Raval And Co. And Anr. vs K.G. Ramachandran (Minor) And Ors. on 20 January, 1966

Equivalent citations: (1966)2MLJ68, AIR 1967 MADRAS 57, (1966) 79 MADLW 331, ILR (1966) 2 MAD 437, (1966) 2 MADLJ68

JUDGMENT

M. Anantanarayanan, C.J.

1. W.P. No. 1124 of 1963 comes before us on a Reference made by one of us (K. Srinivasan, J.). It was a proceeding in Prohibition, of Messrs. Raval & Company (petitioners), seeking to restrain the respondents, including the Chief Rent Controller, Madras (fourth respondent), from prosecuting or proceeding with a petition for the fixation of fair rent, under the Madras Rent Control Acts. Connected with this are two other proceedings, namely, C.R.P. No. 1816 of 1963 and Application No. 2443 of 1964 in C. S. No. 163 of 1962, in which certain closely inter-linked questions are involved. Our learned brother (Srinivasan, J.) felt the difficulty that the catena of decisions of this Court, as far as the Madras Rent Control Acts are concerned, had been only in the consistent directions that these Acts did purport to interfere with contractual tenancies, both as regards the fixation1 of fair rents and as regards the respective rights of landlords and tenants, in the matter of eviction and the grounds for eviction; while certain recent decisions of the Supreme Court, no doubt not upon the Madras Acts but upon similar enactments of other States, appear to justify the interpretation that the contractual tenancies should first be terminated by a notice under Section 111(h) of the Transfer of Property Act, after which alone the procedure under the special Acts would become applicable, their object being to give this additional protection to what are termed 'statutory tenancies '.

2. This explains the Reference, and, as the matter has been argued before us, the following questions emerge for our consideration:

> 1. Do the Madras Act, including the latest Amending Act XI of 1964, enact as self-contained Code governing all relationships between landlords and tenants, during their subsistence, including contractual as well as statutory tenancies, within their ambit ?
>
> 2. In particular, do they enable landlords and tenants to obtain the determination of fair rents for buildings, even during contractual tenancies, and notwithstanding the contract of rent, to which the tenancies relate ?
>
> 3. Similarly, do they enable the landlords and tenants to work out their respective rights in the matter of the liability of the tenants for eviction on the grounds specified in the Acts, even during a contractual tenancy, and without that tenancy being first

determined by the landlord in accordance with Section 111(h) of the Transfer of Property Act ?

4. Can this interpretation be sustained, as a matter of legislative competence and legislative intendment, notwithstanding the absence of a non-obstante clause in the Acts ?

3. Apart from these questions, which are on the interpretation of the particular statute, two questions of their constitutional validity have also been raised before us. The first is that Amending Act XI of 1964, under which a ceiling in respect of non-residential tenements, namely, Rs. 400 specified in Section 30 of Madras Act XVIII of 1960, was done away with, and a further section in the Amending Act (Section 3) was introduced for the abatement of certain pending proceedings, is ultra vires, as offending Article 14 of the Constitution; the argument is that, both as a matter of legislative history and in the substantial sense, the amending enactment embodies a hostile discrimination against the landlords of non-residential premises, without a reasonable basis or objective. On this aspect, even the bona fides of the amending enactment has been assailed, and it is contended that the enactment was hastily rushed through the Legislature, without the salutory procedure of a reference to a Select Committee, and in a matter of one or two days, because the concerned Minister had a personal motive to obtain the benefit of the legislation. An interpretation of Section 3 of Madras Act II of 1964 also arises, particularly in connection with the facts in Application No. 2443 of 1964 in C. S. No. 163 of 1962. The other constitutional point raised during the arguments relates to an alleged infringement of the protection afforded by Article 19 in more than one respect. The learned Advocate General relied upon Article 358 of the Constitution for the view that the provisions of Article 19 are themselves suspended during the operation of the present Proclamation of Emergency; the tenability of this view, in the context of the interpretation of Article 358 in relation to enactments prior to the Emergency such as Madras Act XVIII of 1960, is also a matter on which arguments have been addressed.

4. I might immediately state that we have been concerned, during the arguments submitted to the Full Bench by learned Counsel on both sides, with several enactments of various States, which do have a marked similarity, in respect of their broad objectives and the statutory structure, but which equally exhibit vital differences in several respects. This is of great importance, because we have to consider the ratio of certain decisions of the Supreme Court in the context of the catena of decisions of this Court about successive Madras Acts which decisions of the Supreme Court were rendered with reference to other special Acts, and not the Madras Acts. For instance, we have been occupied with the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947(LVII of 1947), the Bihar Buildings (Lease, Rent and Eviction) Control Act (III of 1947), the Madhya Pradesh Act, the Delhi and Ajmer-Merwara Rent Control Act, the Orissa Act, the Rajasthan Act, the West Bengal and Mysore Acts, in addition to our own. Actually, a detailed scrutiny appears to show that these Acts cannot merely be lumped together into one category of Urban Legislation for the control of letting and the regulation of rents of buildings, and that such a generalisation might be very misleading, since significant differences are thereby obliterated. On the contrary, I think that a threefold classification would be probably more valuable. At one extreme we have Acts like the Rajasthan Act, which has been judicially interpreted by that Court with reference to Article 254(1)

and (2) of the Constitution, as being merely supplementary to the Transfer of Property Act, and as not containing anything repugnant to the pre-existing-law concerning landlords and tenants of buildings; certain further features are merely superimposed, so that there was no need to obtain the assent of the President under Article 254(2), for the validity of the enactment. In the middle group would, appear to fall the larger number of the Acts, particularly an Act like Bombay Act LVII of 1947. Here, no doubt, an additional protection is given to statutory tenancies, in several ways, but the ordinary machinery of the civil Courts is not disturbed. That machinery, and the background of the provisions of the'Transfer of Property Act remain, governing this class of relationships. At the other end, we have an Act like the Madras Buildings (Lease and Rent Control) Act (XVIII of i960), which, in Section 10, practically enacts a self-contained code, with a special machinery of Rent Control Tribunals for applications for eviction, and orders for eviction. Actually, under Section 18, the execution of the orders of these Tribunals', like decrees of civil Courts, is provided for, and Section 23 provides a special machinery for appeal,, while Section 25 vests powers of revision in this Court and in the District Courts. On this ground alone, I think that great care has to be exercised before the dicta and conclusions of the highest Court of the land, interpreting the statute of some other State, are applied to the Madras Acts, without due regard to the distinct groups, into which these seemingly allied enactments appear to fall and to vital differences, both of statutory structure and perhaps even of legislative intendment. For this reason, I shall first deal with the Madras Acts, and the catena of decisions of this Court, available on the Madras Acts, before proceeding to other Acts and the decisions of the Supreme Court. As a prelude to the analysis of the provisions themselves we may first take up the matter of legislative competence, of legislative intendment,. and the absence of a non obstante clause in the Madras Acts, with regard to its consequences.

5. As far as legislative competence is concerned, there is really no room for doubt. Entry 18 of List II (State List) of the Seventh Schedule, includes the relationship of landlord and tenant and rights in or over land, and under Article 254(1) and (2), it is not disputed that the Madras Acts, having received the assent of the President, will prevail over the Transfer of Property Act, to the degree of any inconsistency between the two laws, in Madras State. Legislative competence thus being conceded, legislative intendment has to be gathered from the Preamble, and the structure of the enactment. We may here point out that the Madras Buildings (Lease and Rent Control) Act (XV of 1946) was succeeded by the Madras Buildings (Lease and Rent Control) Act (XXV of 1949), which, in its turn, was succeeded by the similar Act (XVIII of 1960), which is in force, as amended by Madras Act XI of 1964. Sri Thiruvenkatachari, for Messrs. Raval & Company, has emphasised that these are ad hoc pieces of legislation, enacted for a temporary duration, which has been extended from time to time. Nevertheless, the intendment of the Legislature cannot be inferred with reference to such a characteristic alone; nor can the principle of interpretation of statutes, that I shall refer to in another context, that the Legislature does not ordinarily intend any revolutionary modification in the pre-existing corpus of law, such as the law of landlord and tenant in respect of buildings, necessarily lead to the inference that these Acts were merely superimposed safeguards to operate with regard exclusively to statutory tenancies. On the contrary, confining ourselves to Madras Act XVIII of 1960, for the moment, the purpose of this Act is-" to amend and consolidate the law relating to the regulation of the letting of residential and non-residential buildings, and the control of rents of such buildings, and the prevention of unreasonable eviction of tenants ". In other words, in the context of spiralling inflation in respect of urban rents for buildings, conditions of scarce-accommodation, and

perhaps considerable hardship to tenants occasioned by evictions strictly under the law, the Legislature seems to have intended to regulate these matters by statute, for the benefit of citizens. But before proceeding further into the other sections of the Act, which are clearly indicative of the degree of its-encroachments on pre-existing law, I might usefully turn to two aspects : (i) the consequence of the absence of a non-obstante clause in the legislation, and (ii) the view that has been uniformly taken of the Madras Acts by decisions of this Court.

6. As regards the first point, it was dealt with by Govindarajachari, J., in Moses Pillai v. Govindan (1948) 1 M.L.J. 51 where the matter was apparently put in the same form. The learned Judge observed at page 52:

> Mr. J.S. Vedamanickam, Counsel for the appellant, attempted to distinguish this case (Golds,mitk v. Orr 89 L.J. K.B.D. 901 on the ground that the English statute (Increase of Rent and Mortgage Interest (Restrictions) Act, 1919) contains the words 'Notwithstanding any agreement to the contrary', and that there are no similar words in Clause 7(a) of the Madras House Rent Control Order of 1941. This arguement I am unable to accept. Even without the use of those words, the Legislature can indicate that its provisions shall apply, notwithstanding that the parties contracted otherwise....
>
> In Aswani Kumar v. Arabinda Bose (377) the principle has been expressed in the following form:
>
> ...for, even apart from such Clause (non-obstante clause), a later law abrogates earlier laws clearly inconsistent with it.

7. The Legislature had the competence to enact the provisions of a special statute, which do interfere with the contractual tenancies under the Transfer of Property Act, both relating to such matters as the fixation of fair rent during such tenancies, and such matters as protection against the eviction of a tenant whether during a contractual tenancy, or after its determination; so much is not in dispute. Such a special Act, having received the assent of the President, will prevail over the Transfer of Property Act in the concerned area. If that is the intendment to be gathered from the plain language of the Preamble and the structure of the provisions, we cannot shirk this inference, merely because there is the absence of a non-obstante clause. It was, no doubt, easy for the Legislature to have enacted words, such as " Notwithstanding anything in the Transfer of Property Act, or any other law to the contrary "; but in its wisdom, the Legislature might have well intended that the provisions sufficiently and amply do indicate, by their very force, the degree of interference with contractual tenancies sought to be enforced. , We shall immediately turn to the available Madras cases upon the successive Madras Acts. As we shall show, they have been consistently in one direction, and that is that the Madras Acts do invade the domain of the pre-existing law of landlords and tenants, in respect of the letting and rents of buildings, and the evictions of tenants.

8. In Moses Pillai v. Govindan (1948) 1 M.L.J. 51 already referred to, Govindarajachari, J., was concerned with an agreement in terms of which the tenant undertook to pay rent at the rate of Rs.

45 per month, failing to deliver possession of the house within a stipulated period. In the suit by (the landlord to recover the higher rate of rent, the tenant relied on Clause 7(a) of the Madras, House Rent Control Order, 1941, to contest the claim. The learned Judge held that the clause applied, even though the parties had contracted otherwise. The language of Clause 7(a) was peremptory, and had barred the increase in rent claimed. In Parthasarathy v. Krishnamoorthy 1948 2 M.L.J. 391 Subba Rao, J., (as he then was) appears to have felt the force of the opposite view, which has been pressed before us by Sri Tiruvenkatachari. It was held that the object of Madras Act XV of 1946 was to prevent unreasonable eviction, and not to confer any new rights of eviction on the landlord. By enacting Section 7 of the Act, the Legislature did not, expressly or by implication, repeal the provisions of the Transfer of Property Act. Hence, unless and until a tenancy was determined under Section 111(A) of the Transfer of Property Act, a landlord could not obtain an order for eviction or possession. The learned Judge cited from Maxwell on the Intepretation of Statutes, 8th Edition, page 73, the passage expressing the principle to which I have made earlier reference, that the Legislature " does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or in other words, beyond the immediate scope and object of the statute ". The learned Judge pointed out that the Legislature could have enacted a non-obstante clause with regard to the Transfer of Property Act, ' in plain terms '. But in Krishnatnurthy v. Parthasarathy (1949) 1 M.L.J. 412 this decision was reversed, and the Division Bench held that a notice to quit under Section 111(A) of the Transfer of Property Act was not necessary before filing an application under Section 7 of Madras Act XV of 1946. In Merchant v. The Bank of Mysore Ltd. (1949) 1 M.L.J. 417 Satyanarayana Rao, J., followed this decision, and held that the Rent Controller had jurisdiction to order eviction, even in cases where the contractual tenancy had not been determined under Section 111 of the Transfer of Property Act, as Section 7 of the Rent Control Act applied both to constractual and statutory tenancies.

9. In Rangaswami Naidu v. Bangaru Chetty (1948) 2 M.L.J. 82 a Division Bench of Rajamannar, C.J., and Satyanarayana Rao, J., pointed out, in the context, of the facts of that case, that in construing Madras Act XV of 1946, it was not permissible to import conceptions which relate to the ordinary law of landlord and tenant, either under the Transfer of Property Act, or as obtaining in England. Raja Chetty v. Jagannathadas Govindds (1949) 2 M.L.J. 694 as interesting for the reason that it included certain dicta which appear to have subsequently given rise to some difficulty, though it was sustainable on the main finding that the provisions of Madras Act XV of 1946 would not apply to a lease of furniture, fittings and projector equipment. The Bench went further and observed that the parties must have known of the provisions of Madras Act XV of 1946, and, on the facts of the agreement, the landlord must be deemed to have waived the right to evict conferred by the Act. In Kuppuswami v. Mahadeva (1950) 1 M.L.J. 72 a Division Bench held that Section 116 of the Transfer of Property Act had no application to matters arising under the Rent Control Act. The decision of the Federal Court in Kai Khushroo v. Bai Jerbat 1949 F.C.R. 262 : (1942) F.L.J. 168 was referred to, and it was stressed that the tenant may, under the special Act, enjoy a statutory immunity from eviction, even after the lease had expired.

10. In George Oakes Ltd. v. The Chief Judge, Small Cause Court, Madras one of the decisions noticed by our learned brother (Srinivasan, J.) in the Reference, a Division Bench held that Section 4 of Madras Act XV of 1946, which deals with the fixation of fair rent, expressly included the

landlord as a person entitled to apply to have the fair rent fixed. There was nothing in the section to confine its application to contractual rents payable under the subsisting lease. But the landlord could not claim the difference between the fair rent which had been fixed in excess of the contractual rent, and the contractual rent, anterior to the date of his application. The learned Chief Justice (Rajamannar, C.J.) expressly referred to his own decision in Raja Chetty's case (1949) 2 M.L.J. 694 and pointed out that the decision did not imply that a tenant could validly contract himself out of the benefits conferred on him by the Act. Certain observations of Viswanatha Sastri, J., in the same judgment, powerfully indicate that the argument of encroachment on the pre-existing law of contractual tenancies, or the need for preserving the sanctity of contracts, were felt by the Bench to be of no avail whatever, in the face of the plain intentions of the Legislature. In Venkataratnam v. Lalluram Rajamannar, C.J., and Balakrishna Ayyar, J., again held, that even during the continuance of the contractual tenancy, a tenant may be evicted under Section 7(1) of Madras Act XV of 1946.

11. In Venkateswara Rao v. Mohammad Mohibulla Saheb (1953) 1 M.L.J. 490 Govinda Menon, J., held that the provisions of Sections 5 and 6 of the Act were rather peremptory, and will apply even though the parties contract to the contrary. Moses Pillai v. Govindan (1948) 1 M.L.J. 51 was followed. In Ramalingam v. Gurumuthi Reddy (1954) 2 M.L.J. 752 a Division Bench held that the tenant could take advantage of the provisions of the Act, notwithstanding the contractual tenancy for a specified period. In State of Madras v. Natwaralal Davey (1960) 2 M.L.J. 384 Rajamannar, C.J., held with reference to Section 3(5) of the 1949 Act, that even though the landlord might have agreed to a certain rent, he was not prevented from having recourse to an application for the fixation of fair rent; this is in line with the decisions of this Court that the right of both the landlord and the tenant to apply for fixation of fair rent under the said Act, was unaffected by the subsistence of a contractual tenancy, or the super-imposition of a statutory tenancy, after the contractual tenancy had been determined. In conclusion, we might notice two comparatively recent decisions of this Court, namely, Venkataswami v. Abdul Rahim and brothers and Mohammed Burhanudin v. Official Trustee (1961) 2 M.L.J. 29. The former decision squarely held, under Madras Act XXV of 1949, that a tenant could apply for the fixation of fair rent, notwithstanding an agreement to pay rent under a contractual tenancy. Apparently, in the light of case-law that I have set forth, the proposition was almost taken for granted, since the case-law is not discussed. Ramakrishnan, J., in the latter decision pointed out that so long as the contractual rent does not exceed the fair rent, determinable by statute, which, under the Act of 1949, was a specified maximum the contract rent could well be enforced. But in cases where the contract rent exceeded the maximum, then the principle applied that the tenant cannot contract himself out of the statute.

12. This may be the convenient context for notice of the line of argument, as it was developed by Sri Thiruvenkatachari. Learned Counsel contended that the Rent Control Act did not deal with, or interfere with, contractual tenancies at all; they continued to be governed by the Transfer of Property Act. The Rent Control Act dealt only with what are termed 'statutory tenancies'; under it, a statutory tenant had merely a right not to be evicted, while conforming to the conditions laid down in the Act. There was a corresponding remedy for fair rent, for both the landlord and the statutory tenant; but this, again was inapplicable to contractual tenancies. A statutory tenancy is essentially a continuation of what was originally a contractual tenancy; for that reason, every contractual tenancy must be terminated by a notice under Section 111(A) of the Transfer of Property Act, before the Rent

Control Act could at all apply. While there was contractual tenancy in force, the tenant did not require the protection of the Rent Control Act. The Rent Control Acts are ad hoc Acts, temporary in their duration. They cannot supersede the law of contract, or affect the sanctity of contracts.

13. The term ' statutory tenant' is a neologism, which has come into existence because of protective legislation in favour of persons whose contractual tenancies had been determined, and who, nevertheless, continued in occupation without further attornment; as the Supreme Court had occasion to point out, such a person was not really a ' tenant ' at all. Sri Thiruvenkatachari concedes that this interpretation might be opposed to the definitions of ' landlord' and ' tenant' in the 1960 Act, as indeed it is. We might go further and emphasise that it is against the structure of the enactment itself, in several vital respects. As a matter of interpretation of the statute, based not merely on the Preamble but the entire complex of the provisions, we do not see how it is possible to contend that Madras Act XVIII of 1960 does not make quite substantial inroads into the pre-existing law of ' landlord ' and ' tenant', as relating to contractual tenancies. An opposite view would render nugatory several significant provisions of the Act, the self-contained machinery of Section 10, and thus frustrate the objectives of the Legislature. This can be immediately shown, even apart from the intendment of the Preamble that I have earlier set forth.

14. Section 2(6) of the Act defines 'landlord' and Section 2(8) defines ' tenant'. They are symmetrical and complementary definitions. Sri Thiruvenkatachari concedes that the definition would include both a tenant during the subsistence of contractual tenancy, and tenant ' continuing in possession after the termination of the tenancy '. In other words, this Madras Act plainly purports to deal with all tenancies in respect of residential and non-residential buildings, which had been let out, both contractual and statutory. We may next turn to Section 4, which enables any tenant or landlord, to whom the Act applies, to apply for the fixation of fair rent. An elaborate machinery is provided for the determination of fair rent, and the construction that this relates only to tenancies that had been determined under the Transfer of Property Act, will be meaningless. For, if we turn to the significant provisions of Section 7, Sub-sections (1), (2) and (3), we find them to be explicitly to the following effect:

> (1) Where the Controller has fixed the fair rent of a building-
>
> (a) the landlord shall not claim, receive or stipulate for the payment of (i) any premium or other like sura in addition to such fair rent, or (ii) save as provided in Section 5 or Section 6, anything in excess of such fair rent:
>
> Provided that the landlord may receive, or stipulate for the payment of, an amount not exceeding one month's rent, by way of advance;
>
> (b) save as provided in Clause (a), any premium or other like sum or any rent paid in addition to or in excess of, such fair rent, whether before or after the date of the commencement of this Act, in consideration of the grant, continuance or renewal of the tenancy of the building after the date of such commencement, shall be refunded by the landlord to the person by whom it Was paid or at the option of such person,

shall be otherwise adjusted by the landlord:

Provided that where before the fixation of the fair rent, rent has been paid in excess thereof, the refund or adjustment shall be limited to the amount paid in excess for the period commencing on the date of application by the tenant or landlord under Sub-section (1) of Section 4 and ending with the date of such fixation.

(2) Where the fair rent of a building has not been so fixed-

(a) the landlord shall not claim, receive or stipulate for the payment of, any premium or other like sum in addition to the agreed rent:

Provided that the landlord may receive, or stipulate for the payment of, an amount not exceeding one month's rent, by way of advance :

(b) Save as provided in Clause (a), any sum paid in excess of the agreed rent, whether before or after the date of the commencement of this Act, in consideration of the grant, continuance or renewal of the tenancy of the building after the date of such commencement, shall be refunded by the landlord to the person by whom it was paid or, at the option of such person, shall be otherwise adjusted by the landlord.

(3) Any stipulation in contravention of Sub-section (1) or Sub-section (2) shall be null and void.

15. Thus even, where there is a contract of tenancy and the fair rent had not been determined at all, any premium, otherwise than an advance of one month's rental, and any sum in consideration of the grant, continuance or renewal of the tenancy, are refundable; stipulations to the contrary are void. There cannot be a plainer expression of an intent to make incursions into the pre-existing law of tenancies of buildings under the Transfer of Property Act.

16. As we pointed out earlier, Section 10 is a complete code for the eviction of tenants on certain grounds, with a special machinery provided for the decision. It is important to note that under Section 10(2)(i) one ground of eviction is that " the tenant has not paid or tendered the rent due by him in respect of the building, within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord ". Here again, the landlord obtains a right to evict, which is prima facie, unrelated to the determination of the tenancy by a notice conforming to Section 108 of the Transfer of Property Act. Under Section 10(2)(ii)(a), the transfer of a lease and sub-letting without the specific written authority of the landlord are grounds for eviction; admittedly, these are variations from the law of contractual tenancies under the Transfer of Property Act, whereunder transfer or sub-letting would be perfectly lawful, unless prohibited. Again, Section 10(3)(d) is very significant. This enacts that where the tenancy is for a specific period agreed upon, the landlord shall not be entitled in the duration to apply for possession of the building for his own bonafide additional accommodation under Section 10(3)(c); the enactment here exhibits an awareness of mutual rights and obligations under contractual tenancies, and the need for preserving them against the inroad of

a special Act, in certain, contingencies. There are other special features of the Act, such as a bona fide requirement of the building for immediate demolition and reconstruction (Section 14(b); the requirement for carrying out repairs, restraint of the landlord from, interference with certain amenities, restraints upon conversion of a residential building into a non-residential building (Section 21) all of which are, in very plain terms, expressive of the intention to modify the prior law. Indeed, if this Act could be held to apply only to statutory tenancies, after the contractual tenancy had first been determined under the Transfer of Property Act, landlords would be helpless to obtain possession of buildings, while tenants may go on 'wilfully defaulting' to pay rents, and the tenants would be equally helpless to obtaining the benefits of a determination of fair rent, where the contract for rent, which may be far in excess of the fair rent might have been arrived at between the parties, owing to economic pressures, and to subsist for considerable periods.

17. We think that we have shown sufficiently that the interpretation upon the Madras Acts, that Sri Tiruvenkatachari attempts to persuade us to accept, is totally opposed, not merely to the catena of decisions of this Court on the Madras Acts but to the expressed intentions of the Legislature, to the very structure of the enactments, and to the manifest inroads into the pre-existing law, which these enactments have made. We may now turn to the decisions of the Supreme Court and other High Courts upon other Acts, in order to see how far those decisions compel any contrary interpretation. In that analysis, we also propose to refer, though very briefly, to the very different provisions of certain of those special Acts, which, in our view, are significantly different from the Madras Act, which is a' complete code both for determination of fair rent and for eviction of tenants, with a special machinery for both-purposes.

18. In Brij Raj Krishna v. Shaw and Bros. (1951) S.C.J. 238 their Lordships of the Supreme Court were concerned with the interpretation of the Bihar Buildings (Lease, Rent and Eviction) Control Act (III of 1947), and the bar of jurisdiction of a civil Court, with regard to the finding by the Controller, of alleged non-payment of rent as justifying the eviction of a tenant. Section 11(1)(a) of the Act contained a non-obstante clause in clear terms. The Supreme Court held that the Controller had jurisdiction to determine whether there was non-payment of rent or not, and that, even if he decided erroneously, his order could not be questioned in a civil Court. In Karani Properties Ltd. v. Miss Augustine (1957) S.C.J. 177 the Supreme Court was concerned with the West Bengal Premises Rent Control (Temporary Provisions) Act (XVII of 1950) and the interpretation of the word 'rent' as occurring in the statute; the term was held comprehensive enough to include all payments agreed by the tenant to be paid to his landlord, for the use and occupation in respect of both the building and its installations. In Dr. K. A. Dhairyawan v. J.R. Thakur (1958) S.C.J. 1060 the Bombay Act LVII of 1947 was the subject of interpretation, with regard to Section 13 of that Act in the context of the right of the lessee embodied in Section 108(h) of the Transfer of Property Act. The Court held that, notwithstanding Section 108, the lessees could contract to hand over the building to the lessors, without the right to receive compensation at the end of the lease; but such a contract did not transfer the ownership in the building to the lessors while the lease subsisted. The provisions of the Bombay Act gave to the person, who continued to remain in possession of the land, although the period of the lease might have come to an end, the status of a statutory tenant. In this context, it is important to stress certain features of Bombay Act LVII of 1947. Section 11 of the Act relates to the fixation of standard rents, by a certain procedure. Section 12 gives a right to the tenant not to be

ejected, so long as he pays the standard rent and permitted increases. Under Section 12(2), therei s a further protection against a suit for possession by the landlord on ground of non-payment of these rents, until the expiration of a month after a notice of demand. Section 13 enacts the grounds upon which the landlord is entitled to recover possession of the premises, subject to Section 15 which is a bar of the tenant's right to sub-letting or transfer. H. S. Rikhy v. New Delhi Municipality (1962) 1 S.C.J. 612 is a decision on the Delhi and Ajmer Rent Control Act (XXXVIII of 1952). The definitions of ' letting', 'landlord', 'premises' and 'tenant' in the Act are referred to and discussed, and the Court held that licensees were not included within the ambit of the Act. In R.M. Paranjype v. A.M. Mali the Court held that where tenancies were terminated under the Bombay Tenancy and Agricultural Lands Act LXVII of 1948 since the termination was under a statutory provision, the landlords acquired a statutory right to possession; equity did not operate to annul a statute. In Punjalal v. Bhagwat Prasad we have the interpretation of Section 12 of the Bombay Act LVII of 1947, in relation to Section 111 of the Transfer of Property Act. It is here that their Lordships held that Sub-section (1) of Section 12 of this Act merely provided that the landlord will not be entitled to the recovery of possession of any premises, so long as the tenant was willing to pay the standard rent and permitted increases. The provisions will, therefore, operate against the landlord after the determination of the tenancy by any of the modes referred to in Section 111 of the Transfer of Property Act. Indisputably, after such a determination, the landlord has a right to recover possession, but he cannot actually obtain possession because of the statutory protection afforded to the tenant, as an additional feature, by the Act. It was further observed at page 123:

> The landlord is restricted from evicting the tepant till the tenant does not do what he is required to do for peaceful possession under Sub-section (1) of Section 12. We are therefore of opinion that where a tenant is in possession under a lease from the landlord, he is not to be evicted for a cause which would give rise to a suit for recovery of possession under Section 12 if his tenancy has not been determined already. It follows that whenever a tepapt acts is a way which would remove the bar on the landlord's right to evict him, it is necessary for the landlord to serve him with a notice determining his tenancy and also serve him with a notice under Sub-section (2) of Section 12 of the Act.

19. It is, to some extent, on these dicta that the contention has been put forward by Sri Tiruvenkatachari and Sri K. Rajah Ayyar in C.R.P. No. 1816 of 1963, that, under the Madras Act also, the contractual tenancy, even if the tenancy is from month to month must first be determined by a notice under Section 111 of the Transfer of Property Act, before the liability of the tenant to be evicted would arise. But, as we have earlier hinted, the Bombay Act and the Madras Act are vitally different in their respective structure on this point. Actually, the Bombay Act, significantly enough, does not provide that a landlord is entitled to eject a tenant for nonpayment of rent, unlike the Madras Act, nor does it provide a special machinery for such eviction. The combined effect of Sections 11 and 12 of the Bombay Act is that so long as the tenant pays the standard rent and permitted increases, even after the determination of the tenancy, the landlord does not get any right to recovery of possession. Under Section 12(3)(a), the landlord can get a decree for eviction in a suit for recovery of possession, only if the tenant does not pay rent for a period of six months, in the case of monthly rentals. The grounds for recovery of possession in Section 13 are quite distinct. Under

the Madras Act, such an interpretation cannot prevail, for 'wilful default' in the payment of rent is a ground upon which the landlord can take advantage of the special machinery for eviction. If the contractual tenancy is first to be determined, this will simply, imply that, where there is a lease for a long period, the Act is powerless to compel the tenants to pay rent on pain of eviction. Here, the Legislature was probably influenced by a balancing of considerations. A powerful mantle of protection has been thrown on tenants, contractual or even after the clear determination of their contracts, against eviction by the landlord, however greatly the pre-existing property law might sustain the landlord's claim to possession. It stood to reason that the tenants should strictly fulfil their obligations, both during the contractual tenancies and thereafter.

20. Mangilal v. Sugan Ckand is a decision on the Madhya Pradesh Accommodation Control Act XXIII of 1955. The provisions of Section 4 of this Act were held to be in addition to those of the Transfer of Property Act, and the Court held that before a tenant can be evicted by a landlord, he must comply with the provisions-of Section 106 of the Transfer of Property Act and those of Section 4. Notice under Section 106 was essential to bring to an end the relationship of landlord and tenant, and unless that relationship was determined, the Act did not come into force, and the landlord did not get a right of eviction. The effect of Clause (a) of Section 4 of the Act did not convert a periodic tenancy into one of fixed or indefinite duration, nor insert therein a clause of re-entry on the ground of non-payment of rent. The character of the tenancy as one from month to month remained. A condition was added by this Act that the unfettered right to terminate the tenancy conferred by' Section 106 will be exercisable only if one of the grounds set out in Section 4 of the Madhya Pradesh Act is shown to exist.

21. This perspective of interpretation is not available with regard to Madras Act XVIII of 1960, because of its quite different structure and provisions. In the Madras. Act, the grounds upon which a landlord was entitled to evict a tenant, in Section 10 apply to all landlords and tenants by definition, whether the tenancies be under subsisting contracts, or after determination- These grounds include 'wilful default' , in payment of rent, and there will be great difficulty in sustaining the interpretation that eviction is possible only after the determination of the tenancy under the Transfer of Property Act, namely, Section 106 read with Section 111. How can there be such a determination, if the contractual tenancy has still a further period to expire, and is not a tenancy from month to month ? Can we read the grounds specified in Section 10 as additional grounds for eviction, also available to the landlord as grounds for determination of the tenancy itself under the Transfer of Property Act ? The rational interpretation, which we are constrained to make, in the light of the provisions and their plain purport, as far as the Madras Act is concerned, is, whether the tenancy be contractual or statutory, that these grounds are available to the landlord for eviction, irrespective of the provisions of the Transfer of Property Act. With even greater force, the grounds will be available in favour of the tenants, as protection from eviction, along with the right to have the fair rent determined under the Act.

22. In Anand Nivas (P.), Ltd. v. Anandji we have the latest decision on Bombay Act LVII of 1947, with reference to the juxtaposition of Sections 13, 14 and 15 of several of which I have earlier referred to. It is here we find that the Supreme Court commented upon the neologism of ' statutory tenant' and its implication Cat p. 422):

> Such a person is not a tenant at all; he has no estate or interest in the premises occupied by him He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and the permitted increases....His right to remain in possession after the determination of the contractual tenancy is personal; it is not capable of being transferred or assigned....
>
> On the contrary, Section 14 of the Bombay Act, unlike Section 12(1), related to contractual tenancies alone, upon the language used. The decision was upon the right of a statutory tenant to sub-let.

23. Oh a careful perusal of these decisions of the Supreme Court, including Punjalal's case (1963) 2 S.C.J. 441 we are unable to discover any ratio in these decisions, which were not rendered with reference to the intendment, or structure of the Madras Act, which would necessarily imply that the Madras Act should be held applicable only to statutory tenancies, and as not affecting contractual tenancies at all during their subsistence. On the contrary such a view is opposed (i) to the Preamble and the intendment expressed therein; (ii) to the definitions of ' landlord ' and ' tenant' in the Act; (iii) to the self-sufficient code enacted in Section 10 including a special machinery for eviction; (iv) to the provisions of Section 7 which enacts specific inroads upon the rental agreements of contractual tenancies and (v) to the provisions of Section 4 as to the fixation of fair rent, as available to all landlords and all tenants, as defined in the Act. Thus, the Madras Act has to be interpreted as a special Act which does abrogate the Transfer of Property Act, with reference to several of its provisions; of course, it goes further and applies, in its terms, not merely to contractual tenancies during their subsistence, but also to statutory tenancies, after the determination of a contractual tenancy. Under the terms of this Act, therefore, a landlord can evict a tenant on the special grounds available, notwithstanding the subsistence of a contractual tenancy, and even though it has not been determined. But, equally, the tenant has the protection of the Act, even after the termination of the contractual tenancy, so long as he does not do anything which removes the bar of eviction and provides no ground for eviction in terms of the Act. Both during the subsistence of the contractual tenancy, and thereafter the parties have the right to get the fair rent determined. This seems to be the only interpretation which does justice to the specific provisions of this statute, the legislative competence for such an enactment not being in question.

24. We may here notice certain decisions cited at the bar, particularly by Sri Tiruvenkatachari, upon the relationship between a contractual tenancy and a statutory tenancy ' and the principle that the jural relationship of landlord and tenant does not arise from mere nomenclature or any accidental features. Thus, in Shyamacharan v. Sheojee Bhai a Bench of that Court held that a settlement pendente lite in a suit for eviction, by which the tenant undertook certain obligations of payment, did not create a fresh tenancy or leasehold right. In Sampath Mudaliar v. Sakunthala Ammal (1964) 2 M.L.J. 563 Jagadisan, J., held that the terms of a joint endorsement made in a suit, did not constitute the jural relationship of landlord and tenant. In American Economical Laundry v. Littie (1950) 2 All E.R. 1186 the Court held, with reference to Section 12(1)(g) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, that the daughter, who remained in possession after the death of the tenant, did not succeed to the tenancy, as her deceased father had suffered an order for possession. In Mills v. Alien L.R. (1953) 2 Q.B. 341 the Court held that, after a warrant for

possession had ceased to be effective the subsequent death of the tenant and succession by the first defendant, gave rise to a statutory tenancy in favour of the first defendant. This line of cases had more relevance to the arguments based on the specifie facts in Application No. 2443 of 1963 in C.S. No. 163 of 1962, one of the proceedings before us.

25. We may now proceed to briefly notice the decisions of other High Courts, several of which are in point, in the sense that they have also noted certain provisions of the Madras Act. Shambhooran v. Mangalsingh is important because the Rajasthan Act (XVII of 1960) was held to be only supplementary to the provisions of the Transfer of Property Act, without affecting those provisions in any manner. For that reason, the assent of the President under Article 254(1) of the Constitution was not required to make the statute effective. In Siddanna v. Venkatesh A.I.R. 1965 Mys. 65 a Division Bench of the Mysore High Court held, following Punjalal's case (1963) 2 S.C.J.441 that under Bombay Act LVII of 1947 a suit for eviction was not maintainable, unless the tenancy was both determined by a notice under Section 106 of the Transfer of Property Act, and another notice as required by Section 12(2) of the Bombay Act. We have already tressed the great difficulty in adopting such a view on the interpretation of the Madras Act, and the considerations against that view. In Pak. Das v. House Rent Controller, Cuttack a Division Bench of that Court held that notice to quit under sction 106 of the Transfer of Property Act was not necessary for eviction proceedings under Section 7 of the Orissa House Rent Control Act, 1958. It is interesting to note that the decisions of this Court in Kishnamoorthy v. Parthasarathy (1949) 1 M.L.J. 412 Rangaswami Naidu v. Bangaru Chetty (1948) 2 M.L.J. 82 and Kuppuswami v. Mahadeva (1950) 1 M.L.J. 72 were noticed and relied on Again in Shri Hem Chand v. Shrimati Sham Devi I.L.R. 8 Punj. 36 with regard to the Delhi and Ajmer Merwara Rent Control Act, a Division Bench held that the provisions of Section 106 of the Transfer of Property Act, requiring the service of a notice on the tenant, had no relevance in considering the application for ejectment under this Act. Mohammed Ghouse v. Karunnissa Begum A.I.R. 1931 Hyd. 111 was on the Hyderabad Rent Control Order, and the Division Bench held that the provisions of Section 111 of the Transfer of Property Act did not apply to cases of ejectment of a tenant within the purview of this Order. Karamsay Kanji v. Velji Virji 56 Bom. L.R. 619 is of great interest, as here Chagla, C.J., was interpreting the application by a tenant for fixation of standard rent, in relation to a suit by a landlord for claiming contractual rent. The same arguments, that have been urged before us, both with regard to the sanctity of contracts and the absence of a likelihood that the Legislature intended to make inroads on prior law, were pressed on the authority of the dicta in Clift v. Taylor L.R. (1948) 2 K.B. 394. The learned Chief Justice pointed out that the Act was passed to control rents, in days of scarcity of unjust accommodation, and to prevent a landlord from exacting unconscionable rents, and also to provide protection from eviction. Section 20 of that Act gave a. right to the tenant to recover the amount paid to the landlord in excess of the standard rent. Sections 4 and 7 of our Act, and indeed the entire scheme of the 1960 Act, render it clear beyond doubt that the tenant has a right to obtain a fixation of fair rent, whether it is a subsisting contractual tenancy, or a statutory tenancy that applies to his case. Arguments based on the sanctity of contracts, or the likely absence of an intention on the part of the Legislature to make inroads upon property law, are, in my view, quite out of place in construing a statute, which has the special purpose of regulating the letting, rents and liability for eviction in respect of all tenancies of buildings in the State. We would, therefore, unhesitatingly answer the reference in the form that, as far as the Madras Act is concerned, the right to apply for fixation of fair rent is vested in all landlords

and tenants of buildings, both during the subsistence of a contractual tenancy and after its determination and that, similarly the right of a landlord to apply for eviction on the ground specified in Section 10 is not affected by the absence of a statutory notice under the Transfer of Property Act determining that tenancy.

26. On the facts of the present case, it is Messrs. Raval & Company (tenants) who are objecting to the determination of a fair rent at the instance of the landlords, during the subsistence of the tenancy. But that can make no essential difference, for, the adoption of the view pressed by Sri Tiruvenkatachari would automatically disentitle tenants from relief, who may be paying rents far higher than the fair rent, under agreements of tenancy, which might have a currency for years in future. As Jagadisan, J., pointed out in Venkataswami v. Abdul Rahim & Bros. (1962) 1 M.L.J. 406 a fair rent is, essentially, a just rent, having regard to all relevant circumstances; it is not a rent favourable to the landlord, or favourable to the tenant, as such.

27. We now turn to the aspect of the case which relates to Article 14, and the attack on Amending Act XI of 1964 both upon grounds of hostile discrimination, and infringement of rights guaranteed under Article 19.

28. The argument based upon hostile discrimination (Article 14) will have to be considered, both for its proper appreciation and for the purpose of the imputation of mala fides against the concerned Minister, upon certain facts including the legislative history of the Amending Act XI of 1964. Upon the pleadings, as they stand, the respective parties, in W.P. No. 1124 of 1963, are not agreed on the applicability of the Amending Act at all. The terms of the lease between Messrs. Raval & Company, and the landlord are set out in the affidavit of Sri Damodaran for Messrs. Raval & Company inclusive of the original agreement that rent was to be Rs. 225 per mensem that the lease should enure till 1st May, 1969, and that the lessees should further make an annual contribution towards repairs and a sum of Rs. 230 towards property-tax. In paragraph 7 of this affidavit, the average monthly rental is claimed to be Rs. 419 which would come within the ambit of Section 30 of Act XVIII of 1960, only by virtue of the Amending Act XI of 1964. According to the affidavit for the landlords, the monthly rent is only Rs. 225 with an additional 25 per cent and hence the premises were within the scope of the 1960 Act itself . For the purpose of the argument, as based upon Article 14, we shall assume that, but for the amending Act XI of 1964, these non-residential premises will be wholly exempt from the Rent Control enactments, as argued by Sri Tiruvenkatachari. Indisputably, upon such issues of fact, concerning which there is controversy between the parties, this Court will not embark on a trial of the issue under Article 226 of the Constitution.

29. On the matter of the bona fides of the concerned Minister, the record stands thus. In the additional affidavit of Sri Damodaran for Messrs. Raval & Company there is an allegation that, in respect of certain non-residential premises, in the lease of which the Minister has a direct interest, there was pressure from the landlord, and. hence the Minister sponsored Madras Act XI of 1964, influenced by personal predilection and pique. The concerned Minister has filed an affidavit before us,, that with regard to these non-residential premises (Nos. 6 and 7, Umpherson Street,, Madras-1), the concerned private firm has an agreement in its favour that it is entitled to occupation of those premises on a rent of Rs. 500 per mensem, so long as it is in business. There was, hence no necessity

for resort to the protection of the Rent Control legislation, in favour of the buildings, and the allegations are emphatically denied. There is a reply affidavit on record in which Sri Damodaran frankly admits that his enquiries with the landlord were ineffective, and hence that the allegations of pressure in respect of these premises could not be proved. We shall later discuss this question of bona fides on the legal aspect, either as relating to the Legislature, or as relating to the particular Minister. Upon the record, we can only conclude that the allegations have been controverted and that there is no material of any kind to substantiate them.

30. The legislative history of the Amending Act his been stressed, in some detail,. but it will clearly be travelling far outside the scope of this reference to embark upon an investigation of the legislative process, as relating to the Amending Act. However, a few salient features may be tersely stated. It appears that the Select Committee upon the original Act (Act XVIII of 1960) recommended that the Act should not apply to non-residential buildings at all, and that, even with regard to residential buildings, it should be confined to tenants of the low and middle income groups, and that tenancies of the higher class be excluded. An amendment was introduced by Government, which brought in the classification of residential and non-residential tenements within the scope of the Act. Legislative Assembly Bill XXXVIII of 1961, was then brought as a private Bill, which proposed to substitute in Section 30 the assessment formula, on which that section had been originally based, by the formula of actual rent paid by the tenant, which was accepted. The consequence was that residential buildings, up to the rental limits of Rs. 250 per mensem and. non-residential buildings up to the rental limits of Rs. 400 per mensem were brought within the Rent Control enactments, the Act not to apply with regard to higher rentals in both categories.

31. Legislative Assembly Bill XVII of 1964(Governmental Bill) was introduced into the Assembly on 28th March, 1964, and published by Gazette (Extraordinary) on the same day. The Bill was taken up and passed in the Assembly on 31st March, 1964, and in the Council (Upper House) it was taken up on 21st April, 1964, and passed that day; it received the assent of the President on 5th August, 1964. According to the affidavits on record, both oral and written from members of the business community, concerning demands of exhorbitant rents from tenants of non-residential premises, and threats of eviction if these were not complied with, great injury to trade and industry, with consequential unemployment, was apprehended, unless these non-residential buildings on rentals exceeding Rs. 400 per mensem were also brought within the scope of the Rent Control legislation.

32. But Sri Tiruvenkatachari points out that the Statement of Objects is a repetition of the Statement of Objects in an earlier Bill LI of 1961, which had gone to the Select Committee, which committee disapproved of the deletion of Clauses (ii) and (iii) of Section 30, as was then contemplated. According to the learned Counsel this essentially implies that there is a re-classification of tenements upon higher rentals hitherto exempt from the Act, which is a hostile discrimination against the landlords of non-residential buildings. A certain document (page 35 of Volume II) is relied on to show that, though there was a demand in the Legislative Council for reference to a Select Committee, this was not complied with. The haste of the legislative process, the absence of scrutiny by the Select Committee, the repetition of the same Objects and Reasons without any fresh basis for the discrimination, are all relied upon in support of the argument. Per contra, the learned Advocate-General has placed before us the Rules of the Legislative Assembly, and pointed out that

the legislative process has strictly been in order; any reference to a Select Committee has to be proposed and carried through as a resolution, and this was not done. Indeed, we are quite unable to see how this matter of the character, of the legislative process in this case, could at all be canvassed here. The Legislature is presumed to have knowledge of the facts and conditions, which render a particular piece of legislation expedient and beneficial. We have been referred to an extract from Ilbert's Legislative Methods and Forms (page 222) concerning the American Method of powers of initiating legislation and of scrutiny of Bills delegated to committees. Passages from Rottschaefer's Handbook of American Constitutional Law (1939 Edition) have also been adverted to, in support of the proposition that the reasonableness of legislative action cannot be determined, " without considering the factual situation existing when the legislation was enacted" (pp. 454 to 460).

33. All that can be said on this aspect is that the Government claim that the Bill was sponsored in response to agitation and representations, both to the Chief Minister and the Minister for Industries, from numerous concerns, which were tenants of non-residential premises. In the leading case upon Article 14, namely, Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors. (1959) S.C.J. 147 : (1959) 1 M.L.J. (S.C.) 67 : (1959) 1 An. W.R. (S.C.) 69 : (1959) S.C.R. 279, 297 the learned Chief Justice has enunciated the criteria (page 297) and two of these are:

> (1) A presumption in favour of the constitutionality of an enactment; and (2) A presumption that the Legislature understands and correctly appreciates the need of its own people.

Again, the good faith of a Legislature must also be presumed, and an interesting catena of decisions on this aspect will be found in Keir and Lawson's " Cases in Constitutional Law," Fourth Edition (1954), page 301. As laid down in Radio Corporation PHY Ltd. v. The Commonwealth (1937-1938) 59 C.L.R. 170 at 185 the motives of a legislative body cannot be canvassed at all, and do not affect the validity of the legislation. In Fletcher v. Peck (1910) 6 Cranch 27 corruption of the members of the Legislature was actually alleged, but it was held that the bona fides of the exercise of legislative powers cannot be impugned; vide Trustees Executors and Agency Co., Ltd. v. Federal Commissioner of Taxation (1933) 49 C.L.R. 220 at 240 and Stenhouse v. Coleman (1944) 69 C.L.R. 471 The Supreme Court of United States of America has taken the same view in Hamilton v. Kentuckil Distilleries Co. 251 U.S. 146 at 161 We are unable to see how it could be alleged that the legislative history of this measure affords any basis, for the plea of hostile discrimination or inequality of treatment.

34. The criteria with regard to the test of hostile discrimination have been enunciated in many decisions, and it is sufficient to refer here to the following that were cited before us; Dalmia's case (1959) S.C.J. 147 : (1959) 1 M.L.J. (S.C.) 67 : (1959) 1 An. W.R. (S.C.) 67 : (1959) 279 S.C.R Gulf C. & S.F.R. Co. v. Ellis (1896) 41 L.Ed. 686 V.M. Syed Mohammad and Company v. The State of Andhra (1954) S.C.J. 390 : (1954) 1 M.L.J. 619 : (1954)S.C.R. 1117 at 1120 State of Madhya Pradesh v. Bhopal Sugar Industries 4 and S. M. Transports (P.) Ltd. v. Sankaraswamigal Mutt (1964) 1 S.C.J. 530 : (1964) 1 M.L.J. (S.C.).146 : (1964) 1 An. W.R. (S.C.) 146 All these lay down that Article 14 of the Constitution embodies the principle that classification must be found on an intelligible differentiation, and that the differentia must have a rational relation to the object sought to be

achieved by the statute in question. The classification may be on different bases. The decision in State of Madhya Pradesh v. Bhopal Sugar Industries (1964) 1 S.C.J. 555 : (1964) 1 I.T.J. 553 is particularly significant as it is stressed there that to make out a case of denial of the equal protection of the laws under Article 14, a plea of differential treatment, by itself, would not be sufficient. The party advancing such a case must show that he had been treated differently from persons similarly circumstanced, without any reasonable basis, and that this was unjustified. In Chiranjit Lal Chouduri v. The Union of India and Ors. (1951) S.C.J. 29 : 1950 S.C.R. 869it has been laid down that there is a strong presumption in favour of the validity of legislative classification.

35. In the present matter, it is difficult even to appreciate the plea of hostile discrimination urged on behalf of Messrs. Raval & Company, who seek to impugn the Amending Act (XI of 1964) on this ground. Firstly, the party advancing this plea is a tenant, and it is urged that landlords were subject to this hostile discrimination; it is not a landlord who is coming forward with the plea that he has been treated differently from those similarly situated. Next, the classification of ' residential' and ' non-residential' tenancies has been adopted in many tenancy enactments and is a well-recognised and rational principle of differentiation. Actually, this has been conceded by learned Counsel. But, if this be conceded, and as the learned Advocate-General rightly stressed, hostile discrimination can be conceivably urged only if persons of this class (landlords of non-residential tenements) had been differentially treated. Certainly, the argument is sustainable, that, on the contrary, it was the 1960 Act which prescribed some differential treatment with regard to landlords of non-residential premises; this was in the sense that only landlords of premises with rentals of Rs. 400 and below were brought within the scope of the legislation

36. In our view there is no basis for the plea of hostile discrimination or the denial of equal protection of the law, either with regard to the Amending Act (XI of 1964), or with regard to the earlier Rent Control enactments, including the Act of 1960. The successive enactments, have embodied, a perfectly rational principle of classification, and the criteria and their application have been evolved, from time to time, in accordance with the needs of this class of citizens. There is also a clear and discernible nexus between the object of the measure, and the differentia themselves. As the measure stands today, if any group of tenants has a right to complain it is the group of tenants occupying residential buildings with rental of over Rs. 250 per mensem who do not have the protection of these beneficial laws at all. The entire argument has to be repelled, in the context of an evolving democratic State with farflung needs for legislation based upon intelligible differentia, in relation to the objects of such legislation. In Sha Manumal Misrimal v. Natha Rukmani Animal Venkatadri, J., has held that Section 30 of Act XVIII of 1960 does not violate the equality guaranteed under Article 14 of the Constitution and is not void or ultra-vires and that the classification of protected buildings and exempted buildings on the basis of the rent is a reasonable one, consistent with the object of the Act, and is not discriminatory.

37. A word is now called for with regard to the facts in CS. No. 163 of 1962, and the points that have been urged before us concerning the interpretation of Section 3 of Act XI of 1964. We need not dwell much upon the facts of C.S. No. 163 of 1962, for the simple reason that, within the scope of this reference we are not dealing with the evidence of a particular action at all. But it may be noted that the suit was one filed by the landlord (plaintiff) against the tenant (defendant), after the termination

of the tenancy, for delivery of possession, mesne profits subsequent to the date of termination till the date of plaint, with future mesne profits, etc. There is also a compromise decree, which may complicate matters on the application of Section 3 to this case. Section 5 provides as follows:

> Every proceeding in respect of any non-residential building or part thereof pending before any Court or other authority or officer on the date of the publication of this Act in the Fort St. George Gazette and instituted on the ground that such building or part was exempt from the provisions of the principal Act by virtue of Clause (iii) of Section 30 of the principal Act, shall cease and determine and shall not be enforceable:
>
> Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which the decree or order passed has been executed or satisfied in full before the date mentioned in this section.

38. It has to be immediately conceded that the wording of this section can by no means be described as happy or free from any cloud of ambiguity. It is not very clear how a proceeding could have been instituted " on the ground that such building or part was exempt from the provisions of the principal Act by virtue of Clause (iii) of Section 30," or what is the precise scope of the rights and privileges which may accrue to the landlord, and which are to cease and determine. However, the-section does not require to be struck down, either on the ground that it infringes. Article 14, or upon any other patent ground of ultra vires. Its applicability to the stated facts of CS. No. 163 of 1962, such as the effect of this section on the compromise decree in that proceeding, is a matter quite outside the scope of the present reference.

39. We may now proceed to the other ground of constitutional validity urged before us, which is the effect of Article 19 either upon Amending Act XI of 1964, or upon the 1960 Act itself. In this context, we may assume, for an analysis of the argument, that the interest possessed by a tenant in a lease is certainly ' property ' for the purpose of Article 19, equally with the interest of the landlords; vide Bombay Corporation v. Panchan (1966) 1S.C.J.49. The learned Advocate-General has advanced two main contentions on this aspect; after noting them, we shall proceed to consider the argument that the 1960 Act infringes the rights guaranteed under Article 19(1)(f) and goes beyond the scope of reasonable restrictions on such rights enunciated in Sub-clause (5); it will be clear that this is the only matter that is open for the consideration of Court.

40. The first point stressed by the learned Advocate-General is that a company is; not a citizen, as has been held in State Trading Corporation of India v. Commercial Tax Officer A.I.R. 1963 S.C. 1811 and, in consequence, that Messrs. Raval & Company cannot invoke the protection of Article 19 at all. This apart, the learned Advocate-General makes the next point that, in the context of Article 358 of the Constitution, Article 19 will not restrict the power of the State to make a law which may infringe those rights, during the emergency, since the bar of Article 13(2) will not be operative. But it is not disputed that Act XI of 1964 was enacted during the emergency, and that: Article 358 would therefore apply. The Supreme Court held in Mackhan Singh v. State of Punjab that " the suspension of Article 19 during the pendency of the proclamation of emergency removes the fetters created on the legislative and executive powers by Article 19." In Jan Mohammad Moor Mohammad Bagban v.

The State of Gujarat and Anr. their Lordships of the Supreme Court again observed:

> ...The President of India having declared in the month of December, 1962 a state of emergency in exercise of the powers reserved under the Constitution, the right to enforce the fundamental rights guaranteed under Article 19 of the Constitution remains suspended by virtue of Article 358 for the duration of the period of the emergency.
>
> Sri Tiruvenkatachari contends, and we think rightly, that this will not prevent him from seeking to show that the Madras Buildings (Lease and Rent Control) Act XVIII of 1960 itself infringed Article 19 in certain respects, inclusive of the enacted right of a landlord or tenant to obtain a fixation of fair rent, notwithstanding a rent determined by a contractual tenancy, and hence that it must be struck down with reference to those provisions. This matter came up before a Full Bench of the Assam High Court in Shyatn Behari v. Union of India A.I.R. 1963 Assam 94 (F.B.) The learned Judges held that the infraction of Article 358 on Article 19 was only in respect of a law enacted during the emergency, and the validity of an earlier law could certainly be challenged on the ground of violating Article 19 of the Constitution. With respect, we agree with this view, and must hold that it is open to Sri Tiruvenkatachari to show that certain provisions of the 1960 Act were violative of Article 19. If that be so, the validity of Act XI of 1964 may not really arise, since, both in respect of eviction during a contractual tenancy, and the fixation of a fair rent, differing from the contractual rent, during its subsistence, the relevant provisions of the 1960 Act would have to be struck down, should the argument prevail. The very basis for Act XI of 1964 will therefore disappear.

41. Upon this aspect, it is strenuously contended that it is not a reasonable restriction upon the right to property, to interfere, by means of a special enactment with the rent agreed upon between the parties during the subsistence of the tenancy-contract. There is absolutely no justification for thus infringing the sanctity of a contract, and of property right, particularly as these Rent Control Acts, are, invariably, ad hoc and limited in time. An even more vehement argument is that, on the same basis, there ought not to be an eviction of a tenant, during the contract of tenancy, even though he may be guilty of wilful default' in the payment of rents, without first determining the contractual tenancy; where the contractual tenancy does not provide, by its terms, for eviction or forfeiture of the lease for nonpayment of rent, this ought not to be introduced by a special enactment. But, upon deeper scrutiny, it will be seen that this line of reasoning misses the significance of the Rent Control enactments altogether, in the context of rapid industrialisation, and accelerating urban rents for buildings. Taking up the second limb of the argument first, it can easily be shown that this misses the true feature of the protection afforded to tenants, by the Rent Control Act. That is a protection which, as their Lordships of the Supreme Court have pointed out, is extended to occupiers of buildings, even after the determination of the tenancy, who thus become 'statutory tenants '; that is a powerful restriction on the right of a landlord to obtain possession of the leased premises, on determining the lease, under the ordinary law of property.

42. Having thus restricted such a right, by providing that neither during the subsistence of a contract of tenancy, nor thereafter, can the tenant be evicted so long as he fulfils certain terms, the Legislature has, in equity, imposed corresponding obligations on the tenants, whether contractual or statutory. If they infringe those terms of protection, the landlord is given the right to obtain possession of the premises by the special machinery under the Act. The same argument is applicable to what are termed ' fair rents' under the Act. Whether the contractual tenancy includes a stipulation for rent at a higher figure, or otherwise, both the landlord and tenant are entitled, notwithstanding the contract, to obtain this fixation; that is, a just and reasonable rent, and hence the provision is neither for landlords nor for tenants, but for both. Such a restriction is eminently fair and equitable, during a period when economic forces might compel persons to contract for rentals which are unjust.

43. The following cases may be noticed upon this aspect. The right of the Legislature to impose reasonable restrictions upon this right to property has been noticed in Bombay Corporation v. Pancham (1966) 1 S.C.J. 49. In Ram Krishna v. Radhamal a Bench of the Allahabad High Court was concerned with the U.P. Rent Control Act III of 1947, and the Bench held that the restrictions enacted were reasonable and did not infringe Article 19(1)(f). In Venkatachellum v. Kabalamuthy (1955) 1 M.L.J. 368 Ramaswami,J., pointed out that these provisions or restrictions were essential in public interest during a period of scarce accommodation, and did not violate Article 19(1)(f). The learned Judge has referred to several decisions of other Courts, similarly upholding enactments in other States. In Krishnan Singh v. Rajasthan State (1956) S.C.J. 14 Venkatarama Ayyar, J., pointed out, with regard to Article 19(1)(f), in the context of the Marwar Land Revenue Act, that:

> a fundamental right which a citizen has to hold and enjoy property imports only a right to recover reasonable rent...and therefore a legislation whose object is to fix fair and equitable rent cannot be said to invade that right.
>
> In Subramania v. Dharmalinga (1959) 1 M.L.J. 1 (F.B.) this Court held, with reference to Section 3(1) the Madras Cultivating Tenants Protection Act, 1955 and Section 9(2) of the Madras Cultivating Tenants (Payment of Fair Rent) Act, that they represented a valid exercise of the legislative power of the State, and that the restrictions imposed by these Acts on the fundamental rights guaranteed to the land owner by Article 19(1)(f) were reasonable. Indeed, we think it would be almost impossible to sustain any doctrine of the inviolability of contractual rights, in the context of the welfare legislation, which has become so marked a characteristic of modern times. It is difficult to see how, if a Legislature could enact that an exorbitant rate of interest could be struck down by a Court and the debtor relieved against this, notwithstanding the terms of a contract, it cannot validly enact that both a landlord and tenant may apply for the determination of fair rent for premises, though the contract may be subsisting. The same remarks would be applicable to many other restrictions upon property, imposed in numerous fields of human activity, which have been held to be reasonable.

44. In our view, therefore, the Reference must be answered in the terms that we have indicated earlier. The Madras Rent Control Acts, viewed, from any perspective, such as that of legislative competence legislative intendment or the plain significance of the structure of the enactments, admits only of one interpretation; they interfere both with contractual and statutory tenancies, by affording a special protection to tenants against eviction, and also balancing this by certain corresponding obligations imposed on tenants. For this reason, the determination of a contractual tenancy by notice under the Transfer of Property Act is not essential for the Landlord to obtain eviction on the grounds specified in Section 10, as those are the very terms of the protection afforded to tenants, even after the determination of tenancies. The Act is a complete Code for Tribunals exercising this jurisdiction for the execution of the orders of such Tribunals, and for appeal and revision. The absence of a non abstante clause does not affect the interpretation of the Act' with regard to the inroads it makes upon the previous property law of landlords and tenants of buildings. Equally, it enables both landlords and tenants to seek the benefit of the fixation of fair rent, under its provisions, and by the special machinery provided, whether a contractual tenancy with different terms prevails, or it has been determined. The Acts are within the competence of the Legislature and validly passed, including Act XI of 1964. None of them is liable to be struck down, either on the ground of hostile discrimination under Article 14, or on the ground that there has been an unreasonable restriction of fundamental rights guaranteed under Article 19(1)(f) of the Constitution.

45. W.P. No. 1124 of 1963, C.R.P. No. 1816 of 1963 and Application No. 2443 of 1964 in C.S. No. 163 of 1962 will now have to be remitted to the respective Courts where they were pending, for disposal on the merits.