

Sardar Tota Singh vs M/S Gold Field Leather Works, Bombay on 15 January, 1985

Equivalent citations: 1985 AIR 507, 1985 SCR (2) 563, AIR 1985 SUPREME COURT 507, 1985 (1) SCC 414, 1985 SCFBRC 133, 1985 BOM RC 166, 1985 UJ (SC) 459, (1985) GUJ LH 435, (1985) 1 RENCRC 250, (1985) 1 CURCC 707, (1985) MAH LJ 499, (1985) MAHLR 442, (1985) 1 RENCJ 261, (1985) 1 RENTLR 745, (1985) 1 BOM CR 488, 1985 87 BOM LR 95

Author: R.S. Pathak

Bench: R.S. Pathak, E.S. Venkataramiah, V. Balakrishna Eradi

PETITIONER:

SARDAR TOTA SINGH

Vs.

RESPONDENT:

M/S GOLD FIELD LEATHER WORKS, BOMBAY.

DATE OF JUDGMENT 15/01/1985

BENCH:

PATHAK, R.S.

BENCH:

PATHAK, R.S.

VENKATARAMIAH, E.S. (J)

ERADI, V. BALAKRISHNA (J)

CITATION:

1985 AIR 507

1985 SCR (2) 563

1985 SCC (1) 414

1985 SCALE (1) 22

ACT:

Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 Section 15 (2)-Scope of.

Validation of sub-letting by the 1959 Ordinance Whether sub-tenancies permitted by contract between landlord and tenant are included.

A building was let out to the respondent partnership firm, who sublet a portion of a shop on the ground floor to one Manek Chand which was further sub-let by the latter to the appellant in 1952.

HEADNOTE:

The respondent filed a suit in 1962 against the subtenant for possession of the premises on the ground of unlawful subletting and carrying out unauthorised structural alterations. The sub-tenant resisted the suit and filed a written statement. During the pendency of the suit the appellant applied to the Court for being added as a defendant but the application was opposed by the respondent and was rejected. The respondent's suit was ultimately decreed for possession in accordance with a compromise between the parties.

The appellant thereafter filed a suit in 1966 for a declaration that he was a lawful tenant in possession of the premises and for an injunction restraining the respondent from executing the decree he had obtained against the subtenant. It was pleaded that he was in occupation and exclusive possession as a lawful subtenant for more than fifteen years to the knowledge of the respondent and that the decree in the respondent's suit was a collusive one and that he had become a direct tenant of the respondent under s. 14 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

The respondent filed a written statement and pleaded that they were tenants of the entire building and that they had sublet a portion of the premises to a sub-tenant who could not sub-let the premises further to the appellant and therefore the appellant's subtenancy was invalid.

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The Court of Small Causes decreed the suit. The respondent filed an appeal before the Appellate Bench of the Court of Small Causes which dismissed the appeal and affirmed the trial judge's finding that the premises had been sublet by Manekchand to the appellant, and that on May 21, 1959 when the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance 1959 was promulgated and sub-s.(2) of s. 15 was introduced into the Bombay Rent Act the subtenant was not in possession. the Appellate Bench rejected the submission of the appellant that he had paid rent directly to the respondent and therefore had been accepted as a tenant. It found that no rent had been paid by the appellant to the respondent after Manek Chand statutory tenancy which followed the termination of his contractual tenancy by service of notice had itself been terminated by the decree for possession in the respondent's suit. It further held that as the appellant was undisputably in possession on May 21, 1959, the sub-tenancy in his favor by Manek Chand must be deemed to be a valid sub-tenancy and followed the view in Josephy Santa Vincent v. Ambico Industries. 70 Bombay LR 224 while dismissing the respondent's appeal.

The respondent filed a Special Civil Application in the High Court and the High Court set aside the order of the Appellate Bench and dismissed the appellant's suit, taking

the view that having regard to certain observations made in Jai Singh Moraji & Ors v. M/s. Sovani Pvt Ltd. & Ors [1973] 2 SCR 603, an extended construction of sub-s. (2) of s. 15 of the Bombay Rent Act so as to include a sub-tenancy created by a sub-tenant was not justified.

In the appeal to this Court, on the question whether the appellant could rightly claim tenancy rights in the premises and therefore nullify the enforcement as against him of the decree in the respondent's suit.

Allowing the Appeal,

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HELD: 1. There can be no doubt that upon the amendment of sub-s. (I) of s.15 by the Bombay Rents, Hotel and Lodging House Rates Control Amendment Ordinance 1959, which was brought into force on May 21, 1959 and by its related Act, the prohibition against sub-letting did not operate in those cases, where the sub-letting was permitted by contract between the landlord and tenant. In all such cases, if the landlord had permitted the tenant under a contract between them to sub-let the premises, no question would arise of a need to validate those subtenancies. The relevant amendment in sub-s. (1) of s.15 was deemed to have always been part of the sub-section. [569C-D]

2. Sub-s. (2) of s.15 raises the ban from all sub-letting effected before May 21, 1959, the date of commencement of the Ordinance, provided the provisions of that sub-section are fulfilled. Any such sublease shall be deemed to be valid provided the sublessee has entered into possession before the date of commencement of the Ordinance and has continued in possession on such date. This is an special provision and marks a departure from the general law. It does not refer to sub-tenancies which are permitted by contract between the landlord and the tenant, but relates to sub-tenancies which are not so protected.

[569F-F]

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3. Sub-s. (2) of s.15 relates to sub-tenancies not permitted by contract A between the landlord and tenant and which would, but for the said sub-s. (2), fall within the prohibition enacted in the amended sub-section (I) of s. 15. [570C]

4. In the instant case, the respondent Goldfield was a Tenant, Manik Chand was a lawful sub-tenant and the latter had created a further sub-tenancy in favor of the appellant. If regard be had to clause (a) of sub-section (ii) of section 5 it is apparent that in respect of the subsequent sub-tenancy Manek Chand could be described as a tenant and the appellant as his sub-tenant. And if that is so, there is no reason why the appellant's sub-tenancy should not be regarded as a valid sub-tenancy inasmuch as it was created before May 21, 1959 and he entered into possession of the premises before that date and was continuing in possession on that date. [571A-B]

Jai-Singh Morarji & Ors. v. M/s Sovani Pvt. Ltd. & Ors, [1973] 2 S.C.R. 603, referred to.

P.D. Awani v. Kavashah Dinshah Mulla, (1953) 56 Bombay Law Reporter 467 and Woman Shrinivas Kini v. Ratilal Bhagwandas & Co., [1959] Supp. 2 S.C.R. 217, held inapplicable. [572F]

In the instant case, having regard to the concession made on behalf of the respondent in the Court below that Manekchand was a lawful tenant, which necessarily implies a valid contract of tenancy between the respondent and Manek Chand, the latter was to be regarded as a contractual tenant when he sub-let the premises to the appellant. No question, therefore arises of a statutory tenant purporting to sub-let his interest to a sub-tenant. [572F]

Anand Nivas (P) Ltd.. v. Anandji, [1964] 4 S.C.R. 892, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 682 of 1981.

From the Judgment and Order dated the 21st June, 1980 of the High Court of Bombay in Special Civil Application No. 2039 of 1975.

V.M. Tarkunde, P.H. Parekh and R.N. Karanjawala for the Appellant.

Soli J. Sorabjee, V.N. Ganpule and Mrs V.D. Khanna for the Respondents.

The Judgment of the Court was delivered by PATHAK, J. This appeal by special leave arises out of a suit for a declaration and injunction and raises questions concerning the interpretation and application of certain provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Peerbhoy Mansion is a building situated at Vithalbhair Patel Road in the city of Bombay. It was let to a partnership firm, Gold Field Leather Works. Gold Field sublet a portion of a shop on the ground floor to Manekchand Bhikabhai. The sub-tenant Manekchand sublet it further to Sardar Tota Singh in 1952.

Gold Field filed a suit in 1962 against Manekchand for possession of the premises on the ground of unlawful subletting and carrying out unauthorised structural alterations. Manekchand resisted the suit and filed a written statement. During the pendency of the suit Tota Singh applied to the Court for being added as a defendant, but the application was opposed by Gold Field and was rejected. Gold Field's suit was ultimately decreed for possession in accordance with a compromise between the parties.

Tota Singh then filed Suit No. 2454 of 1966 for a declaration that he was a lawful tenant in possession of the premises and for an injunction restraining Gold Field from executing the decree which that firm had obtained against Manekchand. It was pleaded that he was in occupation and exclusive possession as a lawful sub-tenant for more than fifteen years to the knowledge of Gold Field, that the decree in Gold Field's suit was a collusive decree, that as the decree had been passed against Manekchand he, Tota Singh, had become a direct tenant of Gold Field under s. 14 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (the "Bombay Rent Act") and that therefore he was entitled to the declaration and injunction sought in the suit.

Gold Field filed a written statement in the suit and pleaded that they were tenants of the entire building and had sublet the premises to Manekchand, that Manekchand as sub-tenant could not sub-let the premises further to Tota Singh, and therefore Tota Singh's sub-tenancy was invalid.

The Court of Small Causes tried the suit and decreed it on April 17, 1973. Gold Field appealed. The Appellate Bench of the Court of Small Causes dismissed the appeal on April 30, 1975. The Appellate Bench affirmed the trial Judge's finding that the premises had been sublet by Manekchand to Tota Singh in 1952, and that on May 21, 1959, when the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance 1959 was promulgated and sub-s. (2) of s. 15 was introduced into the Bombay Act, Manekchand was not in possession. In the attempt to prove that he was a lawful sub-tenant, Tota Singh urged before the Appellate Bench that Gold A Field had permitted Manekchand to sublet the premises to him, but this contention was not entertained by the appellate Bench as there was neither any plea nor any evidence to support it. The Appellate -Bench also rejected the submissions of Tota Singh that he had paid rent directly to Gold Field and therefore had been accepted as a tenant by them. It found that no rent had paid by Tota Singh to Gold Field after Manekchand's statutory tenancy, which followed the termination of this contractual tenancy by service of notice had itself been terminated by the decree for possession in Gold Field's suit. One road seemed still open to Tota Singh to establish the validity of his tenancy. fore the Appellate Bench a concession had been made by counsel for Gold Field. It was conceded on behalf of Gold Field that Manekchand was their lawful sub-tenant. On that Tota Singh urged that if Manekchand, although a sub-tenant, was regarded as a "tenant" by reason of sub s. (11) of s. 5 of the Bombay Rent Act, then the benefit of sub-s. (2) of s. 15 should be extended to him. He was in possession on May 21, 1959 as the sub-tenant of a lawful tenant and, therefore, the submission proceeded, his subtenancy would be deemed to be valid. This contention found favor with the Appellate Bench. It held that as Tota Singh was undisputedly in possession on May 21, 1959, the sub-tenancy in his favor by Manekchand must be deemed to be a valid sub-tenancy. At this point a debate was raised whether the benefit of sub-s. (2) of s. 15 had to be confined to a sub-tenancy created by a tenant or could be extended to a sub-tenancy created by a sub-tenant. Following the view taken by the Bombay High Court in *Josephy Santa Vincent v Ambico Industries*,⁽¹⁾ the Appellate Bench answered that question in favor of Tota Singh and dismissed Gold Field's appeal.

Gold Field filed a Special Civil Application in the High Court against the order of the Appellate Bench of the Court of Small Causes and on June 21, 1980 the High Court set aside the decree passed by the Appellate Bench and dismissed Tota Singh's suit. The High Court took the view that having regard to certain observations made by this Court in *Jai Singh Morarji and Ors. v. M/s Sovani Pvt.*

Ltd. and Ors.(2) an extended construction of sub s. (2) of s. 15 of the Bombay Rent Act so as to include a sub-tenancy created by a sub-tenant was not justified.

(1) 70 Bombay Law Reporter 224.

(2) [1973] 2 S.C.R. 603.

Tota Singh died during the pendency of the appeal in the High Court, and accordingly this appeal has been preferred by his legal representatives.

The material question before us is whether Tota Singh could rightly claim tenancy rights in the premises and therefore nullify the enforcement as against him of the decree in Gold Field's suit.

It appears that sub-s. (I) of s. 15 of the Bombay Rent Act as originally enacted prohibited the sub-letting by a tenant of premises let to him, except in the particular cases notified by the State Government under the proviso to that sub-section. A sub letting by the tenant constituted a ground for his eviction under clause (e) of sub . (1) of s.

13. The rigour of the provision was relaxed by the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance 1959, which was brought into force on May 21, 1959. The Ordinance was replaced by the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act 1959 In consequence, sub-s. (1) of s. 15 of the Act stood amended from the inception of the Bombay Rent Act so that the prohibition against sub letting incorporated in it operated 'subject to any contract to the contrary'. Simultaneously, sub-s. (2) was inserted in s. 15. That provision was subsequently substituted by Maharashtra Act 38 of 1962 by the following provision with effect from May 21, 1959:

"15 (2) The prohibition against the sub-letting of the whole or any part of the premises which have been let to any tenant, and against the assignment or transfer in any other manner of the interest of the tenant therein, contained in sub-section (1), shall, subject to the provisions of this sub section, be deemed to have had no effect before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959, in any area in which this Act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgment, decree or order of a court, any such sub-lease assignment or transfer or any such purported sub-lease, assignment or transfer in favor of any person who has entered into possession despite the prohibition in sub-section (1), as a purported sub-lease, assignee or transferee and has continued in possession at the commencement of the said Ordinance, shall be deemed to be valid and effectual for all purposes, and any tenant who has sub-let any premises or part thereof, assigned or A transferred any interest therein, shall not be liable to eviction under clause (e) of sub-section (1) of section 13".

It is contended for the appellant that as the respondent conceded before the Court of Small Causes that Manekchand was a lawful sub-tenant, the High Court should have held that a sub-tenancy created by such sub-tenant must be deemed valid by reason of sub-s. (2) of s. 15 of the Bombay Rent Act. It is urged that the High Court erred in construing Jai Singh Morarji (supra) as laying down the contrary. The case for the respondent is that sub-s. (2) of s. 15 benefits a sub-tenancy created by the original tenant only and does not extend to a sub-tenancy created by a sub-tenant.

There can be no doubt that upon the amendment of sub-s. (1) of s. 15 by the Ordinance and by its related Act the prohibition against sub-letting did not operate in those cases where the sub-letting was permitted by contract between the landlord and tenant. In all such cases, if the landlord had permitted the tenant under a contract between them to sublet the premises, no question would arise of a need to validate those sub-tenancies. The relevant amendment in sub-s. (1) of s. 15 was deemed to have always been part of the sub-section. It is in this light that we must determine the scope of sub-s. (2) of s. 15. Sub-s. (2) of s. 15 raises the ban from all sub-letting effected before May 21, 1959, the date of commencement of the Ordinance, provided the provisions of that sub-section are fulfilled. Any such sub-lease shall be deemed to be valid provided the sub-lessee has entered into possession before the date of commencement of the Ordinance and has continued in possession on such date. This is an especial provision and marks a departure from the general law. It does not refer to sub-tenancies which are permitted by contract between the landlord and the tenant, but relates to sub-tenancies which are not so protected. It will be noted that the removal by sub-s. (2) of s. 15 of the prohibition is limited only to those sub-tenancies which were created before May 21, 1959. Such a limitation would be inappropriate to sub-tenancies permitted by contract which could be created regardless of whether they were brought into existence before May 21, 1959 or after that date. Also, the sub-tenancies covered by sub-s. (2) of s. 15 would be regarded as valid only if the sub-tenant had entered into possession before May 21, 1959 and was continued in possession on that date. Such a requirement would be wholly inconsistent in the case of sub-tenancies permitted by contract. Inasmuch as sub-s. (2) of s. 15 specifically attaches the condition that the sub-tenant should have been in possession before the commencement of the Ordinance and should have continued in possession on that date, it is apparent that such a provision could be related only to illegal sub-tenants, that is to say sub-tenants who were let in and given possession without any contractual right conferred by the landlord on the tenant to do so. The protection conferred by sub-s. (1) of s. 15 is necessary for such-tenancies only, and not for a sub-tenancy which is permitted by the terms of the contract and which therefore falls altogether outside the prohibition embodied in sub-s. (1) of s. 15. The result, therefore, is that sub-s. (2) of s. 15 relates to sub-tenancies not permitted by contract between the landlord and tenant and which would, but for the said sub-s. (2), fall within the prohibition enacted in the amended sub-section (1) of s. 15.

In the present case, it was conceded on behalf of Gold Field before the Appellate Bench of the Court of Small Causes that Manekchand was a lawful sub-tenant. He could not have been a lawful sub-tenant by virtue of sub-s. (2) of s. 15 because on May 21, 1959 he was not in possession of the premises, which in fact had already passed as early as 1952 into the possession of Tota Singh. Manekchand could have been lawful sub-tenant only on the assumption that the sub-tenancy was permitted under the contract between Gold Field and their landlord. As the existence of such a term in the contract would be a question of fact, the concession by counsel for Gold Field must be

regarded as binding in this case on Gold Field. It is urged for the respondent that the concession made by counsel for Field can be of no avail because any agreement by a tenant creating a sub-tenancy, being directly opposed to sub-s. (1) of s. 15 as originally enacted, would be void. The submission, it seems to us, is without force. It must be remembered that sub-s. (1) of s. 15 was amended by inserting the words "but subject to any contract to the contrary" in 1959 retrospectively, the words being deemed always to have been inserted in that sub-section. We must take it by reason of the legal fiction employed that those words were already part of the sub-section when Gold Field agreed to sub-let the premises to Manekchand. The cases, *P.D. Aswani v. Kavashah Dinshah Mulla*(1) and *Waman Shriniwas Kini v. Ratilal Bhagwandas and Co.*,(2) on which learned counsel for the respondent relies, were decided before sub-s. (1) of s. 15 was amended and therefore did not take into account the effect of such amendment.

(1) [1953] 56 Bombay Law Reporter 467.

(2) [1969] supp. 2 S.C.R. 217.

Therefore, the present case is one where Gold Field is a tenant, A Manekbhai is a lawful sub-tenant and the latter has created a further sub-tenancy in favor of Tota Singh. The question is whether the further sub-tenancy can fall within the scope of sub-s. (2) of s. 15. Now, if regard be had to clause (1) of sub-s (1) of s. 5, it is apparent that in respect of the subsequent subtenancy Manekbhai could be described as a tenant and Tota Singh as his sub-tenant. And if that is so, there is no reason why Tota Singh's sub-tenancy should not be regarded as a valid sub-tenancy in as much as it was created before May 21, 1959 and he had entered into possession of the premises before that date and was continuing possession on that date.

But it is urged on behalf of Gold Field that this Court has held in *Jai Singh Morarji* (supra) that sub-s (2) of s. 15 does not validate a sub-tenancy created by a sub-tenant. That was a case where the original landlord filed a suit against the tenant Ochhavlal for possession on the ground, inter alia, of illegal subletting by Ochhavlal. The suit was decreed, and the plaintiff obtained possession. Ochhavlal had sub-let the premises to Sovani and Sovani had sub-let them to a private limited company. On application by the Company against dispossession in the execution proceedings, the trial court upheld the Company's claim to possession, but this Court ultimately rejected the Company's claim and upheld the right of the original landlord to possession. The facts of that case disclose that there were two prohibited" sub-tenancies, the first was created by Ochhavlal in favor of Sovani and the subsequent was created by Sovani in favor of the Company. The benefit of sub-s. (2) of s 15 could have been extended to Sovani only if the conditions of the sub-section were satisfied. If they were satisfied in the case of Sovani, the benefit could not be extended again in favor of the Company. That would obviously be so because the condition as to possession on May 21, 1959 could not possibly be satisfied by the subsequent sub-tenant if the original subtenant was in possession on that date. If, however, the subsequent sub-tenant was in possession on May 21, 1959, then clearly neither sub-tenancy can be regarded as valid. To be valid, the first subtenancy had to satisfy the condition of possession by that-sub-tenant on May 21, 1959, which ex hypothesi was not possible. And if the original sub-tenancy was invalid the subsequent sub-tenancy would also be invalid. The subsequent sub-tenancy would be valid only if the original sub-tenant had legal interest to transfer

to the subsequent sub-tenant. It is in the light of this analysis that the decision of this Court in *Jai Singh Morarji* (supra) needs to be appreciated, in particular the passage on page 607 of the Report which reads:

"The answer to the question is whether the respondent Private Company was a sub-tenant prior to 1959 and continued in possession at the commencement of the Ordinance in 1959. Ochhavlal in the present case gave the sub-lease to Sovani before the Ordinance. It is an indisputable feature in the present case that Sovani did not continue in possession at the commencement of the Ordinance of 1959. Sovani became a Director of the Private Company. It is the Private Company which claims to be a sub-lessee. The Private Company was in the first place not a sub-lessee of the tenant but a subsequent assignee from the sub-lessee. Secondly, SOvani who was the sub-lessee not in possession on the date of the Ordinance on 21 May, 1959. It was the Private Company which was in possession. Therefore, the Private Company is not within the protection of section 15 (2) of the Act "

The learned Judges were not unaware of the terms of sub-s. (1) of s. 5, as is evident from the passage on page 608 of the Report.

It is then urged by learned counsel for the respondent that clause (a) of sub-s. (11) of s. 5 of the Bombay Rent Act cannot be called in aid by the appellant as sub-s. (1) of s. 15 applies to contractual tenants only. We are referred to *Anand Nivas (P) Ltd. v. Anandji*,⁽¹⁾ where this Court laid down that the expression "tenant" in sub-s. (1) of s. 15 of the Bombay Rent Act means a contractual tenant and not a statutory tenant. The submission can be of no assistance to the respondent. Having regard to the concession made by counsel for Gold Field in the court below that Manekchand was a lawful tenant, which position, as we have discussed earlier, necessarily implies a valid contract of tenancy between Gold Field and Manekchand the latter must be regarded as a contractual tenant when he sublet the premises to Tota Singh. No question arises of a statutory tenant purporting to sub-let his interest to a sub-tenant.

Upon the aforesaid considerations, in our judgment the appeal must succeed.

The appeal is allowed with costs.

N.V.K.

(1) [1964] 14 S.C.R. 892.

Appeal allowed.