

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1853 OF 2014

Urmi Deepak Kadia	}	
Age:59 years, Occ.:Business	}	
95 Hazel CT, Dayton, New Jersey	}	
08810 U. S. A.	}	Petitioner
Versus		
State of Maharashtra	}	
Through Government Pleader	}	Respondent

Mr. Jawahar J. Thakkar for the Petitioner.

Mr. Anil Singh-Advocate General with
Mr. Sandesh Patil, Mr. Aroz Shah and Mr. Anil
D. Yadav i/b. Mr. Harsha Shah for the
Respondent.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

**RESERVED ON :- JULY 10, 2015
PRONOUNCED ON :- AUGUST 11, 2015**

JUDGMENT :- (Per S. C. Dharmadhikari, J.)

By this Writ Petition under Article 226 of the Constitution of India, the Petitioner seeks a declaration that section 7(15)(d) of the Maharashtra Rent Control Act, 1999 (for short “the MRC Act”) is inconsistent with the Hindu Succession Act, 1956 (for short “the HS Act”) as amended from time to time. The argument is that to the extent section 7(15)(d) of the MRC Act provides protection to the family member, who was residing with the deceased tenant, at the time of his

death, even though such family member is not a heir of the deceased tenant, deprives the heir of the deceased tenant of his right and status under the Hindu Succession Act, 1956.

2) This argument is premised on the fact that the rule of intestate succession set out by the HS Act has been given an overriding effect. Section 4 of the HS Act is giving such overriding effect. Section 4 of the HS Act is given such overriding effect over any other law in force immediately before the commencement of the HS Act and it shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in the HS Act. This overriding effect of the HS Act is taken away by section 7(15)(d) of the MRC Act. Hence, by virtue of the constitutional mandate enshrined by Article 254(1), it would be void because, the HS Act is traceable to Entry 5, List III (concurrent list) of Schedule VII of the Constitution of India. When such is the list and the entry therein, by virtue of Article 254(2) of the Constitution of India, the condition to be fulfilled is that with respect to one of the matters enumerated in the concurrent list, if the law is made by the legislature or State, then, such or any provision therein is repugnant to the provisions of earlier law made by the Parliament or existing law with respect to such matter, then, the law made by such legislature of State, if it has been reserved by the President of India for assent and has

received his assent, it will prevail in that State. In the present case, there is a clear repugnancy. The HS Act is an earlier law, whereas the MRC Act is a later law. The MRC Act is made by the State legislature and contains the above noted provision. Therefore, it should be declared void and of no legal effect. More so, when there is no material on record to indicate that the assent of the President has been received in the manner laid down by the Hon'ble Supreme Court of India in the case of *Kaiser I Hind Pvt. Ltd. and Anr. Vs. National Textile Corporation (Maharashtra North) Ltd. and Ors.* reported in **(2002) 8 SCC 182**.

3) The Petitioner raises these issues in the backdrop of a deed of settlement dated 9th august, 1948. The Petitioner states that she is daughter of Late Ramanlal Kikabhai Amarchand. Late Kikabhai Amarchand had executed this deed of settlement dated 9th August, 1948 and Kikabhai Amarchand, Leelavati Kikabhai, Ramanlal Kikabhai and Pravin Kikabhai were Trustees under the deed of settlement. After referring to the terms of the settlement, it is stated that the Trustees purchased an immovable property at Mumbai, more particularly described in para 51 of the Writ Petition. The immovable property is referred as Amar Niwas. Late Kikabhai Amarchand expired at Mumbai on 29th June, 1958 and Mrs. Leelavati Kikabhai Amarchand also died at Mumbai on 4th February, 1983. Thereafter, new Trustees came to be appointed and out of the new Trustees, Mr. Pravin Kikabhai Dalal died

at Mumbai on 2nd May, 2001. Mr. Ramanlal Kikabhai Dalal was not keeping good health and reference to the same is made in para 55, of the Writ Petition. Ramanlal Dalal executed a Will on 29th March, 2002. He had 25% share in the property Amar Niwas and he was also a tenant in respect of a residential flat situated at Amar Niwas, 61-B, Bhulabhai Desai Road, Sophia College Lane, Breach Candy, Mumbai 400 026. He also had tenancy rights in respect of commercial premises. All his properties are described in para 56 of the Writ Petition. In the Will, he had stated that his family comprises of Urmi Kadia, the Petitioner, who is presently residing in USA, Kumud R. Dalal, Shrenik R. Dalal and Paresh R. Dalal. Upon his death, the Petitioner, in terms of the Will, became the 1/3rd owner of Amar Niwas and as far as the tenancy rights are concerned, they were bequeathed equally between Shrenik and Paresh. If the Trust deed specifically vests the property in the heirs, then, the Will is contrary to the Trust deed. All the heirs are entitled to succeed to the estate because the Settlers wanted to settle the property amongst all the heirs of their four sons after the death of the sons. The Petitioner therefore claims equal rights insofar as the tenancy of the residential flat and that is how in para 59 she submits that the Will to the extent contrary to the deed of settlement will not bind her and as far as the residential flat is concerned, she is entitled to the tenancy right in the same along with Shrenik and Paresh.

4) She filed a declaratory Suit in the Court of Small Causes at Mumbai being RAD Suit No. 2231 of 2010 and in which she placed her version by pointing out that she was not residing with Ramanlal Kikabhai Dalal at Mumbai at the time of his death but was residing in USA with her husband. She applied to the Court of Small Causes and requested it to decide the issue and question that the MRC Act does not override the HS Act. But, the Court of Small Causes passed a Judgment and order dated 11th February, 2013 holding that it has no jurisdiction to decide the said issue being a constitutional issue. The Petitioner, being aggrieved by this finding and conclusion, preferred a Review Application bearing No. 15 of 2013. It appears that the Review Application was not pressed and this Writ Petition was filed in this Court on 10th July, 2014 claiming the above declaration.

5) Though the Writ Petition refers to a Notification under which the President of India gave assent to the MRC Act, but the argument is entirely based on the alleged inconsistency and repugnancy in the two legal provisions.

6) Mr. Thakkar, the learned Counsel appearing for the Petitioner submits that a bare reading of section 7(15)(d) would indicate as to how it is inconsistent with the rule of succession

enunciated in the HS Act. He relies upon sub-clause (d) of clause (15) of section 7 of the MRC Act to submit that when a tenant dies and the premises are let for residence or for education, business, trade or storage, then, any member of the tenant's family residing with him or using the premises at the time of his death becomes the tenant of the said premises. It is only in the absence of such member that any heir of the deceased tenant and as agreed if there are more than one heir or if there is no agreement but a dispute, then as decided by the Court can succeed and can be termed as a tenant of the premises. Thus, a heir cannot step in straight away. It is only in the absence of a member of the family and not fulfilling the above condition that the heir can stake his/her claim. Thus, the member of the Tenant's family and who can becomes a tenant need not be his or her heir. To that extent, the law of succession and the rule therein is displaced. Mr. Thakkar therefore submits that there is a clear conflict. The rights of the heir to succeed to tenancy are restricted. If section 4(1)(b) of the HS Act is noticed, then, nothing can prevent the heirs from succeeding to the estate as per the rule of succession set out in the HS Act. The overriding effect of the HS Act enables them to step in. In the present case, there is no record which would indicate that such inconsistency or the conflicting provisions in both enactments were brought to the notice of the President and his assent was sought on this specific aspect. Hence, to

this extent, there is no compliance with the constitutional mandate enshrined by Article 254(2) of the Constitution of India. Hence, the Petition deserves to succeed.

7) Reliance is placed upon the Judgment of the Hon'ble Supreme Court in the case of *Kaisar I Hind* (supra). In all fairness, our attention is also invited to the Judgment of the Hon'ble Supreme Court in the case of *Vasant Pratap Pandit vs. Dr. Anant Trimbak Sabnis* reported in **(1994) 3 SCC 481**.

8) On the other hand, Mr. Singh, the learned Advocate General appearing on behalf of the State submits that there is no merit in the Writ Petition. It has been repeatedly held that the area and field covered by the two enactments, namely the MRC Act and the HS Act is not same but entirely different. The MRC Act is seeking to regulate and control the relationship created by general law, because the State found that the landlords are exploiting the situation arising out of scarcity of accommodation. The MRC Act, as is clear from its preamble, seeks to prevent the exploitation of tenants and at the same time, ensures a reasonable return for the investment in properties by the landlords. In that regard, our attention is invited to the preamble to the Bombay Rents, Hotel and Lodging House Rates control Act, 1947 and the MRC Act. It is submitted by Mr. Singh that the arguments of the Petitioner

have no merit because there is no repugnancy between these enactments much less any provision therein. Therefore, Article 254(2) would have no application to the case of the Petitioner. If she is aggrieved and dissatisfied for having been left out of the estate even to a limited extent, her remedies are not to approach this Court and challenge the validity of any provision in the MRC Act. For, the provision like section 7(15)(d) therein is inserted to enable the landlords after the death of a tenant to deal with a single member of his family and not to join issues with the heirs and legal representatives. Eventually, it is to enable the landlord to recover the rent and other charges in respect of the premises and equally for the protection of the tenant's family that such clauses are enacted. The State legislature never intends to affect the rights under the general law and particularly the right to succeed to the estate of the deceased. In such circumstances, and when the aim and object of the HS Act is to amend and codify the law relating to intestate succession of a Hindu then all the more the argument of Mr. Thakkar should be rejected.

9) In support of the submissions recorded above, Mr. Singh has relied upon the following decisions:-

- (i) Judgment passed by a Division Bench of Bombay High Court in the case of *Rajaram Brindavan Upadhyaya vs. Ramraj Raghunath Upadhyaya* reported in 1977 Mh.L.J. 792.

(ii) *Engineering Kamgar Union vs. Electro Steels Castings Ltd. and Anr.* (2004) 6 SCC 36

(iii) *Mina Srinivasan Krishnan vs. Arun Bhaskar Adarkar* 2014(5) Bom. C.R. 53

10) On proper appreciation of the rival contentions, we are unable to agree with Mr. Thakkar. Mr. Thakkar's general arguments and on the issue of repugnancy overlook the fact that there is no material at all. A Petition under Article 226 of the Constitution of India to this Court ought to indicate in clearest terms as to how the constitutional issue arises and in the backdrop of a particular case. No general or academic discussion is permissible and the time of the Highest Court in the State cannot be wasted in such discussion. A proper and complete foundation has to be laid backed by factual details based on which such a challenge is raised. It has to be averred as to how there is a repugnancy and which right of the Petitioner guaranteed under the general law made by Parliament allegedly has been affected by a contrary provision allegedly in the State law. In other words, how the question of applicability of the constitutional provision arises must be indicated and set out with requisite factual details. When it is apparent that beyond quoting the paragraphs from the Judgment in the case of *Kaisar I Hind* (supra), the Petition contains no factual averments about why if the assent of the Hon'ble President of India was necessary, the attention of the President ought to have been invited specifically to

every inconsistent provision in the MRC Act, how the Petitioner proceeds to assume that no such care and caution has been taken by the State before obtaining the assent of the President of India, has not been clarified at all. Even if the Petitioner has an adverse order in her proceedings before the Court of Small Causes at Bombay, it is not as if she cannot protect her right, title and interest in the property by taking assistance of the general principles of law and the rule of succession enacted in the HS Act by approaching a competent civil Court. If during the course of trial of the Suit or such proceedings and particularly while dealing with her assertion to succeed to the tenancy rights in respect of the flat in question the civil or competent Court expresses a view that a constitutional issue or question arises, then that question can be referred for opinion by the competent Court to this Court. There are enough powers of that nature and conferred in the Trial Courts. However, today on the strength of the order passed by the Court of Small Causes and which is capable of being challenged in a higher Court, we cannot presume that the Petitioner is without any legal recourse. The issue raised in these circumstances is therefore academic. There is no foundation for the same and laid in the Writ Petition.

11) Apart therefrom, we find much substance in the contentions of Mr. Singh that for Article 254(2) to apply, the Court must

conclude that in terms of Article 254(1) there is a repugnancy in any provision in the law made by the State legislature with any provision which is made by the Parliamentary law or any provision in the State law is repugnant to any provision of an existing law made by the Parliament with respect to the matters in the concurrent list. We do not find that any such repugnancy is spelt out. Article 254 of the Constitution of India reads as under:-

“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States – (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

12) Mr. Singh's reliance on the Judgment of the Hon'ble Supreme Court in the case of *Engineering Kamgar Union* (supra) is thus well placed. The Hon'ble Supreme Court has reiterated its earlier views

and conclusions. From a reading of this Judgment of the Hon'ble Supreme Court, it is apparent and from para 21 that the Central Act and the State Act must indisputably cover the same field. The Hon'ble Supreme Court in that case was not concerned as much with the interpretation of Article 254 but by reason of the enactment made by the Parliament or the State in exercise of their legislative powers contained in List I and List II of the VIIth Schedule of the Constitution of India the effect of one Act over the other in the event it is found that there exists a conflict. Therefore, it reiterated the principle that as far as the question of repugnancy is concerned, firstly it must be shown that the two enactments contain inconsistent and irreconcilable provisions so that they cannot stand together or operate in the same field. The inconsistency must be appearing on the face of the two statutes. The tests as laid down in the case of *M. Karunanidhi vs. Union of India* reported in (1979) 3 SCC 431 are therefore rightly pressed into service by Mr. Singh before us.

13) We are of the view that the area and field covered by the MRC Act is entirely different. The provision such as definition of the term 'tenant' appearing in section 7(15) must be read in the backdrop of the object and purpose sought to be achieved by the MRC Act. It is not to create a separate class or to carve out a distinct rule of succession but

to merely enable somebody to step-in in place of the deceased tenant until the rights under the general law are determined that such a provision has been inserted and for protection of the interests of both, the landlord and tenant.

14) We do not find that there is anything contrary to this principle which is laid down in the case of *Vasant Pratap Pandit* (supra). There, the question was about a tenant (Tarabai) of the disputed premises dying issue-less. She left behind the Will bequeathing the properties including tenancy rights to her sister's son Gopal and appointing the Appellant - her brother's son as Executor of the Will. The Respondent/Defendant, who happened to be the grandson of a sister of the Legatee and his wife were staying with Tara Bai in the disputed premises. After her death, the Appellant called upon the Respondent to vacate the premises and on his refusal, instituted a Suit for eviction in the City Civil Court, Bombay. The Suit was resisted principally on the ground that the bequest of the tenancy rights amounted to transfer and it was impermissible under section 15 of the Act. That is how the Respondent claimed that he cannot be evicted. This contention was negated by the Trial Court and the Suit came to be decreed. The Respondent preferred an Appeal in the High Court and while allowing the Appeal and dismissing the Suit, the High Court held

that the word 'heir' appearing in section 5(11)(c) of the Act did not include 'legatee' and that the words 'assign' and 'transfer' appearing in section 15 of the Act were used in a generic sense to include bequest. Therefore, the Suit itself would not lie.

15) The Hon'ble Supreme Court in that context held that the word 'heir' appearing in different legislations maybe construed both in a wider as well as in a narrow sense and which sense would be applicable to the facts of a particular case would depend on the intention of the scheme of the particular legislation in which the question occurs. The Hon'ble Supreme Court then proceeds to analyse as to what would be the ambit and scope of the words 'assign' and 'transfer' appearing in section 15 of the Bombay Rent Act. It is in that context that the observations in para 14 of the Judgment have been made. However, the Hon'ble Supreme Court has held that the words in section 5(11)(c)(i) have been incorporated to meet a situation where there are more than one heir. The words “as may be decided in default of agreement by the Court” appear in the context of there being no member of the family residing with the tenant at the time of his death and there is no agreement between the heirs as to who should succeed to the tenancy rights. If there is no agreement, then, the Court has to decide who can be treated as a tenant. All this is in the context of the Will which was

left behind by the deceased tenant and whether the bequest of the tenancy rights could have at all been made and if such bequest goes contrary to the plain language of the section can the testator's wish be foisted on the landlord. In the case of testamentary disposition where the wish or Will of the deceased has got to be respected, a decision of the Court will not arise. The rent control legislation in a particular provision could not have intended to confer such a right on the testamentary heir. Otherwise, the right of the landlord to recover the possession will stand excluded even though the original party (the tenant) with whom the landlord had contracted is dead. The Hon'ble Supreme Court in para 14 of the decision in the case of *Vasant Pandit* (supra) has clarified that in certain contingencies as contemplated in section 5(11)(c)(i) of the old Bombay Rent Act, 1947 and now section 7(15)(d) of the MRC Act certain heirs are unable to succeed to a statutory tenancy. To this extent, departure is made from general law. In the circumstances, we do not see how such observations of the Hon'ble Supreme Court would be decisive.

16) In a decision in the case of *Pushpa Rani and Ors. vs. Bhagwanti Devi and Anr.* reported in **AIR 1994 SC 774** the Hon'ble Supreme Court held that when a tenant dies, it was the person who continued in occupation of and carried on business in the business

premises alone with whom the landlord should deal and other heirs must be held to have surrendered their right of tenancy. In a later pronouncement in the case of *State of West Bengal and Anr. vs. Kailash Chandra Kapur and Ors.* reported in **AIR 1997 SC 1348** the Hon'ble Supreme Court, after referring to the view taken by this court in the case of *Dr. Anant Trimbak Sabnis vs. Vasant Pratap Pandit* reported in **AIR 1980 Bom. 69** held as under:-

“11. 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 right 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 (AIR 1986 SC 600) (supra). In that case, S. 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 (AIR 1985 SC 796) (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 leasehold interest may be bequeathed by a testamentary disposition, the landlord is not bound by it nor a stranger be thrust as tenant against the unwilling landlord.”

17) Therefore, there appears to be no conflict in the two provisions. The HS Act amends and codifies the law relating to succession amongst Hindus and therefore the overriding effect given to

it by section 4(1)(b) over other law in force immediately before commencement of the HS Act relating to intestate succession amongst Hindus, that law ceased to apply insofar as it is inconsistent with any other provisions contained in the HS Act. The reliance placed on this clause by Mr. Thakkar is entirely misplaced. Once we understand the controversy in the above manner, then, we do not see how we can apply the mandate of Article 254 of the Constitution of India. That Article has no application.

18) We have already held that nothing in clause (d) of section 7(15) of the MRC Act interferes with the rule of succession enacted by the HS Act. That definition of the term 'tenant' has been inserted to mean any person by whom or on whose account rent is payable for any premises and includes firstly such person who is a tenant or who is a deemed tenant or who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord or who has derived title under a tenant or to whom interest in premises has been assigned or transferred as permitted by virtue of or under the provisions of any of the repealed Acts. Secondly, it includes a person who is deemed to be a tenant under section 25 of the MRC Act or a person to whom interest in premises has been assigned or transferred as permitted under section 26 of the MRC Act and finally, 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, when the premises are let for residence, is residing or when the premises 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, will step in. If there was any intention to interfere with the law of succession and the rule laid down thereunder, the words “any heir of the deceased tenant” would not have been appearing in the definition at all. We also find that the definition read in its entirety reveals as to how the tenant means any person by whom or on whose account rent is payable for any premises and includes, after the death of the tenant, a member of the tenant's family. It is not as if only a right is created by this provision in the member of the family residing with the tenant or carrying on business with him but there is a duty and obligation while permitting the member of the family to step in after the tenant's demise and that is to pay rent and other charges for the premises in terms of the MRC Act and also to abide by it so far as the matters covered by it. Therefore, we do not find that there is any substance in the contentions of the learned Counsel appearing for the Petitioner.

19) As a result of the above discussion, the Writ Petition fails and is dismissed.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)