



DELHI

Judicial Services Exam

CIVIL JUDGE CADRE

High Court of Delhi

Civil Law - 1

Volume 2



DELHI JUDICIAL SERVICES

CIVIL LAW – 1 VOLUME - 2

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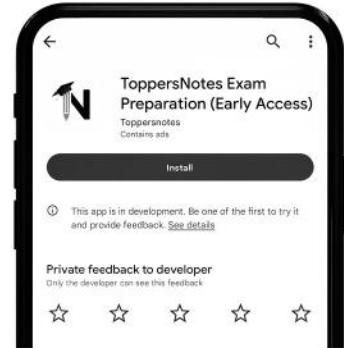
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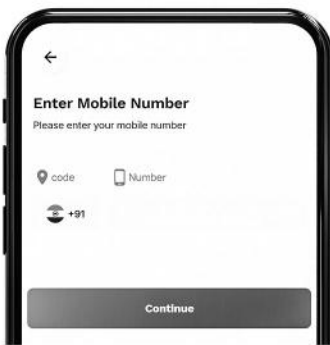
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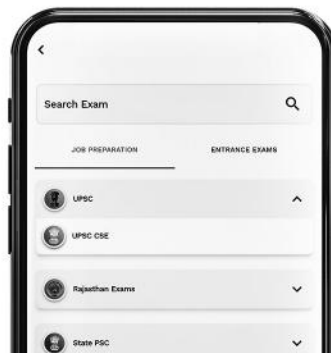
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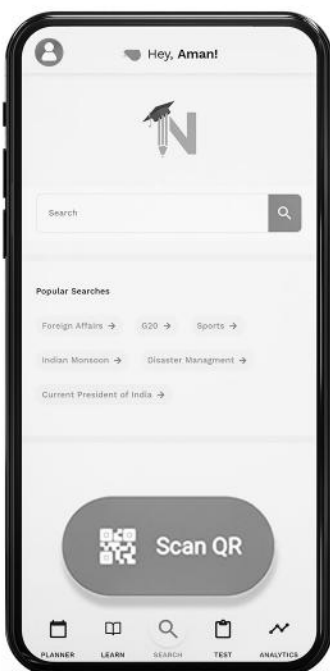
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The Delhi Rent Control Act: Historical Background

The first rent control measure in Delhi came after the outbreak of the Second World War in 1939, under the Defence of India Rules. This was restricted to New Delhi and the Notified Area, Civil Station. In 1942, the provisions of the Punjab Urban Rent Restriction Act, 1941 were made applicable to the remaining areas of Delhi. It was soon realised that the provision of the Punjab Act was insufficient for a city like Delhi and thus, it was supplemented by another Order under the Defence of India Rules in 1944.

After the war, another comprehensive legislation was passed for all parts of Delhi by the name of The Delhi and Ajmer Marwara Rent Control Act, 1947. In 1952, it was repealed by The Delhi and Ajmer Rent Control Act, which substituted it and ceased the application of rent Acts of other states to certain parts of Delhi, another attempt was made in 1958 to plug certain loopholes of the 1952 act. In the same year, the Slum Areas (Improvement and Clearance) Act was passed which sought to protect the interest of the slum dwellers. The next comprehensive enactment on rent control in Delhi was passed in 1958 i.e. The Delhi Rent Control Act, 1958 which came into force on February 9, 1959.

This is the current legislation of rent control in Delhi and it extends to the areas included within the New Delhi Municipal Committee and the Delhi Cantonment Board, together with the urban areas of the Municipal Corporation of the Urban Areas in Delhi.

The statement of objects and reasons for the enactment of the Rent Control Act, indicates that has been enacted with a view:

- (a) to devise a suitable machinery for expeditious adjudication of proceedings between landlords and tenants;
- (b) to provide for the determination of the standard rent payable by tenants of the various categories of premises which should be fair, to the tenants, and at the same time, provide incentive for keeping the existing houses in good repairs, and for further investment in house construction; and
- (c) to give tenants a larger measure of protection against eviction.

This indicates that the object underlying the Rent Control Act is to make provision for expeditious adjudication of disputes between landlords and tenants, determination of standard rent payable by tenants and *giving protection against eviction to tenants*. However, the premises belonging to the Government are excluded from the ambit of the Rent Control Act which means that *the Act has been enacted primarily to regulate the private relationship between landlords and tenants with a view to confer certain benefits on the tenants and the same time to balance the interest of the landlords by providing for expeditious adjudication of proceedings between landlords and tenant...*

Thus, Delhi Rent Control Act is a socio-economic legislation which is primarily meant to protect the tenants from frivolous evictions. The Act intends to give protection to the tenants against unnecessary, undue, or unreasonable eviction and from being exploited by payment of exorbitant rent. Delhi Rent Control Act like any other rent legislation intended not to supplant, but to supplement, not to eliminate those statutory requirements of tenancy but to superimpose a ban on eviction, which otherwise may be available in conformity with Transfer of Property Act without fulfilment of additional grounds.

Definition of Tenant

Before 1976 Amendment definition of tenant was as follows:

"Tenant" means any person by whom or on whose account or behalf the rent of any premises is, or but for a special contract would be, payable and includes a sub-tenant and also any person continuing in possession of the termination of his tenancy but shall not include any person against whom any order or decree for eviction have been made".

This definition of tenant was lacking in many respects and, thus to remove those drawbacks the definition has been comprehensively amended in 1976 so that the real object of the Act can be achieved.

After 1976 Amendment, Section 2(l) of the Delhi Rent Control Act defines the term "**tenant**" as follows:

"tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be payable, and includes

- (i) a sub-tenant;
- (ii) any person continuing in possession after the termination of his tenancy, and
- (iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified, respectively, in Explanation I and Explanation to this classes, such of the aforesaid person's-
 - (a) spouse,
 - (b) son or daughter, or, where there are both son and daughter, both of them,
 - (c) parents,
 - (d) daughter-in-law, being the widow of his pre-deceased son,

As had been ordinarily living in the premises with such person as member or members of his family up to the date of his death, but does not include-

- (A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to Section 3 of the Delhi Rent Control (Amendment) Act, 1976;
- (B) any person to whom a license, as defined by Section 52 of the Indian Easements Act, 1882 has been granted.

Explanation 1: The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows:

- (a) firstly, his surviving spouse;
- (b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death;
- (c) thirdly, his parents, if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and
- (d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death.

Explanation II: If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.

Explanation III: For the removal of doubts, it is hereby declared that-

- (a) where, by reason of Explanation II, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguishment shall not affect the right of any other successor of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor, specified in any lower category or categories, as the case may be;
- (b) the right of every successor, referred to the Explanation I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs.

Analysis of the Definition of Tenant

The definition of the tenant' in the Act is exhaustive. It can be well understood in three parts:

- The first part is general part
- The second part includes certain persons
- The third part excludes certain persons

The opening general part of the definition means that any person who is bound in law to pay rent of any premises is a tenant under the Act.

The second part includes-

- (i) a sub-tenant
- (ii) any person continuing in possession after the termination of his tenancy or statutory tenant; and
- (iii) devolution or transmission of tenancy on the death of the tenant continuing in possession after the termination of his tenancy

The third part i.e., clause (iii) states that only those relations of the deceased tenant which are specifically mentioned in the Explanation-I are benefit and no other. At the same time, it will benefit only any one or more of them who had ordinarily living in the premises such as a member or members of his family up to the date of his (tenant's) death

This clause applies only to the tenant whose tenancy had been determined among lifetime and he continued in possession thereafter. **[Jaimal Singh v. Jaswant Singh, 1989 (2) RCJ 246 Del.]**

Scope of sub-Clause (iii) to clause (1) of Section 2: Various Limitations

In **Mohan Lal v. Shri Krishan**, 1977 (2) RCJ 505, the Court held that the 1976 amendment to the definition of tenant extended the protection to heirs and successors, but at the same time it is a restricted protection. There are many limitations on the right conferred by the amendment. The limitations are:

- (1) The heir must not be financially independent. If he was not financially dependent on the deceased tenant, he has a right to possession only for a limited period of 1 year.
- (2) Only four classes of heirs i.e.
 - (a) the surviving spouse
 - (b) son or daughter

- (c) parents &
 - (d) widowed daughter-in-law a predeceased son
- have been conferred the right to continue in possession.
- (3) in the order of succession spouse succeeds to the exclusion of son or daughter. Son & daughter will exclude parents. The parents will exclude the daughter-in-law, the first category excludes the second and so on.
 - (4) If there are two successors of the same category and one of them was financially independent and the other was financially dependent then the one financially independent will enjoy the right to continue in possession for one year and the financially dependent one will enjoy the right to continue in possession for his lifetime, provided he belongs to the "same category" to which the financially independent successor belonged
 - (5) The successor should "*ordinarily live in the premises with the deceased person at a member of his family upto the day of his death*" in order to be entitled to right to continue in possession.
 - (6) If one successor of a category has enjoyed the right and there is no other successor of the same category, the right to continue in possession comes to an end and does not pass on to the successor in the lower category
 - (7) The right of a successor is personal to him and does not extend beyond the lifetime of the successor. It does not devolve on his heirs

Explanation I provides the order of succession as to

- 1. surviving spouse;
- 2. son or daughter or both
- 3. parents; or
- 4. daughter-in-law, being the widow of the predeceased son.

Subject to conditions: The successor should have been ordinarily living in the premises with the statutory tenant as a member of his family up to the date of his death.

Explanation II

It provides that if the person who acquires by succession the right to continue in possession after the termination of tenancy was not financially dependent on deceased tenant, such successor will acquire the right only for a limited period of one year or till his death, which occurs earlier, and thereafter the right of such successor would be extinguished. So Explanation-11 prescribes the period for those relations who were not financially dependent on the deceased person on the date of his death and limits it to one year.

But if he was financially dependent on the deceased, he will succeed as tenant, entitled to remain in possession till his death, not otherwise becoming liable to vacate on an order of eviction passed against him. For example, if there is son and daughter, and son is financially independent, then he will enjoy it for one year, but daughter who was financially dependent on the deceased will have the right to continue in possession for her life.

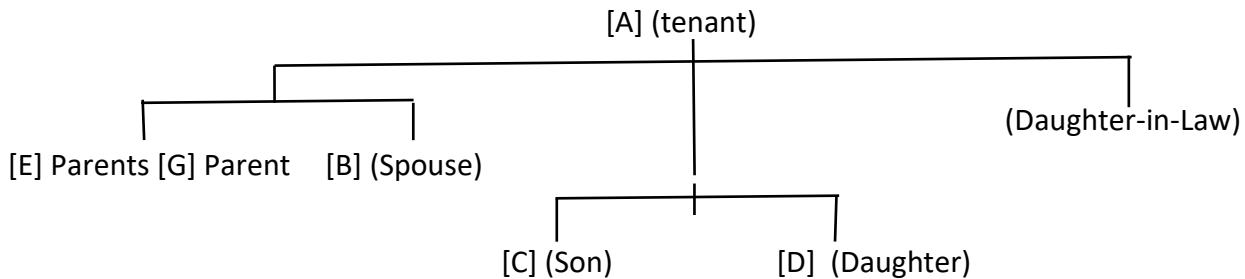
Explanation III

Explanation III has been inserted to remove all doubts which may arise on construction of the aforesaid provisions. Explanation III makes it clear that the right of a successor to the statutory tenant is confined only to the persons in the same category, to the exclusion of the persons in the lower 1 category and where the successor who succeeds under Explanation-I dies or his right is otherwise extinguished, the right cannot pass on to the successor of the deceased tenant in any lower category.

In short, it clarifies that when right of a successor of the tenant is extinguished, then it will not affect any rights of any other successor of the same category. But if there is no other successor in the same category, the heirs of any lower category will not get any right.

Note: This clause applies only to residential premises. In case of non-residential premises this clause is inapplicable and ordinary law of succession applies and all heirs of the tenant becomes tenants by inheritance. (**Gian Devi v. Jeewan Kumar**, AIR 1985 SC 796).

Example:



As per Explanation III, A tenant dies and as per successions the tenancy rights of the residential premises had to devolve on his spouse (B). But if she was not ordinarily residing with the deceased tenant, then it devolves on C who gets limited tenancy for a period of 1 year as "C" was not financially dependent on the deceased tenant nor on B. Therefore, after one year the tenancy right of "C" extinguishes but this does not stop D (Daughter) to claim her tenancy right.

Explanation III Clause (b): It provides that the right of every successor to continue in possession after the termination of tenancy shall be personal to him and shall not, on the death of his successor, devolve on any of his heirs, In short, it states that there will be only one succession. After a relation has succeeded and he remained tenant for the period permitted, there shall be no further succession to his heirs.

Taking again the above example, the son or daughter (C or D) coming within second category, cannot claim any right upon the death of the successor to the statutory tenant in the 1st category.

Interpretation of Certain Key Words used in Section 2(I)

The words "**ordinarily living**" means to reside, to settle, to take up one's abode, to dwell permanently or for considerable time.

The words "**living with**" means that the person claiming to succeed to the tenancy of the particular premises, must fairly and truly be said to have been residing with the predecessor in those premises in the sense that the successor lived and shared for living purpose, the premises in question.

The word "**residing with**" is something more than "living at" even when the premises becomes a person's postal address. The words "resides with imports some measure of factual community of family living and companionship.

The word "**Financially dependent**" is meant, only for residential purposes and the financial dependence must be on the deceased person.

Meaning and Scope of Contractual and Statutory Tenancy

Contractual tenancy: In this case, the parties by means of an agreement or contract enter into a relationship of landlord and tenant. It can be terminated by a notice, by efflux of time or by any other term of the said agreement.

Statutory Tenancy: When a person after expiry of the contractual Tenancy continues with the premises and does not vacate the same, he is known as a statutory tenant. Such tenancy right of the tenant is called statutory tenancy

After the termination of the tenancy, the tenancy thereafter will not be by means of an agreement of contract but under DRC Act. The expression "statutory tenant" emerged in response to reconcile the concept of a tenant under general law and a tenant as defined in rent control legislation. The object of all rent control legislation is to grant protection to the tenant after the protection of his contract has been lost. The tenant remains in possession of premises after the determination of the contract of tenancy by virtue of the Rent Control Act which applies to him. Since he continues to be a tenant by virtue of the statute; he sometimes is called a statutory tenant as distinguished from a contractual tenant.

Points of distinction: The basic distinction between the contractual and statutory tenancy is that the former is heritable (however, this view does not stand true after the Supreme Court decision) but not the latter, because a contractual tenant has an interest in the leased premises but not the statutory tenant. The statutory tenant can hold the premises, so long as the protection is available or continued under the Delhi Rent Control Act. Since, the statutory tenant has no interest in the property; he cannot transfer, alienate or make any change in the premises under his control. This right dies with the statutory thus it cannot be passed to his successors. Thus, before the Amendment of 1976, it was amply clear that the tenancy right extinguished with the tenant, which caused great hardship to the legal heirs of the deceased tenant.

It means that after the cancellation of the contract, statutory tenant (before 1976 Amendment Act) was given a limited benefit. This concept was more useful to the landlord as after death of the tenant, property passes to the landlord and not to the legal heirs of the tenant.

After 1976 Amendment

If any statutory tenant dies leaving behind widow and his son and his parents, the widow is to inherit the rights of the deceased tenant and on extinction of widow's right, the right will not survive and cannot be inherited either by the son or the parents of the deceased who are in lower categories.

Position of statutory tenant under English Law

Under the Act of 1920 the right of a statutory tenant to remain in possession is purely personal and is neither assignable nor heritable. The Statutory tenancy comes to an end with the tenant's death or voluntary surrender by him [**Keeves v. Dean** (1924) 1 KB].

The general law is that in the absence of a contract to the contrary, a tenant may assign, sublet and part with possession of tenancy premises. But in England this right is regulated by statute. As a statutory tenant, one may sublet a part of the dwelling house but not the whole of it as in that case, the tenancy itself ceases to exist. In **Roe v. Russell**, [1928 (2) KB 117], it was held that a statutory tenant in whose contract of tenancy no prohibition against subletting was contained, has power to sublet part of his premises although he cannot, by a number of subletting part with the whole of the premises which he holds as a statutory tenant.

Position of statutory tenant in India

The principles of English law, came up for consideration for the first time by Supreme Court in **Anand Niwas (P) Ltd. v. Anandji Kalyanji** (1964) 4 SCR 892, with reference to Bombay Rent Control Act, 1947.

The case dealt with the right of a statutory tenant in the matter of sub-letting. The issue in this case was, whether a tenant whose tenancy has been terminated had any right to sublet the premises? The Court held that a statutory tenant means a tenant whose tenancy has determined but who continues in possession, has no power of subletting. The Court held as follows: -

"A statutory tenant has no interest in the premises occupied by him and he has no estate to assign or transfer. A statutory tenant is a person who on determination of his contractual right, is permitted to remain in occupation so long as he observes and performs the conditions of the tenancy and pays the standard rent. His personal right of occupation is incapable of being transferred or assigned, and he having no interest in the property there is no estate on which subletting may operate."

PREMISES EXEMPTED FROM THE APPLICABILITY OF DELHI RENT CONTROL ACT, 1958 [Section 3]

Section 3 of the Act states that nothing in this Act shall apply:

- (a) to any premises belonging to the Government;
- (b) to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government:
Provided that where any premises belonging to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgement, decree or order of any Court or other authority, the provisions of this Act shall apply to such tenancy;
- (c) to any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees; or
- (d) to any premises constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988, for a period of ten years from the date of completion of such construction.

SCOPE OF SECTION 3

In general, Section 3 has provided that nothing in the Act shall apply to any premises belonging to the Government, or to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government, provided that any premises belonging to the Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then notwithstanding any judgement, decree or order of any Court or other authority, the provisions of the Act shall apply to such tenancy.

The exemption does not depend upon the nature of relationship with the occupier. It is not necessary that the Government should have leased the premises or entered into any relationship with the actual occupier to claim exemption. So, Government property may be given on lease and the lessee may further lease out that property in favour of other persons.

The expression "belonging to the Government means premises of which the Government is the owner. This becomes clear by comparing this expression with the expression "the premises taken on lease or requisitioned by the Government in clause (b).

The expression other like relationship created by a grant' obviously refers to relations which may not, strictly speaking, be that of lessor and lessee. It would include licensees and allottees.

Control of Rent Meaning, Scope and Applicability of Standard Rent

The preamble to the Delhi Rent Control Act clearly stipulates that one of the prime object of the Act is to provide mechanism for control of rents, namely, the contractual rent and to achieve that object the Act prohibits the recovery of rent in excess of the standard rent which is to be fixed by the Rent Controller on application being made either by the tenant or landlord. The concept of standard rent is one of the most controversial one till date and the provisions relating to that become point of contention in Court of Law quite often.

Meaning of Rent

The Delhi Rent Control Act, 1958 does not define the term 'Rent'. In simple term 'Rent', is the amount of money one pay regularly to use a house, flat or piece of land.

Chapter 2 of the Act deals with provisions regarding rent. It consists of **sections 4 to 13**. Sections 4 and 5 specifically prohibit the recovery of payment of rent in excess of standard rent and section 48 imposes penalties for the contravention of these statutory restrictions

Rent in excess of standard rent not recoverable: Section 4

- (1) Except where rent is liable to periodical increase by virtue of an agreement entered into before the 1st day of January, 1939, no tenant shall, notwithstanding any agreement to the contrary, be liable to pay to his landlord for the occupation of any premises any amount in excess of standard rent of the premises, unless such amount is a lawful increase of the standard rent in accordance with the provisions of this Act.**
- (2) Subject to the provisions of sub-section (1), any agreement for the payment of rent in excess of the standard rent shall be construed as if it were an agreement for the payment of the standard rent only.**

Section 4 clearly declares that barring certain exceptions no tenant shall be liable to pay his landed rent in excess of the standard rent, *unless* such amount is lawful increase of the standard rent in accordance with the provision of the Act.

The exceptions are-

- (a) where rent is liable to periodical increase by virtue of an agreement entered into before 1st day of January 1939 and
- (b) where the landlord is entitled to recover such increase under the provisions of the Act,

Unlawful charges not to be claimed or received: Section 5

- (1) Subject to the provisions of this Act, no person shall claim or receive any rent in excess of the standard rent, notwithstanding any agreement to the contrary.
- (2) No person shall, in consideration of the grant, renewal or continuance of a tenancy or sub-tenancy of any premises
 - (a) claim or receive the payment of any sum as premium or *pugree* or claim or receive any consideration whatsoever, in cash or in kind, in addition to the rent; or
 - (b) except with the previous permission of the Controller, claim or receive the payment of any sum exceeding one month's rent of such premises as rent in advance.

- (3) It shall not be lawful for the tenant or any other person acting or purporting to act on behalf of the tenant or a sub-tenant to claim or receive any payment in consideration of the relinquishment, transfer or assignment of his tenancy or sub-tenancy, as the case may be, of any premises.
- (4) Nothing in this section shall apply-
- (a) to any payment made in pursuance of an agreement entered into before the 1st day of January, 1939, or
 - (b) to any payment made under an agreement by any person to a landlord for the purpose of financing the construction of the whole or part of any premises on the land belonging to, or taken on lease by, the landlord, if one of the conditions of the agreement is that the landlord is to let to that person the whole or part of the premises when completed for the use of that person or any member of his family:

Provided that such payment does not exceed the amount of agreed rent for a period of five years of the whole or part of the premises to be let to such person.

Explanation: For the purposes of clause (b) of this sub-section, a member of the family of a person means, in the case of an undivided Hindu family, any member of the family of that person and in the case of any other family, the husband, wife, son, daughter, father, mother, brother, sister or any other relative dependent on that person.

Analysis of Section 5

Sections 4 and 5 of Delhi Rent Control Act prohibit the recovery payment of rent in excess of the standard rent and section 48 imposes penalties inter alia for the contravention of section 5. In *M.M. Chawla v. J.S.* Sec 1970 (2) SCR 390, the Supreme Court observed that the prohibition in section 4 and 5 operates only after the standard rent of the premises is determined and not till then. So long as the standard rent is not determined by the Controller the tenant must pay contractual rent

Section 5(1) prohibits every person from claiming or receiving any rent in excess of standard rent, and if any such rent is claimed, the tenant may plead that the standard rent is less than agreed rent. Even if there is voluntary agreement, between the landlord and the tenant, for payment of any rent in excess of standard rent, it cannot be enforced in law, because its performance would involve the breach and violation of the *mandatory* provisions of Sections 4 and 5(1) of the Act. The well-known legal maxim "**ex turpi causa non oritur actio**" which means that "no right of action can spring out of an illegal contract" would obviously apply to such a case because to enforce such a contract would amount to defeating the provisions of sections 4 and 5(1) of the Act.

Section 5(2) supplements the prohibitions of sections 4 and 5(1). The expression "no person" is not only confined to landlord but also includes all persons who claim or receive the payment at his direction, however it will include stranger who receives rent without his direction. The term "premium or pague" means a cash payment made to the lessor, and representing or supposed to represent the capital value of the difference between the actual rent and the best rent that might otherwise be obtained [*King v. Earl of Cadogan*, 1915 (3) KB 485 at 492 quoted in *S. Venkata rama Swami vs Abdul*, ATR 1969 Mad 473 at p. 4761

The expression "consideration" must be intended to include benefit which may or may not fall within the description of premium or pague and the use of the words "*in cash and/or kind*" shows that the consideration may be pecuniary well as non-pecuniary. Eg. Even free cooking of landlord's meals by the tenant or a cook appointed by him at his expense would amount in consideration within the meaning of section 5(2)

Section 5(2)(b) makes it penal for the landlord to claim or receive advance rent for more than one month with the premium permission the controller.

The object of section (3) is to prevent the tenant from exploiting situation of scarcity of accommodation. If a tenant/sub-tenant receives any payment in consideration of the assignment of his tenancy or sub-tenancy, as the case may be, contrary to the provisions of this sub-section and sub-section (4), such claim or receipt of payment would not be lawful.

Section 5(4) provides that the section shall not apply to any payment made in pursuance of an agreement entered into before the 1st day of January 1939, or to any payment made under an agreement by any person to a landlord for the purpose of financing the construction of the whole or part of any premises on the land belonging to or taken on lease by the landlord, if one of the conditions of the agreement is that the landlord is to let that person the whole or part of the premises, when completed for the use of that person or any members of his family, provided that such payment does not exceed the amount of agreed rent for a period of five years of the whole or part of the premises to be let to such person.

It should be noted that the exception provided in section 5(4)(b) qualifies entire section 5 and not only section 5(2)(b). The payment contemplated by the exception is neither premium nor advance rent and the use of expression "for the use of in section 5(4)(b) goes to show that the intended letting may be for residential or commercial purpose or both.

The definition of "a member of the family" as given in the explanation divided itself into two parts:

(1) A member of an undivided Hindu family and (2) a member of any other family. As regard the first, any member of the family of the intending tenant would be a member within the meaning of section 5(4)(b) and as to second category of families (i) the husband (ii) wife (iii) son (iv) daughter (v) father (vi) mother (vii) brother (viii) sister (ix) any other relative dependent on the intending tenant would be a member of his family.

Fixation of Fair Rent/Standard Rent (Section 6)

Section 2(k) defines "standard rent" as follows:

"Standard rent in relation to any premises, means the standard rent referred to in section 6 or where the standard rent has been increased under section 7, such increased rent.

This definition is not inclusive but an exhaustive definition and it defines the standard rent to mean either the standard rent referred to in section 6 or the increased standard rent under section 7.

Section 6 elaborates what standard rent is and it reads as under:

(1) Subject to the provisions of sub-section (2), "standard rent", in relation to any premises, means

(A) in the case of residential premises

- (1) where such premises have been let out at any time before the 2nd day of June, 1944,
 - (a) if the basic rent of such premises per annum does not exceed six hundred rupees, the basic rent; or
 - (b) if the basic rent of such premises per annum exceeds six hundred rupees, the basic rent together with ten per cent of such basic rent:
- (2) where such premises have been let out at any time on or after the 2nd day of June, 1944,
 - (a) in any case where the rent of such premises has been fixed under the Delhi and Ajmer-Merwara Rent Control Act, 1947, or the Delhi and Ajmer Rent Control Act, 1952,

- (i) if such rent per annum does not exceed twelve hundred rupees, the rent so fixed; or
 - (ii) if such rent per annum exceeds twelve hundred rupees, the rent so fixed together with fifteen per cent, of such rent;
- (b) in any other case, the rent calculated on the basis of ten per cent. per annum of the aggregate amount of the actual cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction:

(B) in the case of premises other than residential premises

- (1) where the premises have been let out at any time before the 2nd day of June, 1944, the basic rent of such premises together with ten per cent of such basic rent:

Provided that where the rent so calculated exceeds twelve hundred rupees per annum, this clause shall have effect as if for the words "ten percent." "the words fifteen per cent." had been substituted;

- (2) where the premises have been let out at any time on or after the 2nd day of June, 1944
- (a) in any case where the rent of such premises has been fixed under the Delhi and Ajmer-Merwara Rent Control Act, 1947 or the Delhi and Ajmer Rent Control Act, 1952.
 - (i) if such rent per annum does not exceed twelve hundred rupees, the rent so fixed, or
 - (ii) if per annum exceeds twelve hundred rupees, theys so found together with fifteen per cent of such rent
 - (b) In any other case, the rent calculated on the basis of ten per cent per annum of the aggregate amount of the actual cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction:

(2) Notwithstanding anything contained in sub-section (1)

- (a) in the case of any premises, whether residential or not, constructed on or after the 2nd day of June, 1951, but before the 9th day of June, 1955, the annual rent calculated with reference to the rent at which the premises were let for the month of March, 1958, or if they were not so let, with reference to the rent at which they were last let out, shall be deemed to be the standard rent for a period of seven years from the date of the completion of the construction of such premises;
- (b) in the case of any premises, whether residential or not, constructed on or after the 9th day of June, 1955, including premises constructed after the commencement of this Act, but before the commencement of the Delhi Rent Control (Amendment) Act, 1988, the annual rent calculated with reference to the rent agreed upon between the landlord and the tenant when such premises were first let out shall be deemed to be the standard rent for a period of five years from the date of such letting out;
- (c) in the case of any premises, whether residential or not, constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988 and to which the provisions of this Act. are made applicable by virtue of clause (d) of Section 3, the rent calculated on the basis of ten per cent per annum of the aggregate amount of the actual cost of construction of the premises and the market price of the land comprised in the premises on the date of commencement of the construction of the premises shall be deemed to be the standard rent.

- (3) For the purposes of this section, residential premises include. premises let out for the purposes of a public hospital, an educational institution, a public library, reading room or an orphanage.**

Analysis of Section 6

Section 6 of the Act defines what standard rent is and section 9 empowers the Controller to fix standard rent. Further section 12 provides for limitation within which an application may be made for fixation of standard rent. It will be apparent after reading these Sections Le Sections 6, 9 & 12 that until &The object of fixing standard rent is to bring the rent to fair and reasonable level. The definition of standard rent in section 6 is related to the definition of premises.

Section 6(1) provides that subject to the provisions of section 6(2), "standard rent", in relation to any premises, means:

Residential Premises (Section 6(1)(A)(1) and Section 6(1)(A)(2))

Section 6(1)(A)(1) provides that if the premises were let out before 2.6.1944 the following principles would be followed in determining the

Standard Rent:

(a) If the Basic Rent is less than 600 then,

$$\text{Standard Rent} = \text{Basic Rent}$$

(b) If the Basic Rent is more than 600 then,

$$\text{Standard Rent} = \text{Basic Rent} + 10\% \text{ of Basic}$$

Section 6(1)(A)(2) provides that if the premises were let out on or after 2.6.1994, the following principles would be followed in determining the Standard Rent:

(a) Where the rent is fixed under Delhi and Ajmer Merwara Rent Control Act, 1947 or the Delhi & Ajmer Rent Control Act, 1952

(i) If the rent is less than 1200, then the standard rent is the rent so fixed.

$$\text{Standard Rent} = \text{Fixed Rent}$$

(ii) If the rent is more than 1200, then the standard rent is determined in the following way.

$$\text{Standard Rent} = \text{Fixed Rent} + 10\% \text{ of the Fixed Rent}$$

(b) in any other case, standard rent is determined in the following

$$\text{Standard Rent} = 10\% \text{ of the aggregate amount of the actual cost of construction cost of land on the date of the commencement of the construction.}$$

Premises other than Residential Premises Section 6(1)(B)(1) and Section 6(1)(B)(2)

Section 6(1)(B) talks about commercial or Commercial and Residential premises.

Section 6(1)(B)(1) provides that if the premises were let out before 2.6.1994 the following principles would be followed in determining the Standard Rent.

$$\text{Standard Rent} = \text{Basic Rent} + 10\% \text{ of Basic Rent}$$

Exception

Proviso to section 6(1)(B) provides that where Basic Rent is more than 1200, then

$$\text{Standard Rent} = \text{Basic Rent} + 15\% \text{ of Basic Rent}$$

Section 6(1)(B)(2) provides that if the premises were let out on or after 2.6.1994 the following principles would be followed:

(a) Where the rent is fixed under Delhi and Ajmer Merwara Rent Control Act, 1947 or the Delhi Ajmer Rent Control Act, 1952.

(i) If the rent is less than 1200, then the standard rent is rent so fixed.

Standard Rent = Fixed Rent

(ii) If the rent is more than 1200, then the standard rent is determined in the following way:

Standard Rent = Basic Rent +15% of Fixed Rent

Standard Rent Fixed Rent 15% of Fixed Rent

(b) in any other case, standard rent is determined in the following way

Standard Rent = 10% of the aggregate amount of the actual cost of construction +cost of land on the date of the commencement of the construction.

Section 6(2)

Section 6(2) is known as "holiday period" and it applies to residential well as non-residential premises, and talks about three categories of premises.

(i) Section 6(2)(A) talks about those premises which were constructed on or after 2.6.1951 but before 9.6.1955, then standard rent in such case is calculated as follows:

Standard Rent = Rent fixed by the landlord for March 1958.

But, if such premises is not let out,

Standard Rent = Rent last charged

(ii) Section 6(2)(b) premises which were constructed on or after 9.6.1955 but before 1.12.1988: then Standard Rent in such case is calculated as follows:

Standard Rent = Annual rent is calculated with reference to the rent agreed upon when such premises were first let out, would be standard rent for five years from date of such letting

(iii) Section 6(2)(c) talks about those premises which were constructed after 1.12.1988, and if section 3(d) is applicable to it, then it is exempted from rent for 10 years, but after 10 years' standard rent will be determined in the following way:

Standard Rent= 10% of the actual cost of the construction + Market value of land at the time of commencement of construction.

WHAT IS ACTUAL COST OF CONSTRUCTION?

It is very difficult for the tenant to prove actual cost of construction. The mode ordinarily adopted is that an architect or civil engineer having experience in this line is asked to prepare an estimate with reference to the date of commencement of construction.

In **Diwan Chand v. Tirath Ram**, 1972 RCR 88, it was held that the expression "cost of construction" denotes the actual expenditure incurred in constructing the premises. Normally the information as to such expenditure is in the special knowledge of the landlord, if he has himself constructed the premises, or within the special knowledge of some predecessor of the landlord who may have constructed the premises. It is, thus, the duty of the landlord, if he has constructed the premises, to produce direct evidence about the cost of construction which may consist of entries of the expenditure in his account books or cheques or other receipts showing the various amounts paid by him. for the purchase of the materials and for the wages and fees of persons employed in the construction.

WHAT IS MARKET PRICE OF LAND?

In **Rukmanibal v. Shivnarayan Ram Ashre**, 68 Bom JP 692, Court held that market price of land means "*value of land in the open market*". The price which the land would fetch in an open market on sale. Market price can, therefore, exist only if the land is saleable. The price of such land can be ascertained from:

- (1) Price paid for land comprised in the premises immediately before the construction of the premises
or
- (2) Price paid on or about the construction of the premises for adjacent lands having similar advantages.

The next best evidence would be in the form of sale deeds of similarly situated land in the neighbourhood executed on or about the date of construction of the premises

In **Gurcharan Singh v. Hans Ram**, 1969 DLT 539, it was held that i section 6(2) does not provide for exemption from fixation of standard rent for the period mentioned therein. It only lays down that for the prescribed period, the agreed rent and the standard rent of the premises falling under this provision will be the same.

In **Balbir Singh v. MCD**, 1985 (1) SCC 167, it was held that section 6(2) can be applied only in case of actual letting of the premises as it cannot be applied on the basis of any hypothetical letting to a hypothetical tenant. Therefore, where premises, constructed on or after 2nd June, 1951, have never been let out since the date of construction action 6(2) will not apply and the standard rent will have to be determined under section 6(1)(A)(2)(b) or 6e(1)(B)(2)(B).

Section 6(3)

Section 6(3) gives an extended meaning to the expression residential premises for the purpose of section 6. It provides that residential premises include the premises let out for an educational institution, a public library or a reading room

Revision of rent (Section 6A)

Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, maybe increased by ten per cent every three years

Under section 6A, the landlord is entitled to enhance the agreed rent or the standard rent by 10 per cent every three years. Where the landlord claims lawful increase in rent in the circumstances provided by section 7 or under 6, he is required by section 8 of the Act to serve a notice on the tenant of his intention to increase the rent. Section 6A cannot be said to be retrospective in its operation. The provision does not create any liability for the past. The liability to increase the rent is only from future, i.e., after the statute i.e. Amendment Act of 1988 came into force (AIR 1998 Del 308).

LAWFUL INCREASE OF STANDARD RENT IN CERTAIN CASES AND RECOVERY OF OTHER CHARGES (Section 7)

- (1) Where a landlord has at any time, before the commencement of this Act with or without the approval of the tenant or after the commencement of this Act with the written approval of the tenant or of the Controller, incurred expenditure for any improvement, addition or structural alteration in the premises, not being expenditure on decoration or tenantable repairs necessary or usual for such premises, and the cost of that improvement, addition or alteration has not been taken into account in determining the rent of the premises, the landlord may lawfully increase the standard rent per year by an amount not exceeding ten per cent of such cost.**
- (2) Where a landlord pays in respect of the premises any charge for electricity or water consumed in the premises or any other charge levied by a local authority having jurisdiction in the area which is ordinarily payable by the tenant, he may recover from the tenant the amount so paid by him; but the landlord shall not recover from the tenant whether by means of an increase in rent or otherwise the amount of any tax on building or land imposed in respect of the premises occupied by the tenant:**

Provided that nothing in this sub-section shall affect the liability of any tenant under an agreement entered into before the 1st day of January, 1952, whether express or implied, to pay from time to time the amount of any such tax as aforesaid.

The object of section 7 is to enable the landlord to get a return on the cost incurred on the improvement of the premises.

Section 7(1) refers to a situation where standard rent had already been fixed but there have been improvements made after fixation of standard rent. In such a case, the landlord, after issuance notice under section 8(1) to the tenant may claim the cost of improvement by an addition of 10 per cent thereof to the existing standard rent. The improvements contemplated here are those which are made after the fixation of standard rent. Section further says that increase of standard rent is lawful.

NOTICE OF INCREASE OF RENT^Q (Section 8)

- (1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.**
- (2) Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in Section 106 of the Transfer of Property Act, 1882,**

The combined reading of sections 7 and 8 shows that the notice as prescribed under section 8 of the Act is a condition precedent for claiming lawful increase in rent. A landlord cannot claim lawful increase without first serving a notice on the tenant expressing his intention to make the increase. Such a notice must be in writing signed by or on behalf of the landlord and must be given in the manner provided in section 106 of Transfer of Property Act.
