



SUCCESSION TO TENANCY RIGHTS IN THE STATE OF MAHARASHTRA

Introduction:

In Maharashtra, tenancy rights are regulated under the Maharashtra Rent Control Act, 1999, which repealed the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947.

Section 7(15)(d) of the Maharashtra Rent Control Act, 1999 (“Rent Act”) deals with the devolution of tenancy when a tenant die.

Usually in civil cases, in case of death of party to litigation his legal heirs/ representatives can pursue the court cases further by impleading themselves in the matter at the hands of Plaintiff/ Petitioner. However, the provisions are slightly different when it comes to tenancy laws, specially in scenario of death of a tenant.

Upon the death of the tenant, the question arises of who shall inherit the tenancy rights of the tenanted premises? Which member of the family shall qualify as the successor to the tenancy rights?

The answer to the above lies under the Rent Act. The section 7(15) of the Rent Act defines the word “tenant” and section 7(15)(d) of the Act defines or rather provides for who shall be a tenant in case of death of an existing tenant.

Section 5(11)(c) of Bombay Rents, Hotel and Lodging Houses Rates Control Act (Repealed Act/ Old Act) provided certain contingencies which are now provided in section 7(15)(d) of the Rent Act with certain modifications. However, intent of legislature to provide for who shall be the tenant in case of death of the exiting tenant, remained the same.

Section 7(15)(d) under the Rent Act reads as under:

“in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,-

- (i) where they are let for residence, is residing, or*
- (ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,*

with the tenant at the time of his death, or, in the absence of such member, any heir of the

deceased tenant, as may be decided, in the absence of agreement, by the court.

Explanation-- The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.

Explanation:

Thus, section 7(15)(d) of the Rent Act states that a “member of a tenant’s family” who has been “residing with” the deceased tenant “at the time of his/her death” shall qualify first as the successor, to inherit the tenancy and in case of tenanted premises let-out for education, business, trade or storage, or any such purpose, the member/s of tenant’s family who was/were using the premises along with tenant at the time of his/her death and in absence of such member- any heir of the deceased tenant as may be decided in the absence of agreement, by the court.

Analysis:

Analysis of this section makes it clear that the right to tenancy on the death of a tenant devolves upon the members of the family who were particularly partakers in the benefits of the tenancy and were residing with the deceased tenant in the tenanted premises, or continuously operating the premises for commercial purposes, as the case may be, often excluding other legal heirs/representative who would otherwise be entitled to the same under general law of inheritance governing the deceased. Only when such a member or members are not available, will other legal heirs/representatives of the deceased come into the picture for claiming their rights in the tenanted premises and the court must then decide in such cases who is to be treated as the tenant.

The Supreme Court, while dealing with the provisions of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 in the case of *Vasant Pratap Pandit v. Anant Trimbak Sabnis*¹ held that that testamentary succession of tenancy right is not possible, as the tenancy rights are statutory rights and hence a tenant cannot bequeath his tenancy rights by a testamentary document.

The Supreme Court further held that, priority should always be given to the family member who resided along with the deceased tenant. “If the word “heir” is to be interpreted to include a ‘legatee’ (who inherits property under a will), even a stranger may have to be inducted as a tenant, as there would be no embargo upon a stranger being a legatee”. Thus, the word “heir” would be confined to only members of the family and introducing testamentary succession and giving restrictive meaning would not be accepted.

Further, succession in tenanted premises under the Rent Act can only be inherited by family members. The Bombay High Court, in the case of *Jaysen Jayant Rele & Ors. v. Shantaram Ganpat Gujar & Ors.*², held that the word “family” of the deceased tenant did not part with the ordinary meaning of the word “family” as held in common parlance, and included family

¹ 1994 SCC (3) 481

² AIR 2002 Bom 462

as consisting of father, mother, sons, daughters and all such blood relations and other relations arising from lawful marriages. Thus, the act strives to protect only those members who are immediate family of the deceased tenant.

Therefore, succession to tenancy rights under the Rent Act is a clear departure from the general rules of succession laws, as those heirs who would normally qualify as successors under the succession laws may not qualify as heirs to the tenancy rights under the Rent Act.

The expression 'residing with' as explained in *Collier v. Stoneman*³ states that it must be given its ordinary and proper significance. A person claiming to succeed to the tenancy under this clause must fairly and truly be said to have been 'residing with' the predecessor in the premises in the sense that the successor lived in and shared for living purposes the whole of the premises to which he or she claims to have succeeded.

Further, the definition of "resides" as per the judgment given by Bombay High Court under the 1999 act in the case of *Dharmvir Joshi v. Jayant Patwardhan*⁴ was construed to be something that is more than a temporary stay. The character of residence is adopted, and such residence must be permanent in nature.

Thus, succession to tenancy rights is based on possession and enjoyment of tenancy rights of a family member who has last resided with the deceased tenant. Therefore the 'heir' who wishes to claim tenancy rights of the deceased tenant must prove that he/she was permanently residing with the deceased tenant at the time of his/her death. Only such an "heir" will get priority over all other members of the family with respect to the inheritance of such tenancy rights over the premises.

In case of *Parubai Manilal Brahmin and Ors. v. Zaverbhai Tapodhan*⁵, the Gujarat High Court held that the Legislature enacted section 5(11)(c) of Bombay Rents, Hotel and Lodging Houses Rates Control Act (certain contingencies as contemplated in section 5(11)(c) of the old Bombay Rent Act, 1947 are now in section 7(15)(d) of the Maharashtra Rent Control Act 1999) are for the purpose of protecting the members of the tenants family residing with him at the time of his death by providing that, one of them should on the death of the tenant be regarded as a statutory tenant entitled inter alia to the protection of section 12 of the Rent Act. This protection was not extended to any and every member of the tenant's family but only to such member of the tenant's family who was residing with him at the time of his death. This requirement that the member of the tenant's family must be residing with him/her at the time of his/her death is an important requirement which throws considerable light on the true interpretation to be put upon the provisions of section 5(11)(c) and now on section 7(15)(d) of Rent Act.

In case of *Ganpat Ladha v. Sashikant Vishnu Shinde*⁶, the Supreme Court said that "it is obvious from the language of section 5(11)(c) that the intention of the legislature is giving protection to a member of the family of the tenant residing with him at the time of his death was to secure that on the death of the tenant, the member of his family residing with him at

³ 3 All E.R. 20 (24; (1957) 1 W.L.R. 1108; 101 S. J. 849)

⁴ Civil Revision Application No. 225 of 2015 and Civil Application No. 349 of 2015 - Bombay High Court (1964) 5 GLR 563

⁶ 1978 AIR 955

the time of his death is not thrown out.

Conclusion:

To conclude, the succession to tenancy rights is based on possession and enjoyment of tenanted property by a family member who had last resided with the deceased tenant. Therefore, the 'heir' who wish to claim tenancy right of the deceased tenant must prove that he/she was permanently residing with the deceased tenant at the time of his/her death. Only such an "heir" will get priority over all other member/s of the family with respect to the inheritance of such tenancy right in the tenanted premises.

DISCLAIMER

This alert has been written for general information of our clients and should not be treated as a substitute for legal advice. We recommend that you seek proper legal advice prior to taking any action pursuant to this alert. We disclaim all liability for any errors or omissions. For further clarifications you may write to Raksha Thakkar (raksha.thakkar@parinamlaw.com) and Sailee Dhayalkar (sailee.dhayalkar@parinamlaw.com).



MUMBAI

4TH Floor Express Towers, Ramnath Goenka Marg, Nariman Point, Mumbai - 400 021

Tel - 022 42410000

NEW DELHI

4 Todarmal Lane, Bengali Market, New Delhi 110001

Tel - 9810400283

PUNE

2nd Floor, Kundan Chambers, Thube Park, Next to Sancheti Hospital, Shivajinagar, Pune- 411 005.

Tel - 020 2553 0711

www.ParinamLaw.com