

Guruprasad and Etc. Vs. Additional District Magistrate and ors.

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Court : Mumbai

Decided On : Aug-09-1985

Reported in : AIR1986Bom288

Judge : Dhabe, J.

Acts : Central Procedure and Berar Letting of Houses and Rent Control Order, 1949; [Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petn. Nos. 820 of 1982 and 2119 of 1983

Appellant : Guruprasad and Etc.

Respondent : Additional District Magistrate and ors.

Advocate for Def. : S.P. Dharmadhikari and ;P.G. Phatak, Advs. for Respondent No. 2 in W.P. Nos. 820/82 and 2119/83, ;R.K. Thakur, Adv. for Respondent No. 3 in W.P. No. 2119/83 and ;N.R. Abhyankar, Adv. for Respondent No

Advocate for Pet/Ap. : R.K. Thakur, Adv. in W.P. No. 820/82 and ;N.R. Abhyankar, Adv. in W.P. No. 2119/83

Disposition : Petition dismissed

Judgement :

ORDER

Dhabe, J.

1. These are two connected writ petitions arising out of the same order passed under the provisions of the C. P. & Berar Letting of Houses and Rent Control Order, 1949 (for short, 'the Rent Control Order'). The reference to the names of the parties would, however, be as in the writ petition No. 820/1982.

2. It is necessary to state the facts in some detail for the purpose of appreciating the controversy raised in these petitions. One Shri M. V. Gokhale was the owner of the suit block in the instant case. In 1938 he let out the suit block to one Anandkumar Nigam for the purposes of running a shop named 'Chitra Arts Studio' which was a photo studio. The aforesaid Shri A. K. Nigam was the proprietor of the said studio. It was agreed between the said Shri M. V. Gokhale and the proprietor of the Chitra Arts Studio Shri A. K. Nigam that the latter should deposit the rent of the suit block in the Savings Bank Account No. 612 of the said Shri M. V. Gokhale with the United Commercial Bank. It may be stated at this stage that the rent of the suit block was Rs. 59/- per month. This arrangement continued till the end of December 1969. In December 1969 there was a partition of the property between the said Shri M. V. Gokhale and his sons in which the suit block came to the share of his son Prakash. The tenancy of the said Shri A. K. Nigam, Proprietor of Chitra Art Studio was attorned in favour of the son Prakash Manohar Gokhale and from 1-1-1970 the rent was deposited by him in the new Savings Bank Account No. 3058 of the new landlord Prakash Gokhale in the same bank.

3. It is the case of the petitioner and the respondent 3 in these writ petitions that in 1975 Shri A. K. Nigam fell ill and could not look after the shop. Since the petitioner who was a Lecturer in the Laxminarayan Institute of Technology, Nagpur was living separately from his father Shri A. K. Nigam since 1-7-1974, the said Shri A. K. Nigam asked his nephew, the respondent 3 to come to Nagpur from Itarsi where he was staying and to assist him in his work in the photo studio. Accordingly, the respondent 3 came to Nagpur and was appointed as a Manager of the photo studio on a monthly salary of Rs. 500/- per month. The respondent 3 worked in the capacity of a Manager in the photo studio till 14-2-1978. Thereafter by a registered gift-deed dt. 18-4-1978 the said Shri A. K. Nigam gifted the said

photo studio to the respondent 3 with effect from 14-2-1978. It is the case of the petitioner and the respondent 3 that from 14-2-1978 to 25-4-1978 the rent of the suit block was paid by the respondent 3 in the same account of the said Shri Prakash Gokhale on his own account as the proprietor of the photo studio.

4. It is pertinent to notice at this stage that the respondent 2 who is the brother of the proprietor of the Moonlight Photo Studio which is adjoining the suit block and who is working in the said photo studio of his brother purchased the suit block from the owner Prakash Gokhale by a registered sale deed dt. 25-4-1978. A notice was given on 11-5-1979 by the said Prakash Gokhale to Shri A. K. Nigam that he sold the suit block to the respondent 2 on 25-4-1978. A notice was also given by the respondent 2 to the said Shri A. K. Nigam on 16-5-1978 about attornment of tenancy in his favour since he had purchased the suit block from its owner. It is urged on behalf of the petitioner and the respondent 3 that the said notice was received by the respondent 3 although addressed to Shri A. K. Nigam. Shri A. K. Nigam died on 3-7-1978. It is the case of the petitioner and the respondent 3 that after the death, of Shri A. K. Nigam the rent was sent by the respondent 3 from his shop through his accountant to the respondent 2 for the months of July and August 1978 which was accepted by him but the rent receipts were altered and the name of the petitioner was shown as a tenant in the said rent receipts.

5. The respondent 2 gave a notice on 12-8-1978 that the suit block was illegally sublet to the respondent 3 by the petitioner or his father without the written permission of the landlord and that he needed it for his business purposes. The said notice was objected to by the petitioner on the ground that he was not the tenant of the suit block. There was, therefore, no question of subletting the said premises by him to the respondent 3. After the said notice was given the respondent 2 filed an application on 20-9-1978 against the petitioner and the respondent 3 seeking permission under Clauses 13(3)(iii) and (vi) of the Rent Control Order to give quit notice to the petitioner. Parties led evidence in the said case whereafter the Rent Controller by his order dt. 19-5-1981 held that the petitioner was not the tenant of the suit block. He rejected the application of the respondent No. 2 under Clauses 13(3)(iii) and (vi) of the Rent Control Order. The respondent 2 filed an appeal and in appeal the learned appellate court granted him

permission to give quit notice to terminate the tenancy of the petitioner under Clauses 13(3)(iii) and (vi) of the Rent. Control Order reversing the finding of the Rent Controller that the petitioner was not the tenant of the suit block. Being aggrieved by the order of the learned Appellate Court the petitioner and the respondent 3 have preferred these writ petitions in this Court against the same.

6. The principal question raised on behalf of the petitioner is that he is not the tenant of the suit block and that he did not sublet the same to the respondent 3. It is urged that the original tenant Shri A. K. Nigam was not the tenant of the suit block in his personal capacity but was its tenant as a proprietor of Chitra Art Studio. The submission, therefore, is that the tenancy of the photo studio could not be inherited by the petitioner who never stayed with his father and never participated with him in the said business. According to the petitioner and the respondent 3 the tenant of the suit block is the respondent 3 to whom the shop was gifted by the said Shri A. K. Nigam and who paid the rent of the suit block from 14-2-1978 onwards as a proprietor of the shop. It is, however, urged on behalf of the respondent 2 that the tenant of the suit block was in fact and in law the said Shri A. K. Nigam and that his tenancy rights were heritable by reason of which after his death it was the petitioner who became the tenant of the suit block by inheritance. It is, therefore, the submission on behalf of the respondent 2 that by the alleged gift-deed dt. 18-2-1978 there was subletting to the respondent 3 within the meaning of Clause 13(3)(iii) of the Rent Control Order.

7. In support of the rival contentions the rival parties have relied upon the alleged admissions made by them against each other in their evidence before the Rent Controller, It is not really necessary to consider the alleged admissions to show whether the said Shri A. K. Nigam was a tenant in his personal capacity or was a tenant as a proprietor of the studio because, as I would presently show, in law it would be only Shri A. K. Nigam who would be the tenant of the suit block. It cannot be disputed that 'shop' or the 'proprietor of the shop' as such is not a legal entity. Therefore, in such a case the tenancy is created in the personal capacity of the proprietor. In regard to a partnership firm this Court in the case of *Nandkishore Mangilal v. Keshav Dadaji*, 1978 Mah LJ 16 has held that when the premises are taken on lease by a partnership firm since the firm is not itself a legal entity each

partner in his individual capacity becomes the tenant of the rented premises. In considering the provision of Order XXX Rule 10 this Court has held in the case of *Rampratab v. Gourishankar*, AIR 1924 Bom 109 that when a suit is brought against a person (proprietor) in the name in which he carries on the business, the suit is essentially one against him and the two are not separate entities. It has, therefor, to be held in the instant case that Shri A. K. Nigam was the tenant of the suit block in his personal capacity and the tenancy was created for his business purposes.

8. The learned counsel for the petitioner has, however, relied upon a decision of the Supreme Court in the case of *Ganpat Ladha v. Sashikant Vishnu Shinde* : [1978]3SCR198 in support of his contention that a legal representative of the tenant cannot inherit the tenancy which is granted for the business purpose. The facts in the case, cited supra, would show that it was a case in which the question of interpretation of Section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'the Bombay Act') had arisen. It was the contention in the said case that by virtue of the said provision in the Bombay Act the son of the tenant also becomes a tenant of the business premises. In considering Section 5(11)(c) of the Bombay Act the Supreme Court held that by its very language it was applicable where the tenancy was for residential purposes and by virtue of that provision any member of the tenant's family residing with him at the time of the death would be the tenant of such premises because it was the intention of the Legislature in enacting the said provision that after the death of the tenant the members of his family residing with him should not be thrown out on the streets. However, according to the Supreme Court there was no reason to extend the protection of Section 5(11)(c) to the premises which were granted for the business purposes and as such it was held that the tenancy for a business purpose in that case would not accrue after the death of the original tenant to his son who was residing with him. The view taken by the Supreme Court in the above case turns upon the scheme of protection to the tenant envisaged by Section 5(11)(c) of the Bombay Act and cannot, therefore, be an authority in construing Clause 2(5) of the Rent Control Order in which such language is not used. However, the above view taken by the Supreme Court in the above case is no more good law as it is overruled by the Supreme Court in its latest judgment in the

case of Smt. Gian Devi Anand v. Jeevan Kumar : AIR 1985 SC796 in which it is held in para 35 that in Ganpat Ladha's case cited supra it did not consider the effect of Section 5(11)(b) of the Bombay Act upon the commercial tenancy.

9. It is, however, pertinent to notice that the Bombay Act was amended after the said decision in Ganpat Ladha's case and in 1978 a member of the tenant's family carrying on business with him in the premises was also included within the definition of the word 'tenant' in Section 5(11)(c) of the Bombay Act. However, under the Bombay Act itself there are decisions of this court taking a view that a contractual tenancy is heritable although there is a dispute whether a statutory tenancy is heritable thereunder or not. See the case of Vasant Tatoba Hargude v. Dikkaya Muttaya : AIR1980 Bom341 .

10. In my view, the question whether the tenancy is heritable or not has to be considered in the light of the scheme of the provisions of the Rent Control Legislation in question. It may be seen that the definition of the word 'tenant' given in Clause 2(5) of the Rent Control Order is not in pari materia with the definition of the word 'tenant' in Section 5(11) of the Bombay Act particularly in regard to its inclusive Clause (c). In the Rent Control Order the first part of the definition deals with a contractual tenant. Here in the instant case also I am concerned with a case of a contractual tenant. It is held by a Division Bench of our Court in the case of Parwatibai v. Jagannath, 1957 Nag LJ 577 that after the death of a contractual tenant his legal heir would be the tenant within the meaning of Clause 2(5) of the Rent Control Order.

11. However, the question of heritability is placed beyond doubt by the decisions of the Supreme Court at least in the case of a contractual tenant. In the case of J.C. Chatterjee v. S.K. Tandon : [1973]1SCR850 arising under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, although the Supreme Court following the decision in the case of Anand Nivas (P) Ltd. v. Anandji : [1964]4SCR892 arising out of the provisions of the Bombay Act has held that the statutory tenancy is not heritable because no right or interest in the estate or property vests in the statutory tenant as in the case of a contractual tenant but what vests is only a personal right to continue in possession, it has held in para 12

that if the original tenant died before the contractual tenancy was terminated then the heirs would inherit the tenancy. It would thus show that the contractual tenancy is heritable.

12. The learned counsel for the respondents has relied upon Damdilal's case : AIR 1976 SC2229 in which the Supreme Court while considering the provisions of the M.P. Accommodation Control Act, 1961 and in particular the definition of the word 'tenant' in Section 2(i) thereof held that the question whether the statutory tenancy is heritable or not has to be decided in the light of each statute after ascertaining the rights created therein. In the said case the Supreme Court held that the tenancy of a statutory tenant is heritable particularly in view of the definition of the said expression given in Section 2(i) of the M.P. Accommodation Control Act, 1961. The view taken by the Supreme Court in the case of Damadilal v. Parashram cited supra, was affirmed by it in the case of Vithal v. Shamrao : [1979]3SCR572 , a case arising under the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 in which it is held in para 7 that depending upon the provisions of the statute a statutory tenancy is also heritable like the contractual tenancy. Even as regards the statutory tenancy the matter is placed beyond doubt by the latest decision of the Supreme Court in the case of Smt. Gian Devi Anand v. Jeevan Kumar : AIR 1985 SC796 cited supra arising out of the provisions of the Delhi Rent Control Act in which it is held that the statutory tenant has also a right and interest in the estate or the demised property and as such the rights of such statutory tenant would also be heritable. It is, however, clear that at any rate the contractual tenancy is heritable.

13. In the instant case, therefore, which is of a contractual tenancy the petitioner after the death of his father would be the tenant of the suit block by inheritance. The finding of the learned appellate Court has, therefore, to be affirmed. Since he became the tenant of the suit block by inheritance the question whether he lived with his father or not or whether he worked in the business of his father or not was not relevant for the purpose of determining the question whether he was a tenant of the suit block under Clause 2(5) of the Rent Control Order or not.

14. The learned counsel for the petitioner has urged that the petitioner has not himself sublet the suit block to the respondent 3 as alleged by the respondent 2. It is, therefore, urged that the petitioner is not within the mischief of Clause 13(3)(iii) of the Rent Control Order. There is no merit in the above contention. The father of the petitioner Shri A. K. Nigam admittedly has gifted the shop to the respondent 3. It is thus the father of the petitioner who has sublet the suit block to the respondent 3 without the written permission of the then landlord. He was, therefore, liable to be sued for permission to terminate his tenancy under Clause 13(3)(iii) of the Rent Control Order. The petitioner who after the death of his father inherited the tenancy rights with regard to the suit block did so subject to the above liability of his father with regard to the demised property. In the case of Smt. Parwatibai v. Jagannath, 1957 Nag LJ 577 a more or less similar contention was urged on behalf of the tenant that since the defaults were committed by his father the legal heir who inherited his tenancy was not a habitual defaulter within the meaning of Clause 13(3)(ii) of the Rent Control Order since he himself did not commit any, default in payment of rent. The above contention was repelled in the said case by this Court. It has, therefore, to be held that the petitioner was thus within the mischief of Clause 13(3)(iii) of the Rent Control Order. The above contention on behalf of the petitioner is, therefore, rejected.

15. The next question which is necessary to be considered is whether Shri A. K. Nigam has sublet the property within the meaning of Clause 13(3)(iii) of the Rent Control Order. It may be seen that in Section 108(j) of the Transfer of Property Act the lessee has a right to transfer his interest in the demised property either absolutely or by way of mortgage or sub-lease. However, it is made clear that by reason of such transfer, he does not cease to be subject to any of the liabilities attaching to the lease. In other words he would continue to be the tenant of the demised property of the landlord and would be liable to him. In the light of this law if the gift-deed executed by Shri A. K. Nigam in favour of the respondent 3 is examined there can be no other inference except that Shri A. K. Nigam had sublet the suit block to the respondent 3 within the meaning of Clause 13(3)(iii) of the Rent Control Order. In para 2 of the said gift deed it is stated that the respondent 3 would have a right to continue the business in the rented premises as before. In para 4 it is stated that on and from 14-2-1978 the respondent 3 should pay the rent

of the suit block along with all the taxes which would be due. In para 6 it is stated that the business property is transferred by way of gift to him. It is thus clear that when the whole business was transferred to the respondent 3 who was to carry on the same in the suit block and since the said A. K. Nigam would not in law cease to be a tenant it has to be held that by the aforesaid gift-deed there was subletting of the suit block by the said A. K. Nigam to the respondent 3 within the meaning of Clause 13(3)(iii) of, the Rent Control Order, The word 'sub-let' has been given a wider connotation by this Court in the case of Dattatraya v. Narayandas : AIR1974 Bom189 . Admittedly there is no written permission from the then landlord to the said Shri A. K, Nigam for sub-letting the suit block to his nephew the respondent 3. Thus, the subletting being illegal the landlord would be entitled to seek permission under Clause 13(3)(iii) of the Rent Control Order.

16. However, the submission is that, there is an implied permission for subletting the suit block because the then landlord accepted the rent from the respondent 3 for a period from 14-2-1978 to 25-4-1978. The said submission is based upon the fact that from 14-2-1978 to 25-4-1978 the rent was paid by the respondent 3 in the same savings Bank Account of the landlord in which it was paid previously by the said Shri A. K. Nigam. In the first place the provision of Clause 13(3)(iii) is very clear as it, requires a permission in writing, The theory of implied permission is, therefore, untenable in view of the language of Clause 13(3)(iii) of the Rent Control Order. However, merely the fact that the rent was paid by the respondent No. 3 in the account of the landlord in which the said Shri A. K, Nigam was paying the rent in my view is not enough for drawing an inference of implied permission. No receipts are produced for the said period to show that the respondent 3 paid the rent for the said period in his own right as a sub-lessee or a lessee. Therefore, on the basis of the above fact cannot be interred that the respondent 2 or his predecessor in title accepted the respondent 3 as a sub-lessee.

17. It is next contended that the respondent 3 was accepted as a tenant by the previous landlord as well as by the respondent 2. It is, however, not in dispute that either of them did not directly or expressly accept the respondent 3 as his tenant As regards the previous landlord the submission is that because he paid the rent from 14-2-1978 to 25-4-1978 in the account of the landlord he should be deemed

to have accepted him as a tenant. As already stated above in the absence of receipts for the above period showing the name of the respondent 3 as tenant it has to be held that by merely paying the rent in the account of the landlord it cannot be held in the facts of his case that instead of Shri A. K. Nigam the then landlord accepted the respondent 3 as a tenant. It would have been a different case if Shri A. K. Nigam had informed the landlord that henceforth he should accept the respondent 3 as a tenant in view of the gift of the business made by him in his favour and that he would pay rent thereafter in his account on his own behalf as a tenant and then if the respondent 3 were to pay the rent in the account of the landlord it could possibly be urged that the respondent 3 was accepted as a tenant by the landlord. But there is no such evidence in the instant case. It cannot, therefore, be held that the respondent 1 became the tenant of the suit block from 14-2-1978.

18. Although it is true that the rent was paid by the respondent 3 from his shop through his accountant it would not mean that the respondent 3 was the tenant of the suit block because the respondent 2 accepted the rent from him. It would only mean that the rent was paid by him on behalf of the tenant who legally in the instant case was Shri A. K. Nigam till his death and his son the petitioner thereafter. There is a dispute that the rent receipts were altered and the name of the petitioner was afterwards shown as a tenant of the suit premises. Apart from the question that the finding rendered by the learned appellate Court in regard to alteration of rent receipts is a finding of fact based upon appreciation of evidence on record which is not, therefore, liable to be interfered with in the writ jurisdiction of this Court, in the above view which I have taken in the instant case that it is the petitioner who would be legally the tenant of the suit block, the rent paid by the respondent 3 would be not on his own account but would be on behalf of the petitioner. The contentions raised on behalf of the petitioner in this regard are, therefore, rejected. The learned appellate Court, therefore, rightly granted permission to the respondent 2 under Clause 13(3)(iii) of the Rent Control Order.

19. As regards the permission granted under Clause 13(3)(vi) of the Rent Control Order, it is urged on behalf of the petitioner as well as the respondent 3 that as per the evidence of the respondent 2 he wants to occupy the suit block after

remodelling of reconstructing it for which no permission is asked for under Clause 13(3)(vii) of the Rent Control Order in the absence of which he is not entitled to get the permission under Clause 13(3)(vi). It is urged that if the permission is asked for under Clause 13(3)(vii) of the Rent Control Order the tenant has a right to get himself inducted in the suit block as provided in Clause 13(7) of the Rent Control Order after the suit block is reconstructed or after the essential repairs are carried out to the same.

20. In my view there is no force in the above submission. It is well-settled that when a permission is asked for on the ground of bona fide occupation it is open to the landlord to occupy the suit premises after remodelling or reconstructing the same or after carrying out necessary repairs to the same, without asking permission separately under Clause 13(3)(vii) of the Rent Control Order. The permission under Clause 13(2)(vii) is asked for only when the object is to carry out essential repairs or alterations not for the use of the landlord but for letting out to the tenants I may in this regard refer to the decision of the Supreme Court in the case of *Ramniklal v. Indradaman* : [1964]8SCR1 which has interpreted the provisions of Section 13(1) and 13(1)(hh) of the Bombay Act which are analogous to Clauses 13(3)(vi) and 13(3)(vii) respectively of the Rent Control Order. It may, however, be pointed out that even where the permission is granted to the landlord under Clause 13(3)(vi) a right is created in the tenant under Clauses 13(4) and 13(5) to claim that he should be reinducted in the suit premises in case the landlord does not occupy the tenanted premises. The above contention raised on behalf of the petitioner, therefore, deserves to be rejected.

21. In the result, both the writ petitions fail and are dismissed. However, in the circumstances of the case there would be no order as to costs.