiterated in Joginder Pal vs. Naval Kishore Behal(supra) and approved by three-

Judges Bench in Rakesh Vij vs. Dr. Raminder Pal Singh Sethi (supra). In our considered view, the discrimination which was latent in Section 14(1)(e) at the time of enactment of 1958 Act has, with the passage of time (almost 50 years) has become so pronounced that the impugned provision cannot be treated intra vires Article 14 of the Constitution by applying any rational criteria."

43. The judgment of this Court with regard to Rent Control Legislation, namely, 1986 (3) SCC 385 and Malpe Vishwanath Acharya and others vs. State of Maharashtra and another, (1998) 2 SCC 1, has been referred to and relied by Satyawati Sharma. In Malpe Vishwanath Acharya, a three-Judge Bench of this Court laid down following in paragraphs 8 and 31:

> "8. There is considerable judicial authority in support of the submission of learned counsel for the appellants that with the passage of time a legislation which was justified when enacted may become arbitrary and unreasonable with the change in

circumstances. In the State of M.P. v. Bhopal Sugar Industries Ltd., AIR 1964 SC 1179, dealing with a question whether geographical classification due to historical reasons would be valid this Court at SCR p. 853 observed as follows:

"Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared."

31. Taking all the facts and circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable. The said provisions would have been struck down as having now become unreasonable and arbitrary but we think it is not necessary to strike down the same in view of the fact that the present extended period of the Bombay Rent Act comes to an end on 31-3-1998.

The Government's thinking reflected in various documents itself shows that the existing provisions have now become unreasonable and, therefore, require reconsideration. The new bill is under consideration and we leave it to the legislature to frame a just and fair law keeping in view the interests of all concerned and in particular the resolution of the State Ministers for Housing of 1992 and the National Model Law which has been circulated by the Central Government in 1992. We are not expressing any opinion on the provisions of the said Model Law but as the same has been drafted and circulated amongst all the States after due deliberation and thought, there will, perhaps, have to be very good and compelling reasons in departing from the said Model Law. Mr Nargolkar assured us that this Model Law will be taken into consideration in the framing of the proposed new Rent Control Act."

44. The above principles have been reiterated in following judgments:

(i) Anuj Garg and Others Vs. Hotel Association of India and Others, (2008) 3 SCC 1 reiterated the principle that a statute although could have been held to be a valid piece of legislation keeping in view the societal condition of those times, but with the changes occurring therein, such a law can also be declared invalid. In Paragraph Nos. 7, 8 and 9, following has been laid down:-

"7. The Act is a pre-constitutional legislation. Although it is saved in terms of Article 372 of the Constitution, challenge to its validity on the touchstone of Articles 14, 15

and 19 of the Constitution of India, is permissible in law. While embarking on the questions raised, it may be pertinent to know that a statute although could have been held to be a valid piece of legislation keeping in view the societal condition of those times, but with the changes occurring therein both in the domestic as also in international arena, such a law can also be declared invalid.

8. In John Vallamattom v. Union of India, (2003) 6 SCC 611, this Court, while referring to an amendment made in UK in relation to a provision which was in pari materia with Section 118 of the Indian Succession Act, observed: (SCC p. 624, para

28) "28. ... The constitutionality of a provision, it is trite, will have to be judged keeping in view the interpretative changes of the statute affected by passage of time." Referring to the changing legal scenario and having regard to the Declaration on the Right to Development adopted by the World Conference on Human Rights as also Article 18 of the United Nations Covenant on Civil and Political Rights, 1966, it was held:

(John Vallamattom case, SCC p. 625, para

33) "33. It is trite that having regard to Article 13(1) of the Constitution, the constitutionality of the impugned legislation is required to be considered on the basis of laws existing on 26-1-1950, but while doing so the court is not precluded from taking into consideration the subsequent events which have taken place thereafter. It is further trite that the law although may be constitutional when enacted but with passage of time the same may be held to be unconstitutional in view of the changed situation."

9. Changed social psyche and expectations are important factors to be considered in the upkeep of law. Decision on relevance will be more often a function of time we are operating in. Primacy to such transformation in constitutional rights analysis would not be out of place.....

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(ii) In Saradamani Kandappan Vs. S. Rajalakshmi & Ors., (2011) 12 SCC 18, Justice R.V. Raveendran speaking for the Court reiterated the same principles in paragraph Nos. 38 and 39 in the following words:-

"38. It is now well settled that laws, which may be reasonable and valid when made, can, with passage of time and consequential change in circumstances, become arbitrary and unreasonable. In Rattan Arya v. State of T.N.7 this Court held: (SCC pp. 389-90, para 4) "4. ... 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 throughout 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. As held by this Court in Motor General Traders v. State of A.P.8 a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time, become discriminatory and liable to challenge on the ground of its being violative of Article 14." (emphasis supplied)

39. In Malpe Vishwanath Acharya v. State of Maharashtra, (1998) 2 SCC 1, a three-Judge Bench of this Court considered the validity of determination of standard rent by freezing or pegging down the rent as on 1-

9-1940 or as on the date of first letting, under Sections 5(10)(b), 7, 9(2)(b) and 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the said process of determination under the Act, which was reasonable when the law was made, became arbitrary and unreasonable in view of constant escalation of prices due to inflation and corresponding rise (sic fall) in money value with the passage of time. This Court held: (SCC pp. 22-23, paras 29 &

31) "29. Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants.....

* * *

31. Taking all the facts and

circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable." It is relevant to note that Justice Raveendran has placed reliance on earlier judgments of this Court in Rattan Arya Vs. State of Tamil Nadu (supra) and Malpe Vishwanath Acharya (supra), which judgments have already been referred to and relied by this Court in Satyawati Sharma's case. Thus, the proposition, which was laid down in Satyawati Sharma's case relying on above two judgments have again been reiterated by this Court in Sardarmani Kandappan (supra) in Paragraph Nos. 38 and 39, as noted above.

(iii) The Constitution Bench of this Court in Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and Others, (2016) 7 SCC 353, speaking through Dr. Justice A.K. Sikri

in paragraph Nos. 69 and 92, following has been observed:-

> "69. ……..It is rightly said that the law is not an Eden of concepts but rather an everyday life of needs, interests and the values that a given society seeks to realise in a given time. The law is a tool which is intended to provide solutions for the problems of human being in a society.
>
> 92. .....Law is not static, it has to change with changing times and changing social/societal conditions."

45. Much emphasis has been given by the learned counsel for the appellant on the fact that various tenants are tenants of small shops which are their source of livelihood when application under 14(1)(e) filed by the landlord on bona fide need, they are not even entitled to contest the application by filing written statement. They are obliged to obtain leave to defend as per Section 25B which leave to defend is rejected in most of the cases which causes great hardship on the tenants. It is submitted that in so far as applicability of the procedure under Section 25B is concerned, the issue needs to be revisited to save the tenants from hardship. In our view this cannot be a ground for referring the judgment of Satyawati Sharma to larger Bench for reconsideration of judgment of Satyawati Sharma. Satyawati Sharma having not said about the procedure, there is nothing in the judgment which needs to be revisited on the above aspect. It is for the Legislature to take stock of situation and if it so decides it can make necessary changes in the procedure for considering the application under Section 14(1)(e) with regard to eviction of commercial tenants on the ground of bona fide need of the land lord. We need to add nothing more on the subject. In sofaras submission of the learned counsel for the appellant is that under Section 14(1)(e) in respect of commercial tenancy leave to defend is generally rejected, it is suffice to say that rejection of leave for a particular case is matter to be examined in each case and no general observation can be made in this regard.

46. There is one more aspect of the matter which needs to be noted. We have already extracted observation of Constitution Bench judgment in Gian Devi Anand in paragraph 39 where the Constitution Bench observed that bona fide need of the landlord stands very much on the same footing in regard to either class of premises, residential or commercial. We, therefore, suggest that Legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well. After more that a decade of the above observation, a comprehensive Legislation, namely, Delhi Rent Act, 1995 has been enacted to provide for the regulation of rents, repairs and maintenance and evictions relating to premises and of rates of hotels and lodging houses in the National Capital Territory of Delhi. In Act, 1995 the definition of premises as was contained in Act, 1958 remained same. With regard to protection of tenant against eviction a new Section 22(r) which provides as follows:

> "Section 22(r) that the premises let for residential or non-residential purposes are required, whether in the same form or after re-construction or re-building, by the landlord for occupation for residential or non-residential purpose for himself or for any member of his family if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other

reasonably suitable accommodation:

Provided that where the landlord has acquired the premises by transfer, no application for the recovery of possession of such premises shall lie under this clause unless a period of three years has elapsed from the date of the acquisition:

Provided further that where an order for the recovery of possession of any premises is made on the ground specified in this clause, the landlord shall be entitled to obtain possession thereof on the expiration of a period of six months in the case of residential premises and one year in the case of non-residential premises from the date of passing of eviction order."

47. We may notice another three-Judge Bench judgment of this Court, i.e., Subramanian Swamy and others vs. Raju through Member, Juvenile Justice Board and another, (2014) 8 SCC 390. This Court in the above judgment laid down that reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. We need to notice the issues raised in the above case and the ratio of the judgment. Above was a case where a lady of 23 years in age in moving bus was brutally assaulted sexually and physically. The lady succumbed to her injuries. Five persons were apprehended in connection with the crime. The respondent, Raju was below 18 years of age on the date of commission of the crime. His case was referred for inquiry to the Juvenile Justice Board. The other accused were tried in a regular Sessions Court and have been found guilty of the offences under Section 376(2)(g) and Section 302 of the Penal Code. Other accused were sentenced to death, appeal against which was dismissed by the High court. The petitioners had filed applications for impleadment before the Juvenile Justice Board. The case of the petitioners was that on a proper interpretation of the Act (Juvenile Justice (Care and Protection of Children) Act, 2000), the Juvenile(respondent) was not entitled to the benefits under the Act but was liable to be tried under the penal law of the land in a regular criminal court along with the other accused.

48. A writ petition was also filed in the High Court praying for an authoritative interpretation of Sections 2(l) and 2(k) of the Act that the criterion of 18 years set out therein does not comprehend cases of grave offences in general and of heinous crimes against women in particular that shakes the root of humanity in general. The writ petition was dismissed by the High Court holding that against the order of the Juvenile Justice Board the alternative remedies were available under the Act which should be first exhausted. The prayer for impleadment of the petitioners was also rejected.

49. A Special Leave Petition against the above judgment of the High Court as well as writ petition was filed in this Court. The submissions of petitioners were noted by this Court. In paragraphs 59 and 60 this Court noticed the submissions made on behalf of the petitioner as below:

"59. Dr. Swamy at the outset has urged that there is no attempt on his part to challenge the constitutional validity of the Act, particularly, the provisions contained in Sections 2(k) and 2(l) of the Act and what he seeks is a mere reading down of the Act.....

60. Dr. Swamy would urge that the relevant provisions of the Act i.e. Sections 1(4), 2(k), 2(l) and 7 must be read to mean that juveniles (children below the age of 18) who are intellectually, emotionally and mentally mature enough to understand the implications of their acts and who have committed serious crimes do not come under the purview of the Act. Such juveniles are liable to be dealt with under the penal law of the country and by the regular hierarchy of courts under the criminal justice system administered in India....."

50. This Court in the background of the above submissions laid down following in paragraph 61:

> "61. Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the "reading down"
>
> doctrine can be summarized as follows. Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. The above is a fairly well established and well accepted principle of interpretation which having been reiterated by this Court time and again would obviate the necessity of any recall of the huge number of precedents available except, perhaps, the view of Sawant, J. (majority view) in Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors. 1991 Supp. (1) SCC 600 which succinctly sums up the position is, therefore, extracted below: (SCC pp.728-29, para 255) "255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible--one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so.""

51. Rejecting the submission of the petitioner to read down the statute following was held in paragraph 64:

> "64.If the provisions of the Act clearly indicate the legislative intent in the light of the country's international commitments and the same is in conformity with the constitutional requirements, it is not necessary for the Court to understand the legislation in any other manner. In fact, if the Act is plainly read and understood, which we must do, the resultant effect thereof is wholly consistent with Article 14. The Act, therefore, need not be read down, as suggested, to save it from the vice of unconstitutionality for such unconstitutionality does not exist."

52. Now reverting to the judgment of this Court in Satyawati Sharma (supra), in the said judgment this Court did not read down the provision of Section 14(1)(e) of the Delhi Rent Control Act. This Court held that Section 14(1)(e) is not intra vires the doctrine of equality enshrined in Article 14 of the Constitution. In paragraph 31 following was laid down:

> "31.....In our considered view, the discrimination which was latent in Section 14(1)(e) at the time of enactment of the 1958 Act has, with the passage of time (almost 50 years), become so pronounced that the impugned provision cannot be treated intra vires Article 14 of the Constitution by applying any rational criteria."

53. After considering all aspects of the matter, this Court in Satyawati Sharma (AIR 2008 SC 3148) held that Section 14(1)(e) is violative of the doctrine of equality embodied in Article 14 of the Constitution. This Court, thus, struck down the discriminatory portion of Section 14(1)(e). In paragraphs 38 and 39 following was laid down:

> "38. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only."
>
> 39. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned Counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e)..."

54. The judgment of Satyawati Sharma was, thus, not a case of reading down of Section 14(1)(e) rather it was a case where portion of Section 14(1)(e) was struck down as discriminatory and violative of Article 14 of the Constitution. Thus, three-Judge Bench judgment in Subramanian Swamy and others (supra) is clearly distinguishable and does not affect the ratio laid down by

two-Judge Bench judgment in Satyawati Sharma case.

55. The Legislature itself notices the need for providing a ground for eviction to landlord on bona fide need with regard to residential as well as non- residential premises. Thus, what was said in Gian Devi Anand in paragraph 39 was duly accepted by Legislature. It is another matter that Delhi Rent Act, 1995 even though it received assent of the President could not be enforced. Section 1(3) provided that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Central Government did not issue any notification in the Official Gazette for enforcement of the Act. Writ Petition was filed in Delhi High Court for issuance of mandamus to Central Government to enforce Act, 1995 which was dismissed. From the above, it is clear that what was observed by Gian Devi Anand was also accepted by the Legislature in providing for eviction from both the residential and non-residential premises on the ground of bona fide need in Act, 1995. Although, said Act could not be enforced, the Legislation is complete when the Act is passed by the Legislature and receives the assent of the President.

56. A Constitution Bench in State of Kerala and others vs. Mar Appraem Kuri Company Limited and another, (2012) 7 SCC 106, laid down following in paragraphs 50 and 51:

> "50. Broadly speaking, law-making is exclusively the function of the legislatures (see Articles 79 and 168). The President and the Governor are a part of the Union or the legislatures of the States. As far as Parliament is concerned, the legislative process is complete as soon as the procedure prescribed by Article 107 of the Constitution and connected provisions are followed and the Bill passed by both the Houses of Parliament has received the assent of the President under Article
>
> 111. Similarly, a State legislation becomes an Act as soon as a Bill has been passed by the State Legislature and it has received the assent of the Governor in accordance with Article 200. It is only in the situation contemplated by Article 254(2) that a State legislation is required to be reserved for consideration and assent by the President. Thus, irrespective of the date of enforcement of a parliamentary or State enactment, a Bill becomes an Act and comes on the statute book immediately on receiving the assent of the President or the Governor, as the case may be, which assent has got to be published in the Official Gazette.
>
> 51. The legislature, in exercise of its legislative power, may either enforce an Act, which has been passed and which has received the assent of the President or the Governor, as the case may be, from a specified date or leave it to some designated authority to fix a date for its enforcement. Such legislations are conditional legislations as in such cases no part of the legislative function is left unexercised. In such legislations, merely because the legislature has postponed the enforcement of the Act, it does not mean that the law has not been made."

57. The above authority duly supports our view that law has been made by the Parliament in enacting Act, 1995 which accepts the suggestion of Constitution Bench in Gian Devi Anand and

hence what has been held by Satyawati Sharma was felt both by this Court and Legislature. We, thus, do not find any good ground to refer the judgment of this Court in Satyawati Sharma for reconsideration by a larger Bench. We, thus, reject the submission of the learned counsel for the appellant that Satyawati Sharma needs to be referred to a larger Bench for reconsideration.

58. We having decided the above issue let the appeals be now listed for consideration on merits.

.....J. (ASHOK BHUSHAN) .....J. (K.M. JOSEPH) New Delhi, August 05, 2019