Judgment reserved on 14.3.2014
Judgment delivered on 04.4.2014

CIVIL MISC. WRIT PETITION NO.50870 of 2004
Neena Jain & Others vs. State Of U.P. & another
Connected with
TRANSFER APPLICATION (CIVIL) No. - 301 of 2005
Neena Jain & Others vs. State Of U.P. & others

Hon'ble Sunil Ambwani,J.
Hon'ble Mohd. Tahir,J.

1. We have heard Shri Ravi Kiran Jain, Senior Advocate assisted by Ms. Deeba Siddiqui. Learned Advocate General assisted by Shri Ravi Shanker Prasad had appeared for State respondents. Shri Ashok Nath Tripathi appeared for the respondent-landlord.

2. Smt. Neena Jain wife of Shri Avnish Jain, her two sons Archit Jain and Nishith Jain and Shri Rajnish Jain-the brother of petitioner's husband are owners and landlord of a commercial property on the Court Road, Saharanpur. The complex of shops on the ground floor and the rooms on the first floor of the property are situate on the main road of the commercial centre of the district. One of the shops on the front side adjoining the road was given on rent to Gandhi Ashram-the respondent no.2 (the tenant). A part of the front portion given to Dr. Mohan Pandey and the other, in which an ice cream parlour was running on rent, were sold to them by the petitioners.

3. It is stated that Smt. Neena Jain and her children are in dire need of money. They want to dispose of the shop occupied by Gandhi Ashram. The tenancy of the shop let out to Gandhi Ashram is regulated by the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the UP Act of 1972) of which the

agreement of tenancy was entered into prior to April, 1985 @ Rs.100/- per month. At present the shop can be let out at the rent for at least Rs.10,000/- per month. The court road is the main commercial area where the value of the property and the rental value have risen considerably. The petitioner no.1 as a widow, getting a nominal rent from the shop is in need of money and is extremely hard pressed with the present rental of the shop of only Rs. 900/- per month. She cannot increase the rent as there is no provision under the UP Act of 1972 for increasing the rent beyond the agreed rent. She also cannot evict the tenant and obtain possession of the shop from Gandhi Ashram on account of the bar created under Section 20 of the UP Act of 1972 against eviction except on the grounds set out, which do not include eviction on the ground of increase of rent. She gave a notice dated 23.12.2004 to respondent no.2 determining the tenancy. A reply was given by the tenant on 7.1.2005 to the notice, after which the tenant is depositing the rent under Section 30 of UP Act of 1972. The petitioners have thereafter filed a SCC Suit No.16 of 2005 (Rajnish Jain and ors vs. Kshetriya Sri Gandhi Ashram, Meerut) for eviction which is pending in the Court of Judge, Small Cause Court, Saharanpur. The Transfer Petition No.301 of 2005 has been filed by the petitioner under Article 228 of Constitution of India to transfer the Suit to the High Court as it involves a substantial question of law as to the interpretation of the Constitution, the determination of which according to the petitioner is necessary for disposal of the case. It is alleged that since the entire UP Act of 1972 has after the decision of this Court in **Milap Chandra Jain vs. State of UP and ors 2001 (2) ARC 488,** decided on 12.9.2001 declaring the 'standard rent' under Section 3 (k) and corresponding provisions under Section 4 (2), 5, 6, 8 and 9 to be ultra vires the provisions of the UP Act of 1972, has become unworkable and thus the entire U.P. Act of 1972 is

liable to be declared as ultra vires of the Constitution of India.

4. In Writ Petition No.50870 of 2004 the petitioners have prayed for a direction to declare UP Act No.13 of 1972 as ultra vires the Constitution of India on the grounds quoted as below:-

> "(A) Because the definition of "Standard Rent" under Sections 2 (k) of the Act and the corresponding provisions under Section 4 (2), (5), (6), (8) and (9) of the Act having been declared ultra vires of the Constitution of India in Milap Chand Jain's case, these provisions are no more in the Statute Book and may be deemed to be deleted.
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> (B) Because after the aforesaid provisions having been struck down the entire U.P. Act No.13 of 1972 becomes unworkable and is liable to be declared ultra vires the Constitution of India.
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> (C) Because with the passage of time U.P. Act No.13 of 1972 has become counter productive.
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> (D) Because with the passage of time, it is not possible to see that U.P. Act No.13 of 1972 is serving the purpose for which it was enacted, it is causing hardship to landlords.
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> (E) Because after haphazard growth of buildings in urban areas, during last two decades of the 20th Century there cannot be said to be any paucity of accommodation in urban areas and as such the Act becomes redundant and unnecessary.
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> (F) Because it is not only the rent of the buildings to which the Act applies which has freezed, but also the market value of buildings in which the tenants are in occupation which has freezed.
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> (G) Because the petitioners require the building in dispute under a vacant state for being sold in the open market at the prevalent market value. Under the Act it is not possible to get it vacated on this ground."

5. It is submitted by Shri Ravi Kiran Jain that the UP Act No.13 of 1972 is a successor of UP (Temporary) Control of Rent and Eviction Act, 1947 UP Act No.III of 1947), which had in turn replaced the U.P. (Temporary) Control of Rent and Eviction Ordinance UP Act No.III of 1946. The Act came into force with effect from October 1st, 1946. Its life was extended from time to time and several new provisions were added to provide some relief to the tenants against the rigour of original provisions which provide for

control of letting and rent of accommodation similar to those contained in the orders, which were issued under the Defence of India Rules, 1939. The shortage of accommodation became acute on an account of slow pace of housing building activity. With the arrival of displaced persons after the partition of India, it was necessary to provide letting of the accommodation as well as control of rent. The temporary enactment was later replaced by the UP Act of 1972 with the statement of objects and reasons as follows:-

> "**Statement of Objects and Reasons** – The United Provinces (Temporary) Control of Rent and Eviction Act, 1947, was passed as a temporary Act, with a view mainly to continuing in force provisions relating to control of letting and rent of accommodation similar to those contained in orders which had been issued under the Defence of India Rules, 1939. It was expected that the situation of shortage of accommodation would be tided over after a short period, and accordingly an Ordinance was promulgated in 1946, and it was replaced by a temporary Act in 1947. In view, however, of the continuing increase in the urban population and the relatively slow pace of house-building activity, mainly due to shortage of materials the problem of shortage of accommodation has become chronic, and the life of the Act has had to be extended from time to time. Various amendments were also made in its provisions as and when problems arose. Some of the provisions attracted criticism on various grounds in Courts of law and also criticism by informed public opinion. Government gave an assurance to the Legislature that they would soon replace the Act by a new comprehensive legislation, and accordingly, this Bill has been prepared.
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> The salient features of the Bill are as follows:
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> (1) It is proposed to make the new law a permanent one instead of a temporary measure.
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> (2) Instead of fixing a particular date and applying the law only to buildings constructed till the date it is proposed that the new law shall apply to all building after a period of 10 years from the date of completion of their construction. Thus the number of buildings that will be brought under regulation shall be rising progressively as time passes. Ten-year holiday from regulation is being provided to give incentive from construction of new buildings.
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> (3) Under Section 3 of the old Act the powers of the District Magistrate in the matter of grant of permission for instituting a suit for eviction of a tenant were not defined and he had an unfettered discretion to allow eviction of any ground whatsoever. The grounds

on which such eviction of a sitting tenant may be permitted or release of a vacant building allowed have now been restricted. Further in order to reduce multiplicity of proceedings and also to reduce the congestion in civil courts it has been provided that proceedings for eviction shall lie before the prescribed authority instead of in the civil court.

(4) The provision for revision to the State government against allotment and release orders and orders of eviction of unauthorized occupants has been omitted. Instead, appeal against allotment orders and orders of release of vacant buildings that may be passed by the District Magistrate or his delegate shall lie to the Commissioner and appeal against orders of the District Magistrate or his delegate determining or re-fixing rent and orders of the prescribed authority in release proceedings against sitting tenants shall lie to the District Judge, and the decision of the Commissioner or the District Judge, shall be final.

(5) Suits for eviction on the grounds specified in Section 3 of the old Act which lay in the Court of Munsif or Civil Judge shall now lie in the Courts of Small Causes. This will do away with the multiplicity of appeals, as only a revision will lie against the decision of the Small Cause Court as in other small cause cases. Further, out of the grounds specified in the old Act, some have been modified. As it appear that allegations of causing a nuisance were sometimes made for creating a fictitious grounds of eviction, this ground has been omitted. Moreover, mere making of material alterations will not be a valid ground of eviction and only structural alterations in the building will form such ground.

(6) Buildings held by educational institutions or charitable societies or buildings built and held by co-operative societies, companies and firms for their own occupation or for the occupation of their employees, etc. shall be exempt from the operation of the new law.

(7) Certain provisions have been made with a view to ensuring that building are not deliberately got under-assessed, and the local authorities get their due share of taxes according to the correct letting value. Re-fixation of rent on the application of the tenant is also being provided for in such case.

(8) Suits for eviction pending against tenants of buildings brought under regulation for the first time shall not be decreed and decrees for eviction already obtained shall not be executed except on specified grounds.

(9) After the death of tenant the surviving members of his family shall be entitled to the same protection as the deceased.

(10) In the case of such repairs, as are essential to keep a building wind-proof and water-proof the tenant is being allowed to deduct two

months' rent instead of one moth's rent.

(11) The tenant's liability to pay enhanced house tax is being reduced from one-third of the amount of enhancement to one-fourth thereof.

(12) The provisions regarding allotment, maintenance of the building in wind-proof and water-proof condition and of amenities attached to it, and deposit of rent in Court in certain circumstances have been retained, and certain loopholes in the various provisions have been sought to be plugged."

6. Shri Jain submits that though the Act was amended from time to time by UP Act No.37 of 1972; UP Act No.19 of 1974; UP Act No.30 of 1974; UP Act No.28 of 1976; UP Act No.17 of 1985; UP Act No.11 of 1988, and UP Act No.5 of 1995, no provisions were made for increasing the rent. The standard rent under Section 3 (k) subject to the provisions of Sections 6, 8 and 10 means if the building was governed by the old Act and let out at the time of commencement of the Act; (a) where there is both an agreed rent payable thereof at such commencement as well as a reasonable annual rent,(which has the same meaning as in Section 2 (f) of the Act, reproduced in the Schedule), the agreed rent or the reasonable annual rent plus 25 per cent thereon whichever is lesser; (b) where there is no agreed rent, but there is a reasonable annual rent, the reasonable rent plus 25 per cent thereon; and (c) where there is neither agreed rent nor reasonable annual rent, the rent as determined under Section 9. Clause (ii) of Section 3 (k) provides that in any other case, the assessed letting value for the time being in force and in the absence of assessment, the rent determined under Section 9. Section 4 prohibits the charging of premium and rent payable generally, except as provided in Sections 5, 6, 7, 8, 9-A and 10, the rent payable for any building shall be such as may be agreed upon between the landlord and the tenant, and in the absence of any

agreement, the standard rent. Section 5 provides for rent payable in case of old building and which also provides for enhancement thereof to an amount not exceeding the standard rent and the rent enhanced to be paid from the commencement of the Act. Section 6 provides for an effect on improvement on rent by an amount not exceeding 1% of the actual cost of such improvement. Section 7 fixes the liability of payment of taxes subject to the contract in writing to the contrary by the tenant to the landlord in addition to as part of the rent, the water tax, and 25% of enhancement of house tax made after commencement of the Act. Section 8 provides for determination of disputes regarding amount of standard rent and Section 9 provides for determination of the standard rent in case of a dispute with regard to enhancement of rent permissible under Sections 5 and 6 or to the date with effect from the date on which such enhancement shall take effect.

7. Shri Ravi Kiran Jain submits that by an amendment in the second proviso to Section 2 (2), the buildings of which construction is complete on or after April 26, 1985, is inapplicable for a period of 40 years from the date on which the construction is complete. The amendment by UP Act No.17 of 1985 w.e.f. 26.4.1985 has extended the holiday of ten years which was subsequently increased to 20 years for the applicability of the Act to the building newly constructed to 40 years, if the building has been constructed on or after April 26, 1985. The rent and tenancy of the buildings constructed prior to this date is regulated by the Act subject to condition that the agreed rent is less than Rs. 2000/- per month. Where the agreed rent exceeds Rs. 2000/- per month, the UP Act of 1972 is not applicable to such tenancy.

8. It is submitted that in **Milap Chandra Jain and others vs.**

State of UP & ors decided on September 12, 2001 reported in 2001 (2) ARC 488 learned Single Judge considered the challenge to the provisions of Section 3 (k) and corresponding provisions of Section 4 (2), 5, 6, 8 and 9 of UP Act of 1972 on the ground that the freezing of rent of the buildings by these provisions has become arbitrary and unreasonable being violative of Article 14 and 39-A of the Constitution of India. Reliance was placed in the judgment on the ratio of judgment in **Malpe Vishwanath Acharya vs. State of Maharashtra AIR 1998 SC 602.** This Court after considering the ratio of the judgment in Malpe Vishwanath Acharya's case and after comparing the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (in short the Bombay Rent Act of 1947) with the provisions of UP Act No.13 of 1972 held in paragraphs 54 to 56 of the judgment that the control of ejectment and in not permitting the enhancement of the rent and linking it with the price index, is highly unreasonable. The control of eviction is the matter of policy of the Government due to the shortage of accommodation but the control of rent at the level of 1972 in some classes of tenancies cannot be the policy of the State, and it being unreasonable, unfair and inequal is liable to be struck off. Paragraph nos. 54, 55 and 56 of the judgment are quoted as below:-

> "54. Considering the entire arguments in the circumstances, I am of the view that the control of ejectment and not permitting to enhance the rent with the price index is highly unreasonable. The control of eviction is the matter of policy of the Government due to the shortage of accommodation but the control of rent at the level of 1972 in some classes of tenants can not be the policy of the State, and it being unreasonable unfair and unequal is liable to be struck off.
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> 55. Accordingly, the definition on the "standard rent" under Section 2 (k) of the Act and the corresponding provisions under Section 4 (2), 5, 6, 8 and 9 of the Act are declared ultra virus of the Constitution of India. The respondent No.1 is directed to consider the matter in the light of observations and to redefine the "standard rent" or "fair rent" in accordance with the model rent control legislation

published by the Government of India in July, 1992 at least in respect of the buildings which were in the possession of the tenants at the commencement of U.P. Act No.XIII of 1972 to remove injustice done to a class of landlords. The proper legislation in this respect is expected to be enacted at the earliest.

56. Now coming to the other relief Nos. 2 and 3 claimed in the petitioner, it may be mentioned that the rent payable for the disputed building cannot be declared by this Court and will have to be decided in accordance with the legislation enacted by the legislature in pursuance of the above order. Before the law in this regard is enacted the District magistrate can also not be directed to fix the rent of the disputed shop. The guidelines for fixation of rent has to be issued by the legislature. It can be decided by the District Magistrate in accordance with the amended legislation and guidelines. Therefore, reliefs No.2 and 3 mentioned in the petition can not be granted at this stage and the fixation of the rent of the disputed building shall be done by the authority concerned after the new legislation is enacted by the legislature in accordance with the directions given above."

9. Shri Ravi Kiran Jain submits that with the striking down the provisions of standard rent under Section 2 (k) and corresponding provisions under Section 4 (2), 5, 6, 8 and 9 the entire U.P. Act No.13 of 1972 has become unworkable and is liable to be declared ultra vires to the Constitution of India.

10. Shri Ravi Kiran Jain submits that in **Milap Chandra Jain**'s case the Court relied upon the **Malpe Vishwanath Acharya**'s case in which the Supreme Court had considered the provisions of Bombay Rent Act of 1947. After examining the existing provisions of the Bombay Rent Act relating to determination and fixation of standard rent, which was frozen as on 1st September, 1940 or at the time of first letting it was held that it was no longer a reasonable restriction. The said provision however with the passage of time had become arbitrary, discriminatory and unreasonable. The amendments made in the Bombay Rent Act in 1987 were clearly indicative of the fact that the State legislature was conscious of the need to increase the standard rate. The Amendments of 1987 did not do away with the

principle of pegging down of the rent at a rate with the premises or first letting out. The Supreme Court held that the Rent Control Act enacted for the protection of society should not cause injustice to other sections of the society which builds and lets out the houses. The pegging down of the rent gives unwarranted largess and windfall to the tenants without appropriate corresponding relief. The continuation of such a law, which unnecessarily or most likely, leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as reasonable. Its continuance becomes arbitrary. The Supreme Court also relied on Article 14 which provides for equal protection of laws and held that the rent control legislations should strike a balance between the rival interests. The periodical revision of rent is necessary to ensure that disproportionate larger benefit is not given to the tenants. The Supreme Court held that the provisions of the Act have become ultra vires Article 14 of the Constitution. It, however, did not strike down the provisions of the Act on the ground that the new Rent Control Act to be enacted with effect from 1st April, 1998, was perhaps a just and fair law. The Supreme Court expressed hope that the new Rent Control Act will keep in view of the observations made in the judgment in so far as fixation of standard rent is concerned.

11. Shri Ravi Kiran Jain has relied upon observations in **Malpe Vishwanath Acharya**'s case in which the Supreme Court, considering the inflation and devaluation of the rupee, found that if in 1940 the landlord was getting Rs.12/- per year as rent, exclusive of municipal taxes in 1996 or 1997, he will be getting Rs. 800/- per year in terms of value of rupee. The Supreme Court then took into account the fact that the purchasing value of the rupee in view of inflation has fallen 66 times between 1940 and 1996. Further the tenant in the year

1997 was also made entitled to deduct three months' rent per year for repairs. Considering the rise in the municipal taxes the Supreme Court observed that for a flat measuring 1710 sqr. mtrs with a monthly rent of Rs.450/- inclusive of permitted increase of repairs, considering the BMC taxes, repairs, ground rent, maintenance charges inclusive of small electricity bill and insurance premium, the return from the property would be in the negative.

12. Shri Ravi Kiran Jain has also relied on **V. Dhanapal Chettiar vs. Yesodai Ammal (1979) 4 SCC 214** in which it was held that in many cases the distinction between a contractual tenant and a statutory tenant is alluded to for the purpose of elucidating some particular aspects. The Supreme Court held that while considering the criticism to the expression statutory tenant it will suffice to say that the various State Rent Control Acts make a serious encroachment in the field of freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of service a notice to quit on him. Inspite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent etc. in accordance with the law. Reliance has also been placed on **M/s Nopany Investments (P) Ltd. v. Santokh Singh (HUF) AIR 2008 SC** 673 in which the Supreme Court, considered the need to issue a notice under Section 106 of the Transfer of Property Act in order to enable him to get a decree of eviction. Shri Jain has relied upon the judgment for the proposition that the legislature must strike a balance between interest of landlord and tenant. The object of the Act should not be confined to protect the weaker section of the society. The Rent Act should not be permitted to bring a halt to the house building activity for letting out.

13. Shri Ravi Kiran Jain has relied upon a recent judgment of learned Single Judge in Civil Revision No.56 of 2012, Milap Chandra Jain v. Roop Kishor & Ors. decided on 3.2.2014 along with three other civil revisions, which may, for convenience, be called as Milap Chandra Jain (II) in which relying upon Milap Chandra Jain (I) and Bal Kishan v. Additional District Judge, 2003 (2) ARC 545 the Court expressed its anguish to the indifferent attitude shown by the State Government to the suggestion and advice of the Court in earlier pronouncements regarding absence of the provision of increase of rent. The Court thereafter held as follows:-

> "This Court in Milap Chand Jain (supra) way back on 12.9.2001 had struck down certain provisions of the Act in relation to "standard rent' and re-fixation of fair rent with the direction for enactment of proper new legislation on the model rent control legislation published by the Government of India in July, 1992. Another Lordship of this Court in Bal Kishan Vs. Additional District Judge 2003 (2) ARC 545 had made strong recommendation to consider for providing a general provision for enhancement of rent but the people of the State have not seen any amendment in the existing Act and the new legislation is also not in sight.
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> The Act is not applicable to buildings constructed on or after 26th April, 1985 for a period of 40 years and to those tenancies having rent of Rs.2000/- and above. In other words, it covers only old tenancies with meagre rent of less than Rs.2000/- p.m. The landlord of such buildings are the worst suffers as they are not in a position to increase the rent or to get the building vacated from tenants. They are unable to utilise their property in a more appropriate or beneficial method suiting to its value. Therefore, it is imperative and high time for the legislature to give a re-look to the existing statute as had been directed earlier.
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> The apathy shown by the law makers to the suggestions for improvement in the Act and to the directions of the courts to come out with proper and better legislation, reminds me the decision of the Supreme Court in Union of India Vs. Raghubir Singh AIR 1989 SC 1333 wherein it quoted Lord Reid "There was a time when it was thought almost indecent to suggest that Judges make law. But we do not believe in fairy tales any more", suggesting that time has come when the Courts may under compulsion took over the work of legislation.

> If the lawmakers neglect their duty and do not care to enact proper legislation in time or despite directions of the Court, the people would agitate and force them to make the necessary law and even if this fails a day is not far when the courts will have to clothe themselves with the power to enact law.
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> It would be a grim position causing overlapping of jurisdiction but non the less is a sign of caution to the legislature to wake up and to leave aside governance a little and to serve the people more.
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> Let a copy of this judgment be placed before the Chairman, Law Commission, U.P. and the Legal Remembrancer who shall prepare a report on the follow up action on the directions of the court in Milap Chand Jain (supra) and Bal Kishan (supra) and to oversee the implementation of the above decision. The report shall be submitted by him to the court within a period of three months of receiving a copy of this judgment.
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> The revisions have no force and are dismissed with the above caveat."

14. Shri Ravi Kiran Jain has referred to R.M.D.C. v. Union of India, AIR 1957 SC 628 (para 22) and the State of M.P. v. Ranoji Shinde, AIR 1968 SC 1053 in which the Supreme Court held that when a Statute is in part void, it will be enforced as regards the rest, if that is severable from what is valid. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. He submits that the declaration of law in Milap Chandra Jain (I) declaring the provision of a standard rent and corresponding provisions under Section 4 (2), 5, 6, 8 and 9 of the U.P. Act No.13 of 1972 the entire Act has become unworkable and consequently void.

15. Shri Ravi Kiran Jain has also relied upon the judgment of learned Single Judge of this Court in Avadh Raj Singh v. A.D.J., Gorakhpur, 2013 (3) ARC 151; Bal Kishan v. ADJ, 2003 (2) ARC 545 and Abdul Jalil v. Special Judge, 2007 ARC (3) 292. In Avadh

Raj Singh v. A.D.J., Gorakhpur (Supra) this Court ruled:-

> "Before parting it is essential to notice a great flaw in the U.P. Rent Control Act, which has by passage of time become so unjust and arbitrary that it virtually amounts to confiscation of property without due (virtually nil) compensation. Since September, 1972, U.P. Rent Control Act has frozen rents." And then the Court suo-moto granted the relief to the landlord respondent, without asking for it, as follows:
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> "Accordingly, in my opinion, absence of general provision of enhancement of rent in U.P. Rent Control Act is such an alarming and rarest of rare situation that court has got no option except to exercise the powers akin to law making power and to provide general provision for enhancement of rent.
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> I have decided several thousand rent control writ petitions and in several hundred writ petitions, the rates of rent particularly in big cities like Kanpur, Lucknow, Allahabad etc. specifically Kanpur, the most expensive city of U.P. were less than Rs.100/- per month even for shops. In some cases, rates of rent were Rs.25/-, 20/-, 15/- or even Rs.10/- per month for residential or commercial accommodations. Recently I decided a case where a tenanted accommodation situate in Lucknow, capital of U.P. was carrying a rate of rent of Rs.8/- per month and the tenancy was continuing since 1930 (Rent Control No.126 of 1998, J.P. Tiwari Vs. A.D.J., decided on 01.08.2013). In the instant case also, a building having six rooms situate in Gorakhpur City is carrying a rent of Rs.25/- per month."

16. Shri Ravi Kiran Jain has also advanced some additional grounds to hold the entire act as ultra vires. He submits that in consequence to insertion of Clause (g) in sub-section (i) of Section 2 all the buildings, which prior to its insertion were governed by the Act, would come out of the purview, if the municipal rent of such building was more than Rs.2000/-, and if the municipal rent of a building was less than Rs.2000/- before the enforcement of U.P. Act No.5 of 1995 and for some reason it exceeds Rs.2000/-, at any time, thereafter, such a building would also come out of its purview as soon as it exceeds Rs.2000/-. It is submitted that it has become impossible to increase the rent even by mutual agreement for more

than Rs.2000/-, in as much as a tenant, who was paying an amount of rent, which is less than Rs.2000/- would not like to loose security of tenancy. The moment the tenant would agree to enhance the rent exceeding Rs.2000/- per month, his tenancy would be liable to be terminated under Section 106 of the Transfer of Property Act and the landlord would have right to evict the tenant only by simple notice of termination under Section 106 of the Transfer of Property Act. It is submitted that unlike the Delhi Act in which according to M/s Nopany Investments (P) Ltd. v. Santokh Singh (HUF), AIR 2008 SC 673, the building would come out of the Rent Control Act with periodical increase of rent, the absence of provision for periodical increase of rent in the State of U.P. would not leave any building to come out of the provisions of the Act causing extreme hardship and deprivation of right of property of the landlord, which is a constitutional right under Art.300A of the Constitution of India.

17. Shri Ashok Nath Tripathi, appearing for the Gandhi Ashram-the tenant submits that Kshetriya Shree Gandhi Ashram is a non-profitable society registered under the Societies Registration Act. The society provides jobs to small weavers at a very low price. Considering the activity of the society, which promote small weavers and sales the handicrafts and other items at a reasonable price, it is not expected that the society will pay a higher rent. In para-7 of the counter affidavit it is stated that the petitioners are multi-millionaires. They are amongst the richest persons of Saharanpur who own several valuable properties at prime locations in the city. They are owners of several other shops, which they have been selling and disposing of at very high prices from time to time. Shri Avanish Jain had sold adjoining shop to Shri Harish Chandra Arora on 11.12.2003. Smt. Neena Jain-petitioner no.1 sold a shop to Dr. Mamta Pandey and her husband Mohan Pandey on 11.12.2003. She sold another adjoining

shop to Dr. Mamta Pandey and Shri Mohan Pandey on 27.7.2004. They have given one other adjoining shop to a country made liquor shop keeper at a very high rent. They are not in need of money at all and want to increase the rent only for getting more profits and to increase their riches.

18. Shri Ashok Nath Tripathi submits that in **Milap Chandra Jain**'s case the provisions relating to standard rent and corresponding provisions were declared to be ultra vires. The judgment, however, does not stand the test of law. Even if, after **Milap Chandra Jain**'s case the restrictions imposed for enhancement of agreed rent and determination of standard rent do not exist, the entire Act does not become ultra vires the Constitution of India. In **Suresh Gir vs. K. Sahadev 1998 (1) REC 53 (DB)** and **Elger Ferus Vs. Abraham Itty Cheria 2004 (1) Kerala Law Times 767 (DB) s**imilar provisions in Rent Control Acts of Andhra Pradesh and Kerela have been held severable with other provisions under the Act continue to exist and to determine standard/fair rent. Shri Tripathi has referred to several judgments of this Court in which this Court has been in favour of increasing the rent by settlement in judicial proceedings. The effect of **Milap Chandra Jain**'s case is not to set aside the agreement of rent. The rent in any case continues to be the agreed rent and the protection of eviction under Section 20 of the Act continues to obtain to the tenant.

19. Shri Ashok Nath Tripathi submits that the holiday under the Act was substituted from 10 years to 20 years and that as of now there is a 40 years' holiday under the Act, which is sufficient to protect the landlords, while protecting the rights of the tenant under the old tenancies. He submits that due to increase in population and migration of persons living in rural areas in search of employment to

seek benefits of development to urban areas, the housing shortage has increased. The Ministry of Housing and Urban Poverty Eleviation had set up a technical group constituted by the Ministry in 2006, which assessed the urban housing shortage in India. On its estimates at the end of 10th Five Year Plan (2007-08) the total housing shortage in the country stood at 24.71 million dwelling units, in which the housing shortage in UP was worked at 2.38 million dwelling units. The increased wealth disparity and income inequality have led to serious issues including homelessness to an alarming scale. Some people live in palatial houses whereas most of the others do not have access to even a shelter. The urban poverty has increased reducing their capacity to pay rents. The satisfaction of housing needs for most of the urban people is still far to seek.

20. Shri Ashok Nath Tripathi submits that the control of letting and rent is a matter of policy of the State Government, which should not be subjected to judicial review in the courts of law. Article 14 prohibits class discrimination. In the present case he submits that there can be no comparison between the society of poor weavers and a rich landlord, who lives in a big bungalow and has been selling away properties one after another. The entire object of this writ petition is to reap higher profits from the property.

21. Learned Advocate General assisted by Shri Ravi Shanker Prasad submits that the entire foundation of the argument of Shri Jain, that the UP Act No.13 of 1972 has become ultra vires the Act after the pronouncement in **Milap Chandra Jain**'s case, is misplaced. The challenge to the validity of the Act, on the ground that the rent of the building has become frozen and rental value has been pegged to an unreasonably low amount, would not make the provisions of the Act unreasonable and unworkable to strike down a

valid ligislation. It is submitted that the challenge to the constitutional validity of any law made by Parliament or State legislature may succeed only on two grounds, namely the lack of legislative competence and being violative of any of the fundamental rights guaranteed in Part III of the Constitution or any other constitutional provisions. There is no third ground available in law to sustain such challenge. This proposition of law has been firmly established by the Supreme Court in **State of Andhra Pradesh vs. Mc.Dowell & Co. and others AIR 1996 SC 1627; Greater Bombay Cooperative Bank vs. United Yarn Tex (P) Limited 2007 (6) SCC 236** and in **Government of Andhra Pradesh vs. Smt. P. Laxmi 2008 (4) SCC 720.** In the present case no challenge has been made to the legislative competence of the State to enact the Rent Act and that there is no violation of any of the fundamental rights to challenge the Act.

22. It is submitted that UP Act No.13 of 1972 has been under constant review from time to time and according to the needs of the society, Section 5 of the Act was amended enhancing the rent to the extent of 25 per cent for the tenancies, which were continuing from before the commencement of the Act, in respect of a building to which the old Act was applicable, within three months from the date of commencement of the Act to an amount not exceeding the standard rent and the rent so enhanced was to be payable from the commencement of the Act. The standard rent could be fixed under Section 9, and in case of any dispute such a rent could be fixed. A new Section 9A was added for the revision of rent of commercial buildings, let out by public religious institutions. Provisions were also made under Section 21 (8), of the Act for increasing the rent for the buildings, which were in occupation of the State Government or

to a local authority or a public sector corporation or a recognised educational institution. The Act was amended from time to time exempting the categories of buildings by sub-section (a) inserted by UP Act No.17 of 1985 any building of which the Government or local authority, or a public sector corporation or Cantonment Board is a landlord, or (b) any building belonging to or vested in recognised educational institution or (bb) any building belonging to or vested in a public charitable or public religious institution or (bbb) any building belonging to or vested in Waqf including a Waqf – Alal Aulad have been exempted from the operation of the Act. Sub-section (c) exempts building used or intended to be used as a factory within the meaning of Factories Act, 1948 where the plant of such factory is leased our along with the factory or (d) any building used or intended to be used for any other industrial purpose (i.e. to say for the purpose of manufacturers transportation or processing of any goods) or as a cinema or theatre. The building under sub-section (e) used or intended to be used as a place for public entertainment or amusement (including any sports stadium but not including a cinema or theatre or any building appurtenant thereto), or (f) any building built or held by a society registered under the Societies Registration Act, 1860 or by a cooperative society, company or firm and intended solely for its occupation and for the occupation of its officers or servants whether on rent or free of rent or is a guest house by whatever name called for the occupation of persons have been dealing with it in the ordinary course of business is exempt. Sub-section (g) was added to Section 2 by UP Act No.5 of 1995 exempting the buildings, whose monthly rent exceeds Rs.2000. The buildings under clause (h) of which a mission of a foreign country or any international agency is the tenant and in sub-section (2) the buildings of which the construction is completed on or after April 26,

1985 have been exempted for a period of 40 years from the date of its constructions. These amendments made by UP Act No.37 of 1972, UP Act No.30 of 1974, UP Act No.28 of 1976, UP Act No.17 of 1985, UP Act No.11 of 1988 and UP Act No.5 of 1995, have tried to strike a balance between the rival interest of the owners of the building and the tenant.

23. It is submitted that the State is aware and conscious about problems of the society and has proceeded in right direction to obviate their difficulties. The Rent Control Act provides to regulate the conditions of tenancy, rent and restricts unreasonable eviction of tenants. The tenants are invested with certain rights, and protection from eviction except on any specified ground or not to pay the rent in excess of fair rent. The landlords have also been subjected to certain obligations along with the rights belonging to them. The Act tries to maintain a just balance between the rights and obligations of the tenants and the landlord.

24. It is submitted on behalf of the State that in **Malpe Vishwanath Acharya**'s case the Supreme Court had considered the facts and circumstances qua Maharashtra State and declared the provisions relating to determination and fixation of standard rent as ultra vires. The situation in the Maharashtra State was totally different than the State of Uttar Pradesh. In Bombay the Rent Act had come into force on 13.2.1938. The Original Act was enacted only for two years. It was extended from time to time at least on 20 occasions with the last extension upto 31.3.1998. The rent was frozen on 1.9.1940 and the rental value of the building too was pegged to that date. The basis of the finding of the Committees and the reports had proved that the rent was pegged down unreasonably to the rental value of the year 1940. The Tembe Committee Report 1977 had

criticized the pegging down of the rents to a date merely 30 years' ago depriving the property owners of a reasonable return of their properties commensurate with the increase in the cost of living and the cost of building material. The Maharashtra State Law Commission Report of 1977, and the 12th Maharashtra State Law Commission Report of 1979, L.K. Jha Committee Report, 1982, Housing Ministry Conference Resolution dated 21/22.5.1987 and Chief Minister's Conference 1992 were taken to be the basis for declaring the provisions of the Bombay Rent Act relating to determination and that fixation of standard rent as ultra vires the Constitution of India. In Milap Chandra Jain's case there was no reason nor any justification for comparing the situation in the State of UP with the conditions prevailing in Bombay. The Malpe Vishwanath Acharya's case is not comparable to the facts situation in the State of UP. It only gives a proposition of law that by lapse of time a faulty law can be challenged as unreasonable but mere distance of time would not make the law invalid until it is proved that the provisions of law have failed to pass the test of legislative competence and violation of fundamental rights guaranteed by Part III of Constitution of India.

25. It is submitted on behalf of State of UP that in Milap Chandra Jain (I) the provision of the UP Municipal Corporation Act, 1959 were not considered. Section 174 of the UP Municipal Corporations Act, 1959 defines annual value of the building. Section 207 of the Act provides that the Municipal Commissioner shall cause area-wise rental rates, and an assessment list in the city to be prepared from time to time in accordance with the manner prescribed in the Rules and provides complete mechanism for fixation, assessment and determination of rental rate of building. The definition of the

standard rent under Section 3 (k) (i) or (ii) and corresponding provisions under Section 4 (2), 5, 6, 8, and 9 of UP Act No.13 of 1972 are based on the assessment of the building with U.P. Municipal Corporations Act, 1959. Section 3 (f) defines the word 'assessment' to mean the assessment or proportionate assessment as the case may be of the letting value thereof determined by the local authority having jurisdiction and the assessment, shall be considered accordingly. The local authority includes under Section 3 (m) means Nagar Mahapalika, Municipal Board, notified area Committee, Town area Committee, Zila Parishad, Development Authority, etc. in which the revision of assessment of rental rates is a regular process once in every two years by the local authority. In such circumstances the question of freezing the rent and pegging rental value does not arise as the building is assessed periodically. In the Bombay Rent Act there was no provision either for agreement or for enhancement of rent or revision of rent by operation of law whereas in the State of UP there are specific provisions for enhancement of rent based upon the letting value of the building as provided under the U.P. Municipal Corporations Act. The judgment in Milap Chandra Jain (I) case rendered without considering the provisions of the Act, is not a good law and is perincuriam.

26. It is also submitted by the State of UP that Article 14 does not forbid classification for the purposes of right of equality. The private and government tenancies constitute a distinct class. Section 21 (8) of the Act provides for increase of rent of buildings, let out to the government is in consonance with the legislative policy. In **Babu Rao Santa Ram More vs. Bombay housing Board AIR 1954 SC 153** the exemption of the premises belonging to Government or local authority from Bombay Rent Act, was held to be valid.

27. The State has also relied upon the judgments in **Magan Lal Chhagan Lal (P) Ltd vs. Municipal Corporation of Greater Bombay 1974 (2) SCC 402** and **State of U.P. vs. Bhupat 1984 (4) SCC 237** to support their submissions. It is also submitted that the right to property is not a fundamental right. It is a constitutional right under Article 300A of Constitution of India. By Constitution (44th Amendment) Act, 1978 w.e.f. June 20, 1979 Article 31 was deleted and Article 300A was inserted from the same date providing that no person shall be deprived of his property save by authority of law. This was also the objects of provisions contained in Article 31 (1) of Constitution. The control and regulation of rent does not take away the right to property which continues to vest in the owner and landlord of the building. In the present case the landlord has been selling her properties from time to time. She can still exercise the same right in respect of the subject property. The fact, that the property has been given on rent, does not restrict the right of the landlord nor does it provide for taking away the right of property from the landlord. It is submitted that Milap Chandra Jain (I) was wrongly decided and in any case the ratio of the judgment in Milap Chandra Jain's case would not make the provisions of UP Act No.13 of 1972 ultra vires the Constitution of India. The Act is intra vires the Constitution of India and thus the writ petition is liable to be dismissed.

28. We have considered the submissions of learned counsel appearing for the parties and the judgments cited at the bar. The United Province (Temporary) Control, Rent and Eviction Act, 1947 was passed as a temporary act to continue the provisions of control of letting and rent of accommodation as contained in the order issued under the Defence of India Rules, 1939. In the year 1946 an

ordinance was promulgated replaced by the Act in 1947, with the same object. The continuing migration of the rural population to urban areas and relatively slow pace of house building activity made the problem of shortage of accommodation chronic. The Act of 1947 protected the arbitrary increase of rent by the landlords and tenancy except under the provisions of the Act and which included default in payment of rent, subletting, denying the title of the landlord etc. The Act also provides for letting by the District Magistrate of the vacant buildings. At the same time the Act provide for release of the vacant buildings on the orders to be passed by the District Magistrate or his delegatee to the landlord. In case of letting by District Magistrate, the U.P. Act of 1972 provides for determining or refixing the rent under the orders of the Prescribed Authority with a right of appeal.

29. The U.P. Act of 1972 provides for various other rights and obligations of the tenants which have been amended from time to time. The building held by the educational institutions or charitable society or building built and held by the Cooperative Societies, companies and firms for their own occupation and for the occupation of their employees were exempt from operation of the new law enacted in 1972. The Act provides for protection of the rights of the tenants in case, where suits for eviction were pending and also provide for certain rights to the tenants such as the surviving members of the family to be tenant in case of the death, and to continue with the tenancy in case of death of the tenant with same protection. The Act also provide for directions by the Prescribed Authority for such repairs as are essential to keep the building wind proof and water proof with allowance to the tenants to deduct two month's rent instead of one month rent. The burden of enhancement in house tax was reduced from 1/3, to 1/4, of the amount of enhancement.

30. So far as fixing of rent is concerned, provisions were made under the U.P. Act of 1972 for ensuring that the buildings are not deliberately under assessed and that the local authorities get their due share of tax according to the correct letting value. The refixation of rent on the application of tenant, as standard rent in case, where there is no agreed rent is also provided. The provisions regarding allotment, maintenance of building and various other provisions in the temporary U.P. Act of 1947 have been retained in the U.P. Act No.13 of 1972.

31. The U.P. Act No.13 of 1972 has undergone several amendments. These amendments made by U.P. Act No.37 of 1972; U.P. Act No.30 of 1974; U.P. Act No.28 of 1976; U.P. Act No.17 of 1985; U.P. Act No.11 of 1988 and U.P. Act No.5 of 1995 have taken into consideration the shortage of accommodation in urban areas in the State of U.P. and the necessity to provide protection to the old tenancies. The U.P. Act of 1972, with the Amendments carried out from time to time, have tried to strike a balance between lawful interest of the owners of the building and of the tenant. We do not find substance in the argument of Shri Ravi Kiran Jain that the Act is heavily overloaded by providing protection only to the tenant. There are various provisions under the Act, which protect the rights of the owners of the buildings and those, which have been inserted by the amendments made from time to time. The provisions of deemed vacancy of building in certain cases, where the tenant has substantially removed his effects therefrom or has allowed the building to be occupied by any person, who is not member of his family or in case of residential building he as well as members of his family have taken up residence not being temporary residence elsewhere, and in case of non-residential building, where tenant carrying on the business in the building admits a person, who is not

member of his family or partner or new partner as the case may be, and in such case the tenant shall be deemed to have been ceased to occupy the building, and sub-section (3) of Section 12 which provides that in case of a residential building if tenant or any member of his family has built or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified areas or town area, he shall be deemed to have ceased to occupy the building under his tenancy are in the interest of landlord. In such cases the landlord has a right to apply for release of the building under Section 16 of the Act. His need alone to occupy the building in such cases will be sufficient for an order of release. In case of bonafide need of the landlord for occupation by himself or for members of his family either in existing form or after demolition and new construction, application for release can be filed before the Prescribed Authority under Section 21 (1) (a) and (b) of the Act. The guidelines for consideration for bonafide need and for comparison of hardships is given in the Rules made under the Act.

32. A building may also be released under Section 21 for bonafide need of the landlord, without comparison of the hardships, where the tenant or any member of his family has built or otherwise acquired in a vacant state or has got vacated after acquisition of residential building in the same city, municipality, notified area or town area. In such case no objection will be entertained by the tenant against the application. In case of serving or retired Indian soldiers or their widows, where building was let out before his retirement or death, Indian soldier or his widow can recover the possession, if the building is needed for their residence or for residence of their family members.

33. The amendments in the Act exempting the building of which government or local authority or public sector corporation or

Cantonment Board is landlord or where the building belonging to or is vested in recognised educational institution; the buildings belonging to or is vested in public charitable or public religious institution; the buildings belonging to or is vested in waqf including waqf-Alal-Aulad and building used as factory and or intended to be used for any industrial purpose, place or public entertainment or amusement excluding cinema or theater and the building built or held by the Society registered under the Societies Registration Act, 1860 or of cooperative society, company or firm and intended hotel for its own occupation or occupation of its officers and servants and the amendment by U.P. Act No.5 of 1995 w.e.f. 26.9.1994 excluding building whose municipal rent exceeds Rs.2000/-, are the provisions in the Act, which were made in favour of the owners of the building.

34. The State Government amended the Act by extending the holiday applicable to the building constructed for 10 years, to 20 years by U.P. Act No.11 of 1988 and thereafter from 20 years to 40 years by U.P. Act No.11 of 1988, taking out almost the entire new buildings from the purview of the Act leaving old buildings, which were constructed prior to 26.4.1985, and of which the rent is less than Rs.2000/- to be covered by the Act.

35. In Milap Chandra Jain (I) learned Single Judge declared the provisions of Section 2 (k) and the corresponding provisions of Section 4 (2), 5, 6, 8 and 9 as ultra vires on the ground that the control of ejectment and not permitting to enhance rent with the price index is highly unreasonable. These provisions were struck down as they were unreasonable, unfair and unequal. Same reasoning was followed by learned Single Judge of this Court in Milap Chandra Jain (II) decided on 3.2.2014.

36. In our view the reasons given for declaring the aforesaid provisions of the Act as ultra vires are not correct in law. The

provisions of any statute which falls under respective entries in the VIIth Schedule, cannot be declared to be ultra vires only on the ground that they are unreasonable. We also find that while declaring the aforesaid provisions of Act providing for fixation on standard rent to be unreasonable, learned Single Judge in both Milap Chandra Jain (I) and Milap Chandra Jain (II), failed to consider the benefits to the tenant for which these provisions were enacted. After holding that the control of eviction is matter of policy of the government due to shortage of accommodation, learned Single Judge held that the control of rent by freezing such rent with only possibility of fixation of standard rent is arbitrary and unreasonable. The Court did not notice that having entered into tenancy, which remains in the realm of law of contract, the law cannot step in ordinarily to increase the rent. The method and manner and the quantum of increase of rent, overriding the contract, has to be left in the domain of legislative policy. The judiciary is neither possessed of, nor ordinarily equipped with material to take into consideration the needs of society and the balancing factors, which may be taken into consideration in increase of the agreed rent. The determination of standard rent under Section 9 of the U.P. Act No.13 of 1972 is provided where the building to which old Act was applicable, and which was let out at the time of commencement of the Act in respect of which there was neither any reasonable annual rent nor any agreed rent, or in any other case neither there was an agreed rent nor any assessment in force. In such cases the District Magistrate on an application made in that behalf could have determined the standard rent. The object is not to increase the rent but to provide a standard rent, and for which sub-section 2A provides that subject to the provisions of sub-section (2) the District Magistrate shall ordinarily consider 10 percentile per annum of the market value of the building including its site on the

said date to be annual standard rent thereof, and the monthly standard rent shall be equal to 1/12 of the annual standard rent so calculated. The provisions for assessment of annual value of the building are provided in local laws including U.P. Municipalities Act, and the U.P. Municipal Corporation Act. The disputes regarding amount of standard rent are to be decided by the District Magistrate subject to appeal under Section 10 of the Act.

37. The provisions of the Act as amended from time to time, give a right to the landlord for order of eviction in case of the conditions set out under Section 20 of the Act are fulfilled, and of a release order under Sections 16 and 21 of the Act. Under Section 20 of the Act the Court can pass a decree for eviction on the breach of contract of tenancy or of the conditions, and which include arrears for more than four months, under Clause (a) of sub-section (2); willfully causing or permitting to cause substantial damage to the building under sub sub-section (b); making such constructions or structural alteration in the building as is likely to diminish its value or utility, or to disfigure it under sub-section 2 (c); using the building for the purpose other than for the purposes, which was let out or conviction of the tenant in an offence for using building or allowing it to be used for illegal or immoral purposes under sub-section 2 (d); the subletting of the building in contravention with the provisions of Section 25 under the old Act of the whole or part of building under sub-section 2 (c); renouncing its character as such or denying title of the landlord under sub-section 2 (g); and the tenant allowing the building to be occupied as part of his contract or under the landlord, when the employment has ceased under sub-section 2 (g) of the Act.

38. We do not find substance in the argument of Shri Ravi Kiran Jain that the absence of provisions for increase of rent periodically over and above the agreed rent, and in case there is no agreed rent,

standard rent and which has been declared as ultra vires in Milap Chandra Jain v. State of U.P., the whole Act would become ultra vires. The rent is the consideration of contract to let out building on lease. The rate of rent is to be fixed between landlord and tenant on mutually agreeable amount under an agreement. The method and mode of payment may be fixed under the agreement, and in absence thereof such method and mode is provided under the U.P. Act No.13 of 1972. It cannot thus be said that the absence of any provision for not increasing the rent periodically, has made the provisions of fixing a standard rent or the entire Act as a consequence, as arbitrary, unreasonable and confiscatory for declaring it ultra vires.

39. The reasonableness is a relative term. Where a landlord wants increase of rent, which is pegged or freezed and for which there is no provision under the Act except for fixing a standard rent, the entire Act would not become unreasonable to be declared ultra vires. The entire argument of Shri Ravi Kiran Jain is based on the right of the landlord for enjoyment of his property. The right of property was take out of chapter of fundamental right and inserted in separate chapter as Art.300A by the 46th Constitutional Amendment in 1976. Art.300A can be invoked by person, who has been deprived of his property saved by authority of law. The absence of any provision in any law regulating rent and eviction would not by itself amount to depriving a person of his property. The tenancy is created under an agreement, which also provides for rate of rent. A landlord can terminate the tenancy in case of any breach of condition of agreement for letting out the property under Section 106 of the Transfer of Property Act, or where tenancy is at will by giving a simple notice of termination of tenancy. In both the cases the tenancy becomes statutory tenancy, and gets protection of the Act against eviction except in accordance with the provisions of the Act. The landlord,

however, cannot increase rent unilaterally unless there is provision under the agreement for such increase. The control of eviction providing rights to the tenants not to be evicted except for certain conditions as are given under Section 12, 20 or 21 do not amount to taking away or depriving the right of property to a person, who owns the building. The absence of provision for increase of rent under the Act and the restriction on eviction on termination of tenancy on the ground of unilateral increase of rent does not amount to confiscation or forfeiture of right or interest in the property. The State can make a valid law putting restrictions on the right of eviction, if the social conditions so permit, taking into account the need of housing and to protect tenants from exploitation. In the present case the argument that in the last few decades there has been exponential rise in constructions and housing is not supported by any facts, figures or material placed before us. On the contrary learned counsel appearing for the tenant has relied upon a report of National Building Organisation under the ministry of Housing and Urban Poverty Alleviation, assessing the shortage of 26.53 million dwelling houses in the country, which includes 2.38 million dwelling houses in the State of U.P. The increased migration from rural areas to urban areas in search of employment and disintegration of joint families has put great pressure on housing which it has not been met by construction of affordable housing in the State.

40. In case the argument raised at the Bar by the petitioner is accepted, the protection given to the tenants of the old tenements constructed prior to 1985, with rent of less than Rs.2000/- per month will be lost, which may result into eviction of lacs of tenants most of whom are living in small tenements and belong to middle class, lower middle class and poor sections of the society. The lifting of the protection provided by U.P. Act No.13 of 1972 to such tenants

would, in our opinion amount to greater hardship to be caused to the unknown number of persons at the cost of few landlords, who find their rents on which they had let out their property voluntarily to have become small as compared to the increased value of their property, or who want to dispose of their property after eviction of the tenant. We do not find that absence of any provision of increase of agreed rent of the building, which was constructed prior to 1985 and were let out, carrying rent of less than Rs.2000, would make either the provisions of fixation of standard rent under Section 9, which was applicable at the time of commencement of the Act or any of the provisions of the Act as ultra vires. The ratio of the judgments of learned Single Judges in Milap Chandra Jain (I) and Milap Chandra Jain (II) is not correct. The reasoning given in these judgments based upon Malpe Vishwanath Acharya's case (supra) in which the Supreme Court even in the extreme conditions, where rents were pegged to the year 1940 did not choose to strike down the Act, is held to be invalid. Learned Single Judge deciding these cases failed to notice the settled law that unreasonableness, which is a relative term, in the absence of any challenge to legislative competence and the provisions of the act being violative of fundamental rights, cannot be accepted as grounds to challenge the validity of any Act, or its provisions. The judgments in Milap Chandra Jain-I and Milap Chandra Jain-II are thus held to be bad in law.

41. In **Baburao Shantaram More v. Bombay Housing Board, AIR 1954 SC 153** and in **Venkatadri Dasari & ors v. Tenali Municipality & another, AIR 1956 Andhra 61** it was held that in a Rent Control Act it would be reasonable to exempt building of government or a local authority, which are not likely to be actuated by any profit making motive.

42. In **Prafula Kumar Das v. State of Orissa & Ors., (2003) 11 SCC 614,** it was held that where the legislature has requisite jurisdiction to pass the legislation, it is not permissible for the Court to declare it ultra vires only because it may cause some hardships to the petitioners. A mere hardship cannot be a ground for striking down a valid legislation unless it is held to be suffering from vice of discrimination or unreasonableness. In **Otis Elevator Employees' Union S. Reg & Ors. v. Union of India, (2003) 12 SCC 68** the Supreme Court held that in case of social welfare legislation, unless the legislation is patently arbitrary, the same cannot be held to be violative of the Constitution. In **People's Union of Civil Liberties v. Union of India, (2004) 2 SCC 476** it was held that once the provision of an impugned Act or any notification issued thereunder are held to be intra vires, scope of judicial review is very limited. A legislation intended to give effect to the numbers specified under Art.15 or 16 of the Constitution of India is not amenable to challenge on the ground of violation of Art.14.

43. In **Bombay Dying and Manufacturing Company Ltd. (3) v. Bombay Environmental Action Group, (2006) 3 SCC 434,** the Supreme Court held that arbitrariness on the part of legislature so as to make the legislation violative of Art.14 of the Constitution is ordinarily manifest arbitrariness. What would be arbitrary exercise of legislative power, would depend upon the provisions of the statute vis-a-vis the purpose and object thereof.

44. In the present case the U.P. Act of 1972 seeks to protect the old tenancies of which rent is not more than Rs.2000/-. There is no material to show as to what percentage of tenancies in the State of U.P. are still protected by the Act despite its amendments exempting a large number of buildings and providing a 40 year holiday to

building from the operation of the Act after its construction. There may be thousands of tenants, who may be protected by the Act from arbitrary increase of rent. The social object which the Act seeks to achieve, does not make the provisions of freezing the agreed rent of such old tenancy to be so manifest arbitrary or unreasonable that its provisions and consequently the Act to be struck down as violative of Art.14 of the Constitution of India.

45. In view of the aforesaid discussion, we also do not find any good ground to allow Transfer Application (Civil) No.301 of 2005, Neena Jain & Ors. v. State of U.P. & Ors. and to transfer the SCC Suit No.16 of 2005, Rajnish Jain & Ors. v. Kshetriya Sri Gandhi Ashram, Meerut pending in the Court of Judge Small Cause Court, Saharanpur. No question of law much less substantial question of law as to the interpretation of the Constitution arises in the case for consideration of the Court to transfer the suit to the High Court.

46. Before parting with the case we may observe that it is for the State legislature to take into account, after considering the relevant material, which includes collection of data and statistics, and the needs of the society with fair representation of class of persons, who are owners of the building and tenants to make provisions for periodical increase of agreed rent to those buildings, who still continue to enjoy the protection of the U.P. Act No.13 of 1972. The State Government may consider to appoint a Commission, for such purpose and to consider its recommendations for making appropriate amendments to the Act.

47. The writ petition as well as the transfer application are **dismissed**.

Order Date :- 04.4.2014
SP/RKP