

(1970) 08 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No. 795 of 1967

Ramcharan Ramdin Ahir

APPELLANT

Vs

Resident Deputy Collector with Rent Control Appellate
Powers, Yeotmal and Others

RESPONDENT

Date of Decision : 08-08-1970

Acts Referred:

Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 —
Section 1(3), 2
Constitution of India, 1950 — Article 14, 19, 19(1), 19(5), 31
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1971 Bom 203 : (1970) MhLj 975

Hon'ble Judges : Padhye, J

Bench : Single Bench

Advocate : J.N. Chandurkar, for the Appellant; C.S. Dharmadhikari, A.G.P. for Advocate-General and K.G. Chendke, for the Respondent

Judgement

1. This petition raises an important question regarding the validity of Clause 13(3) (vi) of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949. This Order has been made by the State Government in exercise of the power conferred upon it by Section 2 of the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 (No. XI of 1946). Section 2 of the said Act provides as under-

"The State Government may by general or special order which shall extend to such areas as the State 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 classes 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."

The circumstances in which this petition arises are these:

The respondent No. 3 is the owner of house No. 1 in Ward No. 3 at Digras, taluq Darwha in Yeotmal District and the petitioner has been the tenant thereof for the last several years. The respondent No. 3 is a widow and has been staying with her son-in-law who is in Government service. A portion of the house in question is vacant and is in possession of the respondent No. 3. Another portion of the house is in occupation of another tenant Pande. The respondent No. 3 filed an application before the Rent Controller for permission to give notice to the petitioner determining his lease stating that she required the portion in the occupation of the petitioner for her bona fide residence. The petitioner challenged the need of the respondent No. 3 for her bona fide residence. It was urged that the respondent No. 3 owned two other houses in Digras and she could occupy those houses if she really needed any accommodation. It was also urged that she in fact was residing with her son-in-law who goes on transfer from place to place and does not need any accommodation in the portion of the house occupied by the petitioner. It was further alleged that a part of the house in which the petitioner is staying is in the occupation of the respondent No. 3 and she has already secured an order against the other tenant Pande.

2. The Rent Controller found that the respondent No. 3 needed additional accommodation and granted permission to her under Clause 13(3)(vi) of the Rent Control Order. The petitioner filed an appeal against the order of the Rent Controller before the Resident Deputy Collector. The Resident Deputy Collector found that the respondent No. 3 needed the portion in the occupation of the petitioner for her bona fide residence and dismissed the appeal. The orders of the Rent Control authorities are challenged by the petitioner by this petition.

3. The finding that a portion of the house, namely one room is in occupation of the respondent No. 3 would non-suit the respondent No. 3 in view of the recent Full Bench decision of this Court in Eknath Bhanudas Utane Vs. Shankarrao Deorao Jumde and Another, . On the interpretation of Clause 13(3)(vi) of the Rent Control Order, the Full Bench has taken a view that if the landlord is in occupation of another house of his own in the city or town, concerned, or is in occupation of a part of the house, in respect of the other part of which permission is sought by the landlord, the landlord cannot maintain an application for permission under Clause 13(3)(vi) of the Rent Control Order even if the portion of the house in the occupation of the landlord may be insufficient or inadequate for his need. The constitution of the Full Bench was necessitated on account of a conflict of decisions of this Court on this question. In Motilal

Shankar v. Deputy Collector, Wardha. Special Civil Appln. No. 119 of 1961, D/- 9-2-1962 (Bom), which was a Division Bench case, it was held on the interpretation of Clause 13(3)(vi) of the Rent Control Order that since the landlord was occupying a portion of the house, whether the accommodation was adequate or inadequate, he was not entitled to claim permission under item (vi) of Clause 13(3) of the Rent Control Order. Another Division Bench of this Court in Abdul Latif v. D.R. Jaodekar, Deputy Collector, Yeotmal. Special Civil Appln. No. 284 of 1959, D/- 2-2-1960, which is reported in 1960 Nag LJ 130, took a different view. In that case as a result of the partition between the members of the family two houses fell to the share of the landlord. Out of them one was in the occupation of the landlord and the other was in the occupation of the tenant. The house which was occupied by the landlord was a small house and there was no separate bath-room or latrine attached to the house in the occupation of the landlord when as compared with the house in the occupation of the tenant, it was more specious, it had a latrine, kitchen and a temporary bath-room attached to it. On this finding the Rent Controller reached a conclusion that the landlord needed the house in the occupation of the tenant for the purpose of his bona fide residence, but in view of the fact that the landlord was already in occupation of another house of his own, the proviso to Clause 13(3)(vi) debarred him from claiming the relief. The Division Bench in this case, observed that whether the premises in the occupation of the landlord are suitable for being used as a residential house as well as the adequacy of the accommodation afforded must enter into the judicial verdict in ascertaining whether the landlord is in occupation of a residential house within the meaning of the proviso to Clause 13(3)(vi). It was held that if it could be established that the accommodation presently with him is not suitable or adequate and he needs more accommodation for his needs, then permission can be granted to him under Clause 13(3)(vi) of the Rent Control Order. This decision took note of the earlier Division Bench decision of this Court in Kisanlal Radhakisan v. Liladhar Daulatram. Special Civil Appln. No. 406 of 1958, D/- 3-7-1959, which is reported in 1959 Nag LJ 99 and a decision of the then Nagpur High Court in Misc. Petn. No. 291 of 1952, D/- 27-2-1953 (Nag). The Full Bench, however, declined to accept the view taken in 1960 Nag LJ 130 and preferred to agree with the view taken in Special Civil Appln. No. 406 of 1958 (Nag) and Special Civil Appln. No. 119 of 1961 (Bom) of this Court and of the Madras High Court in Dr. Mohammad Ibrahim Vs. Syed Ahmed Khan and Another, .

4. Faced with this difficulty, the respondent No. 3 has now challenged the validity of Clause 13(3)(vi) itself on several grounds. It has been contended that Clause 13(3)(vi) of the C.P. and Berar Letting of Houses and Rent Control Order, 1949 will be invalid as in contravention of the fundamental rights guaranteed to the citizens under Article 19(1)(f) of the Constitution as an unreasonable restriction on those rights. It has also been challenged on the ground that the clause as construed by the Full Bench would be highly discriminatory as denying the equality before law or equal protection of the law to persons owning house

properties in the towns or cities to which the Rent Control Order is made applicable. It is further urged that the clause as construed by the Full Bench could amount to its being a confiscatory measure depriving persons of property without any reasonable ground and without any adequate compensation and also not serving any rational public purpose, and therefore, would be void under Article 19(1)(f) and Articles 14 and 31 of the Constitution. It was also urged that the Full Bench decision is itself erroneous and requires reconsideration for the further reasons that while construing a statute where there were two possible constructions, the one which will lead to invalidity of the provisions should be avoided. It is, therefore, incumbent on the Full Bench to put such construction on this clause so as not to make it invalid as contravening the fundamental rights guaranteed under Article 19(1)(f) of the Constitution. It was urged that while construing Clause 13(3)(vi), the Full Bench did not take into consideration this aspect of the matter.

5. Besides this petition, there were several other petitions before me which also raised questions not only regarding the validity of Clause 13(3)(vi) of the Rent Control Order, but also regarding the validity of the Rent Control Order, itself as in violation of Article 14 of the Constitution on the ground that the Legislature by Section 2 of the C.P. and Berar Regulation of Letting of Accommodation Act, 1946 gave a blanket power to the State Government and thus abdicated its function by giving to the State Government uncontrolled and unguarded authority in the matter of regulating letting and sub-letting of accommodation. It is contended that Section 2 of the Act No. XI of 1946 was itself bad on the ground of a piece of delegated legislation giving uncontrolled power to Government to make substantive law with regard to the landlord and tenant and there are no guidelines provided in the Act. It is further contended that the real legislation for letting and sub-letting of accommodation is in fact in the Rent Control Order which was never presented before the Governor-General for his assent and this vice was still continuing. The Act originally was for a period of one year. By Act No. 39 of 1947, Sub-section (3) of Section 1 of the Act has been amended and the amended provisions now provide that the Act shall cease to operate on such date as the State Government may, by notification, appoint in this behalf. It is urged that in this respect also the Legislature has abdicated its function and has left it to the sole arbitrary discretion of the State Government to continue or discontinue the operation of the Act by issuing a notification in that behalf. It is, therefore, contended that the said amendment is ultra vires being in violation of Article 14 of the Constitution and if the present Section 1(3) of the Act is void, then the Act itself ceased to be in existence and the Rent Control Order made under this Act itself becomes non-existent. It was also urged that in the Rent Control Order important radical changes have been made after coming into force of the Constitution for example, in Clause 13(3)(vi) itself the requirement for "bona fide residence" has been changed into one of "bona fide occupation" and further under the old clause whereas the landlord was not entitled to get permission in respect of a house let out to a tenant if he was occupying any

other residential house of his own in the city or town concerned, by virtue of the amendment he cannot get such permission even if he is occupying a house which is not residential. According to the landlords these important changes are changes in the substantive law itself and can be done only with the assent of the Governor-General prior to the Constitution and now by the President and on that ground also the whole Rent Control Order is bad. Common argument was advanced on behalf of the landlords by Mr. M.N. Phadke who argued the case of the landlords on these various points which have been referred to above. On behalf of the tenants the case was argued mainly by the counsel for the State Mr. C.S. Dharmadhikari, Assistant Government Pleader. He was also appearing for the Advocate-General to whom a notice was issued as vires of the C.P. and Berar Regulation of Letting of Accommodation Act, 1946 and Rent Control Order, 1949 were challenged. Messrs Talukdar, Ranade and Moonje also supplemented the arguments on behalf of the tenants. I shall first take up the question regarding the validity of Clause 13(3)(vi) of the Rent Control Order in relation to Article 19(1)(f) of the Constitution.

6. It is well settled as is laid down in *Saghir Ahmad Vs. The State of U.P. and Others*, , that there is a presumption in favour of the constitutionality of a legislation. At the same time when the enactment on the face of it is found to violate a fundamental right guaranteed under Article 19(1) of the Constitution, it must be held to be invalid unless those who support the legislation can bring it within the purview of the exception laid down in Clause (3) of the Article. In a recent case of the Supreme Court in *Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others*, the same principle has been reiterated and it has been held that when an enactment is found to infringe any of the fundamental rights guaranteed under Article 19(1), it must be held to be invalid unless those who support it can bring it under the protective provisions of Clause (2) to (6) of that Article. To do so, the burden is on those who seek that protection and not on the citizen to show that the restrictive enactment is invalid. This Court in *State v. Balwant Ganpati* 1961 Nag LJ 83, accepted the principle that the Court must try to interpret the provisions of the Act as far as that is possible on the presumption that the provisions are in conformity with the Constitution. It has also accepted the principle that the Legislature must be presumed to have known its own limitations and to have intended to enact only such laws as are within its competence. Without doubt Article 19(1)(f) of the Constitution guarantees to all citizens the right to acquire, hold and dispose of property. An owner of the house, therefore, has a right to possess or occupy his own house and to the enjoyment of his house. If a legislation curtails such a right of occupation or enjoyment or interferes with it, then though the law may otherwise be good and laudable, it on the face of it violates the right guaranteed to a citizen who owns a house. A legislation which denies to the owner of the house which is occupied by a tenant the use and occupation of that house whenever he wants it would be on the face of it violative of the guarantee given under Article 19(1)(f) of the Constitution, and would be unconstitutional unless the Act is saved by bringing it

within the exceptions permissible under the Constitution. It is no doubt true that the fundamental right guaranteed under Article 19(1)(f) of the Constitution is not absolute and can be hedged in by putting restrictions on the exercise of that fundamental right and that has been done by Clause (5) of Article 19 which provides that the State can make any law imposing reasonable restrictions on the exercise of the right conferred by Article 19(1)(f) in the interests of the general public. The restrictions on the exercise of the right conferred by Article 19(1)(f) by any law of the State must be reasonable and they must be in the interest of the general public. Unless these two conditions are satisfied, the law cannot be said to be constitutional or valid.

7. When the constitutionality of an Act of Legislature is challenged a mere literary or mechanical construction would not be appropriate where important questions such as the impact of an exercise of a legislative power on constitutional provisions and safeguards thereunder are concerned, as laid down by the Supreme Court in *Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others*, . In cases of such a kind, two rules of construction have to be kept in mind: (1) that Courts generally lean towards the constitutionality of a legislative measure impugned before them upon the presumption that a legislature would not deliberately flout a constitutional safeguard or right and (2) that while construing such an enactment the Court must examine the object and the purpose of the impugned Act, the mischief it seeks to prevent and ascertain from such factors its true scope and meaning.

8. Another salutary principle laid down by the Supreme Court in *Jivabhai Purshottam Vs. Chhagan Karson and Others*, is that in case of a beneficent legislation meant for the protection of tenants, if there is any doubt about the meaning of any provision that doubt should be resolved in favour of the tenant for whose benefit the Act was passed. The validity of the provisions of Clause 13(3)(vi) of the Rent Control Order has, therefore, to be judged bearing in mind these principles which have been laid down from time to time by the highest authority of the land. There is no doubt that the C.P. and Berar Regulation of Letting of Accommodation Act, 1946 and the C.P. and Berar Letting of Houses and Rent Control Order, 1949 made under the authority of the said Act are pieces of beneficent legislation meant for the protection of the tenants and were made at the time when owing to the conditions prevailing after the termination of the Second World War there was acute shortage of houses in all parts of India and the measure was deemed necessary in order to give protection to the tenant who would have otherwise been thrown out on the slightest pretext or even without any pretext and would have been rendered homeless causing them untold misery. It is well-known that during the period of War and thereafter prices of all commodities were soaring high and rents of houses were no exception. Under the general law the landlord could terminate the lease of any tenant just by giving a notice in terms of Section 106 of the Transfer of Property Act and if the notice was technically valid there was practically no defence to the tenant in an action for ejectment against him. It must have come to the notice of the State

that for securing higher rents the landlords were evicting tenants from the houses which if permitted on a large scale would have caused tremendous misery to the tenant class. In order to prevent this mischief the State came with a legislation in the shape of C.P. and Berar Regulation of Letting of Accommodation Act, 1946 which was to be operative in the then State of Central Provinces and Berar which later was renamed as the State of Madhya Pradesh. The conditions prevailing at that time made it necessary for the State to provide for regulating the letting and sub-letting of accommodation and other ancillary matters which consisted of controlling the rents, preventing eviction of tenants or sub-tenants, requiring accommodation to be let either generally or to specified circumstances and collecting any information or statistics with a view to regulating any of the aforesaid matters. The conditions which were created by the Second World War were not expected to last indefinitely and the Bill which was proposed in this direction expected the situation to last for about a period of three years. It was for this reason that the Bill originally proposed that the life of the Act should be for a period of 3 years, that is, it was to be a temporary Act for a specified period, namely, 3 years. The Legislature which passed the Bill and enacted the law, however, did not consider at that time that the situation would last for long and, therefore, while enacting Sub-section (3) of Section 1, the Legislature provided that the Act would be operative for a period of one year from the date from which the Act was to be brought into effect by means of a Notification issued by the State Government. It appears that the conditions which prompted the Legislature to enact the law for a period of one year only did not improve and the Legislature could not guess as to how long those conditions would continue and therefore, amended Sub-section (3) of Section 1 by Act No. XXXIX of 1947, which provided that the operation of the Act would continue till such date as the State Government thought it fit to continue. The right to determine as to how long the operation of the Act was to continue was given to the State Government which was expected to make an assessment of the situation or the conditions from time to time for considering the desirability of continuing the Act. It was also left to the State Government to extend the operation of the Act to such area as it considered to be necessary, it was also left to the State Government to provide by general or special order for regulating the letting or sub-letting of accommodation or class of accommodation, whether residential or non-residential, whether furnished or unfurnished and whether with or without board and in particular, for controlling the rents for such accommodation either generally or when let to specified persons or classes of persons or in specified circumstances; for preventing the eviction of tenants or sub-tenants from such accommodation in specified circumstances; for requiring such accommodation to be let either generally, or to specified persons or classes of persons or in specified circumstances and for collecting any information or statistics with a view to regulating any of the aforesaid matters.

9. Clothed with this power, the State Government made an order known as the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949,

which contains Clause 13(3)(vi) which is the subject-matter of challenge in this petition. At the moment, I am not concerning myself with the validity of the Act itself or any of its provisions or the validity of the whole of the Rent Control Order as such or any of its clauses except Clause 13(3)(vi). The landlords in the various petitions have challenged the constitutional invalidity of the whole Act and the Order. If it is necessary to go to that extent, the challenge will have to be gone into, but it is not desirable that the Court should enter into the discussion about the validity of the whole legislation or the Orders made thereunder if it is not necessary to do so for the purpose of deciding the case or cases before it. It is also desirable that the determination should be confined only to the specific provision which has been challenged in the case or cases before the Court and it should not travel beyond what is necessary. In the several cases argued before me, the main challenge is to the provisions of Clause 13(3)(vi) of the Rent Control Order. The challenge to that clause is also on several grounds. If the challenge to that provision succeeds on any one ground it would not be necessary to consider the other grounds for determining that challenge. Likewise, if the challenge to that clause succeeds on any ground whatsoever, it would be unnecessary to go into the question of the validity of the Order as a whole or the Act as a whole or any of its provisions. It is only when one challenge fails, that it, may be necessary to deal with the other challenges in succession until all the challenges are dealt with. I am, therefore, confining myself initially to the challenge to Clause 13(3)(vi) of the Rent Control Order on the ground of its being violative of Article 19(1)(f) of the Constitution and, therefore, void.

10. Having noticed the principles laid down in construing the Act and having laid down the guidelines for approaching the question, I now proceed to examine the constitutional validity of Clause 13(3)(vi) of the Rent Control Order, 1949.

11. The Constitution enables the Legislature or the State to put on the fundamental rights of citizen guaranteed under Article 19(1)(f) of the Constitution reasonable restrictions in the interests of the general public. In dealing therefore, with the question whether the Act is within the limitations laid down by the Constitution the Court has to find out whether the restrictions are reasonable and that they are in the interests of the general public. The class of tenants who is intended to be benefited by the legislation is no doubt a section of the general public and any legislation in the interest of such class could be said to be in the interests of the general public. The question which then remains to be examined is whether the restrictions put on the rights of the landlords or the owners of the houses who are also a section of the general public and who are guaranteed the fundamental right to enjoy their property are reasonable or necessary. In order that a restriction must be reasonable, there must be shown a reasonable relation to the provisions of the Act to the purpose in view and unless that is done, the right of freedom to hold property cannot be curtailed by the legislation. As the Supreme Court has put it in *Chintaman Rao Vs. The State of Madhya Pradesh*, , the phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary

or of an excessive nature beyond what is required in the interests of the public. It has further been observed that the word "reasonable" implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 14 and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality. These observations apply equally to a case where the freedom guaranteed in Article 19(1)(f) is concerned and the social control permitted by Clause (5) of Article 19. That has been so held in *Abdul Hakim Quraishi and Others Vs. The State of Bihar*, . Several decisions of the Supreme Court have laid down the test of "reasonableness." The test of "reasonableness" wherever prescribed has to be applied to each individual statute impugned and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. As the Supreme Court has said in *State of Madras Vs. V.G. Row*, , the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict. Yet in another decision reported in *Arunachala Nadar v. State of Madras*, AIR 1956 SC 300, it has been held that in order to be reasonable, a restriction must have a rational relation to the object which the Legislature seeks to achieve and must not go in excess of that object. The same tests which were laid down in *State of Madras Vs. V.G. Row*, , have also been adopted in this decision. As said in *The Lord Krishna Sugar Mills Ltd. and Another Vs. The Union of India and Another*, , the Court in judging the reasonableness of a law has necessarily to see not only the surrounding circumstances but all contemporaneous legislation passed as part of a single scheme. The reasonableness of the restriction and not of the law has to be found out, and if restriction is under one law but countervailing advantages are created by another law passed as part of the same legislative plant, the Court should not refuse to take that other law into account. Another test to find out reasonableness of the restriction is laid down by the Supreme Court in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, . It is said that the criteria for determining the degree of restriction of the right to hold property which would be considered reasonable are by no means fixed or static, but must obviously vary from age to age and be related to the adjustments necessary to solve the problems which communities face from time to time. It is further laid down that where the legislature fulfils its purpose and enacts laws, which in its wisdom, is considered necessary for the solution of what after all is a very human problem the tests of "reasonableness" have to be viewed in the context of the issues which faced the Legislature. It is further held that in the construction of such laws and particularly in judging of their validity the Courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the Courts are not in these matters functioning as it were in vacuo, but as part of a society which is trying by

enacted law, to solve its problems and achieve social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole. These principles cannot be questioned and it is on the touch-stone of these decisions or criteria laid down by the Supreme Court from time to time that the question to be considered in these cases has to be viewed.

12. There can be no doubt that the right to hold property under Article 19(1)(f) of the Constitution included the right in the owner of the building to evict the tenant and enter into actual possession of the property. (See: Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi,). Clause 13(3)(vi) of the Rent Control Order, 1949, seeks to put restrictions on this right of the landlords. For upholding the validity of this clause, these restrictions have to be reasonable. Clause 13(3)(vi) in the original Rent Control Order of 1949 read as under:

"Clause 13(3)(vi): If after hearing the parties the Controller is satisfied-

that the landlord needs the house or a portion thereof for the purpose of his bona fide residence, provided he is not occupying any other residential house of his own in the city or town concerned;

He shall grant the landlord permission to give notice to determine the lease as required by Sub-clause (1)."

This clause has undergone an amendment and after its amendment by an order called the Central Provinces and Berar Letting of Houses and Rent Control (Amendment) Order, 1963 which came into force with effect from 20-7-63, the clause reads as under:

"Clause 13(3)(vi): If after hearing the parties the Controller is satisfied-

that the learned needs, the house or a portion thereof for the purpose of his bona fide occupation, provided he is not occupying any other house of his own in the city or town concerned."

13. Construction of this clause as it stands, at present came up for consideration before the Full Bench of this Court in Special Civil Appln. No. 229 of 1966, D/- 5-9-1969 = (reported in Eknath Bhanudas Utane Vs. Shankarrao Deorao Jumde and Another, . The question referred to the Full Bench was answered only on the construction of the said clause and the question regarding the constitutional validity of the said clause was not before the Full Bench. The reference to the Full Bench was made by me by an order dated 11th of January 1968 and the question referred was:

"If a landlord to whom provisions of C.P. and Berar Letting of Houses and Rent Control Order, 1949, are applicable occupies any other house of his own in the city or town concerned, or a portion of the house in respect of which permission is sought, is he debarred by the proviso to Clause 13(3)(vi) of the Rent Control Order to make "an application for permission to give notice determining the lease of the tenant, even though the accommodation with him is unsuitable or

inadequate and the landlord has a genuine need for the house in the occupation of the tenant."

The question referred as above was answered by the Full Bench in the affirmative with the effect that if the landlord is occupying any other house in the city or town concerned, even though that house may be hopelessly inadequate or unsuitable for his present needs, he cannot evict the tenant or tenants from his other house which may be suitable for satisfying his needs. The effect of the construction put by the Full Bench also is that if the landlord is occupying a portion of the house, the other portion of which has been let out to a tenant, he cannot ask for eviction of the tenant for his own occupation even though the accommodation with him may be utterly inadequate, insufficient or unsuitable. The further effect would be that if the house or a portion of the house in the landlord's occupation is being used for his bona fide residence and he wants the house or portion occupied by his tenant for, say running a business, for which purpose the house already occupied by him is unsuitable or insufficient, he would not be entitled to evict the tenant. This would also be so if the landlord is occupying house for non-residential purpose but wants the house occupied by the tenant for the purpose of his bona fide residence. The decision of the Full Bench is binding on me and the construction which the Full Bench has placed on the Clause 13(3)(vi), as it now stands, is not open to challenge. However, it is open to consider the question as to whether Clause 13(3)(vi) of the Rent Control Order, as construed by the Full Bench, is violative of the fundamental right guaranteed under Article 19(1)(f) of the Constitution and therefore, unconstitutional.

14. Now, I embark on the question of the reasonableness of the restrictions that have been put on the right of the landlords by the proviso to Clause 13(3)(vi) of the Rent Control Order, 1949.

15. The C.P. and Berar Regulation of Letting of Accommodation Act 1946 (No. XI of 1946) and the C.P. and Berar Letting of Houses and Rent Control Order, 1949, made in exercise of the powers conferred by Section 2 of that Act are applicable only to the eight districts of the Vidarbha Region in the State of Maharashtra. The conditions which were prevailing when the Act was made were not peculiar to the area comprised in the then State of Central Provinces and Berar and later Madhya Pradesh, but were generally prevailing in the whole of India. In all the States similar Acts in one form or the other have been enacted and are still continuing. In many of the Acts amendments have been made from time to time. A large part of the area that was once a part of C.P. and Berar has now been merged in the new State of Madhya Pradesh. To those areas also the provisions of this Act and the Order were applicable upto the Reorganization of States and some time after that. The new State of Madhya Pradesh has altered the provisions with respect to the restrictions on the enjoyment of his own house by the landlord. In similar Acts in almost all the States, there is to be found a provision that if the landlord even though he may be occupying a house of his

own or a portion of his house, needs an additional accommodation for his own occupation, he can be granted that additional accommodation by evicting the tenant from his other house or the other portion of the house. What is it then that is so special or peculiar with this area only to which the impugned Act and the Order apply that a landlord who genuinely needs a better and suitable accommodation or additional accommodation should not get such alternative or additional accommodation simply because he is already occupying a house of his own or a portion of his own house howsoever inadequate, insufficient or unsuitable it may be. No doubt the tenants are required to be protected and they also have a right in the property in the sense that they have got leasehold rights in the same, but it cannot be forgotten that the landlords who also form a section of the general public have also rights in their properties and their interests also need to be protected. While protecting the interests of one section of the public, it is natural that another section of the public is, to a certain extent, affected and their rights to some extent have to be curtailed. It must, however, be seen that such curtailment of the rights of the other section, namely, the landlords in this case, should not be too excessive or much in excess of what is necessary in the circumstances and must not cause a greater hardship on that section than what is really necessary. In no State have the restrictions of such magnitude been placed on the rights of the landlord. Nothing has been shown that the conditions in this area are so widely different from those in the rest of the country or even the rest of the State. If such a restriction on the right of the landlord to occupy and enjoy his own house which is more suitable for his needs than the one in which he is living or to get an additional accommodation from the other portion of the house under lease is not considered to be reasonable in the rest of the country, can it be said to be reasonable in this area alone, the conditions in which are not much different or worse than the conditions prevailing in the other parts of the country? The fact that the rest of the country does not consider such a restriction reasonable demonstrates that the restriction put by Clause 13(3)(vi) of the Rent Control Order is unreasonable in the absence of any special and peculiar circumstances relating to only this area.

16. Let us consider the matter more objectively. Let us take a case of landlord who at a given time may not require large accommodation and is satisfied with only a portion of the house. For example, the landlord is alone and single and is taking education in the City where he owns a house and for that purpose a room in the house may be sufficient for his needs at that time and he lets out the remaining portion of the house to a tenant. The C.P. and Berar Letting of the Accommodation Act has been now in operation for the last about 24 years and during this period the landlord completes his education, gets married, is doing a good business or is having a good service, gets also some children. The family thus has grown from one member to several members during the course of years. No one could say that the room which was sufficient or satiable for only one member would still be suitable for the larger family which the landlord now has. On the construction, which has been put on Clause 13(3)(vi) of the Rent

Control Order by the Full Bench, such a landlord, though his need is compelling and genuine, would not be able to get any more accommodation from the remaining portion of the house which is occupied by a tenant. What is he expected to do in such circumstances? Must he leave even that portion which he is occupying and go to the streets or leave the town itself? If that landlord is not a person holding office of profit or an employee of the Electricity Board or a displaced person or an evictee, which he is not, he cannot be allotted any house by the Rent Controller. He, in those circumstances will have either to seek for a house which is not governed by the Rent Control Order and pay an exorbitant rent which he may not afford to or leave the town or squat on somebody's land. Is such a hardship to the landlord commensurate with the purpose or object which is sought to be achieved by the impugned Act and the Order thereunder? Has it really any relation to the object? Compare this hardship with the so called hardship to the tenant. The tenant is occupying a large house which may have been necessary for accommodating his family then existing. In course of time the size of the family dwindles, for example, the daughters may go out by marriage, or the sons may go out for service or business and the family now is a small one for which the accommodation in the occupation of the tenant is too large by any standard. To meet such a case is there any Provision in the Rent Control Order that the tenant should be asked to vacate the portion which really is not necessary for his needs. Even in such a case if the tenant has got superfluous accommodation, whereas the landlord who is living in a portion of the same house has got a very inadequate accommodation even then he would not be able on the construction put by the Full Bench to get the superfluous accommodation from the tenant. Who is suffering in such cases greater hardship? An argument is advanced as to why the landlord should have at all let out the portion of the house. It is, however, forgotten that the landlord's need at that time was not as great as may be now. In fact, such a landlord by letting out the portion which he did not require has helped in easing the situation created by the shortage of houses. Is he, therefore, to be penalised when at a later stage he really needs an additional accommodation by denying to him such an accommodation? Can such a restriction be said to be reasonable? While protecting the interests of the tenants the genuine needs of the landlords have also to be taken into account and a proper balance has to be struck between the two. It cannot be all facility to a tenant and all hardship to a landlord. Hardship to a certain extent is understandable, but not to an extent which altogether denies to the landlord the use and occupation and enjoyment of his house for all the time. Where a landlord is occupying a house of his own which includes also a part, he can never get his another house or the remaining portion of the house for this enjoyment under any circumstances, on the construction put by the Full Bench and such a provision like Clause 13(3)(vi) which for all the time denies to the landlord the enjoyment of his house, would be bordering on a piece of confiscatory legislation.

17. If a tenant is evicted to give additional accommodation to the landlord such a tenant becomes an "evicted person" within the meaning of Clause 2(2-a) of the

Rent Control Order and is under Clause 23 entitled to get an allotment in respect of a vacant house. Not much hardship, therefore, is caused to such a tenant. On the other hand, the landlord of the same house though his need is genuine is not able to get either the additional accommodation in the same house or to get an allotment of any other house. Certainly, therefore, the hardship on the landlord would be much more than the so-called hardship on the tenant and in these circumstances, in fact it is the landlords who would need protection rather than the tenants. Not only that, but a tenant who is one of the categories mentioned in Clause 23 can ask for allotment of another house or an additional accommodation even though he is already living in a house. He can claim allotment of another house even without assigning any reasons. There does not appear to be any such restriction on this. Cases are not wanting where the tenants have been changing houses from time to time as and when they so desire simply because they are in that favoured category and there is no bar or restriction in getting houses allotted one after the other. It is no doubt true that the tenants would need protection to a certain extent, but the protection which is now afforded goes much beyond the permissible limits at the costs of immense hardship to the class of landlords by putting such stringent restrictions on their rights which are really unnecessary and much in excess. Such restrictions cannot be called to be reasonable restrictions.

18. No landlord would ask for more accommodation if he does not really need it for his reasonable living. There are enough safeguards in the Rent Control Order to guard against the excessive or unreasonable demands of the landlords for additional accommodation. If after evicting the tenant on the ground of bona fide residence, the landlord does not occupy the house within a period of one month, then under Sub-clause (4) of Clause 13, the tenant who has been evicted can apply for being restored to possession of the house previously occupied by him. This is a sufficient check on the landlord in not asking for more accommodation than he actually needs. Besides this the Rent Controller has authority to enquire into the needs of the landlord and if on enquiry the Rent Controller is satisfied that the needs of the landlord will be met by the occupation of a portion of the house, he will give permission in respect of such portion only; vide Sub-clause (8) of Clause 13. There can, therefore, be no fears that the tenants would be ruthlessly turned out by the landlords from the houses even though the landlord may not need the house for his own personal occupation. The landlord asking for additional accommodation will have to satisfy the Rent Controller that he really needs additional accommodation and will have also to establish the extent of the additional accommodation he needs. There can, therefore, be no question of any abuse by the landlords of such a right to get additional accommodation if it is granted to them by removing the total restriction.

19. The Full Bench was in fact constituted as there were two conflicting views in this High Court. In one case of the Division Bench of this Court the strict and technical view as has been taken by the Full Bench was taken. In other set of cases a liberal view was taken and the words "house of his own" were construed

to mean a house which is suitable for residence of the landlord. The Rent Control Order has been in operation for the last several years and in spite of dissenting note in one judgment taking the stricter and liberal view in the other, the Rent Control Authorities have been adopting the liberal view of other Benches and on that basis permissions were being granted to the landlords on their establishing the need for additional accommodation. This state of affairs has been continuing in this part for most of the period this legislation has been in operation. Neither the class of tenants, nor the State have taken any serious notice of such trend of decisions and such decisions granting permission to the landlords for additional accommodation were not challenged either by the State or the tenants, nor did the State take any steps in that direction if it considered that such a restriction was really necessary in the interests of the general public. I do realise that the conflict should have been resolved much earlier before it has been done by the recent Full Bench decision. That is, however, another matter. The fact which I am emphasising is that such a restriction on the right of the landlord to get additional accommodation for his bona fide needs did not come to be considered as a reasonable one. This would demonstrate that the restriction which the proviso in Clause 13(3)(vi) of the Rent Control Order seeks to put on the right of the landlords as construed by the Full Bench is an unreasonable one and unnecessary to meet the situation.

20. It should further be seen that during the period this legislation has been in operation the building activity has also increased and several new buildings have come up and are coming up and that must have considerably eased the situation which was existing in the country when the law was made. That must also be a reason why eviction of tenants on the ground of additional accommodation for the landlord must have been tolerated all these years. There is nothing to show that the conditions which were prevailing when the legislation was first enacted are still prevailing at this stage. The burden is on the persons who seeks to support the reasonableness of the restrictions. No material has been placed either on behalf of the tenants or the State to show that such restrictions are really necessary in the interests of the general public, and whether such restrictions are to that extent necessary and not in excess of that. It has also not been shown that such a restriction has a rational relation to the object which the legislature sought to achieve and that it is not in excess of that object. In fact, if the landlords were assured that they would be in a position to get additional accommodation to meet their genuine needs, much more accommodation could be available for the tenants because in that case the landlords who have got superfluous accommodation would not keep to themselves that accommodation and would make that accommodation available for others. It is because of the fear that the landlords must be entertaining that if they once let out their houses they would never be able to get them back even though they may genuinely need them, they must be keeping their superfluous accommodation with themselves and not making them available for other's occupation. Thus, such a kind of restriction would in fact jeopardise the interests of the tenants class

instead of promoting their interests. It is not understood as to how such restrictions can be said to be reasonable restrictions. On a consideration of all these matters, I am of opinion that the restriction which is put on the right of the landlord who occupies his own house or a portion of his house to seek additional accommodation from the tenant is highly unreasonable and is in excess of what is really necessary.

21. The Full Bench also considers that the restriction, which was put initially as a temporary measure, caused unnecessary hardships to the landlords and has observed that the legislature may take these circumstances into consideration and may if necessary, make satiable amendments. The Full Bench made every effort to mitigate the rigour of this law in favour of the landlords but on the plain construction of the proviso, found itself helpless.

22. These observations, therefore, show that the Full Bench felt that the restriction put on the landlords by the proviso as construed by it causes much hardship to the landlords and that there is a case for making suitable amendments to the clause to relieve the hardship. The thinking of the Full Bench, therefore, points out that restriction is not reasonable.

23. Accordingly, I am of opinion that the proviso to Clause 13(3)(vi) of the Rent Control Order in so far as it denies to the landlord the right to get a house or a portion of the house in the occupation of the tenant if the landlord genuinely needs it, because his own house or a portion thereof in which he is living is either unsuitable or inadequate or insufficient for his needs, which is a construction put upon that proviso by the Full Bench, is ultra vires as it violates the fundamental right guaranteed under Article 19(1)(f) of the constitution, the restrictions put thereon under Article 19(5) being unreasonable and is, therefore unconstitutional and invalid. To that limited extent, which I have indicated above, the proviso to Clause 13(3)(vi) of the Rent Control Order has to be struck down.

24. In view of the decision which I have reached on the vires of the proviso to Clause 13(3)(vi) of the Rent Control Order which affects the cases before me, it is not necessary to consider the several other challenges made on behalf of the landlords to the constitutionality of the Act or its provisions or to the Rent Control Order and its other clauses or the validity of the proviso in Clause 13(3)(vi) on other grounds. Those grounds on which the challenge was based have been enumerated by me at the commencement and those questions are left open.

25. In the instant case, it has been found by the Rent Control Authorities that the need of the respondent No. 3 landlady for additional accommodation is bona fide. On this finding the landlady is entitled to get the necessary permission if the proviso to Clause 13(3)(vi) of the Rent Control Order as construed by the Full Bench, is ultra vires. On the view I have taken and on the findings given by the Rent Control Authorities, the petitioner cannot successfully challenge the orders of the Rent control Authorities. The petition, therefore, must be rejected. The petition, therefore, fails and is dismissed. However, in the instant case, there will

be no order as to costs.

26. Petition dismissed.