

Supreme Court of India

Juthika Mulick vs Dr Mahendra Yashwant Bal on 28 October, 1994

Equivalent citations: 1995 AIR 1142, 1995 SCC (1) 560

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

JUTHIKA MULICK

Vs.

RESPONDENT:

DR MAHENDRA YASHWANT BAL

DATE OF JUDGMENT 28/10/1994

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

MUKHERJEE M.K. (J)

CITATION:

1995 AIR 1142

1995 SCC (1) 560

JT 1994 (7) 291

1994 SCALE (4) 792

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by S.MOHAN, J.- This appeal arises out of the certificate issued by the High Court of Calcutta under Article 133(a) and (b) of the Constitution of India.

2.The facts are simple. Being simple it is fascinating. However, the fascination is only superficial, ultimately leading to a question of legal complication.

3.The predecessors of the respondents leased out Suit Premises No. 266-A, Chittaranjan Avenue, Calcutta in favour of Lall Behari Mullick under a registered lease deed dated 11-7-1966. The monthly rent was fixed at Rs 160. The lease deed contained a covenant that the lease was for the lifetime of the lessee and his heirs, executors, administrators, representatives and assigns must yield up and deliver quiet, peaceful and vacant possession of the demised premises within three months of the date of the death of the lessee unconditionally and without any objection whatever. They shall have no right to hold over the demised premises after the said period under any circumstances. The lessee

died on 16-12-1970. His heirs did not deliver possession. This necessitated filing of Suit No. 704 of 1971 for eviction of the defendants. The principal defence raised in the written statement was that the original lessee Lall Behari Mullick having died on 16-12-1970, the registered lease deed dated 11-7-1966 will fall under category of a lease for less than five years by operation of statute. Therefore, the matter will be governed by West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as 'the Act'). The defendants who were residing in the said suit premises with the said Lall Behari Mullick during his lifetime have become monthly tenants under the plaintiffs, by operation of law. They are still residing therein as monthly tenants. After the death of Lall Behari Mullick, the rent for the suit premises was sent to appellant 1 by money order by defendant 1. On his refusal to accept the same, the defendants have been duly depositing the rent for the suit premises month by month with the Rent Controller, Calcutta.

4. By judgment dated 16-1-1973, the trial court dismissed the suit. Aggrieved by that dismissal, Title Appeal No. 105 of 1974 was filed by the respondents before the High Court of Calcutta. The said appeal was allowed by impugned judgment dated 20-12-1977. The High Court came to the conclusion that under the terms of the lease deed, the lease was not heritable. Section 2(h) of the Act defines the tenant as "the heir who generally resides with the deceased tenant". In the present case, the lease deed makes it clear that the lease is not heritable. There is also an obligation that the heirs of the lessee's heirs to yield up and deliver peaceful possession within three months after the death of the lessee. Therefore, the defendants would not fall within the definition of tenant under Section 2(h) of the Act. The statutory protection would not be available to the defendants. In this view, it allowed the appeal.

5. Mr Ashoke Sen, learned Senior Counsel appearing on behalf of the appellants draws our attention to clause 1 in the lease deed dated 11-7-1966. The High Court has rendered the following findings:

(a) The period of lease is uncertain as the death of tenant was uncertain at the time of the execution of the lease. Therefore, Section 3 of the Act does not come into play and the tenant's right could not be heritable under the Act;

(b) Reliance is placed on (1849) Dunford and East's Reports 462:3 Terms Reports 462 to hold against the appellants.

6. These findings are not correct. Section 2(h) of the Act defines "the tenant". As the definition is inclusive taking within it all persons as tenants who continue in possession after the termination of tenancy in their favour and also persons who have been the heirs of the deceased tenant who have been originally residing with the tenant at the time of the death and who have been continuing in possession of the premises in question. The concept of a statutory tenant is cardinal in all rent control legislations. The whole object of rent control legislation is to protect the tenant from eviction notwithstanding the termination of his tenancy. The right of statutory tenant is a personal right granted by the statute. He has a right to continue in possession so long as he observes the conditions of his tenancy and of the statute. In supporting the submissions, reliance is placed on Anand Nivas (P) Ltd. v. Anandji Kalyanji's Pedhil and Kanji Manji v. Trustees of Port of Bombay².

7. This Court in *Orissa Transport Co. Ltd. v. Workmen*³ has held that a statutory tenant has a heritable interest in the premises. A person continuing in possession after the determination of his tenancy is a tenant unless a decree or order for eviction has been made against him. Therefore, he has to 1 AIR 1965 SC 414: (1964) 4 SCR 892 2 AIR 1963 SC 468,471: 65 Bom LR 258 3 (1976) 1 SCC 813 : 1976 SCC (L&S) 125: AIR 1976 SC 2224 be on a par with the person whose contractual tenancy still subsists. The incidents of such tenancy and contractual tenancy must, therefore, be the same.

8. The statutory definition is not subject to any contract between the parties. It is a provision made in the interest of public for the protection of tenants. Therefore, such a benefit cannot be waived by the tenant nor can the parties contract themselves out of it. In support of this submission, reliance is placed on Halsbury's Laws of England, 4th Edn., Vol. 27, paras 590-591, *Amrit Bhikaji Kale v. Kashinath Janardhan Trade*⁴ and *Murlidhar Aggarwal v. State of U.*⁵

9. The tenancy in question was determined in less than twenty years within the meaning of Section 3(2) proviso, the moment death of the original tenant occurred within the three years of the tenancy. On the happening of certain event, namely death, the period of lease becomes certain and determined at the time of death of the tenant. What was uncertain at the beginning of lease was rendered certain by the very event contemplated by the lease deed namely the death of the tenant. Support is derived for this submission from *Ram Kumar Das v. Jagadish Chandra Deb Dhabal Deb*⁶, *Biswabani (P) Ltd. v. Santosh Kumar Dutta*⁷ and *Indira Rani Ghose v. Akhoy Kumar Ghose*⁸. Thus, it is submitted that the judgment of the High Court is liable to be set aside.

10. In meeting these submissions, Dr Shankar Ghosh, learned Senior Counsel appearing for the respondents argues that the lease deed provides that upon the death of lessee, the demise shall absolutely cease and the legal representative of the lessee shall have no right to hold over or remain in the demised premises beyond a period of three months from the date of death of the lessee.

11. In view of the above provision contained in the lease deed, the Act is not attracted. Section 3 of the Act provides that the lease shall be for less than 20 years. On the date of the lease, it was for uncertain period namely during the lifetime of the lessee, the period of which was uncertain. Unless and until the appellants establish that on the date of the lease, it was for less than 20 years, they cannot succeed.

12. Section 3 of the Act will be attracted if the lease is for a period of not less than 20 years and the period limited by such lease is not terminable before its expiration, at the option by either party. Therefore, in order to attract this provision, the lease must provide that it was for a period of 20 years and the period of lease must be limited by the lease deed itself. It is well settled that the period of lease must be ascertainable on the date of lease. It is also clear if reference is made to *Foa's Landlord and Tenants*, 6th 4 (1983) 3 SCC 437 : AIR 1983 SC 643 5 (1974) 2 SCC 472: (1975) 1 SCR 575 6 1952 SCR 269: AIR 1952 SC 23 7 (1980) 1 SCC 185, 190-91 : (1980) 1 SCR 650, 658 8 AIR 1932 PC 269, 272: 59 IA 419 Edn., para 115. The passage therein has been approved by the Division Bench of the Bombay High Court in *Ramchandra Balvant Tilak v. Narasinha Chintaman Kelkar*⁹. To the similar effect an observation is found in *Hill and Redman's Law of Landlord and Tenant*, (Butterworths 16th Edn.) at p. 57 wherein it is categorically stated that duration of term of tenancy

must be fixed by specifying the number of years, in the first instance, or expressed by reference to a collateral matter. However, the maximum duration of the term must be known when the lease commences. Thus, it is submitted that lease deed must itself show that the period thereof is less than 20 years.

13. It is essential that on the date of lease, it must be known whether the Act applies or the Transfer of Property Act applies. It cannot be contended that the Transfer of Property Act applies for the first five years when the tenant was alive and from the sixth year onwards after the death of tenant, the Act applies.

14. Section 2(h) of the Act is a definition section. It can confer no right, not being an operative section. There must be a lease deed to attract this definition. In this case, it is clearly stipulated that on the death of tenant, heirs in possession cannot continue. There being no heritable right, Section 2(h) of the Act has no application.

15. If the intention of the parties was not to confer heritable right, such a contract is not overridden by the Act. Section 13 of the Act mentions only " notwithstanding anything to the contrary in any other law". It does not override the contract. If this section is contrasted with Section 34(4) of the Act in respect of recovery of possession, it is clear that the contract is not overridden. Thus' under the terms of the contract, if the heirs are denied the heritable right, that will prevail.

16. In order to appreciate the respective contentions, we will now refer to the relevant provisions of the Act. Section 2 is the definition section. Clause (h) defines the tenant as follows:

" '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 the termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death,) but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction."

Section 3 of the Act provides for inapplicability of the Act to certain leases. That is as under:

"3. [(1)] The provisions relating to rent and the provisions of Sections 31 and 36 shall apply to any premises held under a lease for residential purpose of the lessee himself and registered under the Indian Registration Act, 1908, where-

9 AIR 1931 Bom 466: 33 Bom LR 590: 133 IC 839

(a) such lease is for a period of not more than 20 years, and save as aforesaid nothing in this Act shall apply to any premises held under a lease for a period of not less than 15 years.

(2)Notwithstanding anything to the contrary contained in subsection (1) but subject to sub-section (3) of Section 1, this Act shall apply to all premises held under a lease which has been entered into after the commencement of the West Bengal Premises Tenancy (Amendment) Ordinance, 1965:

Provided that if any such lease is for a period of not less than 20 years and the period limited by such lease is not expressed to be terminable before its expiration at the option either of the landlord or of the tenant, nothing in this Act, other than the provisions relating to rent and the provisions of Sections 31 and 36, shall apply to any premises held under such lease."

17.The important question to be decided in the light of the above provisions is, whether the appellants will fall within the definition of Section 2(h) of the Act or whether the lease in question is covered by the proviso to Section 3 of the Act. To determine the same, we will have to look at clause 1 of the lease deed dated 11-7-1966. That runs as under: "That in consideration of the rent hereby reserved and the covenants hereinafter referred and contained and to be paid and to be performed by the lessee the lessor both hereby demise unto the lessee all that the entire first and second floor with accommodation for garage and servant and courtyard and one bathroom on the ground floor of Premises No. 266-A, Chittaranjan Avenue, Calcutta more particularly mentioned and described in the schedule hereunder and hereinafter referred to as the demised premises to have and to hold the same unto the term during the term of his natural life commencing from the date of these presents yielding and paying the rent of Rs 160 (Rupees one hundred and sixty) monthly and every month and payable before the fifteenth day of each month for the month immediately preceding according to the English calendar month without any deduction or abatement whatsoever inclusive of both shares of municipal taxes and all other outgoings the lessee with interest that the obligations will continue throughout the term hereby granted doth hence by conversants with the lessor as follows (a) To pay the rent hereby reserved on the day and in the manner aforesaid (b) The lessor's heirs, executors, administrators, representatives and assigns must yield up and deliver quiet, peaceful and vacant possession of the demised premises within three months of the date of death of the lessee unconditionally and without any objection whatsoever and they shall have no right to hold out the demised premises after the said period for any length of time under any circumstances (c) Not to sub-let, assign or transfer the whole or any part of the demised premises exclusively for lessees for lessee's residential purposes only and not to use the same for any other purpose for any length of time."

The following emerge by reading of the above clause:

(i) The lessee was to hold the demised premises during his lifetime;

(ii)The heirs, executors, administrators, representatives and assigns of the lessee must yield up and deliver quiet and vacant possession within three months of the date of the death of the lessee unconditionally and without any objection;

(iii)They shall have no right to hold the demised premises after the said period for any length of time under any circumstances;

(iv)Lease is residential in nature;

(v) The lessee has no right to sub-let, assign or transfer either the whole or any part of the demised premises thereof.

18. What is the nature of this lease? Is it for a period of more than 20 years

(a) because it states that lessee can hold the demised premises during his natural life or less than 20 years;

(b) because the lessee died within three years from the date of lease deed dated 11-7-1966.

The applicability of the definition under section 2(h) will depend upon the answer to the above question.

19. Section 105 of the Transfer of Property Act defines a lease as under:

"105. A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions, to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.- The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

A lease, therefore, is not a mere contract, but is a transfer of an interest of immovable property. This means the lessee has a right to enjoy the property for a term in consideration of the payment in money or kind by the transferee to the transferor.

20. One of the essential attributes of a lease is that transfer must be made for a certain time expressed or implied or in perpetuity. The question is, the word 'tenant' under Section 105 of the Transfer of Property Act, whether means really certain or capable of being made certain on a future date? Is it sufficient if the period is fixed with reference to a future event on the happening of which the lease will be determined and the period of their lease will become certain, although, on the date

of the lease, it may not be possible to say when that event will happen? In Foa's Landlord and Tenants, 6th Edn., para 115, occurs the following passage (which has found approval at the hands of Bombay High Court in Narasinha Chintaman Kelkar⁹):

"The habendum in a lease must point out the period during which the enjoyment of the premises is to be had; so that the duration as well as the commencement of the term must be stated. The certainty of a lease as to its continuance must be ascertainable either by the express limitation of the parties at the time the lease is made, or by reference to some collateral act which may, with equal certainty, measure the continuance of it, otherwise it is void. If the term be fixed by reference to some collateral matter, such matter must either be itself certain (e.g. a demise to hold for 'as many years as A, has in the manor of B'), or capable before the lease takes effect of being rendered so."

21. In Hill and Redman's Law of Landlord and Tenant, (Butterworths 16th Edn.) p. 57, it is stated:

"Duration of term.- The maximum duration of the term must be either fixed by specifying the number of years in the first instance, or expressed by reference to a collateral matter which can, at the time when the lease takes effect, be looked to in order to ascertain precisely the latest date on which the term must end.

It is sufficient, however, if the maximum duration of the term is known when the lease commences."

22. Now we will come to case law. As to construing a grant, the Privy Council held in Baboo Lekhraj Roy v. Kunhya Singh¹⁰ as under: "If a grant be made to a man for an indefinite period, it enures, generally speaking, for his lifetime, and passes no interest to his heirs unless there are some words showing an intention to grant an hereditary interest. That rule of constructions does not apply if the term for which the grant is made is fixed or can be definitely ascertained."

23. In Bavasaheb v. West Patent Press Co. 11 Gajendragadkar, J. (as the learned C.J. then was) quoting the Court in Baboo Lekhraj Roy v. Kunhya Singh¹⁰ held as under:

"If it can be ascertained definitely what that term (of the lease) is, the rule of construction that a grant of an indefinite nature enures only for the life of the grantee would not apply. If a grant be made to a man for an indefinite period, it enures, generally speaking, for his lifetime, and passes no interest to his heirs unless there are some words showing an intention to grant an hereditary interest. That rule of construction does not apply if the term for which the grant is made is fixed or can be definitely ascertained."

24. In Sree Sankarachari Swamiar v. Varada Pillail² it was held:

"And it is scarcely necessary to say that in determining objections founded on the alleged uncertainty of a term in a contract, the test to be 10 (1876-77) 4 IA 223 : ILR 3 Cal 210 (PC) 11 AIR 1954 Bom 257: 56 Bom LR 61 : ILR 1954 Bom 448 12 ILR (1904) 27 Mad 332: 13 MLJ 429 applied would be not whether the term is in itself certain but whether it is capable of being made certain. *Id certum est quod certum reddi potest.*"

25. In *Ram Chand Manchanda v. H. G. Lush* 13 it was held as under:

"It is not necessary that the term should be for a fixed period so long as it is definite. It is settled law that the term is definite, if it is defined either by express limitation or by reference to some event which will afterwards fix its exact length. In this connection reference may be made to Mulla's Transfer of Property Act, p. 523, Gour's Law of Transfer, 6th Edn., Vol. 3, para 3462, *Mahomed v. Ezekiel*¹⁴ and *Ramchandra Balvant v. Narasinha Chintaman*⁹."

26. In *Hamida Khatoon v. Shibananda Bhandari*¹⁵ it was held (AIR at p. 59) : "It is contended that a lease from year to year or a lease reserving yearly rent is not a lease for a certain time. This argument is due to misapprehension. Section 105, T.P Act does not require that the term or period of the lease should be certain on the date of the lease. The period of the lease can be express or implied. A provision for a period implied by law or usage would be enough. This is clear from the language of Section 106, T.P. Act which provides that in the absence of a contract or local law or usage to the contrary, a lease will be deemed to be from year to year, if it is for agricultural or manufacturing purposes, and from month to month if it is for other purposes. The agreement of lease in this case is not outside the scope of Section 105, T.P. Act and is hit by Section 107 by reason of the absence of a registered deed of lease."

27. In *Konijeti Venkayya v. Thammana Peda Venkata Subbaraol*⁶, it is observed (AIR at p.

621):

"The period is 'certain' if it can be made certain on a future date, on the principle *id certum est quod certum reddi potest*. A lease for the lifetime of the lessor or lessee or of any other living person will be valid in law."

28. Two decisions of this Court which have a bearing on this question may now be seen. In *Sivayogeswara Cotton Press, Devangere v. M. Panchaksharappa*¹⁷ where the lease deed provided for the first 20 years the lessee was to pay a fixed rent of Rs 350 every year in advance and if he removed his factory within that period he would still have to pay the said rent for the 20 years retaining his right to possession; that thereafter he would be free to continue the lease as long as he liked subject to the payment of the annual rent of Rs 400 for the first 10 years and thereafter of Rs 500 per year, with the right to terminate the lease at any time. The lessor would 13 AIR 1936 Lah

890 14 7 Bom LR 772 15 AIR 1954 Ass 58: ILR (1953) 5 Ass 207 16 AIR 1957 AP 619: 1956 Andh WR 1093 17 (1962) 3 SCR 876: AIR 1962 SC 413 not have the right to call upon him to give up possession at any time as long as he wanted to keep the land for his purposes observing the terms of the agreement.

29. After a lapse of more than 20 years, the respondent who succeeded to the original lessor's interest, brought the suit for ejectment of the assignee of the lessee's interest on the ground that a tenancy was one at will and stood determined on the service of notice to quit. The trial court decreed the suit which was confirmed in appeal. On further appeal, the High Court was of the view that after the lapse of 20 years, the lease was one for an indefinite period and could enure only during the lifetime of the lessee. The lease will not enure to the benefit of the assignee since it has not been accepted by the original lessor. This Court held as follows: (SCR headnote) "Held, that the lease, read as whole and properly construed, created a permanent tenancy and not a tenancy at will or one for an indefinite period valid only during the life of the lessee.

It was not correct to say that the stipulation granting the lessee the right to surrender the lease at any time after the first twenty years gave to the lessor, in the absence of such a provision in the lease itself, the right to call upon the lessee to quit at any time or that the stipulation was inconsistent with a permanent tenancy. The presumption attaching to a lease for building purposes for no fixed period, therefore, was not weakened in the instant case.

Janaki Nath Roy v. Dina Nath Kundu 18 and Baboo Lekhraj Roy v. Kunhya Singh 10 referred to.

Bavasaheb v. West Patent Co. Ltd.
distinguished.

Navalram v. Javerilal¹⁹, Promada Nath Roy v. Srigobind Chowdhry²⁰, Forbes v. Hanuman Bhagat²¹, and CIT v. Maharajadhiraj Kumar Visheshwar Singh²² discussed.

Held, further that it is always open to a lessee of any description to surrender his leasehold interest to the lessor by mutual consent. It is not necessary in law that there should be such consent at the time when the surrender is made.

Since in the instant case, the surrender after the lapse of twenty years had in terms been agreed to by the parties and that stipulation was for the benefit of the lessee, it could not be construed as in derogation of his right to a permanent tenancy."

30. After referring to this decision in Sivayogeswara Cotton Press case¹⁷ distinguishing the same on the following grounds, it was held in Chapsibhai Dhanjibhai Danad v. Purushottam²³ as under: (SCC p. 212, paras 12-14) "The effect of these clauses is that the first part of the document ensures that the lessor cannot charge rent higher than the agreed rent 18 (1931) 35 CWN 982: AIR 1931 PC 207 19 (1905) 7 Bom LR 401 20 ILR (1905) 32 Cal 648: 9 CWN 463 21 ILR (1923) 2 Pat 452 : AIR 1924 Pat 88 22 ILR (1939) 18 Pat 805 : AIR 1940 Pat 24 23 (1971) 2 SCC 205 : AIR 1971 SC 1878 even if the lessee were to remain in possession after the period of 30 years. That part is consistent with the lease being for an indefinite period, which means for the lifetime of the lessee. The next

part provides for the right to remove the structures 'after the lease period'. The words 'after the lease period' mean either at the end of the 30 years or on the death of the lessee, because, it also says that if the lessee were to remove the buildings before the expiry of 30 years, he would have to pay the rent for the remainder of that period. This part of the document does not show the intention that the lease was to be a permanent lease. It merely ensures the right to remove the structures if the lessee or his heirs so desired on the expiry of the lease period, i.e., either at the end of 30 years, or after the lifetime of the lessee. The heirs are mentioned here to provide for the contingency of the lessee dying before the expiry of 30 years and also for the contingency of his living beyond that period and continuing to occupy the land. In the event of the first contingency, the lessee's heirs would continue in possession till the expiry of 30 years and then remove the structures if they wished. In the case of the second contingency, the heirs of the lessee would have the right to remove the structures on the death of the lessee. In either event the right provided for is the right to remove the structures. It is not a provision for the lease being heritable and its being consequently a permanent lease. Thus, the lease is for a period certain, i.e., 30 years and on the expiry of that period if the lessee still were to continue to pay the rent, for his lifetime. In the event of his dying before that period, the benefit of the lease would enure to his heirs till the completion of 30 years. They would be entitled to remove the structures either at the end of the 30 years if the lessee were to die before the expiry of that period or at the end of the lessee's life were he to continue to be in possession of the leased property after the expiry of 30 years. But the lease did not create hereditary rights so that on the death of the lessee his heirs could succeed to them. In this connection, it is necessary to note that, as translated in English, it would appear as if the document uses the pronoun 'I', meaning as if the lessee, in the earlier part and the pronoun 'we', meaning the lessee and his heirs, in the latter part. Such a translation, however, is not correct. We ascertained from Mr Ratnaparkhi who after looking at the original Marathi assured us that the pronoun used throughout is *Ami*, which means 'we', a term often used in documents written in regional language for the executant instead of the singular 'I'. In our view the lease before us is clearly distinguishable from that in the case of *Sivayogeswara Cotton Press*¹⁷ where the leasehold rights were in clear terms made heritable and where the Court held that clause (14) though placed last in the document, governed all its terms. There is no provision in the present case comparable with such a clause. The lease was undoubtedly for an indefinite period which only means that it was to enure for the lessee's lifetime. Reference in it of the heirs of the lessee is only for the limited purposes set out earlier and not for making the leasehold interests heritable. We do not find in the document words such as those in *Sivayogeswara Cotton Press*¹⁷, which would compel us to the conclusion that the lease was intended to be permanent."

We have referred these two Supreme Court rulings for the sake of completion only.

31. We are of the view that the word 'certain' cannot mean certain on the date of the lease. It is enough if it is capable of being made certain on a future date. In the instant case, no doubt, the lease deed dated 11-7-1966 does not stipulate any term. Nevertheless, it is capable of being made certain because nothing is more certain than death. In this connection, we may also look at Sections 106 and 107 of the Transfer of Property Act. They refer to lease from year to year. Section 108(i) which refers to a lease of uncertain duration. Section 111 of T.P. Act, reads as under:

"111. A lease of immovable property determines-

(a) by efflux of the time limited thereby;

(b) whether such time is limited conditionally on the happening of some event by the happening of such event;"

32. Therefore, it is clear that this section refers to a period of lease being limited conditionally on the happening of certain event. The above provision clearly indicates that the period of lease need not be certain on the date of lease. Either by the terms of actual contract or by implication of law it is enough if it can be made certain on a future date.

33. The meaning of phrase *id certum est quod certum reddi potest* is "that is sufficiently certain which can be made certain". Herbert Broom says in *A Selection of Legal Maxims*, 10th Edn., at pp. 422-423 as under:

"*Certum est quod certum reddi potest* (Noy, Max., 9th Edn. 265.) That is sufficiently certain which can be made certain. This maxim, which sets forth a rule of logic as well as of law, is peculiarly applicable in construing a written instrument. For instance, although every estate for years must have a certain beginning and a certain end, 'albeit there appear no certainty of years in the lease, yet, if by reference to a certainty it may be made certain, it sufficeth'. Therefore, if a man make a lease for so many years as J. shall name, this is a good lease for years; for though it is at present uncertain, yet when J. hath named the years, it is reduced to a certainty. So, if a parson make a lease for twenty years, if he shall so long live and continue parson, it is good, for there is a certain period fixed, beyond which it cannot last, though it may determine sooner on the lessor's death or his ceasing to be parson. Such a lease, if granted at a rent or in consideration of a fine, whenever made, now however takes effect as a lease for ninety years determinable by notice after the death of the parson.

'It is true' said Lord Kenyon, 'that there must be a certainty in the lease as to the commencement and duration of the term; but that certainly need not be ascertained at the time; for if, in the fluxion of time, a day will arrive which will make it certain, that is sufficient. As, if a lease be granted for twenty-one years, after three lives in being: though it is uncertain at first when that term will commence, because those lives are in being, yet when they die it is reduced to a certainty, and *id certum est quod certum reddi potest*'. (emphasis supplied)

34. Mr Ashoke Sen, teamed Senior Counsel contends exactly this while Dr Ghosh, Senior Counsel for respondents would urge that on the date of commencement of lease itself, the period must be certain. We are not able to accept the contention of Dr Ghosh. We approve the rulings of the High Court referred to above which hold that it is enough if the period is capable of being ascertained at a future date on the happening of a certain event. In the case on hand, admittedly the lessee died on 16-12-1970, i.e. within the period of three years. Therefore Section 3 proviso of the Act will not apply. It means that Act will govern the rights of the parties.

35. Now, we pass on to the applicability of Section 2(h) of the Act. This definition is inclusive in nature. It confers the right of tenancy on specific heirs as would ordinarily be residing with him at the time of his death. In *Biswabani (P) Ltd. v. Santosh Kumar Dutta*⁷ it was held as under: (SCR p. 658 : SCC p. 19 1, para 6) "However, on the date of expiry of contractual tenancy the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 was in force and was applicable to the premises and, therefore, on the determination of contractual tenancy by efflux of time the terms and conditions of the lease are extinguished and the rights of such a person remaining in possession are governed by the statute alone. He is loosely described as statutory tenant which is another name for status of irremovability. [See *Anand Nivas (P) Ltd. v. Anandji Kalyanji Pedhi*1.]"

36. In this background, the applicability of Section 13 of the Act will have to be considered. It is the submission of Mr Ashoke Sen, learned Senior Counsel that the statutory definition under Section 2(h) of the Act is not subject to any contract between the parties. It is a provision made in the interest of public for protection of tenants. Such a provision cannot be waived by the tenants nor can the parties contract themselves out of it.

37. Section 13(1) of the Act reads as under: "13. (1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds namely:"

38. As a general proposition of law, there can be no demur that there is no estoppel against a statute. The language of Section 13 of the Act makes it clear that only if anything is found contrary in any other law an order or decree for the recovery of possession of any premises shall be made by any court in favour of the landlord against a tenant. This wording is peculiar unlike most of the rent control legislations where contract to the contrary is also enveloped in affording protection to the tenants against eviction. In view of the language of Section 13(1) of the Act, the parties have freedom to contract out of section. In this case clause (1) of the lease deed extracted above stipulates that the heirs of lessee will have no right to hold after the death of lessee and they have to deliver quiet, peaceful and vacant possession within three months after the demise of the original lessee. In other words, the right has been made specifically not heritable.

39. By way of contrast, if Section 34(4) of the Act is referred to, it is clear that this liberty to contract out of section becomes clear. Section 34(4) reads as under: "Where under the conditions of the tenancy, the tenant is bound to make any repairs, but fails to do so, the Controller shall, on application made to him in this behalf by the landlord of the premises, cause a notice to be served in the prescribed manner on the tenant requiring him to make such repairs within the time specified in the notice. If, after the service of the notice, the tenant fails to show proper cause or neglects to make such repairs within the time specified in the notice or allowed by the Controller, the landlord will be entitled, notwithstanding anything contained in this Act or in any contract, to sue the tenant for recovery of possession of the premises and such cost of such repairs as may be assessed by the court."

40. This sub-section has overriding effect over contracts as well, unlike Section 13 of the Act. The effect of above discussion is that the appellants cannot claim tenancy right. Accordingly the civil appeal is dismissed. However, there shall be no order as to costs.