Amarjit Singh vs Smt. Khatoon Quamarain on 18 November, 1986

Equivalent citations: 1987 AIR 741, 1987 SCR (1) 275, AIR 1987 SUPREME COURT 741, (1986) JT 912 (SC), 1987 RAJLR 58, 1987 HRR 1, 1987 SCFBRC 21, 1987 (1) RENTLR 123, 1987 MPRCJ 9, (1987) 1 RENCR 192, (1987) 1 RENCJ 398, (1986) 2 RENTLR 394, (1987) 1 SCJ 94, 1986 (4) SCC 736, (1987) 31 DLT 72

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, K.N. Singh

PETITIONER:
AMARJIT SINGH

Vs.

RESPONDENT:
SMT. KHATOON QUAMARAIN.

DATE OF JUDGMENT18/11/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
SINGH, K.N. (J)

CITATION:
1987 AIR 741 1987 SCR (1) 275
1987 SCC (1) 736 JT 1986 912
1986 SCALE (2)827
CITATOR INFO :
D 1991 SC 266 (9)
RF 1991 SC1760 (24)

ACT:
Delhi Rent Control Act, 1958 , s. 14(1)(e)--Bonafide Personal necessity of landlord--'Has no other reasonable suitable residential accomodation'--Interpretation of--Events and developments subsequent to initiation of eviction proceedings--Whether Court should take cognizance of.
Statutory Interpretation-- Rent Control Legislations-- Interpretation of--Duty of Courts.

HEADNOTE:

The respondent-landlady was the owner of a premises consisting of ground floor and first floor. Both the floors had been let out on rent and she was living with one of her relatives. She filed a petition for eviction of the appellant-tenant from the first floor of the premises on the ground of bonafide personal necessity. She had stated in the petition that she needed one floor for her residence and the other one i.e. the ground floor to let out to have income to support herself because that was her only source of livelihood. During the pendency of the petition, the ground floor in the house fell vacant twice and she let it out on higher rent.

The Trial Court allowed the eviction petition u/s. 14(1)(e) of Delhi Rent Control Act, 1958 on the ground (i) that the landlady must have some income; and (ii) that it was landlady's choice to occupy the first floor premises and there was no mala fide, her requirement was bona fide. The High Court upheld the aforesaid order of eviction.

In appeal to the Supreme Court, it was contended on behalf of the appellant-tenant that the second limb of the definition contained in s.14(1)(e) of the Rent Act was not satisfied since the respondent-landlady had other reasonably suitable accommodation and by her own conduct, she had disentitled herself of the user of the same inasmuch as the accommodation of ground floor fell vacant twice when tenant left during the pendency of the proceeding for eviction but she chose not to go into that possession but let out the same to fetch higher income. Therefore, taking-these facts into question which indubitably could he taking

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into account, it cannot be said that the landlady had 'no other reasonably suitable accommodation'.

Allowing the appeal,

HELD: (1) The order and judgment of the High Court are set aside. In view of the undisputed facts that the landlady had in her choice to go into the premises in question but she did not, she had become disentitled to the right of eviction. [287A, 286H]

(2)(i) The Rent restriction laws are both beneficial and restrictive, beneficial for those who want protection from eviction and rack renting, but restrictive so far as the landlord's right or claim for eviction is concerned. Rent restriction laws would provide a habitat for the landlord or landlady if need be, but not to seek comforts other than habitat-that right the landlord must seek elsewhere. The philosophy and principle of rent restriction law have nothing to do with the private exploitation of property by the owners of the property in derogation of the tenant's need of protection from eviction in a society of shortage of accommodation. [285F, 286G]

(2)(ii) Administration of justice demands that any changes either in fact or in law must be taken cognizance of by the Court but that must be done in a cautious manner of relevant facts. Therefore subsequent events can be taken cognizance of if they are relevant and material. [283G]

Pasupuleti Venkateswarlu v. The Motor & General Traders, [1975] 3 SCR 958, Hasmat Rai & Anr. v. Raghunath Prasad, [1981] 3 SCR 605 and Variety Emporium v. V.R.M. Mohd. Ibrahim Naina, [1985] 1 SCC 251, relied upon.

Firm Ram Sewa Hari Ram v. Sain Datt Mal, AIR 1967 Delhi 113 and Abdul Hamid and another v. Nur Mohammad, AIR 1976 Delhi 328, approved.

Bishambhar Dayal Chandra Mohan and Others etc. etc. v. State of Uttar Pradesh and Others etc. etc., [1982] 1 SCC 39, referred to.

(3) In a proceeding for the ejectment of a tenant on the ground of personal requirement under a statute controlling the eviction of tenants, unless the statute prescribes to the contrary the requirement must continue to exist on the date when the proceedings was finally disposed of either in appeal or revision by the relevant authority.[284D]

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In the instant case, if cognizance is taken of events and developments subsequent to the initiation of proceedings, it must be held that the landlady had the opportunity of occupying a floor in the house which fell vacant not once but twice subsequent to arising of her need for reasonable accommodation- She chose not to occupy the said premises. Therefore. it cannot be said that the landlady had no other reasonably suitable accommodation and thus the second limb of s. 14(1)(e) of the Act is not satisfied. [283D-E, 285A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3378 of From the Judgment and Order dated 21.3.1983 of the Delhi High Court in C.R. No. 1047 of 1981.

Dr. Shanker Ghosh and H.K. Puri for the Appellant. S.N. Kacker, Arvind Minocha and Mrs. Veena Minocha for the Respondents.

The Judgment of the Court was delivered by.

SABYASACHI MUKHARJI, J- This appeal by special leave arises out of the order of the High Court of Delhi dated 2 1st March, 1983.

On or about 3rd January, 1977, the landlady, the re- spondent herein, had filed a petition for eviction of the appellant, the tenant, from the first floor of the premises situated at C-62, Maharani Bagh, New Delhi along with a garage on the ground floor with a servant quarter above the garage as

per the plan annexed with the petition' (hereinaf- ter referred to as the disputed flat). The ground of evic- tion was the bona fide personal necessity of the landlady. The premises had been let out on a monthly rent of Rs.950 and Rs.50 per month as facility for booster pump--totalling to Rs.1,000 per month, exclusive of water and electricity charges.

The respondent claimed to be the owner of the premises and stated that she required the premises for her residence and. for the residence of the members of her family and further she was not in possession of any other suitable residential accommodation. She was at the time of filing of the petition, living, according to her, as a guest of her niece in her house in D-36, Nizammuddin East, New Delhi. She had asserted that she could not continue residing there permanently or indefinitely and that the accommodation with her niece was limited being only two bed rooms with a common bath room and that her niece wanted her own mother to stay with her and would like the landlady to shift as soon as respondent could. It was further averred that the niece of the respondent landlady was a working woman and for meeting her clients she needed accommodation as she was at all relevant time working as an executive in an advertising agency. It was also stated that the landlady was a social worker and had her own sphere of activities. There were two flats in the building in question. The landlady, according to her, needed one floor to let out one of the floors of that building to have income to support herself which, according to her, was her only source of livelihood and the ground floor of the premises at the time of the filing of the petition was in occupation of New Zealand Embassy at Rs.2,500 per month as rent. It was her case that she wanted to keep the ground floor let out to a tenant to draw a decent amount of rent and the only premises left for her residence was therefore the premises--the disputed flat. The learned single judge of the Delhi High Court in the order under appeal has stated that on 14th March, 1974, the landlady had earlier also filed on eviction application against M/s Jaaj Timber Products (P) Ltd. on the ground that the said company was her tenant of the first floor of the suit premises and it was required for her residence. In the earlier petition, a written statement was filed by the tenant/ appellant who was the Managing Director of that company. The landlady had also on 17th April, 1976 filed a suit for recovery of Rs.35,000 as arrears of rent for the period 1st May, 1973 to 31st March, 1976. But in both the earlier eviction petition and the suit for the recovery of rent, the aforesaid company took up the position that the company was not a tenant but the appellant alone was the tenant and this contention of the appellant was upheld by judgment of the learned Additional District Juge, Delhi dated 1st November, 1976 and it was found that the appellant alone was a tenant in his individual capacity. This fact was relevant only from one point of view, namely, the argument that the appellant was a troublesome tenant. This is noted for this purpose because a contention was advanced by Shri Kacker, learned counsel, appearing for the respondent here- in, in support of his contention that in judging the bona fide and reasonableness of the requirement of the landlord, the conduct of the tenant is a relevant factor to be borne in mind. To continue with a narration of events, however, it has to be noted that the earlier eviction petition was dismissed though a decree. for Rs.34,050 for rent with proportionate costs was passed against the appellant herein. But the suit against the company was dismissed.

It would be necessary to complete the narration of events by stating that in the subsequent affidavit dated 27th October, 1986 filed by the appellant herein before us with our permission during the hearing of this appeal, it was brought to our notice that the appeal was filed in January, 1977 when

the ground floor of the premises had been let out to the New Zealand Embassy. New Zealand Embassy vacated the premises in July, 1977 and the same was relet by the landlady, the respondent herein to one Shri G.N. Dalmia on 27th July, 1977 at a higher rent- Shri Dalmia in his turn had again vacated the premises in July, 1979 and the prem- ises was let out again by the landlady at a still higher rent M/s Indian Express Newspaper Private Limited. It was stated that M/s Indian Express Newspapers Private Limited had vacated and thereafter the 'same was let out to one Shri Pradeep Kumar Ganeriwal at a still higher rent in April, 1985. There were allegations made saying that initially it was occupied by one Shri Mulgaokar and then Shri Nihal Singh and then Shri Ganeriwal. These were controverted by an affidavit filed by the respondent landlady on 30th October, 1986. According to her, Indian Express was the lessee but the others were the officers or the executives of the Indian Express and as such were allowed to occupy the premises in question.

But to revert back to the events leading to the present appeal, it must be noted that the earlier petition for eviction was dated 1st November, 1976 and the present peti- tion was filed on 3rd January, 1977 against the tenant- appellant. The appellant had filed a written statement before the Trial Court and admitted the relationship between the parties and had also admitted that the respondent was also the owner of the premises. It was contended, however, that the premises were not taken for residential purposes and there was no mention of the members of the family of the landlady. It was denied that the landlady was not in posses- sion of suitable alternative accommodation. It was asserted that she was alone and preferred to live with her niece who was alone and that the petition for eviction was not bona fide and was mala fide and in fact the landlady only wanted to increase the rent for which the tenant-appellant was not prepared. There was some allegation about the alleged at- tempt to increase the rent from Rs.1500 to Rs.2500 and it was stated that in the earlier petition which was against M/s Jaaj Timber Products Pvt. Ltd., the landlady had stated that she did not have any residential accommodation and was putting up as a temporary guest at a premises at Pandara Road, New Delhi and it was not made clear as to why she did not occupy the portion which was in occupation previously of the New Zea- land Embassy after it was vacated and she had stated that she needed one floor to draw income to support herself. It was pleaded that the landlady was an old and rich lady and had huge bank balances and did not have to depend upon the rentals of the house only. The respondent's son was an officer in the Indian Foreign Service and was posted in New Delhi since 1976 and living at the External Affairs Hostel and the landlady would normally like to stay in her old age with her only son. She could not afford to live alone in such a big house, according to the appellant, and the story of the niece wanting to stay with her old mother, and the need of the niece for her mother's occupation was not a true story.

In the trial before the Additional Rent Controller, the landlady examined her son and also examined herself and gave details of the various places where she had lived from 1958 till the filing of the present petition. It is not necessary for our present purpose to refer in detail to the said depositions. The landlady had, at one point of time, lived at the Indian Council for Child Welfare, Ladies Hostel at 4, Deen Dayal Upadhyaya Marg, New Delhi and the requirement for her flat there upto her assignment with Indian Council for Child Welfare which ended in May, 1970 and in May, 1970, the respondent-landlady went to Aligarh and stayed there till March, 1971 as she had no place to live in Delhi. From March, 1971 to July, 1974, she had lived at Pandata Road as a guest of one Mrs. Gufran and her niece Miss Shahila Haider had also lived there as a guest of Mrs. Gufran. Mrs. Gufran went

away to U.S.A. and the premises was surrendered to Directorate. of Estate. On 1st July, 1974, the landlady shifted to Nizammuddin, in New Delhi along with Miss Shahila Haider who took the premises on rent. The landlady-respond- ent was a graduate from the Leads University and her father was a leading lawyer, who was pioneer in women education in India. She founded Women's College in Aligarh University. The husband of the landlady was the Manager of Reserve Bank of India. The landlady was connected with various organisa- tions such as Y.W.C.A., All India Women's Conference, Indian Council for Child Welfare and some such other organisations. One Mrs. Vinita Nagar proved various documents to show association with the Social Welfare Advisory Board and at the relevant time when the deposition was being taken, she was staying at-5-A, Artand Lok, New Delhi with one Suleman Haider who was then Ambassador to Bhutan. Her son was also examined and she stated that he joined the Indian Foreign Service in July, 1964 and was in Jordan. It is also stated that during the period January, 1969 to August, 1973, he was in Poland and again on short leave he stayed in External Affairs Hostel when his mother--respondent stayed at Pandara Road. The son was posted at Quater. It is not necessary to discuss in detail all these. The landlady respondent herein comes from a fairly well to do family. She has house income and she has bank balances. The learned trial court also found that the landlady had one daughter who was married in Delhi and landlady was a social worker and worked for number of institutions and had large social circle. She comes from a respectable family and a family of high status. The learned trial judge was of the view that she requires additional accommodation. It was also found that somehow the habits and taste of her niece Miss Shahila Haider and the landlady differed and she had no other reasonably suitable accommoda- tion in Delhi. It is this second aspect which is the impor- tant question in this appeal which will have to be consid- ered herein.

The question as to why the landlady did not occupy the ground floor premises which was vacated and relet in 1974 and 1977 at a Higher rent was also considered by the learned trial Court. It was found that the landlady needed money for her sustenance and maintenance and she had no other source of income and therefore it was held that she would naturally like to let one portion of the house. The house consisted of two portions, the ground floor and the first floor. The ground floor portion was not preferred by the landlady as it fetched a higher rent as compare to first floor of the premises. It was also found that funds were required even for payment of house tax and other charges. Therefore, the trial court was of the view that the landlady must have some income. The trial court was also of the view that it was landlady's choice to occupy the first floor premises and there was no mala fide, her requirement was bona fide. Being aggrieved by the said decision, the appellant moved in revision before the High Court and the question was examined. It was pleaded before the High Court on behalf of the appellant that the respondent had only one son and that she should ,live with him. So far as the requirement being bona fide was concerned, the learned High Court examined the evidence and found that the appraisal and analysis of the evidence by the trial court were correct. The High Court, therefore, found no reason to differ from the Additional Rent Controller that landlady had no other reasonably suit- able accommodation and the landlady was in need of the accommodation in question bona fide and reasonably. It was further found that there was no mala fide on her part in letting out the premises in question when it fell vacant as mentioned hereinbefore. It was further held that there was no ques-

tion of financial difficulty being an afterthought as the previous petition was dismissed on the ground that there was no relationship between the landlord and the tenant between the parties in that case Therefore, under section 14(1)(e) of Delhi Rent Control Act, 1958 (hereinafter called the 'Act'), eviction was upheld. In the premises the revision was dismissed and the decree for eviction was upheld. The appellant challenges this decision. The appellant contends that on the undisputed facts of this case under section 14(1)(e) of the Act, the landlady was not entitled to eviction. Section 14 of the said Act gives protection to the tenant against eviction and stipulates that no order or decree for the recovery of possession of any premises shall be made by any court in favour of the landlord against a tenant. Proviso to sub-section (1) of the section 14 pro- vides that the Controller may on an application made to him in the prescribed manner make an order for recovery of possession of the premises on one or more of the various grounds mentioned in different sub-clauses of section 14(1) and sub-section (e) is to the following effect:

"(e) that the premises let for residential purposes are required bona fide by the land-

lord 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 accommo- dation:"

The contention of the appellant is that the landlady in this case had other reasonably suitable accommodation and by her own conduct had disentitled herself of the user of the same, Therefore, the landlady cannot contend that she had no other reasonably suitable accommodation. In support of this contention reliance was placed by the appellant on a deci- sion of this Court in Pasupuleti Venkateswarlu v. The Motor & General Traders, [1975] 3 SCR 958. The case was under

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 and was dealing with the provisions of section 10(3)(iii)(a) & (b) of that Act. The Court held that the court was entitled to take subsequent facts into considera- tion in a case of this nature. At pages 959-60 of the re- port, this Court set out the findings of the learned trial court where it was observed:

"If the fact of the landlord having come into possession during the pendency of the proceed- ings of Shop No. 2 is to be taken into account, as indeed it must be, then clearly the petition is no longer main- tainable under Section 10(3)(iii) of the Act, as the requisite condition for the invoking of that provision has ceased to exist viz., that the landlord was not occupying a non-residen- tial building in the town. 'Building', of course means a portion of a building. As the prerequisite for the entitlement of the peti- tioner to institute and continue a petition has ceased to exist, it must follow that ABA No.5/1967 is no longer maintainable and must be dismissed."

This Court upheld that finding. This Court affirmed the proposition that for making the right or remedy claimed by the party just and meaningful as also legal and factual in accord with the current realities, the court could and in many cases must take cautious cognizance of events and

developments subsequent to the institution of the proceed- ings, provided rules of fairness to both the sides were scrupulously obeyed. In the instant case there is no ques- tion of violation of any principle of rules of natural justice. If cognizance are taken of events and developments, subsequent to the initiation of proceedings, it must. be held that the landlady had the opportunity of occupying a floor in the house which fell vacant not once but twice subsequent to arising of her need for reasonable accommoda- tion. She chose not to occupy the said premises. The landla- dy asserts that she must have means to live before she can utilise her living space to live. The landlady asserts that in order to have her means to live, she must let one floor on rent. According to her, that is the only source of her income. But it is not clear from the learned Rent Control- ler's findings or the High Court adjudication whether the huge bank balances alleged to belong to the landlady yield any income or not or is insufficient income for her to live. Therefore, for the purpose of this appeal, we must proceed on the assumption that the landlady needed money to live and the income from her house letting was a source of her in- come. But the question is, is it a sufficient ground which will bring her out from the second limb of the conditions imposed by section 14(1)(e) of the Act? There is no dispute that subsequent events can be taken into consideration. There is no dispute that administration of justice demands that any changes either in fact or in law must be taken cognizance of by the court but that must be done in a cau- tious manner of relevant facts.

Hasmat Rai & Anr. v. Raghunath Prasad, [1981] 3 S.C.R. 605, which was a case under Madhya Pradesh Accommodation Control Act. 1961 is relevant. There the question was wheth- er the applicant after filing of two eviction suits and acquiring possession of a major portion of the suit premises through an eviction order passed in one of them-amounts to the landlord "has a reason- ably suitable non-residential accommodation of his own in his occupation in the city or town concerned" within the meaning of section 12(1)(f) of the M.P. Act of 1961. It was reiterated that when an action was brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown to exist at the date of the suit but must exist on the date of the appellate decree or on the date when a higher court deals with the matter. Even at the last stage the tenant was entitled to show that the need or requirement no more exist. Otherwise the landlord would derive an unfair advantage. It was further held that in order to obtain possession under section 12(1)(h) of the Madhya Pradesh Act, the landlord had to establish his bona fide requirement of the accommodation in possession of the tenant. At page 624, of the report Pathak, J. reiterated that the High Court was bound to take the fact into consideration because, it is well-settled that in a proceeding for the ejectment of a tenant on the ground of personal requirement under a statute controlling the eviction of tenants, unless the statute prescribes to the contrary the requirement must continue to exist on the date when the proceeding was finally disposed of either in appeal or revision by the relevant authority. Therefore, subsequent events can be taken cognizance of if they are relevant and material. In the instant case the fact that the other flat in the premises fell vacant which the landlady could have occupied but she did not and let it out to fetch higher income was a relevant factor. It can be taken cognizance of. Variety Emporium v. V.R.M. Mohd. Ibrahim Naina's, [1985] 1 SCC 251 case was with regard to Rent Control and Eviction and dealt with the question of bona fide personal require- ment, wherein in paragraphs 15 and 16, the Court referred to the decision of Hasmat Rai v. Raghunath Prasad, (supra) and observed that the subsequent events could be taken account of and the distinction between 'desire' and 'need' must be kept in view.

This view was also applied by the Delhi High Court in respect of the identical Act in question, in the decision in Firm Ram Sewak Hari Ram v. Sain Datta Mal, AIR 1967 Delhi 113 as well as in Abdul Harnid and another v. Nur Mohammad, AIR 1976 Delhi 328.

The position therefore that emerges in that there must be bona fide need of the landlady for occupation of a resi- dence for herself and further it must be held that the land-lady has no other reasonably suitable accommodation.

Shri Shankar Ghosh, learned counsel appearing for the appellant, contended before us that in this case the landla- dy had reasonably suitable accommodation thrice or if not thrice at least twice when tenant left during the pendency of the proceeding for eviction but she chose in view of the facts mentioned hereinbefore not to go into that possession but let out the same to fetch higher income. Therefore, taking the facts into question which indubitably could be taken into account, it cannot be said that the landlady had no other reasonably suitable accommodation, having regard to the size of her family and her need. Therefore the second limb was not satisfied. There is no dispute and Shri S.N. Kacker for the respondent did not dispute that subsequent events if they are relevant could be taken account of cau- tiously. But he contended as mentioned hereinbefore that the landlady the owner of a house, has to live. He further urged that there was a distinction between self-induced disenti- tlement and disentitlement forced by surrounding circum- stances. He submitted in this case the landlady had to live and for this by the surrounding circumstances. she was forced to let out the floor which fell vacant. It is irrele- vant whether it fell vacant once, twice or thrice but it indisputably fell vacant during the proceedings and she chose not to occupy the same. Better exploitation of the house or the premises in possession of the landlady or landlord was not impermissible. He drew our attention to Article 300A of the Constitution and urged that the Consti- tution provided that no person should be deprived of the property save by authority of law. Therefore, according to Shri Kacker, the landlady had to live and had a right of property in the rental income. The logic of the argument of Shri Kacker is attractive, but the legality of the said submission is unsustainable- Rent restriction laws are both beneficial and restrictive, beneficial for those who want protection from eviction and rack renting but restrictive so far as the landlord's right or claim for eviction is con- cerned. Rent restriction laws would provide a habitat for the landlord or landlady if need be, but not to seek com- forts other than habital--that right the landlord must seek elsewhere.

Our attention was drawn to the decision in the case of Bishambhar Dayal Chandra Mohan and Others etc. etc. v. State of Uttar Pradesh and Others etc. etc., [1982] 1 SCC 39 and our attention was drawn to the observations at pages 66 and 67 of the said case in aid of the submission that right to property is still a constitutional right and therefore in exercise of that right if a landlord or an owner of a house lets out a premises in question there was nothing wrong. Shri Kacker submitted that the second limb of section 14(1)(e) of the Act should be read in such a way that it was in consonance with Article 14 and Article 21 of the Constitution. Otherwise it would be void as being unconstitutional. As a general proposition of law this is acceptable.

We are unable to accept the submissions of Shri Kacker in the way he urged us to read the second limb of section 14(1)(e) of the Act.

The Act in question is the authority of law. There is no denial of equality nor any arbitrariness in the second limb of section 14(1)(e) of the Act read in the manner contended for by the appellant. Article 21 is not violated so far as the landlord is concerned. The rent restricting acts are beneficial legislations for the protection of the weaker party in the bargains of letting very often. These must be so read that these balance harmoniously the rights of the landlords and the obligations of the tenants. The Rent Restriction Acts deal with the problem of rack renting and shortage of accommodation. It is in consonance with the recognition of the right of both the landlord and the ten- ant'that a harmony is sought to be struck whereby the bona- fide requirements of the landlords and the tenants in the expanding explosion of need and population and shortage of accommodation are sought to be harmonised and the conditions imposed to evict a tenant are that the landlord must have bona fide need. That is satisfied in this case. That posi- tion is not disputed. The second condition is that landlord should not have in his or her possession any other reasona- bly suitable accommodation. This does not violate either Article 14 or Article 21 of the Constitution. Shri Kacker submitted that this section should to read literally and we should ask ourselves the question today whether can it be said that the landlady had reasonably suitable other accommodation. We are unable to read it in that sense. If the landlady or the landlord could have reasonable accommodation after his or her need arose and she by her own conduct disentitled herself to that property by letting it out for higher income, she would be disentitled to evict her tenant on ground of her need. The philosophy and principle of rent restriction law have nothing to do with the private exploitation of property by the owners of the property in derogation of the tenant's need of protec- tion from eviction in a society of shortage of accommoda- tion.

In the premises we are of the opinion that the High Court was wrong in the view and the approach it took and in view of the undisputed facts that the landlady had in her choice to go into the premises in question but she did not, she has become disentitled to the right of eviction. The fact that the tenant was a troublesome tenant inasmuch as that he questioned the liability to the landlord is irrelevant.

In the premises the appeal is allowed. The order and judgment of the High Court are set aside. In the facts of this case the parties will pay and bear their own costs.

M.L.A. Appeal al- lowed.