IN THE HON'BLE HIGH COURT OF DELHI AT NEWDELHI

WRIT PETITION (C) NO OF 2021

(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Sh.Sanjeev Rajpal & Ors. ...Petitioners

Verses

Union of India & Ors ...Respondents

PETITION UNDER ARTICLE 226 OF CONSTITUTION OF INDIA FOR CHALLENGING THE CONSTITUTIONAL VALIDITY OF SECTION 14(1)(h) OF DELHI RENT CONTROL ACT,1958

MOST RESPECTFULLY SHOWETH

1. That present petition is filed under Article 226 of constitution of India, 1950 for challenging the constitutional validity of Section 14(1)(h) of Delhi Rent Control Act, 1958 (hereinafter as "*DRCA*") on various grounds by the petitioner and also petitioner is being aggrieved by the judgment dated 14.11.2018 of Sh. Puneet Pahawa, Additional Rent Controller, central District, Tis Hazari Court, Delhi passed in eviction petition no. 827/14/09 or New No. 80371/16. The true copy of order dated 14.11.2018 is annexed as **Annexure No. 1**.

2. That present petition is intended to bring light to the unreasonable classification and inequality towards the landlords having commercial accommodations in Delhi. Landlords have been forced to not to seek legitimate eviction when tenants do not require any more protection under DRCA due to change in circumstance of tenant. However, due to presence of section 3(c) of DRCA and usage of word "Residence" in Section 14(1)(h) unreasonable protection to tenant having non residential premises under tenancy continues. Before we get into the grounds, petitioners' factual matrix and its connected circumstances is required to give light to ground reality of Delhi and in implementation of DRCA, for this Hon'ble Court.

FACTS OF THE CASE

3. That the petitioners are real brothers and have been operating business through a joint business under the name and style of M/s Rajpal Hardwares having office at 4040, Ajmeri Gate, Delhi – 06. The operations of hardware and its components is of more than 50 years and has strong routes in the main commercial market of New Delhi *"Ajmeri Gate"*.

4. That the petitioners are also living together in a joint family at Rajouri garden, Delhi at their ancestral home. The petitioner No.1 and No.2 having been married and has two children each. Petitioner No.1 has one son naming Sh. DhruvRapal who is pursuing BBA and he after college hours assists in the shop to help petitioners, on the other hand daughter of Petitioner No.1 Sh. Chahat Rajpal is in final year of B.Com and intends to start its own business. The petitioner No.2 has two sons whereby Sh. Akshit Rajpal the eldest son of petitioner has been regularly coming to office at Shop No. 4040 Ajmeri gate and the younger one is Sh. Nishit Rajpal who is doing MBA. The whole joint family and their children are dependent on one business entity M/s Rajpal Hardware.

5. That the petitioners has been planning to accommodate both their eldest sons in the same business as both of them has shown business interest and ethics thus, intended to seek possession of neighbor shop which is owned by them that is shop no.4039. The Shop No. 4039 has been in possession of the tenant of petitioner name Sh. Raj Kumar and Sh. Kishan Kumar (deceased) since 1980 and more over Sh. Ankit Gupta adopted son of Sh. Raj Kumar has been managing their business under the name and style of M/s BishamberNathHemchand (hereinafter as *"Tenants"*) from the same premises.

6. That on 18.12.2009 the petitioner filed a case for eviction (Eviction Petition no. 827/14/09) before Additional Rent Controller, Central District, Tis Hazari Court, Delhi under section 14(1)(h) of DRCA whereby court vide judgment dated 14.11.2018 (Annexure No.1)

negated the plea under the said clause holding that the impugned premises being used for commercial purpose and clause (h) uses the word residence. Thus, the eviction under section 14(1)(h) of DRCA is not allowed. Though it was observed by the said Hon'ble Rent court that tenants have multiple commercial premises still tenants show reluctance to give away the possession of tenanted shops and have been seeking protection under DRCA till date due to section 3 (c) of DRCA.

7. That the tenant as on today does not have same need as tenant is using 6 shops involving the tenanted shop for his business and its is pertinent to mention that tenant has one shop of equal size like the tenanted shop of petitioner which is just in neighbours where the tenanted shop is located and is on 100 feat length of main road in Ajmeri Gate.

8. A question arises why such a tenant is still protected under DRCA when no longer requires/need tenanted premises for non residential purposes in. The object and purpose of section 14(1)(h) of DRCA is that tenant having only residence premises is protected until the tenant has been allotted or has acquired premises. Why is not tenant having non residential property is been considered under the said section because the provision has latent flaw and is not justified in protecting only residential premises. However, still the petitioner/landlord having Non-residential property is forced to be governed under the DRCA due to section 3(c) of DRCA as it uses the phrase "Residential or not". And though it has been observed by the Hon'ble Supreme Court of India in Satyawati Sharma (Dead) V Union of India (2008) 5 SCC 287 that DRCA does not make any difference in residence or non residential premises.

9. That at the time of enactment of DRCA it was actually intended to ensure and secure habitable residence (as the preamble of DRCA mentions "lodging houses") for people who shifted to Delhi, India after independence. However, DRCA being a social welfare legislation needs to be in sync with change societal circumstances and infrastrure developement, which is somehow ignored by the legislature/Respondents with respect section 14(1)(h) from very long time.

10. That it is pertinent to bring on record the basis or object and purpose of enacting the DRCA and why protection from eviction was an "Urgent need". In the words of late Justice Krishna Iyer in S. B. Noronah vs Prem Kumari Khanna 1980 (1) SCC 52 at Para 2, 9, 10 and 11;

> *"2. The extraordinary scarcity of accommodation in our country has produced the legislative and legislative phenomena of tenants' protection laws and interminable 'eviction' cases. The situation cries for a social audit of the explosive expansion of ruinous and pathetic 'rent control litigation' and an urgent yet dynamic policy of promoting house construction for the lower brackets of Indian humanity.*
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> *...*
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> *9. To maintain the integrity of the law the court must 'suit the action to the word, the world to the action, and so we have to fathom, from the language employed and the economic, milieu, what the meaning of Sec. 21 is and save it from possible exploitation by unscrupulous landlords for whom 'fair is foul, and foul is fair'.*
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> *10. Rent control legislation in Delhi, as elsewhere in the country, is broadly intended 'to provide for the control of rents and evictions and of rates of hotels and lodging houses and for the lease of vacant premises to Government, in certain areas in the Union Territory of Delhi.*
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> *11. This is understandable where the city population swells and the city accommodation stagnates, the people suffocate for space and landlords 'make hay' playing the game of 'each according to his ability to grab.*"

11. That the petitioner is aggrieved by the judgment dated 14.11.2018 (Annexure No.1) of Sh. Puneet Pahawa, Additional Rent Controller, Central District, Tis Hazari Court, Delhi passed in Eviction Petition No. 827/14/09 or New No. 80371/16 as the Hon'ble Rent court denied summary proceedings under section 14(1)(h) of DRCA as the shop or premises is commercial premises and the above provision

only includes *"Residential premises"*. The above provision not includes non residential premises has been discriminatory and is violating fundamental rights of such landlords. Therefore the petitioner file this writ petition challenging the validity of the section 14(1)(h) of DRCA in accordance with constitutional principles.

12. Thus subject to above paragraphs following are the grounds for challenging the constitutional validity of the Section 14(1)(h) of Delhi Rent Control Act, 1958 as it is in violation of Article 14, 21, 19(1)(g) of Constitution of India, 1950.

GROUNDS

13. THE DRCA LAW BEING A SOCIAL LEGISLATION RECOGNIZED THE NEED OF TENANTS FOR HABITABLE ACCMODATIONS BUT HAS FAILED TO RECOGNIZE THE CHANGE IN SOCIETAL CIRCUMSTANCES WITH RESPECT TO SECTION 14(1) (H) OF DRCA.

xxviii) BECAUSE landlord having commercial property in Delhi and same is on rent for less than Rs. 3,500 (Three thousand five hundred rupees only) is clearly within the scope of section 3(c) of DRCA as it uses the phrase "Residential or not" thus, binds a landlord having commercial property to be governed according to DRCA law. However, there is not a single provision in the DRCA Law holding that a tenant having commercial property can be evicted, on or when, the tenant has acquired or has been allotted commercial property.

xxix) BECAUSE the DRCA law was drafted for the purpose of protection of tenants as they were weak during times of independence and there was scarcity of habitable residential accommodations in Delhi and thus legislature/Respondents restrained eviction on any other grounds other than what is mentioned under section 14 of DRCA. In today's times the grounds for eviction u/s 14 of DRCA is not accordance with change in societal circumstances as in the petitioner factual matrix, he has been left helpless when still tenant is been protected, wherein tenant has self owned commercial property and his need for

tenanted land is already fullfilled. Thus the grounds under section 14 of DRCA are not exhaustive and are incomplete, and do not guide in any way in social balancing of the interest of landlord and tenant. [Reference is placed on Satyawati Sharma v Union of India (2008) 5 SCC 287, Malpe Vishwanth Acharya V State of Maharashtra (1998) 2 SCC 1]

xxx) **BECAUSE** usage of *"Non-obstante clause"* has made the provision section 14 of DRCA as exhaustive but does not any way provide a any remedy for situation where the tenant's need for rented property is fulfilled and at the same time no statutory protection is required for such a tenant.

xxxi) **BECAUSE** legislature/Respondents knowingly or unknowingly has been discriminating against the commercial tenancy in Delhi and making its intention very clear that under section 14(1) (h) of DRCA that only if the tenant has acquired or has been allotted a residential place then such tenant has to be evicted thus, impliedly meaning that if a tenant requirement for residential place is fulfilled then such tenant does not need any more protection under the DRCA law but such provisions is only limited to residential places. Thus, legislature/Respondents using the word "Residential" and not considering Non Residential property/commercial property is purely arbitrary, unreasonable and a latent drafting flaw which has just been ignored for a very long time.

xxxii) **BECAUSE** arbitrariness and unfairness towards commercial property is more clear when Section 3(c) of DRCA uses the word "Resident or not" and thus, binds the landlords who have let their property for Non Residential purpose or let their Non Residential property for commercial purpose but does not give remedy to seek possession of their property again when the tenant need is fulfilled or on any other grounds as deemed reasonable.

xxxiii) **BECAUSE** legislature/Respondents not providing remedy to seek possession of tenanted commercial land again and binding the said landlord to be governed in accordance with DRCA is not reasonably justified and discriminatory to such landlords.

xxxiv) BECAUSE the DRCA law is social welfare legislation must ensure societal balance but the implementation of law can change due to change in societal circumstances and in present circumstances the purpose and scope of DRCA law is not any way guiding in balancing the interest of tenant and landlord with respect to section 14(1)(h) of DRCA. This misbalance was first recognized by Hon'ble Supreme Court of India as constitutional bench in Gian Devi Anand V Jeevan Kumar & Ors (1985) 2 SCC 683 judgment while examining the heritability of commercial premises by tenants' heirs. The Hon'ble court while observing that commercial premises are equally protected by legislature/Respondents in case of heritability of tenanted land and recognizing the landlords need, suggested a shift in interpretation of grounds of eviction, due to change in circumstances of society. The para 32 and 39 of Gian Devi (supra);

> *"34. It may be noted that for certain purposes the Legislature/Respondents in the Delhi Act in question and also in various other Rent Acts has treated commercial premises differently from residential premises S. 14(1)(d) provides that it will be a good ground for eviction of a tenant from residential premises, if the premises let out for use as residence is not so used for a period of six months immediately before the filing of the application for the recovery of possession of the premises. Similarly S. 14(1)(e) makes bonafide requirement of the landlord of the premises let out to the tenant for residential purposes a good ground for eviction of the tenant from such premises. These grounds, however, are not made available in respect of commercial premises.*
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> *39. Before concluding, there is one aspect which we consider it desirable to make certain observations. The owner of any premises, whether residential or commercial, let out to any tenant, is permitted by the Rent Control Acts to seek eviction of the tenant only on the ground specified in the Act, entitling the landlord to evict the tenant from the premises. The restrictions on the power of the landlords in the matter of recovery of possession of the premises let out*

by him to a tenant have been imposed for the benefit of the tenants. Inspite of various restrictions put on the landlords right to recover possession of the premises from a tenant, the right of the landlord to recover possession of the premises from the tenant for the bona fide need of the premises by the landlord is recognised by the Act, in case of residential premises. A landlord may let out the premises under various circumstances. Usually a landlord lets out the premises when he does not need it for own use. Circumstances may change and a situation may arise when the landlord may require the premises let out by him for his own use. It is just and proper that when the landlord requires the premises bona fide for his own use and occupation, the landlord should be entitled to recover the possession of the premises which continues to be his property inspite of his letting out the same to a tenant. The legislature/Respondents in its wisdom did recognise this fact and the Legislature/Respondents has provided that bona fide requirement of the landlord for his own use will be a legitimate ground under the Act for the eviction of his tenant from any residential premises. This ground is, however, confined to residential premises and is not made available in case of commercial premises. A landlord who lets out commercial premises to a tenant under certain circumstances may need bona fide the premises for his own use under changed conditions in some future date should not in fairness be deprived of his right to recover the commercial premises. Bona fide need of the landlord will stand very much on the same footing in regard to either class of premisses, residential or commercial. We therefore, suggest that Legislature/Respondents may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well."

xxxv) BECAUSE the Hon'ble Supreme Court Of India while declaring section 14(1)(e) of DRCA is in violation of Article 14 of

Consutitution of India gave reference to "*doctrine of temporal reasonableness" which meant that a particular legislation may at the time of enactment was quite reasonable and rational but due to lapse of time or due to change in circumstances such legislation may have become arbitrary, unreasonable and violative of the doctrine of equality and also the classification which seemed reasonable at the time of enactment is not non-existent".* In the present matter under section 14(1)(h) of DRCA the landlord having residential property on tenancy is been favored unreasonably and such classification needs to be examined as DRCA includes both residential or non residential premises and there is no difference in definations of such premises . The para 32 and 33 of Satywati Sharma is referred as below for your perusal:

> *"**32**. It is trite to say that legislation which may be quite reasonable and rationale at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent. In State of Madhya Pradesh vs. Bhopal Sugar Industries [AIR 1964 SC 1179], this Court while dealing with a question whether geographical classification due to historical reasons could be sustained for all times and observed:*
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> *"Differential treatment arising out of the application of the laws so continued in different regions of the same reorganized, State, did not therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reason may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume*

permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared.

33. *In Narottam Kishore Dev Verma vs. Union of India [AIR 1964 SC 1590] the challenge was to the validity of Section 87-B of the Code of Civil Procedure which granted exemption to the rulers of former Indian States from being sued except with the consent of the Central Government. In the course of judgment, it was observed as under:*

"If under the Constitution all citizens are equal, it may be desirable to confine the operation of Section 87-B to past transactions and nor to perpetuate the anomaly of the distinction between the rest of the citizens and Rulers of former Indian States. With the passage of time, the validity of historical considerations on which Section 87-B is founded will wear out and the continuance of the said section in the Code of Civil Procedure may later be open to serious challenge.

This view was further affirmed by Hon'ble Supreme Court of India in Vinod kumar v Ashok Kumar Gandhi (2019)17SCC 237.

The true copy of judgment of Hon'ble Supreme Court of India Satyawati Sharma V. Union of India (2008) 5 SCC 28 is annexed as **ANNEXURE NO.2.**

xxxvi) BECAUSE the present matter pertains to non residential premises and section 14(1) (h) of DRCA only mentions residence but in drafting such provision the intention of legislature/Respondents was very clear that it does recognize the fact that if the need of tenants is fulfilled by acquiring or by allotment of any residential premises then he is deemed to be evicted under the aforesaid provision. Moreover, DRCA was enacted for protection of tenants as there was urgent requirement of accommodations in Delhi during 1950's, now due to change in circumstances this requirement has been fulfilled. However,

continuation of same DRCA law has weakened the landlord where his tenant has its own residential premise and still does not return the possession to the landlord. Reliance's is placed on para 29 and 30 of Malpe Vishwanth Acharya V State of Maharashtra (supra) and para 9 of Joginder Pal V Naval Kishore Behal (2002) 5 SCC 397 is reiterated below for your perusal:

Para 29 and 30 of Malpe Vishwanth Acharya V State of Maharashtra (supra)

"29. *In so far as social legislation, like the rent control act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are no exploited. At the same item such a law has to be revised periodically so as to ensure that a disproportionately larger benefit them the one which was intended is not given to the tenants. It is not as if the government does not take remedial measures to try and offset the effects of inflation. In order to provide fair wage to the salaried employees the government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent-the increase made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in todays context.*

30. *When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have a narrow or short sighted parochial approach. Giving a grater than due emphasis to a vocal section society results not marly in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social Legislation is treated with deference by the Courts not merely because the Legislature/Respondents represents the people but also*

because in representing them the entire spectrum of views is expected to be taken into account. The legislature/Respondents is not shackled by the same constraints as the courts of law. But it's power is coupled with a responsibility. It is also the responsibility of the Courts to look at legislation from the alter of Article 14 of the Constitution. This article is intended, as is obvious from its words, to check this tendency; giving under performance some over others."

Para 9 of Joginder Pal V Naval Kishore Behal (2002) 5 SCC 397

"9. The Rent Control Legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The Legislative intent has to be respected by the Courts while interpreting the laws. But it is being uncharitable to Legislature/Respondentss if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants go to the extent of being unfair to the landlords. The Legislature/Respondents is fair to the tenants and to the landlords both. The Courts have to adopt a reasonable and balanced approach while interpreting Rent Control Legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlord too are week and feeble and feel humble."

The copy of judgment Malpe Vishwanth Acharya V State of Maharashtra (1998) 2 SCC 1 and Joginder Pal V Naval Kishore Behal (2002) 5 SCC 397 is annexed as **ANNEXURE NO.3 AND 4.**

xxxvii) BECAUSE legislature/Respondents does not made difference between residential and non-residential premises as far as definition of "premises", "Tenants", Standard rent, Section 3 of DRCA and the grounds for eviction u/s of 14 DRCA but still no amendment has been brought forward to remove a latent difference in residential or non residential u/s 14(1)(h) and due to such difference the landlord having non residential premise has been facing discrimination. [Reference is placed on Satyawati Sharma V Union of India (supra)]. For your perusal the definitions and provisions is made part of Appendix.

xxxviii) BECAUSE there is no difference in DRCA regarding residential or non residential premises, in corollary to this view, in Satyawati Sharma (Supra) Hon'ble Supreme Court of India in appeal has exact same view while setting aside the judgment delivered by this Hon'ble Court full bench in Satyawati Sharma V Union of India AIR2002Delhi509 and HC Sharma V LIC of India ILR(1973)1Del90. The para 31 of judgment is reiterated below:

> ***"...****Therefore, the reason/cause which prompted the Division Bench of the High Court to sustain the differentiation/classification of the premises with reference to the purpose of their user, is no longer available for negating the challenge to Section 14(1)(e) on the ground of violation of Article 14 of the Constitution, and we cannot uphold such arbitrary classification ignoring the ratio of HarbilasRai Bansal vs. State of Punjab (supra), which was reiterated in Joginder Pal vs. Naval Kishore Behal (supra) and approved by three- Judges Bench in RakeshVij vs. Dr. Raminder Pal Singh Sethi (supra). In our considered view, the discrimination which was latent in Section 14(1)(e) at the time of enactment of 1958 Act has, with the passage of time (almost 50 years) has become so pronounced that the impugned provision cannot be treated intra vires Article 14 of the Constitution by applying any rational criteria."*

xxxix) BECAUSE it is important that the legislature/Respondents enacting a law assures that there a reasonable balance between

the tenants and landlords and also the balance may vary due to change in circumstances of society. The DRCA law has gone through many amendments but still there are lot difficulties in implementation of the law. The legislation did recognize imbalance in interest and difficulties while enacting the Delhi Rent Act, 1995 (hereinafter as *"DRA 1995"*). the object and purpose of the law is :

> ***"1.*** *The relations between landlords and tenants in the National Capital Territory of Delhi are presently governed by the Delhi Rent Control Act, 1958. This Act came into force on the 9th February, 1959. It was amended thereafter in 1960, 1963, 1976, 1984 and 1988. The amendments made in 1988 were based on the recommendations of the Economic Administration Reforms Commission and the National Commission on Urbanisation. Although they were quite extensive in nature, it was felt that they did not go far enough in the matter of removal of disincentives to the growth of rental housing and left many questions unanswered and problems unaddressed. Numerous representations for further amendments to the Act were received from groups of tenants and landlords and others.*
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> ***2.*** *The demand for further amendments to the Delhi Rent Control Act, 1958 received fresh impetus with the tabling of the National Housing Policy in both Houses of Parliament in 1992. The Policy has since been considered and adopted by Parliament. One of its major concerns is to remove legal impediments to the growth of housing in general and rental housing in particular. Paragraph 4.6.2 of the National Housing Policy specifically provides for the stimulation of investment in rental housing especially for the lower and middle income groups by suitable amendments to rent control laws by State Governments. The Supreme Court of India has also suggested changes in rent control laws. In its judgment in the case of Prabhakaran Nair vs. State of Tamil Nadu, the Court observed that the laws of landlords and tenants must be made rational, humane, certain and capable of being quickly implemented. In this context, a Model Rent Control Legislation was formulated by the*

Central Government and sent to the states to enable them to carry out necessary amendments to the prevailing rent control laws. Moreover, the Constitution (Seventy-Fifth Amendment) Act, 1994 was passed to enable the State Governments to set up State-level rent tribunals for speedy disposal of rent cases by excluding the jurisdiction of all courts except the Supreme Court.

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

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

(a) exemption of certain categories of premises and tenancies from the purview of the proposed legislation;

(b) creation of tenancy compulsorily to be written agreement;

(c) compulsory registration of all written agreements of tenancies except in certain circumstances;

(d) limit the inheritability of tenancies;

(e) redefine the concept of rent payable and provide for its determination, enhancement and revision;

(f) ensure adequate maintenance and repairs of tenanted premises and facilitate further improvement and additions and alterations of such premises;

(g) balance the interests of landlords and tenants in the matter of eviction in specified circumstances;

(h) provide for limited period tenancy and automatic eviction of tenants upon expiry of such tenancy;

(i) provide for the fixing and revision of fair rate and recovery of possession in respect of hotels and lodging houses;

(j) provide for a simpler and speedier system of disposal of rent cases through Rent Authorities and Rent Tribunal and by barring the jurisdiction of all courts except the Supreme Court; and

(k) enhance the penalties for infringement of the provisions of the legislation by landlords and tenants.

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

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

xl) BECAUSE even DRA 1995 does not make any difference in residential or non-residential property and also balance the interest of tenants and landlords and even Hon'ble Supreme Court in Common Cause V Union of India (2003) 8 SCC 250, wherein writ of mandamus was denied for passing notification for DRA to come into force, observed that legislature/Respondents did recognize that there has been substantial increase in commercial or non residential property for tenancy and legislature/Respondents themselves removed the embargo of difference. For your perusal Para 10 of Satyawati Sharma (Dead) case (Supra):

"9. An analysis of the above noted provisions would show that till 1947 no tangible distinction was made between the premises let for residential and non-residential purposes. The implicit restriction on the landlord's right to recover possession of the non-residential premises was introduced in the Delhi and Ajmer-Marwara Rent Control Act, 1947 and was continued under the 1958 Act. However, the 1995 Act does not make any distinction between the premises let for residential and non-residential purposes in the matter of eviction of tenant on the ground that the same are required by the landlord for his/her bona fide use or occupation. Even though, the 1995 Act is yet to be enforced and

in Common Cause vs. Union of India (supra) this Court declined to issue a writ of mandamus to the Central Government, for that purpose, we can take judicial notice of the fact that the legislature/Respondents has, after taking note of the developments which have taken place in the last 37 years i.e. substantial increase in the availability of the commercial and non-residential premises or the premises which can be let for commercial or non-residential purposes and meteoric rise in the prices of land and rentals of residential as well as non-residential premises, removed the implicit embargo on the landlord's right to recover possession of the premises if the same are bona fide required by him/her."

xli) BECUASE in section 22(2)(j) of DRA the legislation has limited the time for vacating the premise after vacation order is delivered by Rent control court, by tenant, in case he has acquired or has been allotted a residential premises, thus implicitly it can said that legislature/Respondents is now understanding that the tenant does not need protection in the rent law if his need for residential premises is satisfied and he is bound to vacate the property within one year irrespective of the tenant circumstances. The provision section 22 (2) (J) of DRA is reiterated below:

"Chapter IV-Protection of Tenants Against Eviction

22. Protection of tenant against eviction.-

(1) …

(2) The Rent Authority may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(a) …

(j) that the tenant, his spouse or a dependent son or daughter ordinarily living with him has, whether before or after the commencement of this Act, built or acquired vacant possession of, or been allotted a residence:

Provided that the Rent Authority may in appropriate cases allow the tenant to vacate the premises within such period as he may permit but not exceeding one year from the date of passing of orders of eviction;

(r) ….

(3) …

(4) …"

xlii) **BECAUSE** Hon'ble Supreme Court of India while affirming the view of Gian devi and Satyawati Sharma judgment choose not interfere with order of Hon'ble High court of Bombay in State of Maharahrtra & Ors V Super Max Internation Pvt Ltd & Ors (2009) 9SCC 772 where the Hon'ble High court while confirming the ejectment order, imposed a condition that the execution of decree/order is stayed only if the tenant shall deposit Rs.5,40,000 every month. Thus balancing the interests of landlords and Tenants and acknolwdging the fact that tenant are no more weak unlike tenants in 1958's. Para 71 to 73 of State of Maharahrtra & Ors V Super Max Internation Pvt Ltd & Ors (supra);

"71. We reaffirm the views expressed in Satyawati Sharma and emphasise the need for a more balanced and objective approach to the relationship between the landlord and tenant. This is not to say that the Court should lean in favour of the landlord but merely that there is no longer any room for the assumption that all tenants, as a class, are in dire circumstances and in desperate need of the Court's protection under all circumstances. (The case of the present appellant who is in occupation of an area of 9000 sq. ft. in a building, situate at Fort, Mumbai on a rental of Rs. 5236.58/-, plus water charges at the rate of Rs. 515.35/- per month more than amply highlights the point)

72 With the perspective thus adjusted all the submissions made by Mr. Lalit on behalf of the appellant have a simple answer. The interim order of the High Court asking the appellant to deposit Rs.5, 40,000/- from the date of the decree as condition for stay of the execution of the decree of ejectment

has to be seen as one single package. The appellant may or may not accept the order as a whole. But it is not open to it to accept the order in so far as it stays the execution of the decree and to question the condition attached to it.

73. In an appeal or revision, stay of execution of the decree(s) passed by the court(s) below cannot be asked for as of right. While admitting the appeal or revision, it is perfectly open to the court, to decline to grant any stay or to grant stay subject to some reasonable condition. In case stay is not granted or in case the order of stay remains inoperative for failure to satisfy the condition subject to which it is granted, the tenant-in-revision will not have the protection of any of the provisions under the Rent Act relied upon by Mr. Lalit and in all likelihood would be evicted before the revision is finally decided. In the event the revision is allowed later on, the tenant's remedy would be only by way of restitution."

The copy of judgment State of Maharahrtra & Ors V Super Max Internation Pvt Ltd & Ors (2009) 9SCC 772 is annexed as **Annexure No.5**

xliii) BECAUSE even on August 2019 Hon'ble Supreme court of India in Vinod Kumar V Ashok Kumar Gandhi (supra) while negating the submissions that Satyawati Sharma V Union of India (Supra) judgment is per incuriam observed that balanced and objective approach has to be taken for interest of landlords and tenants as there is no longer room for assumptions that there tenants as a class, are in dire circumstances.

14. UNREASONBALE CLASSIFICATION ONLY OF RESIDENTIAL PREMESIS UNDER SECTION 14(1)(H) OF DRCA AND INCLUSION OF COMMERCIAL PROPERTY U/S 3 OF DRCA IS IN VIOLATION OF ARTICLE 14, 19(1)(G) AND 39 OF CONSTITUTION OF INDIA, 1950.

i. BECAUSE the landlords having non residential premises are equal and similarly situated in comparison to landlords with residential property with respect to section 14(1) (h) of DRCA and non inclusion of commercial property under the said section is

discriminatory and arbitrary, thus it is in violation of Article 14 of Constitution of India, 1950. Article 14 declares that the state shall not deny to any person equality before the law or the equal protection of the laws. Broadly speaking, the doctrine of equality means that there should be no discrimination between one person and another, if having regard to the subject matter of legislation, their position is the same. The plain language of Article 14 may suggest that all are equal before the law and the State cannot discriminate between similarly situated persons.

ii. BECAUSE the legislature/Respondents by enacting Delhi Rent Act, 1995 did recognize the fact there are substantial infrastructural development in Delhi in about 60 years since the enactment of DRCA and even Hon'ble Supreme Court of India in various judgment since 1985 (Gian Devi judgment) has recognized the change in societal and infrastructure circumstances but legislature/Respondents still continues to discriminate with non-residential premises as unequal to residential property with respect to section 14(1)(h) of DRCA. Thus, to test the classification being unreasonable or not Hon'ble Supreme Court of India in matter titled as Ram Krishna Dalmia and Ors. Vs. Shri Justice S.R. Tendolkar and Ors. (AIR 1958 SC 538) founded the doctrine of reasonable classification, that is:-

i. *"It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be found on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the*

basis of classification and the object of the Act under consideration. It is also well established by the decisions of Supreme Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

ii. And also in the same judgment:-

iii. *Chief Justice S.R. Das, speaking for the Court, enunciated some principles, which have been referred to and relied in all subsequent judgments. These are:*

iv. *"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;*

v. *(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles ;*

vi. *(c) that it must be presume that the legislature/Respondents understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;*

vii. *(d) that the legislature/Respondents is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;*

viii. *(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of times and may assume every state of facts which can be conceived existing at the time of legislation; and*

ix. *(f) that while good faith and knowledge of the existing conditions on the part of a*

legislature/Respondents are to be resumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

iii. **BECAUSE** of partition and forceful removal and shift of large amount of people to Delhi, India from Pakistan, there was scarcity and need for habitable accommodations in Delhi during 1958 thus, then classification under section 14(1)(h) of DRCA for residential property was beneficial as classification had nexus with object and purpose of DRCA but legislature/Respondents has failed to adopt and bring in amendments in DRCA law in accordance with societal changes. The fact of no change in DRCA law and latent flaw in the said law was clearly observed by Hon'ble Suprme court of India in Satyawati Sharma V. Union of India (Supra) in Para 30 with respect to ground of eviction under section 14 of DRCA;

i. *"30. In our opinion, the reasons which weighed with the High Court in H.C. Sharma vs. Life Insurance Corporation of India &Anr. (supra) and the impugned judgment cannot in the changed scenario and in the light of the ratio of Harbilas Rai Bansal vs. State of Punjab (supra), which was approved by three-Judge Bench in RakeshVij vs. Dr. Raminder Pal Singh Sethi (supra) and of Rattan Arya vs. State of Tamil Nadu (supra), as also the observations contained in the concluding portion of the judgment in Gian Devi Anand vs. Jeevan Kumar &Ors. (supra). now be made basis for justifying the classification of premises into residential and non- residential in the context of landlord's right to recover possession thereof for his bona fide requirement. At the cost of repetition, we deem it proper to mention that in the rent control legislations made applicable to Delhi*

from time to time residential and non-residential premises were treated at par for all purposes. The scheme of the 1958 Act also does not make any substantial distinction between residential and non-residential premises. Even in the grounds of eviction set out in proviso to Section 14(1), no such distinction has been made except in Clauses (d) and (e).”

This is a settled law by negating the precedents set in H.C. Sharma Vs. Life Insurance Corporation of India & Anr. ILR (1973) 1 Del 90 and Amarjit Singh vs. Smt. Khatoon Quamarin [1986 (4) SCC 736].

iv. **BECAUSE** there is no difference in residential or non residential as to grounds of eviction thus, such classification under section 14(1)(h) of DRCA is of no benefit to tenant or landlord but it does treats the landlords having Non residential premises unequal in comparison landlords with residential property such inequality is in violation of Article 14 of Constitution of India.

v. **BECAUSE** landlords having non residential property under tenancy is been treated unequal and discriminated thus, such individuals are not equally protected by law and any classification which was earlier in 1958 was of help and was founded on *“Intelligible differentia”* is of no avail in present time due to increase in availability of infrastructure. Thus, classification of residential or non residential property fails on first condition of doctrine of reasonable classification that is, “*the classification must be founded on an intelligible differentia which distinguishes person or things that are grouped together for others left out of the group”* [Bhudhan Chaudhary V State of Bihar AIR 1955 SC 191]. Reference is also placed on para 31 of Satyawati Sharma (Supra);

“In H.C. Sharma vs. Life Insurance Corporation of India (supra), the Division Bench of the High Court, after taking cognizance of the acute problem of housing created due to partition of the country, upheld the classification by observing that the Government could legitimately restrict the right of the landlord to recover possession of only those

premises which were let for residential purposes. The Court felt that if such restriction was not imposed, those up-rooted from Pakistan may not get settled in their life. As of now a period of almost 50 years has elapsed from the enactment of the 1958 Act. During this long span of time much water has flown down the Ganges. Those who came from West Pakistan as refugees and even their next generations have settled down in different parts of the country, more particularly in Punjab, Haryana, Delhi and surrounding areas. They are occupying prime positions in political and bureaucratic set up of the Government and have earned huge wealth in different trades, occupation, business and similar ventures. Not only this, the availability of buildings and premises which can be let for non- residential or commercial purposes has substantially increased. Therefore, the reason/cause which prompted the Division Bench of the High Court to sustain the differentiation/classification of the premises with reference to the purpose of their user, is no longer available for negating the challenge to Section 14(1)(e) on the ground of violation of Article 14 of the Constitution, and we cannot uphold such arbitrary classification ignoring the ratio of Harbilas Rai Bansal vs. State of Punjab (supra), which was reiterated in Joginder Pal vs. Naval Kishore Behal (supra) and approved by three- Judges Bench in Rakesh Vij vs. Dr. Raminder Pal Singh Sethi (supra). In our considered view, the discrimination which was latent in Section 14(1)(e) at the time of enactment of 1958 Act has, with the passage of time (almost 50 years) has become so pronounced that the impugned provision cannot be treated intra vires Article 14 of the Constitution by applying any rational criteria."

vi. **BECAUSE** the rational for classification under section 14(1)(h) of DRCA is not any way has nexus with the object of DRCA in present circumstances. Thus, the second test for reasonable classification also fails. Therefore, section 14(1)(h) of DRCA giving benefit only to landlords having residential premises is discriminatory classification and is in violation of Article 14 of the Constitution of India. Moreover, such classification also fails to come within the

ambit of principles set in Ram Krishna Dalmia and Ors. Vs. Shri Justice S.R. Tendolkar (Supra) and Ors by then Hon'ble *Chief Justice Sh. S.R. Das.*

vii. **BECAUSE** even if legislature/Respondents may be quite reasonable and rationale at the time of its enactment but may be with the lapse of time and/or due to change of circumstances the legislation becomes arbitrary, unreasonable and violative of the doctrine of equity and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent. Reference placed on State of Madhya Pradesh vs. Bhopal Sugar Industries [AIR 1964 SC 1179], this Court while dealing with a question whether geographical classification due to historical reasons could be sustained for all times and observed:

i. *"Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised, State, did not therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reason may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared.*

ii. *Further, reliance is also placed on Narottam Kishore Dev Verma vs. Union of India [AIR 1964 SC 1590] , H.H. Shri Swamiji Shri Admar Mutt Etc, vs. The Commissioner, Hindu Religious & Charitable Endowments Department [1979 (4) SCC 642], Malpe Vishwanath Acharya and Others vs. State of Maharashtra & Another (supra), Rattan Arya and Ors. vs. State of Tamil Nadu and Anr. 1986 SCR (2) 596"*

viii. **BECAUSE** of such unreasonable classification under section 14(1)(h) of DRCA, and inclusion of non residential property under section 3(c) the landlords having commercial property forced to guided by DRCA with non reasonable remedy, thus, landlords fundamental right to practice any profession or to do any business or trade is violated which is within Article 19(1)(g) of Constitution of India.

ix. **BECAUSE** landlords are been bound by bundle of obligations with respect to all types of premises like maintaining good repairs (u/s 44 of DRCA), essential supply or service (U/s 45 of DRCA), landlords giving premise to government (U/s 48 of DRCA) and in case landlords does not fulfill the above obligations then such landlords are penalized under section 48 read with 49 of DRCA. However, only landlords having residential premises does have the right to evict if the tenant's need for tenanted land is fulfilled, such a classification as per Article 14 of Constitution of India, 1950 is arbitrary and unreasonable.

x. **BECAUSE** since the beginning of DRCA enactment the legislature/Respondents has been focused on providing migrated people with housing premises within the State thus, due to this commercial premise/non residential was never taken into picture separately or some specific grounds were not made in favor of such premise. Therefore, legislature/Respondents intention to draft 14()(h) was only with respect to Residential property but due to inclusion of section 3(c) of DRCA through Amendment Act, 1988 to DRCA legislature/Respondents impliedly included non residential premise under residential premise.

xi. **BECAUSE** even state laws of Haryana, Himachal Pradesh, Uttar Pradesh and Madhya Pradesh has similar provisions like Section 14(1)(h) of DRCA but it is pertinent to mention that the object of such provisions is that once the tenant has self-owned property then his why would he use his money to continue with tenanted property. The copy of provisions reproduced is annexed in **Appendix.**

xii. **BECAUSE** the state has the obligation to ensure adequate means of livelihood for all the citizens of Indian

under Article 39 (a) of COI but legislature/Respondents has failed in this obligation by not making amendments in the DRCA law in accordance with change in societal circumstances and interest of tenants and landlords. The current DRCA law with no remedy has restricted the right to livelihood of landlords having non residential property/commercial property.

14. THE COMMERICAL PROERTY MAY BE ADVANTAGES FOR TENANT BUT IF THE TENANT HAS ACQUIRED SIMILARLY LOCATED PROPERTY THEN HIS NEED FOR NON RESIDENTIAL PROPERTY OF LANLORDS IS FULFILLED.

xiii. **BECAUSE** in the present matter the tenant has acquired similarly situated non residential property/commercial property but still seems to seek protection under DRCA. Such protection is arbitrary and unreasonable on face of it as tenant is no more weak or effected by circumstances which where earlier dominant on people having no self owned property in Delhi but because of section 3 such tenants continues to seek protection.

xiv. **BECAUSE** section 3 (c) of DRCA using the word "residential or not" ensures the tenant in non residential property /commercial property to seek protection but there is no separate remedy for landlords to take possession of there commercial property as soon as the need for tenant for said property is fulfilled by allotment or purchase of commercial property.

xv. **BECAUSE** binding the landlords having non residential property/commercial property under DRCA with only obligations to give their property for tenancy but no right to remedy for eviction is discriminatory and unreasonable, such provision are victimizing the landlords having non residential property /commercial property at the behest of circumstances which no are non existant in the society.

xvi. **BECAUSE** there is contiunues discrimination and arbitrariness in implementation of DRCA has there not a single provision in DRCA wherein landlord having non residential

property can seek eviction when the need of tenant is fulfilled, or he has acquired or has been allotted non residential premises.

15. That the, way legislature/Respondents continues to have laid back attitude towards such arbitrary and discriminatory implementation of DRCA law clearly signifies indulgence of this Hon'ble Court is urgent and it is seen many a times the constitutional court beng the sentinels of fundamental rights have intervened and interpret the law that balances the interests of parties governed by any specific law.

16. That in interest of justice and taking into account substantial infrastructure development in Delhi, please allow this petition under Article 226 of constitution of India.

PRAYER

The petitioner humbly prays on the basis of above grounds for following relief:

a) Pass order to declare Section 14(1)(h) of Delhi Rent Control Act, 1958 as partly unconstitutional till the extent of classification and with respect to Non-Residential Premises.

b) And, to pass order to read non residential premises under Section 14(1)(h) of Delhi Rent Control Act, 1958 in accordance with Satyawati Sharma (Dead) V Union of India (2008) 5 SCC 28 which is further affirmed in Vinod Kumar v Ashok Kumar Gandhi (2019)17SCC 237.

c) Pass any other order as deemed fit.

Petitioners

Through

New Delhi

Dated:29.01.2021

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