Supreme Court of India
Malpe Vishwanath Acharya & Ors vs State Of Maharashtra & Anr on 19 December, 1997
Author: Kirpal
Bench: B.N. Kirpal, M. Srinavasan

PETITIONER:
MALPE VISHWANATH ACHARYA & ORS.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA & ANR.

DATE OF JUDGMENT: 19/12/1997

BENCH:
B.N. KIRPAL, M. SRINAVASAN

ACT:

HEADNOTE:

JUDGMENT:

WITH (WRIT PETITION (C) NOS. 17 AND 824 OF 1996) THE 19TH DAY OF DECEMBER, 1997
Present:

Hon'ble the Chief Justice Hon'ble Mr. Justice B.N. Kirpal Hon'ble Mr. Justice M. Srinivasan F.S. Nariman, Sr. Adv., Mulraj Shah, P.H. Parekh, Jagdish Karia, Subhash Sharma, Ms. Dhun Chapgar, Ms. Sunita Sharma, Nikhil Sakhardande, Sameer Parekh, Advs. with him for the appellants.

M.S. Nargolkar, Sr. Adv., D.M. Nargolkar, S.M. Jadhav, Advs. with him for the Respondents.

M.N. Shroff, Adv. for K.V. Sreekumar, Adv. for Intervenor.

J U D G M E N T The following Judgment of the Court was delivered:

With WRIT Petition @ Nos. 17 and 824 of 1996 Kirpal, J.

Lex injusta non est lex', unjust laws are not laws, is what is being contended by the landlords in their challenge in these appeals, and the connected writ petitions, to the validity of the relevant provisions

of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Bombay Rent Act') in so far as it provides that landlords cannot charge rent in excess of the standard rent.

The appellants are landlords or their representatives of different premises in Bombay which have been given on rent to various tenants. They had filed in the High Court of Bombay writ petitions challenging the constitutional validity of Section 5(10) (B), Section 11 (1) and Section 12(3) of the Bombay Rent Act, inter alia, on the ground that the said provisions pertaining to standard rent were ultra vires Articles 14, 19 and 21 of the Constitution anc consequently void. The main challenge to the said provisions was on the ground that the restriction on the right of the Landlords to increase rents, which ha been frozen as on 1st September, 1940 or at the time of the first letting, was no long a reasonable restriction and the said provisions had, with the passage of time, become arbitrary, discriminatory, unreasonable and consequently ultra vires Article 14 of the Constitution. By the impugned judgment the High Court dismissed the writ petitions, inter alia, holding that the object of the Bombay Rent Act was not to provide to the landlord an adequate return on its investment and it was not open to him to claim an increase in the rent by taking into account the increase in the land privies etc. The Court also observed that the writ petitions lacked particulars in order to satisfy the Court that the relevant provisions of the Bombay Rent Act were unreasonable or arbitrary.

The Bombay Rent Act came into force on 13th February, 1938 This Act was meant to be a temporary measure. The original act was enacted only for two years, with a power to the Government to extend the same by notification in this behalf. this Act has been extended from time to time a least on twenty occasions and the present extension remains in force upto 31st March, 1998. Sections 5(10), 7, 9(b) and 11(1)(a) which are being impugned in the present cases read as follows:

> "5(10) "Standard rent" in relation to any premises means-
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> (a) Where the standard rent is fixed by the Court and the Controller respectively under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (control) Act, 1944, such standard rent; or
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> (b) when the standard rent is not so fixed,-
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> subject to the provisions of section 11,-
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> (i) the rent at which the premises were let on the first day of September 1940,
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> (ii) where they were not let on the first day of September 1940, the rent at which they were last let before that day, or
>
> (iii) where they were first let after the first day of September 1940, the rent at which they were first let or (iii-a) notwithstanding anything contained in paragraph (iii), the rent of the premises referred to in sub-section (1A) of section 4 shall, on expiry of the period of five years mentioned in that sub- section, not exceed the amount equivalent

to the amount of net return of fifteen per cent, on the investment in the land and building and all the outgoing in respect of such premises: or]

(iv) on any of the cases specified in section 11, the rent fixed by the Court;

7. [(1)] Except where the rent is liable to periodical increment by virtue of an agreement entered into before the first day of September 1940, it shall not be lawful to claim or receive on account of rent for any premises any increase above the Standard rent, unless the landlord was, before the coming Standard rent, unless the landlord was, before the coming into operation of this Act, entitled to recover such increase under the provisions of the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 or is entitled to recover such increase under the provisions of this Act [either before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1986].

(2) (a) No person shall claim or receive on account of any license fee or charge for any premises or any part thereof, anything in excess of the standard rent and permitted increase(or, as the case may be, a proportionate part thereto), for such premises if they had been let, and such additional sum as is reasonable consideration for any amenities or other services supplied with the premises.

(b) All the provisions of this Act in respect of the Standard rent and permitted increases in relation to any premises let, or if let, to a tenant, shall mutatis mutandis apply in respect of any license fee or charge and permitted increases and the additional sum mentioned above].

9.(b) Before making any increase under clause (a), the landlord shall obtain a certificate from the local authority that he was required by it to make or to provide such additions, he was required by it to make or to provide such additions, alterations, improvements or amenities and has completed them in conformity with its requirements.

11.(1) [Subject to the provisions of section 11A in any of the following cases the Court may, upon an application made to it for that purpose, or in any suit or proceedings, fix the standard rent at such amount as, having regard to the provisions of this Act and circumstances of the case, the Court deems just-

Where any premises are first let after the first day of September 1940 and the rent at which they are so let is in the opinion of the Court excessive; or Where the Court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in [paragraphs (1) to (iii) of sub-clause (10) of Section 5; or Where by reason of the premises having been ; let at one item as a whole or imparts and at another time in parts or as a whole, or for any other reason, any difficulty arises in giving effect to this Part; or Where any

premises have been or are let rent-free or at a nominal rent or for some consideration in addition to rent; or Without prejudice to the provisions of sub-section (1A) of section 4 and paragraph (iii-a) of sub-clause

(b) of clause (10) of Section 5, where the Court is satisfied that the rent in respect of the premises referred to therein exceeds the limit of standard rent laid down in the said paragraph (iii-a); or Where there I any dispute between the landlord and the tenant regarding the amount of standard rent, Section 10 provides for an increase in rent where after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1986 a landlord is required to pay any fresh rate, cases, charges, tax land assessment, ground rent of land or any other levy on lands and buildings. Section 10 A enables the landlord to make an increase in the rent of the premises by a percentage specified therein in respect of those premises which were let on or before the first day of September 1940. Section 12, inter alia, provides that ordinarily there shall be no ejectment of a tenant if he is ready to pay or is willing to pay the standard rent with permitted increase in the manner provided therein.

From the aforesaid provisions it is clear that in so far as the question of fixation of standard rent is concerned when the Act was enacted the premises fell into two categories; (a) those let on 1st September, 1940 and;

(b) those let for the first time after 1st September, 1940. According to Mr. Nariman these provisions provide as under:

> A. Premises let out before 1st September, 1940.
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> In respect of (a) i.e. premises let out on or before 1.9.1940. rent paid on that date is the standard rent.
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> i) and thus the ret is pegged at the rent paid as on 1.9.1940, subject to the increases mentioned below.
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> ii) Those increases are of three types:
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> a) those permitted U/s 10A In respect of premised let on or before 1.9.1940; increases are permitted to the extent of 5% to 7.5% over the standard rent for residential premises: And 7.5% - 12.5% in respect of non- residential premises- This is a one time permitted increase.
>
> b) Increase on account of heavy repairs, additional amenities and repairs required to be carried out under requisition from local authorities; increase in monthly rent is permitted to the extend of 15% per year on the actual cost incurred without interest (Section
>
> 9)

c) Increase in ground rent, in respect of leasehold premises paid to the government, local authority and statutory authority is allowed to be passed on to the tenant by a proportionate increase in monthly rent (Section 10)

d) increase in amount of property taxes after 13.2.1948 is allowed to be passed on to the tenant by a proportionate increase in monthly rent (Section 10) The cost which have to be absorbed and borne by the landlord (without entitlement to pass on to tenants) therefore:

Entire cost of "tenantable" repairs U/s 23, which if the landlord does not carry out, and the tenant carries out the same, the tenant is permitted to deduct and recover the same from the landlord from year to year to the extent of 3 months rent in a year together with interest at the rate of 15% p.a.; under Section 23 as amended in 1987 by Maharashtra Act No. 18 of 1987. Landlord has had to bear the repair cases from 1.1.1970: first levied under the Bombay Building Repair and Reconstruction Board Act, 1969 replaced by Maharashtra Housing and Area Development Act, 1976 (MHADA)

- to the extent of 10% of the "ratable" value (8.5% of actual rent in a year), which in effect works out to one month's rent in a year.

50% of the total tax levied in lieu of the abolition of the Inami tenures (w.e.f. 1.4.1971) under Bombay city (Inami & Special tenures) Abolition and Maharashtra Land Revenue Code (Amendment) Act, 1969; Sections 7,8,10. In case of leasehold land, the increase in ground rent paid by the landlord to private parties, i.e. parties other then Government, total authority, statutory authority, etc. the entire increase is to Be borne by the landlord and no part of it can be passed on to tenant. (This is the effect of Section 10 as amended by Maharashtra Act No. 18 of 1987.) B. Premises let out for the first time after 1.9.1940-such premises fall into 2 categories;

a) Where the landlord is himself the owner of the building in which flats are let to different tenants mostly from 1940-1950.

b) Where the landlord is himself a member of a co-operative housing society and holds the flat as owner member; but has let out the flat to a tenant - the rent will stand frozen at the amount paid on the date of the first letting; by reason of the definition of "standard rent" under Section 5 (10) (b)(iii) of the Act ("where they were first let after the first day of September, 1940 the rent at which they were first let"). These are "ownership flats" in "cooperative society buildings" constructed in the post -1950 period. Almost all constructions after 1950 are on this pattern.

c) In the decades of the fifties, sixties and seventies, the landlord member is invariably out of pocket as the ever increasing amounts of the outgoing and maintenance paid to the Society are invariably more than the actual amount of rent

> received (which had been frozen at first letting)/ In the decade of the eighties and the nineties however, the amount of the first letting being considerably higher, this incidence does not occur. Since increase in maintenance charges is absorbed in the amount of rent fixed. In both classes of cases i.e. the premises let on or before 1st September, 1940 and premises let on or after 1.9.1940, there are no statutory provisions which entitle the landlord to move the Count for an increase in standard rent. The Scheme of the Act negatives any such right (see Section 5 (10) read with Sec. 11(1)(a)).

Mr. F.S. Nariman, learned senior counsel on behalf of the appellants submitted that a legislation which, when enacted, was justified on considerations of necessity and expediency may, with the passage of time, become arbitrary and unreasonable in changing circumstances. In view of the constant escalation in privies due to inflation and corresponding fall in the value of the rupee, ceiling on rentals, such as the one imposed by Section 5 (10)(a) and

(b) read with Section 7 and 11 of the Bombay RENT Act, is totally arbitrary and unrealistic and , therefore, unreasonable.

In reply it was submitted by Mr. N.S. Nargolkar, learned senior counsel for the respondents that the writ petitions which were filed by the appellants did not give sufficient details as regards the rents which they were receiving from the tenanted premises. It was, therefore, contended that the claims made were hypothetical as there was no sufficient material to decide the truth of the assertions made by the appellants as regards negative returns from their rented properties. It was further submitted by the learned counsel that the respondent - State has become aware of the rising prices at least since 1986 and this had resulted in Maharashtra Act 18 of 1987 being passed whereby the Bombay Rent Act was amended. It was contended that an important concession which was made by the Amending Act was the introduction of Section 4 (1) A, which provided that the provisions relating to standard rent and permitted increases was not to apply for a period of five years to any premises the construction or reconstruction of which was completed on or after the appointed date, namely, 1.10.1987. This Amending Act also introduced Section 9 which; allowed to landlord to increase the rent for an improvement or structural alteration of the premises, excepting repairs under, Section 23 of the Bombay Rent Act. Furthermore, it was submitted that the amended Section 6 also entitled to landlord to increase the rent by addition of an amount not exceeding 15 per cent of the expenses incurred on account of special addition or special alterations or additional amenities, improvements or structural alterations. The landlord was further entitled to temporarily increase the rent at a rate not exceeding 18 per cent of the standard rent for special or heavy repairs. Reference was also made to Section 10 and 10A introduced by the Amending Act of 1986 whereby landlord could increase the rent in case he was required to pay fresh rates, charges etc. to the Government or if he was required to cover the increase in water and electricity charges. The learned counsel reiterated that the State was aware and conscious about the problem of the landlords and was proceeding in the right direction to obviate their difficulties. In this connection the attention of the Court was invited to the constitution of a committee headed by Mr. V.K. Tembe in 1979 for the purpose of preparing a Unified Rent Control Act for the entire State. The State Law Commission had examined the recommendations of the Tembe Committee and submitted its report. The Cabinet

Sub- Committee had considered this report as well as the Model Rent Control Bill, forwarded to it by the Central Government, and this had resulted in a new Rent Control Bill being introduced in the upper house of the State Legislature in July, 1993. This bill has been referred to the Select Committee and it was accepted that the reading of the bill clause will be commenced in the State Legislature.

There is considerable judicial authority in support of the submission of learned counsel for the appellants that with the passage of time a legislation which was justified when enacted may become arbitrary and unreasonable with the change in circumstances in the State of Madhya Pradesh Vs. Bhopal Sugar Industries [(1964) 6 S.C.R. 846] dealing with a question whether geographical classification due to historical reasons would be valid this Court at page 853 observed as follows:

> "Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reason may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support is after the initial expediency and necessity have disappeared."

In Narottam Kishore Dev Varma and Ors. Vs. Union of India and Anr. [(1964) 7 S.C.R. 55] the challenge was to the validity of Section 87 B of the Code of Civil Procedure which granted exemption to the rulers of former India State from being sued except with the consent of the Central. Government, Dealing with this question it was observed at page 60 as follows:

> " If under the Constitution all citizens are equal, it maybe desirable to confine the operation of s.87B to past transactions and not to perpetuate the anomaly of the distinction between the rest of the citizens and Rulers of former Indian States. With the passage of time, the validity of historical considerations on which s. 87B is founded will wear Civil Procedure may later be open to serious challenge."

In H.H. Shri Swamiji of Shri Admar Mutt etc. Vs. The Commissioner, Hindu Religious & Charitable Endowments Department and Ors. [(1980) 1 S.C.R. 368] this Court was called upon to consider the validity of the continued application of the provisions of the Madras Hindu Religious Endowment Act, 1951 in the area which had formerly been part of State of Madras and which had latter become part of the new State Of Mysore (now Karnataka) as a result of the State Re- Organisation Act, 1956. In this connection at page 387-388 it was observed by this Court as follows:

An indefinite extension and application of unequal laws for all time to come will militate against their true character as temporary measures taken in order to serve a temporary purpose. Thereby, the very foundation of their constitutionality shall have been destroyed the foundation being that

section 119 of the State Reorganisation Act serves the significant Purpose of giving reasonable time to the new units to consider the special circumstances obtaining in respect of diverse units. The decision to withdraw the application of unequal laws to equals cannot be delayed unreasonably because of the relevance of historical reasons which justify the application of unequal laws is bound to wear out with the passage of time. In Broom's Legal; Maxim (1939 Edition, page 97) can be found a useful principle "Cessante Ratione legis Cessat Ipsa Lex", that is to say, "Reason is the sour of the law, and when the reason of any particular law ceases, so does the law itself".

This Court in Motor General Traders and Anr. Etc. etc. Vs. State of Andhra Pradesh and Ors. Etc. etc. ()1984) 1 S.C.R. 594] had to consider the validity of Section 32B of the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960. This section provided that the Act would not apply to buildings constructed after 26th August, 1957. This exemption had continued for nearly a quarter of a century and it was argued that because of shortage of housing accommodation since the section had been valid from the commencement of the Act, therefore, it could not be struck down at any time after it came into force. While referring to earlier decisions in Bhaiyalal Shukla Vs. State of Madhya Pradesh [(1962) Suppl. 2 S.C.R. 257] and Bhopal Sugar Industries Ltd. (supra) it was observed at page 606 as follows "what may be unobjectionable as a transitional or temporary measure at an initial stage can still become discriminatory and hence violative of Article 14 of the Constitution of it is persisted in over a long period without any justification." Dealing with the contention that the impugned provisions had been in existence for over 23 years and had once been held to be valid by the High Court and therefore this Court should not pronounce upon its validity at this late stage, it was observed at page 614 that "what was justifiable during a short period has turned out to be a case of hostile discrimination by lapse of nearly a quarter of century... We are constrained to pronounce upon the validity of the impugned provision at this late stage because of grab of constitutionality which it may have possessed earlier has become worn out and its unconstitutionality is now brought to a successful challenge".

In Rattan Arya and Ors. Vs. State of Tamil Nadu and Anr. [(1986) 3 SCC 385] this Court had to consider the validity of Section 30 (ii) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 which provided that tenants of residential building being monthly rent exceeding Rs. 400 were exempted from the protection of the Act whereas no such restriction was imposed in respect of tenants of non- residential buildings under the said Act. Holding that the tenants of the residential buildings required greater protection and that there was no justification in picking out the class of tenants of residential buildings paying a rent of more than Rs. 400/- per month and to deny them the right conferred generally on all tenants of buildings, residential or non-residential, and for this reason holding Section 30 (ii) of the Said Act as being violative of Article 14 at page 389 and 390 it was observed as follows:

"It certainly cannot be pretended the provision is intended to benefit the weaker sections of the people only. We must also observe here that whatever justification there may have been in 1973 when Section 30 (ii) was amended by imposing a ceiling of Rs. 400 on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. We are entitled to take judicial notice of the enormous multifold increase of rents throughout the country. Particularly in urban areas. it is common knowledge today that the

accommodation which one could have possible got for Rs. 400 per month in 1973 will today cost at least five times more. In these days of universal, day to day escalation of rentals any ceiling such as that imposed by Section 30 (ii) in 1973 can only be considered to be totally artificial and irrelevant today. As held by this court in Motor General Traders v. State of A.P. a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time, i become discriminatory and liable to challenge on the ground of its being violative of Article 14".

Lastly reference need be made to be made to Synthetics and Chemicals Ltd. and Ors. Vs. State Of U.P. and Ors. [(1990) 1 SCC 109] where at pages 156-157 it was observed that "restriction valid under one circumstance may become invalid in changed circumstances". Reliance in support of this view was not only placed on some American decisions but also on the decision of this Court in Motor General Traders case (supra).

Mr. Nargolkar referred to the decision of this Court in Sant Lal Bharti Vs. State of Punjab [(1988) 2 S.C.R. 107] and contended that the ratio of the said decision is clearly applicable to the present case. In Sant Lal's case a two Judge Bench of this Court was called upon to consider the validity of Section 4 of the East Punjab Urban Rent Restriction Act, 1949, which inter alia, provided that in determining the fair rent the rent controller shall fix the basic rent by taking into consideration the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during a twelve months prior to 1st January, 1939. It was held in that case that the act in question had been passed in 1949 and it pegged the rent prevalent for similar houses in 1938 and as such it was not unreasonable per se. Even though there was an increase in the rents after the second world war and the partition of the country, it was held that fixing of the rents at the 1938 level could not be regarded as unreasonable when one of the objects of the act was to restrict the increase by providing for certain provisions as to fixation of a fair rent. In that case the main emphasis of the appellants was to assail Section 4 by comparing the said law with the legislation of different states. There was no argument raised or considered, as is being done in the present case, while relying on the decision of a Three Judge Bench in the cases of Rattan Arya, Motor General Traders and Synthetics and Chemicals (supra) that with the passage of time and with the consequent change of circumstances the continued operation of an act which was valid when enacted may become arbitrary and unreasonable.

The aforesaid decisions clearly recognise and establish that a statute which when enacted was justified may, with the passage of time, become arbitrary and unreasonable. It is, therefore, to be seen whether the aforesaid principle is applicable in the instant case. Can it be said that even though the provisions relating to the fixation of standard rent were valid when the Bombay Rent Act was passed in 1947 the said provision, as amended, can still be regarded as valid now?

Reports of different committees and resolutions of the minsters have been placed on record in an effort to show that these official agencies have, since over the last two decades, themselves felt that increase in rents was called for. The correctness or the authenticity of this material has not, in any way been doubted an therefore we see no reason as to why this cannot be taken into consideration in order to determine whether the submission of Mr. Nariman merits acceptance. Reference may now

be made to some of this material:-

1. A rent act inquiry committee of 1977 commonly known as Tembe Committee, was constituted by the Government of Maharashtra which in its report submitted in the same year recognised that the pegging down of the rents to a date nearly thirty years back (at that time) had deprived the property owners of a reasonable return on their properties commensurate with the increase in the cost of living and the cost of building materials. It recognised that there were several small property owners all over the State who had invested the life time savings in building houses partly for the residence and partly for being let out in order to assure a steady income in old age. As a result of rent control act, the return they got is inadequate even for subsistence because of the step increase in the cost of living. In para 6 (10) it observed that " having regard to the general increase in the cost of living, the Committee is of the view that there is a case for some general increase although not to the extent claimed by the property owners as the period of twenty years has elapsed since the last increase was allowed.

2. The Maharashtra State Law Commission which submitted its report in the year 1977 recommended the increase in the rents in the following terms "the commission, feels that there is immediate need for reasonable increase in standard rent."

3. In the 12th report of Maharashtra State Law Commission 1979 on the rent control legislation para 91 dealing with this aspect reads as follows:

" The Commission does not want the rents to be static for long. The inflationary trend reflected by the rising consumer price index numbers at all centers in the State makes it imperative to make an objective assessment of the situation at regular intervals so that the remedial action may be possible by periodical variation in rents according as the situation demanded. Suggestions for such periodical survey was also made to the Commission by various representatives in evidence. The Commission by various representatives in evidence. The Commission feels that such a periodical survey would be much helpful in maintaining the balance between the landlord and the tenant. The possibility of the inflationary the landlord and the tenant. The possibility of the inflationary trend receding in future - though such possibility is not easy to entertain - cannot be totally ruled out, in which case the rents could be brought down to as reasonable level. if on the other hand, the inflationary trend continues unabated, then a reasonable rent increase may have to be resorted to . it is true that the Govt. can always take stock of the situation and come up with an appropriate measure to meet the situation at any given time. But the Commission does not want to leave the matter to an action being thought of by the Government. The Commission thinks that it would be proper to make a specific provision in the unified Act which would cast an obligation on the Government to hold periodical reviews and to take effective actions for rent variations according as the circumstances may warrant."

The Commission further stated:

" In big cities like Bombay, a large number of slums have come into existence. if the rigorous of the Rent Act had not been there, new houses would have been constructed. At present 30 lakhs of people in the city of Bombay stay in slums and 11/2 lakh on pavement.

If new buildings had been constructed, people who stay in slums today might have been in a position to get some decent accommodation.

It was further stated "The increase in the standard rent must be considered from the point of view of the Consumer Price Index.

" It was pointed out to the Commission that 46 percent of the lands belong to low income group, 27 percent belong to middle income group, and only 25 per cent belong to the higher income group. These figures will indicate that 75 per cent of the so-called landlords are really people who depend upon the rent of the property for their livelihood. To designate them as 'landlords' itself is undesirable.

When one considers the financial position of the tenants, compared to the positions in 1940s, one clearly sees that the monthly income of these tenants has gone up from 100 to 400 at least. However, there has not been a proportionate increase in the rents."

4. A Report of Economic Administrative Reforms Commission on Rent Control (commonly known as L.K. Jha Committee) was presented to the Government of India in September 1982. In paragraph 51 of the said report, it stated as follows:

> " We now turn to the problem of existing tenancies. Many of these are very old and the rents were fixed a few decades ago. These old an frozen rents bear little relation to the present day maintenance costs, or to the current returns from alternative investments, or to the prevailing market rents in respect of new accommodation. In the case of new construction we have suggested that the periodical revision of rents should be based on a partial neutralisation of the effects of inflation. Applying the same principle to existing tenancies where rents have remained frozen for at least 5 years, what needs to be done is to update those rents by neutralising 50 per cent of the inflation which has taken place from the time of initial determination of those rent upto the present time."
>
> The report further reads as under: "Similarly in the case of existing tenancies, all that needs to be done is to provide a formula for updating the old frozen rents, and thereafter periodically revising them."

5. On 21/22.5.1987 a conference of the Housing Ministers of all the States was held to discuss various problems. Decisions taken at that Conference were recorded in the form of resolutions. With regard to Rent Control the unanimous resolution at the conference of Housing Ministers reads as under:

> "RESOLUTION NO. IV RENT CONTROL 4.1. Realising the existing Rent Control Laws, have resulted in:
>
> (i) disincentive to further investment in construction of houses for rental purposes;

(ii) neglect of timely repairs and maintenance of existing rental housing stock; and

(iii) debilitating the resources of municipal bodies by virtually freezing their income from property taxes which are based on rateable values.

4.2 This conference urges upon the Government of India to formulate and communicate to the State Governments for necessary action suitable guidelines as soon as possible during the current year for their consideration so as to provide for the expeditious amendment of Rent control Laws wit a view to providing for:

(a) a reasonable return on investment in housing which will be comparable to, if no more favourable then, the return from and other avenues of investment,

(b) periodical upward revision of rents to neutralise the crosion in the real value of rents

(c) enabling expeditious resumptions of possession of a dwelling units for self occupation by a landlord who is the owner of only one such dwelling unit;

(d) delinking of municipal property taxation from reteable values to the extent they are regulated by the Rent Control Laws,

(e) Leave and licence system,

(f) period tenancy,

(g) protection to tenants from arbitrary eviction,

(h) exemption from the provisions of the Act of new construction less than 5 years,

(i) obviating delays in ligation by laying down suitable expeditious procedures, only one appeal to a higher authority instead of multi- level appeals constitution of tribunals to deal with disputes arising under the Act and barring the jurisdiction of Civil Court Act. "

6. In the Letter dated 24.7.1987 from the Ministry of Home Affairs Government of India while communicating President's assent to 1987 amendment to the Bombay Rent Act it was stated as follows:

"It is suggested that the State Government may make subsequent amendments to the principal Act preferably within next 6 months by incorporating the following recommendation of the above conference (Housing Ministers conference).

(a) Periodical upward revision of rents to neutralise the erosion in the real value of rents."

7. A conference of Chief Ministers of all states was held at New Delhi in 1992. One of the topics discussed pertained to static rents and the problems arising therefrom. A unanimous recommendation of this conference made on 9.3.1992 in this regard was as under:

" 4.3 The frozen rents have led to emergence of practices like key money. this apart from creating a block market in rental housing, the Act has reduced the accessibility of low income groups to rental housing, as they cannot afford to pay large deposits for rented premises."

4.4 The widening divergence between the interests of landlords and tenants has not only led to increased litigation under Rent Control Acts (the rent control cases make for a majority of the cases in courts) but also to increased crimes.

A large number of criminal cases have their origin in disputes over rented properties."

The recommendation further reads:

" The important principle is that while the tenant will enjoy security of tenure is controlled premises, he should agree to pay a rent that provides adequate return on investment and provides for proper maintenance and taxes, so that he does not enjoy an unfair advantage over the landlord."

A perusal of the aforesaid extracts of reports and resolutions clearly demonstrates that since the last two decades the authorities themselves seem to be convinced that the pegging down of the rents to the pre war stage and even thereafter, is no longer reasonable. Unfortunately apart from lip service little of note has been done. Even the Rent control Bill introduced in 1993 has not yet become law.

It was submitted by Mr. Nariman that even after the promulgation of the Rent Control act 1948 during the 1950s and 1960s there was not much escalation in the market rents. The rents which were determined during this period has become the standard rent by virtue of the definition in Section 5 (10) of the Bombay Rent Act. In the last few years, due to rapid inflation there has been step escalation of the expenses which the landlords have to incur without there being any corresponding increase in the rents. This has resulted, it was submitted, in the buildings not being repaired as the expenses involved made it uneconomical for the landlords to undertake this task.

As already noticed it had been contended by MR. Nargolkar that realising the need being there for providing some relief to the landlords amendments amendments were made in the Bombay Rent Act in 1987. it was submitted that as a result of these amendments the landlords will be able to charge more rents and it cannot now be said that the Rent Control Act is not valid.

It is true that some amendments were made in 1987 which clearly indicate that the State Legislature was conscious of the fact that there was a need to increase the standard rent. The question, however, is whether the exercise which was undertaken was merely cosmetic or did it bring about any tangible increase in the standard rent. section 4 (10)A was incorporated which provides that the provisions relating to standard rent would be inapplicable for a period of five years in respect of premises constructed or reconstructed after the appointed date, namely,. 1.10.1987. Once this 'holiday' comes to an end the tenant would be entitled to get the standard rent fixed. The amendment of 1987 does not do away with the principle of pegging down of the rent at a rate when the premises are first let out. Increase in the cost of maintenance or fall in the value of money or the rise in the cost of index does not entitle a landlord to any increase. There has been no other material change in the act in this behalf. What the Amending Act of 1987 has done is merely to consolidate and rearrange the sections of the earlier act. Provisions contained in the present Sections 9, 10 and 10A were found earlier, prior to the amendment in 1987, in Sections 10, 10A, 10AA, 10AAA, 10C, 10D, 10E, and 10G. The only change introduced in these sections was that the rate of return on the expenses incurred for additional amenities for heavy repairs has been increased. The following tabulated comparative statement of the relevant provisions before and after 1.10.1987 will bring out the effect of the alteration, if any.

Tabulated Cooperative Statement

After Amending Act 1987	Before Amending Act of 1987
S.9 (1) increase in rent on account of structural alterations or improvement made with Tenants' written consent.	Identical provision in S.9 which is there in the original Act since 1948.
S.9 (2) increase on account of special additions or amenities.	Similar provision in S. 10D(1) additional which was introduced in 1953.
S.9(3) increase on account of additions, improvements or additional amenities.	Similar provision in S. 10D(4) which was introduced in 1953.
f S.9 (3)(a)- Temporary increase in rent in account of special or heavy repairs.	Similar provision in S. 10E introduced in 1964.
S.10- Increase in or fresh rate, cess, charge or tax paid to local authority. S.10A S.10AA (introduced in 1949), S.10AAA (introduced in 1962).	Similar provision in S.10 (introduced in 1953)

S.10 increase in rent on S. 10G introduced in 1973 account of increase in ground permitted recovery of one rent paid to Govt. local third of increase. authority or statutory authority.

During the course of his arguments Mr. Mr. Nariman filed a statement indicating the financial impact of the rent restriction provisions on the assumption that the monthly rent on 1.9.1940 was Rs. 100. This statement takes into account the permitted increases incorporated in the Act including that of 1987 from time to time. The submission was as follows:

> Assumption: that monthly rent on 1.9.1940 was Rs. 100 (exclusive of Municipal taxes) This is an accurate approximate average of rents paid in September 1940 in respect of flats of large areas situated in good localities. 1(a) From September 1940 till 13.21948, when the Rent Act came into force, the landlord continued to retain Rs. 100/- since the burden of tenantable repairs was on the tenant under Section 108 (m) of the T.P. Act.
>
> (b) After 13.2.1948 this burden has been transferred to the landlord (section 23): From 1.10.1987 upto date, the tenant is permitted to carry out " tenantable repairs" and recover the entire cost with interest at 15% per annum by deducting an amount equivalent to 3 months rent in a year.
>
> (c) Hence invariably the landlord gets 25 per cent less than Rs. 100/- (Rs. 1200/- per year reduced to Rs. 900/- per year) as "tenantable repairs" are necessarily recurring in old buildings, and the cost of tenantable repairs keeps rising.
>
> 2. From 1.1.1970 onward the landlord has had to bear continuously ten per cent of "rateable value" (equivalent to 8.5% of the yearly rent) as "repair cess" i.e. one month's rent in a year.
>
> 3. Thus in case of all buildings constructed prior to 1.1.1970- (date of levy of compulsory repair cess - they constitute majority of buildings in all urban areas the landlord retains only 8 months rent in hand every year as against 12 months rent he was getting in September 1940:-
>
> (a)) this is without taking into consideration further inroads as a result of ground rent paid in respect of private leasehold lands where increase in ground rent is not permitted to be passed on effect of Section 10)
>
> (b) this is also without taking into 'account ever increasing outgoings and maintenance charges paid to co-operative Housing Societies by landlord members: not permitted to be passed on to tenants.
>
> 4. Meanwhile all this is further accentuated by the fall in the value of the rupee and rise in the wholesale price index which has totally eroded the amount receivable as rent in the hands of the landlord.

(A) taking base in 1940 at Rs. 100/- the value of the rupee in 1996 was only Rs. 1.5 in 1996 (B) in 1940 the wholesale price index was 13.2. This has risen to 876 by 1996 66 time (C) Value of one rupee silver coin of 1940, as on the 5th Dec. 1992 was Rs. 44/-

(D) Price of silver on 30.12.1939 was Rs. 52 per kg. It rose to Rs. 6945 per kg. On 31.12.1996, that is, by 130 times.

5. Thus if in 1940 the landlord was getting Rs. 1200/- per year as rent (exclusive of Municipal taxes in 1996 or 1997 he is getting Rs. 800 per year and in terms of value of rupee in 1940, this amount of Rs. 800 works out to only Rs. 12.12 (800/66)- against Rs. 1200 he was getting in 1940."

To put simply in a tabulated from the following is the comparative position of rent between 1940 and 1997 and the amount retained by the landlord Per Month

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1940 1997

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1) Rent per month inclusive of Municipal Taxes (Rs.) 100 170.09

2) Amount of Municipal Taxes to be paid by Owner (Rs.) 21.54 103.47

3) Amount of repair cess to be paid by Owner (Rs.) @ 10% of rateable value Nil 7.62

4) Amount retained by owner after payment of Municipal taxes & repair cess (Rs.) 78.46 64.00 N.B. No correction has been made for:-

1) The inflation/fall in purchasing value of the rupee which was about 66 times between 1940 & 1996 and the value of Rs. 100 in 1940 has come down to Rs. 1.5 in 1996.

2) Further in 1940 the tenants could not deduct any amount towards repairs but under Section 23 of the Rent Act in 1997 they can deduct 3 months Rent per year. The aforesaid illustration, which has not been seriously disputed, clearly brings out the arbitrariness of the standard rent provisions contained in the Bombay Rent Act. It is true that the aforesaid illustration has references to the monthly rent of Rs. 100 as on 1.9.1940 and does not relate to the premises which are let out after the Act had come in force. As far as Section 5 (10) is concerned the standard rent of the premises let out after 1.9.1940 is that rent at which the premises were fist let. Even so with the rapid increase in the expenses for repair and other outgoings and the decreasing net amount of rent which remains with the landlord, clearly shows that the non provision in the Act for reasonable increase in the rent, with the passage of time, is leading to arbitrary results. This is also demonstrated from the facts in the case of petitioner no.3 who owns Unit No. A-18 on the first floor admeasuring 808 sq. ft. in the

property known as Shri Ram Industrial Estate situated at 13 J.D. Ambedkar Road, Mumbai. The said building belongs to a cooperative society and unit no.A-18 was given on lease and license basis b an agreement dated 23rd August, 1964 by the appellant to Lokmitra Sahakari Printing and Publishing Society ltd. on a monthly compensation of Rs. 686.80 per month. Liabilities of repairs is on the appellant and according to it this amount received in respect of the said unit by the appellant is Rs. 563 . 65 per month inclusive of all taxes. Out of this sum the appellant no. 3 has to pay Rs. 216.33 as municipal taxes leaving a balance of Rs. 320.22. From this amount the society outgoings is Rs. 250 per month, leaving a balance of only Rs. 70.20 per month with the said appellant. Another instance which has been given is that of appellant no.4 who owns a property known as Ram Mahal situated at 8, Dinshaw Vachha Road, Mumbai. The said building has 20 residential flats and the building was purchased by appellant no. 4 in the year 1955, although it had been constructed prior to 1940, Flat no. 15 on the 5th floor of the said building had been let out by the previous owners to M/s Bennet Coleman & Co. Ltd., who were the sitting tenants at the time when the property was purchased. The flat measures 1710 sq. ft. and monthly rent for the same is Rs. 460 per month inclusive of permitted increase and repairs. According to the appellant the income by way of rent has remained constant while the expenditure has been increased and the total gross rent of the building which he receives is Rs. 1,72,032 per annum while it incurs an annual expenses of Rs. 1,93,245 consisting of BMC taxes, repairs, ground rent, maintenance charges inclusive of small electricity bill and the insurance premium. He is, therefore, suffering a loss of Rs. 21,213 every year. It is not necessary to examine the correctness of these details except to note that what was reasonable on 1st September, 1940 or in 1950s or in 1960s can no longer be regarded as reasonable at this point of time.

That the tenants are, by and large, now getting an unwarranted benefit or windfall can also be illustrated by taking an example of hypothetical tenant, i.e., an Assistant in the Government of India posted at Bombay in the year 1948. At that time the pay scale of the Assistant was Rs. 160-10-300-15-450+20% H.R.A. + Rs. 15.50 C.C.A. On the basis that he was drawing the maximum of scale, his total monthly emoluments would be Rs. 485.50 and if he had in 1948 taken premises on rent at Rs. 100/- per month, he would be paying approximately 20% of his total emoluments by way of rent, without taking into consideration any deduction for repairs. That Assistant in 1997, after the report of 5th pay Commission, would get a maximum basic salary of Rs. 9000+ 30% H.R.A.+ Rs. 200 P.M. as CCA making the total emoluments of Rs. 11900/- P.M. After taking into consideration the 1987 increase in rent, he would be paying about Rs. 170 p.m. in respect of the same premises instead of Rs. 100/- which he was paying in 1948. This enhanced rent, would, however, represent only 0.9% of his salary. With the passage of time, the percentage of rent which would be paid by that hypothetical tenant would have gone down from 20% of his total salary to only 0.9% and this wold be the case of most of the tenants as we can take judicial notice of the fact that from 1948 till now, incomes have increased considerably, whereas the rent has increased only from Rs. 100/- p.m. to Rs. 170/- p.m. On the other hand, in the aforesaid example, the hardship to the landlord is that it was only in 1940 that he had agreed to accept rent of Rs. 100 p.m. That was the real income from rent which he had agreed to receive. Now with the increase in taxes etc., he gots only Rs. 54 p.m. whereas n 1940, he got Rs. 100 minus Rs. 21.54 (municipal tax) i.e. Rs. 78.46. So not only is he getting lesser amount in hand but in terms of real value, after taking inflation into account, he is getting only a pittance. For Rs. 100 p.m. of gross rent which he was getting in 1940, he now in 1997

gets a gross rent of about Rs. 170 which in real money terms, after taking the inflation into account, will be only about Rs. 2/- P.M. of the 1940 value. Had the Rent Control Act not been in force the landlord today may have been able to get todays equivalent of Rs. 100 of 1940 as rent i.e. about Rs. 6650 p.m. It is true that one of the reasons for enacting the rent control legislation is to prevent exploitation of the tenants by the landlords. One of the protections which has been provided to the tenants in the rent legislation throughout the country is the concept of standard rent. Each State has definite laws with regard thereto. In some case, like in Delhi, the rent control act is not applicable if the rent is Rs. 3500/- or more while in the other states rent control act is not applicable to certain categories of persons. In the Bombay Rent Act, with which we are concerned, the standard rent as on 1st September, 190 or the first rent of the premises which was let out thereafter is the standard rent. The paging down of rent, coupled with the inability of the landlord to evict the tenants, has given rise to unlawful tendencies. In the statement of objects and reasons annexed to the L.A. Bill No. 79 of 1986 introduced in the Maharashtra Legislature providing for amendment to the Bombay Rent Control Act with regard to clause 3 it was, inter alia, stated as follows:

> " The freezing of standard rent prevailing on the 1st September, 1940 has deprived the landlords of getting reasonable and adequate return to undertake maintenance and repairs to the old buildings. Despite the penal provisions in the Act for charging any premium from a tenant, such freezing of rent results in charging 'pugree" or deposit or similar illicit payment which are widely prevalent. The con-structio of new tenements on rental basis has considerably caused with the result that low and middle income groups are not getting premises on rent..... "

(emphasis added) Notwithstanding the fact that the State Legislature was conscious of the illegal payments which are made because of the rent restriction law no effective steps have been taken so far to strike a balance between the interests of the landlords and the tenants.

It is true that whenever a special provision, like the rent control act, is made for a section of the Society it may be at the cost of another section, but the making of such a provision or enactment may be necessary in the larger interest of the society as a whole but the benefit which is given initially if continued results in increasing injustice to one section of the society and an unwarranted largess or windfall to another, without appropriate corresponding relief, then the continuation of such a law which necessarily, or most likely, leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary.

The Legislature itself, as already noticed hereinabove, has taken notice of the fact that puggrie system has become prevalent in Mumbai because of the rent restriction act. This Court was also asked to take judicial notice of the fact that in view of the unreasonably low rents which are being received by the landlords, recourse is being taken to other methods to seek redress. These methods, which are adopted are outside the fore corners of the Law and are slowly giving rise to a state of lawlessness where, it is feared, the courts may become irrelevant in deciding disputes between the landlords and tenants. This should be a cause of serious concern because if this extn judicial back-lash gathers momentum the main sufferers will be the tenants, for whose benefit the Rent Control

Acts are framed.

In so far as social legislation, like the rent control act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are no exploited. At the same item such a law has to be revised periodically so as to ensure that a disproportionately larger benefit them the one which was intended is not given to the tenants. It is not as if the government does not take remedial measures to try and offset the effects of inflation. In order to provide fair wage to the salaried employees the government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent-the increase made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in todays context.

When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have a narrow or short sighted parochial approach. Giving a grater than due emphasis to a vocal section society results not marly in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social Legislation is treated with deference by the Courts not merely because the Legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The legislature is not shackled by the same constraints as the courts of law. But it's power is coupled with a responsibility. It is also the responsibility of the Courts to look at legislation from the alter of Article 14 of the Constitution. This article is intended, as is obvious from its words, to check this tendency; giving under performance some over others.

Taking all the facts and circumstances into consideration we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable. The said provisions would have been struck down as having now become unreasonable and arbitrary but we think it is not necessary to strike down the same in view of the fact that the present extended period of the Bombay Rent Act comes to an end on 31st march, 1998. The government's thinking reflected in various documents itself shows that the existing provisions have now become unreasonable and, therefore, require reconsideration. The new bill is under consideration and we leave it to the legislature to frame a just and fair law keeping in view the interests of all concerned and in particular the resolution of the State Ministers for Housing of 1992 and the National Model law which has been circulated by the Central Government in 1992. We are not expressing any opinion on the provisions of the said Model law but as the same has been drafted and circulated amongst all the States after due deliberation and thought, there will, perhaps, have to be very good end compelling reasons in departing from the said Model Law. Mr. Nargolkar assured us that this Model law will be taken into consideration in the framing of the proposed new Rent Control Act.

We, accordingly, dispose of these appeals without granting any immediate relief but we hold that the decision of the High Court upholding validity of the impugned provisions relating to standard rent

was not correct. We however refrain from striking down the said provision as the existing Act elapses on 31.31998 and we hope that new Rent Control Act will be enacted with effect from 1st April, 1998 keeping in view the observations made in this judgment in so far as fixation of standard rent is concerned. It is, however, made clear that any further extension of the existing provisions without bringing them in line with the views expressed in this judgment, would be invalid as being arbitrary and violative of Article 14 of the Constitution and therefore of no consequence. The respondents will pay the Costs.

In view of the aforesaid the writ petitions are disposed of