

A

NILESH NANDKUMAR SHAH

v.

SIKANDAR AZIZ PATEL

AUGUST 23, 2002

B

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

C

*Rent Control and Eviction: Bombay Rents, Hotel and Lodging, House Rates Control Act, 1947—Section 6—Tenancy—Integral tenancy for residential and commercial purpose—Tenancy for residential purpose protected by the Act but not for other purposes—Eviction sought under Transfer of Property Act—Held, if part of tenancy is protected by Rent Control Legislation, it shall take along with it such other part as not protected—Hence, entire tenancy premises would enjoy protection of the Act—If a ground for eviction under the Act from even a part of the premises is made out, eviction can be ordered from the whole unless the statute or the contract contains a special provision empowering the court to split up the tenancy.*

D

E

*Interpretation of statutes—Rent Control Legislation and general legislation—Conflict between—Overriding effect of—Held, Rent Control Legislation being special beneficial provision shall override general legislation.*

F

**Appellant-landlord rented the premises in question for residential as well as commercial purposes. In the area where the tenanted premises was situated Bombay Rents, Hotel and Lodging, House Rates Control Act, 1947 (Bombay Act) was applicable only in respect of premises let out for residential purpose. Appellant-landlord initiated proceedings for eviction and recovery of arrears of rent against the tenant-respondents, under Transfer of Property Act, 1872, on the assumption that purpose of letting being dual, Bombay Act was not applicable.**

G

**Trial Court dismissed the suit on the ground that provisions of Bombay Act, were applicable in the case. Appeals filed by landlord were allowed by appellate Court, holding that Bombay Act was not applicable in the instant case. Second appeals by the tenant-respondents were allowed by High Court. Hence this appeal.**

H

**Dismissing the appeals, the Court**

**HELD: 1.** It is not permissible for the Courts to split up a contract of tenancy in an eviction proceeding. A tenancy can be split up by operation of law or by contract between the parties. In cases governed by rent control legislation if a ground for eviction in respect of part of the tenancy premises is made out, the decree shall be for eviction from the entire tenancy premises unless the law permits a partial decree of eviction being passed. The purpose of rent control legislation is to protect the tenants from unjust evictions at the hands of greedy or unscrupulous landlords. In case of doubt, rent control laws should be so interpreted as to lean in favour of tenant, to advance the purpose sought to be achieved by rent control legislation and to see that the beneficial protection extended by the Act is not scuttled down or defeated or rendered nugatory. In the rent control legislation the relevant provision which regulates or restricts the right of landlords to seek eviction of tenants invariably opens with a non-obstante clause and is given thereby an overriding effect on the statutory or common law right of landlord to evict a tenant. Even in the absence of non-obstante clause a rent control legislation being a special beneficial provision shall override the provisions of any general legislation in case of conflict. It would, therefore, be reasonable and consistent with the principles of interpretation of statutes to hold that such part of the tenancy premises as is protected by the rent control legislation shall take along with it such other part of the tenancy premises as is not protected, the contract of tenancy being an integral one. A view to the contrary would defeat the provisions of the Rent Control Legislation.

[657-H; 658-A, B, C; F, G, H]

*Dr. T.S. Subramanian v. The Andhra Bank Ltd.*, [1989] Supp. 2 SCC 252; *Firm Panjuml Daulatram v. Sakhi Gopal*, [1977] 3 SCC 284; *Miss S.*

*Sanyal v. Gian Chand*, [1968] 1 SCR 536, referred to.

**2.** In the instant cases, inasmuch as one portion of the tenancy premises, having its purpose of user as residence, enjoys the protection of Bombay Rents, Hotel and Lodging, House Rates Control Act, 1947, the tenant shall not be liable to be evicted from any part of the tenancy premises, as part of the premises is protected by the Bombay Act and the contract of tenancy is one single and indivisible. Therefore, when the premises are let out under one integrated contract of tenancy, and the purpose of letting in respect of one part of the premises is one of the users referred to in sub-Section (1) of Section 6 of Bombay Act while the other part of tenancy premises is permitted to be used for purpose other than

- A** the one stated in section 6(1), the entire tenancy premises would enjoy protection of Bombay Act. Eviction of tenant can be had only by making out a case for eviction under Bombay Act. However, if a ground for eviction under Bombay Act from even a part of the premises is made out, eviction can be ordered from the whole unless the statute or the contract contains a special provision empowering the court to split up the tenancy.
- B** [659-B, C]

*Baburao Raghunath Bhagwade v. Chandulal Hiralal Shah*, LXXVII (1975) Bombay Law Reporter 197, overruled.

- C** *Jain Digambr Chaitylaya v. Shyamsundar Maneklal and Ors.*, (1980) XXI Gujarat Law Reporter 392, approved.

*Dr. Gopal Das Verma v. Dr. S.K. Bhardwaj and Anr.*, [1962] 2 SCR 678; *Miss S. Sanyal v. Gian Chand*, [1968] 1 SCR 536, referred to.

- D** CIVIL APPELLATE JURISDICTION Civil Appeal No. 2862 of 1998

From the Judgment and Order dated 4-7-97 of the Mumbai High Court in S.A.No. 216 of 1990.

WITH

- E** C.A. No. 2863 and 2864 of 1998.

Uday Umesh Lalit and Gaurav Aggarwal for the Appellant.

- F** C.S. Joshi and Shivaji M. Jadhav for the Respondent.

The Judgment of the Court was delivered by

- G** **R.C. LAHOTI, J.** There is a property consisting of three tenements belonging to the respondent-landlord situated over revenue survey No. 591/1 in village Koregaon of district Satara, Maharashtra. The three units are situated by the side of main road. Each unit consists of two rooms of equal size interconnected by a door. The room abutting on the road is used for commercial purpose while the room situated behind is used for residential purpose. The three tenants are respectively a tailor, a *vaidu* (medical practitioner dealing mostly in herbs and indigenous medicines) and a petty
- H** restarateur. The lease agreements entered into between the three tenants

respectively and the landlord specifically provide for one room being used for residence and the other one being used for commercial purpose. A

The landlord-appellant initiated proceedings for eviction and recovery of arrears of rent against the three tenant-respondents. Admittedly, any ground for eviction under the Rent Control Law is not available to the landlord. The landlord proceeded on an assumption that the purpose of letting being dual, i.e. residential and non-residential both, the applicability of the Rent Control Law was not attracted, and therefore, the eviction was sought for under the general law working out rights and obligations of the parties under the provisions of the Transfer of Property Act. The trial Court held that the provisions of Bombay Rents, Hotel and Lodging, House Rates Control Act, 1947 (hereinafter, 'Bombay Act', for short) were applicable and therefore directed the suits to be dismissed. The appeals filed by the landlord were allowed by the appellate Court by a common judgment holding Bombay Act inapplicable. Second appeals preferred by the three tenants have been allowed by the High Court which has set aside the judgment of the appellate Court and restored those passed by the trial Court. Feeling aggrieved, the landlord has preferred these three appeals by special leave. B C D

Bombay Rents, Hotel and Lodging, House Rates Control Act, 1947 came to be applied to Koregaon village where the tenements in suit are situated through the notification dated 18th October, 1969 which reads as under: E

"No. BRA. 1860/33301-E-In exercise of the powers conferred by sub-section (2) of section 6 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. LVII of 1947), the Government of Maharashtra hereby directs that in the area of the Koregaon Village in the Koregaon Taluka of the North Satara District, all the provisions of Part II of the said Act shall, on and from the date of this notification, apply to premises let for the purpose of residence." F

Part II of the Bombay Act consists of Sections 6 to 31. Sub-Section (3) of Section 2 provides that the State Government may, by notification in the Official Gazette, extend to any other area, any or all of the provisions of Part II, Part IIA or Part III or all of them. Section 6(1) Provides, "in areas specified in Schedule I, this part shall apply to premises let or given on licence for residence, education, business, trade or storage". Sub-Section (2) of Section 6 provides that in areas to which Part II is extended under sub-Section (3) of Section 2, it shall apply to premises let or given on licence for G H

- A such of the purposes referred to in sub-Section (1) or notified under sub-Section (1A) or let for such standard rent as the State Government may, by notification in the Official Gazette Specify. From these provisions read along with the notification dated 18-10-1960 it follows that in Koregaon village where the three tenements are situated the provisions of the Bombay Act are applicable *"to premises let for the purpose of residence"*. It is common ground
- B that so far as Koregaon is concerned suits for eviction of tenant lie in Civil Court without regard to the fact whether the premises are governed by the provisions of the Bombay Act or not. If Bombay Act applies, eviction would not be ordered unless a ground for eviction thereunder is made out as the tenant is protected. In respect of premises to which Bombay Act is not
- C applicable, the Civil Court would decide the suit for eviction in accordance with the provisions of general law, i.e. excluding the applicability of Bombay Act. It was fairly conceded by the learned counsel for the landlord-appellant that requisites of ground for eviction for non-payment of arrears of rent within the meaning of Bombay Act were not available to the landlord on the date of the suit; the tenants would be liable to be evicted if only this Court
- D may hold Bombay Act not applicable to the tenancy premises in suit. On the other hand if it is held that by virtue of the provisions contained in Section 2(3) and Section 6(2) of the Act read with the notification dated 18-10-1960 the provisions of the Bombay Act are applicable to the suit accommodation, no fault can be found with the view taken by the High Court and the appeals
- E shall be liable to be dismissed as any ground for eviction of the tenants under the Bombay Act was not available to the landlord on the date of the institution of the three suits.

Before we crystallize the issue, which is the bull's eye. Let us clear a misconception which we noticed prevailing during the course of hearing.

- F There is a difference between (a) a composite tenancy or a tenancy for a mixed purpose, and (b) an integrated contract of tenancy for dual purposes.

There may be several purposes for which the tenancy premises may be let out. Broadly speaking the premises are let out either for the purpose of residence or for a non-residential or commercial purpose. A legislation may

G classify the purpose of letting into several categories by adopting some other criterion just as the Bombay Act does (See, sub-Section (1) of Section 6). In case of tenancy of type (a), for a composite or mixed purpose, the premises are let out for defined purposes more than one leaving the option open to the tenant to use the entire tenancy premises as one unit for either or both purposes.

- H The tenancy premises are not divided or demarcated separately into two so

as to specify which part of the tenancy premises will be used for what purpose. In other words, in case of tenancy for composite purpose, the two divers purposes for user of the premises are so blended or mixed up that they cannot be separated by dissecting the tenancy premises into compartments. But, in case of tenancy of type (b), which is a single tenancy for dual purposes, the contract of tenancy is no doubt an integrated one but the premises are demarcated or divided by reference to the purpose for which they will be separately used. The cases at hand are illustrations of the latter type, type (b), of an integrated contract of tenancy for dual purposes, where different portions are earmarked for different types of user. The contract of tenancy is one but it clearly sets out of the two rooms let out under one tenancy agreement, the tenant shall use the room in the front for non-residential purpose and the room in the backside for the purpose of residence. The entire tenancy premises cannot be used interchanging the users nor can the entire premises be subjected to simultaneous user as residence and commerce-both, without defining which part of the premises shall be used for what purpose. Therefore, the purpose of letting, in the case at hand, falls under type (b) and is not composite or mixed. The legal implication is that in case of tenancy for composite or mixed purpose i.e. type (a) the need may arise for determining the dominant purpose of letting. However, the theory of dominant purpose of principle of predominant purpose of letting is irrelevant in the case of tenancies of type (b) when it is known, as previously agreed, that a particular portion of the premises shall be used for one purpose while another portion shall be used for another purpose.

Under the Bombay Act the purpose of letting of the premises may be for (i) residence, (ii) education, (iii) business, (iv) trade, or (v) storage. It is permissible to extend the applicability of Part II of the Act to an area and at the same time to limit its applicability to premises classifiable by reference to the purpose of letting specified in sub-Section (1) of Section 6. In exercise of its legislative wisdom, the State Government has applied the provisions of Part II to Koregaon and yet, at the same time, limited the operation of the Act by stating that the provisions of Part II shall apply to premises let for the purpose of residence only. In other words, premises in Koregaon which have been let out for the purpose of business, trade, education or storage do not attract applicability of the Act. In the case of three tenements under appeal though the contract of tenancy is each an integral one, the purpose of letting being dual, that part of the tenancy premises the purpose of letting where of is residence would enjoy the protection of the Act while the other part of the premises which is meant for use in business or trade would not enjoy the

- A protection, if we were to put it simply but that is the issue which calls for not simplistic but legalistic-determination.

It is well settled that it is not permissible for the Court to split up a contract of tenancy in an eviction proceedings (See, *Dr. T. S. Subramanian v. The Andhra Bank Ltd.*, [1989] Supp. 2 SCC 252, *Firm Panjumar Daulatram v. Sakhi Gopal*, [1977] 3 SCC 284, *Miss S. Sanyal v. Gian Chand*, [1968] 1 SCR 536). A tenancy can be split up by operation of law or by contract between the parties. In cases governed by Rent Control Legislation if a ground for eviction in respect of part of the tenancy premises is made out, the decree shall be for eviction from the entire tenancy premises unless the law permits a partial decree of eviction being passed. The purpose of Rent Control Legislation is to protect the tenants from unjust evictions at the hands of greedy or unscrupulous landlords. The shortage of accommodation and unequal distribution of national wealth warrants a welfare State stepping in to so regulate the common law rights and obligations between landlords and tenants as to protect the tenants and to that extent curtail the common law rights of the landlords. In case of doubt, rent control laws should be so interpreted as to lean in favour of tenant, to advance the purpose sought to be achieved by Rent Control Legislation and to see that the beneficial protection extended by the Act is not scuttled down or defeated or rendered nugatory. In the cases like the one with which we are dealing, there may be two angles of looking at the issue. For the landlord it may be argued that part of the tenancy accommodation (i.e. the portion leased for purposes other than residential) does not enjoy protection under Bombay Act and therefore that part of the tenancy premises which enjoys such protection (i.e. the portion leased for residential purpose) must go with the unprotected part of the premises, that is to say the tenancy premises as a whole shall not enjoy the protection of Bombay Act. On the other hand, looking at the issue from the point of view of the tenant, it may be urged that merely because a part of the tenancy premises (i.e. the non-residential part) does not enjoy the protection of Bombay Act that does not mean that the protection of the Act which is certainly and undoubtedly applicable to a part of the premises (i.e. the residential portion) should be allowed to be defeated. In the Rent Control Legislation the relevant provision which regulates or restricts the right of landlords to seek eviction of tenants in variably opens with a non-obstante clause and is given thereby an overriding effect on the statutory or common law right of landlord to evict a tenant. Even in the absence of non-obstante clause a Rent Control Legislation being a special beneficial provision shall override the provisions of any general legislation in case of conflict. It would, therefore, be reasonable and consistent

with the principles of interpretation of statutes to hold that such part of the tenancy premises as is protected by the Rent Control Legislation (here, the residential portion) shall take along with it such other part of the tenancy premises as is not protected, the contract of tenancy being an integral one. A view to the contrary would defeat the provisions of the Rent Control Legislation.

In the cases at hand, inasmuch as the rear room of the tenancy premises, having its purpose of user as residence, enjoys the protection of Bombay Act, the tenant shall not be liable to be evicted from any part of the tenancy premises, as part of the premises is protected by the Bombay Act and the contract of tenancy is one single and indivisible. We are, therefore, of the opinion that when the premises are let out under one integrated contract of tenancy i.e. type (b) referred to above, and the purpose of letting in respect of one part of the premises is one of the users referred to in sub-Section (1) of Section 6 of Bombay Act while the other part of tenancy premises is permitted to be used for purpose other than the one stated in section 6(1), the entire tenancy premises would enjoy protection of Bombay Act. Eviction of tenant can be had only by making out a case for eviction under Bombay Act. However, if a ground for eviction under Bombay Act from even a part of the premises is made out, eviction can be ordered from the whole unless the statute or the contract contains a special provision empowering the court to split up the tenancy.

The learned counsel for the landlord-appellant placed strong reliance on *Dr. Gopal Dass Verma v. Dr. S.K. Bhardwaj and Anr.*, [1962] 2 SCR 678 and *Miss S. Sanyal v. Gian Chand*, (supra). We shall deal with both the cases. Both these decisions are under Delhi and Ajmer Rent Control Act, 1952. There the building is defined in Section 2 (g) as meaning *inter alia* any building or part of a building which is or is intended to be *let separately* for use as a residence or for commercial use or for any other purpose. Section 13(1) (e) provides for a decree for ejectment to be passed if the Court is satisfied that the premises let for residential purpose are required *bona fide* to satisfy the landlord's requirement of premises for occupation as a residence. In *Dr. Gopal Dass Verma's* case, the premises in occupation of the tenant were being used for professional purpose in substantial part thereof with the consent of the landlord. It was held that such premises were taken out of the scope of Section 13(1)(e) because the premises were not let for *residential purposes alone*. The contention raised on behalf of the landlord that tenancy for dual purposes would be included in "any other purpose" was rejected by



A this Court looking to the scheme of the Act. Moreover, ejection of the tenant was sought by the landlord under the provisions of the Rent Act and yet the contention advanced before this Court was that the Act did not apply to the premises in question which contention was rejected by this court characterizing it as an argument of desperation. In *Miss S. Sanyal's* case, the tenancy premises were let for purposes non-residential as well as residential, that is for running a school and for residence. This Court held that if the premises are not let *for residential purposes only*, Section 13(1)(e) would not apply. The High Court held that where there is a composite letting it is open to the Court to disintegrate the contract of tenancy and on proof of landlord's *bona fide* requirement to decree ejection limited to that part which "is being used" by the tenant for residential purpose. Such a decree which had the result of splitting up the tenancy was held to be unsustainable by this Court. Thus, both the cases proceed on their peculiar facts adjudicated upon in the light of the provision of Delhi and Ajmer Rent Control Act, 1952, the provisions whereof do not bear such similarity with the provisions of the Bombay Act as to apply the law laid down therein to the facts of the cases at hand. In the scheme of Delhi and Ajmer Act the Second Schedule in Parts A and B (see), paras 3 to 5 in Parts A and B both) bring out the principle of letting separately for different uses and such differentiation of purpose of separate letting is not emphasized in the scheme of Bombay Act.

E Two Single Bench decisions by High Courts were brought to our notice. *Baburao Raghunath Bagwade v. Chandulal Hiralal Shāh*, LXXVII (1975) Bombay Law Reporter 197, is a Single Bench decision of Bombay High Court wherein it was held that the user of the word "residence" in the Notification dated 18-10-1960 would exclude its applicability to such premises as were let out for the composite purpose of residence and business or trade. F Such a view is too narrow a view and results in partially defeating the protection extended by Bombay Act. In our view, the law is not correctly laid down therein. We do not agree with the interpretation placed by the learned Single Judge of Bombay High Court in the above case.

G Decision in *Jain Digambar Chaitylaya and Ors. v. Shyamsundar Maneklal and Ors.*, (1980) XXI Gujarat Law Reporter 392 takes a view to the contrary. It is a deailed judgment. The learned Single Judge of Gujarat High Court, interpreting the provisions of this very Act, has held that where the pruposes of letting are dual, i.e. (i) for temple, and (ii) for storage, one of the purposes of letting being the one specified in Section 6, then such H premises in their entirety would be governed by the provisions of the Act.

The entire property need not have been let for the specified protected purpose. A  
Even if a part of it is proved to be let for specified protected purpose, the  
entire property would be protected and governed by the provisions of the  
Act. This is the correct statement of law and we approve the same.

For the foregoing reasons, the appeals are held devoid of merit and B  
liable to be dismissed. They are dismissed accordingly though without any  
order as to the costs.

K.K. T.

Appeals dismissed.