
(1992) 06 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 540 of 1991 with Civil Rev. Application No. 774 of 1989 with Second Appeal No"s. 42 and 46 of 1992

Mohammad Azizul Haq

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 23-06-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226, 227

Citation : (1993) MhLj 382

Hon'ble Judges : H.W. Dhabe, J;B.U. Wahane, J

Bench : Division Bench

Advocate : J.N. Chandurkar in W.P. No. 540 of 1991, S.C. Mehadia in Civil Rev. appln. No. 774 of 1989 and J.T. Gilda in Second Appeals Nos. 42 and 46 of 1992, for the Appellant; C.S. Kaptan for Respondent No. 1 and V.C. Daga for Respondent No. 2 in W.P. No. 540 of 1991, B.N. Mohta for Respondents Nos. 1, 4 and 6 in Civil Rev. Appln. No. 774 of 1989, S.C. Mehadia in Second Appeals Nos. 42 and 46 of 1992, for the Respondent

Judgement

H.W. Dhabe, J.—Writ Petition No. 540 of 1991 and Civil Revision No. 774 of 1989 with Second Appeals Nos. 42 of 1992 and 46 of 1992 are placed together before us for hearing and disposal. In Civil Revision No. 774 of 1989, there is a reference made by the learned Single Judge to the Division Bench of this Court by his order dated 20th September, 1991, because he did not agree with the view taken by the two learned Single Judges of this Court previously in separate cases before them regarding the interpretation and effect of clause 13-A newly inserted in the C. P. and Berar Letting of Houses and Rent Control Order, 1949 (for short the Rent Control Order) by clause 5 of the C. P. and Berar Letting of Premises and Rent Control Order (Second Amendment) Order, 1989 (for short the Second Amendment Order, 1989) which was issued by the State Government as per its notification dated 26-10-1989 (see M.G.G. Extraordinary, Part IV-B, dated 27-10-1989, pp. 620-621). Since the Second Appeals Nos. 42 of 1992 and 46 of 1992 involved the same question as in above referred Civil Revision

Application No. 174 of 1989, they were directed to be put up along with the above referred Civil Revision and since the learned Single Judge has made a reference to the Division Bench in the above referred Civil Revision, the above Second Appeals are also placed before us for hearing along with the above referred Civil Revision.

2. It may be seen that the two learned Single Judges in previous cases i.e. in *Smt. Gangubai vs. Nilkanth*, 1991 Mh.L.J. 1178 by Desai, J. and in *Mohd. Rafik vs. Tahera Begum* in Second Appeal No. 148 of 1977"with Second Appeal No. 149 of 1988 decided on 7-2-1991 by Chavan, J., have 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 (for short the First Amendment Order, 1989) issued by the State Government as per its Notification dated 27-6-1989 (see MGG Part IV-B dated 13-7-1989, p. 787) which makes applicable the provisions of the Rent Control Order to an open plot are applicable to a pending suit or a proceeding for the 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 has 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 open plots i.e. prior to the First Amendment Order, 1989. The learned Single Judge while making the reference to the Division Bench in Civil Revision No. 774 of 1989 is however, 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) was inserted in the Rent Control Order.

3. As regards Writ Petition No. 540 of 1991 which is placed before us, the petitioner/landlord has challenged the validity of the above amendments introduced by the State Government in the original Rent Control Order principally on the ground that the State Government has no power or authority to regulate letting or sub-letting of open sites. We propose to decide the Writ Petition first because if the Writ Petition succeeds and the impugned amendments seeking to apply the provisions of the Rent Control Order to the open sites are struck down, it would not be necessary to consider the reference made by the learned Single Judge in Civil Revision No. 774 of 1989 as it would then become infructuous.

4. The facts in Writ Petition No. 540 of 1991 are that the petitioner and the respondent No. 2, therein are landlord and tenant respectively. The respondent No. 2 had held the lease of open site from the petitioner for a fixed period. He had not vacated the same after the period of lease was over. The petitioner had, therefore, terminated his tenancy and has filed a Civil Suit in the Court of the IInd Joint Civil Judge, Junior Division, at Akola, registered as a Small Cause Civil

Suit No. 268 of 1987, for ejectment, arrears of rent and other ancillary reliefs. The learned trial Court had decreed the suit of the petitioner for ejectment and other ancillary reliefs against which decree the respondent No. 2 had preferred the said appeal in the District Court at Akola.

5. While the said appeal was pending in the District Court at Akola, the Rent Control Order was amended by the First Amendment Order, 1989 by which the definition of the word "House" given in clause 2(3) of the Rent Control Order was deleted and instead after clause 4, clause 4(A) was inserted in the said order defining the word "Premises". Further according to the said First Amendment Order, 1989, wherever the word "House" was used in the Rent Control Order it was to be read as "Premises". Pending the aforesaid appeal, the definition of the word "Premises" in clause 4A was further amended by the Second Amendment Order, 1989 by introducing the words "for residence or for the purpose of practising any profession or carrying on any occupation therein", after the words "let or given on licence" in sub-clause (b) of the said definition clause.

6. Another material amendment introduced during pendency of the appeal preferred by the respondent No. 2 tenant in the District Court is about insertion of clause 13-A in the principal Rent Control Order by the Second Amendment Order, 1989, clause 13-A provides that no decree for eviction should be passed in a suit or proceeding filed and pending against the tenant in any Court or before any authority unless the landlord produces the necessary permission of the Rent Controller as required by sub-clause 1 of clause 13 of the Rent Control Order.

7. In view of the above amendments to the Rent Control Order making applicable the provisions of the Rent Control Order to the open site in regard to which the suit or a proceeding for eviction is pending, the respondent No. 2 tenant filed an application in the appeal preferred by him before the District Court, Akola, praying that the suit of the petitioner should be dismissed because it is filed without obtaining permission from the Rent Controller as required by sub-clause 1 of clause 13 of the Rent Control Order. The petitioner landlord has therefore preferred the instant Writ Petition under Articles 226 and 227 R.F-49 of the Constitution of India, challenging the validity of the above amendments to the Rent Control Order.

8. The challenge to the power and authority of the State Government to issue the Amendment Orders, 1989 regulating letting and sub-letting of open sites and to give them retrospective operation are the two fold contentions urged before us on behalf of the petitioner. As regards the question of validity of the amendments, the contention urged before us on behalf of the petitioner is that the open sites simpliciter i.e. without any construction thereon do not fall within the ordinary connotation of the word "accommodation" used in section 2 of the C. P. and Berar Regulation of Letting of Accommodation Act, 1946 (for short the Accommodation Act) and, therefore, the amendment to the Rent Control Order seeking to include in the newly inserted definition of the word "premises" "Open sites" is beyond the purview of the power given to the State Government u/s 2 of

the said Act to issue general or special orders to regulate letting and sub-letting of any accommodation or class of accommodation. As regards the retrospective operation given to the above amendment by clause 13-A inserted by the Second Amendment Order, 1989, the contention is that there is no such power conferred upon the State Government u/s 2 of the Accommodation Act.

9. In appreciating the above contentions, it is pertinent to see that the word "accommodation" is not defined in the Accommodation Act. Section 2 of the Accommodation Act which is material for the purpose of this petition is reproduced below for ready reference. Section 2. Regulation of Letting and Subletting, etc.--The Provincial Government may, by general or special order which shall extend to such areas as the Provincial Government may by notification, direct, provide for regulating the letting and sub-letting of any accommodation or class of accommodation, whether residential or non-residential, whether furnished or unfurnished, and whether with or without board, and in particular--

- (a) for controlling the rents for such accommodation either generally or when let to specified persons or class of persons or in specified circumstances,
- (b) for preventing the eviction of tenants or sub-tenants from such accommodation in specified circumstances,
- (c) for requiring such accommodation to be let either generally or to specified persons or classes of persons or in specified circumstances, and
- (d) for collecting any information or statistics with a view to regulating any of the aforesaid matters.

10. The definition of the expression "Premises" given in clause 4(A) inserted in the Principal Rent Control Order by the First Amendment Order, 1989 as amended by the Second Amendment Order, 1989 which is most relevant for the purposes of the instant Writ Petition is as follows:

4-A. "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 for residence or for the purpose of practising any profession or carrying on any occupation therein, and includes:
 - i) the garden grounds, garages and outhouses, 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."

11. Clause 13-A introduced by the Second Amendment Order, 1989 in the Principal Rent Control Order which is material for our purposes is also reproduced below:

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 Rent Controller as required by sub-clause (1) of clause 13."

12. Perusal of section 2 of the Accommodation Act clearly shows that it empowers the State Government to issue general or special orders to regulate letting and sub-letting of accommodation or class of accommodation only. The other matters about which the provisions can be made in the Rent Control Order issued thereunder such as Controlling Rent or eviction of tenants or sub-tenants also pertain to the "accommodation" only. Since the word "accommodation" is not defined in the Accommodation Act, we have to look to its dictionary meaning or as it is understood in ordinary parlance. The dictionaries give various meanings of the said word "accommodation". Its meanings from some of the dictionaries are reproduced hereinbelow:

13. In new Webster's Dictionary of the English Language (Delux Encyclopaedic Edition):

Accommodation": The act of accommodating, adjustment, adaptation, adjustment of differences; reconciliation, anything which supplies a want, as in respect of ease, refreshment and the like; a convenience; a loan of money; willingness to help others. Usu. Pl. Lodgings."

14. In Oxford Dictionary (Volume I A-B), the meaning of the word "Accommodation" given therein relevant for our purpose as contained in para 7 is as follows:

1.....6.....

7. "Esp. Room and suitable provisions for the reception of people, entertainment; lodgings (formerly mostly in pl.)."

15. As in Mitra's Legal and Commercial Dictionary (Fifth Edition), the meaning of the word "Accommodation" is as under:

""Accommodation: Something supplied for convenience or to satisfy a need, as lodging, food and services or seat, berth or other space occupied together with service available. Webster's Seventh New Collegiate Dictionary. The word "Accommodation" is regularly used in connection with markets in the sense of space or room. Brackenborough vs. Spalding Urban District Council (1942) AC 310 HLr"

16. In Chambers Twentieth Century Dictionary (1972 Edition), the meaning of the word, "Accommodation" is as under:

"Accommodation", adaptation, adjustment, esp. of the eye to change of distance; wresting of language to a sense not intended, obligingness; settlement or compromise; supplying of wants (esp. housing of refreshment); a help towards satisfaction of a want; a convenience; lodging quarters (sometimes pi.); space for what is required; adaptation of revelation by way of compromise with human ignorance or weakness; a loan of money."

17. It is from amongst the various meanings of the word "accommodation" that we have to ascribe appropriate meaning to the said word as used in section 2 of the Accommodation Act. However, it is well settled that in selecting one of the meanings of a word used in a Statute, regard must be had to be context in which the word is used because it is fundamental rule that the meanings of words and expressions must take their colour from the context in which they appear, See :

Pandit Ram Narain Vs. The State of Uttar Pradesh and Others,

Mangoo Singh Vs. The Election Tribunal, Bareilly and Others,

Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey and Others,

Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri,

R.S. Nayak Vs. A.R. Antulay,

18. It has then to be seen that when the question arises as to the meaning of a particular provision of a statute, it is not only proper to read that provision in its content but the context here means the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the Statute and mischief that it was intended to remedy (see the judgment of Viscount Simonds, J. in A.G.V.H.R.H. Prince Augustus, (1957) 1 All.E.R. 49 (HL) p. 53. Lord Somervell in his judgment in the above case has quoted with approval the observations of Sir John Nicholl M. R. in Vrett vs. Brett, (4) (1826) 3 Add. 210 at p. 216 to the effect that the key to opening of every law is the reason and the spirit of the law -- it is animus imponentis, the intention of law maker, expressed in the law itself, taken as a whole which would mean that to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from its context., meaning thereby the title as well as the preamble as the enacting part of the statute. The Supreme Court has also expressed in similar terms in Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, See also K. Balakrishna Rao and Others Vs. Haji Abdulla Sait and Others,

19. In construing section 2 of the Accommodation Act and in particular, in ascertaining the meaning of the word "accommodation" understood in its proper context, it will be useful to derive assistance from the rule of construction known as "mischief rule" as propounded originally in Heydon's case, (1584) 3 Co. Rep. 7 at p. 76. The said rule is also known as rule of purposive construction. The mischief rule requires four matters to be taken into consideration viz.:

- i) What was the law before the making of the Act.
- ii) What was the mischief or defect for which the law did not provide.
- iii) What is the remedy that the Act has provided.
- iv) What is the reason of the remedy.

It is then the function of the Court to make such construction which will suppress the mischief and advance the remedy according to the true intent of the makers of the Act, *pro bono publico*.

The above mischief rule or rule of purposive construction is firmly established in India by several decisions of the Supreme Court. See:

The Bengal Immunity Company Limited Vs. The State of Bihar and Others,

R.M.D. Chamarbaugwalla Vs. The Union of India (UOI),

The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi,

Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others,

Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another,

N.K. Jain and others Vs. C.K. Shah and others, It is pertinent to see that the Accommodation Act is a piece of social legislation and therefore all the more requires purposive construction.

20. The next question Which needs consideration is whether the legislative history of an enactment, the objects and reasons appended to its Bill, and the speech of the mover of the Bill can be looked into in construing a statute. The strict rule of exclusion of legislative history enunciated by the English Courts and followed by the Supreme Court in its early decisions, for instance in *A.K. Gopalan Vs. The State of Madras*, and *State of Trav. Cochin vs. Bombay Co. Ltd.*, AIR 1952 SC 365 at p. 369 has been watered down in the later decisions of the Supreme Court in which it is held that the legislative history within circumspect limits can be relied upon to resolve ambiguities. See *State of Mysore Vs. R.V. Bidap*, *Fagu Shaw and Others Vs. The State of West Bengal*, *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, and *R.S. Nayak Vs. A.R. Antulay*, Even in early case of *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, *Fazal Ali, J.* allowed parliamentary history including the speech of the Minister introducing the bill as evidence of the "circumstances which necessitated" the passing of the Act. See also *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, *State of Gujarat vs. Shamlal Mohanlal*, AIR 1965 SC 1251 at p. 1257 *Narendra Kumar Maheshwari Vs. Union of India (UOI) and Others*, Even in English Courts *Lord Dennings Saganate Investment Ltd. vs. Norwich Corporation*, 1971 (3) WLR 133 (CA)p. 737dissentedfrom the view that the Court should have no regard to the legislative history of an enactment in construing it. *Lord Simon's speech in Black Clawson's case*, (1975) 1 AU.E.R.

816 (HL) at p. 847md the judgment of the House of Lords in *Pothergill vs. Monarch Air Lines Ltd.*, (1980) 2 All.E.R. 696 (HL) show that there is shift in favour of liberal use of legislative materials in construing an enactment.

21. Although there may be divergence of views on the question whether the legislative material such as the legislative history, the speech of the mover of the Bill and its objects and reasons can be used for resolving ambiguities in an enactment, it is well settled that such legislative material can be used for understanding the object intended to be achieved by the Act and the mischief it sought to cure. As regards the speech of the Minister introducing the Bill it is held by the Supreme Court in *State of Madhya Pradesh and Another Vs. Dadabhoy's New Chirimiri Ponri Hill Colliery Co. Pvt. Ltd.*, that it can be relied upon to find out the object intended to be achieved by the Act. See also in this regard the case of *Union of India (UOI) Vs. The Steel Stock Holders Syndicate Poona*, in which the speech of the mover of the Bill and the objects and reasons were relied upon to find out the object of the Amending Act 29 of 1961 which amended the Railways Act, 1890.

22. As regards the reference to the objects and reasons as an external aid to construction *S. R. Das, J.* in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, held that although in view of the judgment of the Supreme Court in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, he cannot refer to the statement of objects and reasons for construing the Statute, it can still be used for the limited purpose of ascertaining the conditions prevailing at the time which led to the introduction of the Bill and for the purpose determining the extent and urgency of the evil which is sought to be remedied. Perusal of the above judgment would however show that the statement of objects and reasons is actually relied upon in the said case to determine the reasonableness of the restriction imposed by the impugned Act upon the fundamental right under the then Article 19(1) of the Constitution. Be that as it may, it is well settled that it is permissible to refer to the statement of objects and reasons for understanding the background the antecedent state of affairs i.e. the factual matrix, the surrounding circumstances in relation to the statute and the evil which it sought to remedy. See in this regard the recent judgment of the Supreme Court in *Shashikant Laxman Kale vs. Union of India*, AIR 1990 SC 2114 para 16. It is thus necessary to appreciate in the instant case the setting in which the Accommodation Act was enacted.

23. In the light of the above interpretative principles turning to the legislative history of the Rent Control Legislation in India it shows that the Legislative notice of shortage of accommodation was for the first time taken in India after the First World War when for the purpose of mitigating hardship resulting from scarcity of houses, the Bombay Rent (War Restriction) Act, 1918; and the Calcutta Rent Act, 1920 were enacted. War again broke out in 1939. During this Second World War there was again shortage of accommodation and owners of the houses tried to take advantage of the situation by obtaining high rents for the accommodation

owned by them. In order to check the problem of shortage of accommodation and the exploitation by the landlords of the tenants by charging higher rent for their houses due to scarcity of the accommodation which situation arose because of migration of the large rural population to the towns and the cities as a result of War conditions, the Defence of India Rules which were issued during the War conditions contained Rule 81(2)(bb) to check the propensity of the said problem.

24. Rule 81(2)(bb) of Defence of India Rules is as follows :

The Central Government (or the Provincial Government) so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the War, or for maintaining supplies and services essential to the life of the community may by order provide--

(bb) for regulating the letting and sub-letting of any accommodation, or class of accommodation whether residential or non-residential, whether furnished or unfurnished and whether with or without board, and in particular,

i) for controlling the rents for such accommodation either generally or when let to specified persons or classes of persons or in specified circumstances."

25. In pursuance of the aforesaid rule 81 (2)(bb) of the Defence of India Rules, the erstwhile Province of C. P. and Berar which was afterwards known as the State of Madhya Pradesh of which Vidarbha Region of the present State of Maharashtra was a part promulgated C. P. and Berar Letting of Houses and Rent Control Order, 1942 to regulate the letting of houses and the house rents. Although, the Second World War was over, the conditions created by the War still persisted and the continuance of the Rent Control measures was, therefore, necessary. The Defence of India Rules were to lapse by the end of September, 1946 as a result of which the aforesaid Rent Control Order, 1942 would have also lapsed. The Provincial Government of the then C. P. and Berar felt that it was urgently necessary to undertake the legislation to regulate the letting of houses and house rents in the abnormal situation created by War. The Bill No. 7 of 1946 to enact the Accommodation Act was therefore immediately introduced by it on 19-9-1946 in the Provincial Legislative Assembly which passed the Accommodation Act hurriedly on 20-9-1946. The Accommodation Act became law in the then Province of C. P. and Berar when it came into force after the receipt of the assent of the Governor General in Council on 28th September, 1946 and after its first publication in the Government Gazette Extraordinary on 1st October, 1946.

26. The Statement of Objects and Reasons for enactment of the Accommodation Act as appended to its Bill is as follows:

The influx of a large population to towns as result of War conditions necessitated the promulgation of the Central Provinces and Berar House Rent Control Order, 1942, under the Defence of India Rules. The Defence of India Rules will lapse at the end of September 1946. The abnormal conditions created

by the War still persist and are not likely to subside for some time. Rent Control measures will, therefore, continue to be necessary and Government proposes to take powers for regulating house rents in Urban areas by new legislation. It is proposed to keep the law in operation for a limited period of three years. If normal conditions return earlier, steps will be taken to repeal it."

27. The speech of the Hon'ble Minister for Food, Shri R. K. Patil who introduced the bill in the Provincial Assembly (see C. P. and Berar Assembly Proceedings, Vol. II, pp. 514-515 and 557-558) shows that the bill was intended to regulate the letting and sub-letting of accommodation in houses and house rents because due to migration of the rural people to the towns there was shortage of house accommodation in towns because of which the landlords were charging exorbitant rents for their house-premises as under the ordinary law of contract (here was no restriction prohibiting them from doing so. Similarly, the Bill was intended to protect the landlords also from the tenants not paying the rents. It also shows that the Rent Control Legislation which was earlier introduced as per the Rent Control Order, 1942 was intended to be continued with certain appropriate modifications.

28. Perusal of the legislative history, the Statements of Objects and Reasons as well as the speech of the mover of the Bill would indicate the problems which the provincial Legislature wanted to resolve by enacting the Accommodation Act. It is clear that the conditions which prevailed at the time necessitating the enactment of the Accommodation Act were that there was influx of a large population to towns as a result of War conditions which had already necessitated the promulgation of the Rent Control Order, 1942 under the Defence of India Rules which also took legislative notice of such problems. The abnormal conditions created by the War still persisted and, therefore continuance of the Rent Control Measures was felt necessary by the Provincial Government of the then C. P. and Berar for which the bill to enact the Accommodation Act was introduced in the Provincial Legislative Assembly. It is further clear from the above legislative material that the Government proposed to take powers to issue orders for regulating letting and sub-letting of house accommodation and house rents in urban areas as was done in the Rent Control Order, 1942 issued under the Defence of India Rules. It is pertinent to see that the above Rent Control Order, 1942 was applicable to house accommodation and not to open sites. It then appears from the objects and reasons as well as section 1(3) of the Accommodation Act that it was intended to be a temporary legislation till the continuance of the abnormal conditions created by War although in point of fact, it has continued for all these years upto now in Vidarbha Region.

29. After having thus referred to the above legislative material to see in what context the word "accommodation" is used in section 2 of the Accommodation Act, viz. circumstances, necessitating its enactment and the mischief it sought to cure, we turn to the intrinsic material provided by section 2 of the said Act itself for ascribing appropriate meaning to the word "accommodation" used in the said

section. The expression "accommodation" or "class of accommodation" used u/s 2 of the Accommodation Act is qualified by words "whether residential or non-residential, whether furnished or unfurnished, and whether with or without board..." The above qualifying words in our view, contemplate some sort of structure constructed by the land-owner without which there is no question of its use for residential or non-residential purpose or of furnishing or not furnishing or of supply or non-supply of food.

30. Considered thus in the light of the above legislative material including the intrinsic material provided by section 2 of the Accommodation Act itself, the contextual meaning which can be put upon the word "accommodation" out of several dictionary meanings referred to by us above can only be lodging or living premises. To put it in other words, it would mean a building or a part of building or any sort of structure constructed by the landowner which can be let out for residential or non-residential purposes.

31. Our aforesaid view stands reinforced if we look to the further development in the Rent Control legislation in the State of Madhya Pradesh of which Vidarbha Region was a part prior to reorganisation of States in 1956. As we have shown above it is in the erstwhile Province of C. P. and Berar (later on named as the State of Madhya Pradesh) that the Rent Control Order, 1942 was issued by the Provincial Government under the Defence of India Rules and thereafter when the said rules lapsed the said Provincial Government enacted the Accommodation Act under which the Rent Control Order, 1947 replaced thereafter by the Rent Control Order, 1949 were issued. After reorganisation of States in 1956, the Accommodation Act and the Rent Control Order, 1949 continued to apply in the part of the new State of Madhya Pradesh which was formerly in the old State of Madhya Pradesh as also in the Vidarbha Region which became part of the new State of Bombay. Although the said Rent Control Law still continues to apply in the Vidarbha Region, in the new State of Madhya Pradesh where in different regions of the State, different Rent Control Laws were in force, a common enactment viz. Madhya Bharat Accommodation Control Act, 1955 was made applicable in the whole State from 1st January, 1959 by the M. P. Extension of Laws Act, 1958 which renamed it as Madhya Pradesh Accommodation Control Act, 1955. The said Act was thereafter replaced by the M. P. Accommodation Control Act, 1961 with effect from 30-12-1961.

32. It is worthwhile to see the definition of the word "accommodation" given in clause (a) of section 2 of the aforesaid M. P. Accommodation Act, 1961. The said definition is as follows:

"Accommodation" means any building or part of a building, whether residential or non-residential and includes -

(i) any land which is not being used for agricultural purposes;

(ii) garden, grounds, garages and outhouses if any. appurtenant to such building or part of the building; R.-F..S0

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

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

33. Perusal of the above definition shows what the word "accommodation" means and it then proceeds to include additional subjects in the said definition. It is well settled that an inclusive clause is usually intended to extend the normal meaning of the word or the expression defined in the Act. It is, therefore, pertinent to see that if the normal meaning or the natural import of the word "accommodation" were to mean also the open land or site without any structure thereon, it would not have been necessary to include the same separately in the inclusive clause in the definition of the said expression given in section 2(a) of the M. P. Accommodation Act, 1961 reproduced above. When it is specifically so included, it would show not only that the ordinary connotation of the word "accommodation" does not include it within its fold but also show that the previous Rent Control Legislation in the old State of Madhya Pradesh was not applicable to the open sites because the Accommodation Act used the word "accommodation" in section 2 thereof, which word was not artificially defined under the said Act and thus did not in its ordinary meaning include the open sites.

34. The meaning of the word "accommodation" used in section 2 of the Accommodation Act has been considered by this Court in the case of Vasant Narayan Pihulkar vs. Sumanbai Laxman Mairaland others, 1987 Mh.L.J. 202. in the context of the challenge to the provisions of the Rent Control Order under Article 14 of the Constitution on the ground that whereas the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Bombay Act") was applicable to the open lands, the Rent Control Order in force in the Vidarbha Region of the State was not applicable to the same. In the context of the said challenge after considering the Scheme of the Accommodation Act u/s 2 of which as hereinbefore shown the Rent Control Order was issued in contrast to the Scheme of the Bombay Act, it has been held in the above case that the intention of the Accommodation Act was to regulate the letting and sub-letting of the house accommodation and not of the vacant lands.

35. The learned counsel for the respondents has however urged before us that the open site can be adapted for this use by the tenant residential or non-residential and therefore, it is "accommodation" within the dictionary meaning of the said expression. However, close reading of the definition of the said expression shows that the adaptation for user has to be by the person who gives accommodation and not by the person to whom the accommodation was given. The above submission is principally based upon one of the meanings of the expression "accommodation" given in Chambers 20th Century Dictionary.

35-A. It is material to see that one of the meanings given in Chambers 20th Century Dictionary (not in others) is "space for what is required". In order to

ascertain in what context the above meaning is ascribed to the expression "accommodation" we may usefully refer to its meaning given in words and phrases legally defined, Third Edition by Butterworths, Vol. 1 which indicates that when the word "accommodation" is used in connection with markets it denotes the sense of space or room required therefore as is held in the judgment of Lord Wright in the case of *Brackenborough vs. Spalding Urban District Council*. (1942) AC 310 at page 325. It is not therefore, possible for us to accept the above contention urged on behalf of the respondents that since by its adaptation by the tenant open land can be used by him for residential or non-residential purpose it is within the normal connotation of the word "accommodation" as is normally or popularly understood.

36. After thus ascertaining the meaning of the word "accommodation" it is clear that the said word denotes house accommodation, eg. building or part of the building or a sort of structure upon the land to which in its extended sense may be appurtenant the amenities or conveniences such as garden, grounds, outhouse and any furniture supplied by the landlord for use in such house accommodation. It is material to see that the above meaning of the word "accommodation" accords with the definition of the word "House" given in clause 2(3) of the Rent Control Order, 1949 prior to its deletion in 1989. The definition of the word "House" given in clause 2(3) of the Rent Control Order is reproduced below to show how it accords with the ordinary connotation of the word "accommodation":

"House" means a building or part of a building, whether residential or non-residential and includes --

(a) garden, grounds and outhouses (if any), appurtenant to such building or part of a building and;

(b) any furniture supplied by the landlord for use in such building or part of a building.

This has been the meaning attributed to the word * "accommodation" ever since the first Rent Control Order issued in 1942 under the then Defence of India Rule 81(2)(bb).

37. Once it is held that the word "accommodation" used in section 2 of the Accommodation Act, means house accommodation as described above, which can in its extended sense means "house" as defined in clause 2(3) of the Rent Control Order, 1949, section 2 of the Accommodation Act regulates by the general or special order issued by the State Government letting and sub-letting of such house accommodation and also the rents for such house accommodation. When the content of the power of the State Government u/s 2 of the Accommodation Act is thus restricted to the issuance of a general or special order for regulating letting and sub-letting of house accommodation, controlling house rents or other matters relating to house accommodation referred to therein, the application of Rent Control Order, 1949 to the open sites not used for

agricultural purposes by defining the expression "premises" and inserting it as clause 4(A) of the Rent Control Order by Clause 4 of the First Amendment Order, 1989 is clearly in excess of the powers conferred upon the State Government under the aforesaid section 2 of the Accommodation Act under which the State Government has exercised its power to issue the First Amendment Order, 1989. It is trite to say that a delegate must exercise his/its powers within the four corners of the delegation made to him/it and if he/it acts in excess of the powers delegated to him/it, his/its action is illegal, incompetent and unauthorised being ultra vires of the powers delegated to him/it.

38. We may observe that the dictionary meanings of the word "accommodation" and premises do not show that the said words can be used as inter-changeable, although in some respects their meanings may be similar. We have already reproduced the dictionary meaning of the word "accommodation," hereinbefore. We may usefully refer hereinbelow to the dictionary meaning of the word "Premises":

Wharton "s Law Lexicon.

Premises is often used as meaning land or houses.

Cochran"s Law Lexicon, IVth Edition.

Premises means houses or lands.

Black K C. Law Dictionary, IV Edition.

Premises as used in the estates means lands and tenements; an estate; land buildings thereon, the subject matter of the conveyance;

ii) a distinct and definite locality and may mean a room, especially building or other definite area;

Earl Jowitt Dictionary of English Law.

Premises includes meassuages, buildings, lands, easements, tenements and hereditaments of any tenure.

BallentineJ. A. Law Dictionary with Pronunciation, E Edition.

Premises applied to land.

Webster s New International Dictionary.

The property conveyed in a deed, hence in general, a piece of land or real estate, sometimes especially in fire insurance papers, a building or buildings on land; the premises insured. Chambers Twentieth Century Dictionary,

The matter set forth at the beginning of a Deed, the beginning of a deed setting forth its subject matter; the aforesaid, hence a building and its adjuncts, esp. a public house, a presupposition;

Oxford Reference Dictionary. a house or building with its grounds and appurtenances, the houses, lands or tenements, previously specified in a document etc.

39. The "premises" is a generic term meaning open land or land with buildings alone as also held by the Supreme Court in the case of *Ardeshir H. Bhiwandiwalla Vs. The State of Bombay*, It is normally used as 3 word of wide denotation. However, depending upon the context and the purposes of the Act, it is used in a restricted sense also. See for instance the definition of the said word given in section 2(b) of the *Delhi and Ajmer Merwara Rent Control Act, 1947* which definition does not include the open land simpliciter and also a room in *Dharmashala, Hotel or Lodging House*. Similarly in *Madras Municipalities and Local Boards Act*, the meaning of the said word is building with land adjacent to it which shows that the building is a necessary criterion, in the said definition. See *Public Prosecutor Vs. Rajanga Chetti and Others*,

40. Be that as it may, the expression * "Premises" is defined for application of the *Rent Control Order, 1949* to the same in clause, 4(A) inserted by clause 4 of the *First Amendment Order, 1989* and the said definition includes in clause (a), any land or site simpliciter i.e. without any building which is not used for agricultural purposes. The application of the *Rent Control Order* in respect of the said clause (a) i.e. the land or site simpliciter is beyond the purview of the powers of the State Government conferred u/s 2 of the *Accommodation Act* as hereinbefore shown.

41. The next question which arises for consideration is whether it is necessary to strike down in its entirety the *First and the Second Amendment Orders, 1989* since we have found that the provisions of the *Rent Control Order, 1949* which are sought to be made applicable to the "Premises" as defined in clause 4A thereof cannot be made applicable to the open lands or sites in the absence of the power to regulate in their regard letting and sub-letting rents and other matters enumerated in section 2 of the *Accommodation Act*. As already pointed out the *First Amendment Order, 1989* issued on 27-6-1989 deletes the definition of the word "house" given in clause 2(3) of the *Rent Control Order* and introduces instead the definition of the word "Premises" as clause 4-A thereof. It also provides that wherever the expression house is used in the *Rent Control Order* including its title, the expression "premises" should be substituted for the said word. Perusal of the definition of the expression "Premises" given in clause 4-A shows that it is in sub-clause (a) thereof that the meaning given to the said expression is "any land" not being used for agricultural purposes which as per our view taken above needs to be struck down because the said meaning does not accord with the meaning of the word accommodation as hereinbefore shown and therefore, regulation of open land or site thereby under the *Rent Control Order* is impermissible and illegal as the State Government is not empowered to do so u/s 2 of the *Accommodation Act*. However, in clause (b) the meaning given to the said expression is building or part of a building and then follows the

inclusive clauses therein. As hereinbefore shown the meaning given to the said expression "premises" from sub-clause (b) onwards accords with the meaning of the word "accommodation" and its regulation as per the Rent Control Order is within the four corners of the power conferred upon the State Government u/s 2 of the Accommodation Act.

42. The principle of severability is a well known device adopted by the Courts to save the enactment from being struck down in its entirety on finding a portion thereof to be invalid. The said principle of severability is exhaustively considered by the Supreme Court in the case of *R. M. D. Chamarbaugwalla vs. Union of India*, AIR 1957 SC 62 8 cited supra in regard to "mischief Rule" and/or "purposive construction." After considering the case law on the subject, Venkatarama Aiyar, J. in para 22 of the report summarised the tests to determine whether the invalid portion of an enactment of a provision of law can be separated from the valid portion and if so done whether the valid portion can be enforced looking to the scheme of the enactment. See principles enumerated in paras 2 and 3 of the said para 22 of the report.

42-A. Applying the above test of severability in the instant case, it is clear that sub-clause (a) of clause 4A i.e. the definition of the expression "Premises" which is invalid is distinct and separable from the rest of the definition of the said expression which as hereinbefore shown is valid. The said definition of the expression "premises" in clause 4A can be read smoothly without doing any violence to its language, meaning and Scheme even after deleting clause (a) thereof and the application of the Rent Control Order to the same is within the four corners of the power of the State Government u/s 2 of the Accommodation Act as shown above. Sub-clause (a) of clause 4A of the Rent Control Order which is invalid can therefore be deleted by us applying the test of severability and the Rent Control Order can be validly enforced in regard to the subject matter covered by the remaining portion of the said definition clause of the expression "Premises."

43. We now turn to the question of validity of clause 13-A introduced in the Principal Rent Control Order by the Second Amendment Order, 1989 issued on 26-10-1989. Clause 13-A provides that 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 Rent Controller as required by sub-clause (A) of clause 13. It is obvious that this clause 13-A inserted by Amendment, which requires the landlord to produce in the suit proceeding for eviction pending against the tenant, the written permission of the Rent Controller as provided in clause 13(1) of the Rent Control Order is intended to apply to the leases in respect of open sites which were for the first time sought to be regulated by the Rent Controller by including the open sites within the definition of the expression "premises" introduced in the Rent Control Order as clause 4A by clause 4 of the First Amendment Order, 1989. It may be seen that as regards the rest of the definition of the expression

"premises" the leases or sub-leases of the subject matter therein were already regulated by the Rent Control Order since the said portion of the aforesaid definition clause of the expression "premises" is *pari materia* with the definition of the word "house" originally used in the Rent Control Order for regulation of leases or sub-leases thereof. Since, we have held that there is no power to the State Government under the Accommodation Act to regulate letting and sub-letting of the open sites, clause 13-A is redundant because the purpose for which it is enacted no more exists. It is *protanto* invalid. Hence, the said clause 13-A needs to be struck down in so far as it is an integral part of the application of the Rent Control Order to open sites.

44. In the light of the view which we have taken and since we have struck down clause 13-A *protanto* with respect to the open sites, the reference made about the interpretation of clause 13-A in Civil Revision Application No. 774/1989 does not survive for consideration.

45. Since, we have held that the application of the provisions of the Rent Control Order to the open sites is beyond the power of the State Government u/s 2 of the Accommodation Act, it is not necessary for us to consider the question raised on behalf of the petitioner viz. as to whether clause 13-A introduced by the Second Amendment Order, 1989 has any retrospective effect.

46. Shri Mehadia, the learned counsel appearing for the applicant in Civil Revision Application No. 774/89 has urged before us that making the provisions to include licence within the meaning of the definition of the expression "premises" is also illegal and beyond the power of the State Government u/s 2 of the Accommodation Act. However, the said question is not raised by the petitioner in the instant Writ Petition No. 540/91 and it is not therefore necessary for us to consider the same.

47. In the result, the instant Writ Petition No. 540/1991 is allowed. Sub-clause (a) of clause 4(A) 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 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 are struck down. Rule is made absolute in the above terms. There shall be no order as to costs.

In the light of the above view which we have taken in Writ Petition No. 540/91, Civil Revision-Application No. 774 of 1989, Second Appeal No. 42 of 1992 and Second Appeal No. 46 of 1992 be now placed before the Appropriate Bench for disposal in accordance with law.