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NASIMA NAQI

v.

TODI TEA COMPANY LTD. AND ORS

(Civil Appeal No. 9052 of 2019)

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NOVEMBER 26, 2019

**[DR. DHANANJAYA Y. CHANDRACHUD AND  
AJAY RASTOGI, JJ.]**

*West Bengal Premises Tenancy Act, 1997:*

- s. 2(g) second proviso – Decree of eviction against spouse of deceased tenant, on the ground of default in payment of rent – In respect of non-residential premises – Appeal by tenant taking the plea that spouse of the deceased was entitled to life-time protection from eviction – High Court dismissed the appeal – Appeal to Supreme Court – Held: In respect of non-residential premises, under second proviso to s. 2(g), a right of preference is granted to stipulated heirs of deceased-tenant – However, the Proviso does not grant such preferential right to the spouse of such tenant – The exclusion of spouse of the deceased-tenant is without rationale, discriminatory and deprives the surviving spouse of a valuable entitlement – This is a case of *casus omissus* – There is valid justification of amending the provision so as to bring the widow of the tenant within the ambit of second proviso – In the facts of the present case and in view of the fact that the appellant i.e. spouse of the deceased tenant has continued to occupy the premises for a period in excess of seventeen years after the death of the tenant, eviction order is upheld.

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**Disposing of the appeal, the Court**

- HELD:** 1. The effect of the first proviso to s. 2(g) of West Bengal Premises Tenancy Act, 1997 is that the time limit of five years is not to apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of the family and, besides being dependant on him, does not own or occupy residential premises. Thus, in the case of residential premises, the time limit of five years is not applicable to the spouse of the deceased-tenant who fulfills the requirements which have been specified. The limit of five years does not apply to a spouse where the premises are residential. Under the

second proviso, a right of preference for tenancy is granted in a fresh agreement in respect of the premises, subject to the condition of payment of fair rent. The right is granted in favour of a son, daughter, parent or widow of a pre-deceased son of the tenant who was ordinarily residing with the tenant in the premises up to the date of death as a member of the family and was dependant on the tenant and who does not own or occupy any residential premises. However, the legislature, while enacting the second proviso, has not included the spouse of a deceased-tenant in recognizing a right of preference for tenancy in a fresh agreement in respect of the premises. The last sentence of the second proviso states that it shall apply *mutatis mutandis* to premises let out for non-residential purposes. Thus, both in the case of residential as well as non-residential premises, a provision has been made in the second proviso under which a right of preference is granted to stipulated heirs of the deceased-tenant where a fresh agreement is to be entered into in respect of the premises. The effect of the second proviso is that the legislature has not recognized the entitlement of the spouse while conferring a right of preference for tenancy in a case of a fresh agreement. The High Court was correct in observing that this is a case of *casus omissus* on the part of the legislature. [Para 9] [1055-B-F]

2. This is evidently an inadvertent omission. The exclusion of a spouse of a deceased tenant is without rationale, discriminatory and deprives the surviving spouse of a valuable entitlement granted to the other heirs. There is a valid justification for amending the provision so as to bring the widow within the ambit of the second proviso. This is a matter which deserves to be considered by the legislature. Having due regard to the object and purpose underlying the recognition of a right of preference under the second proviso and the social welfare purpose underlying the enactment of the legislation, it would be appropriate if this aspect is considered. The recognition of a right of preference by the second proviso is intended as a measure of protection for the heirs of a deceased tenant and it would be appropriate and proper if the same protection which is extended to a son, daughter, parent or widow of a predeceased son in the matter of a fresh agreement of tenancy is also

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- A recognized to inhere in the spouse of a deceased-tenant. [Para 9] [1055-F-H; 1056-A-B]
3. The High Court was right in coming to the conclusion that a substantive amendment to the second proviso is required since it is not open to the court to introduce words in the second proviso which have the effect of including one class of heirs, namely, a spouse of a deceased-tenant whom the legislature has left out of the terms of the second proviso. Absent such a protection, the spouse of a deceased tenant would be left without the protection which is conferred upon the son, daughter, parent or widow of a pre-deceased son. There would appear to be no justification for not considering the grant of such a protection on the spouse of the original tenant. [Para 9] [1056-B-D]
4. In the present case, the appellant has continued to occupy the premises for a period in excess of seventeen years after the death of the tenant. As stated before this Court the landlord does not intend to execute any fresh tenancy. Having due regard to the judgment of the Trial Court which has been affirmed by the High Court, there is no reason to entertain the appeal insofar as the decree for eviction is concerned. However, time is granted to the appellant to vacate the premises. [Para 10] [1056-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9052 of 2019.

From the Judgment and Order dated 19.12.2018 of the High Court at Calcutta in F.A. No. 162 of 2018.

- F S.K. Bhattacharya, L.K. Paonam, Niraj Bobby Paonam, Mrs. Tomthinnganbi Kojam, Advs. for the Appellant.
- Ashok Kumar Jain, Amar Dave, Bijoy Kumar Jain, Advs. for the Respondents.

- G The Judgment of the Court was delivered by  
**DR. DHANANJAYA Y. CHANDRACHUD, J**
1. Leave granted
2. This appeal arises from the judgment delivered by a Division H Bench of the High Court of Calcutta on 19 December 2018 rejecting

the appeal filed by the appellant against a decree for eviction under A  
the West Bengal Premises Tenancy Act 1997<sup>1</sup>.

3. The spouse of the appellant was inducted as a tenant of shop Room No 23 situated on the ground floor of the premises situated at 2 Lane Bazar Street Calcutta-700001 on a monthly rent of Rs 235.95 under an agreement dated 6 May 1988. An interest free deposit of Rs 12,000 was paid by the original tenant at the time of being inducted into the premises. The tenant died in July 2002 and was survived by the appellant and two sons. The landlord instituted a suit for eviction in 2010. The landlord alleged that after the coming into force of the amended provisions of the Act with effect from 10 July 2001, the tenant was liable to pay enhanced rent in terms of the proviso contained in Section 17(4B) which he had failed to pay. The landlord claimed to have addressed a demand on 13 December 2002 which was not complied with. The landlord claimed that, in any event, after the expiry of five years from the date of death of the original tenant, his heirs had no right to continue in possession of the premises. The landlord addressed a notice to the heirs of the original tenant on 30 July 2010 and eventually filed a suit for eviction on 4 August 2017. The Judge in the 7<sup>th</sup> Bench of the City Civil Court, Calcutta passed a decree for eviction on the ground of default in the payment of rent. The learned trial Judge also directed the defendants to pay arrears quantified at Rs 27,887.10. Aggrieved by the decree for eviction, an appeal was instituted before the High Court. The High Court noted that the principal ground of challenge was that a spouse of a deceased tenant is entitled to life time protection from eviction in respect of premises let out for non-residential purposes under Section 2(g) of the Act.

The High Court framed the following two points for determination: F

- “i. Whether the spouse of a deceased original tenant is entitled to life-time protection from eviction in respect of premises let out for non-residential purpose; and
- ii. If the answer to the first legal issue is against the spouse, whether such spouse has a right to have a fresh agreement executed in such spouse’s favour, on condition of payment of fair rent, in respect of the premises let out for non-residential purpose” G

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<sup>1</sup> “the Act” H

- A        4. The premises were let out for non-residential purposes within the meaning of Section 3(f) of the Act. The premises lie within the limits of the Calcutta Municipal Corporation and the monthly rent was not more than Rs 10,000. The issue which arose for consideration was whether the appellant could be regarded as a tenant or whether as a spouse of the deceased tenant, the appellant was entitled to be included within the extended meaning of the expression “tenant” in Section 2(g).

Section 2(g) provides as follows:

- “2. Definitions. - (g) “tenant” means 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 any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependant on him and who do not own or occupy any residential premises, and in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction:
- Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependant on him and who does not own or occupy any residential premises:
- Provided further that the son, daughter, parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependant on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises on condition of payment of fair rent. This proviso shall apply mutatis mutandis to premises let out for non- residential purpose.”

5. The High Court rejected the claim of the appellant to be entitled to a special right as the spouse of the deceased – original tenant. This was because, in the view of the High Court, the first proviso would not apply to premises let out for non-residential purposes and, more importantly, the spouse of an original tenant has not been conferred with any right under the second proviso which applies to premises let out for non-residential premises. Having said this, the High Court noticed that where the tenancy is of residential premises, the spouse of an original tenant will continue to enjoy the protection under the statute irrespective of the number of years that may have elapsed after the death of the original tenant, so long as such a spouse was ordinarily residing with the original tenant till the death of the tenant, as a member of the family; was dependant on the original tenant; and did not own or occupy any residential premises. On the other hand, only the children, parents or the widow of a pre-deceased son of the original tenant, were given limited rights in respect of non-residential premises under the second proviso to Section 2(g), subject to their fulfilling the same criteria. The High Court noted that the spouse of a deceased – original tenant is, however, not accorded such a right under the second proviso. This, it held to be “a colossal case of *casus omissus*”. The last sentence of the second proviso to Section 2(g) specifies that it would apply *mutatis mutandis* to premises let out for non-residential purposes. The operation of the first proviso was held to be barred in respect of premises let out for non-residential purposes. The High Court observed that the case of a spouse may have been overlooked by the legislature in respect of premises let out for non-residential purposes. But, it observed, such an omission could not be “corrected by judicial engineering of a statutory provision”. The correction of the mistake, if any, would have to be effected by the legislature by an amendment.

On the above reasoning, the High Court answered the points, which it had framed, in the following terms:

- “i. The spouse of a deceased tenant is not entitled to protection from eviction in respect of premises let out for non-residential purpose beyond the period of five years from the date of death of the original tenant if such original tenant died after the coming into force of the Act of 1997.

- A                   ii. The spouse of a deceased original tenant does not have any right to have a fresh agreement executed in such spouse's favour in respect of any premises let out for non-residential purpose if the decree-holder landlord wishes to let out the premises afresh upon obtaining the decree or possession of the premises pursuant to the decree.”
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6. Finding no merit in the appeal, the High Court affirmed the judgment of the Trial Court.
7. The issue which falls for determination in the present appeal
- C turns upon the interpretation of provisions of Section 2(g). The initial part of Section 2(g) defines a tenant to mean 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 any person continuing in possession after the termination of the tenancy. The latter part of the definition deals with the devolution of the tenancy on the death of
- D a tenant. It specifies that when a tenant dies, the expression also includes, for a period not exceeding five years from the date of death (or from the date of coming into force of the Act, whichever is later), the spouse, son, daughter, parent and the widow of a pre-deceased son who fulfill the following conditions:
- E                   (i) The individual should have ordinarily been living with the tenant up to the date of the death as a member of the family;
- (ii) The individual should have been dependant on the tenant; and
- F                   (iii) The individual should not own or occupy any residential premises.
- G                   8. In other words, in relation to residential premises, the protection of a tenant is extended for a period not exceeding five years from the date of death to the spouse, son, daughter, parent and widow of the pre-deceased son, subject to the fulfilment of the above conditions. Where the premises have been let out for non-residential purposes, the protection also extends to the spouse, son, daughter and parent who were:
- H                   (i) Ordinarily living with the tenant up to the date of death as members of the family; and

(ii) Defendant on the tenant or a person authorised by the tenant who is in possession of the premises. A

9. The effect of the first proviso is that the time limit of five years is not to apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of the family and, besides being defendant on him, does not own or occupy residential premises. Thus, in the case of residential premises, the time limit of five years is not applicable to the spouse of the deceased-tenant who fulfills the requirements which have been specified. The limit of five years does not apply to a spouse where the premises are residential. Under the second proviso, a right of preference for tenancy is granted in a fresh agreement in respect of the premises, subject to the condition of payment of fair rent. The right is granted in favour of a son, daughter, parent or widow of a pre-deceased son of the tenant who was ordinarily residing with the tenant in the premises up to the date of death as a member of the family and was defendant on the tenant and who does not own or occupy any residential premises. However, the legislature, while enacting the second proviso, has not included the spouse of a deceased-tenant in recognizing a right of preference for tenancy in a fresh agreement in respect of the premises. The last sentence of the second proviso states that it shall apply *mutatis mutandis* to premises let out for non-residential purposes. Thus, both in the case of residential as well as non-residential premises, a provision has been made in the second proviso under which a right of preference is granted to stipulated heirs of the deceased-tenant where a fresh agreement is to be entered into in respect of the premises. The effect of the second proviso is that the legislature has not recognized the entitlement of the spouse while conferring a right of preference for tenancy in a case of a fresh agreement. The High Court was correct in observing that this is a case of *casus omissus* on the part of the legislature. This is evidently an inadvertent omission. The exclusion of a spouse of a deceased tenant is without rationale, discriminatory and deprives the surviving spouse of a valuable entitlement granted to the other heirs. There is a valid justification for amending the provision so as to bring the widow within the ambit of the second proviso. This is a matter which, in our view, deserves to be considered by the legislature. Having due regard to the object and purpose underlying the recognition of a right of preference under the second proviso and the social welfare purpose underlying the enactment of the legislation, it would be appropriate if this aspect is B C D E F G H

- A considered. The recognition of a right of preference by the second proviso is intended as a measure of protection for the heirs of a deceased tenant and it would be appropriate and proper if the same protection which is extended to a son, daughter, parent or widow of a pre-deceased son in the matter of a fresh agreement of tenancy is also recognized to inhere in the spouse of a deceased-tenant. The High Court was right in coming to the conclusion that this would require a substantive amendment to the second proviso since it is not open to the court to introduce words in the second proviso which have the effect of including one class of heirs, namely, a spouse of a deceased-tenant whom the legislature has left out of the terms of the second proviso.
- B Absent such a protection, the spouse of a deceased tenant would be left without the protection which is conferred upon the son, daughter, parent or widow of a pre-deceased son. There would appear to be no justification for not considering the grant of such a protection on the spouse of the original tenant. We hope and trust that this aspect of the omission in the second proviso will engage the attention of the law makers so as to fulfill the salutary purpose of the provision.

- 10. Insofar as the present case is concerned, the appellant has continued to occupy the premises for a period in excess of seventeen years after the death of the tenant. Learned counsel for the landlord stated before this Court that the landlord does not intend, in any case, to execute any fresh tenancy. Having due regard to the judgment of the Trial Court which has been affirmed by the High Court, we see no reason to entertain the appeal insofar as the decree for eviction is concerned. However, we grant time to the appellant to vacate the premises until 30 June 2020 subject to the filing of the usual undertaking in the Registry of this Court within a period of four weeks from today failing which the decree shall become executable forthwith. A copy of this judgment shall be forwarded to the Chief Secretary of the State of West Bengal.
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- 11. The appeal is accordingly disposed of. There shall be no order as to costs.
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