

PETITIONER:

GANTUSA H. BADDI (DEAD) BY LRS.

Vs.

RESPONDENT:

MEERABAI G. PAI & ORS.

DATE OF JUDGMENT: 24/04/2000

BENCH:

S.V.Patil, R.P.Sethi, G.B.Pattanaik

JUDGMENT:

PATTANAIAK, J.

This appeal is directed against the revisional Order of a learned Single Judge of Karnataka High Court, dismissing the Revision Petition and affirming the order of eviction passed by the District Judge in his Revisional Jurisdiction under the provisions of Karnataka Rent Control Act. The legal representatives of the deceased tenant are the appellants. The landlord filed an application for eviction under Section 21(1) (a), (h) and (p) of the Act, alleging that the tenant has not paid or tendered the arrears of the rent legally recoverable from him and that the premises are reasonably and bona fide required by the landlord for occupation of himself as well as on the further assertion that the tenant has acquired vacant possession of an alternative suitable building. The Munsif at Yellapur, on consideration of the entire materials before him held against the landlord on all counts, and dismissed the application for eviction by his order dated 4.10.1991. The said order was assailed in revision under Section 50 of the Act. The Revisional Court came to the conclusion that the Munsiff had not properly appreciated the evidence on record. Though he did not set aside the findings of the Munsiff, on the question of arrears of rent and the bona fide requirement, which are the two grounds under Section 21(1)(a) and (h) of the Act, but he did set aside the finding on the third question namely whether tenant has acquired a suitable alternative premise, as required under Section 21(1)(p) of the Act and came to hold that the eviction sought for on the grounds available under Section 21(1)(p) of the Act has to be allowed. Against the said revisional order of the District Judge in exercise of powers under Section 50 of the Act, the tenants moved the High Court. The landlord also filed a revision petition against the findings of the revisional Court on the question of arrears of rent and bona fide requirements. The original tenant died during the pendency of the said revision petition and his legal heirs were substituted and brought on record. The High Court disposed of the revision on two grounds. Following the Judgment of this Court in the case of Venkatesh Thimmaiah Gurjalkar vs. S.S. Hawaldar, JT 1997(8) SC 528, the High Court came to the conclusion that the premises in question being non-residential and under the Act the tenancy in respect of non-residential premise

being not heritable and admittedly the tenant having died, the revisional application is liable to be dismissed. On the question whether the provisions of Section 21(1)(p) of the Act is attracted or not, the High Court came to the conclusion that in view of the evidence of the son of the original tenant that it was the partnership firm, which was running the business in the schedule premises and the said firm has acquired an alternative premise, it must be held that the grounds for eviction under Section 21(1)(p) has been made out. With these findings, the revision filed by the tenant as well as the one filed by the landlord stood dismissed. On grant of special leave by this Court, this appeal was placed before a Bench of two learned Judges, wherein a contention was advanced that the decision of this Court in Venkatesh Thimmaiah's case, on which the High Court has relied upon, is contrary to the decision of this Court in the case of Vishnu Narayan Gads kari (Dead) by L.Rs. vs. Paralal Baladev Uza and Ors., 1995 Supp.(4) SCC 428, and in both the cases, the question for consideration was whether under the Karnataka Rent Control Act, the tenancy in respect of a non-residential premises can be held to be heritable or not. In view of the two conflicting decisions, referred to above, the Bench, thought it fit to refer the matter to a larger Bench and that is how the matter has been placed before us.

The learned counsel for the appellant contends that the latter decision of this Court in Venkatesh Thimmaiah's case, must be held to have been not correctly decided, as it does not take notice of the earlier decision in Vishnu Narayans case 1995 Supp.(4) SCC 428, which was a decision interpreting the very same provision of the Karnataka Rent Control Act and which also relied upon the Constitution Bench decision of this Court in Gian Devi Anands case 1985(2) SCC 683, wherein the pari materia provision of Delhi Rent Control Act, 1958 was under consideration. The learned counsel further urged that acquisition of a premises by the partnership firm of which the tenant was merely a partner to the extent of 15%, cannot be held to be an acquisition of alternative premises by the tenant in view of the definition of tenant in Section 3(r) of the Act and the High Court, therefore committed serious error of law.

The learned counsel appearing for the respondent however contended that the impugned judgment of the High Court is unassailable, since it has followed the latter decision of this Court on the question of heritability of a non-residential premises and it has rightly interpreted the provisions of Section 21(1)(p) of the Act. According to the learned counsel for the respondent, the so-called partnership firm being of the father and the sons and the said firm having acquired the premises where business is being carried on and even in the schedule premises the firm in fact was carrying on the business, though the father was the tenant, the conclusion becomes irresistible that an alternative premises is now available and therefore, eviction could be ordered under Section 21(1)(p) of the Act.

In view of the rival submissions at the Bar, two questions arise for our consideration: (1) Whether the tenancy in respect of a non-residential purpose can be held to be heritable under the Karnataka Rent Control Act; and (2) Whether an individual being a tenant of a business premises and said individual having become a partner of a firm, if the firm acquires vacant possession of a suitable

building, whether the tenant incurs the liability of being evicted under Section 21(p) of the Act.

So far as the first question is concerned, it really depends upon an analysis of the provisions of the Act. The expression premises has been defined in Section 3(n) to mean a building as defined in clause (a) and any land not used for agricultural purposes. The building has been defined under Section 3(a) to mean any building or hut or part of a building or hut other than a farm house, let or to be let separately for residential or non-residential purposes and includes ----- . The expression tenant has been defined in Section 3(r) to mean 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 tenants 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 leases by a local authority. Section 51 of the Act provides that any application made, appeal preferred or proceeding taken under the Act by or against any person may in the event of his death be continued by or against his legal representatives. In the case of *Gian Devi Anand vs. Jeevan Kumar and Ors.*, 1985 (2) SCC 683, the Constitution Bench of this Court was considering the very question as to whether the tenancy in respect of a commercial premises or non-residential premises can be said to be heritable under the Act. Bhagwati J, concurring with the majority view, expressed by Sen J, came to hold that the distinction between contractual tenancy and statutory tenancy is completely obliterated by the rent control legislation and if a contractual tenant has an estate or interest in the premises which is heritable, a statutory tenant should also be held to have such heritable estate or interest. In one case, the estate or interest is the result of contract while in the other, it is the result of statute. But the quality of the estate or interest is the same in both cases. In the majority judgment expressed through Sen, J, it was observed: Keeping in view the main object of Rent Control Legislation, the position of a tenant whose contractual tenancy has been determined has to be understood in the light of the provisions of the Rent Acts. 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 under the ordinary law of the land and he is entitled to remain in possession even after determination of the contractual tenancy and no order or decree for eviction will be passed against a tenant unless any ground which entitles the landlord to get an order or decree for possession specified in the Act is established. In other words, the common feature of every Rent Control Act is that it affords protection to every tenant against eviction despite termination of tenancy except on grounds recognised by the Act and no order or decree for eviction shall be passed against the tenant unless any such ground is established to the satisfaction of the court.

After considering the definitions of tenant, the landlord and various other provisions of the Delhi Act as well as the amendment to the definition of tenant introduced by the Delhi Rent Control Act Amendment Act (Act 18 of 1976), which gives 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, the Court observed that 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. The Court observed in paragraph 34 of the Judgment :

A tenant of any commercial premises has necessarily to use the premises for business purposes. Business carried on by a tenant of any commercial premises may be and often is, his only occupation and the source of livelihood of the tenant and his family. Out of the income earned by the tenant from his business in the commercial premises, the tenant maintains himself and his family; and the tenant, if he is residing in a tenanted house, may also be paying his rent out of the said income. Even if a tenant is evicted from his residential premises, he may with the earnings out of the business be in a position to arrange for some other accommodation for his residence with his family. When, however, a tenant is thrown out of the commercial premises, his business which enables him to maintain himself and his family comes to a standstill. It is common knowledge that it is much more difficult to find suitable business premises than to find suitable premises for residence. It is no secret that for securing commercial accommodation, large sums of money by way of salami, even though not legally payable, may have to be paid and rents of commercial premises are usually very high. Besides, a business which has been carried on for years at a particular place has its own goodwill and other distinct advantages. The death of the person who happens to be the tenant of the commercial premises and who was running the business out of the income of which the family used to be maintained, is itself a great loss to the members of the family to whom the death, naturally, comes as a great blow. Usually, on the death of the person who runs the business and maintains his family out of the income of the business, the other members of the family who suffer the bereavement have necessarily to carry on the business for the maintenance and support of the family. A running business is indeed a very valuable asset and often a great source of comfort to the family as the business keeps the family going. So long as the contractual tenancy of a tenant who carries on the business continues, there can be no question of the heirs of the deceased tenant not only inheriting the tenancy but also inheriting the business and they are entitled to run and enjoy the same. We have earlier held that mere termination of the contractual tenancy does not bring about any change in the status of the tenant and the tenant by virtue of the definition of the tenant in the Act and the other Rent Acts continues to enjoy the same status and position, unless there be any provisions in the Rent Acts which indicate to the contrary. The mere fact that in the Act no provision has been made with regard to the heirs of tenants in respect of commercial tenancies on the death of the tenant after termination of the tenancy, as has been done in the case of

heirs of the tenants of residential premises, does not indicate that the Legislature intended that the heirs of the tenants of commercial premises will cease to enjoy the protection afforded to the tenant under the Act. The Legislature could never have possibly intended that with the death of a tenant of the commercial premises, the business carried on by the tenant, however flourishing it may be and even if the same constituted the source of livelihood of the members of the family, must necessarily come to an end on the death of the tenant, only because the tenant died after the contractual tenancy had been terminated. It could never have been the intention of the Legislature that the entire family of a tenant depending upon the business carried on by the tenant will be completely stranded and the business carried on for years in the premises which had been let out to the tenant must stop functioning at the premises which the heirs of the deceased tenant must necessarily vacate, as they are afforded no protection under the Act. We are of the opinion that in case of commercial premises governed by the Delhi Act, the Legislature has not thought it fit in the light of the situation at Delhi to place any kind of restriction on the ordinary law of inheritance with regard to succession. It may also be borne in mind that in case of commercial premises the heirs of the deceased tenant not only succeed to the tenancy rights in the premises but they succeed to the business as a whole.

It has been further held:

It may be noticed that in some Rent Acts, provisions regulating heritability of commercial premises, have also been made whereas in some Rent acts, no such provision either in respect of residential tenancies or commercial tenancies has been made. As in the present Act, 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, the tenancy right which is heritable devolves on the heirs under the ordinary law of succession. The provisions of the Karnataka Rent Control Act directly came up for consideration before a Bench of this Court in the case of Vishnu Narayan Gadskari (Dead) by L.Rs. vs. Paralal Baladev Uza and Ors., 1995 Supp (4) SCC 428, relying upon the aforesaid Constitution Bench decision and bearing in mind the definition of tenant in Section 3(r) of the Karnataka Act, the Court held that the tenant 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. In the latter decision in Venkatesh Thimmaiah's case, neither the decision of the Constitution Bench, referred to supra has been noticed nor the earlier two Judge Bench decision of this Court on the provisions of Karnataka Act has been noticed and relying upon the decision of the Karnataka High Court, without any analysis of the provisions of the Act, the conclusion of the Forums below that the premises in question being non-residential, the right of tenancy therein is not heritable has been upheld. In view of the law laid down by the Constitution Bench as well as the earlier decision of this Court in Vishnu Narayan Gadskari's case, we have no hesitation to hold that the latter decision in Venkatesh Thimmaiah's case, has not been correctly decided. In the absence of any contrary provisions in the Act, it must be held that the tenancy in respect of a non-residential premises under the Karnataka Rent Control Act is heritable. The conclusion of the High

Court to the contrary, therefore, cannot be sustained.

So far as the second question is concerned, it depends upon the interpretation of Section 21(1)(p) of the Act. The aforesaid provision is quoted hereinbelow in extenso:

Sec.21(1)(p): that the tenant whether before or after the coming into operation of this part has built, or acquired vacant possession of, or been allotted, a suitable building.

The language of the provision is clear and unambiguous and given its plain grammatical meaning, it is susceptible of only one construction that it is only when the tenant has built or acquired vacant possession of or has been allotted a suitable building, then only the provisions of Section 21(1)(p) of the Act are attracted and not otherwise. The expression tenant has been defined in Section 3(r) and howsoever vide meaning to the said definition be given, it will not bring within its scope, a partnership firm of which the tenant himself may be a partner. In the case in hand the individual namely deceased Gantusa H. Baddi was the tenant in respect of the premises and application for eviction had been filed as against him. The so-called alternative accommodation, has been acquired, admittedly by a partnership firm, no doubt, consisting of the original tenant the father and his sons wherein the father has 15% share but it cannot be held that the said acquisition of vacant possession is by the tenant. The High Court has given a peculiar reasoning on consideration of evidence adduced to the effect that since in the disputed premises, the business of the firm was carried on, though it had been tenanted to an individual, the moment a vacant possession has been acquired by the firm, the liabilities incurred under Section 21(p) of the Act, we are unable to persuade ourselves to agree with the aforesaid conclusion of the High Court. In our considered opinion, because of acquiring vacant possession of a building by the partnership firm of which the tenant may be a partner, the tenant does not become liable to be evicted by application of Section 21(1)(p) of the Act. It is neither the case of the landlord in the application for eviction that the tenant namely deceased Gantusa H. Baddi, has acquired vacant possession of a building nor has it been proved in course of the proceeding. That being the position, the conclusion of the High Court that the tenant has incurred the liability of having evicted under Section 21(1)(p) of the Act, the moment a business premises is acquired by the partnership firm is erroneous and cannot be sustained.

In view of our aforesaid conclusion on both the questions, this appeal succeeds. The order of eviction passed by the Revisional Authority and reaffirmed by the High Court stands quashed. The application for eviction stands dismissed. There will however be no order as to costs.