
(2001) 07 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No's. 555, 968, 1018, 1027, 1028, 1238, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1456 and 1576 of 2001

Crompton Greaves Ltd. and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Maharashtra Rent Control Act, 1999 — Section 3(1)

Citation : (2002) 2 MhLj 305

Hon'ble Judges : S.A. Bobde, J;A.P. Shah, J

Bench : Division Bench

Advocate : Harsh Desai, instructed by Thakore Jariwalla and A.S.S. in W.P. No. 1576 of 2001, Aspi Chinoi, N.H. Seervai, M.S. Doctor and Ashok Purpohit, instructed by Zohair and Co. in W.P. No. 555 of 2001, Navroz Seervai, Birendra Saraf, M.S. Doctor and Sachin Mandlik, instructed by Udwadia Udeshi and Berjis, in W.P. Nos. 1027 and 1028 of 2001, B.R. Naik, instructed by P.R. Naik, in W.P. Nos. 968, 1018, 1238, 1403 and 1404 to 1411 of 2001, A.J. Rana, K.B. Swamy and Joyti Salgal, instructed by N.S. Lal, in W.P. No. 1456 of 2001 and M.S. Doctor, instructed by Zohair and Co. in W.P. No. 1576 of 2001, for the Appellant; G.E. Vahanvati, AdvocateGen. and N.V. Deshpande, A.G.P. in W.P. Nos. 555, 968, 1018, 1027, 1028, 1238, 1403 and 1456 of 2001 for respondent No. 1, Devarajan, instructed by Thakordas and Madgavkar, in W.P. No. 555 of 2001 for respondent No. 2, Suraj Shah, instructed by S.M. Shah in W.P. No. 1027 of 2001 for respondent Nos. 2 to 5, S.J. Kathewalla, instructed by Akhila Kaushik in W.P. No. 1028 of 2001 for respondent No. 2, R.B. Chavan and L.T. Satelkar, in W.P. Nos. 968 and 1018 of 2001 for respondent No. 2, A.S. Chanduwala, instructed by Desai and Diwanji, in W.P. No. 968 of 2001 for respondent Nos. 3 to 7, M.S. Bhandari, instructed by Suman Jain in W.P. No. 968 of 2001 for respondent Nos. 3 to 5, N.V. Deshpande, A.G.P. in W.P. Nos. 1238, 1403 and 1456 of 2001 for respondent No. 1, A. Kaushik in W.P. No. 1238 of 2001 for respondent Nos. 3 and 4, M.S. Karnik and Mandar Goswami, in W.P. Nos. 1238, 1403 and 1404 to 1411 of 2001 for respondent No. 2, R.M. Nakhwa, instructed by V.B. Dhavan in W.P. Nos. 1403 and 1409 of 2001 for respondent Nos. 3 and 4, Manoj Prajapati and A.G. Pawar, in W.P. No. 1406 of 2001 for respondent Nos. 3 and 4, L.H. Rambhia and Ashok Verma, in W.P. No. 1407/2001 for respondent Nos. 3 and 4, M.M. Bagadia in W.P. Nos. 1408 and 1411 of 2001 for respondent No. 3, M. Chirag Balsara and Chirag Mody, instructed by R.M.G. Lad Associates in

W.P. No. 1410 of 2001 for respondent No. 3 and R.A. Kapadia, S.A. Divan and R.K. Sakpalkar Kaizad Irani, instructed by . and Mulla and Mulla in W.P. No. 1456 of 2001, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Shah, J.—The constitutional validity of section 3(1)(b) of the Maharashtra Rent Control Act, 1999 has been challenged in these writ petitions. This question which is common to all the writ petitions is the only question which arises for consideration and these writ petitions are accordingly being disposed of by this common judgment.

2. Section 3(1)(b) of the Maharashtra Rent Control Act, 1999, which is hereinafter referred to for the sake of brevity as the Act, lays down :

"Section 3(1). This Act shall not apply

(a)

(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more.

Explanation.---For the purpose of this Clause the expression "bank" means:-

(i) the State Bank of India constituted under the State Bank of India Act, 1955:

(ii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 :

(iii) a corresponding new bank constituted u/s 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or u/s 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; or

(iv) any other bank, being a scheduled bank as defined in Clause (e) of section 2 of the Reserve Bank of India Act, 1934."

3. The main contention of the petitioners is that the provisions of section 3(1)(b) of the Act are ultra vires of Article 14 of the Constitution. The argument is that this provision seeks to make an invidious distinction between companies having paid capital of Rs. 1 crore and other commercial ventures. It is urged that the classification of the companies on the basis of paid up share capital of a company is not a reasonable classification and that the same bears no nexus with the object of the legislation. In any event it would be discriminatory to single out only corporate tenants whilst other categories of tenants who are similarly situated like partnership firms, HUFs, and proprietary concerns continue to

receive the protection of the Act.

4. Before dealing with the various contentions raised specifically, it will be useful to refer to the legislative history of the Maharashtra Rent Control Act. The first rent legislation which was introduced was the Bombay Rent Act, 1938 which came into force on 13-2-1938. This Act was meant to be a temporary measure. The original Act was enacted only for two years with a power to the Government to extend the same by notification in that behalf. This Act was extended from time to time at least on 22 occasions till it was replaced by the present Act. We hasten to add that there were 3 different Acts which were in force in the State of Maharashtra. In the areas of erstwhile Bombay State, Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, i.e. Bombay Rent Act was in operation. In the areas of Central Provinces and Berar, namely, Vidarbha Region, the Central Provinces and Berar Letting of Houses Rent Control Order, 1949 which was under the Central Province and Berar Regulation of Letting of Accommodation Act, 1949 was in operation and in Marathwada areas, which was formally in the State of Hyderabad, the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 was in operation. With a view to unify different rent laws operating in the State and in the light of provisions of Model Rent Legislation and reports of the Rent Acts Enquiry Committee and the State Law Commission to which we shall refer to little later, the Rent Control Bill was introduced in the State Legislature in 1993. This Bill contained an exemption provision whereby premises let to foreign missions, international agencies, multinational companies and public limited companies having paid up share capital of more than Rs. 1 crore were exempted from the Act. When the Bill was referred to the Joint Committee of both the Houses of the Legislature, the Joint Committee recommended exemption/exclusion in respect of certain additional categories of tenants viz. private limited companies having a paid up share capital of more than Rs. 1 crore, scheduled banks, public sector undertakings and corporations under State or Central enactments.

5. In the meantime, the constitutional validity of the provisions of the Bombay Rent Act was challenged before the Supreme Court in *Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another*, . The Supreme Court held that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable and therefore the said provisions are liable to be struck down as having become totally unreasonable and arbitrary. However, having regard to the fact that the Rent Control Bill was under consideration, the Supreme Court left it to the legislature to frame just and fair law keeping in view the interests of all concerned and in particular the resolution of the State Ministers for Housing of 1992 and the National Model Law which has been circulated by the Central Government in 1992. Thereafter the Act was passed by both the Houses of legislature and has received the assent of the President on 8-3-2000 and was published in the Government Gazette on 10-3-2000 and was brought into force on 31-3-2000.

6. On behalf of the petitioners it has been contended that the exclusion of certain categories of corporate entities from the protection of the rent legislation irrespective of their capacity to pay is entirely unreasonable, discriminatory and violative of Article 14 of the Constitution. It is contended that the paid up capital of a company is not an indicator of the profitability of a company or the financial soundness of the company. The paid up capital merely indicates the amount of capital which has been raised by a company and does not have a co-relation with the profitability or the capacity of a company to pay. It is therefore, contended that the consideration of the paid up capital without reference to profit and loss being earned/suffered by the company cannot be an indicator of the financial condition of the company and a classification based on the same leads to discrimination. It is contended that for the purpose of determining the financial position of a company and its capacity to pay it is the net worth of the company which ought to be considered alongwith the asset based turn over and profitability that could give a true indication about the financial position of the company. Even the Sick Industrial Companies (Special Provisions) Act, 1985 takes into account the net worth of a company to determine as to whether a company is a sick industrial undertaking or not.

7. It is urged that the exclusion of the companies having paid up capital of more than Rs. 1 crore also leads to serious discrimination between corporate entities and other business entities which are similarly situated. While a company having a paid up capital of more than Rs. 1 crore, irrespective of its earning capacity, is excluded from the purview of the said Act, other business entities such as partnership firms, HUFs, proprietorships, etc. though much more financially sound would continue to avail of the protection of the rent legislation. It is contended that this discrimination between one class of landlords and their tenants and the other class of landlords and tenants solely on the basis of character of entity amounts to a class legislation and violates Article 14 of the Constitution. It is contended that it would be wholly discriminatory if prosperous and financially sound business entities are allowed to continue to have protection of rent legislation, whereas corporate entities though financially weak and not having a capacity to pay or to protect their interests are deprived of the said protection merely because their paid up share capital at some stage was over Rs. 1 crore. It is contended that in a city like Mumbai where accommodation is scarce, the protection of the tenants right to occupy premises subject to payment of appropriate rent is necessary to all categories of tenants irrespective of the nature of entity.

8. On behalf of Indian Airlines it is urged that the Act has not made any distinction between public sector undertakings and other tenants. It is contended that the public sector undertakings are discharging functions which are discharged by the Central and State Government. It could not be subjected to the same treatment as any other commercial establishment. Government companies, and public undertakings discharge public duties and their actions have to be in conformity with the provisions of Part III of the Constitution. The

distinction between the commercial activities of the Government companies, public sector undertakings on one hand and commercial activities of private corporate bodies has been ignored by the impugned legislation.

9. It is contended on behalf of the Maharashtra State Co-operative Bank, Saraswat Co-operative Bank and Bombay Mercantile Co-operative Bank that the Act has discriminated between the scheduled banks and other banks. The Rent Control Bill originally did not provide for exemption to banks or scheduled banks u/s 3(1)(b). However, the legislation as passed exempted the scheduled banks thereby creating a privileged class of landlords. The submission is that there is no rational basis for such classification. In doing so the legislature has ignored the obligation to strike at balancing between the interests of the landlords and tenants in as much as if evicted the banks will not be able to find another place in the vicinity of the existing branches from which they are being evicted, and in the result they may have to close down their business at such branches. It is contended that the banks have set up large number of branches in tenanted premises all over Mumbai with the approval of the Reserve Bank of India and as a result of exemption granted by section 3(1)(b), the banks will have to vacate the tenanted premises causing untold hardship to them.

10. We do not see any force in any of these contentions. The Bombay Rent Act was enacted originally as a temporary measure in order to protect the tenants from eviction from their premises and also from arbitrary enhancement of rent. The necessity for the control of rents by special legislation for properties located within the urban areas was felt during World War II. At that time not much by way of new construction for civil population was possible. A good proportion of private accommodation was requisitioned by the authorities for the war effort. In consequence, rents were beginning to shoot up. Landlords were trying to get rid of their existing tenants to get better rents. The legislation was undertaken primarily to save the tenants from harassment of unscrupulous landlords. To quote the words of Sarkaria, J., *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others*, : "The strain of the last World War, Industrial Revolution, the large scale exodus of the working people to the urban areas and the social and political changes brought in their wake social problems of considerable magnitude and complexity and their co commitment evils. The country was faced with spiraling inflation, soaring cost of living, increasing urban population and scarcity of accommodation. Rack renting and large scale eviction of tenants under the guise of the ordinary law, exacerbated those conditions making the economic life of the community unstable and insecure. To tackle these problems and curb these evils the legislatures of the States in India enacted Rent Control Regulation."

11. The rent control laws are in force in the State for more than 60 years. As a result of these legislations a host of problems have cropped up. These problems have been discussed by various committees appointed by the Central Government and State Governments. The reports of such committees indicate

that freezing of rentals at old historic levels, the excessive protection of tenancy rights and the extreme difficulties of recovering possession even for the owner's own use hit hard the house owners of modest means; rendered investment in housing for rental unattractive; inhibited the letting out of available accommodation and thus had aggravated the acute scarcity of accommodation for hire. It was felt that the laws were being often abused by the rich tenants against the poor or middle class landlords.

12. The State of Maharashtra appointed a committee known as Rent Acts Enquiry Committee (for short Tembe Committee) which observed as under :

".....The result of all this has been that the supply of rental housing in the market is gradually shrinking. Except in the public sector, the growing tendency is to dispose off houses on ownership or hire purchase basis. Rental housing has, therefore, almost come to a halt in cities like Bombay. This has adversely affected the economically weaker sections of the society."

".....The rent law that was enacted for the benefit of the tenants is thus operating to the detriment of their interest in that the flow of rental housing is gradually shrinking."

Tembe Committee had recommended exemption of premises of floor area more than 65 sq metres for business, trade or storage and 125 sq metres for residential purpose.

13. The resolution passed in the conference of the Ministers of 7-3-1992 stated that "the most significant impact is on the supply of rental housing which is influenced by the Act in three different ways (a) the negative effect on investment in new rental housing and supply from the existing stock of housing. This is not only due to low rents but also due to the fear of losing the house to the tenant altogether (b) withdrawal of supply from existing stock. Even though evicting the tenant is very difficult, as and when the landlord recovers the premises the disincentive to reset the premises is quite high. The large number of vacancies is an evidence of the same". The resolution recommended release of larger segment of the rental housing market from the purview of the rent control legislation and exemption of all non-residential and commercial premises. We may hasten to add that Jha Commission appointed for the establishment of Union Territory of Delhi also observed that there is little justification for large establishments in fashionable areas to be paying only nominal rents merely because their tenancy began at a time when rents were low. Even hiring of residential accommodation by commercial organizations (whether they be public or private limited companies, registered firms, partnership etc.) should be placed outside the ambit of the protection.

14. The National Commission on Urbanisation also made a report in which it was stated that the housing has been recognised as the basic need, ranked next only to food and clothing. But resources allocated and policies pursued have not yielded the expected results. Forty million people (about 25 per cent of India's

total urban population) live in slums and under conditions of multiple deprivation--illegal land tenure, deficient environment and kutcha shelter. In addition, a significant number live in inner city neighbourhood with decaying buildings and deficient services. The supply of new shelter units is not adequate to meet incremental needs leave aside the backlog. This may lead to a doubling of slum population 75 million by 2001. Nearly sixty per cent of households cannot afford a conventional pucca house and the lowest 10-15 per cent cannot even afford a serviced site. Furthermore, given the resource constraints, it is not possible to provide new pucca houses for all in the near future. The emphasis of housing policy therefore has to be on increasing shelter supply, improving and upgrading slums and conserving the existing housing stock. The commission observed that there are always some households which are either not interested in owning a house or just cannot afford to own one. For such households rental housing is the only option. In 1981, 56.80 percent of urban households were living in rented premises. The main factors inhibiting investment in rental housing and in the maintenance of rental stock are the various rent control laws. The commission had made extensive recommendations concerning reforming rent laws.

15. In the Statements of Objects and Reasons appended to the Rent Control Bill after narrating the views for unification of different rent laws in the State, it was stated as under :

"3. In the meantime the Central Government announced the National Housing Policy which recommends inter alia to carry out suitable amendments to the existing rent control laws for creating and enabling involvement in housing activity and for guaranteeing access to shelter for the poor. The National Housing Policy further recognised the important role of rental housing in urban areas in different income groups and low income households in particular those who cannot afford ownership house. The existing rent control legislation has resulted in a freeze of rent, very low returns in investment and difficulty in resuming possession and has adversely affected investment in rental housing and caused deterioration of the rental housing stock. A number of expert bodies such as Economic Administration Reforms Commission and the National Commission on Urbanisation have recommended reforms of the rent legislation in a way that balances the interests of both landlords and the tenants and also stimulates future construction. The National Housing Policy envisages amendment of the State Rent Control Laws for bringing about uniformity in their application throughout the country. Having regard to all these aspects the Central Government formulated a suitable model rent law incorporating the views outlined in the policy paper and in July 1992 had laid the same on the Table of both Houses of Parliament.

4. The Model Rent Control Legislation formulated by the Central Government envisages primarily:-

(a) limiting the jurisdiction of the Rent Control Act to large cities ;

- (b) exemption for 15 years to new constructions and substantially renovated houses ;
- (c) exemption of residential and non-residential premises carrying more than a prescribed rent;
- (d) fixation of standards rent based on market value of land and cost of construction and revision of rent of existing tenancies on graduated basis ;
- (e) periodic revision of rent based on current prices index;
- (f) obligations of landlords and tenants to be defined and penalties provided for their violation ;
- (g) provisions for eviction of tenant under limited or long term tenancy to enable resumption of possession by the landlord in stipulated circumstances, with summary procedure for certain vulnerable groups;
- (h) setting up a two tier system of adjudication with Rent Controllers and Tribunals by ousting the jurisdiction of courts and installing speedy and simplified procedures for settling disputes within a year.

5. This is a Bill to unify, consolidate and amend the three rent control laws which are in operation in the State. The Bill generally adapts the provisions contained in the Model Rent Legislation with suitable modifications to suit the circumstances at present obtaining in the State....."

16. It is a settled position of law that no category of tenants can claim to possess any vested right to be protected by the rent laws. In *Mohinder Kumar and Others Vs. State of Haryana and Another*, the Supreme Court observed :

"The argument that the tenants have acquired a vested right under the Act prior to the amendment is without substance..... The right claimed is the right to be governed by the Act prior to its amendment. If the legislature had thought it fit to repeal the entire Act, could the tenant have claimed any such right? Obviously, they could not have; the question of acquiring any vested rights really does not arise."

17. To the same effect are the observations of Fazal Ali, J., in *Kewal Singh Vs. Smt. Lajwanti*, ."

".....Thus any right that the tenant possessed after the expiry of the lease was conferred on him only by virtue of the Rent Control Act. It is, therefore, manifest that if the legislature considered in its wisdom to confer certain rights or facilities on the tenants, it could due to changed circumstances curtail, modify, alter or even take away such rights or the procedure enacted for the purpose of eviction and leave the tenants to seek their remedy under the common law."

18. It is already seen from the Statement of Objects and Reasons that the object of the Act is not merely to protect tenants but also to provide fair returns to the landlords and to encourage housing activity so as to augment rental housing in

the form of construction of buildings and letting them out. It is also meant to legitimize the pagadi or premium system which was prohibited earlier. Thus the Act has been enacted in order to strike a balance between the interests of landlords and tenants and for giving a boost to house building activity and in doing so the legislature in its wisdom has decided and thought it fit not to extend the protection of the Rent Act to certain class of tenants like multinationals scheduled banks, public sector undertakings and private and public limited companies having share capital of more than Rs. 1 crore. This is essentially a matter of legislative policy. The legislature would have repealed the Rent Act altogether. It could also withdraw the protection under the Rent Act on rental basis see *D.C. Bhatia and Others Vs. Union of India (UOI) and Another*, or on income basis see *Delhi Cloth and General Mills Ltd. v. S. Paramjit Singh*, 1990 (4) S.C.C. 923 or any other understandable basis. In our view it is for the legislature to decide what should be the appropriate basis for the purpose of classification and the legislature as of necessity must have a lot of latitude in this regard. Whether any particular category of tenants needs to be protected under the Rent Act is a matter of legislative determination. There is nothing arbitrary if such protection is taken away in case of certain categories of tenants having regard to their position determined on objective and reasonable criterion. These are essentially matters of policy. Unless the provision is shown to be arbitrary, capricious or to bring about grossly unfair results, judicial policy should be one of judicial restraint. The prescriptions may be somewhat cumbersome or produce some hardship in their application in some individual cases; but they cannot be struck down as unreasonable, capricious or arbitrary.

19. In *R.K. Garg and Others Vs. Union of India (UOI) and Others*, the Supreme Court held that it is a rule of equal importance that laws relating to economic activities should be viewed with greater latitude than law touching civil rights, such as freedom of speech, religion etc. The Supreme Court observed that (S.C.C. pp. 690-91 para 8):

"It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straightjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud*, where *Frankfurter, J.*, said in his inimitable style:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of

economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events—self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

The Court must always remember that legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract proposition and do not relate to abstract units and are not be measured by abstract symmetry, that exact wisdom and nice adoption of remedy are not always possible and that judgment is largely a prophecy based on meager and uninterrupted experience. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot as pointed out by the United States Supreme Court in *Secy. of Agriculture v. Central Roig Refining Co.*, be converted into Tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuses of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues."

20. In the case of *City of New Orleans v. Dukes*, reported in 1976 (297) U.S. 427 which was cited with approval in *D.C. Bhatia's* case, that U.S. Supreme Court had to deal with ordinance that banned all pushcart vendors from the French Quarter, except those in continuous operations for more than eight years. It was held :

"When local economic regulation is challenged solely as violating the Equal Protection Clause this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. Unless a classification trammels fundamental personal rights or is drawn upon, inherently suspect distinctions such as race, religion, alien age ,our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate State interest.

States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude. Legislatures may implement their programme step-by-step-in such economic areas, adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations.....In short, the judiciary may not sit as a super-legislature to judge the wisdom or undesirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines..... in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment."

21. The problem of housing is a complex one and indeed it has been aggravated in recent times due to excessive application of rent protection laws and the expert committees have therefore suggested a whole range reforms in rent statutes. It is entirely for the legislature to decide whether any measures, and if so what measures are to be adopted to remedy the situation. The legislature enjoys widest attitude in these matters and the courts will interfere only if such measures are palpably arbitrary. This was so held in D.C. Bhatia's case (supra) where the challenge was to section 3(c) of the Delhi Rent Act which excluded operation of the said Act to any premises whether residential or not, whose monthly rent exceeds Rs. 3500. In repelling the challenge the Supreme Court observed : (at pages 113 and 114).

"28. In order to strike a balance between the interests of the landlords and also the tenants and for giving a boost to house building activity, the legislature in its wisdom has decided to restrict the protection of the Rent Act only to those premises for which rent is payable upto the sum of Rs. 3500 per month and has decided to extend this statutory protection to the premises constructed on or after the date of coming into operation of the Amending Act for a period of ten years. This is a matter of legislative policy. The legislature could have repealed the Rent Act altogether. It can also repeal it step by step. It has decided to confine the statutory protection to the existing tenancies whose monthly rent did not exceed Rs. 3500.

29. In our view, it is for the legislature to decide what should be the cut off point for the purpose of classification and the legislature of necessity must have a lot of latitude in this regard. It is well settled that the safeguards provided by Article 14 of the Constitution is made on the grounds which are totally irrelevant to the object of the statute. But, if there is some nexus between the object sought to be achieved and the classification, the legislature is presumed to have acted in proper exercise of its constitutional power. The classification in practice may result in some hardship. But, a statutory discrimination cannot be set aside, if there are facts on the basis of which this statutory discrimination can be justified."

22. The Court came to the conclusion that the classification made on the basis of rent payable for the premises is perfectly legal and proper. It was observed :

"48. However, we need not go too deeply into this aspect of the controversy, as in our opinion, it is for the legislature to decide whether or not any section of the people should be protected in any way by law. For this purpose, the legislature can identify the section of the people who need protection and decide how the classification will be done or what will be the cut off point for the purpose of making such classification. The classification may be done on income basis or rental basis or some other basis. The Court can only consider whether the classification has been done on an understandable basis having regard to the object of the statute. The Court will not question its validity on the ground of lack of legislative wisdom.

49. Moreover, the classification cannot be done with mathematical precision. The legislature must have considerable latitude for making the classification having regard to the surrounding circumstances and facts. The Court cannot act as a super legislature and decide whether the cut off point for the classification on the basis of monthly rent should be Rs. 3500 or Rs. 4000 or Rs. 5000. If the classification is totally irrational and has no nexus with the object sought to be achieved by the statute, then only will the Court strike down such classification."

23. The view expressed in D.C. Bhatia's case (supra) was reiterated by the Supreme Court in C.N. Rudramurthy etc. v. K. Barkathulla Khan & others, 1999 (2) S.C.C. 261 wherein it was observed: (at page 139)

"(9) It is submitted that if we take the view that section 31 of the Karnataka Rent Act is valid in view of D.C. Bhatia's case, then the enactment will keep out of its purview large number of premises inas much as the rent payable in respect of commercial premises in Bangalore will certainly be more than Rs. 500 per month. We have given our careful consideration to this aspect of the matter. Relying upon the decisions in Rattan Arya and Others Vs. State of Tamil Nadu and Another, ; Motor General Traders and Another Vs. State of Andhra Pradesh and Others, ; Synthetics & Chemicals Ltd. & others v. State of U.P. & others, Sant Lal Bharti v. State of Punjab, it was submitted that with passage of time and change of circumstances the continued operation of an Act which was valid when enacted may become invalid as being arbitrary and unreasonable. Though Karnataka Rent Control Act was enacted in the year 1961 and was to lapse by the end of 10 years time, it has been extended from time to time in the same form in which it was enacted originally or with some modification wherever it was necessary. We cannot imagine that the legislature was not aware or conscious of the fact as to the rents prevalent in the city of Bangalore or in other parts of the State in respect of non-residential premises. Perhaps, the legislature thought it was necessary to give protection of the Act to only very poor tenants who pay rent less than Rs. 500 per month considering the fact that the tenants in other premises are economically of superior class and can withstand the maneuvers of a landlord however, powerful he may be. If that was the policy of the law, we do not think as stated in D.C. Bhatia's case it was open to the Court to have declared the same to be invalid."

24. In the case of Delhi Cloth and General Mills Ltd. Vs. S. Paramjit Singh and Another, the petitioners questioned the validity of section 1(3) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966 which excluded from the purview of the Act tenancies in respect of any house or shop where the income of the tenant whether accruing within or outside the State exceed rupees 40,000 per annum. The explanation to the section defined the word income to mean net income. It was argued that this clause was arbitrary and discriminatory because it does not take into account the nature of the building, but only the income of the tenant. Reliance was placed on the decisions in Rattan Arya and Others Vs. State of Tamil Nadu and Another, and Motor General Traders and Another Vs. State of Andhra Pradesh and Others, . This argument was repelled by a Bench of three Judges of the Supreme Court and it was held :

"In Rattan Arya this Court stated that a distinction between residential buildings leased on rent not exceeding Rs. 400 per month and all other buildings whether residential or non-residential was an unreasonable classification. There was no reason why non-residential buildings leased on rent of Rs. 400 per month or less should be treated differently from residential buildings of like rent or why in the case of residential buildings the limit should have been limited to Rs. 400 per month. To so restrict the protection of the Act was an unreasonable classification. In the Motor General Traders, this Court stated that to arbitrarily prescribe a cut off date i.e. 26-8-1957 for denying the protection of the Act without regard to the age of the building or to the extent of realisation of the investment by the owner was an unreasonable classification. These decisions do not, in our view, support the contentions of the appellant.

On the other hand, a classification with reference to economic realities was upheld by this Court in Kerala Hotel & Restaurant Assn. v. State of Kerala. This Court stated (S.C.C. p 517 para 31) those who can afford the costlier cooked food, being more affluent, would find the burden lighter. This object cannot be faulted on principle and is, indeed, laudable. Though that principle was stated in a different context significantly this Court accepted classification based on financial capacity."

25. It was observed in that judgment that the legislature in its wisdom is presumed to understand and appreciate correctly the problems of the State and the needs of the people made manifest by experience. Legislative innovation by social and economic experimentation must be permitted to continue without judicial interference". It was ultimately held (S.C.C. p 727 para 9) :

"The legislative object is, therefore, to protect tenants who are economically weaker in comparison to those affluent tenants falling outside the specified limit of income, and at the same time to encourage construction of new buildings which will result in better availability of accommodation, employment opportunity and economic prosperity. This is reasonable classification which does not suffer from the vice of being too vague or broad. Classification based on income is well known to law. Such classification has a reasonable relation to the twin legislative

objects mentioned above. We see nothing unreasonable or irrational or unworkable or vague or unfair or unjust in the classification adopted by the impugned provision."

26. The decisions on which the petitioners have placed reliance are indeed of no assistance. In the case of *Motor General Traders* (supra) the Supreme Court had considered the constitutional validity of section 32(b) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. This provision exempted all buildings constructed on or after August 26, 1957 from the operation of the Act. No period had been fixed for which this exemption will be enjoyed by owners of buildings constructed on or after August 26, 1957 from the operation of the Act and the exception appeared to be in the nature of a permanent one. The Supreme Court after referring to various authorities declared the said provision to be invalid holding :

"After giving our anxious consideration to the learned arguments addressed before us, we are of the view that Clause (b) of section 32 of the Act should be declared as violative of Article 14 of the Constitution because the continuance of that provision on the statute book will imply the creation of a privileged class of landlords no longer exists by lapse of time in the case of the majority of such landlords. There is no reason why after all these years they should not be brought at par with other landlords who are subject to the restrictions imposed by the Act in the matter of eviction of tenants and control of rents."

27. In *Rattan Arya's* case (supra) the main controversy was about the discrimination between residential and non-residential buildings. Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was struck down on the ground that the argument based on protection of the weaker section of the community was entirely inconsistent with the protection given to tenants of non-residential premises. It was held :

"As we pointed out earlier, the argument based on protection of the weaker sections of the community is entirely inconsistent with the protection given to tenants of non-residential buildings who are in a position to pay much higher rents than the rents which those who are in occupation of residential buildings can ever pay. We are, therefore, satisfied that section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has to be struck down as violative of Article 14 of the Constitution. A writ will issue declaring section 30(ii) as unconstitutional."

28. In *Jaila Singh and Another Vs. State of Rajasthan and Others*, the Supreme Court held condition No. 3 of the Rajasthan Colonization (Rajasthan Canal Project Pre 1955 Temporary Tenants Government Land Allotment) Conditions, 1971 and Rule 3(2) of the Rajasthan Colonization (Allotment of Government Land to Post 1955 Temporary Cultivation Lease Holders and other Landless Persons in the Rajasthan Canal Project Area) Rules, 1971 are discriminatory and void. It was held that there is no nexus between the pre-1955 conditions and post-1955

Rules and the Rajasthan Tenancy Act which came into force on 15-10-1955. The length of occupation of the lands does not provide any proper criterion for the distinction between pre-1955 and post-1955 tenants.

29. Next judgment cited on behalf of the petitioners is in the case of the State of Rajasthan Vs. Mukanchand and Others, . In that case the Supreme Court struck down a portion of section 2(e) of the Rajasthan Jagirdar's Debt Reduction Act, excluding certain debts due to creditors mentioned in Clauses (i) to (vi) on the ground that it is violative of Article 14 of the Constitution and is invalid. It was held that the portion does not satisfy the test of permissible classification. The fact that the debts are owed to a Government or local authority or other bodies mentioned in the impugned part of section 2(e) has no rational relationship with the object sought to be achieved by the Act, namely to reduce the debts secured on jagir lands which had been resumed under the provisions of Rajasthan Land Reforms and Resumption of Jagirs Act. It was held that no intelligible principle underlies the exempted categories of debts. The reason why a debt advanced on behalf of a person by the Court of Wards is clubbed with a debt due to a State or a Scheduled Bank and why a debt due to a non-scheduled bank is not excluded from the purview of the Act is not discernible.

30. A reference was also made to a decision of the U.S. Supreme Court in Yick Wo v. Hopkins, (1) U.S. 356. In that case an ordinance, which prohibited the carrying on of a laundry business within the limits of the city without having first obtained the consent of the Board of Supervisors unless it was located in a building constructed of brick or stone, was held to be discriminatory and unconstitutional. The undisputed facts disclosed in the record that out of 320 laundries in San Francisco about 310 were constructed of wood and about 240 of the 320 were owned and conducted by subjects of China. The petitioner a Chinaman and about 200 of his countrymen applied to the Board of Supervisors to continue their clothes washing business in wooden building which they had been occupying for many years, but in all cases license was refused, whereas not a single one of the petitions presented by 80 persons who were not subject of China had been refused. Dealing with these facts, the Court observed: "Though the law itself be fair on its face and impartial in appearance yet if it is applied and administered by public authority with an evil eye and an unequal hand so as to practically make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution". We fail to appreciate as to how this decision has any application to the present case inas much as it is not even suggested that there is any hidden agenda behind the impugned provision or its application would result in unjust and illegal discrimination between persons covered by the exemption Clause.

31. Turning then to the provisions of section 3(1)(b) of the present Act, the legislature has decided not to afford protection of the Rent Act to certain categories of tenants mentioned therein. It has been stated that under the

Bombay Rent Act, the rents which were payable were frozen on the basis of what was known as a "standard rent" formulae which landlords contended caused tremendous hardship to them as the same resulted in inadequate returns to the landlords. The legislature felt the need of the Rent Act to bring in the necessary balance between the interest of tenants and the landlords. To bring this balance, the Rent Control Bill, when it was introduced in the State legislature, made a deviation from the existing provisions of the rent laws and introduced an exemption provision under the new Act whereby premises let to foreign missions, international agencies, multinational companies and public limited companies having a paid up share capital of more than Rs. 1 crore were exempted from the Act. When the bill was referred to the Joint Committee of both the Houses of Legislature, the Joint Committee held as many as fifty sittings to consider and discuss the provisions of the Bill. The committee held prolonged discussions and heard views on the proposed provisions in the Rent Control Bill of the representatives of tenants and landlords before making its recommendations. It is thus seen that the legislature had applied its mind to the problem of housing and control of rents and suggested certain measures. It did not proceed on the basis that rent control legislation was meant only for the benefit of the tenants but it wanted to strike a balance between the interests of the landlord and tenants. Therefore it cannot be said that the provisions of section 3(1)(b) have got no nexus with the object which is sought to be achieved.

32. It is urged that no reason has been given as to why only corporate tenants have been singled out for exclusion and why other tenants similarly situated i.e. having capacity to pay, are also not excluded/exempted. Even within commercial ventures no reason is discernible as to why partnership firms, HUFs and proprietary concerns having economic/financial capacity to pay are protected by the Act, whilst private and public limited companies are excluded. Therefore there is violation of Article 14 of the Constitution. We are unable to accept these contentions. It is no doubt true that Article 14 ensures non discrimination in State action both in the legislative and the administrative spheres in the democratic republic of India. This, however, cannot mean that all laws must be general in character and universal in application. As pointed out in *Chiranjitlal Chowdhari v. Union of India*, 1950 S.L.R. 659, the State in the exercise of its Governmental powers must necessarily make laws operating differently on different groups or classes of persons and it possess for that purpose large powers of distinguishing and classifying persons or things subject to such laws. Further it is equally well settled that legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the legislature to determine what categories it should embrace within the scope of legislation and merely because the categories which would stand on the similar footing are not covered by the legislature would not render the legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 unless it is palpably arbitrary or amounts to total denial of equal protection laws. See *Sakhawat Ali Vs. The State of Orissa*, . Besides

there are obvious distinctions between a company incorporated under the Companies Act on one hand and partnership firm or HUF on the other hand. It is not necessary to examine the same in detail. Suffice it to say that even for the purpose of Rent Act, a partnership firm and a company do not stand on the same footing. For example if partners in a partnership firm sell their shares to a third party, it would amount to subletting within the meaning of the Rent Act whereas in a case of a limited company whose shares are transferred may not result into sub-letting and forfeiting of tenancy since the entity remains the same. We see nothing illegal or unfair in the classification adopted by the impugned provision.

33. We also do not find any substance in the submission that the criteria of paid up share capital is arbitrary and violative of Article 14 of the Constitution. The paid up capital of a company is the capital that it has invested into the business from its own sources. It is not necessarily the money with which it was born. Even the money credited to the paid up capital like bonus shares forms a part of the paid up capital of the company. The companies which have paid up share capital of more than Rs. 1 crore by their very nature are substantial organisations. The paid up share capital of a company is a factor which rarely fluctuates, unlike other factors like net worth which are applied while determining the financial status of a company. It is a factor which is insisted upon by various agencies, such as banks while granting loans as also for the purpose of listing on the stock exchanges. The paid up share capital also reflects the confidence which the public at large has in a particular company. It is also a fact that the paid up share capital cannot be reduced unless the procedure prescribed by the Companies Act is followed and without prior permission of the company Court as envisaged by the provisions of the Company Act. It is therefore not possible to hold that criteria of paid up capital is wholly irrelevant. The lack of perfection in a legislative measures does not necessarily imply its unconstitutionality. To quote the words Venkatachaliah, J., as His Lordship then was, in *P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others*, "no economic measure has yet been devised which is free from all discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of criticism, under the equal protection Clause reviewing fiscal devices."

34. In the circumstances, we are not persuaded to hold that the impugned section 3(1)(b) of the Maharashtra Rent Control Act violates Article 14 of the Constitution in any manner.

35. Before parting with this judgment we may mention that apart from the constitutional validity of section 3(1)(b) one more contention was raised before us on behalf of scheduled banks. It was contended that only such scheduled banks which are instrumentalities of the State within the meaning of Article 12 of the Constitution are meant to be covered and no other scheduled bank which is included in the 2nd Schedule is covered. It is urged that the banks covered by the Clauses (i), (ii) and (iii) fit in the description of the State within the meaning

of Article 12 and therefore by invoking the Rule of ejusdem generis the 4th category viz. "any other bank being a scheduled bank as defined in Clause (e) of section 2 of the RBI Act, 1934" must also answer the description of "State" within the meaning of Article 12. The argument is only required to be stated to be rejected. In the first place the categories of banks enumerated in Clauses (i) to (iii) are banks which are established by and under the statute are a class in itself. Clause (iv) adds scheduled banks to the categories of banks which are exempted. There is nothing to indicate that the legislature intended to add only such banks which are instrumentalities of the State. If the interpretation suggested by the Counsel for the banks is to be accepted then it would mean that no scheduled bank will be covered and Clause (iv) would practically become redundant. In any event in our opinion the language of the section is very clear which encompasses within itself all the scheduled banks as defined in section 2(e) of the RBI Act and whether they answer the description of the State with reference to Article 12 is wholly irrelevant.

36. In the result, in view of the foregoing discussion, all the writ petitions are dismissed.

No order as to costs.