

Supreme Court of India

B. N. Mutto & Anr vs T. K. Nandi on 29 November, 1978

Equivalent citations: 1979 AIR 460, 1979 SCR (2) 409

Author: P Kailasam

Bench: Kailasam, P.S.

PETITIONER:

B. N. MUTTO & ANR.

Vs.

RESPONDENT:

T. K. NANDI

DATE OF JUDGMENT 29/11/1978

BENCH:

KAILASAM, P.S.

BENCH:

KAILASAM, P.S.

DESAI, D.A.

KOSHAL, A.D.

CITATION:

1979 AIR 460                      1979 SCR (2) 409

1979 SCC (1) 361

CITATOR INFO :

D                      1982 SC1518 (15,17)

D                      1984 SC 458 (8)

ACT:

Delhi Rent Control Act , 1958 Ss. 14(1)(e), 14A and 25B(5)-Scope of.

HEADNOTE:

Section 14 of the Delhi Rent Control Act, 1958 prohibits a court from making any order or decree in favour of a landlord for recovery of possession of any premises except under certain circumstances. One of the grounds on which the landlord can make an application to the Rent Controller for recovery of possession is provided in s. 14(1)(e) of the Act is that the premises let for residential purposes are required bonafide by the landlord for occupation as a residence for himself and that the landlord has no other reasonably suitable residential accommodation.

In September, 1975 the Central Government decided that Government servants who owned houses in the Union Territory of Delhi should, within three months from 1st October, 1975, vacate Government accommodation let out to them. By the Delhi Rent Control Act (Amendment) Ordinance, 1975 the Act

was amended and eventually the Amendment Act, 1976 replaced the Ordinance. By a deeming provision the Act came into force on the date of the Ordinance i.e. 1st December, 1975.

Section 14A which was added by the amendment Act provides that a, land- lord who, being a person in occupation of any residential premises allotted to him by the Central Government is required to vacate such residential accommodation on the ground that he owns in the Union Territory of Delhi a residential accommodation, a right shall accrue to such landlord to recover immediately possession of the premises let out by him. Section 25B provides for special procedure for disposal of application for eviction under s. 14(1) (e) and s. 14A, Section 25B provides that when an application is filed by the landlord under either s. 14(1)(e) or s. 14A, the tenant shall not contest the prayer for eviction unless he files an affidavit and obtains leave from the Controller. Sub-section (5) requires that the affidavit filed by the tenant should disclose such facts as would disentitle the landlord from, obtaining, an order for the recovery of possession of the premises on the ground specified in s. 14 (1)(e) or s. 14A.

The appellant (landlord) let out his residential accommodation in New Delhi to the respondent (tenant). The landlord was a Government servant who had been allotted Government accommodation in New Delhi. On 9th December, 1975 the Government issued a notice to the landlord calling upon him to vacate Government accommodation allotted to him. In the meantime the landlord retired from service on 30th November, 1975. On 9th December, 1975 the landlord filed a petition for eviction of the tenant from his house. The tenant raised three objections as to the maintainability of the petition: (i) that the landlord could not invoke the provisions of s. 25B(5) because he was not a Government servant on the date of the petition; (ii) that since the ground on

8-978SCI/78

410

which eviction was sought in the petition was the same which had already been filed by the landlord and was pending before the Rent Controller, the petition could not be entertained, and (iii) that the premises occupied by him were let out for residential or professional purposes and therefore the landlord was not entitled to ask for eviction as the premises were not let for residential purposes alone.

The Rent Controller rejected all the contentions and refused leave to the tenant to defend the landlord's eviction petition. He held that (i) the question whether the landlord was a Government servant or not on the date when the notice was received and on the date when he filed a petition was irrelevant so long as he satisfied the requirements laid down in s. 14(1), (ii) the ground for eviction under s. 14A was a new cause of action and different from the one raised in the previous petition and,

therefore the petition was not barred, (iii) it was not necessary for an application under s. 14(1) that the building should have been let for residential purposes as required under s. 14(1) (e), it is sufficient if the landlord required the premises for residential accommodation

Allowing the tenant's revision, the High Court held that since the landlord had retired from service On 30th November, 1975 before the Ordinance came into force, the tenant was not liable to vacate the premises independently of his ownership in the Premises in dispute.

Allowing the appeal.

HELD: 1 (a) Section 14A does not require that the person who was in, occupation of the premises allotted by the Government should be a Government servant. The policy decision of 9th September, 1975 related only to Government servants who were in occupation of premises allotted to them by the Government. But later the Government seemed to have realised that some provision should be made to get possession of the premises let to persons other than Government servants and who owned their own houses in Delhi and whose premises had been let out to tenants. Although the circular dated 9th September, 1975 as well as the notice served by the Government on the landlord support the view that the intention of the Government was to enable only those Government servants who were in occupation of Government accommodation and who owned houses to get immediate possession . s. 14A does not restrict the right to recover immediate possession to Government servants alone. Therefore, taking into account the object of the Act, the meaning of the word "person" cannot be confined to Government servants because Government accommodation was provided not only to Government servants but to others as well. [417C-F]

Nihal Chand v. Kalyanbhai [1978] 2 SCR 183

at p. 190, referred to.

(b) It is not necessary in a petition for eviction under s. 14A to specify that the premises were let for residential purpose only. The words used in s. 14A are clearly different. This section contemplates the owning by the landlord in Delhi of a residential accommodation. If he owns a residential accommodation he had the right to recover immediately possession of any premises let out by him. If the premises were one intended for residential accommodation it would not make any difference if the premises were let for residential as well

411

as other purposes. Even if the residential accommodation was let for professional or commercial purposes, the premises would not cease to be for residential accommodation. Moreover the requirement in s. 14(1)(e) that to enable the landlord to recover possession the premises ought to have

been let for residential purposes is not found in s. 14A(1). [421A-C]

Busching Schmitz Private Ltd. v. P. T. Mengham & Anr. [1977] 3 SCR 312, referred to.

2. The submission that as a previous application for possession by the land lord was pending, a petition under s. 14A would not be permissible has no force because the grounds on which the application for possession was file under s. 14A(1) Are different and ale based on special rights conferred on the class of persons who occupied Government accommodation. [421D]

(a) The scope of s. 25B is very restricted, for leave to contest can only be given if the facts are such as would disentitle the landlord from obtaining an order for recovery of possession on the ground specified in s. 14A. Leave to contest an application under s. 14A(1) cannot be said to be analogous to the provisions of grant of leave to defend envisaged in the C.P.C. [422C & A]

(b) The provisions of s. 25B and s. 25C are applicable to both applications under s. 14(1)(e) and under s 14A. By the introduction of s. 25C the condition imposed in s. 14(6) is varied. The condition imposed under s. 14(6) is made not applicable to persons who satisfy the requirements under s. 14A meaning thereby that this restriction will be applicable only to an application under s. 14(1)(e). Section 25C(2) makes it clear that not only in the case of an application under s. 14(1)(e) but also under s. 14A the term of six months prescribed in s. 14(7) is reduced to two months. By prescribing a specific period of two months under s. 25C(2) it is made clear that even an applicant under s. 14A would have to satisfy the conditions laid down by s.25C, that is, period of two months should elapse before the landlord is' entitled to obtain possession from the date of an order for recovery of possession. [423D-G]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2302 of 1977.

Appeal by Special Leave from the Judgment and Order dated 6th December. 1976 of the Delhi High Court in Civil Revision No.247 of 1976.

Rameshwar Nath, for the Appellant.

G. L. Sanghi. S. S. Ray, S. R. Agarwal, Praveen Kumar and B. Mohan for the Respondent.

The judgment of the Court was delivered by KAILASAM. J.-This appeal is by special leave by the landlord against; the judgment of the High Court of Delhi whereby it allowed a revision of the respondent-tenant and set aside the order of eviction passed by the Rent Controller, Delhi, rejecting

the application of the respondent seeking permission to contest the proceedings for eviction filed by the appellants under section 14(A)(1) of the Delhi Rent Control Act.

The appellant, Shri B. N. Muttoo, Inspector General of Police, leased the property No. F-9, East of Kailash, New Delhi, to the respondent from 15th September, 1972 at a monthly rent of Rs. 2,200/- exclusive of electricity and water charges. The lease was for the use of the premises for residential and/or professional purposes only and not for commercial purposes. The lease agreement was renewed from time to time and the respondent became a monthly tenant under the Delhi Rent Control Act, 1958. On 18th July, 1974 the landlord filed a petition for eviction of the respondent on the grounds of misuser, subletting and bona fide requirement. The petition was registered as Suit No. 182 of 1974 and is still pending.

The first appellant, B. N. Muttoo, retired as Inspector General of Police on 30th November, 1975. While in office he was occupying premises bearing No. C-II/ 77 Moti Bagh I, New Delhi, allotted to him by the Government. On 9th September, 1975 the Government took a decision that Government servants who own houses in the locality should vacate the Government accommodation allotted to them within 3 months from 1st October, 1975. On 9th December, 1975 a notice was served on the first appellant by the Deputy Director (Admn.) stating that the Government by its Office Memorandum No. 12031(1)/ 74-Pol.II dated 9th September 1975 required all Government officials who own houses in Delhi and New Delhi and have also been allotted Government residence to vacate the Government residence before the stipulated date failing which penal rate of licence of market rate shall be charged besides necessary action to evict him from the Government residence. On the same day the appellant filed the present Suit for eviction of the respondent. On 16th January, 1976 the respondent applied for leave to defend. On 10th March, 1976 the Rent Controller refused leave and decreed the suit filed by the landlord. A revision petition was filed by the respondent before the High Court which allowed the revision and set aside the order of the Rent Controller and remanded the proceedings to the Rent Controller for disposal according to law. Against the order of the High Court allowing the revision by the respondent the present appeal has been preferred to this Court by the landlord.

The question that arises in this appeal is whether the Rent Controller was right in refusing leave to the respondent to defend the eviction petition filed by the landlord.

In order to appreciate the point that arises for consideration it is necessary to refer to the relevant provisions of the Delhi Rent Control Act. Delhi Rent Control Act (Act 59 of 1958) came into force on 31st December, 1958. By Chapter III the right of the landlord to evict the tenant was restricted. Section 14 prohibited any order or decree for recovery of possession of any of the premises being made by any court in favour of a landlord except under certain circumstances. The landlord was required to make an application to the Controller for recovery of the possession on one of the grounds mentioned in sub-clauses (a) to (1) in section 14(1). The provisions of section 14(1)(e) which are relevant may be referred to:-

"14. (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be

made by any court or Controller in favour of the landlord against a tenant:

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

(a) X X X

(b) X X X

(c) X X X

(d) X X X

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

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

By the Delhi Rent Control Act (Amendment) Ordinance (No. 24 of 1975), 1975 the Delhi Rent Control Act was amended. The Ordinance was eventually replaced by the Delhi Rent Control (Amendment) Act No. 18 of 1976. The Amending Act continued the provisions of the Ordinance but extended the summary procedure which was applicable to section 14(1)(e) to evictions on the ground set out in section 14A of the Act. The Amending Act came into force on February 9, 1976 but by virtue of sub-section (2) of section 1 it was deemed to have come into force on 1st December, 1975 i.e. On the date on which the Ordinance came into force. Section 14A conferred a right to recover immediate possession of premises to certain persons. The amended section 14A(1) reads:

"(1) Where a landlord who, being a person in occupation of any residential premises allotted to him by the Central Government or any local authority is required, by, or in pursuance of, any general or special order made by that Government or authority, to vacate such residential accommodation, or in default, to incur certain obligations, on the ground that he owns, in the Union territory of Delhi a residential accommodation either in his own name or in the name of his wife or dependent child, there shall accrue, on and from the date of such order, to such landlord, notwithstanding anything contained elsewhere in this 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, a right to recover immediately possession of any premises let out by him:"

This section confers on a landlord who owns a residential accommodation, in his own name or in the name of his wife or dependent child in the Union territory of Delhi and was in occupation of any residential premises allotted to him by the Central Government or any local authority and is required by any general or special order made by the Government or the authority to vacate such residential accommodation or in default to incur certain obligations on the ground that he owns a residential accommodation in Delhi either in his own name or in the name of his wife or dependent child, a right shall accrue to such landlord to recover immediate possession of any premises let out by him. Apart from conferring rights under section 14A a summary procedure for trial of applications made under section 14(1)(e) and section 14A is provided under sections 25A, 25B and 25C. Section 25A provides that the provisions of Chapter IIIA which contains sections 25A, 25B and 25C and any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained else where in this Act or any other law for the time being in force. The special procedure for disposal of application for eviction under section 14(1)(e) and section 14A is prescribed by section 25B. The procedure envisaged is that when an application under section 14(1)(e) or Section 14A is filed by the landlord the Controller shall issue summons in the prescribed form. Sub-section (4) to section 25B restricts the right of the tenant to defend by providing that the tenant shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. In default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid. Sub-section (5) to section 25B states the conditions under which the Controller shall give leave to the tenant to contest the application. It requires that the affidavit filed by the tenant should disclose such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A. When once the leave is granted to the tenant to contest the application the Controller shall commence hearing of the application as early as practicable.

The introduction of section 14A became necessary as the Government took a decision on 9th September, 1975 that the Government servants who own houses in the Union territory of Delhi shall be required to vacate Government accommodation allotted to them within 3 months from 1st October, 1975. If they fail to vacate the accommodation they were to be charged licence fee at market rates. The Government servants who were owing houses in the Union territory of Delhi could not get possession of their residential accommodation. It became necessary to confer on them the right to recover immediate possession of their premises and also to prescribe an expeditions procedure for achieving the object. According to the procedure specified in section 25B it was made incumbent on the tenant to apply for and obtain leave to contest the application for eviction Coming to the facts of the case the Government took the decision to require the Government officers who have been allotted premises by the Government and who own their own houses in the area specified to vacate the premises allotted by the Government within 3 months from 1st October, 1975. Notice of such intention was conveyed to be landlord on 9th December, 1975. In the meantime on 30th November, 1975; the officer retired from service. Thus on the date 11 on which notice was served on him he had already retired. The petition for eviction was also filed on 9th December, 1975 after the officer retired. The main contentions raised by the tenant in the petition for leave to contest were;(1) the

landlord cannot invoke the provisions of section 25B(5) as he was not a Government servant on the date of the petition; (2) the landlord had already filed a petition for eviction which was registered as O.S. No. 182 of 1974 and was pending before the Additional Rent Controller. As the eviction is sought on the same ground in the present petition it was submitted that this petition could not be entertained; (3) the premises which the respondent is occupying were let for the purpose of residential or professional purposes and therefore the landlord is not entitled to ask for eviction as the premises are not let for residential purposes.

The Rent Controller rejected all the contentions put forward by the respondent. He held that the question as to whether the landlord was a Government servant or not on the date when the notice was received and on the date when he filed the petition is irrelevant so long as he satisfied the requirements laid down in section 14(1) of the Act. on the second contention the Rent Controller found that the ground for eviction under section 14A is a new cause of action and different from the one that was raised in the previous petitions and hence the present petition is not barred. On the third point the Rent Controller found that it is not necessary for an application under section 14(1) that the building should have been let for residential purposes as required under section 14(1) (c) and it is sufficient if the landlord requires the premises for residential accommodation. The Rent Controller held that the grounds on which leave to resist an application can be granted are those that are specified in section 25B(5) alone.

On appeal the High Court allowed the revision by the tenant mainly on the ground that the application for eviction must fail on account of the admitted fact that the landlord had retired from service on 30th November, 1975 before the Ordinance came into force and was on that account liable to vacate the premises independently of his ownership of the premises in dispute.

The important question that arises for consideration is whether the landlord who retired from service on 30th November, 1975 before the Ordinance came into force could avail himself of the provisions of section 14A(1). A reading of section 14A discloses that a right to recover immediate possession of premises accrues to certain persons if the requisite conditions are satisfied. The conditions are: (1) the landlord must be in occupation of any residential premises allotted to him by the Central Government or any local authority; (2) such landlord is required by a general or special order made by the Government or authority to vacate such residential accommodation or in default to incur certain obligations on the ground that he owns in the Union territory of Delhi a residential accommodation either in his own name or in the name of his wife or dependent child. If the aforesaid conditions are satisfied a right shall accrue to such a landlord on and from the date of such order to recover immediate possession of any premises let out by him. It may be noted that the section does not require that the person who is in occupation of the premises allotted by the Government should be a Government servant. It is necessary that the person is required by the Government or authority to vacate such accommodation imposing certain consequences in the event of his not vacating. The policy decision taken by the Government on 9th September, 1975 only related to Government servants who were in occupation of premises allotted to them by the Government. If the Government servant had another house in the locality he was to vacate within 3 months from the 1st October, 1975. This general order no doubt relates only to government servants. After the decision was taken it was realized that some provision should be made to enable the persons in occupation of



buildings allotted to them by the Government to get possession of the houses they own but have been let to tenants. In order to enable them to get possession of the premises let by them expeditiously section 14A(1) was enacted and the expeditious procedure under section 25-B was made applicable. It may also be noted that the order served on the landlord on 9th December, 1975 mentions that all Government officials who own houses in Delhi and have also been allotted Government residence are to vacate Government accommodation. the general circular dated 9th September, 1975 as well as the notice served on the landlord thus support the view that the intention of the Government was to enable only those Government servants who are in occupation of Government accommodation and who own houses to get immediate possession, though section 14A does not restrict the right to recover immediate possession to Government servants alone. In these circumstances, the conclusions arrived at by the High Court that a Government servant who had retired before the date on which he had filed the application is not entitled to the benefits of section 14(1) is understandable. This view was expressed by this Court in *Nihal Chand v. Kalyan Chand Jain*(1) wherein it was observed "There appears to be some force in the view taken by the High Court that the provision of section 14A(1) was not intended for Govern-

(1) [1978] 2 S.C.R. 183 at p. 190.

ment servant who have retired from Government service or who have been transferred outside Delhi ." But this Court did not decide the issue because on the facts of the case it was of the view that the landlord was entitled to invoke the provisions of section 14A(1) notwithstanding the fact that he had retired from Government service with effect from 30th November, 1975. In that case the notice was served on the appellant landlord on 30th September, 1975 which was before the date of retirement which was on 31st November', 1975. On the ground that the right to evict the tenant accrued to the landlord when he was in service it was held that he was entitled to the rights conferred under section 14A. In this case the notice was served on 9th December, 1975 and the officer had retired on 30th November, 1975. On the reasoning in the above case the appellant will not be entitled to the relief. The question therefore squarely arises in this case as to whether a Government servant who retired before the notice was served on him requiring to quit the Government accommodation is entitled to the benefit of section 14A(1).

It is not clear as to why the right to recover immediate possession is not confined to Government servants alone under section 14A. It is clear that according to Government's policy statement the intention was only to require the Government servants to vacate the premises allotted to them by the Government if they had their own houses in the area. It cannot be said that it was by inadvertance that the Legislature mentioned persons instead of Government servants and made the section applicable to persons other than Government servants. It is stated at the Bar that Government accommodation is provided not only to Government servants but also to Members of Parliament and other non-officials who occupy important positions in public life. The Court will not be justified in presuming that when the legislature used the word "persons" it meant only Government servants. The rule as to construction of the statutes is well-known and has been clearly laid down. Craies on Statute Law (6th Ed. p. 66) relying on *Tasmania v. Commonwealth*(1) has stated the rule as follows:-

"The cardinal rule for the constructions of Acts of Parliament is that the should be construed according to the intention expressed in the Acts themselves.

The Court has to determine the intention as expressed by the words used. If the words of statutes are themselves precise and unambiguous then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in (1) [1904] 1 C.L.R. 329.

such a case best declare the intention of the lawgiver. Taking into A account the object of the Act there could be no difficulty in giving the plain meaning to the word "person" as not being confined to Government servants for it is seen that accommodation has been provided by the Government not only to Government servants but to others also. In the circumstances, the Court cannot help giving the plain and unambiguous meaning to the section. It may be that the Retired Government servants as well as others who are in occupation of Government accommodation may become entitled to a special advantage, but the purpose of the legislation being to enable the Government to get possession of accommodation provided by them by enabling the allottee to get immediate possession of the residential accommodation owned but let by them, the Court will not be justified in giving a meaning which the words used will not warrant. On this question therefore we find ourselves unable to concur with the view taken by he High Court.

The next question that arises is whether the rights conferred under section 14A(1) are available to premises that had been let for residential as well as professional purposes. It is admitted that the premises were let for residential as well as professional purposes. Section 14(1)(e) requires that in order to avail the provisions of section 14(1)(e) the premises should be "let for use as a residence". It has been held that when premises are let for residential as well as commercial or for residential and professional purposes the provisions of section 14(1)(e) will not apply. This Court in Dr. Gopal Dass Verma v. Dr. S. K. Bhardwaj and Anr.,(1) in construing section 13(1)(e) of the Delhi and Ajmer Rent Control Act, 1952 held that premises let for residential purposes but used by the tenant with the consent of the landlord incidentally for commercial professional or other purposes cease to be premises let for a residential purpose alone and as such the landlord would not be entitled to eject the tenant under section 13(1)(e) of the Act. Section 13(1)(e) allowed a decree for ejectment to be passed if the Court is satisfied that the premises let for residential purposes are required bona fide by the landlord who is the owner of such premises for occupation as a residence tor himself or his family and that he has no other suitable accommodation. On the facts of the case it was found that right from the commencement of the tenancy a substantial part of the premises was used by respondent I for his professional purpose, and they have also found that this has been done obviously with the consent of the landlord. The Court held that the professional use of a substantial part Or the premises with (1) [1962] 2 S.C.R. 678.

the consent of the appellant clearly takes the case outside section 13(1)(e). The view expressed in the above case was reiterated by this Court in Kartar Singh v. Chaman Lal & Ors.(1) On the facts it was found that the premises had been taken for residential-cum-business or professional purposes. By the rent deed the owner inducted as a tenant Labha Mal Arora who was practising advocate. Along with the rent deed a letter was written by the landlord to the tenant stating that he had no objection to the tenant having his professional office along with the residence. After the tenant's death in 1952

the premises were used only for residence by his sons and widow till 1957. In August, 1957 the first respondent who qualified himself as a legal practitioner started having an office in the premises. Another son also started practising as a lawyer in the same premises sometime later. The landlord served a notice on the sons and widow of the deceased for requiring them to vacate the premises. The court found two rooms were used by the original tenant as his office, one room by his clerk and the premises had been let for residence-cum business purposes. The plea that the tenant was only granted a licence to use the premises for residence-cum-profession which was personal to him and which came to an end on his death was not accepted. The court agreed with the view expressed in Dr. Gopal Dass Verma's case (supra) that a tenant could not be ejected under section 13(1)(h) because the tenancy of premises let out or used for residence and carrying on of profession could not be terminated merely by showing that the tenant had acquired a suitable residence. the court rejected the contention that the tenant, Labha Mal Arora, had been merely given a permission or licence which was of a personal nature of his office. It also was unable to find that any test of dominant intention was applied in Dr. Gopal Dass Verma's case.

It is not necessary for us to go into the question whether the words "let for residential purposes" would exclude premises let predominantly for residential purposes with a licence to use an insignificant part for professional purposes such as lawyer's or doctor's consulting room. The words used in section 14A are clearly different. Section 14A contemplates the owning by the landlord in the Union territory of Delhi a residential accommodation. If he owns a residential accommodation he has a right to recover immediately possession of any premises let out by him. The emphasis is on residential accommodation. If the premises are one intended for residential accommodation it will not make any difference if the premises are let for residential (1) [1970] 1 S.C.R. 9.

as well as other purposes. Even though the residential accommodation is let for professional or commercial purposes the premises will not cease to be for residential accommodation. It is common ground that the Premises let were put up under the Delhi Development Authority's scheme for residential purposes. The only plea was that though it was put up for residential purposes it was let for residential as well as for professional purposes. The requirement in section 14(1)(e) that in order to enable the landlord to recover possession the premises ought to have been let for residential purposes is not there in section 14A(1). In this view we agree with the High Court that it is not necessary in a petition for eviction under section 14A to satisfy that it was let for residential purposes only. This view has been taken by this Court in *Busching Schmitz Private Ltd. v. P. T. Menghani and Anr.* (1) The submission that as a previous application for possession by the landlord was pending this petition would not be permissible cannot be accepted as the grounds on which an application for possession is filed under section 14A(1) are different and based on special rights conferred on the class of persons who occupied Government accommodation.

The only other question that remains to be considered is the scope of the right to contest the suit, that is, on what grounds can the tenant seek leave to resist the suit filed by the landlord under section 14A(1). The special procedure prescribed under section 25B is made applicable in cases where the landlord applies for recovery of possession on any of the grounds specified in clause (c) of the Proviso to subsection (1) of section 14 or under section 14A. Sub-section (5) of section 25B says that the Controller shall give leave to the tenant to contest it' the affidavit filed by the tenant

discloses such facts that would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the grounds specified in clause (e) of the proviso to sub-section (1) of section 14 or section 14A. Under section 14(1)(e) the tenant may resist the application on the grounds specified namely that the premises are not let for residential purposes, that they are not required holla fide etc. So far as the facts which would disentitle the landlord from obtaining an order under section 14A are concerned they call only be that the landlord is not a person in occupation OF residential premises allotted to him by the Central Government or that no general or special order has been made by the Government requiring him to vacate such residential accommodation (1) [1977] 3 S.C.R. 312.

on the terms specified in the section. Leave to contest an application under section 14A(1) cannot be said to be analogous to the provisions, of grant of leave to defend as envisaged in the Civil Procedure Code. Order XXXVII, Rule 2, sub-rule (3) of the Code of Civil Procedure provides that the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend. Sub-rule (1) of Rule 3 of Order XXXVIII lays down the procedure to obtain leave. Under the provisions leave to appear and defend the suit is to be given if the affidavit discloses such facts as would make incumbent on the holder to prove consideration or such other facts as the court may deem sufficient to support the application. The scope of section 25B(5) is very restricted for leave to contest can only be given if the facts are such as would disentitle the landlord from obtaining an order for recovery of possession on the ground specified in section 14A.

The learned counsel for the tenant submitted that the requirements of section 14(1)(e) should also be satisfied before the landlord could take advantage of the procedure provided under section 25B. The learned counsel drew our attention to section 25C(1) and section 25C(2) and submitted that the reading of these two sub-sections would indicate that before an eviction could be ordered under an application under section 14A(1) the requirements of sections 14(6) and (7) should be satisfied. While section 14(1) enumerates the grounds on which the landlord can get a decree for recovery of possession against a tenant sub- sections (2) to (11) place certain restrictions. Subsection (2) provides restriction as to right for recovery of possession under section 14(1)(e). Restriction regarding the right to recover possession under clause (e) is laid down ill sub-sections (6) and (7) of section 14. Section 14(6) states that where a landlord has acquired any premises by transfer no application for recovery of possession shall lie under sub-section (1) on the ground specified in clause (e) of the proviso thereto, unless a period of five years has elapsed from the date of the acquisition. Sub-section (7) to section 14 lays down that where an order for the recovery of possession of any premises is made on the ground specified in clause (e) of the proviso to sub-section (1), the landlord shall not be entitled to obtain possession thereof before The expiration of a period of six months from the date of the order. Section 25C makes an exception to the requirement of section 14(6) to the effect that where a landlord is in occupation of any residential premises allotted to him by the Central Government or any local authority and who fulfils the requirements of section 14A(1) the requirement under section 14(6) that he would not be entitled to possession unless a period of five years has elapsed from the date of his acquisition of the premises is not applicable In other words, he can straightway obtain possession without the impediment imposed under section 14(6). Great stress was laid by the learned counsel for the tenant on section 25C(2) which provides that in the case of a landlord who, being a person of the category specified in

sub-section (1), has obtained, on the ground specified in clause (e) of the proviso to sub-section (1) of section 14 or under section 14A, an order for the eviction of a tenant from any premises, the provisions of subsection (7) of section 14 shall have effect as if for the words "six months", occurring therein, the words "two months" were substituted. The contention was that if section 14A(1) stood by itself and if a landlord applying under section 14A(1) would straightway get the possession after the tenant cannot contest the suit on the grounds specified in section 25B(5) there is no need for mentioning the provisions of section 14(1)(6) and section 14(1)(7) and prescribing a lesser period for a prescribed period under section 14(7). In other words, the submission was that an application for possession under section 14A should also satisfy the requirements of section 14(1)(e). The provisions of section 25B and 25C are applicable to both applications under section 14(1)(e) and under section 14A. Applications under section 14(1)(e) are governed by section 14(6) and section 14(7). By introduction of section 25C the condition imposed in section 14(6) is varied. The condition imposed under section 14(6) is made not applicable to persons who satisfy the requirements under section 14A meaning thereby that this restriction will be applicable only to an application under section 14(1)(e). Section 25C(2) makes it clear that not only in the case of an application under section 14(1)(e) but also under section 14A the term of six months prescribed in section 14(7) is reduced to two months. The reason for specifying the period of two months in the case of section 14A is understandable for otherwise an applicant under section 14A would be entitled to possession immediately. By prescribing a specific period of two months under section 25C(2) it is made clear that even an applicant under section 14A would have to satisfy the conditions laid down by section 25C i.e. a period of two months should elapse before the landlord is entitled to obtain possession from the date of an order for recovery of possession. This submission also fails.

In the result we hold that the landlord who retired before the date on which the notice to quit was given by the Government is also entitled to the benefits of section 14A and allow the appeal.

P. B. R

Appeal allowed