

JUDGMENT UPDATE

DISPUTE RESOLUTION & ARBITRATION



Inheritance of tenancy rights in State of Maharashtra: Key judicial pronouncements

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Tenancy rights in a property often lead to litigation and disputes upon the death of a tenant. At the core of most such disputes is the ambiguity around the question of who qualifies as a member of the tenant's family and is entitled to tenancy rights in a premises after the death of tenant as the successor to the tenancy rights. This issue has been addressed in a plethora of judicial pronouncements thus far.

In Maharashtra, tenancy rights are regulated under the Maharashtra Rent Control Act, 1999 (MRCA), which was brought into effect from March 31, 2000. MRCA had repealed the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 (Bombay Rent Act), amongst other Acts that were in operation. According to Section 7(15)(d) of MRCA and Section 5(11)(c) of the Bombay Rent Act, upon the death of a tenant, the tenancy passes on to a member of tenant's family who has been residing with the deceased tenant or operating the premises for commercial purposes at the time of his death. The legal heirs come into the picture only when such a member is not available, and the same is decided by the Court as to who is to be treated as a tenant.

In this regard, some of the judicial pronouncements that have illuminated the discourse on tenancy rights are discussed here below:

- **Anand Nivas Private Ltd v. Anandji Kalyanji's Pedhi & Ors¹:** The Supreme Court (SC) held that the expression 'tenant' under Section 5(11)(c) of the Bombay Rent Act means only a person who is a contractual tenant because rent is payable by a contractual and not by a statutory tenant.
- **Miss Gool Rustomji Lala v. Jal Rustomji Lala²:** The Bombay High Court interpreted the Section 5(11)(c) of the Bombay Rent Act and held that the Court can

declare only one member of the family as a tenant. This view was later reaffirmed in Smt Parvatibai w/o Bandu Marathe v. Smt Radhabai Chaggaan Bhadarkar³, Shamkant Tukaram Naik v. Dayanabai Shamsan Dighodkar⁴, and Vimalabai Keshav Gokhale v. Avinash Krishnaji Binjewale & Ors.⁵

- **Kanti Bhattacharya & Ors. v. K.S. Parmeshwaran & Anr⁶:** In this case, it was contended by the legal heirs that upon the death of the deceased, they were entitled to inherit his right and as the notice of eviction suit was not addressed to them but only to the widow of the deceased, the same was invalid and, therefore, there was no termination of the tenancy. In this case, the Bombay High Court rejected such contentions and concluded that there was an agreement between members of the tenant's family and the widow of the deceased who was treated as a tenant by the tenant's family. Therefore, the notice served upon her is binding on all family members.
- **Ramesh Ramgopal Daga v. Vasant Baburao Khandare⁷:** The question of considering other relatives as a tenant or joint tenant was completely disregarded once the petitioner was recognized as a tenant.
- **Ashok Chintaman Juker & Ors v. Kishore Pandurang Mantri & Anr⁸:** The SC conclusively held that the tenancy rights upon the demise of the original tenant of premises can be inherited only on fulfilment of two requisites:
 - The person must be a member of the tenant's family
 - He must have been residing with the tenant at the time of his death

¹ AIR 1965 SC 414

² AIR 1972 Bom 113

³ Writ Petition No. 4969 of 1998 (Aurangabad Bench)

⁴ 1989 1 Bom CR 554

⁵ 2004 (1) Bom CR 839

⁶ 1994 (3) Bom CR 100

⁷ 2006 (1) Bom CR 844

⁸ (2001) 5 SCC 1

- **Jaysen Jayant Rele & Or. v. Shantaram Ganpat Gujar & Ors**⁹: The Hon'ble Bombay High Court interpreted the words 'any member of the tenant's family' in Section 5(11)(c) of the Bombay Rent Act and held that the word 'family' in 'family of the deceased tenant' did not part with the ordinary meaning of the word 'family' and included family as consisting of father, mother, sons, daughters and all such blood relations and other relations arising from lawful marriages.
- **Mina Srinivasan Krishnan v. Arun Bhaskar Adarkar**¹⁰: The Bombay High Court observed that in circumstances wherein it is to be decided as to who derived tenancy under the MRCA, the legal heirs must agree as to who shall inherit tenancy from the original tenant within the meaning of the said Act and thereby would be liable to tender rent to the landlord. It was further held that in cases of default of an agreement between the legal heirs, the question can then be decided by the Special Court under the MRCA.
- **Dharamyir I. Joshi v. Jayant R. Patwardhan and Anr**¹¹: The definition of 'resides' under the MRCA was construed to be more than a temporary stay by the Bombay High Court, and it was stated that the character of residence is adopted, and such residence must be permanent in nature.
- **Urmi Deepak Kadia v. State of Maharashtra**¹²: The Court addressed the issue of seeming departure of Section 7(15)(d) of the MRCA from the provisions of Hindu Succession Act, 1956 – as legal heirs who would qualify as successors under the Hindu Succession Act, 1956 may not necessarily qualify as legal heirs to the tenancy rights under the MRCA – and held that there is no inconsistency since the areas covered by both the acts differ.
- **Vasant Sadashiv Joshi v. Yashwant Shankar Barve**¹³: The Bombay High Court recently adjudicated on whether tenancy rights are capable of being inherited by a joint Hindu family under the Bombay Rent Act.

Background facts

- A suit premises (**Premises**) was let out by Yeshwant Shankar Barve and his family (**Respondents**) to Raghunath, the original tenant who was the Karta of the joint Hindu family, which included Vasant Sadashiv Joshi and his family (**Petitioners**). The Premises was occupied by Raghunath from 1937 till his death, then by his son, Shri Achyut Raghunath Joshi till 1979, and thereafter, by the Petitioners.
- A suit for eviction was filed by the Respondents before the Small Causes Court at Pune, on the grounds that there was failure to pay arrears of rent and that the Respondents were in *bona fide* need of the Premises. The primary contention of the Petitioners was that the Premises was taken on tenancy for the benefit of the joint Hindu family of Raghunath and therefore, all members of the joint family have inheritable tenancy rights over the Premises.

- The Trial Court partially decreed the suit directing the Petitioners to deliver the possession of two rooms to the Respondents and rejected remaining claims.
- Aggrieved by the order of Trial Court, appeals were filed before the District Court at Pune, which reversed the decision of the Trial Court and directed the Petitioners to hand over possession of the Premises to the Respondents.
- Aggrieved by the decision of the District Court, the Petitioners approached the Bombay High Court.

Decision of the Court

- In the instant case, Bombay High Court vide judgment dated January 3, 2020, held that tenancy rights cannot be inherited by a joint Hindu family as a unit and a person cannot claim an independent right or inheritance of tenancy in a premise merely by virtue of being a member of joint Hindu family.
- While arriving at its decision, the Bombay High Court interpreted Section 5(11)(c) of the Bombay Rent Act and noted that this Act does not recognize members of a joint family or the joint family itself, to be a 'tenant' under Bombay Rent Act. It was held that the tenancy in respect of the Premises came to an end after Shri Achyut Raghunath Joshi moved out of the Premises in 1979.
- It was observed that a 'tenant' necessarily means a person and not a joint family as a unit or any individual members of the family.
- The Court opined that if the arguments of the Petitioners were to be accepted, then a landlord would never be able to get the tenant evicted, as every successor of a tenant would start claiming legal rights and protection under the provisions of the Bombay Rent Act and the same would be against the object of the rent legislation.
- In view of the above, the Court dismissed the petition and upheld the decision of District Court at Pune while directing the Petitioners to hand over possession of the Premises to the Respondents.
- This case further went on appeal by way of a Special Leave Petition¹⁴ before the Supreme Court, which re-affirmed the decision of the Bombay High Court and dismissed the petition filed by the Petitioners on grounds of holding no merit, thereby settling the law in this regard.

The observations of the Courts in these myriad judgements hold high importance considering the high pendency of eviction suits in Maharashtra involving the question of inheritance of tenancy rights. The recent judgment of *Vasant Sadashiv Joshi v. Yashwant Shankar Barve*¹⁵ is remarkable for its far-reaching effect on bringing clarity and progressively interpreting the Bombay Rent Act while recognizing its true spirit. This is undoubtedly a welcome move and would lead to speedy disposal of pending eviction suits filed under the Bombay Rent Act.

⁹ AIR 2002 Bom 462

¹⁰ 2014 SCC OnLine Bom 633

¹¹ 2015 SCC OnLine Bom 4741

¹² 2015 SCC OnLine Bom 8519

¹³ (2020) 1 Bom CR 763

¹⁴ Petition(s) for Special Leave to Appeal (C) No(s). 9387 of 2020

¹⁵ Supra 8