CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01898/2018

DATED THIS THE 25TH DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C V SANKAR, MEMBER (A)

Sri. Tej Bir singh, 28 years,
S/o Sri Krishan Kumar,
Occn: Inspector,
GST West Commissionerate,
BMTC Bus Stand Complex, First Floor,
Banashankari,
Bengaluru 560 070 .....Applicant

(By Advocate Shri P.A. Kulkarni)

Vs.

1. Union of India,
To be represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110 001

2. Central Board of Indirect Tax and Customs,
North Block, New Delhi – 110 001
By its Chairman

3. Directorate General of
Human Resource Development
Central Board of Indirect Taxes & Customs,
C-4, West Wing, Ground Floor,
IRCON Building, District Centre,
Saket, New Delhi – 110 017

4. Principal Chief Commissioner of Central Tax,
Bengaluru Zone,
C.R. Buildings, Queen's Road,
Bengaluru – 560 001.

5. Principal Commissioner of Central Tax,
GST West Commissionerate,
BMTC Bus Stand Complex, First Floor,
Banashankari,
Bengaluru: 560 070.

6. Chief Commissioner of CGST,
Delhi Zone (Cadre Control Authority)
C.R. Building, ITO Lane,
IP Estate,
New Delhi 110 109

7. The Secretary,
Department of Personal and Training
Government of India,
North Block,
New Delhi – 110 001 …..Respondents

(By Shri Vishnu Bhat, Counsel for Respondent No. 1 to 7)

ORDER

DR. K.B. SURESH, MEMBER (J):

We must start with the exhortation made by Hon'ble Justice R.V. Raveendran when addressing the trainees at the National Judicial Academy at Bhopal. We quote:

> ***"Be aware of the consequences of your orders and directions.***
>
> ***The advice, that is normally given to a Judge is that he should not be concerned about or swayed by the consequences of his judgment, and decide the matter strictly in accordance with the facts and law. This principle is applicable only when a Judge is discharging the pure and simple traditional judicial function of adjudicating a civil litigation between two private parties or conducting a criminal trial. It will not apply to public interest litigation, non-adversarial litigation and cases relating to administrative law, environmental law, industrial law and service law. Judges may not realise that their orders may cast an enormous financial burden on the State or the employer; or that as a consequence of their orders, a lower division clerk may be catapulted to a managerial position without the required experience or knowledge for the job; or that the implementation of the orders may lead to administrative chaos.***
>
> ***I remember a case where a government servant claimed that***

when he joined service 25 years ago, his pay was wrongly fixed in the pay scale of Rs.80-120 and that the pay ought to have been fixed in the next higher scale. The case was not was not effectively defended on behalf of the State. A Judge not very familiar with service law granted the seemingly innocuous relief, of refixation in the higher scale with all financial benefits, thinking that the relief granted would involve a few thousand rupees. When that writ petition was allowed, hundreds of persons claiming to be similarly placed, filed writ petitions seeking the same relief. All those petitions had to be allowed in view of the binding precedent. The resultant financial liability on the State exchequer ran into several crores. The judge later told me that if he had known the consequences, he might not have entertained the belated claim at all or at least would have examined it in more detail or moulded the relief properly. I remember another case where a person employed on daily wages for a couple of months in 1980, filed a writ petition in 2003, claiming reinstatement and absorption. Though the Judge was not inclined to grant relief and wanted to dismiss it, the counsel persuaded him to dispose of the writ petition, with an observation to sympathetically consider any representation made by the petition in accordance with law. Once the order was made, it was followed by hundreds of cases claiming similar "disposals". They were also disposed of with a similar observation. Either on account of wrong interpretation of those orders, or collusion between the officers and petitioners concerned, hundreds of persons were given backdoor entry into government service without facing competitive selection, flouting reservation policy, that too after a gap of 25 years. Let me hasten to clarify that in deserving cases, relief should not be denied even if it involves a financial burden or inconvenience. The problem arises only where unwarranted relief is granted on grounds of sympathy, without comprehending the consequences to gain the tag of "relief-oriented Judge", opening the floodgates for undeserving claims resulting in administrative chaos and enormous financial burden on the States."

2. We, therefore, have considered this batch of matters as it related to discretion to be exercised on the basis of a prevailing law or a rule which had granted benefit to many. But then, after the government woke up into the matter, apparently the rule was changed. Therefore, wherein should lie judicial discretion was the question which agitated our minds. These are the results of our research into the matter:

3. In recent times there has been an enormous increase in the use of discretionary powers and in the making of discretionary decisions. Today government officials in particular have greater autonomy and finality in their decision-making and this is due in no small way to the simple fact that they are increasingly faced with situations which are novel or unprecedented and yet upon which they are obliged or entrusted to make authoritative decisions. This growth of new areas which brings with it the need for a new type of administrative or executive decision-making has been accompanied by a widespread delegation of discretionary powers to government authorities generally for the achievement of broadly specified goals and purposes, guided only by broad standards.

4. In many decisions too much attention is being given to minor fact differences which has resulted in classic principles being analysed too narrowly and becoming blurred. The unhappy result is that courts are not agreed as to whether their main function is to establish different principles for “strange” modern situations, or to prefer specific justice in particular disputes. Do we need a multitude of particular rules or more general principles. Sir Roger Ormrod has recently shown how discretion has been “forced” on judges even as to finding facts and fixing their classification arbitrarily due to the disappearance of the civil jury, which used to discover the facts and require the judge only to set out the law. Now finding the facts takes up so great a part of many judgments that the judge is unable to set out the principles sufficiently fully or widely in a normal sized judgment.

5. Moreover, the law has become more mysterious and more complex. Judges therefore find more and more need for balancing strong opposing views by a dialectical process, where courts are faced with propositions which are so apparently contradictory that there is no way of reconciling them. Jurists like Kelsen would not have found this a problem because he argued that in the law two propositions cannot really be contradictory. One must not be “law” at all. But even if Kelsen’s argument is valid, the process of putting them side-by-side and then raising the discussion of two valid theories to higher levels in which both views have force, demands a constructive effort which requires great skill and deep understanding of modern life. The debate about judicial creativity tends to be vague and finally futile, but it does raise the problem of how far a judge, particularly at a high level, is obliged now to use discretionary powers far more freely and openly than he has in the past.

6. Discretion is not opposed to law. It is law and it is governed by legal rules. It is not at “large”, not arbitrary nor “free justice”. It works by legal processes. It cannot destroy a binding principle or negate a clear statutory discretion which plainly fits the facts. So one need not be afraid of discretions, they are the law itself, just as a bird may develop new colour, sharper claws or bigger eyes to exist in a new environment, especially in what the biologists call a “catastrophic” one. Our Age is not yet catastrophic, but we are living in a vastly changed environment, where the random mutations are necessary. It is change or perish. Either the common law, remaining true to its traditions, will take some risks or it will be replaced, like an extinct species of dinosaurs.

7. The constraints on discretion are notorious. Discretion must be used fairly, not arbitrarily. It must be rational not emotional ("I do not like red headed men or manufacturers or prostitutes"). It must not allow some act grossly in itself immoral or illegal. It must not overcome a rule so settled that there is no room to manoeuvre. It must not offend public policy. It must be exercised on explicable or acceptable (even if not accepted) grounds. It must not be inconsistent with statute and so on.

8. So the judicial freedom is not a "roving licence", even the freedom of the judges in highest courts, who sometimes find themselves completely hemmed in and paralysed. Choice must be used sparingly and when no other weapon is available. Modification is the necessary and effective weapon for both dealing with flux and avoiding confusion. Judges frequently talk of the stark necessity of adapting the law in modern needs. This does not mean an abandonment of the past but rather the need to move from a rule-oriented legal approach to a more open-ended one. Balancing rival interests has now become a fashionable term in the law reports. The common law has no fixed scale of priorities of values, rights and duties. Priorities can thus vary with the changing circumstances. Practical reasoning, based on agreed values, is one of the judge's weapons.

9. There is no doubt that judges are currently employing various constraining mechanisms curb the growth of unbridled discretionary decision-making. In the sections below, some of the more common judicial constraints and limiting techniques (such as consistency, formal justice, holism,

universalizability, consequentialism, unpredictability, policy factors) will be considered.

10. The factual question is almost similar in all the cases. Apparently on 27.03.2009, the CBEC issued a circular providing for Inter Commissionerate transfers on the ground of joining together of spouses. Apparently on 30.09.2009, the DoPT had also issued an OM providing for posting of husband and wife at the same station. Thereafter it appears that wisdom had dawned on the government once again and there appears to be a ban on Inter Commissionerate transfer. But then, may be because of pressure at some level, on 27.10.2011 the CBEC issued a circular on lifting of ban on Inter Commissionerate transfers. We had taken the case of OA No. 170/01369/2018 filed by Shri Kuldeep Singh as the leading case and have heard arguments on all the cases but basically the principles enunciated in each OA are exactly the same. Therefore, with the consent of the learned counsels, we have clubbed all these matter together vide order dated 20.02.2019 and thereafter on 28.02.2019 we had heard all the matters and permitted written argument notes also to be filed along with the rulings on which they rely with the significant portions marked with marker ink.

11. It appears that on 02.01.2017 further guidelines were issued with regard to Inter Commissionerate transfers but then based on seniority.

12. In the interregnum apparently the rules were changed. Annexure-R3 appears to be the order issued in DO No. A 22015/117/2016-Ad.IIIA dated 01.10.2018, which we quote:

"*Government of India*
Ministry of Finance/Department of Revenue

Central Board of Indirect Taxes & Customs
North Block, New Delhi-110 001.

1st October, 2018

R K BARTHWAL
SPECIAL SECRETARY & MEMBER

D.O No.A.22015/117/2016-Ad.IIIA

Dear Colleague,

Sub:- Inter Commissionerate Transfers in the Grade of Inspectors-Regarding

The issue of Inter Commissionerate Transfers (ICTs) amongst Central Excise & Customs Commissionerate in the Inspector Grade [Central Excise, Preventive Officer and Examiner Group B post] has been examined in view of varying stand taken by Cadre Controlling Authorities and litigations arising from the same. The Recruitment Rules, 2016 of the Inspector Grade do not have any provision for recruitment by absorption on ICT. Therefore, consequent to the enactment of Recruitment Rules, 26.12.2016, no ICT application for inspector Grade can be considered.

2. The Board has considered the matter and have issued detail instructions vide Circular dated 20.09.2018 issued from F. No.A-22015/117/2016-Ad.IIIA (uploaded on the website of CBIC) superseding all earlier instructions/guidelines on the subject. For administrative exigencies and to mitigate difficulties in exceptional circumstances, Transfer on Loan Basis alone may be considered on case to case basis in view of the administrative requirements of transferee and transferred Cadre Controlling Authority. The maximum tenure on Loan Basis will be Three Years from the date of joining, extendable for a period of further two years by the Board (CBIC).

3. During loan period if Inspector is promoted in his/her parent commissionerate/Cadre he /she shall be reverted to his/her parent cadre for effecting the promotion.

4. As regards Inter Commissionerate Transfer order issued on or after 26.12.2016 (i.e., from the date of enactment of RR, 2016) the same will be treated as non-est. Accordingly, Inspector who has joined another zone in pursuance of such ICT orders, shall be treated as deemed case on loan basis till 31.03.2019, and thereafter the officers will stand relieved and revert to their parent Commissionerate/Cadre.

5. Above instructions may be noted for strict compliance.

With best wishes,

Yours Sincerely,
Sd/-
(Raj K.Barthwal)

All the Principal Chief Commissioners/Chief Commissioners/
Principal Commissioners of Central Tax & Central Excise.”

13. The applicants allege that Annexure-R1 circular is very mischievous as even the orders passed in benefit of the persons were being reopened by it. We quote from the circular F. No. A-22015/117/2016-Ad.IIIA dated 20.09.2018 which is produced as Annexure-R1:

“F.No.A-22015/117/2016-Ad.IIIA
Government of India,
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

North Block, New Delhi
Dated, the 20th of September, 2018

CIRCULAR

Subject: Instructions in respect of Inter Commissionerate Transfer (ICT) in the light of new Recruitment Rules, 2016-regarding.

These instructions are being issued in terms of ***“Central Excise and Customs Commissionerate Inspector (Central Excise, preventive Officer and Examiner) Group B Posts Recruitment Rules, 2016”***

2. Any executive instruction in contravention of the Recruitment Rules will be void in accordance with the ratio of the judgment of the Hon’ble Supreme Court of India in the case of UOI & other Vs. Somasundram Viswanath & Ors. dated 22.09.1988 [1990 SC 166 (10) which held as follows:-

(1) “It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by appropriate Legislature or by rules made under the proviso to Articles 309 of the Constitution of India or by means of executive instructions issued under article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between

the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail." Thus, the Recruitment Rules formulated under Article 309 will prevail over any executive instruction that may be contradictory to it"

*3. It has come to the notice of this office that various CCAs (Cadre Control Authorities) are taking divergent stands on the issue of Inter Commissionerate Transfers (ICT) of officers in the cadre of Inspector on the basis of guidelines issued vide F.No.A-20015/23/2011-AD IIIA dated 27.10.2011. The issue of Inter Commissionerate Transfer under "**Central Excise and Customs Commissionerate Inspector (Central Excise, Preventive Officer and Examiner) Group B Post Recruitment Rules, 2006"** has been examined by the Board and following has been observed.*

4. The ICT applications were being considered under Rule 4 of erstwhile Central Excise and Land Customs Department Inspector (Group 'C' Posts) Recruitment Rules, 2002 which stated that:

"Rule 4: Special Provision.- (i) Each Cadre Controlling Authority (CCA) shall have its own separate cadre unless otherwise directed by the Central Board of Excise and Customs.

(ii) Notwithstanding anything contained in sub-rule (i) the jurisdictional Chief Commissioner of Central Excise may, if he considers to be necessary or expedient in the public interest so to do and subject to such conditions as he may determine having regard to the circumstance of the case and for reasons to be recorded in writing, order any post in the Commissionerate of Central Excise to be filled by absorption of persons holding the same or comparable posts but belonging to the cadre of another Commissionerate or Directorate under the Central Board of Excise and Customs.

However, under Recruitment Rules, 2016 the corresponding provision containing the special provision under Rule 5 provides that "Each Cadre Controlling Authority (CCA) shall have its own separate cadre unless otherwise directed by the Central Board of Excise and Customs."

5. From the above, it is clear that Recruitment Rules, 2016 do not have any provision for recruitment by absorption and accordingly, no ICT application can be considered after coming into force of the Recruitment Rules, 2016

6. In exceptional circumstances depending upon the merit of each case such as extreme compassionate grounds, such transfers may be allowed on case to case on loan basis alone keeping in view the administrative requirements of transferee and transferred Cadre Controlling Authority. However, maximum tenure of such transfer will be three years and can be extended with the specific approval of the Board for a further period of two years depending upon the administrative *requirement. It is further reiterated that the officials transferred on the loan basis shall not be considered for promotion unless they re-join parent cadre.*

7. Now, therefore, it is hereby clarified that an office order for Inter Commissionerate Transfer in the Grade of Inspectors issued on or after 26.12.2016 (i.e., from the date of enactment of RR, 2016) will be non-est and accordingly any officer who has joined another zone in pursuance of such order shall be treated as a ***deemed case on loan basis w.e.f. 26.12.2016.*** *These officers shall be on deemed loan till 31.3.2019, on which date the officers shall stand relieved and be reverted to their parent Zones.*

All CCA are directed to take necessary steps in this regard immediately.

(S.K Gupta)
Deputy Secretary to Govt. of India

To

The Principal Chief Commissioner/ Chief Commissioners/ Principal Commissioners of Central Tax & Central Excise (All)"

14. Both sides agree that the position of law with regard to Inter Commissionerate transfer had now been changed with the new Recruitment Rules and the consequential orders issued by several authorities. The applicant would say that based on past practice and the stand taken by the courts in this regard and on the basis of the grounds available in the circular issued by the DoPT, the earlier order C.No.II-13(181)CCA/CAT/ICT/2017 dated 29.01.2018 may be quashed.

15. We have, therefore, decided that not only on the ground of spouse but other grounds also need to be addressed as a memo had been filed indicating that:

1) The Recruitment Rules govern the initial appointment only,
2) There is no rule in the Central Government which regulates transfers of its employees,
3) Applicant was appointed on the basis of Combined Graduate Level

Examination, 2012 and as such the Recruitment Rules of 2016 are not applicable to his case as it may not have a retrospective effect.

4) There is a vested right in an employee to seek such an Inter Commissionerate transfer

5) The term used in the circular produced by the respondents relating to deemed loan basis is nothing but imagination of fertile mind and it has no legal sanction apart from being unreasonable.

6) Regarding the question of shortage of staff in different Commissionerates, manpower planning is only an administrative function and the employees cannot be made responsible for manpower shortage. Applicants cannot be penalized for the inefficiency of the government.

7) This contention of the government was rejected vide the Ernakulam Bench in OA No. 333/2016 dated 12.07.2016. But the respondents point out that this may not be valid as the explanation for this legal position came only in the month of September, 2016. All these posts carry all India service liability.

16. Therefore, we need to examine the matrix from the point of view of law first of all. The Hon'ble Apex Court have held that it is within the compass of the government to enact a law or a rule in the circumstances of a case, if it is warranted, with a retrospective operation is also possible. We quote from the judgment **Welfare Association A.R.P., Maharashtra &anr vs. RanjitGohil & ors.** reported in (2016) 5 Supreme Court Cases 808 in view of its importance in full:

"The Judgment of the Court was delivered by

R.C. LOHATI, J. - Leave granted in all SLPs.

2. The Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 (Act No. XVI of 1997) having been struck down as ultra vires of the Constitution and as being beyond legislative competence of the State Legislature, the State of Maharashtra, the Welfare Association of Allottees of Requisitioned Premises, Maharashtra and several others have come up in appeal. The decision by the Division Bench of the High Court of Judicature at Bombay was delivered on 27th July 1998. The judgment posed the threat of eviction against several allottees in occupation of premises requisitioned by the State Government. Several Writ Petitions were filed which were all disposed of by the impugned judgment of the Division Bench. The principal question which arises for decision in the batch of appeals is the constitutional validity of Amendment Act No. XVI of 1997 abovesaid. (hereinafter referred to as the Amendment Act, for short).

Historical background : Two decisions of this Court

3. A brief statement of historical background leading to the present controversy is apposite.

4. In the year 1948, Bombay Land Requisition Act, 1948 (Act No. XXXIII of 1948) was enacted to make provision for the requisition of land and for the continuance of requisition of land and for certain other purposes. 'Land' was widely defined so as to include therein building also and 'premises' were defined to mean building or part of building intended to be let separately and other things appurtenant (as defined). Land and vacant premises could be requisitioned by the State Government for any public purpose. Provision was also made for continuance of requisitions made under the Requisitioned Land (Continuance of Powers) Act, 1947 and the Defence of India Act, 1962 and the rules made thereunder. Section 8 of the Act made provision for payment of compensation to persons whose property was requisitioned or continued to be subjected to requisition to be determined by an officer authorized in this behalf by the State Government. The basis of compensation can be spelt out from the following part of sub-Section (1) of Section 8 :-

> *"The officer shall determine such amount of compensation as he deems just having regard to all the circumstances of the case; and in particular he shall be guided by the provisions of sub-Section (1) of Section 23 and Section 24 of the Land Acquisition Act, 1894 (as in force in the Bombay area of the State of Maharashtra) in so far as they can be made applicable."*

5. It appears that the shortage of accommodation in Bombay and the difficulties likely to be faced by the occupants to whom the requisitioned land and premises were allotted by the State Government *resulted in the requisitioned properties continuing under requisition for endless periods of time. The constitutional validity of such requisition was put in issue before the High Court in the following factual background. On 2nd April, 1951 a flat was requisitioned by the State Government and allotted to a person. The owner made a request in 1964 to the Competent Authority for derequisitioning the flat, which was rejected. A purchaser of the property in 1973 once again made a request to derequisition the flat, which too was turned down. The owner filed a Writ Petition in the year 1980 under Article 226 of the Constitution, laying challenge to the validity of the requisition. One of the grounds of challenge was that the requisition order could not survive for such a long period of time and the Government was bound to derequisition the flat. The Writ Petition was allowed. The occupant came in appeal by special leave to this Court. Vide its judgment dated February 22, 1984 (H.D. Vora Vs. The State of Maharashtra and Ors. (1984) 2 SCC 337) this Court held that the power of requisitioning is exercisable by the Government only for a public purpose which is of a transitory character. If the public purpose of requisition is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed, would be a fraud upon the statute; further Government would be requisitioning the premises when really speaking they want the premises for acquisition as the objective of taking the premises was not transitory but permanent in character. This Court upheld the decision of the High Court allowing the Writ Petition and directing the State Government to derequisition the flat and to take steps to evict the appellant and to handover possession of the flat to the owner.*

6. Following the decision of the Bombay High Court in H.D. Vora's case (supra) the Bombay High Court in numerous cases struck down the continuance of requisition orders made in the late 1940s and early 1950s particularly of residential premises. Two Writ Petitions, relating to premises requisitioned under Bombay Land Requisition Act, 1948 __ one of which was requisitioned for purposes of residential use and the other was requisitioned for commercial use of running fair price ration shop by a co-operative society, came to be filed in this Court which were heard and decided on April 27, 1994 by the decision reported as GrahakSansthaManch and Ors. Vs. The State of Maharashtra, (1994) 4 SCC 192. The Writ Petitions in effect had sought reconsideration of decision in H.D. Vora's case (supra), which was a two Judges Bench decision, and therefore, were placed for consideration and hearing by a Constitution Bench. The findings of the Constitution Bench may briefly be summed up as under:-

> *i) That the purpose of a requisition order may be permanent yet an order of requisitioning cannot be continued indefinitely or for a period of time longer than that which, in the facts and circumstances of the particular case, is reasonable. The concept of requisitioning is temporary. The concepts of acquisition and*

requisition are altogether different as are the consequences that flow therefrom. A requisitioning which in effect and substance results in acquisition and thereby depriving an owner of property of his rights and title to property without being paid due compensation is bad;

ii) That the decision in H.D. Vora's case does not require reconsideration.

7. However, the Constitution Bench did not approve the two Judges Bench observation in H.D. Vora's case that requisition orders under the said Act cannot be made for a permanent purpose. The Constitution Bench also held that the period of 30 years has not been laid down in H.D. Vora's case as the outer limit for which a requisition order may continue. An order of requisition can continue for a reasonable period of time; what period is reasonable would depend on the facts and circumstances of each case; and in H.D. Vora's case the continuance of an order of requisition for as long as 30 years was rightly held to be unreasonable.

8. What is of significant relevance is the operative part of the order of the Constitution Bench. The same (paras 20 and 21 of SCC, at p.205) is extracted and reproduced verbatim as under:-

"20.The continuance of requisition orders made in the late 1940s and early 1950s and thereabouts, particularly of residential premises, have been struck down by the Bombay High Court in numerous cases following the judgments in H.D. Vora case. There are no appeals there against (except one which was, by a separate order of this Bench, dismissed). The allottees of these requisitioned premises (except retired government servants allotted premises requisitioned for the purpose of housing government servants) and their legal representatives have continued in occupation thereof by reason of the interim orders of this Court passed from time to time in Writ Petition No. 404 of 1986. Having regard to the known difficulty of finding alternate accommodation in Bombay and other large cities in Maharashtra, the protection of these interim orders is hereby continued until 30-11-1994, on which date all occupants of premises the continued requisition of which has been quashed as aforesaid shall be bound to vacate and hand over vacant possession to the State Government so that the State Government may, on or before 31-12-1994, derequisition such premises and hand back vacant possession thereof to the landlords.

21. The writ petitions are, accordingly, dismissed. There shall be no order as to costs."

[N.B. : The portion which we have underlined to emphasise will be of significance in constructing the operative part of our judgment.]

9. The majority opinion endorsed by four out of five Judges *constituting the Constitution Bench was delivered by S.P. Bharucha, J. (as his Lordship then was) which we have noticed and reproduced hereinabove. P.B. Sawant, J. in his separate opinion agreed with the findings on the questions of law recorded in the majority opinion but expressed dissent with the operative part of the order. His Lordship observed:-*

> *"I am of the view that notwithstanding the legal position, the following directions can be given to mitigate the hardship of the allottees of the requisitioned premises. These directions will in no way prejudice the interests of the landlords of the premises. At present they are receiving the same rent from the allottees as from the other tenants. On account of the Rent Act, they will not receive more rent from the new tenants whom they may induct after the premises are released from requisition. It is in rare cases that the premises would be required by the landlords for bona fide personal requirement. All that, therefore, they will be deprived of for some time more, on account of these directions, is the right to induct new tenants of their choice. It is a notorious fact that such choice is, more often than not, exercised in favour of those who can offer competing illegal consideration, commonly known as "pugree" which is escalating with passage of time."*

10. His Lordship noticed that there were two sets of allottees before the Court:

> *(i) Consumer Cooperative Societies running fair price ration shops in the allotted premises,*
>
> *and*
>
> *(ii) Individuals who are allotted residential premises.*

11. As to category (i) his Lordship opined that the Consumer Cooperative Societies were running ration shops and shall have to be wound up. The employees of such societies should be allowed sufficient time to find out alternative employment and the State Government should also make alternative arrangements for housing ration shops and for that purpose the derequisition and eviction should not take place before 31-5-1996. As to category (ii), his Lordship opined that they should be given preference in allotment of plots and flats by making suitable arrangement with City and Industrial Development Corporation of Maharashtra Limited and Maharashtra State Housing Board. Alternative accommodation to such occupants should be made available by the State Government latest by 31-5- 1996 and till then there should be no derequisition and eviction. The premises other than those covered by the said two categories may be derequisitioned as directed in the order proposed by the majority.

12. It is pertinent to note that the two writ petitions were directed to be dismissed by the Constitution Bench. To mitigate the hardship likely to be caused to the occupants - the allottees in requisitioned premises *continuing in occupation by virtue of interim orders of the Court which stood vacated by dismissal of the writ petitions, this Court allowed time until 30-11-1994 for vacating the premises by the occupants and for restoring of possession of the premises by the State Government to the owners.*

Rent Control Legislations leading upto the impugned amendment

13. Now the relevant Rent Control Legislations in their chronological order leading upto the enactment of the impugned Amendment Actheld ultra vires by the impugned judgment of the High Court, may be noticed.

1. The Bombay Land Requisition Act, 1948 as originally enacted was to remain in force upto 31-3-1950. The Act was amended from time to time extending its life. Section 9 of the Act empowered the State Government to release from requisition at any time the land requisitioned or continued to be subject to requisition under the Act. By Section 2 of Maharashtra Act 51 of 1973, sub-Section (1A) was inserted below sub-Section (1) of Section 9 which made it obligatory for the State Government to release land from requisition on the expiry of the stated period. The said period was extended from time to time by successive amendments. The period of requisition was to expire on 31-12-1994 when the matter came up for consideration and disposed of by the Constitution Bench in GrahakSansthaManch case (supra).

15. The paucity of accommodation and the impact of war on the population and habitation conditions in Bombay led to the enactment of the Bombay Rent Restriction Act, 1939 followed by the Bombay Rents, Hotel Rates and Lodging Houses Rates (Control) Act, 1944 to curb the sky rocketing greed of the landlords pitted against the miseries of roofless. Both these Acts were repealed by a more comprehensive legislation namely, the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 which was enacted to amend and consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging houses and of evictions and also to control the charges for licenses of premises etc. The Act protected tenants and licensees in occupation of the premises. Section 13 made provision for the events and contingencies on proof whereof the landlord could recover possession. Maharashtra Act 17 of 1973 conferred the status of tenant on certain licensees in occupation of any premises or any part thereof, which is not less than a room since 1st February 1973 or before. Several other amendments and enactments were also passed by the State Legislature beneficial in nature to the tenants, licensees and occupants of the premises, the details whereof are being omitted as not necessary for our purpose. What is relevant for our purpose is to note that the life of requisition or continued requisition of any land which was coming to an end by virtue of sub-section (1-A) as inserted in Section 9 of the Bombay Land Requisition Act, 1948 by Maharashtra Act 5 of 1973, further amended by Maharashtra Act 29 of 1990 was given an extension by issuing an ordinance, namely, the Bombay Land

Acquisition (Amendment) Ordinance, 1994 (Maharashtra Ordinance No. XX of 1994) which extended the life of such requisitions for a period of 24 years from 27-12-1973 that is upto 27th December, 1997. The statement of objects and reasons accompanying the said Ordinance referred to the two decisions of this Court in H.D. Vora (supra) and the subsequent decision of this Court dated 27-4-1994 in GrahakSansthaManch and Ors. case (supra). The preamble noticed the difficulty which was likely to be faced by several persons in occupation of the accommodation requisitioned and allotted by the State Government and the difficulties which the Government was facing on account of paucity of funds and ever rising prices in constructing alternative accommodation to accommodate Government employees in-service and others. The statement noticed the factum of both Houses of the State Legislature being not in session and the Governor of Maharashtra having felt satisfied of the existence of requisite circumstances for issuing the Ordinance and concluded by stating :-

> *"In the facts and circumstances as aforesaid, it is considered expedient to extend the period of requisition under the Act for a further period of three years beyond the 26th December, 1994, so as to enable the State Government to complete the process of derequisitioning during the extended period of three years. It is, therefore, proposed to suitably amend sub-Section (1A) of* Section 9 *of the principal Act extending the total period of requisition from twenty-one years to twenty-four years."*

16. The Ordinance was replaced by Maharashtra Act No. VII of 1995. The assent of the President of India under Article 254(2) *of the Constitution of India was received.*

17. Now the crucial amendment. On 7-12-1996, the Governor of Maharashtra promulgated the Bombay Rents, Hotel and Lodging Houses Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Ordinance, 1996 (Maharashtra Ordinance XXIII of 1996) whereby certain amendments were incorporated in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Principal Act, 1947") by Section 2 *of the Ordinance. It is not necessary to burden the judgment by extracting and reproducing the entire text of the Ordinance (which is published in Maharashtra Government Gazette Extraordinary - Part VIII - dated December 7, 1996). It would suffice for our purpose to note the following effect of the Ordinance and consequences flowing therefrom (as crystalised and agreed to by the learned counsel for all the parties, at the hearing):-*

> *1) Section 5 of the Principal Act, 1947 was amended so as to confer the status of the tenant of the landlord on such person or his legal heir as was allotted by the State Government for residential purpose any premises requisitioned or continued under requisition. The status conferred on them by amending Section 5*

of the Principal Act and by inserting Section 15B in the Principal Act was that the allottee or his legal heir in occupation or possession of the allotted premises for own residence

> *"shall, notwithstanding anything contained in this Act, or in the Bombay Land Requisition Act, 1948, or in any other law for the time being in force, or in any contract, or in any judgment, decree or order of any court passed on or after the 11th June, 1996, be deemed to have become, for the purposes of this Act, the tenant of the landlord; and such premises shall be deemed to have been let by the landlord to the State Government or, as the case may be, to such Government allottee, on payment of rent and permitted increases equal to the amount of compensation payable in respect of the premises immediately before the said date."*

2. All the premises requisitioned or continued under requisition under the Bombay Land Requisition Act, 1948 and allotted to Government allottees and allowed by the State Government to continue or to remain in occupation or possession of such premises were deemed to have been released from requisition.

3. The premises requisitioned and continued under requisition and allotted by the State Government for any non-residential purpose to any department or office of the State Government or Central Government or any public sector undertaking or Corporation owned or controlled fully or partly by the State Government or any registered co-operative society or any foreign consulate and allowed by the State Government to remain in their occupation or possession were included in the definition of 'Government Premises' within the meaning of Section 2 clause (b) of the Bombay Government Premises Eviction Act, 1955.

(4) In spite of such status of tenant having been conferred on the person in occupation or possession and the owner of the property having been declared to be landlord, the Ordinance took care to clarify (by sub-section (2) of Section 3) :-

"15-B. (2) Save as otherwise provided in this section or any other provisions of this Act, nothing in this Section shall affect:-

(a) the rights of the landlord including his right to recover possession of the premises from such tenant on any of the grounds mentioned in Section 13 or in any other Section;

(b) the right of the landlord or such tenant to apply to the court for the fixation of standard rent and permitted increases under this Act, by reason only of the fact that the amount of the rent and permitted increases, if any, to be paid by such tenant to the landlord is determined under sub-Section (1);

(c) the operation and the application of the other relevant provisions of this Act in respect of such tenancy."

18. Certain consequential amendments were also effected in the Bombay Land Requisition Act, 1948 and the Bombay Government Premises (Eviction) Act, 1955, which it is not necessary to notice and reproduce.

19. The statement of objects and reasons accompanying the Ordinance is very relevant and shall have to be referred to while dealing with the contentions raised by the contending parties before this Court and therefore the same is reproduced hereunder :-

"STATEMENT

The Bombay Land Requisition Act, 1948 is enacted to provide for requisition of land for relieving the pressure of accommodation, especially in urban areas, by regulating distribution of vacant premises for public purposes, and for certain other purposes incidental thereto. Certain premises which have been requisitioned or continued under requisition under the said Act have been allotted for non-residential purpose to many departments or offices of the State Government or Central Government or public sector undertakings, corporations owned or controlled fully or partly by the State Government or co-operative societies or foreign consulates and for residential purpose to different categories of persons such as employees of the State or Central Government, public sector undertakings, corporations, or homeless persons, etc. Many of these premises have since been derequisitioned by the Government, as per Court orders or having regard to certain other circumstances. But still there are quite a large number of allottees in occupation of such premises, for a number of years, on payment of compensation as determined under the said Act. The allottees of such premises include Government servants who are still in Government service and others.

2. Under the existing provisions of Section 9 of the Bombay Land Requisition Act, 1948, as last amended by Mah. Act No. VII of 1995, the premises which have been requisitioned on or before 27th December, 1973 will have to be released from the requisition on or before 26th December, 1997 and those which have been requisitioned after 27th December, 1973, within twenty-four years from the date on which possession of such land was surrendered or delivered to, or taken by, the State Government. Further the Supreme Court in Writ Petition No. 404 of1986 filed by the Association of Allottees of the Requisitioned Premises and Writ Petitions No. 53 of 1993 and 27 of 1994 filed by the GrahakSanstha Versus State of Maharashtra, has given a final decision on the 27th April, 1994 in the matter of requisitioned premises (AIR 1994, S.C., 2319), upholding the decision in the H.D. Vora's case [(1984) 2 S.C.C. 337] and has directed that the occupants of the requisitioned premises, the continued requisition of which was quashed, were bound to vacate and hand over vacant possession of such premises to the State Government on or before 30th November, 1994 so that the Government could derequisition such premises and hand *over the vacant possession thereof to the landlords. Accordingly, derequisitioning process, in respect of all such premises and applying the ratio of the said Supreme Court Judgment, in several other premises, has already been completed by the State Government. There are however as aforesaid, nearly 604 residential premises and about 90 non-residential premises which are still under requisition in BrihanMumbai and 138 in other districts which include requisitioned premises allotted to Government servants who are still in Government service and others.*

3. As a matter of policy, the State Government has stopped requisitioning of new premises except in some special cases. As a result of this policy and also due to continued acute shortage of accommodation with Government and astronomical rise in the cost of properties in Mumbai, it would not be possible for Government to give suitable alternative accommodation to all such allottees if, applying the ratio of the said Supreme Court Judgment the Government has to vacate all the requisitioned premises. The situation is, therefore, likely to result in the Government allottees presently in occupation of the requisitioned premises being rendered without any office accommodation or homeless. It is imperative to find a solution to this grave situation and to give some kind of statutory protection to these allottees of the requisitioned premises.

4. As the landlords are generally unwilling to accept such Government allottee, as contractual tenants, on payment of the standard rent and permitted increases, Government considers it expedient, in greater public interest, to make suitable provisions for providing the protection of statutory tenancy under the Rent Act *to the State Government and to such Government allottees; and consequently to provide for the release of such premises from requisition.*

5. As many landlords have already approached the High Court seeking eviction orders of the allottees of the requisitioned premises and the possibility of others also approaching the Court for such eviction orders cannot be ruled out, thereby frustrating the very object of this legislation, it is also considered expedient to provide in the proposed section 3 *of this Ordinance that, such conferral of statutory tenancy rights on the allottees shall not be affected by any eviction orders passed by the Court on or after 11th June, 1996 (being the date of the Government decision to undertake such legislation).*

6. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Land Requisition Act, 1948 and the Bombay Government Premises (Eviction) Act, 1955, suitably for the purposes aforesaid, this Ordinance is promulgated.

Mumbai: *P.C.*

ALEXANDER
Dated Governor
of Maharashtra
07.12.1996.

By order and in the name of the Governor of Maharashtra,

JAYANT DESHPANDE,
Secretary to Government."

20. In due course of time, the Ordinance was replaced by the Bombay Rents, Hotel, Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 (Maharashtra Act XVI of 1997).

21. The vires of this Amendment Act XVI of 1997 is under challenge and arises for consideration by this Court in these appeals, in view of the High Court having upheld the challenge. The vires of the Ordinance need not be gone into as the same has lapsed with the passage of time and its provisions merged into the provisions of the Amendment Act above-said.

22. Though the challenge before the High Court was laid on very many grounds, in view of the findings arrived at by the High Court all the learned counsel for the parties agreed that only the following three issues survive and are relevant for decision in these appeals, namely,

i) whether the State Government has requisite legislative competence to enact the impugned amendments?

ii) whether the impugned legislation is a colourable one and is an interference with the judicial mandate of Supreme Court contained in H.D. Vora's case and GrahakSanstha Mancha and Ors. case or has the effect of overruling the decisions of this Court and hence violative of doctrine of separation of powers? and

iii) whether the impugned enactment is violative of Article 14 of the Constitution as being arbitrary and unreasonable?

We proceed to deal with each of the three issues seriatem.

(i) Legislative competence

23. While the writ petitioners challenged the legislative competence of the State Legislature to enact the impugned Amendment Act, the State of Maharasthra and the beneficiaries of legislation have defended the impugned legislation by attributing legislative competence to State Legislature by reference to entries 6, 7 and 13 of List-III and entry 18 of List-II of Seventh Schedule which are reproduced hereunder for ready reference:-

"List - III - Concurrent List

6. Transfer of property other than agricultural land; registration of *deeds and documents.*

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.

List - II - State List

18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

24. So far as entry 18 of List-II is concerned, we may repel the defence summarily by referring to three decisions of this Court, namely, Accountant & Secretarial Services (P) Ltd. & Another Vs. Union of India & Others, (1988) 4 SCC 324, DhanapalChettiar Vs. YesodaiAmmal, (1979) 4 SCC 214 and InduBhusan Bose Vs. Rama Sundari Debi & Another, 1970 (1) SCR 443, wherein it has been categorically held that tenancy of buildings or of house accommodation or leases in respect of non-agricultural property are not included in Entry 18 of List-II and that they more appropriately fall within the field of entries 6, 7 and 13 of List-III.

25. What should be the approach of the Court dealing with a challenge to the constitutionality of a legislation has been succinctly set out in Principles of Statutory Interpretation by Justice G.P. Singh (Eighth Edition, 2001 at pp 453-454 and 36). A statute is construed so as to make it effective and operative on the principle expressed in the maxim "ut res megisvaleat quam pereat". (It is better to validate a thing than to invalidate it). There is a presumption that the Legislature does not exceed its jurisdiction. The burden of establishing that the Act is not within the competence of the Legislature, or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vires. If a case of violation of a constitutional provision is made out then the State must justify that the law can still be protected under a saving provision. The courts strongly lean against reducing a statute to a futility. As far as possible, the courts shall act to make a legislation effective and operative.

26. In CharanjitLalChowdhary Vs. Union of India &Ors., 1950 SCR 869, the Constitution Bench held that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.

27. It must be mentioned in all fairness to the writ petitioners and their learned counsel that the challenge to the constitutional validity of *impugned Amendment Act was pursued and pressed by resting submissions not on the ground of violation of any property rights of the owner-landlords but mainly on the ground of the lack of legislative competence in State Legislature by reference to the relevant entries in Seventh Schedule. The submission of the learned counsel for the writ petitioners - respondents has been that within the meaning of entries 6 & 7 of List-III what can be enacted is a law dealing with any existing transfer of property or an existing contract; the legislation cannot by itself create a transfer of property or bring a contractual relationship in existence which if done would fall outside the scope of entries 6 & 7 abovesaid. It was submitted that the owners have not transferred any property in the premises to the occupants nor does any contractual relationship exist between the owners and the occupants on the date of coming into force of the Amending Act and, therefore, the Amending Actcannot be said to be a law governing transfer of property or contract and hence does not fall within the purview of these entries 6 & 7. To test the validity of such submission forcefully advanced it will be useful to have a recap of certain well-established principles.*

28. The fountain source of legislative power exercised by the Parliament or the State Legislatures is not Schedule __ 7; the fountain source is Article 246 and other provisions of the Constitution. The function of the three Lists in Seventh Schedule is merely to demarcate legislative fields between Parliament and States and not to confer any legislative power. The several entries mentioned in the three Lists are fields of legislation. The Constitution makers purposely used general and comprehensive words having a wide import without trying to particularize. Such construction should be placed on the entries in the Lists as makes them effective; any construction which will result in any of the entries being rendered futile or otiose must be avoided. That interpretation has invariably been countenanced by the constitutional jurists, which gives the words used in every entry the widest possible amplitude. Each general word employed in the entries has been held to carry an extended meaning so as to comprehend all ancillary and subsidiary matters within the meaning of the entry so long as it can be fairly accommodated subject to an overall limitation that the courts cannot extend the field of an entry to such an extent as to result in inclusion of such matters as the framers of the Constitution never intended to be included within the scope of the entry or so as to transgress into the field of another entry placed in another List.

29. In every case where the legislative competence of a Legislature in regard to a particular enactment is challenged with reference to the entries in the various Lists, it is

necessary to examine the pith and substance of the Act and to find out if the matter comes substantially within an item in the List. The express words employed in an entry would necessarily include incidental and ancillary matters so as to make the legislation effective. The scheme of the Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of the legislation are to be focused at. It is a fundamental principle of Constitutional Law that everything necessary to the exercise of a power is included in the grant of the power (See the Constitution Bench decision in Chaturbhai M. Patel Vs. Union of India &Ors., 1960 (2) SCR 362).

30. In Diamond Sugar Mills Ltd. & Another Vs. State of Uttar Pradesh & Another, 1961 (3) SCR 242, the Constitution Bench defined the two bounds between which the stream of interpretative process dealing with entries in Seventh Schedule must confine itself and flow. One bank is the salutary rule that the words conferring the right of the legislation should be interpreted liberally and the powers conferred should be given the widest amplitude; the other bank is guarding against extending the meaning of the words beyond their reasonable connotation in an anxiety to preserve the power to legislate. The working rule of the game is to resolve, as far as possible, in favour of the legislative body any difficulty or doubt in ascertaining the limits.

31. A note of caution was sounded by Constitution Bench in Synthetics & Chemicals Ltd. etc. Vs. State of U.P. & Others, (1990) 1 SCC 109. The Constitution must not be construed in any narrow or pedantic sense and that construction which is most beneficial to the widest possible amplitude of its power must be adopted. An exclusionary clause in any of the entries should be strictly and, therefore, narrowly construed. No entry should be so read as to rob it of its entire content. A broad and liberal spirit should inspire those whose duty it is to interpret the Constitution. The Constitution is a living and organic thing and must adapt itself to the changing situations and pattern in which it has to be interpreted. To bring any particular enactment within the purview of any legislative power, it is the pith and substance of the legislation in question that has to be looked into by giving widest amplitude to the language of the entries. The Constitution must be interpreted in the light of the experience gathered. It has to be flexible and dynamic so that it adapts itself to the changing conditions in a pragmatic way. The undisputed constitutional

goals should be permitted to be achieved by placing an appropriate interpretation on the entries. The Constitution has the greatest claim to live. The claim ought not to be throttled. Directive Principles of State Policy can serve as potent and useful guide for resolving the doubts and upholding constitutional validity of any legislation if doubted.

32. In United Provinces Vs. Mt. Atiqa Begum and Others, AIR 1941 FC 16, their Lordships upheld the principle that the question whether any impugned Act is within any of the three Lists, or in none at all, is to be answered by considering the Act as a whole and deciding whether in pith and substance the Act is with respect to particular categories or not and held that in doing so the relevant factors are: (i) the design and the purport of the act, both as disclosed by its language, and (iii) the effect which it would have in its actual operation.

33. ***Article 37*** ***provides that the Directive Principles of State Policy though not enforceable by any court, yet the principles laid down therein are fundamental in the governance of the country and the State is obliged to apply these principles in making laws.*** ***Article 38*** ***inspires the State to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political prevails and citizens, men and women are treated equally and so share the material resources of community as to result in equitable judicious and balanced distribution of means of livelihood - food, cloth and shelter- the bare essentials for living as human being. Inequalities in status, facilities, opportunities and income are to be eliminated and minimized. The systems in a democratic society ought not to operate to the detriment of individuals or groups of people.***

34. The Constitution Bench decision of this Court in InduBhushan Bose Vs. Rama Sundari Debi & Another, (1969) 2 SCC 289 needs a special mention. A Rent Control Legislation enacted by State Legislature was sought to be extended to cantonment area. The High Court held that the same was not permissible inasmuch as so far as the cantonment area is concerned, legislation touching regulation of house accommodation is governed by Entry 3 of List-I which reads, inter alia, "the regulation of house accommodation (including the control of rents) in such areas" i.e. cantonment areas. During the course of its judgment, the Constitution Bench held that the entry has to be liberally and widely interpreted.

Regulation of houses in private occupation would fall within the entry. The word 'regulation' includes power to direct or control all housing accommodation in cantonment areas, which in its turn, will include within it all aspects as to who is to make the construction, under what conditions the constructions can be altered, who is to occupy the accommodation and for how long, on what terms it is to be occupied, when and under what circumstances the occupant is to cease to occupy it, and the manner in which the accommodation is to be utilized. All these are ingredients of regulation of house accommodation in its wide sense. The Parliament could legislate in respect of house accommodations in cantonment areas in all its aspects, including regulation of grant of leases, ejectment of lessees and ensuring that the accommodation is available on proper terms as to rents. The power of the State Legislature to legislate in respect of landlord and tenant of buildings is to be found in entries 6, 7 & 13 of List-III of the Seventh Schedule to the Constitution and not in entry 18 of List-II, and that power was circumscribed by the exclusive power of Parliament to legislate on the same subject under entry 3 of List-I.

35. Before the Constitution Bench in InduBhushan Bose's case (supra) the English decisions in Prout Vs. Hunter, (1924) 2 KB 736, Property Holding Co. Ltd. Vs. Clark, (1948) 1 KB 630 and Curl Vs. Angale&Anr., (1948) 2 All England Reports 189 were cited with approval. In ProutVs. Hunter (supra), Rent Restrictions Act was held to have been passed by the Parliament with the twofold object -

(i) of preventing the rent from being raised above the pre-war standard, and (ii) of preventing tenants from being turned out of their houses even if the term for which they had originally taken them had expired. In Property Holding Co. Ltd. Vs. Clark (supra), the objects of policy underlying rent restriction legislations were stated to be (i) to protect the tenant from eviction from the house where he is living, except for defined reasons and on defined conditions; (ii) to protect him from having to pay more than a fair rent. The latter object is achieved by the provisions for standard rent with (a) only permitted increases, (b) the provisions about furniture and attendance, and (c) the provisions about transfers of burdens and liabilities from the landlord to the tenant which would undermine or nullify the standard rent provisions. Such acts operate in rem upon the house and confer on the house itself the quality of ensuring to the tenant a status of irremovability.

Tenants security of tenure is one of the distinguishing characteristics conferred by statute upon the house. In Curl Vs. Angelo and Another (supra), Lord Greene, M.R., dealing with Rent Restrictions Act, held that the overriding purpose and intention of such acts are to protect the person residing in a dwelling house from being turned out of his home. In the opinion of Constitution Bench these cases are a pointer to the principle that Rent Control Legislations can be effective and purposeful only if they also regulate eviction of tenants. Regulation of house accommodation, therefore, includes within its sweep the power to regulate eviction of tenants.

36. The expression 'transfer of property' in entry 6 and the term 'contracts' in entry 7 of List-III are to be widely interpreted. Such wide meaning has to be assigned to the said expression and term as would make the entries meaningful and effective. The entries must certainly take colour from the Directive Principles of State Policy specially those contained in Articles 38 and 39 of the Constitution. True that there was no voluntary transfer of property by the owners of property in favour of the occupant allottees of the premises. The State Government in exercise of its power of eminent domain, recognized statutorily, had requisitioned the properties in public interest and allotted it to the occupants. The Government paid compensation for requisitioning to the owners. Out of the requisitioned premises some were occupied by State itself. As to the premises which were allotted, the allottees in occupation were liable to pay compensation in lieu of their occupation of the premises. There was no privity of contract between the owners and the occupants, yet a privity of estate was brought into being by acts of State supported by law. Possession is nine points in law and to that extent a transfer of property had resulted and brought into being. Such privity of estate was compulsorily converted into privity of contract by operation of law as a consequence of the impugned Amending Act. The Act also provided civil procedure by which the landlords were entitled to snap the relationship of landlord and tenant deemingly created by the statute and seek eviction subject to making out a ground therefor under the pre-existing Rent Control Legislation. Such legislation would clearly fall within the purview of entries 6, 7 & 13 of List-III.

37. There is yet another angle of looking at the issue. In LingappaPochannaAppealwar Vs. State of Maharashtra &Anr., (1985) 1 SCC 479, the provisions of Maharashtra Restoration

of Lands to*Scheduled Tribes Act*, 1975 came up for consideration which Act related to transfers and alienation of agricultural lands by members of Scheduled Tribes in the State to persons not belonging to Scheduled Tribes. The legislation fell in entry 18 in List-II. Certain provisions of the Act trenched upon the existing law, namely, the* Transfer of Property Act *and the* Specific Relief Act*, both made by Parliament. It was held that the power of the State Legislature to make a law with respect to transfer and alienation of agricultural land carries with it not only a power to make a law placing restrictions on transfers and alienations of such lands including a prohibition thereof, but also the power to make a law to reopen such transfers and alienations. The legislative competence was spelt out from entry 18 in List-II of Schedule 7. The Court observed :-

> ***"16. The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudents know it. Legislators, Judges and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed "distributive justice". The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle : "From each according to his capacity, to each according to his needs". Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief of distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargaining should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements."***

(emphasis supplied)

38. InManeklalChhotalal&Ors. Vs. M.G. Makwana&Ors., 1967 (3) SCR 65, the constitutional validity of Bombay Town Planning Act, 1954 as amended by Gujarat Act 52 of 1963 was put in issue. The legislation fell within entry No. 18 of List-II. The Court also held after elaborately referring to the various provisions contained in the Act that it was passed with a view to regulate the development of certain areas with the general object of framing proper schemes for the healthy orderly development of the area in question and it is with a view to achieve this purpose that a very elaborate procedure and machinery have been prescribed under the Act. For this reason it was held that the competency of the State Legislation aimed at equitable distribution of landed property resulting in partial deprivation of proprietary rights can also be rested under entry No. 20 of List-III which is "economic and social planning".

39. A grim and emergent situation was created on account of threat posed before the likely evictees who were in occupation of requisitioned premises. The impugned Amending Act also seeks to bring into effect a scheme of equitable redistribution of wealth and shelter so as to protect the licensee __ occupants by giving them the status of tenant and regulating the right to eviction exercisable by the landlords by making it conditional upon availability of grounds under a pre-existing rent control law already governing similar properties in the State of Bombay. The salutary goal of 'from each according to his capacity, to each according to his needs' was sought to be achieved. The essential need of shelter for other segments of society such as the State Administration, Semi-Government bodies, PSUs and the likes was also protected in public interest as otherwise their activities would have been jeopardized, which in turn would have had an adverse effect on the society. Thus, if any grey area of impugned Amending Act is left out uncovered by entries 6, 7 & 13 of List-III, it is covered by entry 18 of List-II, i.e. 'economic and social planning'.

40. For all the foregoing reasons, we are of the opinion that the impugned Amending Act is intra vires and within the legislative competence of the State Legislature.

(ii) whether the impugned legislation is in conflict with the judicial mandate of Supreme Court or a colourable exercise of power?

41. It was submitted on behalf of the writ petitioner-

respondents that the impugned judgment has the effect of nullifying or overriding the mandate of this Court issued in H.D. Vora and GrahakSanstha Mancha and Ors. cases (supra). It was submitted that the Legislature could not have directly overruled the decisions or mandate of this Court but the same thing is sought to be achieved indirectly by resorting to device of an amendment in the legislation which is nothing but colourable exercise of legislative power which ought not to be countenanced by this Court.

42. The doctrine of Colourable Legislation came to be examined by a Constitution Bench of this Court in K.C. Gajapati Narayan Deo&Ors. Vs. State of Orissa, 1954 SCR 1. It was held that the doctrine of colourable legislation does not involve any question of 'bona fides' or 'mala fides' on the part of the Legislature. The whole doctrine resolves itself into the question of competency of a particular Legislature to enact a particular law. If the Legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the Legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power (Vide Cooley's Constitutional Limitations, Vol. 1, p. 379). The crucial question to be asked is whether there has been a transgression of legislative authority as conferred by the Constitution which is the source of all powers as also the separation of powers. A legislative transgression may be patent, manifest or direct or may also be disguised, covert and indirect. It is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements. The expression means that although apparently a Legislature in passing a statute which purports to act within the limits of its powers, yet in substance and in reality it transgresses those powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. The discerning test is to find out the substance of the Act and not merely the form or outward appearance. If the subject matter in substance is something which is beyond the legislative power, the form in which the law is clothed would not save it from condemnation. The constitutional prohibitions cannot be allowed to be violated by employing indirect methods. To test the true nature and character of the challenged legislation, the investigation by the Court should be directed towards examining (i) the effect of the legislation and (ii) its object,

purpose or design. While doing so, the Court cannot enter into investigating the motives, which induced the Legislature to exercise its power.

43. The abovesaid view was reiterated by Larger Bench (Seven Judges) in R.S. Joshi, S.T.O. Vs. Ajit Mills Ltd., (1977) 4 SCC 98, 108 and by Constitution Bench in Naga People's Movement of Human Rights Vs. Union of India, (1998) 2 SCC 109, 137.

44. In K.C. Gajapati Narayan Deo& Others case (supra), the Constitution Bench quoted with approval the statement by Lefroy in his work on Canadian Constitution that even if the Legislature avowed on the face of an Act that it intends thereby to legislate in reference to a subject over which it has no jurisdiction, yet if the enacting clauses of the Act bring the legislation within its powers, the Act cannot be considered ultra vires.

45. InShriPrithvi Cotton Mills Ltd. &Anr. Vs. Broach Borough Municipality &Ors., (1969) 2 SCC 283, a legislation by way of Validation Act was passed because of a decision of the Court declaring a certain imposition of tax as invalid. The question arising before the Court was, when a Legislature sets out to validate a tax declared by a Court to be illegally collected under an ineffective or an invalid law, then how is the validity of such Validation Act to be tested? It was held that the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. The Constitution Bench held :-

> ***"Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being***

removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the Legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating Law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the Validating Law for a valid imposition of the tax."

(emphasis supplied)

46. Thus, it is permissible for the Legislature, subject to its legislative competence otherwise, to enact a law which will withdraw or fundamentally alter the very basis on which a judicial pronouncement has proceeded and create a situation which if it had existed earlier, the Court would not have made the pronouncement.

47. In Indian Aluminium Co. and Others Vs. State of Kerala and Others, (1996) 7 SCC 637, the Government of Kerala issued a statutory order levying surcharge on electricity. The order was declared by the court to be ultra vires followed by a direction to refund the amount collected thereunder. The State Legislature introduced a Validating Act, which was impugned unsuccessfully before the High Court as also this Court. This Court laid down the following tests for judging the validity of the Validating Act: (i) whether the Legislature enacting

the Validating Act has competence over the subject-matter; (ii) whether by validation, the Legislature has removed the defect which the court had found in the previous law;

(iii) whether the validating law is inconsistent (sic consistent) with the provisions of Part III of the Constitution. If these tests are satisfied, the Act can with retrospective effect validate the past transactions which were declared to be unconstitutional. The Legislature cannot assume power of adjudicating a case by virtue of its enactment of the law without leaving it to the judiciary to decide it with reference to the law in force. The Legislature also is incompetent to overrule the decision of a court without properly removing the base on which the judgment is founded. The court on a review of judicial opinion, proceeded to lay down the following principles among others so as to maintain the delicate balance in the exercise of the sovereign powers by the Legislature, Executive and Judiciary :-

> ***"(i) in order that rule of law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded;***
>
> ***(ii) in its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made;***
>
> ***(iii) the court, therefore, needs to carefully scan the law to find out: (a) whether the vice pointed out by the court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the Legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution;***
>
> ***(iv) the court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the Legislature.***
>
> ***Therefore, they are not encroachment on judicial power;***
>
> ***(v) in exercising legislative power, the Legislature by mere declaration, without anything more, cannot directly***

> ***overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid............. It is competent for the Legislature to enact the law with retrospective effect;***
>
> ***(vi) the consistent thread that runs through all the decisions of this Court is that the Legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the Legislature must have competence to do the same."***

(emphasis supplied)

48. In State of Tamil Nadu Vs. Arroran Sugars Ltd., (1997) 1 SCC 326, the Constitution Bench made an exhaustive review of all the available decisions on the point and summed up the law by holding:- "It is open to the Legislature to remove the defect pointed out by the court or to amend the definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been an encroachment by the Legislature over the power of the judiciary. A court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect."

49. Recently a Constitution Bench in Naga People's Movement of Human Rights Vs. Union of India, (1998) 2 SCC 109, held that 'colourable legislation' is enacting by the Legislature of a legislation seeking to do indirectly what it cannot do directly. But ultimately, the crucial question would be - Whether the Legislature had the competence to enact the legislation ? If the impugned legislation falls within the competence of the Legislature, the question of doing something indirectly which cannot be done directly becomes irrelevant.

50. Here we may, with advantage, quote certain observations of the larger Bench (7 Judges) of this Court in DhanapalChettiarVs. YesodaiAmmal (supra). In all social legislations meant for the protection of the 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. When the State Rent Act provides under what circumstances and on what grounds a tenant can be evicted, it does provide that a tenant forfeits his rights to continue in occupation of the property and makes himself liable to be evicted on fulfillment of those conditions. Once the liability to be evicted is incurred by the tenant under the State Rent Legislation, he cannot turn around and say that the contractual lease has not been determined under the provisions of the Transfer of Property Act and, therefore, he is not liable to be evicted. Various State Rent Control Acts make a serious encroachment in the field of freedom of contract. The landlord is not permitted to snap his relationship with the tenant merely by his act of serving a notice to quit on the tenant. In spite of the notice, the Rent Control Law says that the tenant continues to be tenant enjoying all the rights of a lessee but at the same time deemed to be under all the liabilities such as payment of rent etc. in accordance with the law. Various Rent Acts confer immunity on tenants from eviction whether in execution of a decree or otherwise except in accordance with the provisions of the Act and/or liability for eviction being incurred on one of the grounds provided for by the Act. Some Rent Control Acts provide that no landlord can treat the building to have become vacant by 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. All such provisions have been held to be constitutionally valid.

51. The Constitution Bench in DhanapalChettiar's Case (supra) continues to observe that Rent Acts do encroach upon to a very large extent on the field of freedom of contract but the encroachment is not entirely and wholly one-sided. Some encroachments are envisaged in the interest of the landlord also and equity and justice demand a fair play on the part of the Legislature not to completely ignore the helpless situation

of many landlords who are also compared to some big tenants, sometimes weaker section of the society. Finding fault with the Rent Acts and doubting their constitutional validity is at times founded on stretching too far the theory of double protection or additional protection and without a proper and due consideration of all its ramifications.

52. We have already seen that the impugned Amending Act is within the legislative competence of the State Legislature. The impugned Amending Act does not either directly or indirectly overrule the judgments of this Court. The law enunciated by this Court in the two decisions was that the Executive was exercising power of requisitioning the premises in such a manner that the premises were in fact acquired under the guise or pretext of requisitioning. It was a colourable and hence a mala fide exercise of its executive power by the State. Such tainted requisition was struck down by this Court as ultra vires of the Constitution. The consequence of invalidating and striking down the requisitioning continuing for unreasonable length of time was that such invalid requisitioning came to an end. It followed as a natural corollary that the premises in occupation of the allottees became liable to be restored to the possession of the owners. By virtue of interim orders passed by the Court, the possession of the occupants was protected and that protection was continuously enjoyed by the occupants upto the date of decision. To relieve the occupants from the hardship of sudden eviction caused by its judicial pronouncement, the Court allowed some more time to the occupants by directing the protection under the interim orders of the Court to remain in operation for some more period of time in spite of the cases having been disposed of. Allowing time to vacate the premises under the protection of the interim orders is not the same thing as issuing mandamus to vacate the premises by certain date. What the impugned Amending Act has done is to fundamentally alter the very basis of occupation of the premises by the occupants. Instead of their remaining in occupation by virtue of orders of allotment of requisitioned premises, the Amending Act declared that the requisitioning shall come to an end and the occupants shall become tenants under the owners who would become the landlords and the amount of compensation shall become rent.

53. The privity of estate was converted into privity of contract. The foundation for pre-existing transfer of property underwent a fundamental change. The separate concurring

opinion recorded by P.B. Sawant, J. in GrahakSansthaManch and Ors. case (supra) records that the landlords were receiving the same rent from the allottees as from the other tenants (i.e. non-allottees). The effect of allowing more time to vacate the premises in spite of the requisitioning having been struck down was, as stated by P.B. Sawant, J., that what the landlords will be deprived of for some time more on account of the directions made by the Court, is the right to induct new tenants of their choice and consequentially also deprived of the illegal consideration commonly known as 'pugri'. Such time to vacate the premises as was allowed by the Court stood extended on account of the Amending Act. The compensation which the landlords were receiving earlier stood converted into rent payable by the occupants, whosoever they might be, to the landlords. The right of landlords to seek revision of rent was not taken away but became subject to the provisions governing the standard rent or controlled rent determinable by the competent authority under the Rent Control Legislation by which the relationship of the owners and the occupants was to be governed henceforth as one of landlord and tenant. The right of the owners to seek eviction of occupants and have the premises restored to their possession was also not taken away but was made subject to the pre-existing law governing eviction of tenants. The larger Bench in DhanapalChettiar's case (supra) has opined, as already stated, that there is nothing objectionable, much less unconstitutional, in the right to recover possession which accrued under the general law from being made dormant and made subject to a special law so as to become conditional and dependant on availability of certain statutory grounds to eviction as provided for by the State Rent Act. The object, purpose and design of the Amending Act is to extend protection of existing Rent Act to such occupants who, on account of declaration of law made by this court, ran the risk of being rendered suddenly shelterless. We have already pointed out while dealing question No. 1 that the impugned legislation is squarely covered by entries 6, 7 & 13 of List- III and hence within the legislative competence of the State Legislature. So long as the legislative competence is available, the motive behind enactment cannot be enquired into. Though the Statement of Objects and Reasons makes a reference to the two decisions delivered by this Court but that is only by way of narration of facts. The judgments of this Court are nowhere referred to in the body of the provisions

introduced by the Amendment Act so as to spell out any motive of overruling the judgment. The writ petitioners cannot make any capital out of the fact that two decisions have been referred to in the Statement of Objects and Reasons. On the contrary, what is relevant in the State of Objects and Reasons is the factual statement to the following effect (i) that the State Government has honoured the decisions of this Court and commenced derequisitioning process and taken a policy decision not to continue with such requisitionings for future, except in some special cases; (ii) that in spite of the said process having been commenced there were 604 residential premises, above 90 non-residential premises still under requisition in Greater Bombay and 138 in other districts of the State of Bombay, most of them occupied by Government servants and departments, the eviction whereof would have imperatively resulted into creation of a grave situation much to the detriment of public interest; (iii) that the landlords were rushing to the High Court seeking mass evictions from the premises under requisition; (iv) that the likely evictees need to be protected from imminent eviction solely on ground of requisitioning coming to an end, unless and until liability for eviction was incurred under a pre-existing Rent Control Act; (v) that there existed a continuing acute shortage of accommodation and astronomical rise in the cost of properties in Mumbai, and unless the State intervened through an Ordinance followed by an Act, a grim and emergent situation was likely to emerge; and (vi) that such premises as were specifically covered by any specific order of eviction of the Court of a date prior to 11th June 1996 (being the date of Government decision to undertake such legislation) were left untouched and unaffected by the impugned Amendment.

54. We are definitely of the opinion that the impugned Amending Act is neither in conflict with the judgments of this Court nor can it be said to be a piece of colourable legislation.

55. The Amending Act has altered the basis of occupation of the occupants over the premises. So long as the legislation is within the legislative competence of the State Legislature, which it is, as we have already held, merely because the indirect effect of the amendment would be to place additional restrictions on the right of the owners to seek eviction of the premises consequent upon the judgment of the Supreme Court, it cannot be held that the Legislature has overruled the

judgment of this Court or made an inroad on the doctrine of separation of powers. If the Amendment Act had been enacted on the dates of decision in H.D. Vora's case or GrahakSanstha Mancha and Ors.case, the Court would not have been called upon to adjudicate upon and invalidate the unreasonably stretched requisitioning providing cloak for acquisition without adequate compensation and the occupants would have been held protected as tenants under the Rent Act. The situation is squarely covered by the law laid down by three Constitution Benches of this Court and other decisions of this Court referred to hereinabove. We do not think that the impugned Amendment Act is "colourable legislation" or is in conflict with the decisions of this Court.

(iii) The impugned legislation if arbitrary and unreasonable ?

56. Tenancy laws and rent restriction legislations in the country, whenever enacted, have almost invariably been challenged either as violative of the fundamental right guaranteed by Article 19(1)(f) of the Constitution (so long as the Clause existed in the body of Article19) or as arbitrary and unreasonable on the touchstone of Article 14 of the Constitution. However, the history of precedents shows that, by and large, such challenges have failed as often as laid. It is the angle with which the issue is approached that makes the difference. The Legislatures showing pro-activeness in the field have been motivated not with the idea of destroying or jeopardizing the property rights of the landlords but rather with the benevolent desire of extending the protective umbrella of legislation to the tenants so as to save them from unscrupulous evictions and rack-renting mentality of greed which clings to the owning of the property, and, for achieving the avowed object of striking a judicious balance of equity between two sections of the society, i.e. the landlords, generally called haves, and tenants, generally called have nots, so far as the urban property is concerned. The courts while upholding the constitutionality of such legislations have referred to the statements of objects and reasons and the preambles for the purpose of finding out the conditions prevailing at the time when the bills were sponsored and the evils which were prevailing and which were sought to be remedied. Whenever the courts have felt doubt about the constitutionality of certain provisions in Rent Control Legislations, they have been read down so as to save them from the vice of unconstitutionality.

57. In CharanjitLalChowdharyVs. Union of India &Ors (supra), Fazl Ali, J. opined that Article 14 lays down an important fundamental right, which should be closely and vigilantly guarded but in construing it, the Court should not adopt a doctrinaire approach which might choke all beneficial legislation.

58. InKishan Singh &Ors. Vs. State of Rajasthan &Ors., 1955 (2) SCR 531, the Constitution Bench held that a legislation whose object is to fix fair and equitable rent and which regulates the relation of landlord with his tenant cannot be said to be a legislation interfering with the fundamental right of a citizen to hold and enjoy property even though the legislation has the effect of reducing or diminishing the rights hitherto exercised by the landlord.

59. In ManeklalChhotalal&Ors.'s case (supra), the Constitution Bench thus summed up the principles to be borne in mind when applying Articles 14 and 19 of the Constitution –

> ***"A fundamental right to acquire, hold and dispose of property, can be controlled by the State only by making a law imposing, in the interest of the general public, reasonable restrictions on the exercise of the said right. Such restrictions on the exercise of a fundamental right shall not be arbitrary, or excessive, or beyond what is required in the interest of the general public. The reasonableness of a restriction shall be tested both from substantive shall be tested both from substantive and procedural aspects. If any uncontrolled or unguided power is conferred, without any reasonable and proper standards or limits being laid down in the enactment, the statute may be challenged as discriminatory".***

60. Article 14 of the Constitution permits reasonable classification for the purpose of legislation and prohibits class legislation. A legislation intended to apply or benefit a "well defined class" is not open to challenge by reference to Article 14 of the Constitution on the ground that the same does not extend a similar benefit or protection to other persons. Permissible classification must satisfy the twin tests, namely, (i) the classification must be founded on an intelligible differential, which distinguishes persons or things grouped together from others left out of the class, and (ii) such differential must have a rational relation with the object sought to be achieved by the legislation. It is difficult to

expect the Legislature carving out a classification which may be scientifically perfect or logically complete or which may satisfy the expectations of all concerned, still the court would respect the classification dictated by the wisdom of Legislature and shall interfere only on being convinced that the classification would result in pronounced inequality or palpable arbitrariness on the touchstone of Article 14.

61. Bombay as a State and also as a cosmopolitan city__ unofficially crowned as commercial capital of the country, has its own peculiar problems. People from all over the country rush to Bombay in search of employment and opportunities.Not all are blessed enough to find shelter much less of their own. A huge administrative set up in the governance is needed involving a large number of personnel to manage the huge population accompanied by evergrowing influx of people. Accommodation is needed to house the people and activities including official ones catering to the needs of people. The premises were liberally requisitioned to satisfy the needs of the needy. The requisitioning did not solve the problem which continued to persist resulting in endless renewals of requisitioning which was held by this Court to be vitiated on account of virtual acquisitioning without payment of compensation resulting from recurring and non- intermittent cycles of requisitioning. It was struck down. Consequent upon constitutional interpretation and adjudication by this Court thousands, if not lakhs of persons and substantial activity of government, semi-government bodies and PSU's ran the risk of being rendered roofless and out of gear. They all needed to be protected by State intervention and constituted a class by themselves. All such premises whose occupants were under the threat of eviction also constituted property capable of identification by a well defined classification. The Legislature chose to step in and enact a legislation, which would protect the threatened evictees from likely eviction. The persons and premises - both constitute a well defined class by themselves and the classification cannot be said to be arbitrary; it is capable of being distinguished from others not included in that class. Such classification has an apparent and clear nexus with the object sought to be achieved. The impugned legislation does not, therefore, suffer from either arbitrariness or invidious discrimination. The challenge that the impugned Amendment Act falls foul of Article 14 of the Constitution must therefore fail.

62. The contention that the impugned Amending Act cannot withstand the test of Article 14 of the Constitution was raised in the High Court but was not dealt with for the reason that even otherwise, in the opinion of the High Court, the impugned legislation was unconstitutional. However, in view of the submissions made, we have dealt with the issue and disposed of the same.

Conclusion

63. Thus the challenge to the constitutional validity of the impugned Amending Act fails on all the counts. The decision of the High Court wherein view to the contrary has been taken is held unsustainable and liable to be reversed. However, this is subject to a clarification.

64. We have in the earlier part of this judgment extracted and reproduced para 20 of the Constitution Bench decision in GrahakSansthaManch's case containing some categorical and definite directions given by the Supreme Court to the occupants of requisitioned premises and the State Government, which protected the occupants in Bombay and other large cities in Maharashtra until 30.11.1994, and with effect from that date directed that "all occupants of premises the continued requisition of which has been quashed" shall be bound to vacate and hand over vacant possession to the State Government so that the State Government may on or before 31.12.1994 derequisition such premises and hand back vacant possession thereof to the landlords. The reversal of the impugned judgment of the High Court and upholding the validity of the impugned legislation shall not have the effect of undoing or overruling the abovesaid mandate of the Supreme Court contained in the decision of GrahakSansthaManch's case.

65. Accordingly, all the appeals are allowed and the impugned judgment of the High Court is set aside subject to the clarification made hereinabove.

66. It was stated at the Bar, during the course of hearing that the impugned judgment decided only the question of vires of the impugned Amending Act. Some of the writ petitions filed in the High Court raised the question of vires of the impugned Act as the sole issue for decision which writ petitions shall stand dismissed in view of this judgment. Some of the writ petitions filed in the High Court raised other issues as well which in the event of the impugned judgment being set aside shall have to be remanded to the High Court for hearing on

issues other than the issue as to vires of the impugned Amendment Act. All the appeals shall therefore now be listed for appropriate consequential directions before the Court."

17. Therefore, we need now to consider the grounds raised by the applicants. What is the situation of spouse being separated by postings in different parts of India. There are two elements in this question also: 1) Persons who were already married at the time of appointment; 2) Persons who had married subsequently. The applicants would urge that it is the policy of the government to see that spouses are adjusted together at the same locale that the concept of family may be protected. The respondents on the other hand laments that there is a serious and severe shortage of staff in all the Commissionerates and mostly it is those Commissionerates where there is a serious shortage already that is going to be affected by Inter Commissionerate transfers. It is pointed out by the applicant that the Cochin Commissionerate had decided that at least 65% of the strength should be in place for a person to be considered to be transferred out. The respondents says that even this 65% is erroneous and made on severe pressure and on wrong interpretation of judicial orders. Therefore, what is just and correct in this circumstance? How far must personal inclinations of being together as a family weigh on maintaining the efficacy in service in governance?

18. It cannot be doubted that under Directive Principles of State Policy, especially under Article 38, protection of women and children assume important role. But, at the same time, while granting certain benefits, rights of others who are ordinary citizens of India and whose Fundamental Rights under Article 13 of the Constitution of India for efficacy in governance system cannot

be defeated to provide extraordinary personal benefit to government employees. This appears to be the view of the respondents.

19. We have, therefore, considered and discussed this matter with the learned counsels. The applicants are of the view that once the government had taken a policy decision to protect the interest of the family then, at whatever risk, this must be implemented. The respondents, on the other side, lament that the Constitution and the laws and the rules made there under must be viewed and analyzed as a whole to provide for greater public interest. But then we have to be careful that numerical might might not be the answer as actual variance with Constitutional provisions must be viewed as a separate aspect and if there is a right resident in a citizen to be weighed against the totality of weight against public opinion in this regard, then, even then also the ***right must prevail over might***. Therefore, what is the right in this matter? A person gets an employment on his application. On the basis of administrative exigency and convenience he is posted to a specific place. Now what is his right to ask for a particular place wherein he should be posted. "**The question therefore will be; is there a Fundamental Right of a government employee to demand that he be posted to a particular place**?" We searched through volumes and volumes of matter in this regard and going by that there cannot be said to be any Fundamental Right on the part of any employee to be posted to one particular place. It is stated at the bar that government had issued a policy decision that as far as possible spouses should be posted together. There cannot be any doubt on this. Spouses may be posted together but then it do not form a part of Fundamental Right of any

government employee to demand that he be posted at a particular place or a particular region. His posting and appointment will depend on administrative exigency and nothing else. Some of the applicants claim that they have sought for transfer on other grounds also especially illness of parents and being responsible for looking after them. They would say that aged parents are reluctant to go and live with them at the posted place. Therefore, is there any Fundamental Right on the part of a parent to expect that their children should be posted at any particular place or region in India so that the children can look after them? We have searched through all these matrix also and find that unfortunately law in India is silent on this aspect and, as Constitutional benefices are to be provided on positive endowment and not by imagined implication, this also cannot be held to be available even on the ground of a right of life and life with dignity of the parents. Since we are handling matters on an all India matrix, with painstaking concern we had gone through all the literature and rulings available on the subject but we came to a conclusion that there cannot be any such compulsion on the government to provide for all these things for any government employee.

20. Parties allege at this point that when an application is made showing the residential address of an applicant it is incumbent on the part of the selecting authority to post people according to their residence. But then we find that this contention cannot lie in the eye of law. No government employee can claim that he must be posted at any particular place or any particular region. As all these places have an all India transfer liability, we have to understand the question in a reasonable and rational manner.

21. Applicants claim that they were having a legitimate expectation as all these years Inter Commissionerate transfer was possible and they joined only in the fond belief that they will get benefit of that transfer. The respondents maintain that the Inter Commissionerate transfer had to be banned for the simple reason that after posting many of the Commissionerates were unable to work due to severe shortage of staff. Therefore, this is not a ground to be made available to them as on their own volition they have applied for the job and, having got it and enjoyed the benefit of it, it must be stipulated that the rule of estoppel is ranged against them.

22. Therefore, we will now proceed to answer the specific questions raised by the applicants. It may be noted that we have clubbed together all the arguments together and is providing an answer to everyone.

Question 1): Recruitment Rules govern the initial appointment only

Answer: It may not be correct as even the continuance of an employee in employment is dependent on the Recruitment Rules. Assume that he was selected contrary to the Recruitment Rules then it may be difficult for him to continue employment in the light of such a finding. If the Recruitment Rule canvasses a specific cadre creation in each of the Commissionerates then on his appointment that is the rule applicable to him which follows him up to his superannuation.

Question 2) There is no rule in the Central Government which regulates transfers of its employees.

Answer: But then this is also not correct as the rules stipulate many of the aspects of transfer and past practice also, which is not against the law of the land, guides it. The regulatory guidelines and hundreds of decisions of the Hon'ble Courts now fill the field. Therefore, it cannot be said that transfers are unguided exercise of jurisdiction. Can there be a transfer with malafides? The present position negates it. Therefore, there are fundamental rules and procedures available to regulate the transfer of any government employee.

Question 3) The applicant was appointed on the basis of Combined Graduate Level Examination, 2012 and as such the Recruitment Rules of 2016 are not applicable to his case as it may not have a retrospective effect.

Answer: This also appears to be incorrect as the government employee acquires a status on his appointment. It cannot be viewed as an independent contract between the government and the employee. That is why he gets protection under Article 309 to 311 of the Constitution of India. The Hon'ble Apex Court have held, and which we have quoted herein, that it is possible for the government to have laws made and enacted with even a retrospective effect. But in this case it is not a retrospective effect which is canvassed. There was no rule permitting Inter Commissionerate transfer other than a government circular which allowed it. Now, there are different kinds of pronouncement from the governance. The statutory formations will assume precedence whereas circulars and guidelines will only come behind. That being so, when the government, on the basis of an enacted law clarified the position, that clarification assumes precedence and importance especially in the light of circumstances which is explained under the clarifications.

Question 4) There is a vested right in an employee to seek such an Inter Commissionerate transfer

Answer: There is no rule which grants a vested interest to be posted in a particular place for any government employee in the Constitution of India. The government employees will be posted according to the administrative necessity and convenience of the concerned authority. No government employee is eligible to question or challenge it except on grounds of proven malafides and that also arises not because of a contract between him and the government but because of his status as a government employee protected by Article 309 to 311 of the Constitution of India.

Question 5): The term used in the circular produced by the respondents relating to deemed loan basis is nothing but imagination of fertile mind and it has no legal sanction apart from being unreasonable.

Answer: It is correct to say that Inter Commissionerate transfers were bring given indiscriminately in the past. It is also correct to say that we ourselves have permitted it. But when a statutory change had been brought to our notice with adequate reasoning to justify it, we are bound to accept the view of the government that the right of a government employee for a transfer, if possible, will always be subservient to the right of the general public to have unmitigated and undiminished service. Therefore, the greater public interest will come foremost in all these aspects. Therefore, the stand taken by the government is not unreasonable. In fact, it is quite reasonable and justifiable as no government office can be left unattended to for the reason that employees want an en masse transfer to somewhere else.

Question 6) Regarding the question of shortage of staff in different

Commissionerates, manpower planning is only an administrative function and the employees cannot be made responsible for manpower shortage. Applicants cannot be penalized for the inefficiency of the government.

Answer: No government employee need be penalized for shortage of staff. But if there is a shortage of staff, as he is realizing his monthly salary, he is bound to be sincere in his approach to the governance system and to work for betterment of the situation. One cannot understand, in such circumstances, how a government employee can demand that he be allowed beneficial transfer so that he can be with his family. If such grounds can be raised by the soldiers at the border, India will not be in existence at all. Therefore, we feel that the grounds raised by the applicants are unreasonable and the stand taken by the government is justifiable. The manpower planning which they allege is something the authorities are bound to do and only on such planning of manpower have they now decided that there cannot be any Inter Commissionerate transfers.

Question 7): This contention of the government was rejected vide the Ernakulam Bench in OA No. 333/2016 dated 12.07.2016. But the respondents point out that this may not be valid as the explanation for this legal position came only in the month of September, 2016. All these posts carry all India service liability.

Answer: The answer lies in the question itself as postulated by the respondents themselves during the hearing. In fact we ourselves have granted several orders allowing Inter Commissionerate transfer when the law relating to it was different but when the law changed and the change in the law was justified by correct propositions by the government in greater public interest, no adjudicatory body can exercise judicial discretion against it.

23. Therefore, we hold and declare that the action taken by the government banning Inter Commissionerate transfer is wholly and fully justified under Indian Constitutional process.

24. Therefore, all the OAs are held to be without merit. The OAs are dismissed. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/01898/2018

Annexure-A1: Copy of the offer of appointment order dated 23.04.2016
Annexure-A2: Copy of the ICT application dated 31.01.2018
Annexure-A3: Copy of the Board's circular dated 20.09.2018
Annexure-A4: Copy of the communication dated 12.07.2016
Annexure-A5: Copy of the Central Administrative Tribunal, Bangalore Bench order dated 20.07.2018 in OA No. 22/2018
Annexure-A6: Copy of the Central Administrative Tribunal, Bangalore Bench order dated 15.11.2018 in OA No. 101/2018

Annexures with reply statement

Annexure R1: Copy of the Board’s circular dated 20.09.2018
Annexure R2: Copy of the statement of vacancy
Annexure R3: Copy of the letter dated 01.10.2018

* * * * *