1962

*Nedunuri Kameswaramma v. Sampati Subba Rao*

*Hidayatullah J.*

service inam was correct in the circumstances of the case, and the High Court was not justified in reversing it.

The appeal is, therefore, allowed, the judgment of the High Court set aside, and that of the lower Court restored, with costs throughout.

*Appeal allowed.*

---

1962

*April 18.*

## SREE RAGHUTHILAKATHIRTHA SREEPADANGALAVARU SWAMIJI

*v.*

## THE STATE OF MYSORE AND OTHERS

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L VENKATARAMA AIYAR, JJ.)

*Landlord and Tenant—Rent—Enactment providing for fixation of maximum rent – Constitutional validity—Notification sixing standard rent—Validity—Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. 67 of 1948), s. 6—Mysore Tenancy Act, 1952 (Mysore 13 of 1952), ss. 6(1)(2), 12—Constitution of India, Art. 14,19(1) (f), 26,31,31A.*

The Mysore Tenancy Act, 1952, was enacted, inter alia, for the purpose of regulating the law which governed the relations of landlords and tenants of agricultural lands. Subsection (1) of s. 6 of the Act provided: "Notwithstanding any agreement, usage, decree or order of a court or any law, the maximum rent payable in respect of any period......by a tenant for the lease of any land shall not exceed one-half of the crop or crops raised on such land or its value as determined in the prescribed manner". "The Government may, by notification in the Mysore Gazette, fix a lower rate of the maximum rent payable by the tenants of lands situate in any particular area or may fix such rate on any other suitable basis as they think fit". In exercise of the powers conferred by s.6(2), the Government of Mysore issued a notification purporting to fix the standard rent for land

specified in Sch. I which dealt with Maidan areas i. e., lands on the plains at one third of the produce, and for those specified in Sch.II which dealt with Malnad areas i. e., lands on hilly tracts at one fourth.

The appellant who owned garden land in the district of Shimoga in Mysore State and who had leased out the land to a tenant, challenged the validity or s.6(2) of the Act as well as the notification on the grounds that they contravened Arts. 14, 19(1) (f), 26, 31 and 31A of the Constitution of India, and that, in any case, the notification was inconsistent with s. 6(1) inasmuch as it was based on s. 6(2) which being an exception to s. 6(1) could not be allowed to swallow up the general rule and that was precisely what the notification purported to do. The Mysore Tenancy Act was modelled on the pattern of the Bombay Tenancy and Agricultural Lands Act, 1948, and the provisions of s.6 of the Mysore Act were similar to s.6 of the Bombay Act. In *Vasantlal Maganbhai Sanjanwala* v. *The State of Bombay*, [1961] 1. S. C. R. 341 ; it was held that s. 6 of the Bombay Act was vaild. The appellant contended that the aforesaid decision was not applicable because there were differences between the two Acts inasmuch as (1) in the preamble to the Bombay Act it was stated that it was passed inter alia for the purpose of improving the economic and social conditions of peasants and this was not mentioned in the Mysore Act, (2) unlike the Mysore Act, the Bombay Act, made a distinction between the irrigated and non-irrigated land (3) the Bombay Act while prescribing a maximum took the precaution of also prescribing a minimum and the absence of the latter provision in the Mysore Act made a material difference.

*Held*, that : (1) the Mysore Tenancy Act, 1952, was substantially similar to Bombay Tenancy and Agricultural Lands Act, 1948, and that the question as to be whether s. 6 (2) of the Mysore Act was valid must be held to be covered by the decision the *Vasantlal Maganbhai Sanjanwala* v. *The State of Bombay* [1961] 1 S. C. R. 341. Accordingly, s.6(2) of the Mysore Tenancy Act, 1952, was valid.

(2) on its true construction, s. 6(1) of the Mysore Tenancy Act, 1952, was intended to apply to all agricultural leases until a notification was issued under s.6(2) in respect of the areas where the leased lands might be situated ; s 6(2) could not, therefore, be considered as an exception to s.6(1). Consequently, the notification in question was valid.

1962

Raghuthilakathirtha Padangalavaru Swamiji
v.
The State of Mysore

*Macbeth* v. *Ashley*, (1874) L.R. 2 Sc. App. 352, considered and held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 537 of 1960.

Appeal from the judgment and order dated December 23, 1959, of the Mysore High Court in Writ Petition No. 229 of 1955.

*S. S. Shukla* and *E. Udayarathnam*, for the appellant.

*H. N. Sanyal, Additional Solicitor-General of India, R. Gopalakrishnan* and *P. D. Menon*, for the respondents Nos. 1 and 2.

*R. Gopalakrishnan*, for respondent No. 3

1962. April 18. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR, J.—This appeal arises from a writ petition filed by the appellant, Raghutilaka Tirtha Sripadangalavaru Swamiji, in the Mysore High Court challenging the validity of s. 6 (2) of the Mysore Tenancy Act, 1952 (XIII of 1952) hereafter called the Act, and the notification issued under the said section on March 31, 1952.

The appellant's case as set out in his writ petition before the High Court was that the impugned section as well as the notification issued under it infringed his fundamental rights guaranteed under Arts. 14, 19 (1) (f), 26, 31 and 31A of the Constitution. This contention has been rejected by the High Court and it has been held that the section and the notification under challenge are valid and constitutional. The appellant then applied for a certificate from the High Court, both under Art. 132 and Art. 133 of the Constitution. The High Court granted him a certificate under Art. 133, but refused to certify the case under Art. 132. There

after the appellant applied to this Court for liberty to raise a question about the interpretation of the Constitution and permission has been accorded to the appellant accordingly. That is how the present appeal has come to this Court.

The appellant owns 6 acres and 30 ghuntas of garden land in village Mulbagilu in Taluka Thirthahalli in the district of Shimoga. Respondent No. 3, Ramappa, Gowda, is his tenant in respect of this land. A registered lease deed was executed in favour of respondent No. 3 by the appellant on March 11, 1943; under this document respondent No. 3 undertook to pay 82-1/2 maunds of *areca* in addition to Rs. 17/12-in cash as rent per year. In 1955 respondent No. 3 filed an application before respondent No. 2, the Tehsildar of Thirthahalli, under section 12 of the Act and claimed that the standard rent payable by him to the appellant should be fixed (Tenancy case 85 of 1955-56). Meanwhile respondent No. 1, the Government of Mysore, had, in exercise of the powers conferred on it by s. 6 of the Act, issued a notification No. R9. 10720/L.S. 73-54-2 on March 28/29, 1955. This notification purported to fix the standard rent for lands of the category to which the appellants land belongs at one third of the produce. Feeling aggrieved by this notification the appellant filed the present writ petition in the High Court on December 16, 1955. His case was that s. 6 (2) as well as the notification issued under it were *ultra vires,* invalid and inoperative.

Before dealing with the contentions raised before us by Mr. Shukla on behalf of the appellant it would be necessary to consider very briefly the scheme of the Act. The Act has been passed by the Mysore Legislature because it was thought necessary to regulate the law which governs the relations of landlords and tenants of agricultural lands and to regulate and impose restrictions on the

1962

Raghuthilakathirtha Padangalwaru Swamiji
v.
The State of Mysore

Gajendragadkar J.

transfer of agricultural lands, dwelling houses, sites and lands appurtenant thereto belonging to or occupied by agriculturists in the State of Mysore except Bellary District and to make provisions for certain other purposes appearing in the Act. That is the recital contained in the preamble to the Act. It would thus be seen that the primary object of the Act is to afford much needed relief to the agricultural tenants by regulating their relations with their landlords and in that respect the Act bears a very close resemblance to the provisions of the Bombay Tenancy and Agricultural Lands Act, LXVII of 1948. Indeed, the material provisions of the Act with which we are concerned are substantially similar.

Chapter I of the Act deals with the preliminary topic of defining the relevant terms used in the Act. Chapter II contains general provisions regarding tenancies. Section 4 defines persons who are deemed to be tenants. Section 5 provides that no tenancy would be for less than five years. Section 6 deals with the maximum rent payable by the tenants. Section 8 provides for the calculation of rent payable in kind in the manner indicated by cls. (i) and (ii) and prohibits the landlord from recovering or receiving rent calculated in any other manner. Under s. 9 receipt of rent in terms of service or labour is prohibited. Section 11 abolishes all cases and s. 10 enables the tenants to claim a refund of rent which has been recovered in contravention of the provisions of the Act. Section 12 then deals with enquiries with regard to reasonable rent. Sub-section (3) of s. 12 lays down five factors which have to be borne in mind by the authority dealing with an application for the fixation of reasonable rent. Section 13 is a corollary of s. 12 and authorises the reduction of rent after reasonable rent has been determined under s. 12. Section 14 deals with suspensions or remission of rent. Section 15

provides for termination of tenancy. Under s. 18 a statutory bar is created against the eviction of a tenant from a dwelling house and under s. 19 the tenant has the first option of purchasing the site on which he has built a dwelling house. Similarly, under s. 22 the tenant is given an option of purchasing the land leased out to him. Section 24 deals with some cases where relief can be granted against termination of tenancy and s. 25 with relief against termination of tenancy for non-payment of rent. Section 30 provides for the procedure to recover rent and s. 31 protects the tenants' rights under any other law. Chapter III deals with the procedure and jurisdiction of Amildar and provides for appeals against the decisions of the Amildar. Chapter IV deals with offences and prescribes penalties for them and Chapter V contains miscellaneous provisions. That, in its broad outlines, is the nature of the provisions made by the Act in order to give relief to the agricultural tenants.

Section 6 with which we are directly concerned in the present appeal reads thus:—

> "6. (1) Notwithstanding any agreement, usage, decree or order of a court or any law, the maximum rent payable in respect of any period after the date of coming into force of this Act by a tenant for the lease of any land shall not exceed one-half of the crop or crops raised on such land or its value as determined in the prescribed manner :
>
> Provided that where the tenant does not cultivate the land the rent payable shall be the reasonable rent to be fixed by the Amildar.
>
> (2) The Government may, by notification in the Mysore Gazette, fix a lower rate of the maximum rent payable by the tenants of lands

situate in any particular area or may fix such rate on any other suitable basis as they think fit."

As we have already indicated, the provisions of the two sub-clauses of s. 6 are substantially similar to the provisions of s. 6(1) and (2) of the corresponding Bombay Act. Indeed, it would be correct to say that Act with which we are concerned has been modelled on the pattern of the Bombay Act and has adopted most of its important provisions. The validity of s. 6 of the Bombay Act was challenged before this Court in "*Vasantal Maganbhai Sanjanwala* v. *The State of Bombay* (1)" and it has been held that the said section is valid. The reasons given by this Court in upholding the validity of s. 6 of the Bombay Act apply with equal force in support of the validity of s. 6 of the Mysore Act and so the point raised by the appellant in challenging the validity of the impugned section is really covered by the earlier decision of this Court.

Mr. Shukla, however, contends that the preamble to the Act differs from the preamble of the Bombay Act inasmuch as the latter preamble refers to the fact that that Act was passed *inter alia* for the purpose of improving the economic and social conditions of peasants and ensuring the full and efficient use of land for agriculture and so considerations of social justice on which the validity of the corresponding provision of the Bombay Act was sought to be sustained cannot be invoked in dealing with the present appeal. We are not impressed by this argument. It is true that the preamble to the Act merely says that the Act was passed because it was though necessary to regulate the law which governs the relations of landlords and tenants of agricultural lands and it does not refer to the requirement of social justice or does not specifically mention the object of ensuring the full and efficient

(1) [1961] 1 S.C.R. 341.

use of land for agriculture. But in dealing with a law which has been passed for the purpose of effecting an agrarian reform it would be pedantic to ignore the essential basis of its material provisions merely on the ground that the concept of social justice on which the said provisions are based has not been expressly stated to be one of the objects of the Act in the preamble. We have already examined briefly the broad scheme of the Act and it is obvious that the important provisions of the Act are intended to improve the economic and social conditions of the agricultural tenants and so the policy of social justice can be safely said to be writ large on the face of the Act. Therefore, we do not think that the argument based upon the fact that the preamble does not refer to social justice distinguishes s. 6 of the Act from the corresponding section of the Bombay Act.

Then it is urged that unlike the Mysore Act, the Bombay Act has distinguished between irrigated land and non-irrigated land and has provided by s. 6(1) that the maximum rent payable in the case of irrigated land shall not exceed one-forth and in the case of other lands shall not exceed one-third of the crop of such land or its value as determined in the prescribed manner. It is true that s. 6(1) of the Act makes no such distinction between irrigated and non-irrigated lands. But that, in our opinion, is not a matter of essential importance. Like s. 6(1) of the Bombay Act s. 6(1) of the Act also intends to provide for a maximum ceiling beyond which agricultural rent will not be allowed to soar and so far as the fixation of a maximum ceiling of rent is concerned it is not essential that a distinction must necessarily be made between irrigated lands and non-irrigated lands. It must be borne in mind that what the section does is to prescribe the maximum and not to provide for a minimum. In prescribing a maximum it may be open to the Legislature to provide for a maximum which would be

1962

Raghuthilakathirtha Padangalavaru Swamiji
v.
The State of Mysore

Gajendragadkar J.

common to all lands whether irrigated or not. That is why we are not inclined to attach any importance to the point that in the absence of classification of land, while prescribing a maximum s. 6(1) suffers from any infirmity.

Then it is argued that the Bombay Act while prescribing a maximum has taken the precaution of also prescribing a minimum and the absence of the latter provision makes a material difference. This argument is clearly misconceived. It is true that s. 8 of the Bombay Act which had been inserted by the Bombay Legislature in 1956 did provide for the maximum and the minimum rent, but as the decision of this Court in the case of *Sanjanwala* (1) shows in upholding the validity of the impugned provision of the Bombay Act no reliance was placed upon the fixation of the minimum rent. Indeed, the minimum rent was fixed subsequent to the decision of the High Court which was under appeal before this Court in that case and the fact that a minimum had been prescribed subsequently has been only incidentally mentioned in the judgment. Therefore the absence of a provision fixing the minimum rent does not introduce any infirmity in the impugned provision. We are, therefore, satisfied that the case of the impugned section is substantially similar to the case of s. 6 of the Bombay Act with which this Court was concerned in the case of *Sanjanwala* (1) and the challenge to the validity of section in the present appeal must, therefore, be held to be covered by the said decision.

That takes us to the question as to whether the impugned notification is invalid. This notification has been issued in exercise of the powers conferred on the State Government by s. 6(2) and it provides that the rate of maximum rent payable by the tenants of lands situated in the areas specified in Schedule I and Schedule II to the notification

(1) [1961] 1 S.C.R. 341.

shall be one-third and one-fourth respectively of the crop or crops raised on such lands with effect from the year commencing on April 1, 1955. Schedule I deals with Maidan areas in which the maximum rent or rents shall be one-third of the crop or crops and Schedule II deals with Malanad areas in which the maximum rate of rent shall be one-fourth of the crop or crops raised.

It appears that the classification of lands between Maidan an Malanad lands is well known in Mysore. Maidan lands are lands on the plains, whereas Malanad are lands on hilly tracts. The distinction between the two categories of lands takes into account the different conditions of rain fall, the different nature of the cultivation, the difference in the living conditions and the availability of labour and the difference in the quantity and the quality of the produce. It is true that the notification does not prescribe the lower rate of the maximum rent area by area in the sense of district by district, but it purports to prescribe the said maximum by classifying the land in the whole of the State in the two well-known categories of Maidan and Malanad lands.

It is urged by Mr. Shukla that the impugned notification is invalid, because it is inconsistent with the provisions of s. 6(1). The argument is that s. 6(1) lays down a general rule and s. 6(2) provides for an exception to the said general rule. On that assumption it is contended that an exception cannot be allowed to swallow up the general rule and that is precisely what the notification purports to do. This argument is based on the decision of the House of Lords in *Macbeth* v. *Ashley* (1). It would be noticed that this argument raises the question about the construction of the two sub-clauses of s.6. Before addressing ourselves to that question,

(1) [1874] L.R. 2 Sc. App. 352.

1962
Rachuthilakathirtha Padangalavaru Swamiji
v.
The State of Mysore
Gajendragadkar J.

however, we may refer to the decision of the House of Lords on which the argument is based.

It appears that 11 o'clock at night was the hour appointed for closing public-houses in Scotland, although in special cases, and for well considered reasons, a deviation was allowed with reference to any particular locality really requiring it. The Magistrates of Rothesay had ordered for closing at 10 instead of 11 and the effect of the order was that it embraced every public-house in the burgh. The House of Lords held that the Magistrates order was *ultra vires*. The statutory provision with which the House of Lords was concerned was contained in the Act of Parliament, 25 and 26 Vict. c. 35. As a result of these provisions 11 o'clock at night was appointed to be the hour for closing public houses. There was, however, a proviso which said *inter alia* that in any particular locality requiring other hours for opening and closing inns, hotels, and public-houses it shall be lawful for such justices and Magistrates respectively to insert in the schedule such other hours, not being earlier than six or later than eight o'clock in the morning for opening, or earlier than nine o'clock or later than eleven o'clock in the evening for closing the same as they shall think fit. It is in pursuance of the authority conferred on them by the said proviso that the Magistrates of Rothesay passed an order embracing every public-house in the burgo by which a deviation from the statutorily fixed hour was effected.

In dealing with the validity of the order issued by the Magistrates Lord Chancellor Lord Cairns expressed his opinion that if the exception is to swallow up the rule it ceases, of course, to be an exception at all and that which might fairly have been an exercise of discretion becomes no exercise of the kind of discretion mentioned in the Act of Parliament. It was for this reason that the order

issued by the Magistrates was declared to be *ultra vires*. It was conceded that the Magistrates had a discretion, but the Lord Chancellor observed that the words "conferring discretion" expressly bear with reference to a particular locality and not with the whole burgh. What should be true about the whole burgh had been treated as a matter reserved for and determined by the consideration of the Imperial Parliament. The Lord Chancellor did not express any opinion on the question as to whether the discretion vested in the Magistrates can be exercised by them more than once but without deciding that point he held that the order of the Magistrates really amounted to evading an Act of Parliament. In substance, the Magistrates had once for all attempted with regard to all the public-houses in their district to change the rule laid down by the Act of Parliament. Lord Chelmsford, who concurred with the opinion expressed by the Lord Chancellor, rested his conclusion on the ground that it was impossible to say that the limits which the Magistrates had defined could be called a particular locality within burgh and so it appeared that what the Magistrates had done was something very like an attempt to evade the Act of Parliament. According to Lord Selborne, the participle "requiring" is connected with the substantive "locality" and therefore it must be a requirement arising out of the particular circumstances of the place. That is why Lord Selborne thought that the Magistrates must, in exercise of an honest and *bona fide* judgment, be of opinion that the particular locality which they except from the ordinary rule is one which, from its own special circumstances, requires that difference to be made.

It would thus be seen that though the general basis of the decision, as it has been expressed by Lord Cairns, appears to be that the exception cannot swallow up the rule one of the reasons which

1962

Raghuthilakathirtha Padangalavaru Swamiji
v.
The State of Mysore

Gajendragadkar J.

ultimately influenced the decision was that the discretion had to be exercised *bona fide* and after due deliberation in respect of a particular locality and that the manner in which the order was issued indicated that the requirements of the particular localities had not been duly examined by the Magistrates. It is significant that though Lord Cairns posed the question as to whether the discretion in question can be exercised more than once, he did not choose to answer it; but the trend of the opinions expressed by the Law Lords during the course of their speeches may seem to suggest that the discretion cannot be exercised more than once and in any case, it must be exercised by special reference to the particular locality as indicated by the proviso. If an order is made in respect of the whole of the burgh, it cannot be said that it has been passed after exercising due discretion in respect of the requirements of each particular locality. With respect, if the discretion is given to the Magistrates to provide for a departure from the rule prescribed by the general provision by reference to particular localities, it is not easy to see why the said discretion cannot be exercised more than once. Indeed, situations may arise when the Magistrates may have to consider the matter from time to time in respect of different localities and if it appears to the Magistrates considering the cases of different localities that in regard to each one of them a departure from the general rule should be made, it is not easy to follow why the proviso does not justify different orders being passed by the Magistrates in respect of different but particular localities. On the other hand, if the main provision is construed to mean that the time prescribed by it was to apply generally only with certain exceptions contemplated by the proviso, that would be a different matter. However, it is not necessary for us to pursue this point further and to express a definite

opinion on the general proposition that an exception cannot swallow the general rule, because, as we will presently show, this rule cannot be applied to the provisions of s. 6 at all. In this connection we may, however, point out that both in Maxwell and in Craies, the decision in *Macbeth's case* (1) appears to have been treated as an authority for the proposition that an order like the one passed by the Magistrates in that case amounted to an evasion of the Parliamentary statute, because it was not in honest and *bona fide* exercise of the discretion vested in them. (Maxwell on Interpretation of Statutes, 11th Edn., p. 121, and Craies on Statute Law, 5th Edn., p. 75.)

But assuming that the proposition for which Mr. Shukla contends on the authority of the decision in *Macbeth's case* (1) is sound, does it apply to s. 6 at all and the answer to this question will depend upon the construction of the provisions contained in the two sub-clauses of s. 6. It would be noticed that s. 6(1) declares a maximum beyond which no landlord can recover rent from his tenant. In other words, as soon as the Act came into force a ceiling was fixed beyond which the landlord cannot recover rent from his tenant even though it may be justified by agreement, usage, decree or order of a court or any other law. The provisions of this sub-section apply individually and severally to all agricultural leases and govern the relations of individual landlords and tenants in respect of payment of rent by the latter to the former. The fixation of the maximum by sub-s. (1) is really not intended to lay down a general rule as to what a landlord should recover from his tenant and it is in that sense alone that its relation to the provisions of sub-s. (2) must be judged. In that connection we may point out that there is one proviso to s. 6(1) which deals with cases of tenants who do not

(1) (1874) L. R. 2 S.C App 252.

*1962*

*Raghuthilakathirtha Padangalavaru Swamiji*
*v.*
*The State of Mysore*

*Gajendragadkar J.*

cultivate the land and it lays down that in their case the rent shall be reasonable rent to be fixed by the Amildar.

Sub-section (2) is so worded that in terms it cannot be said to be a proviso to sub-s. (1) add in substance it is not such a proviso nor is it an exception to sub-s. (1). Having prescribed the maximum beyond which agricultural rent cannot go under s. 6(1) the legislature has premitted the Government to fix a lower rate of the maximum rent in respect of lands situated in particular areas. The Government has also been authorised to fix the payment of rent on any other suitable basis as it thinks fit. In other words, the authority conferred on the Government is either to fix a lower rate or to fix any other basis on which the rent could be fixed. The provision is an independent provision and so the two sub-sections must be read as different, independent, though co-ordinate, provisions of the Statute. It would, we think, be erroneous to treat sub-s. (2) as a proviso or exception to sub-s. (1). Whereas sub-s. (1) deals with and applies to all leases individually and prescribes a ceiling in that behalf, sub-s. (2) is intend to prescribe a maximum by reference to different areas in the State. The object of both the provisions is no doubt similar but it is not the same and the relation between them cannot legitimately be treated as the relation between the general rule and the proviso or exception to it.

The argument that by issuing the notification the Government has purported to amend s. 6(1) is, in our opinion, not well-founded. As we have already seen, s. 6(1) is intended to apply to all the agricultural leases until a notification is issued under s. 6(2) in respect of the areas where the leased lands may be situated. It is not suggested that

under s. 6(2) it is necessary that the Government must fix the lower rates by reference to individual lands and so there can be no doubt that even on the appellant's argument it would be competent to the Government to fix lower rents, say districtwise. If instead of prescribing the lower rates districtwise after classifying the lands into two categories which are well recognised, the Government prescribed the rates by reference to the said categories of lands throughout the State. we do not see how the said notification can be said to be inconsistent with s. 6(2) or with s. 6(1) either. The scheme of s. 6 does not seem to postulate that after the notifications are issued under s. 6(2) some area must inevitably be left to be covered by s. 6(1). Such an assumption would be inconsistent with the object underlying the said provision itself. What s. 6(1) has done is to fix a general ceiling apart from the areas and without considering the special factors appertaining to them. Having thus fixed a general ceiling the Legislature realised that the ceiling may have to be changed from area to area and so power was conferred on the Government to fix the ceiling at a lower rate. The Government having examined the matter came to the conclusion that the more equitable and reasonable course to adopt would be to divide the agricultural lands into two well-known categories and fix the ceiling by reference to them. Now in the very nature of things, the Legislature must have anticipated that the exercise of the power under s. 6(2) might cover all the areas in the State and that may mean that the general ceiling prescribed by s. 6(1) may not apply to any land which is covered by the notification. If s. 6(1) is not a general rule and s. 6(2) is not an exception to it, then the consequence flowing from the issue of the impugned notification cannot be characterised as an exception swallowing up the

general rule. That, in substance, is the view which the Mysore High Court has taken in the matter and we think that the said view is right.

In the result, the appeal fails and is dismissed with costs.

*Appeal dismissed.*

---

1962
April 18.

## RAM LAL KAPUR AND SONS (P) LTD.

*v.*

## RAM NATH AND OTHERS

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.)

*Supreme Court—Application for special leave—Delay—Condonation—Necessity to give notice to respondent before making order—Supreme Court Rules, 1950, O. XIII, r. 1. proviso (v).*

Against the judgment of the Single Judge of the Punjab High Court dated January 5, 1955, in which he followed the decision of a Division Bench holding that s. 7A of the Delhi and Ajmer Rent Control Act, 1947, was unconstitutional and void, the appellants preferred an appeal under the Letters Patent. Meanwhile the judgment or the Division Bench was brought up by way of appeal to the Supreme Court, and as the appeal was getting ready to be heard, the appellants made an application on January 5, 1959, for special leave to appeal to the Supreme Court against the judgment of the Single Judge. No notice was given to the respondent to the application, and special leave was granted ex-parte. The Letters Patents appeal was thereafter withdrawn by the appellants. When the appeal came on for hearing in due course, the respondent raised an objection to the hearing of the appeal on the grounds that the application for special leave was barred by limitation, that there were no sufficient reasons for condoning the long delay of four years, and that the special leave granted ex-parte should be revoked.