MANU/DE/1177/2000

Equivalent Citation: (2000)ILR 2Delhi408

IN THE HIGH COURT OF DELHI

Civil Writ Petn. No. 1495 of 1997

Decided On: 03.11.2000

Appellants: **Common Cause (A Regd. Society)**

Vs.

Respondent: **Union of India (UOI) and Ors.**

Hon'ble Judges/Coram:

Madan B. Lokur, J.

Counsels:

For Appellant/Petitioner/plaintiff: Bidyarani Yumnam, Arun Khosla, Manisha Singh, C.S. Rathour, Pradeep Gupta and Rattan Lal, Advs. and A.S. Chandhoil, Sr. Adv.,Manmeet Arora and Basant Aggarwal, Advs

For Respondents/Defendant: K.K. Sud, Addl. Solicitor General, Maninder Singh and Shirin Khajuria, Advs. (for Nos. 1 and 2), K.L. Rathee, Adv. (for No. 4) and Anip Sachthey, Sandhya Rajpal and Arjit Prasad, Advs. (for No. 5)

Subject: Constitution

Catch Words

Mentioned IN

Acts/Rules/Orders:

Constitution of India - Article 226

Cases Referred:

Supreme Court Legal Aid Committee v. Union of India, (1998) 5 SCC 762; A.K. Roy v. Union of India, AIR 1982 SC 710; Aeltemesh Rein v. Union of India, AIR 1988 SC 1768; Prabhakaran Nair v. State of Tamil Nadu, AIR 1987 SC 2117; R. v. Secretary of State for the Home Department, ex Parte: Fire Brigades Union (1995) 2 All ER 244; Union for Civil Liberties v. Union of India, AIR 1996 Cal 89; Sarla Mudgal v. Union of India, (1995) 3 SCC 635, AIR 1995 SC 1531; R.K. Singh v. Union of India, 2000 (88) Delhi LT 205; State of U.P. v. Ram Chandra Trivedi, (1977) 1 SCR 462, AIR 1976 SC 2547; L. Chandra Kumar v. Union of India, (1997) 3 SCC 261, AIR 1997 SC 1125; Post-Graduate Institute of Medical Education and Research, Chandigarh v. K.K. Narasimhan, (1997) 6 SCC 283, AIR 1997 SC 3687

Citing Reference:

Discussed

8

Distinguished

1

Mentioned

3

Case Note:

Delhi Rent Control Act, 1995 - Section 1--Enforcement of the Act--Writ

petition seeking direction to the Government to enforce the provisions of the Act--Difference of opinion among the judges of Division Bench--Reference of matter to third Judge--The Government categorically submitting that it does not wish to bring the Act into force in present form--Relief cannot be granted by issuing writ of mandamus for enforcement of the Act.

ORDER

Madan B. Lokur, J.

1. The petitioner has prayed for a writ of mandamus directing respondents No. 1 and 2 to issue a notification in the Official Gazette (as required by Section 1(3) of the Delhi Rent Act, 1995} thereby notifying the date on which the said Act shall come into force.

2. Section 1 of the Delhi Rent Act, 1995 (hereinafter referred to as the Act) reads as follows :

1. Short title, extent and commencement-

(1) This Act may be called the Delhi Rent Act, 1995.

(2) It extends to the areas included within the limits of the New Delhi Municipal Council and the Delhi Cantonment Board and to urban-areas within the limits of the Municipal Corporation of Delhi for the time being :

Provided that the Central Government may, by notification in the Official Gazette, exclude any area from the operation of this Act or any provision thereof :

Provided further that the Central Government may, by notification in the Official Gazette, exclude any premises or class of buildings from the operation of this Act or any provision thereof.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint."

3. This writ petition (and other connected matters) were heard by a Division Bench of this Court. The learned Presiding Judge, by an order dated 11th March, 1999 allowed the writ petition and directed respondent No. 1 to bring the Act into force within six weeks. In giving this direction, the learned Presiding Judge relied upon an order passed by the Supreme Court in Supreme Court Legal Aid Committee v. Union of India MANU/SC/0164/1998 : (1998)5SCC762 . The other learned Judge agreed with the learned Presiding Judge but on the relief to be granted, the learned Judge placed reliance on A. K. Roy v. Union of India, MANU/SC/0051/1981 : 1982CriLJ340 and Aeltemesh Rein v. Union of India, MANU/SC/0009/1988 : 1988CriLJ1809 and issued a mandamus to respondent No. 1 to consider within six weeks whether the time to enforce the Act has arrived.

4. In view of the conflict regarding the mandamus to be issued, this writ petition (along with other similar matters) was referred to a third learned Judge of this Court. The learned Judge heard the petition on 6th July, 1999 and thereafter on several other dates. By an order dated 25th August, 2000 the learned Judge directed that the case be placed before another Bench. This is how the writ petition (and the connected matters) came up before me on 8th September, 2000.

5. On request of learned counsel for the parties, I adjourned this case to 9th October, 2000 for final hearing.

6. Learned counsel for the parties made their submissions between 9th and 12th October, 2000 when judgment was reserved. Initially, no one appeared on behalf of the petitioner apparently because its Director was said to be unwell. Later, learned counsel for the petitioner stated that the petitioner relied upon the written submissions already filed. In any case, learned counsel appearing for some of the respondents, who were in fact supporting the cause of the petitioner, made their submissions. Submissions were also made by learned counsel for the petitioners in connected cases on the basis of the pleadings in this case.

7. It is not necessary for me to go into great details about the facts of the case because they have been fully mentioned in the leading order of the Division Bench. Nevertheless, a few facts are required to be stated to appreciate the controversy.

8. In Prabhakaran Nair v. State of Tamil Nadu, MANU/SC/0796/1987 : [1988]1SCR1 , the Supreme Court said :--

"The laws of landlord and tenant must be rational, human, certain and capable of being equally implemented."

9. In view of this, the Central Government formulated a model rent control legislation. This was sent to the States to enable them to carry out necessary amendments to the prevailing rent control laws.

10. Apparently in anticipation of the amendments being carried out by the States, the Constitution (Seventy-Fifth Amendment) Act, 1994 was passed and this received the assent of the President on 5th February, 1994. This Constitution (Seventy-Fifth Amendment) Act, 1994 enables the State Governments to set up State level Rent Tribunals for speedy disposal of rent cases.

11. The Delhi Rent Bill, 1994 was first introduced in the Rajya Sabha in August, 1994. It was subsequently passed by both Houses of Parliament and the President gave his assent to the Act on 23rd August, 1995. The Act has been published in the Gazette of India but no notification under Section 1(3) of the Act has been issued. Consequently, the Act has not yet come into force. The Act repeals the existing Delhi Rent Control Act, 1958.

12. The Statement of Objects and Reasons for the Delhi Rent Bill, 1994 reads as follows :--

The relations between landlords and tenants in the National Capital Territory of Delhi are presently governed by the Delhi Rent Control Act, 1958. This Act came into force on the 9th February, 1959. It was amended thereafter in 1960, 1963, 1976, 1984 and 1988. The amendments made in 1988 were based on the recommendations of the Economic Administration Reforms Commission and the National Commission on Urbanisation. Although they were quite extensive in nature, it was felt that they did not go far enough in the matter of removal of disincentives to the growth of rental housing and left many questions unanswered and problems unaddressed. Numerous representations for further amendments to the Act were received from groups of tenants and landlords and others.

2. The demand for further amendments to the Delhi Rent Control Act, 1958 received fresh impetus with the tabling of the National Housing Policy in both Houses of Parliament in 1992. The policy has since been considered and adopted by Parliament. One of its major concerns is to remove legal impediments to the growth of housing in general and rental housing in particular. Paragraph 4.6.2 of the National Housing

Policy specifically provides for the stimulation of investment in rental housing especially for the lower and middle income groups by suitable amendments to rent control laws by State Governments. The Supreme Court of India has also suggested changes in rent control laws. In its judgment in the case of Prabhakaran Nair v. State of Tamil Nadu, the Court observed that the laws of landlords and tenants must be made rational, humane, certain and capable of being quickly implemented. In this context, a Model Rent Control Legislation was formulated by the Central Government and sent to the States to enable them to carry out necessary amendments to the prevailing rent control laws. Moreover, the Constitution (Seventh-Fifth Amendment) Act, 1994 was passed to enable the State Governments to set up State Level Rent Tribunals for speedy disposal of rent cases by excluding the jurisdiction of all Courts except the Supreme Court.

3. In the light of the representations and developments referred to above, it has been decided to amend the rent control law prevailing in Delhi. As the amendments are extensive and substantial in nature, instead of making changes in the Delhi Rent Control Act, 1958, it is proposed to repeal and replace the said Act by enacting a fresh legislation.

4. To achieve the above purposes, the present Bill, inter alia, seeks to provide for the following, namely :--

(a) to (k) xxxxx

5. On enactment, the Bill will minimise distortion in the rental housing market and encourage the supply of rental housing both from the existing housing stock and from new housing stock.

6. The notice on clauses appended to the Bill explain the various provisions of the Bill.

13. According to the petitioner (and those supporting its cause), there is an unconscionable delay in bringing the Act into force and, Therefore, it is prayed that a mandamus be given to respondent No. 1 to issue a notification for notifying the date on which the Act will come into force in its present form. What is of significance is that the petitioner wants the Act to come into force in its present form -- more about this later.

14. During the pendency of the writ petition, respondent No. 1 filed several affidavits.

15. In the first affidavit dated 14th May, 1997, it was stated, inter alia, that in June, 1995 an all party committee was set up by the Chief Minister of Delhi to examine the Delhi Rent Bill and to suggest possible changes. The suggestions given by the Committee were examined and in March, 1996 the Minister of Urban Development and the Minister of Home Affairs discussed the matter and concluded that no amendments were required to the Bill/Act because all such issues were already considered by Parliament. However, they were of the view that a transitional provision was necessary in the Act to take care of the gap, if any, between the date of the notification and the actual functioning of the authorities under the Act.

16. It was also stated in this affidavit that thereafter, elections for the 11th Lok Sabha were announced. When the new Government took over, a fresh look was taken at the Act in the light of the recommendations of the all party Committee. The view that now

emerged was that certain amendments were necessary in the Act. It was stated that a final view had not yet been taken in the matter and as and when a final view is taken, the matter would be expeditiously placed before the Cabinet.

17. In the second affidavit dated 25th July, 1997, it was stated on behalf of respondent No. 1 that the Cabinet had decided to bring the Act into force with certain amendments and that an Amendment Bill would be introduced in Parliament in the Monsoon Session of that year.

18. In the third affidavit dated 24th September, 1997, it was stated that the Delhi Rent (Amendment) Bill, 1997 had been introduced in the Rajya Sabha on 28th July, 1997 and that on 6th August, 1997 the Bill had been referred to the Standing Committee on Urban and Rural Development (1997-98) for examination and report to Parliament.

19. In an affidavit dated 29th May, 1998, it was stated that the Lok Sabha has been dissolved and that the date on which the Act would be brought into force depended upon when the Delhi Rent (Amendment) Bill, 1997 is passed by Parliament.

20. In the last affidavit filed by respondent No. 1 on 8th September, 1998, it was stated that with the dissolution of the 11th Lok Sabha, the Standing Committee on Urban and Rural Development also stood dissolved. On the constitution of the 12th Lok Sabha, the Delhi Rent (Amendment) Bill, 1997 was referred to the newly constituted Standing Committee on Urban and Rural Development. It was stated that in view of these developments, respondent No. 1 was not in a position to bring the Act into force as assented to by the President.

21. Since then, the 12th Lok Sabha has been dissolved and the 13th Lok Sabha has been constituted. I assume that the past practice has been repeated. Learned counsel for respondent No. 5 informed me that a new Standing Committee on Urban and rural Development has been constituted and its deliberations are going on. This confirms my assumption.

22. What emerges from the various affidavits filed by respondent No. 1 is that the Central Government is not averse to bringing the Act into force -- the caveat being that it wants to do so with such amendments as are made by Parliament. The Central Government unequivocally, was not prepared to bring the Act into force, as assented to by the President.

23. The question before me, Therefore, is whether this Court can issue a writ to respondent No. 1 to bring into force the Act in its present form, that is, without the proposed amendments.

24. The leading authority on this aspect is the Constitution Bench decision in A. K. Roy MANU/SC/0051/1981 : 1982CriLJ340 . Simply put, the Constitution Bench in A. K. Roy held that it was not open to the Court to issue a writ of mandamus to bring a statute into force when the date of its enforcement is left to the discretion of the executive. It was also held by the Constitution Bench that in the absence of any objective norms, it is not for the Court to substitute its own judgment for that of the Government. The Supreme Court stated in paragraph 52 of the report :--

The executive is responsible to the Parliament and if the Parliament considers that the executive has betrayed its trust by not bringing any provision of the Amendment into force, it can censure the executive."

25. In sum and substance, the Constitution Bench was of the view that a writ of mandamus is not the appropriate remedy for bringing a legislation into force.

26. The view of the Constitution Bench was reiterated in. Aeltemesh Rein MANU/SC/0009/1988 : 1988CriLJ1809 . It was stated in paragraph 6 of the Report as follows :--

"The effect of the above observations of the Constitution Bench is that it is not open to this Court to issue a writ in the nature of mandamus to the Central Government to bring a statute or a statutory provision into force when according to the said statute the date on which it should be brought into force is left to the discretion off the Central Government."

27. Somewhat later in Aeltemesh Rein MANU/SC/0009/1988 : 1988CriLJ1809 , the Supreme Court expressed the view, and which was not seriously disputed by the learned Attorney General, that the Central Government can be directed to consider, within a reasonable time, to bring a legislation into force. Accordingly, in Aeltemesh Rein a mandamus was issued to the Central Government to consider whether Section 30 of the Advocates Act, 1961 should be brought into force or not.

28. It may be stated, en passant, that the relevant provision of the Constitution (Forty-Fourth Amendment) Act, 1978 which was the subject-matter of discussion inA. K. Roy has still not been brought in force as is apparent from an article written by Dr. N. M. Ghatate one of the learned counsel appearing in A. K. RoyMANU/SC/0051/1981 : 1982CriLJ340 and presently a Member of the Law Commission). This article was published in the Times of India dated 13th October, 2000 on page 14. Similarly, I am told by the learned Additional Solicitor General that Section 30 of the Advocates Act, 1961 which is the subject-matter of discussion in Aeltemesh Rein MANU/SC/0009/1988 : 1988CriLJ1809 has not yet been brought into force.

29. Be that as it may, the learned Presiding Judge relied upon Supreme Court Legal Aid Committee MANU/SC/0164/1998 : (1998)5SCC762 to issue a mandamus to bring the Act into force. Paragraph 5 of the Report was relied upon and this reads as follows :--

The provisions of the Act except Chapter III were extended to all the States and the Union Territories on 9-11-1995. More than two years have elapsed. The time available was more than sufficient for the State Government and the Union Territories to act and frame rules under Section 28 of the Act. It is directed that the States and the Union Territories which have not framed the rules so far, i.e. the abovementioned States/Union Territories excluding the Union Territory of Chandigarh shall frame the relevant rules under Section 28and notify the same within a period of two months. As soon as the rules are framed, the same shall be duly intimated to the Union Government and the Union Government shall take steps to issue the notification applying the provisions of Chapter III to that State/Union Territory within two weeks from the date of such intimation."

30. This paragraph has to be read in the context of paragraph 2 of the Report. It has been stated in paragraph 2 of the Report as follows :--

"In pursuance of the directions contained in the order dated 14-10-1997, an affidavit of Shri Bir Singh, Under-Secretary to the Government of India in the Ministry of Law and Justice has been filed on behalf of the Union of India. We have perused the said affidavit. It appears that while the provisions of the Act except Chapter III have been extended to all the States vide notification dated 9-11-1995, the provisions of Chapter III have not been extended to a number of States and Union Territories for the reason that for the purpose of extending the provisions of Chapter III, it is necessary that the State Government/Union Territory Administration concerned should have framed the relevant rules under Section 28 of the Act. It has been stated that since rules have not been framed in certain States/Union Territories, provisions of Chapter III have not been extended there."

31. A reading of the above makes it clear that as per the affidavit filed by the Government of India, the provisions of Chapter III of the Legal Services Authorities Act, 1987 (for short the Legal Services Act) were not extended to some States and Union Territories. This is because for extending the provisions of Chapter III of the Legal Services Act, it was necessary for the State Government or the Union Territory to frame Rules under the provisions of Section 28 of the said Act and that had not been done. It was in this context that the Supreme Court gave a direction to the States and the Union Territories to frame the relevant Rules under Section28 of the Legal Services Act.
32. It was not the case of the Central Government that it was unwilling to extend the provisions of Chapter III of the Legal Services Act. On the contrary, it appears that despite the willingness of the Central Government to do so, it could not extend the provisions of Chapter III of the Legal Services Act because the Rules under Section 28 thereof had not been framed. It was in this context that the Supreme Court asked the Central Government to issue a notification extending the provisions of Chapter III of the Legal Services Act to the State or Union Territory which intimated the fact of framing the relevant Rules. This direction was, to my mind, only consequential to the direction to frame the relevant Rules under Section 28 of the Legal Services Act.
33. Reading paragraph 5 of the Report, in isolation, tends to give a somewhat distorted view of what the Supreme Court said. One may tend to get the impression that the Supreme Court has issued a writ of mandamus directing the Central Government to bring into force the provisions of Chapter III of the Legal Services Act. But, this is not so in view of the Constitution Bench decision in A. K. Roy MANU/SC/0051/1981 : 1982CriLJ340 and in view of paragraph 2 of the order passed in Supreme Court Legal Aid Committee. Consequently, I am of the view that Supreme Court Legal Aid Committee MANU/SC/0164/1998 : (1998)5SCC762 does not advance the cause of the petitioner and the direction given therein is not intended to overrule A. K. Roy (as indeed it cannot) or to overrule Aeltemesh ReinMANU/SC/0009/1988 : 1988CriLJ1809 .
34. Learned counsel for the contesting respondents wanted me to hold that Supreme Court Legal Aid Committee MANU/SC/0164/1998 : (1998)5SCC762 was decided per incuriam. I am afraid that is not possible. I am bound by the decisions of the Supreme Court and am obliged to follow the law laid down by the Supreme Court. Whether a decision of the Supreme Court is per incuriam or not is for the Supreme Court to decide and not the High Court. Anyway, this controversy is now academic in view of my conclusion stated above.
35. Learned counsel supporting the petitioner contended and were greatly agitated that "some bureaucrat" was defying the will of Parliament. If that be so, then it is entirely a matter between Parliament and the executive. As the Supreme Court has said in A. K. Roy MANU/SC/0051/1981 : 1982CriLJ340 , Parliament can censure the executive. It is not for the Courts to censure the executive in this regard nor is it for the Courts to take over a function of Parliament otherwise, there will be chaos with each organ of the State overstepping its jurisdiction and interfering with the functions of another organ of the State. This is clearly impermissible.
36. Moreover, in A. K. Roy MANU/SC/0051/1981 : 1982CriLJ340 the Supreme Court has suggested (in paragraph 51 of the Report) that the exercise of power regarding the date on which a legislation has to come into force, is a legislative exercise of power. For this reason also, the Court cannot issue a writ of mandamus as prayed for by the petitioner.
37. A situation somewhat similar to the present case arose in R. v. Secretary of State for the Home Department, ex parte Fire Brigades Union (1995) 2 All ER 244. In that case, the House of Lords was considering .171 of the Criminal Justice Act, 1988. The relevant extracts of this provision read as follows :--

"(1) Subject to the following provisions of this section, this Act shall come into force on such day as the Secretary of State may by order

made by statutory Instrument appoint and different days may be appointed in pursuance of this sub-section for different provisions or different purposes of the same provision.....

(5) The following provisions shall come into force on the day this Act is passed (i.e. including) this section.

(6) The following provisions..... shall come into force at the end of the period of two months beginning with the day this Act is passed....."

38. One of the questions before the House was whether the Secretary of State had acted unlawfully is not bringing into force Sections 108 to 117 and Schedules 6 and 7 of the Criminal Justice Act, 1988. The majority opinion of the House was that under Section 171 of the said Act, the Secretary of State was required to exercise a legislative power (as distinguished from a duty) and that any intervention by the Courts would not be appropriate. It was, however, held that the Secretary of State could not unreasonably refuse to bring the relevant provisions of the said Act into force.

39. The only other decision which is relevant to the present controversy is Peoples Union for Civil Liberties v. Union of India, MANU/WB/0012/1996 : AIR1996Cal89 .
40. The question that arose in the above case was whether the Court was competent to direct the implementation of the Prasar Bharati (Broadcasting Corporation) Act, 1990 and whether an appropriate notification should be issued in this regard. In the above case, it was not the contention of the Central Government that it would not implement the Prasar Bharati (Broadcasting Corporation) Act, 1990. The stand of the Central Government was that there were some operational difficulties and certain amendments were necessary in the said Act to remove the operational difficulties.

41. In the light of the above, the Calcutta High Court expected the Central Government to, "give shape to the objectives and ideals of the Prasar Bharati Act as early as possible" and to give effect to the proposed amendments or to pass a fresh legislation if it feels fit and proper. No writ of mandamus of the kind prayed for by the petitioners was issued. It must, however, be said that this decision was rendered before Supreme Court Legal Aid Committee MANU/SC/0164/1998 : (1998)5SCC762 .
42. Learned counsel for the parties cited certain other decisions before me which I find, with great respect, not quite apposite.

43. Sarla Mudgal v. Union of India MANU/SC/0290/1995 : 1995CriLJ2926 is not a decision concerning the bringing into force a legislation -- it is a decision regarding the enactment of a statute. Therefore, it is of no assistance in deciding the present controversy. The same may be said of a Full Bench decision of this Court in R. K. Singh v. Union of India, Civil Writ Petition No. 5588 of 1997 decided on 20th September, 2000 MANU/DE/0083/2000 : AIR2001Delhi12 .
44. State of U.P. v. Ram Chandra Trivedi MANU/SC/0465/1976 : (1977)ILLJ200SC was also cited. The purpose of citing this decision was to impress upon me the need to follow the decision of a larger Bench of the Supreme Court as against the decision of a smaller Bench. The suggestion was that Aeltemesh ReinMANU/SC/0009/1988 : 1988CriLJ1809 decided by two learned Judges did not correctly appreciate A. K. Roy MANU/SC/0051/1981 : 1982CriLJ340 and that in fact the three learned Judges who decided Supreme Court Legal Aid Committee MANU/SC/0164/1998 : (1998)5SCC762 had correctly appreciated A. K. Roy. I have already concluded that Supreme Court Legal Aid Committee has to be understood in the context of the facts before the Supreme Court and that this decision does not conflict with Aeltemesh Rein MANU/SC/0009/1988 : 1988CriLJ1809 . Consequently, Ram Chandra Trivedi MANU/SC/0465/1976 : (1977)ILLJ200SC is not quite apposite.

45. L. Chandra Kumar v. Union of India MANU/SC/0261/1997 : [1997]228ITR725(SC) and Post-Graduate Institute of Medical Education and Research, Chandigarh v. K. K. Narasimhan MANU/SC/0919/1997 : AIR1997SC3687 were referred to for the purposes of showing that the Judges of Constitutional Courts should be alive to the interests of the people. I need hardly say that I have tried to decide this petition keeping in mind the views of the Supreme Court in the above (and other) cases. Nevertheless, I hope that those who are unhappy with this decision will concede to me the right to decide these cases in accordance with the law as I perceive it to be.

46. Having explained the legal position as I understand it, what would the man (or woman) in the DTC bus (like the hypothetical man in the Clapham omnibus) make of all this semantics and jargon? The man (or woman) in the DTC bus would want to know what's actually going on.

47. The factual position before me is simple and straightforward. There is a decision of the Supreme Court (Prabhakaran Nair) MANU/SC/0796/1987 : [1988]1SCR1 which calls for a rational and human law to be enacted. This was ostensibly accepted and acted upon by Parliament by amending the Constitution. The Delhi Rent Bill was drafted by the executive and enacted by Parliament. Even the President assented to the legislation and yet it is not being brought into force by an apparently recalcitrant executive. This is said to be a solemn mockery of the will of the people.

48. However, the fact of the matter is that there has been no Rip Van Winkles on the part of the executive. The executive has been alive to the views and reservations of individuals and organizations. Having considered these views and reservations, the executive felt the necessity of amending the Act. This necessity has been discussed and debated upon as is apparent from the various affidavits filed by the Central Government. The result of the dialectics has now been fully expressed in the Statement of Objects and Reasons while introducing the Delhi Rent (Amendment) Bill, 1997 to amend the Act.

49. The Statement of Objects and Reasons for the Delhi Rent (Amendment) Bill, 1997 reads as follows :--

"The Delhi Rent Bill, 1995 which received assent of the on the 23rd August, 1995 was published as the Delhi Rent Act, 1995. However, in view of the strong reservations expressed by various individuals and organizations, the Act could not be brought into force so far. Though the Act was conceived as an attempt to promote private investment in rental housing by balancing the interests of the landlords and the tenants, yet it was felt that certain distortions are to be set at rest.

2. The issue regarding enforcement of the Act with or without amendments has been under examination of the Central Government at various levels for over a year. A view has emerged after various high level meetings that the Act may be brought into force after effecting certain amendments therein.

3. Having regard to the various representations and the developments referred to above, it has been decided to amend the Act, inter alia, seeking to provide for the following, namely :--

(a) provision regarding non-applicability of the Act under Section 3(1)(c) will be in relation to monthly rent payable instead of in relation to monthly deemed rent;

(b) all tenancies which may be entered into after the commencement of the Delhi Rent Act, 1995 shall be writing and registration thereof shall be governed by the provisions of the Registration Act, 1908;

(c) inheritability of tenancies in relation to non-residential premises where the successor of the deceased tenant was dependent on him and is also not owning or possessing any non-residential premises in the National Capital Territory of Delhi shall be for a period of three years;

(d) the tenant will be given an opportunity to file a counter-affidavit in reply to the affidavit filed by the house-owner for getting his premises vacated in relation to certain grounds of eviction;

(e) qualifications and mode of selection of the Chairman and the Members of the Delhi Rent Tribunal will be at par with those of the Central Administrative Tribunal (CAT);

(f) the adjudicating machinery set up under the Delhi Rent (Control) Act, 1958 will continue to deal with cases till the new machinery (i.e. Rent Authority and Delhi Rent Tribunal) is set up and becomes operational under the Delhi Rent Act, 1995; and

(g) the Act shall not affect the provisions of the Administration of Evacuee Property Act, 1950 or the Slum Areas (Improvement and Clearance) Act, 1956.

4. The proposed amendments are intended to make the Act more acceptable both to landlords and tenants. At the same time these would also encourage investment in the housing sector, particularly the rental housing.

5. The Bill seeks to achieve the above objects."

50. It is quite clear, Therefore, that in the opinion of the Central Government, the Act in its present form as assented to by the President ought not to be brought into force. The reason for this, whether good, bad or ugly is not an issue in this case.

51. The Rajya Sabha has referred the proposed amendments to the Act to the Standing Committee on Urban and Rural Development. Obviously, Therefore, the proposed amendments to the Act are not frivolous or unnecessary. One cannot, ostrich like, ignore these developments. Consequently, I am of the view that it is but appropriate that the decision of Parliament be awaited with regard to whether or not the Act should remain in its present form. Parliament represents the will of the people and, I think, its view should be awaited.

52. As a result of the above discussion, I most humbly beg to differ with the learned Presiding Judge of the Division Bench on the relief to be granted to the petitioner.

53. In view of the circumstances indicated hereinabove, and the law as I understand it to be, I am of the opinion that it would not be appropriate to issue a writ of mandamus to bring the Act into force in its present form. I agree with the other learned Judge that, at best, a writ in the nature of mandamus as postulated by Aeltemesh Rein MANU/SC/0009/1988 : 1988CriLJ1809 be issued.

54. However, I do feel that through various interim orders, this Court has effectively issued such a writ of mandamus. In any case, the Central Government has explained its position in unmistakable terms; it does not wish to bring into force the Act in its present form; it would like to bring the Act into force with certain amendments which are pending consideration by Parliament.

55. Consequently, I am of the view that even a writ of mandamus as postulated by Aeltemesh Rein MANU/SC/0009/1988 : 1988CriLJ1809 need not be issued, since the response of the Central Government is already known. Moreover, it is well settled that the Courts do not issue infructuous writs or writs which are of an academic nature. However, since this is not an issue before me, I leave it at that.
56. The case be listed before the Division Bench for issuing an appropriate writ of mandamus (if necessary) on 10th November, 2000, subject to the orders of Hon'ble the Chief Justice.

57. Before parting, I would like to mention something which has troubled me a bit. Section 1(3) of the Act is not in force. On what authority can the Central Government issue a notification under Section 1(3) of the Act?