

DELHI HIGH COURT

Satpal

Vs.

Nand Kishore (Delhi)

C.R. 523 of 80.

(T.P.S. Chawla, J.)

3.9.1982

JUDGMENT

T.P.S. Chawla, J.

1. This is a petition under the proviso to Section 25B(8) of the Delhi Rent Control Act, 1958 (the Act'). The Rent Controller has made an order for recovery of possession of certain premises on the ground that they are required bona fide by one of the landlords. By this present petition, the tenant seeks to have that order revised and set aside.

2. The premises in question are a portion of the first floor of house No. 4-F, Kamla Nagar, Delhi. It is a three strayed building with a barsati on top. Each floor has about six habitable rooms, and kitchens, bathrooms and latrines. The owners are Nand Kishore said his son Mohan Parkash. The aggrieved tenant is Sat Pal.

3. The petition for eviction was filed on 10th March, 1978. Only one ground was pleaded: that the premises on the first floor in the occupation of Sat Pal were required for the residence of Shri Nand Kishore. There was no suggestion that the premises were also required by Mohan Parkash. the son, who was joined as a co-petitioner. Therefore, only the need of Nand Kishore alone falls to be considered. This was conceded by counsel for the landlords. In any case, the Rent Controller has given a clear finding that the portion of the second floor in the possession of Mohan Parkash is sufficient for him and his family; and that finding has not been questioned before me.

4. After being served with summons. Sat Pal applied for leave to contest the application for eviction. He was permitted to context the case on merits with

respect to all the points except the ownership of the petitioners and the original purpose of letting. On the state of the pleadings, the only questions which, thus, remained for trial were, in the words of Section 14(1) (c) of the Act, whether the premises were 'required bona fide by Nand Kishore for occupation as a residence for himself or for any member of his family dependent on him, and whether he had no other reasonably suitable residential accommodation. It is obvious that these two questions are closely connected and have to be judged simultaneously. It is further equally obvious that the facts relevant for deciding these questions are especially within the knowledge of the landlord. Hence in view of Section 106 of the Evidence Act, 1872, the burden of proving them must lie on him. Two authorities for these propositions, if any be necessary, are *Freddy Fernandes v. P. L. Mehra*, 2nd and *Mattulal v. Radhe Lal*, .¹

5. As the trial, Nand Kishore and Mohan Parkash gave evidence on their own behalf. No other witness was called by them. Sat Pal gave evidence himself, and also called a friend of his named Lala Ram. That is all the evidence in the case.

6. There are some facts about which there is no real dispute. They emerge from the evidence of the landlords themselves. I will extract them mainly from the statement of Nand Kishore. He hails from the village of Tajpur in Sonapat. All his working life he was in Government service. In 1969, he retired as Joint Director of Industries in Delhi Administration. His family consisted of himself, his wife, two sons and a daughter. Rudra Parkash was the elder son, and Mohan Parkash, the younger. The house at 4-F, Kamla Nagar, Delhi, was constructed in 1950-51. The family began to reside on the first and second floors of this house. What exactly was the accommodation with them does not appear from the record. But, Nand Kishore has said that in 1973 they had only one room and kitchen on the second floor. It seems that the other rooms on that floor had been let out to tenants.

7. Nand Kishore admits that whilst he was in service till 1969, he lived with his family 'jointly in one and the same house'. The evidence shows that the position was the same even afterwards. There is no evidence or indication that at any time during his life, Nand Kishore has lived separately from his family.

8. At some stage, the Hindi Undivided Family constituted by Nand Kishore and his two sons had acquired a plot at A-2/23, Shakti Nagar Extension Delhi. Its

area was 400 sq. yds. Shakti Nagar and Kamla Nagar are quite close to each other. By 1973, the ground floor had been constructed on the plot at Shakti Nagar. It comprised six rooms. The entire family moved from the house at Kamla Nagar the ground floor at Shakti Nagar. Nand Kishore's wife had died in 1972 and he was now a widower. His family at this time consisted of himself, his two sons, their wives and children, and his daughter. Each of the sons had three small children of various ages, some of whom had begun to go to school. The daughter of Nand Kishore was married in 1974, and, thereafter, lived with her husband. The rest of the family continued to reside together in the ground floor at Shakti Nagar till 1976.

9. According to Nand Kishore even after the family moved to Shakti Nagar in 1973, the first floor of the house at Kamla Nagar was retained and kept vacant. But at some stage the rooms on that floor other than those presently occupied by Sat Pal must have been let out, because admittedly they were in the possession of tenants when the petition for eviction was filed.

10. Originally, Sat Pal was inducted as a tenant of a portion on the second floor of the house at Kamla Nagar. That was in January 1973. The portion let to him comprised one drawing-cum-dining room, two bedrooms, one storeroom and a kitchen. In addition, he had the right to use the bathroom and the latrine in common with other tenants. The rent was Rs. 375 per month. The lease was for a limited period of two years, and was granted after obtaining the permission of the Rent Controller under Section 21 of the Act. Although the two years expired in 1975, Sat Pal did not vacate the premises. Nor were any steps taken by the landlords to evict him.

11. Sometime in 1976, a first floor was added over the ground floor of the house at Shakti Nagar. Rudra Parkash and his wife and children moved to the first floor. They had four rooms, a store, kitchen, bath, and a latrine. Simultaneously, Mohan Parkash and his wife and children shifted to a portion on the first floor of the house at Kamla Nagar. They occupied a drawing-cum-dining room, two bedrooms, a store, and probably, a kitchen. The bathroom and latrine were in common with the tenants on the same floor. At this time, one more child had been added to the family of Mohan Parkash. He now had four children, but they were all very young.

12. As for himself, Nand Kishore made the piteous statement: I continued

living since 1976 with my son Rudra Parkash during night and during the day. I remain with my son Mohan Parkash because I have no house. What happened to the six rooms in the ground floor of the house at Shakti Nagar, is not elucidated in the evidence. But, one can reasonably surmise that they were let out to tenants. This was not denied by counsel for the landlords.

13. On 1st February 1977 there was an exchange of premises by mutual consent between Sat Pal and the landlords. Mohan Parkash moved up into the portion of the second floor occupied by Sat Pal in the house at Kamla Nagar, and Sat Pal moved down into the portion of Mohan Parkash on the first floor. The layout plan shows that the two accommodations were identical. However, on the first floor Sat Pal was not given a kitchen. Probably, for that reason the rent Sat Pal was to pay was reduced to Rs. 325 per month. It is these premises on the first floor, occupied by Sat Pal, respecting which the Rent Controller has made the order for recovery of possession.

14. Now, it seems to me, that even from, these undisputed facts, which I have stated, it is patent that no aspect of the alleged requirement pleaded by Nand Kishore is valid and genuine. He says in the petition that he had been throughout his life in Government service as an officer having independent accommodation and is accordingly accustomed to live an independent life, which is not possible having regard to all the considerations involved in the matter, unless he had a separate unit for his residence independent of his sons having his own establishment'. I do not quite know what he means by independent accommodation and independent life; but it is simply not true that he ever lived separately from his family and had his own separate establishment. Nor does he explain his meaning any further in his evidence. All that he says is that whilst he was in service he was having an independent residence and wishes to live independently.

15. Nand Kishore was about 67 years of age when he gave evidence in 1979. I do not say that a man is not entitled to live independently' for the first time at that age, though to some it may seem rather late in the day. But, in this country, and especially in Hindu families of the old-fashioned kind, an ageing father, particularly a widower, normally desires to live with his sons or have them living with him. He needs some one to look after him in his senescence, and no one could be better than his sons. In most petitions for eviction that one sees, the argument is either that the parents want their sons living with them in their

old age, or, conversely, the sons want their ageing parents to live with them. A reported example, of the former is in *Vas Dev Dhawan v. Triloki Nath*,² The present case is rare, in that a father, who is now a septuagenarian and a widower, wants to live separately and independently from his sons. Though not an impossible desire, even at that age, there is nothing in the previous history of Nand Kishore which might even remotely indicate that the desire may be genuine. There is no suggestion that the relations between the father and any of the sons are strained or that they are not willing to have him stay with them. On the contrary, all the indications are that they are a very well-knit family. From the early 1950s till 1973 they all lived together in harmony in the house at Kamla Nagar; and thereafter, till 1976, in the ground floor of the Shakti Nagar house.

16. I would accept that Nand Kishore can financially afford to maintain separate establishment. He has said that his aggregate income is Rs. 1,50,000 per month made up of his pension, interest on bank deposits, and share in rental and agricultural income. There seems to be no reason to doubt his statement. But merely from the fact that he has the means to do so, it does not at all follow that Nand Kishore has a real desire or need to set up a separate establishment.

17. In the passage which I have quoted from the petition, Nand Kishore makes the mysterious statement that unless he has his own independent accommodation; an independent life is not possible 'having regard to all the considerations involved in the matter'. His counsel explained that Nand Kishore was very fond of playing cards and chess but was reluctant to do so in the presence of his sons, daughters-in-law and grand children. This seems to be somewhat borne out by a passage further on in the petition where it is said : 'There is a large circle of friends, official and non-official, who often visit the petitioner No. 1 (Nand Kishore) in various connections including playing cards, chess and other such like enjoyments'. In his evidence, also, Nand Kishore has said that his friends come for playing cards and chess. However, he does not say that this passion for playing cards and chess is a recent phenomenon. He must have been playing these games during all the years that he has been living with his family, and it must be an open secret by now. Not that I accept that the playing of cards or chess attracts any approbrium at the present day. Besides, his activities would not be much hidden from Mohan Parkash and his family if he were to live one floor below in the same house after Sat Pal was ousted. I

think, it is too obvious that this consideration for wanting to live separately is a mere pretext; or, if bona fide, nothing more than a delusion. In any case, to evict a tenant so as to make it more convenient for the landlord to play cards and chess would be to mock at the Delhi Rent Control Act.

18. Another reason why Nand Kishore says that he needs the premises is that his relations and friends come and stay with him. The relatives he mentions in the petition are his married daughter, two married sisters and a younger brother, all of whom reside permanently in Delhi; and, also, an elder brother who lives in the village but has to come to Delhi quite often. He adds, that other persons from the village also come and stay with him. In his statement, Nand Kishore mentions visits only by his married daughter and does not refer to his brother and sisters. However, Mohan Parkash repaired the omission by referring to the others in his statement. Both of them say that persons from the village come and stay with them as they are an 'influential family' in the District. They also refer generally to other guests. However, neither of them could give any specific idea of the frequency and the duration of the visits of guests and relations.

19. Now, undoubtedly, there are some cases which show that visits by married daughters and guests may be taken into account whilst assessing the needs of the landlord. But, I think, it would be wrong to give too much importance or weight to this factor. After all, it must be remembered, that it is the eviction of a tenant from his established home which is at stake; and he is pushed out into a world where accommodation is very scarce and expensive. One of the main objects of the Delhi Rent Control Act is to provide protection to a tenant against eviction. This protection is withdrawn, by the proviso to section 14 of the Act, on limited grounds. One of them is, when the premises are actually 'required' by the landlord himself. Obviously, this exception should not be so worked as to defeat the whole purpose of the Act. It must be applied in a broad common sense way, so as to hold the balance : see *Mangharam Chuharmal v. B. C. Patel and others*,³ Surely, it would be a total distortion of the law to make an order for recovery of possession against a tenant so that the married daughters and friends of the landlord may be more comfortable during their fleeting visits. And, the tenant is evicted not for the short spell while the visit lasts, but for ever. To my mind, that is no Way of holding the balance.

20. In *Rattan Dal v. Jindhu Ram*,⁴ there was a very special consideration. The landlord's wife was in ill health, and, therefore, his married daughter had

frequently to come and stay with them. Hence, "some provision had to be made for her. Besides, the other daughter had grown up in the meantime, and her need was a legitimate component of the need of the landlord as she was a member of his family. The judge was careful to rest his decision on the particular circumstances of the case. In *S. B. Khanna v. Trilok Nath* ⁵ and *Ram Prakash Saroj v. Shri Mohinder Singh*, ⁶ the visits of a married daughter were taken into consideration along with other matters. But those cases do not go into the question as to the weight and importance to be given to such visits. Moreover, the attention of the court was not drawn to *Ajit Singh v. Inder Saran and others*, in which it was said : To allow the owners to evict a tenant of a complete residential unit. to provide for the occasional guests of the owners would be virtually restoring to them the unrestricted rights to move in their own property which is not what is intended by clause (u) of the proviso to section 14 which advisedly entitles the owners to evict the tenant only to the extent of the reasonable need of the owner. I entirely agree with that view. It is only in the most exceptional cases that visits by married daughters or other relations or guests would have any tangible effect on the result of a proceeding for eviction.

21. So far as this aspect is concerned, there is nothing exceptional about the present case. I have no doubt that Nand Kishore is unduly exaggerating his need to put up relations and friends. How often would a married daughter, or married sisters and a brother, all permanently settled in Delhi, come to stay with him? And, for how long ? The story about people from the village coming to stay with him since he happens to belong to an 'influential family' in the District is much too vague and does not carry any weight with me. In any case all these needs were being adequately met between 1973 and 1976 when the entire family was occupying six rooms on the ground floor of the house at Shakti Nagar. They now have seven rooms : four on the first floor in Shakti Nagar and three on the second floor in Kamla Nagar.

22. The last element of the need pleaded by Nand Kishore is that he is in his 67th year and as such also the second floor would be totally inconvenient and wholly unsuitable for his residence. In answer to this. Sat Pal said in his written statement that Nand Kishore was having good health and conveniently can go up to second or third floor of the building. This allegation was not controverted in the replication and, indeed was impliedly admitted. It was said that the fact that Nand Kishore has good health and can go up to second floor has no

relevance..... In his statement, also, Nand Kishore merely says : I am about 67 years old and it is very inconvenient for me to go again and again to the second floor for any and every thing. He does not say that he suffers from any particular ailment. Nor is there any medical evidence to that effect.

23. All men do not become equally frail with years. Some remain hale and hearty and active well into their 80s, and even 90s. Nand Kishore is one of the lucky ones. But, in any case, he and his son had the choice in 1977 of staying on the first floor. They deliberately chose to go to the second floor after the exchange with Sat Pal on 1st February 1977. There is no suggestion or evidence that there was any deterioration in the health of Nand Kishore during the period of one year between the exchange and the filing of the petition for eviction on 10th March 1978. It is thus apparent that the inconvenience of which Nand Kishore now complains, is feigned for the purpose of this case.

24. If the need of Nand Kishore was genuine, one naturally asks, why no steps were ever taken to evict Sat Pal after his two-year lease under section 21 of the Act expired in 1975 ? The answer given in the replication is that Sat Pal was required to vacate the premises on the second floor, but, at his request, he was given accommodation on the first floor in exchange on 1st February 1977, on the 'definite understanding that he would vacate the same by September 1977. It is strange that so important a matter was not even alluded to in the petition. Furthermore, Nand Kishore makes no mention of it in his evidence. Though, Mohan Parkash does affirm the story in his examination-in-chief, when cross-examined he said that they had forgotten to apply for execution as they were engrossed in his sister's marriage; and, later, they refrained from doing so because Sat Pal had promised to vacate the premises'.

25. I find the story too incredible. It is difficult to believe that a tenant would agree to vacate the premises knowing that the period of limitation prescribed under section 21 for an application for execution had passed. And, if Sat Pal was being so co-operative why was the 'definite understanding not reduced to writing or, preferably, again got sanctioned by the Rent Controller under section 21 of the Act ? What was the sense of an exchange, just to accommodate Sat Pal for the short period of 6 or 7 months? It would surely have been better to let him remain on the second floor till September 1977. Probably, the truth is that the exchange was at the request of the landlords, and Sat Pal, in order to maintain good relations or for other reasons of his own, agreed to oblige. Had

Nand Kishore really needed any accommodation, the attitude and conduct of the landlords would have been very different. They would not have forgotten to apply for execution.

26. The evidence shows that if Nand Kishore had indeed been so minded, there were a number of opportunities for him to retain suitable independent accommodation in the house at Kamla Nagar for setting up a separate establishment. Both in his written statement and in his evidence. Sat Pal had said that, in 1976-77, one room and a kitchen on the second floor fell vacant and were let to Kishan Sharma for his residence. Then, in the middle of 1977, one room and a kitchen on the ground floor were let out to Binny Show Room for commercial use. Previously this room and kitchen had been let out to one Lok Chand for his residence. Also, in 1977, two rooms on the ground floor were merged by breaking the intervening wall, and were let to the National Textiles Corporation for running a cloth shop. In the barsati, also, rooms were falling vacant from time to time as the tenants were changing. Even now, Sat Pal said, one or two rooms on the ground floor, with a kitchen, were in the possession of Mohan Parkash, which he was using for carrying on his business in the manufacture and sale of water meters.

27. In their replication and evidence, the landlords did not deny the various lettings mentioned by Sat Pal; nor that one room and a kitchen on the ground floor were being used by Mohan Parkash for his factory. However, they maintained that all the lettings were before 1977 : that is, either in 1975 or 1976. The cross-examination of Sat Pal was on those lines. But he firmly reiterated that Binny Show Room and National Textiles Corporation and some persons in the barsati had been inducted as tenants in 1977, and Kishan Sharma in 1976-77. Nand Kishore, in his cross-examination, impliedly admitted that two rooms on the ground floor had been let out after June 1977, because he conceded that earlier they were in the possession of his son Mohan Parkash. On further cross-examination, Nand Kishore pleaded that he was unable to say when various portions of the property fell vacant or were let out because his son was managing the property. Mohan Parkash was no more informative. Unfortunately, he was not cross-examined much regarding these matters.

28. In law, the burden was on the landlords to establish the dates when various portions of the building fell vacant and were re-let. Those facts were especially within their knowledge. But, they did practically nothing to discharge that

burden. No documentary evidence was produced. Nor were the ex-tenants or the present tenants called as witnesses. Even in their own statements, they did not say anything about these matters in examination-in-chief, and left it to the cross-examiner to extract such details from them as he could. For their part, they seem to have thought that putting suggestions to Sat Pal in cross-examination was enough. He repudiated all of them, and nothing was achieved. The burden retained where it was. And, adverse inferences ought to have been drawn against them because of non- production of documents and witnesses.

29. Nevertheless, I will assume in favor of the landlords that the various rooms and the kitchen on the ground floor and the room and kitchen on the second floor were let out in 1975 or 1976 and not in 1977. That still gives Nand Kishore ample opportunity to set up a separate independent establishment for him. He could have had accommodation on the ground floor or the second floor, whichever he pleased. I am prepared to ignore the barsati altogether.

30. In the replication it has been pleaded that the accommodation which fell vacant was not suitable for Nand Kishore because it was not commodious enough. No such statement has been made by Nand Kishore or Mohan Parkash in their evidence. I do not accept that plea. Even conceding that he desires to live an independent life', one room and a kitchen should have been adequate for Nand Kishore. In his own statement, he says, he needs one bedroom for himself. Of course, he demands a second room for his married daughter and a third room for his guests and a drawing room. As to the married daughter and the guests I have already stated my view. His statement shows that, for himself, he needs only one bedroom.

31. With regard to the ground floor, Nand Kishore and Mohan Parkash says that the building plan was sanctioned for residential-cum-commercial use, and the ground floor was constructed for commercial purposes. Mohan Parkash first admitted that the ground floor was residential at the time of construction, but recanted in the next sentence. On the other hand, Sat Pal says that the entire house was meant for residential use, and a portion of the ground floor is being used for commercial purposes in violation of the rules and bye-laws of different authorities'.

32. The building plan which was sanctioned has not been produced. In any event, it seems to me, that it would be irrelevant. The use to which a building

can be put is not controlled by the building plan. It is controlled by the lease of the land. The lease was not produced by the landlords. Nor was any explanation furnished for its non-production. Therefore, an adverse inference ought to have been drawn against the landlords.

33. It is true that Sat Pal admits that in other houses in this locality there are shops in the ground floor. But this does not prove anything. It is well known that it has become a common practice in Delhi for landlords to violate the letting purpose by converting residential premises to commercial use for the higher rent they are able to get. It is very unlikely that the lease of a residential plot would allow one half of the ground floor to be used for residential purposes and the other for commercial purposes, for admittedly a portion of the ground floor was previously let for residential use. I think, this plea has been made up by the landlords to explain away their failure to use the rooms on the ground floor which fell vacant and were available for meeting the alleged need of Nand Kishore. Again, the facts were especially within the knowledge of the landlords, and the burden was on them to prove that the portions of the ground floor, which fell vacant from time to time, could not be used for residential purposes. In my opinion, they have wholly failed to discharge this burden, and have deliberately withheld the lease deed. The Rent Controller, in his judgment, has said : A close perusal of the statement of the respondent (i.e. Sat Pal) goes to show that he has failed to prove that the ground floor premises of the suit premises are a residential one. Rather he has admitted that the ground floor of the houses situated in the locality where the suit house is situated, there are shops. This statement of the respondent itself shows that the ground floor premises are being used for commercial purpose. There are two serious errors of law implicit in this passage. In the first sentence the Rent Controller has placed the burden on the tenant to prove that the ground floor was meant for residential purposes. This question was merely a part of the larger question whether the landlords had any other reasonably suitable residential accommodation'. The burden of that, as I have already shown, was on the landlords. Therefore, the burden of any facet of that question would also necessarily be on them.

34. Secondly, as the other two sentences of the passage indicate) the Rent Controller seems to think that the manner in which the rooms on the ground floor of other houses in the locality are presently being used is relevant for deciding the permitted use and, even conclusive. The true question was

whether, according to the terms of the lease of the land, the ground floor was to be used for residential or commercial purposes. The actual present user was irrelevant. By simply letting out rooms in a residential house for commercial use, the permitted use is not changed.

35. Moreover, the landlord cannot plead a shortage of residential accommodation for himself after letting out a portion of his house for a commercial purpose. That, in my opinion, would amount to voluntary self-deprivation of 'other reasonably suitable residential accommodation. The accommodation so let should, from the point of view of section 14(1)(e), be deemed to be vacant. Otherwise, a landlord would be enabled to evict a tenant whilst a portion of his house was being used for a non-residential purpose. Such a result would be abhorrent to the spirit and the scheme of the Delhi Rent Control Act. It would also encourage violation of the permitted use in the lease of the land.

36. Apart from these specific errors appearing in his judgment, I think, the general approach of the Rent Controller was also not in consonance with law. He recites the evidence led by the parties at full length. But he makes no critical appraisal of it; nor any attempt to work out the implications of what is said. He seems very impressed with the financial and social status of Nand Kishore. He accepts the theory that Nand Kishore has been living an independent life. He thinks, accommodation must be provided to Nand Kishore so that his married daughter, sisters and brothers and other relations and guests can come and stay with him. And, he considers, that it is not advisable for Nand Kishore to live on the second floor. For these reasons, he holds, that there is an element of necessity in the requirement of Nand Kishore.

37. The underlying basic notion of the Rent Controller becomes manifest in the sentence in which he says : Every landlord has a right to live in his own house. There could be no worse heresy against the Rent Control laws. In its very opening, section 14(1) of the Delhi Rent Control Act says: Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant. It is only if the landlord can establish one of the grounds set out in the proviso that he can obtain an order for recovery of possession. Otherwise, he has no right to live in his own house. The proposition is prominently written at the commencement of

the section.

38. With regard to clause (2) of the proviso, it is too well settled that the word require denotes a need and not a mere wish or desire: see *Phiroze Bamanji Desai v. Chandralcant and others*,⁷ and *Mankharan v. B. C. Patel and others*,⁸. Further more, the requirement must be bona fide and this means that it must be honest and genuine and not frivolous or whimsical: *Freddy Fernadies v. P. L. Mehra IIR*⁹ and *Vas Dev Dhawan v. Triloki Nath*.¹⁰ These and other cases hold that the landlord is not the final arbiter of his needs, and the matter falls for decision by the Rent Controller, who must apply an objective standard, the criterion being the needs of a reasonable man: see *M/s. Deccan Wine & General Stores v. A. Nashwaraiah*,¹¹ and *Ajit Singh v. Inder Saran and others*,¹² Hence, the mere assertion by a landlord that he requires the premises occupied by the tenant is not decisive : see *Smt. Kamla Soni v. Rup Lal Mehra*¹³

39. "THE Rent Controller seems to, have given undue importance to the circumstance that the tenant had not been able to prove a demand for higher rent for the premises by the landlords. I agree that the evidence of Lalla Ram, who was called as a witness by Sat Pal, does not carry conviction. His story about having gone in the morning to Sat Pal to purchase a water meter from Mohan Parkash, and the later having made a demand for higher rent on that occasion, is too taxing on ones credulity. At the same time, it has to be recognized that landlords are sufficiently aware of the rent control law not to go about making demands for higher rents in writing, and nothing other than oral evidence can normally be available. Sat Pal himself has said that in January 1978 the landlords asked him to increase the rent to Rs. 500, or else they would take proceedings for his eviction. The Rent Controller has not given any cogent reason for disbelieving him. He dismisses the testimony by saying that this is a sort of commonplace plea taken by the tenants'. To that I would rejoin that it is also commonplace for landlords to demand higher rent.

40. The Rent Controller further says : The respondent is paying the same rate of rent as he was paying right from the beginning. I have not been able to comprehend the import of this observation. It was not the tenant's case that rent of the premises had been increased in the past. His case was that the landlords had demanded an increase inrent to which he had refused to agree. To establish their avariciousness, he gave instances of portions of the house being re-let at a much higher rent after being vacated, and, to that end, even being converted to

commercial use. This part of his statement went unrequited and unexplained. The Rent Controller does not even advert to this evidence.

41. However, what is more important is that there is an inherent fallacy in the Rent Controller's reasoning. The fact that the landlords have not demanded higher rent from the tenant does not ipso facto prove that the premises are required bona fide by them. Their so-called requirement may yet only be a desire or wish or whim even if it be honest and genuine. This is the ultimate and critical question. The making or absence of a demand for higher rent is only one of the factors to be taken into consideration for resolving it. The demand would tend to indicate the existence of an ulterior motive: its absence the opposite. But the question whether the requirement pleaded amounts to a need judged by the standards of a reasonable man, still remains an open question.

42. The Rent Controller also relies on section 19 of the Act. That section prohibits the landlord from relating the premises within three years after obtaining possession; and in case he does so, it enables the evicted tenant to be put back into possession. I suppose the purpose of the Rent Controller in referring to this section is to gain further assurance that the landlords do not have the ulterior object of obtaining higher rent. But if this reasoning is to be accepted, the words bona fide in clause (e) of the proviso to section 14 would become redundant. The existence of section 19 would automatically ensure that every petition filed under that clause was bona fide.

43. Only a particularly vindictive tenant, who has been evicted and found another home, would spend his time, keeping surveillance over his erstwhile landlord for the next three years. And, even if he found that section 19 had been violated, and the matter was capable of proof, he would still be reluctant to embark on proceedings for restoration. For, even if he succeeded, he would be put to the discomfort of setting up home all over again and, in the property of a highly antagonized landlord, looking for an opportunity to start another round of litigation. In practice, section 19 has never proved to be much of a deterrent.

44. The various errors, to which I have referred, are sufficient to show that the judgment of the Rent Controller is not according to law. That is the phrase used in the proviso to section 25B(8) to describe the High Court's power of revision. It has been held to justify interference when there is miscarriage of justice due to a mistake of law see *Phirose v. Chandrakant and others*,¹⁴ It includes an

error resulting from perversity of appreciation of evidence : see *M/s. Deccan Wine & General Stores v. A. Eashwaraish and four others*,¹⁵ and *Mattulal v. Radha Lal*, Some of the errors, to which I have referred, come also within this category.

45. I could end this judgment here, and reverse the order of the Rent Controller. But, in deference to the arguments addressed to me, there is one other important aspect which I should not leave unnoticed. It is the house at Shakti Nagar. There were six rooms in the ground floor of that house available in 1976, when Rudra Parkash moved to the first floor and Mohan Parkash shifted to the house at Kamla Nagar. Nand Kishore could have had the pick of those rooms for setting up his separate establishment and living his independent life. As I have said. the evidence does not reveal what happened to those six rooms. There are only two possibilities: either they are vacant or they have been let. If they are vacant they would be available to Nand Kishore. If they have been let, it would show that Nand Kishore did not need any further or separate accommodation for himself, and his needs were otherwise fully met.

46. In order to explain away the accommodation in the house at Shakti Nagar, it was submitted, that as a result of a partition in 1976 that house fell exclusively to the share of Rudra Parkash, whilst the house at Kamla Nagar came to the share of Nand Kishore and Mohan Parkash jointly. Since, thereafter, Nand Kishore had no share in the ownership of the house at Shakti Nagar, he had no legal right to live in it, and, therefore, did not wish to stay there. He wished to stay in the house at *Kamla Nagar*, of which he is the joint owner. Let me clarify the argument a little further. It is not that RudhraParkash is unwilling to keep his father or let him stay in his house. There is no suggestion that the relations between them are not affectionate. Indeed, in the passage from his evidence which I have previously quoted, Nand Kishore says that he continued living since 1976, with his son Rudhra Parkash during night. It is simply that Nand Kishore himself feels that he should live in a house of which he is the owner albeit, only a joint owner.

47. Obviously, the whole foundation of this argument is that Nand Kishore has no share in the ownership of the house at Shakti Nagar. I am far from sure that such is the fact. There is absolutely no evidence on record, whether oral or documentary, of the alleged partition. Neither Nand Kishore nor Mohan Parkash even mentions it is their evidence. The Rent Controller, however, treated the

point as undisputed. He apparently relied on an admission in Sat Pal's written statement that the house at Shakti Nagar was in the ownership of Rudra Parkash. I doubt whether, in the context in which it occurs, that statement could at all be regarded as an admission. Nevertheless, I will proceed to examine the rest of the argument on the assumption that Rudra Parkash is, in fact, the sole owner of the house at Shakti Nagar, and Nand Kishore has no right in it.

48. Counsel for the landlords argued that it could not be said that a landlord had other reasonably suitable residential accommodation unless he had a legal right to that other accommodation. In other words, if the landlord was only a licensee of the other accommodation or was allowed to use it at the sufferance of someone else, it could not be regarded as other reasonably suitable residential accommodation. I do not accept this as a correct exposition of the law. Some authorities were cited in support of the argument, and I will refer to them presently. But first let me consider the matter on principle.

49. The words in clause (e) of the proviso to section 14(1) are that the landlord has no other reasonably suitable residential accommodation. If the argument of counsel for the landlords is correct, then the word has, in this context, must necessarily be held to mean has a legal right. Of course, the form will have to be converted into the negative has no legal right because of the no which follows. The full phrase will then run : '..... has no legal right to other reasonably suitable residential accommodation.

50. Now, I grant that this is a possible meaning of the word has. But, it is not the only possible meaning. "Has is the present indicative,, third person singular of have The very first definition of have in the Concise Oxford Dictionary is: Hold in possession as one's property or at one's disposal. The first alternative of this definition shows that the argument of counsel is not implausible. The second shows that another meaning is equally possible. "Has could just mean to have at one's disposal. And, the same dictionary says under disposal that at one's disposal means available for one's use. The question is which of these two meanings of has is appropriate in the context?

51. In clause (e) of the proviso to section 14(1), the purpose of the Act is to weigh the respective needs of the landlord and the tenant, and resolve the conflict between them. It is only if the need of the landlord amounts to a bona fide requirement that the tenant is allowed to be evicted. The underlying idea is

that the existing accommodation should be equitably distributed. Hence, if the need of the landlord is otherwise met, he cannot obtain an order for recovery of possession against the tenant. That is why the additional condition is stated in clause (e) that the landlord has no other reasonably suitable residential accommodation. Looking at the matter from the point of "view of the object sought to be attained by the Act, it cannot matter how the need of the landlord is met, provided only that it is, in fact, met.

52. The question whether a landlord's need for accommodation is met is essentially a question of fact to be decided having regard to all the circumstances of a given case. I think, the true test is whether, on an overall and reasonable view, it can be said, that the landlord has suitable accommodation available for his use. In deciding this question one should certainly have regard to the fact that the landlord has no legal right to the other accommodation; but, that is only a factor and not the end of the matter. For instance, if a landlord has been residing with his father for decades, and there is no cogent reason for the discontinuance of that arrangement, I think, that in actuality the landlord's need is met. He has other accommodation available for his use, though theoretically he can be turned out at any time. My answer would be the other way if it were shown that there had been an estrangement and the father had asked the son to fend for himself. So, it all depends on the facts. Similar reasoning and considerations would hold if the landlord happened to be a father living with his son.

53. If one takes the view that unless the landlord has a legal right to the other accommodation he is not to be treated as having other reasonably suitable residential accommodation, very curious and unjust results would ensue which would totally undermine the object of the Act. I will give just two examples which I put to counsel in argument, and to which I received no satisfactory reply.

54. Take the case of a government servant who has been allotted residential premises by the Government. Although the normal assumption is that he will retain the accommodation so long as he remains in service, he does not have a legal right to the accommodation. Suppose he owns a house in which there is a tenant. Can he, at his whim, without any threat or fear of eviction from the accommodation allotted to him by Government, contend, that since he has no legal right to that accommodation he has no other reasonably suitable residential

accommodation and is, therefore, entitled to evict the tenant?

55. If the argument of counsel for the landlords is right, this contention ought to succeed. But, it would reduce the Act to absurdity. Such a landlord, though actually in possession of other reasonably suitable residential accommodation with a reasonable security of tenure, could evict his tenant at his sweet will, whenever the fancy took him, on the pretext that he had no legal right to the accommodation in which he lived.

56. Had such been the intention of the Act, there would have been no need to add section 14A by amendment in 1976. That section now gives to a landlord, who has been allotted residential premises by the Government, the right to evict his tenant when he is required by the Government to vacate the allotted premises because he owns a residential accommodation in Delhi, If clause (e) is to be given the interpretation which counsel for the landlords suggests, then the type of landlord under consideration already had an absolute right to evict his tenant whenever he liked, and section 14A is both misconceived and redundant. The fact that the legislature thought it fit to insert section 14A shows that it did not interpret clause (e) in the sense contended by counsel for the landlords. Indeed, that section proceeds on the assumption that if a landlord, in occupation of residential premises allotted by Government, has not been required to vacate the same, he cannot evict his tenant. This is tantamount to a direct refutation of the argument of counsel for the landlords.

57. Of course, I agree that if a government servant has been required to vacate the premises allotted to him by Government, then he ceases to have other reasonably suitable residential accommodation. But that is because of the particular fact that he has been required to vacate the premises allotted to him. In the absence of that fact, the same conclusion does not follow. So, as I said, it all depends on the facts.

58. For the other example, take the case of a husband and wife. They live together cordially in a house owned by the wife. Suppose the husband, also, owns a house in which there is a tenant. How, the husband has no right enforceable at law to live in the house owned by the wife. In law he is merely a licensee at will or lives there at the sufferance of the wife. Could he, at his whim, evict the tenant by pleading that he had no legal right' to live in the house belonging to his wife?

59. According to the argument of counsel for the landlords, the answer has to be. Yes. In my view, the answer depends upon the facts. If the relations between the husband and wife are normal and there is nothing to indicate that the wife wants the husband to leave her house, or that he has any reason for wanting to leave it, then the plea cannot succeed. On the other hand, if their relations are strained or they are heading towards judicial separation or a divorce then the plea may be upheld. Otherwise, in the situation which I have postulated, the husband would again be free to evict his tenant at his pleasure whenever he chose to realize that he had no legal right to live in a house owned by his wife. It is impossible to believe that the Act could have intended such a result.

60. "These two examples by reduction absurdum, and the general considerations which I have mentioned, are sufficient to convince me that the argument propounded by counsel for the landlords is not sound. It defeats the purpose of the Act. On the other hand, if the word has is given the meaning 'available for one's use' the purpose of the Act is fully achieved. It produces no ridiculous results, and impels the Rent Controller to form a sensible and practical view on the facts.. The modern trend is towards a purposive approach in the interpretation of statutes. That construction should be adopted which will promote the general legislative purpose underlying the provision: see *Nothman v. London Borough of Barpet*,¹⁷

61. Fortunately, there is a judgment of the Supreme Court which, I think, fully bears out my view. It is *Phiroze Bamanji Desai v. Chandrakant M. Patel and others*, . The landlord owned two bungalows in the town of Navsari in Gujarat. They were called Truth Bungalow and Hill Bungalow. He instituted a suit for evicting the tenant in the ground floor of Hill Bungalow. One of the contentions of the tenant was that since Truth Bungalow had been given merely on leave and license to a Dr. Bharucha, it remained in law in the possession of the landlord, and, hence, his alleged requirement of the ground floor of Hill Bungalow was not reasonable and bone fide The High Court accepted this argument, reversed the courts below, and dismissed the landlord's suit. In allowing the appeal, the Supreme Court said : Now, it is true that when premises are given on leave and license, the licensor continues from a juridical point of view, to be in possession of the premises and the licensee is merely given occupation, and, therefore, strictly speaking the High Court was right in observing that the Truth Bungalow which was given on leave and license to Dr. Bharucha, was in the

possession of the appellant. But for the purpose of determining whether the requirement of the appellant for the ground floor premises was reasonable and bona fide, what is necessary to be considered is not whether the appellant was juridically in possession of the Truth Bungalow, but whether the Truth Bungalow was available to the appellant, for occupation so that he could not be said to need the ground floor premises. If the Truth Bungalow was in occupation of Dr. Bharucha on leave and license, it was obviously not available to the appellant for occupation and it could not be taken into account for negating the need of the appellant for the ground floor premises. (Emphasis mine). This passage clearly shows that the correct basis for deciding whether the requirement of the landlord is reasonable and bona fide is not whether he has a juridical right to other accommodation, but whether it is available to him for use. Or, in other words, the reality of the situation. If the argument which has been addressed to me were right, the Supreme Court should have affirmed the view of the High Court.

62. I will try to put it more succinctly. The Judgment of the Supreme Court establishes that the landlord's having a legal right to other accommodation does not prove that it is available. The obverse proposition is equally true : Not having a legal right does not prove it is not available.

63. Incidentally, the case before the Supreme Court also furnishes another illustration of the ludicrous consequences of the legal right theory. For, if it were valid, the tenant in that case would have defeated the landlord's suit, although it was obvious even to a layman that Truth Bungalow was not presently available for occupation. In that type of case, the proposition urged by counsel for the landlords would be disastrous for landlords themselves.

64. I come, then, to the cases on which counsel for the landlords relied. The first is *Ram Singh v. Sita Ram*,¹⁸ It was a case under a similar provision in the East Punjab Urban Rent Restriction Act 1949. The tenant opposed the petition for eviction on the ground that, for many years, the landlord, along with his family, had been residing in a house owned by his mother. The Rent Controller dismissed the petition. And, in Appeal, the District Judge concurred. However, in revision, a single judge of the Punjab High Court set aside those orders and allowed the petition. I will quote just one sentence to portray the drift of his judgment : If the owner of the property is to be deprived of its user on the ground that there is another property in his actual possession which can serve

his purpose, then in my opinion in order to deprive him of the user of his own property he must be entitled as of right to possess and use the other property which must not be in his possession merely at the sufferance, mercy or whim of others; and, in my view it should make no difference, that such other persons happen to be his very near relations. The rest of the judgment runs in the same strain. It is pervaded with the notion that the Rent Control Acts should not be interpreted so as to deprive the owner of the user of his own property. So far as I can discern, that is the sole reason for the decision.

65. But, that approach is completely outdated. It is now well recognised that Rent Control laws are social legislation, designed to balance the needs of various sections of the community. When considered from this point of view, there is nothing so shocking about an owner being deprived of the user of his own property, if he happens to have other accommodation available.

66. An unreported case, *Lal Chand v. Dr. Jai Bhagwan*, has been relied upon in that judgment. I think, that case entirely accords with my view. There, the landlord owned two houses. In one of them he lived himself, and the other was with a tenant. The house in which he himself lived was in a dilapidated condition; and, one day, it actually collapsed. Consequently, the landlord had to move out, and was able to obtain accommodation temporarily in the house of a relation. Obviously, on those facts, it could not sensibly be said that he had other accommodation available. There was no reasonable security of tenure. It was just a make shift arrangement or, as the judgment describes it, an emergency accommodation.

67. In *Smt. Basi Devi v. Faqir Chand*,¹⁹ the judge construed the words 'has no other reasonably suitable residential accommodation' as follows: In my opinion the connotation of the said phrase implies three essential things (1) the landlord must have a legal right to reside in the said accommodation, (2) the residential accommodation must be in fact available for occupation and (3) the same must be reasonably suitable for the landlord I would accept propositions (2) and (3) without demur. As regards proposition (1) the judge states it, but there is no discussion. He does not examine the pros and cons. Nor does he refer to any case in support of it. In these circumstances, the proposition is hardly more than an ipse dixit.

68. Furthermore, I confess that I am totally puzzled by his application of that

proposition to the facts of the case before him. The tenant pleaded that the owner had other accommodation available. It was admitted by the owner that she was a subtenant of one Arjun Dass in the house known as Zeenat Mahal. The owner of that house was the State of Punjab. There was a dispute as to whether an order of eviction had been passed against Arjun Dass. The judge said: '..... .but assuming for the sake of argument that no orders of eviction had ben obtained against Arjun Dass, the same will not clothe the appellant (i.e. the owner) with any legal right to stay in the property.'. Surely, if the owner was a subtenant in Zeenat Mahal, she had a legal right' to stay in it. The right of a subtenant to use and enjoy the property is no less effective in law than that of a tenant. And, if there was no order of eviction in existence, that right was in no way in jeopardy.

69. It is true that *Shri Parkash Chandra v. Shri Nirpendra Kumar Aggarwal*,²⁰ also seems to accept the proposition that the landlord must have a right to the other accommodation. But, again, there is absolutely no discussion.

70. These three cases, to which I have so far referred, were decided before the judgment of the Supreme Court in Phiroze Bamanji Desai's case. It seems to me that they are opposed to the ratio of the decision by the Supreme Court, and must, therefore, be treated as impliedly overruled.

71. However, the last two cases were followed subsequently on two occasions by a single judge of this court. That was in *Gurbachan Singh v. Rajpal*,²¹ and *M/s. J. K. Industries Ltd. v. Lt. Col. M. M. Lal*,²² In these two cases, the judgment of the Supreme Court has been noticed; but, if I may say so with respect and diffidence, the ratio of that judgment has been misapprehended.

72. The judge relies on the last sentence of the passage which I have already quoted from the judgment of the Supreme Court. The sentence is : If the Truth Bungalow was in occupation of Dr. Bharucha on leave and license, it was obviously not available to the appellant for occupation and it could not be taken into account for negating the need of the appellant for the ground floor premises. From this sentence the judge infers that if the landlord is in occupation of the other accommodation on leave and license' basis, he cannot be said to have other reasonably suitable residential accommodation, lie forgets that in the case before the Supreme Court the landlord was not in occupation of any accommodation in cither of his bungalows at all. The sentence was

intended to refute the argument of the tenant that the landlord had other reasonably suitable residential accommodation because he had juridical possession of Truth Bungalow which had been given to Dr. Bharucha on leave and license. That case, as I have tried to show, leads to the conclusion that whether the landlord has a legal right to the other accommodation is not the test. The real test is actual availability understood in a realistic, practical and reasonable sense. The judge has, unwittingly, inverted the observation of the Supreme Court and applied it to cases where the landlord was actually in possession of the other accommodation.

73. The rather unsatisfactory result of the view taken by the judge comes out vividly in the former of the cases decided by him. There, the landlord had been residing in a house owned by his daughter-in-law. His son and daughter-in-law were settled in Bangkok". It was alleged that the daughter-in-law had written three letters to him asking him to vacate her house. These letters were apparently not proved in evidence. The landlord said that he did not consider it befitting to his status and self-respect to continue to reside in the premises belonging to his daughter-in-law'. On these facts the judge held: 'It is the will of the landlord that he may reside in the premises of others on leave and license basis but when he desires to occupy his own house and he has no other house in which he can legally remain in occupation, it seems that it is not necessary for the landlord to produce the owner of the other premises to depose that such person does not want him to continue to occupy the premises. Again, with respect, I think, the judge failed to remember that the words required bona fide in clause (e) of the proviso to section 14(1) have been repeatedly held not to mean desire. According to what the judge has said, if was open to the landlord, who had been living in the house owned by his daughter-in-law, without showing that she wanted him to vacate, to evict the tenant because he desired to occupy his own house. And, this, when admittedly his son and daughter-in-law were settled in Bangkok. To my mind, that is allowing the tenant to be evicted by the landlord at his whim.

74. Now, if the view which I have taken be right, there is no evidence in the present case that Rudra Parkash is unwilling to let his father Nand Kishore stay with him in the house at Shakti Nagar. Admittedly, Nand Kishore has been staying there so far. He admits that his entire luggage is lying there. He admits that he has a ration card jointly with his son Rudra Parkash, and the address

given therein is of the house at Shakti Nagar. And, he also admits that in the electoral rolls of 1977 he is shown to be residing in that house. Thus, it is clear from the admissions of Nand Kishore himself that, even after the alleged partition in 1976, he has been residing with his son Rudra Parkash in the house at Shakti Nagar.

75. Since it is not shown that there has been some change in the circumstances or that for some credible reason Rudra Parkash is no longer willing to have Nand Kishore stay with him, I would hold that accommodation in the house at Shakti Nagar is 'available' to Nand Kishore and is reasonably suitable for his residential purposes. In reaching this conclusion I would also draw an adverse inference from the fact that Rudra Parkash, an obviously material witness, was deliberately not called. The case as it stands, comes merely to this, that Nand Kishore desires or wishes or has the whim to live in a house of which he is the joint owner.

76. In conclusion, I would repeat that it is for the sake of completeness in regard to the submissions made, that I have dwelt on the meaning of the words has no other reasonably suitable residential accommodation in clause (e) of the proviso to section 14(1), and stated my opinion. But, as I said earlier, the other points are sufficient to reverse the order of the Rent Controller.

77. Accordingly, this petition is allowed, and the order for recovery of possession made by the Rent Controller is set aside. The petition for eviction filed by the landlords is dismissed. However, having regard to all the circumstances of the case, I make no order as to costs.

Petition allowed.

Cases Referred.

1. (1973) I Delhi 682(1), 690
2. (1967) 69 P.L.R. 260(3).
3. AIR 1972 Bombay 46, 63
4. 1975 R.L.R. (Note) 1
5. , 1980 R.L.R. 187 (6),
6. 1977 (1) R.C.R. 602,

7. AIR 1974 SC 1059, 1963
8. AIR 1972 Bombay 46, 63
9. 1973 (1) Delhi 682,
10. (1967) 69 P.I.P. 260 (D).
- 11.1980 (2) R.L.R. 563,
- 12.1979 (1) R.C.R. 602.
13. 1969 R.C.R. 1017 (11) (S.C.).
- 14.AIR 1974 SC 1059, 1063
15. 1980 (2) R.L.R. 563, 575,
16. AIR 1974 SC 1596
17. (1978) 1 Air E.R. 1243, 1246.
18. 1959 P.L.R. 132(12).
- 19.(1971) 73 P.L.R. (D) 19.
20. 1971 R.C.J. 474.
21. 1981 (1) R.C.J. 745,
22. 1981(2) R.C.R. 178.