

**(1997) 10 BOM CK 0058**

**In the Bombay High Court**

**Case No :** Writ Petition No. 540 of 1991 with C.R.A. No. 774 of 1989 with S.A. No"s. 42 and 46 of 1992

Mohammad Azizul Haq

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

---

**Date of Decision :** 24-10-1997

**Acts Referred:**

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29, 29(2)  
Civil Procedure Code, 1908 (CPC) — Section 115  
Constitution of India, 1950 — Article 136  
Land Acquisition Act, 1894 — Section 18, 23, 23(2), 28, 30(2)  
Transfer of Property Act, 1882 — Section 106

**Citation :** (1997) 10 BOM CK 0058

**Hon'ble Judges :** M.B. Ghodeswar, J;B.H. Marlapalle, J

**Bench :** Division Bench

**Advocate :** J.N. Chandurkar and J.J. Chandurkar, for the Appellant; T.R. Kankale for respondent no. 1, V.P. Panpalia, V.G. Lohia and K.G. Mohta, for the Respondent

---

**Judgement**

B.H. Marlapalle, J.—The petitioner Shri Mohammad Azizul Haq s/o Mohammad Abdul Haq is the owner of the land and Respondent No. 2 Shri Dilip Murlidhar Lohia is a tenant. The petitioner had initially inducted the father of Respondent No. 2 as a tenant for the residential house by agreement dated 9-8-1967 and subsequently by agreement dated 4-1-1974. On 5-5-1977, a fresh lease deed was executed between the petitioner and present Respondent No. 2 in respect of the same house and the lease was renewed by another agreement dated 10-5-1983 by signing a Registered Lease Deed. There was an open site adjacent to this residential house, admeasuring 125 Ft. East West x 85 ft. North South excluding the residential premises and the present petitioner entered into an agreement of tenancy with Respondent No. 2 on 2-5-1983 and in the said lease deed it was specifically made clear that the lease period will commence from 2-5-1983 and expire on 1-4-1986, i.e., the lease period was only for 35 months on a monthly rent of Rs. 225/- and Rs. 75/- per month separately towards the

taxes. On 8-3-1986, the petitioner served a notice on the respondent informing him that the tenancy of the open plot was to expire on 1-4-1986 as per agreement dated 2-5-1983 and, therefore, he called upon Respondent No. 2 to vacate the premises (open plot).

2. As there was no response from Respondent No. 2 to vacate the leased open plot, the petitioner approached the Civil Court by filing Regular Civil Suit No. 447 of 1986 and the said Regular Civil Suit came to be registered as Small Causes Suit No. 268 of 1987 as per the order dated 9-6-1987 passed by the Presiding Officer. The said Small Causes Suit came to be allowed by Judgment dated 27-4-1989 by the 5th Joint Civil Judge (Jr. Division), Akola. The learned Joint Civil Judge had, in all, framed 7 points for his consideration and while recording his finding on the first point, he came to the conclusion that the tenancy of the suit plot was separate from the tenancy of the residential house and in reply to the second question, the learned Judge recorded a finding that the suit plot was an open plot and hence the provisions of Rent Control Order, 1949 were not applicable. The learned Judge granted Rs. 900/- towards damages from 2-4-1986 to 2-7-1986.

3. Being aggrieved by the judgment and decree passed by the learned Joint Civil Judge, allowing the suit for eviction, the present Respondent No. 2 filed Appeal No. 193 of 1989. While the said appeal was pending before the District Judge at Akola, by Gazette dated 27-6-1989, the Government of Maharashtra issued Central Provinces and Berar Letting of Houses and Rent Control (Amendment) Order, 1989, in exercise of the powers conferred by section 2 of the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946, wherein for the word "house" wherever occurred, the word "premises" came to be substituted and by clause (4A), the definition of the word "premises" was incorporated. The State Government thereafter issued the second amendment order, namely, Central Provinces and Berar Letting of Premises and Rent Control (Second Amendment) Order, 1989, in exercise of the powers conferred by section 2 of the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946. By this second amendment, the Government had, inter alia, incorporated clause 13-A. In para 1(2) of the said Second Amendment Order, it was stipulated that the

Second Amendment shall come into force on the date of its publication in the Official Gazette .In an Extraordinary Gazette dated 27-10-1989, the Second Amendment order came to be published.

4. Two learned Single Judges of this Court in two separate cases, namely, Smt. Gangubai vs. Nilkanth, (1991 Mh.LJ. 1178 by Desai, J.) and in Mohd. Rafik vs. Tahera Begum in Second Appeal No. 148 of 1977 with Second Appeal No. 149 of 1977 decided on 7-2-1991 by Chavan J. had held that in view of clause 13-A of the Second Amendment Order, 1989, the C. P. and Berar Letting of Houses and Rent Control (Amendment) Order, 1989, issued by the State Government as per its Notification dated 27-6-1989 which made applicable the provisions of the Rent

Control Order to an open plot were applicable to a pending suit or a proceeding for eviction of a tenant from the open plot and, therefore, if such a pending suit or a proceeding for eviction is not preceded by a prior permission of the Rent Controller as envisaged by Clause 13(1) of the Rent Control Order, it had to be dismissed even at the appellate stage by setting aside the decree for eviction granted by the trial Court, although at the time of passing of such decree by the learned trial Court, the Rent Control Order was not applicable to the open plots i.e. prior to the First Amendment Order. 1989.

5. The present petitioner, therefore, being an Advocate by profession, rightly apprehended that the said judgments of this Court would be made applicable to Appeal No. 193 of 1989 and the decree of eviction passed in his favour by the trial Court would be set aside by the Appellate Court, and he, therefore, approached this Court and filed Writ Petition No. 540 of 1991. challenging the vires of the First Amendment Order as well as the Second Amendment Order to the C. P. & Berar Letting of Houses and Rent Control Order, 1949 (for short referred to as "Rent Control Order1). In the meanwhile, another learned Single Judge of this Court in Civil Revision Application No. 774 of 1989 did not agree with the view taken by the two learned Single Judges in the case of Smt. Gangubai and Mohd. Rafik and hence he made a reference to the Division Bench. While making the said reference, the learned Single Judge was of the view that even as per Clause 13-A introduced by the Second Amendment Order, 1989. the suit should not be dismissed, but should be kept pending allowing the landlord to obtain permission of the Rent Controller under Clause 13(1) of the Rent Control Order and directing him to produce the same in the suit or the appeal as the case may be pending on the date when Clause 13-A is inserted in the Rent Control Order.

6. In the Second Appeal No. 42 of 1992 and Second Appeal No. 46 of 1992, the same question, as referred in the Civil Revision Application, was involved and hence, the Civil Revision Application No. 774 of 1989, Second Appeal No. 42 of 1992 and Second Appeal No. 46 of 1992 were directed to be put up along with the Writ Petition No. 540 of 1991, which had challenged the validity of the First and Second Amendments in the Rent Control Order introduced by the State Government on the ground that the State

Government had no power or authority to regulate letting or sub-letting of open sites. By its judgment dated 23-6-1992, the Division Bench of this Court held that sub-clause (a) of clause (4A) defining the expression "premises" inserted in the Principal Rent Control Order by para 4 of the C. P. and Berar Letting of Houses and Rent Control (Amendment) Order, 1989, published on 27-6-1989 and clause 13-A inserted in the Principal Rent Control Order by para 5 of the C. P. and Berar Letting of Premises and Rent Control (Second Amendment) Order, 1989, were held as being ultra vires. The Division Bench held that since there was no power with the State Government under the C. P. and Berar Regulation of Letting of Accommodation Act, 1946 (hereinafter referred to as Accommodation Act"), to

regulate letting or sub-letting of open sites, clause 13-A was redundant because the purpose for which it was enacted, no more existed. This judgment came to be challenged before the Supreme Court in Civil Appeal No. 3815 of 1993 and it was set aside by the Apex Court by order dated 13-4-1994 (1994 Mh.L.J. 1334 SC), It will be apt to reproduce the relevant portion of the order of the Supreme Court passed on 13-4-1994 and the same is as follows :

"Whether these two clauses would be applicable to a matter which arc already fruited into a decree ought to have been decided first in our considered opinion, on the existing facts. The reason why we state so is, should these clauses be inapplicable to the facts of the present case, there would have been no occasion to deal with vires of sub-clause (a) of Clause 4(A) at all."

The High Court held clause 13-A is bad. Here again, the question was not gone into as to whether in a suit which has already ended in a decree prior to 27-10-1989, pending appeal the benefit of that clause could be had by the tenant. Thus, we are of the view that these two important questions, namely, (1) the applicability of sub-clause (a) of clause 4(A) and clause 13-A to the facts as available in the present case, ought to be decided in the first instance. This not having been done by the High Court, we are left with no other option that to set aside the impugned judgment. The High Court may decide these two questions first and thereafter reconsider the decision as to the vires of these two clauses, if so warranted. We make it clear that by this order, it is not to be considered that we have expressed any opinion on the vires of sub-clause (a) of clause 4(A) or clause 13-A.

7. It appears that after the above referred order was passed by the Supreme Court, Respondent No. 2 approached the District Court and filed an application to dispose of the pending appeal on the basis of the judgments passed by two learned Single Judges in case of Smt. Gangubai (supra) and Mohd. Rafik (supra). By his judgment and order dated 7-10-1994, the learned Joint District Judge, Akola, partly allowed the pending appeal No. 193 of 1989 in respect of possession and the judgment decree in that respect was set aside. It is pertinent to note that though a specific plea was raised by the appellant/present Respondent No. 2 in Appeal No. 193 of 1989 that the suit property was not an open plot, the learned Joint District Judge proceeded on the presumption that the suit property was an open plot. From the order passed by the Apex Court, the relevant portion of which is quoted hereinabove, it is also clear that the same order was passed on the presumption that the suit property was an open plot. Aggrieved by the order passed by the learned Joint District Judge on 27-10-1994, the present petitioner filed Civil Revision Application No. 160 of 1995 which is pending before this Court at present. It is relevant to add here that the trial of the Appeal No. 193 of 1989 was stayed by this Court by order dated 12-9-1991 passed in Writ Petition No. 540 of 1991. As the said Writ Petition along with the connected matters came to be decided by a common judgment of this Court dated 23-6-1992 and the said judgment was quashed and

set aside by the Supreme Court by order dated 13-4-1994, it appears that the learned Joint District Judge proceeded with the pending appeal and partly allowed the same, as observed hereinabove.

8. It is under these circumstances that Writ Petition No. 540 of 1991 with connected matters has come up before us for final hearing and we are proceeding to decide the issue regarding the applicability of the First Amendment as well as the Second Amendment in the Rent Control Order, 1949, effected by the Government of Maharashtra on 27-6-1989 and 27-10-1989 respectively, again on the presumption that the suit property was an open plot. Right at the threshold, the learned counsel appearing for Respondent No. 2 contended before us that the learned Joint District Judge has not decided the issue, though it was raised before him in Appeal No. 193 of 1989, that as to whether the suit property was an open plot or not and, therefore, C. R. A. No. 160 of 1995 may be disposed of by directing the Joint District Judge at Akola to decide the status of the suit property; first, namely, whether it was an open plot or it was not an open plot and in case the learned Joint District Judge differs with the finding of the trial Court on this point, there is no necessity to decide the issues directed to be decided by the Supreme Court by its order dated 13-4-1994. As the trial Court had given a clear finding that the suit property was an open plot and the Supreme Court order came to be passed on the same presumption, we have rejected the submission in this regard made by the learned Counsel for Respondent No.2 and in any case the learned Joint District Judge also had allowed the appeal partly and had set aside the decree passed by the trial Court regarding possession on the presumption that the suit property was an open plot. We, therefore, proceed to decide the issues directed to be decided by the Supreme Court regarding the applicability of sub-clause (a) of Clause (4A) of the First Amendment Order and Clause 13-A of the Second Amendment Order in the Rent Control Order, 1949 to the suit plot which was an open plot. If our findings on these issues are answered in the negative, we are not required to proceed to decide regarding the vires of these amendments.

9. By the First Amendment in the Rent Control Order, 1949, brought into force on 27-6-1989, in Clause 2 of the Principal Order, sub-clause (3) came to be substituted by sub-clause (4-A), which reads as under :

"Premises means -

(a) any land not being used for agricultural purposes;

(b) any building or part of a building (other than a farm building) let or given on licence and includes -

(i) the garden grounds, garages and out houses, if any appurtenant to such building or part of a building;

(ii) any furniture supplied by the landlord for use in such building or part of a building; and

(iii) any Fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

but does not include a room or other accommodation in a hotel or lodging house"

As by this amendment, the word "house" wherever it appeared in the Rent Control Order, 1949 was replaced by the word "premises", the word "premises" came to be defined by the amended sub-clause (4-A) in Clause 2 of the Rent Control Order, 1949. It is pertinent to note that this first amendment does not state as to when the amendment was to be effective inasmuch as it does not state whether the amendment was retrospective or prospective. The second amendment in the Rent Control Order, 1949 was published in the extraordinary Gazette on 27-10-1989 and Clause 13-A as incorporated by the said amendment in the Rent Control Order, 1949, which is relevant for our present consideration, reads thus :

"13-A. No decree for eviction shall be passed in a suit or proceeding filed and pending against the tenant in any Court or before any Authority unless the landlord produces a written permission of the Controller as required by sub-clause 1 of Clause 13."

10. As observed in the foregoing paragraph, Clause 1(2) of the Second Amendment clearly states that it shall come into force on the date of its publication in the official gazette and hence, this amendment came into force in pursuance of this clause on 27-10-1989 when Appeal No. 193/89 filed by the respondent No. 2 against the decree passed by the trial Court was pending before the District Court at Akola.

11. The learned Counsel appearing for the Respondent No. 2 while contending that sub-clause (4-A) of Clause 2 as introduced by the first amendment as well as Clause 13-A as incorporated by the Second Amendment in the Rent Control Order, 1949 are applicable to the present case, has relied upon the following decisions :

1. Amarjit Kaur Vs. Pritam Singh and Others, , 2. Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, . 3. Smt. Shakuntalabai Krishna Bhoyar and Others Vs. State of Maharashtra, . 4. Lakshmi Narayan Guin and Others Vs. Niranjana Modak, . 5. Laxman Marotrao Navakhare Vs. Keshavrao Eknathsa Tapar, .

12. In the case of Amarjit Kaur (supra), the appellant, who was daughter of defendant No. 4 claimed that she had a right to pre-empt and instituted the suit through her guardian. The trial Court decreed the suit and against the decree, an appeal was preferred by the vendees, which was dismissed on July 17, 1971. An appeal was preferred to the High Court against this decree and during that period of pendency of appeal before the High Court, the Punjab Pre-emption (Repeal) Act, 1973 received the assent of the Governor of Punjab on April 6, 1973 and was published in the Punjab Gazette on April 9, 1973. The High Court allowed

the appeal and dismissed the suit holding that provisions of section 3 of the above Act should govern the decision. The plaintiff/appellant then applied for leave to file Letters Patent Appeal, which was also dismissed. Section 3 of the Punjab Pre-emption (Repeal) Act, 1973 provides :

"Bar to pass decree in suit for pre-emption - on and from the date of commencement of the Punjab Pre-emption (Repeal) Act, 1973, no Court shall pass a decree in any suit for pre-emption."

This section, in effect, says that no Court shall decree a suit for pre-emption after the coming into force of the Act. In the appeal filed before the Supreme Court, the question was whether the appellate Court, when it passes a decree, confirming the decree for pre-emption passed by the trial Court or the lower appellate Court, is passing a decree for pre-emption. The Apex Court held that as an appeal is a re-hearing, it would follow that if the High Court were to dismiss the appeal, it would be passing a decree in a suit for pre-emption and, therefore, the only course open to the High Court was to allow the appeal as was done by the High Court. It was further held that in other words, if the High Court were to confirm the decree allowing the suit for pre-emption, it would be passing a decree in a suit for pre-emption, for, when the appellate Court confirms a decree, it passes a decree of its own and, therefore, the High Court was right in allowing the appeal.

12A. In the case of Bhag Singh vs. Union Territory of Chandigarh (supra), the question before the Supreme Court was whether amended provisions of section 23(2) and section 28 of the Land Acquisition Act, 1894, as inserted by Act No. 68 of 1984, were applicable to all proceedings relating to compensation pending on 30th April, 1982 or filed subsequent to the date, whether before the Collector or before the Court or the High Court or the Supreme Court, even if they have finally terminated before enactment of Amending Act. The Supreme Court answered the issue in the affirmative and held that amended Act was applicable to all proceedings before the Collector or any Court including the Supreme Court. The Supreme Court in the said judgment has observed as under :

"But if an award were made by the Court on a reference u/s 18 prior to the commencement of the Amending Act and an appeal against such award were pending before the High Court u/s 54 at the date of commencement of the Amending Act, which provisions would the High Court have to apply in deciding the appeal and determining the amount of compensation : the amended provisions in section 23, sub-section (2) and section 28 or the unamended provisions? The answer can only be that the High Court would have to apply the provisions in the amended section 23, sub-section (2) and section 28. The appeal against the award would be a continuation of the proceeding initiated before the Court by way of reference u/s 18 and when the High Court hears the appeal, it would in effect and substance be hearing the reference and while determining the amount of compensation, it would have to give effect to sections 23 and 28 as it finds them at the time of decision of the appeal."

The above observations of the Supreme Court were based on the express language of section 30(2), which states that provisions of the amended sections 23(2) and 28 shall apply and shall be deemed to have applied to and in relation to any award made by the Collector or Court or to any order passed by the High Court or the Supreme Court in appeal against any such award after 30th April, 1982 and before the commencement of the Amending Act.

13. A Division Bench of this Court in the case of Smt. Shakuntalabai Krishna Bhoyar (supra), held that for the purposes of applicability of the amended provisions in the Land Acquisition Act, 1894 by Amending Act No. 68 of 1984, there was no distinction between the appeal filed by the State u/s 54 of the Principal Act or the appeal filed by the land owners under the same provisions and the land owners were entitled to the benefits arising from the amended provisions, if the proceedings were pending on the relevant date at their instance or at the instance of the State.

14. In the case of Lakshmi Narayan Guin vs. Niranjana Modak (supra), the effect of sub-section (1) of section 13 of the West Bengal Premises Tenancy Act as extended to Memari during the pendency of the first appeal came up for consideration. The suit was filed on 12-6-1967 and was decreed by the trial Court on 17-2-1969. During the pendency of the first appeal, West Bengal Government extended the West Bengal Premises Tenancy Act, 1956 to Memari in which suit property was situated. Section 13 of the Act provided for a qualified protection of the tenant against eviction inasmuch as it Injuncted the Court from passing an order or decree in a landlord's suit for recovery of possession except on the limited grounds detailed in sub-section (1) thereof. Sub-section (6) provided that no suit or proceeding for the recovery of possession on any of the grounds mentioned in sub-section (1), except the grounds mentioned in clauses (j) and (k), could be filed by the landlord, unless he had given to the tenant one month's notice expiring with a month of tenancy. There was no dispute that grounds mentioned in clauses (j) and (k) did not come into play and the High Court had found that the notice for eviction served by the appellants on the respondent gave notice of less than one month and, therefore, there was no compliance of sub-section (6) of section 13. Consequently, it held that the suit was incompetent. The relevant observations of the Supreme Court while dismissing the appeal read as under:

"It is well settled that when a trial Court decrees a suit and the decree is challenged by a competent appeal, the appeal is considered as a continuation of the suit and when the appellate decree affirms, modifies or reverses the decree on the merits, the trial Court decree is said in law to merge in the appellate decree, and it is the appellate decree which rules. The object of sub-section (1) of section 13 is to protect the possession of the tenant, subject to the exceptions specified in the sub-section, and that protection is ensured if we construe the sub-section to mean that, subject to those exceptions, no effective or operative order or decree can be made by the Court in a landlord's suit for possession

against a tenant. To our mind, therefore, sub-section (1) of section 13 of the Act can be invoked by a tenant during the pendency of an appeal against a trial Court decree."

The next point for consideration before the Supreme Court was whether section 13(1) could be invoked where the suit was instituted before the Act came into force as was the case in Lakshmi Narayan Gain's case and it answered in the affirmative.

15. In the case of Laxman Marotrao Navakhare (supra), while considering the applicability of clause 13-A as introduced by the Second Amendment in the Rent Control Order, 1949 with effect from 27-10-1989, the Supreme Court has mainly held that the said clause is not applicable to the SLP pending or an appeal registered before the Supreme Court. The learned Counsel has more particularly relied upon the following observations made by the Apex Court in the said case :

"In view of the connotation of the word "proceeding" as given under the Explanation to section 13-A, it is impermissible to extend the meaning of the word "proceeding" to include an application for special leave under Article 136 of the Constitution. The collocation of the words, "suit, appeal or application for revision" in the Explanation to denote "proceeding" would go to show that suits, regular appeals therefrom, as provided under the ordinary law and applications for revision alone are intended. It is inconceivable that if the legislature had intended to include within the ambit of "proceeding" an application for special leave under Article 136 of the Constitution, it would have omitted to mention it in express terms."

The bar placed by clause 13-A of the Order in question shall be applicable only to a suit or proceeding which was pending in any Court under provisions of any special Act or under the provision of Code of Civil Procedure, as the case may be. It shall not become applicable to a SLP pending or an appeal registered before this Court on basis of leave granted under Article 136 of the Constitution. This Court while exercising its discretionary power under Article 136 of the Constitution even while dismissing the appeal shall not be deemed to have passed any decree for eviction. The matter would have been different if clause 13-A instead of only imposing a bar on passing a decree for eviction had also prescribed a bar on passing any order for recovery of possession of any premises or on initiation of execution proceedings on basis of any decree passed earlier. In that event, this Court could have taken note of subsequent change in the law and in exercise of its discretionary power could have passed an order directing the respondent not to recover possession of the premises on basis of the decree for eviction passed in his favour or to pursue the execution proceedings without complying with the requirement of Clause 13-A."

16. From the above Authorities relied upon by the learned Counsel for the respondent No. 2, it is clear that the word "proceeding" means and includes all proceedings after the suit is decreed and it includes first appeal pending before

the District Court and a second or civil revision application pending before the High Court. However, it is clear from the judgment in Laxman Navakhare's case (supra) that the word "proceeding" is not applicable to the SLP filed before the Supreme Court. The reliance of the learned Counsel on the judgment of the Supreme Court in the case of Lakshmi Narayan Guin (supra) in support of his contention that the provisions of the first amendment as well as second amendment are applicable to the suit property is misplaced as the facts of the instant case are different from the facts in Lakshmi Narayan Guin's case.

17. We have to consider the issues regarding applicability of both the amendments to the present case in the background of the following undisputed facts :

(a) The suit property was leased for a fixed period of 35 months and lease expired at the end of this period of 35 months. The suit property was not leased out for residential purposes and instead, it was leased out for being used as a godown.

(b) The suit property was given on lease by a separate lease agreement and the residential premises with the respondent No. 2 were covered by a separate agreement of lease though the suit property was adjacent to the residential premises covered by the said separate lease;

(c) By notice dated 8-3-1986, the lease of the suit property was deemed to be terminated in view of section 106 of the Transfer of Property Act, 1882 automatically.

(d) The first amendment was a substantive amendment in nature, whereas the second amendment was only procedural.

18. The learned Counsel Shri Chandurkar appearing for the petitioner has mainly propounded the following propositions :

(i) The suit property was an open plot leased out for the sole purpose of being used as a godown and was not covered under the provisions of the Accommodation Act and on expiry of fixed period of lease and consequent upon notice of termination given on 8-3-1986, the lease came to be terminated in view of the provisions of section 106 of the Transfer of Property Act,

(ii) By the time the suit was decreed in favour of the petitioner, the amended provisions were not existing and the property was not amendable to the provisions of the Accommodation Act.

(iii) The first amendment as well as second amendment are made only by an administrative order passed by an executive Authority and these are not the legislative amendments passed by the Legislature.

(iv) Unless the amendments specifically provide for retrospective effect, the amendments are deemed to be always prospective or they will be effective from the date they are published in the Official Gazette.

(v) The amendments under considerations in the instant case are not applicable as no proceedings were filed and pending against the respondent No. 2/tenant when by the second amendment. Clause 13-A was brought into force on 27-10-1989.

19. As observed earlier, the trial Court recorded a specific finding that the suit property was an open plot given on lease to the respondent No. 2 for a specific period for being used as a godown and hence, it was not necessary for the landlord to follow the provisions of Clause 13 of the Rent Control Order, 1949. Section 106 of the Transfer of Property Act clearly lays down that a lease of immovable property for any purpose other than agricultural or manufacturing shall be deemed to be a lease from month to month terminable on the part of either lessor or lessee by 15 days' notice expiring with the end of a month of the tenancy and such a notice must be in writing signed by the person giving it and be served on the opposite party in the manner prescribed. In the instant case, it is not disputed that the petitioner had served a notice in writing dated 8-3-1986 and it has been duly received by the respondent No. 2 and that the lease period was to expire on 10-4-1986. It is, therefore, clear that in view of section 106 of the Transfer of Property Act, tenancy was deemed to be rightly terminated at the end of lease period, which expired on 10-4-1986.

20. Though both the amendments have been brought into force by the Government exercising its power u/s 2 of the Accommodation Act, 1946, it is clear that they are not the amendments amounting to legislative amendments. We will have to therefore examine the applicability of these amendments regarding their prospective or retrospective operation with this background and the principles enunciated for retrospective applicability of a beneficial legislation brought into force by legislative Act, may not be suo motu applicable to such administrative amendments.

21. In the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, , it is, inter alio, observed by the Supreme Court that the right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the this commences and although it may be actually exercised when the adverse judgment is pronounced such a right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal. The Apex Court further observed in the said case that the golden rule of construction is that in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. The learned Counsel Shri Chandurkar relying upon this authority, submitted that as tenancy of the suit premises was deemed to be terminated under the Transfer of Property Act and Appeal No. 193/89 was filed prior to 27-6-1989, the first amendment was not applicable to the instant case. He also submitted that the first amendment did

not specifically state that it shall be effective retrospectively and unless it is stated so, it shall have to be deemed that it was always intended to be operative prospectively. The learned Counsel in this regard also relied upon a judgment of the Supreme Court in the case of Raja Shatrunji Vs. Mohammad Azmat Azim Khan and Others, . In that case, the effect of amendment of U. P. Zamindar's Debt Reduction Act, 1952 embodied in section 2 of the Amendment Act of 1962 fell for consideration before the Supreme Court and the Supreme Court observed that the Amendment Act provided that the amendment took effect as if the Amendment Act had been in force on all material dates. In that case, the Supreme Court, inter alia, observed thus:

"Counsel for the appellant submitted that when the High Court decided the matter, the High Court applied the Law as it stood and a subsequent change of law could not be a ground for review. The appellant's contention is not acceptable in the present case for two principal reasons : first, it is not a subsequent law. It is the law which ail along was there from 1952. The deeming provision is fully effective and operative as from May 25, 1953 when the 1952 Act came into force. The result is that the Court is to apply the legal provision as it always stood, it would, therefore, be error on the face of the record. The error would be that the law that was applied was not the law, which is applicable...."

The learned Counsel Shri Chandurkar, therefore, urged that as the Accommodation Act, 1946 was not applicable to the suit property when the suit was filed before the District Court at Akola by the present respondent No. 2, the first amendment was not applicable.

22. In the case of H. Shiva Rao and Another Vs. Cecilia Pereira and Others, , the appellant was a tenant in the premises where he was residing and was also running a tea shop and the only short question, which arose in the civil appeal before the Supreme Court was whether in view of sub-section (1) of section 21 of the Karnataka Rent Control Act, 1961, the decree was executable because subsequent to the decree for possession, the Act had been made applicable to the area in question. The provisions of sub-section (1) of section 21 on which arguments were advanced were as follows :

"Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or other authority in favour of the landlord against the tenant."

The High Court in the impugned judgment before the Supreme Court was of the view that sub-section (1) of section 21 prohibits the Court from making any order or decree for recovery of possession in favour of landlord irrespective of any other law or contract between the parties. The High Court concluded that any order of eviction passed before the coming into operation of the Act docs not become inoperative after coming into operation of the sub-section. It was further observed by the High Court that it only prevented passing of any order or decree for eviction after coming into operation of the Act except on the specified

grounds mentioned in the proviso to sub-section (1) of section 21 of the Act and the sub-section does not prevent the execution of the order after coming into operation of the Act, of any order or decree passed before the coming into operation of the Act. While dealing with this case, the Supreme Court *inter alia* held thus :

"It is well settled legal principle that Rent Control legislations being beneficial to the tenant have to be given a liberal interpretation. While ordinarily substantive rights should not be held to be taken away except by express provision, or clear implication, in the case of Rent Control Act, it being a beneficial legislation the provision which confers immunity to the tenant against eviction by the landlord though prospective in form operates to take away the right vested in the landlord by a decree of a Court which has become final, unless there is express provision or clear implication to the contrary."

23. The learned Counsel for the petitioner pointed out that even if such a liberal interpretation approach is to be followed in deciding the applicability of the first amendment in the instant case, such an approach will not be warranted because suit plot was not used for residential purposes and the provisions of the Accommodation Act, 1946 were not applicable to the suit plot. In the case of *Keshavlal Jethalal Shah Vs. Mohanlal Bhagwandas and Another*, , the trial Court dismissed the claim for ejection and passed a decree for arrears of rent. In appeal u/s 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the decree was confirmed on February 25, 1963. By section 29(2) of that Act, as it then stood, no appeal lay against any decision in appeal under sub-section (1) from the order of the Court of first instance. The respondent had accordingly moved the High Court of Gujarat by a petition u/s 115 of the CPC and when this petition was pending in the High Court, the Bombay Act 57 of 1947 was amended by Gujarat Act of 1965 and sub-section (2) of section 29 was replaced by the following sub-section :

"No further appeal shall lie against any decision in appeal under sub-section (1), but the High Court may, for the purpose of satisfying itself that any such decision in appeal was according to a law, call for the case in which such decision was taken and pass such order with respect thereto as it thinks fit."

While deciding the said case in appeal, the Supreme Court observed thus :

"There is nothing in the language of section 29(2) as amended, which may indicate that it was intended to be retrospective in operation. Section 29(2) as amended in terms confers jurisdiction upon the High Court to call for the record of a case for the purpose of satisfying itself that the decision in appeal was according to law, which the High Court did not possess before the date of the Amending Act. The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from section 115, CPC and the Legislature has by the

Amending Act not attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. Section 29(2), before it was enacted was precise in its implication as well as in its expression; the meaning of the words used was not in doubt, and there was no omission in its phraseology which was required to be supplied by the amendment."

24. The learned Counsel for the petitioner also urged that u/s 2 of the Accommodation Act, 1946, the Government while exercising powers has no vested authority to make amendments, which will have retrospective effect and, therefore, the first amendment could not be held to be retrospective under any circumstances. He has relied upon and rightly so on the judgment of the Supreme Court in the case of *The Cannanore Spinning and Weaving Mills Ltd. Vs. Collector of Customs and Central Excise Cochin and Others*, in this regard. We, therefore, hold that the first amendment in the Rent Control Order, namely, sub-clause 4-A(a) as was brought into force on 27-6-1989 was not applicable to the suit plot.

25. The second amendment and more particularly, Clause 13-A was introduced in the Rent Control Order, 1949 to make the first amendment applicable to the suits and other proceedings filed and pending against the tenant, which is amply clear from the language of the said clause. If the words "filed and pending against the tenant" are removed from clause 13-A, the whole purpose for amendment will become redundant because all the open plots, which were not a subject matter of any suit or proceeding as on 27-6-1989, are covered by the first amendment and there was no such special provision like Clause 13-A required to be incorporated in respect of such open plots/premises. We have no dispute with the proposition made by the learned Counsel for the respondent No. 2 that the word "proceedings" will include the pending appeal or civil revision application and shall not include the SLP filed before the Supreme Court. In the instant case, there was no appeal filed or pending against the tenant on 27-10-1989 when the second amendment was published by the Government and hence, it is to be inferred that no proceedings were filed or pending against the tenant as on that date. As recorded earlier, we are of the view that the first amendment was not applicable to the instant case because tenancy in respect of the open plot was deemed to have expired immediately after 10-4-1986 in view of provisions of section 106 of Transfer of Property Act and the suit plot was not covered under the provisions of the Accommodation Act, 1946 when the suit was decreed. The second amendment brought into force as on 27-10-1989 also specifically provides that the said amendment will come into force on the day it was published in the Gazette and the intention of the competent Authority is made clear from this specific provision inasmuch as the intention is that the Second Amendment would be prospective and not retrospective. Once we have held that Clause 4-A(a) of the first amendment was not applicable to the suit plot, we have no hesitation in recording our finding that Clause 13-A introduced in the Rent Control Order, 1949 by the Second Amendment was also not applicable to the

suit plot.

26. Accordingly we record our finding in the negative regarding applicability of the amended Clause 4-A(a) and Clause 13-A of the Rent Control Order, 1949 to the suit plot. In view of this finding we have recorded. it is not necessary for us to record our decision as to vires of these two Clauses as is clear from the Supreme Court's order dated 13-4-1994.

27. In the result, we dispose of Writ Petition No. 540/91 in terms of our above findings. Civil Revision Application Nos. 160/95 and 161/95 and connected pending matters be decided on the basis of our above findings.

The learned Counsel for the respondent No. 2 seeks leave to approach Supreme Court. Leave granted.