

(1995) 01 SC CK 0110

In the Supreme Court Of India

Case No : Civil Appeals Nos. 3759 And 3760 Of 1990

Kalyanji Gangadhar Bhagat

APPELLANT

Vs

Virji Bharmal and Another

RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:

Transfer of property act— Madhya Pradesh accommodation control act, 1961—Delhi Rent Control Amendment act (act 18 of 1976)—sub — Clause (ii) of section 2(I)

Citation : (1998) 4 JT 494 : (1998) 3 SCALE 668

Hon'ble Judges : S. Mohan, J;S. B. Majmudar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Mohan and; S.B. Majmudar, JJ.-The short question that arises in these cases is whether a contractual tenant alone can assign or transfer his interest in the demised property and such a right of assignment or transfer is not available to the statutory tenant? In Anand Nivas (P) Ltd. v. Anandji Kalyanji Pedhi it was held that after termination of the contractual tenancy the right to remain in possession is personal and is, therefore, not capable of transfer or assignment. Again, in Jaisingh Morarji v. Sovani (P) Ltd. this proposition was reiterated. This Court in Jagdish Chander Chatterjee v. Sri Kishan while dealing with the Rajasthan Act took the view that such an interest is not heritable. Then came Damadilal v. Parashram in which this Court took the view that the right is heritable. This view was followed in Ganapati Sitaram Balvalkar v. Waman Shripad Mage and Sardar Tota Singh v. Gold Field Leather Works6.

2. Then comes the most important case of Gian Devi Anand v. Jeevan Kumar. In paras 26, 31 and 35 in no uncertain terms the five-Judge Bench stated as under: (SCC pp. 704-712)

"The other section of the M.P. Accommodation Control Act, 1961 considered by this Court in deciding Damadilal case was Section 14 which deals with sub-letting and this Court held that there was nothing in that section to suggest that the

section would not apply to all tenants as defined in Section 2(I) of the said Act. Section 14 was considered in Damadilal case to ascertain whether the "so-called statutory tenant" enjoyed the same right as the contractual tenant in the matter of sub-letting and this Court held that the "so-called statutory tenant" enjoyed the same right as the contractual tenant.

* * *

We now proceed to deal with the further argument advanced on behalf of the landlords that the amendment to the definition of "tenant" with retrospective effect introduced by the Delhi Rent Control Amendment Act (Act 18 of 1976) to give personal protection and personal right of continuing in possession to the heirs of the deceased statutory tenant in respect of residential premises only and not with regard to the heirs of the "so-called statutory tenant" in respect of commercial premises, indicates that the heirs of so-called statutory tenants, therefore, do not enjoy any protection under the Act. This argument proceeds on the basis that in the absence of any specific right created in favour of the "so-called statutory tenant" in respect of his tenancy, the heirs of the statutory tenant who do not acquire any interest or estate in the tenanted premises, become liable to be evicted as a matter of course. 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 case⁴. This view has been taken by this Court in Damadilal case⁴ 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 v. Yesodai Ammal⁸ which we have earlier quoted appear to conclude the question. The amendment of the definition of tenant by the Act 18 of 1976 introducing particularly Section 2(I)(iii) does not in any way mitigate against this view. The said sub-clause (iii) with all the three Explanations thereto is not in any way inconsistent with or contrary to sub-clause (ii) of Section 2(I) which unequivocally states that tenant includes any person continuing in possession after the termination of his tenancy. In the absence of the provision contained in Section 2(I)(iii), the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the "so-called statutory tenant" on his death and the heirs of such tenant would in law step into his position. This sub-clause (iii) of Section 2(I) seeks to restrict this right insofar as the residential premises are concerned. The heritability of the statutory tenancy which otherwise flows from the Act is restricted in case of residential premises only to the heirs mentioned in Section 2(I)(iii) and the heirs therein are entitled to remain in possession and to enjoy the protection under the Act in the manner

and to the extent indicated in Section 2(I)(iii). The Legislature, which under the Rent Act affords protection against eviction to tenants whose tenancies have been terminated and who continue to remain in possession and who are generally termed as statutory tenants, is perfectly competent to lay down the manner and extent of the protection and the rights and obligations of such tenants and their heirs. Section 2(I)(iii) of the Act does not create any additional or special right in favour of the heirs of the "so-called statutory tenant" on his death, but seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and rights of a contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory tenant, are fully protected by the Act and the heirs of such tenants become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the Legislature which has created this right has thought it fit in the case of residential premises to limit the rights of the heirs in the manner and to the extent provided in Section 2(I)(iii). It appears that the Legislature has not thought it fit to put any such restrictions with regard to tenants in respect of commercial premises in this Act.

* * *

In our opinion, the view expressed by this Court in Ganpat Ladha case and the observations made therein which we have earlier quoted, do not lay down the correct law. The said decision does not properly construe the definition of the "tenant" as given in Section 5(11)(b) of the Act and does not consider the status of the tenant as defined in the Act, even after termination of the commercial tenancy. In our judgment in Damadilal case this Court has correctly appreciated the status and the legal position of a tenant who continues to remain in possession after termination of the contractual tenancy. We have quoted at length the view of this Court and the reasons in support thereof. The view expressed by a seven-Judge Bench of this Court in Dhanapal Chettiar case⁸ and the observations made therein which we have earlier quoted, lend support to the decision of this Court in Damadilal case. These decisions correctly lay down that the termination of the contractual tenancy by the landlord does not bring about a change in the status of the tenant who continues to remain in possession after the termination of the tenancy by virtue of the provisions of the Rent Act. A proper interpretation of the definition of tenant in the light of the provisions made in the Rent Acts makes it clear that the tenant continues to enjoy an estate or interest in the tenanted premises despite the termination of the contractual tenancy."

In view of this it is beyond doubt that a statutory tenant has every right to enjoy the estate or interest in the tenanted premises despite the termination of the contractual tenancy.

3. No doubt, Gian Devi Anand case dealt with a case of heritability as rightly contended by Mr P. Chidambaram, learned Senior Counsel for the appellant. But insofar as the Delhi Act is concerned it was held that there is no provision

regulating the rights of the heirs to inherit the tenancy rights of the tenant in respect of the tenanted premises which is commercial premises that the tenancy right which is heritable devolves on the heirs under the ordinary law of succession. Therefore, in view of this, it is clear that the views expressed in *Anand Nivas (P) Ltd. v. Anandji Kalyanji Pedhi and Jaisingh Morarji v. Sovani (P) Ltd.* do not lay down the correct law. That being the position, in the instant case, the question would be whether the respondent/tenants would fall under the proviso to Section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947? The said proviso reads as under:

"15. In absence of contract to the contrary tenant not to sub-let or transfer or to give on licence:

(1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein and after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, for any tenant to give on licence the whole or part of such premises:

"Provided that the State Government may, by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases or the giving on licence any premises or class of premises and to such extent as may be specified in the notification."

The submission of Mr P. Chidambaram, Senior Counsel, is that the leases or class of leases in the proviso must relate to the contractual leases because there is no question of any statutory lease. We find great difficulty in accepting this submission because these words are prefaced "by the transfer of interest in premises held under such leases or class of leases". Therefore, it must be held to be relatable to the premises held under such lease and not merely contractual leases. If that is the interpretation obviously the notification issued by the then Government of Bombay will have to be looked at. The said notification *inter alia* proceeds as follows:

"This Act shall apply to notices in respect of suits or proceedings which relate to immovable properties situate wholly or partly in the city of Bombay with effect from such date as may be directed by the Provincial Government in this behalf by notification in the Official Gazette:

Provided that the Provincial Government may by similar notification direct that the provisions of this Act shall apply to such notices relating to immovable properties situate wholly or partly in such other area as may be specified in the said notification."

Admittedly, it was a case of transfer of stock-in-trade and their goodwill thereof. In other words, the transfer or assignment in favour of the contesting respondent

herein is in the entire interest of transfer of stock-in-trade and the goodwill of such leasehold premises together with the business and the goodwill thereof.

4. The leasehold premises in the notification extracted above means adjective (sic). It has nothing to do with the contractual tenancy. In other words, the premises ought to have been held under a valid lease initially.

5. One other aspect may be noticed. In S.J. Pande v. P.K. Balakrishnan the attention of the Bench was not drawn to Gian Devi case. Of course, even otherwise that case dealt with a licence. The reason why we refer to this is such a licence falls under Section 15(1) of the Bombay Act. The point was barred by the Constitution Bench judgment in Gian Devi case⁷. Therefore, we find no support can be derived by the appellant from Ganapati Sitaram Balvalkar v. Waman Shripad Mage. In regard to other aspects, we agree with the findings of the High Court that neither Section 52 of the Transfer of Property Act nor Order 21, Rule 102 CPC could be invoked by the appellant. The civil appeals are accordingly dismissed. No costs.