

SUPREME COURT OF INDIA

Kush Sahgal and others

Versus

M.C. Mitter and others

(S. Saghir Ahmad and Doraiswamy Raju, JJ.)

Civil Appeal No. 2274 of 2000 (Arising out of SLP(C) No. 11366 of 1999).

28.03.2000

JUDGMENT

S. Saghir Ahmad, J. - Leave granted.

This appeal involves a little interpretative effort. Not like Themis, blindfolded, but like Astraea, the Roman Goddess of justice holding a Scale (Balance) without folds on the eyes and occupying the pride of place as "Libra" in the Zodiacal constellation. This would enable one to read all the words used in the Statutory provisions, so as to reach the correct conclusion on the true meaning intended to be conveyed by the Legislature by the use of those words.

2. Eastern residential portion of the property bearing No. 7\152, Swaroop Nagar, Kanpur, which is the accommodation in question, was allotted, some time in 1947, to Smt. Sushila Saigal, by an allotment order passed under the provisions of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (for short, 'the old Act'). Dr. Kalindi Mitter who had purchased the property in 1959, filed an application for permission under Section 3 of the old Act for filing a suit for the eviction of Smt. Sushila Saigal. The application was allowed by the Rent Control and Eviction Officer by his order dated 23.4.1960 against which a revision was filed by Smt. Sushila Saigal before the Commissioner which was dismissed but a further revision filed by her before the State Government under Section 7-F of the old Act was allowed on 27th of June, 1961 and the application of Dr. Kalindi Mitter for permission under Section 3 of the old Act to file a suit for eviction was rejected. It appears that on the basis of the permission granted by the Rent Control and Eviction Officer on 23.4.1960, Dr. Kalindi Mitter instituted regular suit No. 1664 of 1961 which came to be disposed of by the IInd Addl. Munsif, Kanpur, by judgment dated 24.11.1965. In that suit, several issues were framed but three relevant issues are reproduced below :-

"1. Whether the State Government quashed the order of permission in favour of the plaintiff on 27.6.1961 under Section 7-F of the U.P. Act III of 1947 ?

2. Whether the operation of the order of the State Government dated 12.10.1961 has been stayed by the Hon'ble High Court as alleged in para 15 of the written statement ?
If so its effect ?

3. Whether the suit is barred under Section 3 of the U.P. Act III of 1947 ?"

It was found by the learned Munsif that the permission granted to Dr. Kalindi Mitter was set aside by the State Government on 27.6.1961. It was further found that the operation of the order dated 12.10.1961, by which the revision filed by Smt. Sushila Saigal before the State Government under Section 7-F was, at one stage, rejected, was stayed by the State Government itself on 13.10.1961 on which date the suit was also, incidentally, instituted. In view of the findings recorded by the learned Munsif on issue No. 2, it was held that the suit was not maintainable.

3. Dr. Kalindi Mitter filed another application under Section 3 of the old Act for permission to file a suit for eviction against Smt. Sushila Saigal but the application was rejected by the Rent Control and Eviction Officer on 30.11.1966. A revision filed against that order was allowed by the Commissioner, Allahabad Division, on 6.2.1968 and the case was remanded to the Rent Control and Eviction Officer for fresh disposal. After remand, the Rent Control and Eviction Officer by his order dated 9.12.1968 allowed the application and granted permission to the landlady, Dr. Kalindi Mitter, to file the suit for eviction and Dr. Kalindi Mitter, on the basis of this permission, filed regular suit No. 654 of 1969 for the eviction of Smt. Sushila Saigal.

4. The permission granted by the Rent Control and Eviction Officer on 9.12.1968 was challenged by Smt. Sushila Saigal in a revision filed before the Commissioner, Allahabad Division, but the revision was dismissed in default on 19.3.1969 on account of non-appearance of Smt. Sushila Saigal. This order was challenged by Smt. Sushila Saigal in a Writ Petition which was allowed on 16.3.1971 with a direction to the Commissioner, Allahabad Division, to restore the revision to its original number and dispose it of on merits.

5. During the pendency of the revision before the Commissioner, Allahabad Division, the old Act was replaced by the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short, 'the new Act'). In view of the provisions contained in Section 43(2)(m) of the new Act, the revision was transferred to the District Judge, Kanpur, for disposal. The revision was ultimately dismissed by the Second Addl. District Judge, Kanpur, on 22.9.1973. This order was challenged in Writ Petition No. 6609 of 1973 in the Allahabad High Court in which an interim order was passed by the High Court on 11th of October, 1973. During the pendency of the Writ Petition, an application was filed on behalf of Dr. Kalindi Mitter that the interim order dated 11th of October, 1973 be vacated on the ground that Dr. Kalindi Mitter did not want to proceed with Regular Suit No. 654 of 1969 already instituted by her in the Court of Addl. Judge, Small Causes, Kanpur. The High Court, by its order dated 27.3.1974, directed the Addl. Judge, Small Causes, to consider the application of Dr. Kalindi Mitter for withdrawal of the suit and pass appropriate orders thereon. The interim order dated 10.11.1973 was, therefore, vacated.

6. The application for withdrawal of suit, filed by Dr. Kalindi Mitter, was ultimately allowed by the Addl. Judge, Small Causes, Kanpur, by his order dated 24.4.1974 and the suit was allowed to be withdrawn. During the course of the order, the learned Addl. Judge, Small Causes Court observed as under :-

"I have heard the learned counsel for the parties and have perused the application and objection against it. The plaintiff has prayed for simple withdrawal of the suit and is not seeking permission to file a fresh suit on this cause of action. Order 23 Rule 1 sub-rule (1) enables the plaintiff to withdraw his suit at any time after the institution the same. It is only in sub-rule (2) of rule 1 of order 23 C.P.C. that the permission of the Court is needed for filing a fresh suit on the cause of action."

7. Dr. Kalindi Mitter had not prayed for leave of the Court to file a fresh suit on the same cause of action nor such leave was granted to her.

8. On 1st of April, 1976, Dr. Kalindi Mitter filed an application for the eviction of Smt. Sushila Saigal under Section 43(2)(rr) of the new Act. But during the pendency of the application, Dr. Kalindi Mitter died on 4th of June, 1977. She was substituted by her legal representatives. In the meantime, the heirs of Dr. Kalindi Mitter transferred the property in question in two parts by sale dated 18.4.1979. The front residential portion was transferred in favour of Ram Narain Awasthi while the back residential portion was transferred in favour of Jugal Kishore Arora and his brothers, K.P. Arora, Vijay Arora and Harsh Vardhan.

9. The Prescribed Authority by order dated 6th of May, 1980, rejected the application of Dr. Kalindi Mitter under Section 43(2)(rr). An appeal, thereafter, filed against that order was dismissed by the District Judge, Kanpur, by his judgment dated 21.5.1981. These orders were challenged in Civil Miscellaneous Writ Petition No. 10793 of 1981 in the Allahabad High Court filed on behalf of the heirs of Dr. Kalindi Mitter in which the transferees were also impleaded as respondents at a subsequent stage and later, they came to be transposed as co-petitioners. It is this Writ Petition which has been allowed by the High Court by the impugned judgment which is the subject matter of the present appeal.

10. Mr. Gopal Subramaniam, learned Senior Counsel appearing on behalf of the appellants, has contended that since Dr. Kalindi Mitter had instituted a suit on the basis of permission granted to her and that suit was withdrawn by her unconditionally without seeking permission of the Court to file a fresh suit on the basis of that cause of action nor was such permission granted by the Court, the permission granted under Section 3 of the old Act exhausted itself and no fresh suit or proceeding, on the basis of that permission could have been legally instituted for the eviction of the appellants. It is contended that Section 43(2)(rr) is a mode prescribed under the new Act for execution of the permission already granted under Section 3 of the old Act. But before the permission is put to execution under Section 43, it has to be shown that the permission was subsisting on the date on which an application is filed for its execution under Section 43(2)(rr). It is also contended that before the permission granted under the old Act could be put to execution under Section 43(2)(rr), it had to be shown to have been obtained on any of the grounds specified in sub-section (1) or sub-section (2) of Section 21 of the new Act and if it is shown that such a permission, as was granted under the old Act, could not have been granted under Section 21 of the new Act, it could not be executed under Section 43(2)(rr).

Mr. G.L. Sanghi, learned Senior Counsel appearing on behalf of the respondents, has, on the other hand, contended that the permission under Section 3 of the old Act was

granted in favour of Dr. Kalindi Mitter by the Rent Control and Eviction Officer on being satisfied that the need of Dr. Kalindi Mitter qua the accommodation in question was genuine and *bona fide* and, therefore, she was allowed to institute a suit for the eviction of Smt. Sushila Saigal. At the time of the execution of that permission under Section 43(2)(rr), fresh satisfaction is prohibited and the order has to be executed without looking into the facts which had already been considered by the Rent Control and Eviction Officer at the time of granting the permission. Mr. Sanghi has contended that under Section 3 of the old Act, permission could be granted on the basis of *bona fide* and genuine need of the landlord or landlady and such need, having been found established, has not to be investigated afresh notwithstanding the subsequent change of ownership or other facts and circumstances which too could not be noticed.

11. In order to appreciate the contentions raised by the learned counsel for the parties, it will be necessary, at this stage, to consider the relevant provisions of both the Acts, namely, U.P. Act No. 3 of 1947 (old Act), and U.P. Act No. 13 of 1972 (new Act).

Letting of accommodation, residential and non-residential, in Uttar Pradesh, its rent, and eviction of tenants therefrom, was controlled by legislative action when the Uttar Pradesh Legislature made U.P. (Temporary) Control of Rent & Eviction Act, 1947, which was preceded by U.P. Ordinance No. 3 of 1946. Before coming into force of the U.P. Ordinance No. 3 of 1946, followed by the old Act, the letting of accommodation, both residential and non-residential, as also rights and liabilities of the landlord and tenant and eviction of the tenant therefrom was regulated by the provisions of the Transfer of Property Act, 1882, under which the landlord could, at his will, let out the accommodation to a tenant and could evict that tenant, at any time, therefrom after terminating his tenancy by a notice under Section 106 of the Transfer of Property Act.

12. Eviction of tenants at the will of the landlord as also the letting out of accommodation at exorbitant rent was effectively controlled by the legislative intervention. In respect of a tenant against whom a decree for eviction had already been passed under the provisions of the Transfer of Property Act in a suit instituted by the landlord, it was specifically provided under Section 14 of the old Act as under :

"Execution of pending decrees for eviction - No decree for the eviction of a tenant from any accommodation passed before the date of commencement of this Act, shall in so far as it relates to the eviction of such tenant, be executed against him as long as this Act remains in force, except for any of the grounds mentioned in Section 3 :

Provided that the tenant agrees to pay to the landlord "reasonable annual rent" or the rent payable by him before the passing of the decree, whichever is higher." of that accommodation or he had renounced his character as such or denied the title of the landlord or he was allowed to occupy the accommodation as part of a contract of his employment which had been determined, such a decree could be executed and the tenant could be evicted in pursuance of such a decree. Section 3 also provided that on the aforesaid grounds, suits for the eviction of the tenant could be filed directly in the Court, but if these grounds did not exist, the suit could be instituted only with the permission of the District Magistrate. One of the grounds on which the landlord would usually seek permission of the District Magistrate to file a suit for eviction of the tenant was his own genuine need to occupy the accommodation himself. If the tenant was

already in occupation of a building, but he was likely to vacate the building or had in fact vacated the building, a right was given to the landlord under Rule 6 of the Rules made in exercise of powers under Section 17 of the Act, to apply for occupation of that building on account of his own *bona fide* need. In case it was found by the District Magistrate or the Rent Control & Eviction Officer, to whom the powers of the District Magistrate were delegated, that the need of the landlord was genuine and *bona fide*, he would allow that building to be occupied by the landlord himself and would not allot it to anyone else.

14. Under the scheme of the old Act, an application for permission to file a suit for eviction of a sitting tenant was to be made to the District Magistrate under Section 3 of the Act. The need of the landlord for his occupation would be investigated by the District Magistrate and the District Magistrate on being satisfied that the need of the landlord was genuine and *bona fide* would grant permission to the landlord or else he would refuse it. In either case, the order passed by the District Magistrate was revisable by the Commissioner under sub-section (2) of Section 3 and was further revisable by the State Govt. under 7-F of the old Act. If the permission was granted either by the District Magistrate or the Commissioner or, for that matter, by the State Govt. under Section 7-F of the old Act, the landlord, on the basis of that permission, could institute a suit for eviction of the tenant.

15. The new Act came into force with effect from 15.7.1972. Section 1 provides for the extent, application and commencement of the Act. Sub-section (4) of Section 1 provides that the Act shall come into force from the date, as the State Govt. may, by notification in the Gazette, appoint. Sub-section (2) provides for the exemption of certain buildings from the operation of the Act.

16. Chapter III deals with "Regulation of letting". Section 11 contained in that chapter prohibits the landlord from letting out any building to any person, except in pursuance of an allotment order issued under Section 16. Section 12 provides for deemed vacancy of building in certain cases. Section 13 provides that where a landlord or the tenant has ceased to occupy a building or part thereof, no person shall occupy it in any capacity on his behalf otherwise than under an order of allotment or release under Section 16. Section 14 which is headed as "Regularisation of occupation of existing tenants" provides that any licensee (within the meaning of Section 2-A) or a tenant in occupation of the building with the consent of the landlord immediately before the commencement of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) (Amendment) Act, 1976, against whom any suit or proceeding for eviction was not pending before any Court or authority on the date of such commencement, shall be deemed to be an authorised licensee or tenant of such building. Section 15 casts an obligation on every landlord to intimate vacancy of any building to the District Magistrate. Under Section 16, the building is either allotted to a person or is released in favour of the owner of that building. Conditions for making an allotment order are set out in Section 17 while Section 18 provides for appeals against order of allotment or release. Section 19 provides that in case the release order obtained by a landlord in respect of any building is abused by him, the release order will be revoked and the building would be treated as vacant and it would be open to the District Magistrate to allot it as such.

17. Chapter IV provides for "Regulation of Eviction." Section 20 provides for the

protection of tenants from being evicted at the will of the landlord. While sub-section (1) which operates subject to the provisions of sub-section (2) contains the prohibition that a suit for the eviction of the tenant would not be instituted, sub-section (2) sets out the grounds on the basis of which a suit for eviction of a tenant could be filed. These grounds are almost the same as those contained in Section 3 of the old Act under which the suit could be instituted directly for the eviction of the tenant if any of those grounds existed. Section 21 provides for the release of the building by eviction of the tenant therefrom. The relevant portion of this Section which is necessary for the disposal of this case is reproduced below :

"21. *Proceedings for release of building under occupation of tenant* - (1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely --

(a) that the building is *bona fide* required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

(b) that the building is in a dilapidated condition and is required for purposes of demolition and new construction :

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds, mentioned in clause (a), unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years :

Provided further that if the application under (a) is made in respect of any building let out exclusively for non-residential purposes, the prescribed authority while making the order of eviction shall, after considering all relevant facts of the case, award against the landlord to the tenant an amount not exceeding two years' rent as compensation and may, subject to rules, impose such other conditions as it thinks fit :

Provided also that no application under clause (a) shall be entertained --

(i) for the purposes of a charitable trust, the objects of which provided for discrimination in respect of its beneficiaries on the ground of religion, caste, or place of birth;

(ii) in the case of any residential building, for occupation for business purposes;

(iii) in the case of any residential building, against any tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925) has issued a certificate that he is serving under special conditions within the meaning of Section 3 of that Act, or

where he has died by enemy action while so serving, then against his heirs :

Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed."

18. Under this Section, the building can be released on any of the grounds set out in this Section, including that the building was *bona fide* required for the self-occupation of the landlord. However, if the landlord requires the eviction of the tenant from the "residential building" for his own occupation for "business purposes", the application would not be entertained.

19. Section 43 of the Act repeals the old Act, but provides as to how the orders or the proceedings passed or pending under the old Act would be dealt with under the new Act or what would be the effect of the new Act on those orders or proceedings.

20. So far as the permission already obtained under Section 3 of the old Act is concerned, there are two clauses under Section 43 which are relevant. They are clause (r) and (rr) of sub-section (2) of Section 43 which are extracted below :

"(r) any suit for the eviction of a tenant instituted with the permission referred to in Section 3 of the old Act or any proceeding arising out of such suit, pending immediately before the commencement of the U.P. Civil Laws Amendment Act, 1972 (U.P. Act, 37 of 1972) may be continued and concluded in accordance with the old Act which shall for that purpose, be deemed to continue to be in force.

(rr) Where any permission referred to in Section 3 of the old Act has been obtained on any ground specified in sub-section (1) or sub-section (2) of Section 21, and has become final, either before the commencement of this Act, or in accordance with the provisions of this sub-section, after the commencement of this Act, whether or not a suit for the eviction of the tenant has been instituted, the landlord may apply to the prescribed authority for his eviction under Section 21, and thereupon the prescribed authority shall order the eviction of the tenant from the building under tenancy, and it shall not be necessary for the prescribed authority to satisfy itself afresh as to the existence of any ground as aforesaid, and such order shall be final and shall not be open to appeal under Section 22 :

Provided that no application under this clause shall be maintainable on the basis of a permission granted under Section 3 of the old Act, where such permission became final more than three years before the commencement of this Act :

Provided further that in computing the period of three years, the time during which the applicant has been prosecuting with due diligence any civil proceedings whether in a Court of first instance or appeal or revision shall be excluded."

21. Clause (r) provides that any suit for eviction of a tenant instituted on the basis of the permission granted under Section 3 of the old Act or any proceeding arising out of such suit pending immediately before the commencement of the U.P. Civil Laws Amendment Act, 1972 (U.P. Act No. 37 of 1972) is to be continued and concluded in

accordance with the old Act which shall for that purpose be deemed to continue to be in force. This clause obviously deals with pending suits. If a suit had been filed for the eviction of a tenant on the basis of the permission granted to the landlord by the District Magistrate and if such suit was pending on the date on which the U.P. Act No. 37 of 1972 came into force, the said suit was to be continued and concluded in accordance with the provisions of the old Act. It may be stated that by U.P. Civil Laws Amendment Act, 1972 (Act No. 37 of 1972), many changes were introduced in various Acts, including Provincial Small Causes Courts Act, 1887. Suits for possession, including suit for the eviction of lessee from the building after the termination of its lease was made cognizable by the Small Causes Courts Act which, prior to the amendments intruded by U.P. Act No. 32 of 1972 could not be instituted in that Court. Read in this background, the suits already instituted in a regular civil Court on the basis of permission granted by the District Magistrate, was to be continued and concluded in accordance with the provisions of the old Act.

22. We may now consider the provisions contained in Clause (rr) of Sub-section (2) of Section 43. This clause contemplates summary eviction of a tenant against whom permission had already been granted by the District Magistrate under Section 3 of the old Act. If such permission was granted, then, irrespective of whether a suit on the basis of that permission had been instituted or not, the landlord could apply to the Prescribed Authority for the eviction of the tenant and such tenant would be evicted therefrom. This clause further provides that if the landlord applies for eviction of the tenant on the basis of the permission already granted under the old Act, it would not be necessary for the Prescribed Authority to be satisfied afresh as to the existence of the grounds for such eviction. The two Provisos appended to this Clause deal with the period of limitation within which an application could be filed for the eviction of the tenant, with which we are not concerned. But there are other important words which cannot be ignored and they provide the key to the interpretation of this Clause. The significant words are contained in the first part of this Clause. They are : "WHERE ANY PERMISSION REFERRED TO IN SECTION 3 OF THE OLD ACT HAS BEEN OBTAINED ON ANY GROUND SPECIFIED IN SUB-SECTION (1) OR SUB-SECTION (2) OF SECTION 21." The other significant words are contained in the last part of the Clause which are : "AND IT SHALL NOT BE NECESSARY FOR THE PRESCRIBED AUTHORITY TO SATISFY ITSELF AFRESH AS TO THE EXISTENCE OF ANY GROUND AS AFORESAID."

23. Considered in the light of these significant words, the requirements for the applicability of Clause (rr) would be :-

- (a) There should have been a permission obtained under Section 3 of the old Act.
- (b) Permission should have been obtained on any ground specified in Sub-section (1) or Sub-section (2) of Section 21.
- (c) The permission should have become final -
 - (i) either before the commencement of the new Act or
 - (ii) after the commencement of the new Act, under this Sub-section.

24. If these conditions are satisfied, then the landlord may, even though a suit on the basis of the permission was filed or not filed, apply to the Prescribed Authority for the eviction of the tenant and the Prescribed Authority shall order eviction of the tenant from the accommodation in his tenancy. In this process, it will not be necessary for the Prescribed Authority to satisfy itself afresh as to the existence of "any ground aforesaid". These words, namely, "any ground aforesaid" refer to the grounds mentioned in the earlier part of this clause which in its turn refers to the grounds specified in Sub-section (1) and Sub-section (2) of Section 21. That is to say, if the permission granted under the old Act can be co-related or is referable to any ground specified in Sub-section (1) or Sub-section (2) of Section 21, it will not be necessary for the Prescribed Authority to be satisfied afresh of the existence of those grounds. In this situation, therefore, what is to be seen is whether the ground on which permission was granted to landlord under Section 3 of the old Act is a ground specified in Section 21(1) or Section 21(2) of the new Act.

25. There is thus a difference between Clause (r) and Clause (rr) of Section 43(2) of the new Act. Clause (r) would apply to a situation where the ground on which permission was granted is not covered by Section 21(1) and Section 21(2) of the new Act and, therefore, in that situation, the suit if filed on the basis of that permission, has to be continued and concluded under the old Act which has been fictionally kept alive in spite of its repeal. Such a permission will not be executable under Clause (rr). On the contrary, if the ground on which permission was granted under Section 3 is covered by any of the grounds mentioned in Section 21(1) or Section 21(2), it will be executable under Clause (rr). This is almost akin to the provisions of Section 14 of the old Act under which a decree passed before coming into force of that Act could not be executed so long as the old Act, which was a temporary Act, was in force. But if the decree was passed on any of the grounds specified under Section 3 of the old Act, even though that decree was passed prior to the coming into force of the old Act, it would be executable under that Act and the tenant would be evicted from the accommodation in his occupation. These Clauses, namely, Clause (r) and Clause (rr) thus operate in two different fields. So interpreted and understood, there will be no conflict in the two Clauses.

26. Let us now examine the facts of the present case to see whether an application under Clause (rr) was maintainable against the appellants and whether such an application on the basis of the permission already granted under the old Act could have been executed under Clause (rr).

27. Under sub-section (1) of Section 21, a landlord can apply for eviction of a tenant on the ground that the building was *bona fide* required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family either for residential purposes or for purposes of any profession, trade or calling or on the ground that the building which was in a dilapidated condition was required for purposes of demolition and new construction. The second Proviso to Sub-section (2) however provides that "AN APPLICATION UNDER CLAUSE (a) SHALL NOT BE ENTERTAINED IN THE CASE OF ANY RESIDENTIAL BUILDING FOR OCCUPATION FOR BUSINESS PURPOSES." Thus, if an application is made by the landlord for eviction of the tenant on the ground that the building in occupation of that tenant which was used exclusively for residential

purposes was required for business purposes or for any other commercial activity, it would not be a ground within the meaning of Section 21(1) of the new Act for the eviction of the tenant and the application will not be entertained. This we say because the normal function of a PROVISO is to except something out of the enactment or to qualify something enacted therein which but for the PROVISO would be within the purview of the enactment. (See : ***Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Officer, AIR 1966 SC 12***). Since the natural presumption is that but for the PROVISO, the enacting part of the section would have included the subject matter of the PROVISO, the enacting part has to be given such a construction which would make the exceptions carved out by the PROVISO necessary and a construction which would make the exceptions unnecessary and redundant should be avoided (See : Justice G.P. Singh's "Principles of Statutory Interpretation" Seventh Edition 1999, p-163). This principle has been deduced from the decision of the Privy Council in ***Govt. of the Province of Bombay v. Hormusji Manekji, AIR 1947 PC 200*** as also the decision of this Court in ***Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, AIR 1965 SC 980***.

28. In the instant case, as pointed out earlier, Dr. Kalindi Mitter had applied for permission under Section 3 for instituting a suit for the eviction of the tenant, Smt. Sushila Saigal, on the ground that she would shift her nursing home, already running in some other building, to the residential portion in occupation of Smt. Sushila Saigal. The application was allowed and the suit which was instituted on the basis of that permission was ultimately withdrawn with liberty to file a fresh suit on the same cause of action. After withdrawal, an application under Section 43(2)(rr) was filed for the eviction of the tenant which, as pointed out earlier, was rejected by the Prescribed Authority and also by the District Judge but was allowed by the High Court.

29. In view of the above discussion, such an application could not have been entertained under Section 43(2)(rr) as the landlord wanted to occupy the residential portion of the building for non-residential purposes. It was, therefore, not a ground within the meaning of Section 21(1) or Section 21(2) and, therefore, the application under Section 43(2)(rr) was not maintainable and should have been rejected by the High Court as well on that ground.

30. The appeal is consequently allowed. The impugned judgment dated 27.5.1999 passed by the High Court is set aside and those of the Prescribed Authority and the District Judge are maintained and the application of the respondents under Section 43(2)(rr) is dismissed but without any order as to costs.

Appeal allowed.