Bega Begum And Ors vs Abdul Ahad Khan And Ors on 6 October, 1978

Equivalent citations: 1979 AIR 272, 1979 SCR (2) 1, AIR 1979 SUPREME COURT 272, 1979 (1) RENCR 170, 1979 2 SCR 1, 1979 (1) SCC 273, 1979 MPRCJ 36, 1979 RENCJ 344

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Bench: Syed Murtaza Fazalali, P.N. Shingal

PETITIONER:
BEGA BEGUM AND ORS.

Vs.

RESPONDENT:
ABDUL AHAD KHAN AND ORS.

DATE OF JUDGMENT06/10/1978

BENCH:
FAZALALI, SYED MURTAZA
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FAZALALI, SYED MURTAZA
SHINGAL, P.N.

CITATION:
1979 AIR 272 1979 SCR (2) 1
1979 SCC (1) 273
CITATOR INFO :
E 1980 SC 161 (16)
R 1982 SC1518 (9)
E 1991 SC 266 (7,8)
RF 1991 SC1760 (26)

ACT:
Jammu and Kashmir Houses and Shops Rent Control Act, 1966, Section 11(h)-Meaning of the words "reasonable requirement" ant "own occupation" in Section 11(h)-Balance of convenience in cases of eviction, explained-Constitution of India, 1950, Art. 136, interference by Supreme Court with concurrent findings of Courts below.

HEADNOTE:
The appellants-plaintiffs sought the eviction of the

respondents-defendants from the suit premises which was leased to the latter for a period of ten years only and for running a hotel, on the grounds (a) of personal requirement to run a hotel business themselves and (b) of the failure of the respondents to deliver possession after the expiry of the period of lease despite notices issued. The Trial Court and the High Court in appeal having dismissed the suit, the appellants obtained special leave of this Court.

Allowing the appeal, the Court

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HELD : 1. The Jammu and Kashmir Houses and Shops Rent Control Act, 1966 is a piece of social legislation aimed at easing the problem of accommodation, protecting the tenants from evictions inspired by profit hunting motives and providing certain safeguards for the tenants and saving them from great expense, inconvenience and trouble. But the Act does not completely overlook the interest of the landlord and has under certain conditions granted a clear right to the landlord to seek eviction on proof of the grounds mentioned in section 1. Of the Act. Thus, the Act appears to have struck a just balance between the genuine need of the landlord on the one 'land and great inconvenience and trouble which may be caused to the tenants on the other. In the instant case. the defendants had taken the property on lease only for a period of I O years and now they have been in prossession of the same for over 30 years. If the plaintiffs found that their present business had become dull and was not yielding sufficient income to maintain themselves and therefore, it was necessary to occupy the house so as to run a hotel business, it cannot by any stretch of imagination be said that the plaintiffs had merely a desire rather than a bonafide need for evicting the tenants. The findings of the High court that the plaintiffs had not proved that they had a bonafide need for occupation of the building in dispute is incorrect. [7E-H, 8A]

2. Section 11(h) of the Act uses the words 'reasonable requirement' which 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 as the High Court has done in this case. The connotation of the term 'need' or 'requirement' should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord lo get a decree for eviction. Such a course would defeat the very pur-

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pose of the Act which affords The facility of eviction of the tenant to the landlord on certain specified grounds. 'This is the general scheme of all the Rent Control Acts, prevalent in other States in the country. The word "requirement" merely connotes that there should be an element of need. In such cases the main test should be

whether it was necessary for the landlords t() need the premises for their own use or occupation. [8A-D, F]

In the instant case, the plaintiffs had proved that The requirement for the house for starting a hotel business was both genuine and reasonable and even imperative, because the scanty income of the plaintiffs was not sufficient to maintain them or to afford them a decent or comfortable living. [9A-B]

Phiroze Ramanji Desai v. Chandrakant N. Patel and Ors [1974] 1 SCC 661; applied.

B. Baliah v Chandoor Lachaiah, A.I.R. 1965 A.P. 435 (D.B.) approved.

3. The words "own occupation" in S. ll(h) cannot be so narrowly interpreted as to indicate actual physical possession of the landlord personally and nothing short of that. The provision in S. ll(h) of the Act is meant for the benefit of the landlord and, therefore, it must be so construed as to advance the object of the Act. The word 'occupation' does not exclude the possibility of the landlord starting a business or running a hotel in the shop which also would amount to personal occupation by the landlord. The section contemplates the actual possession of the landlord, whether for his own residence or for his business. It is manifest that even, if the landlord is running a hotel in the house, he is undoubtedly in possession or occupation of the house in the legal sense of the term. Furthermore, the section is wide enough/to include the necessity of not only the landlord but also of the persons who are living with him as members of the same family. [9G-H, 10A and D]

In the instant case there can be no manner of doubt that the house was required for the personal residence or occupation of all the three plaintiffs who admittedly were the owners of the house. The fact that the plaintiffs wanted to occupy the property for running hotel would not take their case out of the ambit of personal necessity and the occupation of a house may be required by the owner for personal purposes. He may choose to reside himself in the house or run a business in the house or use it as a paying guest house and derive income therefrom. In all these cases even though the owner may not physically reside in the house, the house in law would nevertheless be deemed to be in actual occupation of the owners. [10A-C]

4. (a) In deciding the aspect of balance of convenience of the parties in an eviction suit each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable. [10H, 11A]

(b) It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen when ever a decree for eviction is passed and was fully in contemplation of the

legislature when section ll(l)(h) of the Act was introduced in the Act. This by itself would not be a valid ground for refusing the plaintiffs a decree for eviction. [10F-G]

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M/s. Central Tobacco Co. v. Chandra Prakash, Civil Appeal No. 1175/69 [SC] dated 23-4-1969 and Phiroze Ramanji Desai v. Chandrakant N. Patel and Ors. [1974] I S.C.C. 661; referred to.

Kelley v. Goodwin, [1947] All E.R. P. 810; quoted with approval;

K Parasuramaiah v Pokuri Lakshmamma AIR 1965 A.P. 220 approved.

(c) Being the owners of the house they cannot be denied eviction and be compelled to live below the poverty line merely to enable the respondents to carry on their flourishing hotel business, at the cost of the appellants. This shows the great prejudice that will be caused to the plaintiffs if their suit is dismissed. The plaintiffs have already produced material before the court to show that their income does not exceed more than Rs. 8000 to Rs. 9000/- per year as the yearly income tax paid by them is Rs. 70 to Rs. 80 only. There is no other means for them to augment their income except to get their own house vacated by the defendants so as to run a hotel business. [12H, 13A-B]

(d) on a careful comparison and assessment of the relative advantages and disadvantages of the landlord and the tenant, it is clear that the scale is tilted in favour of the plaintiffs in the instant case. The inconvenience, loss and trouble resulting from denial of a decree for eviction in favour of the plaintiffs far outweigh the prejudice or the inconvenience which will be caused to the defendants. The High Court has unfortunately not weighed the evidence from the point of view. [14H, 15A]

Observation:

Normally Supreme Court does not interfere with concurrent findings of facts but as the High Court as also the Trial Court have made a legally wrong approach to this ease and have committed a substantial and patent error of law in interpreting the scope and ambit of the words "reasonable requirement" and "own possession" appearing in section ll(I)(h) of the Act and have thus misapplied the law and overlooked some of the essential features of the evidence, the merits of the case had to be looked into in order to prevent grave and substantial injustice being done to the appellant. [15B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2481 of 1978.

Appeal by Special Leave from the Judgment and order dated 10-10-67 of the Jammu and Kashmir High Court in Civil First Appeal No 18 of 1966 Lal Narain Sinha, E. C. Agarwala, M. M. L. Srivastava, R. Satish and Altaf Ahmed for the Appellant.

S. N. Andley, B. P. Maheshwari and Suresh Sethi for the Respondent The Judgment of the Court was delivered by FAZAL ALI, J.-This is a plaintiffs' appeal by special leave against a judgment dated 10th October, 1966 of the Jammu & Kashmir High Court dismissing the plaintiff's suit.

The facts of the case lie within a very narrow compass and after hearing counsel for the parties we propose to decide only one point, viz., the question as to whether or not the plaintiffs were entitled to a decree of ejectment against the defendants in respect of the house in question on the ground of personal necessity, and, therefore, we shall narrate only those facts which are germane for this purpose.

The property in suit was a four-storeyed building situated at Maisuma Lal Chowk, Srinagar and belonged to one Peer Ali Mohammad, the ancestor of the plaintiffs. This building was leased out to the defendants by a registered lease deed dated 1st December 1947 for a period of 10 years. Under the lease the lessor had provided some furniture and crockery to the lessees. Furthermore, it was clearly stipulated that the building was leased out for the purpose of running a hotel by the lessees, and for this purpose the lessees were given the right to make suitable alterations in the same, but were prohibited from making any alteration which may affect the durability or damage the building. On the expiry of the period of the lease, the appellants demanded possession of the building from the respondents and despite certain notices given by the appellants the respondents failed to give possession of the building. Hence the- plaintiff's suit.

The plaintiffs had taken three main grounds in support of their contention for ejectment of the defendants from the suit premises. In the first place, the appellants alleged that they required the building in order to extend their business by running a hotel there themselves; secondly, as the lease had expired by efflux of time, the respondents were legally bound to surrender possession. Thirdly, it was averred by the plaintiffs that the Jammu & Kashmir Houses and Shops Rent Control Act, 1966 (hereinafter referred to as the Act) was wholly inapplicable to the premises in dispute, because the yearly income of the defendants far exceeded Rs. 20,000 and that running a hotel did not fall within the purview of section 2(3) of the Act. The suit was resisted by the respondents who took, inter alia, a number of objections to the grant of the relief to the appellants. In the first place, it was pleaded that tho income of the respondents being less than Rs. 20,000/- per year the suit was clearly covered by the Act. Secondly, it was averred that the definition of the word 'house' in section 2(3) of the Act was wide enough to include a hotel. It was next averred that the plaintiffs had no personal necessity and had filed the suit merely for the purpose of getting a higher rent. Lastly, it was contended that as the plaintiffs required the house for running a hotel, such a purpose did not fall within the ambit of section ll(h) of the Act which applied only to such a case where the landlord required the house for his occupation and, at any rate, having regard to the comparative advantages or disadvantages of the landlord and the tenant, there was no equity on the side of the plaintiffs.

The case was tried by the City Judge, Srinagar who accepted the case of the defendants (respondents) and dismissed the plaintiffs' suit. The plaintiffs thereupon filed an appeal before the High Court of Jammu & Kashmir which held that the plaintiffs had not proved their personal plaintiffs filed an application for leave to appeal to this Court and the same having been refused, they obtained special leave of this Court and hence the appeal before us.

In support of the appeal Mr. Lal Narayan Sinha, counsel for the appellants submitted three points. In the first place, he contended that there was sufficient evidence to indicate that the income of the defendants-respondents was more than Rs. 20,000/- a year, and, therefore, the provisions of the Act were not applicable and as the leave has expired due to efflux of time, the plaintiffs were entitled to a decree for ejectment straightway. Secondly, it was argued that the word 'house' used in section 2(3) of the Act cannot include a hotel, and, therefore, the Act was not applicable. Lastly, it was submitted that the High Court committed a grave error of law in holding that the plaintiffs hold not been able to prove personal necessity"

> although the High Court gave a clear finding that the plaintiffs had undoubtedly proved that they had a strong desire to occupy the building for running a hotel. It was argued that the finding of the High Court was not based on a discussion of the evidence and circumstances of the case and the High Court has taken an erroneous view of law on the nature of the need of the appellants as also on the question of the comparative advantages or disadvantages of the landlord and the tenant if a decree for eviction followed.
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> After having heard counsel for the parties we are clearly of the opinion that the appeal must succeed on the third point raised by learned counsel for the appellants, i.e., the question of personal necessity and in this view of the matter we refrain from expressing any opinion on the applicability of the Act to the suit premises as averred by the respondents. Learned counsel for the appellants contended that there was sufficient material before the Court to show that the plaintiffs did not merely have a desire to occupy the building, but they actually needed the same and their need is both genuine and reasonable. In this connection, reliance was placed on the evidence of the witnesses for the plaintiffs which does not appear to have been considered by the High Court. We find that the plaintiffs had clearly mentioned in their plaint that they required the house for the purpose of running the hotel business. On behalf of the plaintiffs P.W. Mohd. Yusuf had made it absolutely clear that they required the lease property for their personal need as they wanted to run the hotel themselves. The witness had further explained that this was necessary, because the plaintiffs could not maintain themselves from the income of the leased property. It is true that the plaintiffs were doing a small business, but the witness had made it clear that their income was very low so much so that they paid income tax of only Rs. 70 to Rs. 80/- per annum. These facts have not been demolished either in the cross-examination of the witness or in the evidence of rebuttal given by the defendants.

The above evidence of the plaintiffs is corroborated by the other witnesses examined by them. P.W. Girdhari Lal has clearly stated that the plaintiffs want to extend their business and want to have the hotel in their own possession to run the same. He has further stated that the plaintiffs are running their business on a small scale, and he categorically stated that he had personally observed that there is very little work at the plaintiff's shop now a days. That is why they want to run a hotel. The witness is a neighbour of the plaintiffs. shop and was, therefore, competent to depose to the facts mentioned above which have not been shaken in cross-examination.

P.W. Peer Ahmad Ullah has also stated that now a days people give up other occupations and take up hotel business because hotel business is itself a profitable business. The witness added that the plaintiff also want to extend their business and start a hotel in this building.

P.W. Ghulam Nabi Dar also says that although the plaintiffs had a l? Boot shop they also want to run the hotel themselves, because their business has become dull.

P W. Ghulam Mohd. whose shop is in front of the shop of the plain tiffs states as follows:-

"The plaintiffs require the suit property for their own use, as they have been telling me for the last two or four years Previously, the business at Boot shops was running well but now it has become dull. The plaintiffs intend to run the hotel themselves.. ..... As for plaintiffs I say that they are in need of the hotel. The plaintiffs require the; hotel in order to extend their business".

Another neighbour of the plaintiffs P.W. Yash Paul states that the plaintiffs say that they will start a hotel in the suit property. He fur-

ther deposes that there is little work in the shop of the plaintiffs, and, therefore, they want to start a hotel, P.W. Ghulam Mohd. who is the brother-in-law of P.W. Pir Ali. Mohd., father of the plaintiffs and was looking after his children on the death of P.W. Pir Ali Mohd. has also stated that the plaintiffs want to start business in the shape of a hotel in the house and they also want to run the shop. It is, therefore, proved by the evidence discussed above (1) that the plaintiffs required the house for their personal necessity in order to augment their income, (2) that as their income from the Boot shop is very small and they are not able to maintain themselves. so they want to run the hotel business in the suit premises. The High Court has not at all discussed this part of the evidence of the plaintiffs, but at the some time being impressed by the fact that the need of the plaintiffs was genuine the High Court gave a finding to at the plaintiffs had a strong desire to occupy the house and use it for commercial purposes. Thereafter the High Court appears to have lost itself in wilderness by entering into a hair splitting distinction between desire and need. Here the High Court has misdirected itself. If the plaintiffs had proved that their necessity was both genuine and reasonable, that the present premises which belonged to them were required for augmenting their income as the income so far received by them was not sufficient for them to make the two ends

meet, there could be no question of a mere desire, but it is a case of real requirement or genuine need. In fact the irresistible inference which could be drawn from the facts is that the plaintiffs had a pressing necessity of occupying the premises for the purposes of conducting hotel business so as to supplement their income and maintain themselves property. The Act is a piece of social legislation and aimed at easing the problem of accommodation, protecting the tenants from evictions inspired by profit hunting motives and providing certain safeguards for the tenants and saving them from great expense, inconvenience and trouble. But the Act does not completely overlook the interest of the landlord and has under certain conditions granted a clear right to the landlord to seek eviction on proof of the grounds mentioned in section 11 of the Act. Thus, the Act appears to have struck a just balance between the genuine need of the landlord on the one hand and great inconvenience and trouble of the tenant on the other. It was also not disputed that the defendants had taken the property on lease only for a period of 10 years and now they have been in possession of the same for over 30 years. If the plaintiffs found that their present business had become dull and was not yielding sufficient income to maintain themselves and, therefore, it was necessary to occupy the house so as to run a hotel business, it cannot by any stretch of imagination be said that the plaintiffs had merely a desire rather than a bonafide need for evicting the tenants. We therefore, disagree with the finding of he High Court that the plaintiffs had not proved that they had a bonafide need for occupation of the building in dispute.

Moreover section 11(h) of the Act uses the words 'reasonable requirement' which 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 as the High Court has done in this case. It seems to us that the connotation of the term 'need' or 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for one landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other State in the country. This Court has considered the import of the word requirement and pointed out that it merely connotes that there should be an element of need.

In the case of Phiroze Ramanji Desai v. Chandrakant N. Patel & Ors. (1) Justice Bhagwati speaking for the Court observed as follows:-

> The District Judge did not misdirect himself in regard to the true meaning of the word 'requires' in section 13(1) (g) and interpreted it correctly to mean that there must be an element of need before a landlord can be said to 'require' premises for his own use and occupation. It is not enough that the landlord should merely desire to use and occupy the premises. What is necessary is that he should need them for his own use and occupation."
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> Thus, this Court has held that in such cases the main test should be whether it was necessary for the landlords to need the premises for their use or occupation.

> In the case of B. Balaiah v. Chandoor Lachaiah(2) a Division Bench of the High Court observed as follows:-
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> "As long as such requirement is bona fide, the petitioner can certainly claim for a direction for eviction of the tenant".

It had become necessary for us to enter into the evidence led by the plaintiffs, because the High Court has in a general way made a sweeping obvervation that although the plaintiffs had a strong desire, they (1) [1974] I S.C.C. 661 (2) A.I.R 1965 A.P 435.

were not able to prove reasonable requirement and the High Court came to this finding without at all considering the evidence of competent and important witnesses examined by the plaintiffs on this point which has been discussed above. For these reasons, therefore, we are clearly of the opinion that in the instant case the plaintiffs had proved that the requirement for the house for starting a hotel business was both genuine and reasonable and even imperative, because the scanty income of the plaintiffs was not sufficient to maintain them or to afford them a decent or comfortable living.

This brings us to the next limb of the argument of the learned counsel for the respondents regarding the interpretation of section 11 (1) (h) of the Act. Section ll(l)(h) of the Act runs thus:-

> 11(1)(h) ..... where the house or shop is reasonably required by the landlord either for purposes of building or re-building, or for his own occupation or for the occupation of any person for whose benefit the house or shop is held;
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> Explanation: The Court in determining the reasonableness of requirement for purposes of building or rebuilding shall have regard to the comparative public benefit or disadvantage by extending or diminishing accommodation, and in determining reasonableness of requirement for occupation shall have regard to the comparative advantage or disadvantage of the landlord or the person for whose benefit the house or shop is held and of the tenant".
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> It was submitted by Mr. Andley learned counsel for the respondents that the words used in section ll(l)(h) are "that the house should be required by the landlord for his own occupation or for the occupation of and person for whose benefit the house or shop is held." It was argued that the words `own occupation' clearly postulate that the landlord must require it for his personal residence and not for starting any business in the house. We are, however, unable to agree with this argument. The provision is meant for the benefit of the landlord and, therefore, it must be so construed as to advance the object of the Act. The word 'occupation' does not exclude the possibility of the landlord starting a business or running a hotel in the shop which also would amount to personal occupation by the landlord. In our opinion, the section contemplates the actual possession of the landlord, whether for his own residence or for his business. It is manifest that even if the landlord is running a hotel

in the house, he is undoubtedly in possession or occupation of the house in the legal sense of the term.

2-817SCI/78 Furthermore, the section is wide enough to include the necessity of not only the landlord but also of the persons who are living with him as members or the same family.

In the instant case there can be no manner of doubt that the house was required for the personal residence or occupation of all the three plaintiffs who admittedly were the owners of the house. The fact that the plaintiffs wanted to occupy the property for running hotel would not take their case out of the ambit of personal necessity as already indicated above, occupation of a house may be required by the owner for personal purposes. He may choose to reside himself in the house or run a business in the house or use it as a paying guest house and derive income therefrom. In all these cases even though the owner may not physically reside in the house, the house in law would nevertheless be deemed to be in actual occupation of the owner.

Having regard, therefore, to the circumstances mentioned above, we are unable to subscribe to the view that the words 'own occupation'must be so narrowly interpreted so as to indicate actual physical possession of the landlord personally and nothing short of that. We, therefore, overrule the argument of the respondents on this point.

The last argument that was advanced before us by Mr. Andley for the respondents was that taking an overall picture of the various aspects of the present case, it cannot be said that the balance of comparative advantages and disadvantages was in favour of the landlord. In this connection, our attention was drawn to the evidence led by the defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are not likely to get any alternative accommodation. The High Court has accepted the case of the defendants on this point, but does not appear to have considered the natural consequences which flow from a comparative assessment of the advantages and disadvantages of a landlord and the tenant if a decree for eviction follows. It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction ii passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the legislature when section ll(l)(h) of the Act was introduced in the Act. This by itself would not be a valid ground for refusing the plaintiffs a decree for eviction.

Let us now probe into the extent of the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused. It seems to us that in deciding this aspect of the matter each party has to prove its relative advantages or disadvantages and the entire Onus cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable. This matter was considered by this Court in an unreported decision in

the case of M/s Central Tobacco Co. v. Chandra Prakash(l) where this Court observed as follows:-

"We do not find ourselves able to accept the broad pro-position that as soon as the landlord establishes his need for additional accommodation he is relieved of all further obligation under s. 21 sub-s. (4) and that once the landlord's need is accepted by the court all further evidence must be adduced by the tenant if he claims protection under the Act. Each party must adduce evidence to show what hardship would be caused to him by the granting or refusal of the decree and it will be for the court to determine wether the suffering of the tenant, in case a decree was made, would be more than that of the landlord by its refusal.

The whole object of the Act is to provide for the control of rents and evictions, for the leasing of buildings etc. and s. 21 specifically enumerates the grounds which alone will entitle a landlord to evict his tenant.. The onus of proof of this is certainly on the landlord. We see no Sufficient reason for holding that once that onus is discharged by the landlord it shifts to the tenants making it obligatory on him to show that greater hardship would be caused to him by passing the decree than be refusing to pass it. In our opinion both sides must adduce all relevant evidence before the court; the landlord must show that other reasonable accommodation was not available to him and the tenant must also adduce evidence to that effect. It is only after shifting such evidence that the court must form its conclusion on consideration of all the circumstances of the case as to whether greater hardship would be caused by passing the decree than by refusing to pass it".

This case was followed in Phiroze Ramanji Desai v. Chandrakant N. Patel & Ors (supra). In the case of Kelley v. Goodwin(2) Lynskey, J. Observed as follows:-

"The next matter one has to consider is whether there was evidence on which the county court judge could come to the conclusion that there would be greater hardship in mak-

(1) C.A. 1175 of 1969 decided on 23-4-1969. (2) [1947] 1 All E.R. 810 ing the order than not making the order. He has taken into account, in relation to that question, first, the position of the landlord, and, secondly, the position of the tenant. He has taken into account the financial means of the tenant. It is argued before us that he was wrong in doing that. In my view, he was quite entitled, in considering hardship, to have regard to the financial means of the tenant in considering whether he could obtain other accommodation because, by reason of his means, he was in a position, not merely to rent, but to buy a house. It seems to me also that, on this question cf hardship, the judge was entitled to take into account the fact that the tenant had taken no real steps to try and find other accommodation or no real steps to buy a house".

To the same effect is the decision in the case of K. Parasuramaiah v. Pokuri Lakshmamma(1) where a Division Bench of the High Court narrated the mode and circumstances in which the comparative

advantages and disadvantages of the landlord and the tenant could be weighed. In this connection, the Court observed as follows:-

> "Thus the hardship of the tenant was first to be found out in case eviction is to be directed. That hardship then has to be placed against the relative advantages which the land lord would stand to gain if an order of eviction is passed ..... What is however required is a careful consideration of all the relevant factors in weighing the relative hardship which is likely to be caused to the tenant with the likely ad vantage of the landlord on the basis of the available material on record... '... The proviso however should not be read as if it confers a practical immunity on the tenant from being evicted. That would destroy the very purpose of Sec. 10(3)(c). Likewise the requirement of the land lord in accordance with that provision alone cannot be given absolute value, because that would mean to underestimate the value of the proviso to that section. Keeping in view therefore the purpose of the provision and the necessity of balancing the various factors each individual case has to be decided in the light of the facts and circumstances of that case".
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> In view of our findings it has been established that the landlords have not only a genuine requirement to possess the house, but it is necessary for them to do so in order to augment their income and maintain themselves properly. Being the owners of the house they (1) A.I.R. 1965 A.P.220 cannot be denied eviction and be compelled to live below the poverty line merely to enable the respondents to carry on their flourishing hotel business, at the cost of the appellants. This shows the great prejudice that will be caused to the plaintiffs if their suit is dismissed. The plaintiffs have already produced material before the court to show that their income does not exceed more than Rs. 8000 to Rs. 9000/- per year as the yearly income tax paid by them is Rs. 70 to Rs. 80 only. There is no other means for them to augment their income except to get their own house vacated by the defendants so as to run a hotel business. It was vehemently contended by Mr. Andley that there is nothing to show that the plaintiff Mohd. Yusuf or his mother had any experience of running the hotel, and, therefore, it is fruitless to allow them to run the hotel by evicting the respondents. Mohd. Yusuf is admittedly doing shoe business, and has got sufficient experience of business. Nothing has been brought on the record to show that he is incapable of running a hotel in the premises. The building belongs to him and there is Do reason for us to think that he cannot establish a hotel business.

On the other hand the defendants have been running the hotel for the last 30 years and must have made sufficient profits. To begin with, the defendants had taken the lease only for 10 years which now by virtue of the statute has been extended to 30 years which is a sufficiently long period for which the plaintiffs have been deprived the possession of the house. There is thus no equity in favour of the respondents for continuing in possession any further.

It was then submitted by Mr. Andley, counsel for the respondents that if the respondents are evicted they will be thrown out on the road; that hotel is the only source of their sustenance and they are not

likely to get any alternative accommodation on being evicted. If the defendants had proved that they will not be able to get any accommodation any where in the city where they could set up a hotel, this might have been a weighty consideration, but the evidence of all the witnesses examined by the defendants only shows that the defendants may not get alternative accommodation in that very locality where the house in dispute is situated. There is no satisfactory evidence to prove that even in other business localities there is no possibility of the defendants getting a house. To insist on getting an alternative accommodation of a similar nature in the same locality will be asking for the impossible. The defendants are tenants and had taken the lease only for 10 years but had overstayed for 20 years and they cannot be allowed to dictate to the landlord that they cannot be evicted unless they get a similar accommodation in the very same locality.

G. M. Khan the defendant himself has stated that if he is evicted from the house, he cannot get such a place any where. Great stress is laid that he must get a house of the size of the house in dispute. It was suggested to him that if one of the houses of the plaintiffs is given to him that will be sufficient for him, to which he said that the said house situated in Hari Singh High Street is not suitable because he can-not run his hotel business there. The witness has further stated towards the end that the defendants cannot get any place for the purpose of running a hotel in this Ilaqa (locality).

D.W. Ghani Hajam also says that the defendants cannot get any other building for the purpose of the hotel at this place like the one under dispute. Similarly, D. W. Ghulam Mohd. Khan, another witness for the defendants says that the defendants will not get such a building in this Ilaqa for running a hotel. D.W. Haji Noor Mohd. also endorses the fact that if the defendants are ejected, it is difficult for them to get such a building in this place. D.W. Mohd, Ramzan deposes that if the defendants are ejected from the building, they will not get such a building in this locality for running a hotel. To the same effect is the evidence of D. W. Rasool Dar who says that it is impossible for the defendants to get a house like the suit house for the purposes of running a hotel at the site or nearabout where the suit house is situated. D. W. Ghulam Mohd. has made a similar statement in his deposition when he says that the defendants will not get such a building nor is there any such building vacant in the locality. It is true that there are some witnesses like D. W. Aslam Khan, Ghulam Hassan, Mohd. Abdullah Pandey who has said that the defendants might not get any other place for running a hotel but the evidence is extremely vague and nebulous. D. W. Abdul Kabir however merely says that he had no knowledge that the defendants could get any other house.

Thus, what is established from the evidence of the defendants is that if they are ejected, they might not get a house as big as the house in dispute in the very locality where the disputed house is situated. There is no clear evidence in the first place to show that there is no other business locality in the city at all or that if there is any other business locality attempts were made by the defendants but they Were unable to get any house. Furthermore, as indicated above, the plaintiff necessity is imperative and their requirement is undoubtedly reasonable, because the income which they are receiving including the rent of the house which is in the region of Rs. 5000/- per year, is not sufficient to maintain them. Thus, on a careful comparison and assessment of the relative advantages and disadvantages of the landlord and the tenant it seems to us that the scale is tilted in favour of the plaintiffs.

The inconvenience, loss and trouble resulting from denial of a decree for eviction in favour of the plaintiffs far outweigh the prejudice or the inconvenience which will be caused to the defendants. The High Court has unfortunately not weighed the evidence from this point of view.

Before closing the judgment we would like to observe that normally this Court does not interfere with concurrent findings of facts but as the High Court as also the Trial Court have made a legally wrong approach to this case and have committed a substantial and patent error of law in interpreting the scope and ambit of the words "reasonable requirement" and "own possession" appearing in section 11 (1) (h) of the Act and have thus misapplied the law and overlooked some of the essential features of the evidence as discussed by us, we had to enter into the merits of the case in order to prevent grave and substantial injustice being done to the appellants.

For the reasons given above, the appeal is allowed. The judgment and decree of the High Court are set aside, and a decree for ejectment of the defendants from the house in dispute is hereby passed against the defendants. In the peculiar circumstances of this case, there will be no order as to costs.

S.R. Appeal allowed.