

(1987) 08 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 3400 of 1984

Goregaon Malayalee Samaj (Regd.)

APPELLANT

Vs

Popatlal Prabhudas and Sons and Others

RESPONDENT

Date of Decision : 13-08-1987

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 15A
Constitution of India, 1950 — Article 14, 226, 227
Transfer of Property Act, 1882 — Section 105

Citation : (1988) 1 BomCR 358

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : D.S. Chopra, A.G.P., K.K.V. Kurup, for the Appellant; M.K. Ghelani and A.L. Thakkar, instructed by Romer Dadachanji Sethna and Co. and Divyakant C. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Agarwal, J.—This petitioner seeks to challenge the concurrent decrees passed by the trial Court and the Appellate Court awarding a decree for possession in favour of the respondent No. 1 u/s 13(1)(i) of the Bombay Rent Act. The premises in disputes in the present proceedings is an open plot of land admeasuring about 250 sq.ft. forming part property at Byramjee Jeejeebhoy Road, Goregaon (west), Bombay 400 062. The said premises were initially let in favour of one V.O. Michael who was the original defendant No. 1 who in turn constructed a structure thereon and indicate the petitioner who are in Goregaon Malayalee Samaj which is a trust registered under the Bombay Trust Act. respondent No. 1 filed the present suit and 25 other suit claiming possession of different portions of land in occupation in different tenants. Possession was claimed inter alia, u/s 12(1) i.e. where the premises are land, such is reasonably and bona fide required by landlord for erection of new building.

2. The said suit was resisted by the original tenant V.O. Michael also the

petitioner. They denied that the respondent No. 1 bona fide required the suit premises for the purpose of erecting a new building. According to them the suit premises had been let by predecessor in title of respondent No. 1 and that letting was for the purpose of construction. In pursuance of the said permission granted, the original defendants No. 1 had erected a permanent structure and had inducted the petitioners therein. Respondent No. 1 was thus not entitled to claim possessions of the plot of land as there was already a permanent standing thereon.

3. The trial Court decided all the 26 suits by common a judgments and held that the respondents No. 1 had succeeded in proving that the bona fide required suit premises for erecting a new building. Pursuant to the said finding, all the 26, suit for possessions were decreed. The appeals filed by the petitioner and the defendants in the other suit having been dismissed the 26 petition came to be filed in this Court. However except the present petition all other petitions were amicably settled either before or during the hearing of this petition. As no similar settlement could be arrived at in respect of the present petition the same was set out to hearing on merits.

3-A. Mr. Kurup appearing in person for the petitioner vehemently submitted that the present suit related to an plot of land admeasuring 250 sq. ft. only whereas the petitioner are in possession of a structure which is standing not only on the suit land but also on the adjoining plot of land also admeasuring 250 sq. ft. which had been obtained by the petitioner from the predecessor-in- title of the respondent No. 1. According to Shri Kurup even if a decree for possession were to be passed in respect of the suit premises the respondents No. 1 would not be in a position to construct till they obtained a decree also in respects of the adjoining 25 sq.ft. Area of which the petitioner were in possession through the predecessor in - title of the respondents No. 1 A suit for possession in regard to the said 250 sq.ft. was filed in 1975 and dismissed on 8th April, 1983 and no further proceeding have been taken for obtaining possession in respect thereof. Shri Kurup further submitted that certain developments, had taken place during the pendency of this petition and if regard is to be had to the said developments, respondents No. 1 cannot be said to be requiring the suit premises reasonably and bona fide for erection of a new building. A conveyance dated 4th July, 1986 has been entered into between Byramjee Jeejeebhoy Pvt. Ltd., the Head Lessors of the respondents No. 1 in favour of the respondents No. 3 M/s. Falgu International wherein it has been recited that the lease hold rights of the respondents No. 1 have been terminated. According to Shri Kurup the respondents No. 1 has thus no subsisting right title and interest in the suit premises and consequently the decree passed for possession on the ground of bona fide requirement of the respondent No. 1 cannot be sustained. He also contented that the suit premises as found by the lower Appellate Court had been let for the purpose of construction and the respondent No. 1 had constructed a structure and hence , the requirement of the respondents for putting up a new building cannot be said to be bona fide Shri. Kurup also contended that the

provision of section 13(1)(i) are ultra vires and same are liable to be struck down.

4. I have enumerated the board contentions raised by Shri Kurup. It may be convenient to determine the finding that have been arrived at by the lower Appellate Court as that Court is the final fact finding Court which findings would not be open for interference unless they are shown to be perverse. It has been found that the purpose of letting of the suit land was for the purpose of construction. The learned Judges of the Appellate Court have held that defendants had deposed that the purpose of letting was for the construction and there was no reason to disbelieve that. Moreover, the witness examined on behalf of the plaintiff had personal knowledge in the behalf and that would naturally be so as the plaintiffs have purchased the suit property after the original letting in favour of the defendants No. 1. No fault could be found with the said finding as after the original let construction by the various tenants had in fact been carried out and there was no objection raised in regard thereto. It is true that lower Appellate Court has also relied upon Exhibit A-5 an affidavit of the Rent Collector which had been filed in reply to the standard rent application where in reply to an averment made, it has been stated that admittedly as the land was let out for the purpose of construction the standard rent application is not maintainable. The grievance of Mr. Ghelani that no reliance could be legitimately placed on the said affidavit which was filed in some collateral proceeding without an opportunity having been given to the said Rent Collector to explain the said affidavit is justified and the further grievance of Shri Ghelani that Rent collector of the plaintiff could not be expected to know the purpose of letting when the plaintiff did not know about the same is also justified. In my view, the finding recorded by the lower Appellate Court that the purpose of letting was for the purpose of construction would be justified even if said affidavit is ignored and this is particularly so as after the initial letting by the predecessor of the plaintiffs the defendants and other tenants of adjoining lands had in fact carried out construction and no grievance of whatsoever nature had been raised either by the said predecessors or by the plaintiffs till the institution of the present proceedings.

5. The lower Appellate Court on the appraisal of the evidence has found that the structure erected by the defendants were in any event in any way event of the semi permanent nature. On the question of the bona fide requirement of the plaintiff, it was found that the plaintiff had financial capacity and has also obtained sanction plans for the new construction. Reliance in the behalf was placed on the plaintiff's Architect Mr. Ganjawala who had deposed after he had visited the site prepared and got sanctioned. The Lower Appellate Court also found that even though the provision of section 13(1)(i) did not require that plaintiff offer alternative premises to the tenants the same was offered but not accepted by the defendants. Having found that the plaintiff had prove that they reasonably and bona fide required the suit premises for erection of a new building, the decree passed by the trial Court for possession was confirmed and I find no reason to differ from the said concurrent finding.

6. It may be mentioned that even during the hearing of this petition which was set up for hearing along with the other set of petitions arising out of the same judgments and orders which are impugned in this petition an offer of providing alternate accommodation was made to the defendants. The defendants in all other petitions have either accepted the proposal of granting alternative premises or monetary consideration in lieu thereof and the said petitions have been marked as settled. Since similar offer made to the petitioner was not acceptable to them, this petition was heard and is being decided on its merits.

7. Shri Kurup has submitted that the premises were let to V.O. Michael in the year 1956 i.e. much prior to the Ordinance of May 1959. The said V.O. Michael had constructed a structure on said premises and let the same to the petitioners. Hence, according to Shri Kurup the petitioners were the tenants in respect of the structure constructed by V.O. Michael and were the sub-tenants of the respondents No. 1 in respect of the suit land and consequently protected from the eviction by the Rent Act. In my judgment there is no merit in the aforesaid contention of Shri Kurup. It has been held in the case of *Virji Nathuram and Others Vs. Krishnakumar*, that in a case of lease which permitted the erection of a super-structure on the land and the induction of third parties in the said super-structure the persons so inducted were no doubt the tenants of the super-structure. However, their status vis-a-vis the land is necessarily that of licensees and not of any other higher status. When a decree is sought to be executed in respect of land which was subject matter of the original lease the status of the tenants of the structure on the land was nothing more than of licensees. The said license in respect of the land has necessarily to come to an end and the said tenants have got to be evicted from the land which can not be done unless they are also evicted from the structure which is standing on the land. All subsidiary interests that were created by the original lessee of the land pursuant to the Lease Deed even if legally must necessarily come to an end unless otherwise the tenant is protected under the provision of the Rent Act .

8. Further more it has been held in case of *Mrs. Dossibai N.B. Jeejeebhoy v. Khemchand Gorumal*, AIR 1966 S.C. 1989 that where an open land was let whereon the lessee constructed a building and let the building to tenants, the lease would not be contravening the provisions of section 15 which prohibits sub-letting as there was no sub-letting of the land but merely letting of the building. A similar view was taken in the case of *Vinayak Gopal Limaye Vs. Laxman Kashinath Athavale*, and that decision was approved by the Supreme Court in the aforesaid case of *Mrs. Dossibai*. In view of the aforesaid decisions the submission of Shri Kurup that the petitioners would be in the sub-tenants of the suit land entitled to protection will necessarily have to be negatived.

9. Similarly, the contention of the petitioner that even if the petitioners were considered to be the licensees in respect of the suit land they would be protected in view of the provision of section 15-A has force as no subsisting license could not be said to exist in favour of the petitioner on the 1st February, 1973 as

the present suit had already been instituted much prior thereto i.e in 1965. Moreover therefore one can claim protection under that provision, license has to be in respect of premises not less than a room. In the present case the license claimed being in respect of an open plot of land the protection u/s 15A cannot be ensure for benefit of the petitioners.

9-A. Shri Kurup has further contended that the provision of section 13(1)(i) would only apply to a case only where the premises initially let was land and the same continued to be a land on the date of the suit as also at time of the passing of the decree. According to him the existing premises not being land, the provision of section 13(1)(i) cannot be applicable so as to entitle the plaintiff to a decree for possession. It has however, been held in case of Krishnapusabha Rao v. Dattatraya Krishnaji A.I.R 1966 S.C 1024. that in case lease of open land where the tenants at his own costs, had built a shed it was a tenancy in respect of open land only and the provision of section 13(1)(i) applied. In that case a contention was raised that the suit premises therein were building and ground appurtenant to the building and not land within the preview of section 13(1)(i) and consequently the landlord could not claim eviction u/s 13(1)(i). While rejecting the said contention it was held that the language of section 13(1)(i) read with definitions of " premises", "landlord" and "tenant" in section 5 shows that the expressions "premises" in section 13(1)(i) refers to the subject matter of letting for which rent payable and in respect of which there is relationship of landlord and tenants. A combined reading of section 5(8) and 13(1)(i) shows that u/s 13(1)(i) the land lord can obtained a decree for eviction in respect of premises which are land not in respect of premises which are building or are garden grounds etc., appurtenant to the building. The question is issue is whether the suit premises are land or whether they are building and grounds appurtenant to the building. Hence in a case where the subject matter of letting was open land and the rent was payable in respect of the open only and not in respect of the structures raised by the tenants the building belonged to the tenants and was not the subject matter of letting. Consequently, the premises were land within the meaning of section 13(1)(i). This aforesaid decision of the Supreme Court has been followed by this Court in a series of decisions in the cases of Sohansingh Bharatsingh v. Narhar Narayan Godbole, 73 Bom.L.R. 282. Mangharam Chuburmal v. B.C. Patel 73 Bom.L.R. 140 ; Shantinath J. Upadhyya and Another Vs. Ajit N. Upadhyya, and Mrs. Rampyari Surajbali v. K.V. Borkar 1986 Bom.C.R 261. in this view of matter it must be held in fact of the present case that though the premises in its existing form are not land but consist of a structure put up by the original tenant V.O. Michael who in turn inducted the petitioners therein, the provisions of section 13(1)(i) would still be applicable as the premises let are land.

10 . There was some controversy raised as to whether the suit premises in the present case are open land admeasuring 250 sq. ft. or 500 sq. ft. which includes the land admeasuring 250 sq.ft. which according to the petitioners, they had directly obtained from the predecessors-in-title of the respondents for the

purpose of extending their existing structure. Some capital was sought to be made on account of the description of the suit premises as found in paragraph 1 of the petition wherein the suit premises have been described as admeasuring 500 sq. ft. Similarly in paragraph 4 of the plaint .the premises are described as admeasuring 500 sq. ft. It was, therefore, urged on behalf of the respondents that the suit premises is admeasuring 500 sq. ft. and not 250 sq. ft. and not 250 sq. ft. It must however, be noted that in paragraph 2 of the plaint, it has been mentioned that the termination of his tenancy by a notice to quit, the defendant No. 1 was the plaintiffs monthly tenant occupying a portion admeasuring 250 sq.ft. or thereabouts of the open land of the plaintiffs said property.....Similarly, in the concise statement it has been mentioned that the plaintiffs seek to recover from the defendants vacant and peaceful possession of the open land admeasuring 250 sq.ft. or thereaboutsMoreover, the plaintiffs in his evidence has categorically mentioned that the suit premises admeasured 250 sq. ft. and for the balance of 250 sq. ft. a separate suit had been filed. In view of the aforesaid evidence, it must be held that the reference to the area of 500 sq.ft. appearing in the petition as also in paragraph 4 of the plaint is an inadvertence or a typographical error and that is all the more so as the parties went to trial on the assumption that the suit premises admeasured 250 sq. ft. Therefore, the contention of Shri Ghelani on behalf of the plaintiffs that the suit premises admeasured 500 sq. ft. must be negatived. This takes me to the contention of Shri kurup that a decree in respect of the suit premises admeasuring only 250 sq. ft. could not be passed u/s 13(1)(i) unless the plaintiffs obtain possession of the other 250 sq. ft. area. The plaintiffs would not be in a position to demolish the structure which extends to almost the entire 500 sq. ft. area until they obtained a decree for possession in respect of the said 250 sq. ft. area also. He also submitted that the respondents had filed a suit for possession of the said additional 250 sq. ft. but that suit was dismissed for default and no further steps were taken for having that suit restored. Shri Ghelani on the other hand submitted that it was not that the respondents were intending to construct on each inch of land that may be decreed in their favour as against the petitioner and the other tenants against whom different suits had been filed. Certain portion of the land was bound to be kept open under the Building Rules and even if the plaintiffs were to take some time in obtaining possession in respect of the said additional 250 sq. ft. that would not come in their way of proposed construction and that could be no bar to the passing of a decree in the present proceedings. Moreover the petitioners in ground (iii) of the petition have stated that the front portion of the suit land would be taken for road-widening without any further delay. In my view, having regard to the various suits filed by the respondents for possession in respect of different portions of the land in occupation of various tenants and the settlement arrived therein the claim of the respondents for possession of the suit premises can not be defeated on account of this plea. If each tenant is permitted to raise a similar plea that unless the landlord obtains possession of premises in occupation of all the other tenants, no decree should be passed against him. I am afraid no

landlord would ever be able to obtain possession for the purpose of construction u/s 13(1)(i) when the land on which the new building is proposed to be constructed is let out to several tenants. Having regard to the plan -Exhibit 3, page 110 it would be seen that the suit premises about on the road and a major portion of the land on which the construction is proposed lies to its north and, therefore it would be responsible to infer that the suit premises as also the adjoining land admeasuring 250 sq.ft. may be required to be kept as vacant under the building Bye-Laws. Hence, the proposed construction would not necessarily be hampered till actual possession of the adjoining 250 sq. ft. is obtained. Moreover, it may become necessary for the purpose of utilising the requisite F.S.I. to ultimately demolish the entire structure standing both on the suit land as also on the adjoining piece of land.

11. Shri Kurup then submitted that there have been change in the facts and circumstances of the case since the passing of the decree by the trial Court and if the same are taken into account, it would not be possible now to hold that the respondent No. 1 reasonably and bona fide require the suit premises for erection of a new building. He submitting that the original landlord in respect of the suit property was one Byramjee Jeejeebhoy Private Limited and the respondent No. 1 had the lease-hold rights. The said Byramjee Jeejeebhoy had by a Deed of Conveyance dated the 4th of July, 1986 sold their interest of ownership to me respondent No. 3. Moreover, the respondent No. 1 had under an Agreement dated 17th April, 1979 agreed to sell their lease - hold rights to Vikram Builders who in turn have filed in this Court a suit for specific performance of that Agreement of sale. In that suit an interim injunction have been issued restraining the respondent No. 1 from carrying on any construction work except through the said Vikram Builders. Shri Ghelani on the other hand has pointed out that what Byramjee Jeejeebhoy Private Limited had sought to sell to respondent No. 3 was the reversionary rights and the same did not effect the lease-hold rights of the respondent No. 1. Further more there were two common partners in Vikram Builders and respondent No. 3. And the respondent No. 1 has executed a Power of Attorney in favour of both these partners empowering them to defended the present petition. He also submitted that there was an agreement of development entered into by the respondent No. 1 in favour of Vikram Builders and the respondent No. 1 would be within their rights to put up a new building through the said Vikram Builders, and the respondent No. 1 would be within right to put up a new building through the said Vikram Builders. In my judgment it would not be legitimate to permitted the petitioner to agitate such fresh change in circumstances which are disputed questioned of fact and which cannot be resolved in this petition u/s 226 and 227 of the constitution. It is enough to state that aforesaid facts are not such as lead to a reasonable interference that the respondents No. 1 either by itself or through developers like Vikram Builders would be in a position to carry on the proposed construction . Moreover as held in the case of Rustom Sorabji Powwalla v. Ramchandra Balaji Gaikwad 22 Bom.L.R. 860 and in the case of C.A. Gilmour Ltd. v. St. Batholomows Hospital

(1956)1 All.E.R. 314 It is not necessary that the construction should be carried out by the landlord himself. It is open to carry out same through some other agency like respondents No. 3.

12. Shri Kurup then contended that the respondent No. 1 firm has been dissolved with effect from the 30th September, 1976 and on dissolution it would not be opened to respondents No. 1 to undertake a huge project as proposed in the present case in winding of proceeding u/s 47 of the partnership Act. He relied upon a decision in the case of *Mudenar Nagappa v. Bhagavanji Rasaji* A.I.R 1936 Mad. 539, as also in the case of *Motilal Chimanram & another v. Sarupchand Prithiraj & others* A.I.R 1937 Bom. 81, in support of the said contention. I am afraid Shri Kurup would not be justified in raising the said contention in view of the cryptic contention and raised in that behalf which is found in the amended and ground 18 of the petition which is as under:-

"The impugned decree is other wise bad in law as the firm of the first respondents ceased to exist"

No particular or factual data have been provided and Shri Ghelani appearing on behalf of the respondents No. 1 was justified in raising an objection for the said entertainment of the said contention. Moreover, Shri Ghelani disputed the said contention and submitted that a decree in favour of a firm is in fact as also in Law a decree in favour of its partners. According to him, there had only been change at the relevant time in the partners and the respondent No. 1 firm had all along continued to exist.

13. Shri Kurup further submitted that the respondent No. 1 had on its own showing changed the original plans in regard to the proposed construction. Whereas the original plans were in respect of a multi-storied building, the respondent No. 1 now proposes to construct an air-conditioned market. According to Shri Kurup the trial as also the Appellate Court had judged the reasonable and bona fide requirements of the respondent No. 1 on the basis of original plans for constructing a multi-storied building. This finding answered in favour of the respondents No. 1 both on the issue of reasonableness and bona fides of the respondents No. 1 could not be supported on the changed plans in regard to construction of air-condition market. This contention of Shri Kurup must be negated on the short ground that no material has been placed on record in regard to the aforesaid alleged change plans of contented by Shri Kurup. Moreover, as in the case of *Chandrakant Bhalchandra Nalavalkar and Another Vs. Hiralal Mulchand Shah*, it has been held that making of a building plan before a suit is filed, claiming relief u/s 13(1)(i) of the Bombay Rent Act, may be indicative of bona fides of the landlord. The absence of such a plan on the date of suit by itself will not however, militate against the bona fides of the landlords. It is well known that litigations under the Bombay Rent Act take years before they are finally decided and the claim of the landlord is allowed. Even after long spell of litigation there is always an uncertainty as to whether a landlord is really going to get possession either of the house or of the open plot, and while some

landlord may choose to plan well in advance as to the nature of the building which they propose to have, it is quite possible that being uncertain about the final outcome of litigation, a landlord, in his wisdom, may not want to incur the necessary expenditure of making of plan, or having the estimates made or of keeping a large bank balance to be utilised for the purpose of the construction if we when, after a decade, he gets possession of the plot. Therefore, mere absence of a plan at the date of a suit would not necessarily mean that bona fide was wanting on the part of the landlord. So also the absence of sufficient actual balance in bank by itself, cannot straightway lead to an inference of want of bona fide, where bona fides of the claim that a house is to be constructed are to be tested, the proper course would be to see whether the landlord is able to satisfy the Court that he has either the necessary funds at his disposal, or he can raise the necessary funds needed for the construction. Thus the mere fact that at the date of the suit he does not possess a sufficient bank balance cannot be used against him and his claim u/s 13(1)(i) of the Bombay Rent Act cannot be rejected on that ground. Same applied to making estimates and other preparations for construction. It is well known that even estimating cost of construction involved cost payable to the architects, and the wisdom to going through all these preparations and incurring the expenditure involved in this, without the certainty of getting possession of a plot, is open to question. Thus no set criteria or tests can be laid down for ascertaining the bona fides of the landlord claim u/s 13(1)(i) of the Bombay Rent Act. The bona fides of such a claim have to be decided on the facts and circumstances of each case. In view of the aforesaid decision as also in view of no material having been placed on record, this contention of Shri Kurup must be negatived. On the same reasoning the contention of Shri Kurup that in view of the subsequent agreement of development entered in favour of Vikram Builders, the finding in regard to the financial capacity of the respondent No. 1 cannot enure any further has to be negatived inasmuch as on the facts and circumstances of this case I am satisfied that the respondent No. 1 either by itself or through third parties such as Vikram Builders does have the financial capacity to carry on the proposed construction. Moreover, as laid down in the case of *Gilmour Caterers Ltd. v. Governors of St. Bartholomew's Hospital* (1956) 1 All.E.R. 314 as also in the case of *Rustam Sorabji Powwalla v. Ramchandra Balaji Gaikwar* 22 Bom.L.R. 860 it has been held that it is open to a landlord to carry on construction through agency of third parties and it need not be done by himself alone and if done through such third parties the same would not affect his bona fides.

14. These are the only contents raised by Shri Kurup on the merits of the petition. Having found that there is no merit in any of the said contentions, the impugned judgement and decree passed for possession u/s 13(1)(i) is liable to be confirmed.

14-A. A reference may be made to a contention raised on behalf of the respondent No. 1 to the effect that the present petition as filed is not maintainable. The petition has been filed in the name of the Trust without all

Trustees being impleaded in the petition. The said Trust is not a legal entity and hence, it cannot sue or be sued in its own name. Hence, the present petition without joining all the Trustees is not maintainable. In support of the contention reliance was placed on the decision in the case of *Atmaram Ranchodbhai v. Gulamhusein* 13 Guj LR 828 and in case of *Birdhi Chand Jain Charitable Trust v. Kanhaiyalal Shamlal* 1972 RLR 142. The aforesaid decisions, however, contemplate a suit being filed by an individual if he is authorised to do so either by the Trust Deed or by the Trustees. Shri Kurup has relied on the Rules and Regulations of the petitioner Trust on the basis of which the said Trust had been Registered and bye law No. 24-A specifically authorises the Secretary or in his absence the Chairman to be the person to sue or be sued in the name of the said Trust. The present petition has been filed by the Honorary Secretary of the said Trust. In this view of the matter it cannot be said that the present petition is not maintainable on the aforesaid ground.

15. The only other contention of some substance that has been raised is regarding the vires of section 13(1)(i). While fairly conceding that validity of the said provision has been upheld by this Court in the case of *Mangharam Chubarmal v. B.C. Patel* 73 Bom.L.R. 140 as also in the case of *Badriprasad K. Agarwal & another v. Premier Garage & others* (1980)1 R.C.J. 385: 1980 Bom.L.R. 12 it has been contended that the said decisions have not considered all the aspects of the question and this was a fit case wherein I should refer the matter to a larger Bench as this was question of law of public importance or there is good reason for me to differ from the said decisions or in any event this was a question which deserved to be reconsidered. Placing reliance upon the decision in the case of *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel & others* AIR 1986 S.C. 372 it was submitted that in as much as the present question of law is of public importance, the same deserves to be referred to a larger Bench. It was also submitted that there was good reason for me to differ from the aforesaid decisions and, as laid down in the case of *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, and in the case of *Jaisri Sahu Vs. Rajdewan Dubey and Others*, this is a fit case for making a reference to a larger Bench or in any event I should come to the conclusion that this was a question which was necessary to be reconsidered and, as provided in the case of *Shri Bhagwan and Another Vs. Ram Chand and Another*, is a fit case for a reference to a larger Bench.

16. It was submitted that by introducing the provisions of section 13(1)(i) two seats of tenants have been created, one who are tenants of the structure built by the owners of the land and others who are tenants of the structure put up by the tenants of the land. The two sets of tenants had been discriminated without there being any nexus to the object sought to be achieved. Though there is a difference between the two tenants one being the tenants of the structure put up by the owner of the land and other being the tenants of the structure put up by the tenants of the land, there was a difference but that's nothing. It was submitted that in a given case "A" the landlord of a piece of land may have

constructed a small structure and inducted a tenant and in the other case "B" the landlord of an identical land may have leased that land to a tenant with permission to construct and such a tenant may have erected a multi-storied building and inducted various tenants in different portions thereof. In the first case if a landlord were to sue his tenant for possession u/s 13(1)(hh) he would be required to provide to his tenant alternate suitable accommodation in the newly constructed building. There were other safeguards provided u/s 13(3)(A) and section 17-A to 17-C which would protect the interests of the tenant. In the later case "B" when the landlord sues u/s 13(1)(i) to recover possession from the tenants of the building put up by the tenant of the land, they would be exposed to a decree without the landlord being required to provide alternative accommodation and without he being required to satisfy the other safeguards as contemplated under sub-section 3(A) of section 13 and this was unjust especially when the object of the both the section viz. section 13(1)(hh) and section 13(1)(i) was to provide additional accommodation which object could hardly be said to have been achieved in the later case "B" wherein there is already a multi-storied building accommodating a number of tenants. As another instance of discrimination it was pointed out that a landlord may have two adjoining identical open pieces of land. On one he himself constructs and lets out to tenants and the other adjoining land he lets out for the purpose of construction and the tenant of the land constructs thereon an identical building as constructed by the landlord and inducts tenants therein. Vis-?-vis the tenants of the two buildings a differential treatment has been meted out. In the former, the landlord would be required to satisfy the pre-decreetal and post-decreetal safeguards as provided u/s 13(3)(A), but in the latter he would be entitled to a decree without satisfying the same.

17. It was submitted that the aforesaid classification is wholly unjustified and violated the fundamental right guaranteed under Article 14 of the Constitution of India. The provisions of section 13(1)(i) are unreasonable and discriminatory. This aspect of the matter, according to the petitioners, was not considered in the aforesaid two decisions of this Court while upholding the vires of section 13(1)(i). The provisions of section 13(1)(hh) as also section 13(1)(i) are not intended for the benefit of the landlords but are meant to secure more accommodation in the present days of paucity of accommodation. There are pre-decreetal requirements to be complied with by the landlords as provided in section 13(3)(A) and certain post-decreetal requirement as provided in section 17-A to 17-C. In a suit for possession u/s 13(1)(hh), the landlord is required to provide two times the floor area. Before a landlord is entitled to a decree for possession u/s 13(1)(hh) is required to produce at the time of the institution of the suit a certificate granted by the Tribunal under sub-section (3)(B) and is required to give an undertaking that the new building to be erected by him shall contain not less than two times the residential area and not less than two times the floor area contained in the premises sought to be demolished. He is further required to give an undertaking that the work of demolition shall be commenced not later than one month and

shall be completed not later than three months from the date he recovers possession of the entire premises and also an undertaking that the work of erection of a new building will be completed not later than 15 months from the said date. The said safeguards are totally absent for a claim u/s 13(1)(i) and the only requirement is the one found u/s 17(1) which merely requires the landlord to commence construction within one month from the date he recovers possession. It would, therefore, be open to a landlord suing for possession in the case "B" cited above to have the entire multi-storied building demolished, dis-house all the tenants inducted by the lessee of the land and merely construct within one month a small room and thereby comply with the requirements of section 13(1)(i) read with section 17. It was submitted that in this view of the matter the provisions of section 13(1)(i) were unreasonable and deserved to be struck down. There was no justification to discriminate between the tenants who had been inducted by the landlord in his structure and the tenants who had been inducted in the building constructed by the lessee on the land leased by the landlord. The tenants in the latter case are left with no protection and that could not be the object of the Act. Further more, the provisions of section 13(1)(i) apart from rendering the tenants without any protection, enable the landlords to profiteer and that too is not the object of the Act as the object is otherwise i.e. to check profiteering at the hands of the landlords. In so far as section 13(1)(hh) is concerned, the same applies to premises which consists of not more than two floors whereas in view of the decision in the case of Krishnapasuba Rao v. Dattatraya Krishnaji AIR 1966 S.C. 1024 the provisions of section 13(1)(i) would be applicable to a multi-storied structure and there is no justification for the said discrimination. There also arises discrimination amongst tenants on account of who has constructed the building, whether by the landlord of the land or the lessee of that land. There was no justification to discriminate between tenants of the structures constructed by the leasees from the tenants of the structures constructed by the landlord of the land. It was further submitted that though the provisions of section 13(1)(i) had been enacted at the time of the passing of the Act in 1948 and the provisions of section 13(1)(hh) were brought in by Maharashtra Act 53 of 1950, the same should make no difference while considering the vires of section 13(1)(i) as two set of sub-tenants had been created and hostile treatment has been meted out to tenants to whom the provisions of section 13(1)(i) would apply. Further, it was contended that the provisions of section 13(1)(i) may have been a laudable and legitimate at the time when the same was passed when land was more freely available and there was need to encourage construction. By passage of time the said objects has become obsolete and on this ground also as provided in the case of Rattan Arya and Others Vs. State of Tamil Nadu and Another, ; Omprakash Khatri and Others Vs. Fattelal Maganlal and Company and Others, and Vidarbha (Rent Control) Bhadekaru Sangh, Akola v. State of Maharashtra AIR 1987 Bom. 10 (para 20), the said provision deserves to be struck down.

18. It was further contended that if one compared the provisions of section 13

with that of section 13(1)(g) it would be found that in a suit for possession u/s 13(1)(g) the Court was required to go into the issue of comparative hardship and was also competent to pass a decree even for a part of the premises let as required u/s 13(2). Such a requirement was totally absent in section 13(1)(i) and for no justifiable reason.

19. The aforesaid submission on the point of vires of section 13(1)(i) no doubt are attractive at first blush. However, on closer scrutiny, I find that the same are devoid of any merit. It must be reiterated that there is always a presumption in favour of constitutionality and the attacking party has to show clear transgression. It must be presumed that legislature correctly understands and appreciates the needs of the people and that discriminations are based on adequate grounds. Good faith and knowledge of existing conditions on the part of legislature is presumed. *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, .

The constitutional Code of equality and equal opportunity however does not mean that the same laws must be applicable to all persons. It does not compell the State to run "all its laws in the channels of general legislation". It recognises that having regard to differences and disparities which exist amongst man and things, they cannot all be treated alike by the application of the same laws. *Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others*, .

By the process of classification the State has the power of determining who should be regarding as a class for the purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality, but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation usually found in common properties and characteristics. It postulates a rational basis and does not mean according together of certain persons and classes arbitrarily. Scientific exclusion or inclusion cannot be excepted while determining the constitutionality. Courts cannot act as super-legislature. (*In Re: The Special Courts Bill, 1978*, .

The fundamental principle is that Article 14 prohibits class legislation but permits reasonable classification. The principle underlying the guarantee of Article 14 is not that same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of difference of circumstances. It only means that all persons similarly circumstances shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same. The law can make and set apart the class according to the needs and exigencies of the society and as suggested by experience, it can recognize even a degree of evil but the classification should never be arbitrary, artificial or

evasive. *D.S. Nakara and Others Vs. Union of India (UOI)*, .

Article 14 does not insist that legislative classification should be specifically perfect or logically complete. *Kedar Nath Bajoria Vs. The State of West Bengal*, .

Dissimilar treatment does not necessarily offend against the guarantee of equality, if there is a valid basis for classification having nexus to the object. Mere plea of different treatment is itself not sufficient to justify plea of infringement of Article 14, *Vidarbha (Rent Control) Bhadekaru Sangh v. State of Maharashtra*, AIR 1987 Bom 10.

Classification has to be broadly reasonable in order to sustain the challenge of unconstitutionality. One cannot dissect that process and discover shades within shades to nullify it on the ground of inequality. *Dr. P. Nalla Thampy Terah Vs. Union of India (UOI) and Others*, .

Even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical the choice of the legislature may be accepted. *Louisville Gas Co. v. V. Alabama Power Co.* (1927)240 U.S. 30 .

The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experiences, it can recognise even degree of evil but the classification should never be arbitrary, artificial or evasive.

The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in other who are left out but these qualities or characteristics must have reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled namely (i) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from the other and (2) that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short while Article 14 forbids class discriminated by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the situated proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary, in the sense abovementioned. *In Re: The Special Courts Bill, 1978*, .

A law based on intelligible differentia and rational nexus to the objects of the Act cannot be discriminatory merely because it involves hardship or inequality of burden. *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, .

20. It must be stated that the constitutional validity of section 13(1)(i) has been upheld by two decisions of this Court. As laid down the case of *Smt. Somavanti and Others Vs. The State of Punjab and Others*, that the binding effect of precedence none the less exists despite particular submissions or arguments

were not considered in the said judgement. Moreover, it was pointed out by filing in this Court the relevant proceedings that the decision of this Court in the case of *Badriprasad K. Agarwal v. Premier Garage* 1980(1) R.C.J. 385 was challenged in the Supreme Court and all the grounds which have been agitated before me find place in the petition for special leave and on hearing the Counsel the petition was dismissed.

21. Rent Act is a special legislation inroading on contractual rights. Protection from eviction is no fundamental right. However, legislature in its wisdom has provided protection from eviction, even when otherwise the landlord would become entitled to on the basis of contractual rights. However, keeping in view the larger needs of Society of more accommodation, wherever potentiality to put up additional accommodation exists, such protection is denied. The object is also to ensure supply of more accommodation. The Act as it originally stood provided as a ground of eviction, only the case where land was the subject matter of letting and was required for development in whole or part. Due safeguards are provided against misuse and non compliance. Court is enjoined to investigate and decide on the reasonableness and bona fides of the requirement. Implicit in this is duty to ascertain financial capacity and feasibility, plans etc. Section 17 also provides for consequences, if development is not done and decree is kept idle or abused. It has been held in the case of *Kewal Singh Vs. Smt. Lajwanti*, while dealing with the provisions of the Act, that, it may be necessary to observe that the Rent Control Act is a piece of social legislation and is meant mainly to protect the tenants from frivolous evictions. At the same time, in order to do justice to the landlords and to avoid placing such restrictions on their right to evict the tenant so as to destroy their legal right to property certain salutary provisions have been made by the legislature which give relief to the landlord. In the absence of such a legislation a landlord has a common law right to evict the tenant either on the determination of the tenancy by efflux of time or for default in payment of rent or other ground after giving notice under the Transfer of Property Act. This broad right has been curtailed by the Rent Control Legislation with a view to give protection to the tenants having regard to their genuine and dire needs. While the rent control legislation has given a number of facilities to the tenants it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. The Supreme Court further in paragraph 21 of the said judgment has observed to the effect that, prior to the enactment of the Rent Control legislation in our country the relationship of landlord and tenant was governed by our common law viz. the Transfer of Property Act (sections 107 to 111). The tenant was inducted with his tacit agreement to be regulated by the conditions embodied in the contract and could not be allowed to repudiate the agreement reached between him and the landlord during that period. The tenant was, therefore, bound in law to vacate the premises wither voluntarily or through a suit after he was given a notice as required by the Transfer of Property Act under the terms and conditions of the lease. However, as a piece of special reform in order to protect the tenants from capricious and frivolous eviction, the

legislature stepped in and afforded special protection to the tenant by conferring on him the status of a statutory tenant who could not be evicted except under the conditions specified and procedure prescribed by the Rent Control Acts. Thus to this extent, the agreement of lease and the provisions of the Transfer of Property Act stood superseded. At the same time, the Rent Control Acts provided the facilities of evidence to the landlord on certain specified ground like bona fide personal necessity or default in payment of rent etc. Thus any right that the tenant possessed after the expiry of the lease was conferred on him only by virtue of the Rent Control Act. It is, therefore, manifest that it the legislature considered in its wisdom to confer certain rights or facilities on the tenants, it could due to changed circumstances curtail, modify, alter or even take away such rights or the procedure enacted for the purposes of eviction and leave the tenants to seek their remedy under the common law.

Thus, one cannot see how the tenant can challenge the validity of provision enacted by the legislature from which the tenant itself derived such rights.

22. Tenants cannot complain of any discrimination because the Rent Act merely gives certain protection or a part of it afforded by the Rent Act was withdrawn and the common law right of the tenant under the Transfer of Property Act was still preserved. The legislature may curtail, modify, alter or even take away such rights or the procedure enacted for the purpose of eviction and leave the tenants to seek their remedy under the common law; no genuine grievance can be made by the tenants. *Kewal Singh Vs. Smt. Lajwanti*, ; *Ravi Dutt Sharma Vs. Ratan Lal Bhargava*, and *Premier Synthetic Processors Ltd. and Others Vs. Roshan F. Chinoy (Dr.) and Another*, .

With passage of time, additional cases were covered by amendments, where small structures existed and there was potentiality of additional construction or where there was potentiality of adding to existing structure or on part of open land besides the structure, and thus the provisions of section 13(1)(hh) and section 13(1)(ii) came to be introduced. Thus new classes of cases were being brought in to enable the landlord to provide more accommodation. In cases covered by section 13(1)(hh) the premises let were constructed and not open land and inherent in the ground was reconstruction of a larger area than originally constructed. As such, provision is made to accommodate tenants deprived of possession by a decree u/s 13(1)(hh). Where, however, the demised premises are either land or building or garden or ground appurtenant to a building, they are not the same and identical. They are different in material particulars and in the result the tenants are granted protection against their eviction in varying decree under varying circumstances. Equal protection of law cannot be claimed under unequal circumstances. There is a clear cut intelligible differentia which forms the basis of the classification as far as the provision of section 13(1)(i) of the Bombay Rent Act is concerned. The tenants of the building are different from the tenants of open piece of land. It may be pointed out that classifications are also made with the classes of tenants of structures (section

13(1)(g)) and tenants of similar structures (section 13(1)(hh)) or terrace areas (section 13(5)) and tenants of open land section 13(1)(i) and these tenants are treated differently. On considering the object of the Rent Act, it is also evident, that there is a rational basis for the above mentioned classification. For good reasons, different conditions are prescribed by the various clauses of section 13 as condition precedent for passing of an order of eviction against the tenants. Once the classification is held reasonable, the courts ought not to and will not go in question of wisdom of the legislature.

It is not open to tenants to say that other tenants or tenants belonging to other class have been included in a particular provision or have been given more protection or benefits than the class of tenants to which they belong. Answer to such argument or under inclusion is that there is no doctrinaire requirement that a law should be couched in all embracing terms covering all the cases and persons who suffer from an evil which is sought to be remedied by the statute and if a law is intended to remove an evil where it was most felt it cannot be overthrown because there were other instances to which it might have been applied. It is for the legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation, are left out, would not render legislation, which has been enacted, in any manner, discriminatory and violative of the fundamental rights guaranteed by Article 14 of the Constitution of India. *Sakhawat Ali Vs. The State of Orissa*, ; *State of Uttar Pradesh v. Pradip Tandon* AIR 1975 S.C. 463 : *Premier Synthetics Processor Ltd. v. Roshan F. Chinoy*. 1986 Mh.L.J. 49.

A classification is not to be pronounced arbitrary because it goes on practical grounds and attacks only those objects that exhibit or foster an evil on a large scale. It is not required to be mathematically precise and to embrace every case that the theoretically is capable of doing the same harm. If the law presumably hits the evil, where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied. *Miller v. Wilson* (1914) 236 U.S. 373.

Classification must have relation to the purpose of the legislature. But logical appropriateness of the inclusion or exclusion of objects or persons is not required. A classification may not be merely arbitrary, but necessarily there must be great freedom of discretion, even though it result in "ill-advised, unequal, and oppressive legislation"... Exact wisdom and nice adoption of remedies are not required, nor the crudence nor the impolicy nor even the injustice of state laws redressed by it. *Health and Milligan Mfg. Co. v. Worst* (1907) 207 U.S. 354.

Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts. *Missouri K. & T.R. Co. v. Clay* May 194 U.S.

So, also if it be said that a statute like the one before us is mischievous in its tendencies, the answer is that the responsibility therefore rests upon legislature, not upon the courts. No evils arising from such legislation could be more far reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and, upon grounds merely of justice or reason or wisdom, annul statutes that had received the sanction of the people's representatives. It is the solemn duty of the courts in cases before them to guard the constitutional rights of the citizen against merely arbitrary power. That is unquestionably true. But it is equally true-indeed, the public interests imperatively demand that legislative enactments should be recognized and enforced by the courts as embodying the will of the people, unless they are plainly and palpably, beyond all question, in violation of the fundamental law of the Constitution, *Atkin v. Kansas*, 191 US 207 .

23. It must be noted that the tenants covered by the provisions of Clause (i) of section 13(1) are negligible in number compared to the tenants covered by Clause (hh) of the said section. Herein it is not that the tenants covered by Clause (i) are totally excluded from protection of the Act and sufficient protection and safeguards have been provided by section 13(3) and section 17 of the Act. In case where letting is of land, once construction is made, it no longer is available as land and hence there is no possibility of re-accommodating the tenant in the land. Any provision for re-accommodation in section 13(1)(i) defeats the very object and is irreconcilable. Even in section 13(1)(hh) or (ii) or Clause (5) which are amendments subsequent to section 13(1)(hh) also, no obligation is cast to compensate for loss of accommodation nor any special machinery is provided for ensuring predecretal and post decretal safeguards provided for u/s 13(1)(hh).

24. The aforesaid classification is reasonable and rational and has clear nexus to the object sought to be achieved by the Act. There is no discrimination, much less hostile. Reasonable safeguards are provided. Consequences of abuse or misuse are also provided. It would thus be seen that a right conferred on persons that they shall not be denied equal protection of the laws" cannot same mean the protection of laws for all. "Equal Protection of the laws" must mean the protection of equal laws for all persons similarly situated. To separate persons similarly situated from those whose are not must be discriminated and this does not offend the equality clause under Article 14 of the Constitution. In *Dalmiya's* case reported in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , it has been held that Article 14 forbids class legislation but does not forbid classification. Likewise if a law deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Similarly, the legislature is free to recognise degrees of harms and may confine

its restriction to those cases where the need is deemed to be clearest. Likewise the State in the exercise of its governmental powers has of necessity to make laws operating differently for different groups or class of persons within its territory to attain particular ends in giving effect to its policies and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

25. In the case of *The Special Courts Bill*, reported in *In Re: The Special Courts Bill, 1978*, , it has been observed that exact or scientific exclusions or inclusion cannot be expected while determining the constitutionality of a provision. In para 79 it has been observed that the Courts cannot act as super-legislature, and further in para 83 it is observed that once the dual test of classification and nexus with the object is established resulting harsh treatment or disadvantage is immaterial. Similarly, in the case of *Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others*, , it has been held that once the dual test is satisfied, bruises and hardships which are bound to occur, are of no consequence and every cause must necessarily claim in martyr. Similarly, another thing to be borne in mind is that the approach for testing validity must be an approach with a common course of human conduct and not fancier and financial. That every possibility of discrimination cannot be taken in to account but where the discrimination is possible the statute cannot be declared as invalid. *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, ; *Sakhawat Ali Vs. The State of Orissa*, ; and *State of U.P. Vs. Deoman Upadhyaya*, .

26. Classification necessarily implies the making of a distinction of discrimination between persons classified and those who are not members of that class. It is the absence of the classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed the very idea of classification is that of inequality so that it goes without saying that the mere fact of inequality in no manner determine the matter of constitutionality. When Article 14 is invoked, the first thing for the Court to consider is whether the persons between whom discrimination is alleged fall in the same class. It has been observed in the case of *Western M.P. Electric Power and Supply Company Ltd. Vs. State of U.P. and Another*, that. "Article 14 ensures equality among classes. Its aim is to protect persons similarly placed against discriminatory treatment..... a persons setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstance some were treated to their prejudice".

It is with this background that I will consider the aims and objects of the present Rent Act. It is needless to state that normally the relation of a tenant and a landlord are governed by contract and the provisions of the Transfer of Property Act. It is only on account of the acute scarcity of accommodation which is the very root of the problem, the Rent Control Legislation came to be enacted and if houses were freely available there would hardly be a need for Rent Control

Legislation. As a matter of fact the Rent Control Legislation has to serve a dual purpose of balancing the needs and problems of both, the landlords and the tenants. The policy and the object sometimes is wider than some of the key provisions of the Act and the policy and object of the Act generally is mitigation of hardship of tenants, such protection can be attained by several measures one of them being creation of incentive to persons that are otherwise capable, who are otherwise reluctant to invest in the construction of new buildings in view of the chilling effect of the rent control laws. Creation of additional housing accommodation to meet the growing needs of persons who have no accommodation to reside or to carry on business is a relevant object for the purpose of classification. The legislature is free to recognise the degree of harm or evil and to make provision for the same. As stated hereinabove, it is well settled that courts will not sit as super legislature and strike down a particular classification on the ground that any under-inclusion, namely that some others have been left untouched so long as there is no violation of constitutional restraints. It is also clear that there is no vested right created in the tenant on account of the protection under the laws and the object of incentive to build new construction has been held to be a relevant object for classification. *M/s. Punjab Tin Supply Co. v. Lekhraj*, AIR 1984 S.C. 84; *Motor General Traders v. State of Andhra Pradesh* AIR 1984 S.C. 121 ; *Mohinder Kumar and Others Vs. State of Haryana and Another*, .

27. It must be noted that tenants covered by Clause (hh) are tenants of a building, that clause projects on underdevelopment and tenants of that Clause have a right to be reinducted in a building because of the right they originally held. As against this, tenants covered by Clause (i) are tenants of an open land, Clause (i) project on no-development and lastly if the contention of the petitioners tenants is to be accepted and if they are to be reinducted in the built up portion, they do not stand restored to the same right which they originally possess, but the content of that right clearly stand enlarged. Their right was the lease of an open land, where as if the contention of they being reinducted in the built up premises is to be accepted, the right gets enlarged when they had no initial right of a lease in a built up portion. The aforesaid distinguishing features necessarily distinguish the two categories of tenants covered under Clause (hh) and Clause (i), they being dissimilarly situated and circumstanced and their classification in two different classes would amount to a reasonable classification. The contention that the tenants covered under Clauses (hh) and (i) belonging to the same category over looks the fact that Clause (hh) covers an under-developed category. The unequivocal and clearest object of Clause (i) is to provide an incentive for development of property which is not developed at all, unlike partially developed as provided in Clause (hh) and this object has a reasonable nexus with the classification aforestated, particularly when the object is to meet the general demand of the class of tenants as such and not merely of tenants of the said open land. Once the classification is reasonable and it has nexus with the object, unequal treatment is a necessary consequence, the

question of hardship and disadvantage being immaterial.

28. It need to be stated that it has been held that classification has to be broadly reasonable in order to sustain the challenge of unconstitutionality and that one cannot dissect that process and discover shades within shades to nullify it on the ground of inequality. Mere disadvantage to a class would not violate the rule of equality; Dr. P. Nalla Thampy Terah Vs. Union of India (UOI) and Others, .

29. The contention of the petitioners in giving certain illustrations, like landlord constructing a small room or commencing construction within one month and not completing it at all, could not be the basis for determining the constitutionality of the provisions, as what is expected is a result of the normal human conduct and not an abnormal conduct while testing validity of the provision. Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, . Even u/s 13(1)(g) a landlord having obtained possession after one year could dispose of property, relate it or keep it unused, but such conduct cannot impinge on the validity of section 13(1)(g) of the Act. Once it is accepted that the classification is good and reasonable and it has the necessary nexus with the object of the Act, the submissions advanced on behalf of the petitioners/tenants about safeguards available to tenants covered by Clause (g) or Clause (hh) get in recession and it is not necessary that absence of those safeguards to tenants covered under Clause (i), render the provision violative of Article 14 of the Constitution.

30. In regard to the submission made on behalf of the petitioners for a reference to a larger Bench for the decision in issue, it must be remembered that judicial precedent has its own value and unless there are compelling reasons, judicial propriety demands to abide by the past precedents Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, .

31. In the result I hold that there is no merit in the challenge to the constitutional validity of section 13(1)(I) of the Bombay Rent Act advanced by the petitioners. In the result, I find no merit in the petition and the same deserves to be dismissed. Rule discharged. Shri Kurup appearing on behalf of the petitioners states that the petitioners would approach the Supreme Court seeking to challenge my above order. He prays for continuation of the interim relief granted in terms of prayer Clause (b) in Civil Application No. 3418 of 1986. Shri Thakkar appearing on behalf of the respondents strongly opposes. In my view, It would be reasonable to continue the aforesaid interim relief for a period of three months from today. Petitioners to pay costs of this petition.