AIR 1982 Bom 50 : (1981) MhLj 413

Bombay High Court

Case No: Special Civil applin. No. 2350 of 1977

J. Satyavrata and Another		APPELLANT
	Vs	
Mohamedbhai Abdothussen Sadiq Bahreinwalla and Others		RESPONDENT

Date of Decision: March 25, 1980

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 24

Citation: AIR 1982 Bom 50 : (1981) MhLj 413

Hon'ble Judges: Lentin, J; Desai, J

Bench: Division Bench

Advocate: V.T. Walwalkar, J.J. Miranda and Narendra walwalkar, for the Appellant; K.J. Abhyankar, for the Respondent

Judgement

Lentin, J.

The two petitioners before us are the tenants of flats on the 2nd and 4th floors of New Readymoney Building (renamed Alhatiz Building) situate at clearly Road, Byculla, Bombay. The respondents are the present landlords of this building floors and has in all 55 tenants. The tenants were in enjoyment of the service of a lift in this building. It appears that in 1974 the respondents" predecessors-in- title had partially withdrawn the lift facility by restricting the working hourse of the lift from 10.00 a.m. to 2.00 p.m. and from 4.30 p.m. till 8.30 p.m. in the place of the original working hours. Viz. From 9.00 p.m. Criminal proceedings were thereupon initiated against the respondents" predecessor-in title by the tenants which resulted in the restoration of the lift service to the original hours, viz, from 9.00 P.M. and the concomitant withdrawn if the criminal proceedings. On 1st aprill., 1975, the respondents became the owners of New Ready -money Building, whereafter, according to the petitioners, the respondents started harassing the tenants in

various ways, with the result that the tenants filed proceedings against the landlords in the court of small causes for fixation of standard rent and for a permanent injunction restraining the respondents from cutting off the electric supply. In Dec.,1975, the lift facility was totally withdrawn by the landlords and despite the tenants'' requests to them, the same was not restored. Thereupon in march, 1976 the present petitioners and another tenant, one Mrs. Mendes, residing on the 3rd floor, filled an Application no.424/RES of 1976 in the court of small causes against the landlords under S. 24(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act.1947 (referred to hereafter as "the Rent Act") for restroation of the lift facility. In those proceedings, no reply was filed by the landlords themselves. However. Their Rent Farmer one Shoeb (shaikh) Hashim contractor filed a reply denying that the landlords had cut off or withheld the lift service either directly or indirectly and urged that if hey had done so, it was for just or sufficient cause on the ground that the lift having been installed prior to 1940 had outlived its utility; that the cost of repairs would be in the vicinity of Rupees 20,000/- which the landlords could ill-afford; and that even if repairs were carried out to the lift, no useful c would be served as the repaid would not last for any length of time. In those proceedings, the petitioners and other tenants gave evidence. The landlords however did not step into the witness-box but contented themselves by leading the evidence of thier Rent Farming contractor. The trial Court passed its impugned order on 7 th Dec., 1976 . Following the decision of the learned single Judge of this court in Dhanrajmal Gobindram and Co. (P.) Ltd. and Others Vs. The State of Maharashtra and Another, the trial court upheld the landlords'' contentions and dismissed the tenants'' application, holding that it had not been established that the landlords had cut off or withheld the lift service and that if they had done so, it was for just or sufficient cause. The petitioners thereupon preferred a revision application to the appellate side of the Court of small causes. Relaying on the decision in Dhanrajmal''s case, the lower appellate court held that while it was the landlords'' case that the repairs required to be carried out by the Lift Inspector would come to Rs.20,000/- (Rupees twenty thousands), the landlords had failed to adduce any reliable evidence that the cost of the repairs would be that much. It was further held that on the showing of the tenants themselves the cost of repairs would come to Rs.2,000/- (Rupees two thousand) but even that expenditure the landlords could not be asked to incur as rents are controlled by the Rent Act.with the observation that-

"..... it is difficult to see that how in this case it can be said with certainty that the respondents had done a particular act or deliberately committed to do an act which they were bound to do and which has resulted in the stoppage of the lift. The only thing that can be definitely said against the respondents is that they have not carried out the repairs as informed by the Lift Inspector in his letter at Ext.4:. the lower appellate court dismissed the petitioners'' revision application on 31st dAug., 1977.

2. Hence the present special Civil Application was filed by the present petitioners for setting aside the impugned orders dated 7th Dec. , 1976 and 31st August, 1977 passed by the trial court and the lower appellate court respectively, and for restoration of the lift

service from 10.00 a,m. To 2.00 p.m. and from 4.00 p.m. to 8.30 p.m.

3. This special civil Application came up before our learned Brother dharmadhikari, before whom it was urged on behalf of the petitioners that the lower courts were in error in following the decision of the learned single judge in Dhanrajmal Gobindram and Co. (P.) Ltd. and Others Vs. The State of Maharashtra and Another, in preference to an earlier decision of another learned single Judge of this court in the case of The Bombay Bullion Association Limited Vs. Jivatlal Pratapsi, . To the contrary were the submissions urged on behalf of the respondents. In view of the apparently conflicting decisions of the two learned single Judges of this court in dhanrajamal''s case and the Bombay Bullion case, Dharmadhikari,J. Was of the view that the matter should be placed before a Division Bench and accordingly reported the matter to the and accordingly reported the matter to the learned Chief Justice. It is in these circumstances that the present special Civil Application has come up before us.

4.In challenging the impugned orders, Mr.Walwalkar, the learned counsel appearing on behalf of the petitioners, urged that the lower courts were in error in applying the ration laid down by the learned single Judge in Dhanrajmal Gobindram and Co. (P.) Ltd. and Others Vs. The State of Maharashtra and Another, instead of following the ratio laid down by another learned single Judge in the earlier The Bombay Bullion Association Limited Vs. Jivatlal Pratapsi, On the other hand, in supporting the impugned orders, Mr. Abhyankar, the learned counsel appearing on behalf of the landlords, urged that the earlier decision in the Bombay Bullion case had been considered and disapproved by the learned single Judge in Dhanrajmal'' s case and that being a later decision the lower courts were correct in following the ratio laid down in Dhanrajamal''s case which was the authoritative law on the subject and binding on the lower Courts. Such is the crux of the present controversy before us.

5. At this state , it would be pertinent to recapitulates S. 24 of the Rent Act, which reads as under :-

"(1) No landlord either himself or through any person acting or purporting to act on his behalf shall without just or sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him.

"(2) A tenant inoccupation of the premises may, if the landlord has contravened the provisions of sub-sec. (1), make an application to the court for a direction to restore such supply of service.

"(3) If the court on inquiry finds that the tenant has been in enjoyment of the essential supply or service and that it was cut off or withheld by the landlord without just or sufficient cause, the court shall make an order directing the landlord to restore such supply or service before a date to be specified in the order. Any landlord who fails to restore the supply or service before a date to be specified in the order. Any landlord who

fails to restore the supply or service before the date so specified shall for such day during which the default continues thereafter be liable upon a further direction by the court to that effect to fine which may extend to one hundred rupees.

"(4) Any landlord, who contrivances the provisions of sub-sec. (1) shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both."

"Explanation I : In this section essential supply or service includes supply or service includes supply of water, eleectricity, lights in passage and on staircases, lifts and conservancy or sanitary service."

"Explanation II : For the purposes of this action, withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cut off by the local authority or any other competent auithority." (The underlining is ours to highlight the scope of the present controversy before us.)

6. A plain reading of S. 24 reveals 6 broad ingredients, namely, (I) that there must exist the relationship of landlord and tenant between the parties qua the premises; (ii) that the supply or service in question must be an essential supply or service; (iii) tha such essential supply or service was enjoyed by the tenants; (iv) that it was cut off or witheld; (v) that the cutting off or withholding was by the landlord himself or through any person acting or purporting to act on his behalf; and (vi) that the cuting off or withholding of such essential service was without just or sufficient cause.

7. In the present case, there os mp controversy regarding the first three ingredients of sec. 24 for it is nobody"s case that they are not satisfied. Also not in dispute is the fact that this essential lift service was enjoyed by the tenants but is no longer available to them. The question that arises is whether this essential service was "cut-off" or "withheld" by the landlords and, if so., whether such cutting off or withholding was "Without just or sufficient cause". The burden of establishing the cutting off or withholding the essential supply or service would undoubtedly be on the tenant. The Court would then have to ascertain whether the cutting off or withholding was "without just or sufficient cause". The tenant cannot be expected to establish the negative, viz. That the cutting off or withholding by the landlord was "without just or sufficient cause". In order to escape inclupation, the burden would be on the landlord to establish the positive, viz. That the cutting off or withholding of the essential supply or service was for "just or sufficient cause". That is for the landlord to establish and the burden is heavily upon him to do so.

8. With these introductory remarks, we shall advert to two decisions of the supreme Court before analysing the two decisions of the learned single Judges of this court in the Bombay Bullion case were that the landlord"s predecessor-in-title had made a default in the payment of municipal taxes. With the result that water supply was cut-off by the

municipality, The tenants called upon the landlord to get water connection restored with a treat of prosecution u/s 24 of the Rent Act if the landlord failed to do so. The landlord refused or neglected to have the water connections restored by making payment of Rs.11-4-0 to the municipality, with the result that the tenant filed a complaint u/s 24 of the Rent Act. On these facts, it was held by the supreme court that while the landlord may not have been directly responsible for cutting off the supply of municipal water and that it was within his power to get the supply restored by paying the prescribed fee, the tenant had not shown that she had enjoyed the amenity of the supply of the tap water from the municipality at any time after the Act came into force, with the offence u/s 24(1) had been brought home to the landlord. In the unreported case of Bai phoolvati Dharambir Agrawala v. Kishna Babu Kanchan (1968) CA123 of 1966 , decided by the supreme Court on 1st 1968 the facts were that a certain estate known as morbaug belonged to one Morwala. Out of this estate, one open plot was leased out by morwala to one parab who constructed a chawl on this plot and had let out to different tenants. Parab had his own property in which the electric meter was installed and during the period that parab was the tenant of this plot and the landlord of his tenants in the chawl from 23rd Dec., 1949 to 20th Dec., 1963 he supplied electricity to all his tenants from his meter. On 10th Oct., 1963, parab surrendered his lease hold rights and the chawl constructed by him was purchased by a third party. As a result thereof, with effect from 20th Dec., 1963, the electric supply to all the tenants stood cut-off and withheld. All the tenants of the chawl attorned tenancy to the new purchaser. One of the tenants filed a complaint against the purchaser for cutting off or withholding the electric supply within the meaning of sub-sections (1) and (4) of section 24 of the Rent Act. The learned Magistrate convicted her and the conviction was upheld by the Bombay High Court. The supreme Court observed as under :-

Dr. V. D. Mahajan, learned cousel for the respondents, relied on the decision of this Court, in Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another, where this court had held that though the landlord may not have been directly responsible for cutting off supply of municipal water, never theless, it was power to get the supply restored, on payment of the prescribed fee, and any inaction in that regard, by the landlord would amount to an omission, with in Explanation II to section 24 of the Act. In this case, counsel points out that it is the duty of the appellant, after she became the owner of the property, to arrange for continues supply of electricity in the same manner, as it was done prior to her purchase.

"In our opinion, the finding arrived at by the trial court as well as by the High court are not based upon the evidence in the case and even the inferences drawn by the courts do not flow from the facts. We have already referred to the evidence of P. Ws. 1 and 2, who have both admitted that they were not personally aware of the appellant cutting off electricity supply. It is also clear from their evidence that they were getting the supply of electricity, on payment of separate charges from parab. Through a meter, situated within his premises. Neither of the witness has spoken to the appellant having any right to

compel parab to supply electricity to the premises of the commplainant. The casual statement made in the letter sent by the appleant, Ex.D, that in any event she was not bound to supply electricity has been taken out of its context by the Court to draw an inference that the appellant herself impliedly recognized her obligation in that regard. Reading the letter, as a shoal and, if the letter is read in its entirely, no such inference or conclusion is possible, On the other hand, the appellant specifically pleads that she has not cut off electricity at all, and that statement of hers finds support from the evidence of p.Ws. 1 and 2 Nor can the letter dated April 18, 1964 , written nearly four months after the complaint had been filed, be taken into account for holding that the appellant was adopting coercive methods, for instance, by cutting off supply of electricity on December 20, 1963 for getting vacant possession of the property. As we have already pointed plainant was being done from a meter, situated in a property which was still in the possession of parab. Whether the appellant possession of parab. Whether the appellant has got any rights in respect of that meter has got any rights in respect of that meter or any right to get supply of electricity from that meter, are all matter on which there is absolutely no evidence on record.

"The decision of this court relied on by Dr. Mahajan does not help the respondents. That was a case where this court held that it was within the power of the landlord to get supply of water restored, by payment being made to the municipality. But in the case before us it has not been established that it was within the power of the appellant to get supply restored from the meter which was in the premises owned by parab....."

9. With these two decisions of the supreme court in the forefront, we shall advert to the decisions of the two learned single Judges of this court in the Bombay Bullion case and Dhanrajamal"s case, reported in (1960) 62 Bom LR 380 and 75 Bom Lr 245: (1973 Cri LJ 1848) which have raised this dust of the present controversy before us.

10. In the Bombay Bullion case, (1960) 62. Bom LR 380, the facts were that since 1939 the opponent, one Jivatlal pratapsi, was the tenant of the 5th floor of a certain building owned by the petitioners. When the opponent took the premises on lease in 1939, there was no lift installed in the building but it was his case that the arrangements for the lift had already been made even before he came on the premises as the tenant of the petitioners and that it had been agreed between him and the landlords at that landlords at the time of the lease that as a condition of the lease he would be supplied with the service of the lift when installed. In 1942, the lift was installed and the tenant used it for about 18 years until it went out of order in February, 1959. In April, 1959, the tenant made an application to the court of small causes u/s 24 of the Rent Act complaining that he had been deprived of the service of the lift which he enjoyed for 18 years till Feburary 1959 as the landlords had omitted to put the lift in working order and prayed for a direction from the court for restoration of the lift service to him. The landlords" contention was ghat the amenity of the lift had neither been withdrawn nor withheld by them but that the lift was not working owing to circumstances over which they had no control. It was the case of the landlords that the lift had become worn out and was incapable of being restored and that it was not

possible for the landlords to replace it by a new lift for want of financial means. On these facts, it was urged on behalf, of the landlords that section 24 of the Rent Act was not attract as there was no withholding of any essential supply or service within the meaning of that section and that the mere ommission on the part of the landlords to repair the lift which was worn out and had fallen into disuse would not amount to withholding of any essential amenity enjoyed by the tenant. Reliance was also placed on Explanation II in support of these contentions. It was observed by the learned single Judge (Datar J.) that it was not quite clear now Explanation II supported the landlords" contention inasmuch as that Explanation is only an inclusive explanation, and far from supporting the landlords" contention, appeared to indicate clearly that withholding of any essential supply or service included not merely those acts or omissions expressly described in that Explanation but also all other acts or omissions which resulted in such supply or service being withheld. At page 381 of the Report, it ws further observed as under :-

" .... If the landlord locks the lift and makes it unavailable to his tenant, he has withheld an essential supply or service to him within the meaning of section 24. If the landlord omits to effect necessary repairs to his lift or otherwise fails to keep it in working order and thus makes the lift unavailable, even then the result is the same; he has in fact withheld an essential supply or service to his tenant within the meaning of that section."

(The underlining is ours to emphasis the applicability of these observations to the facts of the matter before us, as will appear later in this judgment).

Before Datar J. In the Bombay Bullion case, reliance was placed on behalf of the landlords on the following observations of the Supreme Court in Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another,

" It may also be pointed out that it is doubtful whether, before the second Explanation was insured into the section, as aforesaid in 1953, the cutting off of the water supply by the municipality, or the omission of the landlord to take steps to have the connection restored, would have come within the mischief of the penal section. Supposing the section Explanation was not there, could the prosecution attribute the cutting off of the connection restored, as an act or omission of the landlord within the meaning of S. 24(1)?" Datar J. Observed as under :-

"The argument is that it is only by reason of the Explanation certain omissions as described therein were included in the word " withhold" and the omission to effect repairs and put the lift in working condition being not any such omission as is mentioned in the Explanation cannot amount to withholding any essential supply or service within the meaning of section 24. I do not think there is any substance whatever in this argument. As I have already stated, the Explanation only refers to certain acts or omissions and does not mean that acts or omissions which themselves result in the withholding of an essential supply or service are not to be included in the word "withhold". In fact, even in the passage from the judgment of the supreme court quoted above, their Lordships have

described the expressions "cutting off" or "withhold" (paraphrased as refusal to get the connection restored) as an act or omission of the landlord within the meaning of S. 24(1)." (The underlining is ours)

11. Coming to the later decision of Learned single judge in Dhanrajmal"s case, 75 Bom LR 245 : (1973 Cri LJ 1848) , the facts in that case were that a three-storeyed building known as "Calcot House" once belonged to Sir Cawasji Jahangir. The respondents were in occupation of the entire third floor as tenants from 1936 at a monthly rent of Rs. 188.71. A lift had been installed in this building even before the respondents became the tenants from 13th Dec., 1965, the lift stopped working by which time Sir Cawasji had ceased to be the owner and one M/s Onkar Investments and Properties Ltd. Had become owners of the building The respondents called upon the landlord to repair the lift and to restore its operation. The landlords pleaded their inability to do so on the ground that it involved an expenditure of about Rs. 10,000/- which they wanted the tenant to share. The latter was however not agreeable to do so and insisted the lift being an essential service, he was entitled to get it restored under the Rent Act. In the meanwhile accused No.1 Company purchased the property on 1st June , 1968. Accused Nos. 2 to 5 were the Directors of the accused No.1 Company . Thereafter the respondents also called upon the accused to restore the lift service and on their failure to do so, lodged a complaint before the learned Presidency Magistrate u/s 24(1) read with sub-sec (4) of the rent Act and in the Court of Small Causes u/s 24(2) and (3) for restoration of the lift service . Amongst the defences taken by the accused before the learned Presidency Magistrate were that they had neither cut off nor withheld the lift service , that the operation of the lift service was stopped due to a mechanical defect , and also by reason of switchover of the D-C-current to A.C. current by B.E.S.T. since 1965 . On these admitted facts , it was observed by the learned single judge at p.247 (of bom. L.R) : (at pp.1849,1850 of Cri.L.J.) of the report as under :-

"..... it should be difficult to hold that the Landlord cut -off or withheld the essential service of lift and deprived the tenant of such service by any act or ommission on his or their part. The lift stopped working due to none of their acts or omissions . Some act of volition is implicit in the phraseology of the words "cut-off or "withhold". Without any conscious , deliberate and voluntary act or omission on the part of the Landlord , essential service of lift cannot be said to have been "cut-off"or "withheld" by the accused. He cannot be held liable for stoppage of lift is due to the mechanical defect or to wear and tear of the machinery in the ordinary course or to the change of policy of the B.E.S.T with regard to the supply of electrical energy ..... Before the Landlord is held guilty , some act or omission of his own volition must be found to have taken place which can be said to have caused the stoppage of the lift..... This by itself was sufficient to acquit the accused and hold that the accused had not either cut off or withheld the essential service with regard to the lift and the question of conviction of the accused on these admitted facts and the plain wording of section 24(1) of the act should not have arisen." (The understanding is ours)

It may also be stated to complete the narration of facts , that it was also the contention of the accused in that case that the service of the lift could not be restored without the old worn out lift being replaced by a new lift involving an expenditure of Rs. 50,000/- which they could not afford.

Construing the word "withhold" in S. 24(1) of the Rent Act , The learned single judge in Dhanrajmal''s case (75 Bom LR 245) : (1973 Cri LJ 1848) observed at page 247 (of Bom LR) : (at p.1850 of Cri LJ) of the report as under :-

"..... The word "withhold" in this sub-section (1) of section 24 is preceded by the word "cut-off" , and necessarily must get its colour therefrom. It is difficult to conceive of any process of cutting off without the volition of the person so cutting. The same must be said to be true of the word "withhold" . One can withhold only that which one was holding out or giving out or supplying. The expression connotes voluntarily stopping of something which was being supplied voluntarily . But, where as here , operation of the lift gets blocked or stopped independently of any act or omission on the part of the landlord , due to the operation of some extraneous factor or factors , the landlord cannot be said to have "withheld" the lift. His mere omission to repair the same or replace the same or ensure its continuance cannot be brought within the scope of the natural connotation in the present context. In fact the word "withhold" is not susceptible of such wide connotation in view of the setting in which this word has been employed..... The section speaks of , (1) either the landlord himself cutting off or withholding such service or , (2) cutting off or withholding such service " through any person acting or purporting to act on his behalf" . Deprivation of such service due to any third party or extraneous reason is plainly excluded from the sweep of this section in view of its peculiar phraseology ..... (The underlying is ours)

After comparing the phraseology of S. 23 with that of S. 24 of the Rent Act , the learned single judge observed that as against the positive obligation of the land lord to keep the premises in good and tenantable repair u/s 23, the phraseology of section 24(1) contemplates imposing a negative obligation and that the manner in which section 24(1) was couched , did not admit of imposing a positive obligation on the landlord to continue essential supply and services in any building, the operation of which was found to have been stopped due to some factor not attributable to any act or omission on the part of the landlord. After observing that section 24 is a penal provision enjoining the landlord not to cutoff or withhold any essential supply or service on paying of imprisonment and fine , the learned single judge continued that it was inconceivable that the legislature could have intended to make it obligatory on the part of the landlord to restore such essential supply or service in respect of the premises let, in the event of the machinery or apparatus pertaining thereto getting worn-out in the ordinary course on paying of penalty and imprisonment when it had not cast any obligation on him to reconstruct the worn-out premises let and had chosen to restrict his liability to keep it in tenantable repairs alone. At page 249 (of Bom LR) : (at pp. 1851, 1852 of CRI LJ) of the report , it was further observed as under :-

"..... Section 24 seems to have been aimed at ensuring that the landlord does not render the protection afforded to the tenant illusory by compelling to vacate by deliberately depriving him of any essential supply or services or by some positive acts of omission and commission to that effect . Ensuring the continuance of such essential supplies and services to the tenant appears to go beyond the scope of this section. It will therefore, not be permissible to import into section 24 an obligation on the land lord, in the absence of any clearer language to that effect, to restore the essential supplies or services enjoyed by the tenant in respect of the premises , even when the same are lost to the tenant due to no fault of his .

(The underlining is ours)

The learned single judge thereafter referred to the Supreme Court decision in , Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another, and the following observations therein , namely (at p. 447) , " it may also be pointed that it is doubtful whether , before the second Explanation was inserted into the section, as aforesaid , in 1953 , the cutting off of the water supply by the Municipality, or the omission of the landlord to take steps to have the connection restored , would have come within the mischief of the penal section. Supposing the second Explanation was not there could the prosecution attribute the cutting of the connection by the Municipality and the subsequent refusal of the landlord to get the connection restored, as an act or omission of the landlord within the meaning of section 24(1) ?" Considering those observations, the learned single judge opined that they unmistakably indicate that but for the expanded connotation of the word "withhold" incorporated in Explanation II , such at or omission on the part of the land lord could not have attracted the penal consequences under S. 24(4) and that it was possible to contend that Explanation II was only a clarificatory piece of legislation which did not in any manner detract from the above observations of the Supreme Court . It was further observed by the single learned judge that Explanation II only sought to specify the acts or omissions of the landlord implicit in the section itself in view of this clarificatory amendment and that the true import and implication of the above observation were that the natural connotation of the word "withhold" in the context is a restricted one, intended to cover only some positive acts or omissions resulting in the loss of amenities to the tenant.The learned single judge also referred to the earlier decision of Datar J.in the The Bombay Bullion Association Limited Vs. Jivatlal Pratapsi, observing that while the ratio of that judgement undoubtedly supported the tenant in Dhanrajmal Gobindram and Co. (P.) Ltd. and Others Vs. The State of Maharashtra and Another, it ran counter to the specific observations quoted earlier by the Supreme Court in Kanaiyalal"s case. The learned single judge further observed as under at page 252 (of Bom LR):(at p.1853 of Cri LJ) of the report:-

" ... . If the matter were to rest there, it would have been necessary for me to consider referring this case to the Division Bench, I, however, had that the approach adopted by the learned judge is not approved by the Supreme Court which is clear from ils another judgment in Bai Phoolvati Dharambir Agatwala v. Krishna Bahu Danchan (1968) CA 13

of 1996, decided on ist May, 1968).

Quoting the following observations of Vaidialingam, J, in Phoolvati"s case, namely, ...

"In our opinion, the findings, arrived at, by the trial Court, as well as, by the High Court, are not based upon the evidence, in the case, and even the inferences, drawn by the Courts, do the flow from the established facts. We have already referred to the evidence of P. Ws. 1 and 2, who have both admitted that land cutting off electricity supply." The learned singly Judge observed:

"It is thus clear from the above observations as well as the discussion in the earlier parts of the judgment that the question posed by the Supreme Court way, whether cutting off of the electricity supply or withholding was done by the accused himself ? had not whether accused had exposed himself to penalty by out continuing to supply electricity by installing a fresh meter? On behalf of the tenant reliance was placed on the Supreme Court judgment in Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another, and it was argued that if was the duty of the landlord, after she became the owner of the property to arrange for continuance of supply of electricity in the same manner it was done prior to her purchase. This contention was negatived by pointing out that electricity was supplied from a property which still was to the possession of ex-landlord Parab and there was no evidence of the new landlord having any rights in respect of that meter or any right in respect of that meter or any right to get the supply of electricity from that meter. The learned judges then observed that the ratio of the earlier judgment of the Supreme Court was not applicable as in that case if was within the power of the landlord to get supply of water restored by payment of tax arrears to the Municipality. Their Lordships then observed:

" .. .. In the case before us, it has not been established that it was within the power of the appellant, to get supply restored, from the meter which was in the premises owned by parab."

Construing the phraseology from the judgment of the Supreme Court "when it speaks of the supply of electricity being "within the power of the appellant." The learned single judge concluded with the following observations at page 253 (75 Bom LR) : 1973 Cri LJ 1854 of the Report :-

"... ... ... In the context the words "within the power" can have no reference whatsoever to the financial capacity of the landlord. These words have been employed by the learned Judges to repel the contention of the complainant that the landlord had withheld the supply of electricity and it was answered by saying that the landlord cannot be said to have withheld the supply inasmuch as the meter located in the premises of Parab, who had ceased to be the landlord, is not proved to have been at the disposal of the new purchaser of the property. In my opinion, the emphasis laid by the learned judges of the

Supreme Court, on the absence of evidence of the new landlord having cut off the electricity. Time and again, in the course of the judgment, and observation that before the landlord can be held guilty of withholding the supply, It shall have to be established that it was within has power to do so, thoroughly negatives the contention of Mr. Andhyarujina that the word "withhold" as sub-section (1) of diction 24 should be so broadly construed as to mean even the conscious omission of the landlord to effect reports in the lift or restore the lift or by replace the life even when it became inworks able to go fault of his."

The learned single Judge set out the ratio to Dhaurajmal"s case 1973 Cro LI 1848 by the following observations :-

"... ... ... The precise extent of liability of the landlord under any such implied obligation to keep the machinery and apparatus, from which essential supplies and services are made available to the tenant during the currency of contractual or statutorytenaney, shall have to be worked out in a property instituted action in a competent Civil Court. Section 28 of the Rent Act is wide enough to deal with any such claim or question arising out of this Act or any of its provisions. I do not find it possible to spell out any such apostate liability of the landlord in this penal provision of Section 7 to continue the essential supplies and services to the tenant in respect of the premises let out to him, even when the tenant stands deprived thereof as a result of some extraneous factor with which the landlord had nothing to do either directly or indirectly."

(The underlining is ours).

12. All these decisions referred to by us, including Dhanrajmal"s case 1972 Cri LJ 1948 were considered by the Division Bench of the Gujarat High Court in The State of Gujarat Vs. Sunderlal Karshanji Min, . In that case, the question which arose before the Division Bench of the Gujarat High Court was whether the landlord was bound to restore the essential supply or service when it was with to his power to do so and whether his failure to do so amounted to withholding of the essential supply or service enjoyed by the tenant as contemplated by S. 24(1) and made punishable under sub-see (4) of S. 24. The facts in that case were that two prosecutions were launched by two prosecutions were launched by two tenants against two landlords in the Court of the learned Judicial Magistrate under S. 24(1) of the Act, the case of the tenants being that their respective premises had a facility or attached basket type latrines which were cleansed by sweepers employed by the Nager Panchayat. In pursuance of a decision taken by Government to do away with manual sweeping of refuse, the local authorities issued a circular pursuant whereto the Nagar Panchayat of Dwarka directed the landlords to convert the basket type latrines into flush type tartness by a specified date. Both the landlords failed to do so. The Nagar Panchayat stopped providing services of sweepers for cleansing basket type larrines. The result was that the conservancy service provided to the tenants in both the cases came to an end. The tenants thereupon them to restore the conservancy service which the landlords failed to do on the plea that it was not they who had out off of withheld the Essential service ut that the same had come to an end as a result of the

decision taken by the Nagar Panchayat in not providing thy sweeping of latrines by human labour. Thus the landlords contended that there was no or omission on their part which resulted in the cutting off of withholding of the essential service in question. The learned Magistrate rejected the landlords'' piea as not being just or sufficient and convicted the landlords under S. 24(A) read with sub-sec (f) of the Act and sentenced them to a this of Rs. 50/- and simple imprisonment for 10 days in case of default. Against that conviction and sentence, the landlords pressured revisional applications to the learned sessions judge who set aside the orders of conviction and sentence. Against the acquittals the State approached the High Court to appeal which appeals were decided by the Divisions Bench of the Gajrat High Court, which allowed the appeals and tip helds the convictions and sentence on the landlords.

13. The Division Bench of the Gujarat High Court considered the Supreme Court decisions and the decisions of the Bombay High Court in the The Bombay Bullion Association Limited Vs. Jivatlal Pratapsi, and Dhanrajmal Gobindram and Co. (P.) Ltd. and Others Vs. The State of Maharashtra and Another, and after reproducing the observations of the Supreme Court in Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another, and of the learned single judge in Chanrajmal''s case, dissented from the latter with the following observations at page 126 of the Report;-

''The learned single judge said that their Lordships have described the expressions ''cutting off'' or ''withhold'' (paraphrased as refusal to get the connection restored) as an act or omission of the landlord within the meaning of Section 24(1). One thing is quite clear. The aforesaid observations do not purport to lay down that Explanation II is exhaustive of the acts or omissions attributable to the landlord which may result in withholding of essential supply or service. The learned single judge in the later Bombay decision in Dhanrajmal''s case, however, dissented from the earlier decision of the Bombay High Court in the Bombay Buttion Assoclation''s case and observed as under.

''With great respect to the learned judge, I do not think that his judgment adequately explains or even at temple\\ to explain the ratio of the Supreme Court passage quoted by my above''

''With great respect, it is not possible to agree with the view of the learned single judge in Dhanrajmal''s case (Supra) in view of the reason given above by us.''

(The underlining is ours.)

Applying the ratio laid down by the Supreme Court in Kanaiyalal''s case and editing with approval the decision of the learned single Judge of this Court in the Bombay Bultion case. The Division Bench of the Gujarat High Court concluded with the following observations (at p. 126);_

''... ... ... Applying the ratio laid down by the Supreme Court is Kanaiyalal.s case mentioned above and applying the correct connotation of the word the power of the

landlords to get this conservancy service restored either by getting the latrine converted into Aquaprivy or water closer or by providing for its cleansing privately through human labour No just or sufficient cause way made out in that trial Court for the omission to do so. Thereafter the conviction of the two landlords in the facts of this case was quite correct and proper."

(The underlining is ours.)

14. With this ratio laid down by the Gujarat High Court with which we are in respectful agreement) in the forefront, we are or opinion that in the facts of the matter before us, it is not possible to give to the word "withhold" in Section 24(1) the restricted meaning attributed to that word by the learned single Judge in Dhanrajmal"s case 1973 Cri LJ 1948. A plain reading of S. 24 reveals that the legislature intended that a tenant in enjoyment of an essential service must get the protection of the law. It is in view thereof that S. 24 enjoins the landlord not to cut off and prohibits him from cutting off such essential service by some direct or overt act on his Part. The words "cut" or "cut-off" have not been defined in the Act itself. Their dictionary meaning in the Random House Dictionary is as under:

"Cut ... . s. To new or saw down: fell :... .. ... 18. To stop, half the running of ... ... Cut off the water ... ... 19 to cease: discontinue ... ... 20, to suspend or terminate ... ... 27, to witch off ... ... 29, top interfere."

"Cut-off. . an act or justice of cutting off, 2, something that cuts of ... ..." Shorier Oxford Dictionary delaines "cut" and "cut-off" as under:-

"Cut, The act of netting ... . To penetrate so as to sever the continuity of with an edged instrument ... . To redact by cutting, to trim, shear, to prunes cut-off, An act of cutting off or portion cut-off ... ... A stopping of a continuance or flow ... .."

The fact that an act must be positive or direct is manifest from the positive phraseology "cut-off" in sub-sections (1) and (5), In other words, the act which leads to the consequence complained of must necessarily be a positive or over act on the part of the landlord, as for instance a landlord putting his lock to the lift or to the water pump of switching off the electric current and thereby depriving the tenants of the essential supply or service in question by a direct and overt act on his part. On the other hand, the word "withhold" in S. 24(1) connotes the with drawal or deprivation of the essential supply or service by some indirect means or set on the part of the landlord, as for instance, when the electricity is cut off by the supplier as a result of the default on the part of the landlord in paying electric bills of where an essential service like a lift ceases to be available to the tenants due to the wrongful failure on the part of the landlord to carry out necessary repairs, or undertake adequate maintenance, or effect replacement or parts, or due to the closing down of the lift facility by the Life Inspector by reason of the wrongful failure on the part of the landlord to carry our requisitions., These are but a few illustrations when a

landlord can be said to withhold an essential supply or service enjoyed by them and which the are entitled to enjoy, the landlord can be said to have withheld such essential supply or service, even though he may have done no direct act to that end. Nowhere is the definition of the word "withhold" in be found in the Act. Shorter Oxford Dictionary defines "withhold" as. ... ...

"to hold back; or retrain from grafting or giving."

Random House Dictionary delaines "withhold" as

"to hold back: restrain or check, to reframes from giving to withhold payment to hold back, refrain".

This the various shades and nuances of the meaning of the word "withhold" disclose the holding or keeping back or refraining on the part of the landlord the granting or continuing to grant to the tenants the essential supply of service, which it is within the power and control of the landlord to make available to the tenants. Thus while the word "cut-off" is positive and applies where the withdrawal or deprivation of the essential supply or service is brought about by some direct and positive act or means on the part of the landlord, the word "withhold" connotes some negation on the part of the landlord which results in the essential supply or service not being made available to the tenants even though it is within the landlord"s power and control to make available. To illustrate, if by reason say or load-shedding or a power-cut which are circumstances over which the landlord has no possible control, the essential supply or service cannot be made available to the tenants during certain hours. It is inconceivable that the tenants can be allowed to make any grievance on that scord, because, the load-shedding or the power-cut certainly not circumstances within the power and control of the landlord and cannot be atiributed to him. It is manifest that the interstices given in Explanation II are merely illustrative and nor exhaustive as is apparent from the words "shall include" in Expln II. Thus a l;andlord can be said to withhold and essential supply or service not only in the in the manner illustrated in Expln. II but also in a variety or ways even without the intervention of the local of competent authority, provided, however, in any event, the act or omission is "attributables to the landlord" One instatice would be the contumacious failure on the part of the landlord to carry out repairs or replace worn out or defective parts or failure in undertake regular maintenance of the essential service resulting after a lapse of time in the essential service becoming useless for the purpose it was masscult to serve. Such failure is "attributable to the landlord" and is within his power and control to prevent. In such a case, while the landlord no doubt may do no direct or overt act resulting in the cessation of the essential supply or service, he can certainly be said to have withheld it by some indirect of negative act, namely, by his falling to do what he was bound to do and what was within his power and control to do. It is within the power and control. And for than matter it is a landlord"s duty, to case the essential supply or service available to the tenants by carrying our regular repairs and undertaking regular maintenance and by doing such other acts as would not result in the wanton deprivation of this facility to the

tenanis. No landlord can be heard to say- " I shall carry out no repairs. I shall under take no maintenance. I Shall not replace even a nut or a bolt. Let the service, be it essential, so to rack and ruin. I shall do nothing". If, as a result of such attitude, sooner or later the essential service or supply grinds to a halt, and is no longer available to the tenants for no fault of theirs, a landlord can be said to have withheld the essential supply of service in question by wantonly bringing labour a state of affairs which it was un his power and control to have prevented in the first place. Thus no landlord can be permitted to take advantage of his own wrong and then be heard to plead that he has withheld nothing after wantonly creating a situation of his own making. In such a case, while a landlord may not have cut-off the essential supply or service, he can certainty be said to have withheld it, if it was within his power and control to have made available to the renants. There is nothing in S. 24 or in Expla II for that matter. To warrant the conclusion that Expln. II can be said to limit the scope and ambit of the word "sith-hold" in sub-section (1) or the word "withheld" in sub-section (3). On the plain reading of Section 24 and Expln. II, we are unable to hold that a limited or restricted meaning should be given to the word "withhold" The words "cut-off" and "withheld" do not have the same shade or meaning. They have different meanings with well-marked and distinctS connotations and, in our opinion, cannot be read ejusdem generis with each other. This is brought to the forefront by the observations of the Supreme Court in Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another, of the Report as under : -

" .....It may be that the appellant was not to blame for the default in payment of municipal dues, but it was open to him to pay Rs. 11-40 and have the water connection restored. He may not have been directly responsible for the cutting off of the supply of municipal water, but it was within his power to get the supply restored by the municipality on payment of the prescribed fee. Hence, in so far as the appellant omitted to do so, such an omission is attributable to him within the meaning of Expln. II which was inserted into the Act in 1953. There can, therefore, be no doubt, that the appellant was continuing to withhold an essential supply within the meaning of S. 24 as it stood in 1953:

(The underlining is ours.)

15. The above discussion and the observations of the Supreme Court in Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another, make demonstrably clear that even where a landlord is not directlyS responsible for the deprivation of an essential service he would still be liable it he omits to get such service restored provided it is within his power and control to do so, In such circumstrances, his failure to do so would amount to his withholding the essential supply of service, The above observations of the Supreme Court enunciating the correct test have been followed by the learned singly Judge in the The Bombay Bullion Association Limited Vs. Jivatlal Pratapsi, . However, with respect, if appears that in the later Dhanrajmal"s case 1973 Cri LJ 1948 those observations of the Supreme Court do not appear in have been given their due weight in preference to other observations in that case. Viz. (At p. 447);

"It may also be pointed out that it is doubtful whether, before the second Explanation was inserted into the section, as aforesaid, in 1953, the cutting off of the water supply by the municipality or the omission of the landlord to take steps in have the connection restored, would have come within the misconnect of the penal section.Supposing the second Expla.., was not there, could the prosecution attribute the cutting off of the connection by the municipality and the subsequent refusal of the landlord to get the connection restored, as an act or omission of the landlord within the meaning of S. 24(1) ?.

This aspect has been dealt with by the Division Bench of the Gujarat High Court in The State of Gujarat Vs. Sunderlal Karshanji Min, by the observations indented in para 12 of this judgment.

16. Thus the lest is - was it within the power and control of the landlord to have the essential supply or service restored even though he himself may not have been responsible directly for its discontinuance. Despite the fact that the essential service has come to an end not on account of any act directly done by the landlord but on account of an act done by a third party or by reason of some factor over which the landlord has no direct control, even so, he can be said to have withheld the supply of service it is within his power and control to get me same restored and despite that fails to do so. Thereby the landlord retrains from restoring and making available to the tenants the essential supply or service even though it is within his power and control to restore and make available to them. For instance. If the electric current is cut off by the supplier for failure of the landlord to pay electricity bills the landlord can be said to have withheld the essential supply or service because it is within his power and control to have the electricity restored and thereby making the essential supply or service in question available in the tenants by the expedient of paying the electricity bills which it was the landlords'' obligation to do in the first place. In brief, applying the "power and control" test, even though a landlord may not be directly responsible for cutting off the essential supply or service. If it is within his power and control to get the same restored, and even so, fails to do so his act would amount to withholding the essential supply or service. In coming to essential supply or service. In coming to this conclusion we are fortified by the observations of the Gujarat High Court in The State of Gujarat Vs. Sunderlal Karshanji Min, of the Report as under:-

"where the landlord is not directly responsible for the deprivation of the tenant of the essential supply or service. If it is within his power to get the supply or service. If it is within his power to get the supply or service restored and he omits to do so, such an omission would amount to withholding of the essential supply or service by the landlord. This is because, by this omission he is refraining from granting or giving the privilege of the supply or service to the tenant though it is within his power to restore the same. Looking to the context in which the word ''withhold'' occurs and keeping in mind the hesitative object, we third no difficulty in coming to the conclusion that in a case where the essential service or supply has come to an end not on account of any direct act done by the landlord but on account of the act done by a third party, or on account of any factor over which the landlord had no control, the landlord can be said to have withheld the

supply or service if he omits to get it restored though it is within his power to do so. His omission in such a case amounts to retraining from granting or giving the privilege of the supply or service to the tenant.....The test is that even though the landlord may not be directly responsible for cutting off of the supply or service, if was within his power to get the same restored and he omits to do so, that act of his amounts to with holding supply or service.....

(The underlining is ours)

We are in respectful agreement with these observations of the Division Bench of the Gujarat High Court in Sunderlal"s case.

17. The question that next arises is what is the meaning and implication of the words "just of sufficient" in sub-sections (1) and (5), The liability of the landlord not to with off or withhold an essential supply or service is concomitant with the right of the tenant to receive it. That right, however is not absolute in all sets of circumstances. In a given case, it would be open to the landlord to establish that he is absolved from his liability provided he makes out a just of sufficient cause. This would, or course apply only in cases where the landlord him self, or anyone acting or purporting to act on his behalf, has not wrongfully done any direct or overt act or falied to do some thing he was bound to do, thereby resulting in wanton deprivation of such essential supply or service. No landlord can deliberately or wantonly create a situation and then claim just or sufficient cause in extenuation of his liability arising out of a situation of his own creation. No landlord can deliberately or wantonly create a situation and then claim just or sufficient cause in extenuation of his own creation. No landlord can be heard to plead just or sufficient cause of what he himself has been responsible directly or indirectly by bringing about a situation of his own making. He does so at his peril. To illustrate, no landlord can curtail the long levitys or hasten the demise of an essential service say like a life by failing to carry out repairs or failing to undertake proper maintenance or failing to do what a prudent and reasonable person would do or by doing what a prudent and reasonable person would not do, and then be heard to plead with any degree of success "just or sufficient" cause in mitigation or as an exenterating circumstance or his own wanton act or omision, direct or indirect. In a word, no landlord can create a situation and then be heard to plead just or sufficient cause must necessarily depend upon the facts and circumstances or each case. Several factors may arise for consideration, to wit, the degree of the essentiality and nature of the supply of service, namely conservancy and sanitation, water, electric lift and soforth. In a fit case, the amount which that landlord would have to spend in restoring such supply or service may also be taken into consideration, provide, of course, the deprivation of such supply or service is not the result of some wanton act or omission no the part of the landlord himself. It is the result of some direct act on the part of the landlord of the result of an indirect cause which was within the power and control of the landlord to prevent, the landlord is bound and liable to restore such supply or service, irrespective of the cost he may have to undergo, for he cannot be allowed to take advantage of his own wrong and then plead a large expenditure as just or sufficient cause

for not incurring it in order to restore a service which it was within his power and control not to deprive the tenants or and is within his power and control to restore. It would indeed be a rare and exceptional case where a landlord can be hear to plead with any degree of success just or sufficient cause. In the case of the most essential and basic amenity like conservancy, sanitation or water sypply, irrespective of cost and even if for their restoration the landlord may have to go out of pocket. The most important consideration is the manner in which the essential supply or service came to an end. We emphasise that if deprivation of the essential supply or service was the result of any wanton act or default on the part of the landlord, or the result of an indirect act which was within his power and control to prevent, he cannot be allowed to plead an exorbitant cost in extenuation of his own wrong, and which would not have resulted in the deprivation of the essential supply or service had he been careful and vigilant to staff with. In brief, a cause is "just or sufficient" when it can be said to be reasonable, bona fide and substantial and which does not allow a landlord to take advantage of or perpetuate his own wrong.

18. We have set out these broad principles in an attempt to reconcile the apparently divergent views expressed by the two learned singly judges of this Court respectively, in the The Bombay Bullion Association Limited Vs. Jivatlal Pratapsi, and Dhanrajmal Gobindram and Co. (P.) Ltd. and Others Vs. The State of Maharashtra and Another, While the reasoning in the earlier decision in the Bombay Bullion case appears to advocate complete immunity to the renant, the reasoning to the later decision in Dhanrajmal''s case appears to propound complete immunity to the landlord in its interpretation of Sec. 24 . We have chosen to follow the middle path and to that end have set out the broad principles based on the "Power and control" test.

19. With this lest in the forefornt, the question that arises is whether the present landlords have made our their eyes of just of sufficient cause pleaded by them. Indisputably the lift service had not been available to he tenants from Dec., 1975, It has not been suggested to us, and rightly so, that the tenants had failed to discharge the burden upon them. It is not even the landlords'' case that the non-availability of the lift service was by reason of any wrongful set or default on the part of the tenants. The question that arises is whether the landlords have discharged the burden of proof, namely that they had just or sufficient cause in withdrawing this essential amenity. It may be recalled that the defence of the landlord in the lower Courts was that the lift having been just lied prior to 1940 had outlived its utility and that the cost of repair''s would come to a sum of Rs. 20,000/- which the landlords could ill-afford and further that even if the repairs were carried out by them no useful purpose would be served because the repairs would not last for any length of time. In respect of these defences taken up by the landlords, if any also be recalled that they did not offer to lead their own evidence but satisfied themselves by leading the evidence of their Rent Farmer, Shoch (Sheksh) Heshim Contractor, It is not in dispute that shortly prior to the with drawal of the lift service in Dec., 1975, a girl residing in that building had lost one of her fingers as a result of an accident due to the lift suddenly

moving when it was not supposed to. Thereafter the Inspector of Lifts ordered the life to be stopped as it required certain repairs. There repairs the landlords refused to carry can for the reasons stated earlier. The respondents. Rent Farming Contractor admitted in his evidence that the lift was not in a working condition since the middle of Dec., 1975 and that a communication dated 16th Aug., 1975 had been received by the landlords from the Inspector of Lifts requesting them to rectify the defects in the lift ny 31st Aug., 1975 and report written compliance. The defects listed were 16 in number, namely (1) that the lift was moving when the car gate was open. (2) the final limit was rusted and was mal-funetioning, (3) the lift gave jerks while stopping. (4) replacement of broken pickets of landing gates. (5) repair of defectiveS looks of landing gates, (6) discontinuance of using the machine room as a store room or living room, (7) replacement of the missing load place inside the car, (8) repair of the phase failure redau. (9) replacement of the broken fuse bridge of the main switch, (10) cleaning the machine room and lift parts. (11) replacement of worn out parts in the machine to eliminate noise. (12) providing bell push button and call bell on the landings, (13) the narrowing doors to 25 mm. The gap between the car edge and the landing edge, (14) providing a counter weight protection screen up to the height of 2 metres, (15) providing a carpet on the car platform so as to make the platform smooth and non-slippery, and (16) replacement of the missing handle of landing gates, Such were the defects noticed by the Inspector of Lifts which the landlord were called open to rectify. Here it may be mentioned that even before the letter of 16 Aug., 1975 was addressed by the Lift Inspector to the landlords, an earlier letter dated 18th July, 1975 had also been sent to the landlords by the Lift Inspector stating that on inspection of the lift defects had been noticed. As these defects had not been removed, the Inspector of Lifts again sent his subsequent letter dated 16th Aug., 1975.

20. It is not in dispute that the defects pointed out by the Lift Inspector were the only defects in the lift. This is Brought to the forefront by the admission in evidence of the landlords" Rent Farmer who has stated that the lift was defective in the manner described by the Lift Inspector in his letter dated 16th August, 1975. He admitted that in Nov., 1975 a child operating the life had lost one of her fingers as a result of an accident by reason of the fact that the lift would operate even when the car door was open and that on an inspection of the lift by the Lift Inspector, if was at his insistence that the lift service had been discontinued.

21. Can a landlord be heard to plead just or sufficient cause on the ground that tenants have been deprived of this essential amenity because the Life Inspector insisted on the discontinuance of the Life Inspector insisted on the discontinuance of the lift in these circumstances? Certainty not. In the facts and circumstances of the present matter, there can be no doubt that the defects pointed out by the Inspector of Lifts arose out of the direct act or default on the part of the landlords themselves in not maintaining the lift in a proper condition which they were bound to do. There is nothing on record to indicate that the landlords had done anything that was within their power and control to keep the lift in a proper condition or in proper repairs. Or that they had even entered into any

maintenance contract for its due maintenance and repairs. On the contrary, there is admission of the landlords'' rent farmer that no maintenance contract had been entered into by the landlords for the due upkeep of the lift. In other words the landlords sat back, did nothing towards keeping the lift in a working condition and wantonly allowed the lift to develop the defects listed by the Lift Inspector which were within their power and control to prevent by taking reasonable care which they totally and absolutely failed to do. It does not behave the landlords not to carry out the barest or repairs, undertake no maintence, take no proper and reasonably care of the lift and thereafter plead help lassies on their part. The degree of the landlords'' culpability is demonstrated by the startling fact that the Lifts Inspector found the machine room being used as a store room or living room which the landlords were directed to discontinue from doing. The respondent-landlords cannot be allowed to take advantage of their own wrongful conduct in not keeping the lift in proper order and maintenance and thereafter plead an alleged expenditure of Rs. 20,000/- as a just or sufficient cause for not setting right the defects, which it is within their power to do and which would not have arisen in the first place but for their utter neglect of this essential service. What also is important is that there is noting beyond the ipse dixit of thr repondents'' Rent Farmer in his evidence that an amount of Rs. 20,000/- would have to be incurred for setting right the defects in this lift and that the respondents do not have the necessary funds. The landlords themselves have chosen to give no evidence. Not a single scrap of documentary evidence has been produced by the respondents or by their Rent Farmer is order to establish that they would have to incur an expenditureof Rs. 20,000/- as alleged by them. The Cross-examination on this aspect of the respondents. Rent Farming Contractor discloses in no uncertain terms the unreliability of the ipse dixit that a sum of Rs. 20,000/- would have to be expended for curing the defects in the lift. The mere assertion by the landlords'' Rent Farming Contractor that the landlords do no have the necessary funds is futile when significantly enough the landlords themselves have not chosen to step into the witness-bpx. No explanation If forthcoming for the curious lapse on their part. He that as it may, in a case such as this. Where the defects have arisen as a direct result of the wanton acts and omissions on the part of the land. Lords themselves, it does now lie in their mouths to plead an alleged expending of Rs. 20,000/- after having been responsible for reducing the lift into the condition in which it was found by the Lift Inspector, The mala fides on the part of the landlords is further demonstrated by the fact that the defects enumerated by the Life Inspector cannot be said to be said to be any major defects requiring any major repairs or a large expenditure. Most of these defects are of a minor character and some of them are quitwifling. According to the tenants, the cost of rectifying these defects would be in the vicinity of about Rs. 2,000/- though that suggestion has been dented by the respondents. Rent Farming Contractor, according to whom the expenditure would be Rs. 20,000/- for which there is nothing beyond his hare word. While the landlords have chosen to lead no exidence of income of outgoings in respect of this property, we are informed across the Bar that the annual rents received by the landlords came to Rs. 43,720/- as against the total annual outgoings aggregating to Rs. 20,000/- including taxes. The failure therefore of the landlords to give evidence themselves becomes understandable for their presence

in the witness-box would have exposed the hollowness of their pretence of financial inability. In these circumstances, there can possible be no justification for the landlords to plead financial disability in carrying out the repairs. The landlords further ground of resistance namely that the life had outlived its utility is also of no substance in view of the admission made by their Rent Farming Contractor in evidence that there is nothing in the communication of the Lift Inspector and the detects pointed out by him to suggest that the lift had become so useless that it was irreparable. The evidence of the landlords Rent Farmer discloses the total hollowness or the dï¿½tentes taken up by the landlords in a vain attempt to establish jut of sufficient catise. The record discloses nothing which can be said to be just or sufficient cause for the landlords not carrying not the repairs to the lift as required by the Lift Inspector it was within the power and control of the landlords not to have reduced the condition of the lift to what if it,. It is also within their power and control to make this essential service once again available to the tenants by carrying out the requisite repairs.

22. This is a gross case where nothing can be said in mitigation for the landlords. We were informed across the Bar that the landlords have even taken away the lift 1982 Bom./5 II motor and that all what remains at present is the eage. Mr. Abhyankar appearing for the landlords, however, stated that the motor has been removed by the landlords for safe keeping. If so, just as well for in that event they should have no difficulty in restoring it to its proper place intend of having to purchase a new one to put the lift in working condition to the satisfaction of the Lift Inspector. This the landlords shall do no or before 31st July, 1950.

23. Mr. Abhyankar ultimately invited us to remand this cas back to the lower Court to enable the landlords to give evidece. Mr. Abhyankar urged that if this opportunity is given, the landlords will be able to establish just or sufficient cause. We have no difficulty in repelling this suggestion of Mr. Abhyankar, which is an application and misericordiam. There is no reason and none was suggested, why the landlords and not choose to step into the witness box when they had the opportunity to do so or why they contented themselves until now on relying upon the evidence of their Rent Farming Contractor, which instead of being of any assistance to the landlords has let the car out of the bag. having done so, if is not now open to the landlords to ask us to remand the cas back to the lower Court for their evidence which they could have given earlier. The intention of the landlords is transparent, namely to pur off the evil day.

24. We conclude this judgment with the observation that if we have differed from the reasoning of our learned Brother in Dhanrajmal Gobindram and Co. (P.) Ltd. and Others Vs. The State of Maharashtra and Another, we have done so with the greatest respect and after deal of cogitation, alive as we are to his vast knowledge and legal acumen.

25. In the result the impugned orders are set aside and the Special Civil Application is allowed in terms of prayers (a) and (b). The respondents shall restore the life service in terms of prayer (b) and obtain the requisites clearance certificate from the Lift Inspector

on or before 31st July. 1980. In default, liberally to the petitioners to apply to this Court for further orders in accordance with S. 24(3) of the Rent Act. As this controversy involved in the main a legal point, namely the interpretation of Sec. 24. There will be no order as to costs throughout.