Muni Lal Peshawaria and others
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class, viz., where a liability not existing at common law is created by a statute, which at the same time gives a special and particular remedy for enforcing it... .....The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class."

Here, the liquidators are creations of the Companies Act and their liability along with officers of the company for damages for misfeasance or non-feasance is created by section 235 of the Act of 1913, and I consider that any share-holder who claims this remedy must go to the Court under the Act in order to obtain it. I am, therefore, of the opinion that the lower Court wrongly held that it had jurisdiction to entertain the suit and I accordingly accept the revision petition and direct that the plaint be returned to the plaintiffs. The parties will bear their own costs.

B.R.T.

LETTERS PATENT APPEAL

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

JIWAN DASS,—*Appellant.*

Versus

DEVI BAI,—*Respondent.*

L.P.A. No. 133-D of 1963.

1964

April, 6th.

Delhi Rent Control Act (LIX of 1958)—S. 14(1)(e)—Bona fide requirement of the landlord—Landlord in possession of other pemises as tenant which are in a dilapidated condition—Landlord wishing to shift to his own house—Whether requires his premises bona fide—Tribunal making a wholly erroneous approach—Substantial question of law—Whether arises for determination.

Held, that where the landlord desires eviction of his tenant on the ground that the rented premises in his own occupation are dilapidated and in danger of falling down any time it can reasonably be said that he requires his own house for occupation as a residence within the meaning of clause (e) sub-section (1) of section 14 of the Delhi Rent Control Act 1958. It is the state of the premises at the time when the application is made which is to be seen in order to determine whether the landlord *bona fide* needs the premises for his personal use. It is no defence that the state of the premises in his occupation can be altered by repairs. All that the law requires is that the need of the owner of the premises should be *bona fide* and the question of *bona fide* need, in the circumstances, has to be examined at the time when a claim for eviction of the tenant is made by the owner. The owner is not required to enter into litigation with his or her tenant and establish, before the requirement of the owner can be adjudged as *bona fide,* that he has failed to get the necessary relief from his or her landlord. The argument that the premises have not fallen down for the last two years is also of no avail. The intention of the law is not that the landlord should be put on the road or in a position of danger to his life and property for the benefit of the tenant. All that the landlord has to show is that his or her need is genuine.

Held, that where the Tribunal was totally oblivious of the requirements of law and his approach to the entire case was erroneous, a substantial question of law arises for determination by the High Court in the second appeal.

Held, (per Dua, J.)—The language "premises..... and required *bona fide*.....for occupation as a residence.....", though connoting something more than a desire or wish to occupy, quite clearly does not convey the idea of absolute necessity in the sense that there should be no other possible alternative for the landlord for meeting his requirement except by occupying his property. The Rent Control Act is primarily designed to protect the tenants against the tactics of greedy and unscrupulous landlords, who taking advantage of the difficulties and helplessness of tenants, extract exorbitant rents from

them; it does not appear to be designed to penalise the owners by disabling them from occupying their own property when they *bona fide* require it; there is adequate provision in the Act safeguarding against a possible abuse of the privilege or the right of eviction on their part. The Parliament did not intend to compel the owners of property to continue to live in rented houses in discomfort and with all the uncertainty attaching to it, and to be kept out of their own houses when they *bona fide* require them for occupation unless they satisfy the Court that their need is absolute and there is no other alternative whereby they may possibly be able, by persuading or compelling their own landlords, to minimise their discomfort in the rented premises,. If their requirement is *bona fide*, in other words, honest and reasonable, broadly considered from their own standard of living and their requirements, and not *mala fide*, or for a collateral purpose or grossly unreasonable, then they would largely be justified in claiming possession. Of course, no rigid and uniform test covering all cases can be laid down, it being a matter to be decided on the circumstances of each case.

Letters Patent Appeal under clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice H. R. Khanna, dated 30th July, 1963, in S.A.O. 175-D/62.

D. K. KAPUR, ADVOCATE, for the Appellant.

R. K. MAKHIJA, ADVOCATE, *for the Respondent.*

JUDGMENT

Mahajan, J. MAHAJAN, J.—This appeal has been filed under clause 10 of the letters Patent after the case was certified as fit one for appeal by the learned Single Judge. The learned Single Judge reversed the decision of the Rent Control Tribunal and restored that of the Rent Controller. The Rent Controller had allowed the application of the landlady for eviction of the tenant from the premises in dispute The ground on which the eviction was sought and allowed was that the landlady *bona fide* required the premises for her personal use. The

application by the landlady was resisted by the tenant on the ground that the landlady was in possession of premises which were reasonably sufficient to meet her requirement. On the other hand, the plea raised by the landlady was that the premises in which she was living were rented premises, the building was over 60 years old, its wooden rafters had been eaten by white-ants, the walls had cracked, the roofs were leaking and the building was unfit for human habitation. No rebuttal was led by the appellant-tenant against the stand taken up by the landlady. The Rent Controller found that the premises which were in the occupation of the landlady were in such a state that her need to occupy her own property by eviction of the tenant was justified. In this view of the matter, her application was allowed. The tenant appealed agaist this decision to the Rent Control Tribunal. The Tribunal, however, maintained the finding of the Rent Controller with regard to the nature of the premises which were in the actual possession of the landlady and from which she wanted to shift to the premises in dispute. The Tribunal however took the view that the premises in the actual occupation of the landlady could be set right by repairs and, therefore, there was no *bona fide* requirement which justified the landlady to shift from the premises actually occupied by her to the premises in dispute. The Tribunal further took the view that the landlady had not asked her landlord to repair the premises and therefore, it could not be said that her requirement in the circumstances, was *bona fide* as to justify the eviction of her tenant from the premises in dispute. In this view of the matter, it reversed the decision of the Rent Controller and dismissed the application of the landlady : Against this decision, the landlady preferred on appeal to this Court. That appeal came up for disposal before

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Khanna J, who allowed the appeal and reversed the decision of the Tribunal and restored that of the Rent Controller. On application made to Khanna J. under clause 10 of the Letters Patent, he certified the case to be fit one for further appeal and that is how the matter has been placed before us.

Mr. Makhija, learned counsel for the respondent landlady has raised a preliminary objection that the present appeal is not competent. His contention is that the Letters Patent appeal does not lie in view of the provisions of the Delhi Rent Control Act. In support of this contention, a Division Bench decision of this Court in *Messrs South Asia Industries (P) Ltd.*, v. *S. B. Sarup Singh* (L. P.A. No. 85-D of 1963) dated the 11th December, 1963, was cited. This decision fully supports the preliminary objection

Mr. D. K. Kapur, who appears for the apellant-tenant, contended that the above cited case is wrongly decided and that it runs counter to the decision of the Supreme Court in *National Sewing Thread Company Ltd.*, v. *James Chadwick and Bros. Ltd.* (1); This decision was noticed by the Division Bench, but, according to the learned counsel, was not correctly interpreted. In view of the fact that there is no merit in the appeal itself, we have thought it fit not to examine and decide this contention.

On the merits, there is no substance in the appeal. The contention of Mr. Kapur, learned counsel for the appellant, is that in case the premises in occupation of the landlady could be set right by repairs, whether nominal or extensive, there would be no question of the landlady requiring the premises in dispute *bona fide* for her personal necessity, because that necessity was already

(1) I.L.R. (1960) 1 Punj. 589=1960 P.L.R. 1.

being met by the premises in her actual occupation from which she wanted to shift to the disputed premises. We are unable to agree with this contention. As observed by the learned Single Judge, it is the state of the premises at the time when the application is made which is to be soon in order to determine whether the landlady *bona fide* needs the premises for her personal use. The state of the premises actually in her posession is admittedly such that it cannot be said that her requirement is not genuine and *bona fide*. The only argument advanced is that the state of the premises can be altered. That is a matter which cannot be noticed because the landlord who is the owner of the premises from which the landlady wants to shift may not be in a position to repair the premises, or may not be even willing to do so or, as in the present case the premises being over 60 years old, he may be inclined to let them fall in order that he may rebuild them. That does not mean that the person who is a tenant in those premises and needs his or her own property should be left on the road. That is not the intention of the Act. All that the law requires is that the need of the owner of the premises should be *bona fide* and the question of *bona fide* need, in the circumstances, has to be examined at the time when a claim for eviction of the tenant is made by the owner. The owner is not required to enter into a litigation with his or her tenant and establish, before the requirement of the owner can be adjudged as *bona fide*, that he has failed to get the necessary relief from his or her landlord. We are clearly of the view that the Rent Controller as well as the learned Single Judge were rightly of the view that the *bona fides* of the owner had to be judged from the state of facts prevailing at the time when the owner makes a claim for eviction of the tenant. No ulterior considerations can be taken into account.

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A further argument was advanced that for the last two years, the premises have not fallen. This is a mere coincidence. The intention of the law is not that the land lord should be put on the road or in a position of danger to his life and property for the benefit of the tenant. All that the landlord has to show is that his or her need is genuine. The facts and circumstances of the case leave no manner of doubt that the need of the landlady is genuine.

Mr. Kapur, as a last resort, sought to contend that the learned Single Judge could not interfere in appeal because there was no substantial question of law arising for determination. We are unable to agree with this contention as well. The entire approach of the Tribunal was erroneous. The Tribunal was totally oblivious of the requirement of law and his approach to the entire case was from a wrong angle. In this situation it cannot be said that there was no substantial question of law arising for determination by the learned Single Judge.

In our view, there is no merit in this appeal, the same fails and is dismissed with costs.

A prayer has been made for by the tenant that some time should be allowed to him to vacate the premises. We allow the tenant one month's time to vacate the premises, but this will not debar the landlady to proceed with her execution application for eviction. The eviction will only take place after the period of one month allowed by us has expired.

DUA, J.—I concur. The language premises... .....and required *bona fide*.....for occupation as a residence.....", though connoting something more than a desire or wish to occupy, quite clearly does not convey the idea of absolute necessity in the sense that there should be no other

possible alternative for the landlord for meeting his requirement except by occupying his property. Nothing urged at the bar has persuaded me to put this construction on the language we are called upon to construe, in the light of the legislative scheme discernible from the statute read as a whole. The Rent Control Act is primarily designed to protect the tenants against the tactic of greedy and unscrupulous landlords who taking advantage of the difficulties and helplessness of tenants, extract exorbitant rents from them; it does not appear to me to be designed to penalise the owners by disabling them from occupying their own property when they *bona fide* require it. There is adequate provisions in the Act safeguarding against a possible abuse of the privilege or the right of eviction on their part. I am, therefore, as at present advised unable to hold that the Parliament intended to compel the owners of property to continue to live in rented houses in discomfort and with all the uncertainty attaching to it and to be kept out of their own houses when they *bona fide* require them for occupation unless they satisfy the Court that their need is absolute and there is no other alternative whereby they may possibly be able by persuading or compelling their own landlords to minimise their discomfort in the rented premises. If their requirement is *bona fide* in other words; honest and reasonable; broadly considered from their own standard of living and their requirements; and not *mala fide* or for a collateral purpose or grossly unreasonable; then they would largely be justified in claiming possession. Of course no rigid and uniform test covering all cases can be laid down; it being a matter to be decided on the circumstances of each case; but I consider the above to be the broad guiding factor in approaching the question.

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On the facts and circumstances of this case, therefore; it is not possible to sustain the appellant's contention. I, therefore, agree that the appeal be dismissed with costs.

B.R.T.

APPELLATE CIVIL

Before H. R. Khanna, J.

LAL SINGH,—*Appellant.*

Versus

SARDARA AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 31-D of 1960.

1964

May, 1st.

Delhi Land Reforms Act (VIII of 1954)—S. 185 and Entry No. 4 in Schedule I of the Act—Delhi Land Reforms Rules, 1954—Rules 6A to 8—Suit for declaration that Bhumidari rights have been wrongly conferred on the defendants and that the plaintiffs are entitled to get those rights—Whether maintainable in civil Court—Decision by Revenue Court in the presence of the parties that the suit was not maintainable in Revenue Court—Whether binding on the parties.

Held, that sub-rule (4) of Rule 8 of the Delhi Land Reforms Rules, 1954, makes no provision for giving notice to the different interested parties before a declaration of *bhumidari* rights is made and the whole thing is done in more or less a mechanical way. As there is no effectual adjudication of the rights by the revenue authorities while declaring *bhumidari* rights, their declaration, must be subject to the due adjudication of rights which, in the absence of anything to the contrary, can only be by a Civil Court.

Held, that section 185 of the Delhi Land Reforms Act, 1954, coupled with entry No. 4, in the Schedule does not exclude the jurisdiction of the Civil Court to entertain and decide a suit for a declaration of *bhumidari* rights in favour