
(1985) 03 BOM CK 0015

In the Bombay High Court

Case No : Spl. C.A. No's. 3126 of 1975 and 2967 of 1978

Santu Joti Lamdade

APPELLANT

Vs

Damodar Narayan Jamnis

RESPONDENT

Date of Decision : 29-03-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 227
Maharashtra Land Revenue Code, 1966 — Section 44

Citation : (1986) 88 BOMLR 68 : (1986) MhLj 150

Hon'ble Judges : K. Madhava Reddy, C.J;P.S. Shah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.S. Shah, J.—In these two petitions which arise out of the proceedings under the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Act", questions about the validity of Section 6 of the Maharashtra Amendment Act X of 1977 which deleted Section 43D of the Act as also the interpretation of Section 6 of the said amending Act arise for consideration. Before we proceed to examine! the rival contentions it is necessary to mention the relevant facts in both the petitions which are not in dispute. Special Civil Application No. 3126 of 1975

2. In this case the predecessor in title of respondent Nos. 1 to 12 was the landlord and the petitioner is the tenant of two Inam lands bearing Revision Survey Nos. 387/1 admeasuring 19 gunthas and Revision Survey No. 387/2 admeasuring 36 gunthas situate within the Municipal limits of Miraj, Taluka Miraj, District Sangli. On the death of the original landlord, respondent Nos. 1 to 12 have become the owner-landlords of the said lands. Respondent Nos. 1 to 6 served on the petitioner a notice dated February 19, 1959, u/s 43D of the Act terminating his tenancy on the ground that they required the lands bonafide for a non-agricultural purpose. After thus terminating the tenancy on November 28, 1959, respondent Nos. 1 to 6 filed Tenancy Application No. 321 of i960 in the

Court of the Tehsildar for possession of the said lands. The tenant inter alia contended that the notice of termination of the tenancy was not legal and also that the landlords did not bonafide require the lands for a non-agricultural purpose as alleged by them. By his order dated September 30, 1971, the Tehsildar allowed the application and directed delivery of possession of the lands to the respondent Nos. 1 to 6. Aggrieved by this order the petitioner preferred Tenancy Appeal No. 81 of 1972 before the Spl. Deputy Collector who by his order dated October 9, 1973. partly allowed the appeal, holding that the notice of termination of tenancy was not signed by the respondent No. 6 and he was not entitled to possession of his 1/6th share in the lands. The petitioner's appeal regarding the remaining 5/6th share in the said lands, however, was dismissed. The order in appeal was challenged by the petitioners in Revision Application bearing Revision Application No. 299 of 1973 before the Maharashtra Revenue Tribunal. By its order dated June 29, 1974, the Tribunal rejected the Revision Application. Thus according to the orders passed in these proceedings the landlords are entitled to get possession of 5/6th share in the said lands. Aggrieved by the order of the Revenue Tribunal, the petitioner - tenant has filed this Writ Petition under Article 226 read with Article 227 of the Constitution. It is common ground that the landlords in whose favour the Revenue authorities have passed an order for delivery of possession have not yet executed the order and the tenant continues to remain in possession. Special Civil Application No. 2967 of 1978

3. In this case the petitioners are the landlords and the respondent is the tenant of Survey No. 33-A-1/5 A-I, admeasuring 24 1/2 gunthas situate within the Municipal limits of Vengurla in Ratnagiri District (now Sindhudurg District). The petitioners served upon the respondent a notice dated September 26, 1976, u/s 43D of the Act terminating his tenancy by the end of May 1976 on the ground that they bonafide required the land for a non-agricultural purpose viz. the construction of a theatre. After thus terminating the tenancy, on June 21, 1976, the petitioners filed Tenancy Case No. 21 of 1978 before the Tehsildar for possession on the aforesaid ground. The respondent's defence inter alia was that he was not a protected tenant, but was a permanent tenant and not liable to be evicted. He also denied that the petitioners bonafide required the land for the non-agricultural purpose set up by them. By order dated October 30, 1976, the Tehsildar granted the application and passed an order directing delivery of the land to the petitioners. During the pendency of this application before the Tehsildar, Bill No. XXXIX of 1976 incorporating provisions seeking, to amend certain provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, and the Maharashtra Regional and Town Planning Act, 1966, was introduced in the legislature. The petitioners preferred Appeal No. 187 of 1976 challenging the decision of Tehsildar. By his order dated September 29, 1977, the Deputy Collector allowed the respondent's appeal and dismissed the petitioners' application for possession inter alia holding that the petitioners had failed to

prove that they required the land bonafide for non-agricultural use. On July 26, 1978, the revision application filed by the petitioners against the order of the Deputy Collector was also dismissed. The Tribunal confirmed the finding of the Deputy Collector that the bonafides were not proved. During the pendency of the appeal before the Deputy Collector the Maharashtra Amending Act X of 1977 came into force with effect from March 11, 1977. By this Amending Act the provisions of Section 43D of the Tenancy Act were deleted and retrospective operation was given to the said deletion of Section 43D and where the conditions mentioned in Section 6 of the Amending Act were satisfied, the pending, proceedings u/s 43D stood abated. Apart from holding against the petitioners on merits as stated above, the Tribunal also held that in view of the provisions of Section 6 of the Amending Act the proceedings for possession had abated since admittedly the landlord had not taken possession of the land as contemplated by Section 6 of the Amending Act.

4. Before we proceed to examine the contentions urged on behalf of the landlords by their respective counsel, it would be necessary to note the scheme of the Act as it stood" prior to the coming into force of the Amendment Act X of 1977 and its effect on its application on its coming into force. By the amending Act No. XIII of 1956 the Tenancy Act which was then in force in the Bombay State was drastically amended and certain rights of ownership in the tenanted land were conferred on the tenants and the landlords were given opportunity to terminate the tenancy on certain specified grounds. u/s 32 it has been inter alia provided that on the first day of April 1957 referred to as "the tillers" day" every tenant shall, subject to the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant. It is not necessary for our purpose to mention the various contingencies under which this right of the tenant gets defeated. Section 31 provides for right to the landlord to terminate the tenancy for personal cultivation and non-agricultural use and except in the case of minors and widows and persons under disability the right has to be exercised within the prescribed period i.e. before March 31, 1957, by making an application to the Tehsildar for possession on the ground that he bonafide required the land either for cultivating the land personally or for any non-agricultural purpose. Then there are certain provisions putting further restrictions even on the establishment of his bonafides by the landlord. For example, the termination can be only to the extent of half of the land and there are provisions relating to> the disposal of the remaining half of the land. As pointed out above, the right of the tenants to become the owners of the land on the tiller"s day is postponed in the case of minors, widows and person having disability. Section 32F inter alia provides the period during which the tenant can exercise his right of purchase of such land u/s 32 on cessation of disability or the tenant attaining majority and so on. Different periods are prescribed during which such rights can be exercised by the tenants, It also takes note of small landlords and a provision is made u/s 88C whereby such landlords are entitled to apply for an exemption

certificate provided the land does not exceed economic holding and the annual income including the rent of the land does not exceed Rs. 1,500/-. Section 33A demise "certificated landlord" for the purpose of Sections 33B and 33C. According to the definition, certificated landlord means a person who holds a certificate issued to him under Sub-section 4 of Section 88. Special rights are conferred on such certificated landlords to terminate the tenancy for personal cultivation and the procedure is prescribed in Section 33B whereunder the certificated landlord is given a right to terminate the tenancy of the excluded tenant if the landlord bonafide requires such land for personal cultivation. u/s 33A(ii) "excluded tenant" means a tenant of land to which Sections 32 to 32R (both inclusive) do not apply by virtue of Sub-section (1) of Section 88C. The application was required to be made within the prescribed period of limitation. Then in the case of a certificated landlord who is a minor or widow or a person subject to disability the period for terminating the tenancy and making the application is extended. Thus it would be seen that the difference between Sections 31 and 33B lies in that whereas u/s 31 the landlord is entitled to terminate the tenancy both on the ground of personal cultivation and non-agricultural purpose; u/s 33B he could do so only on the ground that he requires the land for personal cultivation. There are special provisions made in Chapter III-B for the areas within the limits of a Municipality or a Cantonment. Section 43C as it stood before the amendment by Amending Act X of 1977 provided -

43C. Nothing in Sections 32 to 32R (both inclusive) 33A, 33B, 33C and 4? shall apply to lands in the areas within the limits of-

- (a) Greater Bombay,
- (b) a municipal corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949,
- (c) a municipal borough constituted under the Bombay Municipal Boroughs Act, 1925,
- (d) a municipal district constituted under the Bombay District Municipal Act, 1901,
- (e) a cantonment, or
- (f) any area included in a Town Planning Scheme under the Bombay Town Planning Act, 1954:

Provided that if any person has acquired any right as a tenant under this Act on or after the 28th December 1948, the said right shall not be deemed to have been affected by the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1952, or (save as expressly provided in Section 43D), by the Amending Act, 1955, notwithstanding the fact that either of the said Acts has been made applicable to the area in which such land is situate.

5. The change brought about in Section 43C by the Amending Act X of 1977 is firstly that Section 31 is included in the first part of the section with the result

that "nothing in Section 31 to 32R" and the other sections mentioned in the said section shall apply to lands in the areas mentioned in that section. The second change is the deletion of the words " save as expressly provided in Section 43D" from the proviso. This is consequential to the deletion of entire Section 43D itself by Section 3 of the Amending Act X of 1977. The material change with which we are concerned is the deletion Section 43D which enabled the landlord of a land in the municipal area or other areas mentioned in Section 43C to terminate the tenancy on the ground that he bonafide required the land for non-agricultural purpose. Section 43D which was deleted by Section 3 of the Amending Act X 1977 runs thus:

43D, (1) In the areas specified in Section 43C, notwithstanding anything contained in Sections 31 to 31D (both inclusive) a landlord may terminate the tenancy of a tenant (other than a permanent tenant) in respect of any land with effect from the 31st day of May of any year by giving the tenant three months" notice in writing, if the landlord bona fide requires the land for any non-agricultural purpose:

Provided that the three months" period of such notice shall expire before the 31st day of May of such year.

(2) The provisions of Sections 29, 37 and 39 shall mutatis mutandis apply to the termination of the tenancy of a tenant in respect of any land under Sub-section (1).

(3) For the purposes of this section in Greater Bombay, the functions of the Mamlatdar under Sections 29, 37 and 39 shall be performed by the Collector.

6. Then the most important provision is Section 6 which has adversely affected the claim of the landlords for possession, which reads as follows:

6. Notwithstanding the deletion of Section 43D of the Bombay Tenancy Act and Section 61 of the Vidarbha Tenancy Act, where proceedings for termination of tenancies are pending before the appropriate authority under any such Act and the landlord has taken possession of the land on or before the date of introduction of the Maharashtra Tenancy Law and the Maharashtra Regional and Town Planning (Amendment) Bill, 1976, in the Maharashtra Legislative Assembly, then such proceedings, shall be continued and disposed of by such authority, as if, this Act had not been passed, in all other cases, notwithstanding any judgment, decree or order of any court, tribunal or authority, such pending proceedings shall abate, and the tenant shall continue to hold the land in accordance with the provisions of the Bombay Tenancy Act, or as the case may be, the Vidarbha Tenancy Act.

7. The facts of Special Civil Application No. 2967 of 1978 which as mentioned above would show that prior to the coming into force of the Amending Act X of 1977 the Tehsildar had passed the order for delivery of possession in favour of the landlords. On this basis it was contended by Mr. Rege, the learned Counsel,

appearing on behalf of the petitioners that since the order was passed prior to the coming into operation of the Amending Act X of 1977 and the Act did not provide for an appeal against an order u/s 43D, the landlords had acquired a vested right which was not intended to be taken away nor could it be taken away by the provisions of Section 6 of the Amending Act X of 1977. He submitted that the appeal filed by the tenant was incompetent and the order passed therein is a nullity and the proceedings in appeal could not be treated as tenancy proceedings which is a condition precedent for the applicability of Section 6. In support of his contention the counsel relied on Section 74 of the Act which enumerates the various orders made under different sections of the Act which are made appealable. It is seen that Section 74 did not mention specifically an order u/s 43D as one against which an appeal can be filed, We see no merit in the contention of the learned Counsel that merely because Section 43D is not mentioned in Section 74 the order passed in the proceedings for possession on the grounds mentioned in Section 43D are not appealable. Analysing Section 43D it is seen that Sub-section (1) thereof provides the ground and the procedure for termination of tenancy. Sub-section 2 states that the provisions of Sections 29, 37 and 39 shall mutatis mutandis apply to the termination of the tenancy of a tenant in respect of any land under Sub-section 1. In other words, in so far as they are applicable the provisions of Sections 29, 37 and 39 would be applicable in respect of the cause of action accrued to the landlord under Sub-section 1. While Section 43D read with Section 29 provides a procedure for making an application, it does not provide for the passing of an order under that section. It is by reason of Sub-section 2 of Section 43D that we have to turn to Section 29 which provides a procedure for making an application and also conferring jurisdiction on the authority to pass an order on such application. This is clear from Sub-section 2 of Section 29 which inter alia provides that no landlord shall obtain possession of any land or dwelling, house held by a tenant except under an order of Mamlatdar and for obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land or dwelling house, as the case may be, is deemed to have accrued to him. The enquiry on" the application and the orders to be passed therein are contemplated by Sub-section 3 of Section 29. Sub-section 3 of Section 29 inter alia provides that on receipt of application under Sub-section (1) or (2) the Mamlatdar shall after holding an inquiry, pass such order thereon as he deems fit. It may be mentioned that Sub-section 3 of Section 29 also contemplates an application for possession to the Collector, but that relates to termination of tenancy under Sub-section 1 of Section 43-1B. It is, therefore, clear that Section 43-D does not by itself contemplate a proceeding before the Tehsildar, but it contemplates the passing of an order under that section by the Tehsildar. By reason of Sub-section 2 of Section 43D, the provisions of Section 29 have been extended to Section 43-D and, therefore, the landlord is entitled to terminate the tenancy under Sub-section 1 of Section 43D and resort to the procedure and remedy prescribed u/s 29. It is u/s 29 under which the final order in a proceeding is passed. The question, therefore, would be

whether an order u/s 29 is made appealable. Section 74 clearly provides for an appeal against an order u/s 29 in Sub-section (m) of Sub-section (1). It was, however, urged by Mr. Rege that Section 74 is the only provision in the Act which enumerates the various orders which are made appealable and whereas orders under Sections 31 and 33B which are also provisions relating to the right of the landlord to obtain possession of the land are mentioned in Section 74 as appealable orders, Section 74 does not refer to Section 43D as one of the sections orders whereunder are appealable. He also submitted that in all these cases viz. applications under Sections 31, 33B and 43D the order has to be passed u/s 29 and, therefore, the reference to orders u/s 29 in Section 74 would not be of assistance in determining the question as to whether an order u/s 43D is appealable. In our view, it is not possible to accept this contention of the learned Counsel having regard to the fact that in a proceeding started u/s 43D it is not under that section, but it is u/s 29 that the order is passed by the Tehsildar. It is true that since even in respect of Sections 31 and 33B the provisions show that the order is ultimately passed u/s 29 and, therefore, it can be said that it was unnecessary for the legislature to specifically mention Sections 31 and 33B in Section 74. But that by itself does not necessarily lead to the inference that the Legislature's intention was to exclude Sections 43D from appealable orders. Though analogies or comparisons are some times useful to interpret a statutory provision, the resort to the same would be permissible only if the intention of the legislature cannot be gathered from the plain words used. It is well settled that the intention of the legislature has to be primarily gathered from the plain language used. Section 74 clearly provides for an appeal against an order passed u/s 29. On a plain reading of 43D it is crystal clear that the application for possession is contemplated thereunder to be filed u/s 29 as also the final order is passed u/s 29. Sub-section 2 of Section 43D provides that the provision of Section 29 shall "mutatis mutandis" apply to the termination of the tenancy of a tenant in respect of any land under Sub-section 1 of Section 43D. Sub-section 1 of Section 43D merely provides for the giving of notice to the tenant terminating the tenancy of the tenant on the ground that the landlord bonafide requires the land for any non-agricultural purposes. This would show that as far as the making of the application for possession and the further proceeding pursuant thereto as also the final order for possession has to be u/s 29. In view of this clear position it would be impermissible to hold that no appeal lies on the ground that Section 43D is not referred to in Section 74. If the intention of the legislature was to provide an independent procedure like the one provided in Section 29 as a part and parcel of Section 43D it would have been easy for the legislature to do so by making a clear provision in that behalf in Section 43D itself. In our view, the provisions of Sub-section 2 of Section 43D make it abundantly clear that the order has to be passed u/s 29 and there is no dispute that an order u/s 29 is appealable. As far as the express mention of Sections 31 and 33B in Section 74 all that can be said is the legislature may have done so out of abundant precaution. In our view, therefore, the appeal preferred by the tenant was competent.

8. Having held that the appeal is competent, we have to consider the effect of Section 6 of the Amending Act X of 1977 which came into force during the pendency of the appeal. The examination of this rather clumsily worded provision shows that it envisages that notwithstanding the deletion of Section 43D certain proceedings shall be continued as if the amendment Act was not passed while some other proceedings were to abate. The first category viz. the category of cases which were to be continued and disposed of by the authority as if the Act had not been passed are proceedings which were pending and the landlord had taken possession of the land on or before the date of the introduction of Maharashtra Tenancy Laws and the Maharashtra Regional and Town Planning (Amendment) Act, 1976, i.e. L.A. Bill No. XXXIX of 1976 which ultimately was passed as Act X of 1977. The introduction of the Bill is dated July 5, 1976. Obviously, Section 6 applies to pending proceedings though some of these proceedings may be in the nature of revision applications or appeals in which orders have been already passed. The crucial question that has to be seen is whether the landlord had obtained or not the possession before the date of the introduction of the Bill viz. July 5, 1976. If the landlord had taken possession of the land before that date, the order passed by the Tehsildar which may be the subject matter of the appeal or a revision, such pending proceeding is to be continued as if the Section 43D was not deleted. The intention appears to be to give the tenant an opportunity to prove his case. As far as the cases where possession has not been taken by the landlords are concerned, the section provides that all such pending proceedings shall abate notwithstanding the fact that an order for delivery of possession had already been passed and the same is challenged in the pending proceedings. The case of the landlords in Spl. Civil Application No. 2967 of 1978 clearly falls in this category in view of the admitted fact that the landlord had not taken possession of the land and the tenant all along continued to be in possession.

9. It was urged by Mr. Rege that Section 6 of the Amending Act X of 1977 is violative of the landlords' fundamental rights under Article 19(1) and (g) of the Constitution. Alternatively, he submitted that the provision is discriminatory and violative of Article 14 of the Constitution. The counsel submitted that the right to obtain possession from the tenant is a right to property and a law taking away that right must satisfy the requirements under Sub-article 5 of Article 19. It must be shown that the restrictions affecting the landlord's right to property were reasonable and in public interest. It may be observed at the outset that the Tenancy Act as amended by the Amending Act XIII of 1956 has been held to be valid. (See *Sriram Ram Narain v. State of Bombay* (1958) 61 Bom. L.P. 811 (S.C.)). The counsel did not dispute that the Act as it stood prior to the deletion of Section 43D "was constitutionally valid. The amendment viz. the deletion of Section 43D takes away the right of the landlords to claim the land from the tenant on the grounds mentioned in the repealed section and to that extent it has to satisfy the test of reasonableness as contemplated by Sub-article 5 of Article 19. As far as Article 19(1)(g) is concerned, it is contended that the

landlord wanted the land for the construction of a theatre and carry on his business and as such his fundamental right under Article 19(1)(g) is also affected and, therefore, the restrictions put on his right by the deletion of Section 43D must be shown to be reasonable and in the public interest. It is further urged that since Section 6 of the Amendment Act takes away the landlord's right crystallized by the notice of termination, and also by order of the competent authority taking away of such right vested in the landlords would amount to infringement of Article 19(1)(g). As far as violation of Article 14 is concerned, the contention raised is that an arbitrary discrimination is made between the landlords who had taken possession and those who had not done so. Secondly, the landlords in Municipal areas are discriminated against as they are denied to resume lands for non-agricultural purpose, whereas the landlords in non-municipal areas can avail of Section 31 to enforce such a right. According to the learned Counsel, there is no rational basis for making a distinction between the two classes of landlords nor has such a classification any nexus with the object of the statute. Whereas at least a limited right to resume for bonafide personal use is given under the Act in respect of lands situate outside municipal limits such a right is denied only to a particular class of landlords viz. those whose lands fall within the municipal limits.

10. Mr. Rege at the outset submitted that the State has not filed a return and since it has been prima facie shown that the landlords had a right to evict the tenant on grounds mentioned in Section 43D, which right has been taken away, it was the duty of the State to justify the legislation on the basis of reasonableness and public interest. In the absence of such a return filed by the State there is nothing to show that there were conditions which existed justifying the legislation as being reasonable and in the public interest. In support of this contention reliance "was" placed by the learned Counsel on the decision of the Supreme Court in Sukhnandan Saran Dinesh Kumar and Others Vs. Union of India (UOI) and Others, . In para 19 of the judgment the Supreme Court has observed that (at p. 911): -

Once it is assumed that the impugned notification imposes a restriction on the freedom of trade, the burden is on those who support it, to show that the restriction imposed by the impugned law is reasonable and is imposed in the interest of general public, In other words, the burden is on the those who seek the protection of Clause (6) of Article 19 and not on the citizen who says that the restrictive enactment is invalid

11. It is true that the State has not filed a return, but we fail to see how in the facts of this case a return by the State would have helped. It is a normal practice and Rules of the High Court also require the Government to file returns in such matters, but the mere absence of such a return is not the end of the matter. The burden can be discharged or the validity can be justified from the material that is available. In this case the statement of objects and reasons with the Bill throws a considerable light on the question of reasonableness and public interest. Mr.

Keswani placed reliance on the elaborate statement of objects and reasons annexed" to the Bill in support of his contention that the enactment falls within the four corners of Article 19(5) and as such is saved from being declared invalid. The first question is whether and to what extent the objects and reasons can be looked into. Mr. Rege relied on the Supreme Court decision in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, In para 32 of the judgment the Supreme Court observed" (at p. 378): -

As regards the propriety of the reference to the statement of objects and reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical change during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature, for they do not form part of the Bill and are not voted upon by the members. We, therefore, consider that the statement of objects and reasons appended to the Bill should be ruled out as an aid to the construction of a statute.

12. It would, therefore, appear that the statement of objects and reasons appended to the Bill cannot be used as an aid to the construction of the statute. In *The State of West Bengal Vs. Subodh Gopal Bose and Others*, , while reiterating the view that the statement of objects and reasons is not admissible as an aid to the construction of the statute, the Supreme Court held that the statement of objects and reasons can be used for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy. The Supreme Court held that those) are the matters which must enter into the judicial verdict as to the reasonableness of the restrictions which Article 19(5) permits to be imposed on the exercise of the right guaranteed by Article 19(1)(f). It would, therefore, follow that the statement of objects and reasons cannot be used as an aid to the construction of the amending statute in our case. However, it is permissible to use the same to ascertain the background in which the" legislation was enacted, the history of the earlier legislation and the conditions prevailing at the time of the enactment and these considerations would have a bearing on the question as to the reasonableness and the restrictions which Article 19(5) permits to be imposed on the exercise of the rights guaranteed under Article 19(1)(g). It may be noted that the facts in *State of West Bengal v. Subodh Gopal Base* (cited supra) would show that the statement of objects and reasons was not even relied on before the High Court which struck down the provisions and was considered for the first time by the Supreme Court.

13. The preamble to Bill No. XXXIX of 1976 states that the Bill is to further

amend the Bombay Tenancy and Agricultural Lands Act, 1948, the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, and the Maharashtra Regional and Town Planning Act, 1966. The statement of objects and reasons runs as under:

Under Section 60 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, the tenants of agricultural lands in municipal areas do not have the right to purchase the land cultivated by them, but u/s 61 of that Act a landlord can resume land for bona fide non-agricultural use by giving three month's notice before May 31 of any year. In such a case a tenant is, however, entitled to receive from the landlord solatium equal to the difference between the market value of the land for agricultural purpose as may be determined by the Tahsildar having regard to the provisions of the Land Acquisition Act, 1894, and the reasonable price of the land as may be determined by him u/s 90 of the Vidarbha Tenancy Act. u/s 43C and 43D of the Bombay Tenancy and Agricultural Lands Act, 1948, a similar position obtains except that the tenant is not entitled to receive any solatium. The aforesaid provisions are in force for quite a long time. In the Maharashtra area, however, the position is different in that the Hyderabad Tenancy and Agricultural Lands Act, 1950, does not contain any special provision for regulating tenant-landlord relationship in respect of the lands in municipal areas. The general provision contained in Section 44 of the Act relating to the right of the landlord to resume land for personal cultivation has already been implemented, and the landlords do not now have any such right to resume the land. Under that Act the tenants were given right to purchase land upto one family holding, subject to landlord's ownership right remaining intact in respect of land upto two family holdings. This provision has also been implemented. The result, therefore, is that in the case of surviving tenancies in municipal areas in the Marathwada, the tenants enjoy security of tenure and fixity of rent, and landlords do not have any subsisting right to resume land for bona fide personal cultivation or for non-agricultural use. In view of the provisions of Section 44 of the Maharashtra Land Revenue Code, 1966, which is uniformly applicable throughout the State, a landlord or tenant cannot also convert the land to non-agricultural use without the consent of the tenant, or as the case may be, of the landlord.

In these circumstances, it is felt that if the tenants in municipal areas in the Bombay area and the Vidarbha Region of the State are not subjected to resumption proceedings, a measure of uniformity would be achieved in respect of protection available to tenants in municipal areas in the entire State. It is, therefore, considered expedient to amend suitably the provisions of the Bombay Tenancy and the Vidarbha Tenancy Acts so as to bring the relevant provisions of those Acts on par with those of the Hyderabad Tenancy and Agricultural Lands Act, 1950.

14. It appears from the statement that the object is to bring about uniformity in the relevant law prevailing in Vidarbha, Marathwada and Western Maharashtra.

Under the Vidarbha Act the landlord can resume land for bona fide non-agricultural use by giving three months' notice before 31st May of any year, but in such a case a tenant is entitled to receive from the landlord solatium equal to the difference between the market value of the land for agricultural purpose as may be determined by the Tehsildar having regard to the provisions of the Land Acquisition Act, 1894, and the reasonable price of the land as may be determined by him u/s 90 of the Vidarbha Tenancy Act. u/s 43C and 43D of the Bombay Tenancy and Agricultural Lands Act, 1948, the position is similar except that the tenant is not entitled to receive any solatium. However, in the Marathwada region the position was different because the Hyderabad Tenancy and Agricultural Lands Act, 1950, did not contain any special provision for regulating tenant-landlord relationship in respect of the lands in municipal areas and the general provision contained in Section 44 of that Act relating to the right of the landlord to resume land for personal cultivation had already been implemented, and the landlords did not have any such right to resume the land. Under the provisions of that Act the tenants were given right to purchase land upto one family holding subject to landlord's ownership right remaining intact in, respect of land upto two family holdings had also been implemented. The disparity thus was that in case of surviving tenancies in municipal areas in the Marathwada, the tenants enjoy security of tenure and fixity of rent and the landlords do not have any subsisting right to resume land for bona Me personal cultivation or for non-agricultural use. One of the objects of the amendment is to remove the disparity in the law prevailing in the three areas. The second important aspect mentioned is the provisions of Section 44 of the Maharashtra Land Revenue Code, 1966, which is uniformly applicable throughout the State, under which the landlord cannot convert the land for non-agricultural use without the consent of the tenant or as the case may be, of the landlord. These two considerations, in our view, which were taken into account by the legislature in passing the impugned enactment would satisfy the requirements of reasonableness and public interest contained in Article 19(5) of the Constitution. Having regard to the provisions of Section 44 of the Maharashtra Land Revenue Code, 1966, which are uniformly applicable, a landlord would be met with a plea by the tenant that no order for eviction should be passed since the landlord while terminating the tenancy was not entitled to convert the land to his own use without the consent of the tenant. That apart, it may also be borne in mind that Chapter III-B of the Bombay Tenancy Act contains special provisions in respect to the areas within the limits of Municipality. Section 43C as it existed prior to the amendment by the Amending Act X of 1977 shows that a distinction was made between the urban land and rural land. It is not disputed before us that the classification so made is reasonable having regard to conditions prevailing in urban and rural areas. Whereas, in non-municipal areas the tenant u/s 32 of the Act was made the owner, that provision was not applicable to municipal areas. Thus, the landlords in municipal areas were placed in a somewhat advantageous position because none of the provisions relating to the passing of the title in the land to the tenant applied. Not only this, but the provisions giving a right to the landlord to

terminate the tenancy and make an application to the Tehsildar for bonafide personal cultivation and for putting the land to non-agricultural use contained in Sections 31 and 33B were also available to a municipal landlord. Thus, so far as that is concerned, there was uniformity in respect of the landlord's rights to terminate the tenancy subject of course to the conditions laid down in various provisions of the Act. Deletion of Section 43D obviously cannot disturb such rights under Sections 31 and 33B of the Municipal landlords though it may be mentioned that except with regard to a few cases involving minors, disabled persons or widows the rights as on April 1, 1957 have been already worked out. As a matter of fact, the insertion of Chapter III would otherwise have made the municipal landlords to lose their right to continue to enjoy their ownership rights while their right to terminate the tenancy u/s 14 of the Act are not disturbed. As pointed out above, the necessity of bringing about a uniformity in all the three regions and avoidance of a clash with the provisions of Section 44 of the Maharashtra Land Revenue Code, 1966, by reason of continuing (he provisions of the Section 43D are to our mind sufficient to show that the restrictions on the landlord's right to terminate the tenancy u/s 43D imposed by the deletion cannot be said to be unreasonable or not in public interest, If this is so, the challenge to the deletion of Section 43D on the ground of violation of Article 19(1) (f) and (g) must fail.

15. The next question is whether the deletion of Section 43D offends Article 14 of the Constitution. As far as the lands outside the municipal areas are concerned, the provisions just did not exist. In a sense, by bringing about a uniformity, the discrimination, if any, between the rural landlord and the municipal landlord has been removed.

16. Then the next question is whether any discrimination inter-se between the municipal landlords arises on account of the provisions of Section 6 of the Amending Act. As pointed out above, in the case of pending proceedings where the landlord has taken possession of the land, such proceedings are to continue as if Section 43D is not deleted. However, as regards the pending proceedings where the landlord has not taken possession of the land, notwithstanding the orders passed in favour of the landlords such proceedings abate. What has been done is that the tenant is given, an opportunity to get back the possession of the land which he has lost in execution of the order for possession passed prior to the amendment and has filed further proceedings challenging the said order. The order under which such possession is taken is obviously not a final order and it would appear that the distinction made removes the discrimination between the landlords viz. those who had taken possession and those who have not. It was urged by Mr. Rege that in the case of non-municipal areas where the tenant has become the statutory owner, the landlord gets compensation; whereas in the case of municipal areas on account of the non-applicability of Section 32 of the Act the landlord continues to be the landlord of the land and he is deprived of his compensation which he would otherwise have got if the tenant had become the owner. He submitted that the continuance of the ownership of the landlord with

the right to terminate the tenancy u/s 1.4 is illusory because it is not likely that any tenant would foolishly commit default in payment of rent which is a very paltry amount determined under the Act. It is submitted that the land being in municipal area, in the case of acquisition under the Land Acquisition Act the tenant would be entitled to a large chunk of compensation in view of his Tights under the Tenancy Act. We are not impressed by this submission because these arguments are advanced possibly taking into view the present conditions prevailing in the municipal areas on account of the recent developments in those areas It may well be said that if the tenant was to be made the owner on April 1, 1957 in the case of these lands, by applying the provisions of Section 32 the landlord could have secured a meagre amount as would be determined under the Act, In our view, such considerations put forth by Mr. Rege would not be relevant while determining the question of discrimination. Indeed, it has not been disputed that the classification between the lands in municipal areas and those in non-municipal areas is reasonable and consistent with the object of the tenancy law. We are, therefore, unable to accept the argument that the deletion of Section 43D offends Article 14 of the Constitution.

17. As far as Special Civil Application No. 3126 of 1975 is concerned, tenancy authorities have already ordered delivery of possession, but the tenant has not lost possession. In view of the provisions of Section 6 of the Amending Act all the proceedings abate and the respondents' application for possession must stand rejected as having been abated. Rule made absolute in terms of prayer VIII-A of the petition and there shall be no order as to costs.

18. In Special Civil Application No. 2967 of 1978 the Tehsildar had ordered delivery of possession, but in appeal the order was set aside which order was confirmed by the Revenue Tribunal and the landlord has filed the present petition. Admittedly, the tenant has not lost possession in this case as well. The proceedings, therefore, must necessarily stand abated. Rule is, therefore, discharged with no order as to costs.