

Harish Chand and others v. Kirpa Ram (D. V. Sehgal, J.)

(5) No infirmity can thus be spelt out in the impugned order of the District Judge, Patiala, which is accordingly hereby upheld and affirmed.

(6) This revision petition is hereby dismissed with costs. Counsel fee Rs. 300.

FULL BENCH

Before P. C. Jain, CJ., S. P. Goyal and D. V. Sehgal, JJ.

HARISH CHAND AND OTHERS,—Petitioners.

versus

KIRPA RAM,—Respondents.

Civil Revision No. 2615 of 1983

December 19, 1985.

Haryana Urban (Control of Rent and Eviction) Act (XI of 1973)—Section 2(h)—Order of eviction passed against a statutory tenant in occupation of a non-residential building—Tenant dying during pendency of appeal against ejection order—Heirs and legal representatives of deceased tenant seeking impleadment to proceed with the appeal—Such heirs—Whether have a heritable right of tenancy to the demised premises—Definition of tenant given in Section 2(h) of the Act—Whether applies to tenants of residential and non-residential buildings—Devolution of tenancy and order of inheritance in relation to a non-residential building—Whether governed by the general law of succession—Such tenants—Whether continue to enjoy the protection afforded by the Act.

Held, that the condition and order of inheritance of tenancy which find place in Section 2(h) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 read with the Schedule appended thereto are limited in their application to a "residential building". The tenancy in respect of "non-residential building" in the event of the death of the tenant devolves on the heirs of the deceased tenant in accordance with the general law of succession applicable to the tenant and the heirs who step into the shoes of the deceased tenant continue to enjoy the protection afforded by the Haryana Act. (Para 17)

1. Mateshwar Dayal vs. Om Parkash 1984(2) R.L.R. 678.

2. Om Parkash vs. Smt. Kailash Wati and others 1981(1) R.C.J. 143.
3. Daljit Singh and others vs. Gurmukh Dass. A.I.R. 1981 Punjab and Haryana 394.
4. Rakesh Kumar vs. Daulat Ram and others 1984(2) R.C.J. 27.
(Over-ruled).

Petition under Section 15(6) Haryana Urban (Control of Rent and Eviction) Act, 1973 against the order dated 22nd September, 1983 passed by the Court of Shri R. N. Batra, Appellate Authority, Faridabad affirming that of Shri V. S. Malik, HCS, Rent Controller, Palwal dated 31st May, 1982, allowing the application of the petitioner and giving the Respondent three months time to handover the vacant possession of the demised premises to the petitioner and leaving the parties to bear their own costs.

(This case was referred to Larger Bench by Hon'ble Mr. Justice J. M. Tandon vide order dated November 15, 1984, as an important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. P. C. Jain and Hon'ble Mr. Justice D. V. Sehgal vide order dated September, 25, 1985 forwarded the case to Full Bench. The Full Bench consisting of Hon'ble the Chief Justice Mr. P. C. Jain, Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice D. V. Sehgal answered the question involved and returned the case back to Single Bench for decision on merits in accordance with law. The Single Bench consisting of Hon'ble Mr. Justice D. V. Sehgal decided the case on 23rd January, 1987).

R. L. Sarin, Advocate with A. S. Grewal, Advocate, for the Petitioner.

R. S. Mital, Sr. Advocate with S. K. Jain, N. K. Kholsa and Randeep Singh, Advocates, for the Respondents.

JUDGMENT

D. V. Sehgal, J.

(1) The precise question which calls for determination by this Full Bench is in the following terms :

“Whether the rights of a ‘statutory tenant’ in a non-residential building in the State of Haryana are not heritable under the Haryana Urban (Control of Rent and Eviction) Act, 1973 ?

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(2) The few skeleton facts which deserve to be noticed to unravel the controversy raised in this petition under section 15 (6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter called 'the Haryana Act') are as under :

(3) Kirpa Ram respondent is the landlord of the non-residential building in dispute occupied by Om Parkash (now deceased) as a "statutory tenant". The landlord respondent filed an application on 6th May, 1980 for the ejection of the tenant under section 13 of the Act which was allowed by the Rent Controller,—*vide* its order dated 31st May, 1982. The tenant filed an appeal against the order of the Rent Controller on 11th June, 1982. However, during the pendency of the appeal Om Parkash, the tenant, died on 17th September, 1982. The present petitioners claiming to be the heirs and legal representatives of Om Parkash deceased applied to the Appellate Authority for their being impleaded as appellants in place of the deceased tenant. The Appellate Authority,—*vide* its order dated 22nd September, 1983 held that the tenancy of the non-residential building in dispute was not heritable and that the petitioners had no right to be impleaded as appellants in place of Om Parkash deceased. Their prayer for being impleaded as legal representatives of Om Parkash was declined and the appeal was also dismissed. Against this order, the present revision petition was filed which came up for hearing before J. M. Tandon, J., on 15th November, 1984. It was contended by the petitioners that they had a right to be impleaded as legal representatives of the deceased tenant and reliance was placed on *Hari Chand and another v. Banwari Lal and another* (1). On the other hand, the learned counsel for the landlord respondent relying on *Gordhan Dass and others v. Smt. Dhan Mala Devi Jain*, (2), contended that the tenancy of a non-residential building in the State of Haryana was not heritable under the Haryana Act. In view of the rival contentions, Tandon, J., considered it appropriate that the revision petition should be heard by a larger Bench. The case then came up before the Division Bench consisting of Hon'ble the Chief Justice and myself on 25th September, 1985. In view of the recent Supreme Court judgment in *Smt. Gian Devi Anand v. Jeevan Kumar and others*, (3), and a Division Bench judgment of this Court to the contrary reported as *Mateshwar Dayal v. Om Parkash* (4), it was found that the

(1) A.I.R. 1981 Pb. & Hary. 352.

(2) 1984 Pb. & Hary. 247.

(3) A.I.R. 1985 S.C. 796.

(4) 1984 (2) R.L.R. 678.

judgment in the latter case required reconsideration . Accordingly, the case was directed to be placed before a Full Bench and that is how this case is before us.

(4) It may be stated right at the outset that in *Mateshwar Dayal's case* (supra), it was the learned counsel for the heirs of the statutory tenant who conceded that the tenancy of a non-residential building in the State of Haryana was not heritable. The Division Bench in the said case recorded its decision on this concession of the learned counsel. However, there are a number of Single Bench judgments of this Court to which reference will be made later which hold that the statutory tenancy with respect to a shop situated in the State of Haryana is not heritable in view of the definition of the term "tenant" as given in section 2 (h) of the Haryana Act. It is thus necessary to examine the above question in some detail in view of the Supreme Court judgment in *Smt. Gian Devi Anand's case* (supra).

(5) Before coming into force of the Haryana Act, the relationship of landlord and tenant *qua* buildings in urban areas in the State of Haryana was governed by the provisions of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called 'the Punjab Act') Section 2 (i) of the Punjab Act contains the definition of the term 'tenant', the relevant portion of which is as under :—

“ ‘tenant’ means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour.....”.

The definition of the term 'tenant' in the Haryana Act is contained in section 2 (h). It is necessary to reproduce the relevant part thereof—

“ ‘tenant’ means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of his tenancy and in the event of such person's death, such of his heirs as are mentioned in the Schedule appended to this Act and who were ordinarily residing with him at the time of his death.....”.

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(6) The Schedule appended to the Haryana Act mentions the following heirs of a deceased tenant :—

“Son, daughter, widow, father, mother, grandfather, grandmother, son of a pre-deceased son, unmarried daughter of a pre-deceased son, widow of a pre-deceased son and widow of a pre-deceased son of a pre-deceased son.”

(7) A tenant who continued in possession of the tenanted premises after the termination of his tenancy, by virtue of the definition of the term ‘tenant’ contained in the rent control legislations enacted by various States came to be described as a ‘statutory tenant’. The Supreme Court considered the status of a statutory tenant in two decisions — *Anand Nivas Private Ltd. v. Anandji Kaiyanjis Pedhi and others*, (5), and *J. C. Chatterjee and others v. Shri Sri Kishan Tandon and another*, (6). The statute considered in *Anand Nivas’s* case (supra) was Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as amended in 1959. It was held therein that a statutory tenant has no interest in the premises occupied by him and he has no estate to assign or transfer. A statutory tenant, as held in *Anand Nivas’s* case (supra), was a person who on determination of his contractual rights was permitted to remain in occupation so long as he observed and performed the conditions of the tenancy and paid the standard rent and permitted increases. His personal right of occupation was incapable of being transferred or assigned and, he having no interest in the property, there was no estate on which sub-letting could operate. *J. C. Chatterjee’s* case (supra) dealt with the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 and the question for decision was whether on the death of a statutory tenant his heirs succeed to the tenancy so as to claim protection of the said Act. Relying on *Anand Nivas’s* case (supra), it was held that after the termination of the contractual tenancy a statutory tenant enjoyed only a personal right to continue in possession and on his death his heirs did not inherit any estate or interest in the original tenancy.

(8) The position of a statutory tenant, however, has radically changed after the judgment of the final Court in *Damadilal and others v. Parashram and others*, (7). It was held that a person continuing in possession after the termination of his

(5) A.I.R. 1965 S.C. 414.

(6) A.I.R. 1972 S.C. 2526.

(7) A.I.R. 1976 S.C. 2229.

tenancy under the ordinary law, but who is recognised as a 'tenant' by the rent control legislation, no doubt is described as a 'statutory tenant' as contra-distinguished from contractual tenant. A statutory tenant by virtue of his inclusion in the definition of 'tenant' in the rent control legislation is placed on the same footing as contractual tenant so far as rent control legislation is concerned. The distinction between contractual tenancy and statutory tenancy is thus completely obliterated by the rent control legislation. If a contractual tenant has an estate or interest in the premises which is heritable by virtue of the contract, a statutory tenant also has such heritable estate or interest as a result of the statute. In *Damadilal's case* (supra) the definition of 'tenant' in section 2(i) of the Madhya Pradesh Accommodation Control Act, 1961, which is in the following terms, came up for consideration :—

“a person by whom or on whose account or behalf 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.....”.

(9) After duly considering the earlier judgments in *Anand Nivas's case* and *J. C. Chatterjee's case* (supra), the Supreme Court came to the conclusion that the so-called statutory tenant had an interest in the premises occupied by him and the heirs of the statutory tenant had a heritable interest in the premises. Later on the provisions of section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called 'the Bombay Act') came up for consideration before the Supreme Court in *Ganpat Ladha v. Shashikant Vishnu Shinde*, (8). Section 5 (11) of the Bombay Act is *inter alia* in the following terms :—

“ 'tenant' means any person by whom or on whose account rent is payable for any premises and includes — — — — —

(c) any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the Court.”

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(10) The question that arose for decision in *Ganpat Ladha's* case (supra) was whether an heir of a statutory tenant could possibly claim to be a tenant in respect of the shop which admittedly constitutes business premises by reason of section 5 (11) (c) of the Bombay Act. The Bombay High Court took the view that section 5 (11) (c) of the said Act applies not only to residential premises but also to the business premises and therefore on the death of a tenant of business premises, any member of tenant's family residing with him at the time of his death would become a tenant. The Supreme Court reversed this view and held as under :—

“It is difficult to see how in case of business premises, the need for showing residence with the original tenant at the time of his death would be relevant. It is obvious from the language of section 5 (11) (c) that the intention of the legislature in giving protection to a member of the family of the tenant residing with him at the time of his death was to secure that on the death of the tenant, the member of his family residing with him at the time of his death is not thrown out and this protection would be necessary only in case of residential premises. When a tenant is in occupation of business premises, there would be no question of protecting against dispossession a member of the tenant's family residing with him at the time of his death. The tenant may be carrying on a business in which the member of his family residing with him may not have any interest at all and yet on the construction adopted by the High Court, such member of the family would become a tenant in respect of the business premises.”

(11) As observed by the Supreme Court in *Smt. Gian Devi Anand's* case (supra), to which elaborate reference will be made later, the decision in *Ganpat Ladha's* case (supra) proceeds entirely on the construction of section 5 (11) (c) of the Bombay Act and it does not appear that the case of *Damadilal* (supra), which also was in respect of commercial premises, was cited before the Court or was considered by the Court while deciding *Ganpat Ladha's* case (supra). In *Smt. Gian Devi Anand's* case (supra), the Supreme Court considered section 2 (1) of the Delhi Rent Control Act, 1958 (hereinafter called 'the Delhi Act'). It is not necessary to reproduce in *extenso* section 2 (1) of the Delhi Act along with the Explanation thereto. Only the relevant parts of the said provision are reproduced hereunder—

“ ‘tenant’ means any person by whom or on whose account or behalf 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—

(i) — — — — —

(i) — — — — —

(ii) any person continuing in possession after the termination of his tenancy; and

(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person’s—

(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,

as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death.....”.

(12) After an elaborate discussion of the different provisions of the Delhi Act, their Lordships of the Supreme Court came to the conclusion that the termination of the contractual tenancy in view of the definition of ‘tenant’ in the Delhi Act does not bring about any change in the status and legal position of the tenant unless there are contrary provisions in the Delhi Act; and the tenant notwithstanding the termination of tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate which

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the tenant under the Delhi Act, despite termination of the contractual tenancy, continues to enjoy creates a heritable interest in the absence of any provision to the contrary. Their Lordships of the Supreme Court observed that the Legislature, which under the Rent Act offers protection against eviction to tenants whose tenancies have been terminated and who continued to remain in possession and who are generally termed as 'statutory tenants', is perfectly competent to lay down the manner and extent of the protection and the rights and obligations of such tenants and their heirs. The Supreme Court thus concluded that it appears that the Legislature in respect of the Delhi Act has not thought it fit to put any restrictions with regard to tenants in respect of commercial premises. Their Lordships specifically dissented from the view taken in *Ganpat Ladha's* case (supra).

(13) The learned counsel for the landlord-respondent, however, made a vain attempt to distinguish *Smt. Gian Devi Anand's* case (supra). He contended that the language of section 2(1)(iii) of the Delhi Act, which was considered in *Smt. Gian Devi Anand's* case (supra), is different from the language of section 2(h) of the Haryana Act. He proceeded to contend that in the Delhi Act the heir/heirs who has or have been specified to succeed a tenant in the event of his death are those *ordinarily living in the premises* with him as a member or members of his family up to the date of his death; the words "ordinarily living in the premises" necessarily refer to 'residential premises' only and exclude commercial or non-residential premises from the condition and the order of inheritance of the tenancy provided in section 2(1)(iii) of the Delhi Act read with Explanations I and II thereto; since in section 2(h) of the Haryana Act the words "ordinarily residing with him" are not conditioned by the words "in the premises" or "in the building", the residence of the heirs of the tenant, mentioned in the Schedule appended to the Haryana Act, in the building which is "the subject matter of the tenancy in question" is not necessary; such heirs, thus proceeds the argument, may be residing with the tenant at the time of his death at a place other than the "building" as defined in section 2(a) of the Haryana Act. The learned counsel proceeding with his above logic thus asserted that the inheritance of the tenancy *qua* both residential and non-residential buildings in the State of Haryana shall be conditioned by section 2(h) and limited to the heirs as are mentioned in the Schedule appended to the Haryana Act.

(14) If the interpretation of section 2(h) of the Haryana Act as placed thereon by the learned counsel for the landlord is accepted, it will lead to absurd results. A son may be working with the tenant in the business in a 'non-residential building' but, for the sake of convenience of the family or due to paucity of residential accommodation with the tenant, may not be residing with him. For the purpose of looking after them properly, the tenant may be allowing his father, mother, grand-father or grand-mother to reside with him. In such a case, in the event of the death of the tenant, it shall not be the son who has been working in business with the tenant in the 'non-residential building' who shall inherit the tenancy but instead the tenant would be succeeded by his father, mother, grand-father or grand-mother who because of old age or any other incapacity, may be wholly dependant on the tenant and, after his death, on his son who by carrying on the business in the 'non-residential building' might have been a source of financial support and help to them but would stand ousted from the 'non-residential building' and, resultantly, from the deceased tenant's business also. Examples of such absurdities arising out of the interpretation of section 2(h) of the Haryana Act, which the learned counsel for the landlord wants to place thereon, can be multiplied. It shall be proper to quote here the observations of the Supreme Court in *Carew and Company Ltd. v. Union of India*, (9) :—

“..... surely definitions in the Act are a sort of statutory dictionary to be departed from when the text strongly suggests”.

Again, to quote from *Carew and Company's* case (supra)—

“..... to repeat for emphasis, when two interpretations are feasible, that which advances the remedy and suppresses the evil as the legislature envisaged, must find favour with the Court.”

(15) On being asked, the learned counsel for the landlord admitted that there is a striking similarity between section 2(h) of the Haryana Act and section 5(11)(c) of the Bombay Act in that, unlike section 2(1)(iii) of the Delhi Act, in both the provisions the words “in the premises” or “in the building” do not

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succeed the words "residing with him". In spite of this, the Supreme Court in *Smt. Gian Devi Anand's* case (supra) was of the view that the provision of section 5(11)(c) of the Bombay Act and section 2(1)(iii) of the Delhi Act are almost similar. It would be apt to quote Bhagwati, J. (as the learned Chief Justice then was) from his concurring judgment in *Smt. Gian Devi Anand's* case (supra)—

"Now a word about *Ganpat Ladha's* case (supra). It is true that there are certain observations in that case which go counter to what we are holding in the present case and to that extent these observations must be held not to enunciate the correct law on the subject. This Court was not really concerned in that case with the question of heritability of statutory tenancy. The only question was in regard to the true interpretation of section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which is almost in same terms as section 2(1)(iii) of the Delhi Rent Control Act, 1958 and while dealing with this question, the Court made certain observations regarding the nature of statutory tenancy and its heritability. The attention of the Court was not focussed on the question whether a statutory tenant has an estate or interest in the premises which is heritable and no argument was advanced that a statutory tenancy is heritable. It was assumed that a statutory tenancy is not heritable and on that footing the case was argued in regard to the true meaning and construction of section 5(11)(c). The observations made in that case to the extent to which they conflict with the judgment in the present case must therefore be regarded as overruled."

(16) It would also be pertinent to reproduce here some observations of the Supreme Court in *Smt. Gian Devi Anand's* case (supra), which have an important bearing on the matter before us. Their Lordships observed—

"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.

— — — — —

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."

(17) The imperative conclusion therefore is that the condition and order of inheritance of tenancy which find place in section 2(h) of the Haryana Act read with the Schedule appended thereto are limited in their application to a 'residential building'. The tenancy in respect of a "non-residential building", in the event of the death

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of the tenant devolves on the heirs of the deceased tenant in accordance with the general law of succession applicable to the tenant and the heirs who step into the shoes of the deceased tenant continue to enjoy the protection afforded by the Haryana Act.

(18) Consequently, the Single Bench Judgments of this Court in Sarwan Kumar and others v. Piare Lal and another, (10), Om Parkash v. Smt. Kailash Wati and others, (11), Daljit Singh and others v. Gurmukh Dass, (12) and Rakesh Kumar v. Daulat Ram and others, (13), which took a contrary view and were based on Ganpat Ladha's case (supra) stand overruled. The concession of the learned counsel for the heirs of the tenant recorded in Mateshwar Dayal's case (supra) was not in accordance with law and the decision of the Division Bench on this concession is consequently not correct.

(19) The answer to the legal question referred having been rendered in the terms above, the revision would now go back before a learned Single Judge for decision on merits in accordance with law.

R. N. R.

FULL BENCH

Before Hon'ble C.J., S. P. Goyal and M. S. Liberhan, JJ.

STATE OF PUNJAB,—Applicant.

versus

KRISHAN LAL,—Respondent.

Civil Misc. No. 1001 of 1986 in L.P.A. No. 773 of 1982

May 4, 1987.

Land Acquisition (Amendment) Act (LXVIII of 1984)—Sections 23(1-A) and 30(1)—Award rendered by the Land Acquisition Collector prior to 30th April, 1982—Benefit of the provisions of Section 23(1-A) read alongwith Section 30 of the Act—Whether entitles the claimants to claim the benefit thereunder.

(10) 1979 (1) R.C.J. 3.

(11) 1981(1) R.C.J. 143.

(12) A.I.R. 1981 Pb. & Hry. 394.

(13) 1984(2) R.C.J. 27.