(1980) 02 BOM CK 0029

Bombay High Court

Case No: Writ Petition No. 201 of 1970

Sau, Kusum Bhimrao Patil and Another		APPELLANT
	Vs	
Javahar Lalchand Katariya and Another		RESPONDENT

Date of Decision: Feb. 8, 1980

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13(1), 15(1)
- Partnership Act, 1932 - Section 32

Citation: AIR 1982 Bom 245

Hon'ble Judges: Sharad Manohar, J

Bench: Single Bench

Advocate: M.A. Rane, for the Appellant; K.J. Abhyankar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioners, in this case, claim to be the tenants in respect of the suit premises and have tried to make good their claim in a manner which has turned out to be rather quaint.

2. The facts giving rise to this petition are simple.The suit premises consist of a shop in House No. 255 at Bhavani Peth, Satara, admeasuring 20 ft.x 10ft. For the sake of convenience the parties are referred to by my hereinafter as plaintiff or defendant No. 1 or 2 or 3 as the case may be, that is to say, with reference to their position in the trial Court.

3. Defendant No. 1 was the tenant in respect of the suit premises even before the year 1959. The house in which the suit premises are situate was purchased by the plaintiff on 25-6-1959. He purchased it for Rs. 25.000/- It is contended that he spent a further sum of Rs. 45.000/- for the repairs of the same.

4. On 5-9-1966 the plaintiff executed a rent note in favour of defendant No. 1 Ramchandra Narayan Deshmukh. The exact period of the rent note is not knowsn, but that fact is not even germance for the purposes of this petition. Admittedly defendant No. 1 was carrying on business in the suit premises.

5. On 4-6-1967, defendant No. 1 took defendants Nos. 2 and 3 in the partnership and conducted his business in the said partnership. On 1-1-1969 plaintiff executed another rent note in favour of defendant No. 1. That was to be for a period of 11 months and the agreed rent was Rs. 50/- per month. The noteworthy prohibiting defendant No. 1 from subletting of assigning the suit premises to anyone else.

6. As mentioned above the rent note was only for a period of 11 months meaning thereby that the period of contractual tenancy contemplated by the same expired at the end of 30th Nov., 1969. During the subsistence of the said tenancy, defendant No. 1 carried on business in partnership with defendants Nos. 2 and 3 in the suit premises and there in no dispute that even after even expiry of the said period continued to carry on the said business in partnership fill 15-11-1970.

7. On 15-11-190 a document was executed by the partners and the same has been loosely described as a deed of the solution. On a careful examination of the document, however, it can be readily seen that the transaction envisaged by the said document was nothing but that or retirement of defendant No. 1 from the partnership. From that day defendant No. 1 took certain consideration (Rs. 1488) from defendants Nos. 2 and 3 and walked out of the partnership. What is mentioned in cl (4) of the said document is rather significant. It is stated there as follows:-

"The premises in which out partnership business is going on belong to Shri Javahar Lalchand Katariya resident of Satara. The lease deed in respect of the suit premises is in the name of Shri Deshmukh;came in out partnership the tenancy rights have come to the partners and the receipt in the name of Shri Deshmukh is in the name of Deshmukh as partner of the firm. Hence from the day of the retirement of Shri Deshmukh the said rent is to be paid to Shri Katariya by the remaining two partners and they are bound to obtain receipts. Shri Deshmukh should give co-operation in the behalf and he has to tell Shri Katariya to give rent receipts and execute the lease deed in the name of the partners."

It is thereofe, crystal clear from this statement in the said document which incidentally, is styled as kararpatra, that the document by itself does not even purpose to transfer the tenancy rights of defendant No. 1 either incidentally or substantively in favour of defendants Nos. 2 and 3 Rather, the document assumes that the partnership comprising of the three parttners. Which came into being on 4-5-1967, ipso facto brought in its wake the transfer of the tenancy right in respect of the suit premises from defendants No. 1 to the partnership of defendants Nos. 1, 2 and 3, Evidently the document pastimes the position of transfer as a fait acompli. There is not a suggestion in the said document that the document is instrumental to

the transfer of the tenancy. The document only assumes an already existing transfer and only records the said fact. The document furhter expresses a plus hope that defendant No. 1 will give co-operation to defendants Nos. 2 and 3 so as to persuade the plaintiff to pass the rent receipt and execute a lease-deed in favour of he continuing partners.

8. It was in these circumstances that on 9-1-1971 the plaintiff terminated the tenancy or defendant No. 1 and called upon him to hand over possession of said premises to the plaintiff by a notice of termination. Exh. 102. The plaintiff also called upon defendant No. 1 to pay all th arrears of rent which amounted to more than six months on the date of the notice.

9. It is not disputed that defendants Nos. 2 and 3 tried to send the money orders of the arrears of rent to the plaintiff before the expiry of one month from the receipt of the said notice, Ex 102 . But again it is common ground that they tried to send the amount of rent in their own right and not on behalf of defendent No. 1 as such . In other words it was their contention that they themselves were tenants in respect of the suit premises and that the plaintiff was duly bound to accept them as tenants and to receive the rent from them as such .

10. The plaintiff refused to accept the rent from the defendants Nos. 2 and 3 contending that there was no jural relationship whatsoever between himself and defendants Nos 2 and 3 . Thereafter the suit out of which the present proceedings arise was filed by the plaintiff against all the defendants for recovery of possession of the suit premises.

11.The suit was based upon various grounds contemplated by the provisions of the Bombay Rents, Hotel and Lodging House Rates (Control) Act 1947 (herein after "the Bombay Rent Act") However, we are concerneds here only with four grounds. (I) unlawful subletting or assignment of the suit premises by defendant No.1 to defendants Nos.2 and 3; (ii) bona fide requirement of the landlord (iii) the non-user of the premises by defendant No.1 for a period exceeding six months without any reasonable cause and (iv) default for a period exceeding six months in the matter of payment of rent. I have stated that these are the only relevant grounds because the trial court decreed the plaintiff''s suit on the above four grounds. The trial court held (a) that the plaintiff required the suit premises bona fide and reasonably for his personal requirements as claimed by the (b) that defendant No.1 was liable for eviction from the suit premises on account of unlawful subletting of the suit premises by him in favour of defendants Nos.2 and 3; (c) that defendant No.1 had incurred liability for eviction on account of non-user of the suit premises by him for a period exceeding six months (d) and that defendant No.1 had committed default in the matter of payment of rent for a period exceeding six months.

12. Defendants Nos. 2 and 3 filed an appeal to the District court. The District court held that the finding regarding un-lawful subletting was not correct byt had held

that defendant No.1 was guilty of unlawful assignment of the suit premises. Findings regarding plaintiff''s bona fide requirement of ths suit premises for his personal use as also regarding default committed by defendant No.1 for a period exceeding six months were confirmed by the appellate court. Hence the decree for eviction passed by the trial court against the defendants was confirmed by the appellate court. It is against this decree by the courts below that the present writ petition had been filed by defendants Nos. 2 and 3.

13. Mr. Rane the learned Advocated appearing for the petitioners advanced three arguments in support of his contention that the decree passed by the courts below was unsustainable. Firstly, he contended that there was a transfer of business by defendant No.1 in favour of defendants Nos.2 and 3, the present petitioners, as a going concern along with the transfer of the tenancy rights as envisaged by the notification issued by the Government under S. 15 of the Rent Act, He, therefore, contended that three was a valid assignment of the tenancy rights in favour of the present petitioners. Secondly, he contended that the tenancy of the original defendant No.1, even after the expiry of the period of lease of 11 months from 1-1-1969 , was not a statutory tenancy but was contractual tenancy. Thirdly, he contended that thought there was a prohibition in the said rent note dt. 1-1-1969 prohibiting defendant No.1 From assuming his tenancy rights under the rent note to any other person without the consent of the landlord, still that prohibation was was overridden by the proviso which permitted the assignments of the tenancy rights if the assignment took place together with the business as a going concern etc. Mr.Rane contended that the provisions of law had an overriding effect over the contractual obligations and stipulations.

14. To my mind each of the contentions of Mr.Rane must fail even if taken separately; but the entire petition is being capable of being disposed of with reference to Mr. Rane''s first contention on the short point that in fact there was no the short point that in fact there was no transfer or assignment by defendant No.1 of his tenancy rights in respect of the suit premises, whether contractual or statutory, in favour of defendants Nos.2 and 3 whether by virtue of deed of dissolution, Ex 159, dt.15-11-1970 or otherwise. A glance at the said deed of dissolution would show that there is not even an intention to transfer the tenancy rights, whether incidentally or substantively by the retiring partner, defendant No.1, in favour of the continuing partners, defendants Nos.2 and 3 . I have already extract the relevant portion of the deed of dissolution and it shows that the deed of dissolution proceed upon the assumption that the tenancy rights had already come to the two remaining had already come to the two remaining partners. It is difficult to see on what basis the assumption is made. Further, there is not one word in the said deed of dissolution by which defendant no.1 can be said to have c to transfer those tenancy rights in favour of defendants Nos.2 and 3. Even otherwise it is impossible to hold that there was any assignment by defendant No.1 in favour of defendant Nos.2 and 3 of the business as a going concern, the goodwill and the

tenancy rights as incidental to the assignment by defendant No.1 in favour of defendants Nos.2 and 3. So far as the tenancy rights were concerned, it is nobody''s ase that they ever belonged to the partnership as a whole. What defendant No.1 has done by the deed of dissolution is that he has retired from the partnership by the Retirement from the partnership by one partner may result in fact that the business vests in the continuing partners exclusively and it does result in fact that the retiring partner cases to have any right, title and interest in the business as such: but that does not mean that the retiring partner has ''assigned'' the business with the stock-in -trade and good will thereof in favour of the remaining partners. The kind of deed executed by defendant No.1 in favour of defendants Nos.2 and 3 cannot be said to be a deed of assignment as contemplated by the notification issued by the Government under S. 15 of the Rent Act. Moreover , if the tenancy rights were to be transferred they could be so transferred only by a registered document Admittedly no such registered document has been executed by defendant No.1 in favour of defendants Nos.2 and 3 for the purpose of alleged assignment. It is, therefore, impossible to hold that defendants Nos.2 and 3 are lawful assignees in respect of the tenancy rights within the contemplation of S. 15 of the Rent Act. If there was any ambiguity about the fact that defendant No.1 did not purport to transfer the tenancy rights in favour of defendants Nos.2 and 3 the position is made clear by defendants No.2 himself. In para 13 of the deposition she has stated in clear terms as follows :-
"we have not got transferred the lease-hold interest of defendant No.1 in out favour till to-day by separate deed."

This aspect of the case is considered by the learned trial judge in para. 11 of his judgment. There he has discussed the entire evidence led on behalf of the defendants.

15. From the discussion it will be seen that the contention of defendants was that there was an agreement by defendant No.1 to assign or transfer the lease hold rights in favour of the partnership but it was not so done till the dissolution of the partnership. The deed of dissolution proceeds on the assumption that defendant Nos.2 and 3 were already tenants in respect of the suit premises, whereas defendants No.2 has admitted in so many words that there was no separate deed executed by defendant No.1 in favour defendants Nos.2 and 3 for the purpose of such transfer. This is apart from the position that no such transfer could have been effected by a separate deed. If at all transfer of the tenancy is to be made by any tenant in favour of a stranger it could be done along with the assignment of the business as a going concern together with the stock-in-trade and good will etc. It, therefore, follows that so far as defendants Nos.2 and 3 are concerned they have not a title of right. title and interest in the suit premises. It is equally clear that defendant No.1 had ceased to have the possession of the suit premises. There was, therefore, no question of his being entitled to any protection under the Rent Act. If

he was not entitled to any protection of the Rent Act. If he was not entitled to any protection of the Rent Act, defendants Nos.2 and 3 could be having no legal status whatsover either under the provisions of the Rent Act or under the provisions of the general law. None of them was, therefore, entitled to any legitimate defence to a suit for possession by the landlord.

16. In reply to this position Mr. Rane faintly suggested two replies. Firstly, he contended that if there was no unlawful subletting or unlawful assignment in favour of defendants Nos.2 and 3, no decree could be passed against defendant No.1 for possession under S. 13(1)(e) of the Rent Act. Secondly, he contended that in that even defendants Nos.2 and 3, the present petitioners, were just trespassers. No decree, therefore, could be passed against them by the court in these proceedings which were instituted under the provisions of the Rent Act.

17. I will firstly dispose of the second line of the argument of Mr.Rane. In this behalf, the contention of Mr.Rane is no longer res itegra. As early as in the year 1953 the supreme court has held that were the decree is passed against a tenant under the provisions of the Rent Act the same can be executed against all the persons claiming through the tenant, including the unlawful sub-tenants or assignees.In the present case defendants Nos.2 and 3 did not become lawful assignees. In any event they claimed through defendant No.1 .There is, therefore, absolutely no reason why decree could not be passed or executed against them . This position could be further clarified by taking an illustration. Supposing the plaintiff had not impleaded defendants Nos.2 and 3 at all and had obtained a decree against defendant No.1 alone. When he got a decree against defendant No.1 he would try to executed a decree against defendants Nos.2 and 3 , who could b e in possession. They would raise obstruction and would contend that they were claiming either through defendant No.1 or that they were rank trespassers. In both the cases the obstructionist would have no answer in law to the execution. The obstruction would have to be removed by the executing court. No, the position of the petitioner by jointing defendants Nos.2 and 3 in the suit could not be worse than what it would be if defendants Nos.2 and 3 were not impleaded in the suit. I am mentioning this only as an illustration to show that it is perfectly within the jurisdiction of the Rent Court to pass a decree not only against an ex-tenant but also against persons, who claim through him.

18. As regards the first line of argument of Mr. Rane mentioned above, it is amenable to number of answers. The first simple answer is that even assuming that no decree could be passed against defendant No.1 under S. 13(1)(e) because there was no effective assignment made by him in favour of defendants Nos.2 and 3 in respect of the tenancy rights decree could be passed and in fact has been passed against him, with perfect justification, under S. 12(3)(a) as also under S. 13(1)(g) if the Rent Act. That decree is equally binding upon defendants Nos.2 and 3 for the reasons mentioned above. Secondly, as from the date of expiration of the rent note

dt. 1-1-1969, Ex.127, defendant No.1 had become only a statutory tenant in respect of the suit premises. It is well known that all that a statutory tenant continues to have as "interest" in the premises of which he was previously a contractual tenant is the right to have his possession protected. His "interest" is confined only to the possession of the premises. When, therefore, a statutory tenant parts even with his possession of the premises in favour of a stranger, he can be and must be said to have transferred "in any other manner his interest therein". The transfer may not amount to subletting within the meaning of S. 13(1)(e) of the Rent Act or it may not amount to assignment within the meaning of S. 15 of the Rent Act, but it will amount to assignment within the meaning of S. 15 of the Rent Act, but it will amount to transfer in any other manners his interest in the suit premises within the meaning of S. 13(1)(e) and since defendant No.1 had admittedly parted with the possession of the suit premises in favour of defendants Nos.2 and 3 , he must be deemed to have incurreds the liability of eviction under the said S. 13(1)(e) of the Rent Act.

19. In this connection it is useful to refer to the decision of the supreme court in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, The relevant portion of the report reads as follows (at p. 422):-

"A person remaining in occupation of the premises let to him after the determination of or expirys of the period of the tenancy is commonly. Though in law not accurately called a statutory tenant. Such a person is not a tenant at all; he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal , it is not cable of being transferred or assigned, and devolves on his death only in the manner provided by the statute. "

It has been further held by the supreme court in Hiralal Vallabhram Vs. Kastorbhai Lalbhai and Others, that even after the determination of a lease of a contractual tenant, the sub-tenant who becomes a statutory tenant who becomes a statutory tenant does continue to have come kind of interest subsisting in his favour. That interest is the right to remain in possession. It is on this basis that it was held in that case that a notice terminating the tenancy of a contractual tenant did not ipso facto result in determining the entirely of tenant"s interest in the suit premises.

20. Reading the above two decisions together one can safely attribute an intention to the legislature, while enacting S. 13(1)(e) of the Rent Act read with S. 15 of the same, to proscribe every kind of transfer of rights of the tenant, except that which is specifically permitted. Transfer of possession is one kind of interest, which is proscribed. Unpermitted transfer of possession by the tenant must, therefore, inevitably result in the tenant being exposed to the liability for eviction under the said S. 13(1)(e) irrespective of the question whether the tenant is a contractual tenant or a statutory tenant.

21. I am alive to the fact that while dealing with the question whether a statutory tenant had a right to assign business premises held by him, the supreme court in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, has made an observation that the word "tenant" finding place in S. 13(1)(e) means a contractual tenant. However, it cannot be said to be the intention of the supreme court to hold that S. 13(1)(e) did not apply to a statutory tenant. That would lead to an anomalous result that a contractual tenant who had all the rights in respect of the suit premises including possessory right could not assign or sublet the premises let out to him, whereas a statutory tenant who had no other right except the right of protection of his possession could assign or sublet the suit premises with inpunity. This argument of Mr. Rane must, therefore, fail.

22. Moreover, to my mind this destination between statutory tenant and contractual tenant and the view that S. 12 applies to former whereas S. 13(1) applied to the latter needs a second look having regard to the law recently declared by the supreme court in V. Dhanapal Chettiar Vs. Yesodai Ammal, . There it has been held by a Bench of seven judges of court that a notice of termination of tenancy under S. 106 of the Transfer of property Act is not at all indispensable pre-requisite for a suit for eviction. Now, the following factual and legal position in the urban places to which the Bombay Rent Act applies is well recognised and well settled and is that :-

(1) The preponderating number of tenancies governed by that Act are monthly tenancies;

(2) The tenancies were initiallys brought about by the contract between the landlord and the tenant which was the reason why they were called "contractual tenantcies;

(3)The contractual tenancy of such monthly tenancy could be terminated by the landlord at any time by giving a notice of its termination as per the provisions of S. 106 of the T.P. Act;

(4) By virtue of such notice of termination the status of the contractual tenant stood converted into that of a mere statutory tenant;

(5) The view of law taken by our High court, and shared by various other High courts, as also, at one time, by the supreme court, was that unless the contractual tenancy of the tenant was terminated or stood terminated, no suit for the tenant"s eviction could be filed on any of the grounds mentioned in the Rent Act.

As an inescapable corollary to the last mentioned proposition, suit for possession, whatever may be the ground for it, could be failed only against a statutory tenant. This is the result of inexorable logic or ratiocination. No suit could be filed without termination of tenancy and termination of tenancy inevitably made the tenant a statutory tenant. Could it be then said that when supreme court observed in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, that S. 13(1)(e) of the Rent Act contemplated a contractual tenant, did it mean that suit under S. 13(1)(e) could

be filed against the tenant without a notice of termination of the tenancy of the contractual tenant? On the interpretation of the law as it then stood. This was inconceivable. As per the interpretation of this branch of law which held the field at that time, unless the lease stood determined by efflux of time or by virtue of operation of some forefeiture clause, no eviction suit could have been filed even under said S. 13(1)(e) unless notice of termination of the tenancy was duly given to the tenant. And the moment the said notice was complete, the tenant became a statutory tenant. Where, then, remained any field in which said S. 13(1)(e) could operate?

22.A. But whatever may be the position before V. Dhanapal Chettiar Vs. Yesodai Ammal, the position is materially and significantly changed by the said decision of the supreme court because the most relevant context in which the Anand Nivas case was decided has itself vanished or at least changed. Take for instance the position under S. 12(1) of the Rent Act. The majority view in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, prima facie appear to be that S. 12(1)(1) contemplates a suit against a statutory tenant only. This observation was evidently made because such a suit had to be preceded by a notice terminating the tenancy which made the tenancy a statutory tenancy. But what happens now after the pronouncement of the correct law by the Supreme court in V. Dhanapal Chettiar Vs. Yesodai Ammal, No landlord need give notice under sec. 106 of the Transfer of property Act, as a precursor to the suit. No such notice before the suit means no conversion of the contractual tenancy into a statutory tenancy. If what is apparently the majority view Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, viz that S. 12) contemplates a suit only against as statutory tenant is correct, no suit under sec. 12 without notice under S. 106 of the Transfer of properly Act as a precursor to it would be competent at all. This is something which flies in the fact of the law declared by the supreme court in Dhanpal''s case (supra). What all this means is that the difference between contractual and statutory tenancy is rendered more academic than real by virtue o the pronouncement of law in Dhanpal''s case. Suit could be filed against contractual tenant as well as a statutory tenant. But it could be filed only on the grounds mentioned in Ss. 12 and 13 of the Rent Act. And if the grounds existed and were proved, the suit would culminate in a decree against the tenant irrespective of the question whether the defendant tenant was contractual tenant or a statutory tenant.

23. I have given the illustration of S. 12 of the Rent Act advisedly. It shows that after the final pronouncement of law by the supreme court it must be held that the so-called difference between contractual tenancy and statutory tenancy corpus juris of our Rent legislation is more academic than real. If this is so with reference so to S. 12 of our Rent Act. It is difficult to see how it is not so with reference to S. 13(1)(e) of the Rent Act. It, therefore, follows that S. 13(1)(e) contemplates the liability as much of a statutory tenant as of a contractual tenant. In this view of things it is really unnecessary to examine whether defendant No.1 was a contractual tenant or

statutory tenant on the date when he parted with possession of the suit premises. He, therefore fully divested himself of the protection of the Rent Act. There being no lawful assignment in favour of defendants Nos.2 and 3, they never became transferees for the protection either under any particular provisions of the Act or under the general scheme of the Act. The decree for possession passed against them is, therefore unassailble.

24. While taking this view as regards the effect of V. Dhanapal Chettiar Vs. Yesodai Ammal, I am alive to the judgment of a Division Bench of this court dated 13th September 1979 in spl. C.A. No. 2447 of 1974: (reported in Vasant Tatoba Hargude and Others Vs. Dikkaya Muttaya Pujari, my attention to which was invited by Mr.Rane in a slightly different context,. As stated above, it was his first contention that there was an assignment of tenancy rights of defendant No.1 in favour of defendants Nos.2 and 3, but if defendant No.1 himself had only a statutory tenancy with him, his act of assignment of that tenancy was nothing short of futility because statutory tenancy, as per the said judgment of the Division Bench was perse non-transferable. It was in this context that Mr.Rane invited my attention to this ruling which, he conceded demolished one limb of his clinent''s argument. But the view that I have taken regarding the effect of Dhanpal''s case is bound to necessitate a second look at the question that arose before the Division Bench. In this connection I must hasten to add that with great respect. I am in full agreement with the reasoning on which the judgment is based . if the judgment in V. Dhanapal Chettiar Vs. Yesodai Ammal, was not before me, it would be difficult to find fault with the Division Bench judgment.The judgment in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, ,assuming it was of two learned judges of the supreme court was relied upon with approval by a Bench of 4 learned judges of court in Jaisingh Morarji and Others Vs. Sovani Pvt. Ltd. and Others, Hence there was no escape from the conclusion which was arrived at by the Division Bench. But evidently the judgment in Dhanpal''s case. Though delivered on 23-8-1979, was not and could not be brought to the notice of the Division Bench While giving decision dated 13th September 1979. The Dhanpal''s case was first reported in October 1979 in the AIR series. As discussed above, the said judgment changes the entire complexion of the question involved.

25. All the same, if I was required to go into the question whether statutory tenancy was per se non-transferable, I would have certainly referred this matter to a Division Bench for considering the effect of the judgement in V. Dhanapal Chettiar Vs. Yesodai Ammal, on this branch of law. But in view of mu finding that in fact there was no transfer or assignment of any character by defendant No.1 of his tenancy rights in favour of defendants Nos.2 and 3 I think it to be wholly unnecessary to do so.

26. In view of this postition to my mind, there is hardly any substance in the petition filed by the original defendants Nos.2 and 3. If defendants Nos.2 and 3 have no right

either under the Transfer of property Act or the Rent Act, it is difficultly see how they can resist the decree for possession passed against them. Once it is accepted t hat the said two defendants have nt a title of ritht, title and interest in the suit premises either under the general law or under the special statute, it is impossible to hold that the decree passed by the lower court against defendant No.1 on the ground of default in payment of rent for a period exceeding six months as also on the ground of default in payment of rent for a period exceeding six months as also on the ground that the premises are bona fide required by the respondent-landlord for his own occupation became assailable by defendants Nos.2 and 3 In a way defendant Nos.2 and 3 in that case would have no locus standi to file the petition. I may mention here that in this view of things, Mr.Rane has not even challenged the finding of the lower court or even touched the finding recorded by the lower court in connection with the respondent''s plea of bona fide requirement and defendant No.1''s default in the payment of rent, no argument was advanced before by Mr. Rane to contend that the decision of the lower court on the ground of bona fide requirement was in any away erroneous nor was it contended by him that the decree against defendant No.1 could not be passed on the ground that he had committed default in payment of rent for a period exceeding six months.

27. This disposes of the first contention of Mr. Rane and together with it, in fact the entire petition. However, I propose to deal also with the remaining two propositions urged by Mr.Rane .Mr.Rane urged that the petitioners were not statutory tenants even after the expiry of the period of rent note of 11 months from 1-1-1969. Evidently this contention was urged by him in order to surmount the above mentioned Division Bench ruling that a statutory tenancy was per se non-transferable .Coming to the first of these contestations raised by Mr.Rane that the petitioners were the contractual tenants, Mr.Rane''s said contention is based only upon the notice given by the landlord respondent No.1 on 9-1-1971, Ex. 102 in these proceedings. In the said notice the landlord had mentioned that the tenancy of defendant No.1 was being put to an end by him with effect from the end of 31-1-1971. From this Mr.Rane contended that respondent No.1 had recognised the tenancy of defendant No.1 had recongnised the tenancy of defendant No.1 till 31-1-1971.

28. If we carefully go through the notice, we find that what respondent No.1 has in fact done is that he has terminated the statutory tenancy of defendant No.1 It may be that termination of such tenancy is not necessary having regard to the provisions of law. Rightly or wrongly what respondent No.1 has sought to do is to determine the statutory tenancy. This is clear from the fact that he has given three reasons for terminating the tenancy. Firstly , he contends that the premises are required by him for his personal occupation and that is the reason why he has determined the occupation of defendant No.1 as tenant with effect from the end of 31-1-1971. Secondly, he has mentioned that defendant No.1 has not paid rent as required by the rent note and that is the reason why he has terminated the tenancy from the

end of 31-1-1971. The third ground is that the defendant No.1 has let the suit premises without the permission of respondent No.1 It will be thus seen that the landlord has relied mainly on the provisions of the statute for the purpose of determining the tenancy of defendant No.1 Now, it is well-known that so far as the tenancy under the Transfer of property Act is concerned, no reasons are required to be assigned at all for the termination of the tenancy if the termination is to be made under S. 106 of the Transfer of property Act. A notice simpliciter terminating the tenancy in the manner prescribed by law is enough for the purpose of termination. No reasons or grounds as such are required to be furnished for the termination of the tenancy. Infact mention of the grounds would not validate the notice if the same was otherwise invalid and non-mention of the same would not invalidate it if it was otherwise valid. Statutory tenancy, on the other hand is determined by the decree passed by the court only on the grounds in question. The landlord is evidently not conversant with subtleties and niceties of this distinction, but he knows that the tenant continues to be tenant for all practical purposes. Evsently this is the reason that propelled him to serve this notice. Evidently, this is done by way of abundant caution. To my mind, it would be eminently unjust and unfair to allow the defendants to make capital of the landlord''s ignorance of the law. Moreover, this contention is being raised before me for the first time. At no time in either of the courts below has any of the defendants contended that a new contractual tenancy was either created or evidenced b y the said notice. No issue is got framed for that contention. A number of explanations could have been given by the plaintiff if any issue in that behalf was sought. The very fact that the termination is based upon those particular grounds, which are recognised by the Rent Act, shows that the respondent No.1 was aware that defendant No.1 was entitled to the protection of the statute, meaning thereby that he was a statutory tenant, and hence, that he was advised that that tenancy should be terminated. It is not a notice of termination of tenancy as required by 106 of the T.P. Act at all. The notice proceeds upon the assumption that the tenant is entitled to the protection of the Rent Act and by the notice the tenant is informed that he is no more entitled for protection of the Rent Act, in view of the grounds stated in the notice. It cannot be, therefore, said that respondent No.1 had treated defendant No.1 as his contractual tenant even after the expiry of the tenant even after the expiry of the period of the rent note dated 1-1-1969.

29. Assumin, hopwever, that I am wrong on this point and assuming that defendant No.1 was a contractual tenant on 9-1-1971, still it is to be noted that the rent note incorporates a specific prohibition against assignment. Mr. Rane contends that notification issued by the Government authorising the assignment of tenancy under the proviso to S. 15(1) of the Act, has an overriding effect over the contractual prohibition. He contends that the assignment made in pursuance of or in accordance with the said notification will be lawful despite the contracual prohibition.

30. I am afraid this contention is basically erroneous. There is nothing in the proviso to S. 15(1) not is there anything in the notification issued under the same which has an effect of giving the proviso of the notification an overriding effect over the contractual prohibition against assignment. Whenever the contract sought to be overriding by the statutory provision is intended specific provision is in that behalf is made by the statute. As for instance in sub-sec. (2) of S. 15 of the Rent Act Which came on the statute book with effect from 21st may 1959, a condition in the deed of lease prohibitation sublease or assignment was overridden by the said sub-section (2) of S. 15 This is what the relevant provision of the said sub-section (2) states :

"....., and accordingly, notwithstanding in any contract or in the judgment decree or order of a court, any such sublease, assignment or transfer in favour of any person who has entered in to possession ..... shall be deemed to be valid and effectual for all purpose ....."

Juxtaposing this provision against the notification issued by the Government under the proviso to S. 15(1) it will be found that the assignment which is permitted by the notification is not subject to any such non obstante clause. It is not provided therein that notwithstanding anything provided in any contract, the assignment effected as per the notification would be valid and lawful. On the plain reading of the notification, therefore, it cannot be said that there is any overriding effect given to the notification over the contractual prohibition against subletting or assigning.

31. Moreover, even the abovementioned Division Bench ruling of this Court is Spl. C. A. No. 2447/74 clearly brings out the position that if the tenancy per se is not transferable then the notification authorising the assignment would be of no avail to the assignee. It was held in the case that the statutory tenancy was not per se non-assignable having regard to the provisions of S. 12(1) of the Rent Act and, hence, it was held that the notification would not give any added right to the transferee, if the tenancy was per se non-transferable. A tenancy can be said to be per se non-transferable on various grounds. One of such grounds is that there is a condition in the lease-deed itself that the tenancy could not be transferred. Such a condition and it would be a perfectly valid condition and it would be a perfectly valid condition and it would be an organic part of the totality of the rights knows as tenancy rights. The tenancy in such a case would be per se not transferable. This being the position the contention of Mr. Rane in this behalf must fail.

32. In the result the petition fails and is dismissed.

33. Rule earlier issued is discharged. In the circumstances of the case there will be no order as to costs.

34. Petition dismissed.