

(2002) 09 BOM CK 0103

In the Bombay High Court

Case No : Writ Petition No's. 3572, 3612 to 3616, 3619, 3620, 3622, 3623, 3625, 3626 and 3627 of 1983

Krishnaji Ganesh Vaidya since deceased by his heirs
Chintamani @ Sham and Others

APPELLANT

Vs

Smt. Triveniben Anant Virkar Shete and Others

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15(2)
Maharashtra Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1987 — Section 15(2)

Citation : (2002) 4 ALLMR 757 : (2003) 1 BomCR 738 : (2003) 2 BOMLR 213 : (2003) 1 MhLj 396

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : A.K. Abhayankar, in W.P. Nos. 3626 and 3627 of 1983, C.R. Dalvi, in W.P. No. 3572 of 1983, Thatte, instructed by Thatte and Co. in W.P. Nos. 3612 to 3616, 3619, 3620, 3622 and 3623 of 1983 and M.A. Rane, in W.P. No. 3625 of 1983, for the Appellant; Y.S. Jahagirdar in W.P. Nos. 3612 to 3616, 3619, 3620, 3622, 3623, 3625, 3572, 3626 and 3627 of 1983, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—All these writ petitions can be disposed of together by this common judgment.

2. Writ Petition No. 3626 of 1983 has been filed by the Head-tenant(s), whereas the remaining writ petitions have been filed by the persons who were inducted by the Head-tenant(s) and were occupying the respective suit premises as sub-tenants at the relevant point of time. The respondents in all these writ petitions are landlords. They had instituted suit for possession of the suit premises inter-alia on the ground of unlawful subletting by the Head-tenant. That suit has been decreed by the Appellate Court as against the present petitioners.

3. It is not in dispute that all the petitioners in the group of writ petitions (except

writ petition No. 3626 of 1983) were inducted as sub-tenants prior to 1-2-1973 by the petitioner(s) in Writ Petition No. 3626 of 1983 who are the Head tenant(s). It cannot be disputed that by virtue of Amendment of 1987, all such cases of unlawful subletting have been validated by the Maharashtra Act 18 of 1987. A priori, the ground of unlawful subletting is no more available to the landlords and the decree as passed does not survive having regard to the non obstante clause contained in Sub-section (2) of Section 15 of the Act as amended. This position is no more res integra. It has been so answered in the decision reported in Lakhichand Punamchand Marwadi, deceased by his heirs - Sou. Pramilabi Punamchandji Ladha etc. and another Vs. Thakursheth Lalasaheb Tokeram, , Lakhichand Punamchand Marwadi deceased by his heirs Sou. Pramilabai Panamchandji Ladha etc. and Anr. v. Thakursheth Lalasaheb Tokeram as well in an unreported judgment pointed out by Mr. Abhyankar decided on 14th June 1989 in the matter of Somnath Gyanu Waghchaure since deceased by LR's Hiralal Somnath Waghchaure and Ors. v. Mrs. Malatibai Gajanan Mhatre and Ors. As such it is not necessary to examine the matters any further but to allow all these writ petitions in view of the Amendment of 1987 to the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Bombay Rent Act).

4. To get over this position, Mr. Jahagirdar for the respondents - landlords contends that the nature of lease in favour of the head tenant(s) (Vaidyas) did not permit them to construct building and let out portion thereof to various persons as has been done in this case. According to him, the entry of all the sub-tenants was unauthorized and for which reason the protection extended to the sub-tenants prior to 1-2-1973 by amending Act will not be applicable in the present case.

5. However, to my mind, it is not possible to accept this contention having regard to the plenitude of the provision as amended vide Section 15(2) of the Bombay Rent Act which reads thus:

15(2) "The prohibition against the sub-letting of the whole or any part of the premises which have been let to any tenant and against the assignment or transfer in any other manner of the interest of the tenant therein contained in Sub-section (1), shall, subject to the provisions of this sub-section be deemed to have had no effect before the 1st day of February 1973, in any area in which this Act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgment, decree or order of a Court, any such sublease, assignment or transfer of any such purported sublease, assignment or transfer in favour of any person who has entered into possession, despite the prohibition in Sub-section (1), as purported sub lessee, assignee or transferee and has continued in possession on the date aforesaid shall be deemed to be valid and effectual for all purposes, and any tenant who has sub-let any premises or part thereof, assigned or transferred any interest therein, shall not be liable to eviction under Clause (e) of Sub-section (1)

of Section 13.

The provisions aforesaid of this sub-section shall not affect in any manner the operation of the Sub-section (1) after the date aforesaid."

6. The argument pressed into service by Shri Tahagirdar clearly overlooks the amplitude of the provision which postulates that sub-letting of the whole or any part of the premises which have been let to any tenant and against the assignment or transfer in any other manner or interest of the tenant therein. Besides, the latter part of the above provision makes the legislative intent amply clear that even "purported sub-lessee, assignee or transferee" would get protection "notwithstanding anything contained in any contract or the judgment, decree or order of a Court." Understood thus, there is no force in the submission advanced before this Court on behalf of the respondents. If that argument were to be accepted, it would result in doing violence to the legislative intent to envelope all kinds of transactions so as to protect all persons inducted in the premises prior to 1-2-1973 to which the Act applies.

7. In the circumstances, Rule made absolute in all these writ petitions with no order as to costs. All these writ petitions succeed. Impugned judgment and decree passed by the Court below is set aside.

8. Certified copy expedited.