

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 834 OF 2015

- 1) Subhash s/o Shantilal Bagadiya,
Age: 57 years, Occu: Business,
R/o. Sadar Bazar, Hingoli,
Dist. Hingoli.
 - 2) Manoj s/o Shantilal Bagadiya,
Age: 41 years, Occu: Business,
R/o. As above.
- ...Petitioners

versus

- 1) Hafiza Begum w/o Hajikhan,
Age: 67 years, Occu: Household,
R/o. Tophkhana, Hingoli,
Dist. Hingoli.
 - 2) Salim s/o Hajikhan Pathan,
Age: 46 years, Occu: Business,
R/o.As above.
 - 3) Nazir s/o Hajikhan Pathan,
Age: 43 years, Occu: Business,
R/o.As above.
 - 4) Aayub s/o Hajikhan Pathan,
Age: 40 years, Occu: Business,
R/o.As above.
 - 5) Aazam @ Pasha s/o Hajikhan Pathan,
Age: 38 years, Occu: Business,
R/o.As above.
 - 6) Taherkhan s/o Hajikhan Pathan,
Age: 36 years, Occu: Business,
R/o.As above.
 - 7) Hanifa d/o Hajikhan Pathan,
Age: 28 years, Occu: Household,
R/o.As above.
 - 8) Munni d/o Hajikhan Pathan,
Age: 40 years, Occu: Household,
R/o.As above.
- ...Respondents

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Mr. S. S. Rathi, Advocate for petitioners.
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CORAM : N.W. SAMBRE, J.

DATE : 6TH APRIL, 2015

ORAL ORDER :

The petitioners-landlords, after determination of their claim for possession of the tenanted premises under the provisions of Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 (hereinafter shall be referred to 'the Act') sought execution of the decree, which came to be rejected in view of the provisions of Section 58 of the Maharashtra Rent Control Act, which came into effect on 31/03/2000.

2. The landlords, while questioning the legality of the impugned order, have invited attention of this Court to the provisions of Savings and Repeals provided in sub section (2) of Section 58 of the Maharashtra Rent Control Act and would urge that the execution proceedings are also saved and has sought to invoke the provisions of Section 6 and 7 of the Act.

3. In support thereof, learned Counsel for the petitioners has placed reliance upon the judgment of this Court in the matter of **Dhanraj Bhuddsingh Gupta vs Dinesh Purshottam & ors.** reported in **2002(6) Bom.C.R. 409.**

4. After service of notice for final disposal, the respondents have chosen to remain absent. As such, this Court is required to decide the matter on merits in absence of the respondents.

5. Looking to the provisions of Section 58(2) of the Maharashtra Rent Control Act, 1999, it is required to be noted that the said sub section provides for savings and repeals and has saved all the applications, suits and other proceedings under the said Act which are referred to in sub section (1) to be saved which are pending on the date of commencement of the Act before the competent authority. No doubt, Section 58(1)(c) of Hyderabad Rent Control Act, however saved. He prayed, in the light of Section 6 and 7 of the Bombay General Clauses Act, in my opinion, even execution proceedings are also saved. Support can be drawn from the very observations by this Court in the matter of **Dhanraj** (supra) and relevant extracts from para 4-A of the said judgment which reads thus:

“(v) The question which has to be considered is as to whether any legislative intention was expressed by the State Legislature, while enacting the new Act to the effect that a decree which as in the present case was passed under the Old Act prior to 31st March, 2000 on the ground of a change of user and subletting, would be rendered inexecutable. This issue has to be

considered having due regard to the well settled test which has been formulated by the Supreme Court in a judgment of three learned Judges in (Qudrat Ullah v. Bareilly Municipality)¹, A.I.R. 1974 S.C. 396. The Supreme Court there held that Section 6 of the General Clauses Act would apply generally in the absence of a special saving provision in the repealing statute, for when there is one then a different intention is indicated. The Supreme Court then held that "in any case where a repeal is followed by a afresh legislation on the subject, the Court has to look to the provisions of the new Act to see whether they indicate a different intention". Insofar as the present case is concerned, it would be necessary to note that Section 13(1)(a) of the Bombay Rent Act, 1947 provided as one of the grounds of eviction, that the tenant has committed any act contrary to the provision of Clause (o) of Section 108 of the Transfer of Property Act, 1882. Section 108(o) of the Transfer of Property Act, 1882 provides that the lessee must not use, permit and build property for a purpose other than that for which it was leased. Insofar as this case is concerned, it would be necessary to notice that the same ground of eviction is continued by Section 16(1)(a) of the new Rent Act which came into force on 31st March 2000. Similarly, it would be necessary to note that under Section 13(1)(k) of the Rent Act of 1947, one of the grounds for eviction was that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit. The same ground is now

continued by the legislature in Section 16(1)(n) of the new Rent Act. Similarly, there is no dispute about the fact that subletting continues to be a ground for eviction under Section 16(1)(e) of the new Rent Act. Having regard to these circumstances, it is thus apparent that while enacting the new Rent Act, the Legislature has duly continued to recognise and enforce a change of user and subletting as grounds on which a decree for eviction can be passed in favour of a landlord and against a tenant under the new legislation. There is absolutely no change in these two grounds which as already noted furnished a statutory ground for eviction under the old Rent Act of 1947 and which continue to remain available grounds for eviction under the new Rent Act. This circumstance, in my view, is sufficient to indicate that it could not possibly have been the intention of the legislature that a decree for eviction which was passed in favour of a landlord, as in the present case on account of a change of user and subletting would be rendered inexecutable because the appeal had been disposed of by the Small Causes Court before the date on which the new Rent Act came into force. From that perspective, the question as to whether the Writ Petition which had been filed under Article 227 of the Constitution was a proceeding under the Rent Act need not detain me, for even if as is sought to be urged on behalf of the Applicant, the Writ Petition under Article 227 is not regarded as a proceeding under the Act, it was not the intention of the legislature to render a decree that was validly passed under the old Rent Act of 1947 inexecutable upon the

enactment of the new Rent Act. That is obviously so because it could not be the intention of the legislature that a landlord in whose favour a decree of eviction was passed on the ground of subletting and change of user under the Rent Act must be driven to the filing of a fresh suit for eviction on those very grounds which the legislature has continued to recognise upon enforcement of the new Rent Act. The decree of the Small Causes Court was confirmed by the Appellate Bench and the Writ Petition which was thereafter filed by the Applicant was dismissed by this Court in October 2000. That decree which is validly passed under the old Rent Act of 1947 is capable of being executed notwithstanding the repeal of the earlier Rent Act.

In (Rabindra Nath v. Gour Mondal)², A.I.R. 1957 Calcutta 274, a Bench consisting of five Learned judge of the Calcutta High Court held that ordinarily no action can be taken under a temporary statute after it has expired and all proceedings pending on the date of its expiry terminated automatically. But, there may be provisions to the contrary in the Act itself, and it has to be seen whether it contained any provisions indicating an intention that even after its expiry it would remain alive for certain purposes. Similarly, it has been held by a Bench of five learned Judges of the Calcutta High Court in (Tarak Chandra v. Ratan Lal)³, A.I.R. 1957 Calcutta 257, that in the case of a temporary statute no proceedings can be taken under it after its expiry and proceedings already commenced terminate ipso facto, unless there is a special provision to the contrary. For

the reasons already indicated the Rent Act of 1947 did contain provisions to the contrary, specifically in Section 3(3). Moreover, the new Rent Control Act which came into force on 31st March, 2000 does not evince any intent to render inexecutable a decree passed, as in the present case on the ground of subletting and change of user, under the Rent Act of 1947.”

6. Perusal of the above referred observations, particularly having regard to the object with which new enactment i.e. Maharashtra Rent Control Act, 1999 was brought into force in no way makes the decree passed under the earlier Hyderabad Rent Control Act as unexecutable. In the judgment cited supra, the Court was alive to the provisions Section 6 of the General Clauses Act to the eventuality in question. This Court, having regard to the provisions of General Clauses Act and Section 58(2) of the Maharashtra Rent Control Act, has rightly formed an opinion that the decree passed pursuant to legal provisions of an Act at the relevant time when it was holding the field cannot be made unexecutable by virtue of repeal of the earlier Hyderabad Rent Control Act.

In the wake of above, it has to be inferred that the decree in favour of the present petitioners passed under the Hyderabad Rent Control Act is very much executable in view of the provisions of General Clauses Act and interpretation of Section 58 of

the Maharashtra Rent Control Act, 1999.

7. In view thereof, the order dated 16/08/2014 passed by Sub Divisional Officer, Hingoli is set aside and the execution proceedings initiated by the petitioners-landlords vide Case No. 2011/ROR/KA-117 stands restored to the file of the said authority.

8. The proceedings before the Rent Control Authority are expedited.

9. The writ petition stands disposed of in above terms.

[N.W. SAMBRE, J.]