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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9444 OF 2016

ABID-UL-ISLAM .. APPELLANT

VERSUS

INDER SAIN DUA .. RESPONDENT

J U D G M E N T

M. M. Sundresh, J.

1. Focus in this appeal is on the exercise of the revisional power by the High Court of Delhi in its invocation of proviso to Section 25B(8) of the Delhi Rent Control Act, 1958 (for short "the Act").

2. Heard Mr. Amit Andley, learned counsel for the appellant and the respondent, party-in-person. We have perused all the documents filed along with written arguments.

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BRIEF FACTS:

3. Shri Haji Badrul Islam (since deceased) was the original owner of the two shops leased out to the respondent orally way back in the year 1970. The lease continued for decades. After the demise of the original landlord, his son Shri Sajid-Ul-Islam became the owner both by inheritance and by virtue of an award dated 11.03.1980. He too expired on 21.11.1986 and the appellant, who claims through the award and inheritance by operation of law, filed the eviction petition under Section 14(1)(e) read with Section 25B of the Act in the year 2014.

4. The respondent filed an application seeking leave to defend, inter alia, raising three primary contentions, namely, (i) the appellant is not having title over the property; (ii) the property actually belongs to the Government of India under the Enemy Property Act, 1968 (hereinafter referred to as "Enemy Property Act") and (iii) there are alternative accommodations by way of other properties available for carrying out the business of the appellant as such the need of the appellant is not *bona fide*.

5. The learned Rent Controller dismissed the application holding that the title of the appellant cannot be questioned by the respondent, the averments regarding the suitability of alternative accommodation are vague and the embargo under the Enemy Property Act would not be made applicable to the properties in

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question. Incidentally, the *bona fide* need of the appellant has also been discussed by the learned Rent Controller.

6. The respondent, being dissatisfied with the said decision of the learned Rent Controller, approached the High Court of Delhi invoking the proviso to Section 25B(8) of the Act. Despite holding that the respondent cannot question the title of the appellant, having filed a suit acknowledging the said factum, the revision was allowed on the premise that there are triable issues as the denial of the appellant on the defence of the appellant *qua* the issue of alternative accommodation is vague.

7. Assailing the aforesaid decision rendered by the High Court, the present appeal is before us.

SUBMISSIONS OF THE APPELLANT:

8. Learned counsel for the appellant submitted that the jurisdiction available to the High Court being limited and restrictive, the decision made without a specific finding on the reasoning of the learned Rent Controller would amount to exercising a jurisdiction not vested. The respondent has not made out a case even on facts. It is not for the respondent being a tenant to insist upon a particular property, especially when a clear statement has been made on possession. The appellant has specifically denied ownership of any alternate

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properties mentioned by the respondent in his application seeking leave to defend.

9. On the additional documents filed by the respondent, it is submitted that the subsequent proceeding initiated under the Enemy Property (Amendment and Validation) Act, 2017 (hereinafter referred to as the “Amended Act”) was one without jurisdiction, especially when the earlier one was closed after conducting a preliminary inquiry. To substantiate the same, reliance is made on the report dated 04.11.2015. The learned counsel has also stated that the proceedings challenging the subsequent notices are pending before the High Court of Delhi wherein an order of “no coercive steps should be taken” has been passed. In the aforesaid proceedings the application filed by the respondent to implead himself was rejected for want of *bona fides*, which stood confirmed by this Court.

10. To buttress the submissions, learned counsel has relied on the following judgments rendered by this Court:

- Anil Bajaj and Anr. v. Vinod Ahuja (2014) 15 SCC 610
- Balwant Singh alias Bant Singh and Anr. v. Sudarshan Kumar and Anr. 2021 SCC OnLine SC 114

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SUBMISSIONS OF THE RESPONDENT:

11. The respondent, who appears as a party-in-person, submitted that there are triable issues involved and, therefore, the High Court was right in allowing the revision. There is a serious cloud over the title of the appellant as some of the owners of the properties are living in the neighbouring country of Pakistan. The award obtained on 11.03.1980 is under cloud and thus liable to be ignored. The authority constituted under the Amended Act has recognized the status of the respondent as its tenant. It was further submitted that the appellant is in possession of alternative accommodations available for running the business. Thus, while confirming the order of the High Court, the subsequent events having taken place as evidenced by the documents filed, will have to be taken note of. The respondent sought the dismissal of the present appeal. Seeking to strengthen his case further, the respondent took us through the following judgments of this Court:

- M.M. Quasim v. Manohar Lal Sharma and Ors. (1981) 3 SCC 36
- P.V. Papanna and Ors. v. K. Padmanabhaiah (1994) 2 SCC 316
- Amarjit Singh v. Khatoon Quamarain (1986) 4 SCC 736
- D. Satyanarayana v. P. Jagadish (1987) 4 SCC424
- Precision Steel and Engineering Works v. Prem Deva (1982) 3 SCC 270

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- Liaq Ahmed and Ors. v. Habeeb-Ur-Rehman (2000) 5 SCC 708
- India Umbrella Manufacturing Co. and Ors. v. Bhagabandei Agarwalla (Dead) by LRs and Ors. (2004) 3 SCC 178
- Gram Panchayat v. Ujagar Singh and Ors. (2000) 7 SCC 543

DISCUSSION

Relevant Provisions of the Delhi Rent Control Act, 1958:

Section 14(1)(e):

"**14. Protection of tenant against eviction:** (1) 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:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

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(e) that the premises let for residential purposes are required *bona fide* by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation.

Explanation.-For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;"

SECTION 19:

"**19. Recovery of possession for occupation and re-entry:** (1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (c) of the proviso to sub-section (1) of section

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14, Ins. By Act 57 of 1988, sec. 10 (w.e.f.1-12-1988) [or under sections 14A, 14B, 14C, 14D and 21], the landlord shall not, except with the permission of the Controller obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission the Controller may direct the landlord to put such evicted tenant in possession of the premises.

(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the! Controller to be *bona fide*, the Controller may, on an application made to him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit."

Section 25B

"25B. Special procedure for the disposal of applications for eviction on the ground of *bona fide* requirement:

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(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (c) of the proviso to sub-section (1) of section 14, or under section 14A.

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(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit."

Requirement Under Section 14(1)(e):

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12. Section 14(1)(e) carves out an exception to the regular mode of eviction. Thus, in a case where a landlord makes an application seeking possession of the tenanted premises for his *bona fide* requirement, the learned Rent Controller may dispense with the protection prescribed under the Act and then grant an order of eviction. Requirement is the existence of *bona fide* need, when there is no other "reasonably suitable accommodation". Therefore, there has to be satisfaction on two grounds, namely, (i) the requirement being *bona fide* and (ii) the non-availability of a reasonably suitable residential accommodation. Such reasonableness along with suitability is to be seen from the perspective of the landlord and not the tenant. When the learned Rent Controller comes to the conclusion that there exists a *bona fide* need coupled with the satisfaction that there is no reasonably suitable residential accommodation, the twin conditions mandated under Section 14(1)(e) stand satisfied.

13. We may usefully refer to the decision of this Court in ***Inderjeet Kaur v. Nirpal Singh***, (2001) 1 SCC 706:

> "9**.** Chapter III-A deals with summary trial of certain applications expressly stating that every application by a landlord for recovery of possession on the ground specified in clause (*e*) of the proviso to sub-section (1) of Section 14 of the Act, or under Section 14-A or 14-B or 14-C or 14-D shall be dealt with in accordance with the special provisions prescribed in Section 25-B of the Act. As per the broad scheme of this Chapter a tenant is precluded from contesting an application filed for eviction on the grounds mentioned in the aforementioned provisions unless he obtains leave from the Controller to contest the eviction petition. In default of obtaining leave to defend or leave

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is refused to him an order of eviction follows. It appears recourse to summary trial is adopted having due regard to nature of the grounds on which the eviction is sought with a view to avoid delay so that the landlord should not be deprived or denied of his right to immediate possession of premises for his bona fide use.

10. At the same time, it is well settled and accepted position in law that no one shall be subjected to suffer a civil consequence like eviction from a premises resulting in hardship to him without providing adequate and effective opportunity to disprove the case against him and establish his case as pleaded.

11. As is evident from Sections 25-B(4) and (5) of the Act, burden placed on a tenant is light and limited in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in clause (*e*) of the proviso to Section 14(1) of the Act, with which we are concerned in this case, are good enough to grant leave to defend.

12. A landlord, who bonafidely requires a premises for his residence and occupation should not suffer for long, waiting for eviction of a tenant. At the same time a tenant cannot be thrown out from a premises summarily, even though prima facie he is able to say that the claim of the landlord is not bona fide or untenable and as such not entitled to obtain an order of eviction. Hence the approach has to be cautious and judicious in granting or refusing leave to defend to a tenant to contest an eviction petition within the broad scheme of Chapter III-A and in particular having regard to the clear terms and language of Section 25-B(5).

13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25-B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter III-A of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (*e*) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the

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> rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under clause (*e*) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance, a wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend, but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noticed that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25-B(6) states that where leave is granted to a tenant to contest the eviction application, the Controller shall commence the hearing of the application as early as practicable. Section 25-B(7) speaks of the procedure to be followed in such cases. Section 25-B(8) bars the appeals against an order of recovery of possession except a provision of revision to the High Court. Thus a combined effect of Sections 25-B(6), (7) and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for a long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims."

14. We further wish to place reliance on the judgment of this Court in ***Anil Bajaj and Anr. v. Vinod Ahuja***, (2014) 15 SCC 610:

> "6. In the present case it is clear that while the landlord (Appellant 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the

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> landlord, Appellant 1, does not propose to utilise the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same is any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different businesses and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business."

15. For availing the leave to defend as envisaged under Section 25B(5), a mere assertion *per se* would not suffice as Section 14(1)(e) creates a presumption subject to the satisfaction of the learned Rent Controller *qua bona fide* need in favour of the landlord which is obviously rebuttable with some material of substance to the extent of raising a triable issue. The satisfaction of the Rent Controller in deciding on an application seeking leave to defend is obviously subjective. The degree of probability is one of preponderance forming the subjective satisfaction of the Rent Controller. Thus, the quality of adjudication is between a mere moonshine and adequate material and evidence meant for the rejection of a normal application for eviction.

16. Before a presumption is drawn, the landlord is duty bound to place *prima facie* material supported by the adequate averments. It is only thereafter, the presumption gets attracted and the onus shifts on the tenant. The object of

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Section 14(1)(e) *vis a vis* Section 25B has to be seen in the light of yet another provision contained under Section 19. Section 19 gives a right to the dispossessed tenant for repossession if there is a non-compliance on the part of the landlord *albeit* after eviction, to put the premises to use for the intended purpose. Such a right is available only to a tenant who stood dispossessed on the application filed by the landlord invoking Section 14(1)(e) being allowed. Thus, Section 19 *inter alia* throws more light on the legislative objective facilitating a speedy possession. The object is also reflected in the proviso to Section 25B(8), denying a right of appeal.

17. Dealing with a *pari materia* provision, this Court in ***Baldev Singh Bajwa v. Monish Saini***, (2005) 12 SCC 778, was pleased to clarify the aforesaid position holding the procedure as summary. In such a case, the tenant is expected to put in adequate and reasonable materials in support of the facts pleaded in the form of a declaration sufficient to raise a triable issue. One cannot lose sight of the object behind Section 25B in facilitating not only the expeditious but effective remedy for a class of landlords, *sans* the normal procedural route. In this regard, we wish to quote the decision of this court in ***Baldev Singh (supra)***:

> "14. The phrase "bona fide requirement" or "bona fide need" or "required reasonably in good faith" or "required", occurs in almost all Rent Control Acts with the underlying legislative intent which has been considered and demonstrated innumerable times by various High Courts as also by this Court, some of which we would like to refer to. In Ram Dass v. Ishwar Chander [(1988) 3 SCC 131] it is said that the bona fide need should be

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genuine and honest, conceived in good faith. It was also indicated that the landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it, and that desire, to become a "requirement" in law must have the objective element of a "need", which can be decided only by taking all the relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down.

15. In Bega Begum v. Abdul Ahad Khan [(1979) 1 SCC 273] it was held by this Court that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.

16. In Surjit Singh Kalra v. Union of India [(1991) 2 SCC 87] a three-Judge Bench of this Court has held as under: (SCC p. 99, para 20)

> "*20*. The tenant of course is entitled to raise all relevant contentions as against the claim of the classified landlords. The fact that there is no reference to the words bona fide requirement in Sections 14-B to 14-D does not absolve the landlord from proving that his requirement is bona fide or the tenant from showing that it is not bona fide. In fact every claim for eviction against a tenant must be a bona fide one. There is also enough indication in support of this construction from the title of Section 25-B which states 'special procedure for the disposal of applications for eviction on the ground of bona fide requirement'."

17. In Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta [(1999) 6 SCC 222] this Court while dealing with the aspect of bona fide requirement has said that the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself — whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere and honest.

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19. … In our view there are inbuilt protections in the relevant provisions for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of course, subject to

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> the tenant's right to rebut it but with strong and cogent evidence. In our view, in the proceeding taken up under Section 13-B by the NRI landlords for the ejectment of the tenant, the court shall presume that the landlord's need pleaded in the petition is genuine and bona fide. But this would not disentitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine."

18. We further wish to place reliance upon a recent decision of this Court in ***Ram Krishan Grover v. Union of India***, (2020) 12 SCC 506, wherein this Court considered the aforesaid decisions in ***Inderjeet Kaur (supra)*** *and* ***Baldev Singh (supra)*** and interpreted the burden on the tenant to be rebutted at the stage of leave to defend and observed:

> "39. The requirement of a "strong case" for obtaining leave to defend means a good case that brings to fore reasonable and well-grounded basis on which the tenant seeks leave to contest the eviction proceedings. It does not mean setting up and establishing at that stage a case beyond any scintilla of doubt and debate. The grounds and pleas raised should reflect clear and strong defence and relate to the grounds mentioned in para 25 in Baldev Singh Bajwa [Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778] . The standard applied is similar to parameters elucidated in Inderjeet Kaur v. Nirpal Singh [(2001) 1 SCC 706], in which this Court had held that the leave to defend should not be granted on mere asking but when the pleas and contentions raise triable issues and the dispute on facts demands that the matter be properly adjudicated after ascertaining the truth of affidavits filed by the witnesses in their cross-examination. Each case has to be decided on its merits and not on the basis of any preconceived suppositions and presumptions. By providing for a simplified procedure of eviction by the Non-Resident Indians, Section 13-B does not dilute the rights of tenants. It gives a chance to the tenants on merits to establish their case and when justified and necessary to take the matter to trial. By no means, therefore, Section 13-B can be held to be arbitrary and unreasonable."

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SCOPE OF REVISION

19. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of the legislature is very clear, which is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeals.

20. Proviso to Section 25B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial Court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication *per se*, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature. We do

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not wish to go further on this settled proposition of law, except by quoting the decision of this Court in ***Sarla Ahuja v. United India Insurance Co. Ltd.***, (1998) 8 SCC 119:

> "5. Section 25-B of the Act lays down "special procedure for the disposal of application for eviction on the ground of bona fide requirement". Sub-section (1) says that every application for recovery of possession on the ground specified in Section 14(1)(e) of the Act shall be dealt with in accordance with the procedure specified in Section 25-B. Sub-section (8) says that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Rent Controller in accordance with the procedure specified in this section. The proviso to that sub-section reads thus:
> "Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit."
>
> 6. The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is "according to the law". In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.
>
> 7. Although, the word "revision" is not employed in the proviso to Section 25-B(8) of the Act, it is evident from the language used therein that the power conferred is revisional power. In legal parlance, distinction between appellate and revisional jurisdiction is well understood. Ordinarily, appellate jurisdiction is wide enough to afford a rehearing of the whole case for enabling the appellate forum to arrive at fresh conclusions untrammelled by the conclusions reached in the order challenged before it. Of course, the statute which provides appeal provision can circumscribe or limit the width of such appellate powers. Revisional power, on the contrary, is ordinarily a power of supervision keeping subordinate tribunals within the bounds of law. Expansion or constriction of such revisional power would depend upon how the statute has couched such power therein. In some legislations, revisional jurisdiction is meant for satisfying itself as to the regularity,

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legality or propriety of proceedings or decisions of the subordinate court. In Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar [(1980) 4 SCC 259] this Court considered the scope of the words ("the High Court may call for and examine the records … to satisfy itself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order …") by which power of revision has been conferred by a particular statute. Dealing with the contention that the above words indicated conferment of a very wide power on the revisional authority, this Court has observed thus in the said decision: (SCC p. 262, para 3)

> "The dominant idea conveyed by the incorporation of the words '*to satisfy itself*' under Section 25 appears to be that the power conferred on the High Court under Section 25 is essentially a power of superintendence. Therefore, despite the wide language employed in Section 25 the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority."

8. Dealing with Section 32, the Delhi and Ajmer Rent (Control) Act, 1952, which is almost identically worded as in the proviso to Section 25-B(8) of the Act, a three-Judge Bench of this Court has stated thus in Hari Shankar v. Rao Girdhari Lal Chowdhury [AIR 1963 SC 698 : 1962 Supp (1) SCR 933] :

> "The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which Section 115 is limited. But it must not be overlooked that the section — in spite of its apparent width of language where it confers a power on the High Court to pass such order as the High Court might think fit, — is controlled by the opening words, where it says that the High Court may send for the record of the case to satisfy itself that the decision is 'according to law'. It stands to reason that if it was considered necessary that there should be a rehearing, a right of appeal would be a more appropriate remedy, but the Act says that there is to be no further appeal."

9. In Malini Ayyappa Naicker v. Seth Manghraj Udhavadas [(1969) 1 SCC 688] another three-Judge Bench of this Court was considering a similarly worded proviso in Section 75(1) of the Provincial Insolvency Act, 1920. Though, learned Judges did not give an exhaustive definition of the expression "according to law", a catalogue of instance in which the High Court may interfere under the said proviso was given in the decision as the following [Ed.: The passage quoted is an extract from Beaumont, C.J.'s judgment in Bell & Co. Ltd. v. Wamen Hemrai, (1938) 40 Bom LR 125

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which was approved by the Supreme Court in the case cited.]: (SCC p. 691, para 7)

> "They are cases in which the Court which made the order had no jurisdiction or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere."

10. The Bench has, however, cautioned that the High Court should not interfere merely because it considered that "possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at".

11. Learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable. A reading of the impugned order shows that the High Court has overstepped the limit of its power as a revisional court. The order impugned on that score is hence vitiated by jurisdictional deficiency.

12. Clause (e) of the proviso to Section 14(1) of the Act affords one of the grounds to the landlord to seek recovery of possession of the building leased. The said clause reads thus:

> "14. (1)(*e*) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;
>
> *Explanation.*—For the purposes of this clause, 'premises let for residential purposes' include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;"

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> 13. If the landlord has another residential accommodation which is reasonably suitable, he is not permitted to avail himself of the benefit afforded in the ground set out in the clause. Learned Single Judge of the High Court has noted that the landlord in this case has "admitted in her deposition that the house in Calcutta was a 3-bedroom house with drawing/dining room and one of the bedrooms was used by her, another by her son with his wife and another bedroom was kept for her daughter who used to come and stay". This was one of the reasons which persuaded the learned Single Judge to interfere with the order of eviction. To deprive a landlord of the benefit of the ground mentioned in Section 14(1)(e) on account of availability of alternative residential accommodation, it is not enough that such alternative accommodation is in a far different State. Such accommodation must be available in the same city or town, or at least within reasonable proximity thereof if it is outside the limits of the city. The said limb of clause (e) cannot be interpreted as to mean that if the landlord has another house anywhere in the world, he cannot seek recovery of possession of his building under clause (e). The High Court therefore went wrong in observing that since the landlord has possession of another flat at Calcutta she is disentitled to seek recovery of possession of the tenanted premises situated at Delhi.
>
> 14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

21. The aforesaid decision has been recently considered and approved by this Court in the case of ***Mohd. Inam v. Sanjay Kumar Singhal***, (2020) 7 SCC 327:

> "22. This Court in Sarla Ahuja v. United India Insurance Co. Ltd. [(1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word "revision" was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus: (SCC p. 124, para 11)

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> "*11*. The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable."

It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.

23. Again in Ram Narain Arora v. Asha Rani [(1999) 1 SCC 141], this Court had an occasion to consider the aforesaid powers under the Delhi Rent Control Act, 1958. This Court observed thus: (SCC p. 148, para 12)

> "12. It is no doubt true that the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. Pure findings of fact may not be open to be interfered with, but (sic if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the Revisional Court to interfere with such a matter."

It was thus held, that though the scope of revisional powers of the High Court was very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order, to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. It has also been held, that pure findings of fact may not be open to be interfered with, but in a given case, if the finding of fact is given on a wrong premise of law, it would be open to the Revisional Court to interfere with the same."

ON MERITS:

22. Learned Rent Controller passed a detailed speaking order. On undertaking such an exercise, he found that the *bona fide* need is satisfied; the averments of the respondent regarding alternative accommodation are vague; the title of the appellant cannot be questioned; and the embargo under the Enemy Property Act does not get attracted. Thus, having found that the defense set up by the respondent is only a moonshine, the application filed seeking leave to defend was accordingly rejected.

23. After completing the aforesaid process, the Court made certain observations in addition to the order on merits, giving its indictment on the conduct of the respondent, who dropped the names of not only a District Judge but also a High Court Judge, certainly not germane to the case.

24. The High Court, while ignoring the aforesaid conduct of the respondent, as noted by the learned Rent Controller, proceeded to allow the revision by treating it like an appeal. It did not even reverse the findings of the learned Rent Controller, but proceeded to hold that the denials of the appellant in his reply to the application seeking leave to defend are vague, *qua* the plea of alternative accommodation, notwithstanding the rejection of the contention of the respondent that he cannot question the title. This approach, in our considered view, cannot be sustained in the eye of law.

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25. Section 14(1)(e) deals with only the requirement of a *bona fide* purpose. The contention regarding alternative accommodation can at best be only an incidental one. Such a requirement has not been found to be incorrect by the High Court, though it is not even open to it to do so, in view of the limited jurisdiction which it was supposed to exercise. Therefore, the very basis upon which the revision was allowed is obviously wrong being contrary to the very provision contained in Section 14(1)(e) and Section 25B(8).

26. We have already discussed the scope of Section 14(1)(e) *vis a vis* Section 25B(8) of the Act. Therefore, the mere existence of the other properties which are, in fact, denied by the appellant would not enure to the benefit of the respondent in the absence of any pleadings and supporting material before the learned Rent Controller to the effect that they are reasonably suitable for accommodation.

27. The respondent made substantial claims on the judgment of this Court in ***Precision Steel*** **(supra)**. We do not find the said decision helping the case of the respondent, in the light of the discussion made on the scope of the relevant provisions, as leave to defend cannot be granted on mere asking. We can only reiterate that we do not find any perversity in the decision rendered by the

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learned Rent Controller and the High Court has not only certainly abdicated its jurisdiction, but also exceeded in a way.

28. We are constrained to note that the respondent continued to drop the names of persons holding high offices even before us. He proudly proclaimed during his argument that the proceedings under the Enemy Property Act, as amended, were initiated only at his instance on his personally meeting with an Hon'ble Union Minister. We can only adopt the process undertaken by the learned Rent Controller by not letting the said statement come in the way of deciding the matter on merits, despite it being unconscionable and shockingly brazen**.**

29. Much reliance has been made on the documents indicating the re-creation of tenancy right in favour of the respondent by the authority constituted under the Amended Act. We do not wish to state anything on that, nor the said communication would have an impact on our order. Neither the said Authority is before us, nor its existence or viability can be gone into in these proceedings. The scope of the Enemy Property Act, as amended, *vis a vis* the proceedings for eviction was already dealt with by the learned Rent Controller, though not touched upon by the High Court. Further, the attempt of the respondent to implead himself in a pending case before the High Court of Delhi on a challenge made to the notices passed under the Amended Act got miserably failed with an

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observation by the High Court that it smacked of *mala fides*. We may further note, notwithstanding the earlier conclusion by way of a report dated 04.11.2015 wherein the Assistant Custodian of Enemy Property under the Enemy Property Act has observed that the predecessors of the appellant are non-evacuees and that the properties owned by them by no stretch of imagination can be termed as enemy property, there is another action initiated on which we don't wish to express any view. The decision of the High Court rejecting the respondent's impleadment was not only confirmed by the dismissal of the intra-court appeal, but also that of the rejection of the special leave petition by this Court. On fact, the proceedings initiated under the Enemy Property Act, as amended, are also stayed by the High Court having considered the report dated 04.11.2015, by a reasoned order.

30. On the aforesaid analysis, we have no hesitation in setting aside the order of the High Court by restoring the order passed by the learned Rent Controller. The appeal stands allowed. No costs.

……..……………………….J.
(SANJAY KISHAN KAUL)

…………………………….J.
(M.M. SUNDRESH)

New Delhi
April 07, 2022