
Before Binod Kumar Roy, C.J., N.K. Sud & Viney Mittal, JJ.

AJAY KASHYAP,—*Petitioner*

versus

SMT. MOHINI NIJHAWAN,—*Respondent*

C.R. No. 5474 of 2001

18th December, 2003

Haryana Housing Board Act, 1971—S.4—East Punjab Urban Rent Restriction Act, 1949—S.13—Chandigarh Housing Board (Allotment, Management and Sale of tenements) Regulations, 1979—Regs. 2(3)(10)(19) and (21)—Ejectment of the tenant sought from a flat allotted by Chandigarh Housing Board—S.4 of the 1971 Act provides that the provisions of the Rent Act shall not apply to any land or building belonging to or vesting in the Board under or for the purposes of this Act and as against the Board—Scope of —S.4 does not deal with relationship between an allottee and his tenant—Various provisions of Act, Rules and Regulations provide that for all practical purposes the relationship between the Board and its allottees would be that of an owner and tenant—Provisions of S.4 of the Act have been enacted only with a view to avoid any protection of the provisions of the Rent Act to such an allottee as against the Board—Provisions of the Rent Act held to be applicable to dwelling units allotted by the Board to allottees and as such the provisions of the Rent Act shall govern the inter-se relationship between such allottees and their tenants.

[*Damyanti Bhalla versus Pritpal Singhla, 1999 (2) RCR (P&H) 189 (S.B.) over-ruled*]

Held, that Section 4 of the Housing Board Act does provide that the provisions of the Rent Act shall not apply to any land or building belonging to or vesting in the Board under or for the purposes of this Act and as against the Board to any tenancies or other like relationship created by the Board in respect of such land or building. Section 4 does not deal with any relationship between an allottee and his tenant. It provides for the protection of the interest of the Board *vis-a-vis* its allottees. The hirer under Regulation 42 has been conferred the status of a tenant. The various provisions of the Act, Rules and Regulations provide that in fact for all practical purposes, the relationship between the Board and its allottees would be that of an

owner and its tenant. It is only with a view to avoid any protection of the provisions of the Rent Act to such an allottee, as against the Board, that the provisions of Section 4 of the Housing Board Act have been enacted.

(Paras 20, 28 and 29)

Further held, that from the perusal of Regulation 7 read with Regulation 42 of the Regulations, it is apparent that an allottee of the dwelling unit allotted by the Board shall have right to sub let the premises and even such an allottee, who had not paid the full price as well, could execute the lease for a period not exceeding five years at a time. The right, title and interest of the allottee even to mortgage to raise finances for the payment of the price of the dwelling unit have also been recognised. It would be anomalous that although the right, title and interest of the allottee in the dwelling unit have been recognised by the Regulations and such an allottee has also been conferred a right to lease out the premises for a period not exceeding five years, but still the relationship between the allottee and his own tenant was not to be governed by the Rent Act. This was not the intention of the legislature while enacting the provisions of Section 4 of the Housing Board Act.

(Para 31)

Chetan Mittal, Amar Vivek and
Rajesh Garg, Advocates for the landlords.

J. N. Gupta, Advocates for the tenant.

R. N. Raina, Advocate for the Chandigarh Housing
Board.

JUDGEMENT

VINEY MITTAL, J.

(1) Whether the relationship between an allottee of dwelling unit allotted by the Chandigarh Housing Board and his tenant inducted by him is governed by the provisions of the East Punjab Urban Rent Restrictions Act (as applicable to Chandigarh) ? In other words the true import and scope of provisions of section 4 of the Haryana Housing Board Act, 1971 (as extended to Chandigarh) is a crucial question for determination before this Full Bench in C.R. No. 5474 of 2001 and C.R. No. 4775 of 2001, which are tied up and heard together.

(2) Before delving any further into the controversy involved in the cases placed before this Bench, it may be relevant to notice the facts, which for the sake of convenience have been taken out from Civil Revision No. 4775 of 2001.

(3) An ejectment petition under section 13 of the East Punjab Urban Rent Restriction Act (hereinafter referred to as the "Rent Act") was filed by the landlord Dharminder Kumar Vashisht against his tenant Avnish Sharma. The house in question being House No. 3054, Sector-41, Chandigarh was allotted to Dharminder Kumar Vashist by the Chandigarh Housing Board (hereinafter referred to as the "Board"),—*vide* allotment letter dated 12th March, 1987. Thereafter, Avnish Sharma was inducted as a tenant on a monthly rent of Rs 425/- excluding water and electricity charges. The ejectment of the tenant was sought on the ground that the landlord required the premises for his own use and occupation. Tenant-Avnish Sharma contested the eviction application. The learned Rent Controller,—*vide* order dated 14th December, 1999 held that the ground of ejectment as claimed by the petitioner-landlord was proved to be *bona fide* and as such the tenant was ordered to be ejected. Tenant-Avnish Sharma filed an appeal before the learned appellate authority. Before the learned appellate authority besides challenging the findings recorded by the learned Rent Controller on merits, it was also claimed by the tenant that the provisions of the Rent Act were not applicable to the premises in question in view of section 4 of the Haryana Housing Board Act, 1971 (as extended to Chandigarh) (hereinafter referred to as the Housing Board Act).

(4) The learned appellate authority on reappraisal of the evidence found that the landlord had been able to establish his *bona fide* requirement of the premises in dispute. However, in view of the law laid down by a Single Bench of this Court in **Damyanti Bhalla versus Pritpal Singhla (1)**, it was held that in view of section 4 of the Housing Board Act, the landlord, being an allottee from the Housing Board, was not entitled to evict his tenant under the provisions of the Rent Act and as such it was held that the rent control authorities have no jurisdiction to pass ejectment order against the tenant.

(1) 1999(2) R.C.R. (P&H) 189

(5) Landlord Dharminder Kumar Vashishst has now filed the present Civil Revision No. 4775 of 2001 before this Court. Application of section 4 of the Act to the relationship between the landlord and tenant has been challenged. Additionally it has been maintained that the law laid down in Damyanti Bhalla's case (*supra*) was not the correct law.

(6) In Civil Revision No. 3592 of 2000 a learned single Judge of this court,—*vide* order dated 13th December, 2000 has also doubted the correctness of the law laid down in Damyanti Bhalla's case (*supra*).

(7) In Civil Revision No. 5474 of 2001, a similar argument taking the protection of section 4 of the Housing Board Act raised by the tenant had been rejected by the learned appellate authority by holding that the entire consideration having been deposited by the landlord with the Housing Board, and in view of the law laid down in Damyanti Bhalla's case (*supra*), the provisions of section 4 of the Housing Board Act would not be attracted. The tenant has challenged the aforesaid finding by way of Civil Revision No. 5474 of 2001 before this Court by urging that there was no distinction between an allottee who had paid the entire sale consideration to the Housing Board but in whose favour the conveyance deed has not yet been executed and another allottee who had not yet paid the entire sale consideration. On that basis the exception provided in the Damyanti Bhalla's case has also been challenged. *Vide* order dated 10th December, 2001, the aforesaid matter has also been referred to a larger Bench to be heard along with Civil Revision No. 3592 of 2000.

(8) It is in these circumstances that these cases have been placed before this special Bench for adjudication of the aforesaid controversy.

(9) The provisions of the East Punjab Urban Rent Restriction Act, 1949 were originally extended to the Union Territory of Chandigarh with effect from 4th November, 1972 through a notification. The aforesaid notification was quashed by this Court holding that the said enactment could not be extended to a Union Territory where the original Act was not in force prior to the reorganisation of the composite State of Punjab by a mere notification. Subsequently Act No. 54 of 1974, the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 was enacted by the

parliament and as per section 3 of the aforesaid Act, the provisions of the East Punjab Urban Rent Restriction Act, 1949 were extended and were deemed to have been in force with effect from 4th November, 1972 to the Union Territory of Chandigarh. It is thus not in dispute that the provisions of the East Punjab Urban Rent Restriction Act apply to the Union Territory of Chandigarh.

(10) The Central Government exercising the powers under section 87 of the Punjab Reorganisation Act, 1966 extended the provisions of the Haryana Housing Board Act, 1971 to the Union Territory, Chandigarh,—*vide* notification dated 13th March, 1975. Subsequently, in exercise of the powers conferred by section 74 of the Housing Board Act, the Administrator of Union Territory, Chandigarh framed regulations termed as the Chandigarh Housing Board (Allotment, Management and Sale of tenements) Regulations, 1979 (hereinafter referred to as the “Regulations”). Similarly in exercise of the power conferred under section 73 of the Housing Board Act, Rules were framed which were known as “Housing Board Chandigarh (Eviction from Board Premises) Rules, 1979 (hereinafter referred to as the “Rules”).

(11) At the out set we may notice the provisions of section 4 of the Housing Board Act which are the provisions in controversy between the landlords and the tenants of the premises allotted by the Housing Board to the various allottees. The aforesaid provisions may be noticed as follows :

“4. Non-applicability of East Punjab Act 3 of 1949.—The East Punjab Urban Rent Restriction Act, 1949, shall not apply nor shall be deemed to have ever applied, to any land or building belonging to or vesting in the Board under or for the purposes of this Act, and as against the Board to any tenancies or other like relationship created by the Board in respect of such land or building but shall apply to any land or building let to the Board.”

(12) Before considering the true meaning import and scope of the provisions of section 4, certain other relevant provisions of the Housing Board Act, Rules and the Regulations may be noticed.

(13) Section 2(b) defines the "Board" to mean the Housing Board, Chandigarh, Section 2(p) defines "rent" as follows :

" (p) "rent" means the amount payable to the Board in respect of the occupation of the Board's premises and includes the charges for water and electricity payable in respect of water and electricity used or consumed in the premises."

(14) Section 44 of the Housing Board Act reads as under :

" 44. Power to dispose of land— Subject to any rules made by the Administrator under this Act, the Board may retain, lease, sell, exchange or otherwise dispose of any land, building or other property vested in it and situate in the area comprised in any housing scheme sanctioned under this Act."

(15) Chapter VI deals with the Power of the Board to evict persons from Board premises. Section 51 reads as under :

" 51. Power to evict persons from Board Premises.—(1) If the competent authority is satisfied :—

- (a) that the person authorised to occupy any Board premises had—
- (i) not paid rent lawfully due from him in respect of such premises for a period of more than two months; or
 - (ii) Sublet, without the permission of the Board the whole or any part of such premises; or
 - (iii) otherwise acted in contravention of any of the terms, expressed or implied, under which he is authorised to occupy such premises; or
- (b) that any person is in unauthorised occupation of any Board premises :

the competent authority may, not—withstanding anything contained in any law for the time being in force, by notice served by post or by affixing a copy of it on the outer door or some other conspicuous part of such

premises, or in such other manner as may be prescribed, order that the person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month from the date of the service of the notice :

Provided that no such order shall be passed unless the person has been afforded an opportunity to show cause why such order should not be made.

- (2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may evict the person from, and take possession of the premises and may for that purpose use such force as may be necessary.
- (3) If a person, who has been ordered to vacate any premises under sub-clause (1) or sub-clause (iii) of clause (a) of sub-section (1) within thirty days of the date of service of the notice or such longer time as the competent authority may allow, pays to the Board the rent in arrears or carries out or otherwise complies with the terms contravened by him to the satisfaction of the competent authority, as the case may be, the competent authority, shall, in lieu of evicting such person under sub-section (2) cancel its order made under sub-section (1) and thereupon such person shall hold the premises on the same terms on which he held them immediately before such notice was served on him.”

(16) The Rules framed by the Chandigarh Administration deal with the procedure to evict persons from the Board premises. Rules 4 and 5 of the Rules may be noticed as follows :

- “4. Mode of Service of Notice, Sections 51 and 52.—(1) A notice under sections 51 and 52 shall be served in any or all of the following manner, namely :—
 - (i) By delivering or tendering the notice to be served to the person to whom it is addressed and if such person is not found, to some other adult member or agent of his family and signatures of such

person or family member or agent to whom the notice is delivered or tendered shall be obtained in token of acknowledgement of the service and such signatures shall be deemed to be the *prima facie* proof of service.

- (ii) By registered post, acknowledgement due, addressed to the person or his agent empowered to accept service, at the place where the person or his agent ordinarily resides or comes on business or personally works for gain; and the acknowledgement purporting to be signed by the person or his agent or the postal article containing the notice is received back with an endorsement purporting to have been made by a postal employee to the effect that the person or his agent, as the case may be has refused to take delivery shall be deemed to be the *prima facie* proof of service.
 - (iii) By affixing a copy of notice on the outer door or some other conspicuous part of the premises from which the person is sought to be evicted, in the presence of two persons of the locality and the report of the person affixing the notice that he has so affixed the notice in presence of two persons shall be deemed to be the *prime facie* proof of service.
- (2) The notice under sub-rule (1) of rule 4, may be served by any person in the service of the Board, or by any other person so authorised by the competent authority in this behalf, either by general or special order.
5. Manner of taking possession, Section 51(2).—(1) For the purpose of taking possession of the premises under subsection (2) of section 51, the competent authority or any officer or official empowered by him in this behalf may enter the premises at any time except before sunrise and after sunset.
- (2) If any obstruction is offered or in the opinion of the competent authority is likely to be offered, to the taking of possession of any premises, the competent authority may obtain necessary police assistance.

(3) Where any premises, the possession of which is to be taken under this rule is found locked, the competent authority or any officer or official empowered by him in this behalf may either seal the premises, or in the presence of two witnesses break open the locks or open or cause to be opened any door, gate or other barrier, and enter the premises, provided where any premises are forced open an inventory of the articles found in the premises shall be taken in the presence of the two witnesses."

(17) As noticed above, the Administrator of the Union Territory of Chandigarh framed regulations for the allotment management and sale of tenements by the Chandigarh Housing Board. The relevant Regulations, 2(3)(10)(19) and (21) may be noticed as follows :

"2(3) "Allottee" means a person to whom a property has been allotted by way of sale or hire-purchase or lease or in such manner as prescribed by the Board;

2(10) "Consideration" in relation to a dwelling unit/flat or other built-up property or any other property shall include the price fixed by the Board for allotment of such property by way of sale, hire-purchase or lease or in any other manner premium, hire-purchase, lease money and ground rent;

2(19) "Hirer" means a person who has signed the hire-Purchase Tenancy Agreement;

2(21) "Hire-Purchase Tenancy Agreement" means an agreement between the Board and the hirer in the form prescribed in these regulations for disposal or property under the hirer in the Hire-purchase System."

(18) Regulations 4, 7, 42, 44 and 45 read as under :

"4. Disposal of Property :—(1) The disposal of a property shall be effected by either hire-purchase or sale on lease-hold basis for 99 years or in such manner as prescribed by the Board.

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- (2) The disposal of property shall be subject to such terms and conditions as may be decided by the Board from time to time or as may be imposed on the Board by the Chandigarh Administration, from time to time.”
7. Manner of payment of price and Allottee's Obligations:— (1) When a property is disposed of by sale, every applicant shall deposit a sum equal to 25 per centum of the consideration money of the property or such amount as may be specified in the scheme. Such deposit shall be non-interest bearing unless otherwise declared by the Board to be interest bearing.
- (2) An applicant to whom the property has been allotted shall have to pay the balance amount of the consideration money (i.e. after adjusting the deposit) as may be specified in the allotment letter either in lump-sum or in such number of instalments as may be prescribed therein.
- (3) If payment of the balance of consideration money is made in instalments, the allottee shall have to pay interest on the balance amount of premium at the rate as may be fixed by the Board by prior intimation.
- (4) In case any instalment is not paid by the allottee by the due date, a notice shall be served on him calling upon him to pay the instalment within a month together with penalty which may extend up to 25 per cent of the amount due. If the payment is not made within the said period or such extended period as may be allowed by the Board but not exceeding three months in all, from the date on which the instalment was originally due, the Board may cancel the allotment and forfeit the whole or part of the consideration money and ground rent already paid in respect of the property and thenceforth the property shall vest in the Board.
- (5) In case of an applicant who has not been allotted any property, the deposit made with the application shall be considered as deposit under any scheme which the Board may frame for further allotment of the dwelling unit unless the applicant applies for the refund of the said amount.

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- (6) The Board shall have the sole and exclusive right over the deposit till it is adjusted or refunded with or without deduction as provided in these regulations and the applicant shall execute all necessary documents as may be directed by the Board from time to time in this behalf to enable the Board to deal with such money.
- (7) The allottee shall not sell, alienate, transfer or otherwise part with the possession of the whole or any part of the said property till he becomes the owner or for a period of 10 years from the date of actual possession which ever is later except that.
- (i) a lease for a period not exceeding 5 years at a time may be created.
 - (ii) the right, title and interest of the allottee may be mortgaged in favour of the Government, Life Insurance Corporation or any Scheduled bank or any corporate body such as corporations and boards, in order to raise loan for the payment of price of built up houses to the Board, subject to first charge on the property for the unpaid portion of purchase price and other dues outstanding towards the allottee remaining in favour of the Board :

Provided further that such mortgage lease, etc. can only be created with the prior permission of the Board and the Board will be competent to impose any condition while granting such permission.

Notwithstanding anything contained in sub-regulation (7) above, the administrator, may at his discretion and for reasons to be recorded in writing permit the allottee in genuine cases of hardship or on humanitarian grounds as he deems fit to sell, alienate, transfer or otherwise part with possession of the whole or any part of the said property after he has made the full payment of the property to the Board.”

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42. Status of hirer—During the subsistence of hire-purchase period, a hirer shall remain the tenant of the Board and shall have no right except those under tenancy. He may, however, sub-let the premises under intimation to the Board and, in doing so, it shall be the liability of the hirer to ensure that none of the terms and conditions of allotment/hire-purchase is violated.
44. Transfer of ownership to hirer.—The hire shall cease to be a tenant and shall become the owner of the property only after the last instalment of hire-purchase and all other dues have been paid by him to the Board and the transfer of the property to him has been effected through a conveyance deed/lease deed executed in such form as may be prescribed by the Board and the common portions and common services, if any have also been taken care of.
45. Transfer of ownership to Allotment/Lessee.—When the property is disposed of by way of sale, the allottee/lessee shall become the owner only after the full price and all other dues have been paid by him to the Board and the transfer of the property has been effected through a conveyance/lease deed executed in such form as may be prescribed by the Board and the common portions and common services, if any, have also been taken care of.”

(19) Having noticed the various provisions of the Housing Board Act, Rules and Regulations, the way has been paved to deal with the controversy involved in the case.

(20) Section 4 of the Housing Board Act does provide that the provisions of the Rent Act shall not apply to any land or building belonging to or vesting in the Board **under or for the purposes of this Act and as against the Board** to any tenancies or other like relationship created by the Board in respect of such land or building. The aforesaid provisions have to be read in the contextual background and within the parameters of the other provisions of the Act and the purpose for which the aforesaid Housing Board Act was enacted.

(21) The preamble to the Housing Board Act provides that the aforesaid Act has been enacted to provide measures to be taken to deal with and satisfy the need of housing accommodation. It was with the aforesaid object that various Housing Boards in different States were constituted including the Chandigarh Housing Board. The various dwelling units constructed by the Board were meant to be allotted to the eligible persons, either by way of sale or hire purchase or lease under section 44 of the Housing Board Act. The term rent has been defined in section 2(p) to mean an amount payable to the Board in respect of the occupation of the Board premises including the charges for water and electricity etc.

(22) After the Board had allotted the constructed premises to an eligible allottee, he was required to comply with the various stipulations contained in the hire purchase agreement or letter of allotment including the payment of the rent due for such premises, regularly to the Board. In case of any of the violation of the terms and conditions, such an allottee was liable to be evicted under section 51 of the Housing Board act. The due procedure for eviction is provided under rules 4 and 5 of the Rules.

(23) The language used in various regulations noticed above, clearly shows that an allottee of such a dwelling unit is a person who has been allotted the aforesaid dwelling unit either by way of sale, or hire purchase or lease by the Board. Hirer has also been described as a person who has signed the hire purchase tenancy agreement. A hire purchase tenancy agreement has been defined as an agreement between the Board and a hirer in the prescribed proforma laying down certain conditions with regard to the disposal of the property. Consideration in relation to a dwelling unit has been defined to include the price fixed by the Board for allotment of such property by way of sale, hire-purchase or lease etc.

(24) Regulation 4 provides for such a disposal of the property, constructed by the Housing Board. The manner of payment of price and allottees obligations have been given in detail in Regulation 7.

(25) We may notice that under the provisions of Regulation 7, when a property is disposed of by a sale, an applicant was required to deposit a sum equal to 25 per cent of the consideration money, at the time of submitting the application. On allotment of the property,

the balance amount of the sale consideration was required to be deposited either in lump sum or by way of instalments. In case the allottee opted for instalments, he was required to pay interest on such instalments. Regulation 7(4) provides that if any instalment was not paid by the allottee by the due date, a notice was to be served upon him calling him to pay the instalment within one month along with the penalty. If the payment was still not made within the aforesaid period or the extended period, then the Board had a right to cancel the allotment and forfeit the whole or part of the consideration money and ground rent already paid in respect of the aforesaid property and, thereafter **the property is to vest in the Board**. Under regulation 7(7), an allottee is restrained from selling, alienating, transferring or otherwise parting with the possession of the whole or any part of the property till he becomes owner or for a period of 10 years from the date of actual possession, except that the lease executed by such an allottee for a period not exceeding five years was exempted and the allottee also has a right to create a mortgage in favour of the Government, Life Insurance Corporation or any other scheduled bank or corporate body to raise a loan for the payment of the price of the built up house, subject to the unpaid price being the first charge on the property.

(26) We may also pointedly notice that under Regulation 42, a status of hirer has been defined to be of a tenant of the Board and it has been specifically provided that such a tenant (hirer) shall have no right except those under the tenancy agreement. However, such a hirer has been permitted to sub-let the premises under intimation to the Board and in doing so it shall be the liability of hirer to ensure that none of the terms and conditions of allotment/hire purchase is violated.

(27) In the backdrop of the aforesaid provisions, regulations 44 and 45 provide for transfer of ownership of the dwelling unit to an allottee/hire purchaser on the payment of the entire consideration and execution of the conveyance deed but it can still be noticed that the rights of the Board and corresponding obligations of the allottee are still only with regard to the payment of the entire consideration money and violation of the stipulation with regard to the terms and conditions of the allotment or hire purchase agreement. Besides the aforesaid rights of the Board we do not find that the Board has any

other interest in the dwelling units allotted by it to various allottees/hire purchasers. Once the Board has duly allotted the dwelling unit to an allottee then for all practical purposes the allottee shall be deemed to be a person in immediate control and management of the aforesaid dwelling unit in his own right, with even a right to let the same out to another person for such user which may be permissible under the hire purchase agreement/letter of allotment. That being the position, can it still be said that relationship of such an allottee and the person to whom the premises has been further let out by the allottee shall not be that of a landlord and tenant, as understood in the normal parlance and under the provisions of the Rent Act ?

(28) Section 4 of the Housing Board Act, the scope and parameters of which we are examining, to our mind, does not deal with any such relationship between an allottee and **his tenant**.

(29) A perusal of section 4 of the Act clearly shows that it provides for the protection of the interest of the Board *vis-a-vis* its allottees. As noticed above, the hirer under the Regulation 42 has been conferred the status of a tenant. The various provisions of the Act, Rules and Regulations provide that in fact for all practical purposes, the relationship between the Board and its allottees would be that of an owner and its tenant. It is only with a view to avoid any protection of the provisions of the Rent Act to such an allottee, as against the Board, that the provisions of section 4 the Housing Board Act have been enacted.

(30) Section 51 of the Act provides for a special procedure to evict the persons from the Board premises who had not paid the rent due or who had otherwise violated or contravened any of the terms of the allotment letter/agreement. In our view but for the provisions of section 4 of the Housing Board Act, the protection available to a tenant under the provisions of the Rent Act was automatically liable to be attracted to such a tenant of the Board as well. It is only with a view to avoid such a protection to any such allottee of the Board that the provision of section 4 of the Housing Board Act have been enacted.

(31) From the perusal of Regulation 7 read with Regulation 42 of the Regulations. It is apparent that an allottee of the dwelling unit allotted by the Board shall have a right to sub let the premises

and even such an allottee, who had not paid the full price as well, could execute the lease for a period not exceeding five years at a time. The right, title and interest of the allottee even to mortgage in favour of the Government, Life Insurance Corporation or any scheduled bank etc. to raise finances for the payment of the price of the dwelling unit have also been recognised. It would be anomalous that although the right, title and interest of the allottee in the dwelling unit have been recognised by the Regulations and such an allottee has also been conferred a right to lease out the premises for a period not exceeding five years, but still the relationship between the allottee and **his own tenant** was not to be governed by the Rent Act. To our mind, this was not the intention of the legislature while enacting the provisions of section 4 of the Housing Board Act.

(32) At this stage, we may also notice the provisions of the East Punjab Urban Rent Restriction Act, 1949. The Preamble to the Act provides that the Act has been enacted to restrict the increase of rent of certain premises situated within the limits of urban areas and the eviction of tenants therefrom. It is thus apparent that the aforesaid enactment is a social piece of legislation enacted for providing protection to the tenants. Under section 2(c) of the Rent Act, a landlord has been defined as under :

“landlord” means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and, every other person from time to time deriving title under a landlord.

(33) Similarly 2(i) defines a tenant as under :

“tenant” means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the

landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rents for shops has been framed out or leased by a municipal, town or notified area committee.”

(34) We have already noticed that the provisions of East Punjab Urban Rent Restriction Act, 1949, were extended to the Union Territory, Chandigarh and shall be deemed to have been so extended with effect from 4th November, 1972.

(35) From the definition of the terms “landlord” and “tenant” respectively, it is apparent that a landlord is not required to be the owner of the premises let out by him to a tenant. A landlord can be a person who is entitled to receive rent in respect of any building or rented land whether on his own account or on behalf of any other person and even would include a tenant who sub-lets any building or rented land and also any other person from time to time deriving title under a landlord.

(36) Similarly a tenant means a person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour.

(37) Section 3 of the Rent Act provides that the State Government may direct that all or any of the provisions of the Act shall not apply to any particular building or rented land or any class of buildings or rented lands. In exercise of the powers under section 3, certain buildings have been exempted from the operation of the Rent Act. The provisions of the Rent Act have been exempted from application to such buildings constructed in the urban area of Chandigarh for a period of five years, from the date of the sewerage connection etc. as provided in the notification. It is not in dispute that no such notification under section 3 of the Rent Act has been issued by the Chandigarh Administration exempting the dwelling units allotted by the Housing Board to various allottees. In this view of the matter, *per-se*, the provisions of the Rent Act are duly attracted to such units after the Rent Act has been extended to the Union Territory of Chandigarh. However, such provisions will not be attracted, if it could be held that such buildings are otherwise exempted under the provisions of section 4 of the Housing Board Act. In our view such a view is not possible from the interpretation of the various provisions of the Housing Board Act, Rules and Regulations.

(38) In the light of the above discussion, we may now examine the language of section 4 of the Housing Board Act. In section 4, it has been provided that the provisions of East Punjab Urban Rent Restriction Act, 1949 shall not apply nor shall be deemed to have ever applied to any land or building belonging to or vesting in the Board **under or for the purposes of this Act and as against the Board to any tenancies or other like relationship created by the Board** in respect of such land or building but shall apply to any land or building let to the Board. A perusal of section 4 makes it abundantly clear that the provisions of the Rent Act have been made inapplicable to the buildings belonging to or vesting in the Board. However, such exemption has been qualified by using the words **under or for the purposes of this Act**. In the later portion of the section the said exemption has been created as **against the Board to any tenancies or other like relationship created by the Board**. It is well established rule of interpretation of statutes that all words used in an enactment have to be given their due meaning and no word used by the legislature can be ignored or treated to be superfluous while interpreting a particular provision. It is thus apparent that the exemption provided in the first part of section 4 is not unqualified or unrestricted but has been provided **only under or for the purpose of the Act and also as against the Board to any tenancies or other like relationship created by the Board**. It necessarily would follow that normal relationship of landlord and tenant between various allottees and their sub-lessees would not be covered under the provisions of section 4 of the Housing Board Act in any manner. In the earlier portion of this judgment we have already noticed in detail the various provisions of the Act, Rules and Relations and the *inter se* rights and obligations of the Board and its allottees. Section 4 seems to have been enacted only in furtherance of the aforesaid rights and obligations.

(39) We may also notice that preamble of the Housing Board Act provides for measures to be taken to provide and satisfy the needs of housing accommodation whereas the preamble of the Rent Act provides to restrict the increase of rent of certain premises and the eviction of the tenants therefrom. The underlying purpose of both the enactments is to satisfy the shortage of accommodation in the society and to grant protection to the tenants from unrestrained increase of rent and the eviction of the tenants at the will of the landlords. By any stretch of imagination, the purpose underlying the provisions of

the Rent Act cannot be taken to be militating against the purpose of the Housing Board Act. It would, therefore, necessarily follow that the provisions of both the Acts have to be harmoniously construed. Although, in our mind there is no overlapping or apparent contradiction between the provisions of both the enactments but still the interpretation we have chosen to give to the provisions of section 4 of the Housing Board Act falls more in line with the underlying purpose of the Rent Act.

(40) This brings us to the judgment of the Hon'ble Supreme Court of India in **Messrs. Bhatia Co-operative Housing Society Limited versus D.C. Patel (3)** which has been relied upon by the learned single Judge in Damyanti Bhalla's case (*supra*). In Bhatia Co-operative Housing Society's case (*supra*), the Apex Court was dealing with section 4(1) of the Bombay Rents, Hotel and Lodging House Rent Control Act, 1947 (Act 47 of 1947). The provisions of section 4(1) of the Bombay Act may be noticed as follows :

“4. (1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government; but it shall apply in respect of premises let to the Government or a local authority.”

(41) The Hon'ble Supreme Court while interpreting the provisions of section 4 of the Bombay Act held that the provisions of Bombay Act 47 of 1947 shall stand excluded because of the exemption provided in section 4(1) of the Act.

(42) We have compared the provision of section 4(1) of the Bombay Act with section 4 of the Housing Board Act. Although the two provisions seem to have been couched in a similar language but on a deeper consideration we find that the qualifying words “**under or for the purpose of this Act**” have not been used in section 4(1) of the Bombay Act. It was in those circumstances that the Apex Court in Bhatia Co-operative Housing Society Limited's case (*supra*) has held that the provisions of the Bombay Act would not apply to any premises belonging to the Government or a local authority. We find

that the qualifying words used in section 4 of the Housing Board Act are “**under or for the purpose of this Act**”. Use of the said words by the legislature cannot be treated to be superfluous. The said words have to be given their natural meaning and in the contextual backdrop of the other provisions of the Act. Rules and Regulations, the said words assume a greater importance. To our mind, the said words are in fact a qualifying phrase for the exemption provided to any land or building belonging to or vesting in the Board. In view of the aforesaid fact, we find that the interpretation provided by the Hon’ble Supreme Court of India to sections 4 of the Bombay Act would not be attracted to the provisions of section 4 of the Housing Board Act. From the judgment of the learned Single Judge in Damyanti Bhalla’s case (*supra*), we find that the aforesaid distinction has been completely lost sight of. The language of the two provisions is considerably different. In this view of the matter, we find that the reliance placed upon Bhatia Co-operative Housing Society Limited’s case (*supra*) by the learned Single Judge while deciding the case of Damyanti Bhalla (*supra*) is not correct.

(43) There is another aspect of the matter which may be taken into consideration while dealing with the objections raised by a tenant to contest the ejectment petition filed against him by his landlord. The landlord has filed the ejectment application, taking various grounds available to him under the provisions of the Rent Act. The tenant, of course, has a right to contest the existence of any of those grounds. However, the objection with regard to the maintainability of the petition on behalf of the landlord by the tenant, because of Section 4 of the Housing Board Act, essentially raises a question as to whether the demised premises belongs to the landlord or to the Board. Section 116 of the Evidence Act prohibits a tenant of an immoveable property or any person claiming through such a tenant, during the continuance of the tenancy, to deny that the landlord of such a tenant had at the beginning of the tenancy a title to such immovable property. The said prohibition is based upon the doctrine of Estoppel. Once the tenant is permitted to take up the plea of application of section 4 of the Housing Board Act, then in a sense it would actually mean that he is permitted to deny the title of the landlord at the beginning of the tenancy. This cannot be permitted in view of the specific prohibition contained in section 116 of the Evidence Act. Besides placing reliance upon the provisions of section 116 of the Evidence Act, we may also

notice with advantage some observations made by the Hon'ble Supreme Court of India in **Vashu Deo versus Balkishan (4)** as follows :

“We now proceed to examine whether the appellant could have directly attorned to the owner Trust bypassing the respondent-tenant on 1st April, 1983, relying on the event of institution of suit for eviction by the owner Trust against the respondent-tenant on 30th March, 1983 and whether the said event enables successfully raising of the plea of respondent-tenant's eviction by paramount title, bringing the obligation of the appellant sub-tenant to deliver possession over the tenancy premises to the respondent and to pay rent to him till that date. Under Section 108 clause (g) of the Transfer of Property Act, in the absence of contract of local usage to the contrary, it is an obligation of the tenant to put his lessor into possession of the property on the termination of the lease. Section 116 of the Evidence Act, which codifies the common law rule of estoppel between landlord and tenant, provides that no tenant of immovable property or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy, a title to such immovable property. The rule of estoppel so enacted has three main features ; (1) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord; and (iii) Section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case. Rule of estoppel which governs an owner of an immovable property and his tenant would also *mutatis mutandis* govern a tenant and his sub-tenant in their relationship *inter se*. As held by the

Privy Council in Currimbhoy & Co. Ltd versus L.A. Creet and Bilas Kunwar versus Desraj Ranjit Singh, the estoppel continues to operate so long as the tenant has not openly restored possession by surrender to his landlord. It follows that the rule of estoppel ceases to have applicability once the tenant has been evicted.....”

(44) Before parting with this judgment we may also notice the view taken by the learned Single Judge in Civil Revision No. 3479 of 1998 decided on 2nd March, 2000 titled **Jagjit Singh versus Smt. Rajinder Dhada**. In the aforementioned case, the learned Single Judge has distinguished his own judgment in Damyanti Bhalla’s case on the ground that since the entire sale amount has been paid by the allottee to the Chandigarh Housing Board, therefore, the provisions of the Rent Act would apply. The correctness of the aforesaid judgment in Jagjit Singh’s case (*supra*) has also been doubted in Civil Revision No. 5474 of 2001 and the aforesaid matter has also been referred to the larger Bench. The view we have taken while interpreting the provisions of section 4 of the Housing Board Act necessarily means that the law laid down in Damyanti Bhallas (*supra*) is not the correct law and as such the reference made in Civil Revision No. 5474 of 2001 is not required to be answered, having been rendered infructuous.

(45) As a consequence of the above discussion, we, with utmost respect, have no hesitation in holding that Damyanti Bhalla’s case (*supra*) and all other cases following the aforesaid case do not lay down the correct law. We, accordingly, hold that the provisions of the East Punjab Urban Rent Restriction Act, 1949 (as applicable to Chandigarh) shall apply to the dwelling units allotted by the Chandigarh Housing Board to the allottees and as such the provisions of the aforesaid Rent Act shall govern the *inter se* relationship between such allottees and their tenants.

(46) Now the papers of these revision petitions be placed before the learned Single Judge to decide upon the merits of the controversy in view of the law laid down by this Bench.

R.N.R.