
(1970) 09 BOM CK 0023

Bombay High Court

Case No: Spl. Civil Application No's. 1786 to 1788 and 1819 of 1969

Mangharam Chuarmal

APPELLANT

Vs

B.C. Patel and Others

RESPONDENT

Date of Decision: Sept. 22, 1970

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13, 13(1)(a), 13(1)(b), 13(1)(c), 13(1)(g)
- Civil Procedure Code, 1908 (CPC) - Section 11
- Constitution of India, 1950 - Article 14
- Transfer of Property Act, 1882 - Section 105, 108(B)(h), 3

Citation: AIR 1972 Bom 46 : (1971) 73 BOMLR 140 : (1972) ILR (Bom) 30 : (1971) MhLj 369

Hon'ble Judges: Bhasme, J

Bench: Single Bench

Advocate: M.R. Parpia, i.b. and Little Co., N.H. Paradasani, S.P. Kanuga, K.K. Singhavi, D.R. Dhanuka, K.R. Dhanuka, M.V. Paranjpe and M.L. Bansal, for the Appellant; S.J. Sorabjee, M.O. Chinoy and A.G. Parikh, for the Respondent

Judgement

1. These four petitions are filed by the 15 petitioners the alleged sub - tenants of Defendant No. 1 who are aggrieved by the order of ejectment passed against them by the Appellate Bench of the Court of Small Causes. As common questions of fact and law are involved in these petitions, I propose to dispose them of by one common judgment. The proceedings arise out of the ejectment suit filed by the respondents against Defendant No. 1 and the petitioners.

2. A few facts leading to this litigation are as follows : The suit property comprises of an open plot of land measuring about 1050 square years situate at Mahul Road, Chembur, Greater Bombay. The respondents are the owners of this plot. In February 1954 Respondent No. 1 let out the said open plot of land to Defendant No. 1 Shaikh Hassan Shaikh Razack for his char - coal business. The agreed rent per month was Rs. 100/- and

it is said that the lease was for a period of three years. No written document evidencing the lease is placed on the record of these proceedings. But it is admitted that the said lease was in the first instance for a period of 3 years. The rent of Rs. 100/- per month was subsequently reduced to Rs. 80/- per month as a result of proceedings between the parties. It appears that Shaikh Razack put up shop structures on the open plot of land in or about the month of August 1954 and let out the said structures to various sub - tenants. On 25-2-1957 Respondent No. 1 gave a notice to quit to Razack and on the basis of that notice Respondent No. 1 filed a suit on 11-4-1957 seeking the eviction of Razack and some other defendants (those defendants are some of the defendants in these proceedings also) on various grounds. Possession was sought on the ground on non - payment of rent, breach of the terms of tenancy, erection of permanent structures, unlawful sub - letting, illegal profiteering and also on the ground that the plot of land was required reasonably and bona fide for construction of a building. The suit was initially filed only against Defendant No. 1 and the defendants who were alleged to be sub - tenants, were later on impleaded at their own instance. That suit was decreed on 21-7-1960. Defendant No. 1 Razack preferred an appeal and the other defendants also challenged that decree in appeal Court. In all three appeals were filed against the decree in ejectment passed by the trial Court. On 31-8-1961 the Appellate Bench of the Court of Small Causes allowed the appeals and directed the dismissal of the suit. The appellate Bench held that the defendants were in fact sub - tenants of the land. Only one defendants was held to be a sub - tenant of the land. The Court also found that the plaintiff had not established any breach of the terms of the tenancy. The Court further held that the plaintiff had failed to prove profiteering by the tenant; that the structure put up by the tenant was not a permanent structure within the meaning of the relevant provisions of Section 13 of the Rent Act and that the plaintiff had failed to prove the premises were required by him reasonably and bona fide for his own occupation after erecting the new building. The Appellate Bench also came to the conclusion that the suit filed on the basis of the quit notice dated 25-2-1957 was premature and the suit was liable to be dismissed. It was held that the lessor had not given one clear month"s notice before the institution of the suit.

3. On 21-9-1961 the Respondents gave another notice terminating the tenancy of defendant No. 1 Razack. As the respondents felt that the notice was defective they, by way of abundant caution, gave another notice on 21-11-1961 terminating the tenancy of defendant No. 1 Razack. On 17-2-1962 they filed a suit against Razack claiming possession of the suit premises on various grounds. They alleged that Razack had erected permanent structures without their consent in writing; that he had illegally sub - let portions of the plot to others; that he was profiteering by charging his tenants rent far in excess of the standard rent which he was paying to the Respondents. In addition to these grounds the respondents also sought possession of the premises on the ground that they reasonably and bona fide required the same for erecting a new building. The present suit was first filed against defendant No. 1 and defendants 2 to 11. Later on, at the instance of the plaintiffs, the other defendants were also joined as necessary parties. That is how the

suit came to be filed by the respondents against the defendant No. 1 and the present petitioners.

4. Defendant No. 1 died after the institution of the suit. Defendants 1 - A to 1 - D were brought on the record as his legal representatives and they filed the defences in which they contended that defendant No. 1 was not liable to be evicted on the various grounds mentioned in the plaint. In other words, they denied the fact of illegal sub - letting and profiteering. They also denied the defendant No. 1 had erected any permanent structure. They contended that the Respondents did not require the premises for erecting a new building. It was their defence that the suit was barred by res judicata in view of the earlier decision of the appellate Bench of the Court of Small Causes. The other defendants filed separate defences substantially supporting the case of the heirs of defendant No. 1. They claimed to be lawful sub - tenants and stated that by virtue of Section 14 of the Rent Act even if defendant No. 1 was liable to be evicted, they would become the direct statutory tenants of the plaintiffs. The learned trial Judge framed a number of issues and after considering the oral and documentary evidence came to the conclusion that the suit was not barred by res judicata. Defendant No. 1 had not unlawfully sub - let any portion of the suit premises; that defendant No. 1 was guilty of profiteering as he was charging the sub - tenants rent in excess of the standard rent and permitted increases; that the plaintiffs have failed to prove that the premises are reasonably and bona fide required for the erection of a new building. The learned trial Judge held that defendant No. 1 was liable to be evicted on the ground that he was guilty of profiteering. As regards the allegation of erection of permanent structures, he held that defendant No.1 was not guilty of any breach of the terms of tenancy. The learned trial Judge accordingly held that the plaintiffs were not entitled to claim possession on the ground that defendant No.1 had erected permanent structures. He also held that defendants 2 to 16 were lawful sub - tenants of the land. He passed a decree in ejectment only against the heirs of defendant No. 1. He held that by virtue of Section 14 of the Rent Act, the rest of the defendants had become the direct tenants of the plaintiffs. In the result he dismissed the suit of the plaintiffs against the defendants 2 to 16.

5. The heirs of defendant No. 1 preferred an appeal challenging the decree passed against them. The plaintiffs also filed an appeal against the decree in so far as it directed the dismissal of their suit for possession against defendants Nos. 2 to 16. The Appellate Bench of the Court of Small Causes heard the two appeals. The Appellate Bench dismissed the appeal filed by the heirs of defendant No. 1. The Appellate Bench disagreed with the various findings recorded by the trial Court against the plaintiffs. It also held that the suit was not barred by res judicata. It held that the defendant No. 1 was guilty of erecting permanent structures and profiteering. In respect of some defendants it is found that defendant No. 1 was liable to be evicted on the ground of illegal sub - letting. The Court also came to the conclusion that the plaintiffs have proved that they required the premises reasonably and bona fide for erection of a new building. In the result the appeal filed by the plaintiffs was allowed and the suit in ejectment was decreed against all

the defendants including the heirs of the deceased defendant No. 1.

6. The petitioners, who are defendants 2 to 16, are challenging the decree passed by the Appellate Bench of the Court of Small Causes on various grounds. It must be noted that the heirs of the deceased defendant No. 1 have accepted the finality of the adjudication in so far as it concerned them. They have not approached this Court by making any grievance about the said decision. Before these petitions were taken up for hearing, the advocate for the petitioners pointed out that in these proceedings the vires of Section 13(1)(i) of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947 was challenged on the ground that that section infringes the fundamental right guaranteed under Article 14 of the Constitution. Notice was, therefore, ordered to be issued by this Court to the Advocate - General of Maharashtra. After the notice was returned served, the applications were fixed for final hearing. No appearance was entered on behalf of the Advocate - General. On the adjourned date Mr. Parpia, instructed by M/s. Little and Co., gave an application on behalf of the State of Maharashtra, for leave of the Court to appear on behalf of the State of Maharashtra. I granted the application and Mr. Parpia appears for the State of Maharashtra.

7. Mr. Singhvi, appearing on behalf of some of the petitioners, has raised the following points of law in support of the petition :

(1) That Section 13(1)(i) of the Rent Act infringes the fundamental right under Art. 14 of the Constitution and is to that extent void under Art. 13(1) of the constitution;

(2) That the present suit of the landlords is barred by res judicata on account of the findings recorded in the earlier eviction suit;

(3) That Section 13(1)(i) of the Rent Act applies to open land and the landlords will not be entitled to possession when the land is not open land at the date of the suit;

(4) The effect of Section 14 of the Rent Act vis - a - vis the rights of the petitioners who are the lawful sub - tenants under the original tenant;

(5) That the finding of the appellate Bench of the Court of Small Causes about the bona fide and reasonable requirement of the landlords u/s 13(1)(i) of the Rent Act is a result of the misreading of that provision. Besides the findings of fact about sub - letting, etc., are erroneous in law, and

(6) Jurisdiction of this Court under Art. 227 of the Constitution of India.

8. Mr. Singhvi generally addressed me on all these points. Mr. Dhanuka, who appears for some of the petitioners, advanced supplementary arguments. Mr. Pardasani has endorsed the say of Mr. Singhvi and Mr. Dhanuka. Mr. Paranjpe, who also appears for one of the petitioners, confined his argument only to the interpretation of Section 13(1)(i) of the Rent Act and submitted that the Appellate Court has not adopted a correct

approach while recording the relevant findings.

9. In reply Mr. Sorabjee, who appears for the respondents plaintiffs, submitted that the decision of the Appellate Bench of the Court of Small Causes is based on appreciation of oral and documentary evidence and this Court cannot interfere with the said findings of fact. Even the points of law arising in this case have been correctly decided by the lower Court. He then submitted that Section 13(1)(i) of the Rent Act does not in any manner infringe the fundamental rights under Art. 14 of the Constitution, and its constitutional validity is not open to challenge.

10. Mr. Parpia, on behalf of the State of Maharashtra endorsed all that was said by Mr. Sorabjee and pin - pointed the various features of the impugned legislation which go to show that it does conflict with Art. 14 of the Constitution. I will consider these points of law in the order in which I have mentioned them.

11. Mr. Singhvi, as stated above, vehemently argued that Section 13(1)(i) of the Rent Act unreasonably discriminates between tenants of one class against the tenants of another class. According to his submission the discrimination is wholly arbitrary and inconsistent with the known object of the Rent Act. Before I consider the criticism levelled against the impugned provision of the Rent Act, I would first enumerate the recognised tests or guidelines which are laid down by the Supreme Court. It is well settled that the constitutional provision which secures equal protection of the laws forbids class legislation and not reasonable classification. A law based on or involving a classification founded on intelligible differentia having a rational relation to the object sought to be achieved is considered constitutionally valid.

12. In [Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others](#), the Supreme Court has enunciated the following principles. These principles have been consistently adopted and applied in all the cases. I am reproducing only those tests which are strictly relevant for deciding the point at issue:

"(a)

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discrimination are based on adequate grounds;

(d)

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of

the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of the Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

13. As is stated by the Supreme Court in the above case, these principles will have to be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the law.

14. In an earlier decision of Supreme Court [Kedar Nath Bajoria Vs. The State of West Bengal](#) , the following observation is made which may also be relevant while examining the constitutionality of the impugned legislation :-

"Article 14 does not insist that legislative classification should be scientifically perfect or logically complete."

The Supreme Court also added merely because there is no such scientific perfection or logical infallibility in the mode of classification it cannot be said that the Act is based on no intelligible differentia and is, therefore, arbitrary. I also find that in [Jalan Trading Co. \(Private Ltd.\) Vs. Mill Mazdoor Union](#) , the Supreme Court pronounced yet another principle which can be usefully followed while testing the validity of the impugned classification :-

"If the classification is not patently arbitrary, the Court will not rule it discriminatory merely because it involved hardship or inequity of burden. With a view to secure particular objects a scheme may be selected by the Legislature, wisdom whereof may be open to debate; it may even be demonstrated that the scheme is not the best in the circumstances and the choice of the Legislature may be shown to be erroneous, but unless the enactment fails to satisfy the dual test of intelligible classification and rationality of the relation with the object of the law, it will not be subject to judicial interference under Art. 14."

15. In a nutshell the argument of Mr. Singhvi against the constitutional validity of Section 13(1)(i) is as follows :

16. While restricting the landlord's right to evict the tenants from premises on certain grounds mentioned in Section 13 of the Rent Act, the Legislature has in fact made class legislation which favours one category of tenants by conferring on them rights and

privileges in the matter of evidence. These are denied to the category of tenants to which the petitioners belong. The right of the landlord to evict tenants from premises which are buildings or structures u/s 13(1)(g), (h), (hh) are hedged in by stricter conditions and provision is also made to minimise the evicted tenant's hardships. By contrast u/s 13(1)(i) the landlord is awarded possession of premises as soon as he establishes that his requirement is reasonable and bona fide. Section 13(3) and Section 17 make provision for certain safeguards in favour of the tenants but they are illusory and not as efficacious as those enjoyed by the privileged class of tenants of premises comprising of buildings or structures. Mr. Singhvi argues that the Rent Act seeks to protect tenants of premises against eviction whether they are occupying buildings or open land, or they occupy structures put up by them or their landlord. There is no good reason why there should be any discrimination in the matter of eviction clause. All these tenants irrespective of the nature of the premises held by them need the protection of laws against unscrupulous landlords. If the tenants of open lands have lawfully constructed their own structures on the demised property, they certainly stand in the same position as the tenants who occupy buildings built by their landlords. Section 13(1)(i) when so considered and compared with the other relevant clauses of Section 13, clearly show that the classification is arbitrary and the same also suffers from want of an intelligible differentia.

17. At this stage I find it necessary to ascertain the object of the Bombay Rents, Hotel and Lodging House Rates (Control) Act 1947. The preamble of the said Act and the various clause notes accompanying the amendments effected in the Act from time to time show that the Rent Act was enacted, inter alia, to control evictions and wherever possible to boost and encourage the building activity by enabling landlords to rebuild dilapidated building and also to erect structures or buildings on vacant plots. The later object of the enactment is evident from Section 13(1)(hh), (i) and (ii).

18. Section 12(1) of the Rent Act provides that the landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the amount of the rent and permitted increases, if any, and performs the other conditions of the tenancy in so far as they are consistent with the provisions of the Act. Section 12(3)(a) provides that the tenant who falls in arrears of rent for more than six months forfeits the protection of the Act. The landlord is not free to evict the tenant as and when he chooses to do so. But Section 13 enacts that the landlord shall be entitled to recover possession of any premises if the Court is satisfied about the existence of the several grounds mentioned in that sub - section. Section 13 relaxes the rigour of law in favour of the landlords on certain limited ground. The various clauses which contain different grounds for eviction are not the same. They differ in material particulars and in the result the tenants are granted protection against eviction in varying degrees under varying circumstances.

19. When Mr. Singhvi criticizes this arrangement of the several clauses of Section 13(1), he overlooks two important factors, and those factors betrays the hollowness of his attack. The Rent Act protects tenants against unreasonable eviction from the demised

premises. When the demised premises are either land or building, they are not the same and identical. Equal protection of laws cannot be claimed under unequal circumstances. Merely because the tenant of the land has lawfully constructed a structure of his own on the demised land it makes no difference. When we consider the legal position it is clear that the structure built by the tenant belongs to him at all times. u/s 108(B)(h) of the Transfer of Property Act, the tenant has, even after the determination of the lease, the right to remove all things which he has attached to the earth. He can take away his fixtures or the material which he may have used for putting up the structure when his tenancy of the land is determined for one reason or the other. As the landlord has no proprietary interest in such structure or building, there was no reason to extend the protection of the rent Act to the tenants of the lands in respect of their structures. This is the first aspect which must be given due importance while appreciating Mr. Singhvi's submission.

20. Then there is difference in legislative protection and that is also founded on a rational basis consistent with the known object of the enactment. The landlords of open lands should not find it burdensome when they propose to undertake building activity. Section 13(1)(i), till it was amended by Bombay Act (No. 61) of 1963 allowed the landlord vacant possession of the plot only when he required it for erection of a new residential building. The note on clause which precedes that amendment justifies the dropping of the word "residential" on this ground. So the amendment was thought necessary to give greater incentive to builders.

21. Mr. Singhvi is right when he submitted that the tenants of lands will suffer hardship similar to those suffered by tenants of buildings. But that was inevitable. The difference, if any, cannot in any manner affect the validity of the classification. As observed by the Supreme Court, the matter cannot be examined scientifically and with meticulous precision. When the legislators undertake to mitigate a major social evil and provide for greater good of the greater number, one cannot adopt a too rigid mathematical test while deciding the validity of a legislative measure. In the words of the Supreme court, Art. 14 of the Constitution does not insist that legislative classification should be scientifically perfect or logically complete. Unless the classification is wholly arbitrary, the Court will not rule it discriminatory merely because it involves hardship or inequality of burden.

22. Mr. Sorabjee is right when he says that in the present case there is a clear - cut intelligible differentia which formed the basis of classification. Tenants of buildings are different from tenants of open pieces of lands. When we consider the object of the Rent Act, it is also evident that there is a rational basis for the above mentioned classification for good reasons different conditions are prescribed by the various clauses of Section 12(1) as conditions precedent for passing an order of eviction against tenants.

23. Mr. Parpia, who appears for the State, has also emphasised this very aspect. After carefully considering the criticism levelled by Mr. Singhvi against the validity of the impugned clause of Section 12(1), I have come to the conclusion that the same is valid.

The reasonable classification is not hit by the prohibition implicit in Art. 14 of the Constitution.

24. Then Mr. Sanghvi contended that the present suit filed by the respondents is barred by res judicata. the petitioners relied on this defence even in the lower courts and they urged that the decision in R. A. E. Suit No. 918/5235 of 1957 as varied by the decision of the Appellate Bench bars the present suit and some of the findings recorded by the Appellate Bench in appeals filed by the defendants are conclusive and binding on the plaintiffs in the present proceedings.

25. Before I consider the strength of this submission, it will be necessary to refer briefly to the findings recorded by the Appellate Bench in the earlier proceedings. the Appellate Bench came to the conclusion that the notice to quit dated 25-2-1957 terminating the tenant's tenancy by the end of March 1957 was served on the tenant on 1-3-1957 with the result that the tenant had not one clear month to vacate the premises. The suit filed on the basis of such a notice was liable to be dismissed. Defendant No. 7 in this suit, who was also a defendant in that proceeding, who held to be a lawful sub - tenant. But the Court found that the plaintiff had failed to bring his case under S. 13(1)(i) of the Rent Act as against this defendant on the ground that the law was subsequently amended. It was held that the structure put up by the tenant was not permanent. It was held that the land in question was let by the plaintiffs with the knowledge that defendant No. 1 would put up a structure on the said land. It was also found that the plaintiff had failed to prove that he required the premises reasonably and bona fide for erecting a new building.

26. Mr. Singhvi referred to a few rulings to show that the findings recorded in the earlier suit, whatever the result of the final order, are binding on the parties against whom these findings are recorded. Mr. Singhvi drew my attention to a Calcutta decision in P. M. Mukerjee v. Ambika Churn ILR(1897) 24 Cal 900. In that case a point arose whether findings recorded in the earlier suit are binding in the subsequent suit although the earlier suit was decided against the plaintiff on the ground that the requisite notice was not given. When the ground of res judicata was pleaded in the subsequent suit the Court held that the matter directly and substantially in issue in the subsequent suit was directly and substantially in issue in the previous suit and it was finally heard and decided between the same parties notwithstanding the fact that the previous suit filed by reason of the decision of the Court upon some other matter as well. The subsequent suit was barred by res judicata. The ratio of this decision, no doubt, prima facie supports the contention of Mr. Singhvi. In the present case also the appellate Bench recorded a finding that the notice was not of the required duration and the suit was liable to be dismissed on that finding only. But the Court also recorded other findings mentioned above. The point will have to be decided after carefully considering the important question whether or not the final decision was based squarely on some or on all the findings recorded in the suit. This decision was referred to by a Division Bench of this Court while considering a similar point of res judicata in [Laxman Shivashankar Vs. Saraswati and Another](#), . As both the parties relied upon the decision, I will consider that authority towards the end of my

discussion. Similarly both the parties relied upon another decision of this Court in [N.J. Gor Vs. M.G. Raval](#), . I will also refer to that decision when I conclude the discussion on the point of law raised by the parties.

27. Mr. Sorabjee also referred to certain other rulings dwelling on the point at issue. A Division Bench of the Madras High Court held in *Ramaswami Reddy v. T. Marudai Reddy & Co.* AIR 1924 Mad 469 that an adverse finding in a decree in favour of a party is not res judicata. While giving this decision the Madras High Court followed an earlier decision of the Privy Council in *Midnapur Zamindari Co. Ltd. v. Naresh Narayan Roy*, ILR 48 Cal 460 : AIR 1922 PC 241. In the same volume at page 893 there is another ruling of the same High Court to effect that a finding in the proceeding not necessary for the disposal of the suit but recorded only to avoid possible remand is not res judicata. It is not the basis of the judgment and, therefore, the point is not finally determined.

28. The next decision to be considered is the one in [Hira Lal Murarka and Others Vs. Mangtulal Bagaria and Others](#), . The Court held in that case that a finding upon an issue not necessary to be decided will not found a plea of res judicata. It was a case where the earlier suit was dismissed on the ground that a proper notice u/s 80 of the Civil P. C. was not given. Some findings were also recorded on other issues raised in that suit. When in the subsequent suit the decision was relied upon as constituting a bar in the nature of res judicata, the High Court of Calcutta held that once the Court comes to the conclusion, that no notice had been given u/s 80, Civil. P. C. , it had no option but to dismiss the suit under Order 7, Rule 11 of the Code. the findings of that court operate as res judicata. In this case reliance was placed on the earlier decision of that Court in ILR(1897) Cal 900. It was held to be no longer good law. This matter went up to the Privy Council and the Privy Council upheld the decision of the Calcutta High Court and that judgment is to be found in *Shankarlal Patwari v. Hiralal Murarka* AIR 1950 PC 80. I am mentioning this fact because the decision in ILR(1897) Cal 900 is referred to as good law in [Laxman Shivashankar Vs. Saraswati and Another](#), . It appears that the later decisions of the Calcutta High Court and also of the Privy council were not brought to the notice of the Division Bench which decided that case. The decision in *Bhiku Appa Kura v. Dattatraya Chandrayya* AIR 1947 Bom 392 is also an authority for the proposition that a finding which was wholly unnecessary for deciding the suit does not operate as res judicata.

29. Now, I must refer to a recent judgment of a Division Bench of this Court in [Laxman Shivashankar Vs. Saraswati and Another](#), . This judgment is strongly relied upon by both the parties and as a decision of the Division Bench it is binding on me. After considering the various rulings of the High Court and the Division Bench laid down certain broad propositions which would be helpful while resolving the point of res judicata which arises under similar circumstances. In the previous suit when a number of findings are recorded and the suit is finally decided one way or the other, it is important to find out whether the decision of the suit was based on some or all the findings recorded in the suit. The legal position summed up by the Division Bench of this Court at page 161 is to the following effect :-

"It appears from the decisions mentioned above that it cannot be laid down as a general proposition that where a previous decision is supported on two or more findings, all the findings will necessarily operate as res judicata. Where the previous suit was dismissed on a technical ground which made the suit untenable, findings recorded on the merits would normally be obiter dicta. Similarly, if the Court which decided the prior suit has itself based the decision on only some of the findings recorded by it, or if under the circumstances of the case its decision can be fairly attributed to only some of the findings so recorded, the other findings would not operate as res judicata. In other cases, where the previous decision is based upon, and is attributable to several findings, all the findings will have the force of res judicata."

Mr. Singhvi for the petitioners strongly relies upon the last part of the observation and argues that the previous decision in the present case is attributable to the several findings and not merely to the defective notice. Mr. Sorabjee, on the other hand relies upon this very authority and submits that the earlier decision can be said to be based only on the point of notice. The ultimate decision can be attributed only to that finding which was decisive for the disposal of the suit. The other findings were recorded by the Appellate Bench of the Court of Small Causes only incidentally to avoid a further remand if the higher court were to disagree with its finding on the point of notice.

30. I have gone through the judgment of the Appellate Bench and I find that Mr. Sorabjee is right in his submission. The final decision in that suit can be attributed only to the finding on the point of notice for more than one reason. It was in the nature of a technical point and the suit was, therefore, liable to be dismissed as soon as the court found that the notice of termination of tenancy was not proper. The final decision can be fairly attributed only to this one finding.

31. As for the claim u/s 13(1)(i), the bar of res judicata does not avail the petitioners for the additional reason that the plaintiffs have based their claim on altered circumstances. I need only refer to [N.J. Gor Vs. M.G. Raval](#), wherein it is held that a fresh suit for possession on the ground of reasonable and bona fide requirement based on identical facts without pleading change of circumstances is barred by res judicata.

32. Mr. Singhvi then raised one small point which can be disposed of without much discussion. He says that Section 13(1)(i) of the Rent Act is attracted only when the premises are land at the commencement of the tenancy and also at the time when the landlord institutes the suit for eviction on that ground. In the present case, says Mr. Singhvi, the tenant and the sub - tenants by their joint venture have erected structures on the leased land. The sub - tenants are occupying the structures which are shops. In such a case the landlord cannot ask for possession u/s 13(1)(i) of the Rent Act. Mr. Sorabjee has raised an objection that this point was not taken in any one of the Courts below. He also submitted that the point of law is covered by a decision of the Supreme Court.

33. It is true that the point was not taken up in the Courts below, but as I find that Mr. Sorabjee's contention on the merits is well - founded, that omission on the part of the petitioners is of no consequence. I am referred by Mr. Sorabjee to a decision in K. R. Kundapur v. Krishnaji karan AIR 1966 SC 1024. A similar point was raised by the tenant in this case. The tenant had taken an open plot of land and built a structure thereon and he resisted the eviction on the ground that the landlord had no cause of action against him u/s 13(1)(i) of the Bombay Rent Act. The Supreme Court examined the relevant clauses of the Rent Act including Section 5(8) and Section 13(1)(i) and came to the conclusion that the expression "premises" in Section 13(1) refers to the subject - matter of letting for which rent is payable and in respect of which there is a relationship of landlord and tenant.

34. In the present case the respondents had let out an open plot of land to defendant No. 1. The rent payable by defendant No. 1 is for the land only. Defendant No. 1 is recovering rent from his tenants in respect of the structures standing on the land. Respondents have no concern with the structures and the structures are not the subject - matter of tenancy between the respondents and defendant No. 1. As the premises are land only, the respondent's suit cannot be defeated on the ground that the tenant of the land has put up his own structure on the land.

35. The next important point of law raised by Mr. Singhvi is about the effect of Section 14 of the Rent Act on the rights and liabilities of the petitioners who claim to be lawful sub - tenants. I will consider the issue of lawful sub - tenancy later on. For the present, the point of law is considered on the basis that all the petitioners are lawful sub - tenants and they become the direct tenants of the plaintiffs as soon as the tenancy of defendant No. 1 is determined. Mr. Singhvi relied upon a decision of the Supreme Court in [Hiralal Vallabhram Vs. Kastorbhai Lalbhai and Others](#), for his proposition that the sub - tenant of the contractual tenant will not be deemed to be a tenant u/s 14 of the Rent Act as soon as the notice determining the tenancy is given. The words "is determined for any reason" in Section 14 mean that where the interest of a tenant comes to an end completely, Mr. Singhvi says that in the present case the tenant's interest comes to an end on the passing of a decree in ejectment. It is only at that point of time that the sub - tenants become the deemed tenants of the plaintiffs. He argues that in the present suit a decree in ejectment against the petitioners cannot be passed for the simple reason that their tenancy has not been terminated by a proper notice to quit. Mr. Singhvi relied upon a decision of this Court in [Satwant Kaur Vs. Abdul Kadar Abdul Subhan and Others](#), for the proposition that the sub - tenant is as much a tenant under the Rent Act and is entitled to a notice of termination of tenancy before a suit in ejectment can be filed against him. It was a case where on the death of a sub - tenant the right of sub - tenancy had devolved on all his heirs. The Court considered the definition of "tenant as given in Section 5(11) and read that with the provisions of Section 14 of the Rent Act. the landlord had given a notice terminating the tenancy of only one of the several persons in whom the sub - tenants" rights were vested. This Court held that the suit was bad for the reason that the

other persons who were virtually joint tenants were not given any notice to quit. Whether or not a statutory tenant is entitled to a notice was considered in that case. The point of law decided on the assumption that on the death of a sub - tenant all his heirs become the lawful sub - tenants of the premises. In fact, it is held by the Supreme Court in [Anand Nivas \(Private\) Ltd. Vs. Anandji Kalyanji Pedhi and Others](#), that by virtue of Ss. 12,14 and 15 a person remaining in possession after determination of the contractual tenancy becomes a statutory tenant. He can remain in possession but cannot enforce terms of the original tenancy. He is a statutory tenant but has no contractual interest in the premises. He cannot create lawful sub - leases in favour of others. The ratio of this decision squarely applies to the facts of the present case. The various lawful sub - tenants, who will become the deemed tenants of the plaintiffs, will be the statutory tenants and it is not necessary to terminate their tenancies before instituting proceedings against them under any of the provisions of the Rent Act. Of course, Section 12 requires a demand notice before a suit is filed for possession on the basis of rent defaults. But that is a different thing. Mr. Singhvi is not right when he says that the suit against the petitioners should fail for want of a notice to quit.

36. Both the parties strongly relied upon another decision of this Court in [Indian Coffee Workers" Co-operative Stores Ltd. and Another Vs. Bahoo bai Cowasjee Dhanjeeshaw and Others](#). It was a case where the landlord had filed a suit against the tenant and the sub - tenant for possession on certain grounds u/s 13 of the Rent Act. One of the grounds of eviction was that the tenant had erected a permanent structure without the written permission of the landlord. The lower Courts had found that the tenant had in fact erected a permanent structure and the sub - tenants were actively associated with the erection of that structure. The sub - tenants challenged the decree on the ground that by virtue of the ejectment order against the tenant, they become the deemed tenants themselves u/s 14 of the Rent Act. This Court held that as the sub - tenants were jointly responsible with the tenants for the erection of the structure they are liable to be evicted along with the tenant. Mr. Singhvi relies on this part of the judgment to show that in the present case the petitioners will not be liable to be evicted on the basis of the grounds for ejectment which are found against the tenant. The tenant here is found guilty of profiteering. According to Mr. Singhvi, such a ground is not available for ejectment orders being passed against the sub - tenants who are not guilty of any such default. But Mr. Sorabjee tried to receive support from this very judgment for his proposition of law that once the grounds are mentioned in Section 13(1) are established against the tenants, then the sub - tenants have no independent defence and a decree in ejectment can be passed against them all when all are made parties to the suit. This Court considered the effect of Section 14 and laid down two propositions of law :-

37. It was held that Section 14 cannot be read aside from the provisions of the Act, and if a sub - tenant became a lawful tenant from the inception of the sub - tenancy he was bound to act strictly according to the Act, i.e. must be ready and willing to observe the terms of the tenancy and must not do anything that is prohibited by the Act. If he

contravened the Act or did not observe the terms of tenancy, Section 14 could not possibly be regarded as giving him the right to be a tenant under the landlord. As sub - tenants, in that case, had not observed the terms of the tenancy, by causing permanent alterations in the premises, they were held to be not entitled to be tenants of the landlord.

38. The other aspect which was stressed in that decision was that the right of a person to become a sub - tenant u/s 14 is not an absolute right but it is controlled by the other sections of the Act. If the other sections entitled the landlord in a given case to obtain possession, Section 14 cannot come in the way. Section 12 entitles the landlord to obtain possession for non - payment of rent and Section 13 for other reasons. If the landlord, therefore, is entitled to obtain possession under any of the provisions, Section 14 must give way.

39. I have carefully considered the ratio of this judgment and I find that this interpretation of Section 14 will render the section wholly nugatory. A landlord has no privity of contract with the sub - tenants of his tenant. Sub - tenants are answerable for performing the various conditions of sub - tenancy only to the tenant who is their landlord for the time being. It is only when the tenant's tenancy is determined either by surrender or by a decree in ejectment passed against him that the sub - tenants become the lawful tenants of the landlord by virtue of Section 14 of the Rent Act. Once they get the legal status or character, then they are to hold the premises on the same terms and conditions as they held before subject to the other provisions of the Rent Act. But the words "subject to the other provisions of the Rent Act," will have to be understood as giving them the same rights and privileges as are conferred on the statutory tenants, whose contractual tenancy for one reason or the other has come to an end.

40. A closer look at Section 13(1) will show that the various grounds on which the landlord can seek possession are not of the same kind and they are different in material particulars. Grounds under S. 13(1)(a), (b), (c), (d) and (e) can be said to be personal to the tenant, who by his act, has rendered himself liable to be evicted. Grounds u/s 13(1)(g), (h), (hh), (hhh), (l) and (ii) are mainly concerned with the premises held by the tenant. They are not in the nature of defaults which could be committed by the tenant. The landlord must establish those grounds before he can ask for a decree in ejectment against the tenant. If in a suit against the tenant other persons are joined on the allegation that they are sub - tenants and if an eviction is sought only on the grounds which are personal to the tenant then a decree in ejectment against him will result in conferring direct tenancy rights on the lawful sub - tenants. They cannot be ejected in that suit in those grounds. On the other hand, if the landlord seeks possession on the grounds which are not personal to the tenant and which concern the premises themselves, then it is open to the landlord in the same suit to plead and prove those grounds not only against the tenants but against the other persons impleaded in the suit and who are ultimately held to be lawful sub - tenants. In such a case the issues would be heard and decided between the tenants and sub - tenants on the one hand and the landlord on the other. If the sub - tenants are not impleaded even in such a suit then the landlord, after obtaining a decree against the

tenant, will have to file a fresh suit against the sub - tenants, who by then had become his direct deemed tenants by virtue of Section 14 of the Rent Act. In my opinion this would be the proper interpretation of Section 14 of the Rent Act when that section is read along with the other relevant provisions of the Rent Act. The construction indicated by Patel, J will make Section 14 wholly meaningless. I will give only one illustration to indicate the fallacy which is inherent in that interpretation. The tenant may commit rent defaults for more than six months. He may not have any defence to an action founded on rent defaults. u/s 12(3)(a) the Court has no option but to pass a decree against him. But the sub - tenants may have regularly paid the rent to the tenant and their only fault will be that during the term of their sub - tenancy they have not forced or compelled the tenant to pass on the money received by him to the landlord. It will be wholly unreasonable to expect the sub - tenants to perform such an onerous duty. In my opinion, it is one of those grounds which is personal to the tenant and if his tenancy comes to an end on that ground, the sub - tenants become the direct tenants by virtue of the provisions of Section 14 of the Rent Act and they will be protected under the Rent Act.

41. If this was only point involved in this case then I could not have taken a view contrary to the decision of the Division Bench of this Court and I would have referred the matter to the Division Bench without considering the merits of the case. But as I am holding in favour of the plaintiffs on other points, I have not considered it necessary to refer this matter to a Division Bench.

42. In the present case the plaintiffs can succeed against the lawful sub - tenants only if they show that they are entitled to possession of the plot of land reasonably and bona fide u/s 13(1)(i) of the Rent Act. If the plaintiffs succeed in establishing only the other grounds which are personal to the tenant then a decree in ejectment cannot be passed against the lawful sub - tenants on those grounds.

43. M/s Singhvi and Dhanuka, relying on the legal effect of Section 14 of the Rent Act, tried to evolve a new defence for the lawful sub - tenants of the land in the event of a decree in ejectment against the principal tenant defendant No. 1 on any one of the grounds which involve his personal defaults. As the structures belong to defendant No. 1 in respect of his structures and will be deemed statutory tenants of the plaintiffs in respect of the land underneath subject to the provisions of the Rent Act. In Special Civil Application No. 1191 of 1967 decided on 10-3-1970 I have negated the theory that the building or structure, apart from the land on which it stands, could be the subject - matter of Section 105 of the Transfer of Property Act. Under that section 3 of the Transfer of Property Act read with Section 3(26) of the General Clauses Act (X of 1897) "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. When a tenant of a land puts up his own structure thereon then u/s 108(B)(h) even after the determination of the lease whilst he is in possession of the property leased but not afterwards, he has a right to remove at any time, all things which he has attached to the earth, provided he leaves the property in the state in which he received it. The structure or building without the land

cannot be the subject - matter of a valid lease. The doctrine of dual ownership peculiar to India cannot be stretched to postulate a theory of dual tenancies implicit in the submissions of the learned counsel for the petitioners.

44. Realising this insurmountable difficulty Mr. Dhanuka suggested a novel solution for regularising the legal relationship between the petitioners and the defendants after this decree in ejectment brings about a total extinction of the tenancy of defendant No. 1. Despite the decree for possession of the demised land the tenant may not exercise his statutory right to demolish and remove his structure on the land. In law after, the prescribed time, i.e., execution of decree for possession of land against the defendant No. 1, the right to structure will vest in the plaintiffs. At that point of time the sub - tenants should be deemed to be the tenants both in respect of the land and structure under the plaintiffs. Superficially considered, the argument is attractive. I am interpreting a benevolent statute like a Rent Act enacted to safeguard the rights and interests of tenants. I would gladly adopt a construction which will advance the object of the statute. But unfortunately for Mr. Dhanuka, I find it wholly unwarranted. Rent Act protects tenants in occupation of premises against unreasonable eviction by landlords. u/s 5(8) of the Rent Act "premises" means land or building let. In the present case what was let by the plaintiffs to defendant No. 1 and not structure. The structure was not part of the demised property and not premises within the meaning of the Rent Act. It is not possible to extend the fiction of law implicit in Section 14 of the Rent Act in the manner and to the extent suggested by Mr. Dhanuka.

45. That takes me to the final phase of this case, viz. whether the plaintiff have established the case u/s 13(1)(i) of the Rent Act. Before I consider the point of law, I must make it clear that in my opinion all these petitioners are the lawful sub - tenants of the land. The trial Court correctly recorded a finding to that effect. The Appellate Bench of the Court of Small Causes was not justified in reversing that finding. The facts of this case clearly show that the plot of land was let out to defendant No. 1 some time in August 1954 for a period of 3 years. Shortly after the commencement of the tenancy in or about August 1954 defendant No. 1 had erected shop structures thereon. In all there are 15 shops structures erected on the demised plot. According to the plaintiffs only 11 shops were erected when the earlier suit was filed and the remaining 4 shops were subsequently erected. The trial Court has considered the various admissions of the plaintiffs and has come to the conclusion that very probably in August 1954 itself all the shop structures must have been erected. The plaintiffs have made halting admissions and concession in favour of some of the defendants. Plaintiffs challenge the sub - tenancy of defendants 2 to 16 only as illegal. That is again a curious position. From amongst these defendants a concession is made in favour of defendant No. 15. No good reason is given as to why from amongst these defendants a concession could be made in favour of defendant No. 15. Even the rent receipts show that the defendants were given the plot of land much earlier to the date of the Rent Act Ordinance of 1959.

46.Mr. Dhanuka has referred to the pleadings of the parties and their conduct. The trial Courts has discussed all the relevant factors in greater sufficient reason has tried to explain away the admissions of the plaintiffs with reference to his belated explanation in his re - examination. Again, it is not conceivable that a tenancy could be created only in respect of the structure apart from the land on which the structure stands. I have held in Special Civil Application No. 1191 of 1967 decided on 10th March 1970 that a tenancy cannot be created in law in respect of the structure apart from the land on which it stands. In view of this decision, Mr. Sorabjee for the respondents, could not pursue the matter further but he did argue that a person could be a tenant of the structure at the same time having no interest in the land on which the structure stands. As defendant No. 1 has immediately built upon the open piece of land the several shops it is reasonable to assume that he let out the shops to the several defendants more or less at the same time long before the date of the Rent Act Ordinance of 1959. It is not shown by the plaintiffs that some other persons were in possession before the shops were occupied by the defendants Nos. 13 to 16. I, therefore, disagree with the finding of the Appellate Bench of the Court of Small Causes and hold that the trial Court was right in recording finding that all the defendants Nos. 2 to 16 are lawful sub - tenants in respect of the open plot of land.

47.As stated above, the plaintiffs will only succeed in getting an ejectment order if they show against all the defendants including the sub - tenants that they require the premises reasonably and bona fide for erection of a building within the meaning of Section 13(1)(i) of the Rent Act. That takes me to the consideration of the key words in the sub - section "reasonably and bona fide." Advocates on either side have made various submissions relying upon a mass of case - law and tried to put forth their own interpretation on these two words. I shall presently consider the various possible interpretations and then express my view in the matter.

48.Mr. Singhvi for the petitioners attacked the finding of the Appellate Bench on the ground that the Appellate Bench has not taken into account the relevant factors which had influenced the decision of the trial Court. He further stated that all the relevant factors considered by the trial Court are ignored and the Appellate Bench has held that mere financial capacity to build is sufficient to satisfy the Court that the plaintiffs reasonably and bona fide require the premises. As against this Mr. Sorabjee for the respondents contended that the decision of the Appellate Bench is based on findings of fact and there is no error of law apparent on the fact of the record which would justify any interference under Art. 227 of the Constitution.

49.The Supreme Court in the case of [Neta Ram Vs. Jiwan Lal](#), was interpreting S. 13(3)(a) of Patiala & East Punjab States Union Urban Rent Restriction Ordinance. Section 13(3)(a)(ii) enabled the landlord to recover possession of any building if he required it for the purpose of re - erection of that building or for its replacement by another building or for the erection of other buildings. While interpreting the word "require" in the light of the various provisions of the Rent Act, the Supreme Court held that certain conditions will have to be fulfilled. It must be noted that according to Section

13(3)(a)(iii)(b) the Controller had to be satisfied that the claim of the landlord is bona fide. In other words the landlord had to establish that he required bona fide the building for the specified purpose. At page 502 of the report the Court has observed as follows :-

"The Controller has to be satisfied about the genuineness of the claim. To reach this conclusion, obviously the Controller must be satisfied about the reality of the claim made by the landlord. This can only be established by looking at all the surrounding circumstances such as the condition of the building, its situation, the possibility of its being put to a more profitable user after construction, the means of the landlord and so on. It is not enough that the landlord comes forward and says that he entertains a particular intention, however, strongly, said to be entertained by him. The clause speaks not of the bona fides of the landlord, but says, on the other hand that the claim of the landlord that he requires the building for reconstruction and re - erection must be bona fide, that is to say, honest in the circumstances."

What is observed by the Supreme Court shows that, there is material difference in the scheme of Section 13 of the Bombay Rent Act and the relevant clauses of the Punjab Rent Act. u/s 13(1)(i) of the Bombay Rent Act the landlord's bona fides are to be considered. But under the Punjab Act, the Court must be satisfied that the claim of the landlord is bona fide. Mr. Singhvi cannot, therefore, rely upon this decision for interpreting the relevant clause of the Bombay Rent Act.

50. Then Mr. Singhvi read a passage from Halsbury's Laws of England, III Edn. Vol. 23 at page 814, para 1593 :

Reasonableness :

"In determining whether it is reasonable to make an order for possession the Judge is entitled to take into account all the circumstances as they exist at the date of the hearing, in a broad commonsense way as a man of the world. Any facts which amount to hardship on landlord or tenant are relevant and so is the conduct of the parties generally. The question is not whether it is reasonable for the landlord to seek possession but whether it is reasonable to the court to grant it. The interests of the public are also relevant. The difficulty of establishing reasonableness will usually be less alternative accommodation is available than when it is not."

But this statement of law is based upon the relevant clause of the English Rent Act.

51. Mr. Sorabjee relied upon the exposition of law in the Rent Acts by R. E. Mergarry, Tenth Edition, Vol. 1, page 258. Commenting on Section 2 of the English Rent Act, which deals with the reasonableness of order of ejection, the learned author under the sub - heading (2) "Circumstances to be considered" states as follows :-

"(a) Approach of Court :- The duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture

to call a board, commonsense way as a man of the world and come to his conclusion, giving such weight as he thinks to the various factors in the situation. Some factors may have little or no weight, others may be decisive. The court must consider not whether the landlord's desire for possession is reasonable, but whether it is reasonable to make an order for possession; for because a wish is reasonable, it does not follow that it is reasonable in a court to gratify it."

Mr. Sorabjee, with reference to this passage and the passage quoted from Halsbury's laws of England, says that this statement of law holds good on the peculiar wording of the English Rent Act. u/s 3(1) of the Rent, Mortgage Interest Restrictions (Amendment) Act, 1933 no order of Judgment for recovery of possession of any dwelling house governed by the Act shall be made or given unless the court considers it reasonable to make such an order or give such Judgment. One of the conditions of that section is that the court must have the power to pass the ejectment order under the provisions set out in the first Schedule to that Act. The preamble to the first Schedule provides, among other things, that the Court shall power for the purpose of Section 3 of the Act to make order or give judgment for the recovery of possession of any dwelling house where the Court considers it reasonable so to do and one of the grounds mentioned in that schedule is established. Even if the landlord under one of those grounds reasonably requires the dwelling house for occupation as a residence, the Court must consider it reasonable to make an order or give judgment for the recovery of possession. Relying upon this basic difference Mr. Sorabjee argued that the general observations in Halsbury's Laws of England or in Magarry's Book will have to be considered with suitable changes while interpreting the words "reasonably and bona fide" in Section 13(1)(i) of the Bombay Rent Act. No doubt there is considerable substance in this submission and I cannot agree with Mr. Singhvi or Mr. Dhanuka, who pressed upon me to consider the English law as useful for interpreting the key words in the Rent Act. Mr. Singhvi also relied upon a decision of this Court in [Nimbibai Rajibai Onkar Mali Vs. Ragho Parashram Mali](#), for emphasising his point that the landlord must need the premises for himself and the need must be of a pressing nature. Chainani, C. J. was considering a case u/s 29 read with S. 43 - D (1) of the Bombay Tenancy Act, 1948. u/s 43 - D (1) of the Bombay Tenancy Act, the landlord may terminate the tenancy of a tenant if he bona fide requires the land for any non - agricultural purpose. While considering the exact connotation of these words, the learned Chief Justice referred to a number of cases under the Rent Act and came to the conclusion that before the landlord can be awarded possession of the land on the ground that he requires it bona fide for a non - agricultural purpose, he must prove some need or necessity on account of which it is necessary for him to have the land restored to him. The need for the landlord to have more or a larger income is not the only ground on account of which he can be said to require the land. Relying on these observations, Mr. Singhvi argued that the plaintiffs must make out a case that they need the premises and there is some pressing necessity which compels them to seek possession of the land. Strictly speaking the Division Bench considered only the words "bona fide requirement" without any reference to the reasonableness of that requirement. The Tenancy Act,

among other things, is intended for bringing about equitable distribution of land. When the landlord wants to dispossess the tenant he may deprive him of his means of livelihood. Then the fact that the landlord is hard pressed by circumstance may be a relevant factor while deciding the question of bona fides. the ratio of this decision will not be a very useful while interpreting Section 13(1)(i) of the Rent Act.

52. At this stage I may also refer to a number of decisions cited by Mr. Sorabjee in support of his assertion that the court must consider the bona fides of the landlord and the reasonableness of his requirement without reference to the hardships of the tenant or other general considerations, which are mentioned in the above quoted passages from Halsbury's Laws of England and the book of Magarry. In [R.V.N. Chandrasekara Chetty Vs. Kakumani Adikesavalu Chettys Charities](#), the Madras High Court was interpreting /section 14(1)(b) of the Houses and Rents, Buildings Lease and Rent Control Act (No. 18) of 1960. Under that section the landlord was entitled to possession of the premises if he required them bona fide for immediate purpose of demolition. At page 18, para 16 of the report the Court stated that while considering the bona fides the Judge should take into consideration every circumstances affecting the interest of the landlord and the tenant as well as the interest of the public at the date of hearing. In para 19 of the same report the Court stated that it was whether the landlord's desire for possession was reasonable but whether it was reasonable to make an order for possession; because it was reasonable it did not follow that it was reasonable for a Court to gratify it. Again in para 20 it was stated that the landlord should satisfy the deciding authority that his requirement was reasonable and bona fide and that he had made plans and estimates for the new building; that he had obtained the necessary sanction of the municipal authorities for the purpose of such erection and that he had the necessary funds with him for carrying out such construction. Mr. Sorabjee relied upon only some of the ingredients which the Madras High Court considered as relevant while deciding whether the requirement of the landlord was a bona fide and reasonable one. The Madras statute used the word "bona fide." That Court noted the fact that in the English Act the word used was "reasonably required." Some of the courts felt that the two words are interchangeable and accepted the summary of the English law as affording proper guidance while recording a finding about the bona fide requirement of the landlord. But that against is not quite correct. The English Act used the word "reasonable" and made it clear that the Court must consider whether it is reasonable to pass an order in ejectment. The Madras Act used the word "bona fide". That being the position I cannot derive much assistance from the decision.

53. Mr. Dhanuka, who supplemented the arguments of Mr. Singhvi also referred to a few cases which involve the interpretation of similar words in rent legislation (1951) 1 All ER 710, *Creswell v. Hodgson*, Singleton, L. J. has stated that while considering the reasonableness of the landlord's requirement, the position of the landlord and that of the tenant must be considered. At page 714, Denning, L. J. has made the following observation :-

"The Rent Restriction Acts put a restraint on the exercise by a landlord of his common law right to a possession. The restraint is not to be removed unless the country court Judge thinks it reasonable. That means, I think, reasonable having regard to the interests of the parties concerned and also reasonable having regard to the interests of the public."

But I have already made it clear earlier that the scheme of the English Rent Act and the wording of the relevant provision is materially different from the wording of Section 13(1)(i) of the Bombay Rent Act.

54. The other decision cited by Mr. Dhanuka is [Deb Kumar Mukherjee and Others Vs. Abhoypada Banerjee](#). That Court was interpreting Section 12(1)(h) Houses and Rents - W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950). That section used the expression "reasonable requirement." That sub - section in addition to the word "reasonable" contained an explanation which required the court, while determining the reasonableness of requirement for purposes of building or re - building, to consider the comparative public benefit or disadvantage by extending or diminishing accommodation. The learned Judge interpreted the words "reasonable requirement" in the light of this explanation. In the Bombay Rent Act I do not find any similar provision and in fact in addition to the word "Reasonable" the word "bona fide" also is used here.

55. In [Labhu Ram and Others Vs. Ram Parkash](#) the Court was considering the word requires" in Section 13(3)(a)(iii) of the East Punjab Urban Rent Restriction Act (3 of 1949). At p. 103 the learned Judge observed that the word "required" could not be held as synonymous of "desire". "Required" would import something more than the mere desire and would call for invocation of an outside authority who would give the verdict that in a given case for some objective standards the need was genuine and the tests had been satisfied. As the word used was the bare word "required" without any expression like "bona fide" or "reasonable", the Court struggled hard to properly interpret that word in the light of the object of that Act and thought it necessary that apart from the desire of the landlord there must be some objective standard to indicate that the landlord's need was genuine.

56. Mr. Sorabjee for the respondent, relying upon the difference in language of the English Rent Act and the relevant clauses of the Bombay Rent Act, argued that the Court must find out whether the landlord's requirement is bona fide and reasonable from his point of view without reference to other considerations including hardship of the tenant. When a statute speaks only about the landlord's requirement being reasonable and bona fide, it is not necessary that the requirement should impress the Court as reasonable. He tried to derive some support from the observations of the House of Lords in *Viscount Tredeger v. Harwood*, 1929 AC 72. Their Lordships were considering the terms of a lease and the point argued was whether there was an implied term in the contract under which lessor's approval to certain act of the lessee was not to be unreasonably withheld. They were not called upon to consider any express terms. Reliance was placed on an implied term which would show that the lessor had no absolute right to withhold his approval. The

approval was to be about the alternative Insurance office which would be approached for insuring the estate. It was suggested that there was an implied term in the contract under which the lessor's approval was not to be unreasonably withheld. The grounds of the lessor's disapproval were assailed as unreasonable. While dealing with this point Viscount Dunedin at p. 78 observed as follows :-

"I am not inclined to adhere to the pronouncement that reasonableness was only to be referred to something which touched both parties to the lease. I should read reasonableness in the general sense, and if it was necessary - it is not so in the view already expressed - I would hold here that the appellant's reasons are eminently reasonable."

But this decision is hardly relevant here. Their Lordships were considering the construction of a contract between the parties. And it may be that whether or not the conduct of one contracting party is reasonable or not will have to be decided upon the express or implied terms of the contract. In the absence of express terms, it may be that reasonableness of the lessor's conduct was to be considered without any reference to the lessee. This decision gives no assistance to me while interpreting the terms of a statute and different considerations will be relevant while considering the words "reasonable requirement" in the statute.

57. In [Bhulan Singh and Others Vs. Ganendra Kumar Roy Chowdhury](#), the Court was required to consider the question whether the premises were bonafide required by the landlord, among other things, for purposes of building or re - building. At page 76 of the report, Harries, C. J. has made the following observations :-

"It appears to me that the premises are bona fide required by the landlord for the purpose of rebuilding if the landlord honestly requires them for that purpose. The equivalent of the phrase "bona fide" in "honestly." It refers to the state of the landlord's mind. The landlord, therefore, will be entitled to possession as against the tenant if he established that he honestly requires the premises for rebuilding."

At p. 249 of the same volume *Basant Lal Shah v. Chakravarty* there is another decision which also is given while interpreting the words "requires" and "bona fide" under the West Bengal Premises Rent Control(Temporary Provision) Act (38) of 1948. P. B. Mukharji, J. at p. 251 observes as follows :-

"Although the word "reasonably" does not appear in the Statute, questions of reasonableness may come in for consideration in deciding the "bona fides" of the landlord. Gross unreasonableness of the landlord may in proper circumstances lead the Court to the conclusion that the landlord's requirement is not bone fide."

58. In *Tulsi Charan Bairagi v. Debendra Nath Sil*, 1958 C LJ 149, S. N. Guha Roy, J. was considering the meaning of the expression "required" under the Calcutta Tenancy Act. The learned Judge while interpreting the word "required" expressed the view that that

expression was wider than the expression "bona fide required" or "reasonably required" as used in the Rent Acts of 1948 and 1960. He stated that the expression nevertheless is not equivalent to a mere wish and it refers to an objective state of things. The element of need is expressed by the use of the word "required."

59. A consideration of the various ruling and passages from Law Books cited above shows one striking feature which is common to all, viz. in all the statutes either the word "bona fide" or the expression "reasonably required" is used. Sometimes the word is used is only "requires" without any qualification. Whenever one of these three words is used, the courts have tried to interpret the word bearing in mind the objects of the relevant statutes while interpreting the word "reasonable" even "bona fides" are considered. While interpreting the word "bona fides" the Courts have considered that reasonableness of the requirement is relevant. When the bare word "required" is used the courts have expressed the view that mere wish is not sufficient and there must be something more in the nature of objective facts. Indirectly expressions like "bona fides" and "reasonable" have been considered relevant while interpreting the word "required". But in the Bombay Rent Act in some of the clauses of Section 13, the words used are "reasonably and bona fide required". These words appear in Section 13(1)(g), (h), (hh) and (l). For good reasons the Legislature has used both the expressions and full effect must be given to those expressions while interpreting the sub - section. "Bona fide" means honestly and not actuated by bad faith or oblique motive. "Reasonably" means, according to the dictionary that which is rational, just, not excessive. As these two words are used to govern the word "require" all the three words must be construed in a manner which would be consistent with the object of the Rent Act in general, and Section 13 in particular. The landlord's contractual right to evict his tenant is recognised in a limited way in Section 13 so as to cause the minimum hardship to the tenant in the event of his eviction from the premises. While considering the proof of bona fides and reasonableness of the requirement, a number of facts are bound to overlap. The words "reasonably and bona fide" are not intended to be used disjunctively. In a given case facts established must prove the bona fides without reference to the reasonable requirement. If want of bona fides amounting to mala fides, is proved, courts can readily infer or hold that the requirement is unreasonable. As observed in some of the cases quoted above, if the requirement is wholly unreasonable that will also have a bearing on the question of bona fides of the landlord. Even on that basis the court will find that the requirement is not bona fide. But at the same time it is possible to hold that the landlord has succeeded in establishing his bona fides, by that, by itself, will not give him a right to evict the tenant; he must further prove that in addition to his bona fides, his requirement also is reasonable.

60. Mr. Sorabjee wants me not to follow the English Law on the ground that the words "reasonably and bona fide" refer to the landlord without reference to the tenant. I am not prepared to agree with this submission. As I have shown above, even when one of the three words was used, i.e. "Bona fide" or "reasonably" or "required" in the various Indian

statutes dealing with rent legislation, the Courts have considered all the relevant factors objectively without reference to the landlord while deciding either the bona fides or the reasonableness or the bare requirement of the landlord. It is emphasised in so many words that the mere wish or the intention of the landlord is not sufficient to give him a right to evict the tenant. The Rent Act is enacted with the avowed object of protecting tenants against unreasonable eviction. While considering the relevant factors for deciding the bona fide and reasonableness of the landlord's requirement, the tenant cannot be forgotten for all the time. Various objective facts are mentioned like the public good, the hardship of the landlord, the plight of the tenant and it is said that the Courts should take a broad commonsense view of the whole matter. But at the same time while considering the reasonableness of the landlord's requirement, the mere fact that the tenant will be evicted and will suffer hardship is per se not relevant. It is inevitable consequence of every order in ejectment which would be passed in favour of the landlord. If that is considered as decisive then the landlord, who, bona fide and reasonably requires, the premises, will fail in all cases. But the tenants' hardship may be linked up with the conduct of the landlord and may give rise to some consideration of justice and equity in favour of the tenant. Such factors will have to be objectively considered while deciding the question of bona fides and reasonableness of the landlord's requirement. For instance, if the landlord lets out an open plot of land to the tenant and later on connives at or consents to the construction of some structure thereon at considerable cost by the tenant and shortly thereafter starts eviction proceedings, the tenant's hardship attributable to the landlord's conduct is a relevant factor which will reflect not only on his bona fides but also on the reasonableness of his requirement. I have given only one illustration to indicate as to how certain factors will have to be objectively considered while deciding the bona fide and reasonable requirement of the landlord. In my view that will be the true meaning of the expression "reasonably and bona fide required" used in Section 13(1) of the Rent Act. Each case will have to be decided on the facts as appearing in that case. These are the only general observations which any court can make while interpreting these two words.

61. Now, on merits Mr. Singhvi has assailed the finding of the Appellate Bench of the Court of Small causes on the ground that the Appellate Bench has committed an error of law in ignoring the relevant factors. The trial Court had emphasised certain factors without mentioning that those factors are taken from the other clauses of Section 13 of the Rent Act which require the landlord to prove certain facts for succeeding in eviction proceedings. The Appellate Bench has referred to those clauses of Section 13 of the Rent Act and said that the trial Judge was in error in emphasising irrelevant considerations. Mr. Singhvi is right when he says that the various factors may be relevant in any ejectment proceedings where the landlord is required to prove that his requirement is both bona fide and reasonable. It may not be of a technical requirement in the nature of a condition precedent but certainly the fact that the landlord has not got the plans, has not made the estimate of expenses for building construction, has not obtained the necessary permission of the municipal authorities, are relevant factors. But after all is said and done, I am not prepared to say that the appellate Bench has not considered the relevant facts

while recording a finding in favour of the landlord. The Appellate Bench has pointed out that the landlord has adduced evidence to show that he has the financial capacity to invest money in building a structure; that he has got the plans prepared and although the plans are not up - to - date in accordance with the latest municipal regulations, it is established that under the Municipal regulations it is possible for the landlord to use a portion of the plot for building purposes. One of the landlords is himself a builder and evidence is led to show the estimated cost of the proposed building. If the landlord wants to build in these circumstances, then nothing can be said against his bona fides or the reasonableness of his requirement. The finding of the appellate Bench of the Court of Small Causes is based on appreciation of evidence and I cannot review the findings while exercising my limited powers under Art. 227 of the Constitution.

62. Mr. Dhanuka wanted me to review the finding of the appellate Bench about the purpose of letting the land. According to him, the trial Court has found that the structure on the demised land was of permanent nature and erected, if not with the consent, at least with the connivance of the landlord. Evidence on record shows that the various sub - tenants had contributed large funds towards the cost of construction. As no written document of lease was produced, the Trial Court found that there was no breach of the terms of the tenancy and the tenants showed that letting out of the open plot was with a clear understanding that the same would be used for construction of structures.

63. Mr. Dhanuka wants me to review the adverse finding recorded by the Appellate Bench and after accepting the finding of the trial Court I should consider that as a relevant factor while deciding the question of bona fides and the reasonableness of the landlord's requirement.

64. Mr. Dhanuka has got two difficulties in his way. Firstly, I cannot review the facts and record a finding different from the one recorded by the Appellate Bench. Secondly, If Mr. Dhanuka succeeds in persuading me to adopt that course, then Mr. Dhanuka will be urging a new point of law, which was not taken up in the lower courts. Mr. Dhanuka relied upon Regulation 2 of 1827 and argued that I have wider powers under that Regulation and I can, in the interest of justice, interfere even with the findings of fact. He relied upon a decision of this Court in *Bombay Steam Navigation Co. Ltd. v. Vasudev Baburao Kamat* 29 Bom LR 1551 : AIR 1928 Bom 5. This Court held that the High Court at Bombay, has, apart from Section 115 of the code of Civil Procedure, 1908, the power to call for the proceedings of any subordinate Civil Court and to issue order under Bombay Regulation 2 of 1827, Clause I, Section 5(2), in spite of its repeal by Act 12 of 1873 by virtue of Sections 106 and 130 of the Government of India Act 1915. While recognising this power in this Court, the Court made it clear that it is only in very exceptional cases that the court would be prepared to exercise the power and normally the Court would act only, if at all, under S. 115 of the Civil P. C.

65. Mr. Sorabjee also submitted that that caution will assume greater importance today as this court is now invested with supervisory jurisdiction under Art. 227 of the constitution.

When the makers of our Constitution have invested all the High Courts in India with supervisory jurisdiction under Art. 227 of the constitution, there is no good reason why this Court should resort to the archaic power contained in Regulation 2 of 1827. Apart from that I do not think that this is an exceptional case where I should exercise the power in favour of the petitioners and review the findings of fact.

66. Mr. Dhanuka also challenged the finding of the Appellate Bench of the Court of Small Causes that the tenant was guilty of profiteering and had built a permanent structure and thereby forfeited the protection of the Rent Act. These are findings of fact and I cannot disturb them in proceedings under Article 227 of the Constitution.

67. In the result I hold that the Appellate Bench of the Court of Small Causes has rightly held that the respondents have proved that they required the plot of land reasonably and bona fide for the erection of a new building within the meaning of Section 13(1)(i) of the Rent Act. Even if I am wrong in confirming this finding, I am satisfied that this is not a fit case for interference in favour of the petitioners under Art. 227 of the Constitution. The initial tenancy was only for a period of three years. Just about the time of the expiry of the lease the landlord filed a suit in ejectment. The suit failed mainly on a technical ground. Immediately thereafter he filed the present suit and is seeking to eject the tenants of the land so that he may profitably use the plot for building purposes. The litigation is pending for over nine years. Even justice requires that the matter should end at this stage between the landlords and the tenants and in favour of the landlords I am not bound to interfere in every case in which I find an error of law committed by the lower Courts. As I find, in this case, interference is not called for in the interest of justice. I also refuse to exercise the discretionary jurisdiction in favour of the petitioners.

68. In the result the petitioners fail and the rule in each of the petitions is discharged with costs. The decree not to be executed for a period of one month from the date of the signing of the judgment.

69. Petition dismissed.