

How the Rent Control Act protects tenant rights

If a property owner defaults on repayment of a loan, the lending bank cannot have the tenant living there evicted if the rental lease has not expired

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A lease enables the owner of a property (lessor/landlord) to grant the right of possession of property to his tenant (lessee). The tenant gets the right to enjoy the property for a specified period of time on payment of rent to the landlord. Rent Control Acts have been enacted by different state legislatures to secure the rights of the specific class of tenants (protected tenants). The Rent Control Act governs the relationship between a tenant and the landlord and specifies the rights and liabilities of each as well as the rules of ejection with respect to such tenants.

The provisions of the Act restrict the right of a landlord to

recover possession of his leased premises from a tenant. The latter are also protected against arbitrary and unreasonable eviction from the property.

However, there have been instances of lessees being issued notices by banks to vacate the leased premises even before the expiry of the term of the lease. This has happened because the leased premises were mortgaged to banks as collateral security for money borrowed by the landlord. The bank notices were issued after landlords defaulted on payments. The banks had asked for handover of property under the relevant provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). In such cases, it is the unsuspecting tenant who suffers because of the landlord's fault by being evicted from the property because of possession by the bank even though his lease for his property has not expired.

In a recent case with the Supreme Court of India (SC) an important question was whether the provisions of the SARFAESI Act could override the provisions of the Rent Control Act and how the right of the 'protected tenant' could be protected if the landlord takes a loan by offering the very same property as security to the bank/ financial institution.

In this case, a loan was taken by some property owners from a particular bank. A property which was leased to a tenant was also a part of the properties which were mortgaged to the bank as security against the loan. The landlords failed to pay the dues within the stipulated time and thus the bank initiated proceedings under the SARFAESI Act and got an order to take possession of the secured asset. The tenant was issued a notice to evict the premises within 12 days of the receipt of notice. The tenant fearing eviction filed a rent suit in the court of small causes. An interim

order was passed in favour of the tenant and the landlord was restrained from obstructing the possession of the tenant over the premises during the pendency of suit. The tenant then filed an application to stay the execution of the order passed in favour of bank to take possession of the leased premises. This plea was, however, dismissed by the court which held that the order passed by court of small causes in favour of the tenant was not binding on the bank. An appeal against this order was then filed by the tenant in the SC to preserve his possession of the leased property. The SC decided that once tenancy is created, a tenant can be evicted only after following the

due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to the diminishing the statutory rights of protection given to the tenant. In spite of the clause the SARFAESI Act cannot be used to bulldoze the statutory rights vested on the tenants under the Rent Control Act.

The SC also refused to accept the contention that the provisions of SARFAESI Act override the provisions of the various Rent Control Acts to allow a bank to evict a tenant from the tenanted premise, which has become a secured asset of the bank after the default on

loan by the landlord. It said if the contention to dispense with the procedure laid down under the provisions of the various Rent Control Acts is accepted, then the legislative powers of the state legislatures are diluted which would amount to undermining the law enacted by the state legislature. Therefore, the SC set aside the judgments passed against the tenant and allowed the appeal made by the tenant.

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