Shrisht Dhawan

Vs

Shaw Brothers

Civil Appeal No. 4927 of 1991

(Dr. T. K. Thommen, R. M. Sahai JJ)

13.12.1991

JUDGEMENT

THOMMEN, J.:-

1. Leave granted.

2. The scope of S. 21*1 of the Delhi Rent Control Act, 1958 has been considered by this Court in a number of decisions.*2 The section embodies the legislative policy to devise a special mechanism to increase the supply of accommodation to meet the rising demands of a growing metropolis. It operates in limited circumstances; and, strictly within those bounds, and subject to the vigilant enquiry of the Controller before according his permission, the parties are once permitted to regulate their relationship in accordance with the section, totally governed by the terms of their contract.

* 1. Section 21 reads:

> "Recovery of possession in case of tenancies for limited period. -(1) Where a landlord does not require the whole or any part of any premises for a particular period, and the landlord, after obtaining the permission of the Controller in the prescribed manner, lets the whole of the premises or part thereof as a residence for such period as may be agreed to in writing between the landlord and the tenant and the tenant does not, on the expiry of the said period, vacate such premises, then, notwithstanding anything contained in S. 14 or in any other law, the Controller may, on the application made to him in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in occupation of such premises.
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> (2) While making an order under subsection (1), the Controller may award to the landlord such damages for the use or occupation of the premises at such rates as he considers proper in the circumstances of the case for the period from the date of such order till the date of actual vacation by the tenant."

> * 2. Shiv Chander Kapoor v. Amar Bose, (1990) 1 SCC 234 : (AIR 1990 SC 325); Inder Mohan Lal v. Ramesh Khanna, (1987) 4 SCC 1 : (AIR 1987 SC 1986); Subhash Kumar Lata v. R.C. Chhiba, (1988) 4 SCC 709: (AIR 1989 SC 458); V. S. Rahi v. Smt. Ram Chambeli, (1984) 1 SCC 612: (AIR 1984 SC 595); J. R. Vohra v. India Export House Pvt. Ltd. ' (1985) 1 SCC 712: (AIR 1985 SC 475); Yamuna

Maloo v. Anand Swarup, (1990) 3 SCC 30 :(AIR 1990 SC 1725); Pankaj Bhargava v. Mohinder Nath, AIR 1991 SC 1233; Smt. Dhanwanti v. D. D. Gupta, (1986) 3 SCC 1 : (AIR 1986 SC 1184); S. B. Noronah v. Prem Kumari Khanna, (1980) 1 SCC 52: (AIR 1980 SC 193); Pukhraj Jain v. Padma Kashyap, (1990) 2 SCC 431: (AIR 1990 SC 1133).

3. The section operates in terms thereof, notwithstanding any other law, unless the contract itself, or the permission of the Controller, is vitiated by fraud. Absent such vitiating circumstance, and once the Controller has accorded sanction, the parties to the contract are presumed to have entered into their relationship at arm's length and the law binds them to the terms of their agreement.

4. While the Act is meant for the protection of the tenant, the legislative policy reflected in S. 21 is to carve out an area free of that protection. Where the conditions stipulated in S. 21'are satisfied, the prohibition contained in S. 14 against eviction of tenants except on the specified grounds or the requirements of the Transfer of Property Act or the Civil Procedure Code or any other law are removed or dispensed with.

5. The section is attracted in the specific circumstances postulated by it. The absence of requirement by the landlord of the whole or any part of the premises for a particular period, the permission of the Controller in the prescribed manner for the lease of the premises in question, the agreement in writing between the landlord and the tenant for the lease of such premises as a residence for the agreed period, the refusal of the tenant to vacate the premises on the expiry of that period, and an application made within the prescribed time by the landlord invoking the power of the Controller under this section: these are the conditions precedent to the exercise of power by the Controller to place the landlord in vacant possession of the premises by evicting the tenant or any other person in occupation of such premises. The person in occupation of the premises has no right in law to resist eviction once the section is attracted. This is an extraordinary power vested in the Controller to restore possession of the premises to the landlord by a quick and summary action. The non obstante clause contained in the section protects the action of the Controller from challenge on any ground postulated in S. 14 of the Act or any other law. This is a wide protection of any action duly taken in terms of the section, but the requirements of the section must be strictly complied with before action is taken under it.

6. The order of the Controller in the circumstances warranted by the section is a self-executing order requiring no further proceeding. It is at once a sanction for the lease and for eviction on expiry of the period of the lease. Neither can the landlord evict the tenant during the period of the lease nor can the tenant remain in possession beyond that period. Parties are bound by their contract, as sanctioned by the Controller, and the provisions of S. 14 are of no avail to either party to circumvent S. 21. Once the period has expired, there is no question of any further notice to the tenant or any other person in occupation of the premises and there is no scope for any further proceeding. None has any right outside the section which operates strictly in terms thereof provided the conditions stipulated therein are unquestionably satisfied. See J. R. Vohra v. India Export House Pvt. Ltd., (1985) 1 SCC 712: (AIR 1985 SC 475).

7. The only protection that the tenant has is what S. 21 itself postulates. He is protected against the conduct of a fraudulent landlord. The law does not protect either party whose actions are tainted by fraud. A landlord seeking recovery in terms of that section must satisfy that he has strictly complied with the provisions of that section. The landlord must obtain the permission of the Controller in the manner prescribed. He is not entitled to the permission unless the condition specified for the

purpose in S. 21 is satisfied, namely, the absence of his requirement of the building for a particular period. The period must be clear and definite. The lack of requirement must be honestly felt by the landlord. That the landlord does not require the building is a question of honest belief held by him at the relevant time, that is, at the time of his seeking the Controller's permission. The landlord must have honestly and reasonably believed that he would not require the building for the period specified in his application to the Controller for permission to let out the premises. If that belief was truthfully held by him at the time of his application to the Controller, the fact that subsequent events proved him wrong, and that he did not require the building not only for the period stated in the application, but also for a longer period, or that he required it earlier than anticipated, would not make the belief any less honest or valid. All that the landlord is required to state in his application for permission of the Controller is the absence of his requirement of the premises for the particular period, but he is not bound to state its reasons : Inder Mohan Lal v. Ramesh Khanna, (1987) 4 SCC 1 : (AIR 1987 S C 1986).

8. What the section postulates is the bona fide belief of an honest and reasonable landlord, and not the reckless and casual opinion of an irresponsible and careless person. The question is, did the landlord make a fraudulent representation to the controller about the absence of his requirement of the premises, i.e., knowingly that his statement was false or without belief in its truth or recklessly careless whether it was true or false. Did the landlord honestly believe that what he stated in his application to be a true and fair representation of the facts? There is no fraud if what he honestly believed to be true turned out to be false. The section does not place any higher degree of responsibility on the landlord.

9. The section requires that the premises have to be let out solely for the purpose of residence for the period agreed to in writing. If the agreement does not so stipulate, the section is not attracted, and the Controller cannot sanction the lease in terms of the section. No non-residential premises can come within the protection of the section. On the other hand, if the premises let out as a residence in terms of the section is deliberately used by the tenant for non-residential purposes, he loses the protection of the statute for the period of the lease and the Controller can, on,an application by the landlord, evict the tenant, or any other person in occupation, and restore possession of the premises to the landlord forthwith. The section protects the landlord and the tenant strictly in terms thereof, and on the fraud or deliberate breach by either party of the terms of the lease as contemplated by the section, the protection is withdrawn from the guilty party. This means, if the permission of the Controller has been fraudulently obtained by the landlord, and the tenant has been let into the premises, the landlord loses the right to seek eviction of the tenant by the summary procedure contemplated by the section. Likewise, if the tenant has deliberately - but not accidently violated the terms of the lease by using the premises otherwise than as permitted by the section, he is liable to be evicted on an application by the landlord, although. The stipulated period of the lease has not expired All this is because the very basis of the Controller's order has been violated by the fundamental breach of the guilty party. The section thus postulates that both the landlord and the tenant act honestly. Neither of them can take advantage of his own deceit or breach. No sanction of the statutory authority procured by fraud can protect the guilty or harm the innocent.

10. Fraud is essentially a question of fact, the burden to prove which is upon him who alleges it. He who alleges fraud must do so promptly. There is a presumption of legality in favour of a statutory order. The Controller's order under S. 21 is presumed to be valid until proved to be vitiated by fraud or mala fide. If his order was obtained by the fraud of the party seeking it or if he made a mindless order' in the sense of acting mala fide by illegitimate exercise of power owing to non-application of his mind to the strict requirements of the section, then the special mechanism of the section would

not operate. [See S. B. Noronah v. Prem Kumari Khanna (1980) 1 SCC 52: (AIR 1980 SC 193)].

11. My learned brother,R.M.Sahai,J. has exhaustively dealt with various aspects of the questions raised in this appeal. He has come to the conclusion that there was no evidence of fraud or non-application of the mind of the Controller to the essential requirements of the section, and the burden to prove the same has not been discharged by the tenant. He has further found that the evidence on record amply proved that the landlady honestly believed that she required the premises at the end of the stipulated period; that her request to the Controller for permission in terms of S. 21 was not in any manner tainted by lack of good faith; and that the order obtained by her under S. 21 was not liable to be upset by conducting a roving enquiry and by placing the burden wrongly on her to prove that she did not act dishonestly.

12. I agree that the statutory authorities in the present proceedings addressed themselves to the wrong questions, misunderstood the guiding principle of burden of proof, misconstrued the requirements of the section, and reached a totally irrational, unreasonablel and unsustainable conclusion that the original order of the Controller was obtained byl fraud. There was no justification on the part of the authorities for coming to that conclusion on the basis of a belated plea and far from satisfactory or reliable evidence. The High Court was wrong in affirming the totally unsustainable conclusion reached by the authorities.

13. In the circumstances, I respectfully agree with the findings reached by my learned brother Sahai, J.

14. Economically equally matched tenant resisted execution successfully, under S. 21 of Delhi Rent Control Act, (in short the Act) by accusing landlady of fraud, misrepresentation and lies thus giving rise to a very important issue in this landlady's appeal as to the nature and extent of fraud which could vitiate the sanetion granted under S. 21 of the Act by the Rent Control Officer.

15. Short durational tenancy,a provision unique of its kind in a rent control legislation, with a fresh look on eviction ensuring vacant possession statutorily, after expiry of lease period 'without notice' J. B. Vohra v. India Export House Pvt. Ltd. (1985) 1 SCC 172 : (AIR 1985 SC 475); Shiv Chand Kapoor (1 990) 1 SCC 234: (AIR 1990 SC 325) even or hazard of establishing bona fide need Pukhraj Jain v. Padma Kashyap (1990) 2 SCC 431 : (AIR 1990 SC 1133) due to social necessity, peculiar to Delhi, favourably inclined towards landlord, was subjected to inherent and implied limitations by this Court in S. B. Noronah v. Prem Kumari Khanna (1980) 1 SCC 52: (AIR 1980 SC 193), in larger social interest of fairness and justice, which permeates our jurisprudence, to avoid any abuse of provision or arbitrary exercise of power, by directing such sanction or permission to pass the test of being clear of fraud or collusion. Even a mindless order was held to vitiate the proceedings. And the tenant was permitted to raise the objection in execution. Another was added to it in V. S. Rahi v. Ram Chambeli (1984) 1 SCC 612: (AIR 1984 SC 595) when an order on incorrect facts was also held to be invalid. But the decision not onlv created misapprehension amongst tenants who seized upon it to raise all possible objections frivolous and otherwise but was misunderstood by the authorities, too, who applied erroneously and tested validity of the permission on requirement on the date of execution, or it was bad because the reason due to which sanction was obtained did not materialise even at time of execution. At times the yardstick applied was of bona fide necessity as understood in S. 14 of the Act. Consequently short term tenancy became an illusion and in a span of ten years from Noronah (AIR 1980 SC 193) (supra) there came to be rendered at least a dozen reported decisions by this Court only. Although Noronah (supra) has since been substantially watered down, in subsequent decisions, yet it still furnishes the basis for assailing the sanction

therefore it is necessary to examine, in brief, how much of it survives today and to what extent the law may be taken as settled.

16. For this it is worthwhile extracting the S. 21 which reads as under:-

> "21. Recovery of possession in case of tenancies for limited period.- (1) Where a landlord does not require the whole or any part of any premises for a particular period, and the landlord, after obtaining the permission of the Controller in the prescribed manner, lets the whole of the premises or part thereof as a residence for such period as may be agreed to in writing between the landlord and the tenant and the tenant does not, on the expiry of the said period, vacate such premises, then, notwithstanding anything contained in S. 14 or in any other law, the Controller may, on an application made to hirri in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in occupation of such premises."

What strikes one is, the simplicity of the language and oneness of purpose. As observed in Noronah (AIR 1980 SC 193) (supra) the Parliament was keen on maximising accommodation available for letting, due to scarcity crisis. The objective was sought to be achieved by simplifying the provision for letting and assuring possession after expiry of lease. The only condition for applicability of,the section is non-requirement of it by the landlord for short period. It is not subjected to any restriction by requiring the landlord to disclose any reason nor whether it shall be required thereafter for self or any family member. Other conditions, namely, passing of order, letting it for residential purpose, and entering of agreement with tenant, are incidental only. Use of non o . bstante clause further leaves no room for doubt that the legislature intended it to operate on its own. That is why it has been held to be a self,ntained code Shiv Chander Kapoor v. Amar Bose (1990) 1 SCC 234: (AIR 1960 SC 325). Neither creation of tenancy nor recovery of possession after expiry of period has been hedged in with any statutory restriction or condition. However, Noronah (AIR 1980 SC 193) (supra) culled out dual protection for tenants one substantive and other procedural by providing that validity of sanction could be assailed on fraud etc. and the objection could be taken in execution. But the latter, that is, procedural safeguard has been diluted in four subsequent decisions of three Judge Bench. In Vohra (AIR 1985 SC 475) (supra) warrant of possession issued under S. 21, without service of notice, to the tenant was upheld as after expiry of short term tenancy the tenant had no right to continue. However, to avoid a tenant from being completely shut out even where the permission was obtained by 'a mere ritualistic observance of procedure'or,'where such permission was procured by fraud' or, ,was a result of collusion'the Court held that competing claims could be harmonised by (Para 19 of AIR 1990 SC 325):

> "insisting upon his approaching (tenant) the Rent Controller during the currency of the limited tenancy for adjudication of his pleas no sooner he discovers facts and circumstances that tend to vitiate ab initio the initial grant of permission."

It was reiterated in Shiv Chander Kapoor (AIR 1990 SC 325) (supra); Yamuna Maloo v. Anand Swarup (1 990) 3 SCC 30 : (AIR 1990 SC 1725) narrowed it down further when it held that (para 21 of AIR):

> "if the tenant has objection to raise to the validity of the limited vacancy it has to be done prior to the lapse of lease and not as a defence to the tenants application for

> being put in possession. We would like to reiterate that even if such an exercise is available that must be taken to be very limited and made applicable in exceptional cases."

In Pankaj Bhargava v. Mohinder Nath, AIR 1991 SC 1233, it was observed (para 13):

> "It is true that in Noronah's case (AIR 1980 SC 193) a challenge to the validity of the limited tenancy was permitted even after the period of limited lease. But later cases have substantially denuded this position. In Vohra's case (AIR 1985 SC 475), this Court laid down that a tenant who assails the permission was procured by fraud a ground not dissimilar to the one urged in the present case must approach the Rent Controller during the currency of the limited tenancy for an adjudication of his pleas as soon as he discovers facts and circumstances which, according to him, vitiate the permission."

Thus a tenant cannot wait for the entire period of lease and then raise objection to execution on fraud or collusion unless he is able to establish that it was not known to him and he came to know of it, for the first time only at the time of execution. In other words the Controller shall not be justified in entertaining an objection in execution unless the tenant establishes, affirmatively, that he was not aware of fraud before expiry of the period of lease. To the following extent, therefore, the law on procedural aspect should be taken as settled.

> (1) Any objection to the validity of sanction should be raised prior to expiry of the lease.
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> (2) The objection should be made immediately on becoming aware of fraud, collusion etc.
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> (3) A tenant may be permitted to raise objection after expiry of lease in exceptional circumstances only.
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> (4) Burden to prove fraud or collusion is on the person alleging it.

17. Tested in the light of what has been stated above the tenant was not entitled to claim the protection as the objection filed by him to execution application was in defence to landlord's application for delivery of possession. The application is conspicuously silent on knowledge of fraud. It did not whisper that the tenant was unaware of facts stated therein during subsistence of lease. In fact, from a letter sent twenty days before expiry of lease to the landlord it is clear that the tenant was not only aware that,he was required to vacate the premises after expiry of the time but he requested the landlady to grant him some more reasonable time for vacating the premises. In any case in absence of any averment in the application that he was not aware of various allegations made against the landlady in the application seeking invalidity of the permission granted by Controller the application was liable to be dismissed. No exceptional circumstance so as to bring it within the principle laid down in Yamuna Maloo's case (AIR 1990 SC 1725) (supra) could be deciphered either from the application or from the statement of the tenant. Neither the Controller nor the Appellate Authoriry found any exceptional circumstance which could justify the tenant to resist the execution after expiry of the period. Therefore, the Controller was not justified in entertaining his objection and entering uponi an enquiry which was roving in nature and wholly uncalled for. But since law was not so clear when the objection was decided by the Controller it is appropriate to examine if the

finding on merits is sustainable.

18. With this the more difficult and important aspect, namely, the objections or grounds on which a tenant can challenge validity of sanction granted under S. 21 of the Act by the Controller either during subsistence of lease or after its expiry in execution may now be examined. In Noronah (AIR 1980 SC 193) (supra) even though law was declared and a tenant was permitted to raise objections that sanction was obtained by fraud or collusion or the Controller passed the order mindlessly the Court did not decide what constitutes fraud or collusion in relation to S. 21 of the Act or when an order passed by the Controller could be held to be mindless. An action is mindless when it is thoughtless or without any care or caution. In law it is passing of an order without any regard to the provision of law. If the section requires the authority to pass an order on inquiry or on being satisfied of existence or non-existence of a fact then the duty cast is higher and an order which is passed without due regard to duty to investigate then the order may bemindless. But in absence of any statutory requirement it may utmost be regulatory oversight. In the context of S. 21 it is clear that there is no statutory requirement for the Controller to enter into enquiry on application made by a landlord supported by a statement and agreed to by the tenant. Even though in Noronah's case (AIR 1980 SC 193) it was said that an application to be beyond suspicion must contain special reasons but in ' subsequent decisions this has been explained and it has been held that in absence of any requirement in the section to disclose any reason an application filed without reason could . not be said to be bad in law nor a permission granted on it could be said to be mechanical or mindless. An order may ne mindless if at the time of granting permission there is material to indicate that the premises were being let out for a short period even though it was available for indefinite letting. But in absence of any material to indicate to the contrary if the Controller grants permission on the mere statement in the application that the premises was available for being let out for a short time as it was not required by the landlord and it is supported by a statement recorded before Controller which is not objected to by the tenant rather agreed then it would be too much to say that the exercise of power was made thoughtlessly. In Shiv Chander Kapoor (AIR 1990 SC 325) this Court did not approve of the decision of the High Court that a permission granted under S. 21 was mindless only because on the date of expiry of the period of limited tenancy the age of the landlord's son was about 19 or 20 years whereas the minimum age prescribed by law for marriage was 21 years when the reason for requirement of the premises after expiry of lease period was marriage of the son. The Bench further deprecated the practice of the Authorities of entering into roving inquiry at the instance of tenant as that would frustrate the very purpose of limited period of tenancy contemplated by S. 21. In Smt. Dhanwanti Devi v. D. D. Gupta (1986) 3 SCC 1 : (AIR 1986 SC 1 1 84) it was held that even successive letting under S. 21 prior to grant of sanction could not adversely reflect on the permission as it was reasonable for landlord to let out looking to immediate future. Nor could the Dermission be said to be vitiated because after exdirv of the period the landlord may in chanted circumstances, decide to let out again. In Inder Mohan Lal v. Ramesh Khanna (1987) 4 SCC 1: (AIR 1987 SC 1986) it was held that the landlord was under no obligation, to disclose reasons for letting out for a short period. It was held that omission to do so did not render the order invalid nor it could justify the inference that the sanction was granted mindlessly. In Joginder Kumar Butan v. R. P. Oberoi, (1987) 4 SCC 20: (AIR 1987 SC 1996) even letting of ground floor or first floor to the tenants on earlier occasions which was not disclosed in the application for grant of permission, under S. 21 was not considered fatal as the landlord might have done so on basis of bona fide grounds and genuine calculations which may have gone wrong.

19. All these decisions were examined in Shiv Chander Kapoor (AIR 1990 SC 325) (supra). The Bench explicitly ruled out sufficiency of accommodation or bona fide need, provided for in S. 14, as beyond scope of the enquiry under S. 21 of the Act. It was held that the invalidity which could

vitiate sanction was error in jurisdictional fact at the time of grant of permission, as valid sanction was sine qua non for Controller's jurisdiction. What then is an error in respect of jurisdictional fact? A jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a Court, Tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a Court can properly assume jurisdiction of a particular case. Mistake of fact in relation'to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject-matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the Court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad [Wade Administrative Law]. In Raza Textiles v. Income-tax Officer, Rampur (1973) 1 SCC 633: (AIR 1973 SC 1362) it was held that a Court or Tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly. What are those facts which can be said to be jurisdictional fact under S. 21? Although the section visualises four conditions, namely, that the landlord does not require the whole or part of premises for a particular period', the landlord must obtain the permission of the Controller in the prescribed manner, letting of the whole or part of the premises must be for residence and such letting must be for such period as may be agreed between the landlord and the tenant in writing. But thejurisdictional fact can be said to be two, availability of vacant premises which are not required by the landlord for the particular period and its letting out for residential purpose. For instance a permission obtained under S. 21 may be vitiated if the premises were not vacant on the date of application. Similarly if the permission is obtained in respect of non-residential premises. What is significant is that the declaration by the landlord that the premises were available for letting out for short period is not required to be backed by any reason. And an application filed under S. 21 with or without reasons is neither bad nor contrary to law. It may be accompanied by statement of reasons or the application may merely state that the landlord does not require the premises for the period mentioned therein. In either case the application shall be in accordance with law. And if the Controller is satisfied that what was stated was correct he is obliged to grant permission. This satisfaction may be arrived at by believing the statement or requiring a landlord to give reasons or furnish such information as the Controller may consider necessary to satisfy himself that the statement made by landlord was correct. But once satisfaction is arrived at and the order is passed it becomes operative and final. It cannot be re-opened because of mere mistake or error or in the circumstances a more reasonable approach should have been to reject the application or allow it after obtaining better details. Error in assumption of jurisdiction should not be confused with mistake, legal or factual in exercise of jurisdiction. In the former the order is void whereas in the latter it is final unless set aside by higher or competent Court or authority. An order which is void can be challenged at any time in any proceeding. A permission granted under S. 21 once permitted to attain finality becomes unassailable on error in exercise ofjurisdiction. It could be challenged later or in execution only if it could be brought in the category of a void or ultra vires permission. Such invalidity can arise if jurisdiction is exercised by misrepresentation of facts either about existence of vacancy or nature of premises. In other words what attains finality in accordance with law cannot be permitted to be reagitated or reopened except in the larger social interest of preventing a person from practising deceit. Therefore an error ofjurisdictional fact which could entitle a Controller to re-examine the matter in the context of S. 21 is the same, namely, fraud or collusion. Ratio in Noronah (AIR 1980 SC 193) (supra) to this extent was reiterated and accepted as correct exposition of law in Shiv Chander Kapoor (AIR 1990 SC ,325). It has to be understood as such.

20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to

Milton's sorcerer, Comus, who exulted in his ability to'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Oxford, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. S. 17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case Derry v. Peek (1 889) 14 App Cas 337 what constitutes fraud was described thus:

> "fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false."

But fraud in public law is not the same as fraud in private law. Nor can the ingredients which establish fraud in commercial transaction can be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in Khawaja v. Secretary of State for Home Deptt. (1983) 1 All ER 765 that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law. In Pankaj Bhargava (AIR 1991 SC 1233) (supra) it was observed that fraud in relation to statute must be a colourable transaction to evade the provisions of a statute. 'If a statute has been passed for some one particular purpose, a Court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope' [Craies on Statute Law, 7th Edition, p. 791. Present day concept of fraud on statute has veered round abuse of-power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shade. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement, 'In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain' [Anson's Law of Contract]. In public law the duty is not to deceive. For instance non-disclosure of any reason in the application under S. 21 of the Act about. its need after expiry of period or failure to give reason that the premises shall be required by son, daughter or any other family member does not result in misrepresentation or fraud. It is not misrepresentation under S. 21 to state that the premises shall be needed by the landlord after expiry of the lease even though the premises in occupation of the

landlord on the date of application or, after expiry of period were or may be sufficient. A nondisclosure of fact which is not required by law to be disclosed does not amount to rnisrepresentation. S. 21 does not place any positive ,or comprehensive duty on the landlord to disclose any fact except that he did not need the premises for the specified period. Even the Controller is not obliged with a pro-active duty to investigate. Silence or non-disclosure of facts not required by law to be disclosed does not amount to misrepresentation. Even in contracts it is excluded as is clear from explanation to S. 17 unless it relates to fact which is likely to affect willingness of a person to enter into a contract. Fraud or misrepresentation resulting in vitiation of permission in context to S. 21 therefore could mean disclosure of false facts but for which the Controller would not have exercised jurisdiction.

21. On the substantive safeguard therefore the law that is settled and should be followed by the authorities may be stated thus:

> (1) Permission granted under S. 21 of the Act can be assailed by the tenant only if it can be established that it was vitiated by fraud or collusion or jurisdictional error which in context of S. 21 is nothing else except fraud and collusion.
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> (2) Fraud or collusion must relate to ttie date when.permission was granted.
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> (3) Permission carries a presumption of correctness which can be permitted to be challenged not only by raising objection'but proving it prima facie to the satisfaction of Controller before landlord is called upon to file reply or enter into evidence.
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> (4) No fishing or roving inquiry should be permitted at the stage of execution
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> (5) A permission does not suffer from any of these errors merely because no reason was disclosed in the application at the time of creation of short term tenancy.
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> (6) Availability of sufficient accommodation either at the time of grant of permission or at the stage of execution is not a relevant factor for deciding validity of permission.

22. Turning to the facts now, is the sanction granted under S. 21 vitiated because the landlady in obtaining the permission committed fraud? On 3rd November, 1978 the landlady filed an application before the Controller under S. 21 the material allegations of which were that the ground floor of the house was lying vacant and she desired to give it on rent for a short period of three years whereafter she needed the house for herself. It was mentioned that the premises were being given for residential purpose only and a proposed lease agreement between her and the tenant along with the plan was attached with the application. Her statement was recorded in which she stated that she would require the premises for her own use after three years. It was also mentioned that the premises had not been let out earlier. Statement of tenant was also recorded in which he expressed his agreement to take the premises for a period of three years after expiry of which he agreed to vacate the same. In absence of any material on the record to establish that the statement was not correct the Controller assumed jurisdiction and granted the permission as required under S. 21 for a period of three years. Twenty days before tenancy was to come to an end, the tenant, which is a firm, wrote a letter, through one of its partners to the landlady for sympathetic consideration for renewal of lease as theft had occurred in the premises in which the tenant had lost valuable goods. There was a veiled, irrelevant, suggestion in the letter that no reason was disclosed by her for

requiring the premises as her family was having sufficient accommodation for living. Since the landlady did not agree to extend the lease and filed an application under S. 21 of the Act for a direction to the Controller to place her in vacant possession of the premises an objection was filed by the tenant on all possible grounds which could be imagined from inaccuracy, lack of knowledge, fraud, collusion etc. One of the objections was that since the premises was taken by one of the partners of the firm, only, without any authority the agreement entered into by him for grant of permission under S. 21 was not binding. It was also alleged that this was done without knowledge of other partners. Therefore, the permission was neither binding nor enforceable. But the partner who made the statement was neither examined nor it was stated that the firm was not aware that the tenancy was for short duration only. The tenant went to the length of averring that in fact they were already in occupation of the premises from a date before the tenancy was created, a plea which was rejected by the Rent Control Authorities. Even the plea that the premises were let out for residential-cum-commercial purposes did not find favour with any of the authorities. Nor did the Controller find any merit in the claim that the order of permission was mindless or it was bad for non-disclosure of reason. But the challenge succeeded because the permission was ohtained by playing fraud as the landlady knew from the very beginning that premises were available for letting out indefinitely. The Controller found that in absence of any averment in the objection that she had let out the premises in 1978 for three years as she would require it after expiry of this period for her younger son her statement in support of it could not be looked into. The authority further found that variance between pleadin g and proof apart, the landlady failed to establish that premises were let out with intention to get it back after three years lor her second son. Inference was drawn against her due to non-production of the son who could have been the best person to throw light on it as later on he not only joined anotner service but purchased a flat in Bombay. It was held that even if it was assumed that the premises were not needed by her for son that could not validate the sanction. The Appellate Authority agreed with the finding of the Controller as there was no statement in the application, made at the time for grant of permission, that the premises shall be required after three years by her son. In other words since she stated that she required the premises for herself after three years and she was having an accommodation which was sufficient for her and family the permission obtained by her was vitiated by fraud. The High Court did not consider it proper to examine the matter as it was concluded by findings of fact.

23. Sri Rajeev Dhavan rightly urged that both the Controller and the Tribunal misdirected themselves in placing the burden on the landlady to prove that the perm ssion obtained by her was genuine. According to him the primary burden was on the tenant to establish that the permission was obtained by playing fraud. Unfortunately, it appears, the authorities assumed fraud and misrepresentation on mere averment in the objection of the tenant and proceeded to record the finding on premise that the landlady was required to prove it. Apart from the procedural error even the finding that the premises were not needed by her after three years is not well founded. The law does not require to give any reason on the date when the application is made. May be that one of her sons was in Army and the other was at Bombay and therefore she did not need the premises for them on the date of application. Yet the landlady could well visualize that she would need the premises after three years either because her son who was in Military was to be posted at Delhi, who in fact was posted in the meantime, or because her other son who had been rendered jobless in 1978 and was not doing well in life may need the house for establishing a factory in NOIDA. In fact some land was allotted and licence too appears to have been issued in his favour. But that is not relevant. What is relevant is a prima facie evidence led by her to prove that her statement that she shall be requiring the premises after three years was not a mere make belief or a pretence but a genuine statement on the state of affairs as it stood then. The averment in the application that the premises

shall be needed by her after three years could not be construed as misrepresentation . The requirement of a landlord includes the requirement of a son or daughter or any member of the family. If she gave the premises for threee years believing that in the meantime her son in Military might be posted at Delhi or the son at Bombay may start a business at NOIDA, which may not have come out to be exactly as she desired it to be it could not invalidate the permission. Further the landlady in her statement before Controller, stated that she informed the partner who had taken the premises that she shall need it after three years for her second son. And yet the tenant instead of producing that partner, without any excuse, chose to examine another partner and the authorities did not attach any weight to it.

24. Letting under S. 21 is not hedged with any restriction. Throwing the whole or part of the premises by landlord for letting out is not linked with his existing accommodation, its number or sufficiency. The one is not dependent on the other. Even letting for paying instalment of loan, for constructing the premises or its re-letting has not been held to be contrary to S. 21. Validity of permission has to be judged on the date of grant of application. Availability of premises for indefinite letting cannot be judged by subsequent events or the failure of the landlord to occupy immediately for personal, financial, economic or other reasons. Therefore, the authorities committed manifest error of law, both in entertaining the application of the tenant resisting the objection of the landlady by placing the burden on her erroneously and deciding against her by misapplication of law and misconstructions of the provisions of S 21.

Order of Bench

25. For the reasons stated by us in our concurring judgments dated December 3, 1991 we set aside the impugned judgment of the High Court and the order of the Additional Rent Controller dated 21-11-1987 in Misc. Application No. M-650 of 1978 and that of the Rent Control Tribunal dated 26-91988 in R.C.A. No. 1085 of 1987. The appeal shall accordingly stand allowed. The appellant shall be entitled to her costs assessed at Rs. 5,0001-. Appeal allowed.

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