Supreme Court of India
P. J. Irani vs The State Of Madras on 21 April, 1961
Equivalent citations: 1961 AIR 1731, 1962 SCR (2) 169
Author: K Subbarao
Bench: Sinha, Bhuvneshwar P.(Cj), Das, S.K., Sarkar, A.K., Dayal, Raghubar, Mudholkar, J.R.

PETITIONER:
P. J. IRANI

Vs.

RESPONDENT:
THE STATE OF MADRAS

DATE OF JUDGMENT:
21/04/1961

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
AYYANGAR, N. RAJAGOPALA
SINHA, BHUVNESHWAR P.(CJ)
DAS, S.K.
SARKAR, A.K.
DAYAL, RAGHUBAR
MUDHOLKAR, J.R.

CITATION:
1961 AIR 1731 1962 SCR (2) 169
CITATOR INFO :
F 1966 SC 81 (4)
D 1974 SC 543 (5)
MV 1975 SC 818 (32)
R 1984 SC 87 (10)
R 1985 SC 257 (4,5,6,8,9,14)
R 1987 SC2117 (19)
RF 1989 SC1737 (75)
R 1990 SC1480 (63)

ACT:
Rent Control-Restrictions on eviction-Statute empowering Government to exempt any premises from restrictions Constitutiona lity exempting premises-Validity-When can be challenged-Practice, whether respondent can raise question decided against him-Madras Buildings (Lease and Rent Control) Act, 1949 (Mad. XXV of 1949), s. 13-Constitution of India, Art. 14.

HEADNOTE:

One C had obtained a lease of a cinema house which was to expire in May 1942. In the meantime litigation ensued between the owners of the cinema house, and the High Court appointed receivers to administer the property. In 1940 one I offered to take a lease of the cinema house for 21 years. The High Court offered C the option of taking the lease for 21 years but C was willing to take it only for 7 years upto May 1947. Thereupon the High Court ordered that a lease be given to C upto May 1947, and thereafter the lease be given to 1 upto May 1961. In accordance with this order the receivers executed two leases, one in favour of C and a reversionary lease in favour of I. Before the lease in favour of C expired the Madras (Lease & Rent Control) Act, 1946, came into force which protected tenants in 22
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possession from eviction even after the expiry of their leases. This Act was replaced by the Madras Buildings (Lease & Rent Control) Act, 1949, which contained similar provisions. Section 13 of the 1949 Act empowered the State Government to "exempt any building or class of buildings from all or any of the provisions of this Act." On the application of I the Government passed an order on June 4, 1952, under s. 13 exempting the cinema house from all the provisions of the Act. Subsequently, the reasons for making the order were given by the Government to be: (i) C had deliberately, though he had been offered a lease for 21 years by the High Court, taken a lease for 7 years and he was seeking to take advantage of the Act after the expiry of his lease, (ii) C was an absentee lessee and had several other business and (iii) C had already been in possession for 5 years more than he was legitimately entitled to be. C filed a writ petition before the High Court for quashing the order on the grounds that s. 13 of the Act vested in the Government an unguided and uncontrolled discretion and violated Art. 14 of the Constitution and that the order deprived C of the equal protection of the beneficial provisions of the Act. The High Court held that s. 13 was not unconstitutional but that the order of the Government was ultra vires. I appealed to the Supreme Court. At the hearing C sought to challenge the validity of s. 13 also.

Held, that s. 13 of the Act did not violate Art. 14 and was not unconstitutional. Enough guidance was afforded by the preamble and the operative provisions of the Act for the exercise of the discretionary power vested in the Government. The power tinder s. 13 was to be exercised in cases where the protection given by the Act caused great hardship to the landlord or was the subject of abuse by the tenant.

Ram Krishna Dalmia v. Sri justice Tendolkar, [1959] S.C.R. 279 and Sarday Inder Singh v. State of Rajasthan, [1957] S.C.R. 605, followed.

Held, (per Sinha, C.J., Ayyangar and Mudholkar, jj.), that the order passed by the Government under s. 13 was ultra

vires and void. An order made under s. 13 was subject to judicial review on the grounds that (a) it was discriminatory, (b) it was made on grounds which were not germane or relevant to the policy and purpose of the Act, and (c) it was made on grounds which were mala fide. In the present case the grounds given for granting the exemption were not those countenanced by the policy or purpose of the Act. The mere fact that C had taken the lease for 7 years and continued in possession after its expiry was no ground for eviction as the policy of the Act was to protect such possession. The fact that C had other business was immaterial; the Government failed to consider the question whether if C was evicted he could secure alternative accommodation where he could carry on the business which he was carrying on in the cinema house.

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Per S. K. Das and A. K. Sarkar, JJ. The order passed by the Government under s. 13 was a competent and legal order. All that the court had to see was whether the power had been used for any extraneous purpose, i.e., not for achieving the object for which the power was granted. The purpose of the Act was to prevent unreasonable eviction and to control rent. Where, as in the present case, there was no risk of the landlord being able to realise illegal rent or premium the eviction would not be unreasonable. Further, if exemption was refused in the present case it would prevent the High Court from administering the property in its charge. The order was not unfair to C for he had been offered a lease for 21 years which he declined.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 671 of 1957. Appeal from the judgment and order dated February 5, 1954, of the Madras High Court in Writ Appeal No. 28 of 1953. Sachin Chaudhuri, N. A. Palkhiwala, J. B. Dadachanji, S. N. Andley and P. L. Vohra, for the appellant.

B.K. Gopalakrishnamachar and T. M. Sen, for the respondent No. 1.

A. V. Viswanatha Sastri, R. Ganapathy Iyer and G. Gopalakrishnan, for respondent No. 2.

1961. April 21. The Judgment of Sinha, C. J., Ayyangar and Mudholkar, JJ. was delivered by Ayyangar, J. The Judgment of S. K. Das and Sarkar, JJ., was delivered by Sarkar, J. AYYANGAR, J.-This is an appeal against a judgment of a Division Bench of the High Court of Madras on a certificate under Arts. 132 and 133(1) of the Constitution, and raises for consideration the constitutionality of s. 13 of the Madras Buildings (Lease & Rent Control) Act, 1949; and the legality of an order of the State Government passed thereunder.

The facts giving rise to the appeal are briefly as follows: The dispute relates to promises No. 1, Blackers Road, Mount Road, Madras-a property which was originally owned by one Sir Haji Ismail Sait. In or about the year 1914 one Venkayya obtained a lease of this property from Sir Haji Ismail Sait and constructed a cinema-theatre thereon which he ran under the name of "the Gaiety Theatre". Venkayya was adjudicated an insolvent and the Official Assignee of Madras in whom his estate, including the leasehold interest in the suit site vested, obtained a further lease of the property from the representatives of Sir Haji Ismail Sait who had by then died, for a period of 9 years from March 1926. Thereafter the Official Assignee sold the super-structure of the theatre to one Mrs. Madan to whom he also assigned the unexpired portion of the lease. Mrs. Madan, subsequently, obtained a further lease of the property from the representatives of Sir Haji Ismail Sait's estate for a further period of 7 years from June 1935. Mrs. Madan was thus the owner of the superstructure and the lessee of the site, with a term which would expire in or about May 1942. While one T. S. PL. P. Chidambaram Chetty who is the second respondent before us obtained a conveyance of all the rights which Mrs. Madan possessed in the super- structure and in the lease for a sum of Rs. 36,000 under a registered deed dated January 4, 1937, and he ran the cinema house from then.

There was litigation between the heirs of Sir Haji Ismail Sait, pending on the original side of High Court of Madras, and by interim orders passed in two suits (C. S. Nos. 280 and 286 of 1939), the High Court appointed two advocates as Joint-Receivers to administer' the property in suit. In the early months of 1940, one J. H. Irani, the father of P. J. Irani-the appellant before us-had negotiated with the Recei- vers for a lease of a property adjacent to No. 1 Blackers Road with a view to construct a cinema theatre whereon. That lease was for a period of 21 years and would have expired in or about April-May 1961. Irani offered to the Receivers to take a lease also of the property now in dispute and on which the Gaiety-theatre stood, also till April-May 1961. The Receivers then moved the Court for directions regarding the grant of the lease. The second respondent, whose term of lease would have expired in 1942, was offered by the Court the option of taking a lease for 21 years from the 1st of May 1940 but he expressed his unwillingness to take a lease for such a long term. He was, however, willing to have the lease continued for a period of 7 years from the 1st of May 1940, i.e., for 5 years beyond the term of his then existing lease. The Court thereupon passed an order on May 2, 1940 reading:

> "The lessee of the Gaiety Theatre (Chidambaram Chetty) will be given a lease of seven years from this date. They will not be given any further option. On the expiry of that period, i.e., from 2nd May 1947 the same may be included in the lease of J. H. Irani at the same rate of rent at which it is being leased to the lessee of the Gaiety Theatres."

In accordance with this order the Receivers of the estate of the late Sir Haji Ismail Sait executed two lease deeds (1) in favour of the second respondent for a period of 7 years from May 1, 1940 and (2) a reversionary lease in favour of J. H. Irani for a period of 13 years-11-1/2 months commencing from May 1, 1947, i.e., on the expiry of the lease in favour of the second respondent, this term being fixed so as to be coterminous with the lease of the neighbouring property which Irani was being granted. The term of the lease in favour of the second respondent would, therefore, have ended on May 1, 1947 but before that date Madras Buildings (Lease & Rent Control) Act 1946 (Madras XV of 1946) came into force under which tenants in possession who continued in occupation of residential or

non-residential buildings could not be evicted therefrom except by proceedings taken under the Act before designated officers and on stated grounds which did not include the mere expiry of the term. It is now common ground that this enactment covered the second respondent's possession of the premises now in dispute and that notwithstanding the termination of the term he was statutorily entitled to continue in possession even after the expiry of the lease on May 1, 1947.

This is the result of decisions rendered in certain proceedings between the parties to which we shall immediately refer. Irani, the, reversionary lessee called upon the second respondent to surrender possession in accordance with the conditions of his lease, but the latter declined to do so relying upon the Act and the protection which it conferred upon him. Thereupon the 'present appellant-P. J. Irani- as representing the estate of his father who had by then died, filed a suit on the original side of the Madras High Court (C. S. 479 of 1947) for evicting the second respondent from the property. It may be mentioned that the suit was based upon the allegation that what had been leased to Venkayya originally was a vacant site without any buildings and that consequently Madras Act XV of 1946 which did not apply to leases of mere vacant sites did not apply to protect the second respondent's possession. The suit was, however, dismissed by judgment rendered on April 22, 1948, on the finding that a building as well as the site had been included in the lease, which brought it within the scope and protection of the Act. The appellant filed an appeal against this judgment (Original Side Appeal 37 of 1948) which was also dismissed on July 29,1951, on the same finding. Even while the appeal was still pending before the High Court, Irani applied to the Government of Madras for exemption of the premises from the operation of the Act. By the date of this application Madras Act XV of 1946 had been repealed and its provisions substantially re-enacted in the Madras Buildings (Lease & Rent Control) Act, 1949, but as the provisions of the two enactments on the points which arise for decision in this appeal are identical it is sufficient if reference is made to those of the later Act. A provision for exemption being granted from the operation of the Act by the State Govern- ment was contained in s. 13 of the Act (Madras Buildings) Lease & Rent Control Act., 1949), to which we shall hereafter refer as the Act, in the following terms:

> "Notwithstanding anything contained in this Act the State Government may by a notification in the Fort St. George Gazette exempt any building or class of buildings from all or any of the provisions of this Act."

The Government, however, by their order dated June.

4, 1951, rejected this application for exemption on the ground that the matter was then sub-judice. After the dismissal of the appeal by the Division Bench the appellant Irani moved the Government afresh by a further petition filed in or about December, 1951, praying for the same relief. The Government, by their order dated June 4, 1952, granted the exemption sought and the relevant notification which appeared in the Fort St. George Gazette ran:

> "In exercise of the powers conferred by section 13 of the Madras Buildings (Lease & Rent Control) Act 1949 (Madras Act XXV of 1949) His Excellency the Governor of Madras hereby exempts the building No. 1 Blackers Road, Mount Road, Madras (Gaiety Theatre) from all the provisions of the said Act."

And it was authenticated by the Chief Secretary to Government. The second respondent thereupon made a petition to the High Court under Art. 226 of the Constitution challenging the legality and propriety of this order of exemption on the principal ground that the provision contained in s. 13 of the Act enabling the Government to exempt particular buildings from the operation of the Act, vested in them an unguided and arbitrary discretion which was unconstitutional as violative of the equal protection of the laws guaranteed by Art. 14 of the Constitution. In the affidavit in support of the petition, the second respondent further averred that in the order impugned "no justification has been shown for depriving the petitioner of the beneficial provisions of the Rent Control Act". Both the State of Madras whose order was impugned as well as the appellant Irani for whose benefit the order was passed were made respondents to this writ petition. The writ petition was dismissed by a learned Single-Judge of the High Court by order dated March 12, 1953, on the ground that the constitutional validity of s. 13 of the Act had already been upheld by a Division Bench of the Court in another case. The second respondent thereafter took the matter in appeal under cl. 15 of the Letters Patent. At the time this appeal was heard the Bench had before it, two other appeals in which also the question whether s. 13 of the Act violated Art. 14 of the Constitution had been raised. The three appeals were heard together and this common point was first decided by a judgment pronounced on October 23, 1953. The learned Judges held that s. 13 of the Act did not offend Art. 14 of the Constitution but that individual orders granting the exemption might be examined to find out whether such orders were within the policy and purpose of the Act or whether they were discriminatory and therefore offended Art. 14. In this view the grounds upon which exemption was granted in each of the three cases before them were separately considered and in the appeal by the second respondent the learned Judges, after examining the reasons disclosed by the Government as to why they granted exemption in the particular case, held that those reasons were not germane to the purpose for which the,power of exemption had been vested in them and quashed the order of exemption.

Irani feeling aggrieved by the decision of the High Court applied to and obtained a certificate under Arts. 132 and 133(1) of the Constitution and has filed the present appeal before us. The State of Madras has not appealed but as a respondent has filed a statement which was repeated by Counsel on their behalf, that they were not interested in disputing the correctness of the judgment of the High Court but left the matter to be decided between the rival contestants, viz., Irani and the second respondent.

Mr. Sachin Chowdhary, learned Counsel for the appellant Irani, urged substantially two points before us: (1) that the impugned order of the Government exempting the buildings under s. 13 of the Act was executive or administrative in its nature and not quasi- judicial as wrongly held by the High Court, and was, therefore, not amenable to be quashed by the issue of a writ of certiorari, (2) assuming that the order was quasi-judicial, still it could be quashed or set aside only if it were mala fide or proceeded upon grounds wholly extraneous for the purpose of the enactment and that in the instant case neither of these conditions was fulfilled and the High Court was therefore not justified in setting it aside. He further submitted that the High Court had erroneously converted itself, as it were, into a Court of appeal, put itself in the place of the Government and decided the case on the basis of what the Court itself would have done if it were the exempting authority. Learned Counsel urged that this went beyond the supervisory jurisdiction of the High Court in the exercise of its

powers under Art. 226 even when dealing with a quasi-judicial order. Before dealing with these points it is necessary to mention that obviously these arguments proceed upon the basis that the power conferred by s. 13 of the Act on the State Government to exempt "buildings or class of buildings from the operation of the Act is constitutionally valid. We are saying this because Mr. Viswanatha Sastri-learned Counsel for the second respondent disputed before us the correctness of the decision of the High Court dated October 23, 1953, upholding the validity of s. 13 of the Act. It is manifest therefore that the point urged by Mr. Viswanatha Sastri should first be decided before considering the points urged in support of the appeal.

Learned Counsel for the appellant, however, raised an objection, to Counsel for the respondent being permitted to contest the validity of s. 13 of the Act. He pointed out that the question of the validity of s. 13 had been decided by a judgment rendered on October 23, 1953, and that as the respondent did not prefer an appeal to this Court from that judgment, he was precluded from agitating this question in the appeal now before us. We consider this objection as without substance. By its order dated October 23, 1953 writ appeal 28 of 1953 against the decision in which this appeal has been brought was not disposed of but was still kept pending before the High Court for further consideration and as observed by the learned Chief Justice in that judgment:

"In this view we cannot strike down s. 13 of the Act as inconsistent with the Constitution and void but we shall have to examine each case on its merits".

Writ Appeal 28 of 1953 was thereafter dealt with on its merits and it was this examination which resulted in its being allowed. In our opinion, therefore, the two judgments have to be read together and as really part of one proceeding, though for convenience and with a view to define the scope of the arguments the Court expressed its opinion on the Constitutional point at an earlier stage. We also consider that it is doubtful if an appeal would have lain from the judgment of the High Court dated October 23, 1953, and even assuming that it did in view of the matters which we have set out earlier, the respondent cannot be precluded from contesting the correctness of the conclusion of the High Court, by reason of his not having moved this Court under Art. 136 of the Constitution. We therefore consider that the respondent is entitled to support the judgment in his favour by attacking those portions of that judgment which are against him.

The submission of Mr. Viswanatha Sastri was that s. 13 of the Act conferred an unguided and arbitrary power on Government to discriminate between one building and another and choose at their will and pleasure particular buildings which would be subject to the provisions of the Act and others which would not be so subject, the tenants in the latter being deprived of the protection conferred on other tenants similarly situated. He further urged that whether or not a power to exempt a class of buildings was valid, because in such a case there might possibly be an element of classification based on rational grounds grounds germane to carry out the policy or purpose of the Act-the same could not be predicated of the power to grant exemption for individual buildings because in the latter case it would be merely an arbitrary exercise of power discriminating between one building and another, or one tenant and another and which would, therefore, render the very conferment of the power invalid as in violation of the equal protection of the laws guaranteed by Art. 14.

The arguments addressed to us were the same as bad been urged before the learned Judges of the High Court and had been repelled by them. They pointed out that it was not correct to say that the enactment did not sufficiently disclose the policy and purpose of the Act which furnished adequate guidance for the basis of the exercise of the power of exemption. The preamble to the Act ran:

> "Whereas it is expedient to regulate the letting of residential and non-residential buildings and to control the rents of such buildings and to prevent unreasonable eviction of tenants therefrom in the State".

This meant that the legislation was enacted for achieving three purposes: (1) the regulation of letting, (2) the control of rents, and (3) the prevention of unreasonable eviction of tenants from residential and non-residential buildings. The Act was the latest in the series of enactments and orders dating back to the period of the Second World War when due, inter alia, to large scale movement of populations to urban areas, there was an acute shortage of accommodation in the principal towns, as a result of which tenants ousted from buildings occupied by them on the termination of their tenancies could not find alternative accommodation and were thrown on the streets, and thus owners of house-property could, if left unchecked, unfairly exploit those who sought accommodation. The enactment in terms protected the rights of tenants in occupation of buildings from being charged unreasonable rates of rent and from being unreasonably evicted therefrom. Tenants who required this protection included, of course, those whose duration of tenancy under the ordinary law had expired and who would, therefore, have been liable to be ejected from the buildings occupied by them. Accordingly, the definition of a "tenant" included those who continued in possession notwithstanding their term of tenancy had expired and even those against whom decrees for eviction had been passed by Civil Courts but under which eviction had not taken place.

Though the enactment thus conferred these rights on tenants, it was possible that the statutory protection could either have caused great hardship to a landlord or was the subject of abuse by the tenant himself. It was not possible for the statute itself to contemplate every such contingency and make specific provision therefor in the enactment. It was for this reason that a power of exemption in general terms was conferred on the State Government which, however, could be used not for the purpose of discriminating between tenant and tenant, but in order to further the policy and purpose of the Act which was, in the context of the present case, to prevent unreasonable eviction of tenants. The learned Judges of the High Court, therefore, held that while s. 13 of the Act was constitutionally valid, any individual order of exemption passed by the Government could be the subject of judicial review by the Courts for finding out whether (a) it was discriminatory so as to offend Art. 14 of the Constitution,

(b) the order was made on grounds which were germane or relevant to the policy and purpose of the Act, and (c) it was not otherwise malafide.

We find ourselves in complete agreement with the approach and conclusion of the learned Judges of the High Court to the consideration of the question of the constitutional validity of s. 13 of the Act.

The meaning and scope of Art. 14 of the Constitution has been the subject of several decisions of this Court, a number of which have been considered by us in some detail in Jyoti Pershad v. Administrator of Union Territory (Writ Petition 67 etc. of 1959) in which we have pronounced judgment today. In view of this we find it unnecessary to traverse the same ground except to say that in the case before us enough guidance is afforded by the preamble and operative provisions of the Act, for the exercise of the discretionary power vested in Government so as to render the impugned section not open to attack as a denial of the equal protection of the laws. In our judgment, the provision now impugned belongs to the class numbered (v) in the analysis of the decision on Art. 14 by Das C. J. in Ram Krishna Dalmia v. Justice Tendolkar (1).

(1) [1959] S.C.R. 279, 300.

> "A statute may not make a classification of- the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle..... the executive action but not the statute should be condemned as unconstitutional."

Possibly even a more apt precedent is that furnished by Sardar Inder Singh v. State of Rajasthan (1) where, among others, the validity of s. 15 of the Rajasthan (Protection of Tenants) Ordinance, 1949, was upheld. That section authorised the Government to exempt any person or class of persons from the operation of the Act, and it was urged before this court that this offended Art. 14. The argument was repelled, observing:

> "It is argued that that section does not lay down the principles on which exemption could be granted, and that the decision of the matter is left to the unfettered and uncanalised discretion of the Government, and is therefore repugnant to Art. 14. It is true that that section does not itself indicate the grounds on which exemption could be granted, but the preamble to the Ordinance sets out with sufficient clearness the policy of the Legislature; and as that governs s. 15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided. Vide Harishanker Bagla v, The State of Madhya Pradesh."

The learned Judges of the High Court were therefore, correct in their conclusion that s. 13 of the Act was constitutionally valid but that individual orders of Government passed under that section could be the subject of judicial review in the manner already indicated. (1) [1957] S.C.R. 605, 621.

We shall now proceed to consider the points. urged by learned Counsel for the appellant contesting the correctness of the decision of the High Court setting aside the order of Government exempting the premises in dispute for the reason that it was passed on grounds not germane to the purpose for which the power was conferred. As already stated, the first point urged was that the order granting

the exemption was an executive or an administrative order which was not amenable to being quashed by the issue of a writ of certiorari. We consider there is no substance in this objection. If the High Court were right in their view that the order of exemption was passed for reasons which did not fall within the purpose for which the power was conferred by s. 13 of the Act the order itself would be one discriminatory of the second respondent as violating his fundamental right to equal protection of the laws. In such an event Art. 226 would certainly be available to set aside such an order which affected the fundamental right of the petitioner before the Court. Indeed, it was on the ground that individual orders passed by Government by virtue of the power conferred upon it by s. 13 of the Act were examinable by the Court for their violating Art. 14 that the constitutionality of s. 13 was upheld and in the circumstances no objection could, therefore, be taken to a judicial review of such individual orders. Besides, even if the order did not violate Art. 14, still if the High Court were right in the view that the same was beyond the powers conferred on Government by s. 13 of the Act, we see no substance in the contention that the Court lacks power under Art. 226 to set aside an ultra vires order vitally affecting a person's right to statutory protection against eviction. We do not consider that immunity from interference by the Courts could be sought for order,% which are plainly ultra vires merely because they were passed bona fide in the sense of being without indirect motive. Particularly so when the power of the High Court under Art. 226 of the Constitution is not limited to the issue of writs falling under particular groupings, such as the certiorari, mandamus, etc., as these writs have been understood in England, but the power is general to issue any direction to the authorities, viz., for enforcement of fundamental rights as well as for other purposes.

The second point urged was, and this was the main point argued by learned Counsel for the appellant,that the learned Judges of the High Court were in error in holding (a) that the reasons given by the Government were not germane to the purpose or policy of the Act and, therefore, outside the power conferred on them by s. 13 of the Act, and (b) in con- stituting themselves, as it were, as an appellate authority and examining the reasons which induced the Government to grant the exemption, and pronouncing upon the correctness or otherwise of these reasons.

Before considering this argument it is necessary to advert to a submission of the learned Counsel for the appellant suggesting that the High Court were in error in calling for the reasons which induced the Government to pass the orders of exemption, though when the reasons were before the Court it was in a position to examine the legality of the order. We do not consider this submission well-founded. The entire basis for upholding the constitutional validity of s. 13 of the Act and considering that it did not offend the equal protection of the law guaranteed by Art. 14 of the Constitution was, that the discretion or the power conferred upon Government was not unguided, uncanalised or arbitrary, but that it had to be exercised in accordance with the policy and object of the enactment gatherable from the preamble as well as its operative provisions. The order itself might on its face have shown that it conformed to this requirement, in which event it would have been for the party challenging the validity of the order to establish to the satisfaction of the Court that it was malafide or had been passed on grounds not contemplated by or extraneous to, the object and purpose of the enactment or the principles which should have governed the exercise of the power. For instance, if the exemption had been in favour of a particular class of buildings, say those belonging to charities-religious or secular-the classification would have been apparent in the very order of exemption. Where, however, the exemption granted is not of any class of buildings which

would ex facie disclose a classification, but the exemption is of a specified building owned by A or in which B is a tenant, then prima facie it would be discriminatory and when the legality of the order is challenged, its intra vires character could be sustained only by disclosing the reasons which led to the passing of the order.

In the present case, when the matter was before the appellate Court the Advocate-General filed a memorandum setting out the reasons why exemption was granted in the three cases before the Court. In regard to the exemption which was the subject of controversy in writ appeal 28 of 1953 with which we are concerned, the memorandum which the Government filed ran:

> "The Government exempted the building..... for the following reasons:-
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> (1)When the High Court offered in 1940 to lease out the premises in question for a period of 21 years, Sri Chettiar elected to take it on lease only for a period of seven years, which expired in 1947. As per the High Court's order in C. S. Nos. 280 to 286 of 1939, Sri J. H. Irani, father of Sri P. J. Irani took a lease of the promises for a period of 13 years 11-1/2 months from 1947 and he deposited Rs. 10,000 towards the said lease. He is therefore entitled for the benefits from 1948 onwards.
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> (2)Had not the Rent Control Act come into force, Sri P. J. Irani would have got possession in the ordinary course as per High Court's order and the terms of the lease deed. The operation of the Act is therefore really a hardship to him.
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> (3)Sri Chettiar is only an absentee lessee and he is having several other business in South India.
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> (4)The conduct of Sri Chidambaram Chettiar in refusing to surrender the possession of the building to Sri P. J. Irani who had taken a valid lease under the orders of the High Court is that of a hard litigant seeking to exploit the letter of the law without much regard to bona fides; and (5)Sri Chettiar had already managed to be in possession of the building for five more years than he was legitimately entitled to be."

The learned Judges of the High Court held that the reasons which led the Government to grant the exemption were not those which were countenanced by the policy or purpose of the Act and that the order of exemption was, therefore, invalid. In doing so the learned Judges said:

> "Reasons 1, 2 and 4 go together and have refe- rence to the order of the High Court in 1940 directing the Receivers to execute a lease for seven years to the appellant and after the expiry of that period to grant a lease for fourteen years to the second respondents father. It is undoubtedly true that but for the application of the Act, the second res-
>
> pondent's father would have obtained possession of the premises after the expiry of lease in favour of the appellant. That could be said of thousands of cases in which the

> leases in favour of tenants have expired and, but for the Act the owners would be entitled to obtain possession of the demised premises. If this circumstance alone is sufficient to exempt any premises from the operation of the Act, then the Act itself should be repealed..... ..... There is no policy or principle involved in this circumstance."

We agree with the learned Judges in the view here expressed. The mere fact that the tenant continued in possession after the termination of the tenancy is by itself no ground why he should be evicted from the premises, because it is the very policy of the Act to protect the right of tenants to continue in possession of the premises after the termination of their term because of the great difficulty of their obtaining alternative accommodation. The circumstance, therefore, of the termination of the second respondent's tenancy cannot afford a justification for Government to say that he deserved to be evicted. If the term had not expired the tenant would have been entitled to continue in possession even if the exemption were granted. Learned Counsel for the appellant urged that the High Court had failed to notice that the present case was one where there was a contest between two tenants and not between a landlord and a tenant and that they erred in approximating the position of the appellant to that of the landlord. We Bee no force in this contention, because a lessee of the reversion stands in the same position as a landlord and cannot have any higher rights, nor can the appellant derive any assistance from the fact that the second respondent declined to be a lessee for any term longer than seven years when that option was offered to him by the High Court in April-May, 1940. The position of the second respondent cannot be worse than if he had taken a lease for a definite term of seven years with a covenant to restore possession at the end of the period. The fact that in May 1940, the second respondent had an option to take a lease for a longer term, but of which he did not avail himself, does not make any difference or render that a ground for withdrawing from him the protection of the statute.

We also agree with the learned Judges of the High Court that ground No. 3 is not germane for granting an exemption. As was pointed out, "the important point to be considered by the Government was whether the appellant had not other theatres at which he could carry on the business which he was carrying on at the Gaiety theatre", and this they omitted to consider. The reason why the possession of the tenant whose term had expired was afforded statutory protec- tion was his inability to secure alternative accommodation in which either to reside in the case of residential buildings or to carry on the business which he was carrying on in the case of non-residential buildings. This was therefore a relevant matter which the Government had failed to take into account. The High Court characterised reason No. 5 as really not a reason at all and we agree with this observation. The statute had admittedly conferred upon tenants, such as the second respondent the right to continue in possession after the termination of the lease in their favour, and the fact that such a tenant had exercised the rights conferred upon him by statute was certainly not an improper conduct meriting his being deprived of the statutory protection afforded by s. 7.

The learned Judges further pointed out that the order of Government was defective, in that it had not taken into account several relevant matters as for instance the second respondent expending considerable sums to carry out improvements to the theatre in 1949 etc. which bore upon the exercise of their power, and which if taken into account would have weighed against the grant of the

exemption. In view however of the conclusion reached that the reasons assigned by Government for their order were not germane to the policy and purpose of the fact, we do not consider it necessary to pursue the matter further.

The further point urged regarding the learned Judges of the High Court having erroneously constituted themselves into a Court of appeal need not detain us long. The short answer to it is that the learned Judges had not done so. The submission ignores the distinction between findings on facts which the Court in proceedings under Art. 226 must, save in very exceptional cases, accept as correct and the relevance of those facts for considering whether their establishment satisfied the grounds necessary for the exercise of the power vested in Government under s. 13 of the Act. For instance in the case on hand, no fact found by the Government or stated by them as the reason or reasons which induced them to grant the exemption were even challenged before the High Court, the only contention urged by the second respondent which was accepted by the High Court, being that these facts were irrelevant for justifying the order.

The appeal accordingly fails and is dismissed with costs to the contesting second respondent.

SARKAR., J.-In this judgment we propose to deal only with one of the two questions that arise in this appeal.

Of these two questions, the first is whether s. 13 'of the Madras Buildings (Lease and Rent Control)' Act, 1949, offends Art. 14 of the Constitution. That Act makes provision, among other things, for controlling rents chargeable by landlords and for preventing unreasonable eviction of tenants. Section 13, the validity of which is challenged, gives the State Government power to exempt any building from all or any of the provisions of this Act. The contention was that this section gave arbitrary power to the Government to apply the law with unequal band as it did not furnish any guidance as to how the power to exempt was to be exercised. This question has been discussed fully by our brother Ayyangar. We agree with the view taken by him that the section does not offend the article. We have nothing further to add to what he has said on this aspect of the case. The other question is whether the power was duly exercised in the present case. On this question we have arrived at a conclusion different from that which has found favour with our brother Ayyangar. This is the question that we propose to discuss in this judgment.

The power was exercised by an order made by the Government on June 4, 1952. It exempted from the operation of the Act certain premises used as a cinema house and called the Gaiety Theatre. The second respondent who was a tenant of the premises, was thereby deprived of the protection from eviction which he would have otherwise had under the Act. He, therefore, moved the High Court at Madras for a writ to quash this order. The High Court while upholding the validity of s. 13 which also had been attacked by the second respondent, took the view that the order had been passed for,reasons not germane to the purpose for which the power of exemption under s. 13 had been vested in Government, and quashed that order. This appeal is against this decision of the High Court.

The circumstances in which the order came to be made were these. One Sir Hajee Ismail Sait had a certain plot of land in the city of Madras. He granted a lease of that land sometime in 1914 to one Venkiah for constructing a cinema house on it. It is not clear whether Venkiah himself constructed any cinema house. It appears that he became insolvent and his assets, including the leasehold interest, vested in the Official Assignee who obtained an extension of the lease for a period of nine years from 1926 from the representatives of Sir Hajee Ismail Sait, who had died in the meantime. One Mrs. Madan purchased the lease-hold interest from the Official Assignee and she later obtained a fresh lease from the representatives of Sir Hajee Ismail Sait for a period of seven years from June 1935, expiring on May 30, 1942. This lease gave Mrs. Madan the first option of refusal in case the lessor desired to let out the land on lease after its expiry. On January 4, 1937, the second respondent purchased from Mrs. Madan the lease-hold right, including the superstructure of a cinema house which had by that time been constructed on the land by one of the previous lessees. This is the cinema house which came to be known as the Gaiety Theatre. The term of the lease was due to expire on May 30, 1942.

In or about 1939, certain suits appear to have been instituted in the High Court at Madras in its Original Jurisdiction for the administration of the estate of Sir Hajee Ismail Sait. In those suits, orders had been passed appointing Receivers of that estate and the estate was thereafter being administered by the High Court. It appears that by the side of the Gaiety Theatre premises there was another plot of vacant land belonging to the same estate which was not bringing in any income. The High Court passed orders that that land should also be let out on a long term lease. The father of the appellant offered to take a lease of that land at a rent of Rs. 450 per month for a period of twenty-one years with an option of renewal for another ten years, for the purpose of constructing a show- house on it. This was sometime in 1940. At that time the lease of the adjoining Gaiety Theatre bad only about two more years to run. The appellant's father did not like a competing showhouse in close proximity to his own, and therefore, he suggested to the Receivers that he should be given the lease of the Gaiety Theatre premises also after the expiry of the second respondent's lease on May 30, 1942, at the same rent which was being paid by the second respondent and for a term ending with his proposed lease in respect of the adjoining premises. The proposals were put up by the Receivers to the High Court for its consideration. The High Court thereupon called upon the second respondent to elect whether he would take a fresh lease of the Gaiety Theatre premises for a period of twenty one years after the expiry of his lease then current. This was done as he had the option under his lease. The second respondent was not prepared to take a fresh lease for twenty-one years but he suggested that a lease for another seven years might be given to him on his agreeing to vacate the premises after the expiry of those seven years without claiming any extension or option. The proposals from the appellant's father and the second respondent were then considered by the High Court and by consent of parties orders were passed by it on March 21, 1940, and the 2nd and 3rd of May, 1940. By these orders the Receivers were directed to grant a lease of the land adjoining the Gaiety Theatre premises to the appellant's father for twenty-one years commencing from May 1, 1940, with option for ten more years. These orders further directed the Receivers to grant a lease of the Gaiety Theatre premises to the second respondent for a period of seven years from the same date without any option, and to grant a lease of these premises to the appellant's father for a period of thirteen years and eleven months and a half commencing from the expiry of the seven years for which a lease of them was going to be granted to the second respondent. The orders required the

appellant's father to deposit a security of Rs. 10,000 in respect of the leases to be granted to him and this he duly deposited. All these leases were then granted by the Receivers under the orders of the Court. Apparently, the second respondent surrendered the remaining term of his lease which was to have expired on May 30, 1942. Relying on the aforesaid orders and leases and also on the second respondent's agreement to vacate the Gaiety Theatre premises on the expiry of his lease, the appellant's father constructed a showhouse on the land adjoining the Gaiety Theatre premises which came to be known as the Casino Theatre.

On October 1, 1946, the Act came into force and in view of its provisions, the second respondent could not be evicted from the Gaiety Theatre premises even after the expiry of his lease. Taking advantage of the Act, the second respondent refused to vacate the premises after the expiry of his lease on April 30, 1947, which he had expressly agreed to do. On May 1, 1947, the appellant's mother, his father having died in the meantime, deposited with the Receivers a further sum of Rs. 9,000 as rent in advance, as required by the terms of the lease. Thereafter the appellant ,seems to have succeeded to the estate of his father. He took various proceedings to eject the second respondent from the Gaiety Theatre premises but was unsuccessful. Thereupon he moved the Government and the Government after giving the second respondent a hearing, and fully considering the matter, passed the order of June 4, 1952.

The High Court had called upon the Government to state the reasons. why it had exercised its power under a. 13 exempting the Gaiety Theatre premises from the operation of the Act. The Advocate General appearing for the Government, the first respondent in this appeal, filed a memorandum setting out these reasons. The reasons were as follows:-

> "(1). When the High Court offered in 1940 to lease out the premises in question for a period of 21 years, Sri Chettiar elected to take it on lease only for a period of seven years, which expired in 1947. As per the High Court's order in C. S. No. 280-286/1939, Sri J. H. Irani took a lease of the premises for a period of 13 years and 11-1/2 months from 1947 and he deposited Rs. 10,000 towards the said lease. He is therefore entitled for the benefits from 1948 onwards.
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> (2)Had not the Rent Control Act come into force, Sri P. J. Irani would have got possession in the ordinary course as per High Court's order and the terms of the lease deed. The operation of the Act is therefore really a hardship to him.

(3) Sri Chettiar is only an absentee lessee and he is having several other businesses in South India. (4) The conduct of Sri Chidambaram Chettiar in (4) Sri Chettiar had already managed to be in refusing to surrender the possession of th e building to Sri P. J. Irani who had taken a valid lease under the orders of the High Court is that of hard litigant seeking to exploit the letter of the law without much regard to bona fides; and (5)Sri Chettiar had already managed to be in possession of the building for five more years than he was legitimately entitled to be."

The High Court having considered the reasons came to the conclusion that they did not serve the purpose of the Act. We are unable to accept this view. It may be that some of the reasons given

would not have justified the order but broadly, we think, they referred to facts which showed that the power had been exercised legitimately. Indeed, on the facts of this case which we have set out earlier, we think that it was unnecessary for the High Court to ask the Government to state the reasons for its order. In our view, these facts themselves sufficiently show that the order was within the objects of the Act and not extraneous to s. 13. We wish to observe before we proceed further, that in considering whether the reasons given by the Government are sufficient to bring the order within the objects of the Act, the High Court had no power to act as if it were sitting in appeal over the Government's decision. A court cannot set aside an order under s. 13 on the ground that it would not itself have made the order for the reasons for which the Government had made it. All that the Court has to see is whether the power was used for any extraneous purpose, that is to say, not for achieving the object for which the power had been granted. When it is alleged that the power was used for a purpose other than achieving the object for which the power is granted, the initial onus must be on the party which alleges abuse of power and there must be prima facie evidence in support of the allegation. It is only then that the onus may shift.

However all this may be, was the power in this case in fact used for an extraneous purpose? It is not said that the power had been exercised for any ulterior purpose. Now, the purpose of the Act, quite clearly, is to prevent unreasonable eviction and also to control rent. These two purposes are intertwined. An eviction becomes unreasonable where the object is to exploit the situation arising out of the dearth of accommodation by letting out the premises at an unreasonably high rent and on realisation of extortionate premium. Often these are realised secretly, particularly so, the premium. Therefore, when there is no risk of an opportunity arising in which a landlord may be able to realise illegal rent or premium, an eviction may not be unreasonable; indeed, there may be circumstances which would justify the inference that the tenant is trying to take an undue advantage of the situation and in such a case, the Government would be justified and within its power to exempt the premises from the operation of the Act. That is the position here. The lease was granted at a point of time when the situation was normal, that is, when a landlord was not in a position to make an unconscionable bargain for himself by exploiting the situation, for the lease was granted in 1940 when there was no scarcity of accommodation. Next, the lease was granted under orders of Court. It was granted by the officers of the Court. There is no question of either the Court or the officers using the situation for purposes of exploitation. Again, to refuse exemption under s. 13 in the present case would amount to preventing the Court from administering the estate in its charge in a manner which it has the power to do and which of course is its duty to do for the benefit of the parties entitled to the estate. There was nothing unfair to the second respondent in granting the exemption, for the second respondent had been given the option to take up the lease. He had refused it. He is now objecting to the exemption only because he finds it more profitable to continue in the premises than he thought it would be at the time the offer had been made to him. The appellant and his father had been deprived for a long time of the use of a considerable sum of money which was paid in terms of the bargain to which the second respondent had freely entered. It may be that the appellant's father would not have gone in for the lease of the Casino Theatre premises and spent enormous sums of money for constructing a showhouse there if the second respondent had not given him to understand that he would leave the Gaiety Theatre premises on April 30, 1947. The fact that the second respondent spent money, if any, in improving the Gaiety Theatre premises is irrelevant. He knew that he had undertaken to vacate the premises by April 30, 1947, and that the

appellant was taking steps to recover possession of these premises.

We do not think that the difficulties of a tenant on eviction decide what is or is not "unreasonable eviction". One of the objects of the Act as stated in the preamble is "to prevent unreasonable eviction of tenants". The word "unreasonable" necessarily connotes a consideration of all the circumstances including the conduct of parties in order to find out what is unreasonable. It seems to us that under s. 13 it is the duty of the Government to take into consideration all the relevant circumstances of a particular case or class of cases in order to determine if the pro- tection of the Act given to the tenant or tenants concerned should be withdrawn. The section is applicable not merely to institutions like hospitals or schools, but may be applied to other cases also, where there is no question of any unreasonable eviction of the tenant, or where prevention of eviction itself may be unreasonable. We, therefore, think that the Government's action in exempting the Gaiety Theatre premises from the operation of the Act was within the scope of the Act, and the High Court does not seem to have considered the case from this point of view. For these reasons, in our view, the order of June 4, 1952, was a competent and legal order and no exception can be taken to it.

We would, therefore, allow the appeal and set aside the order of the High Court. The second respondent should pay the costs of the other parties throughout. By COURT. In accordance with the majority Judgment, the appeal is dismissed with costs to the contesting second respondent.