CALCUTTA HIGH COURT

Iswari Prosad

Vs.

N.R. Sen

Civil Rules Nos. 1369 and 1370 of 1950

(Harries, C.J. G.N. Das and Banerjee, JJ.)

30.07.1951

JUDGMENT

Harries, C.J.

1. These are two connected civil revision cases arising out of orders made by learned Judges of the Small Causes Court vacating orders for ejectment which had been made under Section 12(3) of the West Bengal Premises Rent Control Provisions (Temporary Provisions) Act of 1948. In each of the cases the orders were vacated under the provisions of Section 18(1) of the West Bengal Premises Rent Control Act of 1950, as amended by the West Bengal Premises Rent Control (Temporary Provisions) (Amendment) Act of 1950.

2. The facts giving rise to Civil Revision No. 1369 of 1950, can be shortly stated as follows:

> The petitioner was the owner of premises known as No. 12 Pollock Street, Calcutta, whereas the opposite party was a monthly tenant of one room on the first floor of the said premises paying a monthly rental of Rs. 24-12-0. The tenant failed to pay the rent payable by him for the three consecutive months of March, April and May, 1949, whereupon the petitioner brought proceedings in the Court of Small Causes Calcutta, to eject the opposite party. By reason of Section 12(3) of the West Bengal Rent Control Act of 1948, the tenant's interest was ipso facto determined upon his failure to pay the rent for the three consecutive months already mentioned and an order was made evicting the opposite party. This order had not been executed when the West Bengal Rent Control Act of 1950, was passed and an application was made by the tenant under Section 18(1) of the 1950 Act, for vacating the order for possession. The arrears of rent were deposited in Court and an order was made vacating the previous order for possession and it is this order which is the subject of this revision.

3. The petitioner in Civil Revision No. 1370 of 1950, is the owner of premises known as 44/1 Sir Hariram Goenka Street, Calcutta, whereas the opposite party was the tenant of one room in the

said premises at a monthly rental of Rs. 23-6-0. The tenant failed to pay the rent of these premises for three consecutive months after the West Bengal Rent Control Act of 1948, came into force and thereupon his interest in the said tenancy was ipso facto determined. Proceedings were brought by the petitioner in the Court of Small Causes for possession of this room and an order for possession was made in due course. It is to be observed that when the case was called on for hearing an application was made on behalf of the tenant for an adjournment on the ground that he was unable to attend. This application was rejected whereupon Counsel for the tenant confessed judgment and the order for possession was made on such confession with costs.

4. Later after the passing of the West Bengal Rent Control Act of 1950, an application was made to the Court by the tenant under Section 18(1) of that Act for vacating the order. The arrears of rent were deposited in Court and the order was vacated. It is this order which has given rise to this Civil Revision Case.

5. In both these cases it has been urged that the orders made by the Court under Section 18 (1) of the 1950 Act, are void and had no effect because the Rent Control Act of 1950 and in particular Section 18(1) of the Act as amended by the amending Act of 1950, are ultra vires the Constitution of India, and that being so, no order could validly be made under the provisions of that sub-section.

6. In the first place it was argued that all these Rent Control Acts were ultra vires in that they imposed restrictions, which were wholly unreasonable, upon the owner's right to deal with his own property. It was argued that by reason of Article 19(1) (f) of the Constitution of India, the petitioner as a citizen of the Republic had a right to hold property and that this right could not be interfered with by legislation except as provided by Clause (5) of that Article. By Clause (5), only restrictions which are reasonable in the interests of the general public can be imposed by legislation on the right to hold property. But it was urged that these Rent Acts imposed restrictions which are wholly unreasonable and could not also be said to be restrictions in the interests of the general public.

7. Whether a restriction on a fundamental right by a piece of legislation is reasonable or not must depend upon the circumstances existing when that piece of legislation was enacted. Drastic remedies may be necessary to meet conditions giving rise to serious and urgent problems and a piece of legislation which may well impose unreasonable restrictions in one set of circumstances may be eminently reasonable in a different set of circumstances. The Rent Acts in this State were enacted to meet the grave housing shortage caused by the last Great War and the congestion particularly in the cities and towns of West Bengal caused by the War and the partition of the province in the year 1947. There can be no doubt that the war and the partition created very serious problems in this State. During the war building was to a very large extent at a standstill and after partition lakhs of people flocked into this State, particularly into Calcutta and the large towns of the State. That the Government of West Bengal was faced with a serious problem is, I think clear and it was to meet that problem that these Acts were from time to time enacted.

8. Rent Control Acts were found to be necessary in England after the first World War. Building practically ceased during that war and after the termination thereof there was a grave housing shortage. Further, as there was a shortage of accommodation there was a tendency for rents to rise and to become exorbitant and to meet these conditions the English Parliament was

compelled during the war to pass a series of Acts controlling rent and the right to possession of premises. The second World War created very similar conditions in England and Rent Acts were again re-enacted. After the first World War the Rent Control Acts were continued for a number of years and the present Rent Control Act in England is still in operation. I do not think for a moment that it could be said that such legislation was unnecessary in England. Had such Acts not been passed tenants would have been absolutely at the mercy of rapacious landlords.

9. The causes which led to the housing shortage in England caused a similar shortage in this country and the position in India and particularly in West Bengal was greatly aggravated when partition of Bengal took place. Refugees poured into West Bengal and the housing shortage became worse than ever. It appears to me that the State of West Bengal was bound to deal with this very serious state of affairs and that legislation which drastically curtailed the rights of landlords was not only reasonable but absolutely necessary. It is common knowledge that rents increased enormously, particularly in the city of Calcutta and in the larger towns of this State and unless legislation was passed controlling the rent which could be demanded from tenants, thousands of tenants would have been ejected and persons would have had to pay far more than they could afford, to maintain a roof over their heads.

10. It was urged that owing to the increase in the cost of building materials and the cost of maintenance, the rents permitted by these Rent Control Acts are wholly unreasonable, and therefore, the Court would be bound to hold that the Rent Control Act of 1950, as amended, is in its entirety ultra vires the Constitution.

11. There can be no doubt that the cost of building materials has greatly increased and that the Rent Control Act of 1950, has very drastically curtailed the rights of the landlord to demand what rent he pleases from a tenant. It may be that the margin of profit allowed to the landlord by the Rent Act of 1950, is small, but that would not of necessity make the Act ultra vires as being an unreasonable restriction on the landlord's rights. What has to be considered is whether these restrictions on the landlord's rights are justified having regard to the circumstances which would inevitably arise if landlords were free to charge what rent they wished. It appears to me that in the interests of law and order and good Government, restrictions on the landlord's rights were absolutely necessary, for otherwise thousands of tenants would have been ejected and persons would have been compelled to pay far more than they could afford for most inferior accommodation. In considering whether the restrictions imposed on the landlords are reasonable regard must be had to the position of the tenants. Would it be in the interest of good Government and in the public interest generally for thousands of people to be rendered homeless and for thousands of others to be compelled to pay exorbitant rents and to be literally at the mercy of their landlords? It appears to me that in the circumstances existing in this country and particularly in this State, the control of rents during the war and particularly after partition, was essential and had any Government failed to take action in this matter serious consequences might well have arisen which might have shaken the very foundations of this State and indeed of the whole of India. In my view it cannot possibly be said that in the circumstances existing when these Acts were passed, the restrictions imposed by the Acts generally were unreasonable and more than were necessary in the interests of the general public.

12. It was then contended that even if the whole of the 1950 Act, as amended by the later Act of that year is not ultra vires, the provisions of Section 18 and in particular sub-section (1) of that section as amended by the Amending Act of 1950, are clearly ultra vires as they impose

restrictions which are wholly unreasonable and which were quite unnecessary in the interests of the general public. To appreciate this argument it will be necessary to deal shortly with the reasons why Section 18 of the 1950 Act, was enacted.

13. In the Rent Control Act of 1948, the tenant, by Section 11 of that Act was given a very great measure of protection. No decree or order for recovery of possession of any premises could be made provided the tenant paid to the full extent the rent allowable by that Act and performed the other conditions of his tenancy. Then followed a proviso which dealt with cases in which no protection would be granted to the tenant.

14. Section 12 of the 1948 Act, provided that no tenant would be entitled to the benefit of Section 11 of the Act, if he failed to pay the arrears of rent due from him as provided by the Act.

15. Sub-section (1) of that section provided that the rent payable in respect of premises had to be paid on the date fixed by the contract or in the absence of such a fixed date, by the fifteenth day of the month next following that for which the rent was payable. It was then provided that if any rent had accrued due before the commencement of the Act the tenant was given an opportunity within a month after the passing of the Act, to pay all the arrears of rent together with interest thereon at the rate of six and a quarter per cent per annum and costs, and if he did so he was entitled to the protection given by Section 11.

16. Sub-section (2) gave the tenant an opportunity, if proceedings were instituted against him in respect of rent which had accrued due after the passing of the Act to pay the arrears within one month and thus avoid eviction.

17. Sub-section (3) of Section 12 provided that if a tenant failed for three consecutive months to pay rent which has accrued due after the passing of that Act, the interest of such tenant in the premises was ipso facto determined and he was no longer to be deemed a tenant of the premises.

18. It will be seen therefore that Section 12 of the 1948 Act, dealt with three classes of arrears of rent; (a) arrears which had fallen due before the Act was passed; (b) arrears which had fallen due after the Act was passed, but did not include arrears of three consecutive months; and (c) arrears which had accrued due for three consecutive months after the passing of the Act. Section 12 of the 1948 Act, gave the tenant an opportunity of paying the arrears of classes (a) and (b), but the arrears of class (c) could not be paid to save the tenant's interest. If rent for three consecutive months was not paid the tenancy was ipso facto determined and the tenant became a trespasser without any protection whatsoever.

19. It appears to have been felt that the tenant should be given further protection and that decrees or orders for recovery of possession which had already been made which had not been executed should be vacated if the tenant paid the landlord the arrears which had accrued due together with interest and costs. To attain this object Section 18 of the West Bengal Premises Rent Control (Temporary Provisions) Act of 1950 was enacted and Sub-section (1) of that section is in these terms :

> "Where any decree for recovery of possession of any premises has been made on the ground of default in payment of arrears of rent under the provisions of the West Bengal

Rent Control (Temporary Provisions) Act, 1948, but the possession of such premises has not been recovered from the tenant, the tenant may apply to the trial Court within sixty days of the coming into force of this Act for vacating the decree for ejectment against him and within such period no order for delivery of possession shall be made by any Court, nor if an application is made by the tenant under this sub-section till the application has been dismissed under sub-section (4)." Sub-sections (2) and (3) of Section 18 deal with what the tenant has to do to obtain relief.

20. This Court in two cases- *'Nandorani dassi v. Satya Narain[1]',* and *'S.B. Trading Co. Ltd v. Satyendra Ch. Sen[2]',* had to consider this sub-section. This Court eventually held that Section 18(1) of the 1950 Act, did not give relief to tenants who had defaulted in the payment of rent for three successive months after the 1948 Act came into force. Relief it was held could only be given to those classes of tenants who were in arrears with their rent and whose cases were dealt with by sub-sections (1) and (2) of Section 12 of the 1948 Act. The result of these decisions was that a very large number of tenants against whom decrees or orders had been obtained for possession on the ground that their tenancies had been ipso facto determined by their failure to pay rent for three consecutive months, were wholly without protection.

21. There can be no doubt that these two decisions of this Court created considerable consternation amongst tenants generally and appear to have seriously perturbed the Government of the State. Eventually an Act was passed amending the provisions of Section 18 of the Rent Control Act of 1950 and by that Act it was made clear that tenants' whose tenancies had ipso facto determined by reason of the provisions of Section 12(3) of the 1948 Act, came within the purview of Section 18(1) of the Rent Control Act of 1950. Further by reason of Section 5 of the Amending Act of 1950, the Act was made retrospective and made to apply to all pending cases.

22. It is to be observed that this Amending Act appears to have been drafted very hurriedly and the effect of it has been to give tenants who had defaulted for three consecutive months in the payment of rent the relief intended by Section 18(1) of the 1950 Act, but to deprive all other tenants against whom orders of possession had been made for failure to comply with the provisions of Section 12(1) and (2) of the 1948 Act of all relief. What this Court had held in the cases to which I have referred was that the two latter classes only were entitled to relief and that the third class, namely, tenants who had defaulted in the payment of rent for three consecutive months, were not entitled to relief. The effect of the Amending Act of 1950, therefore was to deprive the persons, whom this Court had held were entitled to relief, of all relief and to give to the persons, whom this Court had held not to be entitled to relief the relief given by that sub-section. Whether this was intentional or not it is impossible to say. But it would appear as if there had been a

[1]54 Cal WN 735

[2]54 Cal WN 756

serious error of draftsmanship. What appears to have been intended was to include persons whose tenancies had ipso facto determined with the other classes of tenants and to grant all of them relief; whereas what in fact the legislature did was to give a class of tenants which previously had no relief the relief granted by Section 18(1) of the 1950 Act and to deprive the other tenants of the relief which that sub-section had previously given them.

23. Further, as I have said, the provisions of the Amending Act of 1950 were made retrospective and applicable to all pending cases. By Section 5 of the Amending Act the Act is made expressly applicable to pending cases and it shall be deemed always to have applied to such cases.

24. It was strongly urged on behalf of the petitioner that Section 18(1) of the Rent Control Act of 1950 as amended by the Amending Act of 1950, was clearly ultra vires. Even if these provisions could not be regarded as ultra vires in themselves they must be so regarded having regard to the fact that the amendment made by the Amending Act of 1950, was made retrospective and applicable to pending cases. There was it is said no justification whatsoever for following such a course.

25. There can be no doubt that Courts in England and in India have always declined to give a statute retrospective effect unless they were bound to do so by express words in the statute itself or by necessary implication or intendment. The Courts have always regarded giving a statute retrospective effect as unreasonable, because giving a statute such effect means interfering with accrued rights. That being so it is said that this Court must hold that Section 18(1) of the Rent Control Act of 1950 as amended by the later 1950 Amending Act is ultra vires. The onus of establishing that a piece of legislation is ultra vires clearly rests on the party alleging the same. This has now been definitely decided by the Supreme Court and the point need not be discussed further. It is contended however that as the provisions of Section 18(1) of the Rent Control Act of 1950 as amended are now retrospective, prima facie those provisions are unreasonable and the onus of showing that they are reasonable restrictions in the interest of the general public is thrown upon the tenant.

26. Great reliance was placed by the petitioners upon a recent Bench decision of this Court in *'Subodh Gopal v. Behari Lal'*[3], in which it was held that Section 7 of the Bengal Land Revenue Sales (West Bengal Amendment) Act, 1950 was ultra vires the Constitution in that it imposed a restriction on the right to hold property greater than was necessary in the interests of the general public. The Bench gave great weight to the fact that certain amendments to the Bengal Land Revenue Sales Act, 1859, had been made retrospective and were for that reason unreasonable.

27. It appears to me that the present cases differ greatly from the case of 'SUBODH GOPAL BOSE', 55 Cal WN 433, above referred to. The Bengal Revenue Sales Act, 1859, had been in force for nearly a hundred years and though some of its provisions in the circumstances now existing were no longer necessary to ensure the payment of land revenue no special circumstances were suggested which made amendment of that Act urgent and imperative. Before the amendments contained in the Amending Act,

[3]55 Cal WN 433

purchasers at auction-sales conducted under the Act bought what was practically an estate in possession as they were given the right to annul all interests or encumbrances existing in or on the land with a few exceptions. The effect of the amendments contained in the Amending Act of 1950, was to make the purchase at an auction-sale subject to a variety of interests which could previously be annulled by the purchaser. In short as a result of the amendments purchasers at land revenue auction-sales purchased what were in effect estates in revision whereas previously they obtained by such purchases estates which were to a considerable extent estates in possession. There may have been very good reasons for introducing these amendments, but it was not suggested in the case of 'SUBODH GOPAL BOSE', that there were any pressing or

urgent reasons for making an immediate amendment necessary. The old provisions were no longer necessary to secure the revenue. Land values had increased enormously and sufficient could be obtained to cover the arrears of land revenue without guaranteeing to the purchaser what was virtually an estate in possession. Further, it was not suggested in that case that an unduly large number of holders of undertenures or encumbrances would be harshly affected if the law was not changed immediately and the change made applicable to pending proceedings for ejectment of holders of interests previously unprotected as against purchasers at land revenue auction-sales. In fact the Advocate General in that case could suggest no cogent reason why the amendments were made retrospective.

28. Further though the amendments were made retrospective and applicable to pending cases the purchaser who had bid at the auction for virtually an estate in possession was given no rebate or reduction in the amount paid by him. The purchase price was retained but the purchaser's interests were seriously curtailed and affected. Though he had paid for virtually an estate in possession he received as a result of the retrospective amendments an estate in reversion. This piece of legislation appeared to the Court to be wholly unreasonable and imposed restrictions on the rights of the auction-purchaser wholly unnecessary in the interests of the public. The case therefore differs greatly in very material particulars from the cases now before us.

29. I do not think it is necessary to consider upon whom the onus rests in this case, because the circumstances existing in the State of West Bengal at the time the Amending Act of 1950 was passed were such as to make it quite reasonable to give the provisions of Section 18(1) of the 1950 Act as amended retrospective effect.

30. There can be no doubt that a large number of tenants in this State and particularly in the city of Calcutta had been sued under the provisions of Section 12(3) of the Rent Control Act of 1948 and a large number of decrees and orders had been made for possession on the ground that the tenants' interest had been ipso facto determined. There can be no doubt that the intention of the Legislature was when it enacted the Rent Control Act of 1950, to grant relief to all classes of tenants against whom orders for possession had been made on the ground of failure to pay rent. The result of the two decisions of this Court to which I have made reference was that that class of persons whose tenancies had been ipso facto determined, were found to be without any protection whatsoever. I think it is common knowledge that these two decisions of this Court affected a very large number of persons and the result would have been that these persons would have been ejected as the decisions deprived them of the relief which it appears they were intended to have under Section 18(1) of the 1950 Act. It was to meet these circumstances that the Amending Act of 1950 was passed and made expressly applicable to pending proceedings. It was an attempt to save the tenants who had been deprived of relief by the construction given to Section 18(1) of the 1950 Act originally drafted. But for this Amending Act of 1950, a large number of tenants would have been evicted and probably deprived of any habitation whatsoever.

31. Can it be said that in circumstances such as existed the making of the provisions of the amended Section 18(1) retrospective and applicable to pending cases was necessarily unreasonable and more than was necessary in the interest of the public? Had this Amending Act not been passed there might well have been serious consequences. A large number of persons would have been ejected and having regard to the housing shortage they would probably have nothing better than the pavements to look forward to. Had a large number of people been ejected

from their houses, flats and rooms in these circumstances grave discontent might have been caused with consequences serious to the maintenance of law and order in the State. It appears to me that having regard to all the circumstances a Court cannot say that making the provisions of this Amending Act retrospective was unreasonable in the interest of the general public. This amendment protected a large number of persons and depriving them of such protection might have been followed with dire and serious consequences.

32. In any event it was contended that Section 18(1) of the 1950 Act as amended cannot possibly be said to impose reasonable restrictions in the interest of the general public. The restrictions might have been reasonable it is said in the interests of the public of the city of Calcutta or the public of some other larger towns of West Bengal, but the restrictions could not possibly be said to be reasonable in the interest of the general public, as the general public of India could not possibly be interested in the situation existing in the State of West Bengal, and particularly in the city of Calcutta and the larger towns of that State.

33. I do not think it can possibly be said that the words "in the interests of the general public" mean "in the interests of the public of the whole of the Republic of India." Legislation may be essential to redress some urgent grievance, for example, in a particular State, though such legislation would be wholly unnecessary in any other State. The fact that such legislation would not affect citizens in other States would not in my opinion make it impossible to say that such legislation was not in the interests of the general public. The phrase "in the interests of the general public" means I think nothing more than "in the public interest", and it may well be that legislation affecting a limited class of persons or a limited area might well be legislation in the public interests, though the public of other parts of India might not be directly affected by such legislation. The matter may be in the interest of the general public, though the public generally may not be directly affected by such legislation. If they are indirectly affected such would be quite sufficient to make such legislation in the public interest. Legislation affecting a particular class or a particular area would only directly affect the members of that class or the inhabitants of that particular area. But the removal of some serious abuse or grievance or discontent is a matter indirectly affecting the public generally. It is not in the interests of the general public or in the public interest to allow any class of persons to labor under some grievance and to be genuinely discontented. It is in the interests of the general public or in the public interest that all classes of the citizens of India are content and that their grievances should be removed. A festering sore on the human body may eventually affect the whole body though at first its effect is localized. Grievances or discontent in some particular area or in the some State or in some class of persons may eventually affect the whole republic of India, though originally the effects might be limited. The removal of any grievance, abuse or discontent is a matter not only of local interest but of general interest and where the discontent or grievance is genuine it may well be in the public interest to remove such, though the public in other parts of India may not be directly affected. It is in the public interest that persons should be governed justly and well and removal of hardship and grievances of a particular class is I think clearly a matter of public interest. If these tenants who were being faced with eviction because they had failed to pay the rent for three consecutive months had been ejected, such might have led to grave discontent and eventually disorder. It might well have been in the public interest to deal with that state of affairs and such could only be done by granting that class of persons the relief contemplated by Section 18(1) of the 1950 Act and such could only be done effectively by making the provisions of that sub-section applicable to the class and making the provisions retrospective in the sense that they would apply

to all pending cases. In my judgment it cannot be said that because these provisions only apply to a comparatively small class of persons that the provisions were not provisions in the public interest or in the interest of the general public. In the circumstances existing in this State at the time of Amending Act of 1950 was passed the restrictions imposed on the landlords' rights to eject these tenants cannot be said to have been unreasonable in themselves or unreasonable in the interest of the general public.

34. Mr. Atul Gupta who appeared on behalf of the respondents contended that it was quite impossible for this Court to do anything more than to take a general view of the circumstances existing when the impugned legislation was passed and that this Court could not meticulously weigh all the circumstances which might be said to make this piece of legislation reasonable or unreasonable in the interests of the general public. He contended that unless the legislation was clearly unreasonable on the face of it this Court would be bound to hold that the legislation was reasonable, because the legislature must be deemed to have so held when they passed the legislation. Whether a piece of legislation imposes reasonable or unreasonable restrictions on a fundamental right in the interest of the general public might be a matter of very great difficulty and it appears to me that the Courts must take a broad view of the circumstances existing when such legislation was passed. Legislation which appears to have been arbitrary and based on no reason would clearly be ultra vires the Constitution. Such was the case of *'Chintaman Rao v. State of Madhya Pradesh*[4]*',* at p. 763, Mahajan, J., who delivered the judgment of the Board observed :

> "The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliveration, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19 it must be held to be wanting in that

[4]1950 SCR 759

> quality."

35. Where circumstances exist however which might have compelled a legislature to enact the legislation it would be difficult, if not impossible, for a Court to hold that such legislation was unnecessary and unreasonable and imposed on the fundamental right to hold property a restriction unreasonable in the interest of the general public. It must be remembered that under the Constitution of India the members of the legislatures are representatives of the people, duly elected by them. It must not be too readily presumed that such persons have any desire to impose restrictions which are more than reasonable in the public interest. However, if it is found that such unreasonable restrictions on a fundamental right have been imposed, then the Court must not hesitate to declare that such are ultra vires. In this case however I am unable to say that the legislature of West Bengal did anything more than what was necessary to meet the acute distress which would have occurred if the impugned legislation had not been passed. Though this Amending Act of 1950 imposes severe restrictions on the landlords' rights, it cannot be said that

such imposition was unnecessary in the public interest. If the restrictions had not been imposed then the State might have been faced with serious difficulties.

36. It was faintly contended that the restrictions imposed by Section 18(1) as amended, upon the rights of property owners and landlords could not be said to be restrictions imposed on their right to hold property. It was said that a citizen's right to hold property was not restricted by legislation unless such legislation prevented him from holding the property at all or deprived him of the property. Article 19(1)(f) of the Constitution gives a citizen a right to acquire, hold and dispose of property and it appears to me that the right to hold property includes the right to enjoy the same. A restriction on the right to hold property may be something less than a deprivation of such property. Deprivation of property is dealt with in Article 31 of the Constitution and Clause (1) of that Article provides that no person shall be deprived of his property save by authority of law. Where a person's enjoyment of property is restricted it appears to me that his right to hold the property is restricted. If a person cannot do with his property as he wishes his rights of enjoying that property have been restricted. His rights of enjoyment are part of his rights to hold the property, because property is held by a citizen to enjoy the same or to enjoy the profits and advantages of the same. Interference with the right of enjoyment is I think clearly an interference with the right to hold property and therefore had I been of the view that the impugned legislation amounted to an unreasonable interference with the landlord's right to enjoy his property, I should have been bound to hold the sub-section to be ultra vires the Constitution.

37. It was next contended that Section 18(1) of the Rent Control Act of 1950 as amended did not apply to orders for possession made in the Presidency Small Cause Court under the provisions of Section 41 of the Presidency Small Cause Courts Act. Section 18(1) of the 1950 Act opens with these words :

> "Where any decree for recovery of possession of any premises has been made on the ground of default in payment of arrears of rent under the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act 1948 * *"

38. It will be seen therefore that in terms the sub-section only applies to decrees for recovery of possession of any premises and it is clear that a small cause Court does not, on an application under Section 41 of the Presidency Small Cause Courts Act, make a decree for recovery of possession; it makes an order for the same. Therefore it is said that no relief could be granted to the tenants in these two cases because the orders were made by the Small Cause Court and the orders did not amount to decrees.

39. If effect was given to this contention it would lead to somewhat startling results. A landlord in the city of Calcutta has frequently two courses open to him if he wishes to eject a tenant. He may adopt the quicker and cheaper course of bringing proceedings under Section 41 of the Presidency Small Cause Courts Act in the Presidency Small Cause Court, or he may file a suit on the Original Side for a decree for ejectment. If the argument of the petitioner be acceded to the result would be that the tenant against whom a decree for possession was made in the High Court would be entitled to relief under Section 18(1) of the Rent Control Act of 1950, whereas the unfortunate tenant who had been sued in the Small Cause Court would be entitled to no relief whatsoever.

40. It must be remembered that the Small Cause Court is resorted to by the smaller landlords and the tenants sued are often of the poorer classes, whereas the High Court is resorted to by the wealthier classes and suits are brought against tenants of more substantial premises. It would be indeed an odd result if relief could only be granted to the wealthier class of tenants and denied to the humbler and poorer class of tenants.

41. Protection is given to the tenants by Section 12 of the West Bengal Premises Rent Control Act of 1950 which provides by sub-section (1) that :

> "Notwithstanding anything to the contrary in any other Act or law, no order or decree for the recovery of possession of any premises shall be made by any Court in favor of the landlord against a tenant, including a tenant whose lease has expired : * * "

42. It is clear that the protection given by this sub-section is a protection against not only decrees for the recovery of possession but also against any orders for recovery of the same. The protection is given to the tenant sued not only in the High Court or in the Court of a Subordinate Judge or Munsif, but also to a tenant sued in the Small Cause Court. That being so, there appears to be no reason whatsoever why the relief given by Section 18(1) of this Act as amended, should be confined to tenants against whom a decree in the true sense of the word had been obtained, that is, should be confined to tenants against whom the High Court or a district Court or a Court of the Subordinate Judge or Munsif had pronounced, and not to a tenant upon whose case a Small Cause Court had pronounced.

43. Further, it appears clear from the marginal note of this section that the intention was to give relief to all tenants whether they had been sued in a Small Cause Court or in any other Court. The marginal note is in these terms :

> "Power of Court to rescind or vary decrees and o
> rders or to give relief in pending suits in certain cases."

44. It was contended that the marginal note forms no part of the statute itself and that undoubtedly was the view of the Courts in England for some considerable time and that view was accepted in India. It is noticeable however that the Courts in England have somewhat changed their view because the marginal notes now appear in the draft bills which they did not do in earlier years. In the case of *'Allchin v. Coulthard*[5]*',* it appears to have been strenuously argued by counsel for the Crown that the Court would have to give effect to the marginal note when construing a certain section. Lord Greene, M.R., in his judgment did not reject the contention that the marginal note could not be considered. All he said was at p. 43, namely :

> "Section 114 has as its marginal note the words 'application of revenue of undertakings' and the same phrase appears in the preamble to the Act. I cannot attach to this phrase the importance which counsel for the Crown suggest that it bears. It is, in fact, a misdescription of the contents of the section. The section gives no directions as to the application of revenue as such."

45. This observation of Lord Greene, M.R. reflects the present tendency of the Courts in England to pay due regard to a marginal note of a section in a proper case. It seems to me that the marginal note to Section 18 (1) of the Rent Control Act of 1950 makes it abundantly clear that there was a slip in drafting this sub-section and that the words "or order" were omitted accidentally. The marginal note shows that the sub-section was drafted to empower the Court to rescind or vary decrees and orders and to give relief in pending suits in certain cases.

46. Though strictly an order of a small cause Court is not a decree it is by the rules of practice of the Court of small causes generally treated as a decree and I think when the phrase "decree for recovery of possession of any premises" is used in Section 18 (1) the word "decree" was clearly intended to cover orders of the small cause Court which were not strictly and technically decrees. This view was taken by a Bench of this Court in *'Atulya Dhan v. Sudhangsu Bhusan'*[6], in which it was held that the expression "decree for recovery of possession" in sub-section (1) of Section 18 of the West Bengal Premises Rent Control Act, 1950, includes an order for recovery of possession made under Ch. VII of the Presidency Small Cause Courts Act, 1882.

47. It appears to me that the Court is bound to give the word "decree" in this sub-section a wider meaning that it ordinarily bears and that being so I hold that the opposite parties were entitled to claim relief under sub-section (1) of Section 18 of the Rent Control Act of 1950.

48. Lastly it was contended in Civil Revision Case No. 1370 of 1950 that the tenant in that particular case could have no relief because the order of the Presidency Small Cause Court in that case was an order made by consent. It was contended that Section 18 (1) of the Rent Control Act of 1950 could only apply if the order was made on the ground of default in the payment of arrears of rent under the provisions of the West Bengal Premises Rent Control Act of 1948 and therefore that sub-section could not apply if the order was made on the ground of an agreement entered into between the parties.

[5](1942) 2 All England Reporter 39

[6]55 Cal WN 343

49. It is to be observed that this question has been considered on a number of occasions by this Court. In the case of *'Manick Chandra Pal v. Haripada Roy*[7]*',* a Bench of which I was a member held that a consent decree for ejectment which on the face of it shows that the decree was consented to on the ground that the tenant was not entitled to the benefit of the House Rent Control Order on account of default of payment of rent is liable to be set aside under Para. 9B, Clause (3) of the Calcutta House Rent Control Order.

50. Though in this case a section of a different enactment was being considered the phrase which had to be construed was the same. The same view was taken in the case of *'Haripada Sen v. Santosh Kumar*[8]*',* in which Das, J., held that a consent decree comes within the purview of Section 18 of the West Bengal Premises Rent Control Act, 1948. The section does not require a "decree or order" mentioned therein to be one passed on contest or ex parte.

51. It has been urged that both these cases are wrongly decided. But I do not think it is necessary to consider that matter in this case because it appears to me quite clear that the order for possession made in the case before us was not what is usually meant as a consent order. It was not an order made as the result of any agreement between the parties. What occurred was that the tenant applied for an adjournment pleading illness. But his application was refused. Thereupon

the order of the learned Small Cause Court Judge shows that the Advocate confessed judgment and that the order was made on such confession. It would appear as if the tenant had no defence whatsoever and when his application to adjourn was refused his Advocate was compelled to admit the claim and to allow judgment to be passed on his confession. The order is not what is normally regarded as a consent order and I think it can strictly be said to be an order made on the ground of default in the payment of arrears of rent. We have seen the application in this case and it is clear that such default was pleaded and when the Advocate confessed judgment it is clear that these allegations were admitted and the order was made upon them. It was therefore an order clearly within the terms of Section 18 (1) and there is therefore no force in the tenant's contention.

52. Once it is held that Section 18 (1) of the West Bengal Rent Control Act of 1950, as amended by the later Act of 1950, is intra vires and applies to orders of the Small Cause Court the applications of the tenant were bound to succeed. Even if the sub-section did not originally apply to cases where orders had been made on the ground that the tenancies had been ipso facto determined, nevertheless as the result of Section 5 of the Amending Act of 1950, Section 18 (1) of the original Act of 1950 now applies and applies only to cases of orders for recovery of possession made against tenants whose tenancies had been ipso facto determined under the provisions of Section 12 (3) of the Act of 1948. By Section 5 of the Amending Act of 1950 Section 18 (1) must be deemed always to have applied to such tenants. It did not apply in either of these two cases when the Small Cause Court decided in favour of the tenants. It may well be that having regard to the view that this Court took in the cases of *'Nandorani dassi v. Satya Narain[9]',* and *'S.B. Trading Co. Ltd. v. Satyendra Chandra sen'[10],* the decisions of the Small Cause Court Judges were erroneous. Nevertheless, by reason of Section 5 of the Amending Act they must now be held to have been correct as the section as amended applies to pending cases and these

[7]52 Cal WN 230
[8]53 Cal WN 905
[9]54 Cal WN 735
[10]54 Cal WN 756

two cases were clearly pending when the Amending
Act came into force.

53. The orders of the Small Cause Court in each of these cases therefore cannot be challenged and the petitions fail and are dismissed with costs. The hearing fee in each Rule is assessed at five gold mohurs.

54. The Rule in each case is discharged.

G. N. Das, J.

55. I agree.

Banerjee, J.

56. I agree.
Rules discharged.