

Basha Baig Vs. Choodanath

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Court : Karnataka

Decided On : Mar-04-1988

Reported in : ILR1988KAR1632

Judge : Patil, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1)

Appeal No. : C.R.P. No. 800 of 1983

Appellant : Basha Baig

Respondent : Choodanath

Advocate for Def. : J.S. Gunjal, Adv.

Advocate for Pet/Ap. : H.B. Datar, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Patil, J.

1. This revision filed under Section 50 of the Karnataka Rent Control Act, 1961, hereinafter referred to as the Act, is directed against the order of eviction dated 31-1-1983 passed by the 19th Additional Judge, Court of Small Causes, Bangalore

City.

2. Premises bearing Nos.1 & 2 situated at Chinnappa Garden, Lalbagh Road, Bangalore, more particularly described in the schedule to the original petition is the subject of dispute. It belongs to the family of Respondents-1, 2 & 3, who are related among themselves as full brothers. C.H. Keerti Sunder and C.H. Lokanath are their other two brothers. When the family was still joint, Keerti Sunder, as Karta of joint family, leased the said premises (open site) under a registered lease deed dated 20-9-1965 (Ex.P-1) in favour of S.K. Khader Sheriff, original respondent-1, since deceased whose legal representatives have been arrayed as respondents in this revision, on a monthly rent of Rs. 275/- for a period of five years commencing from 20-9-1965 for the purpose of running an automobile workshop and parking buses, the rent being payable on or before 10th of each following month. In terms of the lease, the lessee was permitted to take water and power connections, but in the name of the lessor and bear the charges himself. In terms of the lease, it was also agreed that the lessor shall apply for licence enabling the lessee to put up temporary structure, for the use for which the premises was let out, at the cost of the lessee and to obtain power and water connections and after the expiry of the period of lease to remove the temporary structure and deliver vacant possession of the premises in its original condition but without removing water and power connections. It was however agreed that neither he should put up or erect any permanent structure nor mortgage nor transfer in any manner nor part with the possession of the whole or any part of the demised premises and shall not also use the premises for any other purpose other than the purpose for which the premises was leased.

3. After the premises was so leased, on 4-5-1970, there was a partition among the five brothers and the premises in question was allotted to the share of respondents-1 to 3, each taking 1/3rd share, as described in the partition deed Ex.P-2. There is however controversy if immediately after the partition, the lessee was informed of the partition. While according to respondents-1 to 3, Keerti Sunder had informed and requested to attorn to them, according to the lessee Khader Sheriff - for the first time he came to know of the partition in August, 1971, when notice of termination of tenancy Ex.P-4 was received. However, the

respondents-1 to 3 instituted proceedings for eviction on 27-10-1971 on the grounds mentioned in Clauses (a) and (h) of Sub-section (1) of Section 21 of the Act contending inter alia that he had committed default in payment of rent and the premises were also reasonably and bona fide required for their own use as they intended to bifurcate the property by metes and bounds into three equal parts and take their share and erect new structure thereon for their own use and occupation ; that is for erection of industrial shed with stores and office accommodation for the 1st respondent herein and for construction of houses for residence of respondents-2 & 3. The original lessee Khader Sheriff, who contested the application denied that he had either deliberately committed default in payment of rent or was aware of the partition until receipt of the notice of termination dated 17-8-1971, and after receipt of the said notice a cheque for Rs.3,575/-representing the rent from July 1970 to July 1971 was sent to Keerti Sunder, but the same was returned by him and, therefore, there was no default on his part. He also denied that respondents-1 to 3 required the premises reasonably and bona fide for their own use and the application for eviction as brought by them was also not maintainable without they terminating the tenancy or serving quit notice (According to him, notice regarding termination issued by Keerti Sunder was not available to them). He also contended that in terms of lease, he had put up sheds and workshop at the cost of Rs.37,000/- and invested money for enclosing the premises and any order passed for eviction without reimbursing him the amount would cause great hardship to him. The respondents-1 to 3 thereafter amended their original petition by adding paras 5(a) and 5(b) claiming eviction of the original tenant Khader Sheriff on the grounds mentioned in Clauses (c) and (f) of Section 21 (1) of the Act, contending inter alia that he had not only erected a permanent structure on the premises by digging a well of the depth 35' to 40' and 4' to 5' diameter without their consent and had thus damaged the property to a great extent, but he had also unlawfully sub-let the 'part of the premises' to one D. Jayaram doing business under the name and style of Janatha Automobiles and therefore also he is liable to the evicted forthwith. It may be mentioned here, Khader Sheriff did not oppose the amendment, but A.R. Sheriff (since deceased, whose legal representatives have been brought on record), who claimed to have purchased the running concern Janatha Travels from the original tenant-

respondent Khader Sheriff and paying the rent to the lessors since then, having got impleaded as respondent-2 on the application made by him as I.A-7 opposed the amendment. The petitioner herein Basha Baig, who claimed to have purchased the running concern from A.R. Sheriff was impleaded on the application I.A-17 in the teeth of the objections to his impleading. It does not appear the case was set down for objections or the petitioner herein filed any objections. The case was straightaway posted for evidence.

4. During enquiry, the 2nd and the 1st respondents herein, i.e., original petitioner Nos.2 and 1, were examined as PWs-1 and 2. Their brother Keerti Sunder was also examined as PW-3. The petitioner Basha Baig himself was examined as RW-1.

5. The Court below raised the following points for consideration :-

(1) Whether the respondents have either paid or tendered the whole arrears of rent, legally recoverable from them, within two months of the date on which a notice of payment of arrears of rent has been served?

(2) If not, whether there are sufficient and proper reasons for not doing so?

(3) Whether the respondent or respondents erected a permanent structure on the premises without the consent of the petitioners in writing?

(4) Whether the 1st respondent and other respondents unlawfully sub-let the whole or part of the premises or assigned or transferred in any other manner, his interest or their interests therein?

(5) Whether the schedule premises is required by the petitioners reasonably and bonafide for occupation by themselves?

(6) Whether greater hardship would be caused to the petitioners by passing a decree than by refusing to pass it?

6. On appreciation of evidence, the Court below held that the original tenant Khader Sheriff neither paid the rents in arrears within two months of service of notice (Ex.P-4) regarding payment of rent served on him nor had shown sufficient

cause for not doing so. Accordingly, answered points-1 and 2 in the negative. The Court below also further held, not only as admitted by Basha Baig RW-1, the original respondent-1 Khader Sheriff had dug out a well, but, as admitted by him (RW-1), he had put up the shed on the entire length of the premises from east to west. Although he contended that permanent structures had been put up with the permission, but he had not produced any such permission given to him in writing. Thus, permanent structures, including sinking of the well, had been put up in violation of the terms of the lease deed Ex.P-1 and therefore the tenant was liable to be evicted under Clause (c) of Section 21(1) of the Act. The Court below also further held that not only part of the premises had been sub-let to Jayaram contrary to the terms and conditions of lease, but Khader Sheriff had also sold his leasehold rights in favour of A.R. Sheriff after the expiry of lease period and service of notice terminating the tenancy in violation of the terms and conditions of the lease deed and A.R. Sheriff had in turn sold to Basha Baig. Since after the expiry of the period of lease Khader Sheriff had no interest in the premises, he could not convey such right or interest and that was not only contrary to the terms and conditions of lease, but contrary to the provisions of the Act and the tenant was therefore liable to be evicted. Considering the point regarding the requirement of the premises for personal use and occupation of respondent-1 to 3, the Court below also held that Choodanath who was working as an Engineer in HMT wanted to put up industrial shed in a portion of the premises allotted to his share, as per the proposed plan Ex.P-15 at the estimated cost of Rs.1,54,700/-, and respondents-2 and 3, who were presently residing in the house of their brother wanted to put up residential houses in the portions of premises allotted to their share. While Choodanath had a sum of Rs.58,315/- in his Provident Fund Account of H.M.T. as evidenced by Ex.P-27, the respondents being partners, by themselves or through their wives, in Allied Electricals, there was a balance of Rs.65,000/- as on 18-2-1982 in State Bank of Mysore, as evidenced by Ex.P-22, and a sum of Rs.1,01,974/- in the Current Account and since they have no other site or residential house of their own, the requirement of the premises was not only bona fide but they had sufficient funds to back up the proposed construction of the shed and residential houses. In that view, the Court below, taking into consideration that there were 40 workers employed by Basha Baig and their

livelihood would also be affected, proceeded to make order of eviction granting time of four months to give vacant possessions of the premises, the correctness of which is sought to be challenged in this revision.

7. Mr. Datar, learned Counsel for the petitioner, argued neither a notice as provided under Clause (a) of Sub-section (1) of Section 21 of the Act had been issued, or served nor service of such notice was pleaded in the application, muchless any postal acknowledgement regarding service of such notice said to be in possession of respondents-1 to 3 was produced, nor there is any evidence to show that any such notice under Clause (a) was issued and served on any particular date. Therefore, in the absence of any evidence to show that such notice was issued or posted on any particular date, the Court below was not justified in proceeding to make order of eviction under Clause (a) on the assumption that original of Ex.P-4 (which is also not admissible in evidence, not being signed) must have been served on the tenant around 20-8-1971, and the order of eviction under Clause (a) of Section 21(1) was therefore not sustainable. He also submitted, the Court below was not justified in proceeding to make order of eviction under Clause (c) of Sub-section (1) of Section 21 on the so called admissions given by the petitioner (RW-1) regarding the permanent structures in as much as no such case of permanent structures erected by the tenant over the premises was pleaded; and all that was pleaded in the petition was that the tenant Khader Sheriff had dug out a well. Even assuming he had dug out a well, the well could not be regarded as a structure. The well had been in existence there on the premises leased since almost from inception of lease and at no point of time any objection was raised either for digging or it is being so used and, therefore, the order of eviction passed under Clause (c) of Section 21(1) of the Act was also not sustainable. So far as the order of eviction under Clause (f) of Section 21(1) of the Act was concerned, he submitted eviction was sought not on the ground that there was assignment or transfer of interest in respect of the premises, but on the ground that part of the premises leased was sub-let to D. Jayaram, who according to the allegations in the petition was doing business under the name and style of Janatha Automobiles, and the allegations made were vague to attract the provisions of Clause(f). When Khader Sheriff was permitted to erect shed for the purpose of business for which the premises was let out to him, even if he had permitted Jayaram to carry on the

business in the said shed or let out the shed so erected by him, since the shed erected belonged to him, the permission given to Jayaram to carry on the business in the shed would not attract the provisions of Clause (f) and therefore the Court below was wholly in error in proceeding to make the order of eviction on the ground not pleaded in the original petition. So far as the order of eviction under Clause (h) of Sub-section (1) of Section 21 of the Act was concerned, learned Counsel for the petitioner submitted that neither the requirement of the premises for personal use and occupation was properly pleaded nor any plan of the proposed construction of industrial shed or residential houses were got prepared or approved or sanctioned, muchless produced with the application made for eviction, as tried to be made out during enquiry, and those plans produced were not only got prepared subsequently, but admittedly the plan of the industrial shed or houses have not so far been approved and sanctioned, therefore, in the absence of necessary pleadings in the petition, the Court below was not justified in relying upon the evidence produced during enquiry and reaching the conclusion that the premises were also required by the landlords for personal use and occupation and hence the order of eviction deserves to be set aside.

8. Mr. J.S. Gunjal, learned Counsel appearing for respondents-1 to 3, on the other hand, submitted that the petitioner had no locus Standi to file the revision questioning the correctness of the order of eviction passed by the Court below. In support of this contention, he also placed reliance on the decision in the case of PACHAPUTI VENKATESWARLU v. K. SUBRAHMANYAM & ORS., 1973 R.C.J. 162. He submitted that no relief was also sought as against him by respondents-1 to 3. He was impleaded as respondent No. 3 in the Court below on his application; because he had sought to be impleaded, he being in possession of the premises leased to Khader Sheriff. Therefore, the revision has to be dismissed in limine without going into merits of the case. Mr. Gunjal also further submitted, if for any reason this contention is rejected, the Court below was justified in making the order of eviction. Although Khader Sheriff filed objections contesting the application, but after his death the L.Rs. have neither filed any objections to the application made for eviction on the additional ground nor have adduced any evidence in rebuttal of the evidence of respondents-1 to 3. The evidence adduced by the respondents--1 to 3 has remained almost unchallenged. Therefore, there

are no grounds to interfere with the order of eviction as made by the Court below. He also submitted, arrears of rent due payable were demanded by notice dated 17-8-1971 (Ex.P-4) and the service of that notice having been admitted by Khader Sheriff in the objection statement filed by him, in the absence of any proof to show that Khader Sheriff had paid or tendered the arrears of rent within two months of service of notice, the Court below was right in making the order of eviction under Clause (a) of Section 21(1) of the Act, particularly when no sufficient cause had been pleaded or proved for not paying or tendering the rent within two months of service of notice. He also further submitted, existence and putting up of permanent structure by Khader Sheriff as disclosed from Ex.P-5(1) to Ex.P-9(a) having been admitted, the Court below has not committed any error in making the order of eviction on the ground mentioned in Clause (c)

The fact that the premises had been sub-let to D. Jayaram, as spoken to by PW-1, having remained unchallenged and the L.Rs. of Khader Sheriff having also not entered the witness box, the sub-lease in favour of Jayaram has been proved and therefore it cannot be said that the Court below has committed any error in making the order of eviction on the ground mentioned in Clause (f) of Section 21(1) of the Act. Besides, by their own showing A.R. Sheriff and the petitioner Basha Baig admittedly being transferees in possession of the premises, Khader Sheriff having no such right of transfer, and the transfer of the demised premises being in violation of the provisions of law, the Court below was also justified in taking into consideration the admitted facts and the order made even on that ground is sustainable and there is no reason to disturb those findings or the order of the Court below on that ground. He submitted, although the respondents-landlords had not pleaded in detail in their application regarding the plan of the proposed construction of industrial shed or residential houses, but they had stated that they require the premises leased for their personal use and occupation for such purpose and not only Khader Sheriff had sufficient notice of it and the L. Rs. had also not chosen to file any objections to the pleadings raised by the landlords and no prejudice can also said to be caused to them and for want of pleadings alone, the claim for eviction under Clause (h) cannot be rejected, particularly when the evidence adduced by the landlords in this behalf has also remained almost unchallenged. Therefore, there are no grounds at all to interfere with the order of

eviction as passed by the Court below.

9. Mr. Datar, replying to the objections raised by Mr. Gunjal, regarding locus standi of the petitioner in preferring the revision or questioning the order of eviction submitted such objections had to be raised at the earliest opportunity and no such objections had been raised. Nevertheless, he submitted, in a proceedings for eviction under Clause (f), sub-tenants or assignees are also proper parties to the proceedings and the petitioner being in possession and he having been impleaded has every right to prefer revision.

10. Before going to the merits of the case, it is necessary to deal with the objections raised by the learned Counsel for respondents-1 to 3 regarding locus standi of the petitioner to file the revision. Although the revision came to be filed in the year 1983, for the first time this objection is sought to be raised during the course of final hearing. Because of this objection raised, the case had to be adjourned. Mr. Datar, it appears, was right in submitting that such objections as pointed out in the case of KATRAGADDA CHINNARAMAYYA v. CHIRUVELLA VENKANRAJU & ANR., : AIR1954 Mad864 had to be raised at the earliest opportunity. In the case of Pachaputi Venkatswarlu v. K. Subrahmanyam & Ors., 1973 R.C.J. 162 when the transferee of a tenancy who was not a party to the proceeding, sought for impleading as an appellant in appeal preferred by the tenant/transferor, it was held that he could not come on record as an appellant in the appeal preferred by the transferor/tenant against the order of eviction. The facts in the case on hand are quite different from the facts in the said case. In the case on hand, from the facts narrated earlier itself it is clear how the petitioner sought to be impleaded in the proceedings. First A.R. Sheriff was arrayed as respondent-2 in the Court below and after the business was transferred, the petitioner also sought to be impleaded on the same terms as A.R. Sheriff and he was accordingly impleaded ; although not a necessary party but, he being in possession of the premises, he was a proper party to the proceedings. However, it would appear he was not given any opportunity of filing objections. He was allowed to participate in the proceedings and also lead evidence. As claimed by him, he has been in possession of the premises. He is not only interested in the result of the case, but to protect his possession. In a case like this where the

original tenant and his legal representatives, for the reasons best known to them, have not participated in the proceedings from subsequent stages, it may also be open and permissible to the person like the petitioner in possession of the property to protect his possession, to show how the orders of eviction made against the original tenant/s is not sustainable. At any rate, the petitioner having been impleaded as party to the proceedings of eviction brought in the Court below and the respondents having allowed him to come on record as a party to the proceedings, they cannot be permitted to raise these contentions at the belated stage. He being a party to the proceedings in the Court below he is entitled to prefer revision against the order of eviction which is adverse to and affecting his interest in the subject of dispute. Accordingly, the contention raised is rejected.

Now coming to the merits of the case, it appears proper to deal with different grounds of eviction separately as argued by the Counsel for respondents-1 to 3.

11. Taking the first ground under Clause (a) of Section 21(1) of the Act, there is no room for doubt service of notice of two months demanding arrears of rent is a condition precedent. That is the settled position of law. Such notice has to be served in the manner as provided under Clause (a) itself by tender or delivery either personally to him or to a member or servant of his family at his residence or by affixture to a conspicuous part of the premises.

Further, there being a partition and different portions of the premises leased having gone to share of three different landlords, each one of them was required to serve notice demanding payment of arrears of rent to the extent of his share. No such notice has been served either separately or jointly demanding payment of arrears by each of the landlords separately according to their shares. All that the landlords stated in para-4 of the application is : 'The petitioners submit the respondent is a chronic defaulter in payment of rent and he has to pay the rent right from 1-7-1970 upto 31-9-1971 amounting to a sum of Rs.4,125/-, he neither paid the same nor deposited the same, thus he forfeited the right of lease.' In evidence also all that the landlord C.H. Chandrasekhar, examined as PW-1, stated was: 'Respondent was not regular in payment of rent. At the time we filed the petition, the respondent was in arrears of Rs.4,000/-. Notice was served on the

respondent with 2-3 days. The postal acknowledgement is with my earlier lawyer.' Neither the notice spoken to by him has been produced nor the acknowledgement. It is not his case that he personally posted the notice spoken to by him. The Court below has proceeded on the assumption that notice Ex.P-4 which was admittedly served on Khader Sheriff fulfils the requirement of Clause (a) and that also appears to be the contention of Mr. Gunjal, learned Counsel for the landlords. The original notice has not been produced. What is produced is a copy of the notice. As pointed out by Mr. Datar, it neither bears the signature of the Advocate who is said to have issued the notice, for and on behalf of the landlords, nor of any of the three landlords, who have sought for eviction of the tenant Khader Sheriff on the ground mentioned under Clause (a). A reading of Ex.P-4 would go to show that for the first time the landlords thought of bringing to the notice of the tenant Khader Sheriff of they becoming landlords of the premises pursuant to the partition of the family property and while informing Khader Sheriff of he being in arrears of rent and he continuing in possession of the premises after efflux of period of lease, called upon him to attorn to them and pay the arrears of rent and by the same notice they also sought to terminate the tenancy on the ground that the premises was also required for their personal use and occupation. Apart from the fact that, as rightly pointed out by Mr. Datar, not only such copy of the notice not signed by the Advocate or Party is not admissible in evidence; it appears, it does not fulfil the requirement of the provisions of Clause of Section 21 (1) of the Act. Therefore, notice Ex.P-4 being not referable to be one required to be served under Clause (a) and service of such notice being a condition precedent for seeking eviction for default in payment of rent, in the absence of pleading & proof of such service of notice, the Court below was not right in making the order of eviction under Clause (a) of Sub-section (1) of Section 21 of the Act.

12. Coming to the case of the landlord for eviction under Clause (c) of Sub-section (1) of Section 21 of the Act, as rightly argued by Mr. Datar, the Court below, it appears, has fallen in error in taking into consideration certain admissions elicited in the cross-examination of the petitioner in making the order of eviction. The admissions elicited are 'Khader Sheriff also had put up permanent structure'. 'Ex.P-5(1) to P-9(a) pertain schedule premises.' These admissions, it appears, cannot also be read conjunctively. They are distinct facts, i.e. Ex.P-5(a) to Ex.P-9(a)

relate to the schedule premises and Khader Sheriff had put up permanent construction. It cannot be said the permanent construction spoken to by him, put up by Khader Sheriff, are the ones as disclosed from photos Exs.P-5(a) to P-9(a). Assuming in the worst situation and considering these admissions favourable to the landlords, that is not the ground on which the landlords had sought for eviction. Although it is stated in para-5(a) of the petition by amending their original petition that tenant had erected a permanent structure on the premises leased, but according to them that permanent structure was a well which, according to them, he had dug out to a depth of 35 to 40 feet and 4 to 5 feet diameter and he had constructed the well without any consent or permission and has thereby damaged the property to a great extent. Leave aside the fact that nowhere evidence is clear as to the time when the well was dug, can such digging of a well be considered as an erection of a permanent structure, is a question. The expression 'structure' has not been defined under the Act. The dictionary meaning of the expression 'structure' is - 'building' any complex whole; frame work or essential parts of a building'. That being so, mere digging of a well (without there also being any construction of well dugout) cannot be said to be a structure or for that matter permanent structure. There is also nothing in the evidence to show that the well dugout had been constructed. Therefore, even if the well had been dugout and thereby any damage was caused to the land demised, that may at best attract Clause (o) of Section 21(1) of the Act; but unless serving a notice to the tenant in the prescribed manner requiring him to stop misuse of the premises and the tenant has refused or failed to comply with such requirement within one month of the date of service of notice, no application for eviction under Clause (o) of Section 21(1) of the Act would lie; and no order for eviction against the tenant shall be made unless the Court is satisfied that the misuse of the premises is of such a nature that it is a public nuisance or that it causes damage to the premises or is otherwise detrimental to the interests of the landlords. Therefore, the order of eviction passed under Clause (c) of Sub-section (1) of Section 21 of the Act cannot be sustained.

13. Now, coming to the eviction of the premises sought on the ground mentioned in Clause (f) of Sub-section (1) of Section 21 of the Act, it appears, it is very difficult to sustain the order of eviction the order of eviction as passed by the Court

below. There seems to be also no merit in the various contentions advanced by Mr. Gunjal, learned Counsel for the landlords. To be precise, the case of the landlords as pleaded in the petition was: 'The respondent herein (meaning thereby Khader Sheriff) has unlawfully sub-let part of the premises to one D. Jayaram, who is doing business under the name and style of Janatha Automobiles and thereby liable to be evicted forthwith. Sub lease of the premises in terms of lease deed Ex.P-1 was undoubtedly prohibited. The provisions of Section 23 of the Act also prohibits sub-lease without consent of the landlord and under Clause (f) of Section 21 (1) of the Act, where the tenant unlawfully sub-lets the whole or part of the premises or assigns or transfers in any other manner his interest therein, the landlord is entitled to seek eviction of the tenant. Even subletting part of the premises leased will give a right to the landlord to seek eviction of the tenant on the ground mentioned in Clause (f). Although the landlords here, in the case on hand, stated that a part of the premises had unlawfully been sub-let, nowhere in the evidence they have clarified as to which of the part of the premises leased had been sub-let. As stated earlier, while narrating the facts of the case, in terms of lease deed Ex P-1, the tenant Khader Sheriff was permitted to erect sheds for his use for the purpose for which the premises was let out. Of course, he had to take licence for such erection in the name of the landlords and erect those structures at his own cost. It is nobody's case that he had not taken licence for erection of such shed. It is also nobody's case that he had not complied with the terms of lease by not obtaining the licence in the name of the landlord. No where such a plea is raised or for that matter any evidence is let in. Khader Sheriff had been using the premises leased to him by erecting sheds. Having regard to the length of time for which he was in possession, it may be presumed that the landlords had notice of this fact; and the shed he had erected on the open site leased also belonged to him; because in terms of the lease deed Ex.P-1, after the expiry of the lease period, he had also to remove the sheds erected by him and deliver vacant possession of the open site leased to him in its original condition, without causing much damage incidental to such removal. Although the open site leased belongs to the landlords, Khader Sheriff was the owner of the sheds erected by him. The concept of law of dual ownership in such case is well recognised. Having regard to the fact that the plea raised by the landlords in the petition is vague, for not

specifying which part of the premises leased had been sub-let to Jayaram, it cannot be said the landlords can successfully maintain their application under Clause (f). The question of law in this regard is covered by the decision of the Supreme Court in the case of MRS. DOSSIBAI v. KHEMCHAND, : [1962]3SCR928 following which this Court in the case of VAZAYIL MOHAMMED v. SRIDHAR PURANIK, : AIR1977 Kant129 held that Clause (f) Of Subsection (1) of Section 21 of the Act is not applicable in cases of letting out of the bunk shops erected by the tenant on the open land leased to him with permission to erect the same. I am bound by these decisions. Therefore, I have no hesitation to hold that the Court below was wholly in error in making the order of eviction under Clause (f) of Section 21(1) of the Act, merely because it transpired during enquiry, as contended by A.R. Sheriff and the petitioner that the premises had been transferred by Khader Sheriff, since the landlords had not sought for eviction on that ground and they had proceeded with the enquiry only on the ground mentioned in para-5(b), namely a part of the premises had been sub-let to Jayaram. Although the legal representatives of the deceased tenant have not contested the proceedings and have also not chosen to examine themselves in rebuttal of the evidence adduced by the landlords, those so called admissions cannot be made a basis for making the order of eviction. To do so would be making out a new case for the landlords. That is not permissible. Hence, that is no ground to hold that the landlords could seek eviction of the tenant on the ground not pleaded by them; because as pointed out by their Lordships of the Supreme Court in the case of RAMSARUP GUPTA v. VISHUN NARAIN INTER COLLEGE, : [1987]2SCR805 the parties cannot be allowed to travel beyond the pleadings.

14. Now coming to the last ground of eviction under Clause (h) of Section 21 (1) of the Act, the case of the landlords is that the premises is reasonably and bona fide required for their personal use since they wanted to bifurcate the property by metes and bounds into three equal portions and take their share and erect new structure thereon for their own use and occupation, that is for erection of an industrial shed with stores and office accommodation for the 1st respondent herein and for construction of residential house for respondents-2 and 3. These were bare facts pleaded in the petition without any averments about plan of the proposed building and the preparedness to construct or capacity to backup their

proposed construction of houses or industrial shed. Even there was any slightest indication as to the nature of industrial shed the respondent-1 wanted to erect or what sort of industry he wanted to start. Admittedly respondent-1 Choodanath was already employed and was working as an Engineer in H.M.T. He had neither prepared plan of the proposed industrial shed nor had obtained sanctioned plan or licence for erecting shed, when the application for eviction was made. So also respondents-2 and 3 had neither produced any plans of the proposed construction nor the plans of the residential houses proposed to be constructed were got approved and sanctioned. There is no denial of the fact that even till the proceedings reached the final stage of hearing they had no plans, nor obtained licence for construction nor the plans of the proposed construction were got sanctioned. Of course, they have stated during enquiry and there is evidence to show that they have capacity to backup the proposed construction and funds are available, as observed by the Court below during the course of its order of eviction. What value can be attached to such evidence without there being necessary pleadings. Such pleadings in detail regarding the nature of requirement, extent of requirement, preparedness with the plans of the proposed construction and above all the capacity to back-up the proposed construction had to be pleaded in the application; because not only the tenant must have the opportunity to meet the case of the landlord, but having regard to the provisions of law the Court has also to form its opinion regarding the bona fide and reasonableness of the requirement of the landlord since it is obligatory on the part of the Court to consider not only the question of hardship to be caused to the tenant but also the possibility or otherwise of making partial eviction without causing hardship either to the landlord or the tenant and the tenant is also in certain cases entitled to re-occupy the premises after construction. It may be in a proper case where the tenant had proper opportunity of meeting the case tried to be made out during enquiry by cross-examining the landlord and his witnesses, the want of pleading by itself may not be made a ground for rejecting the application for eviction, if it could be said that the tenant knew what was the requirement of the landlord, but where there was no such opportunity, prejudice being writ large, it may not be proper for the Court to make an order of eviction taking into consideration the evidence adduced during the enquiry; because such evidence adduced during

enquiry without pleading is valueless and has to be eschewed. Therefore, the Court below was not right in making the order of eviction on the basis of the evidence not pleaded in the application.

In the result and for the reasons stated above I hold the order made on all the four grounds is unsustainable. The revision is allowed and the order of eviction under revision is set aside.

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