Supreme Court of India
The State Of West Bengal & Anr vs Kailash Chandra Kapur & Ors on 29 November, 1996
Bench: K. Ramaswamy, G.T. Nanavati

PETITIONER:
THE STATE OF WEST BENGAL & ANR.

Vs.

RESPONDENT:
KAILASH CHANDRA KAPUR & ORS.

DATE OF JUDGMENT: 29/11/1996

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

We have heard learned counsel on both sides. This appeal by special leave arises from the judgment of the Division Bench of the Calcutta High Court, made on January 19, 1996 in Appeal No.182/95.

The admitted facts are that a lease for 999 years was granted by the Governor of west Bengal to one Tapan Kumar Mullick on July 28, 1983 assigning a plot of land No.CL-10 in Section II admeasuring 4,195 conttahs in Bindhannagar (Salt Lake) in Calcutta. The lessee had executed a Will in favour of the first respondent, a stranger to the family on July 22, 1992 of the lease-hold premises. The lessee died on May 22, 1993. Thereafter, the first respondent had applied for and was granted without any contest by the legal representatives of the lessee the probate to the Will by order of the Court dated May 19, 1994. It would, therefore, be obvious that the bequest was after receipt of consideration. Thereafter, the legatee had applied for mutation of his name in the record as lessee which was objected to and met with rejection. As a consequence, the respondent had filed writ petition under Article 226 of the Constitution. The learned single Judge directed to mutate the name of the first respondent as a lessee under the testamentary disposition made by the original lessee which was confirmed by the Division Bench of Calcutta High Court in Appeal No.183/95 by judgment dated January 19, 1996. Thus, this appeal by special leave.

Shri V.R. Reddy, learned Additional Solicitor General, has contended that clauses 7, 8 and 12 of the indenture of the lease should be read together which manifest the intention that the lease was for the enjoyment of leasehold right of the demised site or a building constructed thereon either by the lessee or his legal representatives and one among them alone should be made responsible to and answerable to the lessor-appellant, the Government of West Bengal. It prohibited sub-letting or transfer without prior permission of the Governor; thereby, there is and implied prohibition to bequeath the leasehold right in the property in favour of the strangers. In that background, the word `transfer' employed in clause 8 of the lease deed would be understood in a broader sense. If so understood, any bequest made to a stranger, without the permission of the Government, does not bind the Governor. Therefore, the Government is not obliged to recognise a stranger as a lessee after the demise of the original lessee. In support thereof, he placed strong reliance on the judgment of a Division Bench of the Bombay High Court in Dr. Anant Trimbak Sabnis vs. Vasant Pratap Pandit [AIR 1980 Bom. 69]. He also further placed reliance on a report given by the Committee constituted in that behalf on May 3, 1984 of the misuse of the leasehold right granted by seeking transfer in favour of the distant relations. On receipt thereof, the Governor by a notification specified that the near relations shall mean and include the father, mother, brother, sister, son, daughter, husband and wife. It prohibited registration under Registration Act by any other relative. It would amplify the intention of the Government in that behalf in granting leasehold interest of their land for the benefit of use and enjoyment of the demised premises for the residential purpose by the members of the family or near relations. The strangers were not intended to be inducted in and given enjoyment of the leasehold interest of the property demised by the Government. Unless the Government gives permission for such a transfer, it cannot be considered to be valid in law. The High Court thereby committed grave error of law in directing that a stranger be treated as a lessee of the Governor.

Shri D.P. Gupta, learned senior counsel for the respondents, on the other hand, contends that we are concerned in this case with the covenants engrafted in the lease-deed. The relevant covenants are 7, 8, and 12. Each one deals, in its own parameters, with restricted covenants thereunder with different situations. Clause (12) is relevant in this behalf. It does not contemplate any restriction to will away the leasehold interest to a stranger. The word `person' used in clause (12) would include the stranger also. The second Clause in para 2 of clause (12) would include heirs also. Thus, these covenants contained in clause (12) do indicated that the lessee is empowered to bequath his leasehold interest in favour of a stranger. The only restrictive covenant contained therein was that in the event of the bequest in favour of more that one person, one among them alone should be recognised as a person answerable to the Governor for compliance of the covenants contained in the lease deed. The succession may be either testamentary or intestate succession. In this case, it is testamentary succession. In support thereof, he placed reliance on the judgment of the Constitution Bench in Gian Devi Anand vs. Jeevan Kumar [(1985) 2 SCC 683]. He, therefore, contends that there is not prohibition for testamentary succession by the first respondent in respect of the leasehold interest given to Mullick. Shri V.R. Reddy sought to distinguish the judgment in Gian Devi's case by relying upon Bhavarlal Labhchand Shah vs. Kanaiyalal Nathalal Intawala [(1986) 1 SCC 571] wherein this Court had held that it would not apply to testamentary succession and the landlord should not be trusted with a stranger as lessee.

In view of the diverse contentions, the question that arises for consideration is; what is the meaning of the word "person" in clause (12) of the covenants? It is necessary to read the relevant clauses in the lease deed, namely, clauses 7, 8 and 12 conjointly or independently. They read as under:

> (7) The Lessee shall not sub-divide or sub-let the demised land or the building to be constructed without the consent in writing of the Government first had and obtained and the Government shall have the right and be entitled to refuse its consent at its absolute discretion. (8) The Lessee shall not assign or transfer the demised land or any part of the demised land and/or the structure erected thereon without the previous permission of the Government in writing. In case of transfer or assignment of the lease the Lessor shall have the right of pre-emption and upon the exercise of this right the building constructed by the lessee on the land shall be taken over by the lessor at a valuation of the building made by the Lessor on the basis of the costs of construction of the building less depreciation at the usual rate of the market value thereof, whichever is less. The value of the land will be the amount of the salami or premium paid by the Lessee. In the event of difference between the parties as to the value of the building, the matters in dispute shall be referred to the arbitration of an arbitrator if the parties can agree upon one or otherwise to two arbitrators, one to be appointed by each party with an Umpire. The award of the arbitrator or arbitrators or the Umpire, as the case may be, shall be final and binding on both the parties. Provided however that in case the Lessee transfers or assigns the leasehold interest in the leasehold interest in the land and/or structure standing thereon in favour of LIC or Nationalised Bank or Government or Semi-Government Organisation, or registered Housing Co-operative Society, or Statutory Body by creating mortgage for repayment of loan for house building purpose, Life Insurance corporation of India or Nationalised Bank or Government or Semi-Government Organisation, or registered Housing Co-Operative Society, or statutory Body, as the case may be, it may claim priority over the Government of West Bengal in respect of right of pre-emption on the demised land and/or structure standing thereon subject to the condition that all the dues of the Government as provided herein shall be payable and recoverable to the Government of West Bengal either from the lessee or from the Life Insurance Corporation of India, or Nationalised Bank or Government or Semi-Government Organisation, or registered Housing Co-operative Society, or Statutory Body, as the case may be. provided however such charge if created shall be subject to the terms and conditions of the lease.
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> (12) If the Lessee dies after having made a bequest of the lease hold premises and the building thereon, if any, in favour of more than one person or die intestate having more than one then heir, then in such case the persons to whom the leasehold premises with the building thereon be so bequeathed or the heirs of the deceased Lessee, as the case may be, shall hold the said partition of the same by metes and bounds or they shall nominate one person amongst their number in whom the same shall vest."

It is true that the object of grant of leasehold right in the land belonging to the Government in a long lease for 999 years, as explained by the Government in the report of the Committee and accepted by the Governor, was that the demised land would be granted to the lessee and enjoyed by him, a legal heirs and close relations of the lessee. Thereby, they would remain in possession and enjoyment of the leasehold interest together with the building constructed thereon to make right to residence as engrafted in Article 19(1)(e) of the Constitution a reality and fundamental right. When the Government distributes its material resources, as engrafted in Article 39(b) of the Constitution, the object of the policy is to effectuate the mandate of the Constitution in the Preamble of the Constitution, viz., social Justice and dignity of person with equal status. The lease was in furtherance thereof. But the question is: whether the lessee has a right to transfer in favour of a stranger in terms of the lease and whether it would frustrate the object thereof?

The Division Bench of the Bombay High Court, considering Section 15(1) of the Bombay Rent Act and the words "assignment" or "transfer" has held that the words `assign' or `transfer' are not defined under that Act. The dictionary meaning of the word would be considered in the absence of any definition given in the Act. It would suggest that to transfer or formality to make over to another. The word "assign" denotes "generally to transfer property especially personal estate or set over a right to another". In their generic sense, the words `assign' or `transfer' include every kind of transfer of the property from one to another including testamentary disposition. The restricted meaning of the word `transfer' denied under Section 5 of the Transfer of Property Act requires to be considered in the light of a particular enactment and its scheme. It has, therefore, been held that the word `assign' does include disposition by a Will. Thereby, it would be construed that in an appropriate case where the property was assigned by testamentary disposition, it may be a transfer for the purpose of a particular Act or a Regulation, as the case may be.

In Gian Devi's case (supra), this Court had to consider, in the absence of any restriction under the Delhi Rent Control Act, the intestate succession by the heirs of the tenant of the leasehold right of commercial premises. This Court had considered the effect of the law in paragraphs 23, 31 and 36 as under:

> "For an appreciation of the question, it is necessary to understand the kind of protection that is sought to be afforded to a tenant under the Rent Acts and his status after the termination of the contractual tenancy under the Rent Acts. It is not in dispute that as long as the contractual tenancy remains subsisting, the contractual tenancy creates heritable rights; and, on the death of a contractual tenant, the heirs and legal representatives step into the position of the contractual tenant; and, in the same way on the death of landlord the heirs and legal representatives of a landlord become entitled to all the rights and privileges of the contractual tenancy. A valid termination of the contractual relationship. On the determination of the contractual tenancy, the landlord becomes entitled under the law of the land to recover possession of the premises from the tenant in due process of law and the tenant under the general law of the land is hardly in a position to resist eviction, once the contractual tenancy has been duly determined.

Because of scarcity of accommodation and gradual high rise in the rents due to various favors, the landlords were in a position to exploit the situation for unjustified personal gains to the serious detriment of the helpless tenants. Under the circumstances, it became imperative for the legislature to intervene to protect the tenants against harassment and exploitation by avaricious landlords and appropriate legislation came to be passed in all the States and Union Territories where the situation required an interference by the legislature in this regard. It is no doubt true that the Rent Acts are essentially meant for the benefit of the tenants. It is, however, to be noticed that the Rent Acts at the same time also seek to safeguard legitimate interests of the landlords. The Rent Acts which are indeed in the nature of social welfare legislation are intended to protect tenants against harassment and exploitation by landlords, safeguarding at the same time the legitimate interests of the landlords. The Rent Acts seek to preserve social harmony and promote social justice by safeguarding the interests of the tenants mainly and at the same time protecting the legitimate interests of the landlords. Though the purpose of the various Rent Acts appear to be the same, namely, to promote social justice by affording protection to tenants against undue harassment and exploitation by landlords, providing at the same time for adequate safeguards of the legitimate interests of the landlords, the Rent Acts undoubtedly lean more in favour of the tenants for whose benefit the Rent Acts are essentially passed. It may also be noted that various amendments have been introduced to the various Rent Acts from time to time as and when situation so required for the purpose of mitigating the hardship of tenants.

We now proceed to deal with the further argument advanced on behalf of the landlords that the amendment to the definition of `tenant' with retrospective effect introduced by the Delhi Rent Control Amendment Act (Act 18 of 1976) to give personal protection and personal right of continuing in possession to the heirs of the deceased statutory tenant in respect of residential premises only and not with regard to the heirs of the `so-called statutory tenant' in aspect of commercial premises, indicates that the heirs of so- called statutory tenants, therefore, do not enjoy any protection under the Act. This argument proceeds on the basis that in the absence of any specific right created in favour of the `so- called statutory tenant' in respect of his tenancy, the heirs of the statutory tenant who do not acquire any interest or estate in the tenanted premises, become liable to be evicted as a matter of course. The very premise on the basis of which the argument is advanced, is, in our opinion, unsound. The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal position of the tenant, unless there are contrary provisions in the Act; and, the tenant notwithstanding the termination of tenancy does enjoy an estate or interest or estate which the tenant under the Act despite termination of the contractual tenancy continues to enjoy creates a heritable interest in the absence of the any provision to the contrary. We have earlier noticed the decision of this Court in Damadilal case. This view has been taken by this Court in Damadilal case and in our opinion this decision represents the

correct position in law. The observations of this Court in the decision of the seven Judge Bench in the case of V. Hanpal Chettiar vs. Yesodai Ammal which we have earlier quoted appear to conclude the question. the amendment of the definition of tenant by the Act 18 of 1976 introducing particularly Section 2(1)(iii) does not in any way mitigate against this view. The said sub-clause (iii) with all the three Explanations thereto is not in any way inconsistent with or contrary to sub-clause (ii) of Section 2(1) which unequivocally states that tenant included any person continuing possession after the termination of his tenancy. In the absence of the provision contained in Section 2(1)(iii), the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the `so-called statutory tenant' on his death and the heirs of such tenant would in law step into his position. This sub-clause (iii) of Section 2(1) seeks to restrict this right insofar as the residential premises are concerned. The heritability of the statutory tenancy which otherwise flows from the Act is restricted in case of residential premises only to the heirs mentioned in Section 2(1)(iii) and the heirs therein are entitled to remain in possession and to enjoy and protection under the Act in the manner and to the extent indicated in Section 2(1)(iii). The Legislature, which under the Rent Act affords protection against eviction to tenants whose tenancies have been terminated and who continue 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. Section 2(1)(iii) of the Act does not create any additional or the `so- called statutory tenant' on his death, but seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and right of a contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the Legislature which has created this right has thought it fit in the case of residential premises to limit the rights of the heirs in the manner and to the extent provided in Section 2(1)(iii). It appears that the Legislature has not thought it fit to put any such restrictions with regard to tenants in respect of commercial premises in this Act. Accordingly, we hold that if the Rent Act in question defines a tenant in substance to mean `a tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed', the tenant even after the determination of the tenancy continues to have an estate or interest in the tenanted premises and the tenancy rights both in respect of residential premises and commercial premises are heritable. The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the

> manner in which the same is to be enjoyed. If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfillment of the condition in the manner and to the extent stipulated in the Act. The Legislature which by the Rent Act seeks to confer the benefit on the tenants and to afford protection against eviction, is perfectly competent to make appropriate provision regulating the nature of protection and the manner and extent of enjoyment of such tenancy rights after the termination of contractual tenancy of the tenant including the rights and the nature of protection of the heirs on the death of the tenant. Such appropriate provision may be made by the Legislature both with regard to the residential tenancy and commercial tenancy. It is, however, entirely for the Legislature to decide whether the Legislature will make such provision or not. In the absence of any provision regulating the right of inheritance, and the manner an extent thereof and in the absence of any condition being stipulated with regard to the devolution of tenancy rights on the heirs on the death of the tenant, the devolution of tenancy rights must necessarily be in accordance with the ordinary law of succession."

It was, therefore, held that in the absence of any definition the legal heirs of the tenants who succeeded by intestate succession became the tenants under the Rent Act for the purpose of continuance of tenancy rights had by the tenant even if it is after the determination of the contractual tenancy. The statutory tenancy steps in and gives protection to the legal heirs of the deceased tenant. It is true that in that case no distinction was made by this Court between testamentary succession or intestate succession. As far as testamentary succession is concerned, this Court had considered that question in Bhavarlal's case (supra). In that case, Section 5(11) of the Bombay Rent Act defines the tenant and clause (c) defines the "restricted tenancy rights" in favour of the family members of the tenant. In that context, the question arose in that case whether a tenant can bequeath a Will in favour of a stranger? Considering the ratio in Gian Devi's case (supra) and the object of the Act, this Court had held that the tenant cannot by a Will bequeath leasehold right in favour of strangers and induct the stranger as tenant of the demised premises against the will of the landlord and the landlord is not bound by such a bequest to recognise the legatee as a tenant. It is, thus, settled law that though lease hold interest may be bequeathed by a testamentary disposition, the landlord is not bound by it nor a stranger be trusted as tenant against the unwilling landlord.

In view of the above settled legal position, the question is: whether the bequest made by Mullick in favour of the respondent is valid in law and whether the Governor is bound to recognise him? It is seen that clauses (7), (8) and (12) are independent and each deals with separate situation. Clause (7) prohibits sub-lease of the demised land or the building erected thereon without prior consent in writing of the Government. Similarly, clause (8) deals with transfer of the demised premises or the building erected thereon without prior permission in writing of the Government. Thereunder, the restricted covenants have been incorporated by granting or refusing to grant permission with right of pre-emption. Similarly, clause (12) deals with the case of lessee dying after executing a Will.

Thereunder, there is no such restrictive covenant contained for bequeath in favour of a stranger. The word `person' has not been expressly specified whether it relates to the heirs of the lessee. On the other hand, it postulates that if the bequest is in favour of more than one person, then such persons to whom the leasehold right has been bequeathed or the heirs of the deceased lessee, as the case may be, shall hold the said property jointly without having any right to have a partition of the same and one among them should alone be answerable to and the Government would recognise only one such person. In the light of the language used therein, it is difficult to accept the contention of Shri V.R., Reddy, that the word `person' should be construed with reference to the heirs or bequest should be considered to be a transfer. Transfer connotes, normally, between two living persons during life; Will takes effect after demise f the testator and transfer in that perspective becomes incongruous. Though, as indicated earlier, the assignment may be prohibited and Government intended to be so, a bequest in favour of a stranger by way of testamentary disposition does not appear to be intended, in view of the permissive language used in clause (12) of the covenants. We find no express prohibition as at present under the terms of the lease. Unless the Government amends the rules or imposes appropriate restrictive covenants prohibiting the bequest in favour of the strangers or by enacting appropriate law. There would be no statutory power to impose such restrictions prohibiting such bequest in favour of the strangers. It is seen that the object of assignment of the Government land in favour of the lessee is to provide him right to residence. If any such transfer is made contrary to the policy, obviously, it would be defeating the public purpose. But it would be open to the Government to regulate by appropriate covenants in the lease deed or appropriate statutory orders as per law or to make a law in this behalf. But so long as that is not done and in the light of the permissive language used in clause (12) of the lease deed, it cannot be said that the bequest in favour of strangers inducting a stranger into the demised premises or the building erected thereon is not governed by the provisions of the regulation or that prior permission should be required in that behalf. However, the stranger legatee should be bound by all the covenants or any new covenants or statutory base so as to bind all the existing lessees.

Under these circumstances, the action taken by the respondent cannot be said to be vitiated by an error of law. The High Courts, therefore, has not committed any manifest error of law warranting interference. As stated earlier, this order does not preclude the Government from taking such step as is warranted under law to prohibit transfer in violation of the covenants or defeating the public policy.

The appeal is accordingly dismissed. No costs.