

## THE MAHARASHTRA RENT CONTROL ACT, 1999: A CRITIQUE

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### INTRODUCTION

The Maharashtra Rent Control Act, 1999 came into force w.e.f. 31/03/2000. Before enactment of this New Act, the state of Maharashtra appointed Rent Enquiry committee i.e. Tambe Committee.<sup>1</sup> The recommendations of Tambe Committee were considered by Maharashtra Law Commission. Prior to enactment of this Act, three Acts were prevailing in the State of Maharashtra to govern the matters pertaining to tenancy dispute i.e. Bombay Rent, Hotel and Lodging House Rent Control Act for Bombay Region. The Central Provinces and Berar Act was prevailing in the area of Vidarbha and Hyderabad House (Rent, Eviction and Lease) Control Act 1954 was prevailing for Marathwada Region. This Act has been enacted to unify, consolidate and amend the law relating to the control of rent and repairs of certain premises and of eviction and for encouraging the construction of new houses by assuring a fair return on the investment by lands and to provide for matters connected with the purpose aforesaid.

Under the Indian Constitution, provision of housing is a state subject. Thus, the enactment and enforcement of rent control laws is the responsibility of the individual states. The common thread running through almost all Rent Control Acts (RCAs) and legislations is that they are intended to serve two purposes, to protect the tenant from eviction from the house where he is living except for defined reasons and on defined conditions and to protect him from having to pay more than a fair/standard rent. But most acts also confer upon the landlord the right to evict a tenant who is guilty of certain specified acts and also when the landlord requires the house for his own personal occupation. Rent Control measures become necessary when demand for rental property far outstrips the supply and tenants become vulnerable to exploitation by the landlords. This article attempts to compare and contrast rent control in Mumbai, Delhi and Bangalore respectively. Firstly, a quick look at the salient features of the rent control act governing each city.<sup>2</sup>

The Maharashtra Rent Control Bill 1999 passed with amendments by both the Legislative Assembly and Legislative Council, aimed to unify the three different Rent Control Laws, in operation in the State of Maharashtra. The new Act called the Maharashtra Rent Control Act 1999 brought about several changes in the Bombay Rent Control Act.<sup>3</sup>

### OBJECT OF THE ACT

The Act is enacted mainly for the following purpose-

- 1) Controlling rents so that they may not exceed beyond the standard rent or the fair rate, as the case may be,
- 2) Regulating the repairs of the premises which may be or are demised.
- 3) For encouraging the construction of new houses by assuring a fair return on the investments and to provide for the matters connected with the purposes aforesaid.

## SALIENT FEATURES OF THE NEW ACT

The major changes effected by the new Act are as under:

- 1) The definition of 'premises' does not include land. Therefore tenancy or lease only of land will not include land. Therefore tenancy or lease only of land will not be governed by this Act.
- 2) The Act does not make separate provisions for hotel and lodging house.
- 3) The Act applies to the whole State of Maharashtra including the areas known as Vidarbha and Marathwada. The Rent Acts applicable to these two areas are repealed.
- 4) The premises to which the Act applies are buildings or structures or parts thereof and the land appurtenant thereto including garages and outhouses thereon.
- 5) From the commencement of the Act that is from 31<sup>st</sup> March, 2000 the landlord will be entitled to increase the rent by 4% per annum in respect of premises let for purposes of residence, education, business, trade or storage.
- 6) The landlord can also increase rent reasonably for any improvement or structural alteration to premises carried out with the written consent of 70% of the tenants.
- 7) The landlord is also entitled to increase the rent by amount not exceeding 15% per annum of the expenses incurred due to special alterations made or additional amenities provided.
- 8) Agreement for grant of tenancy or licence is required to be in writing and registered under the Registration Act.
- 9) Prohibition against receipt of Pagdi or premium for transfer or relinquishment of tenancy is removed and the same is legalized.
- 10) Landlord can also charge fine, premium or deposit as consideration for grant or renewal of a lease of any premises or giving consent thereto.
- 11) A 5% increase is allowed on the standard rent fixed under section 7(14)(a) and (b)(ii).

## MAHARASHTRA RENT CONTROL ACT: AN OVERVIEW

As per **Section 8** of the Act the Court may fix standard rent and permitted increases in certain cases upon an application made to it or in any suit or proceedings, fix the standard rent at such amount as having regard to the provisions of this Act and the circumstances of the case, the Court deems just. If application for fixing standard rent or for determining the permitted increase is made by the tenant the court shall forthwith specify the amount of rent or permitted increase which are to be deposited in court by the tenant. Even at any stage of the suit for recovery of rent, whether with or without claim for possession of the premises, the court is satisfied that the rent is excessive and standard rent should be fixed, the court may make order directing the tenant to deposit in court forthwith such amount.

As per **Section 14** of the Act duty is also cast upon the landlord to keep premises in good repair. If landlord neglects to make any repair which he is bound to make as per rule and after a notice of fifteen days is served upon him by tenant interested in such repair, then such tenant may make the same and deduct the expenses of such repairs from the rent. It is an important provision in favour of the tenant because in most of cases it is seen that landlord keep the premises in such a condition that no one can stay there. So to curb such tactics this provision is made in this Act.

As per **Section 15** of the Act landlord is not entitled to the recovery or possession of any

premises if tenant pays or is ready and willing to pay standard rent and permitted increases. Even landlord cannot file a suit for recovery of possession against his tenant on the ground of nonpayment of standard rent due until the expiration of ninety days next after notice in writing of the demand of standard rent has been served upon the tenant. As per Sub Section (3), decree for eviction cannot be passed by the court, if within ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court, the standard rent and permitted increases then due, together with simple interest on the amount of arrears at fifteen percent per annum and thereafter continuous to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided. This provision also protects the honest tenants who are willing to pay the standard rent to the landlords as per rule. Chapter IV of the Act deals with the recovery of possession. <sup>4</sup>

**Section 16** prescribes the occasions and the circumstances in which landlord may recover the possession of any premises, such as:

- (a) Damage to property,
- (b) Erection of permanent structure,
- (c) Nuisance
- (d) Quit notice issued by tenant
- (e) Subletting,
- (f) Tenant has ceased to be in service/employment of landlord
- (g) Bona fide requirement of landlord,
- (h) Bona fide requirement for carrying out repairs,
- (i) Demolition of premises for erecting new building,
- (j) Requirement for construction on terrace,
- (k) Demolition as ordered by municipal authority,
- (l) The permission for construction granted by municipal authority,
- (m) Rent charged by tenant for area sublet is in excess of standard rent,

(n) Nonuser of premises for continuous period of 6 months preceding date of suit. **Section 23** of the act provides special provision for recovery of possession of the tenanted premises to the member of armed forces of the Union, Scientists or their successor in interest entitled to recover the possession of the premises for their occupation.

**Section 24** provides for recovery of possession by the landlord of premises on expiry of licence period. On failure of the licensee to so deliver the possession, the landlord can make an application to the competent authority. The authority, on being satisfied about expiry of period of license, shall pass an order for eviction of licensee.

As per **Section 25**, when the interest of the tenant is determined for any reason, any sub tenant to whom the premises have been lawfully sublet and such sub tenancy is subsisting on the date of commencement of this Act or where the sub tenancy is permitted by contract between the landlord and tenant, such subtenant shall, subject to the provisions of this Act, be deemed to become the tenant of his landlord.

However, as per **Section 26**, in absence of any contract, it shall not be lawful for any tenant to sublet or give on licence the whole or any part of the premises let to him or to assign or transfer in

any other manner.

**Section 28** of the Act deals with right of landlord to inspect the premises let or given on licence, at a reasonable time after giving prior notice to the tenant, licensee or occupier.

Whereas, there is restriction on landlord in view of **Section 29** of the Act not to cutoff or withhold any essential supply or services of the tenanted premises.

As per **Section 31**, it is mandatory for the landlord to issue receipt for any amount received in respect of the premises.

As per **Section 33** of the Act, in Brihan Mumbai, the Court of Small Causes Mumbai, and in any area for which a Small Causes Court is established under the Provincial Small Causes Courts Act, 1897, such court shall have jurisdiction to entertain any suit proceeding or application or to deal with such claim or question and elsewhere, the Court of Civil Judge (Jr.Dn.) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the court of Civil Judge (Sr. Dn.) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord or tenant relating to the recovery of rent or possession of any premises and to decide any application under this Act.

**Section 53** provides that offences under section 10 shall be non cognizable and offences under sections 17 to 19, 21, 29, 30 and 31 shall be cognizable.<sup>5</sup>

### **THE MAHARASHTRA RENT CONTROL ACT, 1999: A CRITIQUE**

The Maharashtra Rent Control Act, sanctioned by the President of India KR Narayanan in 2000, has been mired in controversy from the word go. The Act found critics among both the landlords and the tenants. The landlord association had challenged in the Supreme Court the constitutional validity of standard rent provisions of the Maharashtra Rent Control Act, whereby rents frozen at the 1940-level were permitted to be increased by 5% and then 4% annually, and provisions of the Maharashtra Housing and Area Development Authority (MHADA) Act. Citing the permitted rise in rent as unreasonable, the property owners' association had said that it was not possible for them to carry out repairs in their dilapidated buildings. The Act has been languishing with the Supreme Court since 2001. The issue came to a standstill when a seven-judge bench hearing the case referred the litigation to a bigger bench due to the numerous constitutional queries it raised. The landlord association had also questioned the validity of a Mhada provision which enabled acquisition of a cessed building on payment of 100 months' rent by tenants if at least 70 per cent of them form a co-operative society. Apart from this there are various critiques in this Act therefore It is important to reform rent control law due to following reason-

- Low or negative rate of return from investment in rental housing and decline in supply of rental housing due to:
  - Withdrawal of rental housing from existing stock.
  - Accelerated depreciation of the premises due to inadequate maintenance.
  - Disincentive to new investment in rental housing.
- Reduced supply of rental housing in the "controlled" market segment leads to increased rents in the uncontrolled market segment.
- Ineffective implementation of the rent laws leads to emergence of a black market in rental housing and of unlawful practices like payment of "key money" at the point of entry in tenancy.

- Exclusions of lower income groups from the rental housing market, due to inability to pay high rents in the uncontrolled market and huge deposits as key money in the controlled market.
- Inefficient and wasteful use of scarce resource (rental housing) in the controlled market due to low rents.
- Negative impact on the value of tenanted properties with repercussions on the salability and/or mortgagability of the premises.
- Contentious relationship between the landlord and the tenant.
- Increased litigation and resort to criminal practices for getting repossession of the house by the landlord and consequent increased administration cost for resolution of disputes.
- Stagnation of revenue from property taxes, which is the major source of revenue of urban local bodies (ULBs).

### CONCLUSION :

Due to above critique, the Maharashtra government has decided to amend the Maharashtra Rent Control Act (1999), which would exclude all commercial establishments occupying more than 500 square feet from the protection under the Maharashtra Rent Control Act that prohibits landlords from levying market rents. Now, all those who have taken such commercial establishments on rent and also those living as tenants in residential homes that are bigger than 862 sq ft will not be protected under the Rent Control Act. In simple terms, these people will now have to pay market rates that are demanded by his/her landlord or could be evicted. However, to ensure that the amendment does not lead to a sudden increase in rents, the amendment has incorporated a provision where in for the first three years after the amendment has been introduced, the owner of the property can only levy 50% of the market rent. From the fourth year onwards, the landlord can levy 100% of rent, though the act has introduced one more caveat — the landlord cannot levy a market rent that is more than 30% of the annual income of the tenant. In such cases the tenant will be ‘liable to pay rent equal to only 30% of his/her annual income’.<sup>6</sup>

Aware that many senior citizens live as tenants and the amendment to the Rent Control Act would remove their protection from being evicted, the new amendment stipulates that such a tenant should be liable to ‘pay 50% of the market rent or 15% of his/her annual income, whichever is lower’.

Sources in the government said by moving the amendment they are trying to create more housing stock and development. Under the current Maharashtra Rent Control Act, rents cannot be charged at market rates for buildings constructed before 1969 (cessed property). In such buildings only a standard rent could be levied.

Landlords have been complaining that the standard rent is quite low and doesn’t give them much a measly amount as rents. For instance in posh Marine Drive where buying a property would set you back by a few crores, landlords of pre-1969 buildings just get rent of Rs 200 per month from a tenant.

“These are houses which are as big as 2,500 sq feet but still get only Rs 200 as monthly rent. Similarly, in many properties in Altamount Road rents are being charged at Rs 75 per month for a residential home. Even slum dwellers pay more. We welcome this new move,” said BR Bhattad, executive president, Mumbai Property Owner’s Association, which has been for years waging a battle in the judiciary to increase the rentals of such properties.

**(Endnotes)**

- 1 <http://mja.gov.in/Site/Upload/GR/Civil%20Summary%20of%20Workshop%20dated%2022.3.2015%20in%20Chandrapur%20District.pdf> (Last Visited 09/12/2015)
- 2 Ibid.
- 3 [https://housing.maharashtra.gov.in/Sitemap/housing/pdf/actsrules/THE\\_MAHARASHTRA\\_RENT\\_CONTROL\\_ACT.pdf](https://housing.maharashtra.gov.in/Sitemap/housing/pdf/actsrules/THE_MAHARASHTRA_RENT_CONTROL_ACT.pdf) (Last visited 08/12/2015)
- 4 Sunil Dighe, “The Maharashtra Rent Control Act”, page no. page no. 69 to 215
- 5 Ibid, page no. 225 to 303
- 6 Krishna Kumar, “Maharashtra government decides to amend Rent Control Act”, available at, [http://articles.economictimes.indiatimes.com/2015-05-01/news/61723824\\_1\\_maharashtra-rent-control-act-market-rates-new-amendment](http://articles.economictimes.indiatimes.com/2015-05-01/news/61723824_1_maharashtra-rent-control-act-market-rates-new-amendment) (Last visited 11/12/2015)