

Shanti Devi vs.digambar Jain Panchayat Samaj (Regd)

Shanti Devi vs.digambar Jain Panchayat Samaj (Regd)

SooperKanoon Citation : sooperkanoon.com/1211580

Court : Delhi

Decided On : Dec-22-2017

Appellant : Shanti Devi

Respondent : Digambar Jain Panchayat Samaj (Regd)

Advocate for Pet/Ap. : Mr. Akhil Sibal, Mr. Gaurav Bhardwaj, Mr. J. Mitra, Mr. Sudhanshu Batra, Mr. Rajiv Dewan, Mr. Aditya Mishra, Mr. Sachin Datta, Mr. Praveey Pahuja, Mr. Anup J. Bhambani, Mr. Anup Bhambani, Ms. Gurmeet Bindra, Mr. Mr. Anurag Bindal

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI K.S. BHANDARI Date of decision:

22. d December, 2017 RC.REV. 18/2016

... Petitioner

Through: Mr. Akhil Sibal, Sr. Adv. with Mr. Gaurav Bhardwaj & Mr. J.

Mitra, Advs. Versus INTERNATIONAL SECURITY PRINTERS PVT LTD

Respondent Through: Mr. Sudhanshu Batra, Sr. Adv. with Mr. Rajiv Dewan & Mr. Aditya Mishra, Advs. AND + RC.REV. 204/2017 & CM No.15804/2017 (for stay) FRONTIER SALES

... Petitioner

Through: Mr. Sachin Datta, Sr. Adv. with Versus Mr. Praveey Pahuja, Adv.
SUPERIOR EXIM PVT LTD Respondent Through: Mr. Anup J.

Bhambani, Senior Advocate with Ms.Gurmeet Bindra, Adv. AND + RC.REV.
205/2017 & CM No.15807/2017 (for stay) FRONTIER SALES

... Petitioner

Through: Mr. Sachin Datta, Sr. Adv. with Versus Mr. Praveey Pahuja, Adv.
SUPERIOR EXIM PVT LTD Respondent RC.Rev.Nos.18/2016, 204-08/2017,
303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 1 of 34 Through: Mr. Anup
J.

Bhambani, Senior Advocate with Ms.Gurmeet Bindra, Adv. AND + RC.REV.
206/2017 & CM No.15810/2017 (for stay) FRONTIER SALES

... Petitioner

Through: Mr. Sachin Datta, Sr. Adv. with Versus Mr. Praveey Pahuja, Adv.
SUPERIOR EXIM PVT LTD Respondent Through: Mr. Anup Bhambani, Sr.
Adv. with Ms. Gurmeet Bindra, Adv. AND + RC.REV. 207/2017 & CM
No.15828/2017 (for stay) + FRONTIER SALES

... Petitioner

Through: Mr. Sachin Datta, Sr. Adv. with Versus Mr. Praveey Pahuja, Adv.
SUPERIOR EXIM PVT LTD Respondent Through: Mr. Anup Bhambani, Sr.
Adv. with Ms. Gurmeet Bindra, Adv. AND RC.REV. 208/2017 & CM
No.15831/2017 (for stay) FRONTIER SALES

... Petitioner

Through: Mr. Sachin Datta, Sr. Adv. with Mr. Praveey Pahuja, Adv. Versus
SUPERIOR EXIM PVT LTD Respondent Through: Mr. Anup Bhambani, Sr.
Adv. with Ms. Gurmeet Bindra, Adv. RC.Rev.Nos.18/2016, 204-08/2017,
303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 2 of 34 AND RC.REV.
303/2017 & CM No.23452/2017 (for stay) JAI RANI & ANR

... Petitioner

s Through: Mr. Mr. Anurag Bindal, Adv. + Versus LALA JOTI PERSHAD SHIV MANDIR TRUST & ORS Through: Mr. R.S. Kela, Mr. Bharat Gupta

... RESPONDENTS

& Mr. Sanjeev Bindal, Advs. AND + RC.REV. 318/2017 & CM No.24855/2017 (for stay) + SHANTI DEVI Through: Mr. J.P. Malviya, Adv. Versus

... Petitioner

DIGAMBAR JAIN PANCHAYAT SAMAJ (REGD) Through: Mr. Prashant Sharma & Mr. Respondent Kartik Khanna, Advs. AND RC.REV. 396/2017 BADI PANCHAYAT VAISH BISE AGGARWAL (REGD)

... Petitioner

Through: Mr. Ajay Gupta & Ms. Surabhi SUNIL GUPTA Gupta, Advs. Versus Through: Mr. Amoolya Kumar Sharma & Respondent Mr. Tanveer Ahmad, Advs. AND RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 3 of 34 + + + RC.REV. 397/2017 BADI PANCHAYAT VAISH BISE AGGARWAL (REGD)

... Petitioner

Through: Mr. Ajay Gupta & Ms. Surabhi Gupta, Advs. Versus JAI PARKASH GOYAL Respondent Through: Mr. Siddharth Aggarwal, Adv. AND RC.REV. 519/2017 & CM No.41300/2017 (for stay) SURENDER KAUR & ANR

... Petitioner

s Through: Mr. A.S. Chandhiok, Sr. Adv. with Mr. Narender Bhandari, Ms. Sweta Kakkad, Mr. Anukrit Gupta & Ms. Pallavi Kumar, Advs. Versus ANOOP SINGH CHARITABLE TRUST Respondent Through: Mr. Hitendra Kumar & Ms. Surabhi Tondon, Advs. AND RC.REV. 520/2017 & CM No.41302/2017 (for stay) SURENDER KAUR & ANR

... Petitioner

s Through: Mr. A.S. Chandhiok, Sr. Adv. with Mr. Narender Bhandari, Ms. Sweta Kakkad, Mr. Anukrit Gupta & Ms. Pallavi Kumar, Advs. Versus ANOOP SINGH CHARITABLE TRUST Respondent Through: Mr. Hitendra Kumar & Ms.

Surabhi Tondon, Advs. RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 4 of 34 CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW The need, if any, for referring to the Division Bench of this 1. Court the question of relationship and interplay between Section 14(1)(e) and Section 22 of the Delhi Rent Control Act, 1958 (for short the Act) and qua which a Coordinate Bench of this Court in Canara Bank v. T.T. Limited (2014) 214 DLT526 has taken a view, is for adjudication.

2. The question first came up for consideration on 5th July, 2017 when Rent Control Revision Petition Nos. 204 to 208 of 2017 came up for consideration. The said Rent Control Revision Petitions under Section 25B(8) of the Act were filed impugning the common order dated 29th November, 2016 of the Additional Rent Controller-02, Central District, Tis Hazari of dismissal of applications filed by the petitioners therein for leave to defend the five petitions for eviction under Section 14(1)(e) of the Act filed by the respondent Superior Exim Pvt. Ltd. therein with respect to five premises in the tenancy of the five petitioners under the said respondent. It was on that date enquired from the senior counsel for the respondent / landlord as to how the petition for eviction under Section 14(1)(e) of the Act, by a private limited company, was maintainable. The senior counsel for the respondent / landlord drew attention to Canara Bank (supra) and to Madan Mohan Lal Sri Ram Pvt. Ltd. vs. P. Tandon (1981) 2 DRJ308 My recollection of the view earlier taken being to the contrary, RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 5 of 34 the senior counsel for the respondent therein was requested to study the earlier judgments and to revert.

3. In the interregnum, several other Rent Control Revision Petitions against orders, mostly of eviction, in petitions for eviction filed by landlords, who in contradistinction to a natural person, were a juristic person and / or of dismissal of their petitions for eviction under Section 14(1)(e) of the Act came up before this Court and were also posted for hearing along with the petitions aforesaid in which the question had first been raised.

4. During the hearing on 11th August, 2017, it was enquired from the counsels for the landlords that if it were to be held that besides Section 14(1)(e) of the Act, Section 22 can also be invoked by a landlord, who as distinct from a natural person is a juristic person, and the legislature having provided a summary procedure under Section 25B of the Act only with respect to petition for eviction under Section 14(1)(e) and not with respect to petition for eviction under Section 22 of the Act, whether such a landlord can in its own discretion choose a ground of eviction, procedure wherein is to the detriment of the tenant.

5. Since then, several other petitions entailing the same question came up before this Court and all of which were also tagged.

6. 7. All the counsels who choose to be heard have been heard. Before proceeding further, it is deemed appropriate to, for convenience, reproduce herein Section 14(1)(e), Section 14(6), Section 19 and Section 22 of the Act, to all of which a reference was made during the hearing. The same are as under: RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 6 of 34 xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx 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 only, namely: - (a) (b) (c) (d) that the premises let for residential purposes are (e) required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation; Explanation. - For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes. xxx xxx (6) Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises 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. xxx xxx 19. (1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (e) of the proviso to subsection (1) of section xxx xxx xxx xxx xxx xxx xxx RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 7 of 34 14, the landlord shall not, except with the permission of the Controller obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission the Controller may direct the landlord to put such evicted tenant in possession of the premises. (2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub- section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made to him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation' as the Controller thinks fit. xxx xxx 22. Where the landlord in respect of any premises is any company or other body corporate or any local authority or any public institution and the premises are required for the use of employees of such landlord or in the case of a public institution, for the furtherance of its activities, then, notwithstanding anything contained in section 14 or any other law, the Controller may, on an application made to him in this behalf by such landlord, place the landlord in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the Controller is satisfied - xxx xxx xxx xxx (a) that the tenant to whom such premises were let for use as a residence at a time when he was in the service or employment of the landlord, has ceased to be in such service or employment; or RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 8 of 34 (b) that the tenant has acted in contravention of the terms, express or implied, under which he was authorised to occupy such premises; or

(c) that any other person occupation of such premises; or (d) that the premises are required bona fide by the public institution for the furtherance of its activities. in unauthorised is Explanation. - For the purposes of this section, "public institution" includes any educational institution, library, hospital and charitable dispensary. 8. All the aforesaid Sections are to be found in Chapter III, titled Control of Eviction of Tenants, of the Act. Besides the aforesaid provisions, Section 25B of the Act under Chapter IIIA titled Summary Trial of Certain Applications was also referred and is relevant but it is not necessary to reproduce the same here. Suffice it to state that the same provides for a summary procedure for disposal of applications for eviction on the ground of bona fide requirement and is applicable to application by a landlord for eviction of tenant on the grounds specified in Section 14(1)(e) of the Act and in Sections 14A, 14B, 14C and 14D of the Act and is not applicable to the application for eviction under Section 22 of the Act. Under the said summary procedure, as distinct from the tenant being required to file a written statement on service of notice of the petition for eviction and the matter then being put to trial, the tenant, within 15 days of receipt of notice, is required to apply for leave to defend and which is to be granted to the tenant only if it discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession under Section 14(1)(e) of the Act. If such application is not filed within 15 RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 9 of 34 days or if such application does not disclose facts disentiing the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act, an order of eviction follows.

9. At this stage, another development may be noticed. Though Section 14(1)(e) as per its language permits petition for eviction thereunder to be filed only with respect to premises let for residential purposes and required by the landlord for occupation as a residence for himself or for any member of his family dependent on him and when the landlord has no other reasonably suitable residential accommodation available to him, but Supreme Court in Satyawati Sharma (Dead) by LRs vs. Union of India & Anr. (2008) 5 SCC287 has held Section 14(1)(e) to be violative of the doctrine of equality embodied in Article 14 of the Constitution of India in so far as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for

occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only. Thus, now a petition for eviction of tenant under Section 14(1)(e) of the Act can be filed even with respect to premises let for non residential purpose and when the requirement of the landlord is for use of premises for non-residential purposes of himself or of any member of his family dependent on him.

10. As would be obvious from above, both, Section 14(1)(e) & Section 22 make requirement of the premises for self use of the landlord a ground of eviction. While Section 14(1)(e) does not RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 10 of 34 restrict the category / class of landlord who can invoke the same, Section 22, as per its language, restricts invocation thereof only by a landlord which / who is a company or other body corporate or any local authority or any public institution.

11. The doubts which arose in my mind and which led to the hearing and to this adjudication may be succinctly listed as under: (a) Whether Section 14(1)(e), by use of the words himself or for any member of his family dependent upon him therein is restricted to only landlords who are natural persons and cannot be invoked by a landlord who is a juristic person, viz. a company or other body corporate or any local authority or any public institution. (b) Whether landlords, who are juristic persons as distinct from natural persons, if require premises in occupation of tenant, can only invoke Section 22 and not Section 14(1)(e). (c) Whether the landlords who are juristic persons and to whom ground of eviction under Section 22 is not available, even if have requirement of the premises in occupation of their tenant, have no ground of eviction available to them. (d) Whether there can be requirements of landlords who are juristic persons beyond those on which eviction is permitted under Section 22 of the Act and if so, whether not the Act discriminates between landlords who are natural persons and landlords who are juristic persons and whether not such discrimination will come in the way of transfer/holding of RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 11 of 34 properties in the juristic entities and which in turn may come in the way of economic development of the country. (e) If it were to be held that to a landlord who is a juristic person, Section 14(1)(e) is also

available, then whether not it will confer a choice in such landlord to either invoke Section 14(1)(e) or invoke Section 22 for evicting the tenant and whether not the same would be prejudicial to the tenant for the reason of Act providing summary procedure only for petition for eviction under Section 14(1)(e) and not for petition for eviction under Section 22 of the Act.

12. Before recording the contentions of the counsels, it is also deemed expedient to record some of the judgments cited on the subject. A. a. Chuni Lal vs. University of Delhi 1970 RCR (Rent) 742 The question for consideration before the Court was, whether University of Delhi being a body corporate and a public institution could, for eviction of its tenant, proceed only under Section 22 of the Act or also had available to it grounds of eviction under Sections 14(1)(b), 14(1)(d) and 14(1)(h) of the Act. (Sections 14(1)(b), (d) and (h) of the Act entitle the landlord to seek eviction of the tenant on the ground of the tenant, i) having sublet, assigned or parted with possession of the tenancy premises without consent in writing of the landlord; ii) the tenant or any member of his family, for a period preceding six months immediately before the date of filing of RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 12 of 34 the application for eviction, having not resided in the premises; and, iii) the tenant having acquired vacant possession of or having built or allotted a residence. b. It was held that (i) Sections 14 and 22 are both parts of the same Act and ordinarily it is not practice of the legislature to repeal one provision of the Act by enacting a repealing provision in the same Act; (ii) that if Section 22 had not been enacted at all, the definition of landlord in Section 2(e) of the Act would have admittedly included juristic entities like a company, a body corporate, local authority or a public institution and these landlords would have been able to apply for eviction of their tenants under Section 14, like any other landlord who might be natural persons; (iii) the landlord who happens to be a company, a body corporate or a public institution still continues to be covered by the definition of landlord in Section 2(e) and therefore all provisions of the Act concerning the landlord are applicable to them; and (iv) the words notwithstanding anything contained in Section 14 were incorporated in Section 22 so that the absolute prohibition against eviction of tenants under Section 22 does not apply to a landlord applying under Section 22 and so the landlord applying under Section 22 is not restricted merely

to the grounds enumerated in Section 14(1) of the Act but is enabled to avail himself of additional grounds mentioned in Section 22. c. There is no direct contradiction between Section 14 and Section 22 - it is only an incidental inconsistency. RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 13 of 34 d. The subject matter of Section 14 and Section 22 are distinct; normally the application of Section 22 would not in any case involve any opposition of Section 14. e. A corporate body or a public institution is similar to natural persons in many respects. f. There is no reason why a corporate body or a public institution should not be able to apply under Section 14 of the Act for eviction of their tenants. g. It is only in so far a body corporate or a public institution is different from natural persons that additional grounds of eviction have been provided for them by Section 22. h. The relationship of Sections 14 and 22, therefore, is that all landlords are able to apply under Section 14 but only the landlords who are corporate bodies or public institutions are entitled to apply under Section 22. i. Such corporate and public institution landlords have been given the ordinary grounds under Section 14 and additional grounds under Section 22. j. Impersonal institutions are less likely to evict their tenants on flimsy grounds than would be the case with ordinary landlords; these impersonal institutions would have certain special reasons why they would like to evict their tenants through special reasons which would not be available to ordinary landlords; the distinction between the two is based on intelligible differentia. k. The Act does not give any arbitrary discretion to choose a remedy by Section 22 as had been given to the Government in RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 14 of 34 Northern India Caterers Pvt. Ltd. vs. State of Punjab AIR 1967 SC1581 as the grounds of eviction under Section 22 are different from those under Section 14 and it could not be said that the institutional landlord has been given the right of choosing to apply either under Section 14 or under Section 22 on one and the same ground of eviction; such a landlord would be compelled to apply either under Section 14 or under Section 22 accordingly as the ground is covered by the former or by the latter. l. A landlord who has available grounds of eviction under Section 14 as well as under Section 22 does not practice any discrimination against the tenant by availing of both. m. Such a landlord cannot avail himself of Section 22

unless the special grounds of eviction mentioned therein are present. B. Madan Mohan Lal Sri Ram Pvt. Ltd. (supra) a. The question for consideration was, whether the ground of eviction under Section 14(1)(e) was available to a private limited company. The contention of the tenant was that Section 14(1)(e) and Section 22 operate in the same sphere and since Section 22 is confined only to specific category of landlords, Section 22 must prevail. b. It was held that (i) whenever a company, body corporate or local authority or a public institution requires the premises for use of their employees, it is Section 22 alone which would be applicable and not Section 14(1)(e); (ii) this however does not RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 15 of 34 mean that other provisions of Section 14 cannot be invoked by such a landlord; (iii) as held in Chuni Lal (supra), the grounds under Section 14 are in addition to the grounds under Section 22; (iv) Section 22 is concerned only with specific type of cases, namely, where the premises are required by a company for use of its employees; (v) Section 22 is not concerned with other grounds which are available under Section 14; (vi) that some circumstances may exist where a company may require premises not for its employees but still for its residence; (vii) in such a case, Section 14(1)(e) can also be invoked; (viii) one such case can be where the premises are required for residence of companys chairman who may not be regarded as an employee of the company; (ix) in such a case, the company would be entitled to invoke Section 14(1)(e); (x) however, where the company requires the premises for its employees, only the provision of Section 22 which has been specifically enacted for this purpose would be attracted; (xi) that as long as facts exist on record, it is immaterial whether in the application, the petitioner has written Section 14(1)(e) or Section 22; (xii) it would be open to the landlord even at the stage of appeal or revision to invoke the provisions of Section 22 even if the petition for eviction had been filed under Section 14(1)(e); and (xiii) though Section 22 does not use the expression bona fide, but it is evident that the requirement for the use of employees by the employer must be bona fide. RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 16 of 34 C. a. Sudhan Singh vs. University of Delhi (1986) 1 SCC611The consistent findings of the Rent Controller, Rent Control Tribunal and this Court, of the landlord Delhi

University requiring the premises for use of its employees and allowing the petitions for eviction under Section 22 of the Act were under challenge. b. It was held that (i) in invoking Section 22, a public institution is not subject to the restrictions imposed by Section 14 or by any other law; and (ii) use of the building for residence of the employees is intimately linked with the activities of the university. D. a. E. a. Ram Partap Vs. Birla Cotton and Spinning and Weaving Mill 1987 1 RCJ493 In this case, the order of eviction under Section 14(1)(e) of the Act in favour of the respondent/landlord company was set aside following Madan Mohan Lal Sri Ram Pvt. Ltd. (supra) and holding that since the requirement pleaded was for the dwelling house for the employees, Section 22 was available and Section 14(1)(e) could not be invoked. Birdhi Chand Jain Charitable Trust vs. Kanhaiya Lal Sham Lal ILR (1973) Del 144 The question for consideration was, whether the landlord Birdhi Chand Jain Charitable Trust was a public institution within the meaning of Section 22 of the Act and whether the requirement RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 17 of 34 pleaded was in furtherance of the activities of such public institutions. b. It was found that the trust deed brought into existence public charitable trust. c. It was held i) that a public trust comes into existence when property is transferred for charitable and public purposes, but a public institution cannot be said to exist unless organized activity is undertaken to carry out such public purposes; ii) that while a trust is primarily a legal concept, a mode of transfer of property and of holding property, on the other hand, an institution is primarily a social concept and not at all a legal concept; iii) that only when the trust so created starts carrying on the activity for carrying on which it has been created, would it become a public institution; iv) reasoning, that Birdhi Chand Jain Charitable Trust had only been created and had not started carrying on the activities for which it was created, it was held that it was a not a public institution within the meaning of Section 22 of the Act; and, v) that it could not be the intention of the legislature that any landlord who is unable to evict his tenants under Section 14 may create a public trust of the property and then get the tenants evicted and for this reason only, the benefit of Section 22 had been given only to public institutions. RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 18 of 34 F. a. Canara Bank v. T.T. Limited (supra)

The court was concerned with an order of eviction under Section 14(1)(e) of the Act for the reason of the leave to defend having not been filed within the prescribed time. b. In the light of Prithipal Singh vs. Satpal Singh (2010) 2 SCC15 it was held that the delay in filing leave to defend could not be condoned. c. The contention of the tenant however was that since the landlord T.T. Limited was a company, it was not entitled to invoke Section 14(1)(e) of the Act. d. The question for consideration was, whether Section 22 of the Act was available to a company when the requirement was the residential use of its employees. e. It was held, that (i) to a company, sub-section (d) of Section 22 is not available; (ii) sub-section (a) of Section 22 is also not available when the tenant is not the employee of the landlord company; (iii) that the landlord company thus did not have available to it Section 22 of the Act; iv) that a landlord company which needs the tenancy premises for residential need of its employees cannot be left remediless; (v) once Section 22 was not available, the general entitlement for eviction of tenant under the grounds mentioned in proviso to Section 14(1) would apply; and, (vi) it would be very incongruous to accept the argument that a landlord company can neither invoke Section 22 nor can apply under Section 14(1)(e). RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 19 of 34 G. Ravinder Kumar Verma vs. Laxmi Narayan Mandir Nirman Sabha 2016 SCC OnLine Del 6024 a. H. a. Referring to an earlier judgment in Bhim Sen Batra vs. Shreyans Buildwell Pvt. Ltd. (2015) 221 DLT413 it was held that the earlier judgments rendered prior to the dicta of the Supreme Court in Satyawati (supra) which made Section 14(1)(e) applicable to commercial tenancies also, would not apply. Judgment dated 10th March, 2015 in R.C. Rev. No.391/2013 titled Prabhu Dayal Batra vs. Shreyansh Buildwell Pvt. Ltd. In this case, the order of eviction under Section 14(1)(e) on the ground of requirement of the tenanted premises for carrying on business of the landlord company was upheld. b. Section 22 of the Act was held to be not available for the said requirement. c. It was held that even if employees sit in the office, it cannot be said that the premises are required for the use of the employees inasmuch as the use pleaded was of the landlord company itself.

13. Let me now set out the kind of juristic entity the landlord in each of the petitions is and the requirement pleaded.

14. M/s Superior Exim Pvt. Ltd. in R.C. Rev.No.204 to 208 of 2017 is a private limited company and the requirement pleaded is for the residence of its employees.

15. Lala Joti Prasad Shiv Mandir Trust in R.C. Rev. No.303/2017 is pleaded to be a trust managing a public temple and the requirement RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 20 of 34 pleaded is for storage of footwear and belongings of the devotees visiting the temple and for holding the other festivals celebrated in the temple.

16. International Security Printers Pvt. Ltd. in R.C. Rev. No.18/2016 is a private limited company and the requirement pleaded is for residence of its directors.

17. Digambar Jain Panchayat Samaj (Regd.) in R.C. Rev. No.318/2017 is a society engaged in preserving Jain traditions, customs and working towards upliftment of Jain Samaj by running and managing Jain Temples and the requirement pleaded is for construction of toilet-cum-bath complex for the Jain Temple and Dharamshala and for the residence of the visiting Jain munis.

18. Badi Panchayat Vaish Bise Aggarwal (Regd.) in R.C. Rev. Nos.396/2017 and 397/2017 is a registered society under the Societies Registration Act, 1860, engaged in various charitable activities, inter alia, of providing food, clothes and financial assistance to widows, providing medical help to all without discrimination of caste, age and sex. The requirement pleaded of the ground floor premises is for the sake of avoiding inconvenience of climbing stairs to its old patrons. \ 19. Anoop Singh Charitable Trust in R.C. Rev. Nos. 519/2017 and 520/ 2017 is a trust created for charitable purposes which has not been able to commence its charitable dispensary as per its aims and the requirement pleaded is for the purposes of setting up a dispensary to provide allopathic, homeopathic and Unani treatment to its patrons.

20. Mr. Anup J.

Bhambhani, senior advocate for Superior Exim Private Limited aforesaid argued (i) that Section 14(1)(e) and Section RC.Rev.Nos.18/2016, 204-08/2017, 303/2017,

318/2017, 396-97/2017 & 519-20/2017 Page 21 of 34 22 are distinct and have different requirements for suing thereunder; (ii) that while under Section 14(1)(e), the person suing besides being the landlord is required to be the owner also, there is no such requirement under Section 22 of the Act; (iii) while to Section 14(1)(e), Section 19 (supra) is also attracted, there is no such restriction qua Section 22; (iv) in Northern India Caterers Pvt. Ltd. (supra) (though overruled in Maganlal Chhaganlal Vs. Municipal Corporation of Greater Bombay (1974) 2 SCC402, in the context of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, it was held that if a law were to provide for differential treatment amongst persons similarly situated, it violates equality clause of Article 14 of the Constitution of India; (v) that discrimination would result if there are two available procedures - one more drastic or prejudicial to the party concerned than the other and which can be applied at the arbitrary will of the authority; (vi) however, the minority view of Bachawat, J.

in the said judgment also was that the law may allow a litigant a free choice of remedy proceedings and tribunals for the redressal of his grievance and the plaintiff being dominus litis has the option of suing in one of the several courts having concurring jurisdiction; (vii) example was given of courts of different territorial jurisdictions having concurrent jurisdiction and a plaintiff having a choice whether to file an ordinary suit or a suit under Order 37 of the CPC; (viii) the law does not violate Article 14 because it gives an aggrieved party the free choice of remedies and proceedings for the redressal of his grievance; (ix) election of remedies is an option very frequently given by law to a RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 22 of 34 person entitled to an action; (x) the unauthorized occupant has full authority of being heard and of producing his evidence before the Collector; (xi) in Magan Lal Chhagan Lal Pvt. Ltd. (supra) the majority view in Northern India Caterers Pvt. Ltd. (supra) was overruled and the minority view of Bachawat, J.

accepted; (xii) thus, merely because Section 14(1)(e) as well as Section 22 may be available to a landlord which is a juristic entity and because a petition under Section 14(1)(e) is to be tried under a summary procedure while a petition under Section 22 is to be tried under the regular procedure would not make the statute

arbitrary; attention was invited to *Olive Marques Vs. Union of India* (2013) 199 DLT727 holding the summary procedure under Section 25B to be not onerous; (xiii) that Section 22 was not available to Superior Exim Pvt. Ltd. for the requirement pleaded of the premises for residence of its employees.

21. I had enquired from Mr. Bhambhani, senior advocate whether not the ingredient, cited by him in Section 14(1)(e) of the landlord being requirement to be owner also, and which is not to be found in Section 22, had been diluted in *Shanti Sharma Vs. Ved Prabha* (1987) 4 SCC193 where it has been held that the requirement in Section 14(1)(e) of being the owner is not of absolute ownership but merely of something more than a tenant. It was further enquired, whether not what prevailed with Bachawat, J.

in his minority view in *Northern India Caterers Pvt. Ltd.* (supra) was the factum of the person against whom the proceedings were directed being an unauthorized occupant and having no equity in his favour and whether the same could be said of tenants for whose protection the Delhi Rent RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 23 of 34 Control Act had been enacted. It was further enquired, whether the reason that prevailed with Bachawat, J.

in his minority opinion and is spelled out therefrom was that if the Act were to be struck down, it would give free charter to unauthorized occupants to continue in occupation thereof for an indefinite period during the pendency of a civil suit. It was yet further enquired whether not the reasoning in the minority opinion, of a Collector being also equally competent to adjudicate as a civil court is not contrary to the specific judgment of the Constitution Bench in *Union of India Vs. Madras Bar Association* (2010) 11 SCC1 qua the necessity to have judicial member in the tribunals. Attention of Mr. Bhambhani was also invited to the differences in the procedure to be followed in a petition for eviction under Section 14(1)(e) and in a petition for eviction under Section 22 of the Act; while to a petition under Section 22 of the Act, Section 37, requiring an opportunity to lead evidence to be given, is in full play, it is not so in Section 14(1)(e) till leave to defend is granted. Though Section 25B(7) also refers to Section 37, but Supreme Court in para 19 of

Precision Steel & Engineering Works Vs. Prema Deva Niranjana Deva Tayal (1982) 3 SCC270 has held the same to be not entitling an opportunity to lead evidence to be given at the leave to defend stage. It was yet further enquired from Mr. Bhambhani as to how it could be urged that clauses (b) and (c) of Section 22 were not available to Superior Exim Pvt. Limited; Superior Exim Private Limited as the landlord can always claim the tenants to have acted in contravention of the terms implied under which they were authorized to occupy such premises and the position of the tenant having become RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 24 of 34 unauthorized, by issuing a notice of determination of tenancy under Section 106 of the Transfer of Property Act, 1882.

22. Mr. Bhambhani contended that Section 106 of the Transfer of Property Act is not applicable to Rent Control proceedings.

23. I am afraid that is not correct. All that Supreme Court in V. Dhanapal Chettiar Vs. Yesodai Ammal (1979) 4 SCC214 held was that determination of tenancy by a notice under Section 106 is not necessary for instituting a petition for eviction under the Rent Control Act. It was not held that the Transfer of Property Act does not apply to the premises covered by the Rent Control Act. It is always open to a landlord of a premises covered by the Rent Control Act to serve on the tenant a notice of determination of tenancy and after which date the tenant continues in possession of premises by virtue of protection afforded by the Rent Control Act but not under a contractual agreement. Without such notice, even in the absence of a registered lease deed, a contract between a landlord and tenant is deemed to be renewed month by month when the tenant tenders the rent and the landlord accepts the same.

24. Mr. Sudhanshu Batra, Senior Advocate for International Security Printers Pvt. Ltd. contended that the requirement pleaded of the premises for residence of the directors was not within the ambit of Section 22 inasmuch as the director is not an employee of a company. Reference was made to Satnam Kaur Vs. Ashlar Stores Pvt. Ltd. MANU/DE/0258/2009 (where 14(1)(e) of the Act was held to be available for requirement for residence of Chairman and Directors) and to Chuni Lal (supra).

RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 25 of 34 25. It was however enquired from Mr. Sudhanshu Batra, Senior Advocate, whether not it was his plea that the Director was an Executive Director and drawing salary from International Security Printers Pvt. Ltd. and whether not such a Director is also an employee.

26. Mr. Batra, fairly did not contradict the same.

27. Mr. R.S. Kela, Advocate for Lala Joti Prasad Shiv Mandir Trust contended that the said trust was not covered by Section 22 and the Explanation to Section 22 expressly excluded private trust. A copy of the trust deed was also handed over in the Court. Reliance was placed on Birdhi Chand Jain Charitable Trust (supra).

28. Mr. Ajay Gupta, advocate for Badi Panchayat Vaish Bise Aggarwal (Regd.) stated that the memorandum of the society was not on record and in the subsequent hearing, handed over the same and to which objection was taken by the counsel for the tenant.

29. Mr. Hitendra Kumar, Advocate for Anoop Singh Charitable Trust contended that the trust deed was on record and the trust has one property only and its activities are still to be commenced.

30. Mr. Kartik Khanna, Advocate for Digambar Jain Panchayat Samaj (Regd.) stated that he was not prepared.

31. I will hereafter summarize the contentions of the counsels for the tenants.

32. Mr. Sachin Datta, Senior Advocate for the tenants of Superior Exim Pvt. Ltd. contended that (i) Chuni Lal (supra), though held that Section 22 is in addition to Section 14, but Section 14(1)(e) was not for consideration therein; (ii) the subsequent judgments in Madan Mohan Lal Sri Ram Pvt. Ltd. (supra) and Birla Cotton (supra) RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 26 of 34 unequivocally held that for requirement of employees, Section 14(1)(e) is not available and only Section 22 is applicable; (iii) in Canara Bank (supra) also though eviction was sought for requirement of its employees, inconsistently with the earlier judgments, it was held that Section

14(1)(e) is available; and, (iv) Supreme Court in Magan Lal Chhagan Lal (supra), as a matter of fact, found the procedure to be not drastic and which is not so in the present case.

33. Mr. Gaurav Bhardwaj, advocate for the tenant of International Security Printers Pvt. Ltd. contended that the requirement of International Security Printers Pvt. Ltd. was also for Executive Director who is an employee and thus what has been argued by the Senior Counsel for the tenants of Superior Exim Pvt. Ltd. applies equally to his case.

34. Mr. Anurag Bindal, advocate for the tenant of Lala Joti Prasad Shiv Mandir Trust contended that (i) the said Trust has been held to be a public trust and the landlord has admitted so; (ii) reliance was placed on Shanti Devi Vs. State AIR1982 Del 453; (iii) that Section 22(d) would be rendered redundant if Section 14(1)(e) were to be applicable; and (iv) that the non-obstante clause with which Section 22 begins ousts Section 14.

35. Mr. J.P. Malviya, advocate for the tenant of Digambar Jain Panchayat Samaj (Regd.) contended that the requirement pleaded in that case was for expansion, for construction of Dharamshala and a toilet and was covered by Section 22(d) and specific overrules general. RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 27 of 34 36. Mr. Siddharth Aggarwal, advocate for the tenant of Badi Panchayat Vaish Bise Aggarwal (Regd.) contended that (i) the landlord was a public institution carrying on charitable activities and the requirement pleaded was for expansion of its activities which requirement was expressly covered by Section 22(d) of the Act; (ii) that Section 14(1)(e) and Section 22 are not merely procedural provisions but substantive provisions affecting rights of the landlords and tenants; (iii) Superior Exim Pvt. Ltd. Vs. Sitar Ram Goel MANU/DE/3889/2012 does not lay down any ratio and was of dismissal of a petition preferred against grant of leave to defend; (iv) reliance was placed on Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India (1980) 4 SCC435 to contend that the scope and object of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the Rent Control Act has been held to be different and the Rent Control Act has been held to be of much wider

application than the Public Premises Act inasmuch as it applies to all private premises which do not fall within the limited exceptions indicated in Section 2 of the Public Premises Act and (v) thus, the principle in Northern India Caterers Pvt. Ltd. (supra) and Magan Lal Chhagan Lal (supra) relating to Public Premises Act would not apply to Rent Control Act.

37. Mr. A.S. Chandhiok, senior advocate for tenants of Anoop Singh Charitable Trust contended that (i) the gamut of each ground of eviction in the Act is different and there are different jurisdictional requirements for invoking each of the said grounds; (ii) it is not as if the landlord has been vested with any choice; (iii) that a company RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 28 of 34 incorporated under Section 25 of the Companies Act, 1956 equivalent to Section 8 of the Companies Act, 2013 may also be a public institution; (iv) that the Explanation to Section 22 is inclusive and not exclusive or exhaustive; (v) that every Section of the Rent Control Act entitling the landlord to evict the tenant is distinct; (vi) special provision is made for the requirement of landlords falling in Sections 14A to 14D even though their cases would have been covered by Section 14(1)(e); (vii) that Chuni Lal (supra) was not concerned with Section 14(1)(e) and thus this Court in that judgment had no occasion to consider Section 14(1)(e) vis-a-vis Section 22; (viii) that the word employee would cover even a non-executive director; and (ix) that though for filing a petition under Section 14(1)(e) of the Act with respect to premises situated in slum areas, the permission under the Slum Areas (Improvement and Clearance) Act, 1956 is not required, but the same will be required for a petition for eviction under Section 22.

38. I had enquired from Mr. Chandhiok, whether it was his contention that a landlord which is a company can never sue under Section 14(1)(e).

39. Mr. Chandhiok replied that a landlord which is a company can sue Section 14(1)(e) if the requirement is for setting up of a factory and it would not be covered by Section 22. It was however clarified that if such company is a company incorporated under Section 25 or Section 8 (supra) and a public institution, then for such requirement also, it cannot sue under Section 14(1)(e).

40. Mr. Anup J.

Bhambani, senior advocate in rejoinder contended that there may be requirements of a landlord which is a juristic entity RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 29 of 34 where both Section 14(1)(e) and Section 22 will be attracted and contended that the choice in such case would be of the landlord.

41. I have considered the rival contentions only from the perspective of whether any reference to a larger Bench is required or not.

42. In my view, vis--vis a landlord which is a company, reference is indeed required inasmuch as the view taken in Canara Bank (supra) where the requirement pleaded was for residence of its employees, petition under Section 22 has been held to be not maintainable when in the earlier judgment in Madan Mohan Lal Sri Ram Pvt. Ltd. (supra), it was unequivocally held that whenever any landlord which is a company requires the premises for use of its employees, it is Section 22 alone which would be applicable and not Section 14(1)(e). There is thus an inconsistency in the two judgments of Coordinate Benches of this Court.

43. I am also, with respect, unable to agree with the reasoning given in Canara Bank (supra) for Section 22 to be not available to such a landlord i.e. of neither of the clauses of Section 22 being applicable. As enquired by me during the hearing and recorded above, I am of the view that such a landlord can avail of clauses (b) and (c) of Section 22, by terminating the contractual tenancy of the tenant by service of a notice under Section 106 of the Transfer of Property Act and whereupon the tenant would be in contravention of the implied term under which he was authorized to occupy the premises and/or would be in unauthorized occupation of the premises. RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 30 of 34 44. Though in Madan Mohan Lal Sri Ram Pvt. Ltd. (supra), it was also held that this Court can treat the case as under Section 22 of the Act, but I am unable to do so for the reason of the difference in procedure prescribed for deciding an application under Section 14(1)(e) and Section 22 of the Act as discussed above. Moreover, against an order of eviction under Section 22, the remedy available would be of an appeal before the Rent Control Tribunal.

45. We are in this bunch of cases concerned with two other kinds of landlords which are a juristic entity, namely, trusts and society. The next question is whether any reference to a larger Bench is required for such cases also.

46. As the narrative aforesaid would show, the only reported judgment qua Trusts and Society is Birdhi Chand Jain Charitable Trust supra. It is deemed appropriate that once the Division Bench of this Court is seized of the aforesaid controversy, it may consider the matter qua the said aspect as well.

47. Even otherwise, Section 22, as per its language, applies to a landlord who / which is a company or other body corporate or any local authority or any public institution. Though a trust may not qualify as a other body corporate and for which reason Section 22 of the Act may not be applicable to it but a society would certainly qualify as a other body corporate within the meaning of Section 22 of the Act. A question may however arise, whether a public charitable trust carrying on organized activity, though not a other body corporate, would qualify as a public institution. RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 31 of 34 48. I am unable to find any pari materia provision to Section 22 in the Rent Control Laws of any other State. In the absence of such a provision, it has been held that a company or a trust or a society, for their requirement for their own use of premises let out by them, are entitled to invoke the same provision for eviction as available to landlords who are natural persons, for their requirement of premises for own use. Reference in this regard may be made to B.M. Lall Vs. Dunlop Rubber Co. (India) Ltd. AIR 1968 SC175 Gur Narain Jagat Narain & Co., Lucknow Vs. Motor & General Sales Ltd. 1980 SCC OnLine All 165, Manick Lal Ghosh Vs. Gokuldas Mundra 1991 SCC OnLine Cal 187 (DB), Umed Singh Vs. Arya Samaj Sewa Sadan (2006) 5 SCC437 and Speedline Agencies Vs. T. Stanes & Company Ltd. (2010) 6 SCC257 49. I am thus satisfied that a need for referring to the Division Bench of this Court, the questions as aforesaid, indeed exists.

50. On the basis of the above and for the sake of convenience, I hereinbelow list the questions which may be answered by the Division Bench: (i) Where the landlord is a company or other body corporate or any local authority or any public

institution and the premises are required for the use of employees of such landlord, whether such landlord has a choice, whether to invoke Section 14(1)(e) or Section 22 of the Act. (ii) Whether the Chairman, Directors, Trustees, members of the governing body and office bearers, of a company or RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 32 of 34 other body corporate or any local authority or any public institution qualify as employees, within the meaning of Section 22 of the Act and if not whether such landlord for requirement of such persons is entitled to invoke Section 14(1)(e) of the Act. (iii) Whether the tenant of such a landlord can be construed as having acted in contravention of the terms under which he was authorized to occupy the premises or be construed as in unauthorized occupation of the premises, within the meaning of Section 22(b) and (c) of the Act, on continuing in occupation after determination of his tenancy under Section 106 of the Transfer of property Act, 1882. (iv) Whether the commercial or industrial or other requirement of a landlord, which / who is a company or other body corporate or any local authority or any public institution, of premises, by allowing its employees to work or carry on its activities therein is within the ambit of Section 22 of the Act and if not, whether for such requirement such a landlord can invoke Section 14(1)(e) of the Act. (v) Whether a public charitable trust carrying on public activities qualifies as a public institution. RC.Rev.Nos.18/2016, 204-08/2017, 303/2017, 318/2017, 396-97/2017 & 519-20/2017 Page 33 of 34 (vi) Whether a deity in a temple owning properties or a trust or a society managing a place of worship qualifies as a public institution. (vii) Whether the choice if any with such a landlord, to invoke either Section 14(1)(e) or Section 22 of the Act, is to the detriment of the tenant and if so to what effect.

51. The aforesaid questions are only illustrative and it will be open to the counsels to urge any other question for consideration of the Division Bench of this Court.

52. The matters be placed before Honble the Chief Justice for constituting a Bench for consideration of the aforesaid questions.

53. Subject to orders of Honble the Chief Justice, list before the appropriate Bench on 29th January, 2018. RAJIV SAHAI ENDLAW, J.

