APPELLATE CIVIL

Before S. S. Dulat and S. K. Kapur, JJ.

ROOP LAL MEHRA,—*Appellant.*

versus

KAMLA SONI,—*Respondent.*

S.A.O. 186-D. of 1965.

February 28, 1966.

Delhi Rent Control Act (LIX of 1958)—S. 14(1)(e)—Bona fide *requirement of landlord—How to be determined—Landlady in possession of fairly commodious ground floor of her house sufficient for her needs—Whether entitled to eject the tenant of first floor on the ground that she and her family is not accustomed to live in a house in which another tenant is living.*

Held, that whatever may be the scope of the expression, "required *bona fide* by the landlord ....." it appears to be fairly clear that read as a whole, clause (e) of proviso to sub-section (1) of section 14 of the Delhi Rent Control Act, 1958, does not make the landlords sole arbiters of subjectively deciding the question of their requirements. It is possible that the latter part of the clause has been added to avoid an argument that once a landlord is able to show that he in fact desires possession and genuinely intends to occupy it, his claim becomes unanswerable. The clause confers a power of scrutiny, though of limited nature, on the authorities charged with the function of deciding disputes under the said Act. The attention of the Courts will have, therefore, to be directed to find out: (a) whether or not the requirement of possession is *bona fide*, and (b) whether or not the premises already in possession of the landlord afford a reasonably suitable alternative accommodation. It would also not be correct to suggest that the question of accommodation, actually in possession of the landlord, being "reasonably suitable" is to be judged only in the context of physical sufficiency of the accommodation. In terms of physical sufficiency, three rooms in possession of a landlord with a family of three, may be sufficient, yet Court may hold that accommodation insufficient having regard to various circumstances such as, the social status of the family or traditions and customs

observed by it. In that view the decision of the landlord would be both subjective and objective. Subjective in the sense that the matter has not to be decided from the standpoint of the Rent Controller or the tenant but from that of the landlord. In deciding this from the point of view of the landlord, various considerations, mentioned above, would be relevant. So long as the landlord is able to establish that he in good faith and genuinely wishes to occupy the premises in possession of the tenant and that good faith or genuineness is of a reasonable man, it would not be open to the Controller to weigh the claim of the landlord in a fine scale. Similarly, the suitability of the other accommodation will also have to be decided from the standpoint of a reasonable landlord.

Held, that the necessity for rent control legislation has, no doubt, arisen with a view to protecting the tenants from unscrupulous landlords, who may adopt devices to extract exorbitant rent, but at the same time the statute is not intended to deprive a landlord of his *bona fide* desire, so long as that desire is confined within reasonable limits, judged from a practical and not fanciful point of view, to be more comfortable by occupying his own house. It is objective in the sense that the authorities under the Act have not been rendered powerless to pronounce dissatisfaction with the *bona fides* of the landlord's claim, provided they judge it from the point of view of the landlord. The law does not require a landlord to sacrifice his own comforts and requirements merely on the ground that the premises are with a tenant. Whether or not the alternate accommodation available to the landlord is suitable or not, must, therefore, be decided after taking into account all relevant circumstances, but in deciding that the authorities must step into the position of the landlord and decide in what may be called a broad, common-sense way as a man of the world. In so deciding, the social customs, conventions and habits, usages and practices of the society also cannot be completely ruled out as irrelevant. The problem will in all cases have to be approached from a practical point of view and from the point of view of a reasonable man and not from that of a whimsical landlord, who may be wanting a premises for satisfaction of his mere whims.

Held, that a landlady who has a fairly commodious and independent accommodation available to her on the ground floor cannot claim the ejectment of her tenant on the first floor on the ground that she is not accustomed to living in a place where somebody else is living.

Second Appeal from the order of Shri P. S. Pattar, Rent Control Tribunal, *Delhi, dated 5th May, 1965, affirming that of Shri P. C. Saini, P.C.S., Additional Rent Controller, Delhi, dated 27th January, 1965, passing an order of eviction against the respondent and for recovery of possession of the disputed premises in favour of the petitioner and further allowing the respondent six month's time to vacate the premises in dispute.*

D. D. Chawla, with S. N. Chopra and M. K. Chawla, Advocates, for the Appellant.

Rameshwar Dial, Advocate, for the Respondent.

JUDGMENT.

KAPUR, J.—A double-storeyed house on Original Road, Karol Bagh, New Delhi, belongs to Kamla Soni, respondent. The first floor of the house is let to Roop Lal appellant. The landlady applied for the tenant's eviction from the first floor on the ground that she *bona fide* required it for occupation as a residence for herself and that she had "no other reasonably suitable residential accommodation". It appears that at the same time by a separate application, the landlady had asked for the eviction of another tenant who was in occupation of the ground-floor of the house and that portion was vacated by that tenant and became available for occupation by the landlady. The respondent did not go into the occupation of that portion and in support of her claim for eviction said that she actually needed the whole of the house, as she and her family had decided to shift to Delhi from Ambala and they were not used to live in any house in which another person or another tenant may be living. This allegation was made in answer to the obvious suggestion forthcoming in defence that the respondent was in a position to occupy the ground-floor vacated by the other tenant and that that flat was sufficient for the respondent's needs. It also appears that the ground-floor flat rendered available to the landlady consists of four bedrooms, one drawing room, one dining room and one office room, apart from a number of verandahs. The landlady's family consists only of her self, her husband and one adopted daughter. The Additional Rent Controller was faced with two questions : (1) whether the respondent really required the first floor for her own residence ? And, (2) whether the accommodation available to the respondent in the ground-floor flat was not reasonably suitable for her needs ? Both those questions were answered by the Additional Rent Controller in favour of the landlady and an order of eviction was passed. The appellant in this Court took an appeal to the Rent Control Tribunal, but did not succeed there. The Rent Control Tribunal had recourse to a number of decisions bearing on the question whether the requirements of a particular landlord were to be left subjectively to his own state of mind or whether the question of accommodation actually in possession of the landlord being 'reasonably suitable' was to be judged objectively and in the context of physical sufficiency of the accommodation, and consequently the physical sufficiency of the accommodation alone was to be considered or also the surrounding circumstances relevant to the question of suitability ? The Tribunal seems to have adopted the

view, and primarily on the basis of certain decisions of this Court, that in determining the issue the dominant fact must be the state of landlord's mind and even on the question of suitability of accommodation in his possession, the suitability or non-suitability must be judged with reference to his state of mind. I will advert to the various decisions relied on by the Tribunal a little later, but it would be relevant to quote here the finding arrived at by the Tribunal. It is,—"Taking into consideration the status of the family and the fact that they are not accustomed to live in a house, part of which is occupied by any other person, and the likelihood of the interference in the privacy by the occupation of the first floor by the appellant, I agree with the findings of the Additional Controller that the existing accommodation in possession of the landlady is not reasonably suitable within the meaning of clause (e) of the proviso to section 14(1) of the Delhi Rent Control Act". The Tribunal also held that,—"the accommodation in possession of the landlady on the ground-floor of this house consists of one office room, one drawing room, one dining room, four bedrooms, four verandahs, two stores and one garage besides grassy lawns on three sides. This accommodation may be sufficient for the landlady and her husband, but we have to consider other circumstances to know whether the accommodation is reasonably suitable."

The appeal came up for hearing before Dulat, J., who felt that, in view of the importance of the question raised, the matter should be considered by a larger Bench. This is how the appeal has come for disposal before us.

I would now proceed to examine various decisions having a bearing on the question. In *M/s Sant Ram-Des Raj* v. *Karam Chand* (1), a Full Bench of this court considered the scope of section 13(3) of the East Punjab Urban Rent Restriction Act (III of 1949). The relevant part of section 13 is as under:—

> "13(3) (a). A landlord may apply to the Collector for an order directing the tenant to put the landlord in possession—
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> (i) in the case of a residential building, if—
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> (a) he requires it for his own occupation;

(1) I.L.R. (1962) 2 Punj. 405=1962 P.L.R. 758.

(b) he is not occupying another residential building, in the urban area concerned;

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

* * * * *."

Mehar Singh, J., said : "It is settled that the word 'requires' as used in section 13(3) (a) (i) (a) of the Act involves something more than a mere wish and it has in it an element of need to an extent at least. When condition (a) in sub-paragraph (i) refers to the requirement of a residential building by the landlord for his occupation, it has an eye to his needs. If his needs in fact exist and are commensurate with his circumstances, such as the size of his family, his social status and social habits and style of living, and it is found, as has been found in these cases, that the landlord has sought eviction of the tenant in good faith, then it is a case in which he requires the residential building, from which he seeks eviction of the tenant, for his own occupation. He has then completely fulfilled condition (a) of sub-paragraph (i). To interpret condition (b) in the manner suggested by the tenants that such *bona fide* claim of the landlord be ignored because he is in occupation of residential building which is utterly unsuited to his needs and requirements and does not meet the same, would mean rendering condition (a) completely redundant. If the operation of condition (b) is such, the Legislature need not have enacted condition (a) at all". In *Mahabir Parshad* v. *Mohinder Kumar* (2), while construing the same provision, Dua, J., after referring to some earlier decisions of this court, said : "It is true that under clause (b) of section 13(3) the Controller has to be satisfied that the claim of the landlord is *bona fide*, but this, in my view, merely means that there is no collateral or ulterior object in getting the house vacated and that the claim is not a device or a subterfuge. The Controller cannot say that, if he were in the position of the landlord, he would not have required the residential building in question for his own occupation. That, in my view, is not, and cannot be the true test. It is the landlord's own state of mind according to which the requirement has to be considered and not according to that of the Controller or of the appellate authority or

(2) 1959 P.L.R. 625.

even of this Court. It is true that it is not mere whim or bare desire of the landlord to occupy the residential building concerned that would establish his requirement, but at the same time it is difficult to substitute the requirement from the standard of the Rent Controller or of any outside authority which is contemplated by section 13(3)(a)(i) of the Act."

The next case that I would like to refer to is a decision by Tek Chand, J., under section 13(1)(e) of Delhi and Ajmer Rent Control Act (38 of 1952), reported as *Vidya Vati* v. *Hanuman Parshad* (3). Tek Chand, J., expressed the view, following certain decisions of this Court and of the English Courts that the word "requires" was not synonymous with "reasonably requires" and the landlord was the sole arbiter of his own requirements provided he proves that he in fact "wants" and "intends" to occupy the premises. The learned Judge declined to follow the view enunciated by Calcutta High Court in *Basant Lal Saha* v. *P. C. Chakarvarty* (4). The learned Judge was largely influenced in coming to that conclusion by the provisions of the Act providing the tenant with a remedy for recovery of possession and for re-entering if the premises were not occupied by the landlord as a residence for himself. Next in series is again a decision by Dua, J., in *Ganga Bishan* v. *Puran Singh* (5). This was also a case under the East Punjab Urban Rent Restriction Act (No. 3 of 1949). It was observed : "As a matter of fact my attention has also been drawn to *Mahabir Parshad* v. *Mohinder Kumar*, where I observed that it is not for the Controller to take the view that if he were in the position of a landlord, he would not have required the residential building in question, for, that is not and cannot be the true test. It is the landlord's requirements which have to be considered, though, of course, it is open to the Controller on proper material to conclude that the landlord is not requiring the premises *bona fide*". I now come to the judgment of Pandit, J., in *R. S. Lala Kishan Lal Chopra* v. *Shri Panna Lal and another* (6). It is this decision which largely influenced my learned brother Dulat, J., in referring the appeal to a large Bench. Pandit, J., was concerned with this very provision as falls for consideration now, namely, section 14(1)(e) of Delhi Rent Control Act (59 of 1958). His

(3) I.L.R. (1963) 1 Punj. 832=1963 P.L.R. 415.
(4) A.I.R. 1950 Cal. 249.
(5) 1964 P.L.R. 452.
(6) I.L.R. (1964) 1 Punj. 863=1964 P.L.R. 370.

Lordship observed : "In my view there can be other circumstances, besides the sufficiency of the accommodation, to determine as to whether the accommodation already in possession of the landlords was 'reasonably suitable' or not. For this purpose, the landlord can convince the Controller on so many grounds, as for example, his financial position, his illness, etc. In the present case, the Controller has found that the appellant was a retired officer drawing a pension of Rs. 244 per mensem. The rent that he was paying was Rs. 165 per month, which was too much for him. The premises in suit, which he had purchased, were giving him only Rs. 40 per mensem. The accommodation therein was much more than what was in his possession. Under these circumstances, he rightly came to the conclusion that the residential accommodation with the landlord was not reasonably suitable for him and he could, therefore, reject the tenants from the premises in dispute." The latest decision of this Court is again by Dua, J., in *Subhadran Devi and others* v. *Sunder Das and another* (7). The learned Judge reiterated the view taken by him earlier and concluded that the word 'requires' appears to connote something less than absolute necessity considered in the limited background of the legal obligations of the landlord, and though it does not mean mere wish and may contain to a certain extent an element of need; but if accommodation in possession of the owner is somewhat inadequate for his requirements, he is not debarred from making himself more comfortable in the premises owned by him if he can show that he has a *bona fide* intention of occupying it.

It may be relevant to refer to the judgment of the Court of King's Bench Division in *G. C. & E. Nuthall* (1917), *Ltd.* v. *Entertainments and General Investment Corporation Ltd, and others* (8), Hallett, J.; while construing the word 'requires' in Landlord and Tenant Act, 1927 (c. 36) section 5(3), which is as under—

> "Where the tenant is the applicant, the grant of a new lease under this section shall not be deemed to be reasonable—(a) unless the tenant proves that he is a suitable tenant and that he would be entitled to compensation under the last foregoing section, but that the sum which would

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(7) 1964 P.L.R. 1214.

(8) (1947) 2 All. E.R. 384.

be awarded to him under that section would not compensate him for the loss he would suffer if he removed to and carried on his trade or business in other premises; or (b) if the landlord proves—(i) that the premises are required for occupation by himself, or, where the landlord is an individual, for occupation by a son or daughter of his over eighteen years of age; or (ii) that he intends to pull down or remodel the premises; or (iii) that vacant possession of the premises is required in order to carry out a scheme of re-development; or (iv) that for any other reason the grant of such a lease of the premises would not be consistent with good estate management, and for this purpose regard shall be had to the development of any other property of the same landlord..... ".

held that "the expression connotes that the landlord has to only prove his intention to use the premises for occupation by himself". On behalf of the tenant it has been contended that it is not legitimate to perform a surgical operation on clause (e) of proviso to sub-section (1) of section 14 and read each part in isolation. The suggestion is that the clause must be read as a whole and when so read, it means that the landlord has to objectively establish that he requires the premises *bona fide* for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation. On the other hand, it has been suggested on behalf of the respondent that the landlord is the sole arbiter of the existence of both the conditions, namely, the condition as to the *bona fide* requirement and as to the suitability of other residential accommodation available to him. According to the respondent, the requirement of the latter part of the clause; "that the landlord or such person has no other reasonably suitable accommodation" is really implicit in the first part which requires a landlord to prove his *bona fide* and if, as has been held in some of the decisions mentioned here in above, a landlord can claim possession if, in fact he desires it and genuinely intends to use the premises, there is no reason why he should also not be held to be the sole arbiter for deciding whether or not the other alternative accommodation available to him is reasonably suitable for his needs. The respondent, though not disputing that the clause must be read as a whole, lays stress on the decision of the landlord being completely subjective

as to the existence of both the conditions. Mr. Rameshwar Dayal, learned counsel for the respondent says that if there is a suitable residential accommodation available to a landlord, then his need for possession cannot be *bona fide*. It is further said on behalf of the respondent that in deciding the reasonableness or suitability of the alternative accommodation, all circumstances, such as, proximity to the place of work, rental and extent of accommodation provided by the other premises, the means of the landlord and his social status can be legitimately taken into consideration in pronouncing upon the existence or non-existence of the condition envisaged by the second part of clause (e). Pandit, J., in *R. S. Lala Kishan Lal Chopra's case* did in principle approve of the argument that the other relevant circumstances, such as, financial position or state of health of the landlord can also be taken into consideration in deciding whether the alternate accommodation is reasonably suitable or not. There can be no dispute with this proposition, though it may be more appropriate to precisely define the area of such circumstances as can be taken into consideration. No Judge has affected to lay down a rule of universal application or catalogue the set of circumstances relevant to the enquiry because of the obvious inherent impossibility. Each case has to turn on the peculiar facts of its own, though it may be safely said that the circumstances must have a direct relation to the object of the Act, and the purpose of the enquiry.

Take a case where a landlord, financially sound, rents a premises at Rs. 1,000 per month. He is rendered impecunious and conclusively establishes that he is unable to afford such an expensive and luxurious house. I think, that would be a perfectly legitimate circumstance, when the landlord claims to shift to his own smaller residential accommodation, to lead to the conclusion that the accommodation in his possession is not reasonably suitable. Similarly, a landlord may be living at a distant place, though in Delhi, in the vicinity of his occupational activity. He may thereafter shift his business to some other locality and so long as that is *bona fide*, he may, in given circumstances, contend with reasonable force that the premises in his occupation have ceased to be reasonably suitable. Yet another case would be of a landlord living in a flat on the second or third floor without the facility of a lift. Subsequently, his health conditions may not permit him to climb upstairs, and he would, in those circumstances, be entitled to say, "I would shift to my own house, which is on the ground-floor." All these questions will, undoubtedly, have to be decided by the courts objectively and having regard to the

object of the Act, they cannot be left entirely to the whim and pleasure of the landlord. The attention of the courts will have, therefore, to be directed to find out: (a) whether or not the requirement of possession is *bona fide* and (b) whether or not the premises already in possession of the landlord afford a reasonably suitable alternative accommodation. It would also not be correct to suggest that the question of accommodation, actually in possession of the landlord, being "reasonably suitable" is to be judged only in the context of physical sufficiency of the accommodation. In terms of physical sufficiency, three rooms in possession of a landlord with a family of three, may be sufficient, yet court may hold that accommodation insufficient having regard to various circumstances, such as, the social status of the family or traditions and customs observed by it. In that view the decision of the landlord would be both subjective and objective. Subjective in the sense that the matter has not to be decided from the standpoint of the Rent Controller or the tenant but from that of the landlord. In deciding this from the point of view of the landlord, various considerations, mentioned above, would be relevant. So long as the landlord is able to establish that he in good faith and genuinely wishes to occupy the premises in possession of the tenant and that good faith or genuineness is of a reasonable man, it would not be open to the Controller to weigh the claim of the landlord in a fine scale. Similarly, the suitability of the other accommodation will also have to be decided from the standpoint of a reasonable landlord.

True, that the necessity for such legislation has arisen with a view to protecting the tenants from unscrupulous landlords, who may adopt devices to extract exorbitant rent, but at the same time the statute is not intended to deprive a landlord of his *bona fide* desire, so long as that desire is confined within reasonable limits, judged from a practical and not fanciful point of view, to be more comfortable by occupying his own house. It is objective in the sense that the authorities under the Act have not been rendered powerless to pronounce dissatisfaction with the *bona fides* of the landlord's claim, provided they judge it from the point of view of the landlord. The law does not require a landlord to sacrifice his own comforts and requirements merely on the ground that the premises are with a tenant. Whether or not the alternate accommodation available to the landlord is suitable or not, must, therefore, be decided after taking into account all relevant circumstances: but in deciding that the authorities must step into the position of the landlord and decide in

what I venture to call a broad, commonsense way as a man of the world. In so deciding, the social customs, conventions and habits, usages and practices of the society also cannot be completely ruled out as irrelevant. The problem will in all cases have to be approached from a practical point of view and from the point of view of a reasonable man and not from that of a whimsical landlord, who may be wanting a premises for satisfaction of his mere whims. Whatever may be scope of the expression : "required *bona fide* by the landlord.....", it appears to be fairly clear that read as a whole, clause (e) of proviso to sub-section (1) of section 14 does not make the landlords sole arbiters of subjectively deciding the question of their requirements. It is possible that the latter part of the clause has been added to avoid an argument that once a landlord is able to show that he in fact desires possession and genuinely intends to occupy it, his claim becomes unanswerable. I think, the clause does confer a power of scrutiny, though of limited nature, on the authorities charged with the function of deciding disputes under the said Act.

In the instant case, it is found as a fact, and that finding is not disputed before us, that the respondent has a fairly commodious and independent accommodation available to her on the ground-floor. All what is said on behalf of the respondent is that she is not used to living in a place where somebody else is living. Having regard to the circumstances of the case and the social status established on the record, I am of the opinion that the plea set forth does not meet the claims of a reasonable man. It must follow that the circumstances of this case show that the landlady has other reasonably suitable accommodation available, and, consequently, she has failed to satisfy the conditions laid down in the said clause (e). The Rent Control Tribunal was, therefore, not justified in granting a decree for eviction.

In the result, the appeal is allowed and order of the Rent Control Tribunal set aside. Having regard, however, to the circumstances of the case, I leave the parties to bear their own costs.

S. S. DULAT, J.—I agree.

B. R .T.