



2026:AHC:177234-DB

AFR

Judgment Reserved:22.05.2026

Judgment Delivered:21.08.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 13349 of 2024

Inder Bhushan Sawhney

.....Petitioner(s)

Versus

Kanchan Kumari Jain (Dead) and 2 Other

.....Respondent(s)

Along with :

1. **Writ - A No. 1201 of 2026:**
Ashok Kumar
Versus
State of U.P. and 2 others
2. **Writ - A No. 996 of 2026:**
Nanak Ram
Versus
State of Uttar Pradesh and 2 others
3. **Writ - A No. 7076 of 2026:**
Shri Raju Mittal and another
Versus
State of Uttar Pradesh and 2 others
4. **Writ - A No. 1057 of 2026:**
Shri Moti Lal
Versus
State of Uttar Pradesh and 2 others
5. **Writ - A No. 5179 of 2026:**
Shri Bhupendra
Versus
State of Uttar Pradesh and 4 others
6. **Writ - C No. 19358 of 2025:**
Rajendra Kumar Agarwal and another
Versus
State of Uttar Pradesh and 4 others
7. **Writ - A No. 5168 of 2026:**
Shri Chandra Prakash Madan
Versus

- State of Uttar Pradesh and 2 others
- Writ - A No. 5169 of 2026:
8. Ashok Kumar
- Versus
- State of U.P. and 2 others
- Writ - A No. 5182 of 2026:
9. Shri Praveen Kumar
- Versus
- State of Uttar Pradesh and 2 others
- Writ - A No. 5307 of 2026:
10. Shri Murli Dhar
- Versus
- State of U.P. and 2 others
- Writ - A No. 5328 of 2026:
11. Shri Shivendra Mangal
- Versus
- State of Uttar Pradesh and 7 others
- Writ - A No. 5167 of 2026:
12. Maya Devi and another
- Versus
- State of U.P. and 6 others
- Writ - A No. 7079 of 2026:
13. Shri Satish Kumar Goyal
- Versus
- State of Uttar Pradesh and 2 others
- Writ - A No. 1502 of 2026:
14. Kanhiya Lal
- Versus
- State of U.P. and 2 others
- Writ - A No. 4893 of 2026:
15. Narendra Amarnani
- Versus
- State of U.P. and 3 others

Counsel for Petitioner(s)	: Mr. Shashi Nandan, learned Senior Advocate assisted by Ms. Shreya Gupta, Mr. Archit Mehrotra, and Mr. Tanishk Goyal
Counsel for Respondent(s)	: Mr. Rahul Agarwal, learned AAG assisted by Mr. Bharat Pratap Singh, learned Additional CSC, Mr. Sudeep Harkauli, Mr. Ashish Kumar Singh, learned Senior Advocate assisted by Mr. Devesh

Kumar Verma

Court No. - 39

**HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE SWARUPAMA CHATURVEDI, J.**

1. Heard learned counsel for the parties and perused the record.
2. The present batch of petitions raises challenge to the validity of the U.P. Regulation of Urban Premises Tenancy Act, 2021 (hereinafter referred to as ‘the Impugned Act’). Also, challenge has been raised to the orders passed by the Rent Authority under Section 10 of the Impugned Act, that have the effect of enhancing of determination of rent (at the instance of the respondent land-lords). Consequential, challenge also exists (in some of the petitions), to execution proceedings. In that, further consequential challenge has arisen to eviction proceedings instituted under the Impugned Act. For ready reference, the challenge raised in the individual petitions, is summarized as below:

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Sl. No.	Writ Petition	Challenge
1.	Writ-A No. 13349 of 2024	(i). Validity of Section 10 of UP Act No.16 of 2021 (ii). Validity of orders dated 22.07.2022 and 27.05.2024 passed by Rent Authority, Agra in Case No.691 of 2022 and (iii). Validity of proceedings in Case No.691 of 2022 and Execution Case No.127 of 2023 as not maintainable.
2.	Writ-A No.1201 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) and (ii). Validity of Section 9 & 10 of the U.P. Regulation of Urban Premises Tenancy Act,

		2021. (iii) Validity of order dated 29.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.446 of 2024.
3.	Writ-A No.996 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) and; (ii). Validity of Section 9 & 10 of the U.P. Regulation of Urban Premises Tenancy Act, 2021; (iii).Validity of order dated 29.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.448 of 2024.
4.	Writ-A No.7076 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) and (ii). Validity of Section 9 & 10 of the U.P. Regulation of Urban Premises Tenancy Act, 2021; (iii) Validity of orders dated 16.10.2023 and 06.05.2024 passed by Rent Authority/ ADJ, Court No.13, Agra in Rent Appeal No.43 of 2023 and order dated 19.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.843 of 2023.
5.	Writ-A No.1057 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) and; (ii). Validity of Section 9 & 10 of the U.P. Regulation of Urban Premises Tenancy Act, 2021; (iii) Validity of order dated 29.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.452 of 2024.
6.	Writ-A No.5179 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) and (ii). Validity of Section 9 & 10 of the U.P. Regulation of Urban Premises Tenancy Act,

		2021; (iii) Validity of orders dated 29.11.2023 and 06.05.2024 passed by Rent Authority/ ADJ, Court No.13, Agra in Rent Appeal No.9 of 2024 and order dated 19.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.839 of 2023.
7.	Writ-CNo.19358 of 2025	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) and (ii). Validity of order dated 25.04.2025 passed by Rent Authority/ ADJ, Court No.7, Farrukhabad in Rent Appeal No.2 of 2025 arising out of P.A. Case No.923 of 2022.
8.	Writ-A No. 5168 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) and (ii). Validity of Section 9 & 10 of the U.P. Regulation of Urban Premises Tenancy Act, 2021. (iii) Validity of order dated 19.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.477 of 2023.
9.	Writ-A No.5169 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) and (ii). Validity of Section 9 & 10 of the U.P. Regulation of Urban Premises Tenancy Act, 2021. (iii) Validity of order dated 29.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.450 of 2024.
10.	Writ-A No.5182 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) and (ii). Validity of the orders dated 16.10.2023 and 06.05.2024 passed by Rent Authority/ ADJ, Court No.13, Agra in Rent Appeal No.40 of 2023 and order dated 19.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.845 of 2023.

11.	Writ-A No.5307 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) and (ii). Validity of orders dated 16.10.2023 and 06.05.2024 passed by Rent Authority/ ADJ, Court No.13, Agra in Rent Appeal No.42 of 2023 and order dated 19.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.836 of 2023.
12.	Writ-A No.5328 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) (ii). Validity of orders dated 16.10.2023 and 06.05.2024 passed by Rent Authority/ ADJ, Court No.13, Agra in Rent Appeal No.44 of 2023 and order dated 19.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.834 of 2023 and
13.	Writ-A No.5167 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) and (ii). Validity of Section 9 & 10 of the U.P. Regulation of Urban Premises Tenancy Act, 2021. (iii). Validity of the order dated 29.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.444 of 2024.
14.	Writ-A No.7079 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021); and (ii). Validity of the orders dated 16.10.2023 and 06.05.2024 passed by Rent Authority/ ADJ, Court No.13, Agra in Rent Appeal No.45 of 2023 and order dated 19.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.842 of 2023.
15.	Writ-A No.1502 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16 of 2021) and (ii). Validity of Section 9 & 10 of the U.P. Regulation of Urban Premises Tenancy Act, 2021. (iii). Validity of the order dated 29.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.445 of 2024.
16.	Writ-A No.4893 of 2026	(i). Validity of UP Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No.16

		of 2021) and; (ii). Validity of Section 9 & 10 of the U.P. Regulation of Urban Premises Tenancy Act, 2021. (iii) Validity of the order dated 29.09.2025 passed by Rent Authority/ ADM (Nagarik Apurti), Agra in Case No.447 of 2024.
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3. Though, lack of basic legislative competence of the State legislature to enact the Impugned Act, may not have been directly pleaded in all petitions, at the stage of oral hearing, submissions have been advanced to that effect by Sri Shashi Nandan, learned Senior Advocate in Writ-A No.13349 of 2024 (Inder Bhushan Sawhney vs. Kanchan Kumari Jain (Dead) and 2 Others). No objection has been raised, either by the State or by the private respondent/land-lords, on the count of absence of formal challenge to the validity of the Impugned Act.
4. After exchange of affidavits, these matters may have been heard at some length by a coordinate bench. Owing to order of recusal passed therein, the matter was nominated to this bench by Hon’ble the Chief Justice. In view of the grave urgency pressed and further in view of the challenge raised to the validity of the Impugned Act, hearing was prioritized. Accordingly, the case was heard.
5. We have heard this batch of petitions as one involving challenge to the legislative competence of the State legislature to enact the Impugned Act (without Presidential assent), and also challenge to the validity of Sections 9 and 10 of the Impugned Act. Further, we have heard the parties on the challenge to the individual orders passed in each case.
6. Though, the issue is purely legal and not factual, more for the sake of form as also to make the discussion contextual, the facts

involved in Writ-A No.13349 of 2024 may be noted. On 14.04.1947, Municipal Corporation, Agra granted lease to Sri Dharam Chandra Jain (grand-father of respondent No.2), over two plots of land ad-measuring 626.5 square yards, at Raja ki Mandi, MG Road crossing, Agra, for a term of 30 years, including extension clause.

7. The lessee Sri Dharam Chandra Jain got constructed a market over the land leased to him. Later, upon a family settlement, the above property fell in the share to Sri Milap Chandra Jain, Sri Vinay Chandra Jain and Sri Shree Chandra Jain. Upon expiry of its term, the lease deed was renewed for the further period of 30 years, up to 30.05.2007. On 19.04.2008, Sri Milap Chandra Jain (since deceased and predecessor in interest of respondent Nos.1 and 1/1), instituted a suit for eviction and recovery of arrears of rent and damages, against the petitioner-Inder Bhushan Sawhney.

8. During pendency of the above proceedings, the Impugned Act was enforced, with effect from 24.08.2021.

9. Thereafter, on 04.02.2022 respondent No.1 i.e. wife of Sri Milap Chandra Jain (since deceased), moved an application under Section 10(4) of the Impugned Act, for fixation of provisional rent. On 24.04.2022, the petitioner filed an application before the Rent Authority praying for directions upon the land-lady to provide a complete set of annexures, etc. filed alongwith her application. He also prayed (in the alternative), to be granted time to obtain certified copies of the necessary documents. Last, he prayed for documents to be marked as exhibits.

10. The land-lady filed objections thereto and the petitioners respondent by filing rebuttal reply. The Rent Authority refrained from passing any order to deal either with the prayer made by the petitioner or the objection made thereto.

11. In such circumstances, the Rent Authority passed the impugned *ex-parte* order dated 22.07.2022. It enhanced the provisional rent payable by the petitioner to INR 750 per square feet, per month, from the pre existing INR 1,000/-, monthly rent.

12. On 10.01.2024, the petitioner filed another application raising preliminary objection as to the maintainability of the proceedings, by relying on Section 46 of the Impugned Act. Further, he sought time to file objections/written statement etc.

13. On such prayer made, *vide* order dated 05.04.2024, the Rent Authority recalled its earlier order dated 13.03.2024 and granted further time to the petitioner to file additional written statement, to the rebuttal filed by the respondent land-lady. That additional written statement was filed on 19.04.2024. Thereafter, *vide* impugned order dated 27.05.2024, Rent Authority reiterated its *ex-parte* order dated 22.07.2022 and revised the provisional rent of the tenant-petitioner, to INR 750 per square feet, per month.

14. Sri Shashi Nandan, learned Senior Advocate has advanced submissions in three parts-(1) challenge to the validity of the Impugned Act, (2) challenge to the validity of Sections 9 and 10 of the Impugned Act and (3) challenge to the validity of the proceedings giving rise to the orders impugned in these writ petitions.

15. In raising challenge to the validity of the Impugned Act, his submissions are two fold. First, repugnance has been pleaded in substantive law provisions of Transfer of Property Act, 1882 (hereinafter referred to as 'TPA') and the provisions of the Impugned Act. Second, repugnance has been pleaded in the procedural law, provisions of the Provincial Small Causes Court Act, 1887 (hereinafter referred to as 'SCC Act') and the provisions of the Impugned Act. In that, reference has also been made to the U.P. Civil Laws (Amendment) Act, 1972 (hereinafter referred to as

the 'Civil Laws Act') that came into force on 16.09.1972, with prior Presidential assent, to complement and create enforceability in favour of the provisions of the Repealed Act. Thus, provisions of Section 2, 3, 4 and 5 of the SCC Act were also amended. In that context, reference has been made to Section 50 and other provisions of the Civil Laws Act.

16. On the first aspect, it has been submitted that the Impugned Act is wholly *ultra vires* the Constitution inasmuch as Presidential assent has not been obtained by the State legislature while enacting the Impugned Act-that falls completely within the shadow of the pre-existing Parliamentary legislation in the shape of TPA and SCC Act read with the Civil Laws Act. To the extent, by virtue of Section 46 of the Impugned Act, the State legislature has repealed the Repealed Act, there is no repugnancy. Therefore, Presidential assent may not have been required to enact that repealing law. At the same time, to the extent Section 42 of the Impugned Act seeks to create overriding effect in favour of the Impugned Act, notwithstanding any other law of the State of U.P., without prior Presidential assent, neither by enacting such provision, the State legislature may cause the effect of overriding a Parliamentary legislation nor it may ever curtail the enforceability of such pre-existing Parliamentary enactments.

17. In support, heavy reliance has been placed on Clause 10 of Article 366 read with Article 372 read with Article 13(3)(b) of the Constitution of India read with the Seventh Schedule, List II Entries 18, and 65 of List II, read with Entry Nos. 6, 7 and 13 of the Concurrent List to the Seventh Schedule of the Constitution of India. Thus, it has been submitted, upon the Constitution of India being enforced- by virtue of the unexceptional force of law created by the above referred provisions of the Constitution of India, TPA and SCC Act as amended by the Civil Laws Act, became valid statutory laws. Referring to Chapter V of the TPA - Sections 105 to

116, and SCC Act, it has been stressed, the provisions of the TPA and SCC Act occupied the respective legislative fields governing leases of non-agricultural land and all rights of lessors and lessee *qua* such land, and institution of proceedings for eviction etc. Being existing and valid law, it continued to remain in force without any fetters arising upon the enforcement of the Constitution of India.

18. In that scheme, the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the 'Repealed Act'), and Civil Laws Act, enacted by the State legislature, were enabled to be enforced, only against prior Presidential assent. Therefore, by virtue of Section 38 of the Repealed Act, it gained overriding effect over the TPA and also the Civil Procedure Code, 1908, (hereinafter referred to as C.P.C.) to the extent of repugnancy, created by the State laws, with the TPA and SCC Act.

19. To the extent, Section 2 of the Repealed Act clearly exempted (from the scope of its application), specified categories of buildings, the provisions of TPA remained applicable to such exempted buildings. The provisions of Section 3(k) read with 9(2) of the Repealed Act for determination of standard rent, remain a valid piece of legislation for reason of prior Presidential assent, attached thereto. Similarly, existence of suit remedy - to seek eviction, provided under Section 20(2), also remains a piece of valid legislation.

20. Next, it has been submitted - the grounds for eviction under Section 21(1) of the Repealed Act were limited. The jurisdiction for such additional grounds for eviction was vested in the Prescribed Authority, for reason of Presidential assent granted, both to the Repealed Act as also to the Civil Laws Act. To the extent the latter Act has not been repealed, jurisdiction may continue to vest in the

Small Causes Courts by virtue of legislative force underlying the Civil Laws Act, enacted upon prior Presidential assent.

21. Alternatively, learned Senior Advocate would contend, under Chapter-III of the Impugned Act, either the rent may be fixed as per agreement under Section 8, or it may be revised under Section 9 or it may be determined under Section 10. Yet, the provisions of Section 10 of the Impugned Act may not be read in isolation. To read Section 10 of the Impugned Act, independent of Sections 8 and 9 of that Act, would be to create uncanalised and unbridled discretion in favour of the Rent Authority-in determining the rent at "prevailing market value". Unless the provisions of Section 10 are read in conjunction with Section 8 and 9 of the Impugned Act, wholly unreasonable and arbitrary conclusions may arise.

22. On the issue of invalidity in the proceedings, again alternatively, it has been submitted - the notice calling upon the petitioners to pay the revised rent, was defective and deficient as it did not specify the rate of rent proposed or the intention to revise the rent as per the formula prescribed under Section 9(3) of the Impugned Act. To the extent, that essential requirement of law prescribed under Section 9(5) of the Impugned Act has not been complied with, the application filed under Section 10 was not maintainable. Second, the Rent Authority decided the application moved by the respondent-landlady without first correctly determining the area of the tenancy. Third, in absence of a written agreement and further in absence of compliance of Section 4(5) of the Impugned Act, the provisions of Section 9(3) and (5) were not complied. Fourth, the Rent Authority has completely erred in blindly relying on market rent of a few shops in the area. Those are renovated shops with modern amenities. Hence, a higher rent may be payable for those shops. The shops offer tenancy are old and not equipped with modern amenities.

23. In support of his submission, Sri Sashi Nandan, learned Senior Advocate has placed reliance on **Indu Bhushan Bose vs. Rama Sundari Devi And Another, (1969) 2 SCC 289**, to submit that the legislative competence to enact a law-governing the relationship between landlords and tenants, with respect to house accommodation or buildings, is not referable to Entry 21 of List II of the Seventh Schedule to the Government of India Act 1935 or to Entry 18 of List II of the Seventh Schedule of the Constitution. On the contrary, that legislative competence may be derived from or be referable to Entry 6 of List III in the Seventh Schedule to the Constitution of India, read with Entry 7 of that List. Though, in first blush, the opinion of that Constitution Bench appears to have been recorded with a caveat - "*However, it is not necessary for us to express any definite opinion in this case on this point*", a later two Judge bench decision of the Supreme Court in **Accountant And Secretarial Services Pvt. Ltd. And Another vs. Union of India And Others, (1988) 4 SCC 324**, clarified-that in **Indu Bhushan Bose (supra)**, "*the question for consideration was whether the act of a Rent Controller in fixing fair rent for certain premises within the cantonment area of Barrackpore was valid.*" That issue was discussed and answered as below:

"22. We now come to Indu Bhushan case [(1969) 2 SCC 289 : AIR 1970 SC 228 : (1970) 1 SCR 443] . While the Counsel for the respondents would have it that this ruling has concluded the present issue in their favour, Dr Chitale contends that this is not so. He points out that the court has been careful to say that "it is not expressing any final opinion" regarding Entry 21. It has, at another place, referred to the framing of house tenancy legislation "either under Entry 18 of List II or Entries 6, 7 and 13 of List III" which also indicates that the court had not made up its mind as to whether this type of legislation will fall under List II or List III. It is submitted also that an analysis of the Calcutta and Rajasthan decisions approved by it would show that they had not at all been considering any conflict between entries in Lists II and III and were concerned only with the interpretation of Entry 2 in List I and Entry 21 of List II. Dr Chitale, therefore, urges that Indu Bhushan [(1969) 2 SCC 289 : AIR 1970 SC 228 : (1970) 1 SCR 443] cannot be taken as a decision that house tenancy legislation cannot come under Entry 18 of List II.

23. We are not, however, persuaded that Indu Bhushan case [(1969) 2 SCC 289 : AIR 1970 SC 228 : (1970) 1 SCR 443] is capable of being brushed aside so easily. It is true that, ultimately, the decision in that

case turned on the wider interpretation of Entry 2 of List I favoured by the Supreme Court in preference to the narrower one preferred by Bombay. Nevertheless the judgment contains a specific discussion of the terms of Entry 21. This is because the Bombay High Court had first discussed the terms of this entry and expressed an opinion thereon. The Supreme Court considered the High Court's interpretation of the entry and disagreed therewith. The view of the Supreme Court on the entry has been set out in some detail and cannot be ignored. Not only this, in the last para of its judgment the court has reaffirmed the earlier discussion and interpretation. We have extracted earlier this concluding para of the judgment. In our view the effect of this para cannot be explained away by trying to analyse the Calcutta and Rajasthan decisions to see what they had actually decided. The important thing is how the Supreme Court understood what the two High Courts had decided. This is set out in the two sentences of the last para of the judgment, which have been underlined in the extract set out earlier. The Supreme Court then specifically affirmed this to be the correct ratio. We are, therefore, of the opinion that Indu Bhushan [(1969) 2 SCC 289 : AIR 1970 SC 228 : (1970) 1 SCR 443] must be taken to have expressed a view that premises tenancy legislation insofar as it pertains to houses and buildings is referable not to Entry 18 of List II but to Entries 6, 7 and 13 of List III."

(emphasis supplied)

24. On the issue of repugnancy of the Impugned Act with the provisions of the TPA, reliance has been placed on **Kaisar-I-Hind Pvt. Ltd. And Another vs. National Textile Corporation (Maharashtra North) Ltd. And Others, (2002) 8 SCC 182**. Therein, upon reference made, a question arose, if assent granted by the President under Article 254(2) of the Constitution of India-to an otherwise repugnant law made by the State legislature, would be referable to laws mentioned in the submission made to the President for his consideration? or to other laws as well-for which assent was not sought, specifically?

25. Dealing with that issue, the Supreme Court observed as below:

"13.Hence, it can be stated that for the State law to prevail, the following requirements must be satisfied:

(1) law made by the legislature of a State should be with respect to one of the matters enumerated in the Concurrent List;

(2) it contains any provision repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter;

(3) the law so made by the legislature of the State has been reserved for the consideration of the President; and

(4) it has received "his assent".

14. In view of the aforesaid requirements, before obtaining the assent of the President, the State Government has to point out that the law made by the State Legislature is in respect of one of the matters enumerated in the Concurrent List by mentioning entry/entries of the Concurrent List and that it contains provision or provisions repugnant to the law made by Parliament or existing law. Further, the words “reserved for consideration” would definitely indicate that there should be active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by Parliament and the necessity of having such a law, in the facts and circumstances of the matter, which is repugnant to a law enacted by Parliament prevailing in a State. The word “consideration” would manifest that after careful thinking over and due application of mind regarding the necessity of having State law which is repugnant to the law made by Parliament, the President may grant assent. This aspect is further reaffirmed by use of the word “assent” in clause (2), which implies knowledge of the President to the repugnancy between the State law and the earlier law made by Parliament on the same subject-matter and the reasons for grant of such assent. The word “assent” would mean in the context as an expressed agreement of mind to what is proposed by the State.

15. ...

16. Applying the aforesaid meaning of the word “assent” and from the phraseology used in clause (2), the object of Article 254(2) appears that even though the law made by Parliament would have supremacy, after considering the situation prevailing in the State and after considering the repugnancy between the State legislation and the earlier law made by Parliament, the President may give his assent to the law made by the State Legislature. This would require application of mind to both the laws and the repugnancy as well as the peculiar requirement of the State to have such a law, which is repugnant to the law made by Parliament. The word “assent” is used purposefully indicating affirmative action of the proposal made by the State for having law repugnant to the earlier law made by Parliament. It would amount to accepting or conceding and concurring to the demand made by the State for such law. This cannot be done without consideration of the relevant material. Hence, the phrase used is “reserved for consideration”, which under the Constitution cannot be an idle formality but would require serious consideration on the material placed before the President. The “consideration” could only be to the proposal made by the State.”

(emphasis supplied)

26. Referring to the subsequent five-judge bench decision of the Supreme Court in **Rajendra Diwan vs. Pradeep Kumar Ranibala**, 2019 SCC OnLine SC 1586, it has been submitted that the said decision is not relevant to the issue at hand. In that case, the only question considered by the Supreme Court was “*Whether Section 13(2) of the Rent Control Act is ultra vires the Constitution of India, by reason of lack of legislative competence of the Chhattisgarh State Legislature to enact the provision.*”

27. Referring to Entry 77 of List I, specifically read with Entry 65 of List II, it has been reasoned by the Supreme Court - that the State legislature of Chhattisgarh had absolutely no legislative competence to enact a law providing for direct appeal to the Supreme Court, against a decision made by an authority constituted under a State legislation. Only in that context, that five judge bench decision, made a passing observation that though the State legislature may enact laws with respect to land-including rights in and over land, land tenures including relationship of landlord and tenant and the collection of rent under Entry 18 of the State List, it had legislative competence to enact the Rent Control Act. Yet, it was reasoned that such power may not be enough to clothe the State legislature with legislative competence to enact a provision in that law as may provide for a direct appeal to the Supreme Court, against an order of statutory Rent Authority.

28. Responding to the above, Sri Rahul Agarwal, learned Additional Advocate General first submitted that there are two aspects to the challenge raised by the petitioners. First, the challenge claiming repugnancy claimed in the substantive laws i.e. the TPA and the Impugned Act. Second, the procedural repugnancy between the provisions of the SCC Act read with Civil Laws Act, the latter being law passed with the prior assent of the President.

29. First referring to Article 323B of the Constitution of India it has been submitted that appropriate legislature may by law, provide for adjudication or trial by Tribunals of any dispute etc. on matters, amongst others including rent, its regulation and control and tenancy issues, including the rights, title and interest of landlords and tenants.

30. On the issue of apparent conflict of opinion in the two co-equal bench strength decisions of the Supreme Court in **Indu Bhushan**

(supra) and **Rajendra Diwan (supra)**, reliance has been placed on a Full Bench decision of this Court in **Gopal Krishna Indley vs. 5th Addl. District Judge, Kanpur and Others, 1981 SCC OnLine All 246**. Therein, it was observed as below:

“15. After having laid down the above law the Supreme Court examined the evidence of the parties and found that the suit was required to be remanded and decided afresh on merits. From the decision given in this case, it is apparent that the Supreme Court accepted that sub-section (2) of Section 2 of U.P. Act No. 13 of 1972 was applicable to a building constructed prior to Act No. 13 of 1972. Had that not been so, there was no question of remanding the suit for a fresh decision. In Ratan Lal Singhal's case, ((1980) 4 SCC 258 : AIR 1980 SC 635) the Supreme Court found that sub-section (2) of Section 2 was prospective and was applicable to buildings constructed after the enforcement of Act No. 13 of 1972. Whereas in Ram Swarup Rai's case; (1980 All LJ 651) the view taken was contrary. The noticeable difference however is that in Ram Swarup Rai's case the controversy about application of sub-section (2) of Section 2 was elaborately discussed. We are in dilemma between what we consider the conflicting decisions. The decisions in both cases are ostensibly binding on us, which we are to follow?

21. The difficulty, however, before us is slightly different, and is not covered by the authority cited above. We are faced with a situation where there are conflicts between the two decisions of the Supreme Court given by Judges of equal strength. We are not concerned here with reasons which led to these conflicts.

23. To meet a situation like the present reference may be made to a Full Bench decision of our Court in U.P.S.R.T.C. v. State Road Transport Tribunal, U.P. Lucknow (AIR 1977 All 1) : (1976 All LJ 683) where the Full Bench held:—

“Even if there is some conflict in the two Supreme Court's decisions, we have to follow the law as declared in the latter case of Mysore State Transport Corporation”.

26. We, therefore, cannot ignore the subsequent decision of the Supreme Court on the basis of the same being per incuriam.”

(emphasis supplied)

31. Reference has also been made to another Full Bench decision of this Court in **U.P. State Road Transport Corporation, Meerut Region, Meerut vs. State Transport Appellate Tribunal, 1976 SCC OnLine All 218** wherein it was observed as below:

“11. Learned counsel for the petitioner produced a copy of the notification issued under Section 68-D of the Act relating to Patna-Newada route to show that the scheme contemplated complete conclusion of other persons except the State Transport Undertaking. He urged that in spite of prohibition of private operators the Supreme Court in Ram Sanahi's case(4) held that the grant or renewal of permit to a

private operator for a portion of the route did not violate the integrity of the scheme.

The instant case is fully covered by the law laid down in that case. On a perusal of the notification we find that the Patna-Newada Scheme permitted other private operators to run stage carriages at the discretion of the State Government. Further Ram Sanahi's case(4) is an unreported judgment and the earlier cases of Supreme Court were neither brought to the notice of the Supreme Court nor discussed, whereas in the Mysore State Road Transport Corporation's case (supra), the Supreme Court considered its earlier decisions and discussed the matter at length in coming to the conclusion that if the scheme prohibits private operators to operate on the notified area or route or any portion thereof, the Regional Transport Authority cannot either grant or renew permits of such private operators in respect of a route which may be overlapping the notified route. It is noteworthy that the Supreme Court's decision in Mysore State Transport Corporation (supra) is later in time. Even if there is some conflict in the two Supreme Court decisions, we have to follow the law as declared in the later case of Mysore State Transport Corporation (supra). In view of the above discussion, we are of the opinion that since the two scheme relating to routes Muzaffarnagar-Bareilly-Basera and Saharanpur-Hardwar via Chutmalpur and Gagalheri provide that the Corporation shall provide road transport services on the notified routes or portions thereof to the complete exclusion of private operators, the respondents permits could not be renewed for a portion of the notified route. We are further of the opinion that it is not necessary for the scheme to contain specific provisions for cancellation or modification of existing permits of overlapping routes.”

(emphasis supplied)

32. In that context, further reliance has been placed on a decision of the Supreme Court in **South Central Railway Employees Cooperative Credit Society Employees Union vs. B. Yashodabai and Others, (2015) 2 SCC 727** wherein it was observed as below:

“13. In our opinion, the High Court should not have considered any other factor especially when this Court had come to a final conclusion that the policy with regard to reservation in the matter of promotion to the employees was not legal and proper.

14. We are of the view that it was not open to the High Court to hold that the judgment delivered by this Court in South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies [South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies, (1998) 2 SCC 580 : 1998 SCC (L&S) 703] was per incuriam.

15. If the view taken by the High Court is accepted, in our opinion, there would be total chaos in this country because in that case there would be no finality to any order passed by this Court. When a higher court has rendered a particular decision, the said decision must be followed by a subordinate or lower court unless it is distinguished or overruled or set

aside. The High Court had considered several provisions which, in its opinion, had not been considered or argued before this Court when CA No. 4343 of 1988 was decided [South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies, (1998) 2 SCC 580 : 1998 SCC (L&S) 703] . If the litigants or lawyers are permitted to argue that something what was correct, but was not argued earlier before the higher court and on that ground if the courts below are permitted to take a different view in a matter, possibly the entire law in relation to the precedents and ratio decidendi will have to be rewritten and, in our opinion, that cannot be done. Moreover, by not following the law laid down by this Court, the High Court or the subordinate courts would also be violating the provisions of Article 141 of the Constitution of India.”

(emphasis supplied)

33. Thus, the thrust of the submissions of the learned Additional Advocate General, on the issue of repugnancy in substantive laws has to be addressed on the strength of the later decision of the Supreme Court in **Rajendra Diwan (supra)**, which according to the learned Additional Advocate General, is more considered, as well. To the extent, the field of legislation falls under List II to the Seventh Schedule to the Constitution of India, the State legislature was wholly competent to enact the Impugned Act. What may have been done in the past while enacting the Repealed Act, may not be of help to the reasoning being adopted by the petitioners. The challenge has to be examined independent of the past conduct of the legislature, *qua* the Repealed Act.

34. On the repugnancy in the substantive law, reliance has been placed on **Hoechst Pharmaceuticals Ltd. and others vs. State of Bihar and others (1983) 4 SCC 45**. Therein, it has been observed as below:

“63. We must then pass on to the contention advanced by learned counsel for the appellants that there is repugnancy between sub-section (3) of Section 5 of the Act and para 21 of the Drugs (Prices Control) Order and therefore sub-section (3) of Section 5 of the Act is void to that extent. Ordinarily, the laws could be said to be repugnant when they involve impossibility of obedience to them simultaneously but there may be cases in which enactments may be inconsistent although obedience to each of them may be possible without disobeying the other. The question of “repugnancy” arises only with reference to a legislation falling in the Concurrent List but it can be cured by resort to Article 254(2).

64...

65. Strong reliance is placed on the judgment of the High Court of Australia in *Clyde Engineering Company Limited v. Cowburn* [(1926) 37 Com LR 466] and to a passage in *Australian Federal Constitutional Law* by Colin Howard, 2nd Edn., at pp. 34-35. Our attention is also drawn to two other decisions of the High Court of Australia: *Ex parte McLean* [(1930) 43 Com LR 472] and *Stock Motor Ploughs Limited v. Forsyth* [(1932) 48 Com LR 128]. The decision in *Clyde Engineering Company case* [(1926) 37 Com LR 466], is an authority for the proposition that two enactments may be inconsistent where one statute takes away the rights conferred by the other although obedience to each one of them may be possible without disobeying the other. The contention is that para 21 of the Control Order confers a right on the manufacturers and producers of medicines and drugs to pass on the liability for sales tax while sub-section (3) of Section 5 of the Act prohibits such manufacturers or producers from passing on such liability. The argument cannot prevail for two obvious reasons viz.: (1) Entry 54 of List II is a tax entry and therefore there is no question of repugnancy between sub-section (3) of Section 5 of the Act which is a law made by the State legislature for the imposition of tax on sale or purchase of goods relatable to Entry 54 and para 21 of the Control Order issued by the Central Government under sub-section (1) of Section 3 of the Essential Commodities Act which is a law made by Parliament relatable to Entry 33 of List III. And (2) The question of 'repugnancy' can only arise in connection with the subjects enumerated in the Concurrent List as regards which both the Union and the State legislatures have concurrent powers so that the question of conflict between laws made by both legislatures relating to the same subject may arise.

66. This court has considered the question of repugnancy in several cases and in *Deep Chand v. State of U.P.* [AIR 1959 SC 648 : 1959 Supp 2 SCR 8 : 1959 SCJ 1069] the result of the authorities was thus stated by Subba Rao, J.:

Nicholas in his *Australian Constitution*, 2nd Edition, p. 303, refers to three tests of inconsistency or repugnancy:

1. There may be inconsistency in the actual terms of the competing statutes;
2. Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code; and
3. Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter.

In *Tika Ramji v. State of U.P.* [AIR 1956 SC 676 : (1956) SCR 393 : 1956 SCJ 625], the court accepted the above three rules evolved by Nicholas, among others, as useful guides to test the question of repugnancy.

67. Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of

such repugnancy, be void. To the general rule laid down in clause (1), clause (2) engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act, will give way to the State Act only to the extent of inconsistency between the two, and no more.....

68. We may briefly refer to the three Australian decisions relied upon. As stated above, the decision in Clyde Engineering Company case [(1926) 37 Com LR 466], lays down that inconsistency is also created when one statute takes away rights conferred by the other, per the illuminating judgment of Isaacs, J. In Ex parte McLean case [(1930) 43 Com LR 472], Dixon, J. laid down another test viz. two statutes could be said to be inconsistent if they, in respect of an identical subject-matter, imposed identical duty upon the subject, but provided for different sanctions for enforcing those duties. In Stock Motor Ploughs Limited case [(1932) 48 Com LR 128], Evatt, J. held that even in respect of cases where two laws impose one and the same duty of obedience there may be inconsistency. As already stated, the controversy in these appeals falls to be determined by the true nature and character of the impugned enactment, its pith and substance, as to whether it falls within the legislative competence of the State legislature under Article 246(3) and does not involve any question of repugnancy under Article 254(1).

69. We fail to comprehend the basis for the submission put forward on behalf of the appellants that there is repugnancy between sub-section (3) of Section 5 of the Act which is relatable to Entry 54 of List II of the Seventh Schedule and para 21 of the Control Order issued by the Central Government under sub-section (1) of Section 3 of the Essential Commodities Act relatable to Entry 33 of List III and therefore sub-section (3) of Section 5 of the Act which is a law made by the State legislature is void under Article 254(1). The question of repugnancy under Article 254(1) between a law made by Parliament and a law made by the State legislature arises only in case both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List, and there is direct conflict between the two laws. It is only when both these requirements are fulfilled that the State law will, to the extent of repugnancy, become void. Article 254(1) has no application to cases of repugnancy due to overlapping found between List II on the one hand and Lists I and III on the other. If such overlapping exists in any particular case, the State law will be ultra vires because of the non obstante clause in Article 246(1) read with the opening words "subject to" in Article 246(3). In such a case, the State law will fail not because of repugnance to the Union law but due to want of legislative competence. It is no doubt true that the expression "a law made by Parliament which Parliament is competent to enact" in Article 254(1) is susceptible of a construction that repugnance between a State law and a law made by Parliament may take place outside the concurrent sphere because Parliament is competent to enact law with respect to subjects included in List III as well as "List I". But if Article 254(1) is read as a whole, it will be seen that it is expressly made subject to clause (2) which makes reference to repugnancy in the field of Concurrent List — in other words, if clause (2) is to be the guide in the determination of scope of clause (1), the repugnancy between Union and State law must be taken to refer only to the Concurrent field. Article 254(1) speaks of a State law being repugnant to (a) a law made by Parliament or (b) an existing law. There was a controversy at one time as to whether the succeeding words "with respect to one of the matters

enumerated in the Concurrent List” govern both (a) and (b) or (b) alone. It is now settled that the words “with respect to” qualify both the clauses in Article 254(1) viz, a law made by Parliament which Parliament is competent to enact as well as any provision of an existing law. The underlying principle is that the question of repugnancy arises only when both the legislatures are competent to legislate in the same field i.e. with respect to one of the matters enumerated in the Concurrent List. Hence, Article 254(1) cannot apply unless both the Union and the State laws relate to a subject specified in the Concurrent List, and they occupy the same field.

70. This construction of ours is supported by the observations of Venkatarama Ayyar, J. speaking for the court in A.S. Krishna case [A.S. Krishna v. State of Madras, 1957 SCR 399 : AIR 1957 SC 297 : 1957 SCJ 216] while dealing with Section 107(1) of the Government of India Act, 1935 to the effect:

For this section to apply, two conditions must be fulfilled: (1) The provisions of the Provincial law and those of the Central legislation must both be in respect of a matter which is enumerated in the Concurrent List, and (2) they must be repugnant to each other. It is only when both these requirements are satisfied that the Provincial law will, to the extent of the repugnancy, become void.

71. In Chapter Tika Ramji case [AIR 1956 SC 676 : (1956) SCR 393 : 1956 SCJ 625], the court observed that no question of repugnancy under Article 254 of the Constitution could arise where Parliamentary legislation and State legislation occupy different fields and deal with separate and distinct matters even though of a cognate and allied character and that where, as in that case, there was no inconsistency in the actual terms of the Acts enacted by Parliament and the State legislature relatable to Entry 33 of List III, the test of repugnancy would be whether Parliament and State legislature, in legislating on an entry in the Concurrent List, exercised their powers over the same subject-matter or whether the laws enacted by Parliament were intended to be exhausted as to cover the entire field, and added:

The pith and substance of argument cannot be imported here for the simple reason that, when both the Centre as well as the State Legislatures were operating in the concurrent field, there was no question of any trespass upon the exclusive jurisdiction of the Centre under Entry 52 of List I, the only question which survived being whether, putting both the pieces of legislation enacted by the Centre and the State Legislature, there was any such repugnancy,”

(emphasis supplied)

35. Also, reliance has been placed on **Forum for People’s Collective Efforts (FPCE) and another vs. State of West Bengal and another (2021) 8 SCC 599**, wherein it has been observed as below:

“H.2. The constitutional scheme of Article 254 and repugnancy

113. The distribution of legislative powers in Part XI of the Constitution envisages that parliamentary legislation extends to the entire territory of India or its part while State legislation extends law to the whole or any

part of a State. Under Article 246 [“**246. Subject-matter of laws made by Parliament and by the legislatures of States.**—(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).(3) Subject to clauses (1) and (2), the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List.”] , the legislative power to make laws “with respect to” any of the matters enumerated in List I of the Seventh Schedule — the Union List — is entrusted to Parliament. Clause (1) of Article 246 which embodies this principle is prefaced with a non obstante provision which gives it precedence over clauses (2) and (3). Article 246(2) enunciates the principles governing the exercise of legislative power “to make laws with respect to any of the matters enumerated in List III of the Seventh Schedule, the Concurrent List. Clause (2) begins with a non obstante provision which gives it precedence over clause (3). Clause (2) embodies the principle that Parliament and [subject to clause (1)] the legislature of any State have the power to make laws with respect to any of the matters in List III. Clause (3) stipulates that the legislature of any State has the exclusive power to make laws for the State or any part of it “with respect to any of the matters enumerated in List II”, the State List. Some of the salient features of Article 246 need to be noticed:

113.1. An exclusive power has been entrusted to Parliament to legislate on matters enumerated in List I.

113.2. The plenary power entrusted to Parliament to legislate with respect to a matter enumerated in List I is reaffirmed by the non obstante provision which operates notwithstanding anything in clauses (2) and (3).

113.3. On matters which have been enumerated in List III:

113.3.1. Parliament has the power to make laws notwithstanding clause (3).

113.3.2. The State Legislature also has the power to make laws subject to clause (1).

113.4. The State Legislatures have the exclusive powers to make laws for the State or any part of it with respect to matters in List II, this power being subject to clauses (1) and (2).

113.5. Clauses (1) and (2) of Article 246 employ non obstante provisions in respect of:

113.5.1. The exclusive power entrusted to Parliament over List I matters.

113.5.2. The power entrusted to Parliament over List III matters.

113.6. Though, the legislature of a State has exclusive power to make laws with respect to matters on the State List, this is subject to clauses (1) and (2).”

(emphasis supplied)

36. In that vein, reliance has also been placed upon **State of Uttar Pradesh and others vs. Lalta Prasad Vaish and sons (2024) 17 SCC 1**, wherein it has been observed as below:

“346. There is another angle to the matter. Article 254 in the normal course would apply when there is a direct conflict between the laws made by Parliament and the State Legislature under an entry in the Concurrent List. But in the instant case, it can also be held that the conflict is not between a law or an action taken by Parliament or the Central Government under Entry 33(a) of List III versus a State law that could be made or action taken under the very same entry. Here, the conflict arises between action that could be taken by the Central Government under Section 18-G of the IDRA made by virtue of Entry 52 of List I as opposed to a State law or action which could be made under Entry 33(a) of List III. In such case, the doctrine of repugnancy would arise as per the first part of Article 254(1) between Entry 52 of List I and Entry 33(a) of List III and not in respect of the second part of Article 254(1). Thus, when the Central Government seeks to exercise power in respect of a scheduled industry under Section 18-G of the IDRA it is pursuant to the said Act being made under Entry 52 of List I. Hence, any action to be taken by the Central Government under Section 18-G is not really an action that would be taken under Entry 33(a) of List III.

347. On this aspect, reference must be made to the judgment of this Court in State of Kerala v. Mar Appraem Kuri Co. Ltd. [State of Kerala v. Mar Appraem Kuri Co. Ltd., (2012) 7 SCC 106 : (2012) 4 SCC (Civ) 69 : (2012) 174 Comp Cas 339] (“Mar Appraem Kuri Co.”). The Constitution Bench of this Court speaking through Kapadia, C.J., considered the question — when does repugnancy arise in the context of whether Kerala Chitties Act 23 of 1975 becoming repugnant to the (Central) Chit Funds Act 40 of 1982 under Article 254(1) upon making of the Central Act (i.e. 19-8-1982 when the President gave his assent) or whether the Kerala Chitties Act 23 of 1975 would become repugnant to the Central Act as and when the notification under Section 1(3) of the Central Act bringing the Central Act into force in the State of Kerala is issued. In other words, the question raised was whether making of the law or its commencement brings about repugnancy or inconsistency as envisaged in Article 254(1) of the Constitution.

348. In this context, reference was made to Deep Chand v. State of U.P. [Deep Chand v. State of U.P., 1959 SCC OnLine SC 12 : AIR 1959 SC 648] (“Deep Chand”) and it was observed as under: (Mar Appraem Kuri Co. case [State of Kerala v. Mar Appraem Kuri Co. Ltd., (2012) 7 SCC 106 : (2012) 4 SCC (Civ) 69 : (2012) 174 Comp Cas 339] , SCC pp. 126-27, para 30)

“30. That, in Deep Chand v. State of U.P. [Deep Chand v. State of U.P., 1959 SCC OnLine SC 12 : AIR 1959 SC 648] , three principles were laid down as indicative of repugnancy between a State law and a Central law, which have to be borne in mind by the State Legislature whenever it seeks to enact a law under any entry in the Concurrent List. Thus, where there is a Central law which intends to override a State law or where there is a Central law intending to occupy the field hitherto occupied by the State law or where the Central law collides with the State law in actual terms, then the State Legislature would have to take into account the possibility of repugnancy within the meaning of Article 254 of the

Constitution. In this connection, it was submitted that Tests 1 and 2 enumerated in Deep Chand [Deep Chand v. State of U.P., 1959 SCC OnLine SC 12 : AIR 1959 SC 648] do not require the Central law to be actually brought into force for repugnancy between two competing legislations to arise in the context of Article 254 of the Constitution.”

349. In para 40, it was observed that the expression “subject to” in clauses (2) and (3) of Article 246 denotes supremacy of Parliament and the same is extracted as under: (Mar Appraem Kuri Co. case [State of Kerala v. Mar Appraem Kuri Co. Ltd., (2012) 7 SCC 106 : (2012) 4 SCC (Civ) 69 : (2012) 174 Comp Cas 339], SCC p. 129)

“40. However, the principle of federal supremacy in Article 246(1) cannot be resorted to unless there is an “irreconcilable” conflict between the entries in the Union and State Lists. The said conflict has to be a “real” conflict. The non obstante clause in Article 246(1) operates only if reconciliation is impossible. As stated, the parliamentary legislation has supremacy as provided in Articles 246(1) and (2). This is of relevance when the field of legislation is in the Concurrent List. The Union and the State Legislatures have concurrent power with respect to the subjects enumerated in List III. [See Article 246(2).] Hence, the State Legislature has full power to legislate regarding subjects in the Concurrent List, subject to Article 254(2) i.e. provided the provisions of the State Act do not come in conflict with those of the Central Act on the subject. [See Amalgamated Electricity Co. (Belgaum) Ltd. v. Municipal Committee, Ajmer [Amalgamated Electricity Co. (Belgaum) Ltd. v. Municipal Committee, Ajmer, 1968 SCC OnLine SC 35 : AIR 1969 SC 227 : (1969) 1 SCR 430].] Thus, the expression “subject to” in clauses (2) and (3) of Article 246 denotes supremacy of Parliament.”

350. In para 43, it was observed as under: (Mar Appraem Kuri Co. case [State of Kerala v. Mar Appraem Kuri Co. Ltd., (2012) 7 SCC 106 : (2012) 4 SCC (Civ) 69 : (2012) 174 Comp Cas 339], SCC p. 130)

“43. Our Constitution gives supremacy to Parliament in the matter of making of the laws or legislating with respect to matters delineated in the three Lists. The principle of supremacy of Parliament, the distribution of legislative powers, the principle of exhaustive enumeration of matters in the three Lists are all to be seen in the context of making of laws and not in the context of commencement of the laws.”

351. Dealing with the question of repugnancy and the ways in which it would arise between parliamentary legislation and States' legislation, it was observed in para 47 as under: (Mar Appraem Kuri Co. case [State of Kerala v. Mar Appraem Kuri Co. Ltd., (2012) 7 SCC 106 : (2012) 4 SCC (Civ) 69 : (2012) 174 Comp Cas 339], SCC p. 130)

“47. The question of repugnancy between parliamentary legislation and State legislation arises in two ways. First, where the legislations, though enacted with respect to matters in their allotted spheres, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, the parliamentary legislation will predominate, in the first, by virtue of non obstante clause in Article 246(1); in the second, by reason of Article 254(1).”

352. Ultimately, in para 61, it was stated as under: (Mar Appraem Kuri Co. case [State of Kerala v. Mar Appraem Kuri Co. Ltd., (2012) 7 SCC 106 : (2012) 4 SCC (Civ) 69 : (2012) 174 Comp Cas 339], SCC p. 133)

“61. The entire above discussion on Articles 245, 246, 250, 251 is only to indicate that the word “made” has to be read in the context of the law-making process and, if so read, it is clear that to test repugnancy one has to go by the making of law and not by its commencement.”

353. On the facts of the said case, this Court held that on the enactment of the (Central) Chit Funds Act, 1982 on 19-8-1982, intending to occupy the entire field of chits under Entry 7 of List III, the State Legislature was denuded of its power to enact the Kerala Finance Act 7 of 2002.

354. Thus, when the State of Kerala intended to amend the State Act in 2002, it was bound to keep in mind the fact that there is already a Central law on the same subject made by Parliament in 1982, though not in force in Kerala, whereunder there is a pro tanto repeal of the State Act. Therefore, the State Legislature ought to have followed the procedure in Article 254(2) and ought to have obtained the assent of the President.

355. Ultimately, in para 78, issue was summed up as under: (Mar Appraem Kuri Co. case [State of Kerala v. Mar Appraem Kuri Co. Ltd., (2012) 7 SCC 106 : (2012) 4 SCC (Civ) 69 : (2012) 174 Comp Cas 339], SCC p. 141)

“78. To sum up, Articles 246(1), (2) and 254(1) provide that to the extent to which a State law is in conflict with or repugnant to the Central law, which Parliament is competent to make, the Central law shall prevail and the State law shall be void to the extent of its repugnancy. This general rule of repugnancy is subject to Article 254(2) which inter alia provides that if a law made by a State Legislature in respect of matters in the Concurrent List is reserved for consideration by the President and receives his/her assent, then the State law shall prevail in that State over an existing law or a law made by Parliament, notwithstanding its repugnancy.”

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359. In the above context, the intention of the Constitution makers in the matter of division of legislative subjects between Parliament and the States have to be clearly understood. In order to achieve consistency of dividing the subjects of legislation not only within the particular Lists, namely, the Union List, State List and Concurrent List but also, inter se, between the three Lists so as to have a clarity in the matter of Parliament or the State Legislature having competence to make laws, the prescription under Article 246 and the mandate thereof would give a clue regarding interpretation of the entries in the three Lists. To reiterate, Articles 246(1) and (2) of the Constitution begin with a non obstante clause and Article 24(3) begins with a “subject to” clause.

360. On a conspectus reading of aforesaid clauses of Article 246, it is evident that the Legislature of a State has the power to make laws with respect to any matter enumerated in List III i.e. Concurrent List, subject to List I which deals with Parliament's exclusive powers to make laws in respect of any matter enumerated in List I. Therefore, a subject placed in List III i.e. the Concurrent List can also be subject to the exclusive power of Parliament to make laws with respect to any matter enumerated in List I [vide first part of Article 254(1)]. Thus, the intention of the Constitution makers was to preserve parliamentary

supremacy while at the same time maintaining a federal balance in the matter of distribution of the fields of legislation vis-à-vis various entries in the three Lists. This is also evident on a reading of Article 246(3) which deals with the exclusive powers to make laws by the State Legislatures in respect of matters enumerated in List II being subject to clauses (1) and (2) of Article 246 i.e. subject to the Union List and the Concurrent List is in a case of conflict of laws which is irreconcilable.”

(emphasis supplied)

37. On the issue of repugnance in the substantive law provisions, it has further been claimed, there is no such repugnance inasmuch as the provisions of Section 106 of the TPA apply with the rider that those provisions would remain wholly enforceable in absence of contract or local law to the contrary. Here, the local law has been enacted in the shape of the Impugned Act. Therefore, Section 106 of the TPA would not create any repugnance to the extent, it remains subject to the Impugned Act.

38. Coming to the issue of repugnancy in the procedural laws, reference has been first made to Section 3(c) of the SCC Act. It clearly provides, nothing under that Act would affect any local law or special law. To the extent local law exists, in shape of the Impugned Act, no repugnancy may be claimed on the own strength of the SCC Act. So far as the provisions of Section 15(2) of the SCC Act is concerned, it has been next submitted that the same remains subject to the exceptions specified in the Second Schedule. Referring to the U.P. Amendment, it has been submitted that the proceedings under the Impugned Act would remain saved. Thus, there does not exist any procedural repugnancy.

39. Referring to Section 42 of the Impugned Act, it has been submitted, to the extent Civil Laws Act and the Repealed Act were State legislations and not Parliamentary enactments, the State legislature had the competence to repeal those enactments, notwithstanding the prior Presidential assent granted to those enactments. To the extent, the Presidential assent does not transform the status of a State enactment to a Parliamentary

enactment, it only enables the enforcement of the law made by the State legislature, but it does not create a pre-condition, to be enforced-before repeal of such enactment.

40. Next, in the alternative, it has been submitted, even if the Impugned Act were to be declared *ultra vires*, the Repealed Act would remain in force, for reason of the repealing law itself having been declared invalid. Reliance has been placed in the case of **Property Owners Association and others vs. State of Maharashtra, (2024) 18 SCC 1**, a nine-Judges' bench decision of the Supreme Court. Therein, it has been observed as below:

*“105. Based on the above precedents, certain principles governing the consequence of an amendment resulting in a substitution being invalidated come to the fore. It is not appropriate to separate an amendment which substitutes certain words with certain other words into multiple steps and examine the legal effect of invalidation on each of these steps independently. This is because when a legislature enacts a substitution, it is only removing certain text to make space for the new text it wishes to enact. Simply put, the legislature would not remove the text in question without at the same time inserting alternate text. Given that the legislative intent is composite and indivisible, to remove and insert simultaneously, a judicial approach which disaggregates these two steps and treats them differently would amount to the court re-writing the law contrary to the legislative intent. As the decisions from the United States note, in such cases, there are two expressions of legislative intent, the original text and the amended text. If the amended text is invalidated, the only valid expression of legislative intent is the original text. If a court were to find that even the original text could not be given legal effect because it had been repealed, this would result in a third outcome, a legal vacuum which was neither intended by the legislature that enacted the original text nor by the legislature which adopted the amended the text. Crucially, this third outcome would fail to give effect to either legislative intent despite there being no constitutional fault in the original provision. As the decisions in *Laxmibai* [*Laxmibai v. State of M.P.*, 1951 SCC OnLine MP 72 : AIR 1951 Nag 94] , *Central Provinces Manganese Ore* [*State of Maharashtra v. Central Provinces Manganese Ore Co. Ltd.*, (1977) 1 SCC 643 : (1977) 39 STC 340] , and *D.K. Trivedi & Sons* [*D.K. Trivedi & Sons v. State of Gujarat*, 1986 Supp SCC 20] note, if a court were to not only invalidate the newly inserted text but also hold that the old text stands repealed it could lead to absurd outcomes or render the text wholly unworkable. The practical effect of such an outcome would be that a judicial decision invalidating an unconstitutional amendment would also inadvertently nullify a valid and constitutional provision which the legislature would never have repealed without providing a replacement.”*

(emphasis supplied)

41. In the same vein, reliance has been placed on **State of Tamil Nadu vs. K. Shyam Sunder and others (2011) 8 SCC 737**.

Therein, it has been observed as below:

“59. Thus, the law on the issues stands crystallised that in case the amending Act is struck down by the court for want of legislative competence or is violative of any of the fundamental rights enshrined in Part III of the Constitution, it would be unenforceable in view of the provision under Article 13(2) of the Constitution and in such circumstances the old Act would revive, but not otherwise. This proposition of law is, however, not applicable so far as subordinate legislation is concerned.”

(emphasis supplied)

42. On the issue of validity of Sections 9 and 10 of the Impugned Act, learned Additional Advocate General would submit, the same may be read together.

43. Sri Ashish Kumar Singh, learned Senior Advocate appearing for the some of the land-lords would also submit, there is no repugnance in the substantive law provisions, as Section 106 of the TPA is subject to local laws to the contrary.

44. Then, he has referred to the fact that in the State of U.P. the Impugned Act is the third legislation on the subject, since Independence. First, Rent Act of 1947 was enforced, upon assent obtained under the Government of India Act, 1935. That enactment was repealed and replaced by the Repealed Act enforced with the prior Presidential assent. Prior to 1947, there were no special protections for tenancy. Those, protections arose under the first two Rent enactments-of 1947 and 1972.

45. To the extent, there arose a bar to the filing of suits (generally) upon enforcement of the Repealed Act, that enactment was first enforced with prior Presidential assent. In contrast, under the Impugned Act no suit proceedings is to be instituted. Therefore, the impugned enactment does not require Presidential assent, for its enforcement. Referring to proviso to Section 107, it has been submitted, to the extent, there is no requirement to necessarily enter into a written agreement for year to year leases, no

repugnance may ever arise on that count. Referring to **M/s. Jado Ram Hira Lal vs. The Prescribed Authority and another (1972) SCC Online All 277**, it has been submitted, following valuable discussion exists, which is equally applicable in the present case:

“2. Learned counsel for the petitioner contended that the petitioner cannot be evicted from the premises in dispute unless a notice under Sec. 108 of the Transfer of Property Act was given to him terminating his tenancy and since no such notice had been given by the landlord the petitioner cannot be evicted from the premises in question. Learned counsel further urged that the provisions of Sec. 106 of the Transfer of Property Act were mandatory and the petitioner cannot be ejected from the accommodation in dispute under Sec. 21 of the Act without complying with those mandatory provisions and without having recourse to Civil Court.

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4. The scheme contained in Secs. 21, 22 and 23 of the Act with regard to determination of tenancy and eviction of a tenant is quite different than that contained in Secs. 106 and 111 of the Transfer of Property Act. Sec. 106 of the Transfer of Property Act, as applicable to the State of Uttar Pradesh, requires giving of thirty days' notice by the landlord to a tenant for termination of monthly tenancy of an immovable property. Sec. 111 of the said Act lays down that the lease of immovable property shall stand determined on the expiry of the period of notice given under Sec. 106 of the Transfer of Property Act. In the absence of a requisite notice no suit for ejectment is maintainable as no order of eviction can be passed at the instance of the landlord from a building or land without determination of lease in accordance with the provisions of Secs. 106 and 111 of the Transfer of Property Act. The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, however, is a special Act which lays down a different scheme for determination of tenancy and ejectment of a tenant. Sub-sec. (4) of Sec. 21 clearly lays down that an order of eviction can be passed against a tenant under Sub-sec. (1) or Sub-sec. (2) of the said section even though the tenancy is not determined. The proviso to Sub-sec. (4), however, makes exception to this rule that no such order shall be made in the case of a tenancy created for a fixed term by a registered lease deed. In that case the order of eviction can be passed only after the expiry of the term fixed in the registered lease. In all other cases the order of eviction can be passed by the Prescribed Authority on the existence of any of the grounds enumerated in Sub-sees. (1) and (2) of Sec. 21 of the Act. Sub-sec. (6) of Sec. 21, however lays down that the tenancy of a tenant shall stand determined in its entirety on the expiry of the period of thirty days from the order passed under Sub-sec. (1) of Sub-sec. (2) of Sec. 21 of the Act.

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7. Chapter IV of the Act contains provisions regulating eviction, Secs. 20, 21 and 23 regulate eviction of a tenant. Sub-sec. (1) of Sec. 20 imposes a bar on the filing of a suit for eviction of a tenant except in accordance with the provisions contained in Sub-sec. (2) of Sec. 20. Sub-sec. (1) takes away the right of a landlord to file civil suit for the eviction of a tenant. Sub-sec. (2) of Sec. 20 however enumerates the grounds on the existence of one more of which a suit for eviction can be filed by the landlord before the Civil Court. Sec. 21 confers power on the Prescribed Authority to pass an

order for the eviction of a tenant from the building or any part thereof if it is satisfied on the application of the landlord that any of the grounds enumerated in clauses (a) and (b) of Sub-sec. (1) of Sec. 21 exist. Similarly by Sub-sec. (2) of Sec. 21 the Prescribed Authority is empowered to order eviction of a tenant from any surplus land appurtenant to the building under tenancy provided it is satisfied that the land is required for constructing one or more new buildings or dividing it into several plots with a view to the sale thereof for purposes of construction of new buildings. The conditions enumerated in Sub-secs. (1) and (2) of Sec. 21, on the existence of which the Prescribed Authority is empowered to order eviction of a tenant from the building or land or part thereof are the same as enumerated in Sub-sec. (2) of Sec. 16 of the Act. Sub-sec. (2) of Sec. 16 confers power on the District Magistrate to pass an order of release in favour of the landlord whenever there is vacancy. But if such accommodation is in possession of a tenant and the landlord is able to satisfy the Prescribed Authority that any of the grounds enumerated in Sub-secs. (1) and (2) of Sec. 21 exist, the building or any specified part thereof may be released in favour of the landlord. The Prescribed Authority is empowered by Sub-sec. (4) to order for the eviction of the tenant in order to put the landlord into possession. The order for eviction of a tenant under Sub-sec. (1) can be passed even before the tenancy is determined. The effect of Sub-sec. (5) of Sec. 21 is that once an order is passed under Sub-sec. (1) or Sub-sec. (2) of Sec. 21 of the Act for eviction of a tenant, the building or part or appurtenant land thereof shall stand released in favour of the landlord. Sub-sec. (6), however, lays down that the tenancy of a tenant shall stand determined in its entirety on the expiration of a period of thirty days from the order of eviction passed under Sub-sec. (1) or Sub-sec. (2) of the said section. Sub-secs. (4), (5) and (6) of Sec. 21 make it abundantly clear that the order of eviction can be passed under Sub-secs. (1) and (2) of the section even before the tenancy of a tenant is determined but the order of eviction only amounts to an order of release in favour of the landlord and does not determine the tenancy. Instead the tenancy shall stand determined only on the expiry of thirty days from the date of the order of eviction passed by the Prescribed Authority under Sub-secs. (1) and (2) of the section.

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10. Learned counsel for the petitioner then contended that the provisions of the impugned Act are repugnant to the provisions of the Transfer of Property Act, 1882 and since the latter Act has been enacted by the Central Legislature, Secs. 18, 21 and 36 of the impugned Act are void. In our opinion the Transfer of Property Act is a general law which regulates the relationship of landlord and tenant, in its various aspects while the impugned Act is a special Act enacted for the purpose of meeting the problem of scarcity of accommodation in the urban areas. If the State Legislature had legislative competence to enact the special Act and if it has received the assent of the President, the special law, namely, the provisions of the impugned enactment, shall prevail within the State notwithstanding the fact that the said provisions are repugnant to an existing law-enacted by the Central Legislature. We shall deal with this question later in detail.

11. Learned counsel for the petitioner further urged that the subject-matter of the impugned legislation falls under entry 18 of List II of the Seventh Schedule of the Constitution. Hence the State Legislature had no legislative competence to enact the impugned Act which contains provisions contrary to those contained in the Transfer of Property Act. Learned counsel contended that the subject of legislation with regard to the control of

tenancy in buildings does not fall within the Concurrent List. Hence the State Legislature cannot enact any law contrary to the provisions contained in any existing law enacted by the Central Legislature. In order to appreciate the petitioner's contention, we have to examine the provisions of the Constitution conferring power on Parliament and the State Legislatures for enacting laws.

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13. The Act in question is referable to entry 6 of the Concurrent List which runs thus:-

“Transfer of Property other than agricultural land; registration of deeds and documents.”

14. The creation of tenancy, regulation of relation between the landlord and the tenant and other incidental matters regulating tenancy in buildings are matters which are eminently covered by the transfer of property other than agricultural land. The legislative entry “transfer of property” is a wide one. While interpreting a legislative entry vide amplitude should be given to it. It contemplates making of laws on the subject of transfer of property including incidental and allied matters which may reasonably be covered by this entry. Under entry 6 of List III no law-can be framed by Parliament in respect of agricultural land. The entry, however, confers power on the Parliament as well as State Legislature to enact laws with regard to transfer of property of every kind except the agricultural land. The provisions contained in the impugned Act do not regulate the agricultural land. On the other hand the Act regulates the relationship of landlord and tenant and the creation and determination of tenancy and other incidental matters relating to the buildings and land appurtenant thereto. In our opinion the impugned Act is covered by entry No. 6 List III of the seventh schedule to the Constitution. It is conceded that the impugned Act was reserved for the consideration of the President and that it has received his assent as required by clause (2) of Art. 254 of the Constitution. The provisions of the impugned Act, therefore even if repugnant to the provisions contained in the Transfer of Property Act (a Central and existing law made by the Central Legislature) shall prevail in the State. We, therefore, hold that the provisions of the impugned Act even if repugnant to the provisions contained in the Transfer of Property Act are valid and shall prevail in the State of Uttar Pradesh.

15. Learned counsel for the petitioner contended that the impugned Act has been enacted by the State Legislature in pursuance of entry 18 of List II of the Seventh Schedule and not under entry 6 of the Concurrent List. Entry 18 of List II runs as follows:-

“18. The land, that is to say, the rights in or over the land, land tenures including the relations of landlord and tenant and the collection of rent; transfer and alienation of agricultural land, land improvement and agricultural loans; colonization.”

16. The above entry in list II confers power on State Legislature to enact laws with respect to land including rights in or over the land, land tenures including the relations of landlord and tenant and collection of rent and transfer and alienation of agricultural land, land improvement and agricultural loans and colonization. No doubt the relationship of landlord and tenant is subject-matter of legislation entrusted to State Legislature exclusively under entry 18 of List II but this is confined to land only. Entry 18 does not contemplate ??? of laws regulating the relations of landlord and tenant in respect of buildings and houses. No doubt the word “land” used in certain other context may include house or house property, but if entry 6 of

List III is taken into account while considering the scope of entry 18 of List II it would be clear that the framers of the Constitution maintained a distinction between a law regulating the relations of landlord and tenant in land simpliciter and immovable property other than land. Entry 18 comprehends enactment of a law relating to land and agriculture and its improvement while entry 6 of List III contemplates making of laws relating to transfer of property other than land. The specific entry at serial No. 6 of List III takes away land from the ambit of property.

17. Learned counsel for the petitioner relied upon a Full Bench case of this Court in Raman Dass v. State of Uttar Pradesh [A.I.R. 1952 All. 703.] . In that case the competence of the State Legislature to enact the U.P. (Temporary) Control or Rent and Eviction Act, 1947, was challenged. It was urged on behalf of Raman Dass that Sec. 3 of the U.P. (Temporary) Control of Rent and Eviction Act (No. III of 1947) was ultra vires as the Provincial Legislature had no power to enact the said Act. The Full Bench repelled the contention and held that the State Legislature was competent to enact the U.P. Act III of 1947. While dealing with the question, the Full Bench observed that the Act was covered by item No. 21 of List II of the Government of India Act, 1935, which is equivalent to entry No. 18 of List II. No doubt the Full Bench made an observation that the U.P. (Temporary) Control of Rent and Eviction Act, 1947, was covered by item 21 List II of the Government of India Act, 1935, but it further observed that the 1947 Act was also covered by item No. 8 of List III of the Government of India Act, 1935, which conferred power on the Central Legislature as well as on the Provincial Legislatures to enact law with respect to "Transfer of Property". Item No. 8 of List III of the Government of India Act, 1935, is equivalent to entry 6 of List II of the Seventh Schedule to the Constitution. The Full Bench thus upheld the validity of 1947 Act on the ground that the State Legislature had legislative competence to enact the same by referring to item No. 8 of List III of the Government of India Act, 1935. The petitioner's contention that the Full Bench laid down that all matters of legislation in respect of regulation of tenancy of buildings and accommodations fell within the State List exclusively and that it was not covered, by any or the item of the Concurrent List cannot be accepted.

18. We have already examined the relevant entries in the Seventh Schedule and have held that the impugned Act is referable to entry 6 of the Concurrent List and not to entry 18 of the State List. We find support for our view from the observations of the Supreme Court in Indu Bhushan v. Ram Sundri [(1969) 2 SCC 289 : A.I.R. 1970 S.C. 228.] . In that case their Lordships of the Supreme Court considered the scope of entry 18 of List II and entry 6 of List III of the Seventh Schedule to the Constitution and observed that laws in respect of non-agricultural property are dealt with in the Transfer of Property Act and would much appropriately fall within the scope of entry 6 of List III of the Seventh Schedule to the Constitution read with entry 7 of the same list."

(emphasis supplied)

46. Last, reference has been made to a decision of the Madras High Court in **Writ Petition No.3985 of 2020 (Balaji vs. Principal Secretary to Government of Tamil Nadu and another)**, decided on 23.04.2024, therein a similar challenge had arisen to the rent enactment made by the Tamil Nadu legislature. Dealing with a

later decision of the Supreme Court in **Rajendra Diwan (supra)**, it was observed as below:

*11.6 Thus, being the position, the Constitution Bench of the Hon'ble Supreme Court of India in **Rajendra Diwan's case** (cited supra) while considering the validity of Section 13 (2) of the Chhattisgarh Rent Control Act, 2011 which provided for an appeal to the Hon'ble Supreme Court of India as against the Judgment of the Rent Control Tribunal, held that Entry 18 of the State List enables the State Legislature to enact the said law. It is essential to extract the relevant paragraph Nos.42, 46, 52 and 53 thereby viewing that the Chhattisgarh Rent Control Act, being traceable to Entry 18 of the State List. The said paragraphs are extracted hereunder for ready reference:-*

“42. Entry 18 of the State List enables the State Legislature to enact law with respect to land, including rights in and over land, land tenures including relation of landlord and tenant and the collection of rent. The State Legislature being clothed with power to enact law in respect of land tenures, including the relation of landlord and tenant and the collection of rent, it had legislative competence to enact the Rent Control Act, insofar as the same regulates the relationship of landlord and tenant and the collection of rent.

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46. On a conjoint reading of Article 323-B and Articles 245 and 246 of the Constitution of India with Entry 18 of the State List in the Seventh Schedule, there can be no doubt that the State Legislature was competent to enact law to provide for adjudication and trial of all disputes, complaints and offences relating to tenancy and rent, by a Tribunal.

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.....

52. Entry 18 of the State List only enables the State Legislature to legislate with regard to landlord-tenant relationship, collection of rents, etc. This Entry does not enable the State Legislature to circumvent Entry 65 of the State List or Entry 46 of the Concurrent List which enable the State Legislature to enact laws with respect to the jurisdiction and powers of Courts, except the Supreme Court, or to render otiose, Entry 77 of the Union List, which expressly confers law-making power in respect of the jurisdiction of the Supreme Court, exclusively to Parliament.

53. Entry 18 of the State List, which only enables the State Legislature to legislate with regard to land, land tenures, landlord-tenant relationship, collection of rents, etc. does not enable the State Legislature to enact law conferring appellate jurisdiction to the Supreme Court in respect of orders passed by an Appellate Rent Control Tribunal, constituted under a State law.”

*11.7 The said Judgment of the Constitution Bench of the Hon'ble Supreme Court of India was delivered on 10.12.2019. However, both the Constitution Bench Judgments in **Indu Bhushan Bose's case** (cited supra) as well as **Ashoka Marketing Ltd.'s case** (cited supra) were not brought to the notice of the Hon'ble Supreme Court of India and was neither referred to nor taken into consideration in deciding the **Rajendra Diwan's case** (cited supra).*

11.8. It can be seen that the question of whether these enactments relating to Buildings would fall under Entry 18 or Entries 6,7,13 of the Concurrent list was not a question that was considered and answered in **Rajendra Diwan**. The Constitution Bench of the Hon'ble Supreme Court of India in the case of **Shah Faesal and Ors. Vs. Union of India and Anr. (2020) 4 SCC 1** restated the purpose and importance of the law of precedents and elucidated the nature of a binding precedent. Paragraph 25 needs to be extracted :

“25. In this line, further enquiry requires us to examine, to what extent does a ruling of coordinate Bench bind the subsequent Bench. A judgment of this Court can be distinguished into two parts : ratio decidendi and the obiter dictum. The ratio is the basic essence of the judgment, and the same must be understood in the context of the relevant facts of the case. The principal difference between the ratio of a case, and the obiter, has been elucidated by a three-Judge Bench decision of this Court in *Union of India v. Dhanwanti Devi* [*Union of India v. Dhanwanti Devi*, (1996) 6 SCC 44] wherein this Court held that : (SCC pp. 51-52, para 9)

“9. ... It is not everything said by a 33 (2020) 4 SCC 1 Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. ... A decision is only an authority for what it actually decides. ... The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution.”

(emphasis supplied)

11.9 However, we must hasten to add that as far as the High Courts are concerned, even the obiter and observations of the Hon'ble Supreme Court of India would also be binding. It is essential to extract the relevant portion in paragraph No.11 of the Judgment of the Hon'ble Supreme Court of India in **Peerless General Finance & Investment Co. Ltd. v. Commissioner of Income Tax, (2020) 18 SCC 625:-**

“11. It is, therefore, incorrect to state, as has been stated by the High Court, that the decision in *Peerless General Finance & Investment Co. Ltd.* [*Peerless General Finance & Investment Co. Ltd. v. RBI*, (1992) 2 SCC 343 : (1992) 75 Comp Case 12] must be read as not having laid down any absolute proposition of law that all receipts of 34 (2020) 18 SCC 625 subscription at the hands of the assessee for these years must be treated as capital receipts. We reiterate that though the Court's focus was not directly on this, yet, a pronouncement by this Court, even if it cannot be strictly called the ratio decidendi of the judgment, would certainly be binding on the High Court.....”

(emphasis supplied)

11.10. When the High Court is faced with situations where there are conflicting views in respect of the judgments of the Hon'ble Supreme Court of India of equal Bench strength, the course to be adopted by the

*High Court is no longer res integra. A Constitution Bench of the Hon'ble Supreme Court of India in **National Insurance Co. Ltd. v. Pranay Sethi and others**, (2017) 16 SCC 680, more specifically, in paragraphs 15 to 19 held as under:*

“15. Presently, we may refer to certain decisions which deal with the concept of binding precedent.

16. In State of Bihar v. Kalika Kuer [State of Bihar v. Kalika Kuer, (2003) 5 SCC 448], it has been held : (SCC p.454, para 10)

“10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ...” The Court has further ruled : (SCC p. 454, para 10)

“10. ... Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits.”

17. In G.L. Batra v. State of Haryana [G.L. Batra v. State of Haryana, (2014) 13 SCC 759 : (2015) 3 SCC (L&S) 575], the Court has accepted the said principle on the basis of judgments of this Court rendered in Union of India v. Godfrey Philips India Ltd. [Union of India v. Godfrey Philips India Ltd., (1985) 4 SCC 369 :1986 SCC (Tax) 11], Sundarjas Kanyalal Bhatija v. Collector, Thane [Sundarjas Kanyalal Bhatija v. Collector, Thane, (1989) 3 SCC 396] and Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel [Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel, AIR 1968 SC 372]. It may be noted here that the Constitution Bench in Madras Bar Assn. v. Union of India [Madras Bar Assn. v. Union of India, (2015) 8 SCC 583] has clearly stated that the prior Constitution Bench judgment in Union of India v. Madras Bar Assn. [Union of India v. Madras Bar Assn., (2010) 11 SCC 1] is a binding precedent. Be it clarified, the issues that were put to rest in the earlier Constitution Bench judgment were treated as precedents by the later Constitution Bench.

18. In this regard, we may refer to a passage from Jaisri Sahu v. Rajdewan Dubey [Jaisri Sahu v. Rajdewan Dubey, AIR 1962 SC 83] : (AIR p. 88, para 10)

“10. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision [Dasrath Singh v. Damri Singh, 1925 SCC OnLine Pat 242 : AIR 1927 Pat 219] given by a Bench is not brought to the notice of a Bench [Ram Asre Singh v. Ambica Lal, AIR 1929 Pat 216] hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be

followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in Gundavarupu Seshamma v. Kornepati Venkata Narasimharao [Gundavarupu Seshamma v. Kornepati Venkata Narasimharao, 1939 SCC OnLine Mad 367 : ILR 1940 Mad 454] that the decision of a Court of Appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England, 3rd Edn., Vol. 22, Para 1687, pp. 799-800:

‘1687. ... the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.’

In Katragadda Virayya v. Katragadda Venkata Subbayya [Katragadda Virayya v. Katragadda Venkata Subbayya, 1955 SCC OnLine AP 34 : AIR 1955 AP 215] it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in D.D. Bilimoria v. Central Bank of India [D.D. Bilimoria v. Central Bank of India, 1943 SCC OnLine MP 97 : AIR 1943 Nag 340]. The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court.”

19. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforesaid pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline.”

*11.11 The Hon'ble Supreme Court of India, in the latest judgment of the **Union Territory of Ladakh and others Vs. Jammu & Kashmir National Conference and another**, 2023 SCC OnLine SC 1140, had reiterated the same position and it is essential to extract paragraph 35, which reads as follows:*

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also

not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.

(emphasis supplied)

*11.12 Thus the High Courts have to carefully consider the facts and circumstances of the case and follow the view taken by the earlier Bench. Upon considering the instant situation where we are called upon to consider the source of legislative power, we deem it appropriate to follow the dictum laid down in **Ashoka Marketing's case** (cited Supra).*

*11.13. We are further enjoined to take such a view as the recent three-judge Bench of the Hon'ble Supreme Court of India in **Ram Krishan Grover's case** (cited supra) and in paragraph No.28 reiterated the position taken in **Ashoka Marketing's case** (cited supra) that the powers would traceable only to Entries 6, 7 and 13 of the Concurrent List and the expression 'land' in Entry 18 cannot be read to mean the building and housing within its ambit and the relevant paragraph No.28 is extracted as under:-*

“28. In Accountant & Secretarial Services (P) Ltd. v. Union of India [Accountant & Secretarial Services (P) Ltd. v. Union of India, (1988) 4 SCC 324] , this Court had examined the question of repugnancy and interplay between the Central enactment viz. the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 based on the pattern of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 and the West Bengal Premises Tenancy Act, 1956 and the question which of these enactments would prevail. The Court had interpreted Entries 3, 32, 43 and 44 of List I, Entry 18 of List II and Entries 5, 6 and 7 of the List III and the corresponding entries in the Government of India Act, 1935 to hold that all the three legislations were passed in exercise of powers conferred with respect to matters contained in the Concurrent List. In view of the repugnancy and conflict between the Central enactment on one hand and the State law on the other, in terms of Article 254, the Central enactment shall prevail. Further, notwithstanding the earlier precedents, the Court had examined the question of the relevant entry applicable to the tenancy legislation and rejected the contention that Entry 18 of List II should be interpreted as encompassing within its ambit legislation on the relationship of landlord and tenant in regard to housing and buildings. Setting out several reasons it was observed that the power to legislate in respect of tenanted premises would fall within the ambit and scope of Entries 6, 7 and 13 of the Concurrent List and would not be referable to Entry 18 of List II. The expression “land” in Entry 18 of List II should be given as wide a construction as possible, but has to be read with the relevant entries in other Lists to give meaning and content to all of them. Inclusion of buildings and housing in the Concurrent List is appropriate and to place buildings and housing within the ambit of the expression “land” in Entry 18 of List II would denude other entries in Lists I and III concerning transfer of property, devolution and succession of land and buildings, etc. of their vigour and would render them otiose.”

11.14. Thus, we answer the question that the legislative power of the state in enacting the impugned legislation, in pith and substance, is traceable to Entries 6,7 and 13 of List-III of the Seventh Schedule of the Constitution of India.”

47. On the issue of repugnance, similar challenge was negated by the Madras High Court on the following reasoning:

“12.5. Thus, it can be seen that to be repugnant, any one of the three tests stipulated should be satisfied and efforts should be made to harmonise the construction to ensure the operation of both the statutes and only if the primary effort fails, declaring the law as being repugnant would arise.

12.6. Thus, it can be seen that to hold the State Legislation as repugnant to Central Legislation,

(i) The legislative power of both the legislations in pith and substance should be traceable to the Entries in the Concurrent List III of the Seventh Schedule of the Constitution of India;

(ii) Repugnancy shall be determined by applying the three tests as encapsulated in **Forum for People’s Collective Efforts** (Cited Supra);

(iii) There must be irreconcilable conflict so that it is impracticable to implement both the legislations and the primary approach of the Court should be to reconcile and harmonise;

(iv) If there is the assent of the President of India, the State Law would prevail in respect of the application to the particular state;

(v) In the absence of the assent of the Hon'ble President of India, to the extent it is repugnant, the State Legislation would be void.

13...

14...

14.2 Thus, it can be seen that if one were to advert to the first test of absolute or irreconcilable conflict and inconsistency, it can be seen that there is no conflict as far as the definition of a lease is concerned. Section 106 applies only in the absence of a contract or local law. As regards the rights and liabilities mentioned under Section 108, if the rights and liabilities of the lessor and lessee prescribed are compared with those of the rights and liabilities which are prescribed by the impugned enactment, it cannot be said that they are irreconcilable or inconsistent. There are minor variations between the two enactments as to the rights and liabilities of the landlord and tenant.

14.3 Similarly, a perusal of the other provisions regarding the determination of lease, forfeiture, surrender, holding over etc., it can be seen that both the legislations are not at all at loggerheads. The variations in the procedure are only to provide a speedy remedy to both sides. Much emphasis is made to Section 107 of the Act, whereby it is argued that there can be oral leases also upto the period of one year, whereas, Section 4 makes it mandatory, but the same should be by a

written agreement. In our opinion, Sections 4 and 4A have to be read purposively. The agreements have to be presented before the authority to have a record of tenancy for the purpose of providing speedy remedy. Unless it is in writing, it cannot be presented before the authority. The impugned enactment purports to relate to tenancies and provides for remedies for both the tenants and the landlords in respect of disputes. Even under Section 107, leases of less than a year can also be made as a registered instrument and thus, it can be seen that the impugned enactment only restricts the rights of the landlords and tenants, in respect of the tenancies to which the Act applies. Section 107 of the Transfer of Property Act deals with the registration or otherwise under the Registration Act, 1908. Whereas the 'the agreement in writing' and 'registration' contemplated under the impugned enactment is before the Rent Authority and therefore, this provision is only in addition to and not in derogation of Section 107 and thus, we see no irreconcilable conflict between the two. The other variations as to the nature of remedy, and mode of determination of lease also fall in the same line of reasoning and therefore, upon application of the first test of direct conflict, we do not see any repugnancy.

14.4 The second situation of the parliamentary legislation occupying the whole field also does not arise as we have already quoted the phrase with which Sections 106 and 108 etc., start, which specifically makes the provisions itself subject to written contract which is otherwise or a local law. Therefore, it is clear that the Central legislation that does not intend to occupy the whole field. Now, coming to the third test of repugnancy whether the field covered by the State Legislation is identical and overlaps with the Central Legislation is concerned, the Transfer of Property Act applies to leases in general and lays down the substantial law which would govern the rights of parties in the absence of a written contract. The entire area of operation of the impugned legislation is to enforce the contractual regime/written contract between the landlords and tenants. The Central Legislation does not prescribe any procedural remedy whereas the primary thrust or field of occupation of the impugned legislation is to provide remedies to the aggrieved parties.

14.5 A perusal of Section 34 of the impugned enactment, clearly stipulates that the jurisdiction of the Rent Control Court will only be limited to the tenancy agreement submitted as per First Schedule and the question of title and ownership of premises will be beyond its jurisdiction. Similarly, under Section 40, the jurisdiction of the Civil Court is barred in respect of the matters which fall within the Rent Court. Thus, there is no overlap as to the field of operation. Thus, there is no conflict even when applying the third test.

14.6 Section 34 (2) of the impugned enactment expressly provides that in deciding applications relating to tenancies and premises, the Rent Court should give due regard to the provisions of the Transfer of Property Act, Indian Contract Act or any other substantive law, applicable to such matter in the same manner as if the matter is before the Civil Court. Thus, it can be seen that the substantive law as contained in Chapter – V of the Transfer of Property Act would still be applicable. The majority of the provisions, under the impugned enactment, relate to the procedure of registering the agreement with the Rent Authority, collection of rent, provisions for depositing rent into Court, providing essential mandates and for getting vacant possession etc. Therefore, on closer scrutiny, none of the provisions of the impugned enactment overlap or supplants

the Transfer of Property Act. The conflict that is pointed out is superficial and on a harmonious construction, it can be ensured that both statutes can be operated and can co-exist. There is no need to violate any of the provisions of the Transfer of Property Act to implement the impugned enactment. Therefore, we hold that the provisions of the impugned enactment are not repugnant to that of the provisions of the Transfer of Property Act.”

(emphasis supplied)

48. That decision of the Madras High Court is described to have attained finality upon dismissal of **Special Leave to Appeal No.22844-22846/2024 (TMT. Manju Purohit and others Vs. State of Tamil Nadu and others)** decided on 27.09.2024.

49. Sri Sudeep Harkauli, learned counsel also appearing on behalf of the landlords, has first adopted the submissions advanced by Sri Ashish Kumar Singh, learned Senior Advocate. In addition, he would submit, the provisions of Sections 8, 9 and 10 of the Impugned Act, apply at different stages and in different circumstances. While, Section 8 provides for rent agreement to be entered between the parties, upon enforcement of the Act, Section 9 provides for rent revision. Those are wholly transitory provisions. On the other hand, Section 10 provides for determination of rent. To the extent, the legislature has clearly provided for the manner and the circumstances, in which each of these provisions may be applied, there is no room to borrow or read into the provisions of Section 10 of the Act - the scheme of either Section 8 or Section 9, or both. Those transitory provisions have no applicability to the proceedings under Section 10 of the Act. To the extent, market value is determinable on the strength of evidence that may be led by the parties, there is no inherent error and there is no prejudice caused to the petitioners upon application of the provisions of Section 10 of the Act.

50. The rival submissions advanced give rise to the following legal issues:

- (i). Whether the later decision of the Supreme Court in **Rajendra Diwan (supra)** is consistent to the earlier decision of the Supreme Court in **Indu Bhushan Bose (supra)**, both being decisions of two benches of equal strength?
- (ii). If the decisions of the Supreme Court in **Indu Bhushan Bose (supra)** and **Rajendra Diwan (supra)** are in conflict to each other, which judgment is to be applied, in the present facts?
- (iii). Whether the Impugned Act is repugnant, to the substantive provisions of the TPA?
- (iv). Whether the Impugned Act is repugnant, to the procedural provisions of the SCC Act, read with Civil Laws Act?
- (v). Whether, even otherwise, on the own test of Article 246, the Impugned Act is a valid piece of legislation, in comparison to the provisions of the TPA and SCC Act, read with the Civil Laws Act?
- (vi). Whether, if the Impugned Act is declared *ultra vires*, the Repealed Act would revive?

51. Coming to the first issue, **Indu Bhushan Bose (supra)** is the earlier decision pronounced by the five-judge bench of the Supreme Court. In that, the Supreme Court had observed as below:

“We have felt considerable doubt whether the power of legislating on relationship between landlord and tenant in respect of house accommodation or buildings would appropriately fall in Entry 21 of List II of the Seventh Schedule to the Government of India Act, or in the corresponding Entry 18 of List II of the Seventh Schedule to the Constitution. These entries permit legislation in respect of land and explain the scope by equating it with rights in or over land, land tenures,

including the relation of landlord and tenant, and the collection of rents. It is to be noted that the relation of landlord and tenant is mentioned as being included in land tenures and the expression “land tenures” would not, in our opinion, appropriately cover tenancy of buildings or of house accommodation. That expression is only used with reference to relationship between landlord and tenant in respect of vacant lands. In fact, leases in respect of non-agricultural property are dealt within the Transfer of Property Act and would much more appropriately fall within the scope of Entry 8 of List III in the Seventh Schedule to the Government of India Act read with Entry 10 in the same list, or within the scope of Entry 6 of List III in the Seventh Schedule to the Constitution read with Entry 7 in the same list. Leases and all rights governed by leases, including the termination of leases and eviction from property leased, would be covered by the field of transfer of property and contracts relating thereto. However, it is not necessary for us to express any definite opinion in this case on this point because of our view that the relationship of landlord and tenant in respect of house accommodation situated in cantonment areas is clearly covered by the entries in List I.”

(emphasis supplied)

52. Then, after specifically considering the decisions of then existing Nagpur High Court in **Kewalchand Keshrimal vs. Dashrathlal Pyarelal**, 1955 SCC OnLine MP 41, the decisions of the Bombay High Court in **A.C. Patel vs. Vishwanath Chadda**, 1953 SCC Online Bom 60, Patna High Court in **Babu Jagtanand vs. Satyanarayanji**, 1960 SCC Online Pat 125 as also and **F.E. Darukhanawalla vs. Khemchand Lalchand**, 1953 SCC OnLine Bom 79 as also the decisions of the Rajasthan High Court in **Nawal Mal vs. Nathu Lal**, 1961 SCC Online Raj 27, the Supreme Court approved the view taken by the Calcutta High Court in **Rama Sundari Devi vs. Indu Bhushan Bose**, 1966 SCC OnLine Cal 59. Thus, the view of the Calcutta High Court in **Indu Bhushan Bose (supra)** and of the Rajasthan High Court in **Nawal Mal (supra)**, was affirmed. Thus, the power of the State legislature to legislate with respect to landlords and tenant regarding buildings, was found referable to Entry Nos. 6, 7 and 13 of List III of the Seventh Schedule to the Constitution of India and not to Entry No.18 of List II.

53. Doubt if any was resolved by a later two-judge bench decision of the Supreme Court in **Accountant And Secretarial Services**

(supra). In that decision, the Supreme Court clarified that in **Indu Bhushan Bose (supra)** it was held that the view of the two High Courts (Rajasthan and Calcutta) expressed the correct position in law. Thus, it reaffirmed that the legislation insofar as it pertains to leases of houses and buildings, is referable not to Entry No.18 of List II, but to Entry Nos. 6, 7 and 13 of List III of the Seventh Schedule to the Constitution of India.

54. On the other hand, it may be true that in the later five-judge bench decision of the Supreme Court in **Rajendra Diwan (supra)** certain observations exist (as have been extracted above), that indicate otherwise. In that case as well, an issue had arisen under the new Rent Control Act i.e. Chattisgarh Rent Control Act, 2011. However, the exact question that had fallen for consideration of the Supreme Court was framed (by the Supreme Court), as below:

“The question which requires to be determined by this Bench is, whether Section 13(2) of the Rent Control Act is ultra vires the Constitution of India, by reason of lack of legislative competence of the Chhattisgarh State Legislature to enact the provision. ”

55. Section 13 (2) of the Chattisgarh Rent Control Act, read as below:

2.Section 13 of the Rent Control Act provides:

“13. (1) Notwithstanding anything to the contrary contained in this Act, a landlord and/or tenant aggrieved by any order of the Rent Controller shall have the right to appeal in the prescribed manner within the prescribed time to the Rent Control Tribunal.

(2) Appeal against an order of the Rent Control Tribunal shall lie with the Supreme Court.”

56. No other provision of the Chattisgarh Rent Control Act, 2011 was under challenge. Specifically, the validity of that State legislation was not under challenge, as here. In fact that issue arose only upon the appeal being filed to the Supreme Court against an order passed by the Tribunal constituted under the Chattisgarh Rent Control Act, 2011. On such appeal filed, the

Supreme Court expressed serious doubts as to its maintainability. In that context, an issue arose as to the validity of Section 13 (2) of the Chattisgarh Rent Control Act, 2011, was tested.

57. In the context of Entry No.77 of List I, Entry No.18 List II and Entry No.46 List III of the Seventh Schedule to the Constitution of India, and further specifically in the context of Article 246 of the Constitution of India, it was reasoned that the State Legislature did not have any power to legislate with respect to jurisdiction of the Supreme Court. That legislative competence fell wholly in the exclusive plenary jurisdiction of the Parliament. Yet, discussion exists, as has been extracted above - indicating that Entry No.18 of List II of the Seventh Schedule to the Constitution of India creates legislative competence with State legislatures to legislate laws with respect to land including rights in relation to landlord and tenants to collect of rent.

58. That discussion appears to exist, not in the context of the legislative competence of the State legislatures to legislate with respect to “transfer of property other than agricultural land”, created or contemplated under Entry No.6 of List III of the Seventh Schedule to the Constitution of India, but in the context of Article 323B of the Constitution of India. That provision provides for creation of Tribunals by legislatures. Under the Constitutional scheme, the power of a legislature to constitute a Tribunal for the purpose of adjudication of a dispute, may only relate to adjudication of such disputes as may with respect to such subject matter that fall within the respective legislative field/competence of each legislature. The Constitution leaves no manner of doubt - that a State legislature may only constitute such Tribunal, to adjudicate disputes as may arise under the laws that it may be competent to legislate upon, under the Constitutional scheme.

59. Thus, the consideration offered by the Supreme Court in **Rajendra Diwan (supra)** with respect to Entry No.18 of List II of

the Seventh Schedule of the Constitution of India exists, not to deal with the submission that the State legislatures are competent to legislate laws in the field, “transfer of Property other than agricultural land”. Rather, that discussion appears in the context of the competence of the State legislatures, to legislatively create/affect the jurisdiction the Supreme Court. In that, submissions may have been advanced that State legislature of Chattisgarh was competent to create/enlarge the jurisdiction of the Supreme Court to hear appeals directly from the orders of the Tribunal created under the Chattisgarh Rent Control Act, enacted by the State Legislature of that State. That submission has been negated on the own strength to Entry No.77 of List I of the Seventh Schedule to the Constitution of India.

60. Having taken that line of reasoning, the Supreme Court has found Section 13 (2) of the Chattisgarh Rent Control Act, 2011 to be *ultra vires* Article 246 of the Constitution of India. The exclusive legislative competence of the Parliament to frame laws with respect to subject/field of legislation falling under any of the Entries of List I of the Seventh Schedule of the Constitution of India, has been recognized and applied.

61. The issue of repugnancy between the laws made by the Parliament and the State legislature, on the own test of Article 254 of the Constitution of India, neither arose before the Supreme Court, nor it was considered, nor there is any observation made in that context. Entry 6 of List III of Seventh Schedule to the Constitution of India was not considered and the issue of repugnancy of laws made with reference to that Entry was also not considered. Therefore, it does not appear to us that there is any direct conflict in the two decisions of co-equal benches of the Supreme Court in **Indu Bhushan Bose (supra)** and **Rajendra Diwan (supra)**. To conclude, while State legislatures may have legislative competence to frame laws with respect to agricultural

lands and rights in or over such lands, including land tenures, collection of rents, transfers and alienation etc., the legislative competence to frame laws governing the transfer of property other than agricultural land primarily arises under Entry 6 List III of the Seventh Schedule to the Constitution of India.

62. In the above context, we may note that the law of precedent is clear. A judgment or the ratio of a judgment may be read and applied only for the proposition or issue that it truly decides. In that while reading the ration of a decision, it must be clearly borne in mind - what was the dispute dealt with ?

63. In **Quinn vs. Leathem (1991) A.C. 495**, the Lord Macnaghten has observed as below:

“Now, before discussing the case of Allen v. Flood, (1898) A.C. 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all. My Lords, I think the application of these two propositions renders the decision of this case perfectly plain, notwithstanding the decision of the case of Allen v. Flood, (1898) A.C. 1.”

(emphasis supplied)

64. Then, in **State of Orissa vs. Sudhansu Sekhar Misra and others, 1967 SCC OnLine SC 17**, five-judge bench of the Supreme Court applied that principle laid down in **Quinn (supra)**. It added as below:

“It is not a profitable task to extract a sentence here and there from a judgment and to build upon it.”

(emphasis supplied)

65. Then, in **Mumbai Kamgar Sabha vs. Abdulbhai Faizullabhai, (1976) 3 SCC 832**, a two-judge bench of the Supreme Court expressed the similar view as below:

“38. It is trite, going by Anglophonic principles, that a ruling of a superior court is binding law. It is not of scriptural sanctity but is an of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decision, exalting the doctrine of precedents into a prison-house of bigotry; regardless of varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting those matters which may lurk in the record. Whatever be the position of subordinate courts' casual observations, generalisations and sub silentio determinations must be judiciously read by courts of coordinate jurisdiction and, so viewed, we are able to discern no impediment in reading Ghewar Chand as confined to profit-bonus, leaving room for non-statutory play of customary bonus.”

(emphasis supplied)

66. Also, in **Bachan Singh vs. State of Punjab, (1979) 3 SCC 727**, referring to Halsbury's Laws of England, it was further observed as below:

“Halsbury's Laws of England (3rd Ed. Vol. 22 at p. 796) explains what ratio decidendi is. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that is unnecessary for the purpose in hand have no binding authority on another court, though they may have some merely persuasive efficacy. Decisions upon matters of fact are not binding on any other court. This Court has held that precedents which enunciate rules of law form the foundation of administration of justice under our system. (Tribhuvandas v. Ratilal [AIR 1968 SC 372 : 70 Bom LR 73]). It has also been held in Amritsar Municipality v. Hazara Singh [(1975) 1 SCC 794 : 1975 SCC (Cri) 354 : AIR 1975 sc 1087].”

(emphasis supplied)

67. We may also note, in **CIT vs. Sun Engineering Works (P) Ltd., (1992) 4 SCC 363** that well established rule was restated as below:

“It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In Madhav Rao Scindia v. Union of India [(1971) 1 SCC 85 : (1971) 3 SCR 9] this Court cautioned:

“It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as

containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.”

(emphasis supplied)

68. In view of the above, the true ratio in **Rajendra Diwan (supra)** does not run contrary to **Indu Bhushan Bose (supra)**. Both decisions have been rendered on different issues. Neither seeks to decide or deal with the issue dealt with or decided in the other. To conclude, there is no inconsistency or conflict of opinion in those two decisions of the Supreme Court.

69. On that opinion, legal issue No. (ii) framed by us appears to have been rendered academic. At the same time, in view of the extensive submissions advanced, we do not propose to leave the issue unanswered.

70. Then in **B. Yashodabai (supra)**, the Supreme Court appears to have reasoned-once the decision of the Supreme court pre-existed, that may be followed. However, in that case there was no issue of the decision of the Supreme Court having been delivered on a different issue. Where the issue is exactly the same, obviously a different test may apply.

71. In **Union of India vs. Dhanwanti Devi, (1996) 6 SCC 44**, the Supreme Court observed as below:

“9. ... It is not everything said by a 33 (2020) 4 SCC 1 Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. ... A decision is only an authority for what it actually decides. ... The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution.”

(emphasis supplied)

72. That decision was reiterated and re-affirmed in **Union Territory of Ladakh and Others vs. Jammu & Kashmir National Conference and Another, 2023 SCC OnLine SC 1140**. Therein, it has been observed as below:

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.

(emphasis supplied)

73. The upshot of the above discussion is, to the extent **Indu Bhushan Bose (supra)** is a decision directly on the issue of legislative competence of Parliament and the State legislature and further to the extent it affirmatively lays down that the legislative competence is drawn on the strength of Entry 6 of List III of the Seventh Schedule to the Constitution of India and not to Entry 18 of List II of the Seventh Schedule to the Constitution of India and further to the extent **Rajendra Diwan (supra)** does not lay down any contrary law, the earlier decision of the Supreme Court is the only direct decision on the issue. Therefore, it is the only law to be applied. Issue No.(i) is decided, accordingly.

74. Therefore, issue Nos. (iii) and (iv) require careful consideration. By way of first principle, it has to be recognised that the Impugned Act or particular provisions may survive the challenge if it or such provisions are not repugnant to the TPA and the SCC Act read with the Civil Laws Act. That principle emerges on the own strength of Article 254 of the Constitution of India. Since in our opinion, the Impugned Act is a legislation traceable or referable to List III of the Seventh Schedule to the Constitution of India, there is no room to entertain any doubt as to the applicability of that principle. Thus, the first requirement to test repugnancy in terms of the principle laid down in **Kaisar-I-Hind (supra)**, is satisfied.

75. As to the third and fourth requirement laid down under that decision, admittedly same are not satisfied. Consequently, the vital test to be applied is of repugnancy. What would be repugnancy has been squarely dealt with and answered by the Supreme Court in **Hoechst Pharmaceuticals (supra)**. That decision lays down - ordinarily repugnancy may arise when there is impossibility to offer simultaneous obedience to the two laws, in issue.

76. In **Deep Chand vs. State of U.P., AIR 1959 SC 648**, it was discussed-three types of repugnancy may arise, namely, repugnancy in actual terms; repugnancy for reason of Commonwealth law (here Parliamentary law being a complete or exhaustive code), and whether both Commonwealth/Parliamentary law, seeks to exercise powers over the same subject matter. While the first and second types of repugnancy considered in **Deep Chand (supra)** may not be cited in the present facts, the third type of repugnancy may be examined closely. Then, in **State of Kerala vs. Mar Appraem Kuri Co. Ltd., (2012) 7 SCC 106**, the Supreme Court considered two types of repugnancy. First, cases of legislative overlap and conflict, and second, cases of direct conflict.

77. Before we may proceed with the discussion further, it may be useful to extract and compare the provisions of the TPA with the provisions of the impugned Act and it would also be useful to compare the provisions of the impugned Act with the provisions of the SCC Act and the Civil Laws Act.

78. It is seen, under Chapter V of the TPA, Section 105 defines lease as right to enjoy a property for a specified time, either express or implied, or in perpetuity. Section 106 provides, in absence of any contract or legal law or usage to the contrary, lease of immovable property (including the lease for residential and commercial purpose) shall be deemed to be a lease from

month to month, terminable either by lessor or lessee against 15 days notice. Section 107 provides for lease of an immovable property from year to year exceeding one year, etc. to be made through a registered instrument only. Section 108 provides for rights and liabilities of lessor and lessee. Thus, a lessor is bound to disclose to the lessee any material defect in the property; put him in possession of the property; to be bound to allow the lessee to hold the property, limited by the lease without interruption, subject to rent payments. Also, it provides for the rights and liability of the lessee. In that, the lessee is enabled (in specified circumstances) to carry out repairs and deduct the expense for the same, with interest, from the rent payment. He may also transfer absolutely or by way of mortgage a lease in whole or any part of his interest in the property. There are other rights and liabilities as well. Then, Section 111 provides for determination of lease either by efflux of time or on the happening of some event or termination of interest of the lessor in the property, etc. Further provisions exist as to waiver of forfeiture and waiver of notice to quit as also effect of holding over.

79. That scheme, so typical of the TPA, is foreign to the Impugned Act. Lease here is described as a tenancy agreement that is not required to be registered. Yet, it may be for more than one year. Then, by virtue of Section 4 of the Impugned Act, no such lease may be executed except by an agreement in writing that has to be informed to the rent authority. To the extent, all rent agreements must be executed in writing, irrespective of their term and further to the extent they are not required to be necessarily registered, irrespective of the duration of the lease, a clear repugnance arises with the provisions of the pre-existing TPA. Then, in the event of a failure to furnish joint intimation, the landlord and the tenant may separately inform the Rent Authority about the execution of such agreement. Further, specific provisions have been made with respect to pre-existing lease. Under Section 5(3) of the Impugned

Act, even where tenancy with respect to fixed term may come to an end and it may not have been renewed, the tenant/lesser may continue against payment of enhanced rent in terms of Section 23 of the Act. The proviso thereto further enables the tenant to continue in possession of the tenancy, notwithstanding other circumstances, for a period of one month after end of *force majeure* circumstance. Then, Section 6 creates rights and obligations in the successor of the lessee and lessor. Also, Section 7 places a restriction on subletting, except against supplementary agreement.

80. As to the rent payable, Section 8 allows that revision of the same in terms of Section 9 and for its determination in terms of Section 10. First, revision may arise in terms of the tenancy agreement as may also the case under TPA, but then provisions exist under the Impugned Act to provide for upward revision of the rent at specified rates. Also, Section 10 provides for determination of revised rent in the case of the dispute between the landlord and the tenant i.e. lessor and lessee that is completely in conflict with the provisions of TPA. Moreover, Section 11 provides for statutory recognized security of payment deposit. It also seeks to regulate the same by providing the maximum amount that may be received by way of security deposit.

81. On the procedural aspects, the Impugned Act contains a complete provision with respect to resolution of disputes by the Rent Authority. Read with Section 38 and 42 of the Impugned Act, a special forum has been created contrary to the procedure prescribed under the SCC Act read with the Civil Laws Act. It also contemplates negotiable disputes and creates a Rent Tribunal, as well. That too creates a clear repugnance with the SCC Act read with the Civil Laws Act.

82. To that extent, it can never be denied that in absence of the Impugned Act and further assuming that the Repealed Act also

did not exist and there was no other law made by the State Legislature to govern leases of immovable properties (other than agricultural lands), the TPA would be the governing law. With respect to all leases that may be executed for such immovable properties, the rights and liabilities of the lessors and lessees would remain governed by the provisions of the TPA.

83. The only legislative entry to which the Impugned Act and the Repealed Act may relate or from which they may be born is Entry 6 in the List III of the Seventh Schedule to the Constitution of India. Therefore, the provisions of the Repealed Act must not be repugnant to the TPA.

84. Seen in that light, it is absolutely true that the Impugned Act does not seek to replace the TPA in its entirety in the State of U.P., on the contrary, it applies to a species of transfer of property by way of lease/rent deed with respect to non-agricultural properties. Thus, “the premises” that may form the subject matter of a tenancy agreement may only be a building or part of a building i.e. intended to be let own rent for the purpose of residence or for commercial or educational use, but not for industrial use. The extensive definition of “premises” is given under Section 2(c) of the Impugned Act. The “Tenancy Agreement” as defined under Section 2(i) is a written agreement executed between a landlord and a tenant for the purpose of letting the premises in consideration of rent.

85. Further, under Chapter II, pertaining to tenancy, the Impugned Act provides that after the commencement of that Act, no person shall take on rent any premises except by an agreement in writing. By way of proviso to Section 4(1) of the Impugned Act and under Section 4(2), it is provided, where a landlord and tenant failed to jointly inform the execution of such tenancy agreement, they may nevertheless inform the Rent Authority, individually.

86. Even where such tenancy may have been created before the commencement of the Impugned Act, the landlord and the tenant are enjoined to discharge similar obligations by entering into a fresh agreement, if no agreement had existed before.

87. Then, Section 4(7) further provides that the specifics in sub-Sections (1), (2) and (3) of that Section shall constitute conclusive proof of facts relating to tenancy and matters connected therewith.

88. Then, by virtue of Chapter III pertaining to rent, a complete scheme exists to ascertain rent payable, or rent revised, or rent determined. For ready reference, provisions of Sections 8, 9 and 10 of the Impugned Act read as below:

“8. Rent payable-*The rent payable in respect of a premises shall be the rent agreed to between the landlord and the tenant in accordance with the terms of the tenancy agreement or as revised under section 9 or determined under section 10.*

9. Revision of rent-*(1) The revision of rent between the landlord and the tenant shall be in accordance with the terms of the tenancy agreement. (2) Where, after 'the commencement of tenancy, the landlord has entered into an agreement in writing with the tenant prior to the commencement of the work and has incurred expenditure for carrying out improvement, addition or structural alteration in the premises occupied by the tenant, which does not include repairs necessary to be carried out under section 15, the landlord may increase the rent of the premises by an amount as agreed to between the landlord and the tenant, and such increase in rent shall become effective from one month after the completion of such work.*

(3) Subject to any agreement in writing, where the premises have been let out before the commencement of this Act, the rent thereof shall be liable to be revised for a further period of two years from the commencement of this Act, according to the formula indicated below:-

(a) where the premises have been let out prior to 15-07-1972, it shall be deemed to have been let out on 15-07-1972;

(b) where the premises have been let out on or after 15-07-1972, the date for revision of rent shall be one year after the date of commencement of tenancy.

The rate of rent payable in above cases shall be liable to be increased at the rate of 5 per annum in case of residential accommodation and 7 per annum in case of non- residential premises, and the rate of increase of rent shall be compounded on an yearly basis. The amount of rent so arrived at shall again be liable to be increased at the aforesaid rates per annum in similar manner up to the commencement of this Act. Notwithstanding anything mentioned above, if rent of premises had been revised during continuance of tenancy after 15-07-1972, the formula of revision of rent mentioned above shall be applicable from the date of such revision of rent:

Provided that notwithstanding anything mentioned above, the revised rent payable as per formula indicated in aforesaid provision, shall be payable as below from the date of commencement of this Act:-
(i) in the first year, half of the rent so computed; and
(ii) in the second year, full amount of rent so computed.
(4) Notwithstanding anything contained in sub-section (1) of section 3 wherein any premises referred to, has been let out to a tenant, the landlord of such premises shall also be entitled for revision of rent in accordance with provisions of clause (3) and the relevant provisions of this Act shall apply to such cases.

(5) In the case of tenancy entered into before the commencement of this Act the landlord shall, by notice in writing to the tenant, demand the enhanced the rate of rent as specified under sub-section (3) and the rate of rent so enhanced shall be payable within 30 days of the service of notice. In such event the tenancy agreement shall be deemed to be amended and enhanced rate of rent shall be the rent payable under section 8:

Provided that if there was no tenancy agreement before the commencement of this Act, the landlord and the tenant may mutually agree to execute tenancy agreement for enhanced rate of rent failing which the rent authority shall determine the enhanced rent subject to the provisions of section 10.

(6) No arrears of aforesaid enhanced rent shall be payable or recoverable for the period prior to commencement of this Act.

10. Rent Authority to determine the revised rent in case of dispute-(1)
In case of any dispute between the landlord and the tenant regarding revision of Rent, the Rent Authority may, on an application made by the landlord or tenant, determine the revised rent and other charges payable by the tenant and also fix the date from which such revised rent becomes payable.

(2) In determining the rent to be revised, the Rent Authority may be guided by the prevailing market rent in the surrounding areas let out on rent.

(3) Once a determination under this section has been made, no application for fresh determination shall lie for a period of one year after the said determination. (4) The Rent Authority may determine provisional rent during the proceedings for revision of rent which shall be subject to final determination.”

89. Next, under Chapter IV of the Impugned Act, by virtue of Sections 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 rights and obligations of landlords and tenants, i.e., lessors and lessees, are clearly defined. As extracted above, those are materially different from the rights and obligations that the TPA contemplates, generally.

90. Amongst others, it prescribes not only for retention of the original tenancy agreement by both parties and for payment of rent against issuance of receipt, but in certain eventualities it also

provides for deposit of rent with the rent authority where the landlord refuses to accept such rent. Further, a specific clause for repair and maintenance of the property exists.

91. Primarily, it obligates both parties to keep the premises in good condition, while Section 16 obligates the tenant to look after the premises let out to him, and Section 17 authorizes the landlord or the property manager to enter the premises against prior notice.

92. Then, Section 18 provides for a property manager to be engaged by the landlord, while Section 19 enlists the duties of such property managers. Section 20 provides for restraint against withholding of essential supplies and services by a landlord.

93. Also, under Chapter V of the Impugned Act, specific provisions exist protecting the tenant, that is, lessees, and also for eviction and recovery of possession of the premises by the landlord, i.e., the lessors. Thus, under Section 21, a tenant may not be evicted during continuance of the tenancy agreement, unless otherwise agreed in writing.

94. At the same time, under Section 21(2), the rent authority may, on an application made by the landlord, make an order of eviction and recovery of possession of the premises on any one or more counts enumerated by Clauses (a) to (m). Those may include non-payment of rent; non-payment of other payable charges; parting with possession by the tenant without consent; continued misuse of the premises by the tenant; where eviction is required to carry out repair or construction or building or creation or demolition; where the premises or part thereof is required to carry out repair or construction as a consequence of change of land use by the competent authority; where the landlord has contracted to sell the property after written notice to the tenant to that effect; where structural changes have been made by the tenant without written consent of the landlord; subletting by the tenants; tenancy

having been determined by efflux of time, the tenant having no right of any non-members of his family to occupy the premises, and, cases where the tenant has substantially removed his effects and the premises are required for the landlord's own use and occupation.

95. By virtue of Section 22, the legal heirs of a deceased landlord may also seek eviction of the tenant if they require the premises for their own use.

96. Then, quite uniquely, Section 23 of the Act provides that the rent of the tenancy may be enhanced by way of penal rent after the expiry of the term of tenancy. As to repugnancy in substantive law, while the TPA provides the basic structure that may govern leases generally, when it comes to the impugned Act, it picks out the area of tenancy created for residential, commercial or educational use, excluding industrial use. To that extent, it is a special Act in comparison to the TPA. By itself, the existence of a special law may not give rise to repugnancy. To the extent, the provisions of the impugned Act replicate or provide further details of statutory law that may govern the species of leases that it seeks to cover, no repugnancy may be claimed on the mere enactment of such provisions. Thus, exclusion of tenancy agreements by itself may not create repugnancy, and the requirement to execute a tenancy agreement may not create repugnancy; the nuances offered with respect to exclusions of such agreements may also not be of such great value or relevance as to infer repugnancy as noted above. If the two Acts, that is, the general legislation/TPA and the special legislation/Impugned Act, can be given effect simultaneously, without avoidance of duty under either and without creating any conflict with the other, the issue of repugnancy may not arise.

97. However, when we look at the provisions for rent payable, covered under Chapter III of the Impugned Act, those appear to

create very different rights and liabilities than those created under the TPA. In short, there is absolutely no provision under the TPA as may allow a lessor to enhance lease rent outside the written terms that may have been agreed, before. Within the lease terms, parties may agree to the quantum, mode and manner of payment of lease rent. However, outside the clause/private law created by the parties themselves, no provision of law may exist to provide for revision or determination of the rent.

98. Then, under Chapter V of the Impugned Act, protections exist in favour of the tenant during the subsistence of the term of tenancy inasmuch as a tenant in whose favour tenancy agreement has been executed may not be evicted, except in the manner extracted above. For the reasons specified under sub-Section (2) of Section 21, new statutory grounds have been introduced to seek eviction over and above the ground that may be otherwise agreed upon by the parties under their private law i.e. the contract or the lease deed. To that extent, the Impugned Act does alter the general law. Even though parties may not have agreed while executing a lease deed, yet, by own force of law created by the Impugned Act, eviction proceedings may arise for varied reasons whether for non-payment of timely rent or to seek repair, re-construction etc. or for re-building after change of land use or failure to vacate, after issuance of notice in that regard or violations made without permission of the landlord or upon substantially removing effects or for self occupation.

99. Moreover the legal heirs of a deceased landlord have also been given statutory rights to seek eviction of a sitting tenant on ground of personal need. Wherever the tenant fails to vacate, he is visited with penal rent clause by way of a statutory provision. Those provisions, to our mind, conflict with the rights and liabilities or lessees and lessors as created under Chapter V of the TPA. Though that general law does contain 14 clauses [(d) to (e) under

Section 108 (B)] those are not clauses that give rise to any ground for eviction. Determination of lease is governed by Section 111 of the TPA. It speaks of efflux of time; fulfillment of condition; rights being getting vested in a third party; express surrender; implied surrender; forfeiture and expiration of needs to determine the lease. Those being the only modes to determine the lease, provisions of the Impugned Act, are not reconcilable with the same, on their own. To that extent, repugnancy exists.

100. Similarly, with respect to the procedural repugnancy, under the scheme of the SCC Act read with the Civil Laws Act, special forum came to be created for the purpose of adjudication of disputes. There is no room under those provisions of law to allow for Rent Authority to intervene and adjudicate disputes between lessors and lessees described as landlords and tenants under the Impugned Act. To the extent, on a conjoint reading of TPA alongwith SCC Act and the Civil Laws Act, there is no room to allow for an adjudicatory body such as the Rent Authority under the Impugned Act, to adjudicate disputes pertaining to payment of rent and eviction etc. Thus, the procedural repugnancy is even more pronounced.

101. The constitutional scheme to validate the Impugned Act through the route of Presidential assent contemplated under Article 254(2) of the Constitution of India, has not been resorted to. Undeniably, under the scheme of the Repealed Act, by virtue of special provisions contained therein both as to substantive law as also to procedural law, to give it live free, the Repealed Act could have been passed with prior Presidential assent. Here, there is none. Interestingly, under the Tamil Nadu Act, Section 33 read as under:

“33. Notwithstanding anything contained in any other law for the time being in force, in the areas to which this Act extends, only the Rent Court and no Civil Court shall have jurisdiction, except the jurisdiction of Rent Authority under section 39, to hear and decide the applications relating to

disputes between landlord and tenant and matters connected with and ancillary thereto covered under this Act:

Provided that the Rent Court shall, in deciding such applications relating to tenancies and premises, give due regard to the provisions of the Transfer of Property Act, 1882, the Indian Contract Act, 1872 or any other substantive law applicable to such matter in the same manner, in which such law would have been applied had the dispute been brought before a Civil Court by way of suit.

(emphasis supplied)

102. Considering the proviso to Section 33 of the Tamil Nadu Act, the Madras High Court observed as below :

"14.1 Chapter V of the Act deals with leases. Section 105 defines Wease. Section 106 lays down the duration of the lease, in the absence of a written contract or local usage. Section 106 starts with the phrase 'In the absence of a contract or a local law or usage to the contrary... Section 107 lays down how the leases are to be made. It states that a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent can be made only by a registered instrument. It further lays down that all other leases can be made only by a registered instrument or by an oral agreement which is accompanied by delivery of possession. Section 108 lays down the rights and responsibilities of the lessor and lessee. Section 108 also starts with the phrase 'In the absence of a contract or local usage to the contrary...'"

(emphasis supplied)

103. Here, to the contrary there is no provision of law under the Impugned Act as may be read *pari materia* to the proviso of Section 33 of the Tamil Nadu Act. On the contrary, Section 42 of the Impugned Act seeks to give it a complete overriding effect over all other law. That would include the TPA, SCC Act and the Civil Laws Act. For ready reference Section 42 of the Impugned Act reads as below :

"42. Overriding effect.-- *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law of the State of Uttar Pradesh for the time being in force."*

104. To the extent the Impugned Act seeks to override TPA as also the SCC Act read with Civil Laws Act, which laws are referable to List III of the Seventh Schedule to the Constitution of India, clearly that effect in law may arise only through the route of Presidential assent. In absence of that essential constitutional requirement being fulfilled, the Impugned Act to the extent it is

repugnant to the laws made by the Parliament must remain unenforceable.

105. In absence of any *pari materia* provision of the Impugned Act, that legislative intent cannot be attempted to be inferred in favour of TPA, as may allow us to avoid repugnancy, that otherwise arises.

106. Consequentially, the issue Nos. (iii) and (iv) are decided in favour of the petitioners. Specifically, provisions of Sections 8, 9 and 10 and provisions providing for eviction by order of Rent Authority of the Impugned Act are repugnant to the substantive law i.e. TPA. Also, Sections 38 and 42 of the Impugned Act, to the extent they seek to override the established procedure under the SCC Act read with Civil Laws Act, without prior Presidential Assent, are declared *ultra vires* the procedural law i.e. SCC Act and the Civil Laws Act. The decision of the Madras High Court in **Balaji (supra)**, is distinguishable, as discussed above. That decision is based on the strength of Section 33 of the Tamil Nadu Act. In doing that, we are conscious that the legislative action i.e. Impugned Act may first be attempted to be protected from the vice of being declared unconstitutional. At any rate, only such provisions of the Impugned Act may be declared *ultra vires* as may be directly conflicted with the constitutional scheme. Other provisions, though at variance with the pre-existing laws, here TPA, SCC Act and Civil Laws Act, may not be declared *ultra vires* to the extent they may not be creating direct repugnancy. In **R.M.D. Chamarbaugwalla vs. Union of India (1957) 1 SCC 650**, the Supreme Court observed as under:

“16. The doctrine of severability rests, as will presently be shown, on a presumed intention of the legislature that if a part of a statute turns out to be void, that should not affect the validity of the rest of it, and that that intention is to be ascertained from the terms of the statute. It is the true nature of the subject-matter of the legislation that is the determining factor, and while a classification made in the statute might go far to support a conclusion in favour of severability, the absence of it does not necessarily preclude it. It is a feature usual in latter-day legislation in America to enact a clause that the invalidity of any part

of the law shall not render the rest of it void, and it has been held that such a clause furnishes only prima facie evidence of severability, which must in the last resort be decided on an examination of the provisions of the statute. In discussing the effect of a severability clause, Brandies, J. observed in Dorchy v. State of Kansas [Dorchy v. State of Kansas, 1924 SCC OnLine US SC 61 : 68 L Ed 686 at p. 690 : 264 US 286 (1924)] that it “provides a rule of construction, which may sometimes aid in determining that intent. But it is an aid merely; not an inexorable command”. The weight to be attached to a classification of subjects made in the statute itself cannot, in our opinion, be greater than that of a severability clause. If the decision in State of Bombay v. F.N. Balsara [State of Bombay v. F.N. Balsara, 1951 SCC 860 : 1951 SCR 682] is examined in the light of the above discussion, it will be seen that while there is a reference in the judgment to the fact that medicinal and toilet preparations are treated separately by the legislature, that is followed by an independent finding that they are severable. In other words, the decision as to severability was reached on the separability in fact of the subjects dealt with by the legislation and the classification made in the rules merely furnished support to it.”

(emphasis supplied)

107. Thus, issue No. (v) as framed by us has been rendered academic. Suffice to note that the issue of repugnancy on the test of Article 246 of the Constitution of India would have arisen if it had been shown to us that the Impugned Act was a law enacted under List II of the Seventh Schedule to the Constitution of India. To the extent it is not and further to the extent the Impugned Act is a law framed under List III of the Seventh Schedule of the Constitution of India, the test of repugnancy on the strength of Article 246 of the Constitution of India does not survive for our consideration.

108. Coming to issue No. (vi), we are in agreement with the submission advanced by learned AAG that though the Impugned Act, in part (as discussed above), is *ultra vires*, it does not leave a vacuum. Section 46 had repealed the Repealed Act. Once the Impugned Act itself is declared *ultra vires*, the Repealed Act would spring back to life, of its own to the extent required. That is the plain effect caused by the decisions of the Supreme Court in **Property Owners Association (supra)** and **K. Shyam Sunder (supra)**.

109. The writ petitions succeed and are thus **allowed**, as above.

110. Accordingly, Sections 8, 9, 10, 38 and 42 of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act No. 16 of 2021), are declared *ultra vires*, from today. Consequently, to give effect to that declaration, all matters or proceedings that may have been conducted and concluded till the end of time today, may remain protected from the vice of *ultra vires*, if no challenge has been raised qua such proceedings, till date. By way of a corollary, proceedings that may have already been concluded under the Impugned Act without any challenge being raised to the validity of the provisions, including all rent agreements that may have been executed or rent that may have been revised or determined in accordance with the provisions of the Impugned Act, shall remain saved. Those revised terms and conditions shall govern the substantive rights of the respective parties in those cases. They shall remain enforceable in accordance with the provisions of the Repealed Act and TPA read with the SCC Act and the Civil Laws Act, as the case may be, with effect from tomorrow. The individual orders impugned in each writ petition, as described in the table contained in paragraph 2 of this order, are quashed.

111. No order as to costs.

(Swarupama Chaturvedi,J.) (Saumitra Dayal Singh,J.)

August 21, 2026

Anurag/Faraz