Indu Bhusan Bose vs Rama Sundari Devi & Anr on 29 April, 1969

Equivalent citations: 1970 AIR 228, 1970 SCR (1) 443, AIR 1970 SUPREME COURT 228

Author: Vishishtha Bhargava

Bench: Vishishtha Bhargava, M. Hidayatullah, J.M. Shelat, K.S. Hegde, A.N. Grover

PETITIONER:
INDU BHUSAN BOSE

Vs.

RESPONDENT:
RAMA SUNDARI DEVI & ANR

DATE OF JUDGMENT:
29/04/1969

BENCH:
BHARGAVA, VISHISHTHA
BENCH:
BHARGAVA, VISHISHTHA
HIDAYATULLAH, M. (CJ)
SHELAT, J.M.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1970 AIR 228 1970 SCR (1) 443
1969 SCC (2) 289
CITATOR INFO :
RF 1972 SC 787 (6)
R 1976 SC1031 (5)
RF 1980 SC1201 (2,4)
R 1988 SC1708 (21)
R 1989 SC 406 (11)
F 1991 SC 855 (46)

ACT:
Constitution of India, 7th Schedule, Entry 3, List I If grants exclusive power to Parliament to legislate covering all aspects of house accommodation in contonment areas, including on relationships of landlord and tenant.

HEADNOTE:
The first respondent, who was the owner of certain premises situated within the cantonment area of Barrackpore filed a suit for the appellant's eviction from the premises. In the plaint it was claimed that the appellant was not entitled to the protection of the West Bengal Premises Tenancy Act 12 of 1956, the regulation of house accommodation including control of rents being a subject in Entry 3 of List I of the Seventh Schedule to the Constitution, the State Legislature could not competently enact a law on the same subject for Cantonment areas and the extension of the Act to the cantonment area was ultra vires and void. Upon the Trial Court making a reference under s. 113 C.P.C. to the High Court for a decision of the constitutional question, that court upheld the first respondents contention.
In appeal to this Court it was contended that the High Court was in error in holding that the field of legislation covered by the Act, which is primarily concerned with control of rents and eviction of tenants, is included in the expression "regulation of house accommodation in cantonment areas" used in Entry 3 List I, regulation of house accommodation will not include within it laws or rules on the subject of relationship of landlord and tenant of buildings situated in the cantonment areas. On the other hand according to the appellant, legislation on this subject can be made either under entry 18 of List 11, or entries 6, 7 and 13 of List III, so that a State Legislature is competent to legislate and regulate relationship between landlord and tenant in the cantonment areas; that under Entry 3 List I Parliament is empowered to legislate in respect of house accommodation situated in cantonment areas only to the extent that house accommodation is needed for military purposes and laws are required for requisitioning or otherwise obtaining possession of that accommodation for such purposes. The alternative submission made was that regulation of house accommodation by parliamentary law should be confined to houses acquired, requisitioned or allotted for military purposes. Entry 3, List I, according to the appellant, should not be read as giving Parliament the power to legislate on the relationship of landlord and tenant in respect of houses situated in cantonment areas if such houses are let out privately by a private owner to his tenant and have nothing at all to do with the requirements of the military.
HELD : Dismissing the appeal,
When power is granted to Parliament under Entry 3 List I to make laws for the regulation of house accommodation in cantonment areas, there are no qualifying words to indicate that the house accommodation, which is to be subject to such legislation, must be accommodation
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required for military purposes, or must be accommodation that has already been acquired, requisitioned or allotted to the military. [447B]

When legislating in respect of local self-government in cantonment areas, it is obvious that Parliament will have to legislate for the entire cantonment area including portions of it which may be in possession of

civilians and not military authorities or military officers. Similarly, the powers of the cantonment authorities, which could be granted by legislation by Parliament, cannot be confined to those areas or buildings which are in actual possession of military authorities or officers and must be in respect of the entire cantonment area including those buildings and lands which may be in actual ownership as well as occupation of civilians. In these circumstances, there is no reason to narrow down the scope of legislation on regulation of house accommodation and confine it to houses which are required or are actually in possession of military authorities or military officers. [447F-H]

The word "regulation" cannot be so narrowly interpreted as to be confined to allotment only and not to other incidents, such as termination of existing tenancies and eviction of persons in Possession of the house accommodation. Entry 3 List I gives power to Parliament to pass legislation for the purpose of directing or controlling all house accommodation in cantonment areas. [448 D]

Prout v. Hunter, [1924] 2 K.B. 736, Property Holding Co. Ltd. v. Clark,

[1948] 1 K.B. 630 and Curl v. Angelo & Anr. [1948] 2 All E.R. 189, referred to.

In the Constitution, the effect of Entry 3 of List I is that Parliament has exclusive power to make laws with respect to the matters contained in that Entry, notwithstanding the fact that a similar power may also be found in any Entry in List 11 or List 111. Article 246 of the Constitution confers exclusive power on Parliament to make laws with respect to and of the matters enumerated in List 1, notwithstanding the concurrent power of Parliament and the State Legislature, or the exclusive power of the State Legislature in Lists III and 11 respectively. The general power of legislating in respect of relationship between landlord and tenant exercisable by a State Legislature either under Entry 18 of List 11 or Entries 6 and 7 of List 111 is subject to the overriding power of Parliament in respect of matters in List 1, so that the effect of Entry 3 of List I is that, on the subject of relationship between landlord and tenant insofar as it arises in respect of house accommodation situated in cantonment areas, Parliament alone can legislate and not the State Legislatures. [454E-G]

A.C. Patel v. Vishwanath Chada, I.L.R. [1954] Bom. 434, F.E. Darukhanawalla v. Khemchand Lalchand, I.L.R. [1954] Bom. 544, Kewalchand v. Dashrathlal, I.L.R. [1956] Nag. 618 and Babu Jagtanand v. Sri Satyanarayanji and Lakshmiji through

the Sheba it and Manager Jamuna Das, I.L.R. 40 Pit. 625, disapproved.
Nawal Mal v. Nathu Lal, I.L.R. 11 Raj. 421, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 882 of 1968. Appeal by special leave from the judgment and order dated July 1, 1966 of the Calcutta High Court in Civil Reference No. 20 of 1963.

D. N. Mukherjee and Sunil Kumar Ghosh, for the appellant. A. K. Sen, Sukumar Ghose and Krishna Sen, for respondent No. 1.

B. Sen, Sukumar Basu and P. K. Chakravarti, for respondent No. 2.

Niren De, Attorney-General, V. A. Seyid Muhammad, R. H. Dhebar and S. P. Nayar, for the Union of India. The Judgment of the Court was delivered by Bhargava, J. Rama Sundari Debi, the first respondent in this appeal by special leave, instituted a suit for the ejectment of Indu Bhusan Bose appellant who was a tenant in premises No. 18, Riverside Road, owned by respondent No. 1, situated within the cantonment area of Barrackpore. The agreed rent was Rs. 250/per mensem but there was a dispute as to whether the owner or the tenant was liable to pay rates and taxes. On an application presented by the appellant, the Rent Controller fixed fair rent under s. 10 of the West Bengal Premises Tenancy Act No. XII of 1956 (hereinafter referred to as "the Act") at Rs. 170/per month inclusive of all cantonment taxes, and, in appeal, the amount was enhanced to Rs. 188/- per month inclusive of all cantonment taxes. Respondent No. 1, in December, 1960, served a notice on the appellant to quit and, on failing to get vacant possession, filed a suit in the Court of the Munsif. In the plaint, respondent No. 1 claimed that, regulation of house accommodation including control of rents being a subject in entry No. 3 of List I of the Seventh Schedule to the Constitution, the State Legislature could not competently enact a law on the same subject for cantonment are-as, so that the appellant was pot entitled to protection under the Act which had been extended to that area by the State Government. It was urged that the extension of that State Act to the cantonment area was ultra vires and void. The Munsif, thereupon, made a reference under s. 113 of the Code of Civil Procedure to the High Court of Calcutta for decision of this constitutional question raised in the suit before him. The High Court decided the reference by making a declaration that the notification, whereby the State Government had extended the provisions of the Act to the Barrackpore cantonment area, was ultra vires and void. This is the decision of the High Court that has been challenged in this appeal.

It has been contended on behalf of the appellant that the High Court is not correct in holding that the field of legislation covered by the Act, which is primarily concerned with control of rents and eviction of tenants, is included within the expression "regulation of house accommodation in cantonment areas" used in entry No. 3 of List I. That entry is as follows :-

"3. Delimitation of cantonment areas, local self government in such areas, the

constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas."

The submission made is that regulation of house accommodation will not include within it laws or rules on the subject of relationship of landlord and tenant of buildings situated in the cantonment areas. On the other hand, according to the appellant, legislation on this subject can be made either under entry of List 111, so that a State ,Legislature is competent to legislate and regulate relationship between landlord and tenant even in cantonment areas. These relevant entries are reproduced below "List II

18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and allenation of agricultural land; land improvement and agricultural loans; colonisation."

"List III

6. Transfer of property other than agricultural land; registration of deeds and documents.

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration."

On the scope of entry 3 of List 1, the argument advanced is that Parliament is empowered to legislate in respect of house accommodation situated in cantonment areas only to the extent that that house accommodation is needed for military purposes and laws are required for requisitioning or otherwise obtaining possession of that accommodation for such purposes. In the alternative. the submission- made is that regulation of house accommodation by parliamentary law should be confined to houses acquired,. requisitioned or allotted for military purposes. This -entry 3, according to the appellant, should not be read as giving Parliament the power to legislate, on the relationship of landlord and tenant in respect of houses situated in cantonment areas if such houses are let out privately by a private owner to his tenant and have nothing at all to do with the requirements of the military. We are unable to accept this submission. The language of the entry itself does not justify any such interpretation. In the entry, when power is granted to Parliament to make laws for the regulation of house accommodation in cantonment areas, there are no qualifying words to indicate that the house accommodation, which is to be subject to such legislation, must be accom- modation required for military purposes, or must be accommodation that has already been acquired, requisitioned or allotted to the military. In fact, if a legislation in respect of any cantonment was to be undertaken by Parliament for the first time under this entry, there would be, at the time of that legislation, no house in the cantonment already acquired, requisitioned or allotted for military purposes; and, if the interpretation sought to be put on behalf of the appellant were accepted, the power of Parliament to pass laws cannot be exercised by Parliament at all. It is also

significant that, in the entry, various items, which can be the subject-matter of legislation by Parliament, are mentioned separately, and these are :-

(i) Delimitation of cantonment areas;

(ii) local self-government in such areas;

(iii) the constitution and powers within such areas of cantonment authorities; and

(iv) the regulation of house accommodation (including the control of rents) in such areas.

In none of these clauses there is any specification that the legislation is to be confined to areas or accommodation required for military purposes. When legislating in respect of local self government in cantonment areas, it is obvious that Parliament will have to legislate for the entire cantonment area including portions of it which may be in possession of civilians and not military authorities or military officers. Similarly, the powers of the cantonment authorities, which could be granted by legislation by Parliament; cannot be confined to those areas or buildings which are in actual possession of military authorities or officers and must be in respect of the entire cantonment area including those buildings and lands which may be in actual ownership as well as occupation of civilians. In these circumstances, there is no reason to narrow down the scope of legislation on regulation of house accommodation and confine it to houses which are required or are actually in possession of military authorities or military officers. The power to regulate house accommodation by law must extend to all house accommodation in the cantonment area irrespective of its being owned by, or in the possession of, civilians. In fact, if a law were to be made for the first time under' this entry, all the houses would be either vacant or occupied by owners or occupied by tenants of owners under private agreements and the law, when first made, will have to govern such houses. The scope of the expression "regulation of house accommodation" in this entry cannot, therefore, be confined as urged on behalf of the appellant.

It is, in the alternative, contended that, even if the expression "regulation of house accommodation" in this entry includes regulation of houses in private occupation, it should not be interpreted as giving Parliament the power even to legislate for eviction of tenants who may have occupied the houses under private arrangement with the owners. It should be confined to legislation for the purpose of obtaining possession and allotment of such accommodation to military authorities or military officers. We cannot accept that the, word "regulation" can be so narrowly interpreted as to be confined to allotment only and not to other incidents, such as termination of existing tenancies and eviction of persons in possession of the house accommodation. The dictionary meaning of the word "regulation" in the Shorter Oxford Dictionary is "the act of regulating" and the word "regulate... is Given the meaning "to control, govern or direct by rule or regulation". This entry, thus, gives the power to Parliament to pass legislation for the purpose of directing or controlling all house accommodation in cantonment areas. Clearly, this power to direct or control will include within it all aspects as to who is to make the constructions under what conditions the constructions can be altered, who is to occupy the accommodation and for how long, on what terms it is to be occupied,

when and under what circumstances the occupant is to cease to occupy it, and the manner in which the accommodation is to be utilised. All these are ingre- dients of regulation of house accommodation and we see no reason to hold that this word "regulation" has not been used in this wide sense in this entry.

It appears that, in the Government of India Act, 1935, the corresponding entry No. 2 in List I of the Seventh Scheiule to that Act was similar to this entry No. 3 of List I of the Seventh Schedule to the, Constitution, but the expression "including centrol of rents" which is now in entry No. 3 of List I within brackets did not exist. An argument was sought to be built on it that regulation of house accommodation was not intended to cover control of rents when that expression was used in the corresponding entry in the Government of India Act, and that this expression used in the Constitution should also be interpreted to cover the same field, so that, but for the addition made within brackets, Parliament could not have legislated for control of rents of house accommodation within cantonment areas. It is further urged that, if the expression "regulation of house accommodation"

> is interpreted as not including within it regulation or control or rents, it should also be held that it will not include regulation of eviction of private tenants. This argument is based on the premise that the words "including control of rents" was introduced in entry 3 of List I of the Seventh Schedule to the Constitution for the purpose of en- larging the scope, of the legislative authority of Parliament and making it wider than that of the Federal Legislature under the Government of India Act. Such an assumption is not necessarily justified. It may be that the words "including the control of rents" were introduced by way of abundant caution or to clarify that the regulation of house accommodation is wide enough to include control of rents. The addition may have been made so as to concentrate attention on the fact that legislation was needed for control of rents in the situation that existed at the time when the Constitution was passed by the Constituent Assembly. It has to be remembered that cantonments are intended to be and are, in fact, military enclaves and regulation of occupation of house accommodation in the cantonment areas by parliamentary law is necessary from the point of view of security of military installations in cantoriments and requirements of military authorities and personnel for accommodation in such areas. Such a purpose' could only be served by ensuring that Parliament could legislate in respect of house accommodation in cantonment areas in all its aspects, including regulation of grant of leases, ejectment of lessees, and ensuring that the accommodation is available on proper terms as to rents. On an interpretation of the contents of the entry itself, therefore, we are led to the conclusion that Parliament was given the exclusive power to legislate in respect of house accommodation in cantonment areas for regulating the accommodation in all its aspects.
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> In this connection, we may refer to three decisions which explain the object of legislation on the subject of rent control. In Prout v. Hunter(1), Scrutton, L.J., dealing with the legislation during the war in England, held:-

> "Great public feeling was aroused by the exorbitant demands for rent that were made and the ejectments for nonpayment of it, with the result that Parliament passed the Rent Restriction Acts with the two-fold object, (1) of preventing the rent from being raised above the prewar standard, and (2) of preventing tenants from being turned out of their houses even if the term for which they had originally taken them had expired."

(1) [1924] 2 K.B. 736.

In Property Holding Company Limited v.

Clark(1), it was held :-

> "There are certain fundamental features of all the Rent Restriction legislation, or at any rate of the legislation from 1920 to 1939. The two most important objects of policy expressed in it are (1) to protect the tenant from eviction from the house where he is living, except for defined-reasons and on defined conditions; (2) to protect him from having to pay more than a fair rent. The latter object is achieved by the provisions for standard rent with (a) only permitted in- creases, (b) the provisions about furniture and attendant liabilities from the landlord to the tenant which would undermine or nullify the standard rent provisions. The result has been held to be that the Acts operate in rem upon the house and confer on the house itself the quality of ensuring to the tenant a status of irremovability. In this description of the distinguishing characteristics conferred by statute upon the clouse, the most salient is the tenant's security of tenure-his protection against eviction; although the scope of the statutory policy about a fair rent must also be borne in mind especially in connexion with the provisions relating to furniture, attendance, services and board."

In Curl v. Angelo and Another(2), Lord Greene, M.R., dealing with Rent Restrictions Act, held :-

> "The courts have had to consider what the over-riding purpose and intention of the Acts are, and I cannot put it in a more clear or authoritative way than by using the words of Scrutton, L.J., in Skinner v. Geary (1931) 2 K.B., 546,560), that the object was to protect the person residing in a dwelling-house from being turned out of his home."

All these three cases clearly show that whenever any legislation is passed relating to control of rents, that legislation can be effective and can serve its purpose only if it also regulates eviction of tenants. Consequently, when in entry 3 of List I the power is granted to Parliament specifically to legislate on control of rents, that power cannot be effectively exercised unless it is held that Parliament also has the power to regulate eviction of tenants whose rents are to be controlled. Such power must, therefore, be necessarily read in the expression "regulation of house accommodation". Of course, it has to be remembered that this power (1) [1948] 1 K.B. 630. (2) [1948] 2 All E.R. 189.

reserved for Parliament is to be exercised in respect of house accommodation situated in cantonment areas only and not other areas the legislative power in respect of which is governed by entries either in List II or in List III. This view that we are taking is also borne out by the historical background provided by the legislation relating to cantonments and house accommodation in cantonments in India. Carnduff in his book on "Military and Cantonment Law in India" has indicated how the need for legislating with the object of overcoming difficulties experienced by military officers in obtaining suitable accommodation in cantonments came under consideration, and has stated :

> "In the early days of the British dominion in India, the camps, stations, and posts of the field army gradually developed into cantonments, where troops were regularly garrisoned. The areas so occupied were at first set apart exclusively for the military and intended for occupation by them only; but, by degrees, non-military persons were admitted land was taken possession of by them, and houses were built under conditions laid down by the Government from time to time. These conditions were undoubtedly framed with the main object of rendering accommodation always primarily available for the military officers whose duties necessitated their residence within cantonment limits." (p. clxii).
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> He goes on to relate that a Bill which ultimately became the Contonments Act, 1889, originally contained a set of provisions on the subject, insisting on the prior claim of military officers to occupy houses in cantonments and proposing that disputes as to the rent to be paid and the repairs to be executed should be referred to, and settled by, committees of arbitration. That part of the Bill was, however, omitted as it evoked considerable opposition and a separate measure was, consequently, taken up, but not till after many years of discussion. The new Bill was introduced in the Governor-General's Council in 1898, and was passed into law as the Cantonments (House-Accommodation) Act II of 1902. The main provision in this Act was that, on the Act being applied to any cantonment, every house situated therein became liable to appropriation at any time for occupation by a military officer. It recognised the paramount claim of the military authorities to insist upon houses in cantonments being, where necessary, made primarily available for occupation by the military officers stationed therein. In addition, a provision was made in s. 10 that no house in any cantonment or part of a cantonment was to be occupied for the purposes of a hospital, bank, hotel, shop or school, or by a railway administration, without the previous sanc-
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> tion of the General Officer of the Command, given with the concurrence of the Local Government. This provision, thus, clearly regulated the letting out of houses in a cantonment even for some of the civilian purposes, such as hospital, bank, etc. The reason obviously was that it was considered inappropriate that a house occupied for such a purpose should be required to be vacated in order to make the house available -for military officers. Keeping the primary object of facilitating availability of house accommodation for military officers in view, even private letting out was, thus,

regulated at that earliest stage. Subsequently came the Cantonments (House-Accommodation) Act VI of 1923 which was in force when the Government of India Act was enacted, as well as at the time when the Constitution came in-to force. This Act also contained similar provisions which permitted military authorities to direct an owner to lease out a house to the Central Government, to require the existing occupier to vacate the house and to refrain from letting out any house for purposes of a hospital, school, school hostel, bank, hotel, or shop, or by a railway administration. a company or firm engaged in trade or business or a club, without the previous sanction of the Officer Commanding the District given with the concurrence of the Commissioner or, in a Province where there are no Commissioners, of the Collector. This Act also, thus, interfered with and regulated letting out of house accommodation by owners for civilian purposes even though, at the time of letting, the house was not required for any military purpose. It was in the background of this legislative history that provision was made in the Government of India Act in entry 2 of List I of the Seventh Schedule reserving for the Federal Legislature the power to legislate so as to regulate house accommodation in cantonment areas. and the same power with further clarification was reserved for Parliament in entry 3 of List I of the Seventh Schedule to the Constitution. Obviously, it could not be intended that Parliament should not be able to pass a law containing provisions similar to the provisions in these earlier Acts which did interfere with private letting out of house accommodation in cantonment areas by owners for certain purposes.

Another aspect that strengthens our view is that if we were to accept the interpretation sought to be put on behalf of the appellant that the power of Parliament is confined to legislation for the purpose of obtaining house accommodation in cantonment areas for military purposes and excludes legislation in respect of house accommodation not immediately required for military purposes, all that Parliament will be able to do will be to make provision for acquisition or requisition of house accommodation. On the house accommodation being acquired or requisitioned, it will be available for use by military authorities. Such power, obviously, could riot be intended to be conferred by entry 3 in List I when the same power is specifically granted concurrently to both Parliament and the State Legislatures under entry 42 of List III of the Seventh Schedule to the Constitution. On behalf of the appellant, reliance was placed on some decisions of some of the High Courts in support of the proposition that the power of Parliament under entry 3 of List I does not extend to regulating the relationship between landlord and tenant which power vests in the State Legislature under entry 18 of List II. The first of these cases is A. C. Patel v. Vishwanath Chada(1) where the Bombay High Court was dealing with entry 2 of List I of the Seventh Schedule to the Government of India Act, 1935 and entry 21 of List 11 of that Act. The Court was concerned with the applicability of the Bombay Rent Restriction Act No. 57 of 1947 to cantonment areas. Opinion was first expressed that the Rent Restriction Act had been passed by the Provincial Legislature under Entry 21 of List II and reliance was placed on the English interpretation Act to hold that land in that entry would include buildings so

-as to confer jurisdiction on the Provincial Legislature to legislate in respect of house accommodation. Then, in considering the effect of Act 57 of 1947, the Court said :-

"As the preamble of the Act sets out, the Act was passed with a view to the control of rents and repairs of certain premises, of rates of hotels and lodging houses, and (A evictions. Therefore, the pith and substance of Act LVII of 1947 is to regulate the relation between landlord and tenant by controlling rents which the tenant has got to pay to the landlord and by controlling the right of the landlord to evict his tenant. Can it be said that when the Provincial Legislature was dealing with these relations between landlord and tenant, it was regulating house accommodation in cantonment areas ? In our opinion, the regulation contemplated by Entry 2 in List I is regulation by the State or by the Government. Requisitioning of property, acquiring of property, allocation of property, all that would be regulation of house accommodation, but when the Legislature merely deals with relations of landlord and tenant, it is not in any way legislating with regard to house accommodation. The house accommodation remains the same, but the tenant is protected quae his landlord."

We have felt considerable doubt whether the power of legislating on relationship between landlord and tenant in respect of house accommodation or buildings would

-appropriately fall in Entry 21 of List II of the Seventh Schedule to the Government of India (1) I.L.R. [1954] Bom. 434.

3SupCI69- 15 Act, 1935, or in the corresponding Entry 18 of List II of the Seventh Schedule to the Constitution. These Entries permit legislation in respect of land and explain the scope by equating it with rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents. It is to be noted that the relation of landlord and tenant is mentioned as being included in land tenures and the expression "land tenures" would not, in our opinion, appropriately cover tenancy of buildings or of house accommodation. That expression is only used with reference to relationship between landlord and tenant in respect of vacant lands. In fact, leases in respect of non- agricultural property are dealt with in the Transfer of Property Act and would much more appropriately fall within the scope of Entry 8 of List III in the seventh Schedule to the Government of India Act read with Entry 10 in the same List, or within the scope of Entry 6 of List III in the Seventh Schedule to the Constitution read with Entry 7 in the same List. Leases and all rights governed by leases, including the termination of leases and eviction from pro- perty leased, would be covered by the field of transfer of property and contracts relating thereto. However, it is not necessary for us to express any definite opinion in this case on this point because of our view that the relationship of landlord and tenant in respect of house accommodation situated in cantonment areas is clearly covered by the Entries in List I. In the Constitution, the effect of Entry 3 of List I is that Parliament has exclusive power to make laws with respect to the matters contained in that Entry, notwithstanding the fact that a similar power may also be found in any Entry in List 11 or List III. Article 246 of the Constitution confers exclusive power on Parliament to make laws with respect to any of the matters enumerated in List 1, notwithstanding the concurrent power of Parliament and the State Legislature, or the exclusive power of the State Legislature in Lists III and 11 respectively.

The general power of legislating in respect of relationship between landlord and tenant exercisable by a State Legislature either under Entry 18 of List II or Entries 6

-and 7 of List III is subject to the overriding power of Parliament in respect of matters in List 1, so that the effect of Entry 3 of List I is that, on the subject of relationship between landlord and tenant insofar as it arises in respect of house accommodation situated in cantonment areas, Parliament alone can legislate and not the State Legislatures. The submission made that this interpretation will lead to a conflict between the powers conferred on the various Legislatures in Lists I, II and III has also no force, because the reservation of power for Parliament for the limited purpose of legislating in 'respect of cantonment area only amounts to exclusion of this part of the legislative power from the general powers conferred on State Legislatures in the other two Lists. This kind of exclusion is not confined only to legislation in respect of house accommodation in cantonment areas. The same Entry gives Parliament jurisdiction to make provision by legislation for local self-government in cantonment areas which is clearly a curtailment of the general power of the State Legislatures to make provision for local self government in all areas of the State under Entry 5 of List R. That Entry 5 does not specifically exclude cantonment areas and, but for Entry 3 of List I, the State Legislature would be competent to make provision for local government even in cantonment areas. Similarly, power of the State Legislature to legislate in respect of : (i) education, including universities, under Entry 1 1 of List 11 is made subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III; (ii) regulation of mines and mineral development in Entry 23 of List II is made subject to the provisions of List I with respect to regulation and development under the control of the Union; (iii) industries in Entry 24 of List 11 is made subject to the provisions of Entries 7 and 52 of List 1; (iv) trade and commerce within the State in Entry 26 of List II is made subject to the provisions of Entry 33 of List III; (v) production, supply and distribution of goods under Entry 27 of List 11 is made subject to the provisions of Entry 33 of List III; and (vi) theatres and dramatic performances; cinemas in Entry 33 of List 11 is made subject to the provisions of Entry 60 of List I. Thus, the Constitution itself has specifically put down entries in List II in which the power is expressed in general terms but is made subject to the provisions of entries in either List I or List III. In these circumstances, no -anomaly arises in holding that the exclusive power of Parliament for regulation of house accommodation including control of rents in cantonment areas has the effect of making the legislative powers conferred by Lists 11 and III subject to this power of Parliament. In this view, we are unable to affirm the decision of the Bombay High Court in A. C. Patel's case(1) which is based on the interpretation that Entry 2 in List I of the Seventh Schedule to the Government of India Act only permitted laws to be made for requisitioning of property, acquiring of property and allocation of property only. The same High Court, in a subsequent case in F. E. Darukhanawalla v. Khemchand Lalchand(2), placed the same interpretation on Entry 3 of List I of the Seventh Schedule to the Constitution. That decision was also based on the same interpretation of the scope of regulation of house accommodation as was accepted by that Court in the earlier case.

The Nagpur High Court in Kewalchand v. Dashrathlal(3) pro- ceeded on the assumption that the decision in the case of A. C. Patel v. Vishwanath Chada(1) correctly defined the scope of Entry (1) I.L.R. [1954] Bom. 434. (2) I.L.R. [1954] Bom. 544. (3) I.L.R. [1956] Nag. 618.

3 Sup. CI 69-16.

2 in List I of the Seventh Schedule to the Government of India Act, and considered the narrow question whether the relationship of landlord and tenant specifically mentioned in Entry 21 in List It of that Act covered the requirement of permission to serve a notice for eviction in regulating the relation of landlord and tenant and fell within the scope of Entry 21 in List II or in Entry 2 in List I of that Act. The Court held that it-substantially fell in Entry 21 in List II and not in Entry 2 in List I. That Court did not consider it necessary to express -any opinion on the question whether the expression "regulating of house accommodation" included something besides what Chagla, C.J., had said was its ambit in the case of A. C. Patel v. Vishwanath Chada(1), but expressed the opinion that the expression could not be stretched to include the aspect of the -relation of landlord and tenant involved in that particular case. It is clear that, in, that case also, a narrow interpretation of the expression "regulation of house accommodation" was accepted, because it appears that there was no detailed discussion of the full scope of that expression. Similar is the decision of the Patna High Court in Babu Jagtanand v. Sri Satyanarayanji and Lakshmiji Through the Shebait and Manager Jamuna Das (2) . In fact, this last case merely followed the decision a the Bombay High Court in the case of F. E. Darukhanawalla v. Khemchand Lalchand(3). On the other hand, the Rajasthan High Court in Nawal Mal v. Nathu Lal(4) held that the power of the State Legislature to legislate in respect of landlord and tenant of buildings is to be found in Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution and not in Entry 18 of List 11, and that that power was circumscribed by the exclusive power of Parliament to legislate on the same_subject under Entry 3 of List I. That is also the view which the Calcutta High Court has taken in the judgment in appeal before us. We think that the decision given by the Calcutta High Court is correct and must be upheld. The appeal fails and is dismissed with costs payable to plaintiff respondent only.

R.K.P.S. (1) I.L. R. 1954 Bom. 434.

(2) I.L.R. 40 Patna 625.

(3) I.L.R. [1954] Bom. 544.

(4) I.L.R. 11 Raj. 421.

R.K.P.S Appeal dismissed.