

“C.R.”

**SUSHRUT ARVIND DHARMADHIKARI,
GOPINATH P.,
and
G. GIRISH, JJ.**

I.C.R. (O.P. (RC)) No. 12 of 2025 and
O.P.(RC) No.16 of 2025

Dated: 15th January 2026

ORDER

Sushrut Arvind Dharmadhikari, J.

The reference to the Full Bench arises out of the order passed by the Division Bench of this Hon’ble Court in the present matter (O.P.(R.C.) No. 16/2025 - ***Vadavathi Rajeevan & Anr. vs. K. Vanaja & Anr.***). The Division Bench found itself in disagreement with the earlier judgement of the Co-ordinate Division Bench dated 25.11.2024 passed in O.P.(R.C.) No. 154/2024 (***Koorantakath Kamaludeen vs. Kannyath Divakaran***), and, after recording its reasons, referred the matter for consideration by the Full Bench.

2. The Full Bench presided over by the Hon’ble the Chief Justice, by order dated 16th July 2025, directed all parties

to file their written submissions, along with the statutory provisions and judgments relied upon by them.

2.1. The moot question to be considered, addressed, and answered by this Full Bench is as follows:

“Whether consequent upon a Panchayat becoming a Municipality, a further notification under Section 1(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short, ‘the Rent Act’) is required or not?”

Ancillary to the above are the following questions as well:

- (i) Whether the Schedule to the Rent Act remains static until amended by the State Government in exercise of its power under Section 1(3); or
- (ii) Whether it is subject to automatic variation, amenable to constant modification depending upon changes in the status of the concerned local authority or body, such as from Panchayat to Municipality or Municipal Corporation, or upon delimitation of the territories of a Panchayat, Municipality, or Municipal Corporation.

Necessary facts leading to the present reference:

3. We find it condign to briefly spell out the relevant facts in a nutshell. The Kerala State Legislature enacted the Kerala Buildings (Lease and Rent Control) Act in the year 1959, which was brought into force in 1965 after receiving the Presidential assent under Article 254 of the Constitution of India. The Presidential assent was necessitated since certain provisions of the Rent Act were in partial conflict with the provisions of the Transfer of Property Act, 1882 (for short, “the TPA”), a Parliamentary enactment. Therefore, in order to overcome the inconsistency between the Central and State enactments, Presidential assent was sought and granted, whereafter the Rent Act was enforced throughout the State.

3.1 In terms of Section 1(2) of the Rent Act, Schedule I was appended to the enactment, enumerating various Panchayats and Municipalities in different districts of the erstwhile State of Kerala to which the provisions of the Act were made applicable. We shall advert to the provisions of the

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Rent Act in greater detail a little later. It is relevant to note that the name of “Koothuparamba Panchayat”, to which the present dispute pertains, was included at Serial No. 60 under the District of Cannanore.

3.2 Thereafter, with effect from 05.03.1990, Koothuparamba Panchayat was upgraded and declared a Municipality under the provisions of the Kerala Municipality Act, 1960, (for short, ‘Municipality Act’) consequent upon the issuance of the requisite notifications. The conversion into a Municipality was effected through two separate notifications, both dated 05.03.1990, one by which Koothuparamba ceased to be a Panchayat, and the other by which it was constituted as a Municipality under the Municipality Act.

3.3 Pertinently and admittedly, no notification modifying or amending Schedule I under Section 1(3) of the Rent Act has been issued by the State Government till date.

4. It is also an admitted fact that Schedule I to the Rent Act has not been amended insofar as Entry No. 60 is concerned,

and that the name “Koothuparamba Panchayat” continues to be retained therein, which has perhaps given rise to the present dispute. We are, therefore, required to consider whether, once an area has been notified and included in Schedule I under Section 1(2) of the Rent Act, a further amending or clarificatory notification under Section 1(3) is required to modify the description of the entry from “*Koothuparamba Panchayat*” to “*Koothuparamba Municipality*”, consequent upon its conversion from a Panchayat to a Municipality.

4.1 We are also called upon to examine whether, in the absence of such an amending or clarificatory notification, the provisions of the Rent Act cease to apply to the territorial area of Koothuparamba, which continues to be shown in Schedule I under the description of *Koothuparamba Panchayat*.

5. The petitioners, who are tenants, suffered a decree of eviction in the eviction proceedings instituted by the landlords, the respondent–plaintiffs. Thereafter, before the

Executing Court, the petitioners raised a plea that the eviction proceedings under the provisions of the Rent Act were not maintainable. The Executing Court overruled the said objection, holding that the Rent Act was applicable. Aggrieved thereby, the matter was carried before this Court, raising a substantial question relating to the applicability of the Rent Act to the newly constituted Koothuparamba Municipality.

5.1 The petitioners relied upon the judgment of a Division Bench of this Court in ***Koorantakath Kamaludeen*** (supra), contending that once Koothuparamba Panchayat ceased to exist and assumed the status of a Municipality, the eviction proceedings ought to have been instituted before the regular Civil Court and not before the Rent Control Court (for short, “RCC”).

5.2 However, the submissions advanced on behalf of the petitioners did not find favour with the Division Bench, which took a *prima facie* view that the decision in ***Koorantakath Kamaludeen*** (supra) appears to run contrary to the provisions

of the Rent Act. The Division Bench was further of the view that once an area is notified in Schedule I to the Rent Act, a subsequent change in its status is of no consequence for the purposes of the Act, unless the area is expressly excluded by a separate notification or exempted under Section 25 of the Rent Act.

5.3 The Division Bench also opined that the judgment in *Koorantakath Kamaludeen* (supra) may have been rendered without a proper scrutiny of the legal effect of Section 1 of the Rent Act, and it was in the said circumstances that the matter was referred to this Full Bench.

Statutory provisions involved in the present matter:

6. The Kerala State Legislature enacted the Rent Act in the year 1959 with the object of regulating the leasing of buildings and controlling rents in respect of such leased buildings. One of the principal aims and objects of the Act was the prevention of unreasonable eviction of tenants from rented premises within the State of Kerala. As aforesaid,

Presidential assent under Article 254 of the Constitution of India was received on 14.05.1965, and only thereafter could the Rent Act be enforced throughout the State.

6.1 **Section 1** of the Rent Act, titled “*Short title, application, commencement and duration*”, reads as follows:

“1. Short title, application, commencement and duration.-

(1) This Act may be called the Kerala Buildings (Lease and Rent Control) Act, 1959.

(2) ***It applies to the areas mentioned in the Schedule.***

(3) The Government may, by notification in the Gazette, apply all or any of the provisions of this Act to ***any other area in the State*** with effect from such date as may be specified in the notification and may, by like notification, cancel or modify such notification or withdraw the application of all or any of the provisions of this Act ***from any area to which this Act*** applies under sub-Section (2):

Provided that no such notification shall be issued unless it is supported by a resolution passed by the local authority or authorities, if any, of the areas affected by the notification.

(4) It shall come into force on the 3rd day of April 1959 and remain in force up to and inclusive of the 31st day of March 1962.”

(emphasis supplied)

7. **Section 2**, which is the definition clause, defines terms such as “*building*”, “*landlord*”, “*tenant*”, and other allied expressions. However, the Act does not define the terms “Panchayat” or “Municipality” anywhere therein.

7.1 **Section 11**, titled “*Eviction of tenants*”, imposes an embargo on the eviction of a tenant, whether in execution of a decree or otherwise, except in accordance with the provisions of the Rent Act. A tenant may be evicted only on an application made by the landlord under Section 11(2) before the RCC, on specified grounds such as non-payment of rent, bona fide requirement of the building for the landlord’s own occupation, or for such other purposes as enumerated under Section 11(4). Sections 11(5), 11(7), 11(8), and 11(9) provide for other contingencies under which eviction of a tenant may be ordered.

7.2 Under **Section 18**, a statutory right of appeal is conferred upon any person aggrieved by an order of the RCC,

to the authority notified as the Appellate Authority under the Rent Act. Section 24 prescribes a time frame of four months for the disposal of applications or proceedings instituted under the Rent Act.

7.3 **Section 36**, titled “*Repeal*”, provides for the repeal of various enactments upon the coming into force of the Rent Act, including the Travancore–Cochin Buildings (Lease and Rent Control) Order, 1950, the Madras Buildings (Lease and Rent Control) Act, 1949, and the Kerala Buildings (Lease and Rent Control) Ordinance, 1959, among others.

7.4 As stated *supra*, Schedule I to the Rent Act enumerates various villages, Panchayats, and Municipalities as the areas to which the provisions of the Rent Act apply. It has been submitted at the Bar that at the time of the enactment of the Rent Act in 1959 (which came into force in 1965), the State of Kerala comprised nine districts, whereas as on date, the number of districts has increased to fourteen, consequent upon reorganisation of districts, delimitation of

territorial boundaries, and the transition of villages, Panchayats, and Municipalities from one district to another.

7.5 By way of illustration, Manjeri Municipality, which was earlier part of Kozhikode District, is now part of Malappuram District, and Kasaragod Municipality, which was earlier within Kannur District, has since become part of an independent Kasaragod District. However, from the submissions advanced by all parties, the Court has been apprised that Schedule I to the Rent Act continues to remain unamended and unaltered in its form and content.

8. The provisions of the Kerala Panchayat Raj Act, 1994 (for short, “*the Panchayat Act, 1994*”) may be adverted to at this juncture. The said Act was enacted pursuant to the Seventy-third Constitutional Amendment Act, 1992. Reference is made to this enactment since considerable emphasis was laid by the petitioners on the contention that the constitution and governance of Panchayats and Municipalities are regulated by special enactments, namely, the Panchayat Act,

1994 and the Municipality Act, respectively.

8.1 Under **Section 2(ii)**, “*Block Panchayat*” of the Panchayat Act, 1994 is defined as a Panchayat constituted at the intermediate level under Section 4(1)(b). **Section 2(xii)** defines “*District Panchayat*” as a Panchayat constituted at the district level under Section 4(1)(cc), and the *District Panchayat area* is referable to the areas notified by the Government for the purposes of Section 4(1)(c) of the Panchayat Act 1994. Likewise, “*Panchayat*” is defined under **Section 2(xxv)** to mean a Village Panchayat, Block Panchayat, or District Panchayat, and the *Panchayat area* denotes the area falling within the territorial jurisdiction of such Panchayat.

8.2 **Chapter III**, titled “*Constitution of Panchayats at different levels*”, empowers the State Government to constitute Panchayats and to specify their names and headquarters by notification published in the Gazette. Under Section 4(1)(a), the Government is empowered to constitute a Village Panchayat for each village or for a group of villages, by

specifying the villages falling within such Village Panchayat. Similarly, Panchayats may be constituted at the intermediate level (Block Panchayat) and at the district level (District Panchayat).

8.3 Further, under Section 4(2), the Government is empowered to increase, diminish, or otherwise alter the area of any Village Panchayat, as well as to change its headquarters. Section 5 provides for the incorporation and administration of Panchayats.

9. Likewise, the Municipality Act was enacted pursuant to the Seventy-fourth Constitutional Amendment Act, 1992, on lines similar to the Panchayat Raj Act, 1994. The said Act provides for the constitution of Municipalities of various categories in the urban areas of the State of Kerala.

9.1 Section 2, which is the definition clause, defines “*local authority*” under Section 2(21) to mean a Municipality constituted under Section 4 of the Municipality Act, or a Panchayat constituted under the Panchayat Raj Act, 1994.

9.2 Chapter II, titled “*Constitution, alteration and conversion of Municipalities*”, contains the provisions relating to the constitution, alteration, and conversion of Municipalities. Section 4, titled “*Constitution, alteration and conversion of Municipalities*”, is the charging provision under which various categories of Municipalities are brought into existence by notification issued by the State Government, and reads as follows:

“4. CONSTITUTION, ALTERATION AND CONVERSION OF MUNICIPALITIES.—

(1)The Government shall, by notification in the Gazette, constitute with effect from such date as specified in the notification, -

- (a) a "Town Panchayat" for a transitional area;**
- (b) a "Municipal Council" for a smaller urban area; and**
- (c) a "Municipal Corporation" for a larger urban area, and specify the name of such Municipalities.**

(2) The Government may, by notification,-

- (a) exclude any municipal area from the operation of this act;
- or
- (b) exclude from a municipal area comprised therein and defined in the notification ; or
- (c) divide any municipal area into two or more municipal

areas; or

(d) unite two or more municipal areas; or

(e) unite the territorial area of a Panchayat geographically lying adjacent to a Municipal area, with the Municipality; or

(f) convert a Village Panchayat into a 5 6[Town Panchayat or a Municipal Council]; or

(g) convert a Town Panchayat into a Municipal Council; or

(h) convert a Municipal Council into a Municipal Corporation:

[Provided that, before issuing such a notification the requirements under Article 243 Q and sub- section (1) shall be fulfilled and the suggestions and opinions of the Village Panchayat or Town Panchayat or Municipal Council or Municipal Corporation concerned, shall be considered.]

Provided further that any notification issued under this sub-section shall not be brought into force except in such a way as to coincide with the expiry of the term of the existing Municipal Council or Village Panchayat in that territorial area.

(3) The Government may at the request of a Municipality or after consultation with the Municipality, at any time, alter the name of a Municipality, after previous publication of the proposal by notification in the Gazette.

(4) Where any Village Panchayat area is constituted as, or included in, a 7 [Municipality], the Government may pass such orders as they may deem fit as to the transfer to the Municipality or disposal otherwise of the assets or institutions of such Panchayat in that area, and as to the

discharge of the liabilities if any, of such Panchayat relating to such assets or institutions.

(5) Where any village Panchayat area is constituted as, or included in a 8 [Municipality], all taxes, fees or other charges levied in that area under the enactments or regulations then in force shall, from the date of constitution or inclusion, as the case may be, cease to have effect and all such taxes, fees or other charges shall be levied in that area in accordance with the provisions of this Act and the rules, regulations and bye-laws made thereunder.

(6) Where a Municipality is abolished, this Act and all notifications, rules, regulations, bye-laws, orders, directions and powers issued, made or conferred under this Act shall cease to apply to the area comprised within the Municipality, the balance of the Municipal fund and all other property vested in the Municipality at the time of its abolition shall vest in the succeeding local authority coming into existence or if a local authority does not come into existence in that area, in the Government and the liabilities of the Municipality shall be transferred to such local authority or as the case may be, the Government.

(7) All funds and property vested in the Government under sub-section (6) shall be applied to discharge the liabilities transferred to the Government under that sub-section and for the promotion of the safety, health, welfare or convenience of the inhabitants of the area comprised in the Municipality.”

(emphasis supplied)

10. From the above, it is clear that “Municipality” is a generic term, referable to three categories of local authorities governing urban areas, namely, a Town Panchayat, a Municipal Council, and a Municipal Corporation. Under the Kerala Municipality Act, the State Government is vested with the power to notify the area falling within a municipal area, to include or exclude areas from an existing Municipality, or to alter the boundaries of any Municipal Council.

10.1 The State Government is also empowered to convert a Town Panchayat into a Municipal Council, and a Municipal Council into a Municipal Corporation, in exercise of the powers conferred under Section 4(g) and Section 4(h), as referred to above.

10.2 Sections 4(4) and 4(5) of the Municipality Act provide for the consequences arising when the area of a Village Panchayat is included in a Municipality, including the transfer of all assets and liabilities of the Panchayat to the Municipality, the cessation of all taxes, fees, and other

monetary levies under the Kerala Panchayat Raj Act, and the imposition of taxes, fees, and other monetary dues under the Kerala Municipality Act.

10.3 Section 4(6) of the Municipality Act goes a step further and provides that wherever a Municipality is abolished, all notifications, rules, regulations, by-laws, and other instruments issued in relation thereto shall cease to apply to the area comprised within such Municipality with immediate effect.

11. The provisions of the Panchayat Act, 1994 and the Municipality Act have been referred to for a specific purpose, viz., in view of the extensive submissions made on behalf of the petitioners regarding the impact of alteration, conversion, or change in the status of a Panchayat to a Municipality, or from one Municipality to another, on the provisions of the Rent Act, particularly the entries in Schedule I. We shall briefly advert to these submissions and deal with the issues arising therefrom in a separate section of the present judgment.

Contentions of the parties:

12. Both sides relied upon judgments of Single Judges as well as Division Benches to fortify their respective submissions, which were in direct conflict regarding the impact of the conversion of a Panchayat into a Municipality and its effect on the provisions of the Rent Act.

Counsel for the petitioners contended broadly as follows:

(a) The judgments in *Koorantakath Kamaludeen* (supra), as well as *Biyathu v. Abdurahimankutty*¹, and *Karam Veettil Parukutty Amma v. Muhammedkutty*², have conclusively held that, in view of the proviso to Section 1(3), the issuance of a fresh notification safeguarding the applicability of a previously existing notification is necessarily required to ensure the continued applicability of the Rent Act. Once a Panchayat is converted into a Municipality, or its status is otherwise altered by the decision of the State Government

¹ 1995 SCC OnLine Ker 45

² 2012 SCC OnLine Ker 29706

under the provisions of the Panchayat Act or the Municipality Act, it becomes obligatory for the State Government to amend and modify Schedule I of the Rent Act so as to extend the applicability of the Rent Act to the newly notified and constituted Municipality in place of the old Panchayat.

(b) Consequently, once a Panchayat is included in or notified as a Municipality, the Rent Act will not automatically apply to the newly constituted entity. The applicability of the Rent Act will remain suspended until a fresh notification is issued and Schedule I is amended, even if the area was previously specified in the Schedule.

(c) The landlord-plaintiff (respondent herein) has not placed on record any fresh notification or document demonstrating that the Rent Act has been made applicable to the newly constituted Municipality arising from the old Panchayat area. In the absence of such a notification, no presumption can be raised regarding the applicability of the Rent Act *ipso facto*.

(d) In view of Section 4(2) of the Panchayat Act 1994 and

Section 4 of the Municipality Act, the resolution of the Panchayat or local authority and consultation with the State Government are necessary for the conversion of a Panchayat into a Municipality. The Government cannot exercise this power automatically, without a resolution of the Panchayat or without consulting it. Consequently, once a Panchayat is converted into a Municipality, for all practical purposes, the Panchayat ceases to exist, even for the purposes of the Rent Act. If the Government thereafter intends to apply or extend the applicability of the Rent Act, issuance of a fresh notification under Section 1(3) is necessitated.

Counsel for the respondents contended broadly as follows:

13. The respondents, on the other hand, place reliance upon the judgment of the Division Bench of this Court in ***Meenakshy v. R. Ananthambal and others***³, to contend as follows:

³ 2014 SCC OnLine Ker 28721

- (a) It is not the Panchayat itself that is notified under Schedule I to the Rent Act, but rather an 'area' determined on the date of issuance of the Schedule. The said determined area, with its geographical limits and territorial boundaries, does not cease to exist or get affected even if the status of the notified Panchayat is subsequently converted into a Municipality.
- (b) Schedule I to the Rent Act relates to the extension and applicability of the Act over a defined geographical area with its territorial limits. At the time the Rent Act was introduced, the Kerala Panchayats Act, 1960 was in force, wherein "*Panchayat area*" was defined under Section 2(21) as any local area declared as such by the Government or the relevant authority. The villages or municipalities mentioned in Schedule I under the 1960 Panchayats Act were included in the districts as specified therein on that day. Admittedly, there is no material to show that this situation has been altered by

any amendment or modification of Schedule I. Therefore, the subject matter of Schedule I of the Rent Act is not the Panchayats or Municipalities per se, but the geographical area with its territorial limits as existing on the date of notification of Schedule I.

- (c) Even if the State Government undertakes any delimitation exercise or upgradation of a Panchayat to a Municipality under the provisions of the Panchayat Act 1994 or the Municipality Act, such changes will not affect the validity or efficacy of the geographical limits already specified in Schedule I of the Rent Act. Schedule I cannot be regarded as co-terminus with, or dependent upon, the modifications or alterations of territories under the Panchayat Act or the Municipality Act; rather, it remains unaffected and unaltered by such exercises.
- (d) Having received the Presidential assent under Article 254 of the Constitution of India, the Rent Act prevails

over all other State enactments and, in respect of overlapping or similar subject matter, also overrides the provisions of the Panchayat Act or the Municipality Act, to the extent matters relating to landlord-tenant relationships, rent control, or eviction are concerned.

14. Accordingly, the respondents contend that the plea of inapplicability of the Rent Act has no basis and is therefore liable to be rejected.

Consideration of submissions by this Court:

15. Having heard both parties to the *lis*, it is apposite to first analyse the statutory scheme of the Rent Act and its correlation with the Panchayat and Municipality Acts of Kerala. However, it must be noted that, although the Rent Act was enacted in 1959, it could be enforced only in 1965, as stated earlier. The Presidential assent was necessitated in view of an apparent conflict with the provisions of the TPA, particularly those relating to lease and determination of lease by the lessor or lessee.

16. At the relevant point in time, the Kerala Panchayat Raj Act, 1960, and the Kerala Municipalities Act, 1960, were in force, and the ‘Panchayat area’ and ‘Municipality area’ were as notified under the respective enactments across the nine districts of the State. Under Section 2(21) of the Panchayat Act, 1960, the *Panchayat area* was defined as the area so notified by the State Government, and similarly, under Section 4 of the Municipality Act, 1960, the *Municipality area* was the area notified by the State Government with its geographical boundaries under the respective enactments.

16.1 Consequently, the concept of “*Panchayat area*” and “*Municipality area*” was incorporated into Schedule I of the Rent Act, by deemed inclusion of their notified territories as various ‘areas’ under Section 1(2). There is therefore no cavil or doubt that the references to the terms “*Panchayat*” and “*Municipality*” in Schedule I, covering areas under the nine districts, were adopted verbatim from the erstwhile Panchayat and Municipality enactments.

17. It is well-settled law that once a State enactment receives the Presidential assent under Article 254 of the Constitution of India, it assumes a superseding character over the central or Parliamentary enactment to the extent of any repugnancy, which is precisely the reason the Presidential assent is constitutionally required. Simultaneously, by virtue of having obtained the Presidential assent, such an enactment also becomes a special enactment in relation to the subject matter, purpose, scope, and ambit for which it is enacted.

i.) *Scheme of Sec. 1(2) &(3) & Proviso to Sec. 1(3) of the Rent Act*

18. The subject matter of applicability of the Rent Act is not any Panchayat or Municipality per se, but the 'area' specified in Schedule I, as provided under Section 1(2). Therefore, the precondition for the enforcement and applicability of the Rent Act is the specification of an area along with the notification of the Schedule under Section 1(2). In other words, even if Section 1(3) had not been enacted, and

only Section 1(2) existed on the statute book, it would not have adversely affected or stultified the operation of the Rent Act.

18.1 Section 1(3) serves merely as a procedural provision relating to the applicability of the Rent Act. Under this section, if any area is to be added, modified, or withdrawn, it can occur only by way of notification and not otherwise. The proviso to Section 1(3) has a limited scope and cannot affect the operation of Section 1(2).

18.2 A careful reading of Section 1, particularly Sections 1(2) and 1(3), reveals a clear distinction between the two provisions. Section 1(2) is the charging provision of the Rent Act, which applies and extends its operation to all areas mentioned in the Schedule. Section 1(3), through the phrase *“to any other area in the State with effect from such date”*, functions as a superstructure on the foundation of Section 1(2). It empowers the State Government to extend the operation of the Rent Act to additional areas, or to cancel, modify, or withdraw the applicability of the Act from any area where it is

already in force.

18.3 Thus, the foundation of the Rent Act is defined by Section 1(2), under which, once an area is specifically mentioned in the Schedule, the Act automatically becomes applicable to that area. Any addition, modification, cancellation, or withdrawal of an area after the notification of the Schedule requires a separate notification issued by the State Government, which would then have the effect of altering, amending, or modifying the Schedule as codified under Section 1(2).

19. The proviso to Clause (3) of Section 1 requires the prior consent of the local authority before the issuance of a notification under Clause (3). This proviso operates solely within the scope of Clause (3) and cannot subsume or affect the operation of Clause (2), since it is a proviso to Clause (3) and not a proviso to Clause (2). Accordingly, in so far as the proviso imposes the precondition of obtaining a resolution of the local authority prior to issuing any notification, it applies

only to Clause (3) and not to Clause (2). Our understanding of the scheme of Section 1 is fortified by the fact that the proviso is specifically mentioned with Clause (3), and not under Clause (2), Clause (4), or as a proviso to the entire Section.

20. It is settled law that a proviso to any section cannot have an ambit, scope, or operation larger than the provision to which it is appended. A proviso can clarify, qualify, or restrict the operation of only the main provision to which it is added, and cannot extend beyond it. The interpretation to be accorded to a proviso is well-settled by a long line of precedents and requires no further elaboration.

20.1 A proviso is ordinarily subordinate to the main section to which it is appended and must always be interpreted in a manner that ensures harmony with the principal section as well as other provisions of the statute. It is generally intended to exercise a part of the main section for special treatment or to provide a particular course of action that could not otherwise be adopted in the absence of the

proviso. For this reason, a proviso cannot extend beyond the main provision or section, nor can it be construed in a manner that enlarges the scope of the enactment or transgresses the boundaries set by the principal section.

20.2 A proviso should not be read in a manner that alters the operative effect of the main section or other ancillary provisions of the statute, but must be restricted to the field covered by the principal provision or section to which it is appended.

20.3 For these principles, the judgments in *Delhi Metro Rail Corporation Limited v. Tarun Pal Singh & Ors*⁴, and *Satya Pal Singh v. State of Madhya Pradesh & Ors.*⁵ have been referred. In *Satya Pal Singh* (supra), the Supreme Court elaborated the manner in which a proviso is to be interpreted, stating as follows:

“12. It is well established that the proviso of a statute must be given an interpretation limited to the subject-matter of the

⁴ (2018) 14 SCC 161

⁵ (2015) 15 SCC 613

enacting provision. Reliance is placed on the decision of this Court rendered by a four-Judge Bench in Dwarka Prasad v. Dwarka Das Saraf, the relevant para 18 of which reads thus: (SCC p. 137)

18. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context' (Thompson v. Dibdin³). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such a manner that they mutually throw light on each other and result in a harmonious construction."

(emphasis supplied)

13. Further, a three-Judge Bench of this Court by majority of 2:1 in S. Sundaram Pillai v. V.R. Pattabiraman has elaborately examined the scope of the proviso to the substantive provision of the section and rules of its interpretation. The

relevant paragraphs are reproduced hereunder: (SCC pp. 607-08, paras 30, 32-33 & 36-37)

30. Sarathi in Interpretation of Statutes at pp. 294-95 has collected the following principles in regard to a proviso:

(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation; but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

....”

(emphasis supplied)

21. From the foregoing observations, it is clear that the enacting clause cannot be expanded or inflated under the guise of a proviso, as doing so would be contrary to the fundamental principles of statutory construction. In other words, the relationship between a section and its proviso can be likened to that of a wall and plaster: the plaster applies only to the dimensions and extent of the wall itself. The plaster cannot exist independently or be applied in mid-air to stand in a vacuum. It is in this context that the interplay between Sections 1(2) and 1(3) of the Rent Act must be interpreted, ensuring that the proviso to Section 1(3) does not extend or modify the operation of Section 1(2) beyond its intended scope.

22. The proviso, as noted above, is appended to Section 1(3) and not to Section 1(2). The Court is unpersuaded by the submissions of the petitioners that the proviso must govern the operation of Section 1(2) as well. When the proviso is attached solely to Section 1(3), it cannot be extended or read into Section 1(2). Accordingly, the Court is at a loss to

understand how the requirement of a fresh notification with the consent of the local authority can be invoked merely on a change of status of a panchayat to a municipality.

22.1 Adopting the interpretation suggested by the petitioners, or as propounded in ***Koorantakath Kamaludeen*** (supra), would effectively extend the scope of the proviso in Section 1(3) to govern Section 1(2), which is impermissible. This crucial aspect, that the proviso is a “plaster on the wall” of Section 1(3) and not on Section 1(2), was entirely overlooked by the Division Bench in the said judgment. In fact, there was no discussion on the effect of Section 1(2) or its correlation with Section 1(3).

22.2 In light of this inherent discrepancy regarding the effect and interplay of Sections 1(2) and 1(3), the judgment of the Division Bench is vulnerable to reconsideration. We therefore hold that ***Koorantakath Kamaludeen*** (supra) has not correctly interpreted Sections 1(2) and 1(3) of the Rent Act. It suffers from an inherent fallacy of interpretation, as it

erroneously conflates the applicability of the proviso to Section 1(3) with the operation of Section 1(2), which is legally impermissible.

23. The moot question, however, remains to be answered, *i.e.*, the transitional effect of the conversion of a panchayat into a municipality on an entry as existing under Schedule I of the Rent Act. Before addressing this question, certain facts, as gathered from the parties during submissions and from the Court's own examination, must be set out.

23.1 At the time of the enactment of the Rent Act, there were nine districts in the State of Kerala: Trivandrum, Quilon, Alleppey, Kottayam, Ernakulam, Trichur, Palghat, Kozhikode, and Cannanore. All these districts had municipalities, panchayats, and villages specified under them in Schedule I. It has been informed across the Bar that Schedule I has not been amended since 1965 and continues to exist in its original form.

23.2 However, significant changes have occurred in the geography and administrative boundaries of Kerala over the

last 50+ years. As opposed to the original nine districts, there are now 14 districts, with five new districts being Malappuram, Idukki, Wayanad, Pathanamthitta, and Kasaragod. A number of panchayats mentioned in Schedule I have transitioned into municipalities, and several municipalities have been shifted from one district to another. Examples include Manjeri Municipality, previously part of Kozhikode district and now part of Malappuram district, and Kasaragod Municipality, previously part of Cannanore and now part of Kasaragod district.

23.3 Thus, holding that the transitional effect of a panchayat's conversion into a municipality necessitates a fresh notification under Sections 1(2) or 1(3) of the Rent Act would give rise to multiple cascading issues. For instance, tomorrow, a petition may be filed contending that even the transfer or transposition of a municipality from one district to another would require a fresh notification under Sections 1(2) or 1(3). Similarly, delimitation exercise, undertaken to alter

the boundaries or titles of panchayats or municipalities, could also trigger claims for notification or amendment, as such exercises may be argued to amount to a “change of status.”

23.4 If this approach were adopted, every alteration in the nature, boundaries, or territorial extent of a panchayat or municipality under the Panchayat Act or the Municipalities Act would potentially require fresh notifications and amendments to Schedule I of the Rent Act, making its operation impractical and unworkable.

24. Permitting such an interpretation would open a Pandora’s box and would virtually render the implementation of the Rent Act impossible. It would also provide an easy tool for tenants to indefinitely stall eviction proceedings, awaiting a fresh notification of the newly constituted panchayat or municipality by the State. Clearly, the legislators never intended such a consequence when drafting and finalizing Schedule I of the Rent Act.

24.1 If the interpretation urged by the petitioners were

adopted, it would lead to unworkable and unmanageable consequences, effectively paralyzing the implementation of the Rent Act throughout the State. For all practical purposes, therefore, such an interpretation would be inconsistent with the objectives and the laudable purposes for which the Rent Act was enacted.

ii.) Schedule I is an example of legislation by incorporation & won't be affected by subsequent changes to panchayats notified

25. There is yet another reason why we are persuaded to hold that the conversion of a panchayat into a municipality will not affect the Schedule I of the Rent Act. It is a trite principle of law that the legislature, while enacting any statute, often borrows words, phrases, and terminologies from other primary enactments, from which such terms originate. In the present case, the mention of 'panchayat' and 'municipality' in Schedule I has been borrowed from the respective Panchayat Act and Municipalities Act.

25.1 All parties are in agreement before the Court that

the words ‘panchayat’ and ‘municipality’ as specified in Schedule I serve as indicia for determining the areas of applicability of the Rent Act and were taken from the erstwhile Panchayat and Municipalities Acts applicable in Kerala.

25.2 Therefore, for the purpose of defining and determining the areas under its Schedule, the legislature thought it fit to adopt and incorporate the ‘areas’ as notified under the erstwhile panchayat and municipality enactments. The legislative intent behind this incorporation was to adopt the geographical boundaries and territories as notified for the concerned panchayats and municipalities at the relevant point in time by the State Government. The legislature, by this method, avoided the need to independently define the areas and territories, instead transplanting the notified panchayat and municipality areas directly into the statutory scheme of the Rent Act.

26. Having once borrowed and incorporated the aforesaid terms as part of Schedule I to the Rent Act, the

phraseology of ‘panchayat’ and ‘municipality’ became a static and geostationary component of the Rent Act. This means that the geographical limits, boundaries, areas, and territories of the concerned panchayats and municipalities, as existing on the date of enactment of Schedule I to the Rent Act, i.e., 14.05.1965, were immortalized and codified as the ‘areas’ to which the Act was intended to apply under Section 1(2) of the Rent Act.

26.1 Once these terminologies of panchayat and municipality were borrowed, transplanted, and incorporated into Schedule I, and thereafter notified under Section 1(2), they ceased to have any connection, lien, or relationship with the respective enactments from which they were borrowed, namely, the Panchayat Act or the Municipality Act.

27. The aforesaid practice is not new to the Rent Act and is commonly referred to as legislation by incorporation, whereby a provision or terminology of a primary enactment is incorporated into a secondary enactment. Once such

incorporation takes place, any amendment, modification, or repeal of the original enactment from which the provisions have been borrowed does not affect the secondary enactment into which such terminologies have been transplanted.

27.1 The Constitution Bench of the Supreme Court discussed this principle in ***Ram Sarup vs. Munshi***⁶, holding that even the repeal of an enactment from which provisions have been borrowed and incorporated into another (secondary) enactment will not affect the latter. Referring to the judgment of the ***UK Courts in Clarke vs. Bradlugh*** – (1881) 8 QBD 63, the Supreme Court in ***Ram Sarup*** (supra) fruitfully stated, *vide* Para 12, as follows:

“12. Where the provisions of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated. The effect of incorporation is stated by Brett, L.). in *Clarke v. Bradlugh*. "Where a statute is incorporated, by reference, into a second statute the repeal of the first statute by a third does not affect the second."

⁶ AIR 1963 SC 553

In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre-emption Act and the expression "agricultural land" in the later Act has to be read as if the definition in the Alienation of Land Act had been bodily transposed into it. Section 2 of the Punjab Alienation of Land Act, 1900, as amended by Act 1 of 1907 defined 'land' as follows:

"The expression "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes.....

It is not in dispute that the land concerned in the claim for pre-emption made in the appeal satisfies this definition."

(emphasis supplied)

28. The aforesaid view of the Constitution Bench, that an incorporated provision becomes isolated from the parent enactment post-incorporation, has been recently reiterated and followed in *Insolvency and Bankruptcy Board of India vs. Satyanarayan Bankatlal Malu & Ors*⁷, wherein the Supreme Court was confronted with the issue of whether the Special

⁷ (2024) 6 SCC 508

Court under the Insolvency and Bankruptcy Code (IBC) would be governed by the procedure provided under Section 435 of the Companies Act as it existed at the time the IBC came into effect, or whether it would follow Section 435 as amended in 2018.

28.1 The Supreme Court distinguished between the effects of “*legislation by incorporation*” and “*legislation by reference*”, holding that where provisions of one enactment are bodily lifted and made part of another enactment, so that the repeal of the former leaves the latter wholly unaffected, any subsequent amendments to the original enactment shall not affect the latter legislation. Any changes, whether substantial or minor, to the original enactment do not impact the subsequent enactment. This principle is a settled rule of statutory construction, uniformly followed whenever the legislature adopts such a mode of incorporation. The Court observed this principle at Paras 30 to 32, 34, and 35 of ***Satyanarayan*** (supra), as follows:

“30. A Constitution Bench of this Court in Collector of Customs v. Nathella a Sampathu Chetty has considered the distinction between "legislation by reference" and "legislation by incorporation". It will be apposite to refer to the following observations of this Court in the said case: (SCC OnLine SC paras 38-39)

"38.... To consider that the decision of the Privy Council has any relevance to the construction of the legal effect of the terms of Section 23-A of the Foreign Exchange Regulation Act is to ignore the distinction between a mere reference to or a citation of one statute in another and an incorporation which in effect means the bodily lifting of the provisions of one enactment and making it part of another so much so that the repeal of the former leaves the latter wholly untouched. In the case, however, of a reference or a citation of one enactment by another without incorporation, the effect of a repeal of the one "referred to" is that set out in Section 8(1) of the General Clauses Act:

8. Construction of references to repealed enactments

(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and reenacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be

construed as references to the provision so re-enacted."

39. On the other hand, the effect of incorporation is as stated by Brett, L.J. in *Clarke v. Bradlaugh*: (QBD p. 69)

'... where a statute is incorporated, by reference into a second statute the repeal of the first statute by a third does not affect the second.' This is analogous to, though not identical with the principle embodied in Section 6-A of the General Clauses Act enacted to define the effect of repeals effected by repealing and amending Acts which runs in these terms: 6-A. Repeal of Act making textual amendment in Act or Regulation. Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express addition, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

"Where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third statute does not repeal the second." In the circumstances, therefore, the repeal of the Assam Municipal Act, 1956 by section 2 of "the Corporation Act" did not affect the Rent Control Act of 1972. The repeal of the Municipal Act has had no effect on the continued operation of the Rent Control Act within the city of Gauhati. As such, the Rent

Control Act continued to be in operation in the areas declared to be or included in the Municipality of Gauhati or in the notified areas although later they comprised within the city of Gauhati. In the result, we hold that the Rent Control Act never ceased to apply in the areas aforesaid falling within the city of Gauhati even after 15.02.1974. We say "not identical" because in the class of cases contemplated by Section 6-A of the General Clauses Act, the function of the incorporating legislation is almost wholly to effect the incorporation and when that is accomplished, they die as if it were a natural death which is formally effected by their repeal. In cases, however, dealt with by Brett, L.J. the legislation from which provisions are absorbed continue to retain their efficacy and usefulness and their independent operation even after the incorporation is effected."

31. It could thus be seen that the effect of incorporation means the bodily lifting of the provisions of one enactment and making it part of another so much so that the repeal of the former leaves the latter wholly untouched. However, in the case of a reference or a citation of the provisions of one enactment into another without incorporation, the amendment or repeal of the provisions of the said Act referred to in a subsequent Act will also bear the effect of the amendment or repeal of the said provisions.

32. In Bolani Ores, this Court was considering the question as to what would be the effect of amendment of the definition of

"motor vehicles" for the purposes of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 (for short "the Orissa Taxation Act"). The Orissa Taxation Act had adopted the definition of "motor vehicles as provided in the Motor Vehicles Act, 1939 for the purposes of taxation. The definition at the time of adoption brought the motor vehicle under the ambit of the said definition. It excluded the "motor vehicles" used solely upon the premises of the owner. However, the said enactment suffered an amendment in the year 1956 and specifically excluded vehicles of special type adapted for use only in a factory or in any other enclosed premises. It was sought to be urged on behalf of the State of Orissa that the definition of "motor vehicles" as adopted in Section 2(c) of the Orissa Taxation Act was not the definition by "incorporation" but a definition by "reference" and therefore amendment to the said definition would also be applicable for the purposes of taxation under the Orissa Taxation Act.

34.It is thus clear that this Court found that, if the vehicles do not use the roads, notwithstanding that they are registered under the Motor Vehicles Act, they cannot be taxed under the Orissa Taxation Act. This Court held in Bolant Ores that the intention of the legislature could not have been anything but to incorporate only the definition in the Motor Vehicles Act, as it existed in 1943, as if that definition was bodily written into Section 2(c) of the Orissa Taxation Act. It further held that, if the subsequent Orissa Motor Vehicles Taxation

(Amendment) Act, 1943, incorporating the definition of "motor vehicle" referred to the definition of "motor vehicle" under the Motor Vehicles Act, as it existed at the time of enactment of the subsequent Act; the effect of this legislative method would amount to an incorporation by reference to the provisions of Section 2(18) of the Motor Vehicles Act in Section 2(c) of the Orissa Taxation Act. It was further held that any subsequent amendment in the Motor Vehicles Act or a total repeal of the Motor Vehicles Act under a fresh legislation on that topic would also not affect the definition of "motor vehicle" in Section 2(c) of the Orissa Taxation Act.

35. This Court unequivocally held in *Bolani Ores* that the intention of Parliament for modifying the Motor Vehicles Act had no relevance in determining the intention of the Orissa Legislature in enacting the Orissa Taxation Act. This Court held that the dumpers and rockers, which were used by the miners in their premises though registrable under the Motor Vehicles Act were not taxable under the Orissa Taxation Act as long as they were working solely within the premises of the respective owners.”

(emphasis supplied)

29. From the above discussion, it transpires that the notified territories of panchayats and municipalities have been bodily lifted to be determined as an “*area*” under Section 1(2) of the Rent Act. Once such specific determination is made,

the area remains completely unaffected by any variations, expansions, or modifications in the said panchayats or municipalities under their respective enactments.

30. Therefore, it is beyond any pale of doubt that the mere borrowing of the notified territories of the erstwhile panchayats or municipalities from their respective enactments does not and cannot continue to impact or affect Schedule I of the Rent Act indefinitely. For this additional reason, we hold that any change in the nomenclature, status, geography, or territory of a panchayat or municipality under their parent enactments, the Panchayat Act or the Municipality Act, shall have no effect whatsoever on Schedule I. Whenever the question arises before any RCC or Appellate Authority regarding the applicability of the Rent Act to any panchayat or municipality, the guiding principle must be Schedule I as notified under Section 1(2) of the Rent Act, and nothing else. We affirmatively hold so.

iii.) Rent Act being a special legislation to remain unaffected by

the Panchayat/ municipality enactments

31. Besides, as stated supra, the Rent Act had received Presidential assent under Article 254 of the Constitution of India and, therefore, prevails even over the Parliamentary legislation, namely, the TP Act, within the State. This is because the Rent Act is a special enactment governing the subject matter of landlord-tenant relationships, rent fixation, adjudication of landlord-tenant disputes, and matters relating to determination of tenancy and eviction of tenants from rented premises.

31.1 The Panchayat and Municipality legislations may pertain to the constitution, incorporation, and self-governance of panchayats and municipalities in the State of Kerala under the 73rd and 74th Amendments to the Constitution. However, when it comes to landlord-tenant relations, it is the Rent Act that becomes the special legislation on the subject, thereby prevailing over and superseding the provisions of the Panchayat and Municipality legislations.

31.2 This Court derives support for the above observation from the judgment of the Supreme Court in ***Atma Ram Properties Pvt. Ltd. v. Oriental Insurance Co. Ltd***⁸, wherein the question arose as to which enactment would prevail in the case of a dispute pertaining to arrears of rent: the New Delhi Municipal Council Act, 1994 (NDMC Act) or the Delhi Rent Control Act, 1958 (Delhi Rent Act).

31.3 After a detailed examination of the provisions of both enactments, particularly the Delhi Rent Act, the Supreme Court addressed the core issue of whether non-payment of property tax recoverable under the NDMC Act by a tenant can constitute grounds for eviction. The Court held that the Delhi Rent Act is both beneficial and restrictive in nature, providing a self-contained mechanism for rent control and eviction disputes. Consequently, the Delhi Rent Act, being a special enactment, prevails over the NDMC Act, notwithstanding the

⁸ (2018) 2 SCC 27

NDMC Act being a subsequent enactment. The Supreme Court's findings, particularly Paras 23 to 28, elucidate why the Rent Act shall prevail over the NDMC Act and can be appropriately reproduced as follows:

“23. As seen from the abovementioned judgments, this Court has held that an earlier enactment will prevail over a latter enactment even if, there is a non obstante clause in the latter enactment, if it were to be held that the earlier enactment is a special enactment on the particular subject being in issue.

24. Assuming that the latter enactment prevailing over the earlier enactment were to apply to this case, the two enactments have to be harmoniously construed so as to ensure that the latter enactment does not cause violence to the intent of the earlier enactment.

25. In ***St. Stephen's College v. unity of Delhi***, it has been held thus: (SCC p. 642, para 140)

“140. The golden rule of interpretation is that words should be read in the ordinary, natural and grammatical meaning and the principle of harmonious construction merely applies the rule that where there is a general provision of law dealing with a subject, and a special provision dealing with the same subject, the special prevails over the general. If it is not constructed in that way the result would be that the special provision would be wholly defeated.”

26. Similarly, in ***Gobind Sugar Mills Ltd. v. State of Bihar*** this Court has held as under: (SCC p. 82, para 10)

"10. While determining the question whether a statute is a general or a special one, focus must be on the principal subject-matter coupled with a particular perspective with reference to the intendment of the Act. Keeping in mind this basic principle, we will have to examine the provisions of the two Acts to find out whether it is possible to construe harmoniously the provisions of Section 4 of the Finance Act and Section 49 of the Sugarcane Act..."

27. In CTO v. Binani Cements Ltd., it was held that when a general law and a special law dealing with the same aspect dealt with by the general law are in question, the general law to the extent dealt with by the special law is impliedly repealed.

28. The object of the Rent Act is to provide protection to tenants who under common law, including the Transfer of Property Act could be evicted from the premises let out to them at any time by the landlord on the termination of their tenancy. It restricts the right of the landlord to evict the tenant at their will. It is a special law in relation to landlord and tenant issues. Therefore, the Rent Act has to prevail insofar as the landlord and tenant issue is concerned."

(emphasis supplied)

32. The aforesaid judgment applies in all respects to the controversy and issue at hand. As referred to above, the delineation and notification of boundaries of panchayats and

municipalities under the respective provisions of the Panchayat Act and the Municipality Act take place for the purposes of those enactments. The territory of a panchayat, whether a single village or a cluster of villages at the village level, a cluster of panchayats at the intermediate level, or at the district level, is notified and constituted by the State Government from time to time for the purposes of effective and efficient self-governance by the panchayats as institutions.

32.1 Likewise, the constitution of a Municipality, whether as a town Panchayat, a Municipal Council, or a Municipal Corporation, is also delineated, determined, and notified by the State Government to endow the concerned Municipality with the powers of efficient and effective self-governance at the urban level. Panchayats represent a model of self-governance at the rural or village level, whereas municipalities embody the goals and functions of self-governance at the urban or town level.

32.2 Therefore, the notification, alteration, or

modification of territories of Panchayats or Municipalities undertaken by the State Government is done for the purposes and objectives for which the Panchayat and Municipality Acts were enacted. Such actions, however, may not necessarily conform or be consistent with the aims and objectives of the Rent Act, which is designed specifically to govern landlord-tenant relationships with respect to properties falling within the ‘areas’ specified in the Schedule.

32.3 For this reason as well, we are inclined to hold that, insofar as the specification of boundaries or territories of the ‘areas’ notified under Section 1(2) is concerned, it is only the Rent Act, a special enactment, that prevails over and above the provisions of the Panchayat and Municipality Acts of the State.

33. A Single Bench of this Court in ***Krishna Iyer v. Rama Krishna Iyer***⁹, had also aptly taken the same view that we adopt today. Holistically considering Sections 1(2) and 1(3) of

⁹ 1964 KLT 418

the Rent Act, the Single Bench held that merely because a part of the territory of Chowghat Panchayat was notified to be included as part of Guruvayoor Township under the Guruvayur Township Act, 1961, its status under the Rent Act would not be affected.

33.1 In that case, the tenant opposing the application of the Rent Act to Chowghat Panchayat, in the altered circumstances of inclusion of the panchayat territories within the township area, contended that the Rent Act ceased to apply to the disputed property. Negating the tenant's argument, the Single Bench held that once a certain area is included in the Schedule to the Rent Act, its subsequent inclusion in a municipality or any other township cannot ipso facto result in cessation of the Rent Act's operation.

33.2 If the Government intended not to apply the Rent Act to the modified territories, so constituted as a township under the Guruvayur Township Act, it was always open to the State Government to issue a modificatory notification under

Section 1(3) of the Rent Act. The Single Bench thus held that the notification issued under the Rent Act is intended to include the 'area' constituting the territory of the concerned panchayat within its area of enforcement. The said notified area, notwithstanding its subsequent exclusion from the jurisdiction of that panchayat under the panchayat enactment, does not affect the operability of the Rent Act as previously notified to be applicable.

34. Two judgments from different High Courts have helped us navigate the complex legal proposition under consideration before this Bench. The first is the Division Bench judgment of the Gauhati High Court in ***Shri Kamala Dutta & Ors. v. Ranendra Nath Das***¹⁰, wherein the question arose regarding the applicability of the Assam Urban Areas Rent Act, 1972, following the conversion of the Municipality of Gauhati into the Gauhati Municipal Corporation under the separate

¹⁰ (1983) 2 Gou LR 490

Gauhati Municipal Corporation Act, 1969.

34.1 Negating the arguments of the tenants regarding the inapplicability of the Rent Act post-conversion, the Division Bench held that the definition of “urban area” under Section 2(g), including the territories of the Gauhati Municipality, remained unaffected by its upgradation to a Municipal Corporation. The Court emphasized that the notification issued under the Rent Act was intended to define the areas of applicability of the Act, and merely because certain definitions had been borrowed from the Assam Municipal Act, 1956 (which later ceased to apply), the applicability of the Rent Act remained unaffected.

34.2 The Gauhati High Court specifically held that the Rent Act was neither expressly nor impliedly repealed by the Gauhati Municipal Corporation Act, and therefore continued to operate undisturbed within the limits of the newly constituted Gauhati Municipal Corporation. Paras 5 to 8 and 10 of the judgment are particularly relevant for the discussion at

hand and are reproduced herein.

“5. Has the Corporation Act expressly repealed the Rent Control Act? It must be answered in the negative as the Corporation Act does not express so. It has been contended that the Rent Control Act was impliedly repealed. The theory underlying "implied repeal" is that there is no necessity for the latter enactment to state in express terms that an earlier enactment has been repealed, by expressing any particular set of words, but the legislative intent to abrogate or supersede the earlier law must be manifested in the latter enactment that it has effected such supersession. Implied repeal is not to be readily presumed. If the objects of the two statutes are different and the language of each statute is restricted to its own objects or subjects then they are generally intended to run parallel to each other and there would be no real conflict, though apparently it may appear to be so on the surface. The principle upon which the rule of implied repeal rests is that if the subject matter or object of the latter legislation is identical with that of the earlier, so that both cannot stand together, then the earlier Act can be said to have been repealed by the latter enactment. These findings have been drawn from *Zaverbhal Amaldas vs. State of Bombay*, AIR 1954 SC 752; *Municipal Corporation of Delhi vs. Shiv Shankar*, AIR 1972 SC 815; *Hari Shankar Bagla vs. State of M. P.* AIR 1954 SC 465. We have considered the objects and subjects dealt in "the Rent Control Act" as well as "the Municipal Act"

and do not find that the objects and subjects dealt with by the Acts are either the same or similar. We have noticed. that there is no repugnancy or conflict between the two. However in one point both the Acts deal with the same subject. It is Section 444 of "the Corporation Act", which deals with the applicability or the operation of the Rent Control Act within the city of Gauhati. The legislative intent evinced in Sec. 444 of the Corporation Act clearly shows that notwithstanding anything contained in the Rent Control Act the provisions thereof shall not apply to the land, building or premises belonging to or vesting in the Corporation. But for the provisions of Section 444 of the Corporation Act the premises of the Corporation, which would also have attracted the provisions of the Rent Control Act, are exempted from operation. When the Corporation Act itself clearly states that the provisions of the Rent Control Act shall not be applicable to the premises belonging to the Corporation it speaks in so many words that the Rent Control Act would continue to be in force in the city of Gauhati, subject to the limitation that provisions thereof shall not be applicable to the premises belonging to the Corporation. It is true that Sec. 444 of the Corporation Act refers to the Rent Control Act, 1951 and not of 1972. There existed no Rent Control Act of 1951 and the only Rent Control Act in force or in existence was the Rent Control Act of 1972 when the Corporation Act came into force in January, 1974. In the result, we have no hesitation in reaching the conclusion that the Rent Control Act was neither

expressly nor impliedly repealed by the Corporation Act. On the other hand we find the legislative intent not to disturb or touch the operation of the Rent Control Act within the city of Gauhati, except putting an embargo that the provisions of the Act would not be applicable to the premises belonging to the Corporation. In our opinion, the Rent Control Act was never repealed by the Corporation Act and the legislative intent to allow the Rent Control Act to continue its operation within the city of Gauhati has been clearly expressed in the Act itself.

6. The next contention is that in accordance with the accepted legislative practice to incorporate by reference, Section 2(g) of "the Rent Control Act" incorporated by reference the provisions of Seca. 5 and 334 of the Municipal Act for the purpose and for furtherance of the scheme and object of the Rent Control Act. As such, when the Municipal Act ceased to apply in the city of Gaubati or repealed by the Corporation Act, the Rent Control Act was automatically repealed to the extent it incorporated by reference the provisions of the Municipal Act As such, it has been contended that there was an automatic repeal of the Rent Control Act on and from 15.2.74, within the city of Gauhati.

7. It is the legislative practice to incorporate by reference s provision of an Act into a second Act. If we accept the contention that there has been incorporation of section 5 and 334 of the Municipal Act in section 2 (g) of the Rent Control

Act, the repeal of the Municipal Act by the Corporation Act, in our opinion, did not affect "the Rent Control Act" in any manner whatsoever. Where a provision of an Act is incorporated by reference into a second Act, it has been ruled by the Supreme Court in *Fam Sarup vs. Munshi*, 1963 SC 353, that the repeal of the first Act does not affect the second Act. Their Lordships relied on the Rule laid down by Brett L. J. in *Clarke v. Bradlugh* (1881) 8 QBD 63, which we extract below:

"Where a statute is Incorporated by reference into a second statute, the repeal of the first statute by a third statute does not repeal the second."

In the circumstances, therefore, the repeal of the Assam Municipal Act, 1956 by section 2 of "the Corporation Act" did not affect the Rent Control Act of 1972. The repeal of the Municipal Act has had no effect on the continued operation of the Rent Control Act within the city of Gauhati. As such, the Rent Control Act continued to be in operation in the areas declared to be or included in the Municipality of Gauhati or in the notified areas although later they comprised within the city of Gauhati. In the result, we hold that the Rent Control Act never ceased to apply in the areas aforesaid falling within the city of Gauhati even after 15.2.1974.

8. Let us try to answer the question from another angle and turn to the Rent Control Act of 1972. It is a piece of permanent social legislation. In our opinion, the provisions of a permanent Act should be construed with the assumption that use of the provisions is inexact or loose, and those who assert that a provision is inexact or loose, the burden to

establish the proposition lies heavily on them. It can be discharged only by pointing to something in the context to show that loose and inexact meaning should be preferred. To understand the meaning of the definition 'urban area' we must give it an interpretation consistent with the smooth working of the system which the benevolent Act purports to be regulating and that alternative must be rejected which may introduce uncertainty, confusion or friction into the working of the system. It is not consistent with the well-known principles of construction that one is to interpret a provision with the assumption that the legislature were dealing with an uncertain state of law or fact and that the provisions of the Act be construed in the light of that uncertainty. There is nothing in the context to show that the expression "urban area" was used in loose or inexact, ever-changing or uncertain manner. In our opinion, the definition was meant to be a permanent and fixed definition. If we look at change its nature and character. The fact that the Municipal Act ceased to apply in the city of Gauhati could merely deter new areas to be included within 'urban area' other than by way of declaration by the State Government under Section 1(2) (b) of the Rent Control Act. In our opinion, the Rent Control Act being a firm and permanent Act must receive the construction we have given. We hold, therefore, that the areas declared to be or included in the Gauhati Municipality or the notified areas declared under the Municipal Act within the city of Gauhati continued to remain

an 'urban area' under the Rent Control Act even after the establishment of the Gauhati Municipal Corporation. The conclusion finds ample support from the language of section 444 of the Corporation Act.

“10. Now let us consider the effect of repeal and savings as contained in Section 2 of "the Corporation Act". The provisions of repeal and savings are in respect of "the Municipal Act" and have no bearing on the Rent Control Act. As alluded, the definition of the expressions "urban area" in the Rent Control Act, used Sections 5 and 334 of "the Municipal Act" by reference. It adopted the well known device in legislative practice generally adopted for the sake of brevity. In *Narottam Das vs. State of M. P.*, AIR 1964 SC 1667 the Supreme Court has ruled that the definitions remain effective even after the other Act, with reference to which the definition has been adopted, ceased to exist. Their Lordships have held that the definition would remain effective even after the other Act with reference to which the definition was given ceases to exist. This fact of defining expressions in an Act with reference to some other Act cannot, therefore, have the effect of making the second Act dependent on the first Act. In *Ramsarup (supra)* the same view was expressed by their Lordships. In *Balani Ors vs. The State of Orisza*. (1974) 2 SCC 777 their Lordships quoted with approval what Lord Esher, MR said, In *re Woods Estate* (1886) 31 Ch. D. 607 dealing with legislation by incorporation, which we extract hereinbelow:

“If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have these clauses in the later Act, you have no occasion to refer to the former Act at all”.

Their Lordships also approved the view expressed by Brett L. J. in *Clarks vs. Bradlaugh* (supra).

As such we are of the opinion that the definition contained in Section 2(g) of the Rent Control Act remains effective even after the Municipal Act, with reference to which the definition was given, ceased to be applicable within the city of Gauhati. We further hold that the fact of defining expressions in the Rent Control Act with reference to "the Municipal Act" did not have the effect of making the Rent Control Act dependent on the Municipal Act. Therefore, notwithstanding repeal of the Municipal Act by the Corporation Act, the Rent Control Act, which was never dependent on the Municipal Act continued to be in force within the city of Gauhati.”

(emphasis supplied)

35. The second judgment on the point is ***Gopeswar Mullick and Ors. v. Biraj Mohini Dassi***¹¹, a pre-independence

¹¹ ILR 27 Calcutta 202

decision delivered by the Division Bench of the Calcutta High Court in 1899. The issue before the Calcutta High Court was broadly analogous to the question under consideration before this Bench.

35.1 The appellant landlord contended that the provisions of the Bengal Tenancy Act applied to the scheduled property, namely the land falling outside the town of Calcutta, which had been notified as the exempted area under the Bengal Tenancy Act at the time of its enactment. Conversely, the respondent tenant argued that since the boundaries of the town of Calcutta had been expanded and extended under the Municipal Act of 1888, the newly extended areas should also be deemed part of the “town of Calcutta,” and thus exempted from the applicability of the Bengal Tenancy Act.

35.2 The Division Bench rejected the tenant’s contention and agreed with the landlord, holding that while the Municipal Act extended the municipal limits of Calcutta to consolidate and amend the law relating to municipal affairs of

the town and its suburbs, it did not automatically alter or extend the definition of “town of Calcutta” as notified under the Bengal Tenancy Act. Consequently, the land in dispute was not exempted from the operation of the Bengal Tenancy Act, and the landlord-tenant relationship remained governed by its provisions. Paras 2 to 4 of the Calcutta High Court judgment provide a ready reference and are reproduced as follows:

“2. The defence set up in the written statement was a varied one; that the relation of landlord and tenant did not exist between the plaintiff s and the defendant; that the land was held in mokurrari and mourasi right; that the defendant had acquired a title by adverse possession; that the plaintiff s were barred by the statute of limitation, and that, if the defendant were a tenant under the plaintiff s, she was an occupancy raiyat. Of all these varied contentions, the last only has been argued before us. The first Court held that the defendant was an occupancy raiyat and was not liable to be ejected; the Lower Appellate Court reversed this decision; hence the present appeal. It is admitted that, before suit, proper notices to quit had been duly served on the defendant.

3. The first point argued before us on behalf of the appellant is that the Bengal Tenancy Act applies to the case, the land being outside the Town of Calcutta. The respondents contend

that, having regard to Bengal Act II of 1888, the land in question is within the Town of Calcutta, and so exempted from the operation of the Bengal Tenancy Act. I am unable to take the latter view. The term "Town of Calcutta" is one well recognised, and at the time of the passing of the Bengal Tenancy Act its boundaries were well known and well defined, and that expression, as used in the Tenancy Act, can, in my opinion, only relate to the Town as it existed at the time of the passing of the Act. No doubt, the area of the Town has, for municipal purposes, been extended by the Act I have mentioned, and this land is within the extended boundary; but the area was extended for those purposes only, and not for all purposes. It could scarcely be contended, for example, that the effect of the Municipal Act of 1888 was to extend the jurisdiction of the High Court on its Original Side over the new area, as being within the "Town of Calcutta." The Act itself draws a distinction between the "Town of Calcutta," "Calcutta," and the "suburbs" of the Town, and it would be a strong thing to hold that this Act, which was one to extend the "municipal limits of Calcutta," and to consolidate and amend the law relating to the municipal affairs of the town and suburbs of Calcutta, was an extension of the "Town of Calcutta," so as to exclude the newly enclosed area from the operation of the Tenancy Act. It may be noticed that the new boundaries are spoken of as those of "Calcutta," not of the "Town of Calcutta."

4. The land in dispute then is subject to the operation of the

Bengal Tenancy Act.”

(emphasis supplied)

36. The legislature may, in its wisdom, always resort to the wide powers available under Section 1(3) of the Rent Act to modify, amend, extend, or even withdraw the areas already notified as part of the schedule under Section 1(2). Once the legislature decides to undertake such an exercise of modifying, amending, or withdrawing any ‘area’ as notified under Section 1(2), it must necessarily follow the procedure stipulated in the proviso, which requires consultation with and seeking the views of the concerned local authority (panchayat or municipality) before undertaking the exercise.

37. However, if the State Government chooses to keep Schedule I intact, without effecting any changes or modifications, the Court cannot draw any inference in favor of any aggrieved party claiming an automatic modification or alteration of the ‘areas’ as already delineated, determined, and notified under Schedule I of the Rent Act. We accordingly hold

so.

Conclusions and answers to the reference:

38. In view of the discussion undertaken above, we answer the reference by concluding as follows:

a. Clause (2) and Clause (3) of Section 1 of the Rent Act have distinct ambit and scope. Clause (2) empowers the State Government to notify the area vide Schedule I to which the Rent Act becomes applicable. Clause (3), on the other hand, functions as a superstructure on the foundation of the area already notified under Clause (2), and relates to the addition, modification, or withdrawal of any area already notified under Clause (2). The proviso appended to Clause (3) is confined to Clause (3) and cannot have any impact on the operation of Clause (2).

b. Section 1(2) read with Schedule I cannot be interpreted in light of the proviso to Clause (3), as the proviso has a limited territorial operation confined to the enacting/principal provision of Clause (3).

c. Notification of panchayats or municipalities under Schedule I is by incorporation from the erstwhile applicable Panchayat or Municipality Acts, by bodily lifting the area so notified as the concerned panchayat/municipality at the relevant point of time under the respective enactment. Post incorporation, the said area became disjointed from the original enactment and was thereafter immortalized. Consequently, any subsequent change in boundaries, territories, status, or delimitation of the concerned panchayat/municipality does not affect Schedule I, as the Rent Act is independent of the Panchayat or Municipality Acts.

d. The Rent Act is a special enactment concerning landlord-tenant relationships and related matters and prevails over the Panchayat and Municipality Acts. Therefore, any alteration of status, boundaries, or territories of panchayats/municipalities notified under Schedule I under the Panchayat or Municipality Acts does not affect the operation of the Rent Act, unless the State Government, in its discretion, chooses to adopt the

modified territory, status, or boundaries under Clause (3) of Section 1 the Rent Act.

e. The petitioner's plea has no merit and is accordingly rejected. The contention regarding the inapplicability of the Rent Act on the conversion of a panchayat to a municipality, or due to alteration of boundaries or territories over time under various laws governing local authorities, fails. Resultantly, the judgment of the Division Bench in **Koorantakath Kamaludeen** (*supra*) and the judgments relied upon therein, viz., **Biyyathu** (*supra*) and **Mahammedkutty** (*supra*), do not correctly lay down the law and are hereby overruled. The *prima facie* view taken by the Division Bench of this Court in the reference order in O.P. (R.C.) No. 16/2025 dated 25.11.2024, and the judgment in **Meenakshy** (*supra*), correctly interpret the provisions of Section 1 of the Rent Act and are accordingly affirmed.

f. The reference to this Full Bench is answered accordingly, and the matter is remitted to the Division Bench for deciding

the pending proceedings finally in accordance with the observations and conclusions recorded above.

This Court places on record its appreciation for the valuable assistance rendered by the learned *Amicus Curiae*, Sri Gopalakrishna Kurup K, Advocate General, State of Kerala, in the present case.

Sd/-
SUSHRUT ARVIND DHARMADHIKARI,
JUDGE

Sd/-
GOPINATH P.,
JUDGE

Sd/-
G. GIRISH,
JUDGE