

COMMON CAUSE

VOICE OF "COMMON CAUSE"

In this second issue of "COMMON CAUSE" we present a comprehensive picture of the present chaos of urban housing development, the problems created by the anachronistic rent control laws and unproductively restrictive urban land ceiling legislation and the difficulties facing the houseowners such as those arising from the distortions and irrationalities of the house tax imposition. In relation to houses we have already dealt with the problems arising from wealth tax, notional income tax and the estate duty.

The objective in presentation of these issues is to disseminate information on them and rouse public opinion in order that organisations and associations interested in the problems of the middle classes as well as houseowners and tenants should raise their voice for applying correctives for remedying the existing shortcomings and aberrations. COMMON CAUSE has already represented these problems to the concerned governmental authorities.

We strongly suggest that interested organisations and associations of national, regional and local levels, including houseowners' associations, residents' welfare organisations, citizen action groups, housing societies, tenants' organisations, as well as public spirited individuals should acquaint themselves with these problems and take up specific issues with the concerned government departments and local authorities. Rent Control laws are enacted by the States, and views for their amendment should be communicated to the State Governments preferably sending copies to the Central Ministry of Works and Housing (Address : Nirman Bhawan, Moulana Azad Road, New Delhi-11). Urban Land (Ceiling & Regulation) Act being central legislation, suggestions regarding

**Urban Housing Chaos; Rent Control Measures; Do's and Dont's
for Houseowners and Tenants; House Tax Muddle; Problem
of Ownership of Flats
1982 Budget and our Recommendations
Problem of Pensioners
Additional Points for Action**

(All are welcome to reproduce any material from this publication)

its amendment should be sent to the Central Ministry of Works & Housing, preferably with copy to the State Government. On the problem of master plan of urban development and town planning, and inadequacies and aberrations of urban development and house tax etc., views and suggestions should be sent to the concerned local authority and the State Government.

We need not emphasize the need of vigilance and effective action on the part of citizens, of stimulating public opinion on issues of importance, and of conveying views and suggestions to the concerned authorities and following them up by exploring all possible avenues. COMMON CAUSE addresses copies of this periodical to all members of Parliament including the Rajya Sabha and Lok Sabha, so that these representatives of the people should be made cognizant of our feelings on the various issues and help to find solutions to the problems of the middle classes.

In a section of this issue of "COMMON CAUSE" we present a brief analysis of some recommendations for 1982 Budget which we had conveyed to the Finance Minister in our Memorandum and subsequent letters and which have found acceptance in the Budget. In another section we reproduce copies of two letters which will be of interest to the pensioners all over the country. These letters would show how COMMON CAUSE continues pursuing this important problem while its Writ Petition is pending in the Supreme Court and has now to be heard by the Constitution Bench of the Supreme Court.

We have, in this issue, also recounted the points on which we have requested a select number of persons for preparation of comprehensive notes for taking them up with the concerned authorities. These will be of interest to the readers and to the organisations and associations as indicative of the matters which are of interest to the middle classes and on which public opinion needs to be mobilised for finding remedies and correctives.

URBAN HOUSING CHAOS

THE PROBLEM

Magnitude of urban housing problem in India has over the years become colossal. Housing in the cities of India is now in greater short supply than other essentials of life. Middle classes feel the greatest pinch of the virtual crisis situation that has emerged.

In the past two decades over 50 percent increase has come about in the population of towns, caused by migration from the rural areas. Ten million people are added to the urban areas of the country every year. Proportion of urban population to rural population has grown from 17 percent in 1951 to 28 percent now. This migration has brought about over-crowding, congestion and woeful lack of public sanitation, unchecked growth of slum areas and various shortcomings and evils connected with

over-crowding. Cities of over one lakh population have increased from 74 in 1951 to 216; cities with population of one million and more have increased from 5 to 12. There has been decline in percentage of population in the smaller towns; the people have moved from small towns to the cities.

All projections of estimates of population growth have gone awry. As an instance, population of Delhi was projected to increase to 4.6 million by 1981, but it has reached 6.8 million, and is heading on to the figure of over 10 million in another 20 years. Enormous backlog of housing has consequently developed in all cities. The Planning Commission's estimates are that by the end of 1980 the backlog of housing in urban areas has increased to five million dwelling units. These estimates are obviously on the low side. In Delhi alone, the backlog is

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estimated at 3.5 lakh units. Taking this into account, and providing for the mounting population, it is estimated that Delhi will require the construction of 80,000 dwelling units every year over the next 20 years.

Eight out of every ten persons who are capable of owning houses in the cities of India, have no homes of their own. None of the cities with population of over five lakhs has been able to provide houses on ownership basis to even ten percent of their population. The result is that one in three persons is a slum dweller; three out of eight in Bombay live in slum areas, taking into account that the unauthorised colonies which have proliferated in the cities have perpetuated themselves into slum areas.

There is virtual urban chaos in the cities. The population has increasingly polarised between rich and the poor, crushing the backbone of the population, namely, the middle classes. With the rents sky-rocketing, the middle classes are continuously being pushed out to the suburbs placing greater burden on the erratic transport system of most major cities. In Bombay and Calcutta, about three million people are disgorged each morning at the railway stations and bus terminals, choking the streets, bottling up traffic and stretching the infrastructure of the cities to the utter limit.

The present housing construction programmes in the cities are hopelessly inadequate for meeting this colossal magnitude of expanding population. The most unfortunate part is that public sector monopolistic tendencies, which have emerged in the past few years of government development programmes, have throttled the initiative of housing expansion and have created conditions of extreme scarcity and horrendously rising prices. In Delhi the monopoly for construction of dwelling units has been concentrated during the last two decades in the hands of the Delhi Development Authority. Against the requirement of the construction of 80,000 dwelling units every year, the Delhi Development Authority has constructed the total of 66,000 units in the last 15 years. People contend that the governmental authorities charged with the housing construction programme have been merely fiddling with this problem.

The houses constructed by the governmental authorities are, moreover, not being used by people for whom they are constructed. Weaker sections of the population, who are rightly given priority in the programmes of housing development, have continuously been squeezed out of the houses allotted to them, because of the high costs and charges, and are becoming squatters again. Increasingly it has now started being recognised that the cheapest public housing built by the governmental authorities have been cheap enough only for the wealthier segment of the population and the houses constructed for a particular income group are largely occupied by families in the next higher income group. Excruciating delays come about in implementation of the housing programmes, and in the meanwhile the construction costs go up making it extremely difficult for the particular income group to benefit from these.

Housing plots for the middle income groups are just not available excepting at fantastic prices. Likewise, no houses are available in the cities excepting at fabulous rents which it is impossible for the middle classes to afford. Prices of the houses have shot up to such extent that it is well nigh impossible for any middle income person to think of buying a house for the family. A single two-bed room house on a small plot of 200 sqm. in any of the good housing colonies of Delhi, for instance, is not now available at price less than rupees ten lakhs, or at a rent less than rupees 2,500 per mensem. In Colaba at Bombay, a middle class residential area, a two-bed room flat with 1000 sq. ft. carpet area now costs Rs. 8 to 10 lakhs. Seedy two-room chawls in Girgaum or Dadar at Bombay cost upto rupees two lakhs, 'Pugree' of at least rupees 10 lakhs is a normal demand for a flat in any prestigious colony of Bombay where the prices range at the fabulous rate of Rs. 1200 to 2500 per sq. ft. Bangalore which a few years ago was known for its low rents and easy housing availability, has suddenly become one of the most expensive in these matters. Annual increase in the prices of lands and houses was 6 to 7% in the previous years; in the last 3/4 years the prices have shot up 600 to 1000% in each of the important cities. Prices of housing plots in Delhi, for instance, have increased 5 to 10 times what they were only five years ago and are now 50 to 100 times what they were 20 years ago.

The land hunger caused by inadequate availability of developed land, coupled with racketeering often encouraged and supported by the unscrupulous, has resulted in the inevitable mushrooming of unauthorised developments in most cities. Unauthorised colonies come up literally almost overnight; they have continued to proliferate. In Delhi alone there are now more than 600 unauthorised colonies housing two million families. They have developed during the past few years. Their layouts defy all standards of town planning and the requirements of hygiene, drainage and transport. There is already a recognition that these colonies cannot be wished away and that the only solution is to upgrade them by providing the basic necessities of water supply, sanitation etc. It is now only a matter of time that these colonies will be made authorised colonies even though they will inevitably perpetuate themselves into slum conditions. They will, however, constitute convenient pools of votes.

CAUSES

The steep gap between demand and supply is of course the major cause for the scarcity conditions and rocketing prices. These have added their toll to the inflationary conditions. Much part of the blame lies, however, on the government monopolistic tendencies which have, in the past two decades, hampered the programmes of land development and construction of houses, amidst the proclaimed objective of providing dwellings for the weaker sections. Freeze applied on the land through acquisition notifications, restrictions imposed by Urban Land Ceiling Act, and the difficulties generated by the operation of antiquated Rent Control legislations, have greatly contributed to the urban chaos. In Delhi, 74,000 acres of land in the vicinity of developed areas were notified for acquisition 20 years ago: acquisition came about only of 40,000 acres) remaining 30,000 acres have neither been acquired nor de-notified), 30,000 acres of the acquired land were made over to the Delhi Development Authority; the area actually developed by DDA has been less than 1/3rd of this acquired land. It was projected to develop 5000 acres for industrial purposes and 2000 acres for commercial purposes. The actual development for industrial purposes has been less than half and for commercial purposes only 1/5th. The result: industrial units in non-conforming areas, which

were 10,000 in 1962, have multiplied to 25,000. In Bombay too, the estimated requirement is the construction of 80,000 dwelling units each year during the next 12 years; the present programmes meet only a fraction of this requirement.

The Urban Land Ceiling Act, which was based on socialistic aspirations for pooling surplus land for distribution, has utterly failed to achieve its purpose and has proved disastrous for the interests of common people by accentuating the scarcity of land by making it virtually impossible to effect transfers. Since its enactment in 1976 not even ten percent of the urban vacant land has been acquired, and where the acquisition has taken place interminable legal disputes have sprung up around the property. In Bombay vacant land exists to the extent of over 7500 acres; only a mere 40 acres have been brought into market through acquisition. In Calcutta not a single acre of 5000 acres of surplus land is reported to have yet been acquired. In Delhi only 50 acres of the 5000 acres have been acquired. This legislation has been a single biggest bottleneck which has throttled the construction of houses.

The most objectionable feature of this legislation is that even where the land does not exceed the prescribed limit, it has been rendered well-nigh impossible to effect its sale. The procedure for securing sanction for the sale involves bureaucratic red tape and inevitable delays which are extremely frustrating and involve scope for corrupt practices. This has led to extreme discontent among lower and middle income people and bred the tendency to look for loopholes to sidetrack the law.

The rising spiral of land prices has been given momentum by policies adopted by government organisations in auctioning plots for houses as well as for commercial constructions. The scarcity conditions of land, and the availability of money from various sources including black money and the remittances from abroad, have raised the auction prices to great heights. In Delhi these auctions have fetched prices ranging up to Rs. 2000 per sqm. for residential plots and upto Rs. 50,000 per sqm. for commercial plots.

Rent Control legislations in the States were enacted under conditions created by the World War II where it had become necessary to control the rents

for protecting the interests of the tenants. These legislations are consequently heavily tenant-oriented. Their present operation has become a source of disincentive for the construction of houses. Great amount of litigation has proliferated between houseowners and tenants: relations between them have got embittered, the houseowners trying to evict the tenants and tenants adopting every possible strategy to thwart such moves. Control of rents at unrealistic levels through the rent control legislations has made it impossible for the houseowners to maintain the buildings. In fact, the houseowner has now a direct interest if the house collapses, thereby clearing the site for profiteering reconstruction. Situation has come about where houseowners now prefer to keep the houses vacant rather than giving them on rent.

There is general feeling that the return on investment on houses amidst the mounting impositions of income tax, wealth tax, house tax and local taxes, has become distinctly inadequate, as compared to the dividends and interests available elsewhere, and consequently the middle class people who previously built houses for renting, are no longer doing this now,

Black money has played a sinister part in raising the price of land and houses. Investment in property has become the first item on the list of any one with lots of money. Real estate business has in the recent years become very lucrative. Today number of the houseowners refuse to sign unless 60 per cent of the money is paid in black. Since the property is bought in black, and the raw materials, owing to scarcity, are also increasingly bought in black, the vicious circle continues endlessly.

Country-wide shortages of raw materials and the mounting spiral of their prices have also greatly contributed to the scarcity of urban houses. Cement is often not available excepting through dubious means or in the black market. Prices of steel, wood, bricks, sanitation materials, fittings and fixtures have all risen very high. Cost of construction has increased four to five times what it was a few years ago with the result that for the middle class wage earner it has become a painful undertaking to construct a house for the family.

The factors of high cost and operations of rent control laws have caused utter neglect and galloping deterioration of the existing housing stock. In Bombay

about 100 buildings, each housing a large number of families, in the most crowded localities, fall every year. Thousands of families are thereby added every year to the queue for housing. Same is the situation in other cities.

The growth of government's monopolistic policies over the past few years in the development of land and construction of houses has been, as stated above, one of the major causes of the chaotic conditions which urban areas of the country face today. There is now increasing recognition that the keeping out of private initiative in these sectors was very unwise. There have been exhortations in the Five Year Plans that public sector should at most play a marginal and promotional role in the provision of urban housing and that vast majority of additional housing requirements in the urban areas will have to be met by harnessing private enterprise. Unfortunately, these exhortations still continue to be disregarded or they attract at best mere lip sympathy.

REMEDIES

Housing must receive priority attention of the government. Present position is that despite the matter having assumed serious dimensions, which can only explode catastrophically, there is hardly any evidence that it is receiving priority attention excepting inviting occasional platitudes. Ways and means have to be found for overcoming the inertia for encouraging and stimulating investment in housing, removing the disincentives which hamper construction and providing bold and positive incentives which would promote and stimulate more construction, with active participation of the private enterprise. Public sector should concern itself more with the requirements of weaker sections and the field should be left to the private initiative for undertaking development of land and construction of houses for the more affluent sections. Tax incentives should be provided for ensuring legitimate profits for construction of inexpensive small houses and apartments. Measures such as mortgage insurance need to be instituted for encouraging the acquisition of homes by younger people who cannot afford large down payments. Fiscal measures also need to be considered for providing incentives for the production of building materials. The problems of every metropolis are inextricably linked up with the

development of satellite towns for taking the load off the city and for acting as counter magnets. There have been plans of developing 200 satellite towns at various places in the country but the progress in this matter has been tardy. For tackling the problems of

Delhi, a National Capital Region Plan has been talked about for years, but even till now very inadequate attention has been paid to this Plan for development of towns around Delhi and for providing the necessities and amenities in them.

RENT CONTROL MEASURES

URGENT NEED OF AMENDMENT

Rent Control Laws of the States generally follow a uniform pattern. They came about way back 40 years ago in the wake of conditions necessitated by World War II. They were based on a laudable objective and were undoubtedly a good social measure when they were enacted. Their primary objective was to freeze the rents and to protect the interests of the tenants. In course of time it was recognised that there was also need of ensuring a reasonable return on investment to the houseowner and to regulate and control the vacation of premises by the tenants, and accordingly modifications in the rent control laws were effected for incorporating provisions which would enable higher rents to be charged for recent and new constructions. These modifications too have now become out of date.

The present position is that everywhere in the country it is recognised that these rent control laws have become obsolete and anachronistic and that they are leading only to embitterment of relations between the tenants and houseowners. There is evidence of lack of political will to effect the changes which are needed in the light of present day circumstances. The courts are bursting at the seams with the enormous litigation which rent control statutes are generating. The tenants as well as the houseowners both have grievances against the law, the latter more than the former; both feel that requirements of justice and provisions of law are moving in divergent directions. It is generally felt, as has been forcefully expressed in recent write-ups in newspapers and journals, that the rent control legislations are wrought with such devices for prolongation of suits and with such technicalities and anomalies that these measures have become merely an instrument for frustrations serving no purpose except to protect the more affluent interests.

Deteriorated relations between houseowners and tenants are daily leading to cases of crimes and violence. They now constitute a major law and order problem. In Delhi alone, over 3000 suits under Rent Control Act are filed every year; 7500 are now pending adjudication mainly seeking eviction, keeping seven rent controllers fully busy dealing with them. Each court has a minimum of 60 cases listed every day and adjournment of three to six months are normal. The Rent Control Tribunal which hears appeals from the orders of rent controllers, receives 1500 appeals every year, and has a backlog of nearly 2000 cases. In the High Court of Delhi, a rent control case takes a minimum of two years for decision, and if it goes to the Supreme Court, it may take another three years. In the Delhi High Court 1000 appeals under the Rent Control Act are at present pending. While this is the size of the problem in Delhi, practically similar position obtains in other States.

Whereas there was need and justification for these rent control measures when they were enacted, the structure of society has since considerably changed. Many houses in the recent years have been constructed by the civil and military officers and other middle class wage earners. They are single-house owners. The yardstick applicable to big landlords is not applicable to them; even the class of big landlords has greatly dwindled. These single unit houseowners have had to give the houses on rent for repayment of the housing loans and for supplementing their income. A survey in Delhi has shown that larger number of houseowners belong to the middle or lower-middle classes of income range of rupees 500 to 1000, and only six per cent of the houses belong to people with income above rupees 1500 per mensem. In quite a few cases, the tenants are affluent, comprising the executives of business and industry and those who

have moved out of their older premises. The rent control laws are now utilised by these categories of tenants to thwart the efforts of houseowners who wish to live in their houses on retirement. These tenants have now become the beneficiaries of safeguards which were meant for the weaker and exploited sections.

It is contended, as an argument against the continuance of present rent control laws, that in a place like Delhi the government is the biggest landlord, providing accommodation to thousands of its staff. But it revises rents and classifications of its accommodation with impunity and turns out the tenants on their transfer, retirement, death etc., whereas the modest single-houses owner cannot get back his house for living in it on retirement.

Houses previously yielded substantial returns on investment, but now the returns are inadequate and comparatively poorer than alternative available investments. This fact, coupled with cumbersome rent control procedures, makes housing a grossly uneconomic proposition. While the cost of construction has continued mounting, the return on investment has been sliding to low levels because of the pressures of inflation, imposition of taxes and the operation of rent control laws. The range and levy of taxes have widened. Municipal authorities charge house tax, education cess, scavenging tax and fire tax, all related to property, which in the aggregate in a city like Delhi reaches upto 32½ per cent of the annual letting value. The Income Tax Department charges tax on the balance rent as income. Wealth Tax Officer charges wealth tax not on what is spent on the house but what he considers it can be sold for. Estate Duty as the law stands at present, is payable on the current market price of the house which has escalated beyond measure in the recent years; payment of Estate Duty would inevitably involve distress sale of the house. When at any stage the house is sold, government claims its share of the capital gain and another authorised government agency claims its share of the price increase of lease-hold land. Whereas these are the impositions, if one wishes to regain possession of the house from the tenant, one may have to wait for years, passing through the agony of litigation.

Various views have been expressed by the organisations of houseowners and the organisations of

tenants for effecting modifications in the existing rent control laws. Broadly, these views make the following points:

(i) **RETURN ON INVESTMENT.** It is generally felt, as stated above, that the returns fixed at 7½ per cent, 8½ per cent and 8 5/8 per cent under the existing provisions, for instance in the Delhi Rent Control Act, for providing a return on investment on housing, need to be stepped up at least 10 per cent on the market value of residential property and 11 per cent in the case of commercial premises. Rent free holiday period provided at present is five years. There are suggestions that this period should be reduced to three years in the context of fast changing conditions of current times.

(ii) **STANDARD RENT.** The suggestions are that the standard rent or fair rent should be based on the value accepted for income tax/wealth tax purposes. It is also suggested that while fixing the standard rent, the present position of escalating costs of repairs, enhanced taxes, prevailing rents and present value of the rupee should be taken into account. Fixation of unrealistic standard rent can only lead to distortions and corrupt practices. The difficulties currently arising from the fixation of standard rent vis-a-vis the assessment of house tax of the local authorities, should be kept in view while redefining the concept of standard rent.

(iii) **LOCAL TAXES.** Taking into account the increase in local taxes which has taken place in the recent years, there are suggestions that in the event of enhancement or imposition of any additional taxes, subsequent to the date of commencement of tenancy, the houseowner should be entitled to claim increase in rent by the amount of such increase of local taxes.

(iv) **DEFINITION OF TENANT.** Taking account of the enormous litigation that has come about between tenants and houseowners in relation to the inheritance of tenancy, there are suggestions that the word "tenant" should be so defined as to include, for residential premises as well as non-residential premises, in case of death of tenant his parents, sons, daughters widowed daughter-in law, provided they have been ordinarily residing or carrying on business or industrial

activity with the deceased tenant at the time of his death or have been directly dependant upon him.

(v) **LIMITATION FOR RENT FIXATION.** Under the existing laws there is generally a provision that the tenant can approach the court within a period of two years the date of tenancy for fixation of standard rent. There have been demands from tenants that there should be no limitation, whereas the viewpoint of houseowners is that there should be no scope for fixation of standard rent once the rent has been agreed upon between the tenant and the houseowner. There are suggestions that the limitation period of two years should be extended to five years.

(vi) **EVICITION** There is at present no provision for eviction of tenant from commercial premises for personal bonafide need of self or dependant members of the family. Viewpoints differ widely between the owners and tenants on this matter, and an easy solution would obviously not be forthcoming. Some via media will need to be explored so that commercial premises could be restored to the owner on the basis of genuine established personal necessity after giving adequate time to the tenant for vacating the premises.

(vii) **VACATION ON RETIREMENT.** Taking account of the difficulties of employees on retirement, there are suggestions that provision should be made for securing restoration of house to the owner on his retirement.

(viii) **LIMITED TENANCY.** Generally, a provision has been incorporated in the rent control laws e.g. Section 21 in the Delhi Rent Control Act, for creating limited tenancy on agreement between the houseowner and the tenant with prior permission of Rent Controller. Personal need of the owner is explained to the Rent Controller at the time of letting out the premises, and the tenant has to vacate it on expiry of the stipulated period. For avoidance of litigation which continues proliferating from this provision, there is need of strengthening it so that the permission granted by Rent Controller should be final and not subject to further review.

(ix) **REVISION OF RENT.** There are suggestions that there should be provision for revision of rent after every three years, or alternatively for pegging

it to the cost of living index, in order to ensure that the property continues to be properly maintained and is not allowed to deteriorate by neglect of repairs, and at the same time give appropriate return to the houseowner.

(x) **WEAKER SECTIONS.** Opinion is currently gaining ground that the protection of rent control laws should be primarily provided to the weaker sections and this protection need not be given to the more affluent tenants. The weaker sections can for this purpose, be distinguished by prescribing a limit either of rent or of income or of the area rented.

(xi) **SELF-OCCUPATION.** There are views that rent control laws should contain a specific provision that where a person owns only one residential house, it should be restored to him on expiry of the tenancy if it is required by him for his own use or his family needs.

(xii) **LEGAL PROCESSES.** It is generally felt that legal processes are providing an excruciating burden on the tenants as well as on the houseowners. There are suggestions that legal processes pertaining to the rent control laws should be different from the normal processes of civil suits and provision should be made for summary proceedings in cases where premises are required for self-occupation or sale. There should be provision for settlement of rent control cases through arbitration instead of the parties having to spend years in courts.

(xiii) **GOVERNMENT OFFICIALS.** Provision has been made in some rent control laws whereby a government official who is obliged to vacate government premises is given the right to recover immediate possession of the house let out by him without payment of any compensation. There is a general feeling that similar provision should be made applicable also to retired government servants, personnel of armed forces and employees of local authorities.

(xiv) **RECEIPTS FOR RENT.** There have been suggestions that difficulties often arise due to the non-issue of receipts by landlords to the tenants and consequently there is need of making a provision that the non-issue of receipt by the land-

lord should constitute a penal offence. It is also considered desirable that there should be provision for deposit of rent in bank account of the houseowner, for which the bank account number should be provided by the houseowner.

PETITION TO LOK SABHA

A Petition has been submitted to the Lok Sabha

by the Delhi Houseowners Welfare Association, which has affiliation with COMMON CAUSE. We have written to the Petitions Committee of the Lok Sabha that as we have very close interest in this problem, an opportunity should be provided to our representatives to be heard when the Petition is considered.

DO'S AND DONT'S FOR HOUSEOWNERS & TENANTS

Taking account of the enormous litigation that daily emerges under the rent control laws we have considered it necessary to suggest DO'S & DONT'S to the houseowners and tenants which would minimise the areas of litigation and facilitate quicker decisions when the resort to courts becomes inevitable. On request from COMMON CAUSE, Mr. Jaspal Singh, Additional District & Session Judge, Delhi, who is the author of well-known and oft-quoted books on Delhi Rent Control Act, has been kind enough to formulate these suggestions. The suggestions are summarised in the paragraphs that follow, and we would be happy to see their wider circulation through other organisations and associations which may like to circulate them. We understand that these, in more detailed shape, along with suggested model forms of notice of rent demand, notice for termination of tenancy, notice to stop misuse of property and agreement to lease etc. will be incorporated in another book of Mr. Jaopal Singh entitled "Law of Landlord and Tenant"

It is obviously necessary and desirable, in the interest of obviating difficulties and delays, that the landlord should get a proper Rent Note or Lease Deed executed before renting out the premises. In the absence of a validly executed rent document, the tenant exercises the option of raising all sorts of pleas, often male fide and make misstatements of facts which can lead to delays and miscarriage of justice. In drawing up the Lease Deed following specific points should be kept in view :

a) **Status of Contracting Parties** The Deed must clearly state the name address of the houseowner and the landlord, and contain an admission by the tenant that he has duly satisfied himself fully about the status of both the owner and the landlord. It is equally important that the status of the tenant

should be duly clarified i.e. whether he is a licensee or a lessee. A careful landlord would make full enquiries regarding the antecedents, financial stability, corporate status or otherwise, of the proposed tenant before entering into the lease.

b) **Purpose of Letting.** It has been observed that in cases of evictions e.g. u/s 15(a) or 14 (i) (e) of the Delhi Rent Control Act, on the ground of bonafide requirement, the usual plea taken by the tenant is that the purpose of letting was residential-cum-commercial or commercial only. In case of a residential building the landlord should stipulate that the house will be used only for residential purposes and that no change in the user would be permissible without prior consent in writing from the owner and a certificate obtained by the tenant from the local authority that the proposed change would not be in contravention of the Master Plan of the city. The Lease Deed should also clearly stipulate the status of the residents who may occupy the house. There should be clause incorporating that the tenant specifically agrees not to raise any plea of consent for change in user by printing of any matter on his letterheads or stationery or communications which may be in conflict with provisions of the Lease Deed.

(c) **Rent Agreed Upon.** In the absence of a written agreement tenants resort to the strategy of denying the rate of rent and the date by which the rent is payable in advance. This leads to complications of the rent demand of houseowner. Under the rent control legislation it is also normally made obligatory on the part of houseowner to issue rent receipt. It would lead to elimination of false pleas if the houseowner main-

tains counterfoils of rent receipts duly signed by the tenant. It would be desirable to mention on the rent receipt and counterfoil the purpose of letting e.g. "let out to the tenant for residential purposes only".

- (d) **Particulars of Rented Accommodation.** In the absence of lease deed, the tenants can take resort to resisting the eviction on account of non-disclosure of the full extent of accommodation rented out to him. He would be prevented from raising such plea if the accommodation rented to him is mentioned in detail in the lease deed and a plan of the building and accommodation so rented is attached to the lease deed and got signed by the tenant.
- (e) **Obligations Devolving on Houseowner.** Tenants have some times resorted to suspension of rent on the ground that certain amenities or services agreed to be provided by the houseowner had been withheld or were not provided at all. It would, therefore, be prudent to clearly specify the obligations of each of the parties regarding annual maintenance and the medium of painting of interior and exterior, day-to-day repairs, payment of electricity and water charges, maintenance of garden and other grounds, anti-pest control etc. It should also be clearly stipulated that the premises will not be used for any illegal or immoral purposes or in contravention of any local bye-laws, rules or regulations in force from time to time, and that all penalties, fines, damages etc. imposed by any local authority for such breach will be borne by the tenants and he would keep the houseowner indemnified to the full extent at all times.
- (f) **Payment of Local Taxes.** Often the house owners forget to protect themselves against the rise in local taxes. It is desirable to mention clearly the local taxes that will be payable by the houseowner and the taxes payable by the tenant. In a recent judgment of the Delhi High Court it has been held that scavenging tax is a charge on the occupier and not on the landlord.
- g) **Period of Lease.** In view of the constantly changing pattern of income tax and local taxes, it is desirable that leases should preferably not be executed for a period of more than two years at a time and any further renewals should be made subject to mutual agreement. It would also be desirable, if the lease deed is for one year or more, that it should be got registered; the cost of such registration is normally borne by the tenant. Un-stamped/un-registered lease deed is not admissible in evidence.
- h) **Sub-letting.** The lease deed should stipulate clearly that the tenant cannot create a license or sub let, assign or part with possession of a part or whole of the tenanted premises without the prior written consent of the houseowner. It should also be provided that the tenant undertakes specifically that no plea of implied or oral consent to such effect will ever be raised and that it is a specific stipulation between the parties that only written prior consent of the houseowner will be necessary in the matter. It may be mentioned that it would not be in the interest of the landlord to execute the lease deed in the name of a partnership firm. Introduction of other persons subsequently as partners would not amount to sub-letting, assigning or parting with possession and the tenant can in the case of a partnership firm easily defeat the intent and purpose of the clause against subletting etc.
- i) **Interest of the Tenant.** It is obviously necessary that the tenant also needs to be equally carefully and cautious. The basic interests of an honest tenant are security of tenancy, fairness/reasonableness of the rent and regular discharge of the obligations undertaken by the landlord. It would be in the interest of the tenant to stipulate that a notice of termination of tenancy must be given allowing him at least three months time. Such a stipulation will protect the tenant from institution of eviction proceedings on grounds of bonafide requirement. The tenants would also stand to benefit if the landlord is careless and the notice turns out to be invalid.
- j) **Purpose of Letting.** The tenant should also be careful about the purpose of letting. The tenancy for commercial purposes is not inheritable; for residential purposes it is inheritable only in a limited manner. Though tenancy for residential-cum-commercial purposes is not inheritable, the tenant cannot be evicted under the summary procedure

on ground of bona fide requirement. In case a tenant wants to have a right to sub-let, assign or part with possession of the leased premises, he should get that right incorporated in the lease deed. In case he can obtain the tenancy in the name of partnership firm of which he is one of the partners, sub-letting etc. will subsequently be possible by admitting the management of the business into the partnership firm holding the tenancy.

- k) **Commercial Tenancy.** In the case of commercial premises the tenant should not agree to the restriction of business to any particular trade but should try to get the purpose of letting recorded as only 'commercial'. In case any particular trade is mentioned e.g. furniture shop, then it would be tantamount to misuse of the premises to run a restaurant therein and render the tenant liable to eviction.
- l) **Rent Payment and Receipts.** Landlord is duty bound to issue rent receipts and this right can be enforced

by the tenant. To prevent a landlord from creating ground for eviction relating to rent payment the tenant should, on receipt of notice of demand from the landlord, pay or tender the full amount of arrears. He should be careful not to deduct any money order fee or bank commission for a draft from the amount payable to the landlord as a short-fall in the amount for any reason whatsoever would be constituted as non-payment of rent. The tenant also has the right to deposit the rent in the court of the Rent Controller.

- m) **Reconstruction Requirement.** In the event of temporary dispossession of the tenant for the purpose of reconstruction of the premises it would be in the interest of the tenant to comply strictly with the order of the Controller. Even one day's delay in handing over possession of premises to the landlord would entail loss of the right to re-occupation on completion of the proposed reconstruction.

HOUSE TAX MUDDLE OF DELHI MUNICIPAL CORP.

Delhi Municipal Corporation has over the past of few years presented a picture of chaos in house Tax assessment and of sheer disregard of public opinion which clamours for correcting the discriminations, anomalies, irrationalities and distortions in these assessments. There are nearly 500,000 assesseses. Seething discontent prevails among them, tens of thousand feel greatly aggrieved, and numerous cases are being filed in courts by them. It is desirable that information about these problems should be widely disseminated so that other cities should take note of them for seeking correctives in their areas and the houseowners of Delhi should become more closely acquainted with the details. COMMON CAUSE has been strenuously taking up these issue with the authorities of Delhi Municipal Corporation as well as the Lt. Governor and the concerned Ministries of the Government of India. Meanwhile, the discontent has spread far and wide.

The reasons for this discontent lie in stratagems and subterfuges adopted in the past few months by the officials of Municipal Corporation of Delhi to over-

come the impact of a Supreme Court judgment in the well known case Dewan Daulat Rai Kapur Vs. NDMC which, delivered on 20.12.1979, exposed the illegalities adopted in the assessment of House Tax for rented properties including the residential, commercial and industrial premises. Supreme Court held that the basis for assessment of House Tax, under the law as it stands at present, can be only the standard rent, as defined in the Rent Control Act and not the actual rent, irrespective of the fact whether the building is on rent or not.

MCD felt that this pronouncement of the Supreme Court would adversely affect its revenues and that it might be called upon also to effect refunds for the previous years. Accordingly, a hastily conceived and poorly worded Bill was got introduced through the Government in the Parliament on 4.8.1980 with the declared objective of overcoming the effects of Supreme Court Judgment and for effecting amendment in the relevant statutes. This Bill raised a storm of protests from all quarters in Delhi. The house-owners were greatly perturbed and felt alienated.

This ostensibly persuaded the Government not to rush the Bill in the Parliament. In the sessions since then the Bill has not yet been brought forth for discussion.

Meanwhile, the concerned officials in MCD, feeling as though it was their bounden duty to safeguard the revenues even at the cost of flouting the Supreme Court Judgment, continued to act in violation of this pronouncement of the law in the hope that the matter would be resolved on the enactment of the proposed amending legislation. This has further aggravated the discontent and resentment of the houseowners. Tactics and stratagems have been adopted by MCD, apparently on the advice of law department, to side-step the Supreme Court Judgment and to continue assessing the House Tax on the basis of rent and to put forth excuses to justify the contention why it is not possible to assess the standard rent. These facts will be evident from the following :

- i) **1980-81 Assessment Lists.** The Supreme Court Judgment was pronounced on 20.12.1979 as stated above. It laid down the law, inasmuch as it prescribed that the House Tax cannot be levied on the basis of rent. Assessment lists had by that time been prepared by MCD for the assessment year 1981-81, and these were based on rent as in the previous years. It was incumbent on the MCD to take note of the law as pronounced by the Supreme Court and to revise the assessment lists *suo moto*, giving opportunity to the houseowners to produce documentary evidence to facilitate the determination of standard rent. No such action was taken. About 2000 houseowners filed objections (the last date for which was 31.12.1979). These objections were disregarded, and on one pretext or the other they were later rejected. In reply to Parliament question on 8.4.1981, it was stated on behalf of MCD that 494 objections had been filed by some residents of South Delhi colonies and they were all rejected on their failure to produce documentary evidence. The fact is that in almost all cases, where opportunity was provided, documentary evidence, comprising valuers' reports etc., had been filed; these were disregarded and a false plea was taken that documentary evidence was not produced.
- ii) **1981-82 and 1982-83 Assessment Lists.** Even for the assessment years 1981-82 and 1982-83 the MCD

has chosen to ignore the pronouncement of law in the Supreme Court judgment, and merely copied the assessment lists of previous years which, as stated above, were based on rent and not on standard rent. Thousands of houseowners have filed objections before the prescribed respective dates. These are being disposed of but all sorts of measures are being adopted to side-step the effect of Supreme Court Judgment. For instance, in the case of lease-hold plots (practically all new colonies are on lease-hold basis) it is being put forth that the market price of land is announced by the Government every year-therefore resort is taken to S.9 (4) of the Rent Control Act which provides that where standard rent is not determinable under S.6 of the Act, resort can be taken to S.9 (4) for this purpose. Through this stratagem the assessment is determined on the basis of rent prevailing in the locality and the rent charged for the premises.

- iii) **Cases u/s 126 of MCD Act.** There is a provision of S.126 in the MCD Act under which notice is issued where any addition or alternation comes about in any building. Objections are filed against such notices by the houseowners and these are expected to be disposed of by the MCD in accordance with the law. More than 80,000 objections have accumulated against the notices issued under section 126 MCD Act and a tiny fraction alone have yet been disposed of. The real objective of postponing decision in all these cases has been to wait for amendment of the relevant provision of the statute so that the assessment can be based on rent.

These various facts have caused extreme annoyance to the houseowners. Practically everybody who is aggrieved has either already gone to court or is planning to file writ where remedy under S.169 of MCD Act, of filing appeal, is not available as the appeal could be filed only within 30 days of the authentication of lists.

Compounding these problems arising from the Supreme Court Judgment there are other serious matters in relation to the House Tax assessment of MCD which are a cause of great discontent. These appear in the following paragraphs.

Distortions and Irrationalities. There are numerous

case of anomalies and distortions in assessments of House Tax. Bigger buildings, either rented or self-occupied, are assessed at smaller tax than smaller buildings of same categories and in immediate contiguity. Cases are available in every area, where, due to predilections and dispositions of the assessment staff such distortions exist; often self-occupied smaller houses are assessed at higher tax than rented bigger buildings. Recent smaller constructions are assessed at much higher tax because of the distortions which have come about in the prices of land and cost of construction which form the basis of determination the tax. A house constructed, say, in 1981 in any of the housing colonies of Delhi attracts house tax much more than the adjacent bigger house constructed some years ago, even though it may be self-occupied and the adjoining house may be fetching high rent for the owner. Suggestions made for overcoming these distortions, by adoption of the cost and price criteria of 1970-71, on the lines of Wealth Tax assessment, have been disregarded. These irrationalities and distortions are causing extreme problems for the homeowners.

Anomalise between impositions of NDMC and DMC.
A major factor which in fact comprises an important grievance of the owners in the jurisdiction of DMC is that whereas their houses and buildings are subjected to the levy of house tax ranging upto 30% of the rateable value and additional charge of 1% education cess and 1% scavenging tax, the owners in the area of New Delhi Municipal Committee pay only 12½% of the rateable value on their properties. The irrationality of this is evidenced by the fact that, for instance, a house or commercial building of rateable value Rs. 80,000 in Sunder Nagar or Defence Colony, South Extension or Nehru Place, is assessed to house Tax of DMC at Rs. 22,800 whereas the same building is assessed to House Tax at Rs. 10,000 if it lies in Golf Links, Jor Bagh or Khan Market, merely because the latter areas are in the jurisdiction of New Delhi Municipal Committee. The former pays, in addition, Rs. 800/- towards education cess and Rs. 800/- towards scavenging tax and Rs. 400/- for fire tax; the latter does not have to pay any of these. A modest building of Rs. 20,000 rateable value will be subjected to the taxes of Rs. 3240 + Rs. 200 + Rs. 200 + Rs. 50 (Total Rs. 3690) in the area of DMC, and it will have to pay Rs. 2400 if it lies on the other side of the road, in NDMC area. The jurisdictions of DMC and

NDMC were fixed merely for administrative convenience. They are not two separate towns. They are parts of one and the same town. They are provided same services of water, sewerage, drainage, power, police, traffic control, fire fighting, public transport, posts and telegraphs, telephones, flood control, octroi and such others; they are treated as one entity for these various purposes and for development requirements of Master Plan and Delhi Development Authority; and standard of services are palpably better in the NDMC area than in the DMC area; yet, the house tax in DMC area is very much higher than in NDMC area. This serious anomaly was recognised when, ostensibly under pressure of the Govt. of India the rates of House Tax in both these areas were made the same i.e. 12½% of the rateable value in about 1975. It is unfortunate that the rates of tax in DMC area were again raised to the present levels in 1977, recreating the irrationality and anomaly. The homeowners of DMC area feel very bitter about this serious distortion.

Valuation [of Lease-Hold Land Price. it is worth repeating that MCD has been adopting the line, which is totally untenable, that as the price of land is not determinable in the case of leasehold areas, the resort has to be taken to the provisions of Sec 9(4) of the Rent Control Act for assessment of the standard Rent as an alternative to the provisions of Sec. 6. This is an ingenious stratagem; it will not stand the test of legal scrutiny. The price of land in leasehold areas is surely determinable and has always been so. The land prices are declared from time to time by the Land & Development Office; these prices are also determined on the basis of auctions conducted by DDA; the land prices are calculated in evaluations for the purpose of Income Tax and Wealth Tax assessments, and the Valuation Cell of the Income Tax Department has itself made these assessments in a large number of cases. In the face of these incontrovertible facts, the subterfuge being put forth by the MCD about non-determinability of the land prices will not hold water in any court of law. It will accordingly be recognised that this stratagem can lead only to MCD cutting a very sorry figure when these matters are taken to courts, which they inevitably will be.

- ii) **Resort to Section 9 (4) of Rent Control Act for Assessment of Standard Rent.** Resort to Sec 9 (4) of RC Act can be taken only when the assessment cannot be made under Sec 6. This is very clearly laid down in Sec 9 (4). The non-determinability of land price cannot be accepted as resort to Sec 9 (4) can only be for determination of the **Standard Rent** based on similar premises in the locality. The term "Standard Rent" as defined in clause (k) of Section 2 of the Act means the Standard Rent referred to in Sec 6 or Sec 7, as the case may be. From all points of view, therefore, the resort to Sec 9 (4), without the primary condition laid down in the first sentence of this sub-section, is against the law. One cannot believe that the Department is not aware of this position and therefore the only inference can be that the Department is deliberately resorting to a strategy which they fully believe to be illegal.
- iii) **Assesments after Initial Period of 5 Years.** Shelter is being taken of the recent High Court judgment in CW 2276/81 Dewan Chand Pruthi Vs. MCD for taking the position that the Standard Rent in self-occupied premises cannot be determined under Sec 6 of the Rent Control Act; it has to be determined under Sec 9 (4) of

the Act. The pronouncement of High Court has relevance to the particular case in which this decision was given, where the property was constructed in 1978 and assessment related to 1981-82 i.e. the decision related to a specific property in which period of 5 years had not elapsed since its construction. This is a very important point in relation to this judgement and it is evident from it. Therefore, the utilisation of this pronouncement in generality is altogether wrong and untenable. This can at best apply only to properties constructed within the period of 5 years, the period relevant under sub-section 2 (6) of Sec 6 of RC Act. For self-occupied properties constructed more than 5 years ago, the assessments cannot be made under Sec 9 (4) of the Act and have to be done on the basis of cost of construction and price of land under Sec 6, as in the case of rented properties. In this connection it is also relevant to note that the Rent Control Act relates only to properties which are rented; it has no application at all to self-occupied properties. At best the general intention of the provisions of this Act may be considered applicable for determination of the Standard Rent of self-occupied properties more than 5 years old and under Sec 9 (4) for properties constructed within 5 years.

A PROBLEM OF OWNERSHIP OF FLATS

There are complaints that Income Tax officers are not accepting the residential and commercial flats of the multi-storeyed buildings and DDA colonies of Delhi as "property" for treating the income from them as "income from property", on the ground that ownership of the flats does not yet vest in the buyers through registered deeds. The problem of vesting ownership of the flats particularly where they are in buildings on lease-hold land, has been hanging fire for many years. It has got entangled in the levy of commercialisation charges of the land and the non-registration of cooperative societies of the flat owners. The matter of levy of commercialisation charges has been going the rounds of higher courts for quite a few years, and there is no solution of this problem yet in sight.

There are over 25,000 flat owners of multi-storeyed buildings of Delhi affected by this problem. They include the owners of commercial flats as well as residential flats, and in addition there are a very large number of owners of DDA flats. In the absence of their flats being treated as "property" by the Income Tax Department, they are disentitled to deductions, such as for repairs, which are allowable for income from property, and the income from their flats is being treated as "income from other sources" which is manifestly

unfair. Similar problems are arising in respect of the valuation of flats for the purposes of Wealth Tax.

COMMON CAUSE had taken up this matter with the Delhi Administration and the Government of India. It is now seriously engaging the attention of Ministry of Works & Housing and the Delhi Administration. The Ministry of Work & Housing has set up a Working Group for urgent study of this problem for taking steps to bring forth a legislation somewhat on the lines of a similar legislation in Maharashtra.

We have represented to the Government of India that the buyers of these flats should not be penalised by Income Tax Department on the ground of the title of ownership not having yet been given to them through registration merely on account of the above mentioned difficulties which the Government of India is fully aware of and which are now sought to be resolved through a new legislation which may take a long time yet to enact. The Finance Ministry has been requested to issue requisite instructions to the Income Tax Officers about the difficulties that are being encountered in this regard and to accept the factum of ownership where it is established that the payment was made by the buyer and agreement executed with the builder/promoter of the building.

1982 BUDGET AND OUR RECOMMENDATIONS

While the Budget proposals of 1982 fall very short of the requirements of the middle classes, despite the claim that this Budget avoids placing burdens on the low and middle income groups, the exemption limit for income tax having not been increased and there being no indication as to when the Estate Duty Act will be amended for removing the present nightmares of homeowners, we consider it appropriate to list hereunder some of the recommendations COMMON CAUSE had made in its Memorandum to the Finance Minister and subsequent letters, which have found acceptance in the Budget proposals :

- i) **Standard Deduction.** We had suggested that the standard deduction should be allowed at a uniform rate of 25 percent with a ceiling of rupees 10,000 and that it should have application to salaried employees in active service and retired persons. In the Budget the percentage has been raised to 25 percent though the ceiling has been retained at rupees 5,000. This measure will give relief to those with salaries upto rupees 20,000.
 - ii) **Leave Encashment.** We had recommended that the leave encashment benefit on retirement should be exempt from income tax. This recommendation has found acceptance in the Budget. We have since further represented that this benefit should be given retrospective effect as the leave encashment benefits have been introduced only recently.
 - iii) **House Property.** We had recommended that "notional income" in respect of self-occupied property is an unfair burden and should be abolished. Specifically, we had suggested that the present concession allowable for a self-occupied house is inadequate and the ceiling of rupees 1800 for deduction in respect thereof should be raised to rupees 5000. The ceiling has been increased to rupees 3600.
 - iv) **Rental Deduction.** Our recommendation was that for promoting construction of residential houses, the present prescribed deduction of rupees 2400 for the initial five years of completion of the building should be increased to rupees 5000. This limit has been increased to rupees 3600.
 - v) **Long Term Saving.** We had suggested that the exemption limit of rupees 5000 for long term savings such as life insurance, provident fund contributions etc. should be increased to rupees 10,000 and contributions in excess of this figure should be exempted to the extent of 1/3rd of such excess.
- The Budget provides for deduction of 100 per cent in respect of the first rupees 6000 of qualifying saving plus 50 per cent of the next rupees 6000 of the savings plus 40 per cent of the balance. The monetary ceiling in respect of saving qualifying for deduction has also been raised from rupees 30,000 to rupees 40,000.
- vi) **Incentives For Investment.** Our suggestion was that the existing incentive for stimulating savings and investments in the shape of exemption of income upto rupees 3,000 from investment in specified financial assets such as government securities, Unit Trusts, bank deposits and shares should be increased to rupees 15,000. The limit of rupees 3,000 has been increased to rupees 4,000; simultaneously, the exemption limit of rupees 2,000 for income from Unit Trusts has been increased to rupees 3,000.
 - vii) **Deduction At Source.** We had suggested that where the estimate of total income is below the taxable limit and where a shareholder gives a declaration in writing that his income chargeable under the head of dividends or interest in government securities or Unit Trusts etc. mentioned under Section 80 (L) does not exceed the exemption limit, no deduction of taxes should be made. This suggestion had been made for affording relief to the small investors. It has found acceptance in the Budget.
 - viii) **Tax On Capital Gains.** Under Section 80 (T) of the Act certain deductions are allowed while computing capital gains relating to long term capital assets. One such deduction is of rupees 5,000. Our suggestion was that the initial exemption limit of rupees 5,000 should be increased to rupees 15,000 and percentages in respect of immovable property and other property of 25% and 40% respectively should be raised to 60 percent. The Budget provides for modification of the existing provisions so as to relate the deduction to the period for which the capital asset has been held by the tax payer and to allow a larger deduction in case where asset has been held for a longer period.
 - ix) **Value of Conveyance.** We had suggested that value of a conveyance for purposes of wealth tax exemption should be increased much above Rs. 30,000 in view of escalated prices of cars etc. In the Budget exemption ceiling has been increased to Rs 75,000.

Government Pensioners Case. Our Continuing Efforts

While our pensioners' case before the Supreme Court has been referred by the Division Bench to the Constitution Bench and we are making efforts to secure an early hearing of the case, we would like to inform the pensioners about further efforts which we continue making to resolve the problem of discriminations caused by the Pension Liberalisation Rules of 1979. We reproduce below a letter written recently to the Finance Minister of the Government of India. The letter is self-explanatory. Pensioners' organisations and associations in the country as well as individual pensioners might like to follow up by writing on similar lines to him and also to the Prime Minister.

Text of COMMON CAUSE Letter to Mr. Pranab Mukherjee, Finance Minister.

"The Ministry of Finance is well aware of the tens of thousands of representations which have been submitted by individuals and associations all over the country on the problems of vast disparities and discriminations caused by the Pension Liberalisation Rules promulgated in 1979. COMMON CAUSE itself had transmitted over 10,000 petitions to Prime Minister's Secretariat a few months ago.

There are in all about 1.2 million central government pensioners. They are a decimating segment, and in a few more years they will have disappeared from the scene. Meanwhile, they carry severe grouse against the government that in liberalising the pensions in 1979 the benefits of liberalisation were given only to those who retired on or after 31-3-1979, depriving all previous pensioners of these. They strongly believe that the functionaries who were operating in the government during that period sought to ensure the benefits only for themselves and deliberately disregarded the requirements of previous pensioners in order to create impression of lesser financial implications.

Extreme frustrations have arisen among the previous pensioners by the application of these 1979 Rules. Anomalies of such serious nature have been perpetrated that, for instance, a Major retiring under the 1979 Rules is entitled to more pension than a Major General who retired earlier; a Section Officer gets more pension than a Secretary to the Government of India who retired earlier; Secretary retiring now gets more

than twice the pension of the Secretary who retired earlier. Exasperations of these anomalies and discriminations are obvious when it is considered that both the previous pensioners and the new pensioners live in the same circumstances of high cost of living.

We have tried our best to convince the Government of India about the unfairness of this position. We led a deputation to the previous Finance Minister. We met the Finance Secretary and the Cabinet Secretary. Other deputations have gone and met various authorities. Prime Minister has also been made aware of this problem. It is most unfortunate that the Government of India has hitherto refused to rectify it.

Eventually, when no justice was forthcoming from the Government of India, COMMON CAUSE was left with no option excepting to take this matter to the Supreme Court. The Finance Ministry will be able to tell you how the case in the Supreme Court has shaped. Arguments in the case were heard on the 8th & 9th Dec. 1981 by the Division Bench. The Bench has in its judgment expressed that the importance of this matter and the constitutional points involved in it, necessitate its being decided by the Constitution Bench of the Supreme Court. We have appeared before the Chief Justice of India & hope that there will be an early hearing of the case by the Constitution Bench.

You have a reputation of dynamism and effectiveness. We have considered it appropriate to apprise you of this matter because it is possible that amidst your numerous important preoccupations it may otherwise not come before you yet. It is obvious that the mere fact of the case being sub judice should not stand in the way of your favourably considering the merits of the demand of previous pensioners. We have already suggested that the pensioners will be content by the application of the present Rules without any claim for arrears.

Without any prejudice to the merits of our case pending in the Supreme Court, we approach you to be kind enough to take a larger view of this problem which is rankling a large section of the people who have given the best of their lives to the government and who in old age wish only to escape the pangs of deprivation caused by the inflation."

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