A

V. DHANAPAL CHETTIAR

v.

YESODAI AMMAL

August 23, 1979

B

[Y. V. CHANDRACHUD, C.J., R. S. SARKARIA, N. L. UNTWALIA, P. N. SHINGHAL, P. S. KAILASAM, O. CHINNAPPA REDDY AND E. S. VENKATARAMAIAH, JJ.]

Rent Control Acts—Provide conditions for eviction of tenants—Notice under C *s.* 106 *Transfer of Property Act if necessary after decree for eviction passed by Court.*

A lease between a lessor and a lessee comes into existence by way of contract when the parties to the contract agree on the rent, duration of tenancy and other relevant terms. Section 111 of the transfer of Property Act provides various methods by which a lease of immovable property can be determined. Under clause (h) of s. 111 a lease determines on the expiry of a notice to D determine the lease given by the landlord to the tenant. Once the lease is determined by notice the lessor can enforce his right of recovery of possession of the property. But if the lease does not stand determined under any of the clauses (a) to (g) of s. 111 notice under s. 106, Transfer of Property Act to determine the lease is necessary. But this section does not impose an obligation on the landlord to spell out the grounds on which the landlord wishes to E evict the tenant.

During the postwar years all the State Legislatures passed Building and Rent Control Acts to give protection to tenants against unreasonable eviction by the landlords as well as to prevent the landlords from exploiting the tenants by way of exorbitant rents. As in the case of all social legislation which is designed for the protection of the needy, the Rent Control Acts have brought considerable inroad on the landlord's freedom of contract. Many Acts have F brought about considerable changes in the rights and liabilities of the lessor and the lessee and the tilt of the law is largely in favour of the lessee. The landlord is bound to let out his premises on rent to a person even against his wishes when the concerned authority allots a particular premises to a person. When once the premises are so allotted, the landlord is bound to give the premises to that person and at the rent fixed by the authority concerned.

G In the matter of determination of the tenancy the State Rent Acts do not permit a landlord to snap his relationship with the tenant merely by serving on him a notice to quit as is the position under the Transfer of Property Act. The landlord can recover possession of the property only on one or more of the grounds enacted in the relevant section of the Rent Acts. Even after the termination of the contractual tenancy the landlord, under the definitions of landlord and tenant contained in the Rent Acts, remains a landlord and a tenant H remains a tenant because of the express provision made in the enactments that a tenant means "a person continuing in possession after the termination of the tenancy in his favour." It is also provided that no landlord can treat a building to have been vacant by merely terminating the contractual tenancy

as the tenant still lawfully continues in possession of the premises. Yet another important feature of the Rent Acts is that either by way of a non-obstante clause or by necessary implication these enactments have done away with the law contained in s. 108 of the T. P. Act dealing with rights and liabilities of the lessor and the lessee.

The difference between the position obtaining under the Transfer of Property Act and the Rent Acts in the matter of determination of a lease is that under the former Act to recover possession of the property determination of the lease is necessary because during the continuance of the lease the landlord cannot recover possession of the premises while under the Rent Acts the landlord becomes entitled to recover possession only on the fulfilment of the conditions laid down in the relevant sections. He cannot recover possession merely by determining the tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy.

In the instant case the appellant filed an application against the tenant under s. 10(3)(ii) of the Tamil Nadu Building (Lease and Rent Control) Act, 1970 calling upon him to quit on the ground of personal necessity. The Rent Controller rejected her application. The Appellate Court, while holding that the respondent required the premises *bona fide* for her personal necessity, dismissed the application on the ground that a notice to quit was necessary and that the notice given by her was not in accordance with law. In revision the High Court held that notice to quit under s. 106, T.P. Act was not necessary.

Dismissing the appeal,

HELD : (1) The High Court was right in its view that no notice to quit was necessary under s. 106 of the T.P. Act to enable the landlord to get an order of eviction against the tenant. On the question of requirement of notice under s. 106, T.P. Act there is no scope for taking different views on the basis of difference in phraseology of the various Rent Acts. The difference in the language does not bring about any distinction. [353F; 342C-D]

2. In the case of a landlord wishing to evict his tenant under the Rent Acts determination of the lease in accordance with the Transfer of Property Act is unnecessary. It is a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be a tenant even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of determination of the lease by issue of notice in accordance with s. 106, T.P. Act. [353D-E]

3. Although the Rent Acts restrict the rights which the landlord possesses either for charging excessive rents or for evicting tenants, if within the ambit of those restricted rights the landlord makes out his case, it is a mere empty formality, a mere surplusage, to ask him to determine the contractual tenancy before the institution of a suit for eviction. Such a notice under the T.P. Act is necessary because mere determination of the lease entitles a landlord to recover possession. But under the Rent Control Acts it becomes an unnecessary technicality to insist that the landlord must also determine the contractual tenancy. It is of no practical use to insist again upon a notice under s. 106, after placing

1979(8) eILR(PAT) SC 11

A so many restrictions under the Rent Acts on the landlord's right to evict the tenant. [344H-345A-B]

4. But where a landlord, by way of abundant caution, to butteress his case, gives a notice to the tenant that he intends to file a suit for eviction, it is not open to the tenant to say that such a notice is compulsory or obligatory or that it must fulfil all the technical requirements of s. 106 of the Transfer of Property B Act. Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting the suit for eviction on the grounds mentioned in any State Rent Acts will amount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee would come to an end on the passing of an order or a decree for eviction. [340B-D]

C

5. The restricted area under the various State Rent Acts has done away to a large extent, with the requirement of the law of contract and the Transfer of Property Act. This being so there is no reason to impose an unnecessary and unjustifiable formality of terminating the contractual lease. [345C]

6. Secondly, if protection from eviction is claimable by the tenant even after D determination of the contractual tenancy under the Rent Acts there is no reason why the law of contract engrafted in the Transfer of Property Act should again be imported for seeking eviction of the tenant. [346B]

7. If the termination of the contractual tenancy by notice does not entitle the landlord to recover possession of the premises and he becomes entitled to recover possession only if he makes out a case under the special provisions of the E State Rent Acts then termination of the contractual relationship by notice is not necessary. Termination comes into effect when a case is successfully made out for eviction of the tenant under the State Rent Acts. [347A-B]

Bhaiya Punjalal Bhagwanddin v. *Dave Bhagwatprasad Prabhuprasad* [1963] 3 SCR 312, *Mangilal* v. *Suganchand Rathi* [1964] 5 SCR, 239, *Manujendra Dutt* v. *Purendu Prosad Roy Chowdhury & ors.* [1967] 1 S.C.R. 475, *Isha Valimohamad & Anr.* v. *Haji Gulam Mohamad & Haji Dada Trust* F [1975] 1 SCR, 720, *P. J. Gupta & Co.* v. *K. Venkatesan Merchant & ors.* [1975] 2 SCR. 401, *Dattanpant Gopalyarao Devakate* v. *Vithabrao Maruthirao Janagavai* [1975] Suppl. SCR. 67, *Ratan Lal* v. *Vardesh Chander & ors.* [1976] 2 SCR. 906 and *Sardarilal Vishwanath and Ors.* v. *Pritam Singh* [1978] 1 SCR. 111 not approved.

G 8. Where, on the other hand, over and above the protection under the relevant Act a clause in the lease deed gives an extra protection of getting notice to quit and vacate the premises, such a clause not being unlawful, the extra protection given to the tenant against eviction must be adhered to. But for this reason it is not correct to say that s. 106 of the T.P. Act gives an extra protection to the tenant against eviction. The purpose of this provision is merely to terminate the contract which the over-riding Rent Acts do not permit to be H terminated. [348 A-B]

M/s. Raval and Co. v. *K. G. Ramachandran and others.* [1974] 2 SCR 629, *Raj Krishna and another* v. *S. K. Shaw and Brothers* [1951] SCR 145 and

Puwada Venkateswara Rao v. *Chidamana Venkata Ramana* [1976] 3 SCR. 551 approved.

Shri Hem Chand v. *Shrimati Sham Devi* I.L.R. 1955 Punjab, 36 approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1303 of 1977.

Appeal by Special Leave from the Judgment and Order dated 10-12-1976 of the Madras High Court in C.R.P. No. 836/76.

K. Jayaram and *K. Ramkumar* for the Appellant.

M. N. Padmanabhan, T. A. Ramachandran, M. N. Tandon and *Mrs. Ramachandran* for the Respondent.

The Judgment of the Court was delivered by

UNTWALIA J. This appeal by special leave at the instance of the tenant of certain premises in the town of Vellore was heard by a larger Bench of this Court consisting of seven Judges to resolve the cleavage of opinion between the various High Courts in India as also between several decisions of this Court, on the question as to whether in order to get a decree or order for eviction against a tenant under any State Rent Control Act it is necessary to give a notice under Section 106 of the Transfer of Property Act. We proceed to do so in this Judgment.

The respondent filed an application against the appellant under section 10(3)(a)(iii) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, hereinafter referred to as the Tamil Nadu Rent Act, on the ground of personal necessity. The Rent Controller held that the requirement of the respondent was not genuine and he accordingly dismissed her petition. On appeal by the landlady the Appellate Court held in her favour on the point of her requiring the premises *bona fide* for her personal necessity but maintained the dismissal of her application on the ground that a notice to quit was necessary and the one given by her was not in accordance with law. The landlady took up the matter in revision to the Madras High Court. A learned single Judge of that Court following his earlier decision in *K. Sukumaran Nair etc.* v. *S. Neelakantan Nair by constituted attorney P. Raman Nair etc. etc.*(1) held that notice to quit under section 106 of the Transfer of Property Act was not necessary for seeking an eviction of a tenant under The Tamil Nadu Rent Act. Hence this appeal by the tenant.

(1) (1976) 2 Madras Law Journal 84.

1979(8) eILR(PAT) SC 11

A We do not think it necessary to decide in this appeal whether the notice to quit given to the appellant was a valid notice in accordance with section 106 of the Transfer of Property Act. The controversy before us centered round the question whether such a notice was at all necessary to be given.

B We shall presently refer to the various decisions of the High Courts and this Court taking contrary views. But before we do so we may make some general observations. It is well-known that after the second world war to give protection to a tenant against unnecessary, undue or unreasonable eviction and in the matter of being exploited for payment of exorbitant rent all States in India at one time C or the other passed Building and Rent Control Acts. Amendments in them were brought about from time to time. The language and the scheme of the Acts varied and differed from State to State. Even though there was no basic or fundamental difference in regard to the law of eviction of a tenant in any of the State Statutes, different constructions D were put in regard to them and principles were culled out in varying manners to arrive at the conclusions in some cases that a notice to quit in accordance with section 106 of the Transfer of Property Act was necessary and in some it was held that it was not necessary. The gravamen of the underlying principles seems to have been over-looked in many cases.

E Under the Transfer of Property Act the subject of "Leases of Immovable Property" is dealt with in Chapter V. Section 105 defines the lease, the lessor, the lessee and the rent. Purely as a matter of contract, a lease comes into existence under the Transfer of Property Act. But in all social legislations meant for the protection of the F needy, not necessarily the so-called weaker section of the society as is commonly and popularly called, there is appreciable inroad on the freedom of contract and a person becomes a tenant of a landlord even against his wishes on the allotment of a particular premises to him by the authority concerned. Under section 107 of the Transfer of Property Act a lease of immovable property from year to year, or for G any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. None of the State Rent Acts has abrogated or affected this provision. Section 108 deals with the rights and liabilities of lessors and lessees. Many State Rent Acts have brought about considerable changes in the rights and liabilities of a lessor and a lessee, largely in favour of the latter, although not wholH ly. The topic of Transfer of Property other than agricultural land is covered by Entry 6 of List III in the Seventh Schedule to the Constitution. The subject being in the Concurrent List, many State Rent

Acts have by necessary implication and many of them by starting certain provisions with non-obstante clause have done away with the law engrafted in section 108 of the Transfer of Property Act except in regard to any matter which is not provided for in the State Act either expressly or by necessary implication.

Section 111 deals with the question of determination of a lease, and in various clauses (a) to (h) methods of determination of a lease of immovable property are provided. Clause (g) deals with the forfeiture of lease under certain circumstances and at the end are added the words "and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease." The notice spoken of in clause (g) is a different kind of notice and even without the State Rent Acts different views have been expressed as to whether such a notice in all cases is necessary or not. We only observe here that when the State Rent Acts provide under what circumstances and on what grounds a tenant can be evicted, it does provide that a tenant forfeits his right to continue in occupation of the property and makes himself liable to be evicted on fulfilment of those conditions. Only in those State Acts where a specific provision has been made for the giving of any notice requiring the tenant either to pay the arrears of rent within the specified period or to do any other thing, such as the Bombay Rent Act or the West Bengal Rent Act, no notice in accordance with clause (g) is necessary. A lease of immovable property determines under clause (h) :—

> "On the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other."

It is this clause which brings into operation the requirement of section 106 of the Transfer of Property Act. Without adverting to the effect and the details of waiver of forfeiture, waiver of notice to quit, relief against forfeiture for non-payment of rent etc. as provided for in sections 112 to 114A of the Transfer of Property Act, suffice it to say that under the said Act no ground of eviction of a tenant has to be made out once a contractual tenancy is put to an end by service of a valid notice under section 106 of the Transfer of Property Act. Until and unless the lease is determined, the lessee is entitled to continue in possession. Once it is determined it becomes open to the lessor to enforce his right of recovery of possession of the property against him. In such a situation it was plain and clear that if the lease of the immovable property did not stand determined under any of the clauses (a) to (g) of section 111, a notice to determine it un-

1979(8) eILR(PAT) SC 11

A der section 106 was necessary. But when under the various State Rent Acts, either in one language or the other, it has been provided that a tenant can be evicted on the grounds mentioned in certain sections of the said Acts, then how does the question of determination of a tenancy by notice arise? If the State Rent Act requires the giving of a particular type of notice in order to get a particular kind of relief, B such a notice will have to be given. Or, it may be, that a landlord will be well advised by way of abundant precaution and in order to lend additional support to his case, to give a notice to his tenant intimating that he intended to file a suit against him for his eviction on the ground mentioned in the notice. But that is not to say that such a notice is compulsory or obligatory or that it must fulfil all the technical requirements of section 106 of the Transfer of Property Act. Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction. Until then, under the extended definition of the word 'tenant' under the various State Rent Acts, the tenant continues to be a tenant even though the contractual tenancy has been determined by giving a valid notice under section 106 of the Transfer of Property Act. In many cases the distinction between a contractual tenant and a statutory tenant was alluded to for the purpose of elucidating some particular aspects which cropped up in a particular case. That led to the criticism of that expression in some of the decisions. Without detaining ourselves on this aspect of the matter by any elaborate discussion, in our opinion, 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 landord to snap his relationship with the tenant merely by his act of serving 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.

In *Sukumaran Nair's* case (supra) the learned Judge has pointed out the difference of opinion expressed in the various decisions of the Madras High Court from time to time in regard to notice to quit under section 106 of the Transfer of Property Act. *In Parthasarthy and another* v. *Krishnamoorthy and another*(1) a learned single Judge of

(1) A.I.R. 1949 Madras 387.

1979(8) eILR(PAT) SC 11

that Court held that a notice to quit was necessary. A contrary view was expressed by a Division Bench of the High Court in *R. Krishnamurthy* v. *S. Parthasarthy and another.*(1) Difference of opinion in Madras High Court continued in many other cases and then came the Full Bench decision in the case of *M/s Raval and Co.* v. *K. G. Ramachandran and others.*(2) This decision was approved in the majority decision of this Court in *Raval & Co.* v. *K. G. Ramachandran & Ors.*(3) *Raval's* case was not directly a case in relation to section 106 of the Transfer of Property Act but some observations made therein did tend to show that notice would not be necessary. In spite of the Full Bench decision of the Madras High Court in *Raval's* case a Division Bench of that Court in *B. Kalyanasundaram* v. *A. R. Nataraian*(4) stuck to the view that notice was necessary. The Punjab High Court in *Shri Hem Chand* v. *Shrimati Sham Devi*(5) had expressed the view that notice was not necessary. The Full Bench of the Punjab and Haryana High Court in *Bhaiya Ram Haroo Lal* v. *Mahavir Parshad Murari Lal Mahajan*(6) took a contrary view. After the majority view of the Full Bench of the Patna High Court in *Niranjan Pal and another* v. *Chaitanyalal Ghosh and another*(7) it has been consistently held in the Patna High Court that a notice is necessary. A Special Bench of the Calcutta High Court in *Surya Properties Private Ltd. and other* v. *Bimalendu Nath Sarkar and others*(8) has taken the view that over and above the notice required to be given under the State Act a notice under section 106 of the Transfer of Property Act is also necessary. To the same effect is the view expressed in *Chhotelal Banshidhar* v. *Abdullabhai Abdul Gaffor;*(9) *Shambhooram & another* v. *Mangal Singh & another*(10) *Siddappa Adivappa* v. *Venkatesh Raghavendra Hubballi;*(11) *Batoo Mal* v. *Rameshwar Nath and others*(12) *and Parshotam Lal* v. *Kalayan Singh and another*(13). As against this, and specially after some decisions of this Court, the preponderance of recent view in the High

A

B

C

D

E

F

G

H

(1) A.I.R. 1949 Madras, 780
(2) A.I.R. 1967 Madras 57.
(3) [1974] 2 S.C.R. 629.
(4) (1969) 2 M.L. J. 585.
(5) I.L.R. 1955 Punjab 36.
(6) A.I.R. 1969 Punjab & Haryana 110.
(7) A.I.R. 1964 Patna 401.
(8) A.I.R. 1964, Calcutta 1.
(9) A.I.R. 1952 Madhya Bharat 121.
(10) A.I.R. 1959 Rajasthan 59.
(11) A.I.R. 1965 Mysore 65.
(12) A.I.R. 1971 Delhi 98.
(13) A.I.R. 1971 J. & K. 20.

1979(8) eILR(PAT) SC 11

A Courts of Andhra Pradesh, Madras, Kerala, Karnataka and Punjab and Haryana is that no notice under section 106 of the Transfer of Property Act is necessary. These cases are *Ulligappa etc.* v. *S. Mohan Rao, minor by guardian Changamma, etc.*(1); *K. Sukumaran Nair and others* v. *S. Neelakantan Nair and others*(2); *Lalitha* v. *Avissumma*(3); *Govindaswamy R.* v. *Pannalal C. S.*(4) and *Vinod Kumar* v. *Harbans Singh Azad*(5). Such a cleavage of opinion cropped up in the various High Courts because of some observations of this Court in some decisions which will be presently alluded to. It was so on an erroneous assumption, if we may say so with great respect, that the difference in the phraseology of the different State Rent Acts justifies this difference of views. In our considered judgment on the question of a requirement of a notice under section 106 of the transfer of Property Act there is no scope for taking different views on the basis of the difference in the phraseology of the various Rent Acts. In this regard the difference in the language does not bring about any distinction. In all the States the law should be uniform viz. that either a notice is necessary or it is not. It was high time, therefore, that this larger Bench was constituted to lay down a uniform law for the governance of the whole country and not permit the unjustified different trend of decisions to continue.

Before we embark upon a review of some of the decisions of this Court we think it necessary and advisable to briefly refer to the provisions of some of the State Rent Acts in support of the observations made by us above that on the question of notice no different result is possible on the language of any State Act. Section 10 of The Tamil Nadu Rent Act says :— "A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 14 to 16." In other words if a case is made out for his eviction in accordance with the provisions aforesaid, he can be evicted. Even after the termination of the contractual tenancy under the definition of the landlord in clause (6) and of the tenant under clause (8) of section 2 the landlord remains a landlord and the tenant remains a tenant as clause (8) expressly says that tenant means "a person continuing in possession after the termination of the tenancy in his favour." Section 3 indicated that no landlord can treat the building to have become vacant by

(1) (1971) 2 Andhra Weekly Report 298.
(2) A.I.R. 1976 Madras 329.
(3) A.I.R. 1978 Kerala 167.
(4) (1978) (1) Karnataka Law Journal 506.
(5) A.I.R. 1977 Punjab & Haryana 262.

merely terminating the contractual tenancy as the tenant still lawfully continues in possession of the premises. The tenancy actually terminates on the passing of the order or decree for eviction and the building falls vacant by his actual eviction. The giving of the notice, therefore, is a mere surplusage and unlike the law under the Transfer of Property Act it does not entitle the landlord to evict the tenant.

Adverting to the provisions of the Bombay Rents, Hotels and Lodging House Rents Control Act, 1947 it would be found from the definition section 5 that any person remaining in the building after the determination of the lease is a tenant within the meaning of clause (11). Section 12 of the Bombay Act says that the landlord shall not be entitled to the recovery of possession of any premises so long as the conditions mentioned in sub-section (1) are fulfilled nor any suit for recovery of possession shall be instituted by a landlord against a tenant on the happening of the events mentioned in sub-section (2) until the expiration of one month next after the notice is served on the tenant in the manner provided in section 106 of the Transfer of Property Act, as required by the said sub-section. Section 13 provides that a landlord may recover possession on certain grounds. Is it not plain then that on the happening of the events or on the fulfilment of the conditions mentioned in sections 12 and 13 etc. the landlord becomes entitled to recover possession from the tenant, otherwise not. It will bear repetition to say that under the Transfer of Property Act in order to entitle the landlord to recover possession determination of the lease is necessary as during its continuance he could not recover possession, while under the State Rent Act the landlord becomes entitled to recover possession only on the fulfilment of the rigour of law provided therein. Otherwise not. He cannot recover possession merely by determination of tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy. Under the State Rent Control Acts the concept of the contractual tenancy has lost much of its significance and force. Identical is the position under the Bihar Act. The definition section permits the tenant to continue as a tenant even after the determination of the contractual tenancy. Section 11 gives him protection against eviction by starting with a non-obstante clause and providing further that he shall not be liable to eviction from any building except in execution of a decree passed by the Court for one or more grounds mentioned in section 11. Does it not stand to reason to say that a decree can be passed if one or more of the grounds exist and such a decree can be passed against an existing tenant within the meaning of the State Rent Act? Similar is the position under the Kerala Lease and Rent Control Act, 1965 and the East Punjab Urban

1979(8) eILR(PAT) SC 11

A Rent Restriction Act, 1949. We shall refer to the provisions of the Madhya Pradesh and Andhra Pradesh State Rent Acts when we come to review the decisions of this Court in relation to those Acts.

A Constitution Bench of this Court in *Rai Brij Raj Krishna and another* v. *S. K. Shaw and Brothers* (1) in a different context dealing B with section 11 of the Bihar Rent Act observed at page 150 :—

> "Section 11 is a self-contained section, and it is wholly unnecessary to go outside the Act for determining whether a tenant is liable to be evicted or not, and under what conditions he can be evicted. It clearly provides that a tenant is not liable to be evicted except on certain conditions, and one C of the conditions laid down for the eviction of a month to month tenant is non-payment of rent..... The Act thus sets up a complete machinery for the investigation of those matters upon which the jurisdiction of the Controller to order eviction of a tenant depends, and it D expressly makes his order final and subject only to the decision of the Commissioner."

It was on that account held that the decision of the Controlling authority was final and it was not open to the Civil Court to take a different view of the matter on the question of non-payment of rent. It was not a case where a question of notice arose for determination. E

The first decision of this Court which is necessary to be noticed on the point of notice is the case of *Bhaiya Punjalal Bhagwanddin* v. *Dave Bhagwatprasad Prabhuprasad*(2). The case related to Bombay Rent Act. Raghubar Dayal J. speaking on behalf of the Division Bench of this Court expressed the view at page 318 thus :— F

> "We are therefore of opinion that where a tenant is in possession under a lease from the landlord, he is not to be evicted for a cause which would give rise to a suit for recovery of possession under s. 12 if his tenancy has not been determined already. It follows that whenever a tenant acts in a way which would remove the bar on the landlord's right G to evict him it is necessary for the landlord to serve him with a notice determining his tenancy and also serve him with a notice under sub-s.(2) of s.12 of the Act."

It is true that the Rent Act is intended to restrict the rights which the landlord possessed either for charging excessive rents or for evicting H tenants. But if within the ambit of those restricted rights he makes out

(1) [1951] S.C.R. 145.
(2) [1963] 3 S.C.R. 312.

his case it is a mere empty formality to ask him to determine the contractual tenancy before institution of a suit for eviction. As we have pointed out above, this was necessary under the Transfer of Property Act as mere termination of the lease entitled the landlord to recover possession. But under the Rent Control Acts it becomes an unnecessary technicality to insist that the landlord must determine the contractual tenancy. It is of no practical use after so many restrictions on his right to evict the tenant have been put. The restricted area under the various State Rent Acts has done away to a large extent with requirement of the law of contract and the Transfer of Property Act. If this be so why unnecessarily, illogically and unjustifiably a formality of terminating the contractual lease should be insisted upon? In *Bhaiya Punjalal's* case, if we may say so with very great respect, the principle of law laid down by this Court in *Rai Brij Raj Krishna's* case (supra) and by the Punjab High Court in *Hem Chand's* case was wrongly distinguished. After quoting the passage from the former it was said at page 322:—

> "In the present case, s.12 of the Act is differently worded and cannot therefore be said to be a complete Code in itself. There is nothing in it which overrides the provisions of the Transfer of Property Act."

The difference in the wordings of section 11 of the Bihar Act and section 12 of the Bombay Act does not justify the conclusion that the provisions of the Transfer of Property Act have not been overridden by section 12 of the Bombay Act reading it with section 13 etc. This was the ground given for distinguishing *Hem Chand's* case also by erroneously pointing out the distinction between section 13(1) of the Delhi and Ajmer Merwara Rent Control Act, 1952 and the Bombay Act. In our considered judgment *Bhaiya Punjalal's* case was not correctly decided.

In another decision of this Court in *Vora Abbasbhai Ali Mohamed* v. *Haji Gulamnabi Haji Safibhai,*(1) in relation to the Bombay Rent Act again there are some lines at page 162 wherein it has been observed thus :—

> "The clause applies to a tenant who continues to remain in occupation after the contractual tenancy is determined: it does not grant a right to evict a contractual tenant without determination of the contractual tenancy."

But the above observation is followed by the words :—

> "Protection from eviction is claimable by the tenant even after determination of the contractual tenancy so long as he

(1) [1964] 5 S.C.R. 157.

1979(8) eILR(PAT) SC 11

A pays or is ready and willing to pay the amount of the standard rent and permitted increases and observes and performs the other conditions of the tenancy consistent with the provisions of the Act."

In our view if "protection from eviction is claimable by the tenant B even after, determination of the contractual tenancy" then why import the contractual law engrafted in the Transfer of Property Act for seeking eviction of the tenant?

The decision of this Court in the case of *Mangilal* v. *Suganchand Rathi,*(1) being a decision of a Constitution Bench consisting of five learned and eminent Judges of this Court requires careful consideration. C Therein it was held at page 244 with reference to section 4 of the Madhya Pradesh Accommodation Control Act, 1955 thus :—

> "The Accommodation Act does not in any way abrogate Ch. V of the Transfer of Property Act which deals with leases of immovable property. The requirement of s. 106 of the D Transfer of Property Act is that a lease from month to month can be terminated only after giving fifteen days' notice expiring with the end of a month of the tenancy either by the landlord to the tenant or by the tenant to the landlord. Such a notice is essential for bringing to an end the relationship of landlord and tenant. Unless the relationship is validly E terminated the landlord does not get the right to obtain possession of the premises by evicting the tenant. Section 106 of the Transfer of Property Act does not provide for the satisfaction of any Additional requirements. But then, s. 4 of the Accommodation Act steps in and provides that unless one of the several grounds set out therein is established or F exists, the landlord cannot evict the tenant."

Section 4 of the Madhya Pradesh Rent Act, 1955 provided that no suit could be filed in any Civil Court against a tenant for his eviction for any accommodation except on one or more grounds set out in that section. The corresponding provision in Madhya Pradesh Accommodation Act of 1961 is contained in Section 12 which starts with a non-G obstante clause also but the definition of the tenant as in other State Acts includes "any person continuing in possession after the termination of his tenancy". How then is it correct to say that a notice is essential for bringing to an end the relationship between the landlord and the tenant? The notice does not bring to an end such a relation-H ship because of the protection given to the tenant under the Rent Act. If that be so then it is not necessary for the landlord to terminate the

(1) [1964] 5 S.C.R. 239.

1979(8) eILR(PAT) SC 11

contractual relationship to obtain possession of the premises for evicting the tenant. If the termination of the contractual tenancy by notice does not, because of the Rent Act provisions, entitle the landlord to recover possession and he becomes entitled, only if he makes out a case under the special provision of the State Rent Act, then, in our opinion, termination of the contractual relationship by a notice is not necessary. The termination comes into effect when a case is successfully made out for eviction of the tenant under the State Rent Act. We say with utmost respect that on the point of requirement of a notice under section 106 of the Transfer of Property Act *Mangilal's* case was not correctly decided.

In *Manujendra Dutt* v. *Purendu Prasad Roy Chowdhury & Ors.*,(1) the question of notice came to be considered with reference to the Calcutta Thika Tenancy Act, 1949 and in that connection it was said at page 480 :—

> "The Thika Tenancy Act like similar Rent Acts passed in different States is intended to prevent indiscriminate eviction of tenants and is intended to be a protective statute to safeguard security of possession of tenants and therefore should be construed in the light of its being a social legislation. What section 3 therefore does is to provide that even where a landlord has terminated the contractual tenancy by a proper notice such landlord can succeed in evicting his tenant provided that he falls under one or more of the clauses of that section."

For the reasons already stated we do not agree, and we say so with respect, with the above enunciation of law. This apart there is scope for distinguishing *Manujendra's* case because clause 7 of the lease deed therein ran as follows :—

> "Provided always and it is hereby agreed and declared that if it be required that the lessee should vacate the said premises at the end of the said term of 10 years the lessee will be served with a 6 months notice ending with the expiry of the said term and it is further agreed that if the lessee is permitted to hold over the land after the expiry of the said term of 10 years the lessee will be allowed a six months notice to quit and vacate the said premises."

Over and above the protection under the Thika Tenancy Act clause 7 of the lease deed gave an extra protection of getting six months

(1) [1967] 1 S.C.R. 475.

1979(8) eILR(PAT) SC 11

notice to quit and vacate the premises. In that event one can say that such a clause being not unlawful and giving an extra protection to the tenant against eviction must also be adhered to. But it is not correct to say that section 106 of the Transfer of Property Act merely providing for termination of a lease either by the lessor or the lessee by giving the requisite notice is an extra protection against eviction. The purpose of this provision is merely to terminate the contract which the overriding Rent Acts do not permit to be terminated.

In *Raval's* case (supra) the question for consideration was whether section 4 of the Tamil Nadu Rent Act providing for an application for fixation of fair rent was available both to the tenant and the landlord. The majority speaking through Alagiriswami J. took the view that it was so. A contrary view was expressed by Bhagwati J. speaking for the minority. While discussing this question the relevant passage from the decision of this Court in *Rai Brij Raj Krishna's* case was quoted at page 634 and reference was made to the decision of the Punjab High Court in *Hem Chand's* case. Thereafter the observation of this Court in *Bhaiya Punjalal's* case to the effect that "Rent Acts are not ordinarily intended to interfere with contractual leases and are Acts for the protection of tenants and are consequently restrictive and not enabling, conferring no new rights of action but restricting the existing rights either under the contract or under the general law," were held not to apply to all Rent Acts irrespective of the scheme of those Acts and their provisions. This observation given with reference to the dictum of this Court in *Bhaiya Punjalal's* case concerned with the question of notice under section 106. It enabled certain High Courts to make a firm departure and take the view with reference to the scheme of their respective State Acts to say that a notice was not necessary. This happened in Madras, Andhra Pradesh, Kerala, Karnataka and Punjab & Haryana. Alagiriswami J. at page 635 after having made that observation with reference to *Bhaiya Punjalal's* case has said—"Be that as it may, we are now concerned with the question of fixation of a fair rent." In our opinion the majority decision with regard to section 4 was undoubtedly correct and the minority stretched the law, if we may say so with respect, too far to hold that section 4 was not available to the landlord. It should be remembered, as we have said above, that the field of freedom of contract was encroached upon to a very large extent by the State Rent Acts. The encroachment was not entirely and wholly one sided. Some encroachment was envisaged in the interest of the landlord also and equity and justice demanded a fair play on the part of the legislature not to completely ignore the helpless situation of

1979(8) eILR(PAT) SC 11

many landlords who are also compared to some big tenants sometimes weaker section of the society. As for example a widow or a minor lets out a family house in a helpless situation to tide over the financial difficulty and later wants a fair rent to be determined. Again suppose for instance in a city there is an apprehension of external aggression, severe internal disturbances or spread of epidemics. A man in possession of his house may go to another town letting out his premises to a tenant financially strong and of strong nerves at a rate comparatively much lower than the prevailing market rates. Later on, on the normalization of the situation as against the agreed rate of rent he approaches the Building Controller for fixing a fair rent in accordance with a particular State Rent Act. Why should she or he be debarred from doing so. The statute gives him the protection and enables the Controller to intervene to fix a fair rent as against the term of contract between the parties. In a large number of cases it is the tenant who gets this protection. But in some as in the case of *Raval* the landlord needs and gets the protection. But this is not a direct authority on the point of notice.

In *Isha Valimohmmad & Anr.* v. *Haji Gulam Mohamad & Haji Dada Trust,*(1) Mathew J. speaking for a Division Bench of this Court had to consider the question with reference to the Saurashtra Rent Control Act, 1951. In that connection it was observed at page 726 that the High Court was right in the assumption that a notice under the Transfer of Property Act was necessary to terminate the tenancy on the ground that the appellants had sublet the premises. Says the learned Judge further that the landlord could not have issued a notice under any of the provisions of the Transfer of Property Act to determine the tenancy on the ground of sub-letting by the tenant. It is not correct to assume that a notice under section 106 of the Transfer of Property Act as required by clause (h) of section 111 needs a ground to be made out for the termination of the tenancy. Such a view could be taken only under clause (g). Beg J. as he then was in *P. J. Gupta & Co.* v. *K. Venkatesan Merchant & Ors.*(2) speaking for himself and Krishna Iyer J. following *Raval's* case observed at page 403 :—

> "In other words, the special procedure provided by the Act displaces the requirements of the procedure for eviction under the Transfer of Property Act and by an ordinary civil suit. Therefore, we need not concern ourselves with the provisions of Transfer of Property Act..... A tenancy is

(1) [1975] 1 S.C.R. 720.
(2) [1975] 2 S.C.R. 401.

1979(8) eILR(PAT) SC 11

A essentially based on and governed by an agreement or contract even when a statute intervenes to limit the area within which an agreement or contract operates, or, subjects contractual rights to statutory rights and obligations."

In *Dattopant Gopalyarao Devakate* v. *Vithabrao Maruthirao Janagavai*(1) one of us (Untwalia J.) speaking on behalf of himself B and Krishna Iyer J. said at page 71 :—

"We do not think that the alternative argument put forward by Mr. Chitaley that no notice was necessary in this case is correct. The appellant was a contractual tenant who would have become a statutory tenant within the meaning C of clause (r) of section 2 of the Act if he would have continued in possession after the termination of the tenancy in his favour. Otherwise not. Without termination of the contractual tenancy by a valid notice or other mode set out in Section 111 T.P. Act it was not open to the landlord to treat the appellant as a statutory tenant and seek his eviction without service of a notice to quit." D

On a careful consideration and approach of the matter in the instant case we think that we cannot approve of the view expressed in the passage extracted above. In *Ratan Lal* v. *Vardesh Chander & Ors*(2) Krishna Iyer J. delivered the Judgment on behalf of a Bench E of this Court consisting of himself, Chandrachud J., as he then was and Gupta J. The case related to a building in Delhi. The Court was concerned with clause (g) of section 111 of the Transfer of Property Act. Tracing the history of the legislation it was pointed out by the Court at page 918 that the requirement as to written notice provided in section 111(g) cannot be said to be based on any general F rule of equity and therefore forfeiture of lease brought about in terms of section 111(g) of the Transfer of Property Act not by notice but on the application of justice, equity and good conscience was held to be good determination of the lease. Quoting from *Manujendra's* case it was said at page 911 :—

"We are inclined to hold that the landlord in the present G case cannot secure an order for eviction without first establishing that he has validly determined the lease under the T.P. Act."

Why this dual requirement? Even if the lease is determined by a forfeiture under the Transfer of Property Act the tenant continues to H be a tenant, that is to say, there is no ferfeiture in the eye of law.

(1) [1975] Suppl. S.C.R. 67.
(2) [1976] 2 S.C.R. 906

1979(8) eILR(PAT) SC 11

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

Beg J., as he then was, speaking for the Court in the case of *Puwada Venkateswara Rao* v. *Chidamana Venkata Ramana*(1) had to deal with the question as to whether a notice to quit was necessary for seeking an order for eviction under the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960. The Andhra Pradesh High Court had relied upon the decision of that Court in *Ulligamma & Ors.* v. *S. Mohan Rao & Ors*(2) for taking the view that a notice under section 106 of the Transfer of Property Act was not necessary. Gopal Rao Ekbote J., delivering the judgment on behalf of a Bench of the Andhra Pradesh High Court in *Ulligappa's* case reviewed several decisions of the High Courts and this Court and considered the special provisions of the Andhra Pradesh Rent Act. The view expressed by him that no notice was necessary under section 106 of the Transfer of Property Act was approved by this Court. We find no justification for saying that because of some special provisions contained in the Andhra Act a different view was possible to be taken. This is exactly the reason why we have thought it fit to review all the decisions and lay down a uniform law for all the States. Section 10 (1) of the Andhra Pradesh Act provided that "A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 12 and 13." A special provision in the Andhra Act was contained in section 10(7) which says :—

> "Where an application under sub-section (2) or sub-section (3) for evicting a tenant has been rejected by the Controller, the tenancy shall, subject to the provisions of this Act, be deemed to continue on the same terms and

(1) [1976] 3 S.C.R. 551.

(2) [1969] 1 A.P. Law Journal, 351=(1971) 2 Andhra Weekly Reporter 29

1979(8) eILR(PAT) SC 11

A conditions as before and shall not be terminable by the landlord except on one or more of the grounds mentioned in sub-section (2) or sub-section (3)."

This special provision is provided by way of abundant precaution only. Even without this a tenant continuing in possession after the B termination of the contractual tenancy and until an eviction order is passed against him continues on the same terms and conditions as before and he cannot be evicted unless a ground is made out for his eviction according to the State Rent Act. The said provision by itself did not justify a departure from the view expressed by this Court in *Mangilal's* case. Beg J., followed the decision of this Court in C *Raval's* case and of the Punjab High Court in *Hem Chand's* case. For the reasons stated by us, we approve of his view not on the ground that the Andhra Pradesh State Act is a different one but because in respect of any State Act that is the correct view to take.

Lastly our attention was drawn to the decision of this Court in D *Firm Sardarilal Vishwanath and Ors* v. *Pritam Singh*(1). The lease in that case had come to an end by efflux of time. A tenant continued in possession and became a so-called statutory tenant. The argument put forward before this Court that a fresh notice under section 106 of the Transfer of Property Act was necessary was rejected on the ground :—

E "Having examined the matter on authority and precedent it must be frankly confessed that no other conclusion is possible on the first principle. Lease of urban immoveable property represents a contract between the lessor and the lessee. If the contract is to be put to an end it has to be terminated by a notice to quit as envisaged under s. 106 of the Trans- F fer of Property Act. But it is equally clear as provided by s. 111 of the Transfer of Property Act that the lease of immoveable property determines by various modes therein prescribed. Now, if the lease of immoveable property determines in any one of the modes prescribed under s.111 G the contract of lease comes to an end, and the landlord can exercise his right of re-entry. This right of re-entry is further restricted and fettered by the provisions of the Rent Restriction Act. Nonetheless the contract of lease had expired and the tenant lessee cotinues in possession under the protective wing of the Rent Restriction Act until the H lessee loses protection. But there is no question of terminating the contract because the contract comes to an end

(1) [1979] 1 S.C.R. 111

once the lease determines in any one of the modes prescribed under s.111. There is, therefore, no question of giving a notice to quit to such a lessee who continued in possession after the determination of the lease, i.e. after the contract came to an end under the protection of the Rent Restriction Act. If the contract once came to an end there was no question of terminating the contract over again by a fresh notice."

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

For the reasons stated above we hold that the High Court was right in its view that no notice to quit was necessary under section 106 of the Transfer of Property Act in order to enable the landlady—respondent to get an order of eviction against the tenant-appellant. But we were told by learned counsel for the appellant that he had some more points to urge before the High Court to challenge the order of eviction. We do not find from the judgment of the High Court that the appellant was prevented from supporting the orders of the courts below in his favour by urging any other point. No point of substance could be indicated before us which was worth consideration after a clear and definite finding by the Appellate Court that the respondent required the premises *bona fide* for a personal necessity. We do not think it advisable to delay the proceeding any further and send back the case to the High Court on this account. We accordingly dismiss the appeal but in the circumstances direct the parties to bear their own costs throughout.

P.B.R. *Appeal dismissed.*