

Sardar Tota Singh

Vs

Gold Field Leather Works, Bombay

Civil Appeal No. 682 of 1981

(E. S. Vankataramiah, V. B. Eradi, R. S. Pathak JJ)

15.01.1985

JUDGMENT

PATHAK, J. -

1. This appeal by special leave arises out of a suit for a declaration and injunction and raises questions concerning the interpretation and application of certain provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.
2. Peerbhoy Mansion is a building situated at Vithalbai Patel Road in the city of Bombay. It was let to a partnership firm. Gold Field Leather Works. Gold Field sublet a portion of a shop on the ground floor to Manekchand Bhikabhai. The subtenant Manekchand sublet it further to Sardar Tota Singh in 1952.
3. Gold Field filed a suit in 1962 against Manekchand for possession of the premises on the ground of unlawful subletting and carrying out unauthorized structural alterations. Manekchand resisted the suit and filed a written statement. During the pendency of the suit Tota Singh applied to the Court for being added as a defendant, but the application was opposed by Gold Field and was rejected. Gold Field's suit was ultimately decreed for possession in accordance with a compromise between the parties.
4. Tota Singh then filed Suit No. 2454 of 1966 for a declaration that he was a lawful tenant in possession of the premises and for an injunction restraining Gold Field from executing the decree which that firm had obtained against Manekchand. It was pleaded that he was in occupation and exclusive possession as a lawful subtenant for more than fifteen years to the knowledge of Gold Field, that the decree, in Gold Field's suit was a collusive decree, that as the decree had been passed against Manekchand he, Tota Singh, had become a direct tenant of Gold Field under Section 14 of the Bombay Rents, Hotel and Lodging House Rent Control Act, 1947 (the "Bombay Rent Act") and that therefore he was entitled to the declaration and injunction sought in the suit.
5. Gold Field filed a written statement in the suit and pleaded that they were tenants of the entire building and had sublet the premises to Manekchand, that Manekchand as subtenant could not subject the premises further to Tota Singh, and therefore Tota Singh's subtenancy was invalid.
6. The Court of Small Causes tried the suit and decreed it on April 17, 1973. Gold Field appealed. The Appellate Bench of the Court of Small Causes dismissed the appeal on April 30, 1975. The Appellate Bench affirmed the trial Judge's finding that the premises had been sublet by Manekchand to Tota Singh in 1952, and that on May 21, 1959, when the Bombay Rents, Hotel and Lodging

House Rates Control (Amendment) Ordinance, 1959 was promulgated and sub-section (2) of Section 15 was introduced into the Bombay Rent Act, Manekchand was not in possession. In the attempt to prove that he was lawful subtenant. Tota Singh urged before the Appellate Bench that Gold Field had permitted Mnekchand to sublet the premises to him, but this contention was not entertained by the Appellate Bench as there was neither any plea nor any evidence to support it. The Appellate Bench also rejected the submissions of Tota Singh that he had paid rent directly to Gold Field and therefore had been accepted as a tenant by them. If found that no rent had been paid by Tota Singh to Gold Field after Manekchand's statutory tenancy, which followed the termination of his contractual tenancy by service of notice, had itself been terminated by the decree for possession in Gold Field's suit. One road seemed still open to Tota Singh to establish the validity of his tenancy. Before the Appellate Bench a concession had been made by counsel for Gold Field. It was conceded on behalf of Gold Field that Manekchand was their lawful subtenant. On that Tota Singh urged that if Manekchand, although a subtenant, was regarded as a "tenant" by reason of sub-section (11) of Section 5 of the Bombay Rent Act, then the benefit of sub-section (2) of Section 15 should be extended to him. He was in possession on May 21, 1959 as the subtenant of a lawful tenant and, therefore, the submission proceeded, his subtenancy would be deemed to be valid. This contention found favour with the Appellate Bench. It held that as Tota Singh was undisputedly in possession on May 21, 1959, the subtenancy in his favour by Manekchand must be deemed to be a valid subtenancy. At this point a debate was raised whether the benefit of sub-section (2) of Section 15 had to be confined to a subtenancy created by a tenant or could be extended to a subtenancy created by a subtenant. Following the view taken by the Bombay High Court in Josephy Santa Vincent v. Ambico Industries ((1968) 70 Bom LR 224 : AIR 1969 Bom 49 : 1968 Mah LJ 532), the Appellate bench answered that question in favour of Tota Singh and dismissed Gold Field's appeal.

7. Gold Field filed a special civil application in the High Court against the order of the Appellate Bench of the Court of Small Causes and on June 21, 1980 the High Court set aside the decree passed by the Appellate Bench and dismissed Tota Singh's suit. The High Court took the view that having regard to certain observations made by this Court in *Jai Singh Morarji v. Sovani Pvt. Ltd.* ((1973) 2 SCR 603 : (1973) 1 SCC 197 : AIR 1973 SC 772) an extended construction of sub-section (2) of Section 15 of the Bombay Rent Act so as to include a subtenancy created by a subtenant was not justified.

8. Tota Singh died during the pendency of the appeal in the High Court, and accordingly this appeal has been preferred by his legal representatives.

9. The material question before us is whether Tota Singh could rightly claim tenancy rights in the premises and therefore nullify the enforcement as against him of the decree in Gold Field's suit.

10. It appears that sub-section (1) of Section 15 of the Bombay Rent Act as originally enacted prohibited the subletting by a tenant of premises let to him, except in the particular cases notified by the State Government under the proviso to that sub-section. A subletting by the tenant constituted a ground for his eviction under clause (e) of sub-section (1) of Section 13. The rigour of the provision was relaxed by the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance 1959, which was brought into force on May 21, 1959. The Ordinance was replaced by the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1959. In consequence sub-section (1) of Section 15 of the Act stood amended from the inception of the Bombay Rent Act so that the prohibition against subletting incorporated in it operated "subject to any contract to the contrary". Simultaneously, sub-section (2) was inserted in Section 15. That provision was subsequently substituted by Maharashtra Act 38 of 1962 by the following provision

with effect from May 21, 1959 :

15(2) The prohibition against the subletting of the whole or any part of the premises which have been let to any tenant, and against the assignment or transfer in any other manner of the interest of the tenant therein, contained in sub-section (1), shall, subject to the provisions of this sub-section, be deemed to have had no effect before the commencement of the Bombay Rents Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959, in any area in which this Act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgment, decree or order of a Court, any such sub-lease assignment or transfer or any such purported sub-lease, assignment or transfer in favour of any person who has entered into possession despite the prohibition in sub-section (1), as a purported sub-lessee, assignee or transferee and has continued in possession at the commencement of the said Ordinance, shall be deemed to be valid and effectual for all purposes, and any tenant who has subject any premises or part thereof, assigned or transferred any interest therein, shall not be liable to eviction under clause (e) of sub-section (1) of Section 13.

11. It is contended for the appellant that as the respondent conceded before the Court of Small Causes that Manekchand was a lawful sub-tenant, the High Court should have held that a subtenancy created by such subtenant must be deemed valid by reason of sub-section (2) of Section 15 of the Bombay Rent Act. It is urged that the High Court erred in construing *Jai Singh Morarji* ((1973) 2 SCR 603 : (1973) 1 SCC 197 : AIR 1973 SC 772) as laying down the contrary. The case for the respondent is that sub-section (2) of Section 15 benefits a subtenancy created by the original tenant only and does not extend to subtenancy created by a subtenant.

12. There can be no doubt that upon the amendment of sub-section (1) of Section 15 by the Ordinance and by its related Act the prohibition against subletting did not operate in those cases where the subletting was permitted by contract between the landlord and tenant. In all such cases, if the landlord had permitted the tenant under a contract between them to subject the premises, no question would arise of a need to validate those subtenancies. The relevant amendment in sub-section (1) of Section 15 was deemed to have always been part of the sub-section. It is in this light that we must determine the scope of sub-section (2) of Section 15. Sub-section (2) of Section 15 raises the ban from all subletting effected before May 21, 1959, the date of commencement of the Ordinance, provided the provisions of that sub-section are fulfilled. Any such sublease shall be deemed to be valid provided the sublessee has entered into possession before the date of commencement of the Ordinance and had continued in possession on such date. This is an especial provision and marks a departure from the general law. It does not refer to subtenancies which are permitted by contract between the landlord and the tenant, but relates to subtenancies which are not so protected. It will be noted that the removal by sub-section (2) of Section 15 of the prohibition is limited only to those subtenancies which were created before May 21, 1959. Such a limitation would be inappropriate to subtenancies permitted by contract which would be created regardless of whether they were brought into existence before May 21, 1959 or after that date. Also the subtenancies covered by sub-section (2) of Section 15 would be regarded as valid only if the subtenant had entered into possession before May 21, 1959 and was continued in possession on that date. Such a requirement would be wholly inconsistent in the case of subtenancies permitted by contract. Inasmuch as sub-section (2) of Section 15 specifically attaches the condition that type subtenant should have been in possession before the commencement of the Ordinance and should have continued in possession on that date, it is apparent that such a provision could be related only

to illegal subtenants, that is to say subtenants who were let in and given possession without any contractual right conferred by the landlord on the tenant to do so. The protection conferred by sub-section (1) of Section 15 is necessary for such sub-tenancies only, and not for a subtenancy which is permitted by the terms of the contract and which therefore falls altogether outside the prohibition embodied in sub-section (1) of Section 15. The result, therefore, is that sub-section (2) of Section 15 relates to subtenancies not permitted by contract between the landlord and tenant and which would, but for the said sub-section (2), fall within the prohibition enacted in the amended sub-section (1) of Section 15.

13. In the present case, it was conceded on behalf of God Field before the Appellate Bench of the Court of Small Causes that Manekchand was a lawful subtenant. He could not have been a lawful subtenant by virtue of sub-section (2) of Section 15 because on May 21, 1959 he was not in possession of the premises, which in fact had already passed as early as 1952 into the possession of Tota Singh. Manekchand could have been a lawful subtenant only on the assumption that the subtenancy was permitted under the contract between Gold Field and their landlord. As the existence of such a term in the contract would be question of fact, the concession by counsel for God Field must be regarded as binding in this case on Gold Field, It is urged for the respondent that the concession made by counsel for Gold Field can be of no avail because any agreement by a tenant creating a subtenancy, being directly opposed to sub-section (1) of Section 15 as originally enacted, would be void. The submission, it seems to us, is without force, It must be remembered that sub-section (1) of Section 15 was amended by inserting the words "but subject to any contract to the contrary" in 1959 retrospectively, the words being deemed always to have been inserted in that sub-section. We must take it by reason of the legal fiction employed that those words were already part of the sub-section when Gold Field agreed to sublet the premises to Manekchand. The cases, *P. D. Aswani v. Kavashah Dinshah Mulla* (1954 56 Bom LR 467 : AIR 1954 Bom 426 : ILR 1954 Bom 857) and *Waman Shrinivas Kini v. Ratilal Bhagwandas & Co.* (1959 Supp 2 SCR 217 : AIR 1959 SC 689 : 1959 SCJ 635), on which learned counsel for the respondent relies, were decided before sub-section (1) of Section 15 was amended, and therefore did not take into account the effect of such amendment.

14. Therefore, the present case is one where Gold Field is a tenant, Manekbhai (sic Manekchand) is a lawful subtenant and the latter has created a further subtenancy in favour of Tota Singh. The question is whether the further subtenancy can fall within the scope of sub-section (2) of Section 15. Now, if regard be had to clause (a) of sub-section (11) of Section 5, it is apparent that in respect of the subsequent subtenancy Manekbhai (sic Manekchand) could be decried as a tenant and Tota Singh as his subtenant. And if that is so, there is no reason why Tota Singh's subtenancy should not be regarded as a valid subtenancy inasmuch as it was created before May 21, 1959 and he had entered into possession of the premises before that date and was continuing in possession on that date.

15. But it is urged on behalf of Gold Field that this Court had held in *Jai Singh Morarji* ((1973) 2 SCR 603 : (1973) 1 SCC 197 : AIR 1973 SC 772) that sub-section (2) of Section 15 does not validate a subtenancy created by a subtenant. That was a case where the original landlord filed a suit against the tenant Ochhavlal for possession on the ground, inter alia of illegal subletting by Ochhavlal. The suit was decreed, and the plaintiff obtained possession, Ochhavlal had sublet the premises to Sovani and Sovani had subject them to a private limited company, On application by the Company against dispossession in the execution proceedings, the trial court upheld the Company's claim to possession but this Court ultimately rejected the Company's claim and upheld the right of the original landlord to possession. The facts of that case disclose that there were two "prohibited"

subtenancies, the first was created by Ochhavlal in favour of Sovani and the subsequent was created by Sovani in favour of the Company, The benefit of sub-section (2) of Section 15 could have been extended to Sovani only if the conditions of the sub-section were satisfied, If they, were satisfied in the case of Sovani, the benefit could not be extended again in favour of the Company. That would obviously be so because the condition as to possession on May 21, 1959 could not possibly be satisfied by the subsequent subtenant if the original subtenant was in possession on that date, It, however, the subsequent subtenant was in possession on May 21, 1959, then clearly neither subtenancy can be regarded as valid, To be valid, the first subtenancy had to satisfy the condition of possession by that subtenant on May 21, 1959, which ex hypothesis was not possible, And if the original subtenancy was invalid the subsequent subtenancy would also be invalid. The subsequent subtenancy could be valid only if the original subtenant had legal interest to transfer to the subsequent subtenant. It is in the light of this analysis that the decision of this Court in *Jai Singh Morarji* ((1973) 2 SCR 603 : (1973) 1 SCC 197 : AIR 1973 SC 772) needs to be appreciated, in particular the passage on page 607 of the Report which reads :

(SCC p. 201, para 17)

The answer to the question is whether the respondent Private Company was a subtenant prior to 1959 and continued in possession at the commencement of the Ordinance in 1959. Ochhavlal in the present case gave the sublease to Sovani before the Ordinance. It is an indisputable feature in the present case that Sovani did not continue in possession at the commencement of the Ordinance of 1959. Sovani became, a Director of the Private Company. It is the Private Company which claims to be a sublessee. The Private Company was in the first place not a subleases of the tenant but a subsequent assignee from the sublessee, Secondly Sovani who was the sublessee was not in possession on the date of the Ordinance on May 21, 1959. It was the Private Company which was in possession. Therefore, the Private Company is not within the protection of Section 15(2) of the Act.

The learned Judges were not unaware of the terms of sub-section (11) of Section 5, as is evident from the passage on page 608 of the Report.

16. It is then urged by learned counsel for the respondent that clauses (a) of sub-section (11) of Section 5 of the Bombay Rent Act cannot be called in aid by the appellant as sub-section (1) of Section 15 applies to contractual tenants only. We are referred to *Anand Nivas (P.) Ltd., v. Anandji Kalyanji Pedhi* ((1964) 4 SCR 892 : AIR 1965 SC 414), where this Court laid down that the expression "tenant" in sub-section (1) of Section 15 of the Bombay Rent Act means a contractual tenant and not a statutory tenant. The submission can be of no assistance to the respondent. Having regard to the concession made by counsel for Gold Field in the Court below that Manekchand was a lawful tenant, which position, as we have discussed earlier, necessarily implies a valid contract of tenancy between Gold Field and Manekchand, the latter must be regarded as a contractual tenant when he subject the premises to Tota Singh. No question arises of a statutory tenant purporting to sublet his interest to a subtenant.

17. Upon the aforesaid considerations, in our judgment the appeal must succeed.

18. The appeal is allowed with costs.

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