

SMT. JUTHIKA MULICK AND ANR.

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v.

DR. MAHENDRA YASHWANT BAL AND ORS.

OCTOBER 28, 1994

[S. MOHAN AND M.K. MUKHERJEE, JJ.]

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West Bengal Premises Tenancy Act, 1956—Sections 2 (h), 3 proviso—Nature of Lease—Lease for life time of lessee, not heritable—Lessee's heirs to yield up and deliver peaceful possession within three months after death of lessee—Lessee died within three years of tenancy—Heirs of deceased tenant originally residing with tenant at time of his death continuing in possession of premises—Whether lease in question is covered by proviso to Section 3—Held, No—Act will govern rights of parties—Whether heirs will fall within definition of Section 2 (h) —Held, No.

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The predecessors of the respondents leased out a suit premises under a registered lease deed. The lease deed contained a covenant that the lease was for the life time 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 within three years of tenancy. His heirs did not deliver possession. Lessor filed suit for eviction of the defendants. The principal defence raised was that the original lessee having died within three years, the lease deed will fall under category of a lease for less than five years by operation of statute. Therefore, the matter would be governed by the West Bengal Premises Tenancy Act and the defendants who were residing in the suit premises with the lessee during the lifetime have become monthly tenants under the plaintiffs, by operation of law. The lessor filed suit for eviction which was dismissed.

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On appeal, the High Court held that under the terms of the lease deed, the lease was not heritable. Therefore, the defendants would not fall within the definition of tenant u/s 2 (h) of the Act. The statutory protection would not be available to the defendants. This appeal had been filed by the defendants against the judgment of the High Court.

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A It was submitted by the appellants that the findings recorded by the High Court were not correct. The definition 'the tenant' u/s 2 (h) of the Act is inclusive taking within it all persons as tenants who continued in possession after the termination of tenancy in their favour and also persons who had been the heirs of the deceased tenant who had been originally residing with the tenant at the time of the death

B and who had been continuing in possession of the premises in question. It was alleged that the right of statutory tenant was a personal right granted by the statute. He had a right to continue in possession so long as he observed the conditions of his tenancy and of the statute. The statutory definition is not subject to any contract between the parties. It was a provision made in the interest of public for the protection of

C tenants. Therefore, such a benefit can not be waived by the tenant nor can the parties contract themselves out of it.

D It was further submitted by the appellants that 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 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. Thus, it is submitted that the judgment of the High Court is liable to be set aside.

E The respondents argued 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. In view of this 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 established that on the date of the lease, it was for less than 20 years, they can not succeed. It is submitted that in order to attract the provisions of Section 3 of the Act, the lease deed must provide that it was for a period of 20 years and the period limited by such lease is not terminable before its expiration, at the option by either party. The period of lease must be ascertainable on the date of lease. In this case, it is clearly stipulated that on the death of tenant, heirs in possession can not continue. There being no heritable right, Section 2 (h) of the Act has no application. If the intention of the parties was not to confer heritable right, such a

F contract is not overridden by the Act.

Dismissing the appeal, this Court

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HELD : 1.1. Section 105 of the Transfer of Property Act defines a lease. 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 whether the word 'tenant' u/s 105 of the Transfer of Property Act, means really certain or capable of being made certain on a future date, and whether it would be 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. (258-G, 259-D)

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1.2. 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 does not stipulate any term. Nevertheless, it is capable of being made certain because nothing is more certain than death. (265-C)

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1.3. 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. In the on hand, case admittedly the lessee died within the period of three years. Therefore, Section 3 proviso will not apply. It means that Act will govern the rights of the parties. (266-G)

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Lekhraj Roy v. Kanhya Singh, Indian Appeals, Vol. 4, 1876; Contonment Board v. W.I. Theatres Ltd., AIR (1954) Bom 256; Sree Sankarachari Swamiar v. Varada Pallai, (1904) Indian Law Reports 27, Madras; Ram Chand Manchanda v. H.G. Lush, AIR (1936) Lahore 890; Hamida Khatoon v. Shebananda, AIR (1954) Assam 58; Konijeti Venkayya Subbarao and Anr., AIR (1957) AP 619; Sicayogowara Press and Ors. v. M. Panchaksharappa and Anr., [1962] 3 SCR 876 and Chapsibhai v. Purushottam, AIR (1971) SC 1878, relied on.

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2. The definition of 'tenant' in Section 2 (h) of the Act is inclusive in nature. It confers the right of tenancy of specific heirs as would ordinarily be residing with him at the time of his death. (266-H)

Biswabani (P) Ltd. v. Santosh Kumar Dutta and Ors., [1980] 1 SCR 650, relied on.

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A 3. As 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'. This wording is peculiar unlike most of the Rent Control Legislation 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 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.

C (267-F-H)

4. 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. This sub section has overriding effect over contracts as well, unlike Section 13 of the West Bengal Tenancy Act. In the instant case, the appellants cannot claim tenancy right. (268-A, D)

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8545 of 1983.

From the Judgment and Order dated 8.9.82 of the Calcutta High Court in O.D. No. 105 of 1974.

E A.K. Sen, S.B. Sanyal and S.B. Upadhyay for the Appellants.

Dr. Shankar Ghose and Ms. Radha Rangaswamy for the Respondents.

The Judgment of the Court was delivered by

F 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.

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

G The predecessors of the respondents leased out a suit premises No. 266A, 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 life time 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

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of the death of the lessee unconditionally and without any objection A 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 B 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 C 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 No. 1 by money order by defendant No. 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.

By judgment dated 16.1.1973, the Trial Court dismissed the suit. D 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 be 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. E F

Mr. Ashok Sen, learned Senior Counsel appearing on behalf of the appellants draws our attention to Clause I 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; G

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

- A 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 Private Ltd. v. Anandji Kalyanji Pedhi and Others.*, AIR (1965) SC 414 and *Kanji Manji v. Trustees of Port of Bombay*, AIR (1963) SC 468 at 471.

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- D This Court in *The Management of Orissa Transport Co. v. The workmen*, AIR (1976) SC 2229 has held that a statutory tenant has an 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 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.
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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. Jagdish Chandra Deb Dhabal Deb*, [1952] SCR 269, *Biswabani (P) Ltd. v. Santosh Kumar Dutta and others*, [1980] 1 SCR 650 at page 658 and *Indira Rani Ghosh v. Ashok*

Kumar Ghosh, AIR (1932) P.C. 269 at page 272. Thus, it is submitted that A the judgment of the High Court is liable to be set-aside.

In meeting these submissions, Dr. Shankar Ghosh, learned Sr. 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. B

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. C

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 Edition, para 115. The passage therein has been approved by the Division Bench of the Bombay High Court in *Ramchandra Balwant Tilak v. Narasinha Chintaman Kelkar*, AIR (1931) Bombay 466. To the similar effect an observation is found in Hill and Redman's Law of Landlord and Tenant, (Butterworth 16th Edition) at page 57 wherein it is categorically stated that duration of term of tenancy must be fixed by specifying the number of years, in the first instants, 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. D E F G

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 onward after the death of tenant, the Act applies. H

A 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.

B 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.

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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 :

D "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."

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

F "[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 -

G (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.

H (2) Notwithstanding anything to the contrary contained in sub-section (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; A

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." B

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 : C

"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 garrage and servant and courtyard and one bathroom on the ground floor of premises No. 266A, Chittaranjan Avenue, Calcutta more particularly mentioned and described in the schedule here under 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 sixty) monthly and every month and payable before the fifteenth day of each month for the month of immediately proceeding 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 placeful and vacant possessions of the demised premises within three D
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A 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 (e) Not to sublet 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."

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The following emerge by reading of the above clause.

C i) The lessee was to hold the demised premises during his life;

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;

D iii) They shall have no right to hold 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 sublet, assign or transfer either the whole or any part of the demised premises thereof.

E 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;

F 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.

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

H "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 A 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, B 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 C transferee to the transferor.

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 Edition, paragraph 115 occurs the following passage [which has found approval at the hands of Bombay High Court in *Ramchandra Chintaman Kelkar's case* (supra)]:

"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 ascertained 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 may years as A. as in the manner of B."), or capable before the lease takes effect of being rendered so."

In *Hill and Redman's Law of Landlord and Tenant Butterworth's* 16th Edition, page 57, it is stated :

A "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"

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

Now we will come to case law. As to construing a grant, the Privy Council held in *Lekhraj Roy v. Kanhya Singh*, Indian Appeals, Volume 4, 1876, 223 at page 225 as under:

E "If a grant be made to a man for an indefinite period, it ensures, 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."

In *Cantonment Board, Poona v. W.I. Theatres Ltd.*, AIR (1954) Bombay 256, it was held at page 261 as under:

F "It if can be ascertained definitely what that term (of the lease) is, the rule of construction that a grant of an indefinite nature ensures only for the life of the grantee would not apply. If a grant be made to a man for an indefinite period, it ensures, generally speaking, for his life-time, 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."

H In *Sree Sankarachair Swamiar v. Varada Pallai*, 1904 Indian Law Reports, 27 Madras 332 at page 336, 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 applied would be not whether the term is in itself certain but whether it is capable of being made certain. *Id certum est quod redi certum potest.*”

In *Ram Chand Manchana v. H.G. Lush*, AIR (1936) Lahore 890, 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, Page 523, Gour’s Law of Transfer, Edn. 6, Vol. 3, para 3462, 7 Bom LR 772 (1) and 133 I C 839 (2).”

In *Hamida Khatoon v. Shibananda*, AIR (1954) Assam 58, it was held at page 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 expressed 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.”

In *Konijeti Venkayya and another v. Thammana Peda Venkata Subbarao and another*, AIR (1957) Andhra Pradesh 619 at page 621 it is observed:

“The period is ‘certain’ if it can be made certain on a future date, on the principle *id certum est quod certum redi* H

A *potest.* A lease for the lifetime of the lessor or lessee or of any other living person will be valid in law."

Two decisions of this Court which have a bearing on this question may now be seen. In *Sivayogeswara Press, Devangere and others v. M. Panchaksharappa and another*, [1962] 3 SCR 876, where the lease-deed

B provided for the first 20 years the lessee was to pay a fixed rent of Rs. 350 every in year in advance and if he removed his factory within that period he would still have to pay the said rent for the twenty 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 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.

C After a lapse of more than twenty years, the respondent who succeeded to the original lessor's interest, brought the suit for ejection of the

D 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 twenty years, the lease was one for an indefinite period and could ensure only during the lifetime of the lessee. The lease will not enure to the benefit of the assignee since it

E has not been accepted by the original lessor. This Court held as follows:

F "That the lessee, 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.

G 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 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.

H *Janaki Nath Roy v. Dina Nath Kundu*, (1931) 35 C.W.N. 982 and *Baboo Lekhraj Roy v. Kanhya Singh*, (1877) L.R. 4 I.A. 233 referred to.

Babasaheb v. West Patent Co. Ltd., I.L.R. 1954 Bombay A 448 distinguished.

Navalram v. Javerilal, (1905) 7 Bombay L.R. 401, *Promoada Nath Roy v. Srigobind Chowdhry*, (1905) I.L.R. 32 Cal. 648, *Forbes v. Hanuman Bhagat*, (1923) I.L.R. 2 Pat. 452 and *Commissioner of Income Tax v. Maharajadhiraj Kumar Visheshwar Singh*, (1939) I.L.R. 18 Pat. 805, discussed. B

Held, further that it is always open to a lessee of any description to surrender his lease-hold 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. C

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.” D

After referring to this decision in *Sivayogeswara Cotton Press* case (supra), distinguishing the same on the following grounds, it was held in *Chapsibhai v. Purshottam*, AIR (1971) SC 1878 as under: E

“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 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 documents 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 F G H

A 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 ensure 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 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.

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E 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'.

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G In our view the lease before us is clearly distinguishable from that in the case of Sivayogeswara Cotton Press [1962] 3 SCR 876 where the leasehold rights were in clear terms made heritable and where the Court held that cl. (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

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period which only means that it was to ensure 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, which would compel us to the conclusion that the lease was intended to be permanent" for the sake of completion only. A B

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:

"A lease of immoveable property determines - D

(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. E

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 term of actual contract or by implication of law it is enough if it can be made certain on a future date. F

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 Edition at pages 422-423 as under:

"*Certum Est Quod Certum Reddi Potest* (Noy, Max., 9th Ed. 265) - That is sufficiently certain which can be made certain. G

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 H

A 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 person make a lease for twenty years, if he shall so long live and continue person, 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 person. 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 person.

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"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 certainty 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)

Mr. Ashok Sen, learned Sr. Counsel contends exactly this while Dr. Ghosh, Sr. 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.

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 and others.*, [1980] 1 SCR 650, it was held at page 658 as under:

“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 Private Ltd. v. Anandji Kalyanji and others*, [1964] 4 SCR 892.”

In this background, the applicability of Section 13 of the Act will have to be considered. It is the submission of Mr. Ashok Sen, learned Sr. 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.

Section 13 (1) of the Act reads as under:

“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.”

As 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.

A 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.”

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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.

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Appeal dismissed.