

PETITIONER:
S.J. PANDE

Vs.

RESPONDENT:
P.K. BALAKRISHNAN

DATE OF JUDGMENT 29/04/1993

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
RAMASWAMY, K.

CITATION:
1993 AIR 2132 1993 SCR (3) 460
1993 SCC (3) 297 JT 1993 (3) 364
1993 SCALE (2) 726

ACT:

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Bombay Rent Hotel and Lodging House Rates Control Act, 1947:
Section 15A-Licence-Statutory Tenant-Cannot create a valid
licence unless he was deemed on a par with contractual
tenant by provision in the statute.

HEADNOTE:

The appellant-landlord determined the tenancy of the contractual tenant in 1966 and filed a suit for his eviction. The suit was decreed ex-parte. In execution proceedings the licensee obstructed and claimed to be protected licensee under Section 15A of the Bombay Rent Hotel and Lodging House Rates Control Act, 1947. The objection was rejected by the executing Court. The appellate Court confirmed the same holding that even though the first licence was, created in 1966 before determination of the tenancy for a period of six years and the second licence having been created in 1972, it was not necessary to examine the validity of the first, as the second one was created when contractual tenant had become statutory tenant, and therefore, he was incapable of transferring any right or interest in favour of the licensee.

On appeal, the High Court upheld the finding of the appellate court that the licence was created in 1972. It also held that creation of licence by a statutory tenant, was valid.

Being aggrieved by the judgment of the High Court, the appellant landlord preferred an appeal, before the Court.

Allowing the appeal, this Court,

HELD: 1.1 In the absence of any legislation touching the contract, a contractual tenant is left with no transferable right after determination of his tenancy. (465-B)

1.2 The law would operate in favour of a person who held the premises under valid licence. A valid licence could be created, by a contractual tenant or by a statutory tenant if he continued at par with contractual tenant by

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operation of legislation. (465-G)

1.3 In the instant case, the licence was granted by the contractual tenant in 1972. But his tenancy had been

determined by the landlord in 1966. He thus had become statutory tenant. He did not, in law had any assignable interest on the date he created the licence. The grantor, therefore, from a cause preceding the grant had ceased to have any interest, and was incapable of creating any valid licence unless he could be deemed to be at par with the contractual tenant by any provision in the Statute. In absence of any such provision in the Bombay Rent Act, the licence was invalid and stood revoked. The occupation of the respondent thus was not as licensee within the meaning of Section 15A of the Act. (466-B-C)

Vasant Tatoba Hargude and Ors. v. Dikkaya Muttaya Pujari: AIR 1980 Bombay 341, approved.

Anand Nivas Private Ltd. v. Anandji Kalyanji's Pedhi & Others, AIR 1965 SC 414; Jai Singh Morarji and others v. M/s Sovani (P) Ltd., AIR 1973 SC 772; Damadilal and others v. Parashram and Others, AIR 1976 SC 2229 and Luadhichem Agencies v. Ahmed R. v. Peer Mohamed and Anr., [1982] 1 SCR 51 1, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4233 of 1984. From the Judgment and Order dated 25.3.1983 of the Bombay High Court in W.P. No. 25 of 1982.

S.B. Bhasme and A.S. Bhasme for the Appellant.

Umesh Bhagwat and V.B. Joshi for the Respondent.

The Judgment of the Court was delivered by

R.M. SAHAI J. Can a statutory tenant create a licence? If the answer is in affirmative then can such licensee claim immunity from eviction in execution proceedings in view of Section 15A of this Bombay Rent Hotel and Lodging House Rates Control Act 57 of 1947 (hereinafter referred to as 'the Act')? These are questions which arise for consideration in this appeal directed against the judgment and order of the Bombay High Court.

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What happened was that the landlord determined the tenancy of the contractual tenant in October 1966 and filed a suit for his eviction in 1967 which was decreed ex-parte on 5th October 1973. In execution of the decree the licensee obstructed and claimed to be protected licensee under Section 15A of the Act. The objection was rejected by the executing and the appellate court. The appellate court found that even though the first licence was, created in 1966 before determination of the tenancy for a period of six years but the second licence having been created in 1972, it was not necessary to examine the validity of the first, as second was created when contractual tenant had become statutory tenant therefore he was incapable of transferring any right or interest in favour of the licensee. The High Court did not disturb the finding that the licence was created in 1972 but it held that creation of licence by a statutory tenant, was valid. Consequently the licensee was in occupation of the premises as licensee on the date the Bombay Rent Act was amended and was entitled to the benefit of Section 15A of the Act. For this reliance was placed on certain observations made by a Division Bench of that Court in Vasant Tatoba Hargude and Others v. Dikkaya Muttaya Pujari, AIR 1980 Bombay 341 to the following effect:-

"On this point of initial presumption as to the subsisting incidence of the tenancy, we shall have to follow the ratio of Damadilal's case (AIR 1976 SC 2229) in preference to the decision in Anand Nivas case

and shall have to proceed on the assumption that statutory tenant does ordinarily possess transferable interest in his tenancy. "

Who is a statutory tenant, what right or interest he can assign or transfer have been dealt by this Court in more than one decisions. In *Anand Nivas Private Ltd v. Anandji Kalyanji's Pedhi & others* AIR 1965 SC 414 a decision rendered under Bombay Rent Act the majority held, "A person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly though in law not accurately, called 'a statutory tenant'. Such a person is not a tenant at all: he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal: it is not capable of being transferred or assigned, and devolves on his death

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only in the manner provided by the statute. The right of a lessee from a landlord on the other hand is an estate or interest in the premises and in the absence of a contract to the contrary is transferable and the premises may be sublet by him. But with the determination of the lease, unless the tenant acquires the right of a tenant holding over, by acceptance of rent or by assent to his continuing in possession by the landlord, the terms and conditions of the lease are extinguished, and the rights of such a person remaining in possession are governed by the statute alone. Section 12 (1) of the Act merely recognises his right to remain in possession so long as he pays or is ready and willing to pay the standard rent and permitted increases and performs the other conditions of the tenancy, but not the right to enforce the terms and conditions of the original tenancy after it is determined."

In *Jai Singh Morarji and others v. M/s Sovani (P) Ltd.*, AIR 1973 SC 772 yet another decision from Bombay the ratio in *Anand Nivas* was reiterated and it was held that tenant in Section 15 of the Bombay Rent Act meant the contractual tenant and not the statutory tenant. Then came another decision, *Damadilal and others v. Parashram and others*, AIR 1976 SC 2229 on M.P. Accommodation Control Act. It in the Court traced the genesis of the concept of statutory tenant derived from the English Rent Act but carved out an exception, where, the sanctity of the contract was touched by legislation. It was held that where the statute itself provided continuance in possession of the tenant after determination of the tenancy in some right the tenant was at par with contractual tenant. Reason was the definition of 'tenant' under Section (2) (i) of the Act. It read as under:

"a person by whom or on whose account or behalf for the rent of any accommodation is, or, but for a contract express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made."

This section was construed thus,

"The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a

decree or order for eviction has been made against him

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thus putting him on par with a person whose contractual tenancy still subsists. The incidents of such tenancy and a contractual tenancy must therefore be the same unless any provision of the Act conveyed a contrary intention. That under this Act such a tenant retains an interest in the premises, not merely a personal right of occupation, will also appear from Section 14 which contains provisions restricting the tenant's power of subletting.

Section 148 is in these terms:.....

No such provision existed in the Bombay Rent Act. The ratio in Damadilal's case, therefore, could not apply to right or interest created by a statutory tenant under the Bombay Act. The decisions in Damadilal's case did not in any way deviate from the decisions given earlier by this Court in Anand Nivas case. All these cases however were of sub-tenants. In 1981 this Court had an occasion to deal with the case of a licensee under the Bombay Rent Act and his rights under Section 15A of the Act. The Bench was of the opinion that the licensee was not entitled to obstruct the eviction proceedings which had become final against the tenant as a statutory tenant could not assign or create any interest after termination of his tenancy. It was observed in *Ludhichem Agencies v. Ahmed R. v. Peer Mohamed and Anr.* [1982] 1 SCR 51 1:

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

On facts however since the statutory tenancy too came to an end before Section 15A was amended due to passing of the decree by the trial court the High Court distinguished this decision ignoring the material difference between the two enactments. What was lost sight of was that the observation made by this Court in Damadilas's case at page 2234 to the following effect,

"We find it difficult to appreciate how in this country we can proceed on the basis that a tenant whose contractual tenancy has determined but who is protected against eviction by the statute, has no right of property but only a personal right to remain in occupation, without ascertaining what his rights

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are under the statute..... It is not possible to claim that the "sanctity" of contract cannot be touched by legislation.

Were on the language of the Section as it stood under that Act. Therefore, in absence of any legislation touching the contract it appears to be settled that contractual tenant is left with no transferable right after determination of his tenancy. In our opinion the learned judge in drawing an inference from *Ludhichem Agencies* (supra) that, 'a licence by a statutory tenant would continue to subsist 'lawfully till it was terminated and therefore if on the facts of that case the decree of ejectment against Saraswatibai had been made after 1.2.1973,

then the licence in favour of the petitioners could have been considered to the subsisting on 1.2.1973, . committed an error of law.

Section 15A reads as under:

"15A-

(1)Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract, where any person is on the 1st day of February 1973, in occupation of any premises or any part thereof which is not less than a room as a licensee thereof, he shall on that date be deemed to have become, for the purposes of this Act, the tenant of the landlord in respect of the premises or part thereof in his occupation.

(2)The provisions of sub-section (1) shall not affect in any manner the operation of sub-section (1) of Section 15 after the date aforesaid."

The section brought into force with effect from 1st February 1973 undoubtedly protected a licensee from eviction. But it could operate in his favour only if he was in occupation of the premises on the date the Act came into force as a licensee. It is, thus, not mere occupation but occupation as licensee which has been statutorily protected. In other words the law would operate in favour of a person who held the premises under valid licence. A valid licence could be created, as explained earlier, by a contractual tenant or by a statutory tenant if he continued at par with contractual tenant by operation of legislation. In absence of any such provision in the Bombay Rent Act the licence created in favour of licensee by the statutory tenant could not render the respondent, a licensee within the meaning of Section 15A of the Act.

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Even a valid licence stands revoked in circumstances mentioned in Section 62 of the Indian Easements Act. Its clause (a) reads as under:

"62. A license is deemed to be revoked-

(a)when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license:"

The licence was granted by the contractual tenant in 1972. But his tenancy had been determined by the landlord in 1966. He thus had become statutory tenant. He did not, in law had any assignable interest on the date he created the licence. The grantor therefore from a cause preceding the grant had ceased to have any interest, and was incapable of creating any valid licence unless he could be deemed to be at par with the contractual tenant by any provision in the statute. In absence of any such provision in the Bombay Rent Act the licence was invalid and stood revoked. The occupation of the respondent thus was not as licensee within the meaning of Section 15A of the Act.

In the result this appeal succeeds and is allowed. The order passed by the High Court in the Writ Petition is set aside and it shall stand dismissed. In the circumstances of the case, however, there shall be no order as to costs.

V.M.

Petition dismissed.

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