S.P. Jain vs Krishna Mohan Gupta & Ors on 4 December, 1986

Equivalent citations: 1987 AIR 222, 1987 SCR (1) 411, AIR 1987 SUPREME COURT 222, 1987 (13) ALL LR 125, 1987 ALL WC 293, 1987 (1) UJ (SC) 182, 1986 JT 979

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, K.N. Singh

PETITIONER:
S.P. JAIN

Vs.

RESPONDENT:
KRISHNA MOHAN GUPTA & ORS.

DATE OF JUDGMENT04/12/1986

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

CITATION:
1987 AIR 222 1987 SCR (1) 411
1987 SCC (1) 191 JT 1986 979
1986 SCALE (2)931
CITATOR INFO :
RF 1991 SC 686 (17)

ACT:
U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, ss. 24A, 24B and 24C--Landlord Government Servant--Directed to vacate government accommodation--Landlord in possession of ground floor of his own house-- Whether entitled to evict tenant in summary proceedings 'dwelling house'--Meaning of..
Words & Phrases--'Dwelling House--Meaning of.

HEADNOTE:
The U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act of 1972 was amended in 1976 and Chapter IV A was added. Section 24A, s. 24B and s. 24C are contained in the said Chapter. They provide for summary trim of eviction

petitions in certain circumstances. By a Notification dated 17th February,' 1982 issued under s.3 of the Cantonments (Extension of Rent Control Laws) Act of 1957, the Government extended to all the cantonments in the State of Uttar Pradesh the provisions of the Rent Act.

The appellant--a government servant, was in occupation of the government accommodation at Meerut. He was also owner of a house situated in the cantonment area in Meerut. The house-had a ground floor and a first floor with common bathroom and latrine situated on the ground floor. It had also a common courtyard and a common entrance. The ground floor of the house was in his possession while the first floor had been let out to the respondent-tenant.

Pursuant to a notice received by the appellant-landlord to vacate the government quarter, he filed an eviction petition against the respondent-tenant in respect of the first floor of the premises under s. 24 C of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 on 14th December, 1979. The respondent-tenant contested the application on the ground that the appellant-landlord had two residential houses--one in which he was living and the other in which the respondent-tenant was living and since the appellant-landlord was in possession of a residential accommodation, he had no right to get another residential accommodation vacated from the tenant under the provisions of s. 24B or 24C of the said Act. The Delegated Authority

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allowed the petition by its order dated 17th August, 1981 and its order was confirmed in revision by the Additional District Judge.

Aggrieved by the order of the Additional District Judge, the respondent tenant moved the High Court under Article 226 of the Constitution. It was contended by the respondent-tenant before the High Court that (i) Chapter IV A had been applied to the Cantonment areas on a subsequent date, i.e. 27th February, 1982, the Act being not applicable to the accommodation in question in November, 1979 when the application under s.24B of the Act was filed by the respondent and as such the same was liable to be dismissed; and (ii) that as the appellant-landlord was living in the ground floor of the said house, petition under s.24B was not maintainable. The High Court upheld the second contention of the respondent-tenant and set aside the order of eviction without deciding the question as to whether the Act would apply to buildings constructed and situated within the cantonment limit.

Dismissing the appeal, this Court,

HELD: 1(i) The whole purpose behind s.24A or s.14A of the Delhi Rent Control Act, 1958 which are in pari materia is that when a landlord or a person who is in occupation of a government accommodation and has to leave that accommodation and yet he has residential building in the area in his

own name or in the name of any member of his family, then such a person or landlord will have a right accrued to him to recover immediate possession of the building let out by him. The rationale behind these provisions or similar provisions is that when a government servant lets out his house and is without residential premises then if he is the owner of any residential building either in his name or in the name of any member of his family then he has a right to ask for immediate recovery of the said residential building. It is an urgency provision to help the government servant to have residential accommodation vacated if he is obliged to vacate his governmental residential accommodation. The proviso to s.24B deals with the situation where the landlord has more than one dwelling house, he will exercise a choice in respect of one. [420 E-F]

1(ii) Subs. (1) of s.24B uses the expression "if the landlord owns residential building" and the proviso uses the expression "dwelling houses". In the Act in question, however, there is no definition provided except that 'building' is defined in clause (i) to s. 3 which is not relevant for the present purpose. It is therefore necessary to determine what kind of a residential building or dwelling house must a landlord possess to be entitled to the urgency procedure of s. 24A to 24C of the Act to recover immediate possession. [420 G, H- 421 A]

2(i) Law should take pragmatic view of the matter and respond to the

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purpose for which it was made and also take cognizance of the current capabilities of technology and life-style of the community. The purpose of law provides a good guide to the interpretation of the meaning of the Act. The legislative futility is to be ruled out so long as interpretative possibility permits. [421 H-422 A]

2(ii) A dwelling house means a building used or constructed or adapted to be used wholly or principally for human habitation and dwelling house includes any part of a house where that part is occupied separately as a dwelling house. Therefore, to be a dwelling house or residential accommodation it must be capable of being separately enjoyed and whether or not the premises in question can be so enjoyed does not depend merely because that a portion cannot be locked up independently or separately.

Busching Schmitz Private Ltd. v.P.T. Menghani and Anr., [1977] 3 SCR 312, relied upon.

Stroud's "Judicial Dictionary." Vol. 2 at page 858 (4th Edition); Corpus Juris Secundum Vol. 28 pages 604-605, Words and Phrases legally defined, 2nd Edition, Vol. 2 page 127 and Black's Law Dictionary 1979, 5th Edition page 454, referred to.

3. In order to determine whether two parts of a building consist of one or more dwelling houses, the tests to be applied are; (i) consider the building and see whether it

constitutes a whole house or a part of the house; (ii) if one part is reasonably needed for convenient and comfortable occupation and enjoyment of the other part of the building then both the parts of the building constitute one dwelling house and to arrive at this finding the relevant factors to be taken in consideration are: (a) the situation; (b) entrance; (c) the Municipal Number; (d) the nature of the construction; (e) inter communication between the two parts; (f) completeness and independence of each unit; and (g) other relevant material circumstances. None of these taken singly is decisive but the cumulative effect should be considered. [422 D-F]

In the instant case, after the death of the mother of the appellant the portion was separately let out and a tenant used to occupy the said portion separately. Therefore, in view of the fact that the premises can be enjoyed with common facilities for dwelling purposes, it would constitute a separate and independent dwelling houses and the High Court in the facts of the case was not in error in holding that the two parts could be separately enjoyed. If the portion in the occupation of the appellant could not separately dwelled in by the appellant, it was only then that the extraordinary provisions of s. 24A, 24B and 24C could be resorted to. Otherwise the owner or the landlord is entitled.to take recourse to other provisions of the Rent Act contending that the premises in
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question is reasonably required bona fide for the landlord's use but in the situation like the present, the landlord was not entitled to take recourse to the urgency provisions in s. 24A, 24B and 24C of the Act. [423 F-424 C]

Jai Singh Jairam Tvagi etc'. v. Mamanchand Ratilal Agarwal and Ors., [1980] 3 SCR 224, relied upon.
Sarwan Singh & Anr. v. Kasturi Lal, [1977] 2 SCR 421, inapplicable.

Smt. V.L. Kashyap v. R.P. (Delhi), 1977 (1) Rent Control Reporter Vol. 9 page 449, S.S. Makhijaniv. V.K. Jotwani, 1977 Rajdhani Law Reporter 207, and Narain Khamman v. Parduman Kumar Jain, [1985] 1 SCR 1025, referred to.

4. The provisions of Chapter IV-A of the Act would be applicable. When the order was, made in this case and the application was filed the building in the cantonment area did not come within the ambit of the Act in question. When, however, the revisional order was passed by the Additional District Judge, the Act had come into operation and the building in question was within the purview of the operation of the Act. [419 D-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1622 of 1985 From the Judgment and Order dated 26.9.1984 of the Allahabad High Court in Writ Petition No. 5892 of 1983. R.B. Mehrotra for the Appellant.

Raja Ram Agarwal, D.N. Mukharjee and M.M. Kashtriya for the Respondents.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. In the administration of justice process often makes a mockery of the purpose. This appeal is an example of the same.

This appeal by special leave arises out of the judgment and order of the High Court of Allahabad dated 26th Septem- ber, 1984. The question involved in this appeal is whether the appellant is entitled to take advantage of the procedure under section 24-C of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction), Act, 1972 as amended from time to time (hereinafter called the said Act) in respect of the First floor of House No. 217-218 Machhli Bazar, Sadar, Meerut Cantonment, of which the appel- lant is the owner and the landlord. The first floor of the said building was in the tenancy of respondent No. 1 on a monthly rent of Rs. 60. The appellant was at the relevant time posted as Superintendent, Military Farm, Meerut Canton- ment. In that capacity he was allotted Government quarter No. 47 belonging to the Union of India. On 8th November, 1979 he was given a notice to vacate the Government quarter by the Deputy Assistant Director intimating that since the appellant had his own house at Meerut Cantonment, he should vacate the government quarter allotted to him by the order dated 8th August, 1979. In view of that the appellant moved an application under section 24-C of the said Act. It is the case of the appellant that he owns no other house except the one involved in the present appeal. Section 24-B(1) of the said Act which gives the right to move under section 24-C of the said Act provides as follows:

> "S.24-B(1) Where a landlord who, being a person in occupation of any residential public building is required, by, or in pursuance of, any general or special order made by the Government or other authority concerned, to vacate such building, or in default, to incur certain obligations, on the ground that he owns, in the same city, municipality, notified area or town area, a residential building either in his own name or in the name of any member of his family, there shall accrue, on and from the date of such order. to such landlord, a right to recover immediately possession of any building let out by him:
>
> Provided that nothing in this section shall be construed as conferring a right on a landlord owning, in the same city, municipality, notified area or town area, two or more dwelling houses, whether in his own name or in the name of any member of his family, to recover the possession of more than one dwelling house and it shall be lawful for such landlord to indicate the dwelling house, possession of which he intends to recover."

In this appeal we are not concerned with other sub- sections and other provisos of the said section. The said application was contested by the tenant on number of grounds including the ground that the accommoda- tion in the possession of the appellant was sufficient to accommodate his family

members. By an order dated 17th August, 1981, the application of the appellant was allowed by the Delegated Authority. He held that the appellant was in the government service and he was due to retire on 30th June, 1980 and he had moved an application under the provisions of section 24-B for getting his house vacated and getting possession of the same. It was further held by him that in this house there was a joint latrine which created difficulty for the appellant. Therefore the appellant had prayed that the possession of the first floor of the house in dispute should be delivered to him at an early date. On this, notice having been given to the respondent, he stated in his counter that the application was not maintainable and had further contended that the present proceedings under section 24-C of the Act could not be taken, according to him, because the appellant did not need any residential accommodation whereas the tenant-objector and respondent in this case was a poor man and had no other house. It was contended before the Delegated Authority that the applicant landlord had two residential houses--one in which the appellant-landlord was living and the other in which the respondent/tenant-objector was living. It was the submission of the respondent-tenant that the appellant-landlord was in possession of residential accommodation and as such he had no right to get another residential accommodation vacated from the tenant. The Delegated Authority observed as fol- lows:

> "It is admitted by both the parties that the entire house is one and in its first floor tenant is living and the ground floor is in possession of the landlord. Both the portions of the house are parts of one house and there- fore there is no question of accepting it as a separate residential unit particularly when the tenant-objector has himself in his own affidavit and objections stated that the bath-room and the latrine is on the ground floor i.e it is situated in the portion of the landlord."

It may be stated that respondent-tenant had filed an affidavit showing his need. The Delegated Authority who was the Addl. District Magistrate held by his order dated 17th August, 1981 that the application of the appellant should be allowed and there should be an order for eviction. There was an appeal from the said order before the Additional District Judge. He, in his order, set out the facts referred to hereinbefore. He also referred to a report dated 11th Decem- ber, 1979 by the Inspector who supported the appellant's case. Before the appellate authority two points were urged namely, that the application was not maintainable under section 24-B or under section 24-C of the said Act, and secondly that the accommodation in the occupation of the landlord was sufficient for his need. The tenant-respondent contended before the learned District Judge that as the landlord was already in occupation of the ground floor of the house in question, he was not entitled to move an appli- cation under the relevant sections. Reliance was placed on the definition of 'building' and the interpretation of the 'dwelling house'. It was contended on behalf of the landlord that the building as a whole had to be considered and not in part. The Delegated Authority was unable to accept the contention urged on behalf of the tenant and held that the building meant a single structure and might be in occupation of more than one person. It has also been held that the house having a common courtyard and a common en- trance would be a single house and a landlord should not be forced to live with an outsider or with a person with whom he had no happy relations. The Appellate Authority held that the building in question was just on the head of the portion of the ground floor in occupation of the landlord. The tenant had to pass daily from the courtyard on the ground floor in order to attend the call of nature.

It was contended that no eviction of the landlord from the premises in his occupation had taken place but merely action had been indicated. Therefore, recourse to section 24-B and section 24-C of the Act was unwarranted. The learned District Judge was unable to accept those conten- tions. He accordingly dismissed the revision application. An application was moved under Article 226 of the Con- stitution before the High Court and the High Court by the impugned judgment and order has set aside the order of eviction. It held that the building was situated within the Cantonment of Meerut. The U.P. Act No. 28 of 1976 added Chapter IV-A as to the question whether this Act would apply to buildings constructed and situated within the cantonment limit, it was observed that by the notification issued in exercise of the powers conferred by section 3 of the Canton- ments, (Extension of Rent Control Laws) Act, 1957, the Central Government had extended to all the cantonments in Uttar Pradesh the provisions of the present Act in question as in force on the date of notification, and as a result of the issuance of the said notification Chapter IV-A, became applicable to the building in question, according to the High Court. It was, however, urged before the High Court on behalf of the respondent that Chapter IV-A had been applied to the Cantonment areas on a subsequent date, i.e. 27th February, 1982, the Act being not applicable to the accommo- dation in question in November, 1979 when the application under section 24-B of the Act was filed by the respondent and as such the same was liable to be dismissed. It was, however, conceded by respondent that the revision order had been passed by the Additional District Judge on 27th April, 1983. It was therefore submitted that the proper course in the circumstances of the instant case would have been to send back the case for fresh decision. Reliance had been placed by the appellant on the decision in the case of Jai Singh Jairam Tyagi etc. v. Mamanchand Ratilal/Igarwal and Ors., [1980] 3 SCR 224. However, as the learned judge felt that on the second point the respondent was entitled to succeed, he did not decide this point taken in the writ petition by the respondent. The second point urged before the learned judge was that as the appellant landlord was living in the ground floor of the said house, section 24-B was not maintainable. The learned judge found 'that the central idea of conferring the power on such a landlord to recover imme- diately possession was that he was being evicted from his government quarter for residence. The learned judge observed that the legislature did not want to leave such a person at the mercy of the laws delay. Such a landlord was a class by himself and was entitled to take summary proceedings. His case had to be urgently dealt with. But, according to the High Court, if he had any house in the same, building then he would not come within the purview of section 24-B of the Act. He was, however, not without a remedy. He can take recourse to section 21(1A) of the said Act. It was noted while chapter IV-A which incorporated section 24-B and 24-C provided summary trial, the object of the two provisions namely section 21 on the one hand and section 24-B and 24-C of the said Act on the other differ from each other. In this connection reliance was placed on certain decisions of this Court. After referring to certain decisions, it was held that the expression "to recover immediately" indicated the ground where section 24-B could be applied there, there was consequential urgency to recover the possession of the building. According to the learned judge, there would be no consequential urgency to recover if he was already in pos- session of a dwelling house or where it could be made avail- able to him at his choice. The High Court accordingly al- lowed the application under article 226 and set aside the orders of the delegated authority and the appellate authori- ty.

Aggrieved by the said decision, the appellant has come up to this Court.

Two questions, therefore, arise in this appeal namely, firstly, whether the building with which we are concerned and which is situated in Cantonment of Meerut would be governed by the provisions of section 24-B and section 24-C of the Act, and secondly, whether in view of the facts and circumstances found, have the grounds been made out under section 24~B of the Act for eviction of the respondent from the premises in question in summary manner? It is not dis- puted that the building in question is within the cantonment limits. In the Act of 1972 (Act No. 13 of 1972), there was an amendment in 1976 and Chapter IVA was added by the U.P. Act. No. 28 of 1976 with effect from 1976. Section 24A, section 24-B and section 24-C are contained in the said chapter. The said Amendment Act No. 28 of 1976 did not state whether the said chapter would be applicable to buildings constructed and situated within the cantonment limit. The first question posed before the High Court but not answered by it was whether in view of the answer given to the second question, the provisions of those sections would be applica- ble to the building in question.

By notification issued in the exercise of section 3 of the Cantonments (Extension of Rent Control Laws) Act. 1957, the Central Government had extended to all the Cantonments in Uttar Pradesh the provi- sions of the Act in question, as in force on the date of that notification, in the State of U.P. The said notifica- tion being Notification No. S.R.O. 259 was issued in exer- cise of the powers conferred by section 3 of the said Act and in supersession of the notification of the Government of India in the Ministry of Defence. The said Notification extended to all the Cantonments in the State of Uttar Pra- desh the Act (U.P. Act. No. 13 of 1972), as in force on the date of the notification with certain modifications with which we are not concerned. It was, therefore, contended that it could not have by virtue of that notification intro- duced the provisions of Chapter IV-A of the said Act to the Cantonment area which themselves were introduced by Amend- ment Act No. 28 of 1976. There was another notification dated 17th February, 1982 being Notification No. S.R.O. 47. The said notification was also issued under section 3 of the aforesaid Act of 1957, mentioned hereinbefore and it stated that in supression of the previous notification, the Govern- ment extended to all the cantonments in the State of Uttar Pradesh the provisions of the Act, with certain modifica- tions with which we are not concerned in this case. The 1957 Act authorises the Government to issue the notification as contemplated therein.

In the instant case, as noted hereinbefore, the appel- lant had moved an application under section 24-C of the Act on 14th December, 1979 in respect of the premises in ques- tion on receipt of notice to quit the government premises in his occupation. The delegated authority made the order of release on 17th August, 1981. There was a revision applica- tion and it was disposed of by the Additional District Judge dismissing the revision on 27th April, 1983. Therefore when the order was made in this case and the application was filed the building in the cantonment area did not come within the ambit of the Act in question. When, however, the revisional order was passed by the Additional District Judge, the Act had come into operation and the building. in question was within the purview of the operation of the Act. In view of the ratio of Jai Singh Jairam Tvagi Etc. v. Mamanchand Ratilal Agarwal and Ors. (supra) it must be held that the provisions of Chapter IVA of the Act would be applicable. The amending Act was passed for the express purpose of saving decrees which had already been passed. Therefore action under section 24-C of the Act in this case was justified. The High Court did not decide this point because it was of the opinion that the second point which we shall note presently, the High Court was in favour of the respondent. We are,

however, of the opinion that the first point urged on behalf of the respondent cannot be accepted in view of the position in law as discussed hereinbefore. It was submitted on behalf of the respondent that section 24-B gave substantive rights to the appellant and section 24-C was the procedure for enforcing those substantive rights. Therefore, these were not only procedural rights. Therefore, there was no question of retrospective operation to take away vested fight. We are, however, of the opinion that it would be an exercise in futility if the application is dismissed on this ground it can be fried again and in view of the subsequent legislation as noted hereinbefore it was bound to succeed on this point. In exercise of our discretionary power under article 136 of the Constitution it would not be proper to interfere in the facts and circumstances of the case on this ground. In the premises in view of the ratio of the decision of this Court in Jai Singh's case (supra) and reason mentioned hereinbe- fore this contention urged on behalf of the respondent must be rejected.

The second question which is the substantial question in this appeal is, whether in view of the fact that respondent No. 3 was in occupation of the ground floor of premises No. 217-218 Machhli Bazar, Sadar, Meerut Cantt. the first floor of which was in the tenancy of the appellant, the applica- tion under section 24-B of the Act was maintainable? We have noted the provisions of section 24-B of the Act. It may be mentioned that section 24-A of the Act indicated that the provisions of Chapter IV-A or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force or in any contract (whether express or implied), custom or usage to the contrary. The whole purpose behind section 24-A or section 14-A of the Delhi Rent Con- trol, 1958 which are in pari materia is that when a landlord or a person is in occupation of a government accommodation and has to leave that accommodation and yet he has residen- tial building in the area in his own name or in the name of any member of his family, then such a person or landlord will have a right accrued to him to recover immediate pos- session of the building let out by him. The rationale behind these provisions or similar provisions is that when a gov- ernment servant lets out his house and is without residen- tial premises then if he is the owner of any residential building either in his name or in the name of any member of his family then he has a fight to ask for immediate recovery of the said residential building. It is an urgency provision to help the government servant to have residential accommo- dation vacated if he is obliged to vacate his governmental residential accommodation. The proviso to section 24-B deals with the situation where the landlord has more than one dwelling house, he will exercise a choice in respect of one. This is not the situation in the instant case. But it may be noted that sub-section (1) of section 24-B uses the expres- sion 'if the landlord owns residential building' and the proviso uses the expression 'dwelling houses'. Our attention was drawn to the definition of 'building' and 'dwelling house' appearing in some Acts. In the Act in question, however, there is no definition provided, except that 'building' is defined in clause (i) to section 3 which is not relevant for our present purpose. It is therefore necessary to determine what kind of a residential building or dwelling house must a landlord possess to be entitled to the urgency procedure of section 24-A to 24-C of the Act to recover immediate possession. In this connection it will be neces- sary to examine the type of 'building' in question in this case. Counsel for the appellant drew our attention to sec- tion 3(i) and he further drew our attention to section 12(4), section 16(1)(b), section 21(1), section 21(1-A) of the Act in aid of the submission that whenever the legisla- ture intended to mean part of the building the legislature has said so expressly.

Sarwan Singh & Anr. v. Kasturi Lal, [1977] 2 SCR 421 was dealing with the Slum Areas (Improvement and Clearance) Act, 1956. Dealing with section 14A of the Delhi Rent Act, this Court observed that section 14A provided that where the landlord who, being in occupation of residential premises allotted to him by the Central Government, was required to vacate such residential accommodation on the ground that he owns residential accommodation within the Union Territory, there shall accrue to such a landlord notwithstanding any- thing contained in any other law for the time being in force fight to recover immediately possession of the premises. In view of the facts in the case involved before us, where the landlord, the appellant was in possession of a par1 of the building in question which could be considered in certain circumstances to be a residential unit by itself, the obser- vations made in that decision are not relevant for the present purpose. In this case we are concerned with the question whether the type of accommodation which was in the possession of the landlord would constitute residential building or dwelling unit in order to disentitle him to seek recourse to the urgency procedure of section 24-A of the Act.

In Busching Schmitz Private Ltd. v. P.T. Menghani and Anr., [1977] 3 SCR 312 section 14A of Delhi. Rent Control Act,, 1958 came up for consideration. This Court held in the said decision that section 2(i) of the Delhi Act covered any building or part of the building leased for use, residen- tial, commercial or other. To attract section 14A of that Act the landlord must be in occupation of residential prem- ises allotted to him by the Central Government. He must be required by order of that Government to vacate the said residential accommodation. Residential premises are not only plots which are let out for residential purposes not do all kinds of structures where humans may manage to dwell are residential. Use or purpose of the letting is no conclusive test. Whatever is suitable or adaptable for residential use, even by making some changes. can be designated residential premises.

We are of the opinion that law should take pragmatic view of the matter and respond to the purpose for which it was made and also take cognizance of the current capabili- ties of technology and life-style of the community. It is well settled that the purpose of law provides a good guide to the interpretation of the meaning of the Act. We agree with the views of Justice Krishna Iyer in Busching Schmitz Private Ltd's case (supra) that legislative futility is to be ruled out so long as interpretative possibility permits. Residentiality depends for its sense on the context and purpose of the statute of the project promoted.

Our attention was drawn to the decision of the learned single judge of the Delhi High Court in Smt. V.L. Kashyap v. R.P. Puri (Delhi), 1977 (1) Rent Control Reporter Vol. 9 page 449. The decision was dealing with section 14A of the Delhi Rent Control Act, 1958 which is more or less similar to section 24-A to 24-C of the Act under consideration. The learned judge observed that in respect of exercise of fight under section 14A of the Delhi Act, an important proviso had been inserted. It was with the effect that fight of eviction under section 14A of the Delhi Act was confined only to one dwelling house and the landlord has no right to recover possession of more than one dwelling house in exercise of section 14A of the Delhi Act. Reference has to be made to another decision under the Delhi Rent Control Act by a learned single judge of the Delhi High Court in S.S. Makhij- ani v. V.K. dotwani, 1977 Rajdhani Law Reporter 207. There the learned judge referred to another decision and expressed concurrence with the said decision where it was held that in order to determine whether

two pans of a building consist of one or more dwelling houses, the tests to be applied were thus: (1)consider the building and see whether it constitut- ed a whole house or a part of the house; (2)if one part was reasonably needed for convenient and comfortable occupation and enjoyment of the other part of the building then both the parts of the building constituted one dwelling house within the meaning of proviso to section 14A of Delhi Act. To arrive at this finding, the learned judge observed that the relevant factors to be taken into consideration were

(a)the situation; (b)entrance; (c)the Municipal Number; (d) the nature of the construction; (e) inter communication between the two parts; (f)completeness and independence of each unit; and (g) other relevant material circumstances. None of these taken singly was decisive but the cumulative effect should be considered. We are of the opinion that the tests indicated above provide workable guide. Stroud in his "Judicial Dictionary" Vol. 2 at page 858 (4th Edition) noted that 'dwelling house' is obviously a house with the super-added requirement that it is dwelt in or the dwellers in which are absent only temporarily, having animus revertendi.

In this connection reference may be made to the meaning of 'dwelling house' in Corpus Juris Secundum Vol, 28 pages 604-605 where dwelling place is mentioned. See also in this connection 'dwelling' or 'dwelling house' where it was mentioned that the term was not free from ambiguity, multi- ple meanings and many definitions have been given. The meaning must suit the purpose and the idea behind the statute in question in a particular case. For the meaning of 'dwelling house' it may be instruc- tive to refer to the Words and Phrases Legally Defined Second Edition, Volume2 page 127 wherein it has been men- tioned, inter alia, that 'dwelling House' meant a building used or constructed or adapted to be used wholly or princi- pally for human habitation and 'dwelling house' included any part of a house where that part was occupied separately as a dwelling house.

Black's Law Dictionary 1979 Edn. (Fifth Edition) page 454 defines 'Dwelling' as the house or other structure in which a person or persons live.

Narain Khamman v. Parduman Kumar Jain, [1985] 1 SCR 1025, was dealing with section 14A of the Delhi Rent Control Act, 1958 which is more or less similar to the section involved in the present appeal. At page 1032 of the report the position has been discussed. There it was observed that if a person had, however, other premises which he owned either in his own name or in the name of his wife or depend- ent child, which were available to him for residential accommodation or into which he had already moved in, he could not maintain an application under section 14A of the Delhi Rent Control Act.

We have considered the maps at Annexure 4 as well as at page 108 of the Paper Book. It appears that there is a staircase in the front which leads to the first floor and one need not go to the ground floor. There are two latrines in ground floor. There is,; however, a common passage and in Order to come down to that passage, one has to use another staircase which is a common staircase. In this context the question is whether the premises in question could be sepa- rately used. In our opinion, the High Court in the facts of this case was not in error in holding that the two pans could be separately enjoyed.

After 1962 the mother of the appellant resided in the portion in the occupation of the landlord now used separate- ly and independently and the same is in occupation of the appellant and at that time when the mother of the appellant was alive the appellant used to occupy the said portion. In our opinion the conduct of the parties is relevant in con- sidering whether parts or portions of a building could be a dwelling house. It may also be mentioned that after the death of the mother of the appellant the portion was sepa- rately let out and a tenant used to occupy the said portion separately. Here in the instant case, Shri Melhrotra, coun- sel for the appellant however, stressed that in order to be a dwelling house or residential accommodation, it must be capable of being separately enjoyed and separately locked up., is true that without that facility, the concept of safe and separate dwelling gets hampered. Yet in view of the fact that premises can be enjoyed with common facilities for dwelling purposes would constitute a separate and independ- ent dwelling houses. It has to be borne in mind that in this case the issue is not whether the premises is sufficiently comfortable or whether the portion in question was sufficiently comfortable for dwelling or residence of the appellant or a party but the question is whether the house or the portion can be separately consid- ered to be dwelling. If the portion in the occupation of the appellant could not be separately dwelled in by the appel- lant, it was only then that the extra ordinary provisions of section 24A, 24-B and 24-C could be resorted to. Otherwise the owner or the landlord is entitled to take recourse to other provisions of Rent Act contending that the premises in question is reasonably required bona fide for the landlord's use but in the situation like the present the landlord was not entitled to take recourse to the urgency provisions in section 24-A, 24-B and 24-C of the Act. In our opinion to be the dwelling house or residential accommodation it must be capable of being separately enjoyed and whether or not the premises in question can be so enjoyed does not depend merely because that a portion cannot be locked up independ- ently or separately.

In that view of the matter, having regard to the nature of the user, we are of the opinion that the High Court was right. Therefore while we affirm the decision of the High Court, in terms of the observations made by this Court in Busching Schmitz Private Ltd. v. P.T. Menghani and Anr., (supra), we direct that the appellant if he so wants or desires can make arrangements for separation of the two units and to this the respondent-tenant would not be enti- tled to take any objection. This, however, will not prevent the appellant to seek eviction by other provisions of the Act or by any other appropriate legal proceeding if he is otherwise entitled to.

In the premises this appeal fails with the aforesaid observations. In the facts and in the circumstances of this case, the parties will pay and bear their own costs.

M.L.A. Appeal dismissed.