B. BANERJEE

v.

ANITA PAN

November 20, 1974

[M. H. BEG, V. R. KRISHNA IYER AND P. K. GOSWAMI, JJ.]

West Bengal Premises Tenancy Act 1956 *as amended in* 1969—*S.* 13(1)(*f*) *and* (*ff*)—*Constitutional validity of—Whether offends Art.* 19(1)(*f*) *and* (5).

Section 13(1)(f) of the West Bengal Premises Tenancy Act, 1956 (Act XII of 1956) enacted that no order or decree for the recovery of possession of any premises shall be made by any court in favour of the landlord against the tenants except among others, on the ground that the premises are reasonably required by the landlord either for the purpose of building or rebuilding or for making thereto substantial additions or alterations or for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held.

Section 13(4) of the Act provides that where a landlord requires the premises on any of the grounds mentioned in cl. (1)(f) and the Court is of opinion that such requirement may be substantially satisfied by ejecting the tenant from a part only of the premises the Court shall pass a decree accordingly. In 1969 the Act was amended by West Bengal Premises Tenancy (Second Amendment) Act. Section 13 of the original Act was amended by introducing sub-section (3A) in it. This sub-section prohibits institution of a suit for ejectment of a tenant by a landlord who has purchased the premises for his own use within three years of the purchase. The Amending Act also enacted that the said Act shall apply to suits and appeals, which are pending at the date of the commencement of the Act.

The respondent purchased the suit premises in which the appellant was a tenant and instituted a suit for ejectment of the tenant under s.13(1)(f) of the original Act. The suit was decreed by the lower court and affirmed by the lower appellate court. A single Judge of the High Court dismissed the appeal. When the Letters Patent Appeal was pending before the High Court, the Amending Act of 1969 was passed, whereupon, the tenant-appellant invoked the provisions of the new sub-sec. (3A) and contended that since the landlord had instituted a suit the ejectment within three years of the purchase, the suit should be dismissed. The High Court held that s.3A was valid prospectively but that the restriction imposed by the sub-section, giving it retrospective effect, was violative of Art. 19(1)(f) of the Constitution.

Per Beg and Krishna Iyer, JJ:

Allowing the appeals and remitting the case to the High Court,

HELD: (1)(a) There is no violation of Art. 19(1)(f) read with Art. 19(5) of the Constitution in the Amending Act, and s.13 of the original Act, as amended is valid. The evil corrected by the Amendment Act is to stop the influx of a transferee class of evictors of tenants and institution of litigation to eject and rack-rent or re-build to make large profits. Apparently the inflow of such suits must have been swelling slowly over the years and when the stream became a flood the Legislature rushed with an amending bill. Had it made the law merely prospective, those who had, in numbers, already gone to Court and induced legislative attention would have escaped the inhibition. This would defeat the object and so the application of the additional ban to pending actions could not be called unreasonable. There is no foundation for the assumptions made by the High Court that there may be cases of ejectment instituted prior to 1956 or that a number of suits and decrees, perhaps decades old, will unjustly be nullified by the previous operation of the new ban. Recondite instances and casual hardships cannot deflect constitutional construction of social legislation,

A

if the main thrust of the statute relates to a real social evil of dimensions deserving to be antidoted by antedated legislative remedy. Questions such as whether those cases which were filed several years ago should have been carved out of the category of transferees hit by the Act, and at what point of time the evil assumed proportions were best left to legislative wisdom and not to courts commonsense. [788C-D; 787F-G; 783F; 787H]

B In the instant case the two landlord-respondents had purchased the buildings in the early sixties, but while considering the constitutionality the Court would not be moved by such accidental instances. The substantial evil has been substantially met by a broad application of the new ban to pending proceedings. [788C]

Section 13, fairly read, directs that the amendment made by s. 4 shall have *effect* in respect of suits, including appeals, pending at the commencement of the Act. The Court is, therefore, bound to give effect to s.4 in pending actions C regardless of isolated anomalies and individual hardships. [788G]

(b) Where two interpretations are possible that which validates the statute and shortens litigation should be preferred to the one which invalidates or proliferates it. Although the old cl. (f) is substantially similar to the present cls.(f) and (ff) the latter imposes more severe restrictions protecting the tenants. Much more has to be proved by the landlord now before he can get eviction than when he was called upon to under the earlier corresponding provision of the basic Act. Moreover, the three year prohibition against *institution* of the D suit is altogether new. It follows, therefore, that on the present allegation and evidence the landlord may not get a decree, his suit having been instituted at a time when he could not have foreseen the subsequent enactment saddling him with new conditions. [789C; 789B]

Though therefore, the suit, as originally brought in, would be defective since it did not and could not contain the averments complying with the new cls. (f) and (ff) of s. 13(1) it is made effective by construing the term 'institute' in a E natural and grammatical way. [789D]

(c) 'To institute' is 'to begin or commence'. The prohibition clamped down by sub-section (3A), carefully read, is on suits for recovery of possession by transferee-landlords *on any of the grounds mentioned in cl. (f) or cl. (ff) of* sub-section (1). [789G]

In the instant case the suits were not for recovery on grounds contained in clauses (f) and (ff). They were based on the repealed cl.(f) of s.13 of the F basic Act. Strictly speaking sub-section (3A) brought in by s.4 of the Amending Act applies only if (a) the suit is by a transferee-landlord; (b) it is for recovery of possession of premises; and (c) the ground for recovery is what is mentioned in cls. (f) and (ff) of sub-section (1). Undoubtedly the third condition is not fulfilled and therefore sub-s. (3A) is not attracted. [789H]

(d) But since the new cls.(f) and (ff) were included by the Amendment Act in s.13 of the basic Act and since the suits did not seek eviction on those grounds they will have to be dismissed on account of the omnibus inhibition on recovery G of possession contained in s. 13 itself. [790C]

Per Goswami, J : (1)(a) In trying to include old actions that may be surviving in courts because of laws' proverbial delay s. 13 of the Amended Act has gone far in excess of the actual needs of the time and problems and the provisions therefore cannot be said to impose a reasonable restriction on the right of the transferee landlords, albeit a well defined class amongst the landlords, to hold and enjoy their property in the interest of the general public. Such transferee-land-H lords with pending old actions in suits or in appeals are not likely to be of a large number. The imposition of such restrictions on a few transferee-landlords cannot be in the general interests of the large body of tenants. If relief in the shape of postponment of the landlord's suit were the object of sub-section (3A) in giving retrospectivity to it, the law did not take count of the inevitable long

delay that takes place in pending litigation as a result of man-made laws of procedure in courts such as have been clearly demonstrated by the cases at hand. The law that misses its object cannot justify its existence. Besides it will be a sterile relief if tenants have to face a fresh summons next days. [798A-C] A

(b) Under the Constitution an individual's right will have to yield to the common weal of the general community. That general community may be in broad segments but even then must form a class as a whole. A few individuals cannot take the place of a class and for the matter of that the general public. [798H] B

In the present case the relief contemplated by the Amendment Act is in favour of tenants in general and the restriction under sub-section (3A) must be viewed in that context. It cannot be said that the legislature in applying sub-section (3A) retrospectively has achieved that avowed object at all. The applicability of the blanket ban to pending suits and appeals cannot be said to be a reasonable restriction in the interest of general public. [799A-B] C

(c) Sub-section (3A) so far as it is retrospective and as such applicable to pending suits including appeals is *ultra vires* Art. 19(1)(f) of the Constitution. The provision is valid only prospectively. The retrospectivity so far as sub-section (3A) in concerned with regard to institution of suits made applicable to pending suits and appeals is clearly very wide of a reasonable mark and is an imposition of an unreasonable restriction on the right of the transferee landlords in pending suits which had been instituted prior to the amendment Act and in appeals arising thereform and it is not saved by the protective clause (5) of Art. 19 of the Constitution. [799D-E] D

(2) On the terms of only s. 13(3A) it is difficult to hold that it would bring old actions within the mischief of s. 13(3A) which imposes a ban expressly on institution of suits within three years of the acquisition of ownership of the premises subject to the relaxation contained in the proviso thereto. [796B-C]

(3) Section 13(1)(f) and (ff) are not *ultra vires* of Art. 19(1)(f) of the Constitution. Further reliefs have been sought to be given to the tenants as a class by these provisions in the Amendment Act. These further reliefs are in the general interests of tenants and can be applied without any difficulty, to pending suits including appeals. There is nothing unreasonable about such a retrospectivity in applying these provisions for the general welfare of tenants in securing for them a safe and sure tenure as far as practicable untrammelled by inconvenient litigation. [799F-G] E

Arguments for the appellants In C.A. 2063/73 by P. C. Chatterjee :— F

There is no vested right to eject on determination of the tenancy but it is conditioned by s. 13, Cl. (a) to (k) and therefore right to eject is not vested in the landlord until a decree is passed. Upto that stage it is contingent depending on the satisfaction of cl. (a) to (k) of s.13. If there is no vested property right, no question of Art. 19(1)(f) of the Constitution will arise. By denying the right to eject for three years from the date of purchase the right to property is not restricted or burdened. The approach of the High Court of separately treating prospectivity and retrospectivity is not correct. The correct approach adopted by this Court is that in considering the reasonableness of any provision retrospectivity of the law is a factor to be considered. Retrospective operation is not bad because it covers a period of 10 years or so. G

For respondent (In C.A. 1304 of 1973.)

The object of the new sub-section (3A) being to give protecion to tenants for a limited period of three years from the date of purchase of the premises by the landlord, by giving retrospective effect to the said sub-section the period limited by the sub-section cannot be enlarged. Therefore, s.13 of the Amending Act which gives retrospective effect to the said sub-section (3A) should be construed in a manner so as to keep the effect of retrospectively within the period H

A limited by the said new sub-section 3A. Sections 4 and 13 of the Amending Act have to be construed harmoniously keeping the object of the Act in view and in doing that if the court has to supply some words to make the meaning clear, it should prefer the construction which is more in consonance with reasons and justice. [1958] S.C.R. 739 at 745. The language of sub-s. 3A and the object and reason for introduction of the said sub-section make it clear that only prospective effect could be given to the sub-section and in any case its effect cannot go beyond three years of purchase of the premises by the landlord. If, s.13
B of the Amending Act means that s.4 of the Amending Act applies to all pending suits including appeals filed by a transferee landlord after the principal Act came into force, then it is clearly violative of art.19(1)(f) of the Constitution. The High Court, therefore, rightly struck down s.13 giving retrospective effect to s. 4 of the Act. Further no law can impose restrictions retrospectively on fundamental rights.

Arguments for the respondent in C.A. No. 2063 of 1973.

C The impugned section cannot be so interpreted as to give it retrospective effect so as to bring within its mischief all suits and proceedings including appeals which may be pending since the enforcement of the Act. This Court can depart from the general rule to apply the law as it is on the date of institution of the suit and apply the law as on the date when the appeal comes up for disposal specially because no injustice is going to be caused between the parties and as such a course would avoid multiplicity of proceedings. Section 13 of the Amending Act is *ultra vires* of article 19, because, construed literally the section can-
D not give protection to such of the tenants against whom proceedings are pending for more than 10 years or so, a protection for a period more than what is envisaged by the Amending Act. This is clearly not what is intended or contemplated by the legislature. Giving restrospective effect to the section would only benefit a few and is not in the public interest of the tenants of the transferee-landlords. The restriction is arbitrary and invades the right to property and is not saved by cl. (5) of article 19. The restriction is not reasonable.

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2063 of 1973.

Appeal by special leave from the judgment and decree dated the 25th July, 1973 of the Calcutta High Court in Appeal from Appellate Decree No. 1193 of 1972.

Civil Appeal No. 1304 *of* 1973.

F From the judgment and order dated the 3rd February, 1972 of the Calcutta High Court in L.P.A. No. 14 of 1969.

P. Chatterjee and *Rathin Das,* for the appellant (In C. A. 2063/73).

Urmila Kapoor and *Shobha Dikshit,* for the respondent (In C.A. No. 2063/73).

G *P. K. Chatterjee, G. S. Chatterjee,* and *Sukumar Basu,* for the Advocate General for the State of West Bengal.

Sukumar Ghose, for the appellants. (In C.A. No. 1304/73).

D. N. Mukherjee, for the respondents (in C.A. No. 1304/73).

The judgment of M. H. Beg and V. R. Krishna Iyer, JJ was delivered by Krishna Iyer, J. P. K. Goswami, J. gave a separate
H Opinion.

KRISHNA IYER, J.—Calcutta or Cochin, for the urban people of India, the shocking scarcity of a roof to rest one's tired bones is an

unhappy problem of social justice that compels control of rent and eviction laws. In the case now before us, attacking the constitutionality of legislation handcuffing the landlord-proprietariat's right of eviction, the law has to be tested not merely by the cold print of Art. 19(1)(f) but also by the public concern of Art. 19(5) and the compassionate animus of Art. 39, Parts III and IV of the Constitution together constitute a complex of promises the nation has to keep and the legislation challenged before us is in partial fulfilment of this tryst with the people. These observations become necessary *in limine* since counsel for the respondents dismissed the concept of social justice as extraneous to an insightful understanding of the section invalidated by the High Court, while we think that judicial conscience is not a mere matter of citations of precedents but of activist appraisal of social tears to wipe out which the State is obligated under the Constitution.

The two appeals before us, raising substantially identical points, have been heard together and are being disposed of by a common judgment. Both of them stem from a decision of the Calcutta High Court reported as *Sailendra Nath* v. *S. E. Dutt*(1). One of the decisions under appeal (C.A. 2063 of 1973) was rendered by a Single Judge of the High Court following a Division Bench ruling of the same Court (i.e., the one reported as *Sailendra Nath* v. *S. E. Dutt*) since he was obviously bound by it.

A provision imparting some sort of retroactivity to a 1969 legislative amendment implanting additional restrictions on eviction of premises under the earlier West Bengal rent control law has been voided by the High Court in the judgments under appeal. The aggrieved tenant in each case has appealed and the State, not being directly a party to the ligitation, has entered appearance to support the legislation and to challenge the Calcutta decision to the extent it has invalidated the retrospective part of the statute.

Welfare legislation calculated to benefit weaker classes, when their vires is challenged in Court, casts an obligation on the State, particularly when notice is given to the Advocate General, to support the law, if necessary by a Brandeis brief and supply of socio-economic circumstances and statistics inspiring the enactment. Courts cannot, on their own, adventure into social research outside the record and if Government lets down the Legislature in Court by not illumining the provisions from the angle of the social mischief or economic menace sought to be countered, the victims will be the class of beneficiaries the State professed to protect. In this case, we are unable to compliment the State or the Advocate General from this point of view. It may happen that when the Court decides against the validity of a measure or order because Government fails to bring the socially relevant totality of facts, it is used as an *alibi* by

(1) A.I.R. 1971 Cal. 331.

A the latter for the misfortune. Courts cannot help cover up the Executive's drowsy default or half-hearted help in making the socio-economic conspectus available.

The West Bengal Premises Tenancy Act, 1956 (Act XII of 1956) (for short, referred to as the basic Act) clamped down several restrictions on ejectment of tenants by landlords from build-
B ings, the policy behind it being alleviation of the lot of the weaker segment of the urban community without their own homes in the context of the scarcity of accommodation and the colossal socio-economic upheaval which would follow if unbridled evictions were allowed. The temptation to evict or rack-rent under scarcity conditions is an irresistible evil in our economic order and it is an all-India phenomenon that the social conscience of the State Legis-
C latures has responded to this large scale threat by effective control measures. Indeed, for decades now, every State in India has on the statute book rent control law and, what is more pertinent to the present case, tactics of circumvention have compelled the enactment of additional safeguards from time to time by vigilant statutory measures. West Bengal, a populous State, with an over-crowded
D city choked by the largest human congregation in the country, enacted the basic Act whereby the plenary right of landlords to recover possession of their buildings was shackled in many ways. Industrial growth and other factors induced demographic congestion such as was witnessed in the urban areas of that State. Consequently, the legislature was faced with a fresh danger in the shape of ingenious transfers of ownership of buildings by indigenous but indigent
E landlords and the transferees resorting to eviction on a large scale equipped as they were with better financial muscles and motivated as they were by hope of speculative returns from their investments on eviction. Presumably, the phenomenal increase of the menance of eviction by the new species of transferee-owners of buildings was countered by a legislative measure—the West Bengal Premises Tenancy (Second Amendment) Act, 1969 (Act XXXIV of 1959)
F (hereinafter referred to as the amendment Act). By this legislation the new class of transferee landlords was subject to a stringent trammel viz., that they should not sue for eviction within three years of the date of transfer (We are not immediately concerned here with certain other changes effected by the Amendment Act). The social objective and the practical effect of this fetter will be con-
G sidered briefly a little later. Suffice it to say at this stage, the High Court has upheld this provision which is now contained in s. 13(3A) of the basic Act. However, while holding the provision substantially *intra vires* the Court has invalidated the giving effect to the provision to pending suits and appeals. Such limited retrospectivity had been incorporated by s. 13 of the amending Act and, if the law were only prospective the landlords in the two cases who had initiated their litigation several years prior to the enactment of the Amendment
H Act would be free from the three year interdict and the other extra restrictions. Once the embargo is out of their way, the decrees for eviction they have secured must stand. On the contrary, if the restriction on eviction by the transferee landlords were to operate on

pending litigation the appellants-tenants are immune to eviction in the current proceedings as they now stand. Thus the short constitutional issue is as to whether s. 13(3A) of the basic Act to the extent it applies to pending litigation on the strength of s. 13 of the Amending Act is violative of Arts. 14 and 19(1)(f) of the Constitution, weapons relied upon for the attack before the High Court, and here. We will proceed to consider the constitutional vulnerability of this limb of the protective legislation. By way of anticipating our conclusion we may also pose the problem whether ss.13 and 4 of the Amendment Act can be validly implemented *vis-a-vis* pending actions in any other just manner which will preserve the additional protection, minimise multiplicity of litigation and make law and justice bedfellows in the changed statutory circumstances.

Some background observations to appreciate the contest in court are necessary. No social realist will deny the frightful dimensions of the problem of homeless families and precarious tenancies; and if the Directive Principles of State Policy are not to be dismissed by the masses as a 'teasing illusion and promise of unreality', curtailment, in public interest, of such extreme rights of the landlord as are 'red in tooth and claw' is a constitutional compulsion. The Court, informed by this sore economic situation and reinforced by the initial presumption of constitutionality, hesitates to strike a socially beneficial statute dead, leading to escalation of the mischief to suppress which the House legislated—unless, of course, a plain breach of the fundamental right of the citizen is manifest.

The perspective of the amending Act is sketched by the High Court in lurid language :

> "The scarcity of accommodation is a burning problem, not only of the State of West Bengal but of the other States as well. Keeping pace with the needs of the gradually swelling population of West Bengal, new buildings have not been built owing to abnormal high price of land and materials. A large majority of the people of West Bengal live in those premises at the mercy of the landlords."

The explosive import of neglecting such a distressing urban development reasonably obliges the State to impose drastic restrictions on landlords' right to property. And when circumvention of wholesome legal inhibitions are practised on a large scale the new challenge is met by clothing the law with more effective amount and that is the rationale of the Amendment Act. The learned Judges rightly refer to the legislative proceedings, notorious common knowledge and other relevant factors properly brought to their ken. The 'sound-proof theory' of ignoring voices from parliamentary debates, once sanctified by British tradition, has been replaced by the more legally realistic and socially responsible canon of listening to the legislative authors when their artifact is being interpreted. We agree with the High Court when it observes :

> "Proceedings of legislature can be referred to for the limited purpose of ascertaining the conditions, prevailing at

A or about the time of the enactment in question, which actuated the sponsor of the bill to introduce the same and the extent and urgency of the evil, sought to be remedied.

In the Statement of Objects and Reasons of the West Bengal Premises Tenancy (Second Amendment) Bill, 1969, it is stated that it has been considered necessary that some B more reliefs should be given to the tenants against eviction. It is found from the speech of the Minister at the time of introducing the Bill in the legislature, that the problems of tenants are many : there are landlords of different kinds : there is one class—original owners who are the old inhabitants of the city : these owner-landlords are not affluent : they solely depend upon the rents received from C the tenants. It has been ascertained from experience that two of the grounds of eviction, namely, of the landlords and for the purpose of building and rebuilding, have been misused by the landlords. In the city of Calcutta and other towns, there are millions of tenants who are left at the mercy of the landlords. In this background and after taking into account similar provisions in other States, it has been D decided that some restrictions ought to have been imposed upon transferee-landlords prohibiting them from bringing ejectment suits against the tenants within three years from their purchase. On the above two grounds and for that purpose, the said classification has been made."

The conclusion of the Court, crystellised in the following words, commends itself to us : E

"Taking an overall view of the various considerations, the statement of the Minister, the objects of the Bill, matters of common knowledge and state of facts, existing at the time of the legislation, it may be well conceived that underlying policy and objects of the amended provision is to give more protection to the tenants against eviction and the classi- F fication of landlords into owner-landlords and transferee-landlords is based upon a rational and intelligible differentia and we hold accordingly."

Proceeding to examine the limited attack on s. 13(3A) of the basic Act read with s. 13 of the Amending Act, we have to remember the comity of constitutional instrumentalities and raise the presumption that the legislature understands and appreciates the needs G of the people and is largely aware of the frontiers of and limitations upon its power. (See : *The State of Bombay* v. *R. M. D. Chamarbaguwala*(1) and *Shri Ram Krishna Dalmia* v. *Shri Justice S. R. Tendolkar & Others*(2). Some Courts have gone to the extent of holding that "there is a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; and 'to doubt the constitutionality of H a law is to resolve it in favour of its validity.'"(3) Indeed, the Legis-

(1) [1957] S.C.R. 874. (2) [1959] S.C.R. 279.

(3) Constitutional Law of India by H. M. Seervai—p 54 vol. I.

lature owes it to the Court to make like respectful presumptions. We therefore view the provision impugned through a socially constructive, not legally captious, microscope to discover glaring unconstitutional infirmity, if any, and not chase every chance possibility or speculative thought which may vitiate the law. Stray misfortunes when laws affecting large chunks of the community are enacted are inevitable and the respondents before us may perhaps belong to that category. Social legislation without tears, affecting vested rights, is impossible. Statutory construction has a benignant sensitivity and we are satisfied the High Court, in substantially upholding the Amendment Act, has done right, but in striking down the retrospective portion of the section has stumbled into a specious error.

It is helpful to reproduce the relevant portion of s. 13 of the basic Act in its unamended state and the amendments dovetailed into it by the 1969 Act, The so-called 'retrospectivity' of this provision has been anathematised by the respondent-landlords and annulled by the High Court :

"13(1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds, namely :—

unamended cl. (f) : where the premises are reasonably required by the landlord either for purposes of building or rebuilding or for making thereto substantial additions or alterations or for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held;

cls. (f) and (ff) substituted therefor :

(f) subject to the provisions of sub-section (3A), and section 18A, where the premises are reasonably required by the landlord for purposes of building or re-building or for making thereto substantial additions or alterations and such building or re-building or additions or alterations cannot be carried out without the premises being vacated;

(ff) subject to the provisions of sub-section (3A), where the premises are reasonably required by the landlord for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held and the landlord or such person is not in possession of any reasonably suitable accommodation;

Sub-s. (3A) newly introduced.

13(3A) Where a landlord has acquired his interest in the premises by transfer, no suit for the recovery of possession of the premises on any of the grounds mentioned in clause (f) or clause (ff) of sub-section (1) shall be insti-

A tuted by the landlord before the expiration of a period of three years from the date of his acquisition of such interest :

Provided that a suit for the recovery of the possession of the premises may be instituted on the ground mentioned in clause (f) of sub-section (1) before the expiration of the said period of three years if the Controller, on the appli-
B cation of the landlord and after giving the tenant an opportunity of being heard, permits, by order, the institution of the suit on the ground that the building or rebuilding, or the additions or alterations, as the case may be, are necessary to make the premises safe for human habitation."

Once the substantive restriction super-added by s. 13(3A) is
C held valid, we have to focus attention only on the extension of the new ban to pending proceedings. That legislative competence to enact retroactively exists is trite law and we have only to test its validity on the touchstone of Arts. 14 and 19(1)(f) pressed into service before us.

Law is a social science and constitutionality turns not on abstract
D principles or rigid legal canons but concrete realities and given conditions; for the rule of law stems from the rule of life. We emphasize this facet of sociological jurisprudence only because the High Court has struck down s. 13 of the Amendment Act on surmises, possibilities and may be rather than on study of actualities and proof of the nature, number and age of pending litigations caught in the net of the retrospective clause. Judges act not by hunch but on hard
E facts properly brought on record and sufficiently strong to rebuff the initial presumption of constitutionality of legislation. Nor is the Court a third Chamber of the House to weigh whether it should legislate retrospectively or draft the clause differently. We find no foundation for the large assumptions made by the High Court and duly repeated before us by counsel that there may be cases of ejectment instituted prior to 1956 or that a number of suits and decrees perhaps decades
F old will unjustly be nullified by the previous operation of the new ban. Recondite instances and casual hardships cannot deflect constitutional construction of social legislation, if the main thrust of the statute relates to a real social evil of dimensions deserving to be antidoted by antedated legislative remedy.

In the present case, indubitably the State was faced with a new,
G insidious and considerable situation of exploitation, undermining the security of tenancy conferred by the basic Act. A large number of original landowners living in their own home could not, under the basic Act, claim recovery of possession, being occupants of their own houses. Likewise, they could not urge the ground of recovery for rebuilding, not being financially able to invest on such a costly venture. They had to look up to modest old-time rentals as the only
H source of return and lest the penurious tenantry desperately inhabiting little tenements be forced to pay extortionate rents the rent control law of 1956 froze the rates at the 1940 level with gentle increases as provided therein. However, for new buildings to be constructed

special incentive provision was made by deeming the contract rent as fair rent, thus ensuring a high return on building investment. The social upshot of this scheme was that the old landlords found their ownership a poor return investment, saw a new class of wealthier investors streaming into cities and towns ready to buy the premises, evict old tenants, re-let on rack-rents or re-build and reap a rich return. They had no buildings of their own and could prove plans to rebuild, thus disarming the nonevictability provision of s. 13 of the basic Act. The transferees could thus get decrees for eviction under the basic Act. Naturally, transfers of buildings to this somewhat speculating class increased and the spectacle of eviction litigation or potential eviction proceedings was projected on the urban scene. The Legislature promptly reacted by the Amendment Act to rescue the lessees by clamping down new restrictions by way of s. 13(3A). A three-year moratorium was given to the tenants from being hunted out of their homesteads by imposing a ban on institution of suits for eviction by transferee landlords. This would both disenchant speculative purchases and provide occupants time to seek alternative housing. Presumably, these objects inspired the law-makers to extend the embargo backwards to pending eviction proceedings. Quite conceivably, the tendency to create a transferee class of real estate owners gradually gathered in volume and showed up in rashes of pending actions. When Government was alerted amending legislation was proposed. Unfortunately, the State's legal wing has failed to protect in Court the class for whose benefit the amending law was made by placing luscent social or statistical materials on these aspects. As earlier stated by us, Government have a duty, where social legislation to protect the weak are challenged, to exhibit the same activism in the Halls of Court as in the Houses of Legislature. Failure in the former duty can be as bad as not promulgating the law. Not an elucidatory affidavit by the State nor even the Minister's explanatory speech has been filed in this Court. We make these observations because of the handicaps we have faced and the little help on facts the State has given to sustain the legislation.

The Calcutta High Court has upheld the vires of sub-s. (3A) but invalidated its application to pending litigation. So the short issue is whether this projection into the past of the otherwise reasonable restriction on the right of eviction arbitrary, irrational, ultra vires? If yes, the lethal sting of Arts. 14 and 19(1)(f) will deaden s. 13 of the Amendment Act. And the High Court has held so on the latter Article.

The prospective validity of the restriction under Arts. 14 and 19(1)(f), the High Court thinks, is vindicated by sound classification and sanctioned reasonably by the interest of the general public. Having regard to the policy of the legislation, the classification of landlords into two classes of owner-landlords and transferee-landlords and the imposition of an embargo on the latter minacious class against bringing eviction suits within three years of purchase passes the dual tests of reasonable classification and the differentia having a rational nexus with the statutory object. Therefore, the High Court had no hesitation—and we totally concur—that the provision is

A impregnable. The controversy rages round giving effect to these stringent restraints newly enacted on earlier legal actions. This, it is contended, is a horrendous invasion of property rights and unjust anteriority which hits innocent plaintiffs whose purchases were beyond three years. Before us respondents' counsel have contended that Art. 14 is violated by s. 3 read with s. 4 of the Amendment Act B although the High Court has negatived this submission thus :

> "We have carefully considered the arguments advanced by the learned counsel and we are of the opinion that the retrospective operation of sub-section (3A) on pending suits and appeals does not offend Article 14 of the Constitution."

Since the argument, dressed differently, has been urged before us C again we will briefly deal with it, agreeing as we do with the High Court. Plaintiffs whose transfers are twenty years ago or two years before the Act, are lugged together and subjected to the same ban if their suits were instituted within three years of the transfer. This blanket ban regardless of the varying periods which have elapsed after the transfers and before the Act was passed was unequal treatment or rather harshly equal subjection to restriction of plainly un- D equally situated transferees. There is seeming attractiveness in this presentation. But Courts are concerned not how best to hammer out equal justice but to oversee whether the classification is without rational basis unrelated to the object of the Act. That is why we are confined to check whether the reasoning on this aspect adopted by the High Court is not tenable. We may or may not disagree with the wisdom of the Legislature in the grouping adopted or hold views E about fairer ways of treatment. But our powers are judicial, not legislative and arbitrariness and irrationality are not writ large in the method of differentiation the Legislature has here chosen. In the words of A. K. Mukherji J :

> "In the instant case, suits of the affected transferee-landlords may be regarded as a sub-class, within a class F and, if within the said sub-class, the suits are not differently treated, they will not be hit by Article 14. The persons affected are transferee-landlords who instituted their suits within three years of their purchase and they form a separate class and, among the suits of that 'affected class', there is no discrimination. The law applied equally with respect to the pending suits with regard to this affected class." G

Some hardship is bound to occur peripherally in any mode of classification and a few hard cases (we have not been shown whether many have been struck by this pattern of grouping) cannot guide the Court in upsetting legislative compartmentalisation.

The next attack by the respondents is that the deprivation of the H right to sue is absurdly beyond the object of the Act when applied to pending cases where the transfers took place more than three years before the Act. Were we draftsmen of legislation, may be counsel's submission could have had more potency. But our limited power is to

examine the reasonableness of the restriction, not by substituting our personal notions but by interfering if the Legislature has gone haywire in unreasonably hamstringing transferee-landlords by dismissing their suits brought long before the legislative bill was in the womb of time.

In an earlier case this Court observed(1) :

> "Right at the threshold we must warn ourselves of the limitations of judicial power in this jurisdiction. Mr. Justice Stone of the Supreme Court of the United States has delineated these limitations in *United States* v. *Butler* (297 U.S. 1 56 Sup. Ct. 312 80 Law. Ed. 477 thus :
>
> The power of courts to declare a statute unconstitutional is subject to two guiding principles of decision which ought never to be absent from judicial consciousness. One is that courts are concerned only with the power to enact statutes, not with their wisdom. The other is that while unconstitutional exercise of power by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our exercise of power is our own sense of self-restraint. For the removal of unwise laws from the statute books appeal lies not to the courts but to the ballot and to the processes of democratic government."
>
> In short, unconstitutionality and not unwisdom of a legislation is the narrow area of judicial review."

The High Court has assumed that even proceedings started prior to 1956 may be affected. This, admittedly, is wrong as pre-basic Act suits will be governed by the then law as provided in s. 40 and the Amendment Act amends only the 1956 Act. It may also be conceded that in both the appeals before us, thanks to Indian longevity of litigation, more than three years from the date of transfer in favour of the plaintiff has passed and thus the spirit of the protection in that sense is fulfilled. Indeed, counsel for the respondents urged that the validation of the retrospective limb of the law would only drive the parties to fresh suits, thus promoting multiplicity of suits ruinous to both sides with no social gain! There is force in this submission. Its relevance to decide the constitutional issue is doubtful but its influence on our ultimate solution in this case, as will be seen later, is undeniable.

A close up of the social milieu leading up to the enactment in 1969 of the Amendment Act is useful to identify the substantial mischief the law was intended to overpower. Did that evil reasonably necessitate, for effectual implementation of purpose, the extension of the new law to pending suits and appeals ? How many suits, appeals and second appeals by transferees within the three-year belt were pending ? How long had they been so pending ? Were there only stray eviction cases of long ago and was it feasible or necessary to

(1) *Murthy Match Works* v. *Asst. Collector of Central Excise*, A.I.R. 1974 S.C. 497, 503.

A draw a line somewhere to prevent injustice to non-speculative and old-time buyers of buildings without impairing the limited immunity meant for tenants and intended against new realty investors? On these facts the State has sat with folded hands and we have been thrown on our own to scan and sustain or strike down. But here arises the significance of initial presumption of constitutionality. The High Court has B made short shrift of this plea thus:

> "There is nothing on the record to show that the mischief, sought to be remedied by the amended legislation, was in existence since 1956. On the other hand, the ministerial speech, referred to above, rather indicates that the said mischief was of comparatively recent origin. In this context, the application of the restriction on the omnibus scale to all C pending suits and appeals would smack of unreasonableness."

Who has the onus to place compelling facts, except in flagrant cases of gross unreasonableness, to establish excessiveness, or perversity, in the restriction imposed by the statute? Long ago in *Dalmia's Case*(1) this Court held that:

D

> "there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles"; and
>
> 'that it must be presumed that the legislature understands and correctly appreciates the need of its own people, E that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;"

If nothing is placed on record by the challengers the verdict ordinarily goes against them.

F Moreover, what is the evil corrected by the Amendment Act? The influx of a transferee class of evictors of tenants and institution of litigation to eject and rack-rent or re-build to make larger profits. Apparently, the inflow of such suits must have been swelling slowly over the years and when the stream became a flood the Legislature rushed with an amending bill. Had it made the law merely prospective, those who had, in numbers, already gone to Court and induced G legislative attention would have escaped the inhibition. This would defeat the object and so the application of the additional ban to pending actions could not be called unreasonable. To omit to do so would have been unreasonable folly. The question is whether those cases which were filed several years ago should have been carved out of the category of transferees hit by the Act? Where do you draw the line? When did the evil assume proportions? These are best left to legis- H lative wisdom and not court's commonsense although there may be grievances for some innocent transferees.

(1) [1959] S.C.R. 279, 297—propositions (b) and (c).

If this be the paradigm of judicial review of constitutionality, we have to ignore exceptional cases which suffer misfortune unwittingly. The law is made for the bulk of the community to produce social justice and isolated instances of unintended injury are inevitable martyrs for the common good since God Himself has failed to make perfect laws and perfect justice, Freaks have to be accepted by the victims rightly or wrongly as froensic fate ! Not that it should be so but human infallibility being unattainable, easily the next best in social justice is to promote the public weal sacrificing some unmerited private hurt as unfortunate but unavoidable. It must be conceded that prima facie the two landlord-respondent's had purchased the buildings in the early sixties and three time three years or more have now passed since that date. But while considering constitutionality can we be moved by such accidental instances ? No. The substantial evil has been substantially met by a broad application of the new ban to pending proceedings. We see in the Amendment Act no violation of Art. 19(1)(f) read with 19(5). The same High Court, in a later case *Kalyani Dutt* v. *Pramila Bala Dassi*(1) came to the same conclusion by what it called 'independently considering the question'. We discern nothing substantially different in the analysis or approach to merit review of our result. We hold s. 13 of the Amendment Act valid and repel the vice of unreasonableness discovered in both the reported rulings of the High Court.

And if reasonable interpretation can avoid invalidation, it is surely preferable. Here humanist considerations, public policy and statutory purpose may provide guidelines of construction within reasonable limits. Section 13 of the Amendment Act reads :

> "13. *Retrospective effect.*—The amendments made to the said Act by section 4, 7, 8 and 9 of this Act shall have effect in respect of suits including appeals which are pending at the date of commencement of this Act."

The Court is called upon 'to give effect to s. 4..' of this new Act.' Section 4 introduced amendments in s. 13 of the basic Act which we have set out earlier.

There is no doubt that the purpose of the law is to interdict, for a spell of three years, institution of suits for eviction on grounds (f) and (ff) of sub-s. (3A). Section 13 of the Amending Act makes it expressly applicable to pending actions, so much so the operation of the prohibition is not simply prospective as in the Kerala case cited before us (*Nealakandhayya Fillai* v. *Sankaran*(2). Section 13, fairly read, directs that the amendment made by s. 4 *shall have effect* in respect of suits, including appeals, pending at the commencement of the Act. We are therefore bound to give effect to s. 4 in pending actions, regardless of isolated anomalies and individual hardships. As earlier noticed, s. 4 has two limbs. It amends s. 13 of the basic Act by substituting two new clauses (f) and (ff) in place of the old clause (f) of sub-s. (1) of s. 13 Secondly, it forbids, for a period of three years from the date of acquisition, suits by new acquirers of

(1) I.L.R. [1972] 2 Cal. 669. (2) (1961) R.L.T. 755.

A landlord's interest in premises, for recovery of possession on any of the grounds mentioned in cl. (f) or cl. (ff) of sub-s. (1). The result of these two mandatory provisions has to be clearly understood. For one thing, although the old cl. (f) is substantially similar to the present cls. f) and (ff), the latter imposes more severe restrictions protecting the tenants. Much more has to be proved by the landlord now before he can get eviction than when he was called upon to B under the earlier corresponding provision of the basic Act. Moreover, the three year prohibition against *institution* of the suit is altogether new. It follows, therefore, that on the present allegations and evidence the landlord may not get a decree, his suit having been instituted at a time when he could not have foreseen the subsequent enactment saddling him with new conditions.

C We consider that where two interpretations are possible that which validates the statute and shortens litigation should be preferred to the one which invalidates or proliferates it. We are guided by that consideration in the interpretative process. We are satisfied further that originally brought in, is defective since it did not contain—and ordinarily could not—averments complying with the new cls. (f) and (ii) of sub-s. (1) of s. 13 and we are making it effectively by construD ing the word 'institute' in a natural and grammatical way. The suit is really instituted in compliance with cls. (f) and/or (ff) only when the new pleading is put in.

The bigger roadblock in the way of the plaintiff is in a pending action lies in the prohibition of the *institution* of the suit within three years of the transfer from the landlord. Indeed, such prohibitions are E common in rent control legislation as has been noticed by the Calcutta High Court and is found even in agrarian reforms laws (vide Malaber Tenancy Act, as amended by Act VII of 1954, Madras). Section 13 of the Amendment Act compels the postponment of the institution of the suit (including appeal) for a period of three years from the date of the transfer. In both the cases before us, F the suits were instituted within the prohibited period of three years. The argument therefore is that the suits must be straightway dismissed, the institution being invalid. We do not think that this consequence is inevitable. 'To institute' is 'to begin or commence', in plain English. The question then is whether the suit can be said to begin on the date it was filed in 1961 or 1964 as the case may be. Here we have to notice a certain nice but real facet of sub-s. (3A). The prohibiG tion clamped down by sub-s. (3A), carefully read, is on suits for recovery of possession by transferee landlords *'on any of the grounds mentioned in cl. (f) or cl. (ff) of sub-s.*(1)'. Obviously the suits with which we are concerned are not for recovery on grounds contained in cls. (f) and (ff). They were based on the repealed cl. (f) of s. 13 of the basic Act. Strictly speaking, sub-s. (3A) brought in by s. 4 of the Amending Act applies only if (a) the suit is by a transferee H landlord; (b) it is for recovery of possession of premises and (c) the ground for recovery is what is mentioned in cl. (f) and cl. (ff) of sub-s. (1). Undoubtedly the third condition is not fulfilled and therefore sub-s. (3A) is not attracted. This does not mean that the suit

can be proceeded with and decree for recovery passed, because s. 13 of the basic Act contains a broad ban on eviction in the following words :

> "13(1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant *except on one or more of the following grounds,* namely :—(*emphasis, ours*)

Since the new cls. (f) and (ff) are included by the Amendment Act in s. 13 of the basic Act and since the suits we are concerned with, as they now stand, do not seek eviction *on those grounds* they will have to be dismissed on account of the omnibus inhibition on recovery of possession contained in s. 13 itself.

A just resolution of this complex situation was put by us to counsel on both sides and the learned Advocate representing the State readily agreed that the policy of the legislation and the conditions in the Amendment Act would be fulfilled if the interpretation we proposed were to be accepted. We are satisfied that as far as possible courts must avoid multiplicity of litigation. Any interpretation of a statute which will obviate purposeless proliferation of litigation, without whittling down the effectiveness of the protection for the parties sought to be helped by the legislation, should be preferred to any literal, pendantic, legalistic or technically correct alternative. On this footing we are prepared to interpret s. 13 of the Amendment Act and give effect to s. 4 of that Act. How do we work it out ? We do it by directing the plaintiffs in the two cases to file fresh pleadings setting out their grounds under cls. (f) and/or (ff) of sub-s.(1) if they so wish. On such pleading being filed we may legitimately hold that the transferee-landlord institutes his suit on grounds mentioned in cls. (f) or (ff) of sub-s. (1) *on that date.* It is only when he puts in such a pleading setting out the specific ground covered by sub-s. (3A) of s. 13 that we can say he has begun or instituted a suit for the recovery of possession of the premises *on that ground.* Institution of a suit earlier has to be ignored since that was not based on grounds covered by cls. (f) and/or (ff) and is not attracted by sub-s. (3A). He begins proceedings on these new grounds only when he puts in his pleading setting out these grounds. In spirit and in letter he institutes his suit for recovery on the new grounds only on the date on which he puts in his new pleading. We cannot be ritualistic in insisting that a return of the plaint and a representation thereof incorporating amendments is the sacred requirement of the law. On the other hand, social justice and the substance of the matter find fulfilment when the fresh pleadings are put in, subject of course to the three-year interval between the transfer and the filing of the additional pleading. Section 13 of the Amendment Act speaks of suits *including appeals.* It thus follows that these fresh pleadings can be put in by the plaintiff either in the suit, if that is pending, or in appeal or second appeal, if that is pending. Thereupon, the opposite party, tenant, will be given an opportunity to file his written statement and the Court will dispose of it after giving both sides the right to lead

A additional evidence. It may certainly be open to the appellate Court either to take evidence directly or to call for a finding. Expeditious disposal of belated litigation will undoubtedly be a consideration with the court in exercising this discretion. The proviso to sub-s. (3A) can also be complied with if the plaintiff gets the permission of the Rent Controller in the manner laid down therein before filing his fresh B pleading.

We are conscious that to shorten litigation we are straining language to the little extent of interpreting the expression 'institution of the suit' as amounting to filing of fresh pleading. By this construction we do no violence to language but, on the other hand, promote public justice and social gain, without in the least imperilling the protection conferred by the Amendment Act.

C

Ruinous protraction of litigation, whoever may temporarily seem to benefit by delay, bankrupts both in the end and inflicits wounds on society by sterile misuse of money. Tenant passengers who prolong their expensive flight on the litigation rocket, are buying tickets for financial crash, drugged though they be by the seeming blessings of law's delays. Courts, by interpreting the expression 'institution of D suits' cannot authorize reincarnation, all over again, of litigation for eviction. We save the tenant by applying it to pending cases and save him also from litigative waste.

This consideration is itself germane to the larger concept of justice which it is the duty of Courts to promote. Law finds its finest hour when it speaks to justice on fair terms. In the present case our inter- E pretative endeavour has been imbued with this spirit. In the process of interpretation where alternatives are possible, *the man in the law* influences *the law in the man* may be and the construction on ss. 4 and 13 of the Amendment Act herein adopted, we admit, appeals to us as more humane. The calculus of statutory construction relating to complex problems of the community cannot be hide-bound by orthodox text-book canons.

F

An obiter, maybe. More buildings is the real solution for dwelling shortage; freezing scarce accommodation relieves for a little while. Tiger balm is no serious cure for brain tumour! We make no more comments on the need for dynamic housing policies beyond statutory palliatives. These belong to legislative 'wisdom' and administrative 'activism' and not to judicial 'constitutionalism'.

G

It was noticed in the course of arguments that a later Amending Act of 1970 purporting to give relief to tenants against whom decrees for eviction had been passed but dispossession had not ensued, had been put on the statute book. It is surprising that counsel on either side did not choose to address us any arguments on the basis of those provisions. We therefore do not go into the impact of that Act H on situations where eviction has been ordered by Courts.

We therefore allow the appeals with costs but direct the High Court to dispose of the cases in the light of the directions and obser-

vations we have made. It will be open to the Court seised of the matter to direct, in its discretion, award of costs to be incurred hereafter.

GOSWAMI, J.—Civil Appeal No. 1304 of 1973 is by certificate granted by the Calcutta High Court and Civil Appeal No. 2063 of 1973 is by Special Leave of this Court.

The first one arises out of Letters Patent Appeal No. 14 of 1969 of the Calcutta High Court dismissed on February 3, 1972, relying upon its earlier decision in *Kalyani Dutt* vs. *Pramila Bala Dassi* since reported in I.L.R. (1972) 2 Calcutta 660. A preliminary question had arisen in connection with the aforesaid Letters Patent Appeal along with three other appeals at an earlier stage with regard to the constitutionality of section 13(3A) of the West Bengal Premises Tenancy (Second Amendment) Act, 1969 (briefly the Amendment Act). A Division Bench repelled the contention of the appellants in decision which has since been reported in A.I.R. (1971) Calcutta 331 (*Sailendra Nath Ghosal & Ors.* vs *Sm. Ena Dutt & Others*). The Division Bench had held that sub-section (3A) of section 13 in so far as it was retrospective in operation was *ultra vires* Article 19(1)(f) of the Constitution on the ground of unreasonableness. Since, however, the Letters Patent Appeal was not completely disposed of, the bar of sub-section (3A) was this time pleaded asserting that Article 19 was not at all attracted to the present case on the ground that the right of reversion of the landlord, namely, the right to recover possession of the property from the tenant, is not a right of property which is a condition precedent to the application of Article 19(1)(f) and consequently, the question as to the infringement of fundamental right did not at all rise and that there could not be any scope for holding that the provision of sub-section (3A) offended against Article 19(1)(f). This second contention which was allowed to be raised by the Letters Patent Bench was also repelled following its earlier decision in *Kalyani Dutt's* case (supra) disposed of on September 7, 1971.

Civil Appeal No. 2063 of 1973 arises out of the decision of the High Court in Second Appeal No. 1193 of 1972 disposed of on 25th July, 1973 relying upon *Sailendra Nath Ghosal's* case (supra) which is the subject matter of appeal in Civil Appeal No. 1304 of 1973.

The history of tortuous litigation in both the appeals may also be noticed. In Civil Appeal No. 1304 of 1973 the plaintiff (respondent herein) purchased the premises in suit on February 16, 1961. She instituted Title Suit No. 480 of 1961 in the court of Munsif of Sealdah, District 24-Pargana, for ejectment of the defendant, on July 24, 1961. The suit was decreed by the Munsif on July 21, 1964, but was dismissed by the lower appellate court on May 17, 1965. On second appeal at the instance of the plaintiff, the High Court framed an additional issue and remanded the suit to return a finding on the same. On receipt of the finding of the court below, the learned single Judge of the High Court dismissed the second appeal and granted

A leave to file a Letters Patent Appeal. That appeal was dismissed on February 3, 1972. The High Court granted certificate to appeal against that decision to this Court on May 24, 1973, referring to the earlier certificate granted by that Court in *Kalyani Dutt's* case (supra). That is how Civil Appeal No. 1304 of 1973 is now before us.

B The facts in Civil Appeal No. 2063 of 1973 are these. The property in suit was purchased by the plaintiff (respondent herein) on February 7, 1964 and the eviction suit No. 76 of 1966 was instituted in February 1965. The suit was dismissed by the Trial Court on October 11, 1966. On appeal by the plaintiff, the Additional District Judge allowed the appeal on June 8, 1967, and remanded the suit for disposal after taking additional evidence. The Munsif thereafter C decreed the plaintiff's suit on December 23, 1968. On appeal by the defendant the Additional District Judge allowed the same and dismissed the suit on April 8, 1969. On plaintiff's appeal to the High Court in Second Appeal No. 968 of 1969, the High Court allowed the same on April 3, 1971 and remanded the suit to the Munsif for retrial. The Munsif again dismissed the plaintiff's suit on September 13, 1971. On appeal by the plaintiff the Additional District Judge allowed the same D and decreed the suit on April 29, 1972. The High Court on appeal by the defendant dismissed the second Appeal on July 25, 1973, relying upon *Salindra Nath Ghosal's* case (supra) disposed of on January 28, 1971. The defendant then obtained special leave. Thus the life of litigation in Civil Appeal No. 1304 of 1973 is now in the fourteenth year after purchase of the premises by the plaintiff six months earlier. The second one is a decade old; the property having E been purchased about a year earlier.

Both the appeals were argued together and will be governed by this common judgment.

The suits in both the appeals are by what has come to be known as transferee-landlords. They have instituted suits in one case within six months of the purchase in 1961 and in the other within one F year of the purchase in 1965. During the long pendency of the litigation the West Bengal Premises Tenancy (Second Amendment) Act was passed which came into force on November 14, 1969, and section 4, *inter-alia,* was made applicable to pending suits including appeals. It amended the West Bengal Premises Tenancy Act, 1956 (West Bengal Act XII of 1956) (briefly the Original Act). Section 4 of the Amendment Act introduced the following changes in section 13 of G the Original Act :

Section 13(1)(f) of the Original Act stood as follows :—

"13(1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or H more of the following grounds, namely :—

* * * * *

(f) Where the premises are reasonably required by the landlord either for purposes of building or rebuilding or

for making thereto substantial additions or alterations or for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held". A

After the amendment of section 13 by section 4 of the Amendment Act, clause (f) was split up into two clauses (f) and (ff) which read as under :—

"(f) Subject to the provisions of sub-section (3A) and section 18A, where the premises are reasonably required by the landlord for purposes of building or rebuilding or for making thereto substantial additions or alterations, and such building or re-building, or additions or alterations, cannot be carried out without the premises being vacated; B

(ff) Subject to the provisions of sub-section (3A), where the premises are reasonably required by the landlord for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held and the landlord or such person is not in possession of any reasonably suitable accommodation". C

In addition, section 4 of the Amendment Act introduced a new sub-section (3A) which reads as follows :— D

"Where a landlord has acquired his interest in the premises by transfer, no suit for the recovery of possession of the premises on any of the grounds mentioned in clause (f) or clause (ff) of sub-section (1) shall be instituted by the landlord before the expiration of a period of three years from the date of his acquisition of such interest; E

Provided that a suit for the recovery of the possession of the premises may be instituted on the ground mentioned in clause (f) of sub-section (1) before the expiration of the said period of three years if the Controller on the application of landlord and after giving the tenant an opportunity of being heard, permits, by order, the institution of the suit on the ground that the building or re-building or the additions, or alterations, as the case may be are necessary to make the premises safe for human habitation". F

It should be noted that the grounds for ejectment in the earlier sub-section (f) are the same as the new grounds in clauses (f) and (ff) except for some additional restrictions. The common grounds for eviction are, broadly speaking, reasonable requirement for the purpose of building or rebuilding, etc. [sub-clause (f)] and reasonable requirement for occupation by the landlord, etc. [sub-clause (ff)]. There is, therefore, no particular significance to the mention of "grounds" in clause (f) or clause (ff) of sub-section (1) in sub-section (3A). G

Section 13 of the Amendment Act which is the bone of contention grants retrospectivity to section 4 of the Amendment Act and, therefore, necessarily to sub-section (3A) and section 13(1)(f)(ff). The grievance centres round retrospectivity of sub-section (3A) and H

A section 13(1)(f) and (ff) made applicable by force of section 13 of the Amendment Act to suits and appeals pending on the commencement of the Act. It may be in order first to deal with the question of retrospectivity of sub-section (3A) which is the principal ground of attack in these appeals.

Section 13 of the Amendment Act provides that effect should be B given to section 4 of the Amendment Act in pending suits including appeal on the date of the commencement of the Act. The suits of the particular category by transferee-landlords, therefore, could be pending on commencement of the Amendment Act and these may have been instituted several years prior to the Amendment Act. There may also be appeals pending in different appellate courts against decrees in such suits. The appeals necessarily have to be understood as C appeals arising out of suits instituted within the three years' ban. The tenants are now permitted to take objection on the score of contravention of section 13(3A), before the courts either in a pending suit or in a pending appeal against decrees in such suits and the point for consideration then would be whether such a suit was instituted within three years' ban and the appeal was pending against such a banned suit. When section 13 of the Amendment Act provides that section D 4 therein has to be given effect in pending suits including appeals, effect has to be given by the courts. Now how will effect be given to section 13(3A) ? Retrospectivity to be given under section 13 of the Amendment Act to section 4 broadly requires compliance as follows

(1) that no suit for eviction by a transferee-landlord shall be instituted within three years of his acquisition of E the premises;

(2) if eviction is sought on the ground under section 13(1)(f) of the Amendment Act, an additional restriction is put, namely, that "such building or rebuilding or additions or alterations cannot be carried out without the premises being vacated";

F (3) if eviction is sought on the ground under section 13(1)(ff), a further restriction is put upon the right of the landlord to evict, viz., that "the landlord or such person is not in possession of any reasonably suitable accommodation".

Under proviso to section 13(3A) a transferee-landlord can, how- G ever, institute a suit within three years' ban provided he obtains prior permission from the Controller who on an application by the landlord and after hearing the parties may decide whether permission should be given or not.

Prime-facie, a suit which had already been instituted prior to the Amendment Act would not come within the mischief of section 13(3A) since this sub-section, in terms, prohibits only institution of H suits and does not provide for dismissal of suits already instituted. Similarly while there is a relaxation in favour of a transferee-landlord under the proviso to obtain permission from the Controller this benefit is out of the way even in a genuine case where the suit had already

been instituted within three years of purchase and the same or an appeal therefrom is now pending after the passing of the Amendment Act. In this regard also it appears sub-section (3A) is not intended to be attracted to suits which were already instituted prior to the Amendment Act. But as will be seen hereafter the above position is altered by the express provision of section 13 of the Amendment Act whereby it is intended that the court should give retrospectivity, *inter alia*, to section 4 of the Amendment Act.

On the terms of only section 13(3A) it is difficult to hold that it would bring old sections within the mischief of section 13(3A) which imposes a ban expressly on institution of suits within three years of the acquisition of ownership of the premises subject to the relaxation contained in the proviso thereto.

This being the correct interpretation of sub-section (3A), taken by itself, what is the effect of section 13 of the Amendment Act upon this provision? Section 13 of the Amendment Act in seeking to give retropective effect to sub-section (3A) does exactly what sub-section (3A) by itself contra-indicates.

The first part of section 13(3A) which provides for a ban against institution of suits for eviction within three years of acquisition of the premises must be given effect to under section 13 of the Amendment Act in pending suits and in pending appeals arising out of the decrees passed in such suits provided the former had been instituted within the period of the ban. If, therefore, after the Amendment Act it is found in a pending suit or in a pending appeal that the particular suit was instituted within the three years' ban the same will have to be dismissed and only in that way the court will be able to give effect to sub-section (3A). With regard to the proviso of sub-section (3A), when the ground of eviction is relateable to section 13(1)(f) of the Amendment Act the court will have to dismiss the suit in absence of the requisite premission.

That being the practical result of restrospectivity given to sub-section (3A), is that sub-section, in so far as it is retrospective, violative of Article 19(1)(f) of the Constitution? That takes us to the object and purpose of the Amendment Act. The Statement of Objects and Reasons as quoted in *Kalyani Dutt's* case (supra) is as follows :—

> "It has been considered necessary that some more relief should be given to the tenants against eviction, that the necessity of tender of rent to the landlord every time the rent is deposited with the Controller during a continuous period should be dispensed with, that the interests of the residents of hotels and lodging houses should be safeguarded and that the penalties for contravention of some of the provisions of the West Bengal Premises Tenancy Act, 1956, should be made more stringent".

In the earlier judgment of the High Court which is also the subject matter of Civil Appeal No. 1304 of 1973 the High Court referred to the statement of the Minister at the time of piloting of the Bill in the following words :—

A "It is found from the speech of the Minister at the time of introducing the Bill in the legislature, that the problems of tenants are many: there is one class—original owners who are the old inhabitants of the city; these owner-landlords are not affluent; they solely depend upon the rents received from the tenants. It has been ascertained from experience that two of the grounds of eviction, namely, requirement of the B premises for own use of the landlords and for the purpose of building and re-building, have been misused by the landlords. In the city of Calcutta and other towns, there are millions of tenants who are left at the mercy of the landlords. In this background and after taking into account similar provisions in other States, it has been decided that some restrictions ought to have been imposed upon trans- C feree-landlords prohibiting them from bringing ejectment suits against the tenants within three years from their purchase".

The High Court also observed further that—

"there is nothing on the record to show that the mischief, sought to be remedied by the amended legislation, D was in existence since 1956. On the other hand, the ministerial speech, referred to above, rather indicates that the said mischief was of camparatively recent origin".

Again in *Kalyani Dutt's* case (supra) the High Court in para 27 observed that "such suits are not many and at the same time most of them are pending for more than ten years". The materials relied E upon by the High Court stand uncontradicted by any affidavit before us.

On the above materials it is safe to hold that the main object of the Amendment Act is to counteract the "recent" mischief of circumvention of the provisions of the original Act in order to evict tenants on even *bona fide* requirements specified under the law of device of transfer of premises held under the occupation of tenants. Although F the Amendment Act has not completely barred institutions of suits by transferee-landlords postponement of litigation for a period of three years from acquisition of the premises was provided for under sub-section (3A). This had a two-fold purpose, namely, to enable tenants a reasonable respite to arrange their affairs and also to discourage speculative acquisitions with an ulterior motive. This salutary provision for the general body of tenants cannot be called unreasonable. G But the question is whether by applying the provision to pending suits and appeals has that object been achieved in the interest of the general body of tenants which would certainly constitute the general public within the meaning of clause 5 of Article 19? From the facts and circumstances extracted above from the two judgments of the High Court, it is not possible to hold that the interest of the general body of tenants would be served by application of sub-section (3A) to pending H suits and appeals.

If the mischief was of "recent" origin, there is no reason to overshoot the mark and outstretch the long rope of the law beyond the

requirements of the situation. It is clear that in trying to include old actions that may be surviving in courts, per chance, because of laws' proverbial delay, section 13 of the Amendment Act has gone far in excess of the actual needs of the time and problems and the provisions thereof cannot be said to impose a reasonable restriction on the right of the transferee-landlords, albeit a well-defined class, amongst the landlords, to hold and enjoy their property in the interest of the general public. Such transferee-landlords with pending old sections in suits or in appeals are, as observed by the High Court, not likely to be of a large number and necessarily so the tenants of such a sub-sec-class. It is not in the general interest of the large body of tenants to impose such restrictions on a few transferee-landlords of this sub-class subject to unbearable delay in litigation, understandably not on their own account. If relief in the shape of postponement of a landlord's suit were the object of sub-section (3A) in giving retrospectivity to it, the law did not take count of the inevitable long delay that takes place in pending litigation of this type as a result of man-made laws of procedure in courts such as as has even been clearly demonstrated by the cases at hand. The law that misses its object cannot justify its existence. Besides, it will be a sterile relief if tenants have to face a fresh summons next day.

Hard cases will be on both sides of the line. Law contemplates in terms of generality and is not intended to hit a few individuals by making invidious distinction. Article 19 of the Constitution confers protection of rights specified therein belonging to all citizens. Any individual citizen may complain of encroachment of his rights and freedom guaranteed under the Article. Law's encroachment upon such rights and freedom of citizens can survive challenge if it passes the tests laid down in the six saving clauses of Article 19.

Coming now to article 19(1)(f), with which we are concerned in these appeals, the said provision confers upon each individual citizen the right to acquire, hold and dispose of property. This right is subject to clause (5) which we may read so far as material for our purpose:

> "Nothing in sub-clauses (d), (e) and (f) of the said clause shall....prevent the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses.... in the interests of the general public.....".

Even a single citizen may complain against violation of his fundamental rights under Article 19(1)(f) and his vindication of his right may be defeated only if the impugned infringement brought upon by the law can be considered as a reasonable restriction and the said restriction is also in the interests of the general public. It is manifest, therefore, under the Constitution, that an individual's right will have to yield to the common weal of the general community. That general community may be in broad segments, but even then must form a class as a whole. A few individuals cannot take the place of a class and for the matter of that the general public In the present case the particular relief contemplated by the Amendment Act is in favour

A of tenants in general and the restriction under sub-section (3A) must be viewed in that context. It cannot be said that the legislature in applying sub-section (3A) restrospectively has achieved that avowed object at all. The matter would have been different if, in view of any prevailing conditions, a reasonable date for giving retrospective effect were fixed under the law in the light of the known mischief. In its absence, applicability of the blanket ban to pending suits and B appeals cannot be said to be a reasonable restriction in the interests of the general public. It may help a few tenants in litigation but will prejudice the right of transferee-landlords locked up in old and costly litigation. The gain of the few as opposed to the general public cannot be the touchstone for justifying reasonableness of the restriction imposed on the rights of the transferee-landlords in applying sub-section (3A) to pending suits and appeals.

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In the social combat between the interests of a few and the general welfare of the community the latter is the clinching factor to be reckoned and hard cases of a few individuals cannot be assigned a higher place and status than they deserve to the detriment of the fundamental rights of even a single individual.

Therefore, the retrospectivity so far as sub-section (3A) is con- D cerned with regard to institution of suits made applicable to pending suits and appeals is clearly very wide of a reasonable mark and is, thus, an imposition of an unreasonable restriction on the rights of the transferee-landlords in pending suits which had been instituted prior to the Amendment Act and in appeals arising therefrom and it is not saved by the protective clause (5) of Article 19 of the Constitution. Sub-section (3A) so far as it is retrospective and as such E applicable to pending suits including appeal is *ultra vires* Article 19 (1)(f) of the Constitution. The provision is valid only prospectively.

So far as the retrospectivity of section 13(1)(f) and (ff), the position is entirely different. Clearly further reliefs have been sought to be given to the tenants as a class by these provisions in the Amend- F ment Act. These further reliefs are in the general interests of tenants and can be applied without any difficulty to pending suits including appeals. There is nothing unreasonable about such a retrospectivity in applying these provisions for the general welfare of tenants in securing for them a safe and sure tenure as far as practicable untrammelled by inconvenient litigation. It is well-established that the legislature in enacting laws can legislate prospectively as well as restrospec- G tively. Section 13(1)(f) and (ff) are, therefore, not *ultra vires* Article 19(1)(f) of the Constitution.

With regard to another contention of the appellants that the right of the landlords that is affected by sub-section (3A) is only a mere right to sue and at best a right of reversion and hence it is not a right to property under Article 19(1)(f) of the Constitution, it is sufficient to state that the question is covered by two decisions of this H Court in *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*(1) *and Swami*

(1) [1954] S.C.R. 1005

Motor Transport (P) Limited and Another v. *Sri Sankaraswamigal Butt and Another*(1). The right to own and hold property in order to make an effective right under the Constitution must include the right to possession of the property including the right to evict tenants in accordance with law. The submission is, therefore, without any force.

The position, therefore, is that in a pending suit or even in a pending appeal a landlord may be given an opportunity to adduce evidence to establish such of the new requirements in 13(1)(f) or (ff) as are relevant to the proceedings. In that case the tenant will have also an opportunity to produce evidence in rebuttal. If the matter arises in a pending suit, it will be disposed of by the trial court. If, however, the matter arises in appeal, it will be open to the appellate court, in order to shorten the life of litigation, to remand the matter to the appropriate court to return a finding on such additional issues as may be framed to meet the requirements of (f) and/or (ff), as the case may be, under order 41, rule 25, Civil Procedure Code.

In the result these appeals are partly allowed. The judgment of the High Court with regard to invalidity of sub-section (3A) so far as it is retrospective and applicable to pending suits and appeals is upheld. The orders dismissing the appeals are, however, set aside and the appeals are remanded to the High Court for disposal in the light of the observations with reference to section 13(1)(f) and/or (ff), whichever is applicable. The landslords may now be given by the High Court an oportunity, if they so wish, to adduce evidence with regard to such further requirements under (f) and/or (ff) as may be applicable and the High Court will call for a finding from the appropriate court in that behalf and thereafter dispose of the appeals on merits. Since success is shared, there will be no orders as to costs in these appeals.

ORDER

In accordance with the majority judgment, the appeals are allowed with costs; the cases are remanded to the High Court, and the High Court is directed to dispose of the case in the light of the directions and observations made in the majority judgment. It will be open to the Court seised of the matter to direct, in its discretion, amount of costs to be incurred hereafter.

P.B.R.

(1) [1963] Supp. 1 S.C.R. 282.