

१३

मंगळवार, जून ६, १९७८/ज्येष्ठ १६, शके १९००

The following Bill is published under the proviso to rule 111 (1) of the Maharashtra Legislative Council Rules :—

L. C. BILL No. II OF 1978.

A BILL

further to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Bom. WHEREAS it is expedient further to amend the Bombay Rents, Hotel and
LVII Lodging House Rates Control Act, 1947, for the purposes hereinafter appearing;
1947. It is hereby enacted in the Twenty-ninth Year of the Republic of India as follows :—

1. (1) This Act may be called the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978. Short title and commencement.
- (2) It shall come into force on the date of its publication in the *Official Gazette*.

Amendment of section 5 of Bom. LVII of 1947. 2. (1) In section 5 of the Bombay Rents, Hotel and Lodging House Rates, Control Act, 1947 (hereinafter referred to as "the principal Act"), in clause (11), for sub-clause (c), the following shall be substituted, namely :—

Bom. LVII of 1947.

“(c) (i) in relation to any premises let for residence, when the tenant dies, whether the death has occurred before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978, any member of the tenant's family residing with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court;

Mah. of 1978.

(ii) in relation to any premises let for the purposes of education, business, trade or storage, when the tenant dies, whether the death has occurred before or after the commencement of the said Act, any member of the tenant's family using the premises for the purposes of education or carrying on business, trade or storage in the premises, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court.

Explanation.—The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply, and shall be deemed always to have applied, even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.”.

(2) Notwithstanding anything contained in any judgment, decree or order of any Court or anything contained in the principal Act or in any law for the time being in force, the provisions of sub-clause (c) of clause (11) of section 5 of the principal Act as amended by this Act, shall apply, and shall be deemed always to have applied, to any person, who is in possession of any premises on the date of commencement of this Act and who claims to be a tenant by virtue of the said sub-clause (c) as amended by this Act. Such person shall continue to be in possession of the premises as a tenant, unless the landlord is entitled to recover possession of the premises on any other ground under the principal Act.

STATEMENT OF OBJECTS AND REASONS.

Section 5 (11) (c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, provides that the expression "tenant" includes any member of the tenant's family residing with him at the time of his death, as may be decided in default of agreement by the Court. Till recently, the view taken by the Bombay High Court was that this provision also applied to the premises let for purposes of education, business, trade or storage [See *Smt. Shantabai Vishnumal* (since deceased by her legal representative *Shashikant Vishnu Shinde*) vs. *Ganpat Ladha and others*, Special Civil Application No. 334 of 1970, decided on the 29th August 1975, Unreported Cases Reporter 1976 (Bombay) at page 6]. But now the Supreme Court has decided on the 21st February 1978 in *Ganpat Ladha vs. Shashikant Vishnu Shinde*, Unreported Judgements (Supreme Court) 1978 at page 218, that the provisions of section 5 (11) (c) apply to residential premises only; and do not apply to non-residential premises. As a result of this decision, a large number of persons who have shops or business premises are adversely affected. If unfortunately the tenant dies, his family members will be at the mercy of the landlord and will be deprived of the tenancy and their source of maintenance by not being able to carry on the business in the premises. In view of the acute shortage of accommodation, a grave socio-economic problem has arisen and it has become necessary to take steps to amend the law to save such persons from being evicted and from losing their source of livelihood suddenly. It has also become necessary to save persons against whom decrees for eviction have already been passed, but who are still in possession of the premises, so that they may also get benefit of the amended law.

2. Another difficulty has also arisen. The Courts are inclined to hold that transmission of tenancy on the death of a tenant under section 5(11) (c) is permissible only once. Sometimes, deaths of family members occur at short intervals. In such cases, the remaining family members should not be deprived of their shelter, when they are already facing the calamity of deaths of other family members. It is, therefore, necessary to make a specific provision in the law for transmission of tenancy, as and when the death of a tenant occurs.

3. The object of the Bill is to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, suitably, for the purposes stated above.

Dated the 6th day of June 1978.

SUDHAKAR R. NAIK,
Minister for Housing.