

Ramu Vs. C.H. Ramakrishna

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Court : Karnataka

Decided On : Feb-14-1992

Reported in : ILR1992KAR1894; 1992(2)KarLJ425

Judge : Shivashankar Bhat, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 11, 21(1) and 21(4)

Appeal No. : C.R.P. No. 3285 of 1991

Appellant : Ramu

Respondent : C.H. Ramakrishna

Advocate for Def. : Mushtaq Ahmed, Adv.

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

Disposition : Petition allowed

Judgement :

ORDER

Shivashankar Bhat, J.

1. The landlord of the premises in question is the Revision Petitioner; his petition under Section 21(1)(h) of the Karnataka Rent Control Act, 1961, ('the Act' for short) seeking eviction of the respondent on the ground of landlord's requirement

to' occupy his own premises was dismissed by the trial Court. According to the petitioner he has been residing in a rented premises and that his landlord has been pressing him to vacate the house occupied by the petitioner as a tenant. Petitioner was paying a rent of Rs. 2,250/- per month, to his landlord; the rent received by the petitioner from the respondent is also the same amount. The schedule premises is in the 2nd floor of the building owned by the petitioner. The ground floor and first floor are tenanted by another tenant who runs a hotel by name 'Hotel Guruprakash'; the 3rd floor has 14 rooms let out to school students. 'Hotel Guruprakash' pays a rent of Rs. 6,000/- p.m. The ground floor and the first floor face the 10th Main Road, IV Block, Jayanagar, which is entirely a commercial locality, busy always with vehicular traffic. The 2nd floor, (the schedule premises) and the third floor face the 28th 'A' Cross, which is entirely residential. The third floor has 14 rooms and the said floor cannot be used conveniently as a residential house; the ground floor and the first floor were let as a single unit and the said unit also is not suitable for residence, as it is essentially commercial in nature facing the commercial road. The 2nd floor is having big drawing and dining halls, two bed room, a pooja room, store, bath and toilet rooms; according to the eviction petition, a part of the big hall can be easily converted into a bed room. Petitioner would occupy the 2nd floor after making requisite alterations. It is unnecessary to refer to other averments. Eviction petition was filed in October, 1987.

2. The respondent contended that he occupied the schedule premises on 18th November 1989 on a monthly rent of Rs. 1,780/- and subsequently the rent was increased to Rs. 2,250/-; the alleged demand made against the petitioner by his landlord to vacate the premises occupied by the petitioner was not a genuine demand at all and therefore there was no need at all for the petitioner to seek respondent's eviction. The requirement of the petitioner was not reasonable, and bona fide, because the petitioner did not occupy the first floor; the 3rd floor also is convenient for his residence.

The plea that the petitioner is only a rent collector need not be considered, as it was not pressed.

The respondent further averred in the objection statement that there are a few more tenants in the ground floor and these tenants occupied the shops recently. All those tenants are carrying on their business. The third floor could be occupied by the petitioner, because, students vacate their room after the academic year and after the examinations are over. Entire building has the same environmental features and the second floor, equally suffers from the noise in the locality. The 2nd floor is also not suitable for residential purposes. It has a kitchen, store room and a toilet room; but there is no bath room; it is suitable to run the restaurant only. According to the respondent no alternative accommodation was available in the locality wherein he can carry on his business if evicted from the schedule premises. The petitioner's real intention is to increase the rent and the eviction petition was filed only because the respondent did not agree to pay a higher rent.

The trial Court has practically accepted the version of the respondent and dismissed the eviction petition.

3. Basically the question for consideration is whether the petitioner has made out a case that he reasonably and bona fide required the schedule premises for his own use and occupation and if so, whether an order of eviction should be made or not having regard to the respective hardships that may result by the order one way or the other. In this regard, necessarily the correctness of the trial Court's order has to be examined. The trial Court held :

(1) The contention of the respondent that in view of the recent surgery undergone, petitioner cannot climb the stair case of 30 feet, is not acceptable and the deposition of the Doctor (R.W.2) in fact, supports the petitioner's contention that, he can climb the stair case now.

(2) The eviction petition filed against the petitioner, by his landlord seeking possession of the premises occupied by the petitioner, is not a collusive proceeding.

(3) The 3rd floor was throughout used for non-residential purposes, and rooms were being let out only to students and that 'admittedly the third floor has no facilities for residence, for housing facility.'

(4) The schedule premises was being put to non-residential purposes from the inception of its construction, except for about 4 or 5 months. The letter of the Corporation Ex.P.14 does not say that the schedule premises is residential. The character of the entire building will not be altered and will be commercial. The schedule premises also is to be used only for commercial purposes, even as per the lease agreement between the petitioner and the respondent.

(5) The schedule premises has no requisite bed room and other accommodation required in a residential premises and for the size of the petitioner's family, the accommodation in the schedule premises will be 'out of proportion' and that no wise landlord can think of converting such a commercial premises for residence.

(6) As per Ex.R.10, in the year 1984 petitioner issued quit notice to 'Hotel Guruprakash' to vacate the ground and first floor, stating that he required them for his personal use and occupation, but petitioner did not pursue the matter, obviously, because he was able to extract a higher rent from the said tenant and the rent was increased to Rs. 6,000/- from Rs. 3,600/-p.m.

(7) The nuisance and the noise from the 10th Main Road equally affect all the four floors.

(8) First floor is more convenient to be used for residence than the 2nd floor in view of the facility available there.

(9) The need of the petitioner for accommodation arose in the year 1976; but the petitioner did not occupy any of the floors owned by him, even after he cleared his debts incurred for the construction. Petitioner owns four revenue sites in the names of his children. In spite of financial affluence, petitioner chose not to occupy his own premises at any time, only, because, the building was meant to be used for commercial purposes.

(10) The hardship to the respondent by an order of eviction will be greater as he will not be able to carry on his business for want of accommodation.

(11) The requirement of the petitioner is not reasonable.

The trial Court has rejected the petitioner's claim for possession mainly, because - (i) the entire building is commercial, (ii) the petitioner did not occupy any of the available floors earlier, even though need for a house existed to him, (iii) it is unwise to occupy a premises for residence, in a commercial locality and (iv) petitioner was interested in getting the rent increased.

4. It was contended for the petitioner the the approach of the trial Court was entirely wrong and the ultimate conclusion was the result of certain unwarranted assumptions. For example, when petitioner said as P.W. 1, that he needed a house in 1976, he did not mean, he required the very premises for his occupation, but the need stated by him was in another context; till the year 1976, he was alone in Bangalore and members of his family were residing in the village. When they had to be shifted to Bangalore, a need arose for him to have a house but he had incurred debts, Having regard to these circumstances he thought it prudent to hire a house, rather than live in the building constructed by him. Similarly there is no universal rule of prudence that a wise man would not reside in his own house located in a commercial locality, The locality of the schedule premises is not entirely commercial; white the ground and the first floor face the X Main Road, which is commercial, other floors face the residential locality, with access from the road lying in the residential area. A decision to reside in the 2nd floor of a building which is located in such an area cannot be brushed aside as unwise and consequently, as unreasonable. Depositions of witnesses examined by the respective parties were read in detail to point out the alleged patent errors in the approach of the trial Court.

5. This is a case where there can be no doubt that the petitioner requires the premises for his own use and occupation. At the time he filed the eviction petition, his landlord had already asked him to vacate the house tenanted by him. Subsequently, an eviction petition was filed as per HRC.1144/89. While the eviction petition filed by the petitioner (which is the subject matter of this Revision Petition) was dismissed by the trial Court on 29-6-1991, the very same trial Judge ordered the eviction of the petitioner, in HRC. No. 1144 of 1989, by an order dated 1-7-1991 granting him six months time to vacate. Therefore, the petitioner herein has already suffered an order of eviction, though he has challenged it in CRP.No.

3286/91 and was heard by me along with the instant Revision Petition; I am confirming the said order of eviction. Therefore, the present Revision petitioner certainly requires an alternative premises for his own occupation. The trial Court also has given a definite finding that the eviction proceedings initiated by the petitioner's landlord against the petitioner was not collusive meant to create a requirement to enable the petitioner to evict the present respondent. In fact, there is nothing on record to support such a case put forth by the respondent. Petitioner and members of his family are residing in Bangalore ever since the year 1976 and the petitioner's children are being educated in Bangalore. He has no other premises of his own in Bangalore.

6. The next question is whether the said requirement of the petitioner is reasonable and bona fide. The contention of the respondent is that, the petitioner's attempt is to let out the schedule premises again for higher rent and since the building is located in a commercial area, it is unreasonable to expect him to choose the schedule premises for his residence and that the building itself is meant to be used for commercial purposes.

7. In para-11 of the objection statement, the respondent pleaded that the petitioner has been a 'habitual increase of rents' and stated that the respondent was paying rent at the rate of Rs. 1,750/- p.m earlier; after four years, respondent has been paying a rent of Rs. 2,250/- and the demand of the petitioner is now for Rs. 3,000/- p.m. Petitioner as P.W.1 stated that in the year 1979, when the lease was granted the rent was Rs. 1,750/- and after 11 months it was increased to Rs. 2,000/- p.m. and then further increase was to Rs. 2,250/- p.m. The building was constructed in the year 1975. Increase of rent or Rs. 2,250/- was about 4 years from the date of deposition (deposition date June 1990). He denied the suggestion that he demanded higher rent of Rs. 3,000/-, earlier to the filing of the eviction petition. The respondent as R.W.1 has tried to develop his case further. In his deposition recorded on 7-11 -90, he said, -

'About 3 years back, the petitioner demanded for higher rent at Rs. 3,000/- p.m. I did not agree to pay that much Court agreed to pay Rs. 2,500/- p.m. The petitioner did not agree. I have paid an advance of Rs. 20,000/-. Other than the Advance

amount, I had given a Goodwill of Rs. 1,00,000/-.'

Subsequently, he said that he did not take any receipt for having paid the advance amount and that he had informed his Counsel regarding the advance amount and 'goodwill' at the time of filing the objection statement and that he was not aware whether these are mentioned in his objection statement. Thus, here is a clean development in the defence of R.W.1. Nowhere he pleaded earlier that he had paid any advance and that he had paid a huge amount of Rs. 1,00,000/- as 'goodwill'. Though objection statement was amended for some other person, these facts were not included by the amendment. No such suggestion was made to the petitioner as P.W.1. The trial Court has ignored this relevant factor, while examining the respondent's plea as to the petitioner's motive. R.W.1 is prone to exaggerate his case, is thus quite clear. In his evidence recorded on 19-2-1991, R.W. 1 admits that, -

'I enhanced the rent to Rs. 2,750/-. I have taken the no-objection certificate from the petitioner and the neighbours at the time of starting the bar.'

This statement shows that the enhancement of rent was by R.W. 1, obviously when he expanded his restaurant to have a 'bar'. Though R.W.1 is an income-tax assessee, he has not shown the 'goodwill' in his returns; he feigns ignorance as to whether payment of advance amount was shown in the income-tax returns.

8. The respondent sought to establish his case of 'oblique motive' in the petitioner by pointing out that the petitioner, admittedly, has increased the rent payable by 'Hotel Guruprakash'. In the year 1989 when P.W.1 was examined initially, said rent was Rs. 6,000/- per month. Initially when it was let out to B.M. Ramakrishna (who runs the said hotel), rent was Rs. 3,600/-, since about the year 1989 the rent was Rs. 6,000/-. In the meanwhile there was one increase by which the rent was Rs. 5,000/-. On 18th June 1991, when P.W.1 was again examined, this rent had become Rs. 6,500/- R.W.1 admits the steep rise in prices. In the restaurant run by R.W.1 (respondent), rate of eatables was increased to double (This was stated on 22-11 -90); this was due to the increase in prices. Apart from Hotel Guruprakash there are other tenants in the ground floor. It is not the case of the respondent that higher rents were demanded from these tenants. Only because, Hotel

Guruprakash, a long standing tenant, agreed to pay a higher rent, it cannot be said that the present eviction petition was filed against the respondent herein to lease the premises again to someone else for a higher rent, or, that it is motivated because the respondent refused to pay a higher rent. The trial Court does not categorically give at ending that petitioner had demanded higher rent from the respondent, which the latter refused and therefore the eviction petition was filed by the landlord. With the increase in prices of commodities and taxes, naturally any landlord would like an enhancement in the rent. If the rate of rent increased in the case of Hotel Guruprakash is an indication, similar request to increase the rent payable by the respondent cannot be held as unreasonable and if really there was such a demand, as a prudent businessman, respondent would have paid a higher rent. Therefore, it is not possible to hold that the eviction petition is vitiated by an oblique motive on the part of the landlord. The manner in which the respondent tried to develop his case by putting forth an unbelievable case of payments towards advance and goodwill, reflects on his credibility. His deposition as R.W.1 cannot be accepted straightaway, at its face value.

9. I am fully aware of the principle that appreciation of oral evidence is primarily for the trial Court and even a first appellate Court shall not take a different view (vide: Smt. RAJBIR KAUR AND ANR. v. S. CHOKOSIRI & CO., : AIR 1988 SC1845 In this regard the Supreme Court observed at page 1854:

'The proposition that the appellate Court should not too lightly interfere with the appreciation of oral evidence made by the trial Court particularly based on the credibility of the witnesses whose demeanour the trial Court has had the advantage of observing is too well settled to require reiteration. A clear exposition of the Rule as to what extent the appellate Court should regard itself as bound by the conclusion reached by the trial Court on questions of fact is to be found in the speech of Lord Thankerton in Watt v. Thomas 1947 AC 484 at pp. 487-488. 'I do not find it necessary to review the many decisions of this House, for it seems to me that the principle embodied therein is a simple one, and may be stated thus: (I), Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, and appellate Court which is disposed to come to a different conclusion on the printed evidence should not do

so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion; (II) The appellate Court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion of the printed evidence; (III) the appellate Court either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses and the matter then will become at large for the appellate Court.'

But in case where there is no question of credibility or reliability of any witness or the question is one of a proper inference to be drawn from proved facts, the appellate Court is - and should be - generally in as good a position to evaluate the evidence as the trial judge is, Lord Reid in *Benamax v. Austin Motor Co. Ltd.*, (1955) 2 WLR 418 at p. 422 observed:

'But in cases where there is no question of the credibility or reliability of any witness and in cases where the point in dispute is the proper inference to be drawn from proved facts, an appeal Court is generally in as good a position to evaluate the evidence as the trial Judge, and ought not to shrink from that task, though it ought, of course, to give weight to his opinion.'

Following passage from *SARJU PERSHAD v. JWALESHWARI PRATAO NARAIN SINGH*, : [1950]1SCR781 is quoted at page 1856:

'The question for our consideration is undoubtedly one of fact, the decision of which depends upon the appreciation of the oral evidence adduced in the case. In such cases, the appellate Court has got to bear in mind that it has not the advantage which the trial Judge had in having the witnesses before him and of observing the manner in which they deposed in Court. This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. The rule is - and it is nothing more than a rule of practice - that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a

particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact.'

10. Therefore, if the conclusion to be arrived at is one of fact based on appreciation of oral evidence, which in turn, depended on the acceptability of the oral evidence, normally, the finding given by the trial Judge has to be respected, because, the credibility of a witness depends upon the impression he creates by his demeanour in the witness box. But while applying this principle one cannot ignore the loose practice prevalent in the Courts, recording the evidence of witnesses in piecemeal, staggering the trial to different dates, and I have come across cases where it took several years to complete the recording of the deposition. In the instant case, examination of P.W.1 commenced on 6-6-1989 and ended on 18-6-1991. In between, his evidence was recorded in stages on several dates, obviously by different Judges. Examination of R.W.1 commenced on 7-11-90 and ended on 6-4-1991. The initial of the Judge who recorded these depositions is different from that of the trial Judge who disposed of the case ultimately. The initials of the trial Judge in the order sheet upto 29-5-1991, are different from the subsequent initials. There was a change in the person of the trial Judge on or about 27-5-1991. The importance to be given to the demeanour of witnesses would lose its weight, when recording of evidence spreads over a lengthy period and certainly it can have no significance when ultimately, the trial Judge who decides the case, is different from the Judge who recorded the evidence.

11. The proceedings under the Act are summary, the object of the Act is to have a speedy culmination of the trial. If there is a real genuine and urgent requirement of an accommodation by a landlord, the very purpose will be defeated by a procrastinated trial and a belated disposal of the case.

12. In the instant case, apart from the above fact, there is an internal indicator in the case of the respondent read with his deposition as R. W. 1, as to why his testimony cannot be straight away accepted. Nowhere he asserted earlier that he

had paid advance amount and also made payments towards goodwill. His pleading is silent on this aspect. No such suggestion was made to P.W.1. Only as R.W.1 he stated so, but, again, he is hesitant about this fact having been shown in his tax returns; he was evasive when he was asked about his income-tax returns. For tax purposes, payment of a large amount towards, 'goodwill', will be a very relevant factor augmenting the capital outlay towards the business and therefore respondent cannot be ignorant of the contents of his tax return.

13. According to the trial Court, the building itself is entirely meant for commercial use and the second floor cannot be occupied for residential purposes. Under the Act there is no such bar. As per Section 11 of the Act, no residential building shall be converted into a non-residential building except with the permission of the Rent Controller. However, the Act nowhere requires any such permission to convert a 'non-residential' building into a residential building. The Act obviously is aimed at preserving residential premises, because, scarcity is felt more in the case of residential premises. In *P. KESAVAN (dead) through L.Rs v. AMMUKUTTY AMMA AND ORS.*, : [1988]2SCR81 Supreme Court considered an almost similar provision of a Kerala Act. In fact Kerala Act required permission of the Rent Controller for conversion of a residential building into a non-residential building or vice versa. The Supreme Court held at page 341;

'It appears clear that this conversion as contemplated for which permission was required is conversion by the tenant and cannot be a conversion by the landlord. Quite apart from the fact that in this case there was no conversion of the building was sought. The building was used for non-residential purpose and the purpose for which the building was sought was for residential purpose. It appears to us that putting to a different purpose the user of the building is not conversion of the building as such. It has been found that the building as it is without any structural change can be put to residential purpose. There was no conversion of the building as such involved in this case but a change of user of the building. Furthermore, in any event the proviso to Sub-section (1) makes it clear, in our opinion, that such conversion as contemplated by Section 17 of the Act for which permission in writing of the Accommodation Controller required is in case of change of the user of the premises by the tenant and not by the landlord.'

14. It is primarily for the landlord to choose the premises for his occupation, provided his requirement is reasonable and bona fide. The choice, of course, cannot be arbitrary. If any other suitable accommodation is available, the landlord cannot give it up or fail to take it, in order to evict another tenant. This is altogether another aspect which has nothing to do with a situation, wherein, the landlord establishes a bona fide and reasonable requirement and no other alternative suitable accommodation is available to him for his occupation. There is nothing illegal under the Act, if the landlord uses a premises for his residence, which hitherto was being used for non-residential purposes. Necessity created out of compulsive circumstances may compel him to shift to a premises owned by him, irrespective of the nature of its past user. Whether, the landlord will be comfortable in the premises and whether it is a prudent act on his part, are essentially for him to decide. Wisdom of the Court cannot step in to save the landlord from his unwise behaviour. However, these abstract theories need not be delved into further, having regard to the proved facts.

15. IV Block, Jayanagar is predominantly a residential area, a fact well known, in Bangalore. However, there is a big commercial complex in the X Main road. On this road dominant activity is trade - a trade in retail catering to the needs of the residents of the locality. Such trading activity is found in many of the residential localities in Bangalore. It is also not an unfamiliar or unknown feature of the present day living conditions, to find people living in first or further floors of a building, having shops in the ground floor. Residential houses in upper floors are located in busy commercial areas in many parts of the City of Bangalore, as elsewhere. Here both sides of the X Main road is commercial; however, 28th 'A' cross, is entirely residential. The premises in question is in a building constructed on a corner site. Therefore, one part of the building is entirely in a residential locality. The evidence is quite clear (and in fact R.W.1 also admits) that the II and III floors face this 28th 'A' Cross Road and these floors have distinct access from the said residential locality. For a residential house, primarily its access and exposure to the outside world are very important. R.W.1 stated in his deposition:

'True that there is a main road leading to the Jayanagar shopping complex towards the west of the schedule premises. It is false to suggest that there are

residential houses towards east of the schedule premises. Towards the east of the schedule premises, there is an office. Beyond that, demolished building; beyond that residential building. I do not know when the building is demolished. I do not know what was there before demolition. It is false to suggest that there are residential houses surrounding the schedule premises. Towards north, except Bank there are no houses. There may be houses. But I cannot say the nature of the buildings. I do not know if there are residential houses towards north of the schedule premises. I do not know as to how many houses are there, towards south of the schedule premises.'

As to the entrance to the 2nd and 3rd floor, P.W.1 has categorically stated it to be from 28th 'A' cross and that 28th 'A' cross is a residential locality. According to P.W.1, the Corporation authorities told him that he cannot use the ground and first floor for residential purposes. Ex. P.14 is a letter of Dy. Director of Town Planning, addressed to the petitioner, which reads;

'With reference to the above subjects, the 28th Cross, 28th 'A1 cross and 29th cross in between 10th and 11th Main, IV Block, Jayanagar, has been earmarked for residential use and as per approved comprehensive development plan of Bangalore - vide Planning District No. 14 except the buildings facing on the eastern side, of 10th Main road, is earmarked for commercial use.'

16. Therefore, there is no bar to use the building facing 28th 'A' Cross for residential purposes, even according to the Planning Authorities. Trial Court rejected this by observing that this letter does not 'rescue' the petitioner's case. Trial Judge observes that the character of the building cannot be altered just because the building is located on a corner site having an entry from 28th 'A' Cross Road; this is a proposition for which I do not find any basis at all. In fact, there is no particular bar imposed by any law, against using such a premises, as the schedule premises (II floor), from being used for residential purposes. In fact, the respondent contended that the petitioner may occupy the III floor which can be used for his residence, or the petitioner may evict the tenant of the first floor for his purposes. In the absence of any statutory restriction against the user of the second floor, of this building, for residential purposes, it is impermissible for the

Court to take away the landlord's right to use his own premises to meet his requirement. P.W.1 has stated in his cross-examination (dated 11-12-89) that, -

'Earlier to respondent's occupation another tenant was there, and he was using the premises for residence. It is false to suggest that the earlier tenant was also running hotel in the schedule premises.'

Tenant failed in his attempt to show that throughout the 2nd floor was being used for commercial purposes and it was not a residential premises at any time, and that there is a legal bar to use the 2nd floor as a residential unit.

17. If the Act does not specifically restrict the user of the premises for one purpose only and no other statutory provision is forthcoming in that regard, Court cannot enlarge the scope of the restriction imposed by the statute on the right of the landlord. In *UDHISHTER v. ASHOK KUMAR*, : [1987]1SCR516 Supreme Court observed at page 564:-

'It is well settled that though the Rent Act is a beneficial legislation, it must be read reasonably and justly. If more limitations are imposed upon the right to hold the property, then it would expose itself the vice of unconstitutionality. Such an approach in interpretation of beneficial statutes is not warranted. It is true one should iron out the creases and should take a creative approach as to what was intended by a particular provision but there is always, unless rebutted, a presumption as to the constitutionality and the Act should be so read as to prevent it from being exposed to the vice of unconstitutionality. State is also presumed to act fairly.'

Earlier, *Mst. BEGA BEGAUM AND ORS. v. ABDUL AHAD KHAN AND ORS.*, : [1979]2SCR1 Supreme Court pointed out that the provisions of the Rent Control Act cannot be unduly stretched or strained so as to make it impossible or extremely difficult for the landlord to get a decree for eviction.

18. Concept of social justice and the need to protect the weaker sections of the society against exploitation are factors to aid the construction of the provisions of the statute and to guide the application of the statutory provisions on the proved

facts of the case. These ideas cannot be extended to create supplemental restrictions on the rights of the landlord, which are not specifically imposed by the statute, in clear terms.

Therefore, it is not possible to uphold the trial Court's approach in assuming that the schedule premises cannot be used for residential purposes.

19. SMT. GIAN DEVI ANAND v. JEEVAN KUMAR AND ORS., : AIR 1985 SC796 was cited by the learned Counsel, wherein at page 806, Supreme Court observed:

'Because of scarcity of accommodation and gradual high rise in the rents due to various factors, the landlords were in a position to exploit the situation for unjustified personal gains to the serious detriment of the helpless tenants. Under the circumstances, it became imperative for the legislature to intervene to protect the tenants against harassment and exploitation by avaricious landlords and appropriate legislation came to be passed in all the States and Union territories where the situation required an interference by the legislature in this regard. It is no doubt true that the Rent Acts are essentially meant for the benefit of the tenants. It is however, to be noticed that the Rent Acts at the same time also seek to safeguard legitimate interests of the landlords. The Rent Acts which are in deed in the nature of social welfare legislation are intended to protect tenants against harassment and exploitation by landlords, safeguarding at the same time the legitimate interest of the landlords. The Rent Acts seeks to preserve social harmony and promote social justice by safeguarding the interest of the tenants mainly and at the same time protecting the legitimate interest of the landlords. Though the purpose of the various Rent Acts appear to be the same, namely, to promote social justice by upholding protection to tenants against undue harassment and exploitation by landlords, providing at the same time for adequate safeguards of the legitimate interests of the landlords, the Rent Acts undoubtedly lean more in favour of the tenants for whose benefit the Rent Acts are essentially passed.'

The last sentence was emphasised by the learned Counsel for the respondent while urging that if two views are possible, about the facts, the facts in favour of the tenant should be accepted and the finding of the Court should always be

towards extending protective arms in favour of the tenant.

In the above passage, Supreme Court has also pointed out that the purposes of the Rent Control Acts include safeguarding of the legitimate interests of the landlords. Therefore, it is not possible to ignore the interests of the landlord altogether; question in every case would involve whether the claim projected by the landlord is legitimate which requires legal protection, just as the plea of the tenant seeking protection against an arbitrary eviction.

DR. GOPAL DAS VERMA v. DR. S.K. BHARDWAJ AND ANR., : [1962]2SCR678 is based on the language of Section 13 of Delhi and Ajmer Rent Control Act wherein the landlord could evict the tenant from the premises let for residential purposes only and therefore it was not possible to seek eviction of the tenant from a non-residential premises,

20. The contention that the petitioner's present requirement is not bonafide, because, he did not occupy the premises available to him in the year 1976 and subsequently, when admittedly he had a need for a house, overlooks the nature of the need spoken to by the petitioner, P.W.1. In that year he needed a house in Bangalore, because members of his family came to Bangalore to reside in that year. Said 'need' was for any residential premises in Bangalore to accommodate the family. By that time, the various premises in the building had been let out to third parties; there is no dispute on this factual aspect of the contention. All the three floors had been let out to Hotel Guruprakash as one unit in the year 1976 and after 2 years, said tenant vacated the 2nd floor; the same tenant was using the 2nd floor to house his employees. Thereafter, 2nd floor was leased to Siddegowda on a monthly rent of Rs. 1,500/- and he was there for 1 year, 4 to 5 months; thereafter 2nd floor came to be leased to the respondent. This shows that the schedule premises became vacant somewhere in the year 1978 and subsequently in 1979 or 1980. The explanation offered by the petitioner is that in view of the debts incurred for the construction he had to lease the various parts of the building. Evidence discloses that the bank loan was cleared in or about the year 1983 (as the trial Court observes by referring Ex.P.12). Petitioner was in a rented house in T Block, Jayanagar till about the year 1987 (inference from the

deposition of P.W.1 dated 18-6-1991), thereafter he shifted to J.P. Nagar, as his previous landlord wanted the T Block house for himself. But there is nothing on record to show that in 1987 any of the portions in the building was available. In the year 1984 he was in occupation of a rented house, and his case is that, when he issued notice to the tenant (Hotel Guruprakash) as per Ex.R.10 in the year 1984, he intended to start a business in the ground floor after evicting the said tenant, but, he could not command requisite funds to start the business and therefore did not pursue the action to evict Hotel Guruprakash. The fact remains that in the year 1984 there was no compulsive need for the petitioner to go in for his own premises. Therefore, this is not a case where the petitioner did not avail of an opportunity to occupy an available suitable premises at the relevant point of time. Present eviction petition was filed in October 1987, after the petitioner's landlord asked him to vacate the house occupied by the petitioner. The cause leading to the present action is entirely different which never existed earlier. The need of the year 1976 was entirely of a different quality and the situation of that year cannot be applied to test the reasonableness of the claim made in October 1987. Therefore, it cannot be said that the choice made in the eviction petition, seeking to evict the respondent so as to occupy the 2nd floor, cannot be held as an arbitrary choice. It is not the case of the respondent/R.W.1 that any other premises of the petitioner was available to the petitioner near about the year 1987, when petitioner was asked to vacate the house by the petitioner's landlord.

21. Reasonableness of the petitioner's requirement is challenged by contending that the schedule premises was not suitable for residence. It was already elicited in the cross-examination of P.W.1 that one Siddegowda was residing in the 2nd floor, after Hotel Guruprakash vacated it, for about 1 year 4 to 5 months. According to P.W.1 it has two rooms, one dining-cum-kitchen, two lavatories, one pooja room, one big hall and he can convert the hall into two rooms and a hall by making alterations, for the occupation of his family. Its extent admittedly is 18 to 19 squares. He has four children, who are studying. Though R.W.1 states that there is no bathroom in the schedule premises, he vaguely, admitted in his cross-examination, that at the time of his occupation there was a bath-room. However, it should be noted that it is not difficult to have a bath room in a premises used by a restaurant-cum-bar. According to R.W.1, said premises has a hall, kitchen, a room

and toilets. The hall measures 58' x 38'. Store room measures 10' x 10' and kitchen 20' x 12'. He admitted that washing facility was available in the premises. Therefore, there cannot be any difficulty to use the schedule premises for residence, after effecting some alterations. Suitability of the schedule premises for residence cannot be held against the petitioner.

22. It was contended that 3rd floor will be more suitable for residence and the petitioner can easily get its possession as the students vacate as and when their studies are over. Nowhere R. W. 1 explains as to how this floor built with 14 rooms for the students will be more suitable than the second floor. Further, P.W.1 stated that all the rooms are not available and there are students who have been in occupation for two to three years. Therefore, in substance, it is a question of choice to be made by the landlord whether to select the second or third floor. As the 2nd floor is more suitable having regard to the nature of its construction, and suitable for residence, choice of the landlord here cannot be held as an arbitrary choice.

Environmental disturbance may be the same for the 1st and 2nd floors. But the 2nd floor has the advantage of facing a residential locality with a direct access for the said locality.

In these circumstances, I am of the view that the trial Court is not justified in rejecting requirement of the petitioner as unreasonable and lacking in bona fides.

23. Trial Court has held that petitioner can get an alternate accommodation for the same rent as he gets from the respondent for which no material is found on record; no such suggestion was made to P.W.1. P.W.1 has specifically stated that in the next building to the schedule premises, Raghavendra Complex has come up in which premises were available for commercial purposes and the respondent may shift his business to that premises after taking requisite area on rent R.W.1 (respondent) nowhere says that Raghavendra Complex was not available; nor does he state that it is not suitable for his purposes. Respondent did not make any attempt to find out about Raghavendra Complex though he admits its existence. He said in his deposition recorded on 19-2-1991, that -

'True that by the side of the petition schedule premises a new shopping complex has come up, namely 'Raghavendra Shopping Complex'. True that the said shopping complex faces to the western road leading to Jayanagar Shopping Complex. The said complex has come up about 3-4 years back and not recently, as suggested,'

'I do not know if the accommodations, are available in the said complex, for offices, restaurant, bar. I do not know if the said complex building is bigger than the petition schedule premises. I do not know as to how many complexes have come up in that area, other than Raghavendra complex. It is false to suggest that no shopping complexes have come up towards east and south of the petition schedule building, I cannot say the extents of complexes and to whom they belong to. It is false to suggest that no shopping complexes have come up towards east and south and that there are only residential houses, and that I can shift my business to Raghavendra Shopping complex and no inconvenience is caused to me.'

The trial Court could not have found that Raghavendra Complex may not be suitable for the business of the respondent, when respondent himself does not say so. Both the landlord and the tenant have to place material before the Court as to the hardship that may result - landlord to show the hardship that may result to him, if eviction is denied and the tenant to show the hardship to him, by the order of eviction. Having regard to their respective financial means to secure an alternative accommodation and other circumstances, the respective hardships have to be measured and compared to decide as to whom greater hardship would result. Respondent as R.W.1 stated that his monthly turnover was Rs. 45,000/-. He has not placed any other material on record to show his present financial capacity, with reference to securing an alternative accommodation. A mere assertion that he would suffer greater hardship, cannot be acted upon because, it is the inference to be drawn by the Court after considering the facts placed before it. The petitioner is already under an order of eviction and he has no other premises available to him for his residence. In these circumstances, I have no hesitation to conclude that hardship to the petitioner will be greater if an order of eviction is denied to him, as against the inconvenience that may result to the respondent by an order of

eviction. However, some time has to be granted to the respondent to vacate the premises.

24. For these reasons, the order of the trial Court has to be reversed. The petitioner is entitled to succeed. The eviction petition under Section 21(1)(h) of the Act is allowed and the respondent-tenant is directed to vacate and deliver vacant possession of the schedule premises within one year from today subject to payment of rents promptly. The petition is accordingly allowed. No costs.

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