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RAVAL & CO.

v.

K. C. RAMACHANDRAN & ORS.

B

December 11, 1973

[A.N. RAY, C.J., H.R. KHANNA, K.K. MATHEW, A. ALAGIRISWAMI AND P.N. BHAGWATI, JJ.]

C *Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960). S. 4(1), 7—Definition of "landlord" and "tenant" under —Applicability to contractual tenancies and statutory tenancies—Fixation of fair rent—Landlord whether entitled to apply for fixation of fair rent during subsistence of contractual tenancy—Interpretation of statutes.*

Constitution of India, Art. 141—And precedents—General observations in Supreme Court decision—Binding nature of

D *Evidence Act, 1972. Sec. 92—Variation in permission of registered lease deed—Oral evidence regarding variation barred.*

On the tenants' appeal, the Full Bench of the Madras High Court held that the Act controls both contractual and statutory tenancies and it enables both landlords and tenants to seek the benefit of fixation of fair rent. Thereafter, the matter came up before a Single Judge of the High Court who applying the provisions of the Act to the facts of the case, held that the Act did not apply to the premises in question. The Division Bench reversed this decision. In the appeal by special E leave the tenants mainly contended that a landlord has no right to apply for the fixation of a fair rent at a figure higher than the contractual rent, where there was a subsisting contract of tenancy.

Dismissing the appeal,

HELD : (per majority—Mathew and Bhagwati, JJ. Contra)

F The present Act which replaces the 1949 Act adopts a completely new scheme of its own and provides for every contingency, i.e. in the relationship of landlord and tenant. The provisions of the Act show that the Madras Legislature deliberately proceeded on the basis that fair rent was to be fixed which was to be fair both to the landlords as well as to the tenants, and that only the poorer class of tenants needed protection. The assumption that the Act like all rent acts, is intended only for the protection of tenants is not warranted by the provisions of the Act. It is clear therefore, that the fair rent under the present Act is payable during the contract G period as well as after the expiry of the contract period. [636C—F]

The analysis of the Act shows that it has a scheme of its own and it is intended to provide a complete code in respect of both contractual tanancees. the definitions of the term "landlord" and "tenant" show that the Act applies to contractual tenancies as well as to cases of statutory tenants and their landlords. On some supposed general principles governing all Rent Acts it cannot be urgued that such fixation can only be for the benefit of the tenants when the Act clearly lays down that both landlords and tenants can apply for fixation of fair rent. A close reading of H the Act shows that the fair rent is fixed for the building and it is payable by whoever is the tenant whether a contractual tenant or statutory tenant. What is fixed is not the fair rent payable by the tenant or to the landlord who applies for fixation of fair rent but fair rent for the building something like an incident of the tenure regarding the building. [637F]

The general observations to the contrary in *Bhaiya Punjalal Bhagwanddin* v. *Dave Bhagwat Prabhuprasad* [1963] 3 S.C.R. 312 and *Manujendra* v. *Purendu Prosad* [1967] 1 S.C.R. 475, held *obiter*. A

Sri Brij Raj Krishna v. *S. K. Shaw and Bros.* [1951] S.C.R. 145, *Hem Chand* v. *Sham Devi*, I.L.R. [1955] Punj, 36, *R. Krishnamurthy* v. *Parthasarathy* A.I.R. 1949 Mad. 780, distinguished.

Abbashai's case [1964] 5 S.C.R. 157 and *Mangilal* v. *Sugarchand Rathi* [1964] 5 S.C.R. 239, referred to. B

Per Mathew and Bhagwati, JJ : Two basic considerations must guide our approach to the question whether a landlord can, during the subsistence of the contractual tenancy, apply for fixation of fair rent under section 4(1) of the Act. The first is that the agreed rent which is the result of contract between the parties must continue to bind them so long as the contract subsists, unless there is anything in the statute which expressly or by neccessary implication over-rides the contract. It is to counteract the injustice resulting from inequality in bargaining power and to bring about social or distributive justice that social legislation interferes with sanctity of contract. Ordinarily, we do not find and indeed it would be a strange, and rather incomprehensible phenomenon, that legislation intervenes to disturb the sanctity of contract for the benefit of a stronger party who does not need the protective hand of the legislature. Secondly the Act has been enacted *inter alia*, with the object of controlling rents of residential and non-residential buildings and preventing unreasonable eviction of tenants. Tamil Nadu Act 18 of 1960 is in its essential character as also in its object and purpose similar to what may conveniently be described rent control legislation, in other States, such as Maharashtra, Gujarat, West Bengal and Madhya Pradesh.The general purpose and intendment of rent control legislation and its positive thrust and emphasis on the protection of the tenant cannot be lost sight of when we are construing a similar legislation like the Tamil Nadu Act 18 of 1960. [642C] C D

Bhaiya Punjalal Bhagwanddin v. *Dave Bhagwatprasad Prabhuprasad* [1963] 3 S.C.R. 312, *Mangi Lal* v. *Sugarchand Rathi*, [1964] 5 S.C.R. 239, and *Manujendra* v. *Purendu Prosad* [1967] 1 S.C.R. 475, referred to. E

Having regard to the basic character of the statute as a rent control legislation and the scheme of its provisions and reading sec. 4(1) in its contextual setting and in the light of the other provisions of the statute, the conclusion is inescapable that the word "landlord" in sec. 4(1) is used in a limted sense and it does not include contractual landlord. The landlord does not have the right to apply for fixation of fair rent during the subsistence of the contractual tenancy. It is only when the contract of tenancy is lawfully determined that he becomes entitled to apply for fixation of fair rent, for it is only then that he can recover fair rent higher than the agreed rent from the statutory tenant, there being no contract of tenancy to bind him down to the agreed rent. [646G] E

(2) *Per* majority : General observations in earlier decisions of this Court should be confined to the facts of those case. Any general observation cannot apply in interpreting the provisions of an Act unless this Court has applied its mind to and analyied the provisions of that particular Act. Therefore, the observations in (1967) 1 S.C.R. 475, that rent acts are not ordinarily intended to interefere with contractual leases and are Acts for the protection of tenants and are consequently restrictive and not enabling conferring no new right but restricting the existing rights either under the contract or under the general law, should not be held to apply to all rent Acts irrespective of the scheme of those acts and their provisions. The present Act did not proceed on the basis that the legislation regarding rent control was only for the benefit of the tenants. It wanted the legislation to be fair both to the landlord and the tenant. [834B] G

(*Per* Mathew and Bhagwati,JJ). The meaning of the term 'landlord' must not be confined to that given in the definition or to its ordinary etymological meaning but must be understood in the context of the setting in which it occurs, and the scheme and object of the Act. The provisions of the Act, particularly of sec. 7, are clearly restrictive in character and not enabling provisions empowering the landlord to recover the fair rent where it is higher than the agreed rent. This is the only rational H

construction which can be placed on the relevant provisions of the Act relating to control of rent and such a construction is not only compelled by grammar and language but also accords with the broad general considerations in interpreting the rent control legislation. [646B]

Cog v. *Hakes* (1890) A.C. 15, and *Whethered* v. *Calcutta* (1842) 5 Scott. N. R. 409, referred to.

(3) Any variation of rent reserved by registered lease deed must be made by another registered instrument. The agreement between the landlord and the tenant by which the rent was increased being in variation of a written contract, evidence of that was barred under section 92 of the Evidence Act.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 50 of 1968 and 1201 of 1970.

From the judgment and Order dated the 20th January 1966, and 26th November 1968 of the Madras High Court in Writ Appeals Nos. 1124 of 1963 and 153 of 1966.

K.S. Ramamurthy and *S. Gopalakrishnan*, for the appellant (in both the appeals).

S.V. Gupte and *A.S. Nambiar*, for respondent Nos. 1-3 (in both the appeals).

S. Govindaswaminathan, A.V. Rangam, N.S. Sivam and *A. Subshashini*, for respondent No. 5 (in both the appeals).

B.R. Agrawala, for intervener (in C.A. 50/68).

The Judgment of A.N. Ray, C.J., H.R. Khanna and A. Alagiriswami, JJ. was delivered by Alagiriswami, J. The dissenting Opinion of K.K. Mathew and P.N. Bhagwati JJ. was delivered by Bhagwati, J.

ALAGIRISWAMI, J. The appellants are the tenants of a property bearing door Nos. 16 and 17 on the Poonamallee High Road in the city of Madras. They became tenants of this building in May 1929 when the property was with one of the predecessors in title of the present landlords, who are the respondents in these appeals. Though the appellants became tenants in 1929 a registered lease deed came into existence only in 1935 under which the lease was to run upto 1-5-1969. The lessee was entitled to renewal on the same terms and conditions for another period of fifteen years. The monthly rent agreed upon was Rs. 225/- and a sum of Rs. 225/- was payable as an annual contribution towards repairs and Rs. 220/- towards public charges and taxes. In 1949 the parties mutually agreed that the tenants were to pay a 25 per cent increase in rent and also certain other amounts. The present landlords purchased the property in 1962 and soon after filed an application under Section 4 of the Madras (now Tamil Nadu) Buildings (Lease and Rent Control) Act, 1960 for fixation of fair rent. Thereupon the tenants filed writ Petition No. 1124 of 1963 seeking to restrain the landlords from proceeding with that petition. The learned Single Judge who heard the petition felt that in view of a long series of decisions of Madras High Court under the various Rent Control Acts in force in Madras that they applied also to contractual

tenancies in the matter of payment of rent as well as eviction, the matter should be considered by a Full Bench in view of the decisions of this Court in Rent Control cases from certain other States.

The Full Bench after an elaborate consideration came to the conclusion that the Act controls both contractual as well as statutory tenancies, that it is a complete Code, and enables both landlords and tenants to seek the benefit of fixation of fair rent, whether a contractual tenancy prevails or it has been determined. Thereafter the matter again came up before the same learned Single Judge who, applying the provisions of the Act to the facts of the case held that the Act did not apply to the premises in question. On appeal by the landlords a Division Bench of the High Court held that the premises were not exempted from the provisions of the Act and the Rent Controller has therefore jurisdiction to entertain and dispose of on merits the application for fixation of fair rent filed by the landlords. These two appeals are against the judgments of the Full Bench (reported in 1966 2 MLJ 68) and the Division Bench respectively.

Before we go further into a discussion of the questions that arise it is necessary to look into certain relevant provisions of the Act.

Clause (6) of section 2 of the Act defines landlord thus :

> "Landlord" includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant;"

Clause 8, in so far as it is relevant, defines tenant as follows :

> "tenant" means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter, or the legal representative of a deceased tenant who had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour...."

Section 4 provides for an application for fixation of a fair rent by the tenant as well as the landlord. The fair rent for any residential building is to be six per cent gross return per annum on the total cost of the building if it is residential and nine per cent if it is non-residential. The total cost has to be calculated by taking the cost of construction at prescribed rates less depreciation at prescribed rates as well as the market value of the site on which the building stands. It is to include allowances for such considerations as locality, features of architectural interest, accessibility to market, dispensary or hospital, nearness to the railway station or educational institution and such other amenities as may be prescribed.

A Section 5 provides that when the fair rent of a building has been fixed no further increase shall be permissible except in cases where some addition, improvement or alteration has been carried out at the landlord's expense and at the tenant's request. Similarly, if there is a decrease or diminution in the accommodation or amenities provided, the tenant may claim a reduction in the fair rent.

B Section 6 provides for payment of additional sums in cases where the taxes and cesses payable to local authorities are increased.

Section 7 prohibits the landlord from claiming or receiving or stipulating for the payment of any premium or anything in excess of fair rent. It also provides that where a fair rent has not been fixed the landlord shall not claim anything in excess of the agreed rent.

C Section 10 deals with the eviction of tenants and lays down the conditions under which an eviction could be asked for. One of those conditions mentioned in sub-section (3) is when the Landlord requires a residential building for his own occupation or a non-residential building for the purpose of his business. Clause (d) of sub-section (3) provides that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be D entitled to apply under that sub-section before the expiry of such period.

Sections 12 and 14 provide for recovery of possession by landlord for repairs or for reconstruction.

E Section 17 provides that the landlord is not to interfere with the amenities enjoyed by the tenant.

Section 30 exempts from the provisions of the Act (1) any building the construction of which was completed after the commencement of the Act, and (2) any residential building in respect of which the monthly rent payable exceeds two hundred and fifty rupees. We shall refer F to other details as and when they become relevant.

The above short analysis of the Act would show that the Act provides for every contingency that is likely to arise in the relationship of landlord and tenant.

On behalf of the appellants reliance is placed upon two decisions G of this Court, *Bhaiya Punjalal Bhagwanddin* v. *Dave Bhagwatprasad Prabhuprasad* (1963 3 SCR 312) and *Manujendra* v. *Purendu Prasad* (1967 1 SCR 475). They are cases dealing with eviction. In those two cases it was held, broadly speaking, that the provisions of the Acts there under consideration were in addition to and not in derogation of the provisions of the Transfer of Property Act. There are certain general observations in those two decisions upon which reliance H was placed to contend that they apply to cases of fixation of rent also. The argument was that as it was held in those cases that the Acts did not provide the landlord with additional rights which he did not possess under his contract of tenancy, similarly where there was a subsisting

contract of tenancy it is not open to the landlord to take advantage of the provisions of the Act to apply for fixation of a fair rent at a figure higher than the contract rent. We are not called upon in this case to consider whether those two cases were correctly decided. But we must point out that the general observations therein should be confined to the facts of those cases. Any general observation cannot apply in interpreting the provisions of an Act unless this Court has applied its mind to and analysed the provisions of that particular Act. We may also point out that in both those cases the contract of tenancy was not subsisting. In a sense, therefore, the observations therein were not really necessary for deciding those cases. We may also point out that in *Rai Brij Raj Krishna* v. *S.K. Shaw Bros.* (1951 SCR 145) dealing with the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 and interpreting section 11 of that Act this Court observed as follows :

> "Section 11 begins with the words 'Notwithstanding anything contained in any agreement or law to the contrary', and hence any attempt to import the provisions relating to the law of transfer of property for the interpretation of the section would seem to be out of place. Section 11 is a self-contained section, and it is wholly unnecessary to go outside the Act for determining whether a tenant is liable to be evicted or not, and under what conditions he can be evicted. It clearly provides that a tenant is not liable to be evicted except on certain conditions, and one of the conditions laid down for the eviction of a month to month tenant is non-payment of rent."

Similarly in *Shri Hem Chand* v. *Shrimati Sham Devi* (ILR 1955 Punj. 36) which dealt with the Delhi and Ajmer Merwara Rent Control Act, section 13(i) of which provided that no decree or order for the recovery of possession of any premises shall be passed by any court in favour of the landlord against a tenant, notwithstanding anything to the contrary contained in any other law or any contract, it was held that the Act provided the procedure for obtaining the relief of ejectment and that being so the provisions of s. 106 of the Transfer of Property Act had no relevance. Both these cases were referred to in the decision in *Bhaiya Punjalal Bhagwanddin* v. *Dave Bhagwatprasad Prabhuprasad*. Therefore, the following observations in *Manujendra* v. *Purendu Prosad* that

> "Rent Acts are not ordinarily intended to interfere with contractual leases and are Acts for the protection of tenants and are consequently restrictive and not enabling, conferring no new rights of action but restricting the existing rights either under the contract or under the general law."

should not be held to apply to all Rent Acts irrespective of the scheme of those Acts and their provisions. The decision of the Madras High Court in *R. Krishnamurthy* v. *Parthasarathy* (AIR 1949 Mad. 780--1949 1 MLJ 412) where it was held that section 7 of the Madras Buildings (Lease and Rent Control) Act of 1946 had its own scheme

of procedure and therefore there was no question of an attempt to reconcile that Act with the Transfer of Property Act and that an application for eviction could be made to the Rent Controller even before the contractual tenancy was terminated by a notice to quit, should not have been summarily dismissed on the grounds that it was contrary to the decisions of this Court in *Abbasbhai's Case* (1964 5 SCR 157) and *Mangilal's Case* (1964 5 SCR 239) and therefore was not a correct law, without examining the provisions of that Act.

Be that as it may, we are now concerned with the question of fixation of a fair rent. The legislation regarding control of rents started during the Second World War. In Madras first two orders under the Defence of India Rules were issued as the Madras House Rent Control Orders, 1941 and the Madras Godown Rent Control Order, 1942. In 1945 these orders were re-issued with slight changes, as the Madras House Rent Control Order, 1945 and the Madras Non-Residential Buildings Rent Control Order, 1945. These were replaced by the Madras Buildings (Lease and Rent Control) Act, 1946. Under that Act for the first time both the tenant as well as the landlord were given the right to apply for fixation of a fair rent. This Act was later replaced by the Madras Buildings (Lease and Rent Control) Act, 1949, which again had a similar provision. But the important thing to note about the fixation of a fair rent under both these Acts is that the fair rent was related to the rents prevailing in April 1940 and only a fixed percentage of increase from 8 1/3 to 50 per cent depending upon the rent payable was allowed. The 1960 Act which replaced the 1949 Act adopted a completely new scheme of its own. It provided for the fixation of a fair rent on the basis of the cost of construction and the cost of land and after allowing for depreciation provided for a return of 6 per cent in the case of residential builings and 9 per cent in the case of non-residential buidings. It also provided for increase in rent for such factors as locality, nearness to railway station, market, hospital, school etc. Another significant fact is that all new buildings constructed after 1960 were exempt from the scope of the Act. Still another departure was that the Act applies, in the case of residential buildings, only if the monthly rent does not exceed Rs. 250. The Act also provides for fixation of fair rent under the new provisions even though fair rent for the building might have been fixed under the earlier repealed enactments. All these show that the Madras Legislature had applied its mind to the problem of housing and control of rents and provided a scheme of its own. It did not proceed on the basis that the legislation regarding rent control was only for the benefit of the tenants. It wanted it to be fair both to the landlord as well as the tenant. Apparently it realised that the pegging of the rents at the 1940 rates had discouraged building construction activity which ultimately is likely to affect every body and therefore in order to encourage new constructions exempted them altogether from the provisions of the Act. It did not proceed on the basis that all tenants belonged to the weaker section of the community and needed protection and that all landlords

belonged to the better off classes. It confined the protection of the Act to the weaker section paying rents below Rs. 250. It is clear, therefore, that the Madras Legislature deliberately proceeded on the basis that fair rent was to be fixed which was to be fair both to the landlords as well as to the tenants and that only the poorer classes of tenants needed protection. The facile assumption on the basis of which an argument was advanced before this Court that all Rent Acts are intended for the protection of tenants and, therefore, this Act also should be held to be intended only for the protection of tenants breaks down when the provisions of the Act are examined in detail. The provision that both the tenant as well as the landlord can apply for fixation of a fair rent would become meaningless if fixation of fair rent can only be downwards from the contracted rent and the contract rent was not to be increased. Of course, it has happened over the last few years that rents have increased enormously and that is why it is argued on behalf of the tenants that the contract rents should not be changed. If we could contemplate a situation where rents and prices are coming down this argument will break down. It is a realisation of the fact that prices and rents have enormously increased and therefore if the rents are pegged at 1940 rates there would be no new construction and the community as a whole would suffer that led the Madras Legislature to exempt new buildings from the scope of the Act. It realised apparently how dangerous was the feeling that only "fools build houses for wise men to live in". At the time the 1960 Act was passed the Madras Legislature had before it the precedent of the Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956. That Act provides for fixation of fair rent. It also provides that the contract rent, if lower, will be payable during the contract period. Even if the contract rent is higher only the fair rent will be payable. After the contract period is over only the fair rent is payable. The Madras Legislature having this Act in mind still made only the fair rent payable and not the contract rent if it happens to be lower. It is clear, therefore, that the fair rent under the present Act is payable during the contract period as well as after the expiry of the contract period.

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It was argued that the basis of the decisions in *Rai Brij Raj Krishan's Case* and *Shri Hem Chand's Case* was the *non-obstante* clause in those two Acts. But it is well settled that the intention that a legislation should take effect notwithstanding any earlier legislation on the subject can be both explicit and implicit and that is the position in the present case. We do not also feel called upon to refer to the decisions in *Glossop* v. *Ashley* (1921 2 KB 450), a *Newell* v. *Crayford Cottage Society* (1922 1 KB 656), and *Kerr* v. *Bryde* (1923 AC 16), nor to the various statements regarding the law in Megarry's work on the Rent Acts relied upon by Sri K. S. Ramamurthy on behalf of the appellants. They are based on the relevant provisions of the Act in force in England particularly section 3(1) of the Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 which reads :

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A "Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession."

The provisions of the Act under consideration show that they are to take effect notwithstanding any contract even during the subsistence of the contract. We have already referred to the definition B of the terms 'landlord' and 'tenant' which applies both to subsisting tenancies as well as tenancies which might have come to an end. We may also refer to the provision in section 7(2) which lays down that where the fair rent of a building has not been fixed the landlord shall not claim anything in addition to the agreed rent, thus showing that the fair rent can be fixed even where there is an agreed rent. That is why we have earlier pointed out that the various English decisions C which provide for fixation of rent only where the contractual tenancy has come to an end do not apply here. We may also refer to sub-section (3) of section 10 which deals with cases where a landlord requires a residential or non-residential building for his own use. Clause (d) of that sub-section provides that where the tenancy is for a term the landlord cannot get possession before the expiry of the term, thus showing that in other cases of eviction covered by section 10 eviction D is permissible even during the continuance of the contractual tenancy if the conditions laid down in section 10 are satisfied.

The Madras High Court reviewed all the decisions of this Court except the latest one in *Manujendra* v. *Purendu Prosad.* We have already pointed out that the criticism made in that decision regarding *Krishnamurthy's Case* was not justified. We are in agreement with E the view of the Full Bench of the Madras High Court that the various decisions of this Court were based upon particular provisions of the Acts which were under consideration, mainly the Bombay Act which is vitally different from the Madras Act. A close analysis of the Madras Act shows that it has a scheme of its own and it is intended to provide a complete code in respect of both contractual tenancies as well as what are popularly called F statutory tenancies. As noticed earlier the definition of the term 'landlord' as well as the term 'tenant' shows that the Act applies to contractual tenancies as well as cases of "statutory tenants" and their landlords. On some supposed general principles governing all Rent Acts it cannot be argued that such fixation can only be for the benefit of the tenants when the Act clearly lays down that both landlords and tenants can apply for fixation of fair rent. A close G reading of the Act shows that the fair rent is fixed for the building and it is payable by whoever is the tenant whether a contractual tenant or statutory tenant. What is fixed is not the fair rent payable by the tenant or to the landlord who applies for fixation of fair rent but fair rent for the building, something like an incident of the tenure regarding the building.

H We have then to deal with Civil Appeal No. 1201 of 1970. The learned Single Judge considering that as the total amount payable annually in respect of these premises was Rs. 5032/-, which makes the rent payable to exceed Rs. 400/- a month, the building was outside

the scope of the Act and therefore the petition for fixation of fair rent does not lie. (This provision was removed by an Amending Act of 1964). The learned Judges of the Division Bench on the other hand held that the agreement of the year 1949 between the landlord and the tenant by which the rent was increased was one in variation of a written contract and therefore evidence of it is barred under section 92 of the Evidence Act. Clearly any variation of rent reserved by a registered lease deed must be made by another registered instrument. We are not able to accept the argument of Sri K. S. Ramamurthy on behalf of the tenants that the agreement of 1949 was one by the landlord to give up his right to apply for fixation of fair rent in consideration of the additional rent agreed to be paid by the tenant and is, therefore, not covered by section 92 of the Evidence Act. The correspondence between the parties makes it clear beyond doubt that the agreement was to pay increased rent. If this agreement is left out of account the rent payble is below Rs. 400/- a month, and, therefore, the decision of the Division Bench is correct.

Before concluding we must refer to one other argument on behalf of the appellants. Under section 30 of the Act, as originally enacted, any residential building the rent of which exceeded Rs. 250/- per month and any non-residential building whose rent exceeded Rs. 400/- a month were outside the scope of the Act. In 1964 the Act was amended so as to provide that all non-residential buildings would be within the scope of the Act. This amendment was attacked on the ground that it contravened the provisions of Art. 19(1) of the Constitution. In view of our finding earlier that this case should be decided on the basis of the monthly rent being below Rs. 400/- this argument does not fall to be considered.

In the result the appeals are dismissed. The appellants will pay the respondents' costs.

BHAGWATI J. We have had the advantage of reading the judgment prepared by our brother Alagiriswami, J., and though we agree with him in regard to the decision in Civil Appeal No. 1201 of 1970, we we find it difficult to assent to the view taken by him in Civil Appeal No. 50 of 1968. The facts giving rise to the two appeals have been stated clearly and succinctly in the judgment given by our learned brother and we think it would be a futile exercise to reiterate them. We may straight away proceed to examine the question which arises for consideration in Civil Appeal No. 50 of 1968. The question is whether a landlord can, during the subsistence of the contractual tenancy, apply for fixation of fair rent under s. 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the Tamil Nadu Act 18 of 1960). The determination of this question depends on the true interpretation of certain provisions of the Tamil Nadu Act 18 of 1960 and we may, therefore, refer to those provisions and see what is their proper meaning and effect.

The long title and the preamble of the Tamil Nadu Act 18 of 1960 show that it is enacted "to amend and consolidate the law relating to the regulation of the letting of residential and non-residential buildings and the control of rents of such buildings and the preven-

A tion of unreasonable eviction of tenants therefrom in the State of Tamil Nadu". Sec. 2, cl. (6) gives an inclusive definition of 'landlord' and according to this definition, 'landlord' includes "the person who is receiving or is entitled to receive rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian B or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant". Thus the owner of a building which becomes vacant would be 'landlord' within the meaning of that expression as defined in s. 2, cl. (6) and so also would be the landlord during the subsistence of the contractual tenancy as also after the termination of the contractual tenancy where the tenant continues to remain in possession of the building. 'Tenant' is defined in s. 2, C cl. (8) to mean "any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter, or the legal representative of a deceased tenant who had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour". This definition is wide enough to include not only a contractual tenant but D also a tenant remaining in possession of the building aftet the termination of the contractual tenancy. Section 3 enacts detailed provisions regulating the letting of residential and non-residential buildings. The broad scheme of this section is that when a building becomes vacant, the landlord is required to give notice of the vacancy to the authorised officer and if the building is required "for the purposes of the State or Central Government or of any local authority or of E any public institution under the control of any such Government or for the occupation of any officer of such Government", the authorised officer may give necessary intimation in that behalf to the landlord and on receipt of such intimation, the landlord would be bound to deliver possession of the building to the authorised officer or to the allottee named by the authorised officer, as the case may be, and the Government would be *deemed to be the tenant* of the landlord on such F terms as may be agreed upon between the landlord and the Government, or in default of agreement, determined by the Controller. The rent payable by the Government to the landlord would be the "fair rent, if any, fixed for the building under the provisions of this Act and if no fair rent has been so fixed, such reasonable rent as the s authorised officer may determine", but "the reasonable rent fixed by the authorised officer—*shall be subject* to such fair rent as may be fixed by the Controller". Section 4 provides for fixation of fair G rent of a building on the application of the tenant or the landlord. Sub-s. (1) of the section is material and it says that "The Controller shall, on application by the tenant or the landlord of a building and after holding such inquiry as the Controller thinks fit, fix the fair rent for such building in accordance with the principles set out in sub-section (2) or in sub-section (3) as the case may be, and such other principles as may be prescribed". Sub-s. (2) lays down the H principles for fixation of fair rent of residential building and sub-s. (3), for fixation of fair rent of non-residential building. The fiar rent is to be such as would provide 6% gross return per annum on

the total cost of the building, if it is residential and 9% gross return per annum on the total cost of the building, if it is non-residential. The total cost of the building is to be computed by taking the cost of construction as calculated according to the prescribed rates less depreciation also at the prescribed rates and adding to it the market value of that portion of the site on which the building is constructed and making allowances for such considerations as locality in which the building is situated, features of architectural interest, accessibility to market, dispensary or hospital, nearness to the railway station or educational institution and such other amenities as may be prescribed. It may be pointed out that under the Madras Buildings (Lease and Rent Control) Act, 1946 and the Madras Buildings (Lease and Rent Control) Act, 1949, which preceded the Tamil Nadu Act 18 of 1960, the scheme of fixation of fair rent was different, in that the fair rent was related "to the prevailing rate of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months perior to 1st April, 1940" and only a fixed percentage of increase varying from 8 1/3% to 50% was allowed on such rate of rent, depending upon whether it exceeded or did not exceed a certain limit. But the Legislature while enacting the Tamil Nadu Act 18 of 1960 made a departure from that scheme persumably because it felt that in view of the staggering and disproportionately heavy fall in the purchasing power of the rupee over the last 30 years, it was most unrealistic to peg the fair rent to the level of rents prevailing during the period of 12 months prior to 1st April, 1940 and allow only an *ad hoc* percentage of increase, and therefore, in s. 4, sub-ss. (2) and (3), it adopted a different basis for fixation of fair rent which would not unduly depreciate the yield permissible to the landlord and at the same time, be not extortionate or exploitative of the tenant. Now once the fair rent of a building is fixed under s. 4, sub-s. (1), no further increase in such fair rent is permissible except in cases where some addition, improvement or alteration has been carried out at the expense of the landlord and if the building is then in the occupation of a tenant, at his request and similarly, if there is a decrease or diminution in the accommodation or amenities, the tenant may claim reduction in such fair rent. Vide s. 5. Section 6 provides that where the amount of the taxes and cesses payable in respect of a building to a local authority for any half year commencing on 1st April, 1950 or on any later date exceeds the amount of taxes and cesses payable for the half year commencing on 30th September, 1946 or for the first complete half year after the date on which the building was first let out, whichever is later, the landlord shall be entitled to claim such excess from the tenant in addition to the rent payable for the building. The consequences of fixation of fair rent are set out in s. 7, sub-s (1) and (3). Sub-section (1) says that where the Controller has fixed the fair rent of a building—

> "(a) the landlord shall not claim, receive or stipulate for the payment of (i) any premium or other like sum in addition to such fair rent, or (ii) save as provided in section 5 or section 6, anything in excess of such fair rent :
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(b) .....any premium or other like sum or any rent paid in addition to, or in excess of, such fair rent whether before or after the date of the commencement of this Act, in consideration of the grant, continuance or renewal of the tenancy of the building after the date of such commencement, shall be refunded by the landlord to the person by whom it was paid or at the option of such person, shall be otherwise adjusted by the landlord;

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Provided that where before the fixation of the fair rent, rent has been paid in excess thereof, the refund or adjustment shall be limited to the amount paid in excess for the period commencing on the date of application by the tenant or landlord under sub-section (1) of section 4 and ending with the date of such fixation."

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Sub-sec. (3) declares that any stipulation in contravention of sub-s. (1) shall be null and void. These are the only provisions of the Tamil Nadu Act 18 of 1960 which have a direct bearing on the determination of the question before us, but reference was also made to certain

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other provisions of that Act dealing with eviction of tenants for the purpose of drawing support by way of analogical reasoning from the decisions of this Court interpreting those provisions and we must, therefore, briefly advert to them. Section 10 confers protection on the tenant against eviction "in execution of a decree or otherwise" by providing that he shall not be evicted except in accordance with the provisions of that section or sections 14 to 16. Sub-ss. (2) and

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(3) of s. 10 set out the grounds on which the tenant my be evicted by the landlord. One of the grounds—that set out in cl. (a) of sub-s. (3)—is that the landlord requires the building, if residential, for his own occupation or for the occupation of his son, and if non-residential, for a business which he or his son is carrying on, but in respect of this ground, there is a limitation imposed by cl. (d) of sub-s. (3) that when the tenancy is for a specified period agreed upon between

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the landlord and the tenant, the landlord shall not be entitled to apply for possession under sub-s. (3) before the expiry of such period. Sections 12 to 14 provide for recovery of possession of the building by the landlord for repairs or reconstruction. These provisions are not material and we need not refer to them in detail. Then we go straight to s. 30 which exempts certain buildings from the operation of the Act. Every new building the construction of which is com-

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pleted after the commencement of the Act is exempted under cl. (i). The reason obviously is that the legislature wanted to encourage construction of new buildings so that more and more buildings would become available for residential as well as non-residential purposes and that would help relieve shortage of accommodation. Cl. (ii) exempts any residential building or part thereof occupied by any

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tenant, if the monthly rent paid by him exceeds Rs. 250/- Here the object of the Legislature clearly was that the the protection of the beneficent provisions of the Act should be available only to small tenants paying rent not exceeding Rs. 250/- per month, as they

belong to the weaker sections of the community and really need protection against exploitation by rapacious landlords. Those who can afford to pay higher rent would ordinarily be well-to-do people and they would not be so much in need of protection and can, without much difficulty, look after themselves.

It is in the light of these provisions of the Tamil Nadu Act 18 of 1960, that we have to consider whether a landlord can, during the subsistence of the contractual tenancy, apply for fixation of fair rent under s. 4, sub-s. (1). Two basic considerations must guide our approach to this question. The first is that the agreed rent which is the result of contract between the parties must continue to bind them so long as the contract subsists, unless there is anything in the statute which expressly or by necessary implication overrides the contract. It is true that with the decline of the doctrine of *laissez faire* and the assumption by the State of a more dynamic and activists role, the principle of sanctity of contract which is one of the pillars of a free market economy, has in a number of cases been eroded by legislation. But if we examine such legislation it will be apparent that this has happened invariably in aid of the weaker party to the contract. Where there is unequal bargaining power between the parties, freedom of contract is bound to produce injustice and social legislation therefore steps in and overrides the contract, with a view to protacting the weaker party from the baneful consequences of the contract. It is to contract the injustice resulting from inequality in bargaining power and to bring about social or distributive justice that social legislation interferes with sanctity of contract. It seeks to restore the balance in the scales which are otherwise weighted in favour of the stronger party which has larger bargaining power. Ordinarily we do not find, and indeed it would be a strange and rather incomprehensible phenomenon, that legislation intervenes to disturb the sanctity of contract for the benefit of a stronger party who does not need the protective hand of the legislature. This consideration we must constantly keep before us while construing the relevant provisions of the Tamil Nadu Act 18 of 1960.

Secondly the Tamil Nadu Act 18 of 1960, as its long title and preamble show, has been enacted *inter alia* with the object of controlling rents of residential and non-residential buildings and preventing unreasonable eviction of tenants. Now, there can be no doubt that in so far as it is calculated to prevent unreasonable eviction of tenants, the Tamil Nadu Act 18 of 1960 is a protective measure intended to safeguard tenants against indiscriminate eviction by landlords. Equally, by controlling the rents by keeping them within fair and reasonable limits, the Tamil Nadu Act 18 of 1960 seeks to protect tenants against greedy and rapacious landlords who taking advantage of the great scarcity of housing accommodation which prevails in almost all urban areas, may extract excessive and unconscionable rent from tenants. The Tamil Nadu Act 18 of 1960 is in its essential character as also in its object and purpose similar to what may conveniently be described as rent control legislation, in other States, such as Maharashtra, Gujarat, West Bengal and Madhya Pradesh.

A Now it is well settled by decisions of this Court that rent control Acts are "not ordinarily intended to interfere with contractual leases and are Acts for the protection of tenants and are consequently restrictive and not enabling or conferring any rights of action but restricting the existing rights either under the contract or under the general law." That is what this Court said in *Manuiendra Dutt* v. *Purendu Prosad Roy Chowdhury & Ors.*(1), while dealing with the Calcutta Thika B Tenancy Act, 1949. The same view was taken by this Court in *Bhaiya Punjalal Bhagwanddin* v. *Dave Bhagwat Prasad Prabhuprasad*(2) in relation to Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which prevails in Maharashtra and Gujarat and which has long title and preamble in almost the same terms as the Tamil Nadu Act 18 of 1960. This Court said in that case: "the Act,", that is the Bombay Rent Act "intended therefore to restrict the rights C which the landlords possessed either for charging excessive rents or for evicting tenants". The Madhya Pradesh Accommodation Control Act, 1955 was also construed in the same way by this Court in *Mangilal* v. *Sugarchand Bathi.*(3) This general purpose and intendment of rent control legislation and its positive thrust and emphasis on the protection of the tenant cannot be lost sight of when we are construing a similar legislation like the Tamil Nadu Act 18 of 1960.

D We may now turn to examine the relevant provisions of the Tamil Nadu Act 18 of 1960 against the background of these general considerations. Section 4, sub-s. (1) contemplates that an application for fixation of fair rent of a building may be made by the tenant or the landlord. The definition of "tenant", as we have pointed out above, includes contractual tenant as well as tenant remaining in possession E of the building after determination of the contractual tenancy, that is, statutory tenant, and both contractual tenant and statutory tenant can, therefore, apply for fixation of fair rent under s. 4, sub-s. (1). The Government, who is deemed to be the tenant of the landlord under s. 3, sub-s. (5), can also similarly avail of the provision for fixation of fair rent in s. 4, sub-s. (1). The question is as to who are the persons comprehended within the expression 'landlord' who can apply for F fixation of fair rent under s. 4, sub-s. (1). The landlord, where the Government is deemed to be the tenant under. s. 3, sub-s. (5), would certainly be entitled to make such application and, having regard to the wide definition of the expression 'landlord', which includes not only contractual landlord but also statutory landlord, if one may use that expression to describe the counterpart of statutory tenant, it was common ground between the parties that the statutory landlord can G also avail of this provision, but the dispute was whether the contractual landlord is within the ambit of this provision. Can he apply for fixation of fair rent under s. 4, sub-s. (1)p? Now *prima facie* according to the definition as also according to its plain natural connotation, the expression 'landlord' includes contractual landlord and it might, therefore, appear at first blush, on a purely literal construction, that the contractual landlord can make an application for fixation of fair H rent under s. 4, sub-s. (1). But is is well settled that a definition clause

(1) [1967] 1 S.C.R. 475. (2) [1963] 3 S.C.R. 312.

(3) [1964] 5 S.C.R. 239.

is not to be taken as substituting one set of words for another or as strictly defining what the meaning of a term must be under all circumstances, but as merely declaring what may be comprehended within the term, when the circumstances require that it should be so comprehended. It would, therefore, always be a matter of interpretation whether or not a particular meaning given in the definition clause applies to the word as used in the statutory proriety. That would depend on the subject and the context. Moreover, it is equally well established that the meaning of words used in a statute is to be found, not so much in strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used and the object which is intended to be achieved. The context, the collocation and the object of the words may show that they are not intended to be used in the sense which they ordinarily bear, but are meant to be used in a narrow and limited sense. Lord Herschell pointed out in *Cox* v. *Hakes* (1): "It cannot, I think, be denied that, for the purpose of construing any enactment, it is right to look, not only at the provision immediately under construction, but at any others found in connection with it which may throw light upon it, and afford an indication that general words employed in it were not intended to be applied without some limitation." However wide in the abstract, general words must be understood as used with reference to the subject-matter in the mind of the legislature and limited to it. Thus, in *Whethered* v. *Calcutta*(2) a statute which, reciting the inconveniences arising from churchwardens and overseers making clandestine rates, enacted that those officers should permit "every inhabitant" of the parish to inspect the rates under a penalty for refusal, was held not to apply to a refusal to one of the churchwardens, who was also an inhabitant. As the object of the statute was to protect those inhabitants who had previously no access to the rates (which the churchwardens had, the meaning of the term 'inhabitants' was limited to them. The same approach in interpretation must be adopted by us in the present case. We must not allow ourselves to be unduly obsessed by the meaning of 'landlord' given in the definition or by its ordinary etymological meaning but we must examine the scheme of the relevant provisions of the statute, the contextual setting in which s. 4, sub-s. (1) occurs and the object which the legislation is intended to achieve, in order to determine what is the sense in which the word 'landlord' is used in s. 4, sub-s. (1)—whether it is intended to include contractual landlord.

It is necessary for this purpose to consider what are the consequences of fixation of fair rent, for that furnishes the key to the solution of the problem before us. The fair rent, when fixed, becomes an attribute or incidence of the building and there can be no change in it except in the circumstances set out in s. 5. When the fair rent is fixed, three possibilities may arise. The fair rent may be the same as the agreed rent in which case no difficulty arises. Or the fair rent may be less than the agreed rent. Where that happens, s. 7, sub-s. (i), cl. (a) operates and it provides that the landlord shall not be entitled to claim, receive or stipulate for payment of anything in excess of the

(1) [1890] 15 A.C. 506.

(2) [1842] 5 Scott. N.R. 409.

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fair rent. The landlord, can, in such a case, claim, receive or recover only the fair rent and nothing more, despite the contract of tenancy which provides for payment of higher rent. To that extent sanctity of contract is interfered with by the legislation in order to protect the tenant against exploitation by the landlord so that the landlord may not take undue advantage of shortage of housing accommodation and extract excessive rent from a needy and helpless tenant. The stipulation in the contract of tenancy for payment of higher rent would in such a case be clearly in contravention of sub-s. (1) of s. 7 and would be null and void under s. 7, sub-s. (3). But what happens if the fair rent fixed is higher than the agreed rent? Can the landlord claim to recover such fair rent from the tenant, overriding the contract of tenancy which provides for payment of lesser rent? We do not think so. There is nothing in s. 7 or in any other provision of the Tamil Nadu Act 18 of 1960 which can by any process of construction be read as authorising the landlord to override the contract of tenancy and claim fair rent higher than the agreed rent from the tenant. If the legislative intent were that, even though the contract of tenancy is subsisting, the landlord should be entitled to recover fair rent higher than the agreed rent, we should have expected the Legislature to say so in so many terms, as it has done in s. 7, sub-s. (1), cl. (a) when it wanted the landlord not to be able to recover the agreed rent where it is in excess of the fair rent. It may no noted that whenever the Legislature intended to confer on the landlord a right to recover any amount which he would not otherwise have under the contract or the general law, the Legislature has done so in clear and specific language as in s. 6 of the Act. But here we do not find any such provision, either express or necessarily implied. We may also profitably compare the language of the provision in s. 3, sub-s. (5). There it is provided that "the reasonable rent fixed by the authorised officer—shall be subject to such fair rent as may be fixed by the Controller". The words "subject to" clearly take in both kinds of cases, where the fair rent fixed is higher as well as lower than the reasonable rent. In s. 7, sub-s. (1), cl. (a), however the Legislature has departed from this phraseology and instead of saying that the agreed rent shall be subject to the fair rent or the rent payable by the tenant shall be the fair rent, the Legislature has merely laid an embargo on the landlord prohibiting him from recovering anything in excess of the fair rent. This provision is clearly, without doubt, restrictive in character. It is not an enabling provision empowering the landlord to recover the fair rent where it is higher than the agreed rent. But quite apart from these considerations, there is inherent evidence in s. 7 itself which strongly reinforces our interpretation and that is to be found in sub-s. (3). That sub-section says that any stipulation *in contravention of sub-s.* (1) shall be null and void. If, therefore, there is a stipulation in the contract of tenancy for payment of rent higher than the fair rent, it would be invalid. Such a stipulation would not be enforceable by the landlord against the tenant. Only the fair rent would be payable by the tenant. If, however, there is a stipulation for payment of rent which is less than the fair rent, it would not be in contravention of sub-sec. (1) and hence would not be invalidated by sub-s. (3) but would remain

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enforceable and binding on the parties and if that be so, the landlord would not be entitled to claim the fair rent in breach of such stipulation. Section 7, sub-s. (3) clearly indicates that the stipulation in the contract of tenancy as regards rent is overridden only where the fair rent is less than the agreed rent and not where it is higher than the agreed rent. This is the only rational construction which, in our opinion, can be placed on the relevant provisions of the Act relating to control of rent. It is not only compelled by grammar and language, but also accords with the broad general considerations we have already discussed. It is difficult to believe that the Legislature should have chosen to interfere with contractual rights and obligations in favour of the landlord who is ordinarly, in view of the acute shortage of housing accommodation, in a stronger and more dominating position than the tenant *qua* bargaining power. The Legislature while enacting a social legislation could not have intended to confer on the landlord a new right of action—a right to override the contract of tenancy and to impose a greater burden on the tenant than that permitted under the contract of tenancy. It would be a startling proposition to assume that the Tamil Nadu Legislature was so solicitous of the welfare of the landlord, who is admittedly, as a class, stronger party and much more favourably situate[d] in respect of bargaining power than the tenant, that it enacted a provision in the Act for relieving the landlord against the consequences of an unwise contract entered into by him with open eyes. To take such a view would be to pervert the legitimate end of a social legislation and proselytise its true object and purpose.

These considerations impel us to the conclusion that the Legislature could not have intended that the landlord should have the right to apply for fixation of fair rent during the subsistence of the contractual tenancy. If it was not the intention of the Legislature to benefit the landlord by giving him a right to override the contract of tenancy and claim fair rent higher than the agreed rent from the tenant during the subsistence of the contractual tenancy, it must follow *a fortiorari* that it could not have been intended by the Legislature that the landlord should have the right to apply for fixation of fair rent whilst the contract of tenancy is subsisting. Having regard to the basic character of the statute as a rent control legislation and the scheme of its provisions and reading s. 4, sub-s. (1) in its contextual setting and in the light of the other provisions of the statute, the conclusion is inescapable that the word 'landlord' in s. 4, sub-s. (1) is used in a limited sense and it does not include contractual landlord. The landlord is not given the right to apply for fixation of fair rent during the subsistence of the contractual tenancy. It is only when the contract of tenancy is lawfully determined that he becomes entitled to apply for fixation of fair rent, for it is only then that he can recover fair rent higher than the agreed rent from the statutory tenant, there being no contract of tenancy to bind him down to the agreed rent.

We were referred to certain decisions of this Court relating to the interpretation of the provisions of various Rent Control Acts dealing with the eviction of tenants. Some of these decisions have

A already been noticed by us earlier while discussing the general object and intendment of Rent Control Acts. They have no direct bearing on the determination of the question before us, but they do lend some support to the view we are taking as to the interpretation of the word 'landlord' in s. 4, sub-s. (1). These decisions which are given in reference to Rent Control Acts of Maharashtra, Gujarat, West Bengal and Madhya Pradesh, clearly establish that the Rent Control Acts B do not give a right to the landlord to evict a contractual tenant without first determining the contractual tenancy. So long as the contractual tenancy subsists, the tenant does not need protection because he cannot be evicted in breach of the contract of tenancy. It is only after the contract of tenancy is determined and the landlord becomes entitled to the possession of the premises, that the tenant requires protection and it is there that the Rent Control Acts step in and pre- C vent the landlord from enforcing his right to possession except under certain conditions. The Rent Control Acts do not confer on the landlord a new right of eviction, but merely restrict his existing right to recover possession under the contract or the general law. The landlord cannot, therefore, sue for recovery of possession on any of the grounds recognised as valid by the Rent Control Acts unless he has first determined the contractual tenancy of the tenant. This view. D which has been taken by the decisions of this Court in regard to the Rent Control Acts of Maharashtra, Gujarat, West Bengal and Madhya Pradesh, applies equally in regard to the Tamil Nadu Act 18 of 1960. It is true that the High Court of Madras took a different view in *R. Krishnamurti* v. *Perthasarthi* (1) in regard to the Madras Buildings (Lease and Rent Control) Act, 1945 which was in material respects in almost identical terms as the Tamil Nadu Act 18 of 1960 and held E that s. 7 of that Act, corresponding to s. 10 of the present Act, had its own scheme of procedure and there was no question of any attempt to reconcile that Act with the Transfer of Property Act and an application for eviction could, therefore, be made under that Act without terminating the contractual tenancy of the tenant. But in *Manujendra Dutt.* v. *Purendu Prosad Roy Choudhury & Ors.*(2) this decision F of the Madras High Court was expressly overruled and held not to be correct law by this Court. The argument on behalf of the respondents was that the observation of this Court disapproving the view taken by the Madras High Court was a casual observation made without examining the scheme of the Madras Act and no validity could attach to it. We fail to see how such an argument can possibly be advanced with any degree of plausibility. It is clear from the dis- G cussion of the Madras decision which we find in the judgment of Court that the attention of this Court was specifically directed to the reasoning of the Madras decision which proceeded on the basis that s. 7 of the Madras Act had its own self-contained scheme which excluded the Transfer of Property Act and it was because this Court found the reasoning to be incorrect, that it held that the Madras decision was not good law. It would not be fair to presume that this Court cavalierly overruled the Madras decision without apply- H ing its mind and caring to examine the scheme of the Madras Act.

(1) A.I.R. 1949 Mad. 780. (2) [1967] 1 S.C.R. 475

Such a charge cannot be made merely because this Court did not elaborately discuss the merits of the Madras decision but disposed it of in a few words. The brevity of the discussion does not signify casualness or lack of proper consideration. We must, in the circumtances, hold that the observation of this Court that the Madras decision cannot be regarded as good law was a deliberate and considered pronouncement and the view taken by this Court in regard to the Rent Control Acts of Maharashtra, Gujarat, West Bengal and Madhya Pradesh must equally prevail in regard to the Tamil Nadu Act 18 of of 1960.

We may point out that in any event we do not find any cogent reason to question the validity of the observation made by this Court disapproving of the Madras decision. We are wholly in agreement with that observation as we do not see any material difference between the language and the scheme of s. 10 of the Tamil Nadu Act 18 of 1960 and the language and scheme of the corresponding provisions of the other Rent Control Acts which came to be construed by this Court. The only distinctive feature which could be pointed out on behalf of the respondents was the provision in s. 10, sub-s. (3), cl. (d). But that provision does not make any material difference because all that it provides is that though, in a case where the tenancy is for a specified period and it is determined by forfeiture before the expiration of the term, the landlord would have been, but for cl. (d), entitled to recover possession of the building under cls. (a), (b) or (c), he shall be precluded from doing so until the expiration of the period for which the tenancy was created. If there is any other ground available to him for claiming possession, for example, a ground specified in s. 10, sub- s. (2), he can seek to recover possession on that ground and cl. (d) would not afford the tenant any protection. But cl. (d) would stand in the way of the landlord, if possession is sought on any of the grounds set out in cls. (a), (b) and (c). The object of cl. (d) clearly is that even though the tenancy has come to an end by forfeiture and the landlord has become entitled to the possession of the building under the general law., the tenant shall be protected from eviction on any of the grounds set out in cls. (a), (b) and (c) so long as the period for which the tenancy was created in his favour has not a expired. This construction receives considerable support from the fact that the Legislature has used the words "before the expiry of such period" and not the words "before the determination of the tenancy" to indicate the langth of time for which protection is given to the tenant under cl. (d). We do not therefore think that it would be right to infer from cl. (d) that, save in cases falling within that provision, the landlord would be entitled to apply for possession under sub-s. (2) or sub-cl. (3) of s. 10 without determining the tenancy of the tenant. There can be no doubt, having regard to the judicial pronouncements of this Court, that the word 'landlord' in s. 10 of the Tamil Nadu Act 18 of 1960 is used in a limited sense to refer only to a landlord who has terminated the tenancy of the tenant and does not include a contractual landlord. If the word 'landlord' in s. 10 is found subjected to a limitation excluding a contractual landlord, it forms a strong argument for subjecting the word 'landlord' in s. 4., sub-s. (1) also to the like limitation.

A It may also be noted that, whatever be the correct interpretation of the word 'landlord' in s. 10, it is clear from the decisions of this Court in regard to the other Rent Control Acts that it is not at all unusual, having regard to the object and purpose of Rent Control legislation, to read the word 'landlord' in a limited sense so as to exclude contractual landlord and we are therefore not doing anything startling or extraordinary but merely following the path eked out by the decisions B of this Court when we place a limited meaning on the word 'landlord' in s. 4, sub-s. (1) which would exclude contractual landlord. That is in fact in conformity with the object and purpose of the Tamil Nadu Act 18 of 1960, which, to quote the words used by this Court in *P.J. Irani* v. *State of Madras* (1) in reference to the earlier Tamil Nadu Act 25 of 1949 which was in material respects in identical terms as the present Act, is intended to proctect "the rights of tenants in occupation C of buildings from being charged unreasonable rates of rent" and not to benefit landlords by conferring on them a new right against tenants which they did not possess before.

Since we are of the view that it is not competent to the landlord to apply for fixation of fair rent under s. 4, sub-s. (1) during the subsistence of the contractual tenancy, we set aside the decision of the D High Court of Tamil Nadu which has taken the view that the Controller has jurisdiction to entertain the application of the respondents and allow Civil Appeal No. 50 of 1968. There will be no order as to costs all throughout.

ORDER

In accordance with the opinion of the majority, the appeal is dis- E missed. The appellant will pay the respondents costs.

S.B.W.

(1) [1962] 2 S.C.R. 169.