

BOMBAY HIGH COURT

Ratanlal Chandi Prasad Jalan

Vs.

Raniram Darkhan

Writ Petition No. 76 of 1980

(K. Madhava Reddy, C.J., B.C. Gadgil and S.C. Partap, JJ.)

18.10.1985

JUDGMENT

K. Madhava Reddy, C.J.

1. This writ petition along with Writ Petition No. 3575 of 1984 has been referred to the Full Bench. The relevant facts in this petition are few. On 18.6.1977 a decree possession was passed in Suit No. 5536 of 1970. It was a decree under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Act"). Its execution was obstructed by the respondents Pabhar Madhu and others. Their case was that the defendant-tenant had put them in possession of the rented property under a leave and license agreement dated 16.2.1968 and that this agreement was subsisting on 1.2.1973. By the Amending Act of 1973 such licensees have been protected and they become tenants. The executing Court accepted this contention. The appeal against this decision was dismissed on 19.3.1979. The decree-holders have filed Writ Petition No. 76 of 1980 against it.

2. The Writ Petition No. 3575 of 1982 *ex parte* decree for possession was passed on 17.12.1978 under the Bombay Rent Act. The execution of that decree was obstructed. The decree-holders took out obstructionists' notice. The contention of the obstructionists (the petitioners in the writ petition) was that they had been in possession of the rented premises since October 1968 as licensees and that they were protected under Section 15-A of the Bombay Rent Act as the said license was subsisting on 1.2.1973. The Small Causes Court found that the defendant in the eviction suit was a statutory tenant and that he could not have created any valid license in favor of the obstructionists. The obstruction was, therefore, ordered to be removed. The petitioner's appeal to the Appellate Bench was dismissed. The petitioners filed Suit No. 6220 of 1975 for declaration that they were the tenants on the basis of their erstwhile rights under the license-deed. That suit was dismissed. Appeal No. 334 of 1982 was also dismissed. Hence, the petitioners filed Writ Petition No. 3575 of 1982. When this writ petition was initially heard by the learned Single

Judge, he referred the matter to the Division Bench. On 26.4.1984 the Division Bench of Kurdukar and Jamdar, JJ., passed an order that certain questions should be referred to the Full Bench as the Division Bench was not able to agree with the earlier decisions of this Court in *First Appeal No. 754 of 1978 and Writ Petition No. 2447 of 1974 reported in Vasant v. Dikkaya*¹, The Division Bench, therefore, referred the relevant questions to the Full Bench.

3. When both these matters were placed before us for hearing we found that Writ Petition No. 3575 can be decided without considering the questions referred to us. Accordingly, that petition was disposed of. However, the learned advocates appearing in both the petitions submitted that the questions referred to the Full Bench should be decided by us with a view to settle the controversy once for all. Taking into account, the importance, of these questions, we also think it fit to decide these questions. We have heard the learned advocates on behalf of both the sides. We felt that the formation of the questions that have been referred to us should be modified a little and accordingly we have formulated the following questions :

1. Whether a statutory tenant governed by the Bombay Rent Act retains heritable interest in the premises ?
2. Whether a statutory tenant governed by the Bombay Rent Act retains transferable interest in the premises ?
3. Whether a statutory tenant governed by the Bombay Rent Act could have created a valid license before 1973 ?
4. Whether *Vasant Totaba Hargude and others v. Dikkaya Muttaya Pujari*², and *Chandrakant Kashinath Thakur and others v. Narayan Lakhanna Shetty and others*³, were correctly decided ?

4. Before proceeding with the discussion we would like to state that the term 'statutory tenant' does not appear either in the Bombay Rent Act or in the Transfer of Property Act. However, that phrase is more convenient to describe a tenant phrase whenever we would be referring to a tenant whose contractual tenancy has been terminated.

5. The question as to whether a statutory tenant has heritable interest and/or transferable interest in the premises has arisen before the Supreme Court in a number of cases. In some cases the point was as to whether such a tenancy was heritable while in other matters the question about the transferability of such tenancy rights was involved. Initially we purpose to note these various decisions and the principles laid down therein. The first case is of *Anand Nivas Pvt. Ltd. v. Anandji Kalyanji's Pedhi and others* reported in⁴ It was a case under the Bombay Rent Act. A lease dated March 5, 1950 for a period of five years was created in favor of Maniklal. After the expiry of the lease a suit was filed by the landlord for possession. That suit was decreed on June 22, 1960. The decree was put in execution. Anand Nivas Pvt. Ltd. (hereinafter referred to as 'the company') claimed sub-tenancy from Maniklal after 1955, i.e. after Maniklal's tenancy was terminated by efflux of time. The company filed a suit for declaration of its rights as a sub-tenant. An application was made in that suit for an injunction restraining the landlord decree-holder for

executing the decree. The trial Court dismissed the application. The matter went up to the Supreme Court. The question before the Supreme Court was as to whether the sub-tenancy created by Maniklal was of any consequence. The decision depended upon the point whether Maniklal as a statutory tenant had any estate in the leasehold property which he could enjoy by a sublease. The

¹ AIR 1980 Bom 341

³ First Appeal No. 754 of 1978

² AIR 1980 Bom 341

⁴ AIR 1965 SC 414

majority of the judgment of the Supreme Court held that Maniklal had no estate or interest in the property and that he merely possessed a personal protection from eviction. The relevant observations in para 27 of the judgment as follows :-

"A person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly though in law not accurately, called "a statutory tenant". Such a person is not a tenant at all; he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal it is not capable of being transferred or assigned, and devolves on his death only in the manner provided by the statute. The right of a lessee from a landlord on the other hand is an estate or interest in the premises and in the absence of a contract to the contrary, is transferable and the premises may be sublet by him. But with the determination of the lease, unless the tenant acquires the right of a tenant holding over, by acceptance of rent or by assent to his continuing in possession by the landlord, the rights of such a person remaining in possession are governed by the statute alone. Section 12(1) of the Act merely recognizes his right to remain in possession so long as he pays or is ready and willing to pay the standard rent and permitted increases and performs the other conditions of the tenancy, but not the right to enforce the terms and conditions of the original tenancy after it is terminated."

The relevant portion from paragraph 30 reads as follows :

"As a statutory tenant he had no estate or interest capable of being assigned or transferred, and his statutory right to occupy could not in law be sublet, because a lawful subletting postulates a right to enjoy the property and a right to transfer the same to another."

The term 'tenant' has been defined under Section 5(11) of the Bombay Rent Act. It is an inclusive definition. In addition, to the contractual tenant, the definition also provides in sub-clause (b) that a person remaining, after the determination of the lease, in possession with or without the assent of the landlord would be a tenant. Thus, the definition conveys a plurality of meaning, so as to include a contractual tenant as well as a statutory tenant. Unlawful subletting by the tenant gives a ground to the landlord for eviction. This is provided by Section 13(1)(c). Section 15 has made a provision that tenant (subject to any contract to the contrary) would not be able to sublet, transfer

or assign his interest in the rented premises. The Supreme Court considered these and other provisions and held that they deal with contractual tenants and not with statutory tenants. It is with this reasoning that the Supreme Court held that a statutory tenant has no interest in the land and that he has mere right to possess which is incapable of being transferred.

6. Similar view has been taken by the Supreme Court in the case of *J.C. Chatterji v. S.K. Tandon reported in*⁶ It was a case under the Rajasthan Premises (Control of Rent and Eviction) Act. The landlord terminated the tenancy on June 26, 1962. A suit was filed. It

⁶ AIR 1972 SC 2526

was decreed on January 17, 1964. The tenant succeeded in appeal. The landlord, therefore, filed Second Appeal No. 39 of 1965. During the pendency of this appeal the tenant died and his legal representatives were brought on record. However, at the time of the decision of the appeal, the High Court held that the defendant-tenant being a statutory tenant had a mere right to possess and that, therefore, his legal representatives cannot claim any interest in the lease so as to successfully object the passing of the decree. The legal representatives of the statutory tenant took the matter to the Supreme Court. The Supreme Court relying upon the decision in the case of *Anand Niwas Pvt. Ltd. (supra)* held that after the termination of the contractual tenancy the statutory tenant has only a personal right to continue in possession and that such personal protection comes to an end as soon as the statutory tenant dies.

7. The third decision which has taken a somewhat similar view is in the case of *Ganpat v. Sashikant reported in*⁷ It was a case under the Bombay Rent Act with respect to the shop premises. The landlord filed suit for eviction on November 6, 1960 on the ground of arrears of rent. The suit was decreed. The tenant's appeal was ultimately dismissed after some intervening proceedings. The High Court set aside this decree in a writ petition and the matter went to the Supreme Court at the instance of the landlord. It seems that during the pendency of the matter in the High Court, the original tenant died. Under Section 5(11)(c) a member of the tenant's family residing with him at the time of his death would be tenant. The legal representatives were brought on record as they were residing with the tenant at the time of tenant's death. A contention was raised before the High Court that such legal representatives (who were residing with the tenant) have a status as tenant even with respect to shop premises. This connection was accepted and the landlord filed an appeal to the Supreme Court. The Supreme Court held that the provisions of Section 5(11)(c) were meant to protect the rights of the legal representatives so far as the residential premises are concerned and that such legal representatives (staying with the tenant) could not get any tenancy rights in respect of the shop premises. Thus, in substance a finding was recorded that legal representatives of a shop premises claim any tenancy rights. A decree for possession was, therefore, confirmed. Thus, the above decisions have taken a view that the statutory tenant has no estate or interest in the lease-hold property and that the personal right to possession is neither heritable nor transferable.

8. However, another (sic) of the Supreme Court cases has taken a somewhat different view. The

first case of this category is that of *Damadilal v. Parshram*⁷. It was a case under Madhya Pradesh Accommodation Control Act. Under Section 12 no suit can be filed against the tenant except on the grounds mentioned therein, such as, default in payment of rent, *bonafide* requirement, etc. The landlord filed a suit. It was dismissed. The appeal was allowed and thus there was a decree for possession. The tenant filed second appeal in the High Court. He died during the pendency of the appeal. His legal representatives were brought on record. The High Court allowed this second appeal. In this way the plaintiffs suit stood dismissed. The plaintiff, therefore, filed an appeal in the Supreme Court. One of the main contentions raised before the Supreme Court was that the tenant against whom the suit was filed was a statutory tenant and that he has no heritable interest in the lease-hold property and that, therefore, on his death the legal

⁷ AIR 1978 SC 955

⁸ RCR 584 (SC) : AIR 1976 SC 2229 reported in 1976

representatives had no right to prosecute the appeal. Some English decisions were cited before the Supreme Court. However, it was found that these decisions would not be applicable in India as they were based upon different provisions of English statutes. In paragraph 11 of the judgment relevant observations read 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 Act. 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 that 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."

The Supreme Court then considered the various provisions of the Madhya Pradesh Accommodation Control Act. For example, the term 'tenant' is defined to include, amongst other persons, any person continuing in possession after determination of his tenancy. This definition has been considered to equate statutory tenant with contractual tenant. In paragraph 12 the Supreme Court has observed as follows :-

"The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been made against him, thus putting him on par with a person whose contractual tenancy still subsists. The incidents of such tenancy and a contractual tenancy must, therefore, be the same unless any provisions of the Act conveyed a contrary intention."

Thereafter Section 14 of the Madhya Pradesh Accommodation Control Act was considered. It provides that the tenant shall not sublet, assign without the previous assent of the landlord. It was then held as follows :-

"There is nothing to suggest that this section does not apply to all tenants as defined in Section 2(i). A contractual tenant has an estate or interest in premises from which he carves out what he gives to the sub-tenant. Section 14 read with Section 2(i) makes it clear that the so-called statutory tenant has the right to sublet in common with a contractual tenant and this is because he also has an interest in the premises occupied by him."

In the same paragraph 12 the Supreme Court has further held as follows :-

"The concept of statutory tenancy under the English Rent Act and the Indian statutes like the one we are concerned with in this appeal rests on different foundations. It must, therefore, be held that predecessors-in-interest of the present respondents had a heritable interest in the premises and consequently the respondents had the right to prosecute the appeal in the High Court. Mr. Gupte's first submission thus fails."

The decision shows that it would not be possible to claim any sanctity of contract and the consequential results on termination of that contract if the legislature has made contrary provisions.

9. Another decision which has taken a similar view is the case of *V. Dhanapal Chettiar v. Yesodai Ammal reported in* ⁹It was a case under the Tamil Nadu Buildings (Lease and Rent Control) Act and the main question was as to whether a notice terminating the tenancy was a condition precedent for filing a suit for eviction. While deciding this question the Supreme Court considered the provisions of this and similar act with a view to find out as to whether the issuing of such notice has any relevant purpose to achieve. The Supreme Court held as follows in paragraph 6 :

"Once the liability to be evicted is incurred by the tenant he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or

a decree for eviction. Until then, under the extended definition of the word 'tenant' under the various State Rent Acts, the tenant continues to be a tenant even though the contractual tenancy has been determined by giving of a valid notice under Section 106 of the Transfer of Property Act. In many cases the distinction between a contractual tenant and a statutory tenant was alluded to for the purpose of elucidating some particular aspects which cropped by in a particular case. That led to the criticism of that expression in some of the decisions. Without detaining ourselves on this aspect of the matter by any elaborate discussion, in our opinion, it will suffice to say that the various State Rent Control Acts make a serious encroachment in the field of freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. In spite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities, such as, payment of rent, etc. in accordance with the law."

It is material to note that the above decision of the Supreme Court it was held that in view of the extended definition of the word 'tenant' it would not be permissible for the landlord to snap the relationship with the tenant merely by terminating the tenancy. This would be more so when none of the provisions of the rent legislation has prescribed any contrary position.

⁹ AIR 1979 SC 1745

10. In our opinion, the matter has now been set at rest by the recent decision of the larger Bench of the Supreme Court in the case of *Gian Devi v. Jeevan Kumar reported in*¹⁰ It would be convenient to state briefly the facts of this case. It was a case under the Delhi Rent Control Act. Wasti Ram was a tenant of the shop. His tenancy was terminated in April 1975. The landlord filed an application under Section 14 on various grounds such as (a) arrears of rent, (b) *bonafide* requirement, (c) change of user, (d) damage to property, (e) subletting, etc. The proceeding was against Wasti Ram and defendant No. 2 Ashok Kumar. The trial Court rejected the claim on all counts except arrears. However, a direction was given that decree for possession would not be passed if the arrears were deposited within one month. The landlord filed appeal. There were cross-objections by the tenant. During the pendency of the appeal, the tenant Wasti Ram died. His widow Gian Devi was brought on record as his legal representative. The appeal was then heard. Cross-objections were allowed by holding that there was no default. The major contentions of the landlord were rejected. However he succeeded on the ground of subletting. But the matter was remanded to the trial Court for further enquiry. Gian Devi filed an appeal in the High Court and the landlord filed cross-objections. A contention was raised on behalf of the landlord that on death of Wasti Ram who was a statutory tenant after termination of his tenancy, his widow and other legal representatives were not entitled to remain in possession and consequently, they have no right to continue the proceeding. The High Court accepted this contention and a decree was passed. Gian Devi filed an appeal in the Supreme Court. The Supreme Court decisions referred to in the previous paragraphs of this judgment were cited on behalf of the rival parties. After referring to these decisions the Supreme Court in paragraph 22 observed as follows :

"The aforesaid decisions indicated that there is a divergence of opinion in this Court on the question whether the heirs of a deceased tenant whose contractual tenancy in respect of commercial premises has been determined, can inherit the tenancy rights of the deceased tenant and can claim the benefit and protection to which the deceased tenant was entitled under the Act."

In paragraph 23 of the Supreme Court found that it was necessary to understand the kind of protection that is sought to be afforded to a tenant under the Rent Acts and his status after the termination of the contractual tenancy under the Rent Acts. The Supreme Court took into account that Rent legislation was passed in the States and Union territories with a view to avoid hardships to the tenants as the landlords were in a position to exploit the situation arising due to scarcity of accommodation. The very purpose of all the Rent Acts had been discussed in paragraph 24 in the following words :

"Though provisions of all the Rent Control Acts are not uniform, the common feature of all the Rent Control Legislation is that a contractual tenant on the termination of the contractual tenancy is by virtue of the provisions of the Rent Acts not liable to be evicted as a matter of course....."

Paragraph 25 of the judgment clearly shows that the larger Bench accepted the principles laid down in Damadilal's case (supra). Section 2(1) of the Madhya Pradesh Accommodation Control Act and Section 2(1) of the Delhi Rent Control Act have both defined the term 'tenant' to mean amongst other persons a tenant continued in possession

¹⁰ AIR 1985 SC 796

after termination of the tenancy. After taking into account such and similar provisions of the Rent legislation this larger Bench has observed in paragraph 25 as follow :-

".... it cannot be assumed that with the determination of the tenancy, the estate must necessarily disappear and the status can only preserve the status of irremovability and not the estate he has in the premises in his occupation; and it is not possible to claim that the sanctity of contract cannot be touched by legislation...."

In this case of Gian Devi the Supreme Court again considered the provisions of Section 14 of the Delhi Rent Control Act which provided that no order or decree for possession shall be made unless certain grounds are proved. It was held that this protection is available to all types of tenants including tenant who is in possession after the termination of the tenancy and in paragraph 28 of the judgment after considering the definition of the tenant in the Delhi Rent Control Act the Supreme Court held as follows :-

"This section clearly establishes that determination of a contractual tenancy does not

disqualify him from continuing to be a tenant within the meaning of this Act and the tenant whose contractual tenancy has been determined enjoys the same position and is entitled to protection against eviction."

The larger Bench in paragraph 29 of the judgment has quoted with approval the observations in Dhanapal's case (supra) (reproduced in paragraph 8 above). This is clear from the observations in paragraph 30 of the judgment in Gian Devi case. As a matter of fact paragraph 35 of the judgment in Gian Devi's case specifically states that Damadilal's case and Dhanapal's case laid down that the termination of the contractual tenancy does not bring about change in the status of a tenant. The conclusion of the larger Bench is mentioned in paragraph 36 of the judgment. The relevant portion reads as follows :

"Accordingly, we hold that if the Rent Act 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."

Accordingly, it would be clear that the tenancy rights of a contractual tenant are not evaporated by mere termination of such tenancy.

11. Consequently, a statutory tenant would continue to possess the same rights and would be under same obligations which were available during the subsistence of the contractual tenancy. Of course the extent of such rights and obligations would depend upon the various provisions of the rent legislation. The Bombay Rent Act contains some provisions similar to those that are available in the Madhya Pradesh Accommodation Control Act and Delhi Rent Control Act. We are not shown any provisions from the Bombay Act which would suggest that a statutory tenant has no heritable interest. As a matter of fact, Section 5(11)(c) has specifically provided the extent of such heritable interest and consequently the interest of the statutory tenant would be so heritable.

12. The question whether a statutory tenant has a transferable interest or not, would depend upon the terms of contractual tenancy. Such terms would continue to be operative even after the contractual tenancy comes to an end and the tenant becomes a statutory tenant. But this again would be subject to contrary provision in the Bombay Rent Act. It would, therefore, be necessary to discuss in detail this aspect of transferability of contractual tenancy and/or statutory tenancy.

13. Under Section 108(j) of the Transfer of Property Act in the absence of a contract to the

contrary the lessee has a right to transfer his tenancy rights absolutely or by way of sub-lease, etc. This right would continue to exist in favor of a statutory tenant but all this would be subject to the provisions of the Bombay Rent Act. Section 15 of the Bombay Rent Act provides that notwithstanding anything contained in any law but subject to a contract to the contrary it shall not be lawful for the tenant to sublet his interest. Thus, it would be necessary to read this provision and Section 108(i) of the Transfer of Property Act together. So read, it would be clear that a tenant, under the Transfer of Property Act, can sublet his interest if there is no contract (sic) the to Rent Act prohibits any sub-lease, assignment or transfer by a tenant of his interest if there is no contract to the contrary, a breach thereof renders the tenant liable to eviction under Section 13(1)(c). Thus, under the Rent Act, sub-tenancy will be permissible not when the contract is silent but when the contract specifically permits a sub-lease. The net result is that the contractual tenants will be divided into two categories :-

(A) a tenant who, under the tenancy agreement is specifically entitled to sub-lease his interest (for short, "category 'A' tenant").

(B) a tenant who under the tenancy agreement is not so specifically entitled to sub-lease or whose tenancy agreement is silent about it (for short, "category 'B' tenant").

Category 'A' tenant, even after the termination of his tenancy, would continue to have a right to sub-lease. The right under the original contractual lease has not been taken away by the Bombay Rent Act. In fact that right has been kept intact. However, the tenant of category 'B' would not either before or after the termination of his contractual tenancy able to sublet his interest in view of the specific bar under Section 15.

14. The addition of sub-section (2) to Section 15 of the Bombay Rent Act does not affect the above position. Under Section 15, a transfer including a subletting has been prohibited from the beginning. However, by adding sub-section (2), the Legislature has provided that sub-section (1) would not have any effect on sub-lease, assignments or transfers by a tenant before the commencement of the amending Ordinance of 1959. The amendment, therefore, validates only such sub-leases, assignments or transfers as are effected prior to that Ordinance. Thus, this provision would not be relevant for finding out as to whether a contractual tenant or a statutory tenant can transfer his leasehold interest if the tenancy agreement specifically permits such transfer.

15. In view of the legal position enunciated in Gian Devi's case, it would not be necessary to discuss in detail the various decisions of this Court taking different views. Similarly, the referring judgment of the Division Bench also does not require detailed discussion. However, we would briefly mention them. A learned Single Judge of this Court in the case of *Hargovind Dharamsey & Co. v. Ruby & Co^{ll}*, held that a statutory tenant can assign his interest under Section 15(1) read the Government notification issued thereunder. As against this, Kanade, J., before whom another matter, viz. Special Civil Application No. 247 of 1974, was argued, came to the conclusion that such an assignment by a statutory tenant is not permissible. Kanade, J. therefore, referred this

matter to a Division Bench. The reference was heard and decided by Deshpande and Lentin, JJ. The decision is reported in *Vasant v. Dikkaya*¹², Briefly stated, the facts in this case were that one Gopalkrishna who was a statutory tenant assigned his tenancy rights along with the running hotel concern. The question arose as to whether Gopalkrishna was competent to make such transfer. The Division Bench considered both Anand Nivas (supra) and Damadilal (supra) and observed in paragraph 12 that these two decisions are irreconcilable. In Anand Nivas the Supreme Court has observed that the provisions of Sections 12, 13, 14 and 15 show that the Legislature intended that the statutory tenant would not be able to transfer his interest. The Division Bench held that this aspect of the decision in Anand Nivas still holds good even after Damadilal. In First Appeal No. 754 of 1978 decided by another Division Bench, a similar view has been taken. A similar question arose before another Bench in Writ Petition No. 3575 of 82 and that Bench found it difficult to agree with the above-mentioned two decisions of the Division Bench. The matter has, therefore, been referred to the Full Bench. The referring judgment observes that in Anand Nivas the Supreme Court concluded that Sections 13, 14 and 15 were applicable to contractual tenants alone on a presumption that a statutory tenant has no transferable interest. It is for this reason that the reference has been made. In our opinion, the larger Bench of the Supreme Court in Gian Devi has now settled the controversy. The provisions of the Madhya Pradesh now settled the controversy. The provisions of the Madhya Pradesh Accommodation Control Act and the Delhi Rent Control Act are practically similar to those the Bombay Rent Act. There are certain minor differences in these legislations, but they are not relevant while deciding the controversy. The larger Bench in paragraphs 26 and 28 of the judgment considered the provisions of the Madhya Pradesh Act and the Delhi Act and, thereafter has held that the tenant whose contractual tenancy has been determined enjoys the same position and is entitled to protection against eviction. We have already reproduced the relevant portions from the other paragraphs as also the contentions mention in paragraph 36. It is, thus, clear that the distinction between contractual tenant and statutory tenant made by the Division Bench in Vasant Tatoba would not be entirely correct and to that extent the law laid down in that decision would not be correct. A statutory tenant can transfer his interest but only if he is category 'A' tenant as mentioned in paragraph 12 above.

16. Uptill now we have discussed the questions as to whether a statutory tenant can transfer his interest. The point that remains to be decided is as to whether such a tenant can grant a license of the rented premises in favor of another person. This aspect has now become important after the amending Act of 1973. By this amendment in Section 5 sub-section (4-A) is added whereby the terms "license", "licensee" and "licensor" have been

¹¹1976 RCR 843 (SC) : AIR 1979 Bom 89

¹² AIR 1980 Bom 341

defined. Licensee means a person who is in occupation of the premises under a subsisting agreement of license given for a license fee (emphasis is ours). The definition further states as to which specific licenses are said to be included by this definition and which are not so included. Section 15-A is added by this very Amending Act. It provides that notwithstanding anything contained elsewhere in the Rent Act and notwithstanding any other law or contract, a licensee as defined in Section 5(4-A) in occupation on 1st February, 1973, shall become a tenant if his

occupation is of not less than a room. Thus only such a licensee will get the status of a tenant. It would be necessary to find out as to whether the statutory tenant can grant a license.

17. The definition in Section 5(4-A) has used the above mentioned words "subsisting agreement of license". The distinction between lease and license has been considered by the Supreme Court in the case of *B.M. Lall and another v. M/s. Dunlop Rubber Co. (India) Ltd. and another reported in*¹³, in the following words :

"A lease is the transfer of a right to enjoy the premises, whereas a license is a privilege to do something on the premises which otherwise would be unlawful."

Similarly in the case *Ludhichem Agencies v. Ahmed R.V. Peer Mohd. reported in*¹⁴ the Supreme Court has observed as follows :-

"An agreement for license can subsist and continue to take effect only so long as the licensor continues to enjoy a right, title or interest in the premises. On the termination of this right, title or interest in the premises, the agreement for license comes to an end. If the licensor is a tenant the agreement for licensor terminates with the tenancy. No tenant is ordinarily competent to grant a license enduring beyond his tenancy. On the termination of the licensor's tenancy the licensee ceases to be a licensee."

Of course, the termination of tenancy mentioned in the above decision will now have to be viewed in the background to the legal position that a statutory tenant of category 'A' aforesaid continues to have transferable interest in the tenancy rights. Again in the case of *D.H. Maniar v. Waman reported in*¹⁵ there was an agreement of license. Eviction proceeding was filed against the licensee. The licensee claimed protection by contending that under Section 15-A of the Bombay Rent Act he has become a tenant. In paragraph 8 of the judgment the Supreme Court considered the definition of the term "license" as given in Section 52 of the Indian Easements Act for deciding as to whether a person claiming protection under Section 15-A was a licensee under the Act. Of course, in addition it was also necessary to find out as to whether the licensee complies with the rest of the conditions mentioned in Section 5(4-A) and Section 15-A of the Bombay Rent Act. Section 62 of the Indian Easements Act deals with revocation of license, and the Supreme Court held that the license stood revoked long before February 1, 1973. Consequently, the Supreme Court rejected the claim of the person seeking protection under Section 15-A of the Bombay Rent Act.

18. It would thus be clear that there must be a valid license and that same must be

¹³ AIR 1968 SC 175

¹⁵ AIR 1976 SC 2340

¹⁴ AIR 1981 SC 1998

subsisting on the material date. Section 52 of the Indian Easements Act has defined the term "license". It envisages a grant of a license to do something upon the immovable property of the grantor. Section 53, however, would have an important bearing. It reads as follows :-

"A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property effected by the license."

This provision, thus, provides that one who has a transferable interest in the immovable property can to the extent thereof grant in respect of it. In other words, a person who cannot transfer his interest in the property would have no right to grant a license. Besides Section 15 of the Bombay Rent Act prohibits a transfer of the tenancy rights. But such a transfer is permissible if there is a specific contract to the effect. We have already discussed this aspect in detail in the part of the judgment. The eligibility of a tenant, whether contractual or statutory, to grant license would thus depend upon his right to transfer his interest. The category 'A' tenant mentioned above has such a right to transfer his interest and consequently he would create a license though he is a statutory tenant. The position would be otherwise as far as the category 'B' tenant is concerned, that is, he has no right to create or grant license.

19. In view of the above discussion, our answer to the questions referred to the Full Bench are as follows :-

- (1) Yes - But only to the extent provided by Section 5(11)(c) of the Bombay Rent Act.
- (2) Yes - But only if he had such transferable interest as a contractual tenant.
- (3) Yes - But only if under the terms of his original contractual tenancy he had a right to transfer his leasehold rights.
- (4) The decisions in *Vasant v. Dikkaya*¹⁶, and *Chandrakant Kashinath Thakur and others v. Narayan Lakhanna Shetty and others*¹⁷, are not entirely correct in laying down that no statutory tenant is entitled to transfer his interest. The aforesaid category 'A' tenant would be entitled to transfer his interest of whether he is a contractual or statutory tenant. But the aforesaid category 'B' tenant will not, whether before or after the termination of his contractual tenancy, entitled to transfer his interest.

The matter now be placed before learned Single Judge for further hearing.

Decided accordingly.

¹⁶ AIR 1980 Bom 341

¹⁷ First Appeal No. 754 of 1978