

(1990) 11 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No's. 2337 of 1986 and 2587 of 1990

M.N. Kaka (deceased) and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-11-1990

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11, 12, 12(3), 12(4), 5(10)
Constitution of India, 1950 — Article 14, 19(1), 39

Citation : (1992) 1 BomCR 35 : (1990) 92 BOMLR 533

Hon'ble Judges : C. Mookerjee, C.J.; M.G. Chaudhari, J

Bench : Division Bench

Advocate : Atul Setalvad, N.H. Seervai, Sudhir Sethna and J.A. Karia, instructed by Kantilal Parikh and Co, for the Appellant; K.K. Singhvi, P.K. Thakore and P.D. Anklesaria, Government Pleader, Rohit Kapadia, Harshad A. Desai, Milind Sathe, K.R. Dhanuka and Prashant Karande, for the Respondent

Final Decision : Dismissed

Judgement

C. Mookerjee, C.J.—These two writ petitions were filed challenging the validity of the various provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called "Rent Act"). At the time of the final hearing, the petitioners, however, have confined their challenge to validity of section 5(10) (b)(i), (ii) and (iii), section 11(1) (except clause (d-1) and sections 12(3) of the Rent Act. The petitioners have not also pressed their prayers for declaration that deletion of Article 19(1)(f) by the Constitution (Forty-Fourth Amendment) Act, 1977, was ultra vires and against the basic structure of the Constitution of India.

2. Mr. Atul Setalvad, the learned Counsel for the petitioners, has submitted that The Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947, was enacted with the threefold object of protection of tenants against their unreasonable eviction and demands for extortionate rent and to safeguard the legitimate interests of the landlords so as to ensure that they receive reasonable and fair return by way of rent. The definition of standard rent given in section

5(10)(b) which freezes rent received on first day of September 1940 or at the time of the first letting of the premises was inconsistent with all these three facets of the Rent Act. Mr. Setalvad has submitted that although the Rent Act was enacted as a temporary measure by amending from time to time sub-section (2) of section 3 of the Rent Act, Maharashtra Legislature has extended the Act and it is now due to expire on 31st day of March 1991. According to Mr. Setalvad, continuation of the said pegging of rent for nearly last fifty years u/s 5(10) with a provision under the Act for only marginal changes, in spite of colossal rise in the prices of goods and services of nearly 2500/3000 per cent is unconstitutional. Two principal effects of this abnormal price rise are that the landlord no longer receives a fair return and what the tenant enjoys is not protection from payment of extortionate rates but licence to pay practically nominal and almost illusory amounts as rent. Mr. Setalvad's submission is that any legislative measure to be reasonable restriction under Article 19(6) and non-arbitrary within the meaning of Article 14, there must be reasonable balancing of interests. In other words, the restrictions ought not to be excessive and disproportionate. Because of phenomenal escalation in the prices and wages. Mr. Setalvad submits that what were considered reasonable and balanced rents in the year 1947 and for a reasonable time thereafter, have today become so hopelessly one sided and unfair to the landlords, that the continuation of section 5(10)(b) which defines standard rent has become arbitrary and unreasonable. Therefore the said provision is violative of both Article 19(1)(g) and Article 14 of the Constitution of India. Mr. Setalvad has further submitted that a provision of law which was reasonable and non-discriminatory at one given point of time can become arbitrary and discriminatory after lapse of time. In support of this proposition, Mr. Setalvad has relied upon two decisions of the Supreme Court in the cases of Motor General Traders and another v. State of Andhra Pradesh and others, AIR 1984 S.C. 121 and Rattan Arya and Others Vs. State of Tamil Nadu and Another, . Mr. Setalvad, the learned Counsel for the petitioners, has further submitted that V.A. Mohta and B.G. Deo, JJ., in the case of Omprakash and others v. M/s. Fattelal Maganlal and Company, AIR 1987 Bom. 3 , had applied the ratio of the Supreme Court decision in the case of Motor General Traders and others v. State of Andhra Pradesh and others (supra) and had struck down clauses 6(1), 7(1) and 7-A of the C.P. and Berar Letting of Houses and Rent Control Order, 1949, upon a view that indefinite continuation of outer limit in the matter of fixation of fair rent with relation to cut off date 1st April 1940 was violative of Article 14 of the Constitution of India. The said Division Bench decision in the case of Omprakash v. Fattelal Maganlal, (supra) was binding upon us. According to Mr. Setalvad, the later decision of the Supreme Court in the case of Sant Lal Bharti Vs. State of Punjab, did not deal with the point decided by the Division in Omprakash v. M/s Fattelal Maganlal (supra). Therefore, sitting singly, Mohta, J., in the case of Union of India v. Dr. Bhimrao Narayanrao Randaye, 1989 Mh.L.J. 662, was not right in holding that the decision in the case of Omprakash v. Fattelal Maganlal (supra) stood overruled by the later Supreme Court decision in the case of Sant Lal Bharti v. State of Punjab (supra). Mohta J., had held that

fixation of fair rent u/s 6(1), 7(1) and 7A of C.P. and Berar Letting of Houses and Rent Control Order were valid. Mr., Setalvad submits that in case we are of the view that the Division Bench decision in the case of Omprakash v. M/s. Fattelal Maganlal (*supra*) requires reconsideration in view of pronouncements made by the Supreme Court in Sant Lal's case (*supra*), we ought to refer the question to a larger bench.

3. Mr. Setalvad, the learned Counsel for the petitioners, has further submitted that since the provisions of section 5(10)(b) for pegging the standard rent with reference to the date first day of September 1940 or date of first letting of the premises was bad, clauses (a) to (d) of section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 should be also struck down at the same time maintaining as valid the opening words of section 11(1), clauses (d-1) and (e) of the Act: so that when either the landlord or the tenant approaches the Court for fixation of standard rent the Court would be in a position, under opening words of section 11(1), to fix the standard rent at such amount as it may deem just. The petitioners have also challenged section 12(3) of the Act on the ground that in the context of the draconian legislation, the landlord has been thereby unreasonably deprived of his right to recover possession from his tenant even in case of default in payment of rent. Mr. Setalvad characterised section 12(3) as one giving licence to tenants not to pay rent and at the same time to enjoy protection from ejectment by paying or tendering the arrears on the first day of the hearing of the suit. The proviso to section 12(3) hardly affords any protection to landlords because at present suits for ejectment filed in Bombay do not come up for hearing for many years.

4. Mr. K.K. Singhvi, the learned Counsel appearing on behalf of the respondent State, on the other hand, has submitted that the impugned section along with the rest of the sections of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, are all *intra vires* because none of the provisions are unreasonable or arbitrary. Relying upon a number of reported decisions of the Supreme Court and of this Court, Mr. Singhvi has submitted that the object of the Rent Control legislation is to curb demand of extortionate rent and to protect tenants from eviction. The Rent Act therefore, has legitimately pegged the rent of premises with reference *inter alia* to the rate prevailing on first day of September 1940 and in cases of letting after the said date with reference to the rent received at the time the premises were first let out. The rent received by the landlords on first day of September 1940 or at the time of the first letting of their premises, as the case may be, represented fair and reasonable return upon their investments made towards land and building. According to Mr. Singhvi over the years the said original investments by the landlords did not increase. The Rent Act has also provided for controlled rise in rent to certain extent and to take care that the burden of additional imposition of taxes, rates, cess, etc., could be passed on to the tenants. Both, Mr. Singhvi for the State and Mr. Rohit Kapadia who has appeared on behalf of the applicants who have prayed for being joined as Interveners have submitted that the petitioners have not laid the necessary

foundation. In fact, for establishing their case that the new provisions of the Rent Act were unreasonable, arbitrary and were causing undue hardship to the landlords. Both Mr. Singhvi and Mr. Kapadia have submitted that sections 5(10)(b), 11 and 12(3) of the Act are valid.

5. We proceed to examine the merits of the above contentions raised before us. According to the Statement of Objects and Reasons of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which was published in the Bombay Government Gazette dated 30th September, 1947 5 Pat 364, the Bombay Rent Restriction Act, 1939 and the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 were due to lapse.".....The conditions which led to the enactment of these measures continue in an even more aggravated form and it is, therefore, essential that effective control should be continued until sufficient progress has been made with building operations to provide adequate and suitable accommodation for the largely increased populations of the areas concerned..... It has been decided to introduce a revised and self-contained Bill covering control over rents of residential and other premises as well as over hotel and lodging house rates....." It is not necessary to set out rest of the said Statement.

6. Mr. K.K. Singhvi, learned Counsel for the Respondent State, has drawn our attention to the following observations of Chagla, C.J., with reference to section 5(10)(b), section 11, etc., (as the said provision stood then) of the Bombay Rents, Hotel Rates and Lodging House Rate Control Act, 1947, in the case of Karamsey Kanji Vs. Velji Virji, , "the Act was passed to control rents so that in days of scarcity of houses the landlord should not exact unconscionable rents from the tenant. The Act was also passed in order to give protection to the tenant from being evicted and it is in the light of these two main objects that the different provisions of the Act should be construed". The later Division Bench of this Court in the case of Filmstan Private Limited v. The Municipal Commissioner, Greater Bombay, reported in (1972) 56 Bom.LR 589 quoted with approval the above observations of Chagla, C.J., in the case of Karamsey Kanji v. Velji Virji, (supra). Mr. Singhvi has also relied upon Division Bench judgment in the case of Rukmanibai Khimiji Cooverji v. Shivanarayan Ram Ashre, reported in 67 (1965) Bom.L.R. 692. the Division Bench had quoted from the observations in Patel Joitram v. Sheth Anandji Kalyanji Padhi's, case unreported decision of Chagla C.J., in Special Civil Application Nos. 1366 to 1372 of 1957 decided on 4th August 1958. "The objects of the Legislature in enacting the Rent Act was, apart from giving security of tenure to the tenant, to peg down rents as they were prevailing on the first September 1940. The view that the Legislature took was that the relevant date rents were normal, but after that date there was inflation and rents were inflated and landlords started charging excessive and unfair rents." Section 4 of the Act sets out the exemptions and exceptions of the application of the Act. Sub-section (1) of section 4 makes the Act inapplicable inter alia to any premises belonging to the Government or any local authority, etc., Sub-section (1-A) which, was inserted in section 4 by Maharashtra Act 18 of

1987, the provisions relating to standard rent and permitted increases shall not apply for a period of five years to any premises the construction or reconstruction of which is completed on or after the appointed date.

7. The expression standard rent u/s 5(10) of the Act in relation to any premises means :

"(a) where the standard rent is fixed by the Court and the Controller respectively under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, such standard rent; or

(b) when the standard rent is not so fixed, subject to the provisions of section 11,

(i) the rent at which the premises were let on the first day of September 1940 or

(ii) where they were not let on the first day of September 1940, the rent at which they were last let before that day, or

(iii) where they were first let after the first day of September 1940, the rent at which they were first let, or

(iii-a) notwithstanding anything contained in paragraph (iii), the rent of the premises referred to in sub-section (1-A) of section 4 shall, on expiry of the period of five years mentioned in that sub-section, not exceed the amount equivalent to the amount of net return of fifteen percent, on the investment in the land and building and all the outgoings in respect of such premises; or

(iv) on any of the cases specified in section 11, the rent fixed by the Court;"

The clause (a) section 5(10) has not been challenged before us. The petitioners have not also challenged section 5(10)(b)(iii-a) which provides that on expiry of period of five years from construction or reconstruction standard rent for the said premises shall not exceed the amount equivalent to the amount of net return of 15 per cent on the investment in the land and the building and all the outgoings in respect of such premises. Section 11(1)(d-i) authorises the Court to fix standard rent of the said new premises after expiry of five years from the date of construction or reconstruction.

8. Mr. Atul Setalvad, the learned Counsel for the petitioners, fairly conceded that the acute shortage of accommodation has continued or has been heightened and therefore, the distortion of rents which began to occur in 1940s has persisted and might have even become far more worse. Therefore, the need for control upon evictions and rents still subsists. At the same time, Mr. Setalvad's submission is that the present Rent Control Act was contemplated as a piece of temporary legislation but the statute has been extended from time to time. According to him by passage of time, the rent payable on first day of September 1940 or at the time of first letting of the premises, have now become totally unrealistic and irrelevant for determining what should be fixed as standard rent of the premises. It is common knowledge that over the years there has been phenomenal rise in the prices and wages. Mr. Atul Setalvad in this connection has

placed reliance upon the Inaugural speech of the Chief Minister of Maharashtra delivered on 7th July, 1990 in the Conference of National Housing Policy, Western Region. Our attention has been drawn to the extract from the Report of the National Commission on Urbanisation, August 1988, Volume II. Paragraph 18.4.4; while recommending continuation of the existing protection both of tenure and of rent, the Commission had suggested raising of the rent for non-residential and residential tenancies in order to neutralise the effects of inflation. The Report on the Study of Rent Control made by the Economic Administration Reforms Commission presented by late Shri L.K. Jha, had also suggested various changes in Rent Control Legislation. The said recommendations included increase at intervals of the rents which had remained frozen in many years in order to neutralise inflation. Reliance has been placed on the Twelfth Report of the Maharashtra Law Commission submitted in the year 1979 which also inter alia recommended. "The unification of rent restriction laws in the State, namely the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, The Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 and the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946". The Commission also felt that the standard rent should be allowed to be increased. The same would give higher return to the landlords and also result in the increase in the rateable value of the building for the purpose of Municipal taxes. Various other papers have been placed before us to establish that many authorities and bodies have recommended enhancement of the rent payable by tenants in order to offset at least to some extent steep rise in the prices.

9. Undoubtedly it is a matter of common knowledge that over the years the prices and wages in this country have risen. The real value of the rupee has been falling due to spiralling inflationary trends.

10. The Counsel for the respondent has drawn our attention to the submissions made in the different paragraphs of the two writ petitions. With some amount of justification it has been contended on behalf of the respondent and the Interveners that in respective writ petitions the petitioners have not made averments with full and sufficient particulars about rents received from the tenanted premises which the petitioner Nos. 1a, 2, 4 to 7 of Writ Petition No. 2337 of 1986 and petitioner Nos. 2 to 5 in Writ Petition No. 587 of 1990 allegedly own. According to the averments made in paragraphs 1 and 2, the petitioner Nos. 2 and 3 in Writ Petition No. 2587 of 1990 had let out their respective premises on 12th July 1971 and 23rd August 1964. The Petitioner No. 4 in Writ Petition No. 2587 of 1990 claimed to be purchasers of the property known as "Ram Mahal" situated at 8, Dinshaw Vaccha Road, Bombay, in the year 1985. They have not stated the dates on which the various tenants of the said premises were inducted and the amounts of rent they used to pay. Petitioner No. 5 in Writ Petition No. 2587 of 1990 stated about certain legal proceedings against his tenants in the building known as "Shivlal Motilal Mansion". Therefore, we refrain from discussing facts which may be involved in other pending proceedings.

11. The averments made in paragraph 5 in Writ Petition No. 2337 of 1986 were presumably made before enactment of Maharashtra Act 18 of 1987 which inter alia inserted section 10. The said section now deals with the rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings or increase in rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings. Therefore the claims made in paragraph 5 of the said petition are really hypothetical and the assertions made therein may not be consistent with the present state of law. The Maharashtra Act 18 of 1987 has removed at least some of the hardship caused by placing burden of increase in existing taxes or their new levy upon landlords. Therefore, these are not enough materials to decide the truth of the assertions made by the petitioners that their tenanted properties because of very low rents now yield practically negative returns and in future may actually result in losses to them.

12. Mr. Atul Setalvad has submitted that what was once a non-discriminatory piece of Legislation made in course of time may become discriminatory and be exposed to successful challenge on the ground that it violated fundamental rights guaranteed by the Constitution. As a proposition of law this statement is perhaps unexceptionable. The Supreme Court in the case of Motor General Traders and others v. State of Andhra Pradesh, (supra) and again in the case of Rattan Arya v. State of Tamil Nadu (supra), had adumbrated this proposition. We may, however, note that section 32(b) of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act considered in Motor General Traders's case (supra) exempted buildings constructed on or after 26th August, 1957 from the operation of the Act. The Supreme Court upheld the challenge to the validity of the said exemption proceedings contained in section 32(b) on the ground inter alia that what might have been unobjectionable or transitory or temporary measure at the initial stage, may become discriminatory and hence violative of Article 14 of the Constitution. The classification of buildings into two classes did not bear any relationship with the objects of the Act since the buildings which were exempted had been in existence since the year 1957 and the owners had already realised a major part of their investments. Similarly, in Rattan Arya's case (supra) Supreme Court struck down section 30(ii) of Tamil Nadu Buildings (Lease and Rent Control), 1960, which classified buildings fetching rent of over Rs. 400/- per month for depriving them of benefits of the Rent Control Act as without any basis. The Court took judicial notice of the enormous manifold increase of rents throughout the country since the enactment of the said Rent Control Act and held there was no reasonable basis for denying the benefit of the Legislation to those who paid Rs. 400/- or over per month as rent.

13. Both these two decisions deal with the validity of classification of premises for the purpose of applicability of Rent Control Legislations. In one case, according to the date of their construction and in the other case according to the amount of rent received. The Supreme Court held that by passage of time the said classifications had become unreasonable and without any intelligible basis and therefore, having no nexus with the object of the Rent Control Legislation in

question. In the present case we are not concerned with the problem of arbitrary or unreasonable classification. In fact the section 4 of the Bombay Rent Control Act which exempts certain classes of premises, has been already held to be valid. In these two cases we are called upon to decide as to whether pegging of rents according to the rent received on first day of September 1940 or at the time of first letting of the premises have with the passage of time become unreasonable and arbitrary. Mr. Atul Setalvad, the learned Counsel for the petitioners has not urged that the provision of section 5(10) is a colourable piece of legislation but what he has contended is that the said freezing of the rent payable because of the changed circumstances no longer ensures fair and reasonable return to the landlords of the tenanted premises. In case of premises which were let before first day of September 1940 but were not let on that date, u/s 5(10)(b)(ii) the rent at which the premises were last let out constitutes the standard rent. In case of premises which were let after first day of September 1940, u/s 5(10)(iii) the rents at which they were first let constitute the standard rent. Therefore it cannot be contended that section 5(10) is a blanket measure making in every case the rent received on first day of September 1940 the standard rent subject to section 11 of the Act. The said fixity has been made only in respect of the premises which were let on first day of September 1940 presumably taking the said date to be anterior to the period during which the rents began to abnormally rise and became totally distorted. We also find no valid ground for objecting to taking the rent on first letting as standard rent in cases where premises were let out after first September 1940. It would be quite plausible to assume that when a landlord for the first time lets out his premises, he would fix rent at a figure which he considered would give fair and reasonable return upon his property.

14. There are serious impediments in the way of the petitioners obtaining reliefs in these two petitions. In the first place in cases of the premises which were let out on first day of September 1940, the landlords were receiving rents which they considered at the time of inducting their tenants fair returns for their investments upon lands and buildings. Merely because new investments on lands and buildings if now made would fetch higher returns, it can not lead to the conclusion that restriction made upon rate of returns from investments made upon lands and buildings prior to September 1940 or on a much earlier date are now unreasonable and that the rents received by these landlords of older premises should be allowed to be raised even though these landlords might not have made further or fresh investments upon their properties. It is a notorious fact in Bombay that many of the old premises in the city have remained in state of utter disrepair. Separate legislation had to be passed for their repairs and reconstructions. After enactment of Maharashtra Act 18 of 1987, the landlord is under a duty to keep the premises only in good and tenantable repairs. In case the landlord makes improvement or structural alterations to the premises with the consent of the tenant given in writing, u/s 9(1) of the Act he would be entitled to make such increase in the rent of the premises as may be reasonable. On account of special additions to premises or special alterations made therein or

additional amenities provided for the premises or on account of improvements or structural alterations made, the landlord under sub-section (2)(a) of section 9 is entitled to make an increase in the rent subject to the provisions of clauses (b) and (d) of section 9(2).

15. Mr. Atul Setalvad, the learned Counsel for the petitioners, has referred to the decisions of the Supreme Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, ; *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , which stressed the other Dimensions of Article 14. Article 14 is no longer confined to reasonableness and classification. In its sweep Article 14 strikes down arbitrary, irrational and improper state actions. We may point out that the reported decisions relied upon by the learned advocate for the petitioners dealt with the cases of executive action. We are not demurring from the proposition that legislative measures also must conform to rules of reason and fairness. But it is also settled law that presumption is always in favour of the constitutionality of an enactment since it must be assumed that the legislature understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience and its discretions are based on adequate ground. See *The State of Bombay and Another Vs. F.N. Balsara*, . *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . This presumption is not weakened but is strengthened in case of a welfare legislation like Rent Control Law which seeks to promote the Directive Principles of State Policy set out in Article 39 of the Constitution.

16. Before us, the challenge to section 5(10), as already stated, is not founded on the ground that in all cases control of rent for premises in Bombay would be now unreasonable or arbitrary but upon the basis that the measure or degree of control of rents and the amount of permitted increases u/s 11 have become disproportionate to the need and the same now has become unreasonable. The authorities and reports relied upon on behalf of the petitioners, to which we have made reference earlier, do not characterise the provisions for standard rent in rent control legislation as arbitrary. On the other-hand, all of them advocate need for control of rent and eviction of tenants at the same time suggests some amount of liberalisation. To what extent the rents which have been fixed as standard rent u/s 5(10)(b) should be allowed to float and rise and at what figure the same should be refixed are matters not for the courts to decide but for Legislature to lay down according to its wisdom. We have referred to the two decisions in *Motor General Trader's case* (supra) and in *Rattan Arya's case* (supra). These cases do not assist the petitioners. Both the reported cases struck down provisions which by making arbitrary classification denied protection of Rent Control Legislation to certain classes of tenants. The results of these two Supreme Court decisions were to bring tenants within the fold of the protection of Rent Control Laws - in one case, irrespective of the dates of construction of building and in another irrespective of the amounts of rent received. The petitioners before us want to rely upon these reported decisions to challenge as

unconstitutional control imposed by Bombay Rent Act upon rents and in order to obtain enhancement of present rate of standard rent to figures equivalent to rates of fair returns upon investments today made upon lands and buildings. Denial of such claim to raise rents to landlords of older premises can not be termed as arbitrary or unreasonable. We have already pointed out that when rents of these premises were fixed by the landlords of older premises can not be termed as arbitrary or unreasonable. We have already pointed out that when rents of these premises were fixed by the landlords in September 1940 or at the time of first letting of their premises, they themselves obviously considered such rents as fair returns upon their investments. They can not claim upward revision only because investments if now made might yield much higher returns. Further, by way of rent the landlords of these old buildings most likely already have received much more than the capitalised rental values of their premises.

17. Mr. Atul Setalvad has relied upon the observations in paragraph 23 at page 806 of the Supreme Court decision in the case of Gian Devi Anand Vs. Jeevan Kumar and Others, , to the effect that it is no doubt true that the Rent Acts are essentially meant for the benefit of the tenants. It is, however, to be noticed that the Rent Acts at the same time also seek to safeguard legitimate interests of the landlords. In the first place, these observations were made in the context of the question whether or not a statutory tenancy in respect of commercial premises was hereditary and whether their heirs were entitled to same protection against eviction as afforded to tenants under the Act. The Supreme Court had no occasion to consider whether a provision for pegging or freezing of rent would become unreasonable by lapse of time. The Supreme Court was also not called upon to decide whether fixity of the standard rent would result in denial of the "legitimate interest" of the landlords and whether the same would be in violation of Article 14 of the Constitution. The petitioners' contention that the landlord can legitimately claim a fair or adenuate return by way of rent, in a way suggests that they should be permitted to receive, if not market rate of rent, at least just or reasonable consideration by way of rent from tenants who are protected under Rent Control Legislation. Articles 19(1)(f) and 31 have been deleted. We ought not to interpret the law in a manner which might mean resurrection of the concept of just or adequate return by way of rent in respect of premises which are subject matter of Rent Control Legislation. We have also referred to the preamble of the Rent Act and several judicial decisions. These do not indicate that making provisions for adequate return to the landlords was really one of the objects of the Rent Act. The reports, speeches and communications relied on by the petitioners have repeatedly emphasized need for revision of rent of the premises under Rent Control Legislation. We have already pointed out that same are matters for consideration by the Legislature. We do not thereby mean that such preponderance of views about alteration in the rent control laws should have no consideration. But same, as already stated, are matters not for the Court while examining constitutional validity of the rent control laws. In fact, from time to time the amendments have been in the Bombay Rent Control Act.

They may not in full measure meet the demands of the landlords for changes, etc. But this can not justify striking down section 5(10)(b) and section 11 etc., of the Rent Act. Upon enquiry made by us, Mr. K.K. Singhvi, the learned Counsel on behalf of the State, stated before us that the State Government proposes to introduce in the Maharashtra Legislature shortly a comprehensive Rent Control Legislation.

18. The petitioners challenged section 5(10)(b), section 11 and section 12(3) of the Rent Act as unreasonable restrictions upon rights guaranteed by Article 19(1)(g) of the Constitution on the ground that the restrictions imposed were excessive and arbitrary and therefore, not in the interest of the general public. Although in the petitions this ground of infringement of Article 19(1)(g) was not expressly taken, we have allowed the petitioners to urge this point. We have already mentioned that the petitioners have chosen not to contend that The Constitution (Forty-fourth) Amendment Act, was ultra vires. Therefore, they cannot base their arguments upon infringement of Article 19(1)(f) which stands deleted. The reasons which we have given for holding that the provisions of the Bombay Rent Control Act are not violative of Article 14 would also apply in repelling the contention of the petitioners that the restrictions imposed by section 5(10)(b), section 11 and section 12(3) of the Act are unreasonable and disproportionate within the meaning of Article 19(6). The object of the Rent Control law, as already stated, was to control the rent and to restrict the landlord's right to evict tenants of the premises. Krishna Iyer J., in the case of *B. Banerjee Vs. Smt. Anita Pan*, while upholding the prospective operation of an amendment in West Bengal Premises Tenancy Act had mentioned of shocking scarcity of accommodation and the problem of social justice which compelled the enactment and the control of rent and eviction laws. Because of the immensity of the problem of accommodation and the great need of protection of tenants, it was within the competence of the Legislature to declare a moratorium upon enhancement of rent. Merely because the standard rent had continued to remain nearly fixed subject to controlled enhancement u/s 11, we cannot pronounce these provisions as excessive and unreasonable restrictions. If the arguments of the petitioners had any substance, standard rent with reference to any other date is likely to be assailed on the ground taken in the petitions. Therefore, it must be left to the Legislature to select the date with reference to which the rents of the premises are to be pegged.

19. The direct authority on this point is the recent decision of the Supreme Court in the case of *Sant Lal Bharti Vs. State of Punjab*, . u/s 4 of the East Punjab Urban Rent Restriction Act, 1949, in determining the fair rent the Controller was required to first fix a basic rent taking into consideration the prevailing rate of rent during the 12 months prior to 1st January, 1939. This provision was challenged, Supreme Court dismissed the SLP firstly on the ground that the petition lacked particulars as to what premises the appellant owned and in respect of which premises the appellant was making the grievance. The question of vires of section 4 of the East Punjab Urban Rent Restriction Act having been

challenged, the Supreme Court also considered the question. The Supreme Court held that :

"It must be the function of the legislature of each State to follow the methods considered to be suited for that State, that would be no ground for judging the arbitrariness or unreasonableness of a particular legislation in question by comparison. What may be the problem in Madras may not be the problem in Punjab. It must, however, be borne in mind that the Act in question was passed in 1949 and it pegged the rent prevalent in the similar houses in 1938 and as such is not unreasonable per se. The rises started tremendously after the end of the Second World War after the partition of the country. In that view of the matter, we cannot say that per se there is unreasonableness in fixing the prices in 1938 level. Having regard to the specific preamble of the Act we find nothing unreasonable in the scheme contemplated u/s 4 of the present Act."

The decision in Sant Lal's case (supra) cannot be brushed aside on the ground that the same did not refer to the two earlier decisions of the Supreme Court in Motor General Trader's case (supra) and Ratan Arya's case (supra). We have already indicated that the said two earlier decisions dealt not with the question of fixity or pegging of standard rent in relation to a particular date. The said two earlier decisions held that it would be discriminatory to deny protection to tenants of certain classes of premises. Whatever reasons might have existed in the past for treating differently tenants of buildings which had been constructed after the year 1957 or who paid more than Rs. 400/- per month as rent, the same no longer subsisted and now the said classifications of tenants had become unreasonable and arbitrary. In the context of the above situation, the Supreme Court had held that the particular provisions of law might have been originally valid, but by passage of time or change of circumstances, these provisions have become discriminatory. These two decisions did not deal with question of reasonableness of pegging of rents. In Sant Lal's case "supra", section 4 of the East Punjab Urban Rent Restriction Act had been challenged. The Supreme Court categorically laid down that per se there is no unreasonableness in fixing the fair rent by taking into consideration rent prevailing twelve months prior to January 1939. The Supreme Court held such pegging of rents to be valid. Therefore, the ratio in Sant Lal's case "supra" squarely applies to the case before us. We can not hold section 5(10)(b) read with section 11 of the Bombay Rent Act to be ultra vires.

20. We regret we are unable to give any countenance to the submission that the decision of the Division Bench in Omprakash's (supra) case is a binding precedent. The decision of the Division Bench in the case of Omprakash's case (supra) was given in the context of the provisions of C.P. and Berar Letting of Houses and Rent Control Order, 1949. Mohta, J., himself delivered the Division Bench judgment in Omprakash's case (supra), took a contrary view in the case of Union of India and others v. Dr. Bhimrao Narayanrao Randaye, reported in

1989 Mh.L.J. 662, because he felt that he was bound by the Supreme Court decision Sant Lal's case. The scheme of the C.P. and Berer Letting of Houses and Rent Control Order, 1949 and the paragraphs 6, 7 and 7A of the said order are not *pari materia* with section 5(10)(b) or section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The Supreme Court in Sant Lal's case (*supra*) expressly disapproved the method of judging arbitrariness or unreasonableness of a particular legislation by making comparison with a different statute. In the above view, we are not obliged to refer the matter to the larger Bench in the absence of any contrary view expressed by any other Bench of this Court regarding scope and effect of sections 5(10), 11 and 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

21. We have already referred to the provisions of sections 9 and 10 both of which substituted sections 9, 10, 10-A, 10-AA, 10-AAA and 10-B by Maharashtra Act 18 of 1987. Therefore, now the statute contains provisions for increase of rents on account of improvements, etc. special additions, etc. and special or heavy repairs in the manner set out in different sub-sections of section 9 of the Act. Under sub-section (1) of section 10, landlord is not entitled to ask for increase of rent both in case after commencement of the Amendment Act of 1986 there is any fresh rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings and in case of increase in rate, cess, charges, tax, land assessment, ground rent of land or any other levy on lands and buildings. No doubt, in case new levy was made or increase of any existing levy was effected, prior to insertion of new section 10, the said section 10(1) would not entitle the landlord to demand any increase in rent. But at least in respect of fresh levy or increase in rate, cess, charges, tax, etc. made after the new section 10 came into force, the landlord will be entitled to ask for an increase in the rent. Mr. Atul Setalvad, the learned Counsel for the petitioners has drawn our attention to section 10 of the City (Inami and Special Tenancies) Abolition Act, 1969, under which a landlord can recover a sum equal to fifty percent of the amount of assessment payable. Further, section 10(1) of the Rent Act has not been given overriding effect in respect of provisions contained in any other law. In their present petition, the petitioners have not questioned the validity of section 10 of the Bombay City (Inam and Special Tenancies) Act, 1969. Whether section 10 of the Rent Act should over-ride other statutes is a matter for consideration by the Legislature. This is also not relevant while deciding validity of the Rent Act. At least, to the extent provided, the additional burden of fresh levy or of increase in levy effected after the commencement of the Amendment Act of 1986, can be now passed on to the tenants. We have upheld section 5(10)(b) and therefore, necessarily the challenge to section 11 ought to fail. We cannot accept the submission that by ignoring the clauses (a), (b), (c), (d) and (e) u/s 11, the Court ought to fix the rent having regard to the provisions of the Act and circumstances of the case. The said clauses of section 11 being *intra vires* the Court is required to take the said clauses into consideration in fixing the standard rent and/or making permitted increases.

22. There is no substance in the challenge made by the petitioners about the vires of section 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. It is not at all relevant that the provisions of previous sub-section (3) which has been substituted by the present sub-section (3) was more stringent in matter of granting relief against forfeiture on the ground of arrears of standard rent and permitted increases, if any. Section 12 broadly embodies the equitable principle of relief against forfeiture on the ground of default in payment of standard rent. We find nothing unreasonable in providing that no decree for eviction shall be passed by the Court in any suit for recovery of possession on ground of arrears of standard rent if on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court, the standard rent and permitted increases when due together with interest at the rate of 9% per annum and thereafter continues to pay or tender standard rent. The proviso to sub-section (3) denies this relief in case of a tenant to whom relief against forfeiture was given in any two previously instituted suits by landlord. We find no substance in the submission that sub-section (3) will give a premium upon habit of not regularly paying standard rent. In the first place, when the tenant fails to pay his rent, nothing prevents the landlord from immediately sue him for recovery of said arrears of rent. The section 12 in fact is also for the benefit of the landlord who brings a suit for recovery of possession, because sub-section (3) enjoins the tenant to pay or tender the entire arrears of rent with interest at the rate of 9%. In case of failure to pay or tender the arrears of rent on the first day of the hearing, the decree for eviction shall be passed. Secondly, under sub-section (4) of section 12, pending the disposal of the suit for recovery of possession, the Court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards rent as it may think fit. Therefore, section 12(3) is not in violation of Articles 14 or 19(1)(g) of the Constitution of India.

23. The petitioners have cited the recent decision of the Supreme Court in the case of *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, . *Sabyasachi Mukharji, J.*, (as he then was) in para 24 of his judgment had approved the views expressed by *Chagla, C.J.*, in *Rampratap Jaidayal Vs. Dominion of India*, . In *Rampratap" Jaidayal"s* case (*supra*) this Court upheld the constitutional validity of section 4 of the Rent Act. The legislative assumptions or expectations about the public authorities acting with constitutional conscience have no relevance for deciding the vires of section 5(10)(b) of the Rent.

24. Even though challenge to the constitutional validity of the provisions considered earlier has failed. We hope that the Government will bring forward its promised reforms to the Rent Control Act early and shall have regard to the over all economic situation prevailing in the country. After all the Legislature in its wisdom is expected to give due consideration to all aspects. Law cannot remain static one way or the other when realities of life call for a change so as to make it dynamic.

25. For the foregoing reasons, these two petitions fail. We dismiss the writ petitions. There will be, however, no order as to costs.

26. Mr. Seervai for the petitioners makes an application for certificate under Article 133 of the Constitution of India. The same is rejected.

27. Application for leave to intervene made by Mr. Rohit Kapadia on behalf of his clients is allowed and disposed of with no order thereon.