
(1977) 11 BOM CK 0043

In the Bombay High Court

Case No : Special Civil Application No. 913 of 1972

Mohamad Hussein Ali Akbar

APPELLANT

Vs

Laxman Dattatraya Bhawe

RESPONDENT

Date of Decision : 17-11-1977

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 16, 17, 17B

Constitution of India, 1950 — Article 227

Transfer of Property Act, 1882 — Section 106, 111, 113, 17C

Citation : (1979) 81 BOMLR 288

Hon'ble Judges : Sawant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sawant, J.—An interesting question falls for consideration in this petition viz. whether a tenant, whose tenancy has been terminated in respect of the premises which are subsequently destroyed upto the plinth on account of a vis majeure, can claim a right to possession of new premises to be constructed at the site of the old premises, under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Rent Act).

2. The facts involved in the petition are as follows:

A plot of land bearing City Survey No. 1276/A on the Jangli Maharaj Road, Poona, belonged originally to defendants Nos. 1 to 6 who leased out the same to Messrs Bagate and Chaudhary on October 17, 1945 for constructing a building which among other things consisted of three shops on the ground floor. The plaintiffs were the tenants of one of the said shops which was the middle one. In course of time, Messrs Bagate and Chaudhary assigned their leasehold rights in the said plot as well as their ownership rights in the said building, to others and ultimately on August 12, 1948 the same came to be assigned in favour of defendant No. 7 who took the said assignment on behalf of the joint family of

which he was a member. Thus the joint family of defendant No. 7 became, on that day the lessee of the plot and the owner of the said building and therefore the landlord of the plaintiffs. Thereafter, on January 24, 1961 there was a partition in the joint family of the owners and by virtue of the said partition, defendants Nos. 8 to 10 became the landlords of the present plaintiffs in respect of the said shop. On March 25, 1961 the plaintiffs attorned to defendants Nos. 8 to 10 as their tenants. Thereafter by notice dated April 14, 1961 the landlords terminated the tenancy of the plaintiffs with effect from May 31, 1961. On July 12, 1961 the entire building including the plaintiffs' shop (hereinafter referred to as the premises) were destroyed upto the plinth level by the flood-waters commonly known as the Panshet flood.

3. Thereafter, sometime in the year 1963, the landlord-defendants Nos. 8 to 10 entered into an arrangement with defendants Nos. 11 to 13 whereby defendants Nos. 11 to 13 were to construct a building at the site of the old building and one of the terms of the said arrangement was that the defendants Nos. 11 to 13 were to occupy a shop on the southern side of the ground floor of the proposed building. It appears that while constructing the shop which was allotted to, and subsequently occupied by, defendants Nos. 11 to 13, a portion of the area admeasuring 5'-6" in width and 25'-6" in length occupied by the plaintiffs for their shop premises earlier, was encroached upon. The plaintiffs therefore gave a notice in September 1963 to the landlords calling upon them to demolish the wall of the shop allotted to defendants Nos. 11 to 13 so as to remove the said encroachment on their premises. That requisition not having been complied with, the plaintiffs filed the present suit in the Small Causes Court, Poona, i.e. the Court having jurisdiction under the said Act, on December 18, 1963 for a mandatory injunction directing defendants Nos. 8 to 13 to demolish the wall in order to remove the said encroachment, and also for a preventive injunction restraining the defendants Nos. 8 to 13 from making any further encroachment on their premises. The suit was resisted only by defendants Nos. 9 to 13, on the ground that the Court had no jurisdiction to entertain and try the suit; that the old premises were let out only to plaintiff No. 1 and therefore the suit as framed was bad in law; that the plaintiffs had lost their tenancy rights when the old premises were destroyed on July 12, 1961, and further that there was no encroachment as alleged. By its decision dated July 31, 1968 the trial Court held that it had jurisdiction to entertain and try the suit. It also further held that the old shop premises were let out only to plaintiff No- 1. The Court also held that there was an encroachment as alleged by the plaintiffs, and defendants Nos. 11 to 13 had encroached at the instance of defendants Nos. 8 to 10, the landlords. The Court however held that the tenancy rights were lost after July 12, 1961 when the premises were destroyed by the flood-waters, and in view of that finding, dismissed the suit. Against the said decision, the plaintiffs preferred an appeal to the district Court. Before the appeal Court, the same contentions were raised on behalf of the contesting defendants as in the trial Court. The appeal Court confirmed the findings of the trial Court that the Court had jurisdiction to

entertain and try the suit and that there was an encroachment by defendants Nos. 11 to 13 at the instance of defendants Nos. 8 to 10. Disagreeing with the trial Court, however, the appeal Court held that plaintiff No. 2 was also a tenant of the premises and further that the plaintiffs had not lost their tenancy rights in respect of the premises. The appeal Court, therefore, set aside the findings of the trial Court on the said two issues and decreed the suit of the plaintiffs, by its decision dated February 9, 1972. It is this decision of the appeal Court which is challenged by defendants Nos. 11 to 13 by this petition filed under Article 227 of the Constitution prior to its amendment.

4. Mr. Dalvi, the learned counsel appearing for the petitioners, raised four contentions. His first contention was that the finding of fact recorded by the appeal Court that both the plaintiffs were the tenants of the premises was erroneous. His second contention was that the Rent Court had no jurisdiction to entertain and try the present suit and therefore the decree passed was void. His third contention was that the plaintiffs had lost their tenancy rights on and after July 12, 1961 and as such there was no relationship of landlord and tenant subsisting between them, and his last contention was that, in any case, no mandatory injunction could have been granted as has been done by the appeal Court in view of the laches on the part of the plaintiffs.

5. I have not permitted Mr. Dalvi to raise the first contention with regard to the status of both the plaintiffs as tenants, since the finding recorded by the appeal Court on the said issue is a pure finding of fact and no question of law is involved in the same. As regards the last contention viz. the laches on the part of the plaintiffs, the argument is that the petitioners had started construction at the instance of the landlords as early as in January 1963 and yet the notice calling upon them to desist from such construction was given by the plaintiffs only in September 1963- At that time, the wall which is sought to be demolished by the mandatory injunction had come up to the level of at least ten feet above the plinth. According to Mr. Dalvi the plaintiffs ought to have given the notice before the said wall was constructed. He further contended that the suit also came to be filed as late as on December 18, 1963, that is, almost three months after the wall was constructed and after all other construction had come up to the level of more than ten feet in height. This contention ignores the fact that no notice of any such construction was given by the landlords to the plaintiffs. It is also difficult to hold that the plaintiffs could be attributed with the knowledge that a particular wall was going to be constructed at a particular spot, even assuming that the plaintiffs could be foisted with the knowledge of the commencement of the construction in general. It is not the petitioners' case that the plaintiffs were apprised of the plan of construction or had knowledge of the same from any other source. There is further nothing on record to show that the wall in question was constructed on a particular date. Assuming that the construction as a whole had commenced in January 1963, that will not be sufficient to show that the wall in question was constructed in January 1963. It is therefore difficult to accept the contention that the notice which was given in September 1963 calling upon the

defendants to desist from such construction suffers from laches. This is apart from the fact that this contention with regard to the alleged laches is raised for the first time in this Court. I therefore find no substance in the argument that the appeal Court erred in granting the mandatory injunction because there were laches on the part of the plaintiffs.

6. Coming now to the second and third contentions which are really the crux of the matter, it may at once be stated that the answer to the second contention rests on an answer to the third contention. It is not disputed that if the plaintiffs had their rights of tenancy surviving they could file the present suit only in the Rent Court and the Court will have jurisdiction to entertain and try the suit, The question that really falls for consideration therefore is as indicated at the very outset viz. whether it can be said in the circumstances of the case that the tenancy rights of the plaintiffs survived even after July 12, 1961. Unfortunately, on this question the position of law does not seem to have been crystallised so far, and the authorities which were cited at the bar are not on all fours with the facts, and the issue to be answered, in the present case. In order to appreciate the specific point that requires to be answered in the present petition, it is necessary to note the material facts bearing on the issue. The plaintiffs were the contractual tenants in respect of the shop-premises in question on April 14, 1961 on which date a notice was served upon them terminating their tenancy with effect from May 31, 1961. Therefore on and from June 1, 1961 the contract of tenancy had come to an end and on July 12, 1961 when the shop-premises were destroyed and became useless for occupation as such, the plaintiffs were not the contractual tenants. It is further undisputed that the flood-waters demolished the said shop-premises only upto the plinth level and except for the plinth, all other parts of the shop were washed away. All that now remains of the shop is the said plinth, and the plaintiffs' claim in the suit is for a mandatory injunction for removal of the encroachment on the said plinth and for a preventive injunction against further encroachments thereon.

7. The authorities which were cited at the bar seem to be unanimous in holding that if the contractual tenancy survives till the new premises erected at the old site are ready for occupation, the tenant has a right to claim possession of the new premises. It also further appears that this will be the position in law even if the old premises were demolished completely, meaning thereby upto the ground level and when nothing but land is left at the site. This is on the principle that the contractual tenancy inheres also to the land on which the tenanted structure stands. However, the position in law is different if on the day the contractual tenancy is terminated, no premises are in existence. In such cases, when the new premises are constructed at the old site, the former contractual tenant, even though protected by the legislation such as the Rent Act with which we are concerned, has no right to claim possession of the new premises- The principle underlying this position of law seems to be that when the contract of tenancy came to an end the tenant was not in possession of any premises and if he was not in possession of any premises he had no right to claim the new premises.

8. In the case of Krishna Laxman v. Narasingh Rao (1972) 75 Bom. L.R. 29, admittedly, the contractual tenancy was at no stage terminated. The original premises occupied by the tenants were washed away completely by the Panshet flood on July 12, 1961 and at the old site, the landlord subsequently constructed a building containing new tenements. The tenants filed a suit claiming possession of the new tenements on the ground that the relationship of landlord and tenant had continued and they were therefore entitled to the possession of the new tenements. The claim was resisted on behalf of the landlord on various grounds including the ground urged in this petition viz. that the Rent Court had no jurisdiction and that the tenancy rights had come to an end after the premises were completely destroyed by flood waters. Reliance was placed on behalf of the landlord on two unreported decisions of this Court, one of the division Bench in Messrs. Mehta and Patel Bros. v. Bai Hajarabai Jamahamad (1953) First Appeal No. 557 of 1952, decided by Chagla C. J. and Dixit J., on June 24, 1953 (Unrep.) and another of the single Judge in Shri Marutrao Laxman Wagh v. Dr. Shamhhurao Gopal Punde (1970) Special Civil Application No. 973 of 1966, decided by Bhasjne J., on September 30, 1970 (Unrep.). As against this, on behalf of the tenants reliance was placed on two decisions of the English Courts in Simper v. Coombs [1948] 1 All E.R. 306 and Denman v. Birse [1948] 2 All. E.R. 141 and a Full Bench decision of this Court in Dattatraya Krishna Jangam Vs. Jairam Ganesh Gore, . After considering the aforesaid authorities, the division Bench held there that the contractual tenancy having never been put an end to, the tenants had a right to claim possession of the new premises.

9. The decisions which have been cited before me are the very same decisions which were considered by the division Bench. It will however be necessary to state here the facts as well as the ratio of those decisions and also to point out the comments of the division Bench on the said decisions. In Messrs. Mehta and Patel Bros. v. Bai Hajaribai Jamahamad, (supra) the facts were that the landlady had obtained possession of the premises from the tenants on the representation that she wanted to repair the same pursuant to the notice received from the Municipal Corporation. After the tenants handed over the said premises, the landlady demolished the same completely on the pretext that according to the landlady's architect the building could not be repaired without such demolition. After the building was so demolished and before the new building was constructed, the landlady terminated the contractual tenancy. Thus on the date the tenancy came to an end there were no premises in existence. The argument which was advanced on behalf of the tenants was that the tenants were at all times in possession of the premises and on the expiry of the contractual tenancy, they became the statutory tenants and their rights as such statutory tenants were protected by the Rent Restriction Act and therefore they were entitled to the possession of the premises. As against this it was contended on behalf of the landlady that on the date the contractual tenancy expired there were no "premises" as denned in the Rent Restriction Act in existence and since the protection, was given by the said Act only in respect of the "premises in the

possession" of the tenants. The tenants were not entitled to the possession of the new premises which were later constructed on the site. For arriving at its conclusion, this Court relied upon the proposition of law laid down by Lord Justice Tucker in *Ellis & Sons Amalgamated Properties, Ltd. v. Sisman* [1948] 1 K.B. 653. In that case, Lord Justice Tucker had to consider a case where a house was destroyed by enemy action. While the new building was not yet completed, the contractual tenancy was terminated. The question that arose was whether the tenant could claim statutory protection and the answer given was that the material date to consider was when the contractual tenancy was terminated and since on that date there was no dwelling house in existence which it could be said that tenant was in possession of, the tenant was not entitled to the protection under the Rent Restriction Act (the English Act). In that case the English Act protected the possession of a dwelling house. This Court held that under our Rent Restriction Act then in force also what was protected was "premises" as defined in the Act and that it was not possible to take the view that if the land existed without the building it would still be premises within the meaning of the said definition, for definition under our Act was similar to the one under the English Act. The Court therefore held that since in the case before them, there was no building in existence when the contractual tenancy came to an end, the tenants could not claim statutory protection. The Division Bench in *Krishna Laxman v. Narsingh Rao* (supra) after discussing the said decision and quoting the relevant observations distinguished it on the ground that the contractual tenancy in that case had come to an end on the day when no premises were in existence and the tenants' claim for protection as regards the possession of the premises was based on the provisions of the then Rent Restriction Act.

10. As regards the decision in *Shri Mamtrao Laxman Wagh v. Dr. Shambhura Gopal Punde*, (supra) decided by Bhasme J., the facts were that the contractual tenancy was never terminated. The premises were damaged by the Panshet flood-waters, and were subsequently pulled down and a new building was constructed at the old site. The learned Judge relying upon the aforesaid decision of this Court in *Messrs. Mehta and Patel Bros. v. Bai Hajarabai Jamahamad*, (supra) held that the protection contemplated under the Rent Act whether under a contract or under the provisions of the Rent Act is in respect of premises as defined in that Act. Where for some reason the building of which the premises formed part was destroyed and the landlord put up a new building in the old place, the tenant's right to the restoration of possession if any, would be strictly governed by the relevant provisions in the Rent Act. According to the learned Judge, there was no provision in the Rent Act under which the tenant could claim restoration of possession of the premises. The learned Judge further held that the claim made by the tenant was not in respect of the premises within, the meaning of the Rent Act and therefore the Rent Court had no jurisdiction to entertain the plaintiff's suit. The learned Judge therefore negatived the claim of the tenant to claim possession of the premises under the Rent Act. This decision

of the single Judge was in terms overruled by the division Bench.

11. In the case of *Simper v. Coombs*, (supra)} the facts involved were that the contractual tenancy was not terminated and the landlord rebuilt the house which was destroyed by a flying bomb. An action was brought by the tenant for possession of the premises in the new house. Denning J., held that the destruction of the house by a bomb did not determine the tenancy, as it was well-settled that the destruction of the house did not by itself determine the tenancy of the land on which it stood. The tenancy remained in being and the fact that a new house had been erected on the site, did not make any alteration to the legal position. The house which was constructed was substantially the same as the old one. It was annexed to and part of the land which was let under the tenancy, and, therefore, it was included in the tenancy which had never been determined. The tenant was still the tenant of the premises and was entitled to possession of the house. The division Bench relied upon this case and the observation of Denning J. made therein to the above effect.

12. The division Bench also relied upon the case of *Denman v. Brise* (supra). In that case a dwelling house, subject to the Rent Restrictions Act and let on a monthly tenancy, was destroyed by enemy action. The landlord erected a new house on the site of the old one and when the house was fit for occupation, and the tenant tried to get possession, the landlord denied him possession of the premises. Thereafter he determined the contractual tenancy of the tenant. The tenant claimed possession and brought action. Lord Justice Tucker (whose observations in *Ellis & Sons Amalgamated Properties, Ltd. v. Sisman* (supra) were relied upon by this Court in the case of *Messrs. Mehta and Patel Bros. v. Bai Hajaribal Jamahamad* (supra) discussed above) delivering the judgment in this case held that since the contractual tenancy was in existence on the date the new premises were ready for occupation, the tenant had a right to claim possession of the new premises notwithstanding the fact that the landlord terminated the contractual tenancy after the premises were ready for occupation. The learned Judge further observed that to allow the landlord to keep the tenant out of possession after the premises are ready for occupation and then to deny the right to possession on the ground that the contractual tenancy was in the meanwhile put an end to, would be a position contrary to one's ideas of justice and equity and that any Court must have power in such circumstances to order that the landlord shall put the tenant back into the position in which he would have been on the date the premises were ready for occupation. In substance, this case laid down that if the contractual tenancy subsisted on the date the new premises were ready for occupation, the contractual tenant was entitled to claim possession of the premises. These are all the authorities which were cited at the bar on the point. As stated earlier, the position of law that emerges from these authorities is that where a contractual tenancy subsists at the time the premises are in existence, the tenant will have a right to claim possession. The contrary view taken by the learned single Judge (Bhasme J.) in the case of *Shri Marutao Laxman Wagh v. Dr. Shambhum Gopal Punde* (supra) stands overruled.

13. As far as the facts of the present case are concerned, there is no doubt that on the date the contractual tenancy was terminated, the old premises were in existence. It is only after the termination of the contractual tenancy that the flood-waters damaged the old premises. Therefore on the date the flood-waters damaged the old premises, the plaintiffs were the statutory tenants. The question therefore is whether in such circumstances the ratio laid down in the division Bench case will be applicable or not.

14. On behalf of the petitioners, much stress was laid on the decision of this Court in *Messrs. Mehta and Patel Bros. v. Bai Hajarabai Jamahamad* (supra) and it was contended that the statutory tenant had no such right. I am afraid that such an inference is not possible from the said decision". It is true that it was a case where the statutory tenants were claiming a right of possession of the new premises. However, it must not be forgotten that on the date the contractual tenancy was terminated in that case, neither the old nor the new premises were in existence and it is precisely for this reason that the learned Judges in that case held that the tenants were not entitled to claim possession because their protection" was with regard to the premises within the meaning of the Rent Restrictions Act, and since there were no premises to be protected on the date the contractual tenancy came to an end, they were not entitled to the benefit of the said Act. That however is not the case here. In the present case, on the date the contractual tenancy came to an end, the old premises were in existence and the plaintiffs were in possession of the same. There is no dispute that these premises were premises within the meaning of the Rent Act. That being the case the said decision will not come in the way of the present plaintiffs claiming a right of possession of the new premises. The only question therefore that remains to be answered is whether the right to claim possession, in the circumstances, is confined only to contractual tenants or whether it extends to statutory tenants as well. The division Bench in *Krishna Laxman v. Narsingh Rao* (supra) has in terms observed as follows (p. 33):

With reference to the first two contentions, it is necessary to notice that there can be no dispute that a lease and a tenancy involves transfer of rights in immovable properties and the interest transferred will not revert to the landlord in ordinary circumstances except upon termination of such interests in accordance with the provisions in Section 106 read with Sections 111, 113 and the other relevant sections in Chapter 5 of the Transfer of Property Act. There is no law preventing letting out and/or lease of broken and tumbled down and/or damaged houses. It is also well settled that contracts for transfer of immovable properties including agreements for lease are liable to be specifically enforced. In other words, parties to such contracts and agreements will be subjected to such orders as are necessary for specific performance of such contracts and agreements. These rights existed in favour of the lessees and/or tenants in ordinary law and in that connection protection under the Rent Restriction Act was never necessary. The protection that was given under the above Act was against the ejectment of tenants. It is important to notice that under Sections 16 and 17

to enable a landlord to rebuild a new property ejectment of tenants was authorised. In Sections 17B and 17C provision was made for giving specific rights to tenants concerned to reoccupy the repaired and/or newly built up premises. These provisions in the Act go to indicate that even under the Act tenants' rights to re-occupy repaired or newly constructed building-premises has been recognised. The above discussion goes to show that even prior to the above Act and thereafter also the normal rights of a tenant for specific performance have always been recognised at law. The only condition for specific enforcement would be such as provided in the Specific Relief Act. In other words, for getting specific performance the tenant must be ready and willing to perform his part of the covenants in the lease and/or otherwise agreed between the parties. It is, therefore, clear that a tenant who is willing to satisfy the above condition must always be entitled to relief of specific performance in cases in which there is no physical impediment in granting such reliefs.

15. These observations would go to show that all tenants governed by the Rent Act will be entitled to claim a right to possession under the provisions of the said Act and/or to claim protection against their ejectment from the "premises" within the meaning of the said Act. There is no distinction made in the Rent Act between a contractual tenant and a statutory tenant and the protection granted by the said Act is not restricted to contractual tenants alone. In the premises, it will have to be held that even a tenant whose contractual tenancy has been put an end to will be entitled to be protected against ejectment from the premises in his possession and to claim possession of the new premises constructed on "he same site. There is no dispute that in the present case the tenants had never surrendered the possession of the plinth that had been left. On the construction of the Rent Act therefore, it will have to be held that a statutory tenant is equally competent to claim protection of the said Act and to claim possession of the new premises when constructed at the old site, notwithstanding that the old premises were destroyed, provided he was in possession of the premises or could be deemed to have been in possession of the premises when the contractual tenancy came to and end. Mr, Dalvi, the learned counsel for the petitioners submitted that there was a distinction between the rights of a contractual tenant and those of a statutory tenant and that the statutory tenant had only a personal right to occupy, and he enjoyed no more than the status of irremovability. He submitted, relying upon the decision of the Supreme Court in *Hiralal Vallabhram Vs. Kastorbhai Lalbhai and Others*, , that unlike the contractual tenant, the statutory tenant had no right in the property which was leased. According to him, that made a vital difference with regard to his right to claim possession of the new premises. He submitted (hat since the premises themselves were destroyed and the statutory tenant could only claim irremovability from the premises he could claim no protection under the Act since there were no premises in respect of which he can be given protection. Mr. Abhyankar on the other hand contended that there was no longer any difference between the rights of a contractual tenant and a statutory tenant as per the recent decision of the Supreme Court

reported in *Damadilal and Others Vs. Parashram and Others*, It is unnecessary for me to go into the question as to whether the position with regard to the statutory tenant's rights has undergone a change in view of the said latest decision of the Supreme Court. It also further appears from the said decision that it was a decision under the Madhya Pradesh Rent Restriction Act, and there the position of law with regard to the statutory tenant under our Act has been stated and distinguished. It does not therefore appear that the said decision has made any change in the present position of law in that behalf. However as stated earlier for the purposes of the narrow question that I am called upon to decide it makes no difference as to whether the rights of the statutory tenant remain as they were exounded in *Hiralal v. Kasturbhai* (supra) or are deemed to have undergone a change. There is nothing in the decision reported in *Hiralal v. Kasturbhai* (supra) to suggest that the statutory tenant had no right to claim possession of the new premises constructed at the old site or that he could not claim protection of the possession of the premises which were in his possession at the time his contractual tenancy was terminated. As stated earlier, if it is true that the Rent Act makes no distinction with regard to such protection between contractual and statutory tenants, it is immaterial whether the statutory tenant had any interest or right in the property which was leased to him. The protection given by the Rent Act is against ejectment from such possession and the right given is a right to claim possession of the premises. The moment the tenant proves, whether statutory or contractual, that what was in his possession was premises within the meaning of the Rent Act, he will be entitled to retain and or to claim possession. That being the case, I am of the view that the present plaintiffs who were in possession of the old premises when their contractual tenancy came to an end and who had never surrendered possession of the same, are entitled to retain their possession and to claim protection against their dispossession, by encroachment or otherwise.

16. Assuming I am wrong in the view that I have taken: above, I am of the further view that the plaintiffs will be entitled to the protection of their possession also on the ground that the premises as defined in the Rent Act and which were in their possession have not been completely destroyed. It is true that the original premises which were in the plaintiffs' possession were a shop consisting of the plinth, wall and the roof overhead. The flood-waters destroyed, admittedly, only the wall and the roof, and the plinth has remained intact. It cannot be gainsaid that a plinth is a part of structure and therefore merely because the wall and the roof have been washed away, it is not possible to hold that the entire "premises" have been destroyed. If that is so, the plaintiffs are still in possession of their premises and "premises" within the meaning of the Rent Act are still in existence. The plaintiffs are therefore entitled, under the provisions of the said Act, to claim protection of the possession of the premises and for removal of encroachment thereon.

17. Thus on both grounds I hold that the plaintiffs' right to retain and claim possession of the premises survives and the relationship between the plaintiff

and defendants Nos, 8 to 10 as tenants and landlords has not come to an end, as far as the provisions of the Rent Act are concerned.

18. Since there is a relationship of landlord and tenant, and the tenants had in fact filed the present suit against the landlords for possession of a portion of the premises by removal of encroachment, which has been made at their instance by defendants Nos. 11 to 13, it will have to be held that the suit is essentially a suit by the tenants against the landlords for recovery of possession of the premises, and therefore the Rent Court will have jurisdiction to entertain and try the same. In this view of the matter, the view taken by the appeal Court that the Court has jurisdiction to entertain and try the suit, and that the tenants have a right to claim a mandatory injunction for removal of the wall of the shop occupied by defendants Nos. 11 to 13, and to a preventive injunction restraining the defendants from committing future encroachments, is both valid and proper. I have already held that there are no laches on the part of the plaintiffs. The decision of the appeal Court therefore does not require any interference from this Court. The petition is therefore dismissed and the rule is discharged with costs.