

(2020) 06 CAL CK 0017

In the Calcutta High Court

Case No : Civil First Appeal (FA) No. 126 Of 2019

Satyanarayan More & Anr

APPELLANT

Vs

Milagrina Rose Correia @ Millie Correia

RESPONDENT

Date of Decision : 03-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 14
West Bengal Premises Tenancy Act, 1997 — Section 1(3), 2(g), 45
West Bengal Premises Tenancy Act, 1956 — Section 2(h), 45(2)
Code Of Criminal Procedure, 1973 — Section 30(ii)
Bombay Rents Hotel And Lodging House Rates Control Act, 1947 — Section 5(10)(B), 7, 9(2)(b), 12(3)
General Clauses Act, 1897 — Section 6, 6(c)
Bengal General Clauses Act, 1899 — Section 8(c)
Karnataka Rent Control Act, 1961 — Section 3(h), 3(n)
Karnataka Rent Act, 1999 — Section 5, 5(1), 69, 70(2)(b)
Bengal General Clauses Act, 1897 — Section 8

Citation : (2020) 06 CAL CK 0017

Hon'ble Judges : Soumen Sen, J;Saugata Bhattacharyya, J

Bench : Division Bench

Advocate : Mainak Bose, Arif Ali, Anurag Bagaria, Probal Mukherjee, Raja Mentosh, Sohini Chakraborty

Final Decision : Allowed

Judgement

Soumen Sen, J

The appeal is arising out of a decree passed in a suit for eviction filed by the appellant-plaintiffs against the respondent-defendant. The learned Trial Judge by a judgment dated 17th April, 2019 dismissed the suit on the ground that the appellant-plaintiffs are not entitled to invoke Section 2(g) of the West Bengal Premises Tenancy Act, 1997 to evict the respondent-defendant from the suit property.

In this appeal, the interpretation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 has again come up for consideration.

The appellant-plaintiffs are the owners of premises no. 78, Lenin Sarani, P.S. Taltolla, Kolkata - 700 013 (hereinafter referred to as the "suit premises"). Initially, Satyanarayan More and Surendra Kumar More were the owners of the suit premises. Mr. Surendra Kumar More sold his undivided half share of the premises to Shyam Sundar Agarwal. Shyam Sundar Agarwal died on 21st October, 2005 leaving behind him surviving his wife, two daughters and one son. The son is the appellant no. 2. He obtained Letters of Administration to the estate of his late father Shyam Sundar Agarwal from this High Court on 19th March, 2008 and, thereafter, he filed the present suit in his capacity as Administrator to the estate of his late father Shyam Sundar Agarwal along with appellant-plaintiff no. 1.

Shorn of unnecessary details, one V.P. Carvalho was the recorded monthly tenant in respect of room no. 2 situated on the 2nd floor of the suit premises at a monthly rent of Rs. 360 per month. In the first week of November, 2015 the appellant-plaintiffs for the first time came to know about the death of Mr. Carvalho. In the suit filed before the learned Trial Court, the appellant-plaintiffs alleged that the respondent-defendant is illegally and wrongfully occupying the suit premises on the ground that the respondent-defendant is not the legal heir of the deceased tenant and the tenancy had extinguished on the death of Mr. Carvalho. The appellant-plaintiffs stated that they had demanded delivery of peaceful, vacant and khas possession of the suit premises but the respondent-defendant refused to hand-over the possession of the suit premises, thus leading to the appellant-plaintiffs filing the present suit.

In response, the respondent-defendant filed the written statement. The respondent-defendant alleged that the original tenant V.P. Carvalho died long before the passage of the West Bengal Premises Tenancy Act, 1997. The respondent-defendant further alleged that after the death of the original tenant the present respondent-defendant used to pay monthly rent to Satyanarayan More and Surendra Kumar More, the original landlords of the suit premises. The respondent-defendant stated that she was the niece of the recorded tenant and she was residing with the original recorded tenant Mr. Carvalho and, after his demise, she had become tenant in respect of the suit premises under the West Bengal Premises Tenancy Act, 1997.

On the basis of the pleadings the learned Judge in the Trial Court framed the following issues:-

1. Is the suit maintainable in its present form?
2. Have the appellant-plaintiffs got any cause of action to file the suit?
3. Whether the respondent-defendant is the legal heir of the recorded tenant?
4. Whether the respondent-defendant has been possessing the suit premises illegally or she is in wrongful possession in the suit premises?

5. Whether the respondent-defendant is liable to be evicted from the suit premises?

6. Whether the appellant-plaintiffs are entitled to get decree as prayed?

7. To what other relief/reliefs, if any, are the appellant-plaintiffs entitled?

At the trial the appellant-plaintiffs relied upon six documents marked as Exbt. 1 to Exbt. 6. The respondent-defendant, on the other hand, respondent-defendant relied upon the rent receipts for the months of April, 2013 to June, 2013, money order pay slip for the month of November, 2018, December, 2018 and January, 2019 with EMO acknowledgement, being Exbt. A and Exbt. B respectively.

The respondent-defendant in her affidavit in chief filed before the Trial Court has stated that the recorded tenant V.P. Carvallo died in the year 1985. Thereafter she used to pay monthly rent to Satyanarayan More and Surendra Kumar More for her occupation as a tenant. She was the niece of the recorded tenant and she was residing with him till his death. Thereafter, she became direct tenant under the appellant-plaintiffs soon after death of Mr. Carvallo under the West Bengal Premises Tenancy Act, 1956. The respondent-defendant further contended that the landlord issued rent receipt in the name of her uncle due to sentimental reasons. The respondent-defendant's clear case was that V.P. Carvallo died long before the West Bengal Premises Tenancy Act, 1997 which came into force on 10th July, 2001, and after the death of her uncle she became direct tenant under the appellant-plaintiffs under the West Bengal Premises Tenancy Act, 1956.

The contention of the appellant-plaintiffs in the Trial Court was that the appellant-plaintiffs were never aware of the death of Mr. Carvallo and it was only in November, 2015 that it had come to their notice that the respondent- defendant was occupying the suit premises claiming she was the legal heir of Carvallo.

The learned Trial Judge on consideration of the evidence as well as interpretation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 concluded that since tenancy had devolved upon the tenant prior to 10th July, 2001, when Section 2(g) of the West Bengal Premises Tenancy Act, 1997, came into force, the tenancy should be governed by the provisions of the West Bengal Premises Tenancy Act, 1956 and not under the 1997 Act.

Mr. Arif Ali, the learned counsel appearing on behalf of the appellant-plaintiffs, has submitted that the respondent-defendant has failed to prove before the Trial Court that she is the legal heir of the original recorded tenant. The appellant-plaintiffs have never recognised her as tenant. In any event, by reason of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 which came into force on and from 10th July, 2001, the respondent-defendant, at the highest, can take the benefit of five years from 10th July, 2001 and claim protection under Section 2(g) of the West Bengal Premises Tenancy Act, 1997 till such time and not thereafter. It is submitted that Section 2(g) clearly states in no uncertain term that in the event of death of any tenant, the legal heirs who were ordinarily living

with the tenant up to his death as a member of his family could get the benefit of 5 years to remain in possession of the property in question as legal heirs of the deceased tenant and not thereafter.

Mr. Arif Ali, in this regard, has relied upon two Division Bench judgments of our Court, namely:

1. Manju v. Abeera Goswami, reported in 2019 SCC Online Cal 1632.
2. Goutam Dey v. Jyotsna Chatterjee, reported in 2013 (1) CHN 336.

Per contra Mr. Probal Mukherjee, learned Senior Counsel appearing on behalf of the respondent-defendant, has supported the judgment of the learned Trial Judge. Mr. Mukherjee has heavily relied upon a decision of the Hon'ble Supreme Court in *Shahwar Basheer & Ors. v. Veena Mohan* in Civil Appeal Nos. 7020-7021 of 2005 decided on 28th October, 2009 and submits that a similar provision came up for consideration before the Hon'ble Supreme Court, where it has been categorically held that if the death of the tenant had taken place prior to coming into force of the amended provision, the relationship between the landlord and tenant should be governed by the statute prevailing at the time when the tenancy right had accrued in favour of the legal heir of the original tenant.

We are concerned with the definition of the tenant under the 1997 Act. In order to appreciate the argument of the parties it is necessary to refer to the definition of the tenant under 1956 Act and 1997 Act.

1956 Act

1997 Act

(h) "tenant" [means] any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and [(includes any person continuing in possession after the termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death) but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction]

(g) "tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and 2 [in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up

to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction:

The status of the existing tenants under the 1956 Act has been largely affected by the amendment to the definition of the tenants in Section 2(g) of the 1997 Act.

The question arises whether the period of five years would apply to tenants who have inherited tenancy by reason of Section 2(h) of the 1956 Act prior to July 10, 2001. In other words, whether the new Section 2(g) of the 1997 Act would be prospective or retrospective. The argument of Mr. Mukherjee is that the respondent has become a tenant under the W.B. Premises Tenancy Act 1956 and has acquired a vested right. Any other interpretation of Section 2(g) would result in hardship and manifest injustice. The further question which incidentally arises whether there is an essential nexus between the withdrawal of protection of tenant under Section 2(g) and the objects sought to be achieved by the Act if one accepts that the definition of tenant under Section 2(g) would operate retrospectively.

Before we advert to the issues it is necessary to refer to the history of rent legislation.

So far as Bengal, before its partition was concerned, there was no rent restriction legislation prior to 1942. The 1st rent control legislation that was passed in Bengal was the Bengal House Rent Control Order, 1942 and Bengal Hotels and Lodging Houses Control Order, 1942, which extended to the whole of Bengal. It was followed by Calcutta House Rent Control Order of 1943 which was for the tenancies within Calcutta as defined in the Calcutta Municipal Act, 1923. That Act excluded the Bengal House Rent Control Act, 1942. All those control orders expired on 30th September, 1946. But even after the end of the Second World War, the housing problem did not at all ease and naturally with effect from 1st October 1946, the Calcutta Rent Control Ordinance, 1946 were promulgated, the provisions of which were extended to all the Municipal Towns. This Ordinance was replaced by Bengal Ordinance Temporary Enactment Act, 1957. However, the partition of Bengal and the influx of the refugees in the present West Bengal made this problem of housing accommodation in Calcutta and the Municipal Areas very acute. So, with the object of controlling rents and prevent realisation to selami and other illegal demands by the landlords, the State Legislature of West Bengal passed the West Bengal Premises Rent Control Act, 1948. But the Act of 1948 proved very unsatisfactory and the Calcutta High Court also pointed out certain drafting defects which affected large number of pending suits and proceedings, thereby necessitating the amendment of the Act. The Act was, therefore, amended by the Amending Act of 1950. The Act of 1950 was a temporary Act which was to remain in force up to 31st March, 1953, but its life was extended up to 31st March, 1956. As it was felt that an enactment of

permanent measure was very much necessary which would look after not only the interest of the tenants but also the landlord so that they would be interested in making more investments in constructing buildings, the West Bengal Premises Tenancy Act, 1956 was enacted which came into force on 31st March, 1956. From time to time, several amendments were made to the Act as and when necessity arose for keeping a balance between the interest of the landlord and the tenants. The Amendment Acts were of 1965, 1968, 1969, 1970, 1975, 1976, 1986 and 1988.

However, the Central Government in order to achieve a uniform legislation in the matter of urban tenancies and in order to encourage the people to build more housing accommodation, the Central Government had prepared a Model Rent Control Legislation and has circulated the same to all the State Governments with a request to all of them to enact legislation based on the said Model. On the basis of the said Model Rent Control Legislation, the West Bengal Premises Tenancy Act, 1997 has been passed by the State Legislature which has received the assent of the President on 28th November, 1998. The Act came into force with effect from 10th July 2001 by the Notification No. 3052-L published in the Extraordinary Kolkata Gazette, Part-I dated 9th July 2001.

The statement of objects and reasons of the Act is reproduced below:

"Statement of objects and reasons. The present Bill viz. "The West Bengal Premises Tenancy Bill 1996 is meant to replace" The West Bengal Premises Tenancy Act 1956; with the object of regulating the incidence of tenancies of premises and relationship between the landlords and tenants of the premises in the changed circumstances.

The National Housing Policy approved by the Central Government recommended that appropriate amendment in existing laws and regulations be carried out for creating enabling atmosphere for housing activities in the country. A number of expert bodies such as the Economic Administration Reform Commission and the National Commission on Urbanisation have recommended reforming the rent legislation in a way that balances the interests of both the landlords and the tenants and also that stimulates future construction to meet the growing demands for housing.

On the basis of the various recommendations of the experts and also after a series of consultations with the State Governments, the Ministry of Urban Development of India prepared a Model Rent Control Legislation, and sent to the States for consideration.

The Land and Land Reforms Department set up a committee under the Chairmanship of the Land Reforms Commissioner. The Committee considered the salient features of the 'Model' and obtained the views of Tenants' Associations and Houseowner's Associations on these features, heard them and suggested a new enactment by replacing the old one.

The Department accepted the suggestion and has prepared the "The Bengal Premises Tenancy Bill 1996" to replace the existing Act i.e. "The West Bengal Premises Tenancy Act 1956."

The West Bengal Premises Tenancy Act, 1997 has been amendment by the West Bengal Premises Tenancy (Amendment) Act 2002 and the said Amendment Act has been given retrospective operation with effect from 10th July, 2001, i.e. the date on which the principal Act came into force.

The Statement of Objects and Reasons of the West Bengal Premises Tenancy (Amendment) Bill 2002, inter alia envisages:

To redefine the term "tenant" in such a manner as to give the right for continuity on certain conditions as a tenant to the son, daughter, parent or widow of the predeceased son of the tenant who was ordinarily residing with the tenant up to the date of death of the tenant as a member of his family in respect of premises let out for residential purpose, as well as in respect of premises let out for non-residential purpose, to give the right for continuity on certain conditions to the spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family or a person authorised by the tenant who is in possession of such premises; The proposed definition contemplates continuation of pre existing tenancy on certain conditions.

We refer to the history of rent legislation in Bengal as Mr. Mukherjee has made an attempt to make a dent in the definition of tenant in Section 2(g) of the Rent Act, 1987 in so far as the pre existing tenants are concerned. The interpretation of tenant according to the learned Senior Counsel should exclude those tenants who already became a tenant under the Rent Act, 1956 as any other interpretation would lead to hardship and not contemplated under the statute. What emanates from the said argument is the situations that led to the enactment of successive W.B. Premises Tenancy Act including the W.B. Premises Tenancy Act 1997 having not undergone any change, warranting phasing out of different segments of urban settlers, the classification may not be in-consonance with the object of the Bill and may appear to be unreasonable and not fair.

Enactment of rent control legislation was necessitated by acute shortage of accommodation in urban areas as a consequence of various interlinked socio-economic factors and migration to urban areas for employment and sustenance; the object of such legislation being to prevent rack-renting or fixation of monopolistic rent and arbitrary eviction of tenants at the whims of the landlords for securing higher income.

Accommodation is recognised as a basic need and ranks only after food and clothing and such classification virtually convert this very important basic need to an unregulated and speculative trading stock. Rent control law applies to urban areas. Urban settlements comprises several segments/components of house stock users namely residential, commercial administrative, educational, vocational, etc. Each such segment is complimentary to the other. Habitation

does not grow where there is no employment opportunities, no educational set up, no health care and other facilities. Similarly commercial and other set ups are not established where no job seekers are available. All these needs existing together build up an urban settlement.

Scientific rationalisation of the rent structure ensuring fair and reasonable return on investment and securing eviction of tenant without any classification when the property is required by the owner for his own use and occupation or for protecting the property from being damaged by the tenant should perhaps be the guiding factors for enacting such laws. The State has a duty and obligation to ensure protected shelter for the weaker section.

The United Nations had also addressed to this aspect of human settlements. The first Habitat Convention was held in 1976 in Vancouver, Canada and was followed by the Istanbul Declaration adopted at the next Convention in Istanbul in June 1999. The deliberations and recommendations and the emphasis given was to ensure sustainable urban settlements where the conglomerate of the aforesaid components of urban settlement could co-exist.

In the introductory address, the UN Secretary General outlined the purpose and objective of the United Nation Conference on Human Settlement (Habitat II) by inviting the Heads of the State/Government and the official delegations for endorsing the universal goals of ensuring adequate shelter for all and making human settlements safer, healthier, more liveable, equitable, sustainable and productive. The deliberations at the Habitat Conference centred around two major theme, i.e. adequate sustainable human settlements and developments in an urbanizing world. The Conference recognised cities and towns as centres of civilization, generating economic development and social, cultural, spiritual and scientific advancement. The outcome of the Conference (Habitat II) was integrated in the Istanbul Declaration, 1999.

Chapter 3 of the Istanbul Declaration, 1999 contains the commitments made by the Member Nations in regards to the Habitat Agenda, i.e. adequate shelter for all and sustainable human settlement in an urbanizing world.

The commitments made by the Member Nations at the Conference as recorded in Clause B and C of paragraph 3 are of some relevance for the present study which are reproduced as under:-

"43(b) creating and enabling international and domestic environment for economic development, social development and environmental protection as interdependent and mutually reinforcing components of sustainable development,".

"43(c) integrating urban planning and management in relating to housing, transport, employment opportunities, environmental conditions and community facilities".

In the Action plan that was adopted at the Conference, it was specifically

approved that to integrate the shelter policies Government should strengthen the linkage between shelter policies, employment generation, environmental protection, preservation of cultural heritage, resource mobilization, maximization of resources efficiency and strengthening the mobilisation and support for sustainable economic development and social development activities [paragraph 67 (c)].

The Conference recognized that urban economies are integral to the process of economic transformation and development. They are a pre-requisite for the creation of a diversified economic base capable of generating employment opportunities. Cities currently generate more than half of national economic activities worldwide.

The Action Plan adopted at the Conference was that the Member States should ensure legal security of tenure and protection from any discrimination that may hinder the implementation of the two Agenda namely "adequate shelter for all" and "sustainable human settlement".

Since these are the International Conventions, India being a Signatory Member States should ensure due adherence to the basic principles adopted in this Convention as one of the Contracting parties through its Municipal Laws.

The issues raised are on interpretation of statutes. While engaging in statutory interpretation, it is well-recognised that Heydon's Principle (Mischief Rule) may be applied. The principles are:

- a) What was the Law before making of the Act?
- b) What was the mischief or defect for which Law did not provide?
- c) What is the remedy that the Act has provided?
- d) What is the reason of the remedy?

The gist of these principles seems to be that the provisions that uphold the object of the Act should be followed while interpreting a statute. One important factor of interpretation of statute is to ascertain the legislative intent, which is the essence of a statute. Legislative purpose is the constituent of legislative intent. Legislative purpose is the reason why a particular law was enacted by the Legislature. The reason presumably is to remedy some existing evils or to correct some defect in the existing law or to create new right or a new remedy. Consequently, in seeking to ascertain the legislative purpose resort may be taken to circumstances existing at the time of the law's enactment and the evil intended to be cured. Ascertainment of legislative purpose is a process for ascertainment of legislative intent or meaning, since the reason for the enactment of a law must necessarily shed considerable light on the law promulgated by the statute.

In this regard, it may be stated that while interpreting the statute, we must have due regard to whether provisions corroborate or conform the ascertained

legislative purpose. The purpose of a statute is the reason for its enactment. An exception in a statute seeks to exempt something from the scope of the general provisions of the statute. On challenge, the court may see whether such exemption is in conformity with the ascertained legislative intent. Power to repeal an existing statute is a legislative attribute subject to Constitutional limitation, if any, rights acquired or conferred under the Repealed Law will not be destroyed by repeal of that Statute. The constitutional safeguard under Article 14 can be invoked if the classification is made on no ground or on grounds which are totally irrelevant to the object of the Statute. If there is some nexus between the object sought to be achieved and the classification, the legislature is presumed to have acted in proper exercise of its Constitutional power.

Mr. Mukherjee would perhaps tried to highlight that it does not appear from the Statute or from the various deliberation and recommendations preceding its enactment that the classification has any nexus with the object sought to be achieved by the Statute. Constitutional guarantee of equality is perhaps offended if classification rests on grounds wholly irrelevant to the achievement of the object of the Statute. It is not emerging from the Statute even by implication that the classification has any nexus at all with the stated object of the Statute.

However, we are not concerned with the vires of the Rent Act, 1997.

Keeping in mind the object and purpose of rent control legislation, we feel that the object of rent control legislation should not be to make tenants homeless and nomads, but to strike a balance between the need of the landlord to receive a fair rent which should include proportionate municipal rates and taxes and maintenance charges and the interest of the tenant to have a secured tenure. It is apposite here to refer to the observation of the Hon'ble Supreme Court in *Joginder Pal vs. Naval Kishore Behal*; (2002) 5 SCC 397 paragraph 9 which states:

"9. The Rent Control Legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The Legislative intent has to be respected by the Courts while interpreting the laws. But it is being uncharitable to Legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants go to the extent of being unfair to the landlords. The Legislature is fair to the tenants and to the landlords both. 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 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 landlord too are weak and feeble and feel humble."

There has been a definite shift in the Court's approach while interpreting the rent control legislation. An analysis of the judgments of 1950s to early 1990s would indicate that in majority of cases the courts heavily relied in favour of an interpretation which would benefit the tenant. Most of the judgments rendered during this period the courts 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. (See. *Satyawati Sharma v. Union of India*; (2008) 5 SCC 287 paragraph 11.)

The interest of the son, daughter, parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependant on him and who does not own or occupy any residential premises appear to have been secured in the new definition of tenant in Section 2(g) as they shall have a right of preference for tenancy in a fresh agreement in respect of such premises on condition of payment of fair rent.

This provision applies *mutatis mutandis* to premises let out for non-residential purpose. The time limit of 5 years would not be applicable to the spouse of the tenant who was ordinarily living with the tenant upto his death as a member of his family and was dependent on him and who does not own or occupy any residential premises. The new definition of tenant leaves a room for a fresh bargaining between the parties.

There is a need to be a balanced and objective approach to the relationship between the landlord and tenants while the court may not lean in favour of a landlord all the time and under all circumstances but there is no reason to assume that a tenant is in dire circumstances and in desperate need for the court's protection under all circumstances. With the passage of time the earlier legislation which perhaps was justified in 1956 may become arbitrary and unreasonable with the change of circumstances and this change has brought about significant changes in the Rent Act, 1997. The need for a balanced view has been reiterated in paragraphs 38 and 39 in *Saradmoni Kandappan v. S. Raja Lakshmi*; (2011) 12 SCC 18 in the following words:

"38. It is now well settled that laws, which may be reasonable and valid when made, can, with passage of time and consequential change in circumstances, become arbitrary and unreasonable. In *Rattan Arya v. State of Tamil Nadu* - (1986) 3 SC 385, this Court held:

"4. We must also observe here that whatever justification there may have been in 1973 when Section 30(ii) was amended by imposing a ceiling of Rs. 400 on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. We

are entitled to take judicial notice of the enormous multifold increase of rents throughout the country, particularly in urban areas. It is common knowledge today that the accommodation which one could have possibly got for Rs. 400 per month in 1973 will today cost at least five times more. In these days of universal day to day escalation of rentals any ceiling such as that imposed by Section 30(ii) in 1973 can only be considered to be totally artificial and irrelevant today. As held by this court in *Motor General Traders v. State of A.P.* (1984) 1 SCC 222, a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time, become discriminatory and liable to challenge on the ground of its being violative of Article 14."(emphasis supplied)

39. In *Malpe Vishwanath Acharya v. State of Maharashtra* - (1998) 2 SCC 1 a three Judge bench of this court considered the validity of determination of standard rent by freezing or pegging down the rent as on 1.9.1940 or as on the date of first letting, under sections 5(10)(B), 7, 9(2)(b) and 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This court held that the said process of determination under the Act, which was reasonable when the law was made, became arbitrary and unreasonable in view of constant escalation of prices due to inflation and corresponding rise in money value with the passage of time. This Court held:

"29. In so far as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants....."

31. Taking all the facts and circumstances into consideration, we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable....."

The question whether Section 2(g) is retrospective or prospective operation can be best answered by referring to the views of Maxwell, the eminent authority on the subject, in his much celebrated book *Interpretation of Statute*. The recognised author viewed that it is a fundamental Principle of Law that no Statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication.

In this connection Section 6 of the General Clauses Act 1897 may be referred to

which is reproduced as under:-

"6. Effect of repeal - Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect;

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

And any such investigation, legal proceeding or remedy may be instituted, continued or enforced, any such penalty, forfeiture or punishment may be imposed as if the Repealing Act or Regulation had not been passed".

In *State of Punjab v. Mohar Singh & Ors.*, reported in AIR 1955 SC 84, it was observed that when repeal is followed by fresh legislation on the same subject, the court would undoubtedly have to look to the provision of the new Act, but only for purpose of determining whether the new Act indicates a different intention. The line of enquiry would be not whether the new Act expressly keeps alive the old rights and obligations; but whether it manifests an intention to destroy them. More respectivity is not to be given than what can be gathered from expressed or clearly implied intention of the legislature [See. *Sukhram Singh & Anr. v Smt. Harbheji* reported in AIR 1969 SC 1114].

Section 1(3) provides that the W.B. Premises Tenancy Act, 1997 shall come into force on such date the State Government made by notification in the official gazette. By a notification, the State Government appointed 10th July, 2001 as the date for coming into force of the W.B. Premises Tenancy Act, 1997. Section 45 of the W.B. Premises Tenancy Act, 1997 is the repeal and savings clause. By Section 45 of the 1997 Act, the W.B. Premises Tenancy Act, 1956 was repealed. Thus it is repealed on and from 10th July, 2001. However, Sub-Section 2 of Section 45 protects the litigation initiated under the 1956 Act. This provision is taken to be an indication that the tenancy created prior to commencement of the W.B. Premises Tenancy Act 1997 shall continue to be governed by the W.B. Premises Tenancy Act, 1956 in so far as the pending proceeding is concerned.

In *Goutam Dey (supra)* the original tenant died while Act of 1956 was in force. The question was whether the tenancy enjoyed by the heirs of the deceased

tenant, for the purpose of inheritance of the tenancy right, would be governed by the new Act.

In *Goutam Dey* (supra) the learned Single Judge considered three situations namely, death of a tenant (i) before July 10, 2001; (ii) after July 10, 2001; and (iii) on July 10, 2001. The three situations have been explained in the manner following:-

"Regarding situation (i) i.e. death of a tenant before July 10, 2001 and the case with which I am concerned (Sunil died on May 4, 1997), undoubtedly it was the Act of 1956 that was in force and had a tenant governed by the provisions of the Act of 1956 died on July 9, 2001 or even previous to that date, the tenancy would be governed by that Act meaning thereby that the tenancy being heritable, the heirs would be justified in claiming tenancy right subject to fulfilment of the resident requirement in Section 2(h) of the Act of 1956 but unfettered by the other two conditions newly inserted and the stipulation of five years in Section 2(g) of the Act of 1997. Law appears to be settled that provisions of a new statute which though a right in existence at the date it is enforced are not to be applied retrospectively in the absence of express provision or necessary intendment. The Act of 1997 has not been given retrospective effect so as to bring within its coverage death of tenants occurring prior to July 10, 2001 and a different intention does not appear on a reading of the Act of 1997 so as to affect any right or privilege that has been acquired or has accrued in favour of the specified heirs of the deceased tenant under the Act of 1956, since repealed. Having regard to Section 8(c) of the Bengal General Clauses Act, 1899 a vested right that accrued in favour of an heir like Subhra on the death of the tenant i.e. Sunil cannot be abrogated. There is a presumption against curtailment of or washing away a vested right by a repealing legislation, and a construction involving such curtailment of or washing away the right accrued ought not to be adopted unless a contrary intention clearly appears in the repealing legislation. It could not have been and it does not seem to be the intention of the legislature to fix July 9, 2006 as the last date till which tenancy of an heir of deceased tenant would continue (assuming all the other conditions were fulfilled), no matter when he died prior to July 10, 2001. The absurd result that the aforesaid extract of Section 2(g) of the Act of 1997 has the potential of producing is best illustrated by the facts of the present case and needs no further elaboration. Insofar as situations (ii) and (iii) are concerned, it is obvious that the definition of tenant in Section 2(g) of the Act of 1997 shall apply and for achieving the purpose that it seeks to achieve, it was not necessary to insert the phrase "or from the date of coming into force of this Act, whichever is later". The period of five years mentioned in Section 2(g) automatically would have application only in respect of death of tenants occurring on and from July 10, 2001 and in such case the portion extracted above is in my considered view, a piece of loose drafting and ought to be considered redundant unless in a given case, which I have been unable to perceive, the same is shown to have application. I hasten to record here that the above observation regarding

redundancy has been made by me despite my best effort to make the statute effective with all the words that have been used by the legislature and conscious of the principle that the legislature is presumed not to waste words.

Be that as it may, it passed my comprehension as to how a finding could be returned that Subhra lost her locus standi to occupy the suit property as a tenant, five years after the death of Sunil. I am of the further considered view that the learned Judge misdirected himself in ruling in favour of Jyotsna and Subhas and against Goutam."

The phrase "or from the date of coming into force by this Act" was interpreted to mean that it is a piece of loose drafting and ought to be considered redundant. It is observed in the said decision in Goutam Dey (supra) that it is obvious that the definition of tenant in Section 2(g) of the Act of 1997 shall apply and for achieving the purpose that it seeks to achieve, it was not necessary to insert the phrase "or from the date of coming into force of this Act, whichever is later". The period of five years mentioned in Section 2(g) automatically would have application only in respect of death of tenants occurring on and from July 10, 2001, the date of commencement of the Act of 1997. It is further observed in this case that the expression "or from the date of coming into force of this Act" is a "piece of loose drafting and ought to be considered redundant". The court observed:

"I hasten to record here that the above observation regarding redundancy has been made by me despite my best effort to make the statute effective with all the words that have been used by the legislature and conscious of the principle that legislature is presumed not to waste words."

In Shahwar Basheer & Ors. (supra) the original tenant died on 20th May, 1994. The appellant no. 1 was the widow of the original tenant while other appellants were his children. At the time when the original tenant died, the Karnataka Rent Control Act, 1961 (hereinafter referred to as "1961 Act") was in force. Section 3(n) of the 1961 Act reads as under:

"Tenant" means any person by whom or on whose account rent is payable for a premises and includes the surviving spouse or any son or daughter or father or mother of a deceased tenant who had been living with the tenant in the premises as a member of the tenant's family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a premises by its tenant or a person to whom the collection of rents or fees in a public market, cart-stand or slaughter house or of rents for shops has been framed out or leased by a local authority."

A new rent control Act known as the Karnataka Rent Act, 1999 (hereinafter referred to as the "1999 Act") came into force with effect from 31st December, 2001. Section 5(1) of the 1991 Act reads as under:

"Inheritability of tenancy. - (1) In the event of death of a tenant, the right of tenancy shall devolve for a period of five years from the date of his death to his successors in the following order, namely:-

- (a) spouse;
- (b) son or daughter or where there are both son and daughter both of them;
- (c) parents;
- (d) daughter-in-law, being the widow of his pre-deceased son:

Provided that the successor has ordinarily been living or carrying on business in the premises with the deceased tenant as a member of his family up to the date of his death and was dependent on the deceased tenant:

Provided further that a right to tenancy shall not devolve upon a successor in case such successor or his spouse or any of his dependent son or daughter is owning or occupying a premises in the local area in relation to the premises let."

The learned Counsel for the respondent in the Special Leave Petition had submitted that in view of Section 5(1) of the 1991 Act, the appellants are not the tenants of the premises in dispute in view of the definition of Section 3(n) of the 1991 Act.

The Hon'ble Supreme Court did not agree with the said submission. The Apex Court noticed Section 3(n) of the 1961 Act and compared it with 5(1) of the 1991 Act. It was held that Section 3(h) of 1961 Act shows that on the death of the original tenant the appellants herein become the tenant in 1994 by operation of law. Thereafter the Apex Court proceeded to hold:-

"It may be mentioned that in almost all rent control statutes, the word "tenant" has been defined to include the heirs of the tenant. Section 5 of the 1991 Act makes a radical departure from the said legal position. Hence, in our opinion, it should be strictly construed and is prospective in nature. In our opinion, Section 5 of the 1991 Act applies only if two conditions are fulfilled:

- (I) The death of the previous tenant takes place after 31.12.2001; and
- (II) five years have expired from the date of death.

In the present case since the previous tenant died in 1994, the appellants had become tenants in 1994 itself.

It is a well settled principle of interpretation that when rights have accrued in favour of a party, ordinarily they should not be deemed to have been extinguished unless the statute clearly provides to that effect.

Learned counsel for the respondent has relied on Section 70(2)(b) of the 1999 Act which reads as under:

"Notwithstanding such repeal and subject to the provisions of Section 69,-

(a) xxx xxx xxx

(b) all cases and proceedings other than those referred to in clause

(a) pending at the commencement of this Act before the Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority, as the case may be in respect of the premises to which this Act applies shall be continued and disposed off by such Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority in accordance with the provisions of this Act."

On the strength of Section 70(2)(b), learned counsel for the respondent submitted that now the definition of "tenant" prescribed in the new Act will apply. We do not agree. In our opinion, the provision of Section 70(2)(b) is procedural. The said Section has nothing to do with substantive rights which had accrued before the 1999 Act came into force.

As already stated above, the appellants had become tenants when the original tenant died in 1994 and there is no clear provision in the 1999 Act which states that the tenancy rights which had accrued earlier will become extinguished on the coming into force of the 1999 Act.

For the reasons given above, the appeals are allowed. 5 The impugned judgment of the High Court is set aside and the matter is remanded to the High Court to go into the questions on merits which the High Court has not decided, namely:

(I) Whether the landlady has bonafide and reasonable need of the premises in dispute;

(II) Whether the tenant has sublet the premises in dispute.

The High Court is requested to decide the case as expeditiously as possible and preferably within six months after the date of receipt of a copy of this order."

The learned Counsel on behalf of parties in all fairness has referred to a recent coordinate Bench decision in *Sushil Kumar Jain v. Pilani Properties Limited*, reported in 2017 (4) Cal LT 575 where Goutam Dey (supra) came up for consideration. Mr. Mukherjee has submitted that the decision in *Sushil Kumar* (supra) is not a good law and cannot be a binding precedent. In view of the decision of the Hon'ble Supreme Court in *Shahwar Basheer* (supra) where in a similar situation the Apex Court had observed that the right accrued by operation of law in the earlier statute cannot be taken away by the subsequent statute, it is submitted that there is no provision in the W.B. Premises Tenancy Act, 1997 which would make the statute retrospective in relation to the definition of tenant under Section 2(g) of the W.B. Premises Tenancy Act, 1997. Although it appears that in *Shahwar Basheer* (supra) has not been cited before the Hon'ble Division Bench but the issue as to the "vested right" of a tenant under the 1956 Act came up for consideration before the coordinate bench and it was answered in paragraphs 26 and 27 of the judgment, which read:-

"26. The view expressed in Goutam Dey, of rights having vested in tenants under the 1956 Act being incapable of dilution by the repeal of such Act, is unacceptable in the light of a long line of authoritative pronouncements of the Supreme Court, including the judgments reported at (1995) 1 SCC 104 (D.C. Bhatia v. Union of India), (1999) 9 SCC 334 (Thyssen Stahlunion GmbH v. The Steel Authority of India) and (2004) 4 SCC 1 (Vishwant Kumar v. Madan Lal Sharma).

27. Section 8(c) of the Bengal General Clauses Act, 1899 is in pari materia with Section 6(c) of the General Clauses Act, 1897. In the context of rent control legislation, the right or privilege conferred by a statute to a tenant cannot be regarded as "acquired" or "accrued" rights within the meaning of the relevant words in the Bengal General Clauses Act or the General Clauses Act. At any rate, in the statement of objects and reasons of the 1997 Act indicating that there was a need to reform "the rent legislation in a way that balances the interests of both the landlords and the tenants", there is an express declaration of the rights of tenants covered by the previous legislation being diluted. There appears to be "a different intention", within the meaning of such expression as used in Section 8 of the Bengal General Clauses Act evident from the change in law."

In Shahwar Basheer (supra) the Hon'ble Supreme Court was considering the definition of tenant in the Karnataka Rent Act, 1999 where the phrase "or from the date of coming into force of this Act, whichever is later" is absent. This phrase makes a lot of difference to ascertain the legislative intent and whether it would have retrospective effect. This phrase came up for consideration before Justice I.P. Mukerji in Prabir Kumar Jalan vs. Laxmi Narayan Jalan & Ors. reported in 2012 (2) CHN 56 in which in paragraph 21 the said clause was explained in the following words:-

"21. Now, if Ms. Doshi's argument that the rights of the original tenant vested in the defendants on his death on 25th December, 1999 was true, then there would be no occasion for the legislature to enact that the status of a tenant would cease on expiry of five years from the date of the Act or five years after the death whichever was later. If the legislature had intended to protect the heirs of a tenant under the 1956 Rent Act, the tenant having died before coming into force of the new Rent Act, the legislature would have only prescribed five years from the date of death which must occur on or after coming into force of the new Act. Or better still it could have said five years from the death and no more. The legislature need not have said any more. Then the provisions of Section 8 of the Bengal General Clauses Act, 1897 would come into play to interpret date of death as death after the new Act came into force to save and protect the rights of the heirs of a tenant who died during the operation of the old Act. The legislature has said five years from the date of death of a tenant or from the date of coming into force of this Act whichever is later. If the legislature had intended death after the new Act came into force the five year period would always end on and after five years from the date of coming into force of the Act. Therefore,

there was no need to provide the phrase "five years..... from the date coming into force of the Act." This phrase was inserted to give limited protection to the heirs of the tenant who died before the new Act came into force. By inserting the phrase "coming into force of the Act" the legislature has specifically referred to deaths of tenants before the coming into force of the new Act. This express provision excludes any protection that may be claimed under Section 8 of the Bengal General Clauses Act, 1897."

This view has been affirmed in *Sushil Kumar* (supra). The Division Bench Judgment in *Sushil Kumar* (supra) has been affirmed by the Hon'ble Supreme Court in SLA(C) No.2750/2018 by an order dated 7th February, 2018.

We are in respectful agreement with the view expressed in *Sushil Kumar Jain* (supra).

Apart from the aforesaid the respondent has not been able to establish that she is a legal heir of the original deceased tenant or she was ordinarily residing with the original tenant at the time of his death which was also a requirement under the W.B. Premises Tenancy Act, 1956. In the Rent Act of 1997 in addition to the aforesaid requirement she has to establish that she was dependent on the tenant and do not own or occupy any residential premises.

The judgment passed by the learned 9th Bench, City Civil Court, Calcutta on 17th April, 2019 is set aside. There shall be a decree for recovery of khas possession of the property in question. In the event the respondent-defendant delivers peaceful and vacant possession within a period of one year from date, subject to payment of occupation charges at the rate of Rs.3500 per month commencing from June 2020 to be paid by 20th June, 2020 and by 10th of each succeeding month by cheque or electronic transfer to the designated bank account of the appellant to be provided by the appellant within one week from date and pay a further sum of Rs.30,000/- towards occupation charges for the past periods within six weeks from date. In default of making payment of any of the monthly occupation charges or the said sum of Rs.30,000/- the decree shall be immediately executable after the lockdown is lifted in Kolkata and the plaintiff shall be entitled to apply before the trial court for appointment of an advocate commissioner for determination of mesne profits. However we make it clear that should an occasion arises for determination of mesne profits the said sum of Rs.30,000/- should not be construed as determination of mesne profits for the period under unauthorised occupation. The appellants-plaintiffs have agreed that they shall not claim mesne profits for the period of unauthorised occupation in the event the plaintiff/respondent delivers khas possession within one year from date.

On such consideration the appeal succeeds.