

(1953) 09 BOM CK 0005

In the Bombay High Court

Case No : Special Civil Application No's. 1008 and 1480 of 1953 and Reference No. 10 of 1953

Chimanlal Dipchand

APPELLANT

Vs

The State of Bombay

RESPONDENT

Date of Decision : 30-09-1953

Acts Referred:

Bombay City Civil Court Act, 1948 — Section 4
Bombay General Clauses Act, 1904 — Section 14
Bombay Tenancy and Agricultural Lands Act, 1939 — Section 15(1), 15(3)
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 12, 12(5), 6, 6(1), 6(2)
Civil Procedure Code, 1908 (CPC) — Section 113
Constitution of India, 1950 — Article 143, 19(1), 226, 245, 31

Citation : AIR 1954 Bom 397 : (1954) 56 BOMLR 321 : (1954) ILR (Bom) 1278

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : M.R. Parpia, with Thakordas Madgavkar and Co., B. N. Gokhale, V.M. Limaye, R.A. Jahagirdar and N.M. Shanbhag, for the Appellant; M.P. Amin, General, M.M. Desai and V.S. Desai for Govt. Pleader and G.N. Vaidya, for the Respondent

Judgement

Chagla, C.J.—There are two petitions made under Art. 226 of the Constitution challenging Sub-section (2) of Section 6, Bombay Tenancy and Agricultural Lands Act, 1948, as being "ultra vires" of the Legislature and also challenging a notification issued by Government under that Sub-section. There is also a reference made to us by the Civil Judge, junior Division, Kumta, who had a similar question to consider and who has taken the view that Sub-section (2) of Section 6 is "ultra vires" and has made a reference u/s 113, Civil P. C. The learned judge has given a very able and carefully considered judgment and his judgment has been of considerable help to us.

2. Section 6, Tenancy Act provides for the fixation of a maximum rent and the maximum rent which a landlord is entitled to recover may be fixed irrespective of any agreement, usage, decree or order of the Court or of any law, and Sub-

section. (1) provides that the maximum rent payable by a tenant for the lease of any land shall not, in the case of an irrigated land, exceed one-fourth and in the case of any other land exceed one-third of the crop of such land or its value as determined in the prescribed manner. Then comes Sub-section (2) which confers certain power upon the State Government and the power is to issue a notification to fix a lower rate of the maximum rent payable by the tenants of lands situated in any particular area or may fix such rate on any other suitable basis as it thinks fit.

In the case of the two petitions before us under Article. 226, the notification challenged is dated 17-10-1952, and by that notification the rate of maximum rent payable by the tenants is fixed by Government in the case of lands specified in Schedule I on which assessment not exceeding Rs. 4 per acre is levied or is leviable according as the lands are fully assessed or are totally or partially exempt from payment of assessment, at a rate equal to five times the assessment, and in the case of lands on which assessment exceeding Rs. 4 per acre is levied or is leviable according as the lands are fully assessed or are totally or partially exempt from payment of assessment, at a rate equal to two and a half times the assessment or a rate equal to Rs. 20 per acre, whichever is more, and one-sixth of the crops of lands or its value as determined in the prescribed manner, as the maximum rent payable by tenants of lands situated In the area specified in Schedule II appended to the notification.

The lands of both the petitioners are situated in Schedule I and therefore they are governed by the first part of the notification, and the petitioner in Special Civil Application no. 1480 of 1953 points out that the crop raised as far as "kharif" land is concerned was valued at Rs. 288 per acre and as far as "varkas" land is concerned it was Rs. 96 per acre, and it is further pointed out that according to the maximum to be fixed under Sub-section (1) of Section 6 he would be entitled to recover Rs. 72 from his tenant, but by reason of the notification challenged his rent is reduced from Rs. 72 to Rs. 20 in the case of "kharif" land, and in the case of "varkas" land whereas he would be entitled to recover Rs. 24 per acre his rent is reduced from Rs. 24 to Rs. 5; and the petitioner in Special Civil Application No. 1008 of 1953 points out that as far as he is concerned the effect of the notification challenged is that the one-fourth fixed under Sub-section (1) of Section 6 has been reduced to 1/34th of the value of the crop.

As far as the reference is concerned, the notification challenged is dated December 8, 1952, and that notification fixed the maximum, rent at one-sixth of the value of the crops whether the lands are irrigated lands or not.

3. The challenge to these notifications is on two grounds. The first ground is that Sub-section (2) of Section 6 is "ultra vires" of the Legislature because it constitutes delegated legislation. The other ground of the challenge is that even assuming Sub-section (2) of Section 6 was "intra vires" of the Legislature, the notifications issued and challenged are beyond the scope and ambit of Sub-

section (2).

We will deal with the first contention first, because if the petitioners are right and if Sub-section (2) is "ultra vires", no question of considering the validity of the notifications will arise. The doctrine of delegated legislation has been known and canvassed by Constitution writers for a considerable period. In England it was not much canvassed because the British Parliament being sovereign no question of the "ultra vires" nature of any legislation would ever arise. But it was particularly canvassed in America because the American Constitution is based on the principle of separation of powers, and the view taken there was that the Legislature being one organ of the State and that organ being separate from the executive and the judicature, the functions entrusted by the Constitution to the Legislature could not be delegated to any other functionary.

This principle of delegated legislation was also expounded by the Privy Council in many cases when the question arose with regard to legislation enacted by Legislatures in the dominions. As far back as -- "The Queen v. Burah 5 Ind App 178 (PC) (A), the Privy Council, while emphasising the fact that Legislatures in India were sovereign within their own ambit, pointed out certain limitations upon the legislative power arising out of the doctrine of delegated legislation. At one time it was the fashion to draw a distinction between delegated legislation and conditional legislation and it was suggested that while delegated legislation was prohibited, conditional legislation was permissible. It was said that if the Legislature passed a law and left it to an outside agency to determine the time at which the law should come into force or to determine the place to which the law should be applied, then it was conditional legislation and the legislation became absolute when the conditions were satisfied, and it was open to the Legislature to leave it to the outside agency to determine when the conditions should be satisfied and when the law should become absolute.

But in our opinion the true principle of delegated legislation is not so much a distinction between delegated legislation & conditional legislation or subordinate or ancillary legislation as the principle that it is solely the function of the Legislature to legislate and it is not open to the Legislature to delegate the essential function of legislation. If the Constitution entrusts to the Legislature the duty, responsibility and even the privilege of legislating, then the Legislature cannot set up a parallel co-ordinate authority and confer upon that authority the power which is entrusted to the Legislature itself, nor is it competent to the Legislature to efface itself or abdicate itself and permit some other authority to take its place. Therefore, the limitation upon a Legislature, which is not sovereign like the British Parliament but which is the creature of the Constitution, is that it cannot legislate in a manner which would result in its entrusting essential legislative functions to some other authority.

It has also been said that it is an essential legislative function for the Legislature to lay down broadly the policy of legislation, to give at least an indication of what its policy is, and it is open to the Legislature to leave to an outside agency the

execution and the enforcement of that policy. The doctrine of delegated legislation has undergone certain changes due inevitably to the complexity of modern life, to the fact that the State is fast becoming a welfare State, to the necessity of innumerable details being looked into, and various inquiries and investigations being made before the policy determined upon by the Legislature can be effectively carried out. In a simpler age the doctrine of delegated legislation had a more powerful sway than it has in our own complicated and difficult times.

Even in America, the home of this doctrine, the Supreme court has to a large extent minimised the importance of the doctrine and refused to enforce it in all its rigour. As a matter of fact in the whole history of the American Supreme Court there have been only two Federal laws which have been held invalid on the ground of delegated legislation, and as pointed out by John p. Frank in his recent book "Cases on the American Constitution" :

"During world War II acts which delegated power extremely broadly were upheld; and in the present climate of judicial opinion, it is improbable that any act which Congress garnishes with even an appearance of a "standard" to guide executive discretion will be invalidated."

4. Now, as far as our country is concerned, the history of this doctrine need not be traced from its very inception because that has been done in several cases both of this Court and of the Federal and the Supreme Courts, but it is necessary to refer to some recent judicial decisions.

This Court in -- Narottamdas Jethabhai Vs. Aloysious Pinto Phillips, had to consider the validity of Section 4, Bombay City Civil Court Act. That section empowered the executive to increase the jurisdiction of the new Court which had been set up from Rs. 10,000 to Rs. 25,000, and the view taken by this Court - was that that constituted delegated legislation. We held that it was for the Legislature to invest Courts with jurisdiction, and to the extent that the Legislature had delegated that power to the executive it constituted delegated legislation which was prohibited, and therefore Section 4 was "ultra vires". In the judgment of the Court certain principles as to delegated legislation were laid down. At p. 181 It was stated:

".....It is clear, and I shall presently refer to the authorities, that the Legislature cannot abrogate its legislative functions. It cannot efface itself and set up a parallel legislative authority. It cannot delegate its legislative functions; it must be the sole authority to lay down the policy of the law and to enact the general principles which should be embodied in the legislation which is placed on the statute book. But to the extent that its policy has to be carried out in details and in particulars, it may leave to a subordinate authority or agency the task and function of doing so. It can never be open to such subordinate authority or agency to lay down any legislative policy; that would be for the Legislature to abrogate its functions."

Again, at p. 185:

".....but it is not open to the Legislature to efface itself and to substitute in its place another authority with co-ordinate power,"

Further on at p. 185 :

".....It is solely the privilege of the Legislature to make laws. In exercising that privilege it may entrust subordinates and agents with the power to carry out its policy and to give effect to the legislation, but the subordinates and agents must act within the policy laid down by the Legislature. It cannot create a parallel or alternative law-making authority."

5. Now, this matter went to the Supreme Court and the Supreme Court reversed the decision of this Court taking the view that the policy of the Legislature was clearly indicated in Section 4 inasmuch as the Legislature had stated in that section that the maximum limit of the jurisdiction of the City Civil Court should be Rs. 25,000, and what was pointed out by the Supreme Court was that when the Legislature laid down that limit, it obviously applied its mind to the question that the limit of the jurisdiction of the City Civil Court should be raised, but left it to the executive to determine the time when the jurisdiction should be raised, and therefore the Supreme Court differed from this Court and held that Section 4, City Civil Court Act did not constitute delegated legislation as understood in the authorities.

But it may be said that the Supreme Court accepted the principles which this Court had laid down as to what constituted delegated legislation. Where the Supreme Court differed from this Court was in the application of those principles to Section 4, City Civil Court Act. It is necessary to emphasise that there was no difference between the Supreme Court, with respect, and this Court as to the correct principles which should be applied in deciding whether a certain legislation was "ultra vires" on the ground that the delegated legislation was beyond the power of the Legislature.

Mr. Justice Mahajan in -- State of Bombay Vs. Narothamdas Jethabai and Another, , referring to certain observations of mine in the judgment in -- Narottamdas Jethabhai Vs. Aloysious Pinto Phillips, ", says this at p. 80:

"....I am therefore of the opinion that the learned Chief Justice was not right in saying that the legislative mind was never applied as to the conditions subject to which and as to the amount up to which the new Court could have pecuniary jurisdiction. All that was left to the discretion of the Provincial Government was the determination of the circumstances under which the new Court would be clothed with enhanced pecuniary jurisdiction. The vital matters of policy having been determined, the actual execution of that policy was left to the Provincial Government and to such conditional legislation no exception could be taken."

Again, Mr. Justice Das says at p. 93:

"....Here there is no effacement of the Legislature, no abdication of the legislative power. On the contrary, the proper Legislature has exercised its judgment as to the possible necessity for the extension of the pecuniary jurisdiction of the new Court and the result of that judgment has been to legislate conditionally as to such extension and that the condition having been fulfilled by the issue of the notification by the Provincial Government, the legislation has now become absolute."

6. Then came a very important judgment of the Supreme Court which was delivered on a reference made by the President of the Republic, and the judgment is reported in - "In re Art. 143, Constitution of India, etc. AIR 1951 SC 332 (D). The reference was made under Art. 143 of the Constitution and the President asked the opinion of the Supreme Court on three questions which were submitted to it for its consideration and report, and the three questions were with regard to the legality of certain provisions of the Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947, and Part C States (Laws) Act, 1950, and in substance what the Supreme Court had to decide was whether it was competent for the Legislature to empower the Provincial Government to extend to the Provinces concerned any enactment which was in force in any part of British India with such restrictions and modifications as it thought fit, and the majority of the Supreme Court took the view that these provisions were valid, the minority on the other hand taking the view that these provisions constituted delegated legislation and therefore they were "ultra vires".

It has been suggested by the Advocate General that this decision revolutionises the doctrine of delegated legislation as understood in these Courts for all these years, it is urged that the Supreme Court has practically given a quietus to that doctrine and that doctrine no longer exists as a nightmare to be faced by the Legislatures. Therefore, according to the Advocate General, now Legislatures are absolutely free to delegate whatever powers they think proper to the executive or to any other agency, and on whatever other ground the legislation may be challenged, it is no longer open now to challenge the legislation on the ground that the Legislature had delegated its legislative function which it was not competent to do.

7. Now, with respect to the Supreme Court, there are several Judgments and most of them are very long judgments and different learned Judges have taken different views on various questions that arose for consideration before them, and we have to gather as best as we can what was the majority view on a particular point. The mere fact that the majority of the Judges of the Supreme Court came to the conclusion that the laws they had to consider were valid does not necessarily lead to the inference that they came to that conclusion because they held that the doctrine of delegated legislation no longer held the field, It was open to the learned Judges, with respect, to come to that conclusion even on a consideration that although the doctrine still held good, on the application of that doctrine the laws according to them were valid, and as we shall presently

point out it seems to us that this decision of the Supreme Court has made no appreciable difference to the principles underlying the doctrine of delegated legislation to which reference has been made.

The most that can be said is that those principles are more broadly applied than they were applied in the past, and as we ourselves have already pointed out that in the context of modern times it would be impossible to give to the doctrine of delegated legislation a narrow, restricted and conservative interpretation. But it would be equally wrong to suggest that the Supreme Court by one stroke of the pen has completely destroyed that doctrine of delegated legislation. It is not at all correct to say that the Supreme Court has laid down that after this decision It is open to a Legislature to efface itself or to abdicate its essential Judicial functions or for a Legislature to set up a parallel co-ordinate authority and confer upon that authority the legislative power and function which has been conferred upon it under the Constitution. Even on the question of policy it seems that the majority view was that the laying down of broad policy was the function of the Legislature and even that function could not "be delegated. It is true that it was emphasized that the policy may not be laid down in details, but the Legislature must give a clear and precise indication of what its policy was so that after go indicating its policy it could leave it to some other agency to carry out that policy.

8. The learned Chief Justice who was in the minority at p. 346 made it clear that he adhered to What he had stated in -- AIR 1949 175 (Federal Court) , viz. that the power of delegation, in the sense of the Legislature conferring power, on either the executive Government or another authority, to lay down the policy underlying a rule of conduct is not permitted. He points out that the expression "delegation" has been loosely used, but giving "delegation" the meaning which has always been given to it in the decision of the Privy Council at p- 346:

"....what I stated in -- "Jatindra Nath Gupta"s case (E)", as the legislature not having the power Pf delegation is, in my opinion, correct."

He further says at p. 346:

"....The essentials of the legislative functions, viz. the determination of the legislative policy and its formulation as a rule of conduct, are still in the Parliament or the State Legislatures as the case may be and nowhere else."

Mr. Justice Mahajan who was also in the minority at p. 387 says:

"....I have again no hesitation in holding that our Constitution makers accepted the American doctrine against delegation of legislative power, and on grounds of administrative convenience and to meet particular circumstances they care-fully - made express provisions within the Constitution for devolution of power In those eventualities."

9. Mr. Justice Mukherjea who was in the majority said at p. 404:

"....On a consideration of all these decisions I have no hesitation in holding that

as regards constitutionality of the delegation of legislative powers the Indian Legislature cannot be in the same position as the omnipotent British Parliament.This is not warranted by the provisions of the Constitution and the legitimacy of delegation depends entirely upon its being used as an ancillary measure which the Legislature considers to be necessary for the purpose of exercising its legislative powers effectively and completely. The Legislature must retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law, and what can be delegated is the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it. Provided the legislative policy is enunciated with sufficient clearness or a standard laid down the Courts cannot and should not interfere with the discretion that undoubtedly rests with the Legislature Itself In determining the extent of delegation necessary in a particular case."

Mr. Justice Bose at p. 439 comes to the conclusion that the Indian Parliament could legislate along the lines laid down in - "The Queen v. Burah (A)"; and Mr. Justice Das lays down two tests at p. 428 in order to determine the validity of a law and the two tests are: (1) Is the law within the legislative competency fixed by the instrument creating the Legislature? and (2) Has the Legislature effaced itself or abdicated or destroyed its own legislative power? The learned Judge points out that there may be an apprehension as to how the executive would act if important powers were delegated to it, and the learned Judge says at p. 431:

".....In any case there was no need to feel perturbed by the possibility of the executive doing something wrong by mistake or even by design, for if it did it was easy enough for the Legislature to put its foot down, rectify the mistake or nullify the wrong doing or, if need be, to withdraw the matter into its own hand."

Further, the learned Judge observes at p. 431:

".....Apart from this the judicial decisions, as I apprehend them, quite clearly establish that the power of delegation is a component part of the content of legislative power and once this power of delegation is conceded, there is no limit to it except what I have mentioned." (The limit being what has been already drawn attention to by the learned Judge at p. 428).

Then we come to the judgment of Mr. Justice Sastri, as he then was, on which strong reliance has been placed by the Advocate General. It is true, with respect to the learned Judge, that he has gone beyond the opinion expressed by his colleagues on the doctrine of delegated legislation. At p. 370 the learned Judge says, discussing the doctrine of delegated legislation in American constitutional law:

"....Without such a doctrine being incorporated in the Constitution and made its structural foundation, the maxim "delegatus non protest delegare" could have no constitutional status but could only have the force of a political precept to be acted upon by Legislatures In a democratic polity consisting of elected

representatives of the people in the discharge of their function of making laws, but cannot be enforced by the court as a rule of constitutional law when such function is shirked or evaded."

And the learned Judge also took, the view that the Indian Legislature could do in the matter of delegating its legislative powers what the British Parliament could do and he expressed surprise at p. 370:

"....It would indeed be strange if, in framing the Constitution of the Independent Republic of India at the present day, its makers were to ignore the experience of legislative bodies all the world over and to deny to Parliament a power which its predecessors unquestionably possessed."

10. Fortunately, we have a later decision of the Supreme Court and that decision makes it perfectly clear that in giving the opinion to the President the majority of the Judges have not really altered the view of the law of the Supreme Court as embodied in -- "State of Bombay v. Narottam-das (C)". The judgment to which we are referring is -- The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, . In that case what was challenged was the Bihar Land Reforms Act and that Act provided for compensation to be paid to landlords and the compensation was payable partly in cash and partly in bonds. The compensation was to be paid in 40 equal instalments and Section 4(2)(p) of that Act gave power to the State Government to frame rules providing for the proportion in which compensation should be payable in cash and in bonds and the manner of payment of such compensation, and what was contended was that this provision was void on the ground that the Legislature instead of determining compensation itself had left it to the State Government, and this argument was repelled by the learned Chief Justice of India at p. 266 in the following words:

".....The Legislature has applied its mind to the form in which compensation has to be paid and has fixed the number of equal instalments in which it should be paid. It has also provided for payment of interest on the compensation amount in the meantime. The proportion in which the compensation could be paid in cash and in bonds and the intervals between the Instalments have been left to be determined by the executive Government as those must necessarily depend on the financial resources of the State and the availability of funds in regard to which the executive government alone can have special means of knowledge. By no standard of permissible delegation can the vesting of such limited discretion by a Legislature in an administrative body be held incompetent."

It is clear, therefore, that in this later judgment the learned Chief Justice of India thought that when a legislative provision was challenged on the ground that it constituted delegated legislation, it had to be considered in the light of well defined and well accepted tests. The learned Chief justice of India does not take the view in this case that there was no limitation upon the Legislature as to the extent to which it could delegate its own functions; and Mr. justice Mahajan who concurred with the learned Chief Justice expressly refers to the case of -- "State

of *Bombay v. Narottamdas*". (C), and comes to the conclusion that the delegation to this extent is permissible in view of the decision of this Court in that case. The learned Judge proceeds at p. 278:

"... The Legislature applied its mind to the question of the method and manner of payment of compensation. It settled its policy and the broad principles. It gave the State Government the power to determine matters of detail after having settled vital matters of policy. It cannot be said that the Legislature did not apply its mind to the subject-matter of the legislation and did not lay down a policy."

And Mr. Justice Das at p. 292 repeats the tests he has laid down in the case of *In re The Delhi Laws Act (D)*" & says that he would have dismissed the argument as to delegation "in limine" because in this case the Legislature has not abdicated or effaced itself in the sense the learned Judge had explained in his opinion in that case.

11. Therefore, it is clear on a review of these decisions that it is still incumbent upon the Court, when a legislation is challenged on the ground that it constitutes delegated legislation, to consider whether in delegating certain power to the Government or to an outside agency the Legislature has divested itself of any essential judicial function. It is also incumbent upon the Court to consider whether the power has been delegated to the Government after the Legislature has laid down the vital policy. Once the policy is laid down and is made clear in the Act itself, it would not be for the Court to consider the extent and the nature of the delegation; that must be left to the discretion of the legislature. The Court will not and cannot say that the Legislature should have delegated up to this point and not beyond it. The Court cannot say that delegation would have worked out better if the Legislature had kept with itself some of the powers rather than conferring them upon Government or an outside agency. If the delegation does not constitute a delegation of essential judicial functions and if the delegation does not result in the outside agency laying down the policy and not the Legislature, then the delegation must be upheld as within the competence of the Legislature. It is from this point of view that we must now approach the impugned piece of legislation, viz. Sub-section (2) of s. 6.

12. Now, what is argued, and argued with considerable force, is that the Legislature Under/Section 6(1) has laid down the maximum which a tenant is liable to pay and which a landlord is entitled to receive, and the Legislature under Sub-section (2) has empowered the Government to lower that maximum. But the Legislature has not indicated what the minimum should be which the landlord should be entitled to receive as rent and which the tenant would be liable to pay as rent. It is, therefore, urged that if Sub-section (2) was a valid piece of legislation, it would be open to the State Government to go on reducing the rent to which a landlord would be entitled without any limit and a situation may come about where the landlord may not receive any rent at all.

It is contended that the Legislature has laid down no policy with regard to the limit upon the reduction of the rent a landlord is entitled to receive. The only policy it has laid down is as to the maximum which the tenant is liable to pay, and it is further urged that the policy of what the minimum should be is left to the State Government. It is said that this is not a case of carrying out or enforcing a policy. This is a case of laying down the policy itself, and therefore according to the principles we have just indicated the legislation should be held to be bad.

13. In order to understand the policy of the Legislature it is necessary to consider why the Bombay Tenancy and Agricultural Lands Act, 1948, was enacted. It is an ameliorative measure and it is being put on the statute book in furtherance of the policy of the Legislature to give relief to the poor peasants and tenants of the State. One of the objects which is clearly and emphatically stated in the preamble is the improving of the economic and social conditions of peasants, and it is in the light of this objective which the Legislature had in mind that Section 6 must be understood. In fixing the maximum rent which the tenant was liable to pay, the Legislature took into consideration the social and financial conditions of the tenants in the State of Bombay, and taking a broad view of the matter the Legislature laid down as a policy that in no case with which it was dealing should the tenant be made liable to pay more than the maximum it had indicated. But the Legislature obviously realised that it could not possibly deal with all cases that might come up for consideration, that it could not deal with distress or exceptional circumstances, that it could not deal with particular areas where conditions of peasants may be worse than the conditions in any other parts of the State, and it left to the State Government to carry out its policy of improving the economic and social conditions of peasants by reducing the maximum rent payable by the tenant and leaving it to Government to decide in the light of special circumstances what the minimum should be.

It is not correct to say that the minimum may be a cypher and that it is open to the Government u/s 6(2) to either deprive the landlord of any rent whatsoever or to fix a rent which would be purely illusory and in substance no rent at all. The whole of Section 6 is based on the assumption that a landlord is entitled to receive rent and a tenant is liable to pay rent. The object of the Tenancy Act is not to liquidate the landlords and to put an end to landlordism. The Act proceeds on the basis that in the State of Bombay there will be landlords and there will be tenants, and what the Act intends to do is to regulate the relations between landlord and tenant, and the most important relation that had to be regulated was the payment of rent by the tenant and the receipt of rent by the landlord.

Therefore, in one sense there is a natural minimum provided by the terms of Section 6 itself and that natural minimum is that the landlord must receive some rent for the land which he had let out to the tenant. The grievance of the petitioners is that the Legislature in fairness to the landlords and in order to do justice to them should have provided a minimum below which the rent should

not fall. It is said that the duty of the Legislature was not merely to be fair and equitable to the tenants, but it was equally the duty of the Legislature to be fair and equitable to the landlords.

14. We must confess that it would have been much better if the Legislature had given in the Act itself some indication as to the minimum below which rents receivable by the landlords should not fall. In fairness to the landlords it must be stated that they have a right to know what their future is and what they should expect from moneys they have invested in the lands. Mr. Jahagirdar is perfectly right when he tells us that if national interest demands that lands should be cultivated, that production should be increased, and that modern methods of agriculture should be introduced in our State, the landlords should also be made to feel that they have a stake in the lands which they own, and this feeling of uncertainty, of instability, a fear that rents may go on being decreased at the sweet will of Government, is not a feeling which should be encouraged in the landlords and it is certainly not in the interest of the State. It is a pity that the Legislature has not kept legislative control over the notifications which Government may issue from time to time. In the old Act of 1939 Sub-section (3) of Section 15 provided that every notification shall be placed before each chamber of the Provincial Legislature and shall be liable to be rescinded or modified by a resolution passed in which each of the said Chambers concurs during the next following session.

It is a trite warning, but a warning which may well be repeated that it is never safe to invest the executive with wide and vast powers. The Legislature exists in order to control the executive, and although it may be difficult for the Legislature to control every stage of a reform which it has embarked upon, it should as far as possible at least keep control over the major decisions which the executive might take in furtherance of the policy laid down by the Legislature.

But it may be pointed out that although the Legislature has not fixed the minimum, every reduction which the Government may bring about by a notification in the rents receivable by the landlord can only be in furtherance of the policy laid down by the Legislature and the policy is as pointed out, the improvement of the social and economic conditions of the peasants. When one analyses the matter, the real apprehension on the part of the landlords is not that the Government will reduce rents in the economic and social interest of the peasants, but that it will reduce rents arbitrarily and capriciously. In deciding whether a particular piece of legislation is bad on the ground that it is delegated legislation, it is not open to us to consider that the delegated authority may act arbitrarily and capriciously and not in furtherance of the policy laid down by the Legislature.

15. Therefore, in our opinion, Sub-section (2) of Section 6 is enacted after the Legislature had applied its mind to the vital policy underlying the statute and after it had come to the conclusion that that policy should be enforced and carried out by the Government reducing the maximum rent fixed by it, the

reduction to be brought about to suit special conditions and special localities. If this be the correct view of the impugned piece of legislation, then obviously a challenge against it on the ground that it is delegated legislation cannot stand.

16. Turning now to the other attack made on the notifications which is on the ground that they are beyond the scope of Sub-section (2) of Section 6, it is first necessary to construe Sub-section (2) and then to decide whether on that construction the notifications are beyond the scope of the sub-section. It may straightway be stated that the language used by the draftsman is by no means very appropriate and much of the difficulty has been caused by the loose language used in the Sub-section. Sub-section (2) provides that the Government may by notification in the Official Gazette fix a lower rate of the maximum rent payable by the tenants of lands situate in any particular area or may fix such rate on any other suitable basis as it thinks fit. In Sub-section (1) the expression used by the Legislature was "the maximum rent payable by a tenant". In Sub-section (2) a new expression is introduced, viz. "a lower rate of the maximum rent".

Obviously it means the same thing and what it contemplates is that the maximum rent fixed under Sub-section (1) by the Legislature itself may be reduced by the State Government. Why it was necessary to use the expression "rate" it is difficult to understand. The lower rate may be fixed in any particular area and power is also given to the Government to fix the rate not on the basis indicated in Sub-section (1) but on any other suitable basis, and the selection of the basis is left entirely to the discretion of the State Government. The basis in Sub-section (1) is crop grown on the land or the value of the crop, and there is also a distinction made between irrigated and non-irrigated land. But Government may fix any other rate and in fixing any other rate it may adopt a basis different from the basis laid down by the Legislature in Sub-section (1).

17. The attack against the notification is on three grounds. In the first place it is suggested that looking to the scheme of the Act and looking to past legislative history, the power of the State Government to issue a notification was exhausted as soon as a notification was issued lowering the rate. In this particular case the two notifications we are concerned with are not the first notification under Sub-section (2), but several earlier notifications were issued, and therefore it is urged that the power of the State Government to issue these particular notifications no longer existed at the time when they were issued. The other attack on the notifications is that under Sub-section (2) the lowering of the maximum rent must be in relation to a particular area, and it is pointed out that when the notification applies the lower rate to a whole district it is not a particular area as contemplated by Sub-section (2).

It is urged that a particular area can only be an area which is denned in relation to its peculiar characteristics or nature of the population residing in it, but you cannot appropriately use the expression "particular area" to mean a whole district which has no special characteristics to make it different from the rest of

the State. The third attack is based on the contention that in reducing the rate of the maximum rent the State Government must maintain the basis laid down in Sub-section (1) both with regard to the crop grown on the land and also the distinction between irrigated and non-irrigated land.

18. Turning to the first contention, it is necessary to look at the history of this legislation. The earlier Act was Act 29 of 1939 and Section 15(1) of that Act provided that the Provincial Government may from time to time by notification in the Official Gazette fix the maximum rate of rent payable by tenants for lands situated in such areas as may be specified in the notification. Therefore, that Sub-section gave the power to the Government to fix any maximum rate which would clearly imply the power from time to time to reduce that maximum to any limit, the limit not having been indicated by the Legislature, and it is rather significant that the proviso to that Sub-section was only inserted by Act 26 of 1946 several years after the old Act was passed, and that proviso fixed the maximum at the same rate as the maximum fixed u/s 6(1) of the present Act and Sub-section (3), as already pointed out, made it incumbent upon Government to place before the Legislature the notifications issued by it and gave power to the Legislature to rescind or modify by a resolution any notification.

What is contended is that under the old Act power was given to the Provincial Government to issue notifications from time to time. When the Legislature passed Act 67 of 1948 it advisedly deleted from Section 6(1) the words "from time to time", and it is said that the intention of the Legislature was that the Provincial Government should not have power to alter the maximum from time to time. It is pointed out that if you look at the scheme of the Act it becomes abundantly clear that it was never intended by the Legislature that the maximum rent should be a variable factor, uncertain in its nature and to be altered from time to time, thereby undermining the stability of rents which was intended to be fixed by Section 6(1). It is said that the power given to the State Government u/s 6(2) was to alter the maximum rate only with regard to a particular area, otherwise ordinarily the maximum rent fixed u/s 6(1) was to prevail, and once the Government had studied the conditions of a particular area and lowered the maximum rent, that rate was to prevail without any alteration. Considerable force is lent to this argument by the scheme of the Act which we will now proceed to consider.

19. Section 7 provides that the rent payable by a tenant is either the rent agreed upon or the rent according to usage, but this is made subject to the maximum rate fixed u/s 6. Therefore, even though under an agreement or by usage a tenant is liable to pay a particular rent, If that rent is more than the maximum fixed u/s 6. his liability is only to pay up to the maximum rate. There is a further concession in favour of the tenant, and possibly also in favour of the landlord, and that is that if there is a dispute as to the reasonableness of the rent, then notwithstanding any agreement or usage what the tenant is liable to pay is the reasonable rent. But even the reasonable rent is subject to the maximum rent

fixed u/s 6. Then Section 8 provides for commutation of crop-share rent into cash, and Sub-section(2) provides that once the rate of commutation is fixed, it cannot be altered for five years, and what is urged is that if the maximum rent was to be altered from time to time it would be impossible to give effect to Section 8. That contention, in our opinion, is not tenable because what Section 8 provides is for the rate of commutation. It, as it were, fixes the exchange rate between crop and money. The rate would remain the same as fixed by Section 8 even though the maximum rent payable by the tenant may be altered u/s 6. He would pay the rent at the rate fixed u/s 8 which would continue for five years, though as far as the amount of the rent is concerned it may be more or less according to the maximum fixed u/s 6. Therefore, Section 8 really creates no serious difficulty.

Then Section 10 precludes the landlord from recovering rent from any tenant in contravention of the provisions of Sections 6, 7, 8 or 9, Section 9 being a prohibition against receiving rent in terms of service or labour. Then Section 12 provides for the determination of the reasonable rent by the Mamlatdar, and Sub-section (3) lays down the various factors which the Mamlatdar has to consider in determining the reasonable rent, and Sub-section (5), which is a very important Sub-section, provides that every order passed by the Mamlatdar under this section if not appealed against, and every order passed by the Collector in appeal, shall hold good for a period of five years and shall not be called in question during that period, and what is urged with regard to this Sub-section is that if Government had the power to alter the maximum rent from time to time, then it would be impossible to give effect to this Sub-section.

It is said that once the reasonable rent is fixed, the tenant is bound to pay that reasonable rent for five years and this Sub-section permits of no interference with the reasonable rent fixed by the Mamlatdar. It must be borne in mind that Section 12(5) does not provide for any liability upon the tenant to pay reasonable rent, nor does it provide for any right in the landlord to recover reasonable rent. It is Section 7 that imposes upon the tenant the liability to pay rent, and even when the liability upon the tenant is to pay reasonable rent, that liability is subject to the maximum fixed u/s 6.

Therefore, even though the Mamlatdar may fix a reasonable rent and the amount determined may not be questioned for a period of five years, if the Government were to reduce the maximum and that maximum happens to be less than the reasonable rent, the only liability upon the tenant would be to pay the maximum rent and not the reasonable rent. The determination of the reasonable rent would not be affected and would continue to govern the relations of parties for five years, but that would be subject to the overriding power of Government to fix the maximum rent. If after fixing the maximum rent which is lower than the reasonable rent, Government later on were to increase the maximum rent, then the reasonable rent fixed would again come into operation and the liability of the tenant would only be to pay reasonable rent fixed u/s 12.

Section 13 provides for suspensions or remissions of rent and it provides that if land revenue payable to Government) is suspended or remitted, then the landlord shall also suspend or remit the payment to him of rent by the tenant; and Section 13 is relied upon for the purpose of contending that if there is distress or there are famine conditions or there are floods, Section 13 provides for relief of the tenant without it being necessary for Government to reduce the maximum rent. But it must be borne in mind that Section 13 would only come into play provided Government itself remits land revenue. But Government for certain reasons may not want to remit land revenue and yet may want to reduce rent payable by the tenant, it is also pointed out that even in the case of reasonable rent power is given to the Mamlatdar u/s 12(5) to reduce the reasonable rent even during the period of five years if on account of deterioration of the land by floods or other cause beyond the control of the tenant the land has been wholly or partially rendered unfit for the purposes of cultivation. It is again therefore pointed out that under this provision even the Mamlatdar has got the power to give relief to the tenant.

20. From all these provisions it is argued that it could not have been in the contemplation of the Legislature to have intended that notifications should be issued by Government from time to time reducing the maximum rent. If the object was to give relief to the tenant, that object is achieved by other sections of the statute. We find that in the Act of 1939 we had similar provisions to those to which attention has just been drawn and notwithstanding that Section 15(1) gave power to the Government to issue notifications from time to time. It would be difficult to hold that the Legislature having given that power in the Act of 1939 withdrew that power and limited the power of Government to issuing only one notification u/s 6(2). Apart from that, the contention put forward is contrary to Section 14 of the General Clauses Act. That section provides that when by any Bombay Act made after the commencement of this Act any power is conferred upon any Government, then that power may be exercised from time to time as occasion require.

Therefore, if the power is conferred upon Government to issue a notification, u/s 14 of the Bombay General Clauses Act Government can exercise that power from time to time as occasion require. Therefore, in our opinion, it is not correct to suggest that the power of the State Government was exhausted u/s 6(2) as soon as it had issued a notification lowering the rate of the maximum rent payable by the tenants u/s 6(1).

21. The next contention is with regard to a particular area. In Section 15(1) of the old Act the language used was "in such areas as may be specified in the notification," and the change in the language is relied upon for the contention that the Legislature intended to convey something different by using the expression "in any particular area" from what it intended to convey by using the expression "in such areas as may be specified in the notification." It is unfortunate that when Acts are amended the draftsman should unnecessarily

alter the language of the earlier statute. With regard to the point which we have just considered, viz. the expression "from time to time," we see no reason whatever why the draftsman should not have used the same expression in Section 6(2). The Advocate General has pointed out that the draftsman's attention was perhaps for the first time drawn to Section 14 of the General Clauses Act and realising that Section 14 was there he thought it wise to save paper and ink by omitting that expression from Section 6(2).

There is not much force in that argument, because we find that in Section 8(1) the expression "from time to time" is used. Again, in Section 88(1) (d) the expression "from time to time" is used. We take it that the draftsman did not forget the existence of Section 14 of the General Clauses Act when drafting Section 8(1) and Section 88(1) (d) of the Act. It is not always correct to suggest that because the Legislature changes the language, it necessarily wishes to convey something else. The language may be altered for greater caution, for greater clarity or to have a better drafting. But it is really desirable that such alterations should be avoided if the alterations are unnecessary and likely to give a handle to the argument that the Legislature intended something else by amending the particular statute.

In our opinion the same argument applies to the expression "in any particular area." The expression "in any particular area" is used in the singular and it cannot be disputed that the singular must include the plural. Therefore, the power of the State Government cannot be limited to fixing a lower rate of the maximum rent with regard to a particular area; it must extend to fixing a lower rate of the maximum rent to different areas; and it is difficult to understand why, if the power extends to different areas, the notification cannot extend to a conglomeration of different areas constituted by a district or even by the State as a whole. Therefore, in our opinion, there is no substance in that argument also.

22. Finally, with regard to the argument of suitable basis what is urged is that a lower rate of the maximum rent can be fixed on two grounds; one is with regard to the area and the other is with regard to the basis, and the basis, it is suggested, contemplated in this Sub-section is one in conformity with the basis fixed under Sub-section (1). An illustration is given that Government may feel that in a particular case a particular crop is grown on a particular land and the basis may have to be altered looking to the nature of the crop grown in the particular area, and it is said that the basis contemplated by Sub-section (2) must be confined to cases like that and not to cases where the basis laid down in Sub-section (1) may be wholly destroyed and an entirely new basis fixed. It is pointed out that in the notification dated 17-10-1952, the basis fixed is the assessment levied on the particular land and in the notification dated 8-12-1952, the distinction between irrigated and non-irrigated land has been completely done away with, and it is urged that to alter the basis in the manner was not within the scope of Section 6(2). It is said that the whole object of the Legislature was to keep some relationship between the return which a landlord

obtained and the crop grown on the land. It is further said that there was a good reason why this relationship had to be maintained because the landlord then would have an interest in seeing that improvements were effected on the land and better crop was grown so that his return should be larger.

We have already pointed out that on a true construction of Sub-section (2) power is given to the State Government to fix a different basis from the basis laid down in Sub-section (1) of Section 6. This argument receives further support from what Mr. Vaidya has pointed out that the Tenancy Act does not merely protect tenants who cultivate their lands, but it protects tenants who do dairy farming, poultry farming, who use the land for grazing, and for this purpose attention is drawn to the definition of "land" which means land which is used for agricultural purposes, and "agriculture" is very widely defined as not only meaning raising of crops, but also horticulture, the raising of crops, grass or garden produce, dairy farming, poultry farming, stock breeding & grazing, but does not include cutting of wood; & a "tenant" is defined as an agriculturist who holds land on lease. Therefore, if the contention put forward by the petitioners were sound, only the tenants who cultivate land and grow crops would get the benefit of the fixing of the maximum rent u/s 6(1). If that is the only basis on which maximum rent could be fixed, then it would be impossible for the State Government to fix maximum rent in the case of a tenant who does dairy farming or poultry farming on his land, such a construction would be contrary to the basic principle underlying the Act.

The Act does not select for special protection, tenants "who grow crops on their land. The Act is intended for the protection of all tenants who are agriculturists, and agriculturists not in the narrow sense of growing crops but in the wide sense in which "agriculture" is defined in the Act, and it seems precisely for this reason that the Legislature gave the power to the State Government to fix the maximum rent on any other suitable basis. In the case of dairy farming or poultry farming, if the Government wants to fix the maximum rent, it would have to devise a different basis from the basis laid down in Section 6(1). A dairy farmer or a poultry farmer raises no crops and the maximum rent he would be liable to pay would have to be fixed by reference to some other test than the test of the crop grown on his land. In our opinion, therefore, this challenge made to the notifications must also fail.

23. Reference has also been made to Article 31B of the Constitution. Under that article Acts and Regulations specified in the Ninth Schedule were saved and no provision of these Acts or Regulations shall be deemed to be void or ever to have become void on the ground that such Act, Regulation or provision is inconsistent with or takes away or abridges any of the rights conferred by any provisions of Part III and notwithstanding any judgment, decree or order of any Court or tribunal to the contrary, each of the said Acts & Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force, and we find in the Ninth Schedule the Tenancy Act in question included. Therefore, it

is clear that by this amendment of the Constitution it is not competent to any one to challenge any provision of the Tenancy Act on the ground that it violates any of its fundamental rights secured to the citizens under Part III of the Constitution. Therefore, it is not open to the petitioners to contend that by this legislation the rights of landlords are being expropriated under Article 31(1) or that under Article 19(1)(f) their right to acquire hold and dispose of property is being interfered with.

But realising this difficulty what Mr. jahagirdar has argued is that what is saved by Article 31B is existing legislation, and there is no reference in Article 31B to future legislation. Mr. Jahagirdar says that if the Legislature were to pass new laws encroaching upon the rights of citizens, those laws can be challenged notwithstanding Article 31B. That contention is perfectly sound, but what Mr. jahagirdar wants us to accept is untenable.

What Mr. Jahagirdar says is that the notifications which are being challenged are subsequent to the enactment of Article 31B and therefore they constitute new legislation and it is open to a citizen to challenge those notifications on the ground that they violate his rights either under Article 19(1)(f) or Article 31(1). Now, if Article 31B saves the whole of the Tenancy Act and no provision of that Act can be challenged, then it is clear that Section 6(2) is as much saved as any other provision of the Tenancy Act. If, as we have held, the Legislature has validly delegated the power to the State Government to issue notifications u/s 6(2), then all that the Government is doing is issuing notifications in the exercise of that power conferred upon the Legislature and it is not open to the petitioners to challenge the exercise of that power by the Government on the ground that the exercise violates any fundamental right. If the power was validly conferred and if the power itself could not be challenged as violating a fundamental right; then surely the exercise of that power also cannot be challenged.

24. Before concluding we would like to say and to suggest to Government that they ought to sympathetically consider the grievances of the landlords which have been ventilated before us during the arguments of these petitioners. We are conscious of the fact that our State is a welfare State and that it must do social justice specially to those who are poor and down-trodden. We are also conscious of the fact that our peasants and the tillers of our land have for generations and centuries been depressed and the State is doing a most laudable thing in trying to raise their economic status. But so long as our Legislature is not pledged to the abolition of landlordism as such and so long as landlords are expected to play a proper role in national economy, it is but right that the landlords should feel that the State in protecting the tenants is not being unfair or inequitable to them. So long as landlords and tenants exist our national economy can only flourish provided they both play their respective roles as good citizens and contribute to the welfare of the State. Therefore, it is extremely desirable that a sense of security should be given to the landlords.

This apprehension that the rents may be reduced to any minimum, this fear that

the State may completely ignore their interests because it is a pro-tenant Government, is a very unfortunate feeling which the landlords entertain, and it is the duty of the Government to remove this feeling and to give a sense of security to the landlords. Although the power is given to the Government to issue notifications from time to time, some indication of their policy should be given by the Government to landlords so that landlords should know that beyond a particular point the rents will not be reduced, and it is also not desirable that so many notifications should be issued u/s 6 altering the maximum at short interval

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Therefore, while upholding the power of the Legislature to delegate this power to the Government, and while upholding the power of the Government to issue the notifications which it has issued, we would like to say that possession of power is one thing, the exercise of that power is entirely a different thing, and we have no doubt that the Government will not exercise the very wide power given to it u/s 6(2) without considering the effect of the exercise of that power not only upon tenants but also upon landlords because, as we have already pointed out, both landlords and tenants are citizens of this State and entitled to be protected by Government.

25. The result, therefore, is that the two petitions fail and must be dismissed with costs.

26. With regard to the Reference, We must answer the two questions submitted to us as follows: (1) Section 6(2) is valid, and (2) the notification is within the scope of Section 6(2). Costs in the Reference, costs in the cause.

27. Order accordingly.