

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (C) D. NO. 40966 OF 2013
IN
CIVIL APPEAL NO.7448 OF 2011

Union of IndiaAppellant(s)

:Versus:

Nareshkumar Badrikumar Jagad & Ors.Respondent(s)

WITH

M.A. NO.2714 OF 2018 IN CIVIL APPEAL NO.7448 OF 2011

AND

**CONTEMPT PETITION (C) NO.550 OF 2014 IN CIVIL APPEAL NO.7448
OF 2011**

ORDER

A.M. Khanwilkar, J.

1. Union of India has filed this review petition seeking review of the judgment and order passed by this Court on September 5, 2011 in Civil Appeal No.7448 of 2011: ***National Textile Corporation Ltd. Versus Nareshkumar***

Badrikumar Jagad & Ors.¹ At the same time, the appellant National Textile Corporation Ltd. (for short “**NTC**”) has filed an application for directions including for extension of time. Whereas, respondent Nos.1 to 6 in the review petition (for short “**respondents**”) who were respondent Nos.1 to 6 in the aforementioned civil appeal, have filed contempt petition for initiating appropriate action against the appellant NTC. During the pendency of the review petition, an Ordinance was promulgated titled as the Textile Undertakings (Nationalisation) Laws (Amendment and Validation) Ordinance, 2014 which later on became The Textile Undertakings (Nationalisation) Laws (Amendment and Validation) Act, 2014 (for short “**Validation Act 2014**”), as a result of which the Union of India has filed an application for urging additional grounds in the Review Petition. As the issues to be decided in these proceedings are overlapping, we propose to deal with the same by this common order.

¹ (2011) 12 SCC 695

2. Briefly stated, the property in question admeasuring 12118 square yards of land, bearing Plot No.9 in Survey No.73 of Lower Parel Division, N.M. Joshi Marg, Chinchpokli, Mumbai, originally belonged to one Damodar Tapidas and Dayabhai Tapidas. They executed a lease deed on 11th March, 1893 in favour of one Hope Mills Ltd. The demise was for 99 years to expire on 21st October, 1990. A structure was erected to house a cotton mill on the property. The original suit land owners sold and conveyed the said land to one Harichand Rupchand by a sale deed dated 22nd February, 1907. As per the Will of Harichand Rupchand, the property vested in a public charitable trust by the name of Seth Harichand Rupchand Charitable Trust (for short "**the Trust**"). The respondents are the present trustees of the said Trust. The leasehold rights then stood transferred from Hope Mills Ltd. to Prospect Mills Ltd. and thereafter to Diamond Spinning and Weaving Co. Pvt. Ltd. By an indenture of Lease dated 25th October, 1926, the property, namely, the said land and structures thereon, were demised to Toyo Podar Cotton Mills

Ltd. (whose name was subsequently changed to Podar Mills Ltd.) for the residue of the unexpired period of lease of 99 years commencing from 22nd October, 1891, subject to the same terms and conditions as in the original lease deed dated 11th March, 1893.

3. The Textile Undertakings (Taking over of Management) Act, 1983 (for short “**1983 Act**”) was enacted by Parliament in order to take over the management of 13 textile undertakings, including Podar Mills, pending their nationalisation. The lease granted in favour of Podar Mills Ltd. expired by efflux of time on 21st October, 1990. However, it continued to occupy the suit property as a protected or statutory tenant in terms of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short “**1947 Act**”). The Trust issued a legal notice dated 2nd December, 1994 to the NTC terminating its tenancy qua the suit property. The Parliament enacted the Textile Undertakings (Nationalisation) Act, 1995 (for short “**1995 Act**”), which was deemed to have come into force on 1st April, 1994.

4. On 18th July, 1995, the Trust (through respondents/trustees) filed a suit for eviction being TER Suit 680/1568/1995, against Podar Mills Ltd. (defendant No.1), NTC (defendant No.2) and Union of India (defendant No.3) under the provisions of the 1947 Act. The reliefs claimed in the said suit read thus:

“The Plaintiffs, therefore, pray that :-

(a) the Defendants No.2&3 be ordered and decree to quit, vacate and hand over quiet, vacant and peaceful possession of the suit Plot No.9, Cadastral Survey No.73 of Lower Parel Division situated at Delisle Road, (Now known as N.M. Joshi Marg), Bombay-400011 to the Plaintiffs;

(b) that the Defendants No.2 be ordered and decreed to pay the mesne profit to the Plaintiffs from the date of the suit till the Decree at the rate of Rs.128.75 per month, and after passing of the Decree a direction be given to make inquiry in the matter and such other rate 170, at the rate prevailing in the market be fixed as the mesne profit payable till possession is handed over to the plaintiffs;

(c) that pending the hearing and final disposal of the suit the Defendants No.2 their servants, agents and representatives be restrained by an order and injunction of this Hon'ble Court from carrying out any further work of additions, alterations and/or erections of a permanent nature or committing acts of waste into or upon the suit lands viz., Plot No.9, Cadastral Survey No.73 of Lower Parel Division situated at Delisle Road, (Now known as N.M. Joshi Marg), Bombay-400011;

(d) that pending the hearing and final disposal of the suit that the defendants No.2 their servants, agents and representatives be restrained by an order and a permanent injunction of this Hon'ble Court from sub-letting and/or transferring their interest in the suit premises or from creating a leave and licence in respect thereof or from

inducting a third party therein or from in any other manner parting with the possession of the suit lands;

(e) that interim and ad-interim injunctions be granted in terms of prayer (c) and (d) above during the pendency and final disposal of this suit;

(f) that a fit and proper person be appointed as a Commissioner to visit and inspect the suit premises being Plot No.9, Cadastral Survey No.73 of Lower Parel Division situated at Delisle Road, (Now known as N.M. Joshi Marg), Bombay-400011 and to make and give his report regarding the present position and condition of the suit lands and structures standing thereon;

(g) that the status quo in respect of the suit premises be maintained;

(h) for costs of this suit;

for such other and further order as may be just and proper and necessary;”

This suit was dismissed for non-prosecution on 26th August, 2002.

5. The Trust (through respondents/trustees) filed another suit on 6th May, 1997, being RAD Suit No.955/97, against the same parties (Union of India, Ministry of Textile (defendant No.1), NTC (defendant No.2) and Podar Mills Ltd. (defendant No.3) for the following reliefs:

“THE PLAINTIFFS THEREFORE PRAY:-

A. It be declared that upon expiry of the Lease period by efflux of time on 22.10.1990 the Defendants No.3 were holding over premises and/or by operation of law become the statutory tenant of the Plaintiffs in respect of suit property being Plot No.9, Cadastral Survey No.73 Land admeasuring about 12,118 Sq. yards with all buildings standing thereon, situated at Delisle Road, now known as N.M. Joshi Marg, Bombay-400011.

B. that it be declared that on the appointed day i.e. 1st April, 1995. The Defendants No.1, had acquired tenancy rights of the Defendants No.3, and what has vested in Defendants No.2 is the statutory tenancy of Defendants No.3, and as such Defendant No.2, is the statutory tenant of the Plaintiffs, protected under Bombay Rent Act, in respect of the suit premises being Plot No.9, Cadastral Survey No.73, land admeasuring about 12,118 Sq. yards with all buildings standing thereon, situated at Delisle Road, now known as N.M. Joshi Marg, Bombay-400011.

C. that it be also declared that Defendants No.3, as the statutory tenants of the Plaintiffs in respect of suit premises being Plot No.9, Cadastral Survey No.73, land admeasuring about 12,118 Sq. yards with all buildings standing thereon, situated at Delisle Road, now known as N.M. Joshi Marg, Bombay-400011, had no right to claim and/or receive any compensation from the Defendants No.1 and/or Defendant No.2, for the acquirement and/or vesting of their statutory tenancy right, in the Defendants No.1.

D. that the Defendants No.1 and 2 be directed to furnish the detail bifurcation of the payment mentioned in Schedule I item No.4 of the said Ordinance 6 of 1995.

E. that the Defendants No.1 be also restrained from making any payment to the extent of Defendants No.3, allege lease right, title, and interest in the suit property being Plot No.9, Cadastral Survey No.73, land admeasuring about 12,118 sq. yards with all buildings standing thereon, situated at Delisle Road, now known as N.M. Joshi Marg, Bombay-400011, fixed by the Defendants No.1, and/or No.2, as the Defendants No.1 had only acquired statutory tenancy rights thereon.

F. that it be declared that the Defendants No.1 and 2 as the statutory tenant of the Plaintiffs have no right to deal with transfer, mortgage, sell and/or otherwise disposed off and/or induct any third party in the suit promises, being Plot No.9, Cadastral Survey No.73, land admeasuring about 12,118 sq. yards with all buildings standing thereon, situated at Delisle Road, now known as N.M. Joshi Marg, Bombay-400011.

G. Interim and ad-interim reliefs in terms of prayers (d) to (f) be granted.

H. Costs and any other and such reliefs be granted as this Hon'ble Court may deem fit and proper."

This suit was eventually withdrawn on 22nd December, 2004.

6. The 1947 Act stood repealed by the Maharashtra Rent Control Act, 1999 (for short "**1999 Act**"). The Trust issued a notice for terminating the tenancy of NTC vide notice dated 26th September, 2000. The Trust (through respondents/trustees) filed a fresh suit on 20th April, 2001 under the Transfer of Property Act, 1882 only against the appellant NTC, in the Small Causes Court at Bombay being TER 311/326/01 for the following reliefs:

"The Plaintiffs, therefore, pray:

- (a) that the Defendants be ordered and decree to vacate and hand over to the Plaintiffs vacant peaceful possession of the suit premises i.e. premises being land with the building admeasuring about 12,118 sq. yards (equivalent to 10131.85 sq. mtrs.) bearing Plot No.9, Cadastral Survey No.73 of Lower Parel Division situated at Delisle Road, now known as N.M. Joshi Marg, Chinchpokli, Bombay-400011;
- (b) the Defendants be ordered and decree to pay to the Plaintiffs mesne profits at the market rate and at some other rate fixed by this Hon'ble Court for the use and occupation of the said land and building having area of about 12,118 sq. yards (equivalent to 10131.85 sq. mtrs.) from November 2000 till the Defendants hand over peaceful possession of the said premises viz. land with building admeasuring about 12118 sq. yards, bearing Plot No.9, Cadastral Survey No.73 of Lower Parel Division situated at Delisle Road, now known as N.M. Joshi Marg, Chinchpokli, Bombay-400011 to the Plaintiffs or at such amount as this Hon'ble Court may deem fit and proper, after due inquiry under Order XX Rule 12 (c) of the Civil Procedure Code;

- (c) pending hearing and final disposal of the suit Defendants by themselves, their agents, officers, servants be restrained by order and injunction of this Hon'ble Court from parting with possession or occupation of the suit premises under any assignment or part in whatsoever manner of induct any third party therein;
- (d) pending the hearing and final disposal of the suit some fit and proper person be appointed Receiver with all power under Order 40 Rule 4 of the Code of Civil Procedure to take charge of the suit premises;
- (e) pending the hearing and final disposal of the suit Defendants be ordered to pay to the Plaintiffs damages/equally profit at Rs.7 lacs per month subject to adjustment of said amount when damages/mesne profit is finally determined by the Hon'ble Court;
- (f) interim and ad-interim reliefs in terms of prayers (c), (d) and (e) above;
- (g) cost of this suit be provided for; and
- (h) for such other and further reliefs as the nature and circumstances of the case may required be granted."

7. The appellant NTC filed its written statement denying the pleas taken by the plaintiffs. The suit was decreed in favour of the plaintiffs (Trust) vide judgment and decree dated 5th August, 2006 by virtue of which the NTC was directed to hand over vacant and peaceful possession of the suit premises to the plaintiffs within four months.

8. Being aggrieved, the appellant NTC preferred Appeal No. 627 of 2006 before the Division Bench of the Small Causes Court at Bombay on 13th November, 2006 which was

dismissed by the appellate court by affirming the judgment and decree of the trial court vide judgment and decree dated 14th August, 2008. The appellant preferred civil revision before the High Court of Bombay, which came to be dismissed vide judgment and order dated 3rd August, 2009.

9. Being aggrieved, NTC assailed the aforementioned decision of the High Court before this Court by way of a Special Leave Petition converted to Civil Appeal No.7448 of 2011, which came to be dismissed on 5th September, 2011. That decision is the subject matter of the review petition filed on 20th December, 2013 by the Union of India as a third party. The principal ground urged by the Union of India is that the right, title and interest in the suit property had vested absolutely in the Central Government by virtue of Section 3(1) of the 1995 Act. Nevertheless, in the subject suit for possession filed by the Trust, Union of India had not been impleaded as a party-defendant. Notably, the Trust had impleaded Union of India as a party defendant in both the previous suits filed including for eviction under the provisions

of the 1947 Act. That pre-supposes that the respondents were cognizant of the effect of the statutory vesting of the tenancy absolutely in favour of the Central Government.

10. As aforementioned, during the pendency of the review petition, the Validation Act 2014 came into effect, necessitating Union of India to take out an application for urging additional grounds in the pending review petition, in light of the provisions contained in the said enactment.

11. This Court while dismissing the appeal preferred by NTC, gave time to vacate upto 31st December, 2013 subject to filing of usual undertaking within four weeks, to hand over peaceful and vacant possession to the Trust. The General Manager of NTC filed an affidavit of undertaking on behalf of NTC on 3rd October, 2011, with the approval of the Union of India, in compliance of the order dated 5th September, 2011 passed by this Court.

12. Before the expiry of the time to vacate, NTC filed an application for extension of time to hand over possession of the suit premises on 23rd December, 2013, for reasons stated

in the application. This Court acceded to that request vide order dated 31st January, 2014 and extended the time to vacate until 30th June, 2014. NTC filed a fresh undertaking on 24th March, 2014, with the approval of the Union of India, in compliance of the order dated 31st January, 2014.

13. NTC has filed a fresh application on 27th June, 2014 before the expiry of the time to vacate, being I.A. No.6 of 2014 for directions and praying for the following reliefs:

“PRAYERS:

(a) To grant time to the Applicants herein to comply with all the laws, rules, regulations as required for sub-division of the said land so that the land of the Respondent as well as Applicant could be demarcated and sub-divided;

(b) That this Hon'ble Court may be pleased to declare the Order dated 5.8.2006 of the Hon'ble Small Causes Court as regards the handing over of the building structure standing on the said suit land does not imply that the buildings are to be handed over free of cost or that the Respondent Trust is the owner therein;

(c) That in any event this Hon'ble Court may be pleased to vary the said order of the Small Cases Court dated 05.8.2006 in-as-much-as it directs handing over of building in-as-much-as the said order is impossible of compliance since in the process of sub-division, the structures on the land of the Respondent as also the land of the Applicant will stand demolished;

(d) That this Hon'ble Court may be pleased to direct the Respondent Trust to pay to the Applicants the salvage value at the market rate/value of the demolished structure

standing on the lease hold land to be handed over to the Respondent.

(e) That this Hon'ble Court may be pleased to permit and also issue a direction permitting the Applicant to hand over juridical possession to the Respondent Trust without handing over the physical possession until such time as the land has been demarcated and the structure demolished.

(f) Pass any such other order/s as may be deemed fit and proper.”

14. The respondents have filed a contempt petition on 20th November, 2014 including for enforcement of the directions given to NTC to vacate the suit premises and to hand over peaceful and vacant possession thereof to them. They allege that it is a case of willful disobedience and more particularly, breach of the undertaking given to this Court by the party concerned warranting appropriate action against NTC and its officials.

15. The respondents would contend that Union of India has no locus to file a review petition against the judgment of this Court dated 5th September, 2011. It is then contended that the grounds urged by the Union of India in the review petition regarding the purport of the 1995 Act were specifically raised

and have been answered appropriately. Secondly, the fact now asserted by the Union of India by way of review petition and which contention is supported by NTC, namely, that the tenancy rights in the suit property of the erstwhile Podar Mills Ltd. vested absolutely in the Union of India after the taking over of the management of the subject Textile Undertaking by operation of the provisions of the 1983 Act and followed by acquisition by virtue of the 1995 Act, was not specifically raised in the written statement filed by NTC. It is too late in the day to permit Union of India or NTC to raise that plea. It is not open for the review court to travel beyond the pleadings in the written statement filed by NTC. No evidence can be led either by Union of India or NTC in respect of any factual matter which has not been pleaded in the written statement. The plea taken by NTC in the written statement has been duly considered right up to this Court, which culminated into the decision of this Court. In fact, the review petition by Union of India is a subterfuge so as to circumvent the decree of possession passed against NTC in respect of the suit premises,

and moreso, in defiance of the undertaking already given to this Court, with the approval of the Union of India, to hand over peaceful and vacant possession. According to the respondents, the review petition by Union of India as well as the application for extension of time by NTC are nothing but an abuse of the process of the Court and must be dismissed. The respondents have also invited our attention to the interim orders passed by this Court in the present proceedings and would contend that the Commission's Report exposes the stand taken by NTC that the suit premises are still being used for its activities.

16. We have heard Ms. Pinky Anand, learned Additional Solicitor General appearing for the review petitioner, Mr. Shekhar Naphade & Mr. Maninder Singh, learned senior counsel appearing for NTC and Mr. Mukul Rohatgi, Mr. Ranjit Kumar & Mr. Shyam Divan, learned senior counsel appearing for the respondents.

17. From the judgment under review, it is seen that the main ground urged by Union of India in the review petition was

pressed into service by NTC. In paragraph 7 of the judgment, the argument canvassed on behalf of NTC has been noted as under:

“7. Shri Parag P. Tripathi, learned Additional Solicitor General, appearing for the appellant has submitted that the judgments and decrees of the courts below have to be set aside as none of the courts below has taken into consideration the effect of the provisions of the 1995 Act by virtue of which the textile undertaking stood absolutely vested in the Central Government and further vested in the appellant. As on the expiry of the lease of 99 years on 22-10-1990, the 1947 Act was in force, the then tenant, Podar Mills became the statutory tenant. Such tenancy rights stood vested absolutely in the Central Government on the commencement of the 1995 Act by operation of law. **The appellant stepped in the shoes of the Central Government merely as an agent, thus, the Central Government remained the tenant. The Central Government continued to be a tenant in the suit premises and thus, would be protected in terms of Section 3(1)(a) of the 1999 Act being premises let out to the Government.** The courts below failed to consider this vital legal issue. The suit filed by the respondents was not maintainable. The judgments and decrees of the courts below are liable to be set aside.”

(emphasis supplied)

18. This Court, after considering the rival submissions, held that NTC had not specifically pleaded in the written statement that the tenancy stood vested absolutely in the Central Government and resultantly, no issue in that behalf was framed nor any argument was advanced before the Trial

Court, Appellate Court or the Revisional Court. That contention was taken for the first time in the appeal before the Supreme Court by way of an application to urge additional grounds regarding the application of the 1995 Act, without seeking amendment to the pleadings (written statement). The Court then considered the question as to whether the Government is a tenant or whether NTC can be termed as “Government” or “Government Department” or “Agent” of the Central Government in the context of the 1999 Act. The Court, in unambiguous terms held that NTC could neither be treated as “Government” or “Government Department” nor could it be treated as an “Agent” of the Central Government. Whereas, NTC was controlled by the provisions of the 1995 Act and not by the Central Government. The Court also considered the purport of the expression “vesting” and noted that the Trust had rented out the suit premises to Podar Mills and what had vested was that right, title and interest of the Podar Mills and nothing else. It will be apposite to reproduce paragraphs 42

and 43 of the judgment under review, which rejects the claim of NTC in the following words:

“42. It is not permissible for the appellant to canvass that the Central Government has any concern so far as the tenancy rights are concerned. Right vested in the Central Government stood transferred and vested in the appellant. Both are separate legal entities and are not synonymous. The appellant being neither the Government nor the government department cannot agitate that as it has been substituted in place of the Central Government, and acts merely as an agent of the Central Government, thus protection of the 1999 Act is available to it. The appellant cannot be permitted to say that though *all the rights vested in* it but it merely remained the agent of the Central Government. Acceptance of such a submission would require interpreting the expression “vesting” as holding on behalf of some other person. Such a meaning cannot be given to the expression “vesting”.

43. It is a settled legal proposition that an agent cannot be sued where the principal is known. In the instant case, the appellant has not taken the plea before either of the courts below. In view of the provisions of Order 8 Rule 2 CPC, the appellant was under an obligation to take a specific plea to show that the suit was not maintainable which it failed to do so. The vague plea to the extent that the suit was bad for non-joinder and, thus, was not maintainable, did not meet the requirement of law. The appellant ought to have taken a plea in the written statement that it was merely an “agent” of the Central Government, thus the suit against it was not maintainable. More so, whether A is an agent of B is a question of fact and has to be properly pleaded and proved by adducing evidence. The appellant miserably failed to take the required pleadings for the purpose.”

19. Reverting to the question of whether Union of India has locus to file the review petition, we must immediately advert to

Section 114 of the Code of Civil Procedure (“**CPC**”) which, inter alia, postulates that “any person considering himself aggrieved” would have locus to file a review petition. Order XLVII of CPC restates the position that any person considering himself aggrieved can file a review petition. Be that as it may, the Supreme Court exercises review jurisdiction by virtue of Article 137 of the Constitution which predicates that the Supreme Court shall have the power to review any judgment pronounced or order made by it. Besides, the Supreme Court has framed Rules to govern review petitions. Notably, neither Order XLVII of CPC nor Order XLVII of the Supreme Court Rules limits the remedy of review only to the parties to the judgment under review. Therefore, we have no hesitation in enunciating that even a third party to the proceedings, if he considers himself an aggrieved person, may take recourse to the remedy of review petition. The quintessence is that the person should be aggrieved by the judgment and order passed by this Court in some respect.

20. The next question is whether Union of India can be considered as an aggrieved person so as to pursue the remedy of review petition. It is indisputable that the management of Podar Mills-Textile Undertaking was taken over by the Central Government after the commencement of the 1983 Act. The scope of management would obviously include possession and permissible use of the suit property of the Textile Undertaking so taken over. In due course, the 1995 Act came into force. As a consequence of Section 3 of this Act, the right, title and interest of the owners of the subject Textile Undertaking (Podar Mills Ltd.) including the statutory tenancy rights in relation to the suit property stood transferred to and vested absolutely in the Central Government. By the same provision, vide sub-section (2) thereof, the Textile Undertaking which stood vested in the Central Government immediately thereafter stood transferred to and vested in the National Textile Corporation. That included subsisting statutory tenancy rights in respect of the suit property enjoyed by the concerned Textile Undertaking. However, Section 3 stands amended by virtue of

the 2014 Act. That amendment by a legal fiction is deemed to have been inserted into the 1995 Act w.e.f. 1st January, 1994. The purport of the amended sub-sections (3) and (4), inserted in section 3 is that the leasehold rights of the Textile Undertaking would continue to remain vested in the Central Government and no Court could exercise jurisdiction to order divestment from the NTC of the property vested in it by the Central Government. In addition, the Amendment Act of 2014 has introduced Section 39 in the 1995 Act, titled as 'Validation'. We shall dilate on the efficacy of these provisions a little later.

21. Suffice it to observe that since Union of India is asseverating that the suit property had vested absolutely in the Central Government and continues to so vest in it by virtue of a legal fiction in the Validation Act 2014, would be justified in contending that it is a person aggrieved and has locus to point out that the decree for possession of the suit premises against NTC could not have been passed and in any case, the same could not be enforced in law. It is an

inexecutable decree and including the undertaking given by NTC, assuming that the concerned court had jurisdiction to pass such a decree.

22. Having said this, we may now turn to the question of scope of review jurisdiction to be exercised by this Court in civil proceedings. The power to review any judgment pronounced or order made by this Court flows from Article 137 of the Constitution of India, which reads thus:

“137. Review of judgments or orders by the Supreme Court Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.”

23. The power to frame rules is posited in Article 145 of the Constitution. As per Rule 1 of Order XLVII of the Supreme Court Rules framed under Article 145, the Court can review its judgment or order on the grounds mentioned in Order XLVII, Rule 1 of the CPC. It will be, therefore, apposite to advert to Rule 1 of Order XLVII of CPC. The same reads thus:

**“ORDER XLVII
REVIEW**

1. Application for review of judgement.-

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgement notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review."

24. The grounds for review are specified in clause (1) noted above. The factual scenario in the present case is certainly not ascribable to discovery of new or important matters or evidence which was "available or existing" at the time of the decree but could not be produced despite exercise of due diligence. In the present case, the asseveration of the review petitioner is about the mistake or error apparent on the face of the record committed by the Court and more particularly

founded on the effect of the subsequent enactment of Validation Act 2014 which completely changes the status of the parties, namely, Union of India and NTC qua the suit property and bars the enforcement of any decree and including the undertaking given to the Court by NTC.

25. Ordinarily, enactment of a subsequent legislation by itself cannot be the basis to review the judgment already rendered by the Court. But the argument of the review petitioner proceeds on the premise that the subsequent legislation has completely altered the status of the parties retrospectively qua the suit property with effect from 1st April, 1994 by a legal fiction, as a result of which the cause of action against NTC as referred to in the subject suit had become non-existent; and including any decree or order passed against NTC or for that matter, an undertaking filed by NTC in any court or tribunal or authority has been rendered unenforceable by operation of law and cannot be continued or taken forward. In other words, even if a valid decree has been

passed against NTC, the same had become inexecutable by operation of law.

26. This Court in *Raja Shatrunji Vs. Mohammad Azmal Azim Khan and Ors.*² had an occasion to consider the impact of Amendment Act having retrospective effect on the decree already passed. The discussion in paragraphs 11 to 13 of this decision is quite instructive. It accepts the argument that the Court must give full effect to the statutory fiction, which should be carried to its logical conclusion - no matter in review jurisdiction. The said paragraphs read thus:

“11. The Amendment Act therefore provided that the amendment took effect as if the Amendment Act had been in force on all material dates. The effect of such a deeming clause was stated by this Court in *State of Bombay v. Pandurang Vinayak Chaphalkar*³ as follows:

‘When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.’

The statutory fiction was introduced to give full effect to Section 4 of the 1952 Act by conferring on the debtors and creditors the right to apply to the court for calculation and reduction of debt. It was realised that courts always passed simple decrees. It was noticed that mortgaged property was not and could not be charged under the decree. It was

² (1971) 2 SCC 200

³ AIR 1953 SC 244 = 1953 SCR 773

therefore appreciated that unless the words “charged under the decree” were deleted the section could never give any relief to any landlord whose estate had been acquired.

12. This Court in the *Bombay case* referred to the observations of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council*, 1952 AC 109 that “If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs”. These observations indicate that the words “charged under the decree” in Section 4(2) of the 1952 Act were never there with the inevitable consequence that the only statutory requirement is whether the mortgaged property consists of estate which has been acquired under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

13. On November 27, 1962 when the matter was heard by the High Court, this amendment did not come into the statute-book. That is why the judgment-debtor made an application to bring it to the notice of the High Court that the law was that the words “charged under the decree” were always deemed to have been deleted and this law was effective from the date of coming into force of the 1952 Act on May 25, 1953. The High Court by a majority opinion was of the view that the judgment-debtors should be given relief under Order 47 of the Code of Civil Procedure the principles of review are defined by the Code and the words “any other sufficient reason” in Order 47 of the Code would mean a reason sufficient on grounds analogous to those specified immediately previously in that order. The grounds for review are the discovery of new matters or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or the review is asked for on account of some mistake or error apparent on the face of the record. In *Rajah Kotagiri Venkata Subbamma Rao v. Rajah Vellanki Venkatrama Rao*, Lord Davey at p. 205 of the

Report said that “the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some subsequent event”. **Counsel for the appellant submitted that when the High Court decided the matter, the High Court applied the law as it stood and a subsequent change of law could not be a ground for review. The appellant’s contention is not acceptable in the present case for two principal reasons; first, it is not a subsequent law. It is the law which all along was there from 1952. The deeming provision is fully effective and operative as from May 25, 1953 when the 1952 Act came into force. The result is that the court is to apply the legal provision as it always stood. It would, therefore, be error on the face of the record. The error would be that the law that was applied was not the law which is applicable.** Secondly, Section 4 of the 1952 Act confers power on the court to apply the law notwithstanding any provision contained in the Code of Civil Procedure. *Therefore the application though intituled an application for review was not so.* The substance and not the form of the application will be decisive.”

(emphasis supplied)

27. Applying the underlying principle and as jurisdictional issues have been raised which are essentially founded on the law enacted by the Parliament with retrospective effect containing a legal fiction and for doing complete justice to the parties, besides the power of review under Article 137 of the Constitution, it is open to this Court to exercise its plenary power under Article 142 of the Constitution.

28. Reverting to the judgment under review, it is noticed that the provisions of the 1983 Act and 1995 Act have been generally adverted to while dealing with the plea taken by the appellant NTC that it was in possession of the suit property merely as an agent of the Central Government. However, the Court declined to entertain that plea of NTC as it was not so specifically pleaded in the written statement. The Court then concluded that the appellant NTC was neither the “Government” nor “Government Department” nor “Agent” of the Central Government in the context of the Maharashtra Rent Control Act, 1999. That view has been taken in reference to the 1983 Act and the “un-amended” provisions of 1995 Act. Indeed, the review petitioners would argue that on a fair reading of the un-amended provisions contained in 1995 Act and juxtaposed with the provisions of 1983 Act, the inescapable conclusion is that the leasehold rights continued to vest in the Central Government. However, we are not inclined to countenance this argument.

29. The review petitioners may be justified in pointing out that this Court committed an error apparent on the face of the record in observing that the appellant had never raised the issue before the courts below that the Central Government was the tenant and the appellant was holding the premises merely as an agent; and that a vague plea was taken about the non-joinder of the parties - which plea was not even pursued before the Trial Court. Those errors, in our opinion, would not affect the final conclusion recorded by this Court in the judgment under review, considering the effect of the provisions as were applicable at the relevant time in the form of “un-amended” Section 3 of the 1995 Act. For, by virtue of sub-section (2) of Section 3 of that Act, the rights which had vested absolutely in the Central Government including in respect of the suit property, stood transferred to and vested in the appellant NTC on coming into force of the 1995 Act w.e.f. 1st April, 1994. That view taken by this Court does not merit any review. Resultantly, it is not necessary to dilate on the decisions in **S. Bagirathi Ammal Vs. Palani Roman**

Catholic Mission⁴, ***Union of India Vs. Sandur Manganese and Iron Ores Limited and Ors.***⁵ and ***Champsey Bhara and Company Vs. Jivraj Balloo Spinning and Weaving Company Limited***⁶, on the principle of the purport of expression “error apparent” postulated in the rules governing the scope of review jurisdiction.

30. However, the legal situation has undergone a sea-change retrospectively after the coming into force of the Validation Act 2014. The Validation Act makes it explicit that the amendment to the 1995 Act specified therein shall be deemed to have been inserted on or from the date of commencement of the 1995 Act i.e. 1st April, 1994. The preamble of the Validation Act and the relevant chapter applicable to the case on hand, being Chapter III of that Act, read thus:

“THE TEXTILE UNDERTAKINGS (NATIONALISATION) LAWS
(AMENDMENT AND VALIDATION) ACT, 2014
NO.36 OF 2014
[17th December, 2014.]

⁴ (2009) 10 SCC 464

⁵ (2013) 8 SCC 337

⁶ (1923) Vol. L (IA) 324

An Act further to amend the Sick Textile Undertakings (Nationalisation) Act, 1974 and the Textile Undertakings (Nationalisation) Act, 1995, **in order to continue with the lease-hold rights vested in the National Textile Corporation on completion of the lease-hold tenure.**

WHEREAS the National Textile Corporation subserves the interests of the general public and the land continue to be in possession of the said Corporation;

AND WHEREAS **various other textile undertakings have been nationalised from time to time and their assets vested absolutely in the Central Government and thereafter transferred to the National Textile Corporation Limited by the Central Government free from all encumbrances;**

AND WHEREAS after the nationalisation of the textile undertakings, a **large sum of money have been invested with a view to making the said textile undertakings viable;**

AND WHEREAS the Central Government has taken **initiative to revive certain sick undertakings** including the National Textile Corporation under a revival scheme sanctioned by the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985;

AND WHEREAS **it is necessary for the proper and effective implementation of the revival scheme and to protect the public investment in the acquired textile undertakings and to explicitly clarify the status of such vesting of the lease-hold rights in the Central Government.**

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. (1) This Act may be called the Textile Undertakings (Nationalisation) Laws (Amendment and Validation) Act, 2014.

(2) It shall be deemed to have come into force with effect from the 24th October, 2014.

CHAPTER II
AMENDMENTS TO THE SICK TEXTILE UNDERTAKINGS
(NATIONALISATION) ACT, 1974

xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx

CHAPTER III
AMENDMENTS TO THE TEXTILE UNDERTAKINGS
(NATIONALISATION) ACT, 1995

5. On and from the date of commencement of the Textile Undertakings (Nationalisation) Act, 1995 (hereafter in this Chapter referred to as **the principal Act**), in section 3, after sub-section (2), **the following sub-sections shall be inserted and shall be deemed to have been inserted,** namely:—

"(3) **Notwithstanding the transfer and vesting** of any textile undertaking to the National Textile Corporation **by virtue of sub-section (2), the lease-hold rights of the textile undertakings shall continue to remain vested in the Central Government** on payment of lease-hold rents and shall be discharged, for and on behalf of that Government, by the National Textile Corporation as and when payment of such lease-hold rents or any amount becomes due and payable.

(4) Subject to sub-section (3), **no court shall have jurisdiction to order divestment from the National Textile Corporation of the property vested in it by the Central Government.**".

6. On and from the date of commencement of the principal Act, in section 4, after sub-section (7), the following sub-sections shall be inserted and shall be deemed to have been inserted, namely:—

“(8) Notwithstanding the fact that the textile operations have been discontinued in any textile undertaking being revived, shall for all effects and purposes be deemed that the textile operations are being continued and no suit or proceeding shall be instituted or if instituted be maintainable against the National Textile Corporation on the ground that it has discontinued such activity in the textile undertaking.

(9) For the removal of doubts, it is hereby declared that the continued deemed vesting of the lease-hold land in the Central Government shall not affect, impair or in any manner prejudice the rights of the National Textile Corporation to prosecute or defend any proceedings as a subsequent vestee in respect of any such lease-hold rights and no such proceedings shall fail only on account of the non-impleadment of that Government.”.

7. After section 38 of the principal Act, the following section shall be inserted, namely:—

"39. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

(a) the provisions of this Act, as amended by the Textile Undertakings (Nationalisation) Laws (Amendment and Validation) Act, 2014, shall have and shall be deemed always to have effect for all purposes as if the provisions of this Act, as amended by the

said Act, had been in force at all material times;

(b) any lease-hold property divested from the National Textile Corporation to any person under the provisions of this Act, as it stood immediately before the commencement of the Textile Undertakings (Nationalisation) Laws (Amendment and Validation) Act, 2014, shall stand transferred to and vest or continue to vest, free from all encumbrances, in the National Textile Corporation in the same manner as it was vested in the National Textile Corporation before such divesting of that property under the provisions of this Act as if the provisions of this Act, as amended by the aforesaid Act, were in force at all material times;

(c) no suit or other proceedings shall, without prejudice to the generality of the foregoing provisions, be maintained or continued in any court or tribunal or authority for the enforcement of any decree or order or direction given by such court or tribunal or authority, notwithstanding any undertaking filed by the National Textile Corporation in any court or tribunal or authority, directing divestment of such lease-hold property from the National Textile Corporation vested in it under section 3 of this Act, as it stood before the commencement of the Textile Undertakings (Nationalisation) Laws (Amendment and Validation) Act, 2014, and such lease-hold property shall continue to vest in the National Textile Corporation under section 3 of this Act, as amended by the aforesaid Act, as if the said section was in force at all material times;

(d) any transfer of any property, vested in the National Textile Corporation, by virtue of any

order of attachment, seizure or sale in execution of a decree of a civil court or orders of any tribunal or other authority in respect of leasehold property vested in the National Textile Corporation which is contrary to the provisions of this Act, as amended by the Textile Undertakings (Nationalisation) Laws (Amendment and Validation) Act, 2014, shall be deemed to be null and void and notwithstanding such transfer, continue to vest in the National Textile Corporation under this Act.”.

8.(1) The Textile Undertakings (Nationalisation) Laws (Amendment and Validation) Ordinance, 2014 is hereby repealed.

(2) Notwithstanding the repeal of the Textile Undertakings (Nationalisation) Laws (Amendment and Validation) Ordinance, 2014, anything done or any action taken under the principal Acts as amended by the said Ordinance shall be deemed to have been done or taken under the principal Acts, as amended by this Act.”

(emphasis supplied)

31. We may hasten to add that the validity of the provisions of Validation Act 2014 is not put in issue in these proceedings. As is noticed, the effect of the Validation Act 2014 is to incorporate sub-sections (3) & (4) in Section 3 and sub-sections (8) & (9) in Section 4 of the Principal Act i.e. 1995 Act, with retrospective effect for all purposes, by a deeming provision, as if it had always been in force at all material times

w.e.f. 1st April, 1994. In addition, Section 39 has been inserted in the Principal Act.

32. The effect of insertion of sub-sections (3) & (4) in Section 3 of the Principal Act is that Section 3, as on 1st April, 1994, would read as follows:

“3. (1) On the appointed day, the right, title and interest of the owner in relation to every textile undertaking shall stand transferred to and shall and shall vest absolutely in, the Central Government.

(2) Every textile undertaking which stands vested in the Central Government by virtue of sub-section (1) shall immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation.

(3) **Notwithstanding the transfer and vesting** of any textile undertaking **to the National Textile Corporation by virtue of sub-section (2), the lease-hold rights of the textile undertakings shall continue to remain vested in the Central Government** on payment of lease-hold rents and shall be discharged, for and on behalf of that Government, by the National Textile Corporation as and when payment of such lease-hold rents or any amount becomes due and payable.

(4) Subject to sub-section (3), **no court shall have jurisdiction to order divestment from the National Textile Corporation of the property vested in it by the Central Government.**”

(emphasis supplied)

Similarly, in light of the amendment of 2014, Section 4, as on

1st April, 1994, would read as follows:

“4. (1) The textile undertakings referred to in section 3 shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments machinery and equipment, cash balances, cash

on hand, reserve funds, investment and book debts pertaining to the textile undertakings and all other rights and interests in, or arising out -of, such property as were immediately before the appointed day in the ownership, possession, power or control of the textile company in relation to the said undertakings, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to include the liabilities and obligations specified in sub-section (2) of section 5.

(2) All property as aforesaid which have vested in the Central Government under sub-section (1) of section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation mortgage, charge, lien and all other incumbrances affecting it, and any attachment, injunction or decree or order of any court or other authority restricting the use of such property in any manner shall be deemed to have been withdrawn.

(3) Where any licence or other instrument in relation to a textile undertaking had been granted at any time before the appointed day to the owner by the Central Government or a State Government or any other authority, the National Textile Corporation shall, on and from such date, be deemed to be substituted in such licence or other instrument in place of the owner referred to therein as if such licence or such other instrument had been granted to it and shall hold such licence or the textile undertaking specified in such other instrument for the remainder of the period for which the owner would have held such licence or the textile undertaking under such other instrument.

(4) Every mortgagee of any property which has vested under this act in the Central Government and every person holding any charge, lien or other interest in, or in relation to, any such property shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, charge, lien or other interest.

(5) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (2) or any other person holding any charge, lien or other interest

in, or in -relation to, any such property' shall be entitled" to claim, in accordance with his-rights and interests, payment of the mortgage maps or other-dues, in whole or in part, out of the amounts specified in relation to such property in the First Schedule, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government.

(6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any property which has vested in the Central Government under section 3, instituted or preferred by or against the textile company is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the textile undertakings or of anything contained in this act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the National Textile Corporation.

(7) Any person who, on the date on which the Textile Undertakings (Nationalisation) Ordinance, 1995 was promulgated, was in possession of, or had under his custody or control, the whole or any part of any textile undertaking referred to in section 3, the management of which could not be taken over by the Central Government by reason of any decree, order or injunction of any court or otherwise, shall deliver forthwith the possession of such undertaking or part and all books of account, registers and all other documents of whatever nature relating to such undertaking or part to the Central Government or the National Textile Corporation, as the case may be, may specify in this behalf.

(8) Notwithstanding the fact that the textile operations have been discontinued in any textile undertaking being revived, shall for all effects and purposes be deemed that the textile operations are being continued and no suit or proceeding shall be instituted or if instituted be maintainable against the National Textile Corporation on the ground that it has discontinued such activity in the textile undertaking.

(9) For the removal of doubts, it is hereby declared that the continued deemed vesting of the lease-hold land in the Central Government shall not affect, impair or in any

manner prejudice the rights of the National Textile Corporation to prosecute or defend any proceedings as a subsequent vestee in respect of any such lease-hold rights and no such proceedings shall fail only on account of the non-impleadment of that Government.”

(emphasis supplied)

33. Reverting to Section 3 as “amended” and which by operation of law had come into force with effect from 1st April, 1994, the right, title and interest of Podar Mills Ltd. in relation to the Textile Undertaking including in respect of the suit property, stood transferred to and vested absolutely in the Central Government. By virtue of sub-section (2), all such right, title and interest of Podar Mills as vested in the Central Government under sub-section (1), immediately stood transferred to and vested in the appellant NTC “except the leasehold rights in the suit property” which continued to remain vested in the Central Government. For, the amended Section 3(3) explicitly postulates that the leasehold rights of the Textile Undertaking (Podar Mills) in respect of the suit property as on 1st April, 1994, continued to remain vested in the Central Government. That right was never transferred to NTC by operation of law. It pre-supposes that “only the other

rights” of the Textile Undertaking as vested in the Central Government in terms of sub-section (1), stood transferred to and vested in the NTC under sub-section (2).

34. In the present case, the management of Podar Mills was taken over by the Central Government in exercise of powers under 1983 Act whereafter the lease in respect of the suit property expired on 21st October, 1990. On expiry of the lease term, indisputably, Podar Mills became the protected tenant or statutory tenant within the purview of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short **“1947 Act”**). Section 5(11) of the said Act defines the term “tenant”, as under:

(11) “tenant” means any person by whom or any whose account rent is payable for any premises and includes,-
 (a) such sub-tenants and other persons as have derived title under a tenant before the 1st day of February 1973;
 (aa) any person to whom interest in premises, has been assigned or transferred as permitted or deemed to be permitted, under section 15;
 (b) any person remaining after the determination of the lease, in possession, with or without the assent of the landlord, of the title [before the first day of February 1973;]
 [(bb) such licensees as share deemed to be tenants for the purposes of this Act by section 15A]
 [(bba) the State Government, or as the case may be, the Government allottee, referred to in sub-clause (b) of clause (1A), deemed to be a tenant, for the purposes of this Act by section 15B;].

[(c) (i) in relation to any premises let for residence, when the tenant dies, whether the death has occurred before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978, any member of the tenant's family residing with the tenant at the time of his death or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court;

(ii) in relation to any permission let for the purposes of education, business, trade or storage, when the tenant dies, whether the death has occurred before or after the commencement of the said Act, any member of the tenant's family using the premises for the purposes of education of carrying on business, trade or storage in the premises, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court.

Explanation.- the provisions of this clause for transmission of tenancy, shall not be restricted to the death of the original tenant, but shall apply, and shall be deemed always to have applied, even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.]”

In the 1999 Act the expression “tenant” has been defined in

Section 7(15) as follows:

“(15) “tenant” means any person by whom or on whose account rent is payable for any premises and includes,-

- (a) such person,-
 - (i) who is a tenant, or
 - (ii) who is a deemed tenant, or
 - (iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or
 - (iv) who has derived title under a tenant, or
 - (v) to whom interest in premises has been assigned or transferred as permitted,

by virtue of, or under the provisions of, any of the repealed Acts;

- (b) a person who is deemed to be a tenant under

section 25;

(c) a person to whom interest in premises has been assigned or transferred as permitted under section 26;

(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,-

(i) where they are let for residence, is residing, or

(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,

with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in the absence of agreement, by the court.

Explanation.- The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.”

35. Being a protected or statutory tenant, Podar Mills could be dispossessed from the suit premises by the Trust only on the grounds permissible under that Act by instituting eviction proceedings before the competent Rent Court having exclusive jurisdiction to entertain the dispute between the landlord and tenant, who in turn would then have to record its satisfaction about the entitlement of the landlord to recover possession of the suit property. The right so enjoyed by the Podar Mills Ltd. stood transferred to and vested in the Central Government with effect from 1st April, 1994. Further, by virtue of

“amended” Section 3 of the 1995 Act, by operation of law, the rights of the Textile Undertaking, in respect of the suit property, of being a statutory or protected tenant, continued to vest in the Central Government even after the coming into force of the 1999 Act and repeal of the 1947 Act. Resultantly, the provisions of the 1999 Act would squarely apply to the suit property in terms of Sections 2 & 3 of the said Act. The said provisions read thus:

“2. Application. (1) This Act shall, in the first instance, apply to premises let for the purposes of residence, education, business, trade or storage in the areas specified in Schedule I and Schedule II.

(2) Notwithstanding anything contained in sub-section (1), it shall also apply to the premises or, as the case may be, houses let out in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 or the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 issued under the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 and The Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 were extended and applied before the date of commencement of this Act and such premises or houses continue to be so let on that date in such areas which are specified in Schedule I to this Act, notwithstanding that the area ceases to be of the description therein specified.

(3) It shall also apply to the premises let for the purposes specified in sub-section (1) in such of the cities or towns as specified in Schedule II.

(4) Notwithstanding anything contained hereinabove, the State Government may, by notification in the Official Gazette, direct that –

(a) this Act shall not apply to any of the areas specified in Schedule I or Schedule II or that it shall not apply to any one or all purposes specified in sub-section (1);

(b) this Act shall apply to any premises let for any or all purposes specified in sub-section (1) in the areas other than those specified in Schedule I and Schedule II.

3. Exemption. (1) This Act shall not apply –

(a) to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf, **but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer;**

(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of more than rupee one crore or more.

Explanation. - For the purpose of this clause the expression "bank" means,- (i) the State Bank of India constituted under the State Bank of India Act, 1955; (ii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959; (iii) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980; or (iv) any other bank, being a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934.

(2) The State Government may direct that all or any of the provisions of this Act shall, subject to such conditions and terms as it may specify, not apply-

- (i) to premises used for public purposes of a charitable nature or to any class of premises used for such purposes;
- (ii) to premises held by a public trust for a religious or charitable purpose and let at a nominal or concessional rent;
- (iii) to premises held by a public trust for a religious or charitable purpose and administered by a local authority; or
- (iv) to premises belonging to or vested in an university established by any law for the time being in force.

Provided that, before issuing any direction under this sub-section, the State Government shall ensure that the tenancy rights of the existing tenants are not adversely affected.

(3) The expression "premises belonging to the Government or a local authority" in subsection (1) shall, notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be, and such person shall be entitled to create a tenancy in respect of such building or a part thereof."

(emphasis supplied)

The latter part of clause (a) of sub-section (1) of Section 3 of the 1999 Act makes it amply clear that the Act shall apply in respect of the premises let or given on licence to Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer.

36. As aforementioned, since the Central Government continued to remain as the protected or statutory tenant in respect of the suit property w.e.f. 1st April, 1994, the fact that the appellant NTC was carrying on its activities therein would not extricate the landlord (Trust) from initiating eviction proceedings against the real tenant, namely, the Central Government or Union of India; and such eviction proceedings could be maintained only before the jurisdictional Rent Court having exclusive jurisdiction to decide any dispute between the landlord and tenant. The present suit, however, came to be filed only against the appellant NTC and that too before the jurisdictional civil court under the Transfer of Property Act. It is obvious that the Trust acted on the legal advice and instituted the present suit, despite having filed two suits (namely, TER Suit 680/1568 of 1995 and RAD Suit 955/1997) in earlier point of time, for possession of the suit property, in both of which Union of India was made party-defendant. But those suits were eventually dismissed for non-prosecution and

withdrawn, respectively, during the pendency of the subject suit, for reasons best known to the Trust.

37. To put it differently, the present suit instituted by the Trust under the provisions of the Transfer of Property Act, which culminated with the decree of eviction, affirmed up to this Court vide judgment under review, has been rendered without jurisdiction, by operation of law. This being the position after coming into force of the Validation Act 2014 and in particular, the purport of Section 39 as inserted, the decree so passed or undertaking given by NTC cannot be continued or enforced.

38. According to the learned counsel for the respondents, the amended provision introduced by the Validation Act 2014 has no application to the present case. This contention is founded on the interpretation of the expression “leasehold rights” of the Textile Undertaking. It is argued that this expression presupposes that there must be an existing or subsisting leasehold rights. Only such right would be governed by the amended provision. To buttress this submission, reliance is

placed on Section 4 of the 1995 Act which explicitly adverts to different types of rights enjoyed by the Textile Undertaking. "Leaseholds" is one such right separately noted. Since there was no "subsisting" leasehold right enuring in favour of Podar Mills, inevitably no such right vested in the Central Government. Whereas, the right transferred to and vested in the Central Government under sub-section (1) is only that of a protected or statutory tenant enjoyed by Podar Mills at the relevant time i.e. 1st April, 1994. That right vested in the Central Government is not saved in terms of sub-section (3). Resultantly, the right of a protected or statutory tenant vested in Central Government stood transferred to and vested in NTC in terms of sub-section (2) and continued to remain so vested in the NTC. If so, the relief of eviction or possession could be pursued by the Trust only against NTC. Further, admittedly, NTC did not enjoy the status of a statutory or protected tenant after coming into force of the 1999 Act and repeal of the 1947 Act. In that situation, the subject suit for possession against

the appellant NTC came to be justly filed before the civil court under the provisions of the Transfer of Property Act.

39. This argument, in our opinion, is an attempt to oversimplify the purport of Section 3(3), if not indulging in hair-splitting of the contextual meaning of the expression “leasehold rights” therein and in Section 4(1) or elsewhere in the 1995 Act. Section 3(1) refers to right, title and interest of the owner of the Textile Undertaking generally. That encompasses all the rights as are spelt out in Section 4(1) of the Act. One such right can be leasehold rights. Concededly, the expression “leasehold rights” mentioned in the 1995 Act must be construed as referring to the rights under the Transfer of Property Act, 1882 as well as under the applicable Rent Act recognizing “tenancy rights” without exception. The expression “leasehold rights” has not been defined in the 1983 Act or in the 1995 Act or for that matter, in the concerned Rent Act. That expression can be discerned from the Transfer of Property Act, 1882. The expression “lease” is defined in Section 105 thereof which reads thus:

“105. Lease defined.- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.- the transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.”

Chapter V of the Transfer of Property Act deals with matters concerning Leases of Immovable Property. The rights and liabilities of a lessor and lessee are specified in Section 108. The provision regarding determination of a lease can be culled out from Section 111 and the effect of holding over in the event of a lessee or under-lessee of a property remaining in possession thereof after the determination of the lease granted to the lessee, is provided in Section 116, which reads thus:

“116. Effect of holding over.- if a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Illustrations

- (a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs.100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.
- (b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year."

40. We must quote with profit the meaning of the expression 'lease', 'leasehold', 'leasehold interest', 'tenancy', and 'tenancy at sufferance'; as predicated in Black's Law Dictionary (9th Edn.). The same read as follows:

Lease, n. (14c) 1- A contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usu.rent. – The lease can be for a fixed period, or for a period terminable at will. [Cases: Landlord and Tenant-20.] 2- Such a conveyance plus all covenants attached to it. 3- The written instrument memorializing such a conveyance and its covenants. – all termed lease agreement; lease contract. 4- The price of real property so conveyed. 5- A contact by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration. [Cases: Bailment-1.]

Leasehold, n. (18c) A tenant's possessory estate in land or premises, the four types being the tenancy for years, the periodic tenancy, the tenancy at will, and the tenancy at sufferance. • Although a leasehold has some of the characteristics of real property, it has historically been classified as a chattel real. – Also termed leasehold estate; leasehold interest. See TENANCY. Cf. FREEHOLD. [Cases: Landlord and Tenant-70, 113, 117.]

Leasehold interest. (18c) 1- LEASEHOLD; esp. for purposes of eminent domain, the lessee's interest in the lease itself, measured by difference between the total remaining rent and the rent the lessee would pay for similar space for the same

period. [Cases: Eminent Domain -147] 2- Lessor's or lessee's interest under a lease contract.[Cases: Bailment-7] 3. WORKING INTEREST. [Cases: Landlord and Tenant-20.]

Tenancy. (16c) 1. The possession or occupancy of land under a lease; a leasehold interest in real estate. 2. The period of such possession or occupancy. See ESTATE (1). [Cases: Landlord and Tenant-20] 3. The possession of real or personal property by right or title, esp. under a conveying instrument such as a deed or will.

Tenancy at sufferance. (18c) A tenancy arising when a person who has been in lawful possession of property wrongfully remains as a holdover after his or her interest has expired. • A tenancy at sufferance takes the form of either a tenancy at will or a periodic tenancy.- Also termed holdover tenancy; estate at sufferance. See HOLDING OVER (1). [Cases: Landlord and Tenant-117, 119.]

“A tenancy at sufferance arises where a tenant, having entered upon land under a valid tenancy, holds over without the landlord's assent or dissent. Such a tenant differs from a trespasser in that his original entry was lawful, and from a tenant at will in that his tenancy exists without the landlord's assent. No rent, as such, is payable, but the tenant is liable to pay compensation for his use and occupation of the land. The tenancy may be determined [i.e., terminated] at any time, and may be converted into a yearly or other periodic tenancy in the usual way, e.g., if rent is paid and accepted with reference to a year in circumstances where the parties intended there to be a tenancy.” Robert E. Megarry & M.P. Thompson, A Manual of the Law of Real Property 319 (6th ed. 1993).

It will be useful to also advert to the expression ‘Tenant’ and ‘Holdover Tenant’ in Black’s Law Dictionary which are as follows:

Tenant, n. (14c) 1. One who holds or possesses lands or tenements by any kind of right or title. See TENANCY. [Cases: Landlord and Tenant-1]

Holdover tenant: A person who remains in possession of real property after a previous tenancy (esp. one under a lease) expires, thus giving rise to a tenancy at sufferance.- Sometimes shortened to holdover. See tenancy at sufferance under TENANCY. [Cases: Landlord and Tenant-119(2).]

41. Indeed, if the matter in issue is to be decided de hors the provisions of the applicable Rent Act, then it is possible to say that the expression “leasehold rights” would be limited to a subsisting lease. However, in the present case, we are required to reckon the status of the Union of India and NTC qua the suit property in the context of the rights accrued in terms of the provision of the Rent Act of 1947 and 1999, respectively. The expression “leasehold rights” in 1995 Act, obviously, must receive wider meaning so as to encompass “tenancy rights” flowing from the applicable Rent Act. For, the expression “tenancy rights” accruing under the Rent Act is analogous to and interchangeable with the expression “leasehold rights”. There is no reason to exclude the expression “statutory right” so enjoyed by the owners of the Textile Undertaking from the expression “leasehold rights” referred to in sub-section (3), so long as it has not been so expressly excluded.

42. Considering the legislative intent for enacting the 1995 Act and the Validation Act 2014 also, it is not possible to give a restricted meaning to the expression “leasehold rights” occurring in sub-section (3) of Section 3, as amended, or elsewhere in the said enactment. Thus, the expression leasehold rights in 1995 Act must include “tenancy rights” flowing from the provisions of the applicable rent legislation. Any other interpretation would be doing violence to the legislative intent and be a pedantic approach.

43. According to the respondents, the status of Podar Mills and resultantly, of the Union of India is that of a tenant at sufferance. We have already adverted to the provisions of the concerned Rent Act. From the scheme of the 1947 Act as also in the 1999 Act, it is indisputable that after determination of the lease period, the status of Podar Mills had become that of a protected or statutory tenant under the Rent Act. Thus, it would continue to enjoy tenancy rights stipulated under the concerned Rent Act. Once that status has been acquired by the Central Government by operation of law, the action of

eviction, could be only as per the prescribed dispensation under the concerned Rent Act.

44. Our attention was invited to paragraph 9 in **B. Arvind Kumar Vs. Govt. of India and Others**⁷, wherein the essential ingredients of lease have been delineated as under:

“9. Section 105 of the Transfer of Property Act, 1882 defines lease as follows:

“105.

Thus, the essential ingredients of a lease are: (a) there should be a transfer of a right to enjoy an immovable property; (b) such transfer may be for a certain term or in perpetuity; (c) the transfer should be in consideration of a premium or rent; (d) the transfer should be a bilateral transaction, the transferee accepting the terms of transfer.”

Relying on these ingredients, it was argued that the leasehold rights of Podar Mills had expired by efflux of time on 21st October, 1990. Since, Podar Mills had no subsisting leasehold rights, the vesting of right, title and interest of Podar Mills in the suit property as on 1st April, 1994 by virtue of 1995 Act was of other than leasehold rights. Whereas, Section 3 including the amended provision sub-section (3) could be invoked only in respect of a subsisting leasehold rights

⁷ (2007) 5 SCC 745

acquired under the 1995 Act. We have already observed that even though the leasehold rights of Podar Mills had expired on 21st October, 1990, it continued to enjoy the rights of a protected or statutory tenant in terms of the 1947 Act and ascribable to “leasehold rights” referred to in Section 3(3) of 1995 Act. Therefore, the argument of holding over or tenant at sufferance, will be inapplicable as the rights of a protected or statutory tenant under the 1947 Act would be governed by that Act and such a tenant could be evicted only on the grounds postulated under the Rent Act upon an order passed by the jurisdictional Rent Court in that regard.

45. In the present case, admittedly, the Trust proceeded on a clear understanding that the rights enjoyed by Podar Mills Ltd. after determination of lease period was that of a protected or statutory tenant within the meaning of the rent legislation (1947 Act). That right had been transferred to and vested in the Central Government by virtue of Section 3(1) of the 1995 Act and continues to so vest in it in terms of Section 3(3) which had come into force w.e.f. 1st April, 1994 and deemed

always to have effect for all purposes as if it had been in force at all material times.

46. Relying on the dictum in ***Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras***⁸, it was contended that Podar Mills having continued in occupation of the suit property only by virtue of the protection of the then applicable Rent Act, namely, the 1947 Act, even after 21st October, 1990, it had no subsisting right whatsoever. Reliance is placed on paragraph Nos. 13 and 15 of the said decision, which read thus:

“13. We are also unable to agree with the contention of the learned counsel for the appellant-company that the leasehold interest of the appellant-company in premises leased out to it is property for the purpose of Section 22(1). It is no doubt true that leasehold interest of the lessee in the premises leased out to him is property which can be transferred and the said interest can also be attached and sold by way of execution in satisfaction of a decree against a lessee. In that sense, it can be said that the leasehold interest of a company is its property. But the question is whether the same is true in respect of the interest of a company which is in occupation of the premises as a statutory tenant by virtue of the protection conferred by the relevant rent law because in the instant case on the date of reference to the Board the proceedings for eviction of the appellant-company were pending and the appellant-company was in occupation of the premises only as a statutory tenant governed by the provisions of the Karnataka Rent Control Act. In *Gian Devi Anand v. Jeevan*

⁸ (1992) 3 SCC 1

*Kumar*¹ this Court has laid down that the termination of a contractual tenancy does not bring about a change in the status and legal position of the tenant unless there are contrary provision in the relevant Rent Act and the tenant, notwithstanding the termination of tenancy, does enjoy an estate or interest in the tenanted premises. It is further laid down that this interest or estate which the tenant continues to enjoy despite termination of the contractual tenancy creates a heritable interest in the absence of any provision to the contrary. This Court has also held that the legislature which by the Rent Act seeks to confer the benefit on the tenants and to afford protection against eviction, is perfectly competent to make appropriate provision regulating the nature of protection and the manner and extent of enjoyment of such tenancy rights after the termination of contractual tenancy of the tenant including the rights and the nature of protection of the heirs on the death of the tenant.”

“15. From these provisions, it would appear that except in cases covered by the two provisos to sub-section (1) of Section 23, there is a prohibition for a tenant to sublet whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. This prohibition is, however, subject to a contract to the contrary. A tenant who sublets or assigns or transfers the premises in contravention of this prohibition loses the protection of law and can be evicted by the landlord under Section 21(1)(f). In the case of a statutory tenant, the relationship is not governed by contract. The prohibition against assignment and transfer is, therefore, absolute and the interest of a statutory tenant can neither be assigned nor transferred. This means that the interest of the statutory tenant in the premises in his occupation, as governed by the Karnataka Rent Control Act is a limited interest which enables the surviving spouse or any son or daughter or father or mother of a deceased tenant who had been living with the tenant in the premises 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, to inherit the interest of the tenant on his death. The said interest of the tenant is, however, not assignable or transferable and, therefore, the interest of a company which is continuing in occupation of the premises

as a statutory tenant by virtue of the protection conferred by the Karnataka Rent Control Act, cannot be regarded as property of the company for the purpose of sub-section (1) of Section 22 of the Act and for that reason also the provisions of Section 22(1) were not attracted to the eviction proceedings instituted by the respondents against the appellant-company. The provisions of Section 22(1) did not, therefore, bar the prosecution of the said proceedings by the respondents and the order dated September 30, 1989 passed by the XII Additional Small Causes Judge, Bangalore allowing the eviction petition cannot be held to have been passed in contravention of the provisions of Section 22(1) of the Act. Civil Appeal No. 2553 of 1991 also, therefore, fails and is liable to be dismissed.”

The issue examined in this part of the reported judgment is in the context of the provisions of the Karnataka Rent Control Act, 1961, stipulating absolute prohibition against assignment and transfer of interest of a statutory tenant and in particular, the purport of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 regarding suspension of legal proceedings etc. In the present case, it is not an assignment or transfer of interest by the statutory tenant but a case of involuntary transfer and vesting of the right, title and interest of the statutory tenant in respect of the suit premises in the Central Government by operation of law made by the Parliament. The purpose of retrospective insertion of sub-

section(3) of Section 3 of the 1995 Act is intended to take away the basis of the status acquired by the appellant-NTC qua the suit property or the rights to be enjoyed in relation thereto. So long as the amended provisions of the 1995 Act or of the Validation Act 2014 are in force by operation of law, interest of Podar Mills as that of a statutory tenant stood transferred to and vested absolutely in the Central Government and would continue to so vest in it. The concomitant of this indisputable factual position is that the Trust could and ought to seek eviction of the Union of India from the suit property if it intends to do so, on grounds permissible under and in the manner prescribed for in the municipal Rent Legislation as applicable at the relevant time.

47. Reliance was then placed on the exposition in paragraph Nos. 14 to 18 in ***Bhoolchand and Another Vs. Kay Pee Cee Investments and Another***⁹. The Court noted the factual position of that case and the submissions of the counsel in

⁹ (1991) 1 SCC 343

paragraphs 14 to 16; and then proceeded to consider the same in paragraphs 17 and 18, which read as follow:-

“17. The decision in *Damadilal case* and others in the same line related primarily to the question of heritable interest in the premises of the legal representatives of the deceased tenant who was in occupation as statutory tenant. Pointing out that the concept of statutory tenancy under the English Rent Acts and under Indian statutes like the one with which we are concerned rests on different foundations, it was held that the statutory tenant had a heritable interest in the premises which was not merely a personal interest but an interest in the estate like that of a contractual tenant. On this conclusion, the right of legal representatives of the statutory tenant to protect the possession and prosecute the appeal against eviction order was upheld. The main question for decision in *Damadilal case* was the heritable nature of the statutory tenancy and it was in this context that the terms and conditions of a statutory tenancy were held to be the same as those of the contractual tenancy preceding it. No question arose in *Damadilal case* of the right of a statutory tenant to create a sub-tenancy after replacement of the contractual tenancy with the statutory tenancy. The observations made and the decision rendered in *Damadilal case* cannot, therefore, be construed as holding that a statutory tenant has a right to create a sub-tenancy during subsistence of statutory tenancy after expiry of the contractual tenancy when the Rent Acts give the same protection against eviction to the tenant except on one or more of the specified grounds. Obviously, the protection to the statutory tenant and the heritable nature of the statutory tenancy providing the same protection against eviction to the tenant's heirs does not further require conferral of the right of inducting a sub-tenant which is not necessary for enjoyment of the tenancy and the protection against eviction given by the Rent Acts. There is no rationale for inferring or extending the landlord's written consent for sub-letting beyond the period of contractual tenancy for which alone it is given. No separate discussion for the later decisions in the same line is necessary because of the same distinction in all of them.

18. One decision which requires specific mention and is obviously nearest on facts to the present case is *Mahabir Prasad Verma v. Surinder Kaur*. In that case, the contractual tenancy was for a period of one month from April 1, 1974 to April 30, 1974 with the landlord's consent for sub-letting. The tenant continued to occupy the premises even after expiry of the contractual tenancy on April 30, 1974 and inducted therein a sub-tenant. The landlord sued for eviction of the tenant on the ground of unlawful sub-letting of the premises which was a ground for eviction under the relevant Rent Act. There was some dispute about the time of induction of the sub-tenant, it being claimed by the tenant that the induction of the sub-tenant was in the month of April 1974 during subsistence of the contractual tenancy while the landlord contended that the sub-letting was after the month of April 1974. It was found as a fact that the tenant had sublet in the month of April 1974 when the written consent of the landlord subsisted and not subsequent to it in May as claimed by the landlord. The crux of the question for decision therein was stated thus: (SCC p. 269, para 24)

“The crux of the question, therefore, is whether the sub-letting by the tenant with the written consent of landlord during the currency of the tenancy becomes unlawful and illegal on the determination of the tenancy and furnishes a ground for eviction within the meaning of Section 13(2)(ii)(a) of the Act.”

On the finding that the sub-tenant had been inducted during the period of contractual tenancy on the basis of the written consent for sub-letting given by the landlord, the sub-letting did not become unlawful merely because the contractual tenancy of the tenant came to an end and the protection against eviction to the tenant as a statutory tenant also enured to the benefit of the lawful sub-tenant recognised by the statute. It was held as under: (SCC p. 271, paras 26 & 27)

“Sub-letting lawfully done with the written consent of the landlord does not become unlawful merely on the ground that the contractual tenancy has come to an end. Sub-letting to constitute a valid ground for eviction

must be without the consent in writing of the landlord at the time when the tenant sublets any portion to the sub-tenant.

A sub-letting by the tenant with the consent in writing of the landlord does not become unlawful on the expiry of the contractual tenancy of the tenant, *unless there is any fresh sub-letting by the tenant without the written consent of the landlord. Mere continuance in possession of a sub-tenant lawfully inducted does not amount to any fresh or further sub-letting.* We are, therefore, satisfied that in the instant case the tenant has not sublet any portion without the written consent of the landlady after the commencement of the Act.... Mere continuance of possession by the sub-tenants lawfully inducted by the tenant with the written consent of the landlady contained in rent note does not afford any ground to the landlady for eviction of the tenant on the ground of sub-letting, as the *tenant has not sublet after the commencement of the Act any portion without the consent in writing of the landlady.*"

(emphasis supplied)

Of all the decisions cited at the bar, this decision is, admittedly, nearest on facts to the present case with the only difference that the sub-letting in the present case was after expiry of the contractual tenancy and after the commencement of the Act prohibiting sub-letting without the written consent of the landlord when it was made on April 1, 1948, while the sub-letting in *Mahabir Prasad case* was during the period of contractual tenancy when the express written consent of the landlord for sub-letting was available. The principle for application, however, is the same with the only difference in the result since in *Mahabir Prasad case* the sub-letting was made during subsistence of the contractual tenancy with the written consent of the landlord. It is significant that the judgment in *Mahabir Prasad case* was by A.N. Sen, J. who also wrote the opinion in *Gian Devi case* relied on by Dr Chitale as one of the decisions in line with *Damadilal case*. It is clear that A.N.

Sen, J., who wrote the opinion of the bench in *Mahabir Prasad case* as well as in *Gian Devi case* did not construe the earlier decisions starting with *Damadilal case* in the manner read by Dr Chitale. If Dr Chitale is correct in his submission on this point, then the entire emphasis in *Mahabir Prasad case* on the sub-letting being made during the period of contractual tenancy in April 1974 and not thereafter being decisive of the validity of sub-letting was misplaced and a futile exercise. In our opinion this was not so and the correct premise is that landlord's written consent for sub-letting during the period of contractual tenancy cannot be construed as his consent subsisting after expiry of the contractual tenancy. The submission of learned counsel for the appellants runs counter to the clear decision in *Mahabir Prasad case* which, in our opinion, is in no way contrary to the decisions starting with *Damadilal case*, the observations wherein are in the context of heritability of the statutory tenancy. In fact, it is rightly not even contended by Dr Chitale that the decision in *Mahabir Prasad case* runs counter to *Damadilal case* and other decisions following them. This is sufficient to indicate that the appellants' contention is untenable."

We fail to understand as to how the principle expounded in the reported decision will be of any avail to the respondents (Trust). As already noted, it is not a case of subletting by the statutory tenant (Podar Mills Ltd.) but instead a case of involuntary transfer and vesting of rights and interest of the statutory or protected tenant in respect of the suit property in the Central Government by operation of law. In any case, if the Trust intends to proceed against the statutory tenant on the ground of unlawful subletting or such other ground, it will

be obliged to initiate eviction proceedings against the Union of India before the competent jurisdictional Rent Court on that count. In the present case, the subject suit for eviction has been instituted against NTC only. Suffice it to observe that the subject suit not having been filed against the Union of India, the statutory tenant as on the date of filing of the suit; and not invoking the jurisdiction of the Rent Court for seeking eviction of the statutory tenant, the decree as passed by the civil court is rendered unenforceable against the Union of India and, in any case, inexecutable due to legal fiction.

48. The respondents (Trust) may be justified in pointing out that the judgment and decree rendered by this Court has not been nullified by the Validation Act 2014 as such. However, the said decree is not against the real tenant in whom the rights of the statutory tenant had vested and continue to vest. That right could be snapped only by resorting to the dispensation prescribed for in the rent legislation, as the concerned Rent Act continued to apply to the suit property –

consequent to vesting of the rights and interest therein in the Central Government.

49. That takes us to the next argument of the respondents that Section 39 inserted in the 1995 Act operates prospectively and would not impact the judgment delivered by this Court on 5th September, 2011. Second, the said provision applies to only subsisting leasehold rights. Taking the last argument first, the same needs to be rejected on the basis of the view already taken by us that the expression “leasehold rights” or “leasehold property” would include tenancy rights or tenanted property in occupation of a statutory or protected tenant as per the applicable municipal rent legislation at the relevant time. Be that as it may, Section 39 opens with a *non obstante* clause and makes it more explicit that the provisions of the Amendment Act, 2014 shall have and shall be deemed always to have effect for all purposes as if the provisions of the Act have been amended by the said Act, had been in force at all material times. It then predicates that no suit or “other proceedings” shall be maintained or continued in any court for

the enforcement of any decree or order or direction notwithstanding any undertaking filed by the NTC in any court. Having observed that Section 3 has been amended w.e.f. 1st April, 1994 and upon giving full effect to the amendment, it must necessarily follow that the Central Government had acquired the status of protected or statutory tenant qua the suit property from that date and continue to remain so, and could be evicted only in the manner prescribed by the concerned rent legislation. The decree passed against NTC is on the assumption that the 1999 Act had no application to the suit property as the right had vested in NTC – which did not enjoy the protection of the 1999 Act. Resultantly, it must follow that the subject suit and the proceedings arising from or in relation thereto cannot proceed in law and moreso because NTC is not the real tenant. Further, as the tenancy rights in relation to the suit property continue to vest in the Central Government by operation of law, the provisions of the 1999 Act will be attracted, warranting suit for eviction to be filed against the Union of India before the jurisdictional Rent Court

having exclusive jurisdiction to decide the dispute between the landlord and tenant. We must hasten to add that the validity of the provisions of the Validation Act 2014 is not put in issue in the present proceedings and we do not intend to deal with the same. All questions in that behalf are kept open.

50. Reliance was placed on ***State of Tamil Nadu Vs. State of Kerala and Another***¹⁰, (in paragraph Nos. 127, 148 and 149) to buttress the argument that a judicial decision rendered by recording a finding of fact cannot be made ineffective by enacting a validating law, thereby fundamentally altering or changing its character retrospectively. On a bare perusal of relevant paragraphs of this decision, the Court unambiguously found that the judgment was given by this Court in the context of disputed factual position between the two States in respect of the safety of a Dam for raising the water level. The Court went on to observe that such decision must be binding upon the parties and enforceable according to the decision being a plain and simple decision on the fact

¹⁰ (2014) 12 SCC 696

which cannot be altered by the legislative decision. In that case, the validity of the amended Act was put in issue. In the present case, however, we are not called upon to examine the validity of the provisions of the Validation Act 2014. Whether such a legislation is valid or in excess of legislative competence can be examined in an appropriate proceeding. It is open to the respondents (Trust) to challenge the validity of the Validation Act 2014, if they so desire. For the same reason, the decisions in ***Madan Mohan Pathak and Ors. Vs. Union of India (UOI) and Ors.***¹¹ (in paragraph Nos. 9, 20, 21 and 31) and ***Shri Prithvi Cotton Mills Ltd. and Ors. Vs. Broach Borough Municipality and Ors.***¹², will be of no avail to the respondents.

51. In view of the above, we have no hesitation in concluding that it is not a case for taking contempt action for non-compliance of the direction of this Court inasmuch as the basis for issuing such direction has become non-existent in law. Similarly, the fact that NTC has already filed two

¹¹ (1978) 2 SCC 50

¹² (1969) 2 SCC 283

undertakings with the approval of the Union of India, assuring to vacate the suit property, will be of no effect and cannot be enforced by operation of law. Further, the decree though validly passed at the relevant time by the concerned Court, would be of no avail nor could it be enforced against the Union of India in whom the rights of the protected or statutory tenant stood transferred to and vested in w.e.f 1st April, 1994. The Trust may have to take recourse to appropriate remedy under the provisions of the applicable rent legislation to evict the real tenant, the Central Government. Those proceedings will have to be decided on their own merits in accordance with law, without being influenced by any observation made in the proceedings which have culminated in the judgment under review.

52. Considering the above, we are not inclined to continue with the contempt proceeding or for that matter application for extension of time filed by NTC. As a result, the dictum of this Court in ***T. Sudhakar Prasad Vs. Govt. of A.P. and Ors.***¹³,

¹³ (2001) 1 SCC 516

(Paragraph Nos. 9 to 22.), ***Firm Ganpat Ram Rajkumar Vs. Kalu Ram and Ors.***¹⁴ (Paragraph Nos. 5 and 6) and ***Noorali Babul Thanewala Vs. K.M.M. Shetty and Ors.***¹⁵ (Paragraph 11), will be of no avail.

53. The respondents are seriously opposed to showing any indulgence to NTC in the garb of Review Petition by the Union of India. For, the review petition is hopelessly time barred as there is delay of 837 days coupled with conduct of Union of India in according approval to NTC for filing two successive undertakings in compliance of the direction of this Court. The objection appears to be attractive at the first blush but it cannot be taken forward, because of the legal fiction introduced by the amendment Act and giving retrospective effect to the event of vesting of the rights of the statutory tenant in respect of the suit property in the Central Government and also rendering the decree and order including the undertaking given by NTC unenforceable. As a result, the decision in the case of ***Office of The Chief Post Master***

¹⁴ (1989) Supp. (2) SCC 418

¹⁵ (1990) 1 SCC 259

General and Ors.Vs. Living Media India Ltd. and Ors.¹⁶

(Paragraph Nos.27 to 29), need not detain us.

54. Considering the above, we do not deem it necessary to dilate on other submissions urged by the parties as it would not have any bearing on the conclusion that we have already reached.

55. To sum up, we hold that as per the amended Section 3 of the 1995 Act w.e.f. 1st April, 1994, by operation of law the statutory or protected tenancy rights of Podar Mills Ltd. in respect of the suit property stood transferred to and vested in the Central Government and it continues to so vest in it and that the decree against NTC including the undertaking given by NTC has been rendered unenforceable by a legal fiction. As a result, the Trust being the landlord is obliged to take recourse to remedy against the Central Government (Union of India) to get back possession of the suit property, as per the dispensation specified in the concerned Rent Legislation, if it so desires. It is open to the respondents

¹⁶ (2012) 3 SCC 563

(Trust) to challenge the validity of the Validation Act 2014, if they so desire.

56. We further deem it appropriate to grant liberty to the Trust to revive the contempt action in the event the challenge to the validity of the provisions of the Validation Act 2014 is upheld and as a result whereof that Act is struck down. We say so because, it is common ground that the challenge to that Act is pending consideration before the Bombay High Court at the instance of a third party in Writ Petition No.526 of 2015 (*Byramjee Jeejeebhoy Pvt. Ltd. & Ors. Vs. Union of India & Ors.*) If that challenge succeeds, the position as it stood before the coming into force of the Validation Act 2014 would get revived and then the judgment of this Court dated September 5, 2011 in Civil Appeal No.7448 of 2011 can be taken to its logical end against the NTC. For the same reason, it is not necessary to continue with the application for extension of time filed by the NTC.

57. Accordingly, we dispose of these proceedings in the following terms:

(i) Application for condonation of delay in filing review petition is allowed;

(ii) Application for urging additional grounds in the review petition is allowed;

(iii) The review petition is disposed of with liberty to the respondents (Trust) to pursue other appropriate legal remedy as per law;

(iv) Contempt petition stands disposed of with liberty to the respondents as aforementioned;

(v) Application for direction filed by the NTC is also disposed of in the above terms;

(vi) All applications are disposed of in the above terms.

There shall be no order as to costs.

.....J.
(Kurian Joseph)

.....J.
(A.M. Khanwilkar)

New Delhi;
November 28, 2018.