

(1962) 05 GUJ CK 0001
In the Gujarat High Court

Glamour Cleaners

APPELLANT

Vs

Chandrakant Chhotalal Gandhi and Another

RESPONDENT

Date of Decision : 01-05-1962

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 14
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 37
Transfer of Property Act, 1882 — Section 108(j)

Citation : (1962) 3 GLR 941

Hon'ble Judges : P.N. Bhagwati, J

Bench : Single Bench

Judgement

P.M. Bhagwati, J.—This group of matters consists of four Revision Applications and one appeal. They all raise the same question and are therefore being disposed of by a common judgment. The question raised is a question of considerable importance and it is whether the holder of a statutory tenancy under the Bombay Rents Hotel and Lodging House Rates (Control) Act 1947 (hereinafter referred to as the Rent Act) has power to sublet whole or part of the premises and thereby confer on the sub-tenant the benefit of the protective provision contained in Section 14 of the Rent Act. The facts giving rise to these matters are for the most part undisputed and may be briefly stated as follows.

Anandji Kalyanji Pedhi is a Public Trust registered under the Bombay Public Trusts Act 1950 Chandrakant Chhotalal Gandhi and Kantilal Bhogilal Nanavati are the present trustees of that trust. By an Indenture of Lease dated 18th July 1949 the then trustees granted a lease of certain premises situate on Relief Road Ahmedabad to one Maneklal Mafatlal for a period of five years. The premises were then under construction and it was therefore provided that the lease would commence from the date on which possession of the premises was handed over by the trustees to Maneklal Mafatlal. It is an admitted fact that the construction of the premises was thereafter completed and possession was handed over by the trustees to Maneklal Mafatlal on 5th March 1950. The period of the lease consequently commenced from 5th March 1950. The rent reserved under the

lease was Rs. 2 0 per month and the premises consisted of a ground floor and first floor structure. There were various stipulations in the lease of which the most material was that contained in Clause (1) and as translated it ran in the following terms:

We have taken on lease this building for running lodging and boarding If we have a necessity to forming a partnership with another in that we shall keep a vegetarian partner and we shall inform you of having formed such partnership. By forming partnership in this manner ourselves and the partner and the partners along with ourselves will be jointly and severally responsible in the liability to you. And if we want to sublet the said building or any part thereof we shall not give to other than vegetarian sub-tenant and we shall immediately inform you in writing of having sublet in that manner Even when we have sublet in this manner for the entire rent and for compliance with all terms of this lease deed the whole responsibility is ours....

It appears that soon after obtaining the lease from the trustees Maneklal Mafatlal started raising disputes about the rent with the trustees and ultimately it was agreed between the trustees and Maneklal Mafatlal that the rent of the premises should be reduced from Rs. 2 0 per month to Rs. 1 700 per month with effect from 1st January 1951. Maneklal Mafatlal was however not content with this reduction in rent and he therefore made an application for fixation of standard rent under the provisions of the Rent Act The application was contested by the trustees. The trial Court however fixed the standard rent of the premises at Rs. 1 300 per month. Maneklal Mafatlal as well as the trustees were aggrieved by this determination of the standard rent with the result that there were cross Revision Applications filed by Maneklal Mafatlal and the trustees. The cross Revision Applications ended in a consent order on 30th April 1957 whereby the standard rent of the premises was fixed at Rs. 1 700 per month by consent of parties. The period of the lease in the meantime expired on 5th March 1955 and since Maneklal Mafatlal had run into arrears of rent the trustees gave a notice dated 25 February 1955 calling upon Maneklal Mafatlal to hand over possession of the premises to the trustees on the expiration of the period of the lease. Maneklal Mafatlal however failed to hand over possession of the premises to the trustees and the trustees were therefore obliged to file a suit for ejectment against Maneklal Mafatlal on 27th April 1956. After a bitter contest the trustees ultimately succeeded in obtaining a decree for ejectment against Maneklal Mafatlal on 22nd June 1960. When the trustees attempted to obtain possession of the premises in execution of the decree the trustees found that the first floor of the premises was in the possession of Anand Niwas Private Limited while two shops on the ground floor were in the possession of Glamour Cleaners and Vithaldas Panchal. The trustees could therefore obtain possession only of the remaining portion of the ground floor from Maneklal Mafatlal and so far as the other portions of the premises were concerned the trustees were obstructed by Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal. According to Anand Niwas Private Limited the first floor of the premises was sublet by

Maneklal Mafatlal to Anand Niwas Private Limited from 1st January 1959. Glamour Cleaners and Vithaldas Panchal also set up sub-tenancies of the respective portions of the ground floor in their possession from Maneklal Mafatlal from August 1958.

2. Taking up first the history of the litigation in regard to Ananar Niwas Private Limited it appears that Anand Niwas Private Limited filed a suit in the Court of the Civil Judge Junior Division Ahmedabad on 25 June 1960 for a declaration that the decree for ejectment obtained by the trustees against Maneklal Mafatlal was not binding on Anand Niwas Private Limited and for an injunction to restrain the trustees from executing the decree for ejectment against Anand Niwas Private Limited. Immediately after filing the suit Anand Niwas Private Limited applied for an interim injunction to restrain execution of the decree for ejectment and on the application an ad interim injunction was granted by the trial Court. The application for interim injunction was thereafter heard and the trial Court confirmed the interim injunction and directed the suit to be expedited. The trial Court ultimately at the hearing of the suit came to the conclusion that it had no jurisdiction to entertain and try the suit and that the Court of Small Causes was the only Court which could entertain and dispose of the suit having regard to the provisions of the Rent Act. The trial Court accordingly ordered the plaint to be returned for presentation to the proper Court. The plaint was thereafter presented in the Court of Small Causes and the suit was numbered 2814 of 1961. On the application of Anand Niwas Private Limited an ad interim injunction was granted by the Court of Small Causes on 4th September 1961 but after hearing the parties the Court of Small Causes vacated the ad interim injunction and dismissed the application on 19th September 1961. Anand Niwas Private Limited thereupon filed an appeal against the order dismissing the application for interim injunction and immediately after filing the appeal Anand Niwas Private Limited applied for an interim injunction restraining the trustees from executing the decree for ejectment pending the hearing and final disposal of the appeal. Anand Niwas Private Limited succeeded in obtaining an ad interim injunction in the application but the ad interim injunction was vacated by the Assistant Judge Ahmedabad on 11th October 1961 after hearing the parties. The result was that no interim injunction was granted to Anand Niwas Private Limited restraining the trustees from executing the decree for ejectment during the pendency of the appeal. Anand Niwas Private Limited thereupon filed Civil Revision Application No. 751 of 1961 in this Court challenging the order passed by the learned Assistant Judge dismissing its application for interim injunction pending the hearing and final disposal of the appeal. At the hearing of this Revision Application I pointed out to Mr. I.M. Nanavaty learned advocate appearing on behalf of Anand Niwas Private Limited that the order passed by the learned Assistant Judge dismissing the application of Anand Niwas Private Limited for an interim injunction during the pendency of the appeal was an appealable order and that no Revision Application could therefore be maintained against such order. Mr. I.M. Nanavaty thereupon applied that the Revision Application be

converted into an appeal and I accordingly directed that the Revision Application be treated as an appeal and the Revision Application was under the circumstances argued as an appeal and is being disposed of as an appeal.

So far as Glamour Cleaners and Vithaldas Panchal are concerned the litigations in regard to them followed similar course with a little variation. The trustees as I have pointed out above were obstructed in obtaining possession of the portions of the ground floor of the premises in the respective occupation of Glamour Cleaners and Vithaldas Panchal and the trustees therefore filed two applications under Order 21 Rule 37 of the CPC one against Glamour Cleaners and the other against Vithaldas Panchal for removal of the obstruction caused by them. These applications were allowed and orders were made by the Court of Small Causes directing Glamour Cleaners and Vithaldas Panchal to remove the obstruction caused by them. Against the orders made by the Court of Small Causes on those applications Glamour Cleaners and Vithaldas Panchal filed two separate Revision Applications in the Court of the District Judge Ahmedabad. These Revision Applications were dismissed by the learned District Judge. Glamour Cleaners and Vithaldas Panchal thereupon preferred Civil Revision Applications Nos. 478 of 1961 and 479 of 1961 respectively in this Court complaining against the dismissal of their respective Revision Applications by the learned District Judge. Glamour Cleaners and Vithaldas Panchal also tiled two separate suits under Order 21 Rule 103 of the CPC against the trustees suit No. 106 of 1901 being the suit filed by Glamour Cleaners and suit No. 101 of 1961 being the suit filed by Vithaldas Panchal for a declaration that the trustees were not entitled to recover possession of the permises in the respective occupation of Glamour Cleaners and Vithaldas Panchal in execution of the ejectment decree obtained against Maneklal and for an injunction to restrain the trustees from executing the decree for ejectment. If I might say so history repeated itself in these two cases. Immediately after filing the suits Glamour Cleaners and Vithaldas Panchal applied for an interim injunction and on their applications an ad interim injunction was granted but subsequently after hearing the parties the ad interim injunction was vacated and applications were dismissed by the trial Court. Glamour Cleaners and Vithaldas Panchal thereupon filed appeals in the Court of the District Judge Ahmedabad against the orders dismissing their applications for interim injunction. But the appeals were also dismissed by the learned Assistant Judge. Glamour Cleaners and Vithaldas Panchal thereupon filed Civil Revision Application No. 784 of 1961 and Civil Revision Application No. 785 of 1961 against the orders passed by the learned Assistant Judge dismissing their respective appeals. Since all these matters involved the same question of law they were all heard together and are now being disposed of by a common judgment. Before I proceed further I may state that after the matters were argued for sometime Mr. J.M. Shah learned Advocate appearing on behalf of Glamour cleaners and Vithaldas Panchal applied for withdrawal of Civil Revision Applications Nos. 478 of 1961 and 479 of 1961 since Glamour Cleaners and Vithaldas Panchal having already filed suits under Order 21 Rule 103 of the CPC there was no point in

pursuing those Revision Applications. Civil Revision Applications Nos. 478 of 1961 and 479 of 1961 were accordingly allowed to be withdrawn. The result therefore is that only Civil Revision Application No. 751 of 1961 (which has been converted into an appeal) and Civil Revision Applications Nos. 784 of 1961 and 785 of 1961 now remain to be disposed of by this judgment.

In order to eliminate all controversy as to facts and to obtain a decision on the questions of law arising in Civil Revision Application No. 751 of 1961 (which has been converted into an appeal) Anand Niwas Private Limited and the trustees submitted an application before me requesting me to decide finally while disposing of the appeal the following questions of law which according to the parties arise in the appeal:

- (1) Whether Maneklal Mafatlal was entitled to sublet the premises to An Niwas Private Limited?
- (2) Whether Anand Niwas Private Limited has become direct tenant of the trustees or is otherwise protected under the Rent Act?
- (3) Whether the doctrine of *lis pendens* has the effect of preventing Anand Niwas Private Limited from claiming protection under the Rent Act?

By this application I was also requested to dispose of the appeal on the footing that there was actual sub-letting of the first floor of the premises by Maneklal Mafatlal to Anand Niwas Private Limited from 1st January 1959. Similar applications were also submitted by Glamour Cleaners and the trustees in Civil Revision Application No. 784 of 1961 and by Vithaldas Panchal and the trustees in Civil Revision Application No. 785 of 1961. I will therefore now proceed to examine the various contentions arising in these matters on the basis of the applications submitted before me by the respective parties.

It is an admitted fact that the period of the lease of Maneklal Mafatlal expired on 5th March 1955. It is also an admitted fact that the tenancy of Maneklal Mafatlal was thereafter not renewed and that Maneklal Mafatlal continued in possession of the premises by virtue of the protection afforded to him by the provisions of the Rent Act. To use the common and well-worn expression which I shall have occasion to examine a little later Maneklal Mafatlal became a statutory tenant from 5th March 1955. Maneklal Mafatlal was therefore admittedly a statutory tenant both in August 1959 when he sublet two portions of the ground floor of the premises to Glamour Cleaners and Vithaldas Panchal as also on 1st January 1959 when he sublet the first floor of the premises to Anand Niwas Private Limited. Of course when I use the word sublet here I use it to describe the transactions which according to Anand Niwas Private Ltd. Glamour Cleaners and Vithaldas Panchal were intended to be effected by Maneklal Mafatlal when he handed over possession of the respective portions of the premises to them. Whether Maneklal Mafatlal could in law sublet and if not whether the transactions could amount to subletting are questions which I have to determine in these proceedings and I should not therefore be understood to assume what I have to

decide when I use the word sublet in connection with the transactions which took place between Maneklal Mafatlal on the one hand and Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal on the other in regard to the respective portions of the premises handed over to them. The statutory tenancy of Maneklal Mafatlal admittedly came to an end on the passing of the decree for ejectment against him on 22nd June 1960. It was therefore contended on behalf of Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal relying on the provisions of Section 14 of the Rent Act that since they were persons to whom different portions of the premises were lawfully sublet before 21st May 1959 being the date of commencement of the Bombay Rents Hotel and Lodging House Rates Control (Amendment) Ordinance 1959 they must be deemed to have become direct tenants of the trustees on the same terms and conditions as they would have held from Maneklal Mafatlal if the statutory tenancy of Maneklal Mafatlal had continued. If this contention were valid it is clear that the trustees would not be entitled to execute the decree for ejectment against Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal for on the passing of the decree for ejectment on 22 June 1960 Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal would be deemed to have become direct tenants of the trustees and the trustees would have to adopt appropriate proceedings for ejectment against them if the trustees have any ground for eviction available against them. The entire controversy between the parties therefore centred round the true interpretation of Section 14 of the Rent Act. In order to bring themselves within the protection of Section 14 of the Rent Act Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal contended that they were sub-tenants to whom different portions of the premises were lawfully sublet before 21st May 1959. The trustees on the other hand contended that Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal were not sub-tenants to whom different portions of the premises could be said to have been lawfully sublet before 21st May 1959 so as to attract the applicability of Section 14 of the Rent Act. These rival contentions raised the important question whether a statutory tenant could sublet the whole or part of the premises. If a statutory tenant could not sublet the premises or any part thereof it is obvious that Maneklal Mafatlal being a statutory tenant from and after 5 March 1955 no subletting of any portion of the premises could be effected by Maneklal Mafatlal either in August 1958 or on 1st January 1959 and in that event Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal could not be said to be sub-tenants to whom any portion of the premises was lawfully sublet before 21st May 1953. It was therefore strenuously argued by Mr. I.M. Nanavaty on behalf of Anand Niwas Private Limited and by Mr. J.M. Shah on behalf of Glamour Cleaners and Vithaldas Panchal that a statutory tenant is entitled to sublet and that Maneklal Mafatlal though a statutory tenant had therefore power to sublet the whole or any part of the premises and Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal were accordingly lawful sub-tenants of Maneklal Mafatlal since prior to 21st May 1959 so as to fall within the protective provisions of Section 14 of the Rent Act. Mr. M.M. Shah on behalf of the trustees combated

this contention by pointing out that a statutory tenant has no estate or interest in the premises out of which he can create a sub-tenancy and that a statutory tenant is therefore not entitled to sublet either the whole or any part of the premises and that Maneklal Mafatlal could not therefore sublet any portion of the premises to Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal. I shall now proceed to examine the correctness of these rival contentions urged before me.

3. The contention that Maneklal Mafatlal though a statutory tenant was entitled to sublet different portions of the premises to Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal was advanced by Mr. I.M. Nanavaty and Mr. J.M. Shah under two heads. The first head of the contention was that Clause (1) of the Indenture of Lease which contained the terms and conditions of the contractual tenancy of Maneklal Mafatlal empowered Maneklal Mafatlal to sublet the premises or any part thereof and that the right to sublet conferred by this clause was imported into the statutory tenancy of Maneklal Mafatlal by virtue of the provisions of Section 12(1) of the Rent Act and that Maneklal Mafatlal was therefore entitled in exercise of the right so imported to sublet different portions of the premises to Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal even though he was a statutory tenant at the dates when he so sublet. The contention under the second head was that having regard to the scheme of the Rent Act and Sections 5, 13, 14 and 15 it was clear that there was an implied power in the statutory tenant to sublet the whole or part of the premises and that Maneklal Mafatlal was therefore entitled to sublet different portions of the premises to Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal as he in fact did. These were the two broad heads of argument advanced on behalf of Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal and they raised questions which certainly cannot be said to be free from difficulty having regard to the obscure and complicated provisions of the Rent Act which I am called upon to construe in these proceedings.

Before I examine these two heads of argument urged by Mr. I.M. Nanavaty and Mr. J.M. Shah on behalf of Anand Niwas Private Ltd. Glamour Cleaners and Vithaldas Panchal it would be desirable to consider the exact position so far as can be ascertained occupied by a statutory tenant in jurisprudence. The Rent Act contains no mention of the term statutory tenant. Despite intimations of paternity by Scrutton L.J. in *Keeves v. Dean* (1924) 1 K.B. 685 the judgment of Lord Coleridge J. in *Hunt v. Bliss* (1919) 89 L.J.K.B. 174 D.C. seems to be the judicial birth place of the term. The term later appeared in the marginal note to Section 15 of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (hereinafter referred to as the English Act of 1920) but does not appear in the Rent Act. The Rent Act does not define the nature of statutory tenancy and it is a matter of regret that even such obvious incidents of statutory tenancy as death with or without will insolvency power to assign and power to sublet are not clearly provided for in the Rent Act. The result therefore is that it has been left to the Courts to work out the nature of statutory tenancy and to pronounce upon its

various incidents. The Courts have been slowly trying to frame a consistent theory in their task of making bricks with very insufficient statutory straw. It is now clear as a result of various judicial decisions both in this country and in England that a statutory tenancy arises when a tenant under the contractual tenancy-whether the contractual tenancy be a tenancy from month to month or from year to year or for a period certain-remains in possession without the landlords consent after the determination of the contractual tenancy. A statutory tenant has no estate or property as tenant at all but has a purely personal right to retain possession of the premises. On the determination of the contractual tenancy the landlord would under the ordinary law of landlord and tenant be entitled to recover possession of the premises from the tenant. But the Rent Act restricts the landlords rights to recover possession of the premises from the tenant and as a result the tenant if he fulfils the conditions set out in the Rent Act is entitled to remain in possession of the premises against the will of the landlord. It is this right of the tenant to remain in possession of the premises-which is a personal right as the decisions show-which is described as statutory tenancy. The statutory tenancy is thus nothing more than a status of irremovability. The statutory tenant is not a tenant at all in the sense that he has an estate or property in the premises. He has merely a personal right of occupation which right enures so long as he complies with the conditions set out in the Rent Act. The statutory tenancy being thus merely a personal right of occupation it has been held that it cannot be assigned Vide *Keeves v. Dean* (1924) 1 K.B. 685; *Balmukund & Co. v. Mangaldas* 55 Bom LR 50 nor can it vest in the trustees in bankruptcy or the official assignee on insolvency Vide *Sutton v. Dorf* (1932) 2 K.B. 304 and in *In re Peregrino Rodrigues* 66 Bom LR 916. The question however is: can the statutory tenant sublet the whole or part of the premises which he is holding as a statutory tenant? Now obviously since the statutory tenant has no estate or interest in the premises but has merely a personal right of occupation the statutory tenant cannot under the ordinary law of landlord and tenant which is embodied in the Transfer of Property Act sublet the whole or any part of the premises. Subletting involves the carving out of a subordinate estate or interest out of the estate or interest of the tenant and there can be no subletting by a person who has no estate or interest as a tenant in the premises. The statutory tenant has thus no right to sublet under the ordinary law of landlord and tenant As a matter of fact the statutory tenant is to quote the words of Scrutton L.J. *monstrum horrendum informe ingens* unknown to such a law. The statutory tenant being a creature of the Rent Act his rights must be found within the four corners of the Rent Act which creates him. If the statutory tenant has the right to sublet such right must be given by the Rent Act and if the the Rent Act does not confer; such right on the statutory tenant it must be held that the statutory tenant cannot sublet. This being the position Mr. I.M. Nanavaty and Mr. J.M. Shah were constrained to fall back upon the Rent Act for the purpose of the contention that the statutory tenant is entitled to sublet the whole or at any rate a part of the premises and it was in this context that they advanced the two-fold argument to which I have just referred and which I

will now proceed to examine.

4. The first contention of Mr. I.M. Nanavaty and Mr. J.M. Shah was that Clause (1) of the Indenture of Lease conferred on Maneklal Mafatlal the right to sublet the premises or any part thereof and that the right to sublet so conferred being a condition of the tenancy was imported by virtue of the provisions contained in Section 12(1) of the Rent Act into the statutory tenancy which came into existence on the expiration of the lease and that Maneklal Mafatlal was therefore entitled to sublet different portions of the premises to Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal in exercise of such right. This contention of Mr. I.M. Nanavaty and Mr. J.M. Shah was founded on the provisions of Section 12(1) of the Rent Act which runs as follows:

12(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases if any and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of this Act.

Now the first question which arises on this contention of Mr. I.M. Nanavaty and Mr. J.M. Shah is whether Clause (1) relied on by Mr. I.M. Nanavaty and Mr. J.M. Shah is a clause empowering Maneklal Mafatlal to sublet. Does this clause confer a right on Maneklal Mafatlal to sublet for it is only if this clause can be construed as conferring a right on Maneklal Mafatlal to sublet that it can afford a foundation for the argument that the right to sublet so conferred is imported into the statutory tenancy by reason of the provisions of Section 12(1)? The clause in my view has not the effect of conferring any right on Maneklal Mafatlal to sublet the whole or part of the premises. It is really a clause restricting the ordinary right of Maneklal Mafatlal as a tenant to sublet u/s 108(j) of the Transfer of Property Act. The clause imposes two restrictions on the exercise of the right to sublet conferred by Section 108(j) of the Transfer of Property Act. The first restriction is that Maneklal Mafatlal shall not sublet except to a vegetarian and the second restriction is that if Maneklal Mafatlal sublets he shall immediately give an intimation in writing to the trustees of his having so sublet. The clause postulates the existence of a right in Maneklal Mafatlal to sublet and provides for restrictions of the exercise of such right. It is to my mind clear that the clause cannot be interpreted as conferring any right on Maneklal Mafatlal to sublet and the foundation for the argument urged by Mr. I.M. Nanavaty and Mr. J.M. Shah is therefore wanting. There being no right conferred by the clause on Maneklal Mafatlal to sublet it cannot be contended that the right to sublet is a condition of the tenancy which is imported into the statutory tenancy by virtue of the provisions of Section 12(1). Mr. I.M. Nanavaty and Mr. J.M. Shah also contended that in any event the right to sublet is a condition of the tenancy for it necessarily arises out of the contract of tenancy by virtue of Section 108(j) of the Transfer of Property Act and that it must therefore be taken to be imported into the statutory tenancy as a result of the operation of Section 12(1). Mr. I.M.

Nanavaty and Mr. J.M. Shah relied on the following observations of Denning L.J. in *Lewis v. Reeves* (1951) 2 All ER. 855:....

Furthermore she is entitled to the benefit of all the terms and conditions of the original contract of tenancy: see Section 15(1) of the Act of 1920. Whence it follows that inasmuch as the original tenant was entitled to sublet part she is also entitled to sublet part. Hence the subletting by the widow was lawful

I cannot however persuade myself to agree with these observations of Denning L.J. The right to sublet arising u/s 108(j) of the Transfer of Property Act cannot be said to be a term or condition of the tenancy. It is merely an incident of the grant of the tenancy and is not a term or condition of the tenancy. I need not give any detailed reasons for taking this view beyond stating that the same view which I am inclined to take has also been taken by the Court of Appeal in England in at least two cases Those cases are *Keeves v. Dean* (supra) and *Roe v. Russell* (1928) 2 W.B. 117. In *Keeves v. Dean* an assignment for value by a statutory tenant to a third party came before the Court of Appeal. All the three members of the Court held the assignment bad as contrary to the English Act of 1920 in that the assignor received value from the assignee. But two members of the Court also held the assignment ineffective on a different ground. They said that a statutory tenant u/s 15(1) of English Act of 1920-a section corresponding to Section 12(1) of the Rent Act was entitled to the benefit of all the terms and conditions of the original contract of tenancy but that the right to assign the original tenancy was not a term or condition of the original contract of tenancy but an incident of the tenancy created by the original contract which therefore did not pass to the statutory tenant who had only a personal right which he could not assign to any one else. The case of *Roe v. Russell* (supra) dealt with the question whether a statutory tenant was entitled to sublet a part of the premises retaining possession of the remainder and two members of the Court of Appeal expressed their agreement with the reasoning which found favour with the majority of the Court of Appeal in *Keeves v. Dean* (Supra) and following that decision held that the right to sublet could not be said to be a term or condition of the original contract of tenancy so as to be applicable to subsequent statutory tenancy under Sub-section (1) of Section 15 of the English Act of 1920 Sargant L.J. observed:

....In considering the decision of the Divisional Court here it is of great importance to see what was the argument which was presented to them on the part of the sub-tenant Russell and which their judgment negatived Put shortly it was this. Jameson the tenant of the whole was not prohibited by his original contract of tenancy from subletting part this ability to sublet was one of the terms and conditions of his original contract which u/s 15 Sub-section 1 of the Act of 1920 became applicable to his subsequent statutory tenancy; and therefore the sub-tenancy created by him in favour of the defendant Russell was a lawful subletting and is preserved against the landlord by Sub-section 3 of Section 15 notwithstanding the determination of the statutory tenancy of Jameson. Now this

argument is directly in conflict with the reasoning of the majority of the Court of Appeal in *Keeves v. Dean* which probably binds us and with which moreover I agree. For when once the conclusion is reached that the statutory tenant has no estate or property as tenant at all but has a purely personal right to retain possession of the property it is difficult to apply to him as part of the terms and conditions of his former tenancy rights essentially incidental and due to the possession of the property.

The learned Lord Justice also gave another reason for rejecting the line of argument that the right to sublet which a tenant had under the ordinary law of landlord and tenant constituted one of the terms and conditions of his original contract of tenancy and was therefore incorporated into the subsequent statutory tenancy:

And it may be further noted that even if the statutory tenant had the same estate as he previously had as a contractual tenant that alone would not avail the sub-tenant. For a contractual tenant though entitled under his contract to sublet part obviously cannot give his sub-tenant an estate exceeding in duration his own estate.

It is therefore clear that no right to sublet was conferred on Maneklal Mafatlal by Clause (1) of the Indenture of Lease and that the right to sublet which Maneklal Mafatlal had u/s 108(j) of the Transfer of Property Act was not imported into the statutory tenancy by reason of the operation of Section 12(1) of the Rent Act.

5. But even if Clause (1) of the Indenture of Lease could be interpreted as empowering Maneklal Mafatlal to sublet it is difficult to see how the right to sublet conferred by this clause could be imported into the statutory tenancy u/s 12(1) of Rent Act On a true construction of the language of Section 12(1) of the Rent Act it cannot be contended that any right which Maneklal Mafatlal had as a tenant under the Indenture of Lease was imported into the statutory tenancy. Section 12(1) of the Rent Act protects a tenant from dispossession so long as he pays or is ready and willing to pay the amount of the standard rent and permitted increases and observes and performs the other conditions of the tenancy not inconsistent with the provisions of the Rent Act. The stipulations in the original contract of tenancy which are therefore incorporated in the statutory tenancy are stipulations which are covered by the words the other conditions of the tenancy and the tenant is required to observe and perform those stipulations in order to be entitled to the protection conferred by Section 12(1) of the Rent Act. Now it is necessary at this stage to examine the difference in the language between Section 12(1) of the Rent Act and Section 15(1) of the English Act of 1920. The language of Section 15(1) of the English Act of 1920 is materially different from the language of Section 12(1) of the Rent Act. Section 15(1) of English Act of 1920 provides:

15 Conditions of Statutory tenancy: (1) A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies

shall so long as he retains possession observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy so far as the same are consistent with the provisions of this Act and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy or if no notice would have been so required on giving not less than 3 months notice:

Provided that notwithstanding anything in the contract of tenancy a landlord who obtains an order or judgment for the recovery of possession of the dwelling house or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

It will be immediately noticed that Section 15(1) of the English Act of 1920 enacts in express terms that the statutory tenant shall be entitled to the benefit of all the terms and conditions of the original contract of tenancy. This provision is nonexistent in Section 12(1) of the Rent Act. u/s 12(1) of the Rent Act therefore the statutory tenant is not entitled to the benefit of any terms and conditions of the original contract of tenancy in the sense that if there are any terms and conditions which confer any rights on the tenant the statutory tenant is not entitled to such rights, the statutory tenant is merely given the right to retain possession so long as he observes and performs the other conditions of the tenancy. The words the other conditions of the tenancy preceded by the words so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases and governed by the words observes and performs clearly show that the conditions of the tenancy referred to in Section 12(1) of the Rent Act are conditions in the nature of obligations which are to be observed and performed by the tenant under the original contract of tenancy. The words so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases have a demonstrative and limiting effect and the phrase the other conditions of the tenancy cannot be so construed as to disregard the effect of the first example and include all conditions of the original contract of tenancy. Whilst on this point I am reminded of cases of carriage of goods by sea under charterparty agreements where reference to the charterparty is very commonly made in the bills of lading by expressing that the goods are to be delivered on payment of freight and all other conditions as per charterparty. These cases bear a close parallel and afford considerable help in the interpretation of the words the other conditions of the tenancy occurring in Section 12(1) of the Rent Act. The words and all other conditions as per charterparty occurring as they do after the words on payment of freight in bills of lading issued by the Master of the ship under charterparty agreement have been judicially interpreted to mean only those conditions of the charterparty which are to be performed by the consignee of the goods-conditions which operate against the consignee, vide *Serravino & Co. v. Campbell* (1891) 1 Q.B. 283. Similarly the words the other conditions of the tenancy in Section 12(1) of the Rent Act preceded as they are by the words so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases refer to

conditions of the tenancy which are to be performed by the tenant. The payment of the amount of the standard rent and permitted increases is a condition to be performed by the tenant and the words the other conditions of the tenancy must also therefore be construed as referring to conditions performable by the tenant. This interpretation which I am inclined to place on the words of Section 12(1) of the Rent Act is further supported by the use of the words observes or performs. These words clearly indicate that the other conditions of the tenancy referred to in Section 12(1) of the Rent Act are conditions in the nature of obligations to be observed and performed by the tenant. Mr. I.M. Nanavaty in this connection relied on a decision of the Court of Appeal in *Harman v. Ainslie* (1904) 1 K.B. 698. In that case there was a covenant whereby the lessee covenanted not to assign under let or part with the possession of the premises or any part thereof without the lessors consent and the lease contained a proviso for re-entry that if the lessee shall commit any breach of the covenants hereinbefore contained and on his part to be performed then and in either of the said cases the lessor may reenter upon the said premises. The lessee assigned the premises without the lessors consent and the assignee of the lessor thereupon sued to recover possession of the demised premises from the assignee of the lessee as upon a forfeiture by reason of the breach not to assign without the lessors consent. The defence of the assignee of the lessee was that the covenant being a negative covenant the proviso-for re-entry couched in the words in which it was was not applicable to such covenant and that the assignee of the lessor was therefore not entitled to re-enter upon the premises as upon a forfeiture. The Court of Appeal negatived the defence and held that the covenants to be performed by the lessee on the breach of which the lessor was entitled to re-enter included the negative covenant not to assign or sublet without the lessors consent. The word perform observed the Court of Appeal meant in the context carry out the obligation undertaken whether negative or affirmative. Collins M.R. said: when one speaks of performing a covenant it is in the sense of fulfilling the duty created by it whether to do or to abstain from doing a thing. The word perform is no doubt inapplicable to not doing a thing but the obligation to abstain from doing something may I think be said to be performed by not doing it. Observations to the same effect were also made by Romer L.J. and Mathew L.J. It would therefore be obvious that this decision of the Court of Appeal does no more than to lay down that the word performs is applicable not only to a positive covenant but also to a negative covenant. I entirely agree that as a matter of plain english the words performs or observes and performs are applicable both to positive covenants as also to negative covenants. As a matter of fact as observed by Lord Esher M.R. in *Barrow v. Issacs* (1891) 1 Q.B. 417 the word observes added to the word performs emphasizes that the covenants to which it applies may be negative as well as positive. But I do not see how this conclusion can at all help Mr. I.M. Nanavaty and Mr. J.M. Shah. This conclusion takes them only to the position that the other conditions of the tenancy referred to in Section 12(1) of the Rent Act may be positive conditions or negative conditions. But these conditions must as I have pointed out above be conditions in the nature of

obligations to be performed and observed by the tenant. It is again significant to note-and this fortifies the view I am inclined to take that the words in Section 12(1) of the Rent Act are the other conditions of the tenancy and not the other terms and conditions of the tenancy. Condition is defined in Osborns Law Dictionary as a provision which makes the existence of a right dependent on the happening of an event. Conditions of the tenancy are therefore stipulations which condition the tenancy-stipulations on the fulfilment of which depends the continued existence of the tenancy. The conditions of the tenancy are therefore stipulations performable by the tenant who is the grantee under the contract of tenancy. The expression terms of the tenancy is definitely wider for it would include not only stipulations performable by the tenant but also stipulations performable by the landlord. A term would mean any stipulation performable by the tenant or by the landlord. The Legislature has however not used the wider expression terms of the tenancy but has used the narrower expression conditions of the tenancy which can only refer to conditions in the nature of obligations performable by the tenant. Here also the deference in language may be noted between Section 12(1) of the Rent Act and Section 15(1) of the English Act of 1920. The expression used in Section 15(1) of the English Act of 1920 is the terms and conditions of the original contract of tenancy and since that is a wider expression which would include not only obligations performable by the tenant but also rights exercisable by the tenant the Parliament has added the words and be entitled to the benefit of for the word observe would have been entirely inappropriate in relation to a term of the original contract of tenancy conferring a right on the tenant. Turning to the Rent Act itself one finds that where the Legislature wanted to refer to terms and conditions the Legislature has done so. See for example Sections 14, 16 and 17 of the Rent Act. In all these three sections the Legislature intending to refer not only to conditions in the nature of obligations performable by the tenant but also to terms conferring rights on the tenant or imposing obligations on the landlord used the expression terms and conditions but deliberately did not use that expression in Section 12(1) of the Rent Act. The departure made by the Legislature must be considered to be deliberate and it must therefore follow that the conditions of the tenancy referred to in Section 12(1) of the Rent Act are Conditions in the nature of obligations to be observed and performed by the tenant and do not include any stipulations in the original contract of tenancy which confer any rights on the tenant or impose any obligations on the landlord. The object of Section 12(1) of the Rent Act is merely to protect the possession of the tenant whose contractual tenancy has expired so long as he observes and performs the conditions of the tenancy performable by him-conditions which operate as against him-and which are consistent with the provisions of the Rent Act. The intention of the Legislature in enacting Section 12(1) of the Rent Act was merely to confer a status of irremovability on the tenant whose contractual tenancy had expired. The tenant was sought to be protected against dispossession because of shortage of housing accommodation: the intention was not to clothe him with all the rights which he possessed whilst a contractual tenant. The section was enacted as a protective

measure and the Legislature said that the tenant shall not be evicted notwithstanding the determination of his tenancy provided he carried out all that he was required to do under the original contract of tenancy. If there were any rights to which the tenant was entitled under the original contract of tenants such rights ceased on the determination of the original contract of tenancy and the legislature stopped at protecting the possession of the tenant and did not go further and invest the tenant with such rights even after the determination of his original contract of tenancy. Even if therefore Clause (1) of the Indenture of Lease were construed as conferring a right on Maneklal Mafatlal to sublet the whole or part of the premises such right was not imported into the statutory tenancy by reason of the provisions of Section 12(1) of the Rent Act and Maneklal Mafatlal was not entitled to sublet the premises or any part thereof in exercise of such right.

6. There is another aspect of this matter which I must consider since it was touched though not pressed in the form in which I propose to deal with it. The argument on this aspect of the case took the following steps. The condition contained in Clause (1) of the Indenture of Lease was a restrictive condition performable by the tenant since it contained a covenant not to sublet except to a vegetarian as also a covenant to give immediate notice of the subletting to the trustees. The condition being in the nature of an obligation performable by the tenant was a condition of the tenancy within the meaning of Section 12(1) of the Rent Act and Maneklal Mafatlal was therefore bound to observe and perform the condition if he wanted his possession to be protected. There was thus an obligation on Maneklal Mafatlal even during his statutory tenancy not to sublet except to a vegetarian and if he sublet then to give written intimation of such subletting to the trustees. It was suggested as the last step in the argument that from the condition which was thus imported into the statutory tenancy there should be inferred a right in Maneklal Mafatlal as statutory tenant to sublet the premises. But the short answer to this argument is that the condition could apply only if Maneklal Mafatlal as statutory tenant was entitled to sublet. If Maneklal Mafatlal was not entitled to sublet the condition obviously could not apply for the condition operated as a restriction of the right to sublet the right to sublet if it existed was hedged in by the condition but if the right to sublet did not exist at all the condition could not operate and have any meaning. The condition could not have any independent existence apart from the right to sublet which it conditioned and if there was no right to sublet the condition could obviously have no applicability and without the peg of the right to sublet it could not hang in vacuo. The condition could therefore be imported into the statutory tenancy only if Maneklal Mafatlal as statutory tenant was entitled to sublet. No implication of the right to sublet could therefore be drawn from the condition for unless the condition was imported into the statutory tenancy there could be no foundation for implying the right to sublet and unless the right to sublet existed the condition could not be imported into the statutory tenancy. The argument thus ran in a vicious circle and could not lead to any logical conclusion. The argument

also suffered from the fault that it involved assumption of the proposition sought to be established. The condition could not therefore help to establish the existence of any implied power in Maneklal Mafatlal to sublet. As a matter of fact the statutory tenant not being entitled to sublet the condition was inconsistent with the provisions of the Rent Act and could not therefore be imported into the statutory tenancy so as to form the basis for the implication of the right to sublet. I must therefore reject the contention of Mr. I.M. Nanavaty and Mr. J. M. Shah based on the provisions of Section 12(1) of the Rent Act.

That takes me to the next contention of Mr. I.M. Nanavaty and Mr. J.M. Shah and that is that having regard to the scheme of the Rent Act and its various provisions such as Sections 5(11), 13, 14 and 15 a right should be implied in the statutory tenant to sublet the whole or part of the premises. Mr. I.M. Nanavaty and Mr. J.M. Shah founded themselves mainly on the proposition that the statutory tenant is the creation of the Rent Act and has such rights as the Rent Act has given him either expressly or impliedly and that an examination of the Rent Act shows that the legislature has recognized the power of the statutory tenant to create sub-tenancies and has provided protection for these subtenants independently of the continuance of the statutory tenancy of the statutory tenant. Mr. I.M. Nanavaty and Mr. J.M. Shah also relied on certain decisions of the Court of Appeal in England as also on a decision of a Pull Bench of the Calcutta High Court in support of their contention that the statutory tenant is entitled to sublet the whole or part of the premises. These decisions no doubt appear to support the contention urged by Mr. I.M. Nanavaty and Mr. J.M. Shah but before I analyse these decisions and consider how far these decisions can be regarded as offering a solution to the question posed before me I shall first examine the question on principle.

To appreciate the argument urged before me by AIr. I.M. Nanavaty and Mr. J.M. Shah it is necessary to refer to some of the important provisions of the Rent. Act which have a bearing on the question which I have to determine. Section 5(3) defines a landlord in the following terms:

(3) Landlord means any person who is for the time being Receiving or entitled to receive rent in respect of any premises whether on his own account or on account or on behalf or for the benefit of any other person or as a trustee guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant a tenant who has sublet any premises;

The definition of a tenant is to be found in Section 5(11) and it is as follows:

(11) tenant means any person by whom or on whose account rent is payable for any premises and includes-

(a) Such sub-tenants and other persons as have derived title under a tenant be

fore the commencement of the Bombay Rents Hotel and Lodging House Rates Control (Amendment) Ordinance 1959

(aa) any person to whom interest in premises has been transferred under the proviso to Sub-section (1) of Section 15;

(b) any person remaining after the determination of the lease in possession with or without the assent of the landlord of the premises leased to such person or his predecessor who has derived title before the commencement of the Bombay Rents Hotel and Lodging House Rates Control (Amendment) Ordinance 1959

(c) any member of the tenants family residing with him at the time of his death as may be decided in default of agreement by the Court;

The next material section is Section 12(1) which has already been reproduced above. Then come Sections 13(1)(e) which runs as follows:

13 (1) Notwithstanding anything contained in this Act but subject to the provisions of Section 15 a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

XXX XXX XXX XXX XXX XXX

(e) that the tenant has since the coming into operation of this Act unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein;

The word unlawfully was not there in Section 13(1)(e) prior to its amendment by the Bombay Rent Hotel and Lodging House Rates Control (Amendment) Ordinance 1959 thereafter referred to as Ordinance No. III of 1959) but it was added in the section by the amendment. Section 14 is the section round which the entire controversy between the parties has centred and that section prior to its amendment by Ordinance No. III of 1959 ran as follows:

14 Where the interest of a tenant of any premises is determined for any reason any sub-tenant to whom the premises or any part thereof have been lawfully sublet before the coming into operation of this Act shall subject to the provisions of this Act be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued.

By Ordinance No. III of 1959 the words the coming into operation of this Act were substituted by the words the commencement of the Bombay Rents Hotel and Lodging House Rates Control (Amendment) Ordinance 1959 with the result that after the amendment Section 14 runs as follows:

14 Where the interest of a tenant of any premises is determined for any reason any sub-tenant to whom the premises or any part thereof have been lawfully sublet before the commencement of the Bombay Rents Hotel and Lodging House Rates Control (Amendment) Ordinance 1959 shall subject to the provisions of

this Act be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued.

Section 15 was also likewise amended by Ordinance No. III of 1959. Prior to the amendment Section 15 was in the following terms:

15 Notwithstanding anything contained in any law it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein:

Provided that the State Government may by notification in the Official Gazette permit in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification.

But after the amendment it assumed the following form:

15 (1) Notwithstanding anything contained in any law but subject to any contract to the contrary it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein:

Provided that the State Government may by notification in the Official Gazette permit in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification.

(2) Notwithstanding anything contained in any judgment decree or order of a Court or any contract the bar against subletting assignment or transfer of premises contained in Sub-section (1) or in any contract shall in respect of such sub-lessees assignees or transferees as have entered into possession despite the bar before the commencement of the Bombay Rents Hotel and Lodging House Rates Control Amendment) Ordinance 1959 and as continue in possession such commencement have no effect and be deemed never to have had any effect.

7. These were the sections of the Rent Act which were relied on by Mr. I.M. Nanavaty and Mr. J.M. Shah for the purpose of implying a right in the statutory tenant to sublet for it was common ground that there was no express provision of the Rent Act which conferred such right on the statutory tenant. None of these sections in my opinion supports the implication which Mr. I.M. Nanavaty and Mr. J.M. Shah want to raise. Before I proceed to examine these sections I may state that it is a cardinal principle of interpretation of statutes that no rights or obligations should be implied from a statutory enactment unless it is clear by necessary intendment that such rights or obligations were intended to be created by The Legislature and such necessary intendment would ordinarily be inferred only if full force and effect cannot be given to the statutory enactment without raising such implication. Keeping this principle of interpretation in mind I will now turn to examine these sections relied on by Mr. I.M. Nanavaty and Mr. J.M. Shah and consider how far they yield the implication sought to be raised by Mr. I.M. Nanavaty and Mr. J.M. Shah.

Section 5(3) defines a landlord to mean any person who is for the time being receiving or entitled to receive rent in respect of any premises whether on his own account or on account or on behalf or for the benefit of any other person or as a trustee guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and the definition includes any person not being a tenant who from time to time derives title under a landlord. The definition also includes in respect of his subtenant a tenant who has sublet any premises. A tenant who has sublet any premises would therefore be a landlord qua the sub-tenant. Tenant is defined in Section 5(11) as meaning any person by whom or on whose account rent is payable for any premises. There are four classes of persons who are also included in the definition of tenant and they are described in Clauses (a)(aa)(b) and (c). Clause (b) includes in the definition of tenant any person remaining after the determination of the lease in possession with or without the assent of the landlord of the premises leased to such person or his predecessor who has derived title before the commencement of Ordinance No. III of 1959. The reference here is clearly to a statutory tenant who remains in possession of the premises after the determination of the contractual tenancy against the will of the landlord and who cannot be ejected by reason of the provisions of Section 12 so long as he complies with the conditions set out in that section. This clause brings out one dominant characteristic of the statutory tenancy namely that the statutory tenancy must be preceded by contractual tenancy. The statutory tenancy to use the expression of Bachawat J. in *Krishna Prasad v. Sarjubala Dessi* AIR 61 Cal 505 arises like a phoenix out of the ashes of the contractual tenancy. Of course Section 12(1) also affords a clear indication that there must be a contractual tenancy before a statutory tenancy can come into being; but Clause (b) of Section 5(11) clearly and unmistakably traces the origin of the statutory tenancy into the contractual tenancy. Clause (c) Section 5(11) also creates a statutory tenant by providing that tenant shall it is a any member of the tenants family residing with him at the time of his death as may be decided in default of agreement by the Court. It is a matter of some doubt whether Clause (c) is limited to a member of the family of a statutory tenant as defined in Clause (b) or it extends also to a member of the family of a contractual tenant. Of course it has been held in England by the House of Lords in *Moodie v. Hosegood* (1951) 2 All E.R. 582 construing a similar provision under the English Act of 1920 that the widow of a tenant whether contractual or statutory who was residing with her husband at the time of his death becomes the statutory tenant and is therefore entitled to be protected from dispossession. It is however not necessary for me to consider for the purpose of the present proceedings whether this view of the corresponding Section in England which has been taken by the House of Lords should be accepted and a similar interpretation should be placed on the words of Clause (c) of Section 5(11). It may however be noted that whatever view be taken as regards the interpretation of the words in Clause (c)- whether they embrace within their scope and ambit any member of the family of a contractual tenant or not-one thing is clear that the statutory tenancy created

by Clause (c) also follows upon the contractual tenancy. Clauses (b) and (c) of Section 5(11) thus refer to statutory tenants and bring them within the definition of tenant. Clause (aa) refers to an assignee or transferee of a contractual tenant for admittedly there can be no assignment or transfer by a statutory tenant and no statutory tenancy is therefore contemplated by this clause. Clause (a) also in my view does not refer to statutory tenancy. Under Clause (a) such sub-tenants and other persons who have derived title under a tenant before the commencement of Ordinance No. III of 1959 are brought within the definition of tenant. The words as have derived title under a tenant clearly show that the tenant under whom the sub-tenants and other persons referred to in Clause (a) have derived title must be a contractual tenant. It is difficult to see how any title could be derived by a sub-tenant or any other person from a statutory tenant who has nothing more than a mere personal right of occupation. Even if I were to accept the artificial meaning of subletting propounded before me by Mr. I.M. Nanavaty namely that when the statutory tenant passes on the personal right of occupation to another person who is put in possession by him the transaction amounts to subletting. I do not see how such other person can be said to have derived title under the statutory tenant. The words as have derived title under a tenant are words which have a well recognized legal meaning and they connote the acquisition of an estate or interest in property and cannot appropriately be used to describe the transaction of passing on a personal right of occupation by the statutory tenant to another person. As a matter of fact it is to my mind a contradiction in terms to say that a personal right of occupation can be passed on to another for if the right of occupation is personal I do not see how it can be passed on to another without destroying its personal character. But apart from that the words as have derived title under a tenant clearly indicate that the sub-tenants and other persons covered by Clause (a) are sub-tenants and other persons who have derived title under a contractual tenant. Clause (a) also therefore does not create a statutory tenant or bring such statutory tenant within the definition of tenant. This analysis of the provisions of Section 5(11) is sufficient to negative the contention of Mr. I.M. Nanavaty and Mr. J.M. Shah that the provisions of the Rent Act recognize the right of the statutory tenant to sublet. The statutory tenancy contemplated by Section 5(11) it is apparent from the above discussion must always be preceded by contractual tenancy and there can be no statutory tenancy which cannot ultimately trace its origin to contractual tenancy. It is therefore difficult to see how there can be any sub-tenancy by a statutory tenant. Such a sub-tenancy would not be a contractual sub-tenancy in the sense in which the words contractual sub-tenancy have been used by me in this discussion namely transfer of an estate or interest by a tenant in favour of a sub-tenant as contemplated by the ordinary law of landlord and tenant; for the statutory tenant has no estate or interest in the premises out of which he can carve out a contractual sub-tenancy. Such a sub-tenancy is therefore one which cannot fall within any of the clauses of Section 5(11). Looking at the matter from another angle the same conclusion follows. Section 5(11) clearly shows as I have pointed out above that the sub-tenants included in

the definition of tenant are sub-tenants from contractual tenants and that no subtenants from statutory tenants are contemplated so far as the definition of tenant goes. This conclusion has been reached by me on the interpretation of the language of the various clauses of Section 5(11). This conclusion is however further strengthened on a consideration of the definition of landlord contained in Section 5(3) 6 and lord within the meaning of Section 5(3) includes in respect of his sub-tenant a tenant who has sublet any premises. When a tenant has sublet any premises the tenant becomes the landlord qua the sub-tenant who becomes his tenant. But in order to fall within the definition of tenant in Section 5(11) the sub-tenant must be one who has derived title under the tenant and that according to the interpretation put by me means that the sub-tenant must be a sub-tenant of a contractual tenant. The tenant likewise in order to fall within the definition of landlord in Section 5(3) must be one of whom it can be said that he has sublet the premises to the subtenant. The use of the word sublet in Section 5(3) in my opinion clinches the matter and indubitably shows that when the Legislature used the word sublet the Legislature clearly intended to refer to sub-tenant of a contractual tenant and this for two reasons. In the first place as the word sublet itself suggests there can be subletting only by a person to whom the premises are let. It is because a subordinate interest is carved out by the person to whom the premises are let out of his own interest that he is said to sublet. Subletting is subordinate to the main letting and postulates the existence of the main letting. It is therefore axiomatic that there must be a person to whom the premises are let before there can be subletting by such person. Now it is difficult to see how a statutory tenant can possibly satisfy this condition. How can it be said that when there is a statutory tenant the premises are let to him by the landlord? There is in fact no letting at all; the Setting has come to an end and the statutory tenant remains in possession notwithstanding the determination of the letting by reason of the protection afforded by the Rent Act. It cannot therefore be said during the subsistence of the statutory tenancy that the premises are let by the landlord to the statutory tenant. I may add here in support of what I have said that a Division Bench of the High Court of Bombay has also taken the view in *State of Bombay v. Virendra Motabhoy* 52 Bom LR 627) that if a building or a part of a building is let to a person he is a tenant qua the person who has let the whole or a part of the building to him; but if the relationship of landlord and tenant is absent and no interest in the property is created in the person who is in possession of the building it cannot be said that the building or a part of the building is let to him and a statutory tenant cannot therefore be said to be a person to whom the premises are let. The definition of tenant in Section 5(11) by an artificial meaning includes a statutory tenant but there is no artificial meaning given to the word let in any provision of the Rent Act so as to include within the meaning of the word let the relationship subsisting between the landlord and the statutory tenant. The statutory tenant is no doubt a tenant within the meaning of the definition of that term contained in Section 5(11) but from this premise it does not follow in the absence of any artificial meaning given by the Legislature to the word let that the relationship between

the landlord and the statutory tenant amounts to letting of the premises by the landlord to the statutory tenant. If the premises cannot be said to be let to the statutory tenant it must follow as a necessary corollary from the aforesaid line of reasoning that the statutory tenant cannot sublet. To stress the argument in the form of interrogation: How can statutory tenant sublet when the premises are not let to him? How can he create a subordinate letting when there is no letting in his favour? To accept a right in the statutory tenant to sublet would involve placing of an extended artificial meaning on the term let so as to include the jural relationship of landlord and statutory tenant-which relationship is obviously not comprehended within the accepted connotation of the term. The Legislature has enacted an artificial definition of a tenant so as to include a statutory tenant who is really not a tenant at all under the ordinary law of landlord and tenant; but to hold that because the statutory tenant is a tenant within the meaning of such artificial definition the premises can be said to be let to him by the landlord would amount to creating a fiction upon a fiction for which there is no warrant to be found in the language of the enactment. The statutory tenant obviously therefore cannot sublet the premises to the sub-tenant and is not covered by the definition of landlord contained in Section 5(3). The second reason which compels me to reach the same conclusion is that the word sublet must have a legal connotation akin to that of the word let for when a tenant sublets to a sub-tenant what he in effect and substance does is to let the premises to the sub-tenant such letting being subordinate to the main letting. In both cases according to the well recognized meaning of these words there is a transfer of an interest by one person to another which carries with it the right to possession of the premises. Now as I have already discussed there is no artificial meaning given to the word let in any provision of the Rent Act and the word let therefore continues to bear its age-old meaning under the ordinary law of landlord and tenant. If that is so the word sublet must also bear the same meaning it has under the ordinary law of landlord and tenant and connote a transfer of an interest by a tenant to a sub-tenant conferring on the sub-tenant the right to enjoy the premises. This line of argument clearly indicates that there can be subletting only by a contractual tenant and not by a statutory tenant for a statutory tenant has no estate or interest in the premises which he can transfer to a sub-tenant. It must also be noted that the word sublet must have either its well-known legal connotation or an artificial meaning given to it by the statute and if no artificial meaning is given to it by the statute it is clear that the well recognized legal meaning must prevail. It always requires strong compulsion of words in a statute to induce the Court to alter the well-known meaning of a legal term. The well-known meaning of the word sublet being to carve out a subordinate interest out of the interest held by a contractual tenant it is clear that the tenant in order to fall within the definition of landlord contained in Section 5(3) qua his sub-tenant must be a contractual tenant for he cannot be a landlord within the meaning of that definition unless he has sublet the premises to the sub-tenant which he cannot do unless he is a contractual tenant.

8. That takes me to a consideration of Section 13(1)(e) of the Rent Act. The argument of Mr. I.M. Nanavnty and Mr. J.M. Shah based on Section 13 was that this section made it a ground of eviction that the tenant had since the coming into operation of the Rent Act unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein and that since the word tenant included also a statutory tenant by reason of the definition of tenant contained in Section 5(11) it was clear by necessary implication that a statutory tenant was entitled to sublet the whole or part of the premises if he did so lawfully that is without committing any breach of the conditions of the tenancy or without contravening the provisions of Section 15. The logical consequence of this line of argument which was pressed for my acceptance was that if there was no condition in the original contract of tenancy prohibiting subletting of the whole or part of the premises and if the subletting was covered by the provisions of Section 15(2) or if the original contract of tenancy empowered subletting the statutory tenant was entitled to sublet the whole or part of the premises. This line of argument was sought to be supported by reference to the decision of the Court of Appeal in *Roe v. Russell* (supra). I shall have occasion to deal with this case in some detail a little later but suffice it to state for the present that this case was decided mainly on Section 4(1)(h) of the Rent and Mortgage Restrictions Act 1923 (hereinafter referred to as the English Act of 1923) which provided:

No order or judgment for the recovery of possession of any dwelling-house to which this Act applies or for the ejectment of a tenant therefrom shall be made or given unless the tenant without the consent of the landlord has at any time after 31st July 1923 assigned or sublet the whole of the dwelling-house or sublet part of the dwelling-house, the remainder being already sublet.

Section 4(1)(h) of the English Act of 1923 corresponded to Section 13(1)(e) of the Rent Act with this difference that whereas Section 13(1)(e) of the Rent Act made it a ground of eviction that the tenant has since the coming into operation of the Rent Act unlawfully sublet the whole or part of the premises Section 4(1)(h) of the English Act of 1923 made the tenant liable to ejectment if the tenant without the consent of the landlord sublet the whole of the dwelling house or sublet part of the dwelling house the remainder being already sublet. The members of the Court of Appeal held founding themselves mainly on Section 4(1)(h) of the English Act of 1923 that this section made it clear that a statutory tenant remaining in possession was entitled to sublet part of the premises. Scrutton L.J. observed:

It is very difficult after this Section 4 Sub-section 1(h) to say that the statutory tenant cannot sublet part of the premises when the landlord is not given power to eject him from doing so.

Sargant L.J. also stated:

Section 4 Sub-section 1(h) of the Act of 1923 was not relied on or even referred

to in *Keeves v. Dean*, probably because the material facts in that case had occurred before the Act of 1923 had come into operation. But it was referred to and formed the main ground of the decision in the subsequent case of *Campbell v. Lill* 135 L.T. 26 decided by a Divisional Court consisting of Bankes and Warrington L.JJ. The later judge pointed out that on all sound canons of interpretation the word tenant should be given the same meaning in every part of the section. This is a strong authority in favour of the view that the section is not limited to contractual tenancies but comprises statutory tenancies and therefore recognizes sub-tenancies of parts of the premises included in statutory tenancies.

Eve J. who was the third member of the Court also agreed with this line of reasoning based on Section 4(1)(h) of the English Act of 1923. Adopting this line of reasoning Mr. I.M. Nanavaty and M.J.M. Shah contended that just as the Court of Appeal in England held on an implication made from Section 4(1)(h) of the English Act of 1923 that a statutory tenant was entitled to sublet part of the dwelling house provided he was in possession of the remainder because that was not made a ground of eviction under the section I should also hold on an implication made from Section 13 of the Rent Act that a statutory tenant was entitled to sublet the whole or part of the premises provided he did so lawfully since lawful subletting of the whole or part of the premises was not made a ground of eviction. This contention though appearing to be supported by the high authority of the Court of Appeal is in my opinion not well-founded and cannot bear scrutiny if regard be had to the scheme of the Rent Act and some of its provisions. There are to my mind at least five different answers which must repel this contention. I will first construe the meaning and effect of Section 13(1)(e) as it stood prior to its amendment by Ordinance No. III of 1959. Section 13(1)(e) as it stands today provides that the landlord shall be entitled to recover possession of the premises from the tenant if the tenant has since the coming into operation of the Rent Act unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein. The only word added by the amendment was unlawfully and I shall presently explain the reason for adding that word and point out that the amendment made by the addition of that word does not in any way affect the consideration of that question which has arisen before me. In what follows I shall proceed to examine the language of Section 13(1)(e) on the basis that it continues to retain its unamended form and then consider the effect of the amendment made by the addition of the word unlawfully. Three events are contemplated by Section 13(1)(e) on the happening of any one of which the landlord is declared entitled to recover possession of the premises from the tenant. The three events are: (1) if the tenant sublets the whole or part of the premises; (2) if the tenant assigns his interest in the premises; or (3) if the tenant transfers in any other manner his interest in the premises. Now the last two events are obviously referable only to contractual tenancy for it is clear that a statutory tenant cannot assign or transfer his interest in the premises. This position in law could not be disputed by

Mr. I.M. Nanavaty and Mr. J M. Shah in view of the decisions of the Court of Appeal in *Keeves v. Dean* (supra) and the High Court of Bombay in *In re Peregrino Rodrigues* (supra) and *Balmukund and Co. v. Mangaldas* (supra). The words assigned or transferred in any other manner his interest therein which refer to the last two events cannot therefore apply to statutory tenancy. These words apply only to contractual tenancy. Now if these words apply only to contractual tenancy I do not see why the words sublet the whole or part of the premises also should not be confined in their application to contractual tenancy. The argument of Mr. I.M. Nanavaty and Mr. J.M. Shah assumes the premise that these words apply to statutory tenancy and from that premise seeks to draw an inference that a statutory tenant can sublet when the premise itself is the proposition which has to be established. This process of reasoning begs the question which is to be answered. If a statutory tenant can sublet then of course these words would apply to statutory tenancy; but if a statutory tenant cannot sublet these words must obviously be held referable only to contractual tenancy. The same line of reasoning which limits the application of the words assigned or transferred in any other manner his interest therein to contractual tenancy would also similarly limit the application of the words sublet the whole or part of the premises to contractual tenancy. It is plain that in this view of the matter no inference can be drawn from Section 13(1)(e) that a statutory tenant is entitled to sublet. I may mention in this connection another argument which was advanced by Mr. I.M. Nanavaty and Mr. J.M. Shah bearing upon Section 13(1)(e). The argument was that the words assigned or transferred in any other manner his interest therein really contemplate the tenant purporting to assign or transfer in any other manner his interest in the premises and that if therefore the statutory tenant purports to assign or transfer his interest in the premises that would furnish a ground for eviction to the landlord u/s 13(1)(e). This argument was advanced by Mr. I.M. Nanavaty and Mr. J.M. Shah with a view to getting over the difficulty presented by the previous argument namely that if the words assigned or transferred in any other manner his interest therein apply only to contractual tenancy why should the words sublet the whole or part of the premises also not apply only to contractual tenancy. Mr. I.M. Nanavaty and Mr. J.M. Shah were therefore constrained to argue that the words assigned or transferred in any other manner his interest therein also apply to statutory tenancy and the only way in which they could make these words applicable to statutory tenancy was by contending that these words refer to the tenant purporting to assign or transfer in any other manner his interest in the premises. Taking this stand Mr. I.M. Nanavaty and Mr. J.M. Shah argued that the point of time for the happening of the events mentioned in Section 13(1)(e) could on the view advocated by them be the statutory tenancy and in that event from the provision that if the statutory tenant sublets the whole or part of the premises he would be liable to be evicted by the landlord an inference could be drawn that a statutory tenant is entitled to sublet But this argument suffers from two major defects. One defect is that the words used by the Legislature in Section 13(1)(e) are assigned or transferred in any other manner his interest therein and not

purported to assign or transfer in any other manner his interest therein. The other defect is that if the words assigned or transferred in any other manner his interest therein could be read as meaning purported to assign or transfer in any other manner his interest therein on a parity of reasoning the words subject the whole or part of the premises could also be read as meaning purported to sublet the whole or part of the premises meaning thereby that if the statutory tenant purports to sublet the whole or part of the premises, he would be liable to be ejected. But if such an interpretation be put on the words used in Section 13(1) (e) it is clear that no implication of a power in the statutory tenant to sublet could be raised from those words.

There is also another reason why the three events mentioned in Section 13 on the happening of any one of which the tenant is liable to be evicted under that section must be held to refer to the point of time during the subsistence of the contractual tenancy. The words assigned or transferred in any other manner his interest therein in Section 13(1)(e) are obviously referable only to contractual tenancy for if they refer to statutory tenancy it would be a ground of eviction if the statutory tenant assigns or transfers his interest in the premises. But if the statutory tenant assigns or transfers his interest in the premises he would cease to remain in possession of the premises and in that event he would cease to be a tenant u/s 5(11) and would forfeit the protection of Section 12 for such protection is given only to a tenant as defined in Section 5. In that event however it would not be necessary to provide it as a ground of eviction that the statutory tenant has assigned or transferred his interest in the premises. Such a ground of eviction would be necessary u/s 13(1)(e) if the statutory tenant is otherwise entitled to protection; but if the statutory tenant is not entitled to protection it would not be necessary to enact such a ground of eviction. Such enactment would be superfluous and it is well-known that the Court always leans against superfluity. The effect of reading the words assigned or transferred in any other manner his interest therein as referable to statutory tenancy would be to render the provision enacted by these words redundant and wholly unnecessary. So also in the case of sub-letting the whole of the premises if the statutory tenant can sublet and does sublet the whole of the premises he would cease to be in possession of the premises and he would consequently lose the protection of Section 12(1) and be liable to be evicted without the necessity of any ground of eviction. In that view Section 13(1)(e) would again be rendered superfluous and unnecessary in so far as the provision of sub-letting the whole or the premises is concerned. Take then the case of subletting part of the premises. In such a case also the statutory tenant if he can sublet and does sublet part of the premises would part with the possession of the part of the premises so sublet and in that event it cannot be said that he is in possession of the premises-meaning thereby the whole of the premises-within the meaning of Section 5(11) and he would consequently cease to be a tenant and forfeit the protection of Section 12(1) and be liable to be ejected without any further ground of eviction. In this case also the provision regarding subletting part of the premises in Section 13(1)(e) would

be rendered unnecessary and superfluous if the provision be held to refer to the point of time during the subsistence of the statutory tenancy. It is therefore clear that the events specified in Section 13(1)(e) are events referable to contractual tenancy and not to statutory tenancy. No inference can therefore be drawn from the provisions of Section 13(1)(e) that the Legislature has by enacting Section 13(1)(e) recognized the power of the statutory tenant to sublet.

9. The matter may also be regarded from another point of view. Why should there be in principle any distinction between assignment and subletting of whole, of the premises? If a statutory tenant can sublet the whole of the premises why can he not assign the premises? In both cases the personal right of occupation would be passed on by the statutory tenant to another person-in the case of assignment for the duration of the statutory tenancy or for a period certain according as the assignment is absolute or for a definite period and in the case of subletting for a period depending upon the arrangement between the parties. But there would be a parting of the possession of the premises in favour of another person in both the cases. It is difficult to see any basis for distinction between the two cases. Such distinction would be entirely unjustified and unsupportable on principle. As a matter of fact even in England no distinction has been made between assignment and subletting of whole of the premises. The distinction made in England is between subletting of whole of the premises and subletting of part of the premises and this distinction is largely founded on Section 4(1)(h) of the English Act of 1923. There is however no warrant in the sections of the Rent Act for making any such distinction between subletting of whole of the premises and subletting of part of the premises. Section 13(1)(e) Section 14 and Section 15 all place subletting of whole of the premises and subletting of part of the premises on the same basis. It would thus be seen that so far as the Rent Act is concerned there is really no distinction made by the Legislature between assignment subletting of whole of the premises and subletting of part of the premises. It must therefore follow that if a statutory tenant cannot assign the premises he equally cannot sublet the whole of the premises and if he cannot sublet the whole of the premises he equally cannot sublet part of the premises.

But apart from these reasons there is one reason which to my mind clinches the matter in favour of the view that a statutory tenant is not entitled to sublet. If a statutory tenant is entitled to sublet and does sublet the whole or part of the premises that would u/s 13(1)(e) as it stood unamended furnish a ground for eviction to the landlord and the landlord would be entitled to evict the statutory tenant. How can under these circumstances a power be implied in the statutory tenant to sublet when the exercise of that power would have the effect of destroying the statutory tenancy itself? The argument urged on behalf of the alleged sub-tenants in the present case amounts to this namely that Section 13(1)(e) provides that if the statutory tenant sublets the whole or part of the premises the statutory tenancy would be liable to be determined and an inference should therefore be drawn that the statutory tenant is entitled to sublet. The argument has merely to be stated in order to be rejected. How can

the Court imply a power in the statutory tenant to sublet when the very provision of the Rent Act from which the power is sought to be implied enacts that if the statutory tenant sublets the statutory tenancy shall be liable to be determined? Besides the power to sublet which is sought to be implied would be a self-destructive power for the exercise of it would have the effect of rendering the statutory tenancy liable to determination and with it would also fall the sub-tenancy since it would not be protected by Section 14 as it stood prior to the amendment. By no canon of construction would it therefore be right to imply a power in the statutory tenant to sublet from the provisions of Section 13(1)(e).

Another cogent reason for the impossibility of making an implication of a power in the statutory tenant to sublet is provided by Section 15. Section 15 as it stood prior to its amendment clearly negated the existence of any power in the statutory tenant to sublet. Section 15 provided that notwithstanding anything contained in any law it shall not be law-ful after the coming into operation of the Rent Act for any tenant to sublet the whole or any part of the premises let to him. In the face of Section 15 I do not see how it could be said that the Legislature recognized subtenancies by statutory tenants. On the hypothesis that the word tenant in Section 15 as it stood unamended included not only a contractual tenant but also a statutory tenant the section clearly operated to prohibit any sub-tenancies by statutory tenants. If Section 15 prior to its amendment made it unlawful for a statutory tenant to sublet the whole or any part of the premises it is difficult to appreciate the argument that in spite of such prohibitory provision there should be implied a power in the statutory tenant to sublet. How can any provision of the Rent Act be construed as empowering by necessary implication a statutory tenant to do that which Section 15 in express terms declares that a statutory tenant shall not do? To construe Section 13(1)(e) or any other provision of the Rent Act as recognizing by necessary implication a power in the statutory tenant to sublet would be to contra diet the provisions of Section 15. Section 15 in my opinion concludes the question against the alleged sub-tenants at least in so far as the position as it prevailed prior to the amendment is concerned.

If no power in a statutory tenant to sublet could be implied from Section 13(1)(e) as it stood prior to the amendment the question is can any such power be implied in a statutory tenant after the amendment? Now if one examines the nature of the amendment made in Section 13(1)(e) it is clear that the amendment has not the effect of conferring even by necessary implication any power on the statutory tenant to subject. The amendment in Section 13(1)(e) was made consequential upon the amendment in Section 15. Prior to the amendment by reason of the operation of Section 15 as it stood prior to the amendment all sub-tenancies assignments and transfers were unlawful and it was therefore not necessary to provide in Section 13(1)(e) that the tenant shall be liable to be evicted if he unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein. It was enough to make any subletting of the whole or part of the premises or any assignment or

transfer of his interest in the premises by a tenant a ground for eviction of the tenant for every such subletting assignment or transfer was necessarily unlawful having regard to the provisions of Section 15 as it stood prior to its amendment. Since however Section 15 was amended and certain sub-lettings assignments and transfers made after the coming into operation of the Rent Act which were unlawful u/s 15 were made lawful as a result of the amendment of Section 15 it became necessary also to amend Section 13(1)(e) for the Legislature obviously did not desire to penalise a tenant for doing that which was lawful. The Legislature thought and wisely too-that the penalty of eviction should be inflicted only on the tenant who unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest in the premises. That is why the word unlawfully was brought in Section 13(1)(e). That however did not affect the scope and meaning of Section 13(1)(e) in so far as it concerns the present question namely whether the grounds of eviction specified in that section refer only to contractual tenancy or also extend to statutory tenancy. The grounds of eviction specified in Section 13(1)(e) prior to the amendment referred only to contractual tenancy and the amendment which was made consequential upon the amendment of Section 15 merely excepted out of the grounds of eviction sub-tenancies assignments and transfers which were made lawful under the amended Section 15 and did not make the grounds of eviction referable to statutory tenancy.

Looking at the matter from another angle if the power to sublet was not there in the statutory tenant prior to the amendment of Section 13(1)(e) it is difficult to see how the statutory tenant came to be clothed with such power as a result of the amendment. The amendment in Section 13(1)(e) was made as I have pointed out above consequential upon the amendment of Section 15 and the amendment was made in Section 15 merely for the purpose of removing the bar against sub-lettings assignments and transfers contained in Section 15 as it stood prior to the amendment and not for the purpose of conferring any fresh rights on the tenant either contractual or statutory. I shall presently consider Section 15 in some detail but it is sufficient at this stage to point out that Section 15 as it stood prior to the amendment imposed a prohibition on sub-tenancies assignments and transfers by tenants-whether the tenants were only contractual tenants or included not merely contractual but also statutory tenants which is a question which I have to determine-and the amendment of Section 15 lifted the prohibition so that the tenants could if they were otherwise entitled to do so sublet the whole or part of the premises or assign or transfer their interest in the premises. The amendment of Section 15 was therefore avowedly for the purpose of removing the prohibition which existed prior to the amendment and it would be a long step in the argument to contend that an amendment effected for the purpose of lifting a ban has the effect of conferring fresh rights which did not exist. If the object of the amendment and its manifest purpose was not or confer any fresh rights on the tenants whether they be contractual tenants or statutory tenants I do not see how the amendment in Section 13(1)(e) made

consequential on the amendment in Section 15 could have the effect of so altering the structure and content of Section 13(1)(e) that from the section as amended conferment of a fresh right on a statutory tenant to sublet could be inferred by necessary implication. The grounds of eviction as I have already pointed out above referred to contractual tenancy prior to the amendment and they must in my opinion continue to refer to contractual tenancy even after the amendment. It would not therefore be right to read Section 13(1)(e) after its amendment as recognizing sub-tenancies by statutory tenants and conferring by necessary implication a power on the statutory tenant to sublet.

There is also another reason why Section 13(1)(e) as amended cannot yield the implication sought to be extracted by the learned advocates appearing on behalf of the alleged sub-tenants. The argument which was vehemently pressed on behalf of the alleged sub-tenants founded on the language of amended Section 13(1)(e) was that since what is made a ground of eviction u/s 13(1)(e) is only unlawful subletting of the whole or part of the premises the section by necessary implication recognizes the right of the tenant to lawfully sublet the whole or part of the premises and since the word tenant includes statutory tenant it must follow that the statutory tenant can sublet the whole or part of the premises if he does so lawfully. According to the learned advocates appearing on behalf of the alleged sub-tenants the subletting of the whole or part of the premises by the statutory tenant would be lawful if it is not in breach of any condition of the contractual tenancy or in violation of the prohibition enacted in Section 15. This contention as I have pointed out above was drawn from the case of *Roe v. Russell* (supra) to which I have already referred. To my mind this contention suffers a major defect in that it ignores that what is made a ground of eviction u/s 13(1)(e) is not only unlawful subletting of the whole or part of the premises but also unlawful assignment by the tenant of his interest in the premises. If the contention urged on behalf of the alleged sub-tenants were correct in its application to the subletting of the whole or part of the premises it should equally apply in case of assignment or transfer by the tenant of his interest in the premises. In its application to assignment or transfer of the interest of the tenant in the premises the contention leads to an absurdity which becomes immediately apparent even on a superficial consideration. If the contention is legally valid it must follow that just as a statutory tenant can lawfully sublet the whole or part of the premises he can equally lawfully assign or transfer his interest in the premises for just as lawful subletting of the whole or part of the premises by the statutory tenant has not been made a ground of eviction lawful assignment or transfer of his interest in the premises by the statutory tenant has also not been made a ground of eviction in Section 13(1)(e). But it is well-settled that a statutory tenant cannot assign or transfer for he has no estate or interest in the premises but has a mere personal right of occupation. The contention must therefore fail in its application to assignment or transfer and if that is so I do not see how the contention can be accepted as valid in its application to subletting of the whole or part of the premises for the purpose of implying a power in the

statutory tenant to sublet the whole or part of the premises.

10. It is also apparent that the same reasons which impelled me to come to the conclusion that no power in a statutory tenant to sublet could be implied from the enactment of the provision contained in Section 13(1)(e) prior to its amendment must also apply in negating the implication of any such power in the statutory tenant from the provision enacted in Section 13 as it stands after the amendment. It is well worth repetition to state that if a statutory tenant assigns or transfers whether lawfully or unlawfully he would lose the protection of Section 12(1) and be liable to be evicted since on such assignment or transfer he would not remain in possession of the premises and would therefore cease to be a tenant within the meaning of Section 5(11). If this be the position it is difficult to see why the Legislature thought it necessary to enact in Section 13(1)(e) that the statutory tenant shall be liable to be evicted if he unlawfully assigns or transfers. The provision for ejection in Section 13(1)(e) on the ground that the statutory tenant has unlawfully assigned or transferred would in this view of the matter be superfluous since even without such provision the statutory tenant would on such assignment or transfer be liable to be ejected. Now it is a well recognized principle of interpretation that the Legislature does not legislate in vain and no intention should be attributed to the Legislature to repeat itself and to produce superfluity, even if it be assumed that the Legislature for some unknown reason desired to indulge in repetition and to make a provision which was altogether unnecessary it is difficult to appreciate why this inscrutable desire of the Legislature stopped at making a repetitive provision in regard to unlawful assignments and transfers and did not find full satisfaction in making a similar provision as superfluous and unnecessary-in regard to lawful assignment and transfers, even in making a lawful assignment or transfer the statutory tenant would cease to retain possession of the premises within the meaning of Section 5(11) vide the observations of Scrutton L.J. in *Roe v. Russell* (supra) and would therefore be liable to be evicted there being in this matter no distinction between lawful assignments or transfers and unlawful assignments or transfers. It is therefore clear that the ground of eviction that the tenant has unlawfully assigned or transfers his interest in the premises is referable to contractual tenancy and does not contemplate an event happening during the subsistence of the statutory tenancy. The same line of reasoning must equally apply to unlawful subletting of the whole or part of the premises and the ground of eviction based on that event must also be referred to contractual tenancy.

Of course at the date when the question arises whether the landlord is entitled to recover possession of the premises from the tenant u/s 13(1)(e) the tenant would undoubtedly be a statutory tenant; but the ground of eviction specified in Section 13(1)(e) would be a ground referable to the period of the contractual tenancy and not to the period of the statutory tenancy. The tenant who is sought to be evicted would be a statutory tenant but the event which u/s 13(1)(e) constitutes the ground for eviction would be an event which has happened during the subsistence of the contractual tenancy for it is the contractual tenant alone in

respect of whom it can be said that he has lawfully or unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest in the premises. The true construction of Section 13 is that the landlord shall be entitled to recover possession of the premises from the tenant-meaning thereby the statutory tenant for it is only when the contractual tenancy is terminated that the question of recovering possession of the premises can arise if the tenant has since the coming into operation of the Rent Act and during the period of the contractual tenancy-being the period when he could assign transfer or sublet-unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest in the premises. Such a construction is compelled by the various considerations which I have discussed in some detail since the view which I am inclined to take does not accord with the decisions of the Court of Appeal in England where the view has been consistently taken starting from the decision in *Roe v. Russell* (supra) that a statutory tenant is entitled to sublet a part of the premises provided he remains in possession of the remainder. This construction also derives some support by way of an analogy from Section 13(1)(d) where it is provided that the landlord shall be entitled to recover possession of the premises from the tenant if the tenant has given notice to quit and in consequence of that notice the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would in the opinion of the Court be seriously prejudiced if he could not obtain possession of the premises. Here also at the date when the question arises whether the landlord is entitled to recover possession of the premises from the tenant the tenant would be a statutory tenant but the event specified must obviously be referable to the period of the contractual tenancy for it is only a contractual tenant who can give notice to quit. This section would therefore apply to enable the landlord to eject the statutory tenant in a case where the statutory tenant has during the period of the contractual tenancy given notice to quit and in consequence of that notice the landlord has taken the steps specified in this section. It is in my opinion therefore futile for the alleged sub-tenants to attempt to spell out any power in the statutory tenant to sublet from the provision enacted in Section 13(1)(e).

I may add that in this view which I am inclined to take I am supported by a decision of Chagla C.J. as he then was in *Balmukund & Co. v. Mangaldas* (supra). The learned Chief Justice in that case held that Section 13(1)(e) applied where a tenant whilst a contractual tenant sublet the whole or part of the premises or assigned or transferred in any other manner his interest in the premises. The following observations from the judgment of the learned Chief Justice may be usefully quoted:

Now certain positions that arise in law are beyond dispute. As the contractual tenancy had already terminated defendant No. 1 had no interest in the premises which he could transfer or assign to defendant No. 3. He had only a personal right under the Rent Act to be protected in possession of the premises and that personal right could not be transferred or assigned. Therefore in law there was no

valid assignment in favour of defendant No. 3 Section 13(e) of the Act provides that a landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant has since the coming into operation of this Act sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein and the trial Court held that inasmuch as the tenant has contravened the provisions of Section 13(e) the landlord was entitled to possession and the decree against defendant No 3 want as a decree against a trespasser The learned Judges of the appellate Court have taken the view and in my opinion rightly that Section 13(e) has no application because Section 13(e) postulates an interest in the tenant which he could sublet or assign or transfer. There must be a contractual tenancy and having an interest in the tenancy if he assigns or transfers or sublets then he contravenes the provisions of Section 13(e) and he is liable to be evicted. But in this case the tenant not having any interest in the premises could not in law transfer or assign or sublet the premises and therefore if the landlords sought ejectment on the ground that their case fell u/s 13(e) they were liable to fail....

There are other decisions of the High Court of Bombay which have taken the same view but I need not burden this judgment with the citation of all such decisions.

That takes me to a consideration of Section 14 which is the crucial section which must ultimately govern the decision of the case. Section 14 is enacted to confer on certain class of sub-tenants the same status of irremovability which is accorded to tenants u/s 12(1). When a contractual tenant has sublet the premises or any part thereof to a sub-tenant on the determination of the contractual tenancy the subordinate interest of the sub-tenant determines and the sub-tenant becomes the statutory tenant of the sub-landlord just as the sub-landlord becomes the statutory tenant of the head-landlord. So long as the statutory tenancy of the sub-landlord continues there is no danger to the possession of the statutory sub-tenant for the statutory sub-tenant cannot be thrown out of possession by the sub-landlord because of the provisions of Section 12(1). But when the statutory tenancy of the sub-landlord comes to an end either by a decree or order of the Court or by death (if there are no entitled relatives) or by the delivery of the premises to the head landlord the statutory sub-tenants right would automatically come to an end unless there is some statutory protection afforded to him. This statutory protection is to be found in the provisions of Section 14. Section 14 provides that where the interest of a tenant of any premises is determined for any reason the interest of a tenant referred to in this section being either the estate or property of a contractual tenant in the premises or the personal right of occupation of a statutory tenant any sub tenant to whom the premises or any part thereof have been lawfully sublet before the coming into operation of the Rent Act shall subject to the provisions of the Rent Act be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued. I have here referred to Section 14 as it stood prior to its

amendment by Ordinance No. III of 1959 and it is the unamended section which I shall first proceed to consider for if the unamended section on a true construction protects only subtenants from contractual tenants the amendment in my opinion does not bring within the protective ambit of the section any subtenants from statutory tenants. The legislative history in regard to the right of the tenant to sublet is also of considerable assistance in the interpretation of Section 14; but before I refer to the legislative history I might first dispose of the question of construction on a consideration of the plain and grammatical meaning of the language used. The first thing that strikes one on a reading of Section 14 is the use of the passive tense in which the sub-tenancy is described; the words used are any sub-tenant to whom the premises or any part thereof have been lawfully sublet. The passive form of expression does indicate that the sub-tenant who is entitled to the benefit of the protection contained in Section 14 is a sub-tenant to whom the premises or any part thereof have been lawfully sublet at a point of time when there could be subletting and that the section does not contemplate lawful subletting of the premises by the tenant at all points of time upto the determination of the interest of the tenant in the premises. Though this is a small point and I do not attach too much importance to it it is I think consistent with the view that I take as to the construction of Section 14. It is only an indication but it does throw some little light on the intention of the Legislature. But apart from this consideration the use of the word sublet is to my mind determinative of the matter. I have already discussed the significance of the use of this word while dealing with the definitions of landlord and tenant in Sections 5(3) and 5(11) and I need not repeat what I have there stated. The use of this word to my mind clearly indicates that the sub-tenant referred to in Section 14 is a sub-tenant of a contractual tenant. The word sublet has not been given any artificial meaning and it must therefore have its well-recognized meaning as a legal term and if that is the meaning which attaches to it it is obvious that it cannot apply in relation to a sub-tenant of a statutory tenant. When there can be no letting of the premises by the landlord to the statutory tenant can the statutory tenant sublet the premises to a sub-tenant? Can there be any subletting by a person to whom it cannot be said that the premises are let? Can any subletting be made without there being a letting? Subletting must necessarily inhere upon letting and a statutory tenant obviously cannot sublet for the premises which he is holding on statutory tenancy cannot be said to have been let out to him. It is therefore clear to my mind on a plain and grammatical construction of Section 14 that the sub-tenants who come within the scope and ambit of Section 14 are sub-tenants from contractual tenants and not sub-tenants from statutory tenants.

The history of the legislation with regard to the right of the tenant to sublet also throws considerable light on the construction of Section 14 The Bombay Rent Restriction Act 1939 (hereinafter referred to as the Act of 1939) was brought into force in the then Province of Bombay on 19th June 1939 in order to restrict the rights of a landlord to recover more than the standard rent and permitted

increases and to recover possession of the demised premises from the tenant. There was no provision in that Act in regard to subletting and a contractual tenant could therefore sublet if there was no prohibition against subletting in the contract of tenancy. There was admittedly no power express or implied given to a statutory tenant to sublet. That Act continued in force upto 31 March 1948. The sub-tenancies which came into existence between 19 June 1939 and 31st March 1948 were therefore sub-tenancies created only by contractual tenants. That Act however applied only to premises the standard rent of which did not exceed Rs. 80/- per month and that too only in certain limited areas. Then came the Bombay Rent Restriction Order 1942 which applied to premises the standard rent of which exceeded Rs. 80/- per month in areas to which the Act of 1939 was applicable and in other areas to premises the standard rent of which did not exceed Rs. 250/- per month. There was originally no provision as regards subletting in the Bombay Rent Restriction Order 1942 but it was amended twice with a view to control the right of the contractual tenant to sublet the whole or part of the premises. These amendments are however irrelevant since the Bombay Rents Hotel Rates and Lodging House Rates (Control) Act VII of 1944 (hereinafter referred to as the Act of 1944) replaced the Bombay Rent Restriction Order 1942 in its application to various areas with retrospective effect. Section 10 of the Act of 1944 provided as follows:

10 Notwithstanding anything to the contrary in any law for the time being in force a tenant may sublet any portion of his premises to a sub-tenant provided he forthwith intimates in writing to his landlord the fact of his having so sublet the premises and also the rent at which they have been sublet.

Relying on this section it was contended by Mr. I.M. Nanavaty and Mr. J.M. Shah that under the Act of 1944 a statutory tenant was entitled to sublet and that there could therefore be sub-tenants from statutory tenants before the coming into operation of the Rent Act who would be entitled to the protection of Section 14 of the Rent Act. If argued Mr. I.M. Nanavaty and Mr. J.M. Shah Section 14 applied before its amendment to sub-tenants from statutory tenants created before the coming into operation of the Rent Act it is obvious that Section 14 after its amendment must also apply to subtenants from statutory tenants created before the coming into operation of the Rent Act and if sub-tenants created by statutory tenants before the coming into operation of the Rent Act are within the protection of Section 14 it must be readily implied that sub-tenants from statutory tenants after the coming into operation of the Rent Act but before the commencement of Ordinance No. III of 1959 are also within the protection of Section 14. At any rate the concept of sub-tenant from statutory tenant would not be foreign to Section 14 and it can be reasonably assumed that a statutory tenant can sublet even under the Rent Act. This contention as I have pointed out is based on the hypothesis that Section 10 of the Act of 1944 enabled a statutory tenant to sublet. This hypothesis is however in my opinion incorrect and the contention must therefore fail.

Before I examine the language of Section 10 of the Act of 1944 for the purpose of ascertaining its true meaning and effect it may be noted that the Act of 1944 applied in the areas to which the Act of 1939 was applicable only to premises the standard rent of which exceeded Rs. 80/- per month and in to her areas to all premises. If the premises in the areas to which the Act of 1939 was applicable were premises the standard rent of which did not exceed Rs. 80/- per month the Act of 1939 applied and as pointed out above no sub-tenancy could be created by a statutory tenant in respect of such premises. Could it then have been intended by the legislature that in these very areas in respect of premises the standard rent of which exceeded Rs. 80/- per month a statutory tenant should be entitled to sublet when he could not sublet in respect of premises the standard rent of which did not exceed Rs. 80/- per months this is a consideration which must be borne in mind while interpreting the language of Section 10 of the Act of 1944. Now the argument of Mr. I.M. Nanavaty and Mr. J.M. Shah was that Section 10 of the Act of 1944 empowered a tenant to sublet any portion of the premises to a sub tenant notwithstanding anything to the contrary in any law for the time being in force and the tenant included by reason of the definition contained in Section 4(5) a statutory tenant and that consequently a statutory tenant was entitled to sublet. It is no doubt true that the definition of tenant in Section 4(5) includes a statutory tenant but the definition is in terms made subject to the qualification namely unless there is anything repugnant in the subject or context. I must therefore examine the subject or context for the purpose of ascertaining whether the expression tenant in Section 10 of the Act of 1944 comprehends a statutory tenant or is confined only to a contractual tenant. Section 10 of the Act of 1944 deals with subletting by a tenant and the marginal note which can be referred to for the purpose of ascertaining the drift of the Section also indicates that the matter dealt with by the Section is subletting by a tenant and in the subject or context of subletting the expression tenant can only mean a contractual tenants for under the general law a contractual tenant alone can sublet. The idea of subletting is entirely foreign to a statutory tenant and the Legislature could not have possibly intended to bring about such a revolutionary concept as if by the side-wind by using the expression tenant in Section 10 of the Act of 1944 as including statutory tenant. It is significant to note that the expression tenant also occurs in Section 8 of the Act of 1944 and there it undisputedly refers to a contractual tenant for the grant renewal or continuance of a tenancy can only be with a contractual tenant. The expression tenant in Section 10 of the Act of 1944 also similarly refers to a contractual tenant and does not comprehend a statutory tenant. Then again the use of the word sublet clearly indicates for reasons which I have already stated while discussing the provisions of Sections 5(3), 5 and 14 of the Rent Act that the tenant referred to in Section 10 of the Act of 1944 is a contractual tenant. This is a consideration which must be given its due weight in ascertaining the true meaning of what is comprehended in Section 10 of the Act of 1944. Then again consider the effect of Section 9 of the Act of 1944. Section 9 of the Act of 1944 like Section 12(1) of the Rent Act postulates the existence of a contractual tenancy preceding the

statutory tenancy but when a statutory tenant sublets there can be no contractual tenancy in the sense of a transfer of interest between the statutory tenant and the sub-tenant. Section 9 of the Act of 1944 cannot therefore apply to protect a sub-tenant let in possession by a statutory tenant though it would apply to protect a sub-tenant let in possession by a contractual tenant. That would certainly be an anomalous result which could not have been intended by the Legislature. This anomalous result can be avoided by taking the view consistently with reason and principle that the subletting contemplated by Section 10 of the Act of 1944 is subletting by a contractual tenant and that this section does not have the effect of empowering the statutory tenant to sublet. But apart from the logic of this argument there are observations to be found in a decision of a Division Bench of the High Court of Bombay in *Cooper v. Shiavax Cambata* L Bombay Law Reporter 713 which support the view which I am inclined to take. They are as follows:

It (Section 10) only deals with the law as it obtains between the landlord and tenant and provides for a tenant being able to sublet only on certain terms even though those terms may be different from or contrary to the law regulating the relations of landlord and tenant. It is not as if Section 10 is wholly redundant. The Advocate General says that a tenant had already a right to sublet u/s 108 if that right was merely to be recognised there was no need to enact Section 10. But Section 10 restricts the right of the tenant to sublet under the ordinary law. As we have already pointed out whereas u/s 108(j) the right of the tenant to sublet was unrestricted, u/s 10 that right is circumscribed by the conditions; (1) that he must intimate in writing to the landlord the fact of his having sublet the premises and (2) he must inform him as to the rent at which the premises have been sublet.

11. It would thus be seen that Section 10 of the Act of 1944 refers only to a contractual tenant and imposes limitations on the right of the contractual tenant under ordinary law to sublet. There could therefore be no subtenants of statutory tenants prior to the coming into operation of the Rent Act and Section 14 as it stood prior to its amendment did not seek to protect sub-tenants of statutory tenants. The sub-tenants protected by Section 14 as it stood unamended were sub-tenants of contractual tenants and no inference could therefore be drawn from the unamended Section 14 that a statutory tenant is entitled to sublet.

If Section 14 prior to its amendment applied only to sub-tenants from contractual tenants it is clear that the amendment did not make any difference and even after the amendment the section continued to apply only to sub-tenants from contractual tenants. Only the point of time upto which it was necessary u/s 14 that the sub-tenancy should have been created by the contractual tenant was extended and it was provided that the benefit of Section 14 shall be available not only to subtenants to whom the premises or any part thereof were lawfully sublet before the coming into operation of the Rent Act but also to sub-tenants to whom the premises or any part thereof were lawfully sublet after the commencement of

the Rent Act but before the coming into force of Ordinance III of 1959. This extension became necessary because of the amendment in Section 15. Since prior to the amendment of Section 15 there could be no lawful subletting under the Rent Act the protection of Section 14 was given only to sub-tenants to whom the premises or any part thereof were lawfully sublet before the coming into operation of the Rent Act. But as a result of the amendment of Section 15 certain sub-tenancies which were unlawful under the unamended Section 15 became lawful and the benefit of Section 14 was therefore extended to sub-tenants holding such sub-tenancies. The subtenants who therefore came within the protective ambit of Section 14 as a result of the amendment were sub-tenants to whom the premises or any part thereof were sublet between the coming into operation of the Rent Act and the commencement of Ordinance III of 1959 and whose sub-tenancies were originally unlawful under the unamended Section 15 but were rendered lawful by reason of the amendment of Section 15. Now on a true interpretation of Section 15 to which I shall presently turn the subtenants whose sub-tenancies were rendered lawful by the amendment of Section 15 were sub-tenants from contractual tenants and it must therefore follow that the class of sub-tenants who were brought within the periphery of Section 14 as a result of the amendment were sub-tenants from contractual tenants. It may also be noted that the amendment in Section 14 was made consequential upon the amendment in Section 15 and if the object of the amendment in Section 15 was merely to remove the ban on subletting assignment and transfers in certain cases with retrospective effect and not to confer any fresh rights which did not exist at the date of the amendment the amendment in Section 14 could not be construed as conferring any fresh right on the sub-tenant to sublet if as I have held the statutory tenant had no such right to sublet prior to the amendment. If there was no power in the statutory tenant to sublet prior to the amendment of Section 14 it is difficult to see how the statutory tenant got such power as a result of the amendment. I am therefore of the opinion that Section 14 even after the amendment applies to protect only sub-tenants from contractual tenants and does not contemplate sub-tenants from statutory tenants so as to justify an implication of a power in the statutory tenant to sublet.

Turning to Section 15 I find that the argument based on this section is even weaker than the argument based on Sections 13(1)(e) and 14. Section 15 as it stood prior to its amendment in clear and unmistakable terms prohibited the tenant from subletting the whole or any part of the premises let to him or to assign or transfer in any other manner his interest in the premises. Section 15 enacted a prohibition on the tenant to do that which he might otherwise be entitled to do. If the tenant was entitled to sublet the whole or any part of the premises let to him or to assign or transfer his interest in the premises Section 15 declared that the tenant shall not be entitled to do so notwithstanding anything contained in any law for the time being in force. Apart altogether from other considerations it is difficult to see how a section which is prohibitory in nature and which seeks to impose a fetter on the right of the tenant to sublet the

whole or any part of the premises or to assign or transfer his interest in the premises can be construed as conferring a right by necessary implication. Even if the word tenant in Section 15 be read as including a statutory tenant Section 15 as it stood prior to its amendment prohibited the statutory tenant from subletting the whole or any part of the premises or from assigning or transferring in any other manner his interest in the premises. To read the section as empowering the statutory tenant to sublet-when in terms clear and explicit it says that the statutory tenant shall not be entitled to sublet-would be to contradict the very terms of the section. I know of no method of construction of a section by way of contradiction of it. Section 15 prior to its amendment therefore in my opinion merely imposed a prohibition and if a tenant was entitled to sublet or to assign or transfer Section 15 made it unlawful for him to do so. The power to sublet assign or transfer could not therefore be founded in Section 15. Now a statutory tenant admittedly could not assign or transfer and as I have already shown a statutory tenant also could not sublet under any other provision of the Rent Act. It is therefore apparent that the word tenant in Section 15 referred only to a contractual tenant and the section operated to prohibit only the right of a contractual tenant to sublet or to assign or transfer. But apart from this consideration the words let to him provide a very cogent reason for coming to the conclusion that the tenant referred to in Section 15 is a contractual tenant. The tenant is prohibited by Section 15 from subletting the whole or part of the premises let to him. Now obviously for reasons which I have already discussed there can be no letting by a landlord to a statutory tenant and it cannot be said of a statutory tenant that the premises which he is holding as a statutory tenant are let to him. These words are in my opinion applicable only to a contractual tenant. The tenant who is prohibited from subletting u/s 15 must therefore be a contractual tenant. The same conclusion is also reached on a consideration of the expression sublet. I have already pointed out that the expression sublet in the absence of any artificial meaning must receive its well-known meaning as a legal term and can therefore be applicable only to a contractual tenant. The words assign or transfer in any other manner his interest therein also fortify the same conclusion. I am therefore of the opinion that the word tenant in Section 15 as it stood unamended referred only to a contractual tenant and did not extend to a statutory tenant. Now the same question arises in regard to Section 15. Does the amendment make any difference to the interpretation of the section? In my opinion it does not make the slightest difference. The prohibition against sub-lettings assignments and transfers which was contained in Section 15 as it stood prior to its amendment continues to remain even after the amendment with this modification that the prohibition is now made subject to any contract to the contrary. If therefore there is any contract to the contrary the tenant can sublet assign or transfer. The very use of the words subject to any contract to the contrary emphasizes the view I am inclined to take namely that the sub-lettings assignments and transfers contemplated by Section 15 are by a contractual tenant. These words obviously cannot apply so as to permit the statutory tenant to sublet assign or transfer. It is difficult to see how the contract of tenancy can

provide that the statutory tenant shall be entitled to sublet assign or transfer. I am therefore of the opinion that Section 15 after its amendment also does not contemplate any subletting assignment or transfer by a statutory tenant. The amendment merely legalises certain sub-tenancies assignments and transfers which were unlawful by reason of the provisions of Section 15 as it stood unamended and does not empower the tenant contractual or statutory to do that which he was not entitled to do apart from the provisions of Section 15. The same view I find has been taken by Tarkunde J. in Special Civil Application No. 1685 of 1957. This decision is of course binding on me but even if the matter were *res integra* I would have been inclined to reach the same decision for the reasons mentioned above. No implication can therefore be raised from Section 15 in favour of the view that a statutory tenant is entitled to sublet./

12. It would thus be apparent from the aforesaid discussion that none of the sections relied on by Mr. I.M. Nanavaty and Mr. J.M. Shah supports the existence, of a power in the statutory tenant to sublet. Each one of these sections can be given full force and effect by reading it as applicable to a sub-tenant of a contractual tenant and there is no need for making an implication as contended for by Mr. I.M. Nanavaty and Mr. J.M. Shah. But apart altogether from this line of reasoning the language of these sections does not justify the making of any such implication. The language of these sections in my opinion not only does not warrant but actually negatives the existence of any power in the statutory tenant to sublet. I am therefore of the opinion on principle that a statutory tenant under the Rent Act is not entitled to sublet the whole or any part of the premises. Turning to the authorities the first authority to which I must refer is the decision of the Court of Appeal in *Roe v. Russell* (supra). This was the authority strongly relied on by Mr. I.M. Nanavaty and Mr. J.M. Shah. Now it must be admitted that the view has consistently been taken in England starting from *Roe v. Russell* (supra) that a statutory tenant under the English Rent Restriction Acts can sublet part of the premises provided he remains in possession of the remainder. But I do not think it would be right on my part to surrender my judgment on a construction of the provisions of the Rent Act to the decisions of the English Courts on the interpretation of the English Rent Restriction Acts. There are no doubt certain provisions in the English Rent Restriction Acts which are similar to the provisions in the Rent Act but the scheme of the English Rent Restriction Acts is to some extent different from the scheme of the Rent Act and it would not be wise to follow blindly the decisions of the Courts in England on the interpretation of the provisions of the English Rent Restriction Acts while construing the provisions of the Rent Act. As observed by Beaumont C.J. in *Punamchand Valraj v. Bombay Cloth Market Company Limited* 65 Bom LR 241:

The learned Judge has adopted that view relying to some extent on decisions of English Courts under the English Rent Restriction Acts which are not worked in terms identical with those of the Indian Acts. Under the English Act of 1923 subletting without the consent of the landlord took the premises out of the Act and in my view decisions on the English Acts are not of much help in construing

the Indian Act....

Bachawat J. also pointed out in *Krishna Prasad v. Sarajubala Dassi* (supra) that the English decisions must be applied with caution to a case arising under an Indian Act. The English Rent Restriction Acts apply only to a dwelling house and the key-note of those Acts is the protection of the home. This particular feature of the English Rent Restriction Acts seems to have largely influenced the Courts in England in reaching the decision that a statutory tenant can sublet part of the premises so long as he retains possession of the remainder for in that event he continues to have his home in the dwelling house which is within the protection of the English Rent Restriction Acts. This feature is absent in the Rent Act. Another factor which seems to have played considerable part in inducing the Courts in England to hold that a statutory tenant is entitled to sublet part of the premises remaining in possession of the remainder is the fact that at the time when the English Acts of 1920 and 1923 were passed the vast majority of the tenancies of the properties to which these Acts applied had ceased to be contractual tenancies and had become statutory tenancies for landlords had naturally taken advantage of the intermediate legislation enabling them to make statutorily authorized increases in the rents payable to them and had for the most part (at any rate in England) adopted the method strictly necessary for that purpose of giving notices to determine existing contractual tenancies and subsequently giving notices of the appropriate permitted increases. The statutory tenants had in their turn in innumerable cases particularly having regard to the notorious deficiency of housing accommodation and whether they were strictly entitled to do so or not let or affected to let portions of their premises to subtenants. The result was that a large number of persons who claimed to be subtenants belonged to the class deriving their sub-tenancies from statutory tenants. The Courts in England obviously felt that if the protective provisions enacted in the English Acts of 1920 and 1923 for the benefit of sub-tenants were construed as applying only to sub-tenants from contractual tenants the vast majority of persons to whom the premises were affected to be sublet by statutory tenants would be deprived of protection and it was this factor which weighed heavily with the Courts in England in taking the view that a statutory tenant is entitled to sublet part of the premises provided he continues in possession of the remainder. This factor does not exist or at least has not been shown to exist so far as the area of applicability of the Rent Act is concerned. I may however point out that even if this factor were present I would have taken the same view negating power in the statutory tenant to sublet since in my view the Rent Act does not either expressly or by necessary implication recognize any such power in the statutory tenant. Another consideration which formed the basis of the view taken by the Courts in England which consideration distinguishes the cases arising under the English Rent Restriction Acts from the cases arising under the Rent Act was the enactment of the provision contained in Section 4(1)(h) of the English Act of 1923. The Court of Appeal in England as I have pointed out above founded itself mainly on this provision in taking the view

that a statutory tenant is entitled to sublet part of the premises provided he remains in possession of the remainder since this section omitted to make such action on the part of the statutory tenant a ground for eviction of the statutory tenant. I need not quote passages from the judgment of the Court of Appeal in *Roe v. Russell* to show that it was mainly from the provisions of Section 4(1)(h) that the Court of Appeal spelt out by necessary implication a power in the statutory tenant to sublet for I have already quoted some passages from the Judgment of Scrutton L.J. in that case which are sufficient for the purpose. Such a provision as Section 4(1)(h) does not exist in the Rent Act and the analogy of the decision of the Court of Appeal in *Roe v. Russell* cannot therefore apply. If the decision of the Court of Appeal in *Roe v. Russell* does not help Mr. I.M. Nanavaty and Mr. J.M. Shah it is clear that the subsequent decisions of the Court of Appeal are also of no help since they merely followed as they were bound to do the decision of the Court of Appeal in *Roe v. Russell*. The reliance placed on the decisions of the English Courts is therefore in my opinion futile.

That takes me to the two decisions of the Calcutta High Court which were relied on by Mr. I.M. Nanavaty and Mr. J.M. Shah. The first decision was the decision of P.B. Mukharji J. in *Manoranjan Bhattacharjee v. Satya Charan Law*. 85 CLJ 81. In that case the learned Judge had to consider the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act 1948 the point directly arose as to whether a statutory tenant was entitled to sublet. The learned Judge held that in his opinion a statutory tenant was entitled to sublet and the line of reasoning which he adopted for taking that view was as follows:

Under the Rent Act a notice to quit does not determine the tenancy because he cannot be evicted by decree for possession by reason of Section 11 of the Rent Act provided even such a tenant complies with the requirements of that section.... That means the statute continues his tenancy on of course certain conditions. Such a statutory continuance of the tenancy gives therefore to such a tenant an interest in the immovable property and once such interest is there there is nothing in the Rent Act which takes away his right to sublet under the Common Law or the Transfer of Property Act.

Now this line of reasoning is obviously fallacious. The learned Judge it appears came to the conclusion that by the reason of the provisions of the Rent Act in question the tenancy of the tenant was continued notwithstanding the expiration of the notice to quit and that such a statutory continuance of the tenancy gave to the tenant an interest in the premises out of which he could lawfully carve out a sub-tenancy unless the Rent Act took away such right of the tenant. This is an entirely wrong approach for it is well-settled that a statutory no estate or interest in the premises out of which he can carve out a subordinate interest in favour of the subtenant and that he is therefore not entitled under the common law or the Transfer of Property Act to sublet the premises to the sub-tenant. There is therefore no question of considering whether the Rent Act has taken away any right of the statutory tenant to sublet. The proper approach can only be and that

was the approach which was submitted for consideration by Mr. I.M. Nanavaty and Mr. J.M. Shah and which I have examined in the earlier part of the judgment whether the statutory tenant being a creature of the Rent Act has any power given to him by the Rent Act to sublet. This decision cannot therefore be accepted by me as laying down correct law and I must refuse to follow the same.

The next decision to which my attention was invited was the decision of a Pull Bench of the Calcutta High Court in *Krishna Prasad v. Sarajubala Dassi* (supra). It is no doubt true that in that case the Pull Bench of the Calcutta High Court took the view that a statutory tenant under the West Bengal Premises Rent Control (Temporary Provisions) Act 1950 can sublet the premises under certain circumstances but having given the most anxious consideration to the judgments of the learned Judges constituting the Pull Bench I find myself unable to accept the line of reasoning which commended itself to them. The judgments in that case seem to be influenced largely by the high authority of the decision of the Court of Appeal in England in *Roe v. Russell* and the arguments which found acceptance with the learned Judges follow substantially the same line as the arguments which prevailed with the Court of Appeal in England in *Roe v. Russell* in recognizing power in the statutory tenant to sublet. The decision of the learned Judges rested on Sections 12 and 13 of the West Bengal Act corresponding to Sections 13 and 14 of the Rent Act. Section 12 conferred protection on the statutory tenant against dispossession and proceeded to lay down amongst its various provisions that the protection would not be available if the tenant transferred his tenancy in whole or in part with possession otherwise than by sub-lease or if the tenant sublet the whole or major portion of the premises for more than seven consecutive months. Section 13 enacted that where any premises or any part thereof have been sublet by a tenant of the first degree and the tenancy of such a tenant is lawfully determined (except in one particular manner with which I am not concerned) the sub-lessee shall be deemed to be a tenant in respect of such premises or part as the case may be holding directly under the landlord of the tenant whose tenancy has been determined on terms and conditions on which the sub-lessee would have held under the tenant if the tenancy of the latter had not been so determined. From these two provisions the learned Judges spelt out a power in the statutory tenant to sublet. I have already set out in detail the reasons why I cannot accept this line of reasoning in its application to Sections 13(1)(e) and 14 of the Rent Act and for those reasons I must refuse to follow this decision of the Calcutta High Court. This decision of the Calcutta High Court in my opinion does not lay down the correct law and at any rate it can have no application in construing the provisions of the Rent Act.

For all these reasons I take the view that a statutory tenant under the Rent Act is not entitled to sublet the whole or part of the premises. In taking this view I may say with Mackinnon L.J. that he must be a bold if not a conceited man who can feel confidence in forming or expressing an opinion on any one of the innumerable problems that arise out of the Rent Act but having groped my way

about that chaos of verbal darkness I have come to the conclusion with all becoming diffidence that the contention urged on behalf of the alleged sub-tenants is not well founded. This being the position it is clear that Maneklal Mafatlal was not entitled to sublet the different portions of the premises to Anand Niwas Private Limited Glamour Cleaners and Vithaldas Panchal and that these alleged sub-tenants are not entitled to any protection u/s 14 of the Rent Act. In this view of the matter it is not necessary for me to decide the second question raised by Mr. M.M. Shah that in view of the provisions of Section 52 of the Transfer of Property Act any sub-tenancy created by Maneklal Mafatlal in favour of Anand Niwas Private Limited Glamour Cleaners or Vithaldas Panchal was subject to the result of the ejectment suit during the pendency of which the sub-tenancy was created and could not therefore be put forward in answer to the execution of the decree for ejectment.

The result therefore is that Civil Revision Application No. 751 of 1961 (which has been converted into an appeal) Civil Revision Application No. 784 of 1961 and Civil Revision Application No. 785 of 1961 fail and will be dismissed with Costs. Civil Revision Applications Nos. 478 and 479 of 1961 are as I have already stated allowed to be withdrawn.