

Bhavarlal Labhchand Shah

Vs

Kanaiyalal Nathalal Intawala

Special Leave Petition (Civil) No. 14036 of 1985

(E. S. Venkataramiah, R. B. Misra JJ)

07.01.1986

JUDGMENT

VENKATARAMIAH, J. -

1. The question for consideration in this special leave petition is whether a person occupying a non-residential premises as a tenant after the contractual period is over can bequeath his right to occupy the property as a tenant under a will in favour of a legatee who is not a member of his family carrying on business, trade or storage with him in the said premises at the time of his death under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Act 57 of 1947) (hereinafter referred to as 'the Act') as in force in the State of Gujarat.

2. The respondent who is the landlord of a building situated at Baroda had leased it out in favour of one Bai Maniben Dhirajlal Shah on a monthly rent of Rs 22. Maniben was carrying on business in the said shop premises and before her death she bequeathed her tenancy right in the said shop by a will in favour of the petitioner. After her death the will was probated. The petitioner who had got into possession of the premises in question claimed that Maniben had a tenancy right under the Act which was heritable and as such she could validly bequeath the tenancy right in his favour. It was however admitted by the petitioner that she was not a contractual tenant but her right to tenancy was only a right protected by the Act. The landlord instituted a suit in Rent Suit No. 47 of 1975 on the file of the Small Causes Court at Baroda for recovering vacant possession of the said building contending that the petitioner was not a tenant and could not continue any longer in it. By way of defence the petitioner set up the will referred to above and asserted that he had become a tenant thereunder and could not be evicted from the premises. The Small Causes Court agreeing with the petitioner that he had acquired the tenancy right under the will dismissed the suit. The landlord filed an appeal before the Extra Assistant Judge, Baroda against the decree dismissing the suit. The Extra Assistant Judge, Baroda allowed the appeal holding that the tenancy right could not have been bequeathed under the will in favour of a third party like the petitioner who was not a member of the tenant's family doing business with the tenant before her death and he directed the petitioner to deliver possession of the premises to the landlord. Aggrieved by the judgment of the Extra Assistant Judge, Baroda the petitioner filed a revision petition before the High Court of Gujarat in Civil Revision Application No. 1500 of 1978. The learned Single Judge of the High Court who first heard the civil revision application felt that Maniben who was entitled to the protection of the Act even after the determination of the lease had an interest in the premises which could be bequeathed by her in favour of any person of her choice under a will irrespective of the fact whether the legatee was a member of her family carrying on business, trade or storage in the said premises along with her at the time of her death. He however referred the matter to a larger Bench since substantial issues of law had arisen for consideration. Ultimately the case was heard by a Full Bench of the Gujarat High

Court. The Full Bench by its judgment dated September 24, 1985 held that the petitioner could not acquire under the will any interest in the tenancy in question and that the decision of the Extra Assistant Judge, Baroda did not call for any interference. Aggrieved by the judgment of the Full Bench of the High Court the petitioner has filed this special leave petition under Article 136 of the Constitution.

3. After we heard the learned counsel for the petitioner we came to the conclusion that there was no infirmity in the judgment of the High Court but we were however of the view that we should set out our reasons in support of our decision having regard to the contentions very strenuously urged before us by the learned counsel for the petitioner.

4. The expression 'tenant' has been defined in sub-section (11) of Section 5 of the Act thus :

5(11) 'tenant' means any person by whom or on whose account rent is payable for any premises and includes -

(a) such sub-tenants and other persons as have derived title under a tenant before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 (Bom. Ord. No. 3 of 1959),

(aa) any person to whom interest in premises has been transferred under the proviso to sub-section (1) of Section 15 :

(b) any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance (Bom. Ord. No. 3 of 1959),

(c)(i) in relation to premises let for residence, any member of the tenant's family residing with the tenant at the time of or within three months immediately preceding the death of the tenant as may be decided in default of agreement by the court, and

(ii) in relation to premises let for business, trade or storage any member of the tenant's family carrying on business, trade or storage with the tenant in the said premises at the time of the death of the tenant as may continue after his death, to carry on the business, trade or storage, as the case may be in the said premises and as may be decided in default of agreement by the court.

5. We are concerned in this case with a building which is let for business and insofar as business premises are concerned, it is provided in Section 5(11)(c)(ii) that any member of the tenant's family carrying on business, trade or storage with the tenant in the premises at the time of the death of the tenant as may continue, after his death, to carry on the business, trade or storage, as the case may be in the said premises and as may be decided in default of agreement by the court shall be treated as a tenant. It is significant that both sub-clauses (i) and (ii) of clause (c) of sub-section (11) of Section 5 of the Act which deal with the devolution of the right to tenancy on the death of a tenant in respect of residential premises and premises let for business, trade and storage respectively do not provide that the said right of tenancy can devolve by means of testamentary disposition on a legatee who is not referred to in the respective sub-clauses. It has, therefore, to be understood that even the extended meaning given to the expression 'tenant' by sub-section (11) of Section 5 of the Act does

not authorise the disposition of the right to the tenancy of the premises governed by the Act under a will. Ordinarily it is only an interest that can be inherited that can be bequeathed. But the heritability of a tenancy after the determination of the lease, which is protected by the Act is restricted in the case of residential premises only to the members of the tenant's family mentioned in sub-clause (i) of clause (c) of Section 5(11) of the Act and in the case of premises let for business, trade or storage to members belonging to the family of the tenant carrying on business, trade or storage with the tenant in the premises at the time of the death of the tenant as may continue after his death to carry on the business, trade or storage as the case may be in the said premises and as may be decided in default of the agreement by the court as provided in sub-clause (ii) thereof. When the statute has imposed such a restriction, it is not possible to say that the tenant can bequeath the right to such tenancy in the case of premises let for business, trade or storage in favour of a person not possessing the qualification referred to in Section 5(11)(c)(ii) of the Act. The petitioner admittedly is not a person possessing the said qualification. It is appropriate to refer here to the following observations made by A.N. Sen, J. who has written the main judgment of the case in *Gian Devi Anand v. Jeevan Kumar* (AIR 1985 SC 796 : (1985) 2 SCC 683) at page 810 : (SCC p. 708, para 31)

In the absence of the provision contained in Section 2(1)(iii), the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the "so-called statutory tenant" on his death and the heirs of such tenant would in law step into his position. This clause (iii) of Section 2(1) seeks to restrict this right insofar as the residential premises are concerned. The heritability of the statutory tenancy which otherwise flows from the Act is restricted in case of residential premises only to the heirs mentioned in Section 2(1)(iii) and the heirs therein are entitled to remain in possession and to enjoy the protection under the Act in the manner and to the extent indicated in Section 2(1)(iii). The legislature, which under the Rent Act affords protection against eviction to tenants whose tenancies have been terminated and who continue to remain in possession and who are generally termed as statutory tenants, is perfectly competent to lay down the manner and extent of the protection and the rights and obligations of such tenants and their heirs. Section 2(1)(iii) of the Act does not create any additional or special right in favour of the heirs of the "so-called statutory tenant" on his death, but seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and rights of a contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory tenant, are fully protected by the Act and the heirs of such tenants become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the legislature which has created this right has though it fit in the case of residential premises to limit the rights of the heirs in the manner and to the extent provided in Section 2(1)(iii). It appears that the legislature has not thought it fit to put any such restrictions with regard to tenants in respect of commercial premises in this Act.

6. In the above decision this Court was considering the provisions of the Delhi Rent Control Act in which restriction had been placed on the heritability of the statutory tenancy in the case of residential premises only to the heirs mentioned in Section 2(1)(iii) of the Delhi Rent Control Act and no such restriction had been placed with regard to the right of tenancy in respect of commercial premises. Proceeding further A.N. Sen, J. observed in the above decision at page 813 thus : (SCC p. 713, para 37)

In the Delhi Act, the legislature has thought it fit to make provisions regulating the right to inherit the tenancy rights in respect of residential premises. The relevant provisions are contained in Section 2(1)(iii) of the Act. With regard to the commercial premises, the legislature in the Act under consideration has thought it fit not to make any such provision. It may be noticed that in some Rent Acts provisions regulating heritability of commercial premises, have also been made whereas in

some Rent Acts no such provision either in respect of residential tenancies or commercial tenancies has been made. As in the present Act, there is no provision regulating the rights of the heirs to inherit the tenancy rights of the tenant in respect of the tenanted premises which is commercial premises, the tenancy right which is heritable devolves on the heirs under the ordinary law of succession. The tenancy right of Wasti Ram, therefore, devolves on all the heirs of Wasti Ram on his death.

7. In view of the above decision, we are of the opinion that the right to occupy the premises after the determination of the lease cannot be bequeathed to any person under a will who does not satisfy the qualification, referred to in Section 5 (11)(c)(ii) of the Act. In Gian Devi case (AIR 1985 SC 796 : (1985) 2 SCC 683) the court was not concerned with the right of a tenant to bequeath his right to remain in possession of a premises after the determination of the lease which he possessed under the statute in favour of a third party under a will. The court was dealing with the case of persons who claimed that they had inherited such right by way of intestate succession. Naturally the court was inclined to take a view favourable to the members of the family of the tenant who would be exposed to grave difficulties if they were to be thrown out of the demised premises in which the tenant was carrying on his business till his death. This is clear from the following observations of A.N. Sen, J. at page 811 : (SCC pp. 709-11, para 34)

A tenant of any commercial premises has necessarily to use the premises for business purposes. Business carried on by a tenant of any commercial premises may be and often is, his only occupation and the source of livelihood of the tenant and his family. Out of the income earned by the tenant from his business in the commercial premises, the tenant maintains himself and his family; and the tenant, if he is residing in a tenanted house, may also be paying his rent out of the said income..... The mere fact that in the Act no provision has been made with regard to the heirs of tenants in respect of commercial tenancies on the death of the tenant after termination of the tenancy, as has been done in the case of heirs of the tenants of residential premises, does not indicate that the legislature intended that the heirs of the tenants of commercial premises will cease to enjoy the protection afforded to the tenant under the Act. The legislature could never have possibly intended that with the death of a tenant of the commercial premises, the business carried on by the tenant, however flourishing it may be and even if the same constituted the source of livelihood of the members of the family, must necessarily come to an end on the death of the tenant, only because the tenant died after the contractual tenancy had been terminated. It could never have been the intention of the legislature that the entire family of a tenant depending upon the business carried on by the tenant should be completely stranded and the business carried on for years in the premises which had been let out to the tenant must stop functioning at the premises which the heirs of the deceased tenant must necessarily vacate, as they are afforded no protection under the Act. We are of the opinion that in case of commercial premises governed by the Delhi Act, the legislature has not thought it fit in the light of the situation at Delhi to place any kind of restriction on the ordinary law of inheritance with regard to succession.

8. The reasons given by the court in the above decision in support of the case of the heirs of a tenant who inherit his business under the intestate succession would not however be available in the case of a person who is a stranger to the family who claims the right to the tenancy under a will of a deceased tenant. There can possibly be no justification either in law or in equity to extend the meaning of the word 'tenant' so as to include such strangers also. If such a right of a tenant were to be recognised, what prevents him from transferring the building to anybody he likes who is totally unconnected with him or who is not dependent on him such as a temple, a church, a mosque, a hospital, a foreigner, a multinational company and any other person of any country ? The legislature

could never have intended to confer such a right on him and exclude the right of a landlord to get back possession of his building for ever even after the death of the tenant with whom he had entered into contract initially. Perhaps even in the case of a person who may succeed under sub-clauses (i) and (ii) of Section 5(11)(c) there can be no further devolution after his death again under these sub-clauses. This question however need not be pursued in this case. (However see para 602, vol. 27, Halsbury's Laws of England, fourth edition). When in the case before us the legislature has restricted the right to inherit the right to the tenancy of the premises let out for business, trade or storage to any member of a tenant's family carrying on business, trade or storage with the tenant at the time of his death it is not open to the court by judicial construction to extend the said right to persons who are not members of the tenant's family who claim under testamentary succession.

9. In *Jaspal Singh v. Additional District Judge, Bulandshahr* (AIR 1984 SC 1880 : (1984) 4 SCC 434) this Court had occasion to consider the validity of a bequest of the right of a tenant to continue to occupy the premises after the determination of the tenancy under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 under a will. Section 3(a) of the U.P. Act referred to above defined the expression 'tenant' thus :

3. In this Act, unless the content otherwise requires -

(a) 'tenant', in relation to a building, means a person by whom its rent is payable, and on the tenant's death -

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) in the case of a non-residential building, his heirs;

10. The appellant in that case claimed the right to tenancy held by one Naubat Singh under the will of Naubat Singh. This Court held that the appellant would be a tenant within the meaning of Section 3(a) of that Act only when he was an heir but the appellant was not a son but only nephew of Naubat Singh. The said U.P. Act also contained a provision in Section 12(2) thereof which stated that in the case of non-residential building where a tenant carrying on a business in the building admitted a person who was not a member of his family as a partner or a new partner, as the case may be, the tenant should be deemed to have ceased to occupy the building. Under those circumstances this Court held at page 1885 thus : (SCC pp. 440-1, para 10)

From a survey of these provisions it will be clear that if a tenant parts with possession of the premises in his possession, the same would be treated as vacant..... In the case of a non-residential building, when a tenant is carrying on business in the building, admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building. If a tenant sublets the premises, he is liable to ejection. Obviously, therefore, there are restrictions placed by the Act on the right of the tenant to transfer or sublet the tenancy rights and he can keep possession of the building or premises for himself and for the purpose of his family, for his business and for the business of his family members. He obviously cannot be allowed to transfer a tenancy right. A fortiori, the scheme of the Act does not warrant the transfer of the tenancy right to be effective after his lifetime.

11. In the Act under consideration in the present case also there is a provision similar to the provision contained in Section 12(2) of the U.P. Act. Section 15(1) of the Act reads thus :

15. In absence of contract to the contrary tenant not to sublet or transfer. - (1) Notwithstanding anything contained in any law, (but subject to any contract to the contrary), it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein :.....

12. In *Dr Anant Trimbak Sabnis v. Vasant Pratap Pandit* (AIR 1980 Bom 69 : 1969 Mah LJ 755) the High Court of Bombay has in the light of Section 15(1) of the Act taken the view and in our opinion rightly that the words 'to assign or transfer in any other manner his interest therein' in Section 15(1) of the Act had the effect of prohibiting the disposition of the tenancy right by a will in the absence of a contract to the contrary. The High Court of Bombay observed at pages 72 and 73 thus :

12. Prohibition against transfer of tenancy rights by the tenants is just a corollary to the restrictions on the landlords and is aimed at protecting them, in turn, by preventing the tenant from abusing these protections by thrusting un contemplated strangers as tenants on the landlords, willy nilly, for monetary gain or favouring any friend or relative of theirs, and thus ensuring that the immunity against eviction is not expanded into licence to dispose of premises as if it were their own and landlords' rights are not invaded beyond what is strictly necessary.....

13. Bequest of tenancy rights in this context stands on the same footing as any other transfer by sub-lease, sale, assignment, gift, volition of the tenant in inducting un contemplated strangers in the premises and thrusting them on the landlord, being the common element of these dispositions. It makes little difference to the invasion on the landlord's right whether such un contemplated stranger is so inducted by the tenant for gain or just as a favour - invasion in either case having no nexus with the object underlying these protections. It is difficult to imagine why the legislature could have intended to exclude such bequests from the sweep of the prohibited assignments and transfers under Section 15, when bequest is pregnant with the same evils as other transfers. The words "transfer in any manner" in this context only go to signify inclusion of 'bequest' also therein.

14. It is not without significance that legatee is not included in the definition of the word 'tenant'. Section 5(11) of the Act defines it to mean "a person who is liable to pay the rent or on whose account the rent is payable for any premises". Under sub-clauses (a) to (c) it is enlarged to include some others whom legislature considered it necessary to protect. Clause (c) provides for the succession to tenancy rights on the death of the tenant. Thus, this sub-clause (c) by providing for the mode of succession, impliedly excludes successors from the purview of the width of the main clause. Secondly, it restricts the succession even by operation of law of inheritance to the persons and situations indicated therein and impliedly excluding all other heirs. In fact, all the heirs are liable to be excluded if any other member of the family was staying with the tenant at the time of his death. Thirdly and more importantly, legatee is not included either in this sub-clause or any other sub-clauses. This demonstrates legislative intent to prohibit testamentary disposition of the tenancy rights. There is no other express provision to this effect in the Rent Act. It shall have to be traced only in Section 15 thereof by interpreting the words 'assign' and 'transfer' in their generic sense. This also fortifies our interpretation of these words.

13. The above reasons given by the Bombay High Court in support of its decision are perfectly justified in the context of the object and the scheme of the Act. The language of the statute also lends itself to the same construction.

14. We, therefore, agree with the view taken by the Full Bench of the High Court of Gujarat that on a true interpretation of the provisions of the Act a bequest of the right to the tenancy in respect of premises referred to in Section 5(11)(c)(ii) of the Act after the determination of the lease, which is protected by the Act cannot be made under a will in favour of a person not referred to in that sub-clause. We do not find any kind of justification to saddle the landlord with the liability to treat a stranger who is not referred to in sub-clause (ii) of Section 5(11)(c) of the Act as a tenant on the basis of a bequest made under a will by the tenant.

15. Since we are disposing of the case on the basis of the express provisions of the Act which are sufficiently restrictive in character, we do not propose to deal with the wider proposition that a statutory tenancy which is personal to the tenant cannot be bequeathed at all under a will in favour of anybody. We leave the said question open.

16. In the circumstances, there is no ground to interfere with the judgment of the High Court. This petition is, therefore, dismissed.

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