Supreme Court of India Sarla Ahuja vs United India Insurance Company ... on 27 October, 1998 Author: Thomas Bench: S.Saghir Ahmad, K.T.Thomas PETITIONER: SARLA AHUJA

Vs.

RESPONDENT: UNITED INDIA INSURANCE COMPANY LTD.

DATE OF JUDGMENT: 27/10/1998

BENCH: S.Saghir Ahmad, K.T.Thomas

JUDGMENT: THOMAS J. A widow wants to shift her residence from calcutta to New Delhi to occupy her own building which is presently in the possession of her tenant M/s United India Insurance Company Limited. Though she got an order of eviction from the Rent Controller under Section 14(1)(e) of the Delhi rent Control Act 1958 (for short "the Act"), a single judge of the Delhi High Court non-suited her by reversing the roder. She has sought for special leave to appeal against the said decision of the High Court. Leave granted. When she filed a case before the Rent Controller her husband was alive. By the time her case reached the stage of evidence she became a widow, but that did not affect her claim for eviction because it was not for the use of her husband that the building is required. At present she is staying at Calcutta in a flat with her son and his family. She is doing business, along with her son, in Patents and Trade Marks. In connection with the said business they have to be in Delhi quite often. The house where she is now living in Calcutta is on the third floor of a building which she finds it very inconvenient particularly on account of a knee trouble which she has developed recently. As the house in Delhi is on the ground floor of the building there would be no problem for climbing up the stairs. Those apart, her daughter is now staying at NOIDA which in on out-skirts of Delhi. The Rent Controller, after appraisal of the evidence, came to the conclusion that she bona fide requires the tenanted premises for her occupation and she has no other suitable residential accommodation in Delhi. But learned single judge of the High Court made a reappraisal of the evidence and reached a different conclusion by observing that "it was only when her husband (who was carrying on the business) was alive that she could urge the ground of wanting to live with her husband in Delhi." Learned single judge pointed out that her relationship with her son and daughter-in-law is cordial and that her family is settled down in Calcutta for long. According to her knee problem learned single judge noticed that she has recently moved into a new flat at Calcutta wherein a lift is provided and hence she need not much bother about that problem. Learned counsel for the appellant - landlord contended that the High Court has committed jurisdictional transgression while exercising revisional jurisdiction by interfering with the finding of fact made by the Rent Controller. We find much force in the said contention. The power which the High Court was exercising is envisaged in the proviso to Section 25B(8) of the Act. The said section is one of the three provisions subsumed in Chapter IIIA of the Act which was added to the parent Act as per Act 57/1988 for "summary trial of certain applications."

Section 25B 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 withthe procedure specified in Section 25B. 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 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.' 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 works, 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 25B. 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. Although, the work "revision" is not employed in the proviso to Section 25B(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 re-hearing of the whole case for enabling the appellate forum to arrive at fresh conclusions untrammeled 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, legality or propriety of proceedings or decisions of the subordinate court. In Sri Raj Lakshmi Dyeing Works vs. Rangaswamy [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, illegality 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: "The dominant idea conveyed by the incorporation of the words to satisfy 'itself' under the Section appears to be that the power conferred on the High Court under the Section is essentially a power of superintendence. Therefore, despite the wide language employed in the Section 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." Dealing with Section 32 Delhi and Ajmer Rent (Control) Act, 1952, which is almost identically worded as in the proviso to Section 25B(8) of the Act a three judge bench of this Court has stated thus in Hari Shankar vs. Rao Girdhari Lal Chowdhury [1962 Suppl (1) SCR 933]: "The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which S.115 is limited. But it must not be over-looked 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." In Malini Ayyappa Naicker vs. Seth Menghraj 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: "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." 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." Learned Single Judge of the High Court in the present case has reassessed and re-appraised 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 over-stepped the limit of its power as a revisional Court. The order impugned, on that score, is hence vitiated by jurisdictional deficiency. 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: "(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." 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 and other by her son with his wife, and another bedroom was kept for her daughter who use 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 landlord has another house anywhere in the world he cannot seek recovery of possession of his building under clause (e). 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 possession of the tenanted premises situated at Delhi. 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 in 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. Facts such as the cordial relationship between a landlord and her daughter-in-law or that he is comfortably residing in the present building are not relevant in judging the bona fides of the claim of the landlord. Otherwise it would appear that landlord can think of residing in his or her own residential building only when cracks develop in the relationship between him and his other kith and kin. In this case the landlord put forth a variety of reasons which persuaded her to seek recovery of the tenanted premises: (1) That the tenanted building is her own and it is a residential building. (2) In the building where she now resides at Calcutta her son and daughter-in-law are also living with their children. (3) She and her son have to go to Delhi quite often and stay there for days in connection with their business. (4) Her daughter is living in NOIDA which is on the outskirts of Delhi and it would be convenient for that daughter to stay with the mother frequently. (5) Landlord is getting old and developed orthopedic problems and hence she feels that living in the ground floor is more advisable. (6) The flat in which she lives now at Calcutta is on the third floor whereas the tenanted premises are on the ground floor. Rent Controller approved the claim of the landlord as bona fide after taking into account the aforesaid broad aspects. It cannot be said that the Rent Controller had taken into account irrel-

evant factors in reaching the conclusion. Hence the High Court has improperly exercised its revisional jurisdiction in upsetting the findings of the Rent Controller. In the result, we set aside the impugned order and restore the eviction order passed by the Rent Controller and direct the respondent-tenant to vacate from the premises on or before the expiry of three months from today.