

BOARD OF TRUSTEES OF THE PORT OF MUMBAI

v.

M/S BYRAMJEE JEEJEEBHOY PVT. LTD. & ANR.

(Civil Appeal No. 3147 of 2011)

APRIL 8, 2011

[AFTAB ALAM AND R.M. LODHA, JJ.]

*Bombay Rent Act, 1947: ss.13(1)(e), 15(1), (2), 22 – Unlawful sub-letting – Suit for eviction on the ground of unlawful sub-letting by the tenant of leasehold property – Held: Sub-letting, assignment, transfer of interest in any manner or licencing made by the tenant after February 1, 1973 without there being any sanctioning clause in the contract or without any express consent of the landlord would constitute a ground for eviction u/s.13(1)(e) – In the instant case, the tenant made a sub-lease and parted with the possession of suit land in favour of sub-tenant – Sub-lease though executed on June 17, 1978 was made effective retrospectively from June 15, 1964 – Material on record showed that sub-tenant was in possession of suit premises long before February 1, 1973 and had continued to be in possession on that date – Subletting, thus, clearly fell within the protective ambit of s.15(2) – There was no material change in the status of sub-tenant or in the terms and conditions on which it was in possession of suit land on February 1, 1973 or in the inter se relationship between the tenant and sub-tenant – Execution of sub-lease on June 17, 1978 would not, therefore, militate against the protection offered by s.15(2) – Ground for eviction u/s.13(1)(e) not made out – Eviction suit dismissed – Transfer of Property Act, 1882 – ss.106, 108(j), 114A – Rent control and eviction.*

**The plaintiff-respondent no.1 was the landlord of the suit premises. The defendant no.1-appellant trustee was the tenant in the suit premises. The plaintiff filed a suit for**

- A eviction against defendant no.1. Later on by way of amendment, defendant no.2 was joined in as the sub-tenant under the defendant no.1. In the suit, plaintiff averred that the suit land was given to defendant no.1 on lease for 999 years by its predecessors-in-interest under
- B a registered lease deed dated May 10, 1866. The plaintiff sought eviction of defendants from the suit premises on the grounds of breach of the terms and conditions of the said lease deed mainly the condition against assignment of any portion of the leasehold land to any third party.
- C The trial court decreed the suit holding that respondent no.1 had failed to establish the breach of any other terms of the lease but had successfully proved the breach of the covenant against assignment of the leasehold property to the third party. The trial court
- D pointed out that under clause 4 of the lease deed, defendant no.1 was not supposed to part with possession of the leasehold or to induct any third person into the suit property unless it obtained a licence in writing from the lessor, the plaintiff and there was no
- E material to show that it had obtained any licence from the plaintiff before parting with possession of the leasehold in favour of defendant no.2, the sub-lessee. The trial court also observed that for inducting defendant no.2 into the suit premises, defendant no.1 had charged compensation
- F higher than the rent/compensation it paid to the plaintiff and, therefore, the act of defendant no.1 was contrary to clause 4 of the original lease deed and defendant no.1 was guilty of committing its breach. The trial court also upheld the validity of the notice issued by the plaintiff to
- G defendant no.1 determining and forfeiting the lease. It further held that the transaction between the plaintiff and defendant no.1 was covered by the provisions of the Transfer of Property Act and, therefore, the suit could not be said to be barred by limitation. Dealing with the
- H question of the decree being binding on defendant no.2,

the trial court observed that once it was held that the sub-lease created in favour of defendant no.2 was unlawful and illegal, the decree of eviction passed against the lessee would fully bind the sub-lessee.

The appellate court dismissed the appeals filed by defendant nos.1 and 2. The High Court affirmed the findings of the courts below. The instant appeals were filed challenging the order of the High Court.

Allowing the appeals, the Court

HELD: 1. The instant case proceeded on a completely wrong course. The suit was adjudicated on by the courts, right up to the High Court on the basis of the provisions of the Transfer of Property Act. The provisions of law that must actually determine the rights and liabilities of the parties did not find mention in the pleadings of the parties or even the judgments of the courts. In the plaint, at one place it was stated that for committing breach of the terms and conditions of the lease the defendants had lost the protection of the Bombay Rent Act. Further, for invoking the jurisdiction of the Small Causes Court, it was stated in the plaint that the suit was for recovery of possession of land situated at Bombay to which the Bombay Rent Act was applicable. Beyond this there was no reference to the provisions of the Bombay Rent Act. The three courts below discussed sections 106, 108 (j) and 114A of the Transfer of Property Act but there was hardly any reference to the provisions of the Bombay Rent Act. It would appear that the provisions of the Bombay Rent Act which have a direct bearing on the case were completely overlooked by the three courts. From the judgment of the first appellate court it indeed appeared that defendant no.2 had sought the protection of section 15(2) of the Bombay Rent Act but the court brushed aside the

A submission observing that since the suit premises belonged to defendant no.1, which was a local authority and since defendant no.2 was the lessee under defendant no.1, the provisions of the Bombay Rent Act would not be applicable and the defendant no.2 was not entitled to the protection of section 15(2) of that Act. The appellate court clearly failed to appreciate the way the provision of section 15 along with some other provisions of the Act applied to the case set up by the three parties to the suit. [Para 15] [174-G-H; 175-A-E]

C 2. At the material time the relationship between the landlord, tenant and sub-tenant was regulated and fully governed by the Bombay Rent Act, 1947 (which came into force on January 19, 1948 and expired on March 31, 2000 when it was replaced by the Maharashtra Rent Control Act 1999). The preamble to the Act described it as an Act to amend and consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging house and of evictions and also to control the charges for licence of premises, etc. D It was not denied that the plaintiff was a "landlord" as defined in section 5(3) and the suit land "premises" as defined in section 5(8) of the Act to mean "any land not being used for agricultural purposes". Section 13 of the Act had the marginal title, "When landlord may recover possession" and enumerated the grounds on which alone a landlord would be entitled to recover possession of any premises. One of the grounds, enumerated in clause (e) of the section, was unlawful sub-letting by the tenant. Section 13(1)(e) provided that any unlawful sub-letting by the tenant since January 19, 1948, the date of coming into operation of the Act or after February 1, 1973, the date of commencement of the Amendment Act (Maharashtra Act 17 of 1973) any licence given by the tenant unlawfully or any unlawful assignment or transfer

H

BOARD OF TRUSTEES OF THE PORT OF MUMBAI v. 161  
BYRAMJEE JEEJEEBHOY PVT. LTD.

of his interest in any other manner in the whole or part of the demised premises would make the tenant liable to eviction. Section 15, in sub-section (1) then laid down what would make the sub-letting, assignment, transfer or licence unlawful. It said that any sub-letting or assignment or transfer of his interest in any manner made by the tenant after January 19, 1948 or any licence given by him after February 1, 1973 for the whole or part of the premises, unless sanctioned by the contract, would not be lawful, notwithstanding anything contained in any law. Section 15(1), thus, took away any protection given to the tenant by any other law, e. g., section 108 (j) of the Transfer of Property Act and prohibited him from any sub-letting or licensing or assignment or transfer of his interest in any other manner in the absence of a sanctioning provision in the contract unless, of course, the demised premises came under the proviso to section 15(1). But it was no one's case here that the proviso to section 15(1) had any application to the suit land. In light of section 15(1), so much emphasis put on behalf of the plaintiff on clause 4 of the lease deed dated May 10, 1886 would appear to be rather out of place because even without clause 4, in the absence of a sanctioning clause in the lease the subletting by the tenant would not be lawful and would come within the mischief of section 13(1)(e). But then came section 15 (2) that removed the "unlawful" tag from any sub-letting, assignment, transfer of interest in any other manner or licensing, though contrary to sub-section (1), that were made before the 1st day of February, 1973. The second part of section 15(2) laid down that regardless of the prohibition in sub-section (1) and notwithstanding anything contained in any contract or in the judgment, decree or order of a court a sub-lease, assignment or transfer of interest in any other manner shall be deemed to be valid if the person in whose favour transfer is made entered into

A

B

C

D

E

F

G

H

A possession of the demised property and continued to be in possession on February 1, 1973. The second part of section 15(2) overruled a contract by saying at the beginning, "Notwithstanding any thing contained in any contract...". This means that clause 4 of the lease deed

B would be ineffective and inoperative if the sub-lease made by defendant no.1 in favour of defendant no.2 otherwise conformed to the conditions laid down in section 15(2) of Bombay Rent Act. More importantly, section 15(2)

C further provided that any sub-letting, assignment or transfer of interest in any other manner made by the tenant that came within its protective ambit would save him from eviction under section 13(1)(e). Thus, any sub-

D letting, assignment, transfer of interest in any other manner or licensing made by the tenant after February 1, 1973 without there being any sanctioning clause in the contract or without the express consent of the landlord would constitute a ground for eviction under section 13(1)(e) of the Act. [Paras 16-19] [175-G-H; 176-A-C; 178-F-H; 179-A-H; 180-A-C]

E 3. It was not disputed that defendant no.1 made a sub-lease and parted with the possession of the suit land in favour of defendant no.2. The plaintiff in its pleadings and evidence was completely silent on the question as to when did this transaction take place and when was

F defendant no.2 inducted into the suit land. The trial court also did not advert to the said question. But, the first appellate court recorded a finding. It observed that defendant no.2 was in possession of the premises since prior to 1/2/1973 and therefore, they were protected. The

G evidence on record showed that the fact of possession of the defendant no.2 in the premises prior to 1/2/1973 was admitted. Having come to this finding, the appellate court misdirected itself by misconstruing the provision of section 15(2) of the Bombay Rent Act. But the finding of

H fact that defendant no.2 came in possession of the suit

**BOARD OF TRUSTEES OF THE PORT OF MUMBAI v. 163  
BYRAMJEE JEEJEBHOY PVT. LTD.**

land from before February 1, 1973 and continued to be in its possession on that date was very much there. The finding was arrived at for good reasons and it was supported by both oral and documentary evidences. A charge certificate issued by the Estate Manager's Department, Mumbai Port Trust dated February 1, 1963 was on record. There were receipts of the years 1963 and 1965 issued by the Mumbai Port Trust acknowledging the payment of rent from defendant no.2. More importantly the sub-lease deed that formed the sheet-anchor of the plaintiff's case, though executed on June 1, 1978, was made effective retrospectively from June 15, 1964. It came to an end on February 26, 1985. The materials on record showed that defendant no.2 was in occupation of the suit land long before February 1, 1973 and had continued to be in its possession on that date. The sub-letting by defendant no.1 in favour of defendant no.2, thus, clearly fell within the protective ambit of section 15(2) of Bombay Rent Act. Section 15(2), apart from others uses the expression 'transfer of interest in any other manner'. It is sufficiently wide to include even an oral arrangement pursuant to which the sub-lessee might enter upon the land and continue in its possession. The initial induction of defendant no.2 on the suit land was covered by section 15(2) of the Act. [Paras 20 to 23 & 25] [180-D-H; 181-A-B;182-C-E; 183-B-C]

4. Section 22 provided for the landlord to have full information concerning the sub-lessee/licensee who might be in occupation of the demised premises on February 1, 1973, including the rent charged from him by the tenant. The provisions of section 22 clearly suggested that after the cut off date, i.e., February 1, 1973 there should be no material change, to the detriment of the landlord in the terms and conditions on which the sub-tenant was in possession of the demised premises on that date and in case after that date, any material change

A was brought about in the status of the sub-tenant, to the  
prejudice of the landlord that might not have the  
protection of section 15(2) but may come within the  
mischief of section 13(1)(e). In pith and substance, the  
sub-lease deed of 1978, was simply a formalization and  
B continuation of the arrangement as existing between the  
defendants prior to February 1, 1973. There was no  
material change in the status of defendant no.2 or in the  
terms and conditions on which it was in possession of  
the suit land on February 1, 1973 or in the inter se  
C relationship between the two defendants. The execution  
of the sub-lease on June 17, 1978 by defendant no.1 in  
favour defendant no.2 would not, therefore, militate  
against the protection offered by section 15(2) of the Act.  
The execution of the lease would not constitute a ground  
D for eviction against defendant no.1 in terms of section  
13(1)(e) of the Act. The judgments and orders passed by  
the High Court are not sustainable. [Paras 28, 29] [184-  
D-H; 185-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.  
E 3147 of 2011 etc.

From the Judgment & Order dated 1704.2008 of the High  
Court of Judicature at Bombay in Civil Revision Application No.  
183 of 2007.

F WITH

C.A. No. 3148 of 2011.

Parag P. Tripathy, ASG, C.A. Sundaram, Buddy A.  
G Ranganadhan, A.V. Rangam, Jay Savla, Sumit Ghosh, Rohini  
Musa, Bhargava V. Desai, Rahul Gupta, Nikhil Sharma, Zafar  
Inayat for the appearing parties.

The Judgment of the Court was delivered by

H AFTAB ALAM, J. 1. Leave granted.

**BOARD OF TRUSTEES OF THE PORT OF MUMBAI v. 165  
BYRAMJEE JEEJEEBHOY PVT. LTD. [AFTAB ALAM, J.]**

2. These two appeals, though coming from separate judgments and orders passed by the Bombay High Court, arise from the same suit for eviction instituted by the landlord which figures in both the appeals as respondent no.1. The appellant in the appeal arising from SLP (C) No.19522 of 2008 is the Board of Trustees of the Port of Mumbai (hereinafter "Mumbai Port Trust"). It was the sole defendant, described as the tenant, in the suit for eviction as it was originally filed. Later on, by an amendment M/s Wadi Bunder Cotton Press Company (hereinafter "WBC Company"), the appellant in the appeal arising from SLP (C) No.36246 of 2010, was joined in as defendant no.2 as the sub-tenant under the defendant, the Board of Trustees of the Port of Mumbai. From that stage, Mumbai Port Trust, the principal tenant and WBC Company, the sub-tenant came to be arrayed in the suit as defendants 1 & 2 respectively.

3. The plaintiff respondent no.1 filed a suit in the court of Small Causes at Bombay registered as RAE suit no.83/197 of 1993, seeking inter alia a decree of eviction, against the defendants from the suit land admeasuring about 3273.394 square yards, situated at Santacruz Estate, Mazgaon, Bombay. According to the plaintiff-respondent no.1, the suit land was given to defendant no.1 on lease for 999 (nine hundred and ninety nine) years by the plaintiff's predecessors-in-interest under a registered lease deed dated May 10, 1886<sup>1</sup>. In terms of the lease deed, defendant no.1, the lessee had the right to renewal but it had no right to assign the leased out land to any third party. As a matter of fact, there was an express prohibition against assignment in clause 4 of the lease deed which is as

---

1. As a result of acquisition of a part of the leasehold lands and for other reasons, the 1886 lease was followed by subsequent leases in which the area of the lease hold lands was considerably reduced. But the stipulation against assignment on which the case of the plaintiff-respondent is based remained unaltered. In the pleadings of the parties and the judgments of the courts the reference is made to the above quoted clause in the 1886 deed. It is, therefore, unnecessary to go into the details of the subsequent leases.

A under:

B “4. That they the said Trustees their successors or assigns will not (subject never the less as hereinafter mentioned) assign the said premises or any part thereof without the licence in writing of the lessors their heirs executors administrators assigns first obtained.”

C [The only exception to the above prohibition was the right given to the lessee to part with and dedicate some portions, up to a specified limit, from the aggregate of the lands covered by the lease for public roads and ways with the consent of the lessors. But in that case the lessors agreed to give such consent upon the reasonable applications of the lessee from time to time and within the limit (prescribed under the lease).]

D 4. The plaintiffs sought eviction of the defendants on grounds of breach of the terms and conditions of the lease dated May 10, 1886, mainly the condition against assignment of any portion of the lease hold land to any third party. In paragraph 4 of the plaint as it was originally filed it was stated that the defendant had committed breach of several terms and conditions of the lease and had unlawfully and illegally parted with the possession of the lease hold property without any licence in writing from the lessor. It was further stated that by an advocate's notice dated December 7, 1991 the plaintiff had put on record the several acts of omission and commission by the defendant that were in breach of the terms and conditions of the lease and for that reason had determined and forfeited the lease. Despite the notice the defendant did not remedy but persisted in the breach of the terms and conditions of the lease. It had, therefore, lost the protection of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short “the Bombay Rent Act”) and had made itself liable to quit the suit premises and hand over its vacant, peaceful possession to the plaintiff. It was further alleged in paragraph 7 of the plaint that in consideration of a large sum as rent/compensation the

H

**BOARD OF TRUSTEES OF THE PORT OF MUMBAI v. 167  
BYRAMJEE JEEJEEBHOY PVT. LTD. [AFTAB ALAM, J.]**

defendant had created sub-leases in favour of sub-lessees/ tenants and had unlawfully, clandestinely and surreptitiously parted with possession of the lease-hold land in favour of the sub-lessees/tenants. In the transaction, the lessee, defendant no.1, had made huge profits. It was, therefore, liable to eviction for committing breach of the covenant in the lease deed of May 10, 1886. In paragraph 9 of the plaint, injunction was sought against the defendant restraining it from sub-letting and/or parting with the possession of the suit land in any manner whatsoever and in that connection it was once again stated that the defendant had no right to assign any part of the suit land without the licence in writing of the lessors. In paragraph 12 of the plaint it was stated that the suit was for recovery of possession of the suit land to which the Bombay Act, 1947 was applicable and the claim of the plaintiff fell within section 28 of the Act. Hence, the court of Small Causes, Bombay, had the exclusive jurisdiction to try the suit.

5. Later on, after the sub-lessee was joined in as the second defendant, paragraph 7A and 7B were added by an amendment in the plaint. In paragraph 7A, reiterating the earlier allegation it was said that in respect of the suit land, defendant no.1 had unlawfully created sub-lease in favour of defendant no.2 and had wrongfully inducted defendant no.2 into the suit land. Defendant no.1 had thereby committed breach of the lease and had also violated the provisions of the Transfer of Property Act, and also the terms of tenancy. In paragraph 7B it was submitted that the plaintiff was entitled to a decree of eviction against defendant no.1 as it had unlawfully created sub-lease and/or given sub-tenancy and/or transferred its interest in the suit land to defendant no.2 and defendant no.2 was equally liable to be evicted and would be equally bound by the decree as it had no independent right, title or interest in the suit land and it had been unlawfully and illegally inducted into the suit land.

6.- Defendant no.1 in its written statement, denied having

- A committed any breach of the terms and conditions of the lease deed dated May 10, 1886. The defendant denied that it had unlawfully and illegally parted with possession of the property in breach of the covenant in the lease deed and/or in the manner as alleged by the plaintiff. In paragraph 14 of the written
- B statement it was stated that the advocate's notice sent to the defendant at the instance of the plaintiff was quite invalid. In different paragraphs of the notice, the area of the lease hold lands was stated differently. The notice gave wrong description of the lease hold property; it was vague, unintelligible and
- C suffered from serious legal and factual infirmities. It was not possible to act upon it or to even give any proper reply to it. On account of its vagueness it was not possible for the defendant to know what was the breach alleged and whether it was capable of being remedied in terms of section 114-A of the Transfer of Property Act. The defendant denied that it had
- D either surreptitiously or clandestinely parted with possession by creating sub-lease in respect of the leasehold land in favour of a third party in the manner as alleged by the plaintiff. The defendant further denied having demanded huge rent/compensation from the alleged sub-lessees in respect of the building and the suit land, making huge profits. The defendant
- E denied any breach of clause 4 of the lease deed. According to the defendant, clause 4 of the lease deed enjoined against assignment. There was no covenant in the lease deed prohibiting sub-lease. The defendant stated that it had not
- F "assigned" the premises or any part thereof as alleged by the plaintiff and had not committed any breach of clause 4 of the lease deed. The plaintiff's allegation was based on a misreading and misinterpretation of clause 4 of the lease deed. Reiterating that there was no assignment of the leasehold
- G interest the defendant once again denied that it had committed any breach of clause 4 of the deed in the manner as alleged by the plaintiff. The defendant further stated that the plaint nowhere stated when or in whose favour the alleged breach was committed. The allegations made by the plaintiff were
- H

BOARD OF TRUSTEES OF THE PORT OF MUMBAI v. 169  
BYRAMJEE JEEJEEBHOY PVT. LTD. [AFTAB ALAM, J.]

imaginary and fanciful, the averments in the plaint were quite vague and devoid of particulars and did not disclose the precise breach of the lease of which it was being accused.

7. After the impleadment of defendant no.2 in the suit, defendant no.1 filed an additional written statement. In paragraph 3 of the additional written statement, it took the plea that defendant no.2 was neither a necessary party nor a proper party to be joined in the suit and its addition had made the suit liable to be dismissed for misjoinder of parties. In paragraph 4, in answer to paragraph 7A of the plaint, defendant no.1 denied that the sub-lease in respect of the suit land was created unlawfully in favour of defendant no.2. It further denied that there was any breach of the lease or any violation of the provisions of the Transfer of Property Act. The defendant stated that no agreement of terms of tenancy was executed and hence, there was no question of violation of any terms of tenancy as alleged by the plaintiff. In paragraph 5 of the additional written statement, in answer to paragraph 7B of the plaint, defendant no.1 denied that it had illegally and unlawfully created sub-lease and/or given sub-tenancy and/or transferred its interest in the suit land to defendant no.2. It denied that defendant no.2 was an unlawful and illegal sub-lessee/licensee.

8. **Defendant No.2, M/s WBC Company**, in its written statement took the plea that the plaintiff's suit was barred by limitation and it was further liable to be dismissed because the plaintiff had not set out any cause of action against defendant no.2. The second defendant denied that the sub-lease created by defendant no.1 in its favour was unlawful or in breach of the lease or in violation of the provisions of the Transfer of Property Act and the terms of tenancy. The main thrust of the case of the second defendant, however, was that it had been in physical possession of the suit premises for several years prior to 1963 and this fact was fully within the knowledge of the plaintiff. The second defendant stated that in October, 1977 the suit premises was inspected by a representative of the plaintiff

A along with an architect and even at that time, the answering defendant was found to be in physical possession of the suit premises and the fact was acknowledged in a letter of November 7, 1977, written at the instance of the plaintiff. The plaintiff was, therefore, fully aware that defendant no.2 was in

B occupation of the suit premises long before the filing of the suit. The suit was, thus, clearly barred by limitation. Giving reply to the statement made in paragraph 9 of the written statement the second defendant denied that the plaintiff was entitled to a decree of eviction against defendant no.1 for inducing the

C answering defendant as a sub-lessee/sub-tenant into the suit land. The second defendant denied that it was an unlawful and illegal sub- lessee/licensee/inductee and it had no independent right, title or interest in the suit land and hence, it too would be bound by the decree against defendant no.1. In this connection,

D the second defendant further stated that by a registered lease deed dated June 17, 1978 executed by defendant no.1 an area of 4596.47sq.mts. (that included the suit land together with building(s) standing thereon) had been demised in its favour. The sub-lease was for the term of 20 years 8 months and 14

E days commencing from June 15, 1964 with the clear acknowledgement that the sub-lessee (defendant no.2) was in occupation and possession of the demised property from that date. The second defendant further stated that even before the filing of the plaintiff's suit, defendant no.1 had filed L.E. & C.

F suit no.271/309 of 1987 seeking its eviction from the demised premises and the suit was pending before the same court, i.e. the court of Small Causes, Bombay. In paragraph 11 of the written statement, in answer to paragraph 12 of the plaint, defendant no.2 (quite strangely!) denied that the suit was between the landlord and tenant, relating to the possession of

G the suit land to which the Bombay Rent Act was applicable.

H 9. On the basis of the pleadings of the parties, the trial court framed as many as 12 issues and later on, 3 additional issues. But of relevance for the present are issues 4, 5 and 7 which are as under:

**BOARD OF TRUSTEES OF THE PORT OF MUMBAI v. 171  
BYRAMJEE JEEJEEBHOY PVT. LTD. [AFTAB ALAM, J.]**

4. Whether the plaintiffs prove that, the defendants have committed breaches of terms and conditions of lease as alleged in para 4 (a) to (d) of the plaint? **A**

5. Whether the plaintiffs prove that that they have validly determined and forfeited the lease by a notice dated 7th December 1991? **B**

7. Whether the defendants prove that the suit is barred by law of limitation?

Of the three additional issues, additional issue no.1 was allied to issue no.4 and additional issue no.3 to issue no.7 as quoted above. Additional issue no.2 which was independent of the earlier issues was as under: **C**

“2. Whether the defendant no.2 is bound by decree against the defendant no.1?” **D**

10. The trial court answered issue nos.4 and 5 and additional issue nos.1 and 2 in the affirmative. And issue no.7 and additional issue no.3 in the negative.

11. Discussing the question of breach of the terms and conditions of the lease deed dated May 10, 1886 by defendant no.1, the trial court held that the plaintiff had failed to establish the breach of any other term of the lease but had successfully proved the breach of the covenant against assignment of the leasehold property to a third party. The trial court pointed out, that under clause 4 of the lease deed defendant no.1 was not supposed to part with possession of the leasehold or to induct any third person into the suit property unless it obtained a licence in writing from the lessor, the plaintiff. There was no material to show that it had obtained any licence from the plaintiff before parting with possession of the leasehold in favour of defendant no.2, the sub-lessee. The trial court found it was undeniable that defendant no.1 had inducted defendant no.2 into the suit premises by executing a sub-lease on June **E**  
**F**  
**G**

**H**

A 17, 1978 for a term of 20 years 8 months and 14 days. The only plea raised on behalf of the defendants was that defendant no.2 was inducted over the suit premises in full knowledge of the plaintiff and defendant no.2 was in possession of and hence, it could not be said that the induction of defendant no.2

B into the suit premises was illegal. The trial court also observed that for inducting defendant no.2 into the suit premises, defendant no.1 had charged compensation higher than the rent/compensation it paid to the plaintiff. The act of defendant no.1 was, therefore, undoubtedly, contrary to clause 4 of the original

C lease deed and defendant no.1 was guilty of committing breach of the covenant as contained in clause 4 of the lease deed. The trial court also upheld the validity of the notice issued by the plaintiff to defendant no.1 determining and forfeiting the lease. It further held that the transaction between the plaintiff and

D defendant no.1 was covered by the provisions of the Transfer of Property Act and, therefore, by no stretch of imagination the suit could be said to be barred by limitation. Dealing with the question of the decree being binding on defendant no.2, the trial court observed that once it was held that the sub-lease created in favour of defendant no.2 was unlawful and illegal, the

E decree of eviction passed against the lessee would fully bind the sub-lessee. The trial court decreed the suit by judgment and order dated June 12, 2002.

F 12. Against the judgment and order passed by the trial court, both defendant nos. 1 and 2 filed their separate appeals (no.741 and 742 of 2002 respectively). The appellate court formulated a number of points for its consideration of which point no.2 related to the breach of the terms and conditions of the lease by defendant no.1 and point nos.4 and 5 related to the protection that might be available to defendant no.2 under

G section 15(1) of the Bombay Rent Act, 1947 and whether defendant no.2 would be bound by the decree of eviction passed against defendant no.1. Dealing with the breach of the terms of the tenancy by defendant no.1, the appeal court held the evidence on record showed that there was no written

H

BOARD OF TRUSTEES OF THE PORT OF MUMBAI v. 173  
BYRAMJEE JEEJEEBHOY PVT. LTD. [AFTAB ALAM, J.]

permission from the plaintiff to defendant no.1 for sub-letting the lease hold in favour of defendant no.2 in the year 1978. The appellate court observed that on behalf of the defendants, it was sought to be shown that defendant no.2 was in possession of the premises from before February 1, 1973, and, therefore, they were protected by the provisions of Bombay Rent Act, 1947. It went to the extent of saying that the evidence on record showed that the possession of the suit premises by defendant no.2 from before February 1, 1973 was admitted but since the premises belonged to defendant no.1 which was a Local Authority, the protection envisaged under the Bombay Rent Act, 1947 was not available to defendant no.2 and it, therefore, could not claim protection under section 15(2) of the Act. In this connection, the appellate court said as follows:

“Evidence on record shows that the fact of possession of the Defendant No.2 in the premises prior to 1.2.1973 is admitted but when the premises belongs to the local authority i.e. the Defendant No.1 and Defendant No.2 is the lessee of the Defendant No.1, the provisions of the Bombay Rent Act, 1947 will not be applicable and, therefore, the Defendant No.2 are not entitled for protection of amendment of 1987 in Sec.15(2) of the Act. There is no dispute about the legal position that amended section 15(2) gives protection to the unlawful occupant who were in possession on 1.2.1973 but when the provisions of the said Act are not applicable to the sub-lease between the Defendant No.1 and 2, there is no question of giving protection of the amended provisions of the Bombay Rent Act. When it is admitted that the premises are sub-let by Defendant No.1 to Defendant No.2 in the year 1978 and it is also admitted that there is no written permission granted by the Plaintiffs for sub-letting, it is clear cut breach of the terms and conditions of the lease agreement. After careful scrutiny of the evidence on record, we are of the view that Plaintiffs established sub-letting by Defendant No.1 to Defendant No.2 in the year 1978 without prior

A  
B  
C  
D  
E  
F  
G  
H

A permission in writing and, therefore, the Plaintiffs are entitled for a decree on the ground of breach of terms and conditions of the tenancy."

In light of its findings, the appellate court dismissed both the appeals by judgment and order dated 31st March and April 1, 2004.

13. Both, defendants 1 and 2 sought to challenge the orders passed by the Small Causes Court by filing civil revisions before the Bombay High Court. The two civil revisions were dealt with separately in the High Court. The civil revision filed by defendant no.1 (no.183 of 2007) was first dismissed by a reasoned order dated April 17, 2008 and later on the civil revision filed by defendant no.2 (no.21 of 2009) by order date October 29, 2010, primarily following the order passed in the case of the first defendant.

14. In the case of the first defendant, the High Court affirmed the findings of the courts below that the execution of the sub-lease by defendant no 1 in favour of defendant no.2 without obtaining the permission in writing from the plaintiff was in breach of clause 4 of the lease deed. The High Court also dealt with the plea of defendant no.1 based on section 114A of Transfer of Property Act, and held that the provision had no application to a case of sub-letting or under letting. It further held that the suit filed by defendant no.1 for the eviction of defendant no.2 would not remedy the breach committed by it, more so as at the time of hearing of the Civil Revision the suit still remained pending. On these findings, the High Court dismissed the civil revision.

15. The strange thing about this case is the completely wrong course on which it has proceeded thus far. The suit was framed by the plaintiff and it was contested by the defendants and adjudicated on by the courts, right up to the High Court on the basis of the provisions of the Transfer of Property Act. The provisions of law that must actually determine the rights and

H

BOARD OF TRUSTEES OF THE PORT OF MUMBAI v. 175  
BYRAMJEE JEEJEEBHOY PVT. LTD. [AFTAB ALAM, J.]

liabilities of the parties find no mention in the pleadings of the parties or even the judgments of the courts. In the plaint, at one place it is stated that for committing breach of the terms and conditions of the lease the defendants had lost the protection of the Bombay Rent Act. Further, for invoking the jurisdiction of the Small Causes Court, it is stated in the plaint that the suit was for recovery of possession of land situated at Bombay to which the Bombay Rent Act is applicable. (Interestingly even this statement made in the plaint is rather unmindfully denied by defendant no.2 vide paragraph 11 of its written statement!). Beyond this there is no reference to the provisions of the Bombay Rent Act. In the three judgments of the courts there are discussions on sections 106, 108 (j) and 114A of the Transfer of Property Act but there is hardly any reference to the provisions of the Bombay Rent Act. It seems that the provisions of the Bombay Rent Act which have a direct bearing on the case were completely overlooked by the three courts. From the judgment of the first appellate court it indeed appears that defendant no.2 had sought the protection of section 15(2) of the Bombay Rent Act but the court brushed aside the submission observing that since the suit premises belonged to defendant no.1, Mumbai Port Trust, which is a local authority and since defendant no.2 was the lessee under defendant no.1, the provisions of the Bombay Rent Act would not be applicable and the second respondent was not entitled to the protection of section 15(2) of that Act. The appellate court clearly failed to appreciate the way the provision of section 15 along with some other provisions of the Act applied to the case set up by the three parties to the suit.

16. At the material time the relationship between the landlord, tenant and sub-tenant was regulated and fully governed by the Bombay Rent Act, 1947 (which came into force on January 19, 1948 and expired on March 31, 2000 when it was replaced by the Maharashtra Rent Control Act 1999). The preamble to the Act described it as an Act to amend

H

A and consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging house and of evictions and also to control the charges for licence of premises, etc. It is undeniable that the plaintiff is a  
B “landlord” as defined in section 5(3) and the suit land  
“premises” as defined in section 5(8) of the Act to mean “any land not being used for agricultural purposes”. Section 13 of the Act had the marginal title, “When landlord may recover possession” and enumerated the grounds on which alone a  
C landlord would be entitled to recover possession of any premises. One of the grounds, enumerated in clause (e) of the section, was unlawful sub-letting by the tenant. Clause 13(1)(e) in so far as relevant for the present is as under:

**“13. When landlord may recover possession.**

D (1)Notwithstanding anything contained in this Act but subject to the provisions of sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

- E (a) xxxxxxxx
- (b) xxxxxxxx
- (c) xxxxxxxx
- (d) xxxxxxxx

F (e) that the tenant has, since the coming into operation of this Act, unlawfully sub-let or after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, unlawfully given on licence, the whole or part of the premises or  
G assigned or transferred in any other manner his interest therein; or”

Section 14 of the Act afforded protection to sub-tenants and licensees and provided as follows:

H

**“14. Certain sub-tenants and licensees to become tenant on determination of tenancy** A

(1) When the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let before the 1st day of February 1973 shall subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant, if the tenancy had continued. B

(2) Where the interest of a licensor, who is a tenant of any premises is determined for any reason, the licensee, who by section 15A is deemed to be a tenant shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the terms and conditions of the agreement consistent with the provisions of this Act.” C D

Then came section 15 which is reproduced below:

**“15. In absence of contract to the contrary, tenant not to sub-let or transfer or to give on licence.** E

(1) Notwithstanding anything contained in any law but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein and after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, for any tenant to give on licence the whole or part of such premises: F

Provided that the State Government may by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases or the giving on licence any premises or class of premises and no such extent as may be specified in the notification. G H

A (2) The prohibition against the sub-letting of the whole or  
any part of the premises which have been let to any tenant,  
and against the assignment or transfer in any other manner  
of the interest of the tenant therein, contained in sub-  
B section (1), shall, subject to the provisions of this sub-  
section be deemed to have had no effect before the 1st  
day of February, 1973, in any area in which this Act was  
in operation before such commencement; and accordingly,  
notwithstanding anything contained in any contract or in the  
C judgment, decree or order a Court, any such sub-lease,  
assignment or transfer of any such purported sub-lease,  
assignment or transfer in favour of any person who has  
entered into possession, despite the prohibition in sub-  
D section (1) as purported sub-lessee, assignee or  
transferee and has continued in a possession on the date  
aforesaid shall be deemed to be valid and effectual for all  
purposes, and any tenant who has sub-let any premises  
or part thereof, assigned or transferred any interest therein,  
shall not be liable to eviction under clause (e) of sub-  
section (1) of section 13.

E The provisions aforesaid of this sub-section shall not  
affect in any manner the operation of sub-section (1) after  
the date aforesaid."

F 17. It is important to clearly understand the interplay  
between sections 13(1)(e) and section 15 of the Act. Section  
13(1)(e) provided that any unlawful sub-letting by the tenant  
since January 19, 1948, the date of coming into operation of  
the Act or after February 1, 1973, the date of commencement  
of the Amendment Act (Maharashtra Act 17 of 1973) any  
G licence given by the tenant unlawfully or any unlawful assignment  
or transfer of his interest in any other manner in the whole or  
part of the demised premises would make the tenant liable to  
eviction.

H 18. Section 15, in sub-section (1) then laid down what  
would make the sub-letting, assignment, transfer or licence

BOARD OF TRUSTEES OF THE PORT OF MUMBAI v. 179  
BYRAMJEE JEEJEEBHOY PVT. LTD. [AFTAB ALAM, J.]

unlawful. It said that any sub-letting or assignment or transfer of his interest in any manner made by the tenant after January 19, 1948 or any licence given by him after February 1, 1973 for the whole or part of the premises, unless sanctioned by the contract, would not be lawful, notwithstanding any thing contained in any law. Section 15(1), thus, took away any protection given to the tenant by any other law, e. g., section 108 (j) of the Transfer of Property Act and prohibited him from any sub-letting or licensing or assignment or transfer of his interest in any other manner in the absence of a sanctioning provision in the contract unless, of course, the demised premises came under the proviso to section 15(1). But it is no one's case here that the proviso to section 15(1) has any application to the present suit land. In light of section 15(1), so much emphasis put on behalf of the plaintiff on clause 4 of the lease deed dated May 10, 1886 would appear to be rather out of place because even without clause 4, in the absence of a sanctioning clause in the lease the subletting by the tenant would not be lawful and would come within the mischief of section 13(1)(e).

19. But then came section 15 (2) that removed the "unlawful" tag from any sub-letting, assignment, transfer of interest in any other manner or licensing, though contrary to sub-section (1), that were made before the 1st day of February, 1973. The second part of section 15(2) laid down that regardless of the prohibition in sub-section (1) and notwithstanding anything contained in any contract or in the judgment, decree or order of a court a sub-lease, assignment or transfer of interest in any other manner shall be deemed to be valid if the person in whose favour transfer is made entered into possession of the demised property and continued to be in possession on February 1, 1973. It needs to be emphasised here that the second part of section 15(2) overruled a contract by saying at the beginning, "Notwithstanding any thing contained in any contract...". This means that clause 4 of the

A  
B  
C  
D  
E  
F  
G  
H

A lease deed would be ineffective and inoperative if the sub-lease made by defendant no.1 in favour of defendant no.2 otherwise conformed to the conditions laid down in section 15(2) of Bombay Rent Act. More importantly, section 15(2) further provided that any sub-letting, assignment or transfer of interest in any other manner made by the tenant that came within its protective ambit would save him from eviction under section 13(1)(e). To sum up, any sub-letting, assignment, transfer of interest in any other manner or licensing made by the tenant after February 1, 1973 without there being any sanctioning clause in the contract or without the express consent of the landlord would constitute a ground for eviction under section 13(1)(e) of the Act.

20. It is in the light of the legal position as explained above that we may now proceed to examine the findings of fact recorded in this case. It is undeniable that defendant no.1 made a sub-lease and parted with the possession of the suit land in favour of defendant no.2. But the crucial question is when did this transaction take place and when was defendant no.2 inducted into the suit land? The plaintiff in its pleadings and evidence is completely silent on this question. The trial court also did not advert to the question. But, the first appellate court has recorded a finding. The appellate court observed:

“The learned advocate for both the appellants took us to the evidence to show that defendant no.2 is in possession of the premises since prior to 1/2/1973 and therefore, they are protected. **Evidence on record shows that the fact of possession of the defendant no.2 in the premises prior to 1/2/1973 is admitted but....**”

(Emphasis Added)

Having come to this finding, the appellate court misdirected itself by misconstruing the provision of section 15(2) of the Bombay Rent Act. But the finding of fact that defendant no.2 came in possession of the suit land from before

BOARD OF TRUSTEES OF THE PORT OF MUMBAI v. 181  
BYRAMJEE JEEJEEBHOY PVT. LTD. [AFTAB ALAM, J.]

February 1, 1973 and continued to be in its possession on that date is very much there. A

21. The finding is arrived at for good reasons and it is supported by both oral and documentary evidences. A charge certificate issued by the Estate Manager's Department, Mumbai Port Trust dated February 1, 1963 is on record as Annexure P5. It is as under: B

No. 551

MUMBAI PORT TUST  
ESTATE MANAGER'S DEPARTMENT  
CHARGE CERTIFICATE C

This is to certify that the Plot of Land i.e. position of old RR No.736 situated at Wadi Bunder Road Santa Cruz Estate & agreed to be leased by Trustees' Resolution No.1121 dated 11/12/1962 to M/s Morarji Dharamsey Bhawanji & Ors. (Wadi Bunder Cotton Press Company) has been pegged out to the dimensions measuring 5571 5/6 square yards and handed over to Mr. Morarji Dharamsey Bhawanji this day the 1st of February 1963 by me with effect from 1st March 1955. D E

Signed \_\_\_\_\_ (illegible) \_\_\_\_\_ Surveyor  
and taken over and acknowledged correct by me. F

Signed Morarji Dharamsey Bhawanji Lessee

Sd/-

Assistant Manager

North/ South District G

Forwarded to the Lessee/s M/s Morarji Dharamsey Bhawanji & others trading in the name and style of M/s Wadi Bunder Cotton Press Co. for information and record.

No building operations on the plot mentioned on the H

A reverse should be commenced until the plans in respect thereof are previously approved by the Trustees.

This permit should be produced for inspection whenever demanded by an Officer of the Port Trust.

B Dated 1/2/1963

Sd/-  
Estate Manager"

C 22. There are receipts of the years 1963 and 1965 issued by the Mumbai Port Trust acknowledging the payment of rent from defendant no.2. More importantly the sub-lease deed that forms the sheet-anchor of the plaintiff's case, though executed on June 1, 1978, was made effective retrospectively from June 15, 1964. It came to an end on February 26, 1985.

D 23. On the basis of the materials on record, we must accept and proceed on the basis that defendant no.2 was in occupation of the suit land long before February 1, 1973 and had continued to be in its possession on that date. The sub-letting by defendant no.1 in favour of defendant no.2, thus, clearly fell within the protective ambit of section 15(2) of Bombay Rent Act.

F 24. Faced with this situation, Mr. Sundaram, learned senior advocate, appearing for the plaintiff-respondent no.1 contended that in order to claim protection under section 15(2) of the Act, it was incumbent upon the claimant to show that there was a sub-lease, assignment or transfer in his favour prior to 1973 and it was in pursuance of such sub-lease, assignment or transfer that it came in possession and continued to be in possession of the demised property and was actually in possession of the demised property on February 1, 1973. In this case, according to Mr. Sundaram, apart from the sub-lease dated June 17, 1978, there was no other sub-lease or any other instrument of transfer to show that defendant no.2 came in possession of the suit land in pursuance of any sub-lease,

H

BOARD OF TRUSTEES OF THE PORT OF MUMBAI v. 183  
BYRAMJEE JEEJEEBHOY PVT. LTD. [AFTAB ALAM, J.]

assignment or transfer, etc.

A

25. We find no force in this submission. Section 15(2), apart from others uses the expression 'transfer of interest in any other manner'. It is sufficiently wide to include even an oral arrangement pursuant to which the sub-lessee might enter upon the land and continue in its possession. We have no manner of doubt that the initial induction of defendant no.2 on the suit land was covered by section 15(2) of the Act.

B

26. Mr. Sundaram next contended that the possession of the suit land by defendant no.2 on February 1, 1973 might have had the protection of section 15(2) of the Act. But a basic change was brought about by the execution of the lease deed on June 17, 1978 which gave rise to a new relationship between the two defendants, the lessee and the sub-lessee. Mr. Sundaram submitted that the execution of the sub-lease by defendant no.1 in favour of defendant no.2 on June 17, 1978 and the continued possession of the suit land by defendant no.2 on the basis of that sub-lease would certainly not come under the protection of section 15(2) of the Act.

C

D

27. In order to appreciate Mr. Sundaram's submission it would be apposite to refer to section 22 of the Bombay Rent Act, which is as follows:

E

**"22. Particulars to be furnished by tenant of tenancy sub-let or transferred before the 1st day of February 1973.**

F

(1) Every tenant who before the 1st day of February 1973, has without the consent of the landlord given in writing sub-let the whole or any part of the premises let to him or assigned or transferred in any other manner his interest therein, and every sub-tenant to whom the premises are so sub-let or the assignment or transfer is so made, shall furnish to the landlord, within a month of the receipt of a notice served upon him by the landlord by post or in any

G

H

A other manner, a statement in writing signed by him giving full particulars of such sub-letting assignment or transfer including the rent charged or paid by him.

B (2) Any tenant or sub-tenant who fails to furnish such statement or intentionally furnishes a statement which is false in any material particular shall, on conviction, be punished with the fine which may extend to one thousand rupees."

C 28. Section 22 provided for the landlord to have full information concerning the sub-lessee/licensee who might be in occupation of the demised premises on February 1, 1973, including the rent charged from him by the tenant. The provisions of section 22 clearly suggest that after the cut off date, i.e., February 1, 1973 there should be no material change, to the detriment of the landlord in the terms and conditions on which the sub-tenant was in possession of the demised premises on that date and in case after that date, any material change is brought about in the status of the sub-tenant, to the prejudice of the landlord that might not have the protection of section 15(2) but may come within the mischief of section 13(1)(e). And hence, the point raised by Mr. Sundaram appears to be theoretically correct. But in the facts of the case the point does not seem to arise. Mr. Parag Tripathi, learned Additional Solicitor General, appearing for the Mumbai Port Trust, rightly submitted that in pith and substance the sub-lease deed of 1978, was simply a formalization and continuation of the arrangement as existing between the defendants prior to February 1, 1973. There was no material change in the status of defendant no.2 or in the terms and conditions on which it was in possession of the suit land on February 1, 1973 or in the inter se relationship between the two defendants. The execution of the sub- lease on June 17, 1978 by defendant no.1 in favour defendant no.2 would not, therefore, militate against the protection offered by section 15(2) of the Act. The execution of the lease would not constitute a ground for eviction against

H

BOARD OF TRUSTEES OF THE PORT OF MUMBAI v. 185  
BYRAMJEE JEEJEEBHOY PVT. LTD. [AFTAB ALAM, J.]

defendant no.1 in terms of section 13(1)(e) of the Act. A

29. In light of the discussion made above, we find that the judgments and orders passed by the High Court and the two courts below are quite unsustainable. We, accordingly, set aside the judgments and orders passed by the High Court and the court of Small Causes and dismiss the suit filed by the plaintiff-respondent no.1. B

30. The appeals are allowed but with no order as to costs.

D.G. Appeals allowed. C