

(1974) 04 GUJ CK 0002
In the Gujarat High Court

Shah Pravinchand Harakhchand

APPELLANT

Vs

The State of Gujarat and Another

RESPONDENT

Date of Decision : 18-04-1974

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(g),
13(1)(g)
Civil Procedure Code, 1908 (CPC) — Section 113
Constitution of India, 1950 — Article 14, 14, 19, 19

Citation : (1975) 16 GLR 40

Hon'ble Judges : A.D. Desai, J

Bench : Single Bench

Judgement

A.D. Desai, J.—The question which is common in these three proceedings and which arises for determination relates to the vires of Explanation (a) to Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Act). The question arises in this way. Plaintiff landlords filed civil suits in competent Courts against their respective tenants for possession of the leased premises on the ground of their bona fide requirements. Admittedly the landlords had purchased the suit properties after January 1, 1964 with sitting tenants. In the suits the landlords challenged the vires of Explanation (a) to Section 13(1)(g) of the Act on the ground that the said provisions violated Articles 14 and 19 of the Constitution. Special Civil Application relates to the suit in which a preliminary issue was raised as to the vires of the provisions and the learned trial Judge decided the issue against the landlords. In suit out of which Reference No. 5 of 1972 arises the learned trial Judge referred the issue of vires of the provisions to this Court u/s 113 of the Civil Procedure Code. In Civil Revision Application No. 860 of 1967 the learned trial Judge finally decided the suit holding that the landlord failed to prove that he bona fide required the suit premises for his personal use and dismissed his suit. It is obvious, therefore, that in the said Civil Revision Application the issue regarding vires of Explanation (a) to Section 13(1)(g) of the Act loses all its importance. All these three proceedings came up for hearing before the Division Bench consisting of J.B.

Mehta and S.H. Sheth, JJ., who delivered their judgments on January 19, 1974. J.B. Mehta J. came to the conclusion that the said provisions were intra vires while S.H. Sheth J. came to the conclusion that they were violative of Articles 14 and 19 of the Constitution. It is for this reason that the three proceedings are placed before me for final decision.

2. In order to appreciate the contention raised regarding the unconstitutionality of Explanation (a) to Section 13(1)(g) of the Act it is necessary to refer to the material provisions of the Act. The Act has been enacted to control rents and repairs of certain premises and eviction of tenants therefrom. Under the ordinary law of landlord and tenant, as soon as the landlord terminates the tenancy by any of the modes available to him u/s 111 of the Transfer of Property Act except for by forfeiture, he is entitled to recover possession and the tenant has no right to resist his claim for possession. In view, however, of shortage of accommodation and the apprehension that the landlords might take undue advantage of shortage of accommodation the legislature has passed the Act with object to offer protection to tenants against their evictions by landlords. Section 13 of the Act provides for the protection of tenants against eviction. It lays down that notwithstanding anything contained in the Act but subject to the provisions of Section 15 a landlord shall be entitled to recover possession of any premises if the Court is satisfied of the grounds for eviction. The grounds on which the Court has to be satisfied are then set out in Clause (a) to (1) of the said section. The effect of these provisions is that a landlord can recover possession of the premises leased by him only on grounds mentioned in Clause (a) to (1). Clause (g) of Section 13(1) provides that the landlord shall be entitled to recover possession of any premises if the Court is satisfied that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlords are trustees of a public charitable trust that the premises are required for occupation for the purpose of trust. Sub-section (2) of Section 13 further restricts the rights of the landlord to recover possession and it lays down that no decree for eviction shall be passed on the ground specified in Clause (g) of Sub-section (1) if the Court is satisfied that having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant greater hardship would be caused by passing the decree than by refusing to pass it and where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises the Court shall pass the decree in respect of such part only. The Act was enacted in the year 1947 and came into force on February 13, 1948. At that time there was an Explanation to Section 13(1)(g) and the Explanation was as under:

(a) : a person shall not be deemed to be a landlord unless he has acquired his interest in the premises at a date prior to the beginning of the tenancy, of the 1st day of January, 1947, whichever is later or, if the interest had devolved on him by inheritance or succession, his predecessor-in-title had acquired the interest at

a date prior to the beginning of the tenancy, or the first day of January 1947, whichever is later.

This explanation was repealed by the Bombay State Legislature in the year 1953 by Act 61 of 1953. The State of Gujarat was formed on May 1, 1960. The Legislative Assembly Bill No. 56 of 1963 was introduced in the Gujarat Assembly and by Section 12 thereof the following Explanation was sought to be added to Section 13 of the principle Act. "Explanation: for the purpose of Clause (g) of Sub-section (1)-

(a) a person shall not be deemed to be a landlord unless he has acquired his interest in the premises at a date prior to the beginning of the tenancy or the first day of January 1963 whichever is later or has the interest devolved on him by inheritance or succession, his predecessor-in-title had acquired the interest at a date prior to the beginning of the tenancy or the first day of January 1963, whichever is later.

The Gujarat Legislature then passed Gujarat Act 57 of 1963 and enacted the following Explanation:

For the purposes of Clause (g) of Sub-section (1)-

(a) a person shall not be deemed to be a landlord unless he has acquired his interest in the premises at a date prior to the beginning of the tenancy of the first day of January, 1964, whichever is later, or if the interest has devolved on him by inheritance or succession, his predecessor-in-title had acquired the interest at a date prior to the beginning of the tenancy or the first day of January 1964, whichever is later.

The Gujarat Act came into force on January 1, 1964. The Explanation thus introduced has been worded exactly in similar terms to the Explanation which existed at the time when the Act was enacted with the only difference that it specified the first day of January 1964 as the date. It must be noted that in the Bill specified date was first January 1963 while in the Act the said specified date was mentioned as January 1, 1964, as it was not intended to give retrospective effect to the Explanation. The circumstances in which and the object of the legislature in introducing the Explanation by the amendment in the Act would be matter of consideration hereinafter.

3. Mr. Daru appearing for the landlords contends that the effect of the Explanation is that even heavily restricted right of reversion in a case of genuine and hard need is available only to those landlords (1) who acquired interest in the premises at a date prior to the beginning of the tenancy or the first day of January 1964 whichever is later and (2) on whom their interest has devolved by inheritance or succession. The provisions exclude all other landlords from the right of reversion on the ground of bona fide, reasonable and harder need. The exclusion is totally unrelated to the object of the Act and results in gross discrimination in actual operation. Clause (g) even after the insertion of the

Explanation recognises that the landlords of the class included in the Explanation may have rented the premises at the time when they did not personally need them but later on there may arise a personal need and, therefore, they should have a right to evict those tenants. This often happens, contends Mr. Daru, e.g. an owner in Government service subject to transfers may not need the premises while in Government service but may need after retirement or a person who has rented a part of the premises owned by him may need after the expansion of his family for residence or for business. Now there is no reason to believe, contends Mr. Daru, that such need will not arise in case of those landlords who are included in the Explanation, i.e. those who acquired interest in the premises on the dates specified therein. It would be fantastic, the argument continued, to believe that those who purchased the premises after a certain date will not need the premises for personal use. Nothing had happened on January 1, 1964 which made it improbable for the subsequent purchaser to need the premises for personal need. It was further contended that the landlords from these points of view can fall into the following five groups:

- (1) Persons who acquired ownership of the premises prior to January 1, 1964.
- (2) Persons who acquired interest, otherwise than by inheritance or succession, on or after January 1, 1964 in the premises which were occupied by the tenants on the date of acquisition of interest and continued to be so occupied by the same tenants on the date when the need of the landlord arose.
- (3) Persons who acquired interest otherwise than by inheritance or succession after 1-1-64 in premises which were either vacant on the date of acquisition of interest or which became subsequently vacant and were let out after the acquisition of interest.
- (4) Persons who got the premises by inheritance or succession from predecessors belonging to group (1).
- (5) persons who got the premises by inheritance or succession from predecessors belonging to groups (2) and (3).

The Explanation confers the right of reversion upon a needy landlord if he belongs to groups (1), (3) and (4) but not if he belongs to groups (2) and (5). Thus it divides landlords into two classes A and B. Class A consists of groups (1), (3) and (4) and class B consists of groups (2) and (5). Class A is the favoured class and class B is selected for hostile treatment. From the point of view of the genuinely arisen need of the landlord, there is no distinction between class A and class B. The classification rests on two-fold basis : (1) the date of acquisition of interest, (2) the accident of a vacancy existing on or arising after a date which has no bearing on the genuineness or otherwise of the need of the landlord. Both these bases are totally unrelated to the object of the Act. The argument that the purchaser after the specified date makes the purchase with the full knowledge that he will have no right to evict have no bearing whatsoever on the question of discrimination. Unequal treatment does not become constitutionally permissible,

contended Mr. Daru, merely because persons selected by the legislation for hostile treatment are warned in advance that they will be visited with hostile action. The constitutional guarantee of Article 14 would indeed be illusory if it is permissible to destroy it by ordinary legislative process after due notice. The aforesaid classification is arbitrary and excessive as the legislature has failed to take into account the changing conditions in the life of an individual. The prohibition enacted in the Explanation is absolute and permanent. It prevents the widows and minors from selling their properties for reasonable prices if they are occupied by tenants even though they may be in need of money. The prohibition which the Act confers upon the tenant without the impugned Explanation is, contended Mr. Daru, adequate. If it is adequate to the tenants or landlords of Class A, how can it be said that it is inadequate to tenants or class B landlords? The impugned Explanation has been enacted, as the object and reasons for introducing the Bill shows, to remedy an usual situation arising out of unusual transaction in chawls. In absence of the impugned Explanation, will a transferee landlord be ever able to make out a case of reasonable and bona fide requirement for his personal requirement against all the tenants residing in the chawl? At the most such a landlord can make out such a case against 2 or 3 or 4 tenants but definitely not against all the tenants. Moreover, the right to recover possession u/s 13(1)(g) read with the Explanation can arise only upon a fortious circumstances-the circumstance being the tenant vacating the premises and surrendering its possession thereof to his landlord; because in such case the landlord moves into the category of B Class landlords and acquires the legal right to evict the tenant whom he thereafter inducts into the premises. At the most if malpractices were noticed in respect of chawls, Explanation could have been restricted to such premises and should not have been extended to other premises. The magnitude of evil arising from unusual transactions in chawls is not such that the entire community of landlords of class B should be subjected to this permanent prohibitions. Thus it is obvious that the protection conferred by the Explanation to the tenants is arbitrary, excessive and the impugned Explanation, therefore, is violative of the constitutional provisions of Articles 14 and 19 of the Constitution.

4. Now it cannot be disputed that Explanation (a) to Section 13(1)(g) of the Act divides the landlords into two classes as contended by Mr. Daru. Article 14 does not prohibit the legislature from classifying in certain cases. The question that arises for determination is whether the classification made by the legislature is rational or reasonable. In order to judge whether the impugned provisions offend Article 14 or 19(1)(f) of the Constitution, it is necessary to bear in mind the principles which have been laid down by the Supreme Court in that connection. In *Chintaman Rao Vs. The State of Madhya Pradesh*, Mr. Justice Mahajan observed that the words "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. He further observed that the 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 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality. Chief Justice Patanjali Sastri in *State of Madras Vs. V.G. Row*, laid down the test of reasonableness as under:

...the test of reasonableness, wherever prescribed, should 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. 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.

The scope of reasonable restrictions was again considered by the Supreme Court in *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, and the following observations were made:

The word "restriction" includes cases of "prohibition" also. The contention that a law prohibiting the exercise of a fundamental right is in DO case saved, cannot therefore be accepted. However, when the restriction reaches the stage of prohibition special care has to be taken by the Court to see that the test of reasonableness is satisfied. The greater the restriction, the more the need for strict scrutiny by the Court. While applying the test of reasonableness, the Court has to consider the question in background of the facts and circumstances under which the impugned legislation has been enacted, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the burden caused to individual citizens by the proposed remedy, to the beneficial effect reasonably expected to result to the general public. It will also be necessary to consider in that connection whether the restraint caused by the law is more than was necessary in the interest of general public.

The same proposition of law has also been laid down by the Supreme Court in *Mohammed Faruk Vs. State of Madhya Pradesh and Others*, and *The State of Maharashtra v. Himmatbhai Narbheram Rao and Ors.* : [1969]2SCR392 . The question of considering the validity of Gold (Control) Act, 1970 in the light of Articles 14 and 19 of the Constitution arose in *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, and the Court observed that the circumstances and the socio-economic background in which an impugned legislation has been passed can be taken into account while adjudicating upon the constitutional validity of a legislation. The principle which underlies the structure of the rights guaranteed under Article 19 is the principle of balancing the need for individual liberty with the need for social control in order that the freedom guaranteed to the individual sub-serves the larger public interests. The reasonableness of the restrictions imposed under an impugned Act will have to be judged by the magnitude of the evil which it is the purpose of the restraint to curb or eliminate. When a law is challenged as violative of Article 14 of the Constitution, it is necessary in the first place to ascertain the policy underlying

the statute and the object intended to be achieved by it. Having ascertained the policy and object of the Act the Court has to apply a dual test in examining its validity (1) whether the classification is rational and based upon an intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of the group and (2) whether the basis of differentiation has any rational nexus or relation with its avowed policy and object. The same principle is also laid down in *Bachan Singh and Others Vs. State of Punjab and Others*, . It must be noted that in order to understand the circumstances in which an Act was passed, and the purpose and object sought to be achieved, recourse can be had to the legislative debates and object and reason stated in the Bill vide *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, . It is in the light of the aforesaid principles which have been laid down by the Supreme Court that the constitutional validity of the Explanation has to be examined.

5. As pointed out earlier when the Rent Act was enacted in the year 1947 there was an identical Explanation to Section 13(1)(g) of the Act. The said Explanation to Section 13(1)(g) of the Act was challenged as ultra vires Articles 14 and 19 of the Constitution before the Division Bench consisting of Chagla C.J. and Bhagwati J. in *A.S. Ruben Vs. Narayan Moreshwar*, . The Court upheld the validity of the said provisions observing that the classification between the landlords who purchased the property before January 1, 1947 and those who purchased after January 1, 1947 could not be said to be arbitrary or capricious, unreasonable because the intention of the Legislature was to protect the tenants who would otherwise find no living space at all from a class of people who had sufficient means to purchase properties in order to live in those properties themselves. The Court considered the object why the Legislature enacted the said provision. Due to the post-war boom and the partition of the country there was an influx of the people in the state and these people often wanted to invest their surplus money. The Legislature then came forward to protect tenants. What is necessary, therefore, to examine is the circumstances in which the impugned Explanation had been introduced by the legislature in our case and what was its object in doing so. The relevant portion of the object and reason stated in the Bill which was introduced for the purpose, is as under:

It has been noticed that unusual transactions are taking place especially in case of Chawls whereby the tenants are deprived of the possession. To avoid such a consequence the scope of the definition of landlord is proposed to be restricted by adding another Explanation to Section 13.

In Special Civil Application No. 309 of 1970 an affidavit in reply on behalf of the State of Gujarat has been filed. With reference to the circumstances under which the impugned legislation was enacted it has been stated that on the formation of the State of Gujarat the situation was such that there was a rush for the purchase of Immovable properties in various places in the newly formed State which would have resulted in a large scale eviction of tenants of such properties.

The said Explanation was, therefore, necessary in the interest of general public. Having regard to the housing accommodation prevailing at the time and evil of acquisition of properties by persons having lot of surplus money (in many cases unaccounted) with a view to evict tenants after the purchase on the ground of personal requirement that the legislature enacted the said provisions. The underlying purpose of the restriction imposed by the Legislature was to protect tenants from eviction by persons of the category stated above. In the absence of such legislation many a poor tenant would have been subjected to costly litigation and mental worries caused by threats of eviction. This statement made in the affidavit was not accepted by S.H. Sheth J. for two reasons : (1) that the State of Gujarat was formed on May 1, 1960, then why such an enactment was not rendered necessary between the years 1960 and 1964 and there was nothing to show that such a situation had suddenly developed on or after January 1, 1964; (2) that it was not on account of the situation as stated in the affidavit that the legislature enacted the impugned Explanation. The statement of objects and reasons and the legislative assembly debates do not bear out the statement made on behalf of the State of Gujarat. The learned Judge further observed that unusual transactions in respect of Chawls alone appeared to be the reason which led the legislature to enact the provisions. It is necessary, therefore, to refer to the speech made by the Minister on the floor of the house while piloting the Bill. The relevant part of his speech vide Legislature Debates, Vol. 8 part 10 dated December 18, 1963 as officially translated is as under:

if we think today of the society, the persons of poor and middle class are suffering hardships. It would be a blessing if we can in any way give relief to the poor and the middle class. We could not construct the buildings according to our requirements due to the circumstances which are prevailing in the country and which were also beyond our control. The population is increasing in the cities and it is a fact that the buildings are not being constructed in that proportion. There is also a shortage of materials for constructing the buildings. There is also a difficulty of acquiring land. On account of this today we see everywhere the shortage of residential buildings. A Law was enacted 24 years before and an attempt to give relief to the poor and middle class were made....

We all believe in the context of the present situation in this world that there should be an organised equitable society. We organise socialist society, Sarvodaya society and such other societies so that the people can live in happiness. Then the fundamental question is to whom we would give preference: whether we would give first preference to humanity or to the capital? This is a question before us. It is good that a person can collect the capital of 5 thousand, 10 thousand, 15 thousand, 20 thousand, 25 thousand and such a person desires to construct his building on the strength of that capital. He should be encouraged. But a person on account of his capital cannot harass the poor or middle and labour class tenants and drive them in streets. He cannot then be happy. Today in this country the tenants are more in number than the landlords. The tenants are in big majority. The tenants deserve to be the landlords but

cannot achieve the desire because of their economical condition. This Act is for the protection of such tenants. They should be given the protection. It is said that the standard rent is an important matter. I accept it but the stability to the tenant is more important.

The man can only be happy if they have their stability for employment and residence as well. The situation prevailing today is that thousands of people live in tension. Many instances have come to my notice and number of the complaints have been received to the effect that the landlord in order to earn money and to gain the profit make such an arrangement/device that he would call someone and by tempting him and giving him a promise to give a free house, would ask them to find out such one or two people who would purchase the rooms and thus create a type of atmosphere amongst the labourers that the whole of his chawl and its rooms are about to be sold away. On hearing of such information instability rises amongst the tenants, they believe that the houses would be disposed off, we would be sued in the court of law, and we would have to vacate the chawl. What would be our condition? On account of this they become ready to purchase the chawl. Landlord proposes him double the price than the reasonable price. The distressed people would prepare to accept this as well. Many instances have occurred of disposing off such chawls. The same is the condition of the middle class people in the cities.

One argument is being advanced here that what would be the position of the poor widow landlords?

The Honourable Chairman, Sir, is it that only the landlord's have widows? The tenants haven't widows?_____I am putting a question that the conditions of the landlord widows are still better in that at least they are the owners of the house. But what about those tenants widows who are helpless and destitute....

I wish that injustice should not be done either to the landlord or to the tenant. But in the present circumstances more sympathy should be shown to those who are unhappy. They should be given more relief. If any sacrifice is called for or required it should be by those who have got enough. We always have sympathy towards the widows. The sympathy must be towards ladies, but it must be more towards the widows. That is the feeling. If this feeling is exploited in the manner indicated above then there is the socialistic society or a society without exploitation.

Respected Chairman, I do not desire that the difficulty arises to anybody because of the definition of the word "landlord" which has been introduced. The new provision was to be effective from 1-1-63 but I am going to accept the amendment which is to be proposed that it should effect a landlord who will become the owner after 1-1-64.

We desire and many respectable members also desire that many buildings may be constructed. My intention is also that one who has got some capital of 10 thousand, 15 thousand, 20 thousand-may construct a new building instead of

staying in an old building by purchasing it. There is no justice or happiness in making any one unhappy by using one's capital. It is therefore, that this explanation has been introduced. And I think that those who possess progressive ideology should welcome it and in fact congratulate me.

It is said that the existing provisions are sufficient. The person who has purchased the building has to go to the court of law for getting it vacant. The court passes the decree in his favour only if it is satisfied that no further hardship would arise in case any eviction decree is passed. Many cases have been filed taking advantage of these provisions, but Respectable Sir, it is my experience and therefore to my knowledge that the hardships of the poor who have no means to go to court are only increased by this. The rich persons are defending very well by engaging advocates. But the poor persons who are unable to pay the rent, have to go to the court and incur a good deal of expenditure even though they cannot afford. The said amendment has been made to redress the difficulty of such persons and with a view that the buildings activities may be increased.

The aforesaid quotation of the speech clearly points out that what has been stated in the affidavit filed on behalf of the State of Gujarat is a correct version. The said affidavit also sets out clearly and correctly the object with which the Explanation was enacted by the legislature. The Minister's statement clearly indicates that the amendment was sought to be made in order to protect sitting tenants. The object of the legislature was not limited to the protection of the sitting tenants of the Chawls only. In actuality the object was to protect the sitting tenants of all the premises against the eviction by landlords who purchased the property under a device to defeat the provisions of the Act which has been enacted to protect the tenants from eviction. It seems plain that the object which this provision is intended to achieve is to prevent transfers by landlords to enable purchasers to evict sitting tenants from the premises let out to them. If the landlord is unable to make out a case of eviction of his tenant u/s 13(1)(g) of the Act it is not unlikely that he may think of transferring the premises to a purchaser who would be able to make out a case on his own behalf. The legislature wanted to step down this device and did not want to permit such transferee landlords to evict sitting tenants by adopting the device. It has been pointed out by the Minister that the Explanation was likely to cause some hardship to the landlords including widows but on the other hand there are also widows of the tenants-and thousands of them-who required protection against evils created by the device which was introduced to circumvent the provisions of Section 13(1)(g) of the Act. It is true that the State of Gujarat was formed on May 1, 1960 and the amendment came into force in the year 1964. But it must not be forgotten that the interested persons were watching the development of the new State and prospect of its stability. One cannot close his eyes to the delays which occurs in Government departments. The Bill was published in the Government Gazette on September 4, 1963. It will not be improper to infer that before the Bill was enacted, the relevant authorities made

necessary inquiry into the circumstances and the reasons why people were investing the surplus money in Immovable properties and the mal practice that was adopted by them. In the Explanation given in the Bill the purchasers after January 1, 1963 were not intended to be included in the definition of the landlord. When the Bill was discussed in the House the Minister stated that instead of the purchasers on or after 1st January 1963, the purchasers of the properties on or after 1st January 1964 were to be excluded from the definition of landlord for the purpose of Section 13(1)(g) of the Act. Thus the concession was given in order to avoid inconvenience. It is thus clear that the legislature had to consider the necessity of the adding further restriction when the investors purchased the tenanted properties and as such transactions imposed serious threats on the sitting tenants who were under the risk of being evicted on the investor making out a case of eviction under the existing provisions of law. The legislature found that there had been many purchases of houses or properties during the period prior to the introduction of the Bill and as such owners were likely to apply for ejectment of their tenants and it was for these reasons that the legislature enacted the Explanation. It is obvious that the legislature was very well aware of need of the wider restriction being enacted and not against Chawls-owners but against all who by their investment were in a position to evict the tenants. This is abandonantly clear if one reads the speech of the Minister made by him on the floor of the House. The persons who would invest in such transactions can be divided into two classes; one class was of those who invested the money for the return by way of rent and there could hardly any hardship to them. The other class was of those who might have needed the premises and they no doubt would suffer some inconvenience but in view of their capital they could construct new buildings and thus avoid their inconvenience. On the other hand any action by persons belonging to those classes would have driven the tenants into streets. It was for these reasons that the legislature intervened in order to avoid hardships to sitting tenants. The legislature did not intend to permit persons having surplus money - a fortituous circumstance by itself - to evict sitting tenants. In such a case a poor tenant will be obliged to go through the entire costly litigation. The legislature balanced the circumstances in which the landlords and tenants were and decided that tenants required more protection because the wealthy class could avoid inconvenience by purchasing a vacant house or by building anew house. The tenant had no alternative in such cases except to be thrown on the streets because of the non-availability of premises. Such a legislation could not be said to be unreasonable and the restriction put by it cannot be said to be excessive. If the intention of the legislature was to protect sitting tenants how can it be said that the classification is unreasonable, arbitrary or capricious? The Act has been enacted in order to protect tenants from eviction and keeping the same beneficent view in mind the legislature enacted the Explanation. The classification made between the landlords is also rational and intelligible as the legislature desired to put at an end to the device adopted by the landlords to evict the tenants. The legislature for the reasons already stated saw the difference between purchasers prior to

January 1, 1964 and the purchasers thereafter and in order to avoid a device followed by the latter purchasers to defeat the provisions of the Act, made a special law in respect of such purchasers. There is no discrimination. The State is undoubtedly prohibited from denying to any person equality before the law or equal protection of the law but by enacting a law which applies generally to all persons who come within its ambit as from the date on which it becomes operative, no discrimination is practised. Article 14 of the Constitution strikes at discrimination in the application of the law between persons similarly circumstanced; it does not strike at a differentiation which may result by the enactment of law between transactions governed thereby and those which are not governed thereby. If the argument that the discrimination results when by statute a civil liability is imposed upon transactions which were otherwise subject to such liability be accepted, every law which imposes civil liability will be liable to be struck down under Article 14 of the Constitution even if it comes into operation on the date on which it is passed, because immediately on its coming into operation discrimination will arise between transactions which will be covered by the law after coming into force and transactions before the law came into force which were not naturally be hit by it. See *Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others*, . The degree of classification is a matter to be determined by the legislature upon considerations which appear to it to be practical and no valid complaint can be made to the legislature unless it can be shown that Article 14 of the Constitution has been infringed. It is for the purpose of evading the rampant evil and to protect helpless middle and poor class tenants that the legislature intervened and enacted the Explanation. The object with which the Act was enacted was to protect tenants from eviction. The aim of the legislature in enacting the impugned Explanation was to achieve the same object. Therefore, the basis of the differentia has not only a nexus but a direct nexus to the policy and object which the Act aimed to achieve. The legislature took care not to give retrospective effect to the amendment and this is evident because the legislature changed the date from January 1, 1963 to January 1, 1964 and prohibited the purchaser after January 1, 1964. The widows and minors were not out of the eyes of the legislature and the legislature wanted to protect die widows and minors of the tenants as against affluent widows and minors.

6. The legislature enacted the Explanation keeping in mind the changing circumstances in the life of the landlords as well as tenants. No doubt the impugned Explanation contains a prohibition but the prohibition is not a permanent one. No doubt it is "for an indefinite and undetermined period but we must not lose sight of the fact that the Act itself is a temporary statute. The legislature has the power to take out the Explanation when it is satisfied that the restriction is no more necessary. One must not forget that the legislature did remove such a restriction which was placed in the year 1947 in the year 1953. The circumstances which were prevalent at the time when the Explanation was added by the Gujarat Legislature were similar to the circumstances which

prevailed at the time when the Act was enacted with such an explanation in the year 1947. The decision in A.S. Ruben (supra) is exactly on fours and the said decision completely covers the present case. No ground whatever is made out to challenge Explanation (a) to Section 13(1)(g) of the Act under Articles 14 and 19 of the Constitution.

7. The result is that Special Civil Application No. 309 of 1970 fails and the rule issued thereon is discharged. The question referred to in Reference No. 5 of 1972 is answered by holding that Explanation (a) to Section 13(1)(g) of the Rent Act is intra vires Articles 14 and 19 of the Constitution and the case to go back to learned trial Judge for disposal in accordance with law. Civil Revision Application No. 860 of 1967 also to go to the learned Single Judge for disposal in accordance with law. There shall be no order as to costs in all these proceedings.