

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Super Max Internationalp.Ltd.

C.A.No.5835 of 2009

(B.N. Agrawal, G.S. Singhvi and Aftab Alam JJ.)

27.08.2009

JUDGMENT

AFTAB ALAM, J.

1. Leave granted.

2. The Government of Maharashtra, the appellant before us, is in occupation of an area of 9000 sq. ft. (11,050 sq. ft. as per the affidavit-in-reply filed by the appellant) comprising the sixth floor of a building on a monthly rental of Rs. 5236.58/-, besides water charges at the rate of Rs. 515.35/- per month. The suit premises, used for housing the office of the Registrar Co-operative Societies is situate at Fort, opposite GPO, (near C.S.T. Railway Station) in the heart of the city of Mumbai. The appellant is in occupation of the suit premises since 1966. At that time the building belonged to the Maharaja of Travancore. Respondents 1 to 3 purchased it under a deed of assignment dated May 5, 1982 and stepped into the shoes of the landlord.

3. The appellant suffered a decree of ejectment passed by the Court of Small Causes on June 30, 2003 in RAE R Suit No. 1233/3730 of 1986 on grounds of (i) default in payment of taxes and water charges as stipulated under section 13(3)(a) and (ii) reasonable and bona fide need of the landlords, respondents 1 to 3 for their own use and occupation in terms of section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('the Bombay Rent Act' or 'the Act' hereinafter). Its appeal (No.752/2003) against the decree was dismissed by the Division Bench of the Small Causes Court by judgment and order dated April 28, 2005.

4. The appellant initially filed a writ petition [W.P. (C) No.7361 of 2005] seeking to challenge the orders of ejectment. The Bombay High Court declined to entertain it on the ground that the

appellant had a remedy available to it under the Act itself. It, accordingly, disposed of the writ petition by order dated March 15, 2007 leaving it open to the appellant to file a civil revision application as provided under section 35F(2) of the Act. The appellant then moved the High Court in Civil Revision Application No.78 of 2007 challenging the orders of its ejection. The High Court admitted the Civil Revision on December 10, 2007 and issued rule on interim relief regarding stay of execution of the decree. Later on, after hearing the parties the Court stayed the execution of the decree by order dated October 14, 2008 subject, however, to the condition that the appellant would deposit a sum of Rs. 5,40,000/- every month commencing from the date of the decree passed by the trial court. The Court directed that the amount in arrears should be deposited by January 10, 2009 and from that date the future deposits for every month should be made by the tenth of the next succeeding month. The Court, however, did not allow the landlords to take away the money but further directed that the deposits would be ad-hoc and subject to further order in the revision or in any other appropriate proceeding. It also directed the office to invest the amount(s), in case deposited by the appellant, in a nationalized bank, initially for a period of one year and then for further periods of one year each. The appellant finds the condition on which stay is granted highly onerous. But the respondents maintain that the Court has been very liberal with the appellant and the amount of monthly deposit fixed by the court is far less than the current market rent in that area.

5. Of late, orders are coming to this Court where, in cases arising from ejection proceedings, the High Courts, with a view to strike a balance between the competing interests of the landlord and the tenant, pass interim orders asking the tenant to pay to the landlord or deposit in court, as monthly rent, certain sum fixed by it (that, according to the High Court, should be the reasonable market rent for the tenanted premises), far in excess of the existing monthly rent. In this case, while it was at the threshold, it was stated before this Court that two of its Division Bench decisions, one in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*, (2005) 1 SCC 705 and the other in *Niyas Ahmad Khan vs. Mahmood Rahmat Ullah Khan*, (2008) 7 SCC 539 had taken conflicting views on the correctness of such orders passed by the High Court. The case was, accordingly, directed to be placed before a three-Judge Bench and that is how it came to be heard before us.

6. It may be stated at the outset that just a little scrutiny revealed that there was no conflict between *Atma Ram Properties* and *Niyas Ahmad Khan*.

In *Atma Ram Properties* the tenant, having lost before the Rent Controller preferred an appeal before the Rent Control Tribunal. The Tribunal stayed the tenant's eviction but subject to the condition that he would deposit in Court Rs.15,000/- per month, in addition to the contractual rent that might be paid directly to the landlord. The deposits made in the Court were not permitted to be withdrawn by any of the parties until the appeal was finally decided. The tenant challenged the condition attached to the stay order before the High Court in a petition filed under Article 227 of the Constitution of India. The High Court allowed the writ petition and set aside the condition imposed by the Tribunal. The effect of the order of the High Court was that during the pendency of the appeal before the Tribunal the tenant would continue to remain in occupation of the suit premises on payment of an amount equivalent to the contractual rate of rent. Against the High Court order the landlord came to this Court in appeal. This Court allowed the appeal, set aside the High Court order and restored the order passed by the Tribunal.

7. In *Niyas Ahmed Khan*, the position was quite different. The landlord's application for eviction of the tenant on grounds of personal necessity was turned down by the prescribed authority. The order of the prescribed authority was confirmed by the appellate authority. The landlord challenged the

orders passed by the two authorities under the Rent Control Act in a writ petition filed before the Allahabad High Court and while admitting the writ petition the Court gave an interim direction to the tenant to pay rent at the rate of Rs. 12,050/- per month (in place of the contractual monthly rent of Rs. 150/-). The Court further directed that if the rent fixed by it was not paid for two consecutive months the landlord could evict the tenant by coercive means taking the aid of police. In appeal by the tenant, this Court naturally frowned upon the interim order passed by the High Court and in paragraph 10 of the decision observed as follows:

10. To sum up, in writ petitions by landlords against rejection of eviction petitions, there is no scope for issue of any interim direction to the tenant to pay higher rent. But in writ petitions by tenants against grant of eviction, the High Court may, as a condition of stay, direct the tenant to pay higher rent during the pendency of the writ petition. This again is subject to two limitations. First, the condition should be reasonable. Second, there should not be any bar in the respective State rent control legislation in regard to such increases in rent. Be that as it may.

8. We, thus, find no inconsistency, much less any conflict in the decisions of this Court in Atma Ram Properties and Niyas Ahmed Khan. The decision in Niyas Ahmad Khan has no application to the facts of the present case and it seems to be covered by the decision of the Atma Ram Properties.

9. However, Mr. U. U. Lalit, Senior Advocate appearing for the appellant, submitted that the decision in Atma Ram Properties would apply only to cases under the Delhi Rent Control Act and shall have no application to tenancies governed by the provisions of the Bombay Rent Act. Mr. Lalit submitted that the Delhi Rent Control Act defined 'tenant' in a way as to exclude a person against whom a decree of eviction was passed. Section 2(1) of the Delhi Rent Control Act, 1958 defined tenant as: 2(1) tenant means.....but does not include, --- (A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be reopened under the proviso to section 3 of the Delhi Rent Control

(Amendment) Act, 1976 (18 of 1976).

10. Mr. Lalit submitted that under the Delhi Rent Control Act a tenant suffering a decree or order of eviction lost the status of 'tenant' and was consequently stripped of all the protection (including, against increase in rent) provided by the Rent Control Act and in such a case it would be open to the appellate or the revisional authority to enhance the monthly rent payable by him as a condition for granting stay of execution of the decree or order as held in Atma Ram Properties. This exclusionary clause in the definition of tenant was a special feature of the Delhi Rent Act and the Rent Acts of some other States, e.g. Madhya Pradesh, Rajasthan, etc. But the position under the Bombay Rent Act was materially different. In the definition of tenant in the Bombay Act there was no exclusionary clause. Moreover, in the Bombay Rent Act there were a number of provisions creating an express bar against any enhancement of rent.

11. Learned counsel then took us through various provisions of the Bombay Rent Act. He referred to section 5(11) defining tenant and emphasised that this definition did not have any exclusionary clause as in section 2(1) of the Delhi Act. Section 5(11) of the Bombay Rent Act reads as follows:

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 1st day of February 1973; (aa) any person to whom interest in premises, has been assigned or

transferred as permitted or deemed to be permitted, under 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 first day of February 1973; (bb) such licensees as share deemed to be tenants for the purposes of this Act by Section 15A

(bba) the State Government, or as the case may be, the Government allottee, referred to in sub-clause (b) of clause (1A), deemed to be a tenant, for the purposes of this Act by Section 15B;

(c) (i) in relation to any premises let for residence, when the tenant dies, whether the death has occurred before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978, any member of the tenant's family residing with the tenant at the time of his death or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court;

(ii) in relation to any permission let for the purposes of education, business, trade or storage, when the tenant dies, whether the death as occurred before or after the commencement of the said Act, any member of the tenant's family using the premises for the purposes of education or carrying on business, trade or storage in the premises, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the court. Explanation- The provisions of this clause for transmission of tenancy, shall not be restricted to the death of the original tenant, but shall apply, and shall be deemed always to have applied, even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.

(emphasis added)

12. He then referred to the definition of standard rent as contained in section 5(10) of the Act. The provision is as under: 5(10). standard rent in relation to any premises means,- (a) where the standard rent is fixed by the Court and the Controller respectively under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, such standard rent; or (b) when the standard rent is not so fixed,-subject to the provisions of section 11,

(i) the rent at which the premises were let on the first day of September 1940, or

(ii) where they were not let on the first day of September 1940, the rent at which they were last let before that day, or

(iii) where they were first let after the first day of September 1940, the rent at which they were first let, or (iii-a) notwithstanding anything contained in paragraph (iii), the rent of the premises referred to in sub-section (1-A) of section 4 shall, on expiry of the period of five years mentioned in that sub-section, not exceed the amount equivalent to the amount of net return of fifteen percent, on the investment in the land and building and all the outgoings in respect of such premises; or

(iv) on any of the cases specified in section 11, the rent fixed by the Court.

13. Mr. Lalit submitted that by virtue of section 5(10)(b) the standard rent under the Bombay Rent

Act was attached to the premises. It was, therefore, constant and not subject to any revision on change in tenancy. In other words even if the appellant ceased to be a tenant and is thrown out, the respondents can induct another tenant only on the same standard rent, that is, Rs.5236.58/- besides water charges at the rate of Rs.515.35/- per month. He further submitted that except in circumstances as provided under sections 10 (increase in rent on account of payment of rates, etc); 10A (increase in rent in respect of premises that were let out on or before September 1, 1940), 10B (saving increase in rent under the previous provisions from the bar of section 7), and 11 (increase in rent resulting from 'standard rent' fixed by the court in certain cases) any increment of rent was expressly barred under section 7 of the Act.

14. Mr. Lalit submitted that in view of section 5(11) of the Act the appellant continued to be a tenant within the meaning of the Act notwithstanding the decrees of ejection passed by the Small Causes Court. It, therefore, followed that the appellant enjoyed all the protections provided under the Act and in light of the provisions referred to above any direction to pay, as monthly rent, any amount in excess of the standard rent was contrary to law and unsustainable.

15. Before proceeding to examine Mr. Lalit's submissions we may observe that earlier a three-Judge Bench of this Court in *Malpe Vishwanath Acharya Ors. vs. State of Maharashtra Anr.*, (1998) 2 SCC 1, found and held that the provisions of the Bombay Rent Act relating to the determination and fixation of 'standard rent' can no longer be considered to be reasonable. The only reason why, despite the finding, the Court did not strike down those provisions was that the Bombay Rent Act was to come to an end on March 31, 1998 and the Court was informed that the State was in the process of enacting a new Rent Control Act that would be just and fair and would follow the National Model Law that was circulated by the Central Government in 1992. After the decision of the Court in *Malpe Vishwanath Acharya* the Bombay Rent Act was indeed replaced by the Maharashtra Rent Control Act, 1999 that came into force with effect from March 31, 2000. But Mr. Rohatgi, learned Senior counsel appearing for the respondents, strongly contended that the Maharashtra Rent Control Act completely belied the hopes expressed by the Court under which it had refrained from striking down the offending provisions in the Bombay Rent Act. Mr. Rohatgi submitted that the Maharashtra Rent Control Act merely brought about some cosmetic changes but retained the substance of the earlier Bombay Rent Act. Referring to the definition of standard rent in section 7(14) of the Maharashtra Rent Control Act, Mr. Rohatgi submitted that it merely shifted the date from September 1, 1940 to October 1, 1987 for pegging the standard rent which continued to be attached to the premises and was not amenable to any revision on change of tenancy.

16. The issue of reasonableness of the provisions of the Maharashtra Rent Control Act, 1999 or the Bombay Rent Act do not arise in this case and, therefore, we refrain from making any observations in that regard but we do feel that the reasonableness or otherwise of the provisions of the Maharashtra Rent Control Act may have to be seriously examined by this Court in an appropriate case.

17. Coming back to the case in hand, Mr. Lalit argued that in spite of the decrees of eviction passed by competent courts, the appellant continued to be a tenant within the meaning of the Bombay Rent Act until, in execution of the decree it was physically evicted from the suit premises. The tenancy did not come to end on the passing of the decree but would continue as long as the appellant was in actual physical possession of the suit premises; a priori it enjoyed all the protection under the Bombay Rent Act and specially those laying down the bar against any increase in rent. In support of the contention he relied upon two sets of decisions, one on the issue of heritability of tenancy under

the Rent Acts and the other on the question whether a tenant could be evicted on the basis of a decree made under the general law in case after the decree was passed the rented premises came to be covered by the Rent Act. The first set comprises three decisions of this Court in (i) Damadilal Ors. vs. Parashram Ors., (1976) 4 SCC 855, (ii) Ganpat Ladha vs. Shashi Kant Vishnu Shinde, (1978) 2 SCC 573 and (iii) Gian Devi Anand vs. Jeevan Kumar (1985) 2 SCC 683. The second set also has three decisions. Those are (i) Mani Subrat Jain vs. Raja Ram Vohra, (1980) 1 SCC 1, (ii) H. Shiva Rao vs. Cecilia Pereira (1987) 1 SCC 258 and (iii) Anr., (2000) 3 SCC 607.

18. Dealing with the three decisions in the first set, Mr. Lalit submitted that Damadilal fully supported his contention. The decision in Ganpat Ladha took a contrary view but later in Gian Devi Anand a Constitution Bench overruled Ganpat Ladha and approved Damadilal thus, reinforcing the submission made on behalf of the appellant.

19. The case of Damadilal arose under the Madhya Pradesh Accommodation Control Act, 1961. The suit premise was a house in a bazar that was let out to the two defendants (the tenants) for business purposes. The question that arose in the case was whether on the death of the two tenants during the pendency of their second appeal before the High Court, their respective heirs and legal representatives had the right to get themselves substituted in place of the original appellants-tenants and pursue the reliefs sought for by them. The High Court permitted substitution and eventually allowed the second appeal, setting aside the eviction decrees passed by the courts below. The High Court judgment was challenged before this Court in appeal. One of the grounds on which the High Court judgment was assailed by the appellants-landlords was that after their contractual tenancy was determined the two original tenants were reduced to the status of statutory tenants having no heritable interest in the demised premises and on their death the right to prosecute their appeal did not survive for their heirs and legal representatives. In support of the contention reliance was placed on two earlier decisions of the Court in Anand Nivas (Private) Ltd. vs. Anandji Kalyanji Pedhi (1964) 4 SCR 892 (arising under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947) and Jagdish Chander Chatterjee vs. Sri Kishan (1973) 1 SCR 850 [arising under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950]. A three-Judge Bench of this Court rejected the contention raised on behalf of the appellants. The decision in Damadilal pointed out that the term 'statutory tenancy' was borrowed from the English Rent Acts and along with the expression certain legal notions, peculiar to the English Common Law, had also found their way in some Indian decisions though those concepts had no basis in the Rent Acts of this country. The Court observed that the courts in England had held that a statutory tenant had no estate or property in the occupied premises since he retained possession by virtue of the Rent Act(s) and not as being entitled to tenancy. It was said that he had only a personal right to remain in occupation, the statutory right of irremovability and nothing more. The position in this country, however, was quite different. In paragraph 11 of the decision it was observed as follows:

We find it difficult to appreciate how in this country we can proceed on the basis that a tenant whose contractual tenancy has determined but who is protected against eviction by the statute, has no right of property but only a personal right to remain in occupation, without ascertaining what his rights are under the statute. The concept of a statutory tenant having no estate or property in the premises which he occupies is derived from the provisions of the English Rent Acts. But it is not clear how it can be assumed that the position is the same in this country without any reference to the provisions of the relevant statute. Tenancy has its origin in contract. There is no dispute that a contractual tenant has an estate or property in the subject-matter of the tenancy, and heritability is an incident of the tenancy. It cannot be assumed, however, that with the determination of the tenancy the estate

must necessarily disappear and the statute can only preserve his status of irremovability and not the estate he had in the premises in his occupation. It is not possible to claim that the 'sanctity' of contract cannot be touched by legislation. It is therefore necessary to examine the provisions of the Madhya Pradesh Accommodation Control Act, 1961 to find out whether the respondents' predecessors-in-interest retained a heritable interest in the disputed premises even after the termination of their tenancy

20. The decision then went on to examine section 2(i) of the Madhya Pradesh Accommodation Control Act that defined 'tenant' and section 14 that provided for restrictions on subletting and held that those provisions supported the view taken by the Court that the statutory tenant retained as much interest in the demised premises as a contractual tenant.

21. The case of Ganpat Ladha arose under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and the premises from which the tenant was sought to be evicted was a shop let out to him for business purpose. The trial court and the appellate court decreed the suit on the findings that the tenant had failed to make payment of the arrears of rent even after a valid notice of demand was given to him by the landlord and further that he was not entitled to the protection of section 12(3)(b) of the Act. The tenant challenged the decrees passed by the courts below before the High Court in an application under Article 227 of the Constitution. During the pendency of the writ petition before the High Court the tenant died and her son was impleaded in her place to pursue the reliefs prayed for in the writ petition. The High Court eventually allowed the writ petition on the ground that despite the default in payment of arrears of rent, the trial court could exercise its discretion in favour of the tenant and decline to pass a decree of eviction. The matter finally came to this Court in appeal preferred by landlord. A three-Judge Bench of the Court allowed the appeal inter alia holding that after the death of the original tenant her son could not claim to be a tenant within the meaning of the Act. The decision in Ganpat Ladha is based entirely on interpretation of the definition of 'tenant' under the Bombay Rent Act. The Court noticed section 5(11) defining tenant and reproduced the section insofar as it was relevant to the case as follows: 5. (11) 'tenant' means any person by whom or on whose account rent is payable for any premises and includes- (a)

(b)

(c) any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the Court

22. The Court held that section 5(11)(c) restricted the heritability of tenancy only to a member of the tenant's family who might be residing with him at the time of his death. This in turn implied that heritability of tenancy was confined only to residential premises and the benefit could not be extended to business premises. The Court held as follows: This principle underlying the enactment of Section 5(11)(c) also goes to indicate that it is in respect of residential premises that the protection of that section is intended to be given. We can appreciate a provision being made in respect of business premises that on the death of a tenant in respect of such premises, any member of the tenant's family carrying on business with the tenant in such premises at the time of his death shall be a tenant and the protection of the Rent Act shall be available to him. But we fail to see what purpose the legislature could have had in view in according protection in respect of business premises to a member of the tenant's family residing with him at the time of his death. The basic postulate of protection under the Rent Act is that the person who is sought to be protected must be

in possession of the premises and his possession is protected by the legislation. But in case of business premises, a member of the family of tenants residing with him at the time of his death may not be in possession of the business premises

23. In Ganpat Ladha this Court approved the decision of the Gujarat High Court in Parubai Manilal Brahmin vs. Baldevdas Zaverbhai Tapodhan (1964) 5 Guj LR 563 and in support of the view taken by it also cited the amendment introduced by the Gujarat Legislature in section 5(11)(c) of the Bombay Rent Act. It needs to be stated here that in Ganpat Ladha the earlier decision in Damadilal was not brought to the notice of the Court and the Court did not go into the question whether a tenant on his death left behind any heritable estate or interest in the tenanted premises.

24. Gian Devi is a decision by a Constitution Bench of five Judges. The case arose under the Delhi Rent Control Act, 1958 and the tenanted premises was once again a shop. The question that the Court framed for its consideration was as under:

To state it more precisely, the question is whether the heirs of a deceased tenant whose contractual tenancy in respect of commercial premises has been determined, are entitled to the same protection against eviction afforded by the Act of the tenant

25. In this case, the Constitution Bench considered both the earlier decisions in Damadilal and in Ganpat Ladha. It also considered the earlier seven-Judge Bench decision in V. Dhanapal Chettiar vs. Yesodai Ammal (1980) 1 SCR 334 besides several other decision of the Court. In Gian Devi, as in Damadilal, the Court observed that the expression statutory tenant was used in English Rent Acts and the concept that a statutory tenant had no estate or interest in the demised premises was peculiar to the English Law. It had no basis in the provisions of the Rent Acts of the different States of this country. Referring to the earlier decision in Damadilal in paragraph 25 of the judgment the Court observed as follows:

This Court has very aptly observed in Damadilal case that it cannot be assumed that with the determination of the tenancy, the estate must necessarily disappear and the statute can only preserve the status of irremovability and not the estate he has in the premises in his occupation

In the same paragraph, the decision reproduced Section 2(1) of the Delhi Rent Control Act that defined tenant both as it stood prior to and after its amendment by Act 18 of 1976 and observed as follows: It is, therefore, clear from the definition of tenant, whether in the original Act or in the amended Act, that the tenant within the meaning of the definition of the term in the Act includes any person continuing in possession after the termination of his tenancy. It will be seen that the definition of tenant in Madhya Pradesh Accommodation Control Act, 1961 on which the decision in Damadilal case mainly turns, is similar to the definition of tenant as given in the Delhi Act in the sense that the tenant under both the Acts includes for the purpose of Rent Act any person continuing in possession after the termination of tenancy.

(emphasis added)

In this regard in paragraph 31 of the decision, it observed as follows: The very premise, on the basis of which the argument is advanced, is, in our opinion, unsound. The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal position of the tenant, unless there are contrary provisions in the Act; and, the tenant

notwithstanding the termination of tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate which the tenant under the Act despite termination of the contractual tenancy continues to enjoy creates a heritable interest in the absence of any provision to the contrary. We have earlier noticed the decision of this Court in Damadilal case. This view has been taken by this Court in Damadilal case and in our opinion this decision represents the correct position in law. The observations of this Court in the decision of the seven-Judge Bench in the case of V. Dhanapal Chettiar vs. Yesodai Ammal which we have earlier quoted appear to conclude the question.

In paragraph 33 of the decision the Court expressed its inability to agree with the observations made by the three-Judge bench in Ganpat Ladha and in paragraph 35 it stated more explicitly that the view expressed by the Court in Ganpat Ladha and the observations made therein do not lay down the correct law.

26. In conclusion the Constitution Bench, in paragraph 36 of the decision, held and observed as follows:

Accordingly, we hold that the Rent Act in question defines a tenant in substance to mean 'a tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed', the tenant even after the determination of the tenancy continues to have an estate or interest in the tenanted premises and the tenancy rights both in respect of residential premises and commercial premises are heritable. The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed. If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfillment of the condition in the manner and to the extent stipulated in the Act. The Legislature which by the Rent Act seeks to confer the benefit on the tenants and to afford protection against eviction, is perfectly competent to make appropriate provision regulating the nature of protection and the manner and extent of enjoyment of such tenancy rights after the termination of contractual tenancy of the tenant including the rights and the nature of protection of the heirs on the death of the tenant. Such appropriate provision maybe made by the Legislature both with regard to the residential tenancy and commercial tenancy. It is, however, entirely for the Legislature to decide whether the Legislature will make such provision or not. In the absence of any provision regulating the right of inheritance, and the manner and the extent thereof and in the absence of any condition being stipulated with regard to the devolution of tenancy rights on the heirs on the death of the tenant, the devolution of tenancy rights must necessarily be in accordance with the ordinary law of succession.

27. On the basis of the decisions in Damadilal and Gian Devi Anand Mr. Lalit strongly contended that when a tenant, having suffered a decree of eviction, on his death left behind sufficient protection under the law for his heirs and legal representatives to step into his shoes and resist the eviction sought for by the landlord how can it be that a tenant suffering a decree of eviction would

himself lose the statutory protection against increase in rent. The submission is indeed attractive but a little scrutiny would show that it is quite misconceived. It may be recalled that the decision in Damidilal was under the Madhya Pradesh Accommodation Control Act, 1961 and Gian Devi Anand under the Delhi Rent Control Act, 1958. In both the Acts the definition of tenant had the qualification that Mr. Lalit termed as the exclusionary clause:

tenant means.....but does not include, --- (A) any person against whom an order or decree for eviction has been made

In both the decisions, the definition of tenant as appearing in the Madhya Pradesh and the Delhi Acts respectively were reproduced. But for some reason, in those two decisions, the Court did not take any notice of that part of the definition. In the Constitution Bench decision in Gian Devi Anand, after reproducing in full the definition of tenant as contained in section 2(1) of the Delhi Rent Control Act, the Court observed (at the end of paragraph 25):

It is therefore, clear from the definition of tenant, whether in the original Act or in the amended Act, that the tenant within the meaning of the definition of the term in the Act includes any person continuing in possession after the termination of his tenancy.

It is, thus, to be seen that the Court noticed that a person who continued to be in possession after termination of his (contractual) tenancy was covered by the definition of tenant but did not pay any attention to the latter part of the definition that excluded any person against whom an order or decree of eviction had been made.

28. Here, it may further be recalled that the decision in Atma Ram Properties was also under the Delhi Rent Control Act. Hence, if the submissions of Mr. Lalit are to be accepted then it would follow that Atma Ram Properties was wrongly decided. But Mr. Lalit himself did not take that position (and he could not have taken that position!). He only tried to distinguish the decision in Atma Ram Properties by contending that it would not apply to a case under the Bombay Rent Act because in that Act the definition of tenant was materially different. The distinction sought to be made by the learned counsel, thus, appears to be unfounded and the submission seems to be inconsistent.

29. But the basic flaw in the submission is that it overlooks that the decisions in Damadilal and Gian Devi Anand were rendered in a totally different context. In those two decisions the Court proceeded on the basis that the determination of contractual tenancy did not extinguish the rights of the tenant. Under the Rent Act the tenant continued to retain his estate and interests in the demised premises that, after his death, devolved upon his heirs and legal representatives. Further, in both Damadilal and Gian Devi Anand the underlying concern of the Court was to save the heirs and legal representatives of the deceased tenants from two misfortunes befalling them at the same time; one, the death of the bread winner and the other, the loss of the bread altogether as a consequence of the closure of business resulting from ejection from the tenanted business premises. In Ganpat Ladha a three-Judge Bench of the Court had held that (under the Bombay Rent Act) the devolution of tenancy could take place only in case of residential premises and not in case of business premises. Disagreeing with that view the Constitution Bench in Gian Devi Anand (in paragraph 34 of the decision) observed as follows:

The death of the person who happens to be the tenant of the commercial premises and who was

running the business out of the income of which the family used to be maintained, is itself a great loss to the members of the family to whom the death, naturally, comes as a great blow. Usually, on the death of the person who runs the business and maintains his family out of the income of the business, the other members of the family who suffer the bereavement have necessarily to carry on the business for the maintenance and support of the family. A running business is indeed a very valuable asset and often a great source of comfort to the family as the business keeps the family going..... 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 will 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.

30. In light of the discussion above we are of the considered view that the appellant in this case cannot derive any support from the decisions of this Court in Damadilal and Gian Devi Anand.

31. Coming now to the second set of decisions, the case of Mani Subrat Jain arose from an order of the appellant's eviction in execution of a decree made against him. The appellant was an advocate and thus belonged to a 'scheduled' class of tenants whose dwellings enjoyed special protection under the East Punjab Rent Restriction Act, 1949. In a suit filed by the respondent-landlord for recovery of possession of the demised premises the appellant entered into a compromise and agreed to vacate the premises by a certain date on certain terms regarding rent etc. The Court passed a consent decree on the basis of the agreement entered into by the parties. The decree was passed on October 9, 1972. Shortly thereafter the area of application of the East Punjab Rent Restriction Act, 1949 was extended and with effect from November 4, 1992 it came to apply to Chandigarh (where the rented property was situated). The appellant did not vacate the premises as agreed and the decree was put to execution. The execution court ordered eviction and the order was affirmed by all the superior courts till the matter finally reached this Court. Before this Court, the appellant took the stand that the rented premises having come under the Rent Control Act he could not be ejected on the basis of a decree passed earlier. The Court found that the decision of the case would turn on the question whether or not the appellant was covered by the definition of tenant under the Rent Act and observed as follows:

The salvation of the appellant is certain if he be a 'tenant' within the meaning of the Act. His eviction is certain if the definition 'tenant' does not ensconce him in its amplitude.

32. The Court then, brushing aside the precedents cited by the two sides, proceeded to examine the question in light of section 2(i) (containing the definition of 'tenant') and section 13 (laying down the grounds on which alone a tenant could be evicted) and reproduced the two provisions as follows:

2 (i) 'tenant' means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter house or of rents for shops has been framed out or leased

by a municipal, town or notified area committee.

13. Eviction of tenants- (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

(emphasis in the original)

33. Having thus taken note of the two provisions, the Court arrived at the inevitable conclusion as follows:

The expression 'tenant' includes 'a tenant continuing in possession after the termination of the tenancy in his favour'. It thus includes, by express provision, a quondam tenant whose nexus with the property is continuance in possession. The fact that a decree or any other process extinguishes the tenancy under the general law of real property does not terminate the status of a tenant under the Act having regard to the carefully drawn inclusive clause.

It, however, appears that the parties entered into yet another agreement while the matter was pending before this Court and hence, the operative order in the judgment reads as follows:

Krishna Iyer, J.- The judgment having been delivered counsel for the respondent represented that the Agreement, which has been made and appended to the judgment, be treated as an undertaking mutually between the parties to the Court. Counsel on both sides have no objection to this course and so we record the Agreement incorporated in the judgment as an undertaking to the Court made by the parties in regard to their respective obligations.

34. Interestingly in Mani Subrat Jain the very first sentence of the judgment gives sufficient indication how the decision is going to end up. Krishna Iyer, J. writing for the Court in his inimitably grandiloquent style started the judgment by referring to the Holmesian homily and thereby making it clear that the Court would bestow its humane attention on the matter not through logic but on the basis of experience. From the start to the end the Court made clear its intent to stand firmly by the side of the tenant. We may concede that the tenant who was also an advocate was entitled to be doubly protected by the law. We may also try to comprehend the legalese of the debate as reflected in the judgment. But we have real problem in following the message the decision in Mani Subrat Jain gave to the ordinary man. That to go back on one's solemn word given to the other side before a Court of law is no sin. On the contrary one may derive rich dividend before the highest Court of the land, provided one is a tenant. To, sometimes, divorce logic from the law is one thing but to divorce morality altogether from the law is something quite different.

35. The case of H. Shiva Rao v. Cecilia Pereira arose on facts very similar to the case of Mani Subrat Jain (except that in this case the decree of eviction was passed on contest and not on the basis of any agreement between the parties). Following the earlier decision in Mani Subrat Jain this Court allowed the tenant's appeal and held that he could not be evicted in execution of the decree since after the decree was made the rented premises came under the Karnataka Rent Control Act as a result of the territorial extension in regard to the application of the Act. In H. Shiva Rao too the Court's strong sympathy for the tenant is evident from paragraphs 5 and 7 of the judgment.

36. Dilip vs. Mohd. Azizul Haq is the third and the last decision in the second set of decisions cited by Mr. Lalit. In this case the High Court had taken the view that an appeal preferred by the tenant against a decree of eviction passed by the trial court was not covered by the expression in a suit or proceeding filed and pending against the tenant in any court or before any authority as occurring in clause 13-A of the C.P. and Berar Letting of Houses Rent Control order, 1949. Clause 13-A of the order was as follows: No decree for eviction shall be passed in a suit or proceeding filed and pending against the tenant in any court or before any authority unless the landlord produces a written permission of the Controller as required by sub-clause (1) of clause 13 This Court reversed the High Court decision relying on some earlier decisions and holding that an appeal, even though filed by the tenant, was a continuation of the suit and hence, covered by the expression used in clause 13-A. The decision in Dilip also referred to the earlier decision in H. Shiva Rao but this decision does not seem to have any relevance to the case in hand.

37. It is not difficult to distinguish the decisions in Mani Subrat Jain and H. Shiva Rao from the case in hand. Once the tenanted premises came under the Rent Act the tenant could only be evicted on the basis of a decree passed under the Rent Act. But unlike the present appellant, the tenants in Mani Subrat Jain and H. Shiva Rao had not suffered any decree under the respective Rent Acts.

38. It needs to be stated here that the decisions relied upon by Mr. Lalit are undoubtedly binding precedents for the respective issues decided in those cases but it is not possible to stretch those decisions in support of the point canvassed by him. We must also state here that on the basis of the aforementioned decisions Mr. Lalit was able to build up a persuasive argument. But in the larger perspective and with the change in times we find the submissions quite unacceptable. Here it is important to bear in mind that all the decisions relied upon by Mr. Lalit, from Damadilal to H. Shiva Rao were rendered between 1976 to 1986 during the period when, to put it mildly, the Court used to be overly protective of the tenant and for good reasons too because that is the apparent thrust of the Rent Act. The Rent Act was the socio-legal response to certain historical developments, namely, the acute shortage of housing in the aftermath of the World War, the great influx of refugees in a number of States of the Union following the partition of the country and the massive migration inside the country from rural areas to the urban centres as a result of rapid urbanisation. All these developments that took place almost at the same time skewed the law of supply and demand totally in favour of the landlord. The need of the hour, therefore, was to protect the tenant, who would have otherwise been left completely at the mercy of the landlord. The legislature intervened and brought in the Rent Act, severely restricting the grounds for enhancement of rent and for eviction of the tenant from the rented premises, thus regulating the relationship between the landlord and the tenant beyond the general law under the Transfer of Property Act, 1882. In this regard the Court responded in equal, if not greater measures. But after about three quarters of a century and three generations later when things are no longer the same and the urban centres are faced with newer problems, some of those having their origin in the Rent Act itself, there is the need to take a re-look on the Court's attitude towards the relationship between the landlord and the tenant and to provide for a more level ground in the judicial arena.

39. The way this Court has been looking at the relationship between the Landlord and the Tenant in the past and the shift in the Court's approach in recent times have been examined in some detail in the decision in Anr., (2008) 5 SCC 287. In that decision one of us (Singhvi, J.) speaking for the Court referred to a number of earlier decisions of the Court and (in paragraph 12 of the judgment) observed as follows:

Before proceeding further we consider it necessary to observe that there has been definite shift in the Court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s to early 1990s would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant- Mohinder Kumar vs. State of Haryana¹, Prabhakaran Nair vs. State of T.N.², D.C. Bhatia vs. Union of India³ and C.N. Rudramurthy vs. K. Barkathulla Khan⁴. In these and other cases, the Court consistently held that the paramount object of every rent control legislation is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the later judgments.

40. He then referred to some later decisions and (in paragraph 14 of the judgment) quoted a passage from the decision in Joginder Pal vs. Naval Kishore Behal (2002) 5 SCC 397, to the following effect: ... The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.

(emphasis in original)

1 (1985) 4 SCC 221 2 (1987) 4 SCC 238 3 (1995) 1 SCC 104 4 (1998) 8 SCC 275

41. Commenting upon the Full Bench decision of the Delhi High Court that had upheld the Constitutional validity of section 14(1)(e) of the Delhi Rent Control Act and that came under challenge in Satyawati Sharma, Singhvi, J. (in paragraph 29 of the judgment) observed as follows: ... It is significant to note that the Full Bench did not, at all, advert to the question whether the reason/cause which supplied rationale to the classification continued to subsist even after lapse of 44 years and whether the tenants of premises let for non-residential purposes should continue to avail the benefit of implicit exemption from eviction in the case of bona fide requirement of the landlord despite see-saw change in the housing scenario in Delhi and substantial increase in the availability of buildings and premises which could be let for non-residential or commercial purposes.

42. The decision in Satyawati Sharma then referred to the doctrine of temporal reasonableness and in paragraph 32 observed as follows: It is trite to say that legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent.

43. We reaffirm the views expressed in Satyawati Sharma and emphasise the need for a more balanced and objective approach to the relationship between the landlord and tenant. This is not to say that the Court should lean in favour of the landlord but merely that there is no longer any room for the assumption that all tenants, as a class, are in dire circumstances and in desperate need of the

Court's protection under all circumstances. (The case of the present appellant who is in occupation of an area of 9000 sq. ft. in a building, situate at Fort, Mumbai on a rental of Rs. 5236.58/-, plus water charges at the rate of Rs. 515.35/- per month more than amply highlights the point)

44. With the perspective thus adjusted all the submissions made by Mr. Lalit on behalf of the appellant have a simple answer. The interim order of the High Court asking the appellant to deposit Rs.5, 40,000/- from the date of the decree as condition for stay of the execution of the decree of ejectment has to be seen as one single package. The appellant may or may not accept the order as a whole. But it is not open to it to accept the order in so far as it stays the execution of the decree and to question the condition attached to it. In an appeal or revision, stay of execution of the decree(s) passed by the court(s) below cannot be asked for as of right. While admitting the appeal or revision, it is perfectly open to the court, to decline to grant any stay or to grant stay subject to some reasonable condition. In case stay is not granted or in case the order of stay remains inoperative for failure to satisfy the condition subject to which it is granted, the tenant-in-revision will not have the protection of any of the provisions under the Rent Act relied upon by Mr. Lalit and in all likelihood would be evicted before the revision is finally decided. In the event the revision is allowed later on, the tenant's remedy would be only by way of restitution.

45. In Atma Ram Properties the Court viewed the issue exactly in the same way (See paragraphs 6, 8 9 of the decision). Further, the decision also answers Mr. Lalit's submission that the tenancy did not come to end on the passing of the decree but would continue until the tenant was actually physically evicted from the premises in execution of the decree. In Atma Ram Properties the Court framed two issues arising for consideration as follows:

This submission raises the following two issues: (i) in respect of premises enjoying the protection of rent control legislation, when does the tenancy terminate; and (ii) up to what point of time is the tenant liable to pay rent at the contractual rate and when does he become liable to pay compensation for use and occupation of the tenancy premises unbound by the contractual rate of rent to the landlord?

The Court answered the first issue as follows:

We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case of premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy.

The second issue was answered as follows:

With effect from that date (the passing of the decree of eviction), the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree. (words in parenthesis added)

We are in respectful agreement with the decision of the Court in Atma Ram Properties.

46. In light of the discussions made above we hold that in an appeal or revision preferred by a tenant against a order or decree of an eviction passed under the Rent Act it is open to the appellate or the revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/ decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.

47. In the case in hand, the High Court has fixed the amount of Rs. 5,40,000/- per month with reference to the Stamp Duty Ready Reckoner and hence, its reasonableness cannot be doubted. In fairness to Mr. Lalit he did not challenge the fixation of the amount on that ground.

48. Before concluding the decision one more question needs to be addressed: what would be the position if the tenant's appeal/revision is allowed and the eviction decree is set aside? In that event, naturally, the status quo ante would be restored and the tenant would be entitled to get back all the amounts that he was made to pay in excess of the contractual rent. That being the position, the amount fixed by the court over and above the contractual monthly rent, ordinarily, should not be directed to be paid to the landlord during the pendency of the appeal/revision. The deposited amount, along with the accrued interest, should only be paid after the final disposal to either side depending upon the result of the case. In case for some reason the Court finds it just and expedient that the amount fixed by it should go to the landlord even while the matter is pending, it must be careful to direct payment to the landlord on terms so that in case the final decision goes in favour of the tenant the payment should be made to him without any undue delay or complications.

49. In light of the discussions made above, we find the order of the High Court just and proper, calling for no interference by this Court. We find no merit in the appeal. It is, accordingly, dismissed with costs.